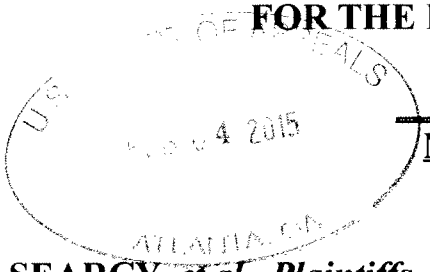
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT



No. 15-10295 ~

CARI SEARCY, *et al.*, *Plaintiffs-Appellees,*
v.
LUTHER STRANGE, ATTORNEY GENERAL,
STATE OF ALABAMA, *Defendant-Appellant.*
_____/

Appeal from the U.S. District Court, Southern District of Alabama
Civil Action No. 1:14-cv-0208-CG-N, before Hon. Callie V.S. Granade

***Time-Sensitive* Motion for leave to file *Amicus Curiae* Brief of Gordon Wayne Watts in support of Atty. General's motion for stay, but offering a Compromise to redress legitimate grievances of Plaintiffs, Searcy & McKeand**
(RULING REQUESTED BEFORE FEB. 9, 2015)

The name, office address, and telephone number of counsel*[*]* representing the party for whom the brief is filed:

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LAYMAN OF THE LAW:
Gordon W. Watts, PRO SE / PRO PER
[*] Mr. Watts, acting as his own counsel, is not a lawyer.

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U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Searcy, et al v. Strange, Appeal No: 15-10295

Amicus, Gordon Wayne Watts, pursuant to 11th Cir. R. 26.1-1, hereby certifies that the following is a list of trial judge(s), and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party those who have an interest in the outcome of this case and/or appeal:

1. Agricola, Jr., Algert Swanson, Attorney for Alabama Probate Judges Association ("APJA") & Gov. Robert J. Bentley

2. Alabama Probate Judges Association

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4. Bentley, Robert J., Governor of Alabama

5. Brasher, Andrew Lynn, Solicitor General

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9. Granade, Hon. Callie V. S., United States District Judge

10. Hernandez, Christine Cassie, attorney for plaintiffs

11. Howell, Laura Elizabeth, Assistant Attorney General

12. Kennedy, David Graham, attorney for plaintiffs

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15. Norris, Greg, Probate Judge, Monroe County, Alabama, APJA President

16. Paluzzi, John Earl, Probate Judge, Pickens County, Alabama, APJA Secretary

17. Reinert, Jeff, Clerk of the Court, U.S. Dist. Court, S.D. of Alabama

18. Ryals, Joseph Lenn, Attorney for Alabama Probate Judges Association

19. Searcy, Cari D., plaintiff

20. Strange, Luther, Attorney General

21. Watts, Gordon Wayne, *Amicus Curiae*

No counsel for any party authored this brief in whole or part, nor did anyone make any monetary contribution intended to subsidise/fund preparation/submission of this brief. I, Gordon Wayne Watts, alone, both wrote & funded it. *Amicus*, Gordon Wayne Watts, is an individual, not a corporation, and accordingly does not does not issue any stock and does not have any parent corporations or any publicly held corporations that own 10 percent or more of stock of that nonexistent parent corporation.

/s/ [signature] **Date:** Monday, 02 February 2015

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Time-Sensitive Motion for leave to file _Amicus Curiae_ Brief of Gordon Wayne Watts in support of Atty. General's motion for stay, but offering a Compromise to redress legitimate grievances of Plaintiffs, Searcy & McKeand
(RULING REQUESTED BEFORE FEB. 9, 2015)

Pursuant to Federal Rule of Appellate Procedure 29, Gordon Wayne Watts moves for leave to file an *amicus* brief in support of Defendant-Appellant, Atty. Gen. Luther Strange's motion to stay pending appeal, *but also* in support of key complaints of the Appellees-Plaintiffs, Searcy, *et al.*, in the above-captioned case. The Defendant has consented to the filing of the *amicus* brief, but the Appellees withheld their consent, thus requiring this Motion. In support of this Motion, Proposed *Amicus* states as follows:

1) Although I'm not an attorney, I was successfully able to make strong arguments, and follow the proper protocol, Rules of Appellate Procedure, & local rules, in an attempt to submit an *Amicus Curiae* brief in *Brenner v. Armstrong*, 14-14061, and its consolidated case, *Grimsley v. Armstrong*, 14-14066, two other 'Gay Marriage' cases before This Court –and that, in a timely fashion. This Court was also generous enough to grant me leave to submit an amended brief out-of-time, to correct errors/omissions I had made in my original *amicus*, and said brief is currently the most recent item on both dockets.

