

Fla. Federal Judge Strikes Down Gay Marriage Ban

Law360, Miami (August 21, 2014, 8:21 PM ET) -- A Florida federal judge on Thursday became the fifth judge in the state to declare Florida's ban on same-sex marriage unconstitutional in two suits brought by gay couples who want Florida to recognize their out-of-state marriages and want to marry in the state.

U.S. District Judge Robert L. Hinkle issued an order declaring Florida's ban on same-sex marriage unconstitutional and granted the plaintiffs' request for a preliminary injunction that bars enforcement of the statute, though the judge did temporarily stay the injunction for an upcoming appeal.

Judge Hinkle noted that since the U.S. Supreme Court's landmark ruling last year in *U.S. v. Windsor* that struck down the federal Defense of Marriage Act, 18 other federal courts around the country have struck down similar state-law gay marriage bans. His opinion, the 19th such ruling, follows the "unbroken line of federal authority since *Windsor*," he said.

"When observers look back 50 years from now, the arguments supporting Florida's ban on same-sex marriage, though just as sincerely held, will again seem an obvious pretext for discrimination," the Judge Hinkle said.

The ruling was issued in two consolidated suits backed by the American Civil Liberties Union of Florida and filed in the Northern District of Florida.

The first suit, filed Feb. 27, 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 as plaintiffs, including Sloan Grimsley, a Palm Beach Gardens firefighter who married her wife Joyce Albu in New York and wants the support that the state offers to spouses of first responders if she were to die on the job.

Arlene Goldberg, whose wife died in March after 47 years together, was added to the second suit in April. The couple were married in New York in October 2011, and Goldberg says she needs her wife's Social Security benefits to help care for her elderly in-laws who live with her, according to the ACLU.

"We are thrilled that these loving and committed couples will soon have the same protections and security for their families that other married couples have," Daniel Tilley, an ACLU staff attorney, said in a statement. "Florida's refusal to recognize their marriages serves no legitimate purpose and is hurtful to Florida families.

A representative for the attorney general could not immediately be reached for comment Thursday.

The ruling is the fifth to come down so far from Florida judges on the issue. Earlier this month, a Broward

County judge ruled that Florida must recognize a Vermont civil union and allow it to be dissolved. That was followed a day later by a Palm Beach County judge declaring the ban unconstitutional in a case over a will left by a man who had married his partner in Delaware.

Those two rulings in family court and probate court were handed down just weeks after similar rulings in two parallel suits in Miami-Dade and Monroe counties. The plaintiffs in those two suits have asked an appeals court to consolidate the cases and present the state's appeals to the Florida Supreme Court for immediate consideration.

Florida's attorney general has asked a state appeals court to stay its appeals of those two rulings, saying the U.S. Supreme Court appears poised to take on the issue soon and provide a definitive answer to the issue. Officials in Utah and Oklahoma have petitioned the nation's highest court to hear cases asking whether the Fourteenth Amendment bars states from defining or recognizing marriage only as "the legal union between a man and a woman."

The plaintiffs 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 Attorney General's Office of Florida.

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, in the U.S. District Court for the Northern District of Florida.