

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

CARI D. SEARCY,)	
)	
Plaintiff,)	
)	
v.)	
)	
HON. DON DAVIS,)	
individually and in his official)	
capacity as Probate Judge for)	
Mobile County, Alabama,)	
)	
Defendant.)	

**COMPLAINT AND REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTIVE
RELIEF**

COMES NOW the Plaintiff, Cari D. Searcy, by and through undersigned counsel, and files this her Complaint and Request for Injunctive Relief as follows:

JURISDICTION AND VENUE

1. This matter is filed pursuant to 28 U.S.C. § 2201-2202 and 42 U.S.C. § 1983 as a challenge to the Probate Court of Mobile County, Alabama's refusal to grant an unqualified adoption to the Plaintiff presumably under the guise of Ala. Code § 30-1-19 (the so-called "Marriage Protection Act"), Ala. Const. Amend. No. 774 (the so-called "Sanctity of Marriage Amendment") and the February 8, 2015, Order of the Alabama Chief Justice, Roy Moore. A copy of Judge Moore's Order is attached hereto as Exhibit "A."
2. This Court is a proper venue pursuant to 28 U.S.C. § 1331(1) because the Defendant, Hon. Don Davis resides in this judicial district. Alternatively, venue is proper in this judicial

district pursuant to 28 U.S.C. § 1331(2) because “a substantial part of the events or omissions giving rise to the claim occurred” in this judicial district.

3. The Court possesses proper subject matter jurisdiction and personal jurisdiction over the parties.

4. The Plaintiff is an adult resident citizen of Mobile County, Alabama.

5. The acts and omissions complained of occurred in Mobile County, Alabama. Plaintiff’s cause of action arose in Mobile County, Alabama.

PARTIES

6. Plaintiff Cari D. Searcy is an adult resident citizen of both Alabama and the United States. As such, she is endowed with certain inalienable rights that include, among others, the right to be treated justly and equitably under the laws of the United States and of the State of Alabama.

7. Defendant Hon. Don Davis is an adult resident citizen of Mobile County, Alabama and is a citizen of the United States. Hon. Don Davis is the Judge of Probate for Mobile County, Alabama. As such, Hon. Don Davis is charged with upholding the laws and Constitution of the United States and the laws and Constitution of the State of Alabama. Hon. Don Davis is the Judge responsible for hearing and granting adoptions in Mobile County.

FACTUAL ALLEGATIONS

8. This Court held that the Alabama Sanctity Laws violate the Equal Protection and Due Process Clauses of the 14th Amendment of the United States Constitution. (Copies of the

relevant Orders are attached hereto collectively as Exhibit “B”). Of particular note, this Court has already held those laws to be unconstitutional in a case wherein the current Plaintiff was the Plaintiff. By continuing to enforce and uphold the now void Alabama Sanctity Laws, Hon. Don Davis is violating the Constitution of the United States and the laws of the State of Alabama.

9. This Court has also specifically enjoined the Defendant, Hon. Don Davis, from enforcing the Sanctity Laws, and the State of Alabama is enjoined from enforcing those laws as well. (*Strawser v. Strange* and *Searcy v. Strange*). Yet, Hon. Don Davis is continuing to enforce the remnants of those now void laws in violation of the constitutional rights of the Plaintiff.

10. The Plaintiff is married to Kimberly McKeand having been so since 2008 when Searcy and McKeand were married in California. K.S. was born to Kimberly McKeand in Mobile, Alabama on December 30, 2005. K.S.’s biological father is a adult citizen of the State of Florida named Mike. McKeand and Searcy became friends with Mike, and eventually it was decided that Mike would be a sperm donor and that McKeand would carry a child that would be raised by Searcy and McKeand. Mike was not listed as father of K.S. on the birth certificate, and Mike did not register as the father with the State of Alabama’s putative father registry system. Mike did not contest the adoption, and in fact, Mike consents to the adoption and executed a waiver to that effect. Mike has waived all parental rights and he has terminated all rights as a parent to K.S.

11. In reliance on this Court’s Orders, the Plaintiff filed a Petition for Adoption with the Probate Court of Mobile County on or about February 9, 2015, seeking to adopt K.S. pursuant to Ala. Code § 26-10A-27 (1975), which “[a]ny person may adopt his or her spouse’s child according to the provisions of this chapter” subject to three exceptions and conditions that are inapplicable to this matter.

12. Searcy and McKeand enjoy a close, loving, and stable relationship, and they have provided K.S. with a nurturing, supportive, and loving home environment since birth. Together, they attend to K.S.'s educational, physical, emotional, spiritual, and mental development.

13. Searcy and McKeand share in financial, medical, career, spiritual, and social decisions as a married couple. More importantly to this matter, the two jointly parent K.S. and they will continue to do so. K.S. views both as parents, and K.S. has only known Searcy and McKeand as his parents since birth.

14. There is no articulable reason why Searcy is not allowed to adopt K.S. other than the fact that she is a woman married to another woman.