2) Since I posted every single merits brief on my blog, and did news coverage of *each* and *every* brief, I was able to get a much-stronger grasp on the

issues surrounding the 'Gay Marriage' debate.

3) When I heard on the news that Hon. Judge Callie Granade refused to issue a stay pending appeal in a 'Gay Marriage' case within the 11th U.S. District, and, now knowing what the 4-prong test requires, it dawned on me that she had overlooked a new legal development which would "tip the balance" of prong-1, regarding the likelihood of success on the merits, and thus mandate a "Stay Pending Appeal," and so I endeavored to timely move the district court –and This Honourable Court –if necessary –to review some facts of law which the Defendant had also overlooked in his motions before the court below –and before This Court.

4) Besides the legitimate grievances of Defendant, Luther Strange, I also noticed that the plaintiffs had some legitimate gripes, which were being addressed in a far-more destructive way than actually was necessary to solve the problem and redress what looked, to me, to be genuine torts.

5) The proper, but limited, function of an *amicus* brief is described by **U.S. Supreme Court Rule 37.1** as follows: "1. An *amicus* curiae brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court."

6) While this is not the SCOTUS, nonetheless, that maxim applies, and I shall endeavor to bring to This Court's attention several matters which have perennially been ignored or overlooked, probably by human error.

7) Pursuant to Fed.R.App.P., 29(b), I am filing the proposed amicus along with the motion, and hereby state my interests**:** my interests are both altruistic and personal, as I elucidated in my *amicus* filed in the *Brenner/Grimsley* cases, and, for the reasons which shall become apparent in this rather short memorandum, the matters asserted are relevant to the disposition of the case.

For all these reasons, I respectfully request that The Court grant this motion and countenance this rather short *Friend of the Court* brief.

Date: Mon. Feb. 02, 2015 Respectfully submitted,

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Certificates of Service

In accordance with Rule 25(c)(4), Manner of Service, "Service by mail or by commercial carrier is complete on mailing or delivery to the carrier," which I hereby certify that I am doing today, Monday, Feb 02, 2015, 2015, to the following parties (below), by Fed Ex –and by Electronic Mail, when/where possible. Additionally, I hope to post a TRUE COPY of these filings on my Open Source online docket, for free download, at the following two (2) URL's, as soon as practically possible:

http://www.GordonWatts.com/DOCKET-GayMarriageCase.html
and:
http://www.GordonWayneWatts.com/DOCKET-GayMarriageCase.html

/s/ Gordon Wayne Watts
Gordon Wayne Watts, *Amicus*

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U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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18. Ryals, Joseph Lenn, Attorney for Alabama Probate Judges Association

19. Searcy, Cari D., plaintiff

20. Strange, Luther, Attorney General

21. Watts, Gordon Wayne, *Amicus Curiae*

No counsel for any party authored this brief in whole or part, nor did anyone make any monetary contribution intended to subsidise/fund preparation/submission of this brief. I, Gordon Wayne Watts, alone, both wrote & funded it. *Amicus*, Gordon Wayne Watts, is an individual, not a corporation, and accordingly does not does not issue any stock and does not have any parent corporations or any publicly held corporations that own 10 percent or more of stock of that nonexistent parent corporation.

/s/ Gordon Wayne Watts **Date:** Mon. 2-2-2015

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Argument I. New developments require a Stay Pending Appeal

The court below found against the defendant, claiming he wasn't likely to succeed on the merits, but entered a stay pending appeal anyway, for a period of 14 days, which is set to expire circa Feb. 09, 2015. **Well-settled case-law (and Order of the court below) state the 4-prong test governing 'Stays Pending Appeal':** *(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.* The defendant made a 'balance of equities' argument, citing *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986), and *amicus*, Alabama Probate Judges Assn., made a good 'public interests' argument (citing the "substantial confusion" that would result if SCOTUS reversed). Although defendant's motion for a stay pending appeal cited the U.S. 6th Circuit's recent ruling in *DeBoer*, et al. (upholding a 'Gay Marriage' ban), *and* the recent grant of Certiorari by the U.S. Supreme Court of these cases, supporting his prong-4 argument (public interest), he altogether *failed* to make an argument that he's likely to succeed on the merits (prong-1). Based on the *amicus* brief by Gordon Wayne Watts, in the *Brenner* (14-14061) and *Grimsley* (14-14066) cases, lodged before This Court, there is one argument that all but guarantees defendant will likely succeed on the merits. Said brief makes an argument that has

