

Judges rule SC same-sex marriage ban to end Thursday, November 18, 2014
(<http://www.thestate.com/2014/11/18/3820689/us-court-of-appeals-nixes-sc-ag.html>)

The following article is a follow-up piece on Bradacs, Goodwin, and their lawyer. It discusses their opinions and feelings on the upcoming Supreme Court decision regarding the legalization of same-sex marriage in South Carolina.

Judges rule SC same-sex marriage ban to end Thursday

By: John Monk

COLUMBIA, SC — Same-sex marriage will be legal in South Carolina on Thursday afternoon unless the U.S. Supreme Court steps in to stop it.

On Tuesday, a three-judge panel of the 4th U.S. Circuit Court of Appeals unanimously turned down S.C. Attorney General Alan Wilson's request to extend the Thursday noon deadline imposed by U.S. Judge Richard Gergel of Charleston. Gergel last week ruled that gay couples could get married in South Carolina under the provisions of the U.S. Constitution, but he imposed the Thursday deadline to give Wilson a chance to appeal.

Wilson did. He lost. But he said he immediately will ask the U.S. Supreme Court to get involved.

In a separate decision Tuesday, U.S. Judge Michelle Childs of Columbia upheld a Lexington County lesbian couple's bid to get legal recognition from the state of South Carolina for their out-of-state marriage.

The couple, Katherine Bradacs and Tracie Goodwin, were legally married in the District of Columbia in 2012. They have three children, and their lawsuit alleged their children were adversely affected by South Carolina not acknowledging they are legally married.

A Wilson spokesman said the attorney general is reviewing Childs' decision in the Lexington case.

In the Charleston case, the three-judge panel issued a terse, two-page ruling, denying Wilson's bid for more time to argue his case that a probate judge in Charleston should not issue a marriage license to Colleen Condon and Ann Bleckley. Gergel said a 4th Circuit ruling in July allows the probate judge to issue the license and said he could – after the stay of his decision is lifted at one minute after noon on Thursday.

Gay couples who want to get married – no one knows how many that would be – and apply for a license on Thursday would have to wait 24 hours for it to be issued, just as any other couple would.

However, Condon and Bleckley, who brought the lawsuit in Gergel's court, had already applied for a marriage license and paid an application fee. Theoretically, they could get married by as early as Thursday, if Gergel's stay expires at noon on that day.

Neither Childs' nor Gergel's ruling would compel any church to marry same sex-sex couples. Instead, both judges said for legal purposes, the state of South Carolina must grant the same legal rights and benefits to married gay couples as the state grants to married opposite sex couples.

In the Lexington case, Judge Childs ruled that an anti-gay marriage amendment to the state Constitution and a state law banning recognition of same-sex marriage violate the U.S. Constitution.

Specifically, South Carolina's laws violate Bradacs' and Goodwin's right to equal protection under law and due process, Childs ruled.

Childs' ruling means that two South Carolina federal district judges – she and Gergel – have now ruled definitively against Wilson, who was arguing that South Carolina's Constitution had more legal authority than the U.S. Constitution when it came to recognition of same-sex marriages. Wilson also argued that each state should be able to define what marriage is. South Carolina law has defined marriage as a legal union between a man and a woman.

On the 4th Circuit panel that ruled against Wilson on Tuesday were three federal judges who had not yet weighed in on the same-sex marriage issue – Judge William Traxler Jr. of South Carolina, Judge Diana Motz of Maryland and Judge Stephanie Thacker of West Virginia.

In July, another 4th Circuit three-judge panel voted 2-1 to overturn a Virginia ban on same-sex marriage. The prevailing judges on that panel were Henry Floyd of South Carolina and Roger Gregory of Virginia. The losing judge was Paul Niemeyer of Maryland.

In their rulings, both Childs and Gergel made clear their findings that legally married gay couples should have the same rights as legally married opposite sex couples. Those rights include income tax exemptions, inheritance and hospital visitation rights and job benefit rights, to cite a few, according to pleadings in the Lexington and Charleston cases.

Bradacs and Goodwin filed their lawsuit in August 2013, seeking to force the state to recognize their District of Columbia marriage. They were the first South Carolina gay couple to file such a lawsuit. At the time, fewer than 20 states recognized gay marriages and the wave of more than 40 federal court decisions overturning gay marriage bans was not yet in full force.