15. In step-parent adoption petitions, Hon. Don Davis typically issues an interlocutory order

16. In the present matter, Hon. Don Davis did issue an interlocutory order, but it is materially different than what he issues in a heterosexual step-parent adoption situation. A redacted copy of the Interlocutory order is attached hereto as Exhibit "C."

17. As the Court can see, Hon. Don Davis has "qualified" his Interlocutory order specifically stating that "It is further ORDERED by the Court that this Decree is qualified in nature, and the Court will not issue a final adoption order until a final ruling is issued in the United States Supreme Court on the Marriage Act cases before it."

18. This current lawsuit challenges Hon. Don Davis's refusal to grant final adoption in the matter despite being specifically enjoined by this Court from enforcing the Sanctity Laws for any purpose.

19. As this Court is aware, this Court ordered that the Alabama Sanctity Laws were unconstitutional and that the laws were enjoined from enforcement as of February 9, 2015. The

Eleventh Circuit Court of Appeals upheld the expiration of the stay of February 9, 2015. Significantly, the Supreme Court of the United States upheld the same meaning that the Alabama Sanctity Laws became null and void on February 9, 2015. There can be no legitimate question on the issue, and Hon. Don Davis has no legitimate reason for continuing to abide by the fiction that the Alabama Sanctity Laws have any effect in Alabama. Quite simply, that issue has been decided, and there is no valid, legal reason why he is affirmatively delaying this adoption. In so doing, he is violating the legal rights of the Plaintiff, and, by extension, her family.

COUNT 1

VIOLATIONS OF RIGHTS SECURED BY THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)

20. Plaintiff hereby re-alleges and incorporates by reference all allegations set forth in paragraphs 1-19 as if fully set forth herein.

21. All acts and omissions taken by Hon. Don Davis were done by Hon. Don Davis while acting under color of state law and had the effect of depriving the Plaintiff of rights secured by the Constitution and laws of the United States, specifically the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

22. The treatment that Plaintiff has received is in retaliation for the exercise of her civil rights secured by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

23. Defendant Hon. Don Davis acts and omissions were intentional, malicious, willful, wanton, and in gross reckless disregard of Plaintiff's constitutional rights.

COUNT 2

VIOLATIONS OF RIGHTS SECURED BY THE DUE PROCESS CLAUSE OF THE
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)

24. Plaintiff hereby re-alleges and incorporates by reference all allegations set forth in paragraphs 1-23 as if fully set forth herein.

25. All acts and omissions taken by Hon. Don Davis were done by Hon. Don Davis while acting under color of state law and had the effect of depriving the Plaintiff of rights secured by the Constitution and laws of the United States, specifically the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

26. The treatment that Plaintiff has received is in retaliation for the exercise of her civil rights secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

27. Defendant Hon. Don Davis acts and omissions were intentional, malicious, willful, wanton, and in gross reckless disregard of Plaintiff's constitutional rights.

WHEREFORE, the premises considered, the Plaintiff respectfully requests that the Court enter an Order as follows:

- (a) Enjoining Hon. Don Davis from enforcing, directly or indirectly the Alabama Sanctity Laws;
- (b) Commanding Hon. Don Davis to grant the adoption sought in this matter without any further delay, and specifically commanding Hon. Don Davis;
- (c) Striking Hon. Don Davis's "qualified" Interlocutory Order so as to treat Cari Searcy and this family the same way that he would a heterosexual family;

(d) Awarding compensatory, consequential, and other damages (including punitive damages if the Court deems it appropriate);

(e) Awarding the Plaintiff attorneys' fees, costs, and expenses associated with this lawsuit;

(f) Commanding Hon. Don Davis to end his discriminatory practices directed towards the Plaintiff and her family;

(g) To the extent the Court deems necessary, reaffirming its previous Orders in the *Searcy v. Strange*; *Hedgepeth v. Probate Court of Mobile County*; and *Strawser v. Strange* matters;

(h) Granting Preliminary Injunctive Relief commanding Hon. Don Davis to vacate his Interlocutory Order to the extent it is "qualified" upon a ruling from the Supreme Court at some unknown point in the future;

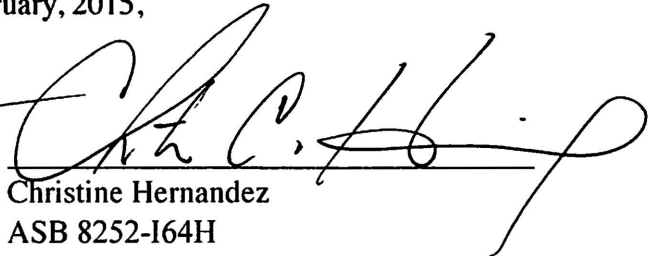
(i) Setting the issue of a preliminary injunction at the earliest convenient time once this Complaint is served as Plaintiff anticipates serving Hon. Don Davis with the Summons and Complaint the same day as the filing of this Complaint;

(j) Granting such other, further, and different relief as the Court deems appropriate

Respectfully submitted this 24th day of February, 2015,



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The Defendant may be served by private process server as follows:

Hon. Don Davis
Judge of Probate Court for Mobile County, Alabama
151 Government Street
Mobile, Alabama 36602