never heretofore been advanced**:** even though polygamy has been invoked as either *obiter dictum* or for 'slippery slope' arguments, it has never been properly used as an 'Equal Protection' argument -until, that is, here**:** However, now that the Watts amicus is lodged before This Court, there is absolutely no way that 'Gay Marriage' can remain legal at all "[U]nless, of course, polygamists for some reason have fewer constitutional rights than homosexuals." *Romer v. Evans*, 517 U.S. 620, at 648 (1996). Since polygamy has a much stronger legal and historical precedent (see Watts brief, *supra*), than Gay Marriage, it would perforce, via Equal Protection, be impossible to grant 'Gay Marriage' any greater legal status**; and,** since polygamy is **very** unlikely to become legal in the near future, then Gay Marriage is even more certain to fail, and thus defendant, Luther Strange, has made a strong showing that he is likely to succeed on the merits, even if it was by proxy (by the instant memorandum of law), thus fully satisfying prong-1 and requiring a stay pending appeal in the case at bar. These facts, when added to the point *supra*, only clinch what is already a certain legal justification for granting a stay pending appeal. Furthermore, a stay pending appeal is typically mandatory in many state courts, implying that, absent "extreme" circumstances (life-or-death jeopardy), a stay pending appeal is appropriate. Even if the court below fails to issue a stay pending appeal, This Court has "oversight" responsibility (see: Fed.R.App.P., RULE 8(a)(1)(A)), and, so, as the old saying goes: "The buck stops here."

Argument II: Plaintiffs have legitimate complaints too

Even though plaintiffs are certain to lose on the merits, with regard to the definition of 'marriage,' they do have legitimate grievances, namely, the right to adopt: while not a guaranteed certainty to all people (for example: even "legally" married couples who are child-abusers will be refused adoption), so-called "Gay Adoption" bans are no more legal than, say, an outright ban on singles or the elderly adopting. For example: a Florida State Appeals Court found that found a Florida statute prohibiting adoption by homosexuals had "no rational basis" and thus violated their equal protection rights. (*Fla. Dept. of Children and Families v. In re: Matter of Adoption of X.X.G. and N.R.G.*, Fla. 3d DCA, No. 3D08-3044, Opinion filed September 22, 2010) This is good case law, and a Federal Court would be correct in upholding that: while opinions differ as to whether homosexual couples are "better than" or "worse than" families with a man-woman marriage, homosexuals are, in many cases, fine parents, and thus such a ban is unreasonable. Indeed, I attest that I occasionally hear reports that Alabama has a 'Gay Marriage' ban, and, if this is true, then This Court would be more appropriate in simply striking down Alabama Laws for such a Gay Marriage ban, instead of changing the definition of marriage (the latter being overkill -and also running afoul of Equal Protection, as I argue in my amicus brief lodged in Brenner/Grimsley, *supra*). If, however, my reading of Alabama Law is correct, then both plaintiffs, defendants,

amici (probate judges), the court below, *and* This Honourable Court, have all missed the obvious problem –and the obvious solution: While plaintiffs complain that **Ala. Code §26-10A-27 (1975)** is a problem ("Any person may adopt his or her spouse's child..."), they miss the obvious: **Ala. Code §26-10A-5(a) (1975)** (Who may adopt.) states: "Who may adopt. (a) **Any adult** person or husband and wife jointly who are adults may petition the court to adopt a minor." Furthermore, **§26-10A-5(a)(2) states:** "(2) No rule or regulation of the Department of Human Resources or any agency shall prevent an adoption **by a single person** solely because such person is single or shall prevent an adoption solely because such person is of a certain age." Since Alabama doesn't recognise Searcy and McKeand as legally-married, they're legally 'single,' and thus protected by this statute, and thus legally permitted to adopt. If, however, the judge denied adoption, then This Court can enter a ruling affirming in part (their rights of adoption), reversing in part (the ruling of the court below that struck Ala. Code §30-1-19, the so-called "Marriage Protection Act") and remanding to the state court for orders consistent with this court, namely that This Court would issue an order of 'Show Cause' to the state court demanding to know by what legal standard it denied defendants the right to adopt. Perhaps the state court was justified, but only if it found on independent grounds (such as the welfare of the child), but not if it found solely on

