FINISHING THE JOB: HOW MARRIAGE IS MOVING FORWARD NATIONWIDE

By Adam Polaski
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Editors’ Note: Freedom to Marry will update this post throughout the next few weeks as movement for marriage shifts and develops in the states where same-sex couples are still denied the freedom to marry. Updated October 20 with news from KS, MT, ND and MS.

It’s been a historic month for the freedom to marry: On Monday, October 6, the United States Supreme Court denied review in five marriage cases, bringing the freedom to marry immediately in those states (Indiana, Oklahoma, Utah, Virginia and Wisconsin) and paving the way for marriage in another six. Then, just one day later, the U.S. Court of Appeals for the 9th Circuit issued its ruling in favor of the freedom to marry, overturning bans in Idaho and Nevada and setting the stage for marriage in three other states.

As of Monday morning, October 20, same-sex couples have the freedom to marry once and for all in 32 states, including victories from Friday in Arizona and Wyoming (although the ruling in Alaska is being appealed, though the U.S. Supreme Court denied the state’s request for a stay, a signal that there is no good reason to delay the freedom to marry in the state), with marriages for same-sex couples beginning on Tuesday morning at 10:00am. Additionally, bans are expected to fall in three more states within days or weeks.

Freedom to Marry has always been committed to winning marriage for same-sex couples nationwide - and now, as momentum surges across the country, it is more important for supporters to do all they can to speak out for the freedom to marry nationwide. Here’s what’s going on in the 3 other states set up for the freedom to marry soon, plus the 15 where same-sex couples continue to be denied the freedom to marry. Every day of denial in these states is a day too long - and the past week of momentum demonstrates more clearly than ever: America is ready for the freedom to marry.
States Where the Path to Marriage is Paved

**KANSAS (Updated 10/20)**

On October 24, a hearing will be held in Kansas City, KS on the plaintiffs’ Motion for a Temporary Restraining Order in *Marie v. Moser*, a federal legal case filed on October 10 by the American Civil Liberties Union of Kansas. The case is assigned to Judge Daniel D. Crabtree.

A separate case is also being considered by the Kansas Supreme Court, which placed an October 9 administrative order from Johnson County, Kansas officials on hold when the county began issuing marriage licenses to same-sex couples. The hearing is scheduled for November 6.

**MONTANA (Updated 10/20)**

On November 20, a hearing will be held in Great Falls, MT on plaintiffs’ Motion for Summary Judgment in *Rolando v. Fox*, a federal legal case filed on May 21, 2014 by the American Civil Liberties Union of Montana against state Attorney General Tim Fox, state revenue director Michael Kadas and Fay McWilliams, Cascade County clerk of court, on behalf of four Montana couples who are either unmarried or who have been legally married in another state. The Motion for Summary Judgment was filed on October 15, asking the judge to rule in line with the 9th Circuit Court of Appeals' ruling on Tuesday, October 7.

**SOUTH CAROLINA (Updated 10/20)**

On October 8, the stay was lifted in the federal case *Bradacs v. Haley*, which was filed in August of 2013. Soon after, marriage licenses began being issued to same-sex couples in Charleston, but on October 9, the marriages were put on hold pending the outcome of the federal case. Judge Michelle Childs announced on October 14 that she would decide soon whether she needed an in-person oral argument in SC in order to rule in the case. Briefs are due from both the plaintiffs and defendants on October 23, with replies due 21 days later. Despite the additional briefing, the verdict in the case should be clear: The 4th Circuit ruling in Virginia requires that Judge Childs strikes down the constitutional amendment barring same-sex couples from marriage once and for all.

On October 20, plaintiffs in *Bradacs v. Haley* filed a Motion for Summary Judgment.

On October 15, Lambda Legal and South Carolina Equality joined in filing a new federal lawsuit, *Condon v. Haley*, making the case that the 4th Circuit ruling is binding in South Carolina and that marriages must begin immediately. Read more about that complaint here.

http://www.freedomtomarry.org/blog/entry/finishing-the-job-how-marriage-is-moving-forward-in-all-50-states
States in the 6th Circuit

On August 6, 2014, the U.S. Court of Appeals for the 6th Circuit heard oral arguments in six cases seeking the freedom to marry or respect for marriages legally performed in other states. We are still awaiting a ruling in each of the six cases.

**KENTUCKY**

Awaiting a ruling from the 6th Circuit in *Bourke v. Beshear* and *Love v. Beshear*, two federal marriage cases where a federal judge has ruled in favor of the freedom to marry, striking down the marriage ban for same-sex couples and requiring Kentucky to respect the marriages of same-sex couples performed in other states. The legal challenges were brought by private firms Clay Daniel Walton & Adams and Fauver Law Office.

