

**Federal judge strikes down state's gay marriage ban, stays ruling until Nov. 20, November 12, 2014**

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**The following is an article from the *Post and Courier* detailing the debate over same-sex marriage in South Carolina**

**Federal judge strikes down state's gay marriage ban, stays ruling until Nov. 20**

**By: Jennifer Berry Hawes**

A federal judge ruled Wednesday that South Carolina officials cannot enforce the state's constitutional gay marriage ban, although a temporary stay means those marriages won't happen before Nov. 20.

U.S. District Judge Richard Gergel granted a motion for summary judgment and enjoined state officials from enforcing the state's constitutional gay marriage ban or from withholding marriage licenses from same-sex couples. South Carolina's laws banning gay marriage violate the U.S. Constitution "and are invalid as a matter of law," Gergel wrote in his much-anticipated order.

However, Gergel also granted defendant Attorney General Alan Wilson a temporary stay until noon on Nov. 20, giving attorneys slightly more than a week to appeal.

"Today's ruling comes as no surprise and does not change the constitutional obligation of this Office to defend South Carolina law, including, but not necessarily limited to, appeal to the Fourth Circuit. Therefore, we will immediately appeal to the Fourth Circuit," Wilson said in a statement.

Charleston County Councilwoman Colleen Condon, who filed the lawsuit along with her fiancée, Nichols Bleckley, deemed the appeal a waste.

"Wilson is grasping at any excuse to defend something that is indefensible," Condon said. "He can appeal to the Fourth Circuit, but he is wasting our time and taxpayer money in South Carolina."

Wilson's appeal will go before the very court that struck down Virginia's constitutional gay marriage ban and was among those that triggered the recent cascade of legalized same-sex marriage across the nation.

"I don't think the Fourth Circuit is going to change its mind," said Malissa Burnette, lead attorney in Condon's case.



[Enlarge](#) Colleen Condon (right) and her partner, Nichols Bleckley, arrived to apply for a marriage license in Charleston County exactly one month ago. Brad Nettles/Staff Last month, the U.S. Supreme Court refused to hear an appeal of the Fourth Circuit's ruling striking down Virginia's ban. Legal experts then largely agreed that meant gay marriage must be allowed in the five mid-Atlantic states under the Fourth Circuit's jurisdiction. South Carolina remains the only state still fighting.

Meanwhile, Gergel's ruling could impact an estimated 7,200 gay couples living together in South Carolina, according to the Williams Institute, a California think tank that researches issues regarding sexual orientation.

Gay couples around the state are planning to line up at their local courthouses to apply for marriage licenses at noon on Nov. 20. Condon said she and Bleckley will be at Charleston County's courthouse promptly at noon, as well.

"It's history," Burnette said. "I'm just sorry that South Carolina has to be the last in the Fourth Circuit and has to be dragged kicking and screaming into the century."

### **Calls to concede defeat**

Andrew Billings and his fiancé, Shawn Brock, were the first male couple to apply for a marriage license in Charleston County last month when a window opened briefly to gay marriages before the state Supreme Court intervened. They want Wilson to concede defeat.

"Enough is enough. It's over!" Billings said.



Andrew Billings and Shawn Brock were the first male couple to apply for a marriage license in Charleston County. Provided

The couple, both veterans, have been together for more than 20 years and want the legal protections of marriage such as being able to join the other's employer-provided health insurance plan and being guaranteed hospital visitations.

"We have a family, and we want the same legal aspects that other people get," Billings said. "We don't want any special treatment."

The Rev. Lorraine Brock, senior pastor of the Metropolitan Community Church, said she plans to be at Charleston City Hall on Nov. 21 to marry couples. "If they have a valid marriage license, I will marry them on the spot," she said.

Wednesday's ruling thrilled supporters from Charleston and across the nation where gay marriage has made rapid headway since the U.S. Supreme Court's action.

"Laws prohibiting same-sex couples from marrying serve no purpose other than to harm Americans who simply want to protect and provide for themselves and their families. Ultimately, the U.S. Constitution does not allow states to continue discriminating against committed and loving gay and lesbian couples," said Sarah Warbelow, legal director of the Human Rights Campaign, in a statement.