the grounds that the couple was homosexual. Thus, This Honorable Court now has a solution to defendant's problem that does not violate Equal Protection viz. Polygamy. This solution should satisfy plaintiffs (who can get a "fair shake" in adoption) as well as defendants (who defined marriage as it has been defined for tens of thousands of years, in all societies, cultures, and countries, since the very beginning of time, and that, for compelling state interests in promoting traditional marriage).

Since I have provided a solution to defendants' problem, then any complaint about **Ala. Code §30-1-19** (the so-called "Marriage Protection Act") is unfounded, and clearly used as a "straw man" argument to strike a good law**: RULE 3 of the Fed.R.Civ.P.**, clearly state that "A civil action is commenced by filing a complaint with the court," and so with a proper solution to redress grievances (that I provided above), no complaint may legally issue**:** no foul, no harm, is a legal standard. **Now that this case has been appealed, This Court has "subject matter" jurisdiction,** and the solution I offer could, legally, work**; I hope that my solution is an acceptable compromise to both sides,** to help my fellow-man (and woman) come to a truce –and reduce arguments and strife. – I hope to be helpful to the goodwill of several parties in getting a solution acceptable to all.

Additionally, there are many, many more unfair laws, which target both straights and gays and single adults, and, in my brief, *supra*, I strongly oppose the

mistreatment of Sloan Grimsley, a homosexual firefighter, who can not name her homosexual spouse as a beneficiary of her life-insurance policy (Brief, p.14) or, for example, the "Marriage Penalty," which penalises straight people, based solely on marital "status," in things such as disability, retirement, and even higher taxes required from some married couples that would not be required by two otherwise identical single people with exactly the same income. (A straight friend of mine would see his disability 'go down' if he married his girlfriend.) So, prejudice exists in law against both straights and gays, but it is not due to the Alabama Law defining marriage as 1-man and 1-woman, and thus an attack on that law is misplaced. **I add this paragraph solely to be respectful and courteous -and show plaintiffs that I am not prejudiced, and, indeed, most 'conservatives' are strongly opposed to gays to be mistreated in any form or fashion.**

III. 'EQUAL PROTECTION' ADOPTION COMPLAINTS & SOLUTIONS:

While I have satisfied the 'traditional' role of an *Amicus Curiae* (to show the court/parties something they missed), one more point needs to be mentioned with connection to adoption. At first, it would seem that the Alabama Law defining marriage solely as 1-man and 1-woman would be prejudiced, since, in adoption, gays are disfavoured, while traditional marriages are given 'preferential' treatment. *But, is this really prejudiced?* Well, we remember that singles can adopt, but, all

things being equal, preference is given the married couples, and yet no one cries foul here. Likewise, it would not be prejudice here: Indeed, see "DECLARATION OF LOREN MARKS, PH.D.," page 20, lodged on docket in the court below, where a small, but statistically-significant, group of children were compared, and all things being equal, married couples had the best development from objective teacher reports (and not biased parental reporting), and next, singles, and lastly, homosexual rearing. In fact, many studies have been done on child-rearing, and it is this author's recollection that most (but not all) support those findings of Dr. Marks, which begs the question of diversity. To see some of these studies, both pro and con, see the many *Amici Curium* briefs in *Brenner v. Armstrong* or *Grimsley v. Armstrong*, lodged before This Court.

Even though this *amicus* is a 'conservative,' I admit that the 'liberals' are correct to assert and promote "diversity": Racial diversity (Blacks, Whites, Hispanics, and Asians), and gender-diversity (men and women) in the workplace. How, then, is it wrong to promote "gender-diversity" in the family? While this is merely a liberal cliché, nonetheless, I mention it to show that it is a *true* cliché: Dr. Marks' research is "right on mark" with its implicit claims that gender diversity is beneficial, and thus the State has an interest in promoting it, as shown by peer-reviewed scientific research. **Therefore, this is a sound legal argument which I am including in my brief, as it is often overlooked.**

