

## ACLU Aims To Lift Stay On Fla. Gay Marriage Ruling

By **Nathan Hale**

Law360, Miami (October 06, 2014, 9:54 PM ET) -- Following the [U.S. Supreme Court's](#) refusal Monday to review seven rulings striking same-sex marriage bans in five states, the Florida chapter of the [American Civil Liberties Union](#) said that it will ask a federal judge to lift a stay on his decision finding Florida's ban unconstitutional.

In a statement, the organization, which is representing the plaintiffs in one of two cases covered by U.S. District Judge Robert L. Hinkle's stay, expressed optimism that same-sex couples will soon be able to get married or have their out-of-state marriages recognized in Florida.

“The [decision by the Supreme Court not to hear arguments in the marriage cases](#) before it is a huge win for all families across the nation, including in Florida,” ACLU of Florida attorney Daniel Tilley said. “Because Judge Hinkle tied the stay in the ACLU’s case to the lifting of the stays in the very cases which the Supreme Court today refused to hear, we are now one step closer to the day when every Florida family can have the respect, protection and responsibilities that come with marriage.”

That sentiment extended to attorneys representing plaintiffs in some of the related cases pending in the state courts.

“The Supreme Court’s willingness to let stand decisions striking down state marriage bans by the Tenth, Fourth and Seventh circuits sends a strong message to other courts considering the issue that there is no basis for delay or for perpetuating the harms caused to same-sex couples and their children,” said Shannon Minter, legal director of the National Center for Lesbian Rights and counsel for six couples from Miami-Dade County whose case could next be headed to the Florida Supreme Court. “Today’s action by the court should also send a strong message to state officials in Florida that there is no basis for defending these discriminatory bans.”

Proponents of same-sex marriage said the U.S. Supreme Court's position could add pressure to Florida Gov. Rick Scott and Attorney General Pam Bondi to drop their defense of the state's ban, which Tilley described as a “dead-end campaign to resist what is now clear historical inevitability.”

[Bondi had cited two of the cases](#) rejected by the U.S. Supreme Court on Monday in a motion to stay two

state cases. On Monday, her press secretary, C. Whitney Ray, said, “We are reviewing the impact of these decisions, as well as other cases around the country.”

Tilley said the ACLU of Florida is preparing its request to Judge Hinkle and is in communication with the state solicitor general's office, which had already appealed the ruling to the Eleventh Circuit.

Judge Hinkle's stay was issued in conjunction with **his Aug. 21 ruling** in two consolidated suits filed in the Northern District of Florida.

**The first suit**, filed in February, challenged Florida's refusal to recognize same-sex marriages performed out of state on behalf of two Jacksonville men who were married in Canada. According to the complaint, James Brenner was unable to designate Charles Jones as his spouse while enrolling in the state's deferred retirement option program.

**The second ACLU-backed suit**, filed in March, names eight same-sex couples, a Fort Myers widow and SAVE, South Florida's largest gay rights organization, as plaintiffs.

The widow, Arlene Goldberg, whose wife died in March after 47 years together, received an exception to the stay. Judge Hinkle ordered that she be provided an amended death certificate, which Tilley said is expected this week, so she can receive Social Security benefits.

The U.S. Supreme Court's ruling Monday left intact decisions rendering gay marriage legal in Indiana, Wisconsin, Utah, Virginia and Oklahoma, and will bring the number of states where gay marriage is legal to 24, including the District of Columbia.

That number could also increase quickly, as challenges play out against gay marriage bans in states whose designated appeals courts have deemed them to be unconstitutional.

Elena Vigil-Farinas of Restivo Reilly & Vigil-Farinas LLC, counsel for the plaintiffs in a state court case out of Key West in Monroe County, said that she expects the U.S. Supreme Court may have to issue an opinion eventually, but the signs are clearly good for her side.

“They have already struck down huge portions of the Defense of Marriage Act in favor of married gay couples,

so I believe today's decision weighs very heavily in our favor as tacit approval and a green light for marriage equality rights," she said.

The plaintiffs in the cases affected by Judge Hinkle's stay are represented by Daniel B. Tilley and Maria Kayanan of the ACLU Foundation of Florida, Leslie Cooper of the ACLU Foundation, and Stephen F. Rosenthal of [Podhurst Orseck PA](#).

The state is represented by Allen C. Winsor and Adam Scott Tanenbaum of the Florida Office of the Attorney General.

The cases are Brenner et al. v. Scott et al., case number [4:14-cv-00107](#); and Grimsley et al. v. Scott et al., case number [4:14-cv-00138](#), both in the U.S. District Court for the Northern District of Florida.

--Additional reporting by Carolina Bolado and Allissa Wickham. Editing by Edrienne Su