**MICHIGAN**

Awaiting a ruling from the 6th Circuit in *DeBoer v. Snyder*, the federal marriage case where, on March 21, a federal judge ruled in favor of the freedom to marry, striking down the marriage ban for same-sex couples. For the next 24 hours, more than 300 same-sex couples across the state received marriage licenses in Michigan until the 6th Circuit Court of Appeals granted a stay in the decision. Michigan for Marriage, a coalition that Freedom to Marry has been proud to found and lead, is continuing to highlight grassroots support for the freedom to marry. The legal challenge is led by private counsel Kenneth M. Mogill, Dana M. Nessel, Robert A. Sedler, and Carole M. Stanyar.

**OHIO**

Awaiting a ruling from the 6th Circuit in two cases: *Obergefell v. Wymyslo*, the federal marriage case where, on December 23, a federal judge ruled that Ohio must respect the marriages of same-sex couples legally performed in other states for the purpose of listing surviving spouses on death certificates; and *Henry v. Himes*, the federal marriage case where, in April 2014, a judge ruled more generally that Ohio must respect the marriages of same-sex couples from other states. Both cases were filed by Gerhardstein & Branch Co., LPA and Newman & Meeks Co., LPA, with the ACLU joining *Obergefell* and Lambda Legal joining *Henry*. Why Marriage Matters Ohio, a coalition that Freedom to Marry has been proud to found and lead, is continuing to highlight grassroots support for the freedom to marry.

**TENNESSEE**

Awaiting a ruling from the 6th Circuit in *Tanco v. Haslam*, the federal marriage case filed by the National Center for Lesbian Rights, where, on March 14, a federal judge ordered state officials to respect the marriages of the three plaintiff couples.
States in the 5th Circuit

Currently before the U.S. Circuit Court of Appeals for the 5th Circuit are two federal marriage cases - one from Texas, in which the marriage ban was struck down in February 2014, and one from Louisiana, in which a federal judge issued so far the only federal ruling upholding marriage discrimination. Briefing schedules take the cases through November, but an oral argument is not yet set.

TEXAS

Last week, the plaintiffs in a federal marriage case, *De Leon v. Perry*, celebrated as the 5th Circuit granted their motion to expedite this case, which has long been pending before the 5th Circuit. On Friday, the state of Texas submitted its final reply brief, repeating many of the flawed, illogical arguments it has already set forth, and briefing is now complete in the case. Earlier this fall, dozens of amici briefs were filed in the case, including one signed by more than 200 faith leaders and one by dozens of Texas First Responders for the Freedom to Marry.

LOUISIANA

Two legal cases have received rulings in Louisiana. In one, *Robicheaux v. Caldwell*, a federal judge became the first to uphold marriage discrimination in September when he upheld Louisiana's law denying the freedom to marry to same-sex couples. That case has been appealed by same-sex couples to the 5th Circuit Court of Appeals, which has expedited the case and placed it on a parallel schedule with Texas' marriage appeal. The briefing schedule in Louisiana takes the case through at least the middle of November, although an oral argument has not yet been scheduled. Lambda Legal has joined this case as counsel.

In a separate case in state court, *Costanza and Brewer v. Caldwell*, a Circuit Judge ruled in favor of the freedom to marry, requiring Louisiana to respect the marriages of same-sex couples performed in other states and affirming that the anti-marriage amendment in Louisiana violates the due process and equal protection clauses of the 14th Amendment. The ruling was nearly immediately appealed by the state, triggering the decision to be placed on hold. A schedule for next steps in the case is unclear.

MISSISSIPPI (Updated 10/20)

On October 20, 2014, a new federal legal case (*Campaign for Southern Equality v. Bryant*) was filed seeking the freedom to marry in Mississippi on behalf of the Campaign for Southern Equality and two same-sex couples. The lead attorney, Roberta Kaplan of Paul, Weiss, Rifkind, Wharton & Garrison LLP, led the case that brought down the core of the so-called Defense of Marriage Act at the U.S. Supreme Court in June 2013. Plaintiffs are also represented by Mississippi attorney Robert McDuff of McDuff & Byrd, based in Jackson, Mississippi.

The couples are Andrea Sanders and Rebecca Bickett, who want to marry in their home state, and Jocelyn Pritchett and Carla Webb, who are fighting for their marriage in Maine to be respected back home. You can read more about the legal case, *Campaign for Southern Equality v. Bryant*, HERE.
States in the 11th Circuit

Currently before the U.S. Circuit Court of Appeals for the 11th Circuit is one federal marriage case from Florida, in which the marriage ban was struck down in September 2014. Briefing schedules take the cases likely through the start of 2015, but an oral argument is not yet set.

FLORIDA

In a federal marriage case, *Brenner v. Scott*, the state of Florida has delayed proceedings, receiving an extension in the filing of its opening brief until November 11. The briefing schedule should take this case into 2015.