IV. Inferior Federal Courts don't even have jurisdiction to address 'Gay Marriage' dispute

On it's face, it would seem that the Supremacy Clause would allow a Federal District Court, such as here, to 'strike down' any state law or state Constitutional provision, such as has been happening in the 'Gay Marriage' dispute, nationwide. *But, is this so?*

Doe v. Pryor, 344 F.3d. 1282, 1286 (11th Cir. 2003), held that: "The only federal court whose decisions bind state courts is the United States Supreme Court." Their advisory opinion on this head evokes the Rooker-Feldman doctrine, which, in essence, holds that lower United States federal courts may not sit in direct review of state court decisions. This would give a strong support to Federalism, and 10th Amendment State's rights, that is, that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States." Accord: *Arizonans for official English and Robert D. Park, Petitioners v. ARIZONA et al.*, 520 U.S. 43, at Syllabus 23, note 11, in which the U.S. Supreme Court held: "(Supremacy Clause does not require state courts to follow rulings by federal courts of appeals on questions of federal law)." In other words, lower Federal Courts (including the Circuit Courts of Appeals) may not sit in appellate review of state court decisions; this court may only address these issues through original jurisdiction (which, apparently, the plaintiffs allege, insofar

as they claim that the state laws in question are unconstitutional).

While this case law seems counter-intuitive, let me illustrate why this, if taken to its logical end, is not unreasonable: What if, for example, residents from 49 U.S. states appeared in one single Federal District Court (of the 50th state), demanding that their states' laws, recognising marriage one way or the other, should yield to the State Law of the 50th State, where the case is being heard, and demand The Court enter a ruling that the laws of these 49 states are unconstitutionally-restrictive, and ask The Court to exercise "Long Arm Jurisdiction" to enforce such an order against these 49 states? Well, what if, then, *another* U.S. District Court entered a ruling just the opposite? Can you not see the mayhem and confusion that would surely ensue? (And, as it stands, the nation-wide 'patchwork' of Gay Marriage Laws has effectively made my prophecy, here, come true!) So, the case law that holds that the Supremacy Clause is restricted in this regard is 'good' case law: **Only The U.S. Supreme Court may exercise jurisdiction in this regard,** and most other courts, while well-meaning and well-intentioned, have exceeded their authority. Lastly, I don't know what significance this may be, but I ask This Court to take Judicial Notice of the court below, which appears to have issued an informal edict (APPENDIX-A) outright refusing to grant Due Process/Redress to a short *pro se* amicus memorandum of law when considering difficult & time-sensitive issues, such as this stay. See also my response (APPENDIX-B) to the Due Process/Constitutional issues implicated.

Dated: ~~--day, XX Month 2015~~ Mon. 02 Feb. 2015 Respectfully submitted,

s/ Gordon Wayne Watts

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CERTIFICATE OF COMPLIANCE

In accordance with Rule 29, Brief of an Amicus Curiae (c), Contents and Form, Fed.R.App.P., I hereby certify the following:

The instant amicus brief complies with Rule 32: see *infra.*

The cover identifies the party or parties supported and indicate whether the brief supports affirmance or reversal: This brief supports defendant, **LUTHER STRANGE**, regarding his motion for a "State Pending Appeal" –and affirmance of the Alabama Law in question, and on many other points, but supports many elements of the plaintiffs, including (but not limited to) fair and just treatment of all people, including homosexual citizens. In addition, I certify that I complied with the disclosure requirement in the CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT, *supra.*

In accordance with Rule 32(a)(7), Length., Fed.R.App.P., I hereby certify the following:

Rules 32(a)(7)(A), Page limitation, 32(a)(7)(B) Type-volume limitation, and 32(a)(7)(C)(i) Certificate of compliance [e.g., "A brief submitted under Rules 28.1(e)(2) or 32(a)(7)(B)"] do not apply: **This brief is neither a principal nor reply brief.**

Regarding Rule 32(a)(7)(C)(ii), which states in succinct part that "Use of Form 6 must be regarded as sufficient to meet the requirements of Rules 28.1(e)(3) and 32(a)(7)(C)(i)," **I am hereby following this standard to be safe:**

Form 6. Certificate of Compliance With Rule 32(a)

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

*** this brief contains [state the number of] words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or
[[[it contains no more than 14,000 words— **5,526** Words in total, to be exact; Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.]]]