Bradacs is a trooper in the S.C. Highway Patrol, and their lawsuit specifically refers to the hardships faced by Goodwin and other similarly situated spouses whose marriages are legal in other states but not in South Carolina.

“Lesbian and gay police officers, firefighters and other first responders are denied the peace of mind of knowing that if they make the ultimate sacrifice, their partner will be taken care of through the financial support available to help those who lost their spouses in service to the community,” the lawsuit says.

“We represent two of the most courageous people – Katie and Tracie – that I know,” said attorney John Nichols, who with Columbia lawyer Carrie Warner filed the Bradacs-Goodwin lawsuit in 2013.

“This is a very proud moment for John and me, to be a part of a case this huge,” Warner said. “These girls stuck their necks out when nobody else was willing to do it.”

In their August 2013 lawsuit, Bradacs and Goodwin cited a 5-4 June 2013 decision by the U.S. Supreme Court that struck down part of the federal Defense of Marriage Act that recognized state-sanctioned, same-sex marriages but treated them differently from state-sanctioned, opposite-sex marriages.

In 2006, S.C. voters approved an amendment to the state Constitution banning same-sex marriage, 78 percent to 22 percent. Some 829,360 people voted to approve the amendment; 234,316 voted against it.

Condon and Bleckley filed their Charleston lawsuit in early October after the U.S. Supreme Court declined to review U.S. decisions by four U.S. courts of appeals – including the 4th Circuit – that overturned gay marriage bans.

Malissa Burnette of Columbia, one of the three Columbia lawyers for Condon and Bleckley, said late Tuesday that, “We are one step closer now, and we are going to fight every step of the way every one of the state’s delaying tactics.”

In a statement late Tuesday, Wilson said, “This issue has not yet been resolved nationally. It is still likely the U.S. Supreme Court will address conflicting rulings between federal circuit courts of appeal.

“Therefore, today’s ruling by the 4th Circuit does not end the constitutional obligation of this office to defend S.C. law,” Wilson said.

Wilson was referring to a decision earlier this month by the 6th U.S. Circuit Court of Appeals, which ran counter to other U.S. circuit appeals courts.

Gov. Nikki Haley was originally named in both the Charleston and Lexington lawsuits as a defendant along with Wilson. Although Haley has said she agreed with Wilson, both

judges dropped her as a defendant because she had not played any active role in trying to stop gays from being married, as has Wilson.

Columbia City Council doesn't wait

The city of Columbia immediately will begin preparing to extend full family benefits to its gay employees who have valid marriage licenses from any state and the District of Columbia, per a decision of City Council on Tuesday.

“This is no longer a discussion of faith, politics or even law,” Mayor Steve Benjamin said in a letter to council, city manager Teresa Wilson and Human Resources director Pamela Benjamin. “It is simply a matter of time.”

Council members Moe Baddourah, Brian DeQuincey Newman, Tameika Isaac Devine and Benjamin voted in favor of the decision Tuesday. Councilman Sam Davis wasn't there for the vote. Cameron Runyan opposed it.

“I can't support it today. I can't support it tomorrow,” Runyan said.

AT THE DMV

Michelle Ruby said she has tried unsuccessfully three times to change her driver's license from her maiden name, Fields, since her June wedding in Massachusetts.

“I have been in limbo, a lot of people have been in limbo,” the Moncks Corner resident said.

Being able to have workers at the S.C. Department of Motor Vehicles office grant her name-change request will be “like we're getting married all over again. Everyone will know I'm a Ruby.”

Jeff Ayers, board chairman of S.C. Equality, suggested same-sex couples married legally outside South Carolina should go to DMV offices Wednesday.

“They should take a copy of the (court) ruling to the DMV and wait until (workers) get on the phone to see what they are supposed to do,” he said.

Same-sex couples might want to wait a day before going to driver's license offices, said Susan Dunn, legal director for the American Civil Liberties Union in South Carolina.

The court decision was released late Tuesday, giving DMV officials little time to set up procedures for the following day, she said.

TAXES

Tuesday's court decisions also cast doubt on an opinion issued by the S.C. Department of Revenue this year that directed same-sex couples legally married in other states to file separate state income tax returns.

The IRS allows those couples to file jointly.

Compiled by staff writers Sarah Ellis and Andy Shain.