Dot Scott, president of the Charleston NAACP, agreed. "Every citizen has the right to marry who they choose," Scott said. "It is one of those civil rights every citizen has."

**Issue likely heading to high court**



Tabitha and Pamela Talbird applied for a marriage license in Charleston County but decided to go to North Carolina to marry instead after their application was put on hold. Provided

Depending how court actions across the nation shake out, South Carolina could become the 34th state where same-sex marriage is legal.

The U.S. Supreme Court said Wednesday that gay marriages can go ahead in Kansas, making it No. 33. However, since a judge ruled Missouri's ban unconstitutional, a stay has kept the issue on hold while that state's attorney general appeals to the Eighth Circuit.

Despite the recent tide of rulings in favor of same-sex marriage nationwide, Wilson argued that last week's surprise ruling by the Sixth Circuit U.S. Court of Appeals in Ohio upholding a gay marriage ban makes it more likely the U.S. Supreme Court will weigh in nationally - and perhaps halt the march of gay marriage across the country.

"We believe this office has an obligation to defend state law as long as we have a viable path to do so," Wilson said in a statement.



The Fourth Circuit is likely to act quickly in response - and not in Wilson's favor, said Carl Tobias, a professor at the University of Richmond's School of Law who closely watched the Virginia case.



Shawn Brock and Andrew Billings have been together for more than 20 years and want to marry legally in South Carolina. They were the first male couple to apply for a marriage license in Charleston County last month before the state Supreme Court intervened. Provided "In short, the (attorney general) is wasting time, money and energy on appeals," Tobias said.

After the U.S. Supreme Court's lack of action last month, Charleston County's Republican Probate Judge Irvin Condon, a distant cousin to Colleen Condon, said he would issue marriage licenses to same-sex couples. Condon and Bleckley, along with 29 other couples, rushed to the courthouse to apply. However, none received licenses.

Instead, the S.C. Supreme Court intervened, ordering the state's 46 county probate court judges not to issue marriage licenses until a separate Columbia-based federal case is resolved. A week later, Condon and Bleckley sued state officials contending they are infringing on the couple's right to marry.

### **Getting hitched anyway**

In Wednesday's order, Gergel granted the couple's request for a summary judgment and ruled that no state officials can enforce South Carolina's voter-approved constitutional gay marriage ban or keep same-sex couples from getting marriage licenses. Gergel contends his ruling will control probate judges and other state officials as they move forward.

Gergel also removed Gov. Nikki Haley as a defendant in the case. The same occurred in a Columbia-based gay marriage lawsuit earlier this week.

Lawmakers passed South Carolina's Defense of Marriage law in 1996. Then in 2006, roughly two-thirds of voters approved an amendment to the state constitution banning same-sex marriages and prohibiting same-sex marriages legal in other states from being recognized in South Carolina.

For Louise Turrentine and her wife, Carolyn Ferrell, recent events underscore the fragmented nature of how their marriage in Vermont is treated compared to straight couples whose vows are treated equally in all states.

"They're married - nice and simple," Turrentine said. "Our situation isn't so clean cut. Our marriage is legal, yet regarded differently depending on which state we're in. We are hopeful that this issue will soon be resolved for us and everyone else who lives in South Carolina but had to marry their loved one in another state."

Several couples who applied for marriage licenses in Charleston County when the window opened briefly last month have withdrawn their requests and married in other states rather than wait. Among them are Pamela and Tabitha Talbird, the seventh in line to apply.

"We were given a small taste of equality for less than 24 hours," Pamela said. "So many people don't know what it's like to live in a world where someone, because they think differently than you, has the authority to dictate what you can and can't do in your life."

Instead of waiting for the legal wrangling that followed to be resolved, they drove to Charlotte to tie the knot.

"We lost what little faith we had in South Carolina, and getting married in a state we love so much just didn't matter anymore," Pamela said. "South Carolina, once again, had let us down."

They paid their \$70 for a South Carolina marriage license - but don't need it any more.

"We will have a nice piece of paper to frame as part of South Carolina history," Pamela said.