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

*** this brief has been prepared in a proportionally spaced typeface using [state name and version of word processing program: OpenOffice version 3.1.0] in [state font size: 14, and name of type style: Times New Roman],
[[[A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.]]]

I believe, in good faith, that I am also in compliance with Rule 29. Brief of an Amicus Curiae, (d) Length, since I met the Rule 32 requirements above.

s/ Gordon Wayne Watts
Gordon Wayne Watts, Amicus

CERTIFICATE OF SERVICE

In accordance with Rule 25(c)(4), Manner of Service, "Service by mail or by commercial carrier is complete on mailing or delivery to the carrier," which I hereby certify that I am doing today, Mon 2-2-2015 **, 2015, to the following parties (below), by** Fed Ex **–and by Electronic Mail, when/where possible. Additionally, I hope to post a TRUE COPY of these filings on my Open Source online docket, for free download, at the following two (2) URL's, as soon as practically possible:**

http://www.GordonWatts.com/DOCKET-GayMarriageCase.html
and:
http://www.GordonWayneWatts.com/DOCKET-GayMarriageCase.html

/s/ Gordon Wayne Watts
Gordon Wayne Watts, *Amicus*

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-10295

CARI SEARCY, *et al., Plaintiffs-Appellees,*
v.
LUTHER STRANGE, ATTORNEY GENERAL,
STATE OF ALABAMA, *Defendant-Appellant.*
_____/

Appeal from the U.S. District Court, Southern District of Alabama
Civil Action No. 1:14-cv-0208-CG-N, before Hon. Callie V.S. Granade

Amicus Curiae Brief of Gordon Wayne Watts in support of Atty. General's motion for stay, but offering a Compromise to redress legitimate grievances of Plaintiffs, Searcy & McKeand
(RULING REQUESTED BEFORE FEB. 9, 2015)

APPENDIX

The name, office address, and telephone number of counsel*[*]* representing the party for whom the brief is filed:

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BS, The Florida State University, Biological & Chemical Sciences;
Class of 2000, double major with honours
AS, United Electronics Institute, Class of 1988, Valedictorian

LAYMAN OF THE LAW:
Gordon W. Watts, PRO SE / PRO PER
[*] Mr. Watts, acting as his own counsel, is not a lawyer.

INDEX TO APPENDIX

Instrument **Docket/Tab#**

Certificate of Service

A

Re: Jeff, I made a typo in my amicus; here's the corrected one

Reminder: AOL will never ask you for your password or billing information.

Subject: **Re: Jeff, I made a typo in my amicus; here's the corrected one**
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From: Jeff_Reinert@alsd.uscourts.gov
To: Gwww1210@aol.com
Sent from the Internet (Details)

Mr. Watts,

Judge Granade does not accept amicus curiae briefs from persons who are neither members of the bar of this court nor admitted pro hac vice. This excludes all pro se amicus briefs.

Please let me know if you need further assistance.

Thank you,

Jeff Reinert
Chief Deputy Clerk
USDC, Southern District of Alabama
Jeff_Reinert@alsd.uscourts.gov
http://www.alsd.uscourts.gov
(251) 694-4298

B

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

CARI D. SEARCY and KIMBERLY MCKEAND, individually and as parent and next friend of K.S., minor, ***Plaintiffs,***	)	**Civil Action No. 1:14-cv-0208-CG-N**
vs.	)	
LUTHER STRANGE, in his capacity as Attorney General for the State of Alabama, ***Defendant.***	)	

Motion of Gordon Wayne Watts for leave to appear as *amicus curiae* in support of Defendant's Motion to Stay, but offering a 'Compromise' to redress legitimate grievances of Plaintiffs, Searcy and McKeand

Comes Now Gordon Wayne Watts, *pro se* and *in persona propia*, and moves **This Honorable Court** to grant it leave to appear as *amicus curiae* in support of the motion filed by Defendant Luther Strange for stay [Doc. 55] of this Court's Memorandum Opinion and Order entered herein on January 23, 2015 [Doc. 53] – **but also in support of Plaintiffs who appear to have some legitimate grievances, a solution of which has not, heretofore, been considered.** In support of its motion, Gordon Wayne Watts states as follows:

1. I am a citizen of Florida, which is in the 11th U.S. Circuit, and the definitions of 'marriage,' which will be affected by any ruling of this court, currently on appeal in the court above (Case #:15-10295) materially affect me as more carefully described in my 01/06/2015 amended *amicus* brief lodged with that court (Case #'s 14-14061 & 14-14066), pp.5-6 & Argument II.B., "Prejudice

against heterosexuals (straight people)...," p.17ff.