On Monday, October 14, Florida Attorney General Pam Bondi filed a motion to the FL Third District Court of Appeals in two marriage cases in state court urging the appeals court to pass the cases onto the Florida Supreme Court, which would rule once and for all on the freedom to marry for all of Florida. Marriage "is unquestionably an important issue, and the Plaintiffs, the State, and all citizens deserve a definitive answer," the Attorney General wrote Monday evening. "Until recently, the issue was squarely before the United States Supreme Court, and it appeared that a definitive answer was coming. ... Unfortunately, the United States Supreme Court decided not to answer the question."

GEORGIA

A federal case, *Inniss v. Aderhold*, is currently pending in federal court, with the state's reply brief due on October 22. The case is led by Lambda Legal and private counsel from Bryan Cave and White & Case. Earlier this year, the legal team added a new plaintiff family to the case, Beth and Krista Wurz, who were married in 2010 and are now seeking respect for their marriage. The women are raising seven children together, including five placed with them through the foster care system - but because their marriage is not respected, they are unable to jointly adopt their children.

Jeff Graham, Executive Director of Georgia Equality, said earlier this month, "On behalf of everyone at Georgia Equality, we want to thank Beth and Krista for joining the lawsuit. While it has long been a best business practice to extend benefits to the spouses and partners of same-sex couples, unfortunately the State of Georgia does not treat their LGBT employees with that same sense of fairness. By joining this lawsuit, they are giving voice to the tens of thousands of state employees who are denied the benefits and protections that other married co-workers enjoy."

ALABAMA

Three federal cases are pending in Alabama seeking respect for the marriages of same-sex couples legally performed in other states. Motions for summary judgment have been filed, but none of the cases have seen much movement in recent weeks.

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States in the 8th Circuit

In the 8th Circuit, no federal marriage cases have received rulings this year, although challenges are pending in Arkansas, North Dakota, and South Dakota. In Minnesota and Iowa, same-sex couples already have the freedom to marry.

ARKANSAS

A state marriage case, Wright v. Smith, will soon be considered by the Arkansas Supreme Court; the briefing process in the case is nearing completion. On October 6, plaintiffs filed their reply brief, and supporters of the freedom to marry - including 43 faith leaders in Arkansas and dozens of First Responders - filed "friend-of-the-court" briefs.

MISSOURI

Marriages between same-sex couples are officially respected in Missouri, now that the Attorney General and Governor have said they will not appeal a ruling from Friday, October 3. Now, two other legal cases are pending in Missouri's state court system. One, Lawson v. Kelly, seeks the freedom to marry in Missouri. A separate case, Missouri v. Carpenter, was filed by the state after the City of St. Louis issued four marriage licenses to same-sex couples. A hearing was held in the Carpenter case on Monday, September 29, and a ruling could potentially pave the way for the freedom to marry across the Show Me State.

NEBRASKA

There has been no movement on the freedom to marry in the courts in Nebraska.

NORTH DAKOTA (Updated 10/20)

Two federal legal challenges are pending seeking the freedom to marry in North Dakota. In both, Jorgensen v. Montplaisir, filed by Lambda Legal, and the other, Ramsay v. Dalrymple, filed by Joshua Newville of Madia Law LLC and Debra Voigt of Burd And Voigt Law Office with the National Center for Lesbian Rights as co-counsel, the legal teams have filed motions for summary judgment, seeking immediate relief for the same-sex couples represented in the case, with Lambda adding additional supplemental briefs in light of all of the movement at the U.S. Supreme Court this month. The cases are fully briefed and a ruling could come down at any point.

SOUTH DAKOTA (Updated 10/20)

One federal legal challenge is pending seeking the freedom to marry in South Dakota. The case, Rosenbrahn v. Daugaard, filed by Joshua Newville of Madia Law LLC and Debra Voigt of Burd And Voigt Law Office with the National Center for Lesbian Rights as co-counsel, had a hearing on the defendants' motion to dismiss the case on Friday, October 17, with a ruling expected soon. A motion for summary judgment is also pending, although the hearing is not scheduled or expected to cover the motion.

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Other Areas Where Marriage is Moving Forward

PUERTO RICO

In Puerto Rico, a federal legal challenge has been brought by private counsel and joined by Lambda Legal. Plaintiffs are awaiting a ruling in the case.

Note: Same-sex couples officially have the freedom to marry right now in Alaska, Idaho, and Nevada, although opponents of the freedom to marry are still pursuing last-ditch attempts to reinstate harmful marriage bans. But the ruling from the U.S. Court of Appeals for the 9th Circuit - and the U.S. Supreme Court's decision to deny review in the five marriage cases last week - indicate that their efforts are unlikely to succeed.