2. Besides a personal stake in the matter, which borders on the right to intervene (a right which I am declining to assert, p.6, *brief*), I am greatly grieved by the hate and discontent that has been generated by the differences and arguments in the Gay Marriage case here, and elsewhere, and I do not like the toxic atmosphere that results, and, as a result, am hoping that a compromise amenable to all sides can be reached, where each side "walks away a winner," and get something of value, which is appropriate, because both sides (plaintiffs & defendants) have some legitimate grievances.

3. Shortly after the Order of this court, dated January 23, 2015 [Doc. 53], granting a temporary, 14-day stay pending appeal, I realised that This Court had missed something, in weighing the 4 factors that govern "stays pending appeal," and, although I am not a lawyer (and thus very rarely file anything), I did recently lose a 4-3 split decision in my petition to be Terri Schiavo's next friend, *In Re: Gordon Wayne Watts (as next friend of Theresa Marie 'Terri' Schiavo)*, No. SC03-2420 (Fla. Feb.23, 2003), which did <u>better</u> than a sitting governor, *In Re: Jeb Bush, Governor of Florida, et al. v. Michael Schiavo, Guardian: Theresa Schiavo,* No. SC04-925 (Fla. Oct.21, 2004), denied 7-0, before the same panel, implying I know something about law.

4. Also, besides filing an *amicus* brief in the court above (*Brenner v. Armstrong*, 14-14061, consolidated: *Grimsley v. Armstrong*, 14-14066, 11th Cir., 2014), which that court accepted for review (see dockets via PACER) I, as the legal reporter for *The Register*, also posted every *single* merits brief in that case, and several from the courts above and below, and did extensive commentary on each and every brief: http://GordonWatts.com/DOCKET-GayMarriageCase.html and http://GordonWayneWatts.com/DOCKET-GayMarriageCase.html which forced me to be up-to-date on the subject matter of 'Gay Marriage.'

5. Although the Federal Rules of Civil Procedure do not address the matter of *Amici Curiae*, the general concepts of 1st Amendment Redress would suggest that I have a right to Redress the courts, and so, I contacted Jeff Reinert, the clerk of this court, and asked him to allow me to email my amicus brief and motion for leave to appear as amicus, since email would expedite this time-sensitive issue. His initial response was to set me up an EF/CMF account in case an email to him was not appropriate protocol (he did not know at that time). He initially said that filing by U.S. Postal Mail was the proper protocol, but then said (APX-A), in email dated 1/27/2015, that Hon. "Judge Granade does not accept amicus curiae briefs from persons who are neither

members of the bar of this court nor admitted pro hac vice. This excludes all pro se amicus briefs." However, he did assure me that my proposed amicus brief was given to Hon. Judge Granade in chambers for her review, but that she refused to allow my motion and brief to be posted on the docket.

6. I have carefully reviewed both the local rules of This Court and the Fed.R.Civ.P., and neither has an "absolute prohibition" against *pro se amici* briefs, and so I infer that either Mr. Reinert made an honest mistake, or, perhaps, Hon. Judge Granade made an honest mistake/error in judgment. Also: While I know that no rules guarantee my right to have an amicus (friend of the court) brief accepted, I do know that it is my **absolute right,** under the First Amendment's guarantee of Redress, to file such a brief, and so, based on the local rules, the Fed.R.Civ.P., and the 1st Amendment, I have concluded that it is permitted to file an amicus. Wherefore, with no disrespect meant to Judge Granade or Clerk Reinert, I am filing a short and to-the-point memorandum of law and following the proper protocol, so far as I can ascertain –and in such a way as to be most respectful (and hopefully, also, helpful) towards all parties involved, court, plaintiffs, and defendants.

7. Although this is Civil Court, since the Fed.R.Civ.P. are silent on the matter of *Amici Curiae*, I feel that the Federal Rules of Appellate Procedure should

provide a useful, and common-sense, guide, and to that end, I find that **Rule 37.1 of the U.S. Supreme Court** offers guidance on that head: *"1. An amicus curiae brief that brings to the attention of the Court relevant matter* ***not already brought to its attention by the parties*** *may be of considerable help to the Court."* Since Judge Granade was probably not aware of a very recent legal development that tipped the balance of power regarding one of the factors for a "stay pending appeal," I felt a moral obligation to make her court aware of these new developments. **Well-settled case-law (and This Court's Order) state the 4-prong test governing 'Stays Pending Appeal':** *(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.* Although defendant's motion for a stay pending appeal cited the U.S. 6th Circuit's recent ruling in *DeBoer*, et al. (upholding a 'Gay Marriage' ban), and the recent grant of Certiorari by the U.S. Supreme Court of these cases, supporting his argument of prong-4 (public interest), he altogether failed to make an argument that he is likely to succeed on the merits (prong-1).

8. The very recent *amicus* brief by Gordon Wayne Watts, makes an argument that has never heretofore been advanced (see Watts brief, cited *supra*, Arg.

I.): even though polygamy has been invoked as either *obiter dictum* or for 'slippery slope' arguments, it has never been properly used as an 'Equal Protection' argument -until, that is, Watts' brief (me speaking of myself in the 3rd person, as is sometimes protocol). However, now that the Watts amicus is lodged in the court above, there is absolutely no way that 'Gay Marriage' can remain legal at all "[U]nless, of course, polygamists for some reason have fewer constitutional rights than homosexuals." *Romer v. Evans*, 517 U.S. 620 (1996). Since polygamy has a much stronger legal and historical precedent (see Watts brief, *supra*), than Gay Marriage, it would perforce, via Equal Protection, be impossible to grant 'Gay Marriage' any greater legal status; and, since polygamy is **very** unlikely to become legal in the near future, then Gay Marriage is even more certain to fail, and thus defendant, Luther Strange, has made a strong showing that he is likely to succeed on the merits, even if it was by proxy (by the instant memorandum of law), thus fully satisfying prong-1 and requiring a stay pending appeal in the case at bar.

9. The defendant made a 'balance of equities' argument, citing *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986), and amicus, Alabama Probate Judges Assn., made a good 'public interests' argument (citing the "substantial confusion" that would result if SCOTUS reversed). These facts, when added to the point *supra*, only clinch what is already a certain legal justification for

granting a stay pending appeal. Furthermore, a stay pending appeal is typically mandatory in many state courts, implying that, absent "extreme" circumstances (life-or-death jeopardy), a stay pending appeal is appropriate.

10. Even if the court above fails to issue a stay pending appeal, This Court has "primary" responsibility (see: Fed.R.App.P., RULE 8(a)(1)(A)), and, thus even if the court above refuses to properly stay pending appeal, that does not absolve This Court of its primary duty under the law, as "2 wrongs make not a right." [This statement, while harsh, is meant with no disrespect to This Honourable Court, but merely an observation of law.]

11. Even though plaintiffs are certain to lose on the merits, with regard to the definition of 'marriage,' they do have legitimate grievances, namely, the right to adopt**:** while not a guaranteed certainty to all people (for example: even "legally" married couples who are child-abusers will be refused adoption), so-called "Gay Adoption" bans are no more legal than, say, "pro se" bans to which Clerk Reinert alluded in his email to me. (Appendix-A) For example: a Florida State Appeals Court found that found a Florida statute prohibiting adoption by homosexuals had "no rational basis" and thus violated their equal protection rights. (*Fla. Dept. of Children and Families v. In re: Matter of Adoption of X.X.G. and N.R.G.*, Fla. 3d DCA, No. 3D08-3044, Opinion

filed September 22, 2010) This is good case law, and a Federal Court would be correct in upholding that: while opinions differ as to whether homosexual couples are "better than" or "worse than" families with a man-woman marriage, homosexuals are, in many cases, fine parents, and thus such a ban is unreasonable. (To illustrate this standard of law: It would be equally unreasonable to ban singles –or elderly –from adopting, even if these groups are not favoured as much as 'traditional' marriages.)

12. I attest that I occasionally hear reports that Alabama has a 'Gay Marriage' ban, and, if this is true, then This Court would be more appropriate in simply striking down Alabama Laws for such a Gay Marriage ban, instead of changing the definition of marriage (the latter being overkill -and also running afoul of Equal Protection, as I argue in my brief lodged in the court above—and available for download via both PACER and my own "docket").

13. If, however, my reading of Alabama Law is correct, then both plaintiffs, defendants, amici (probate judges), *and* This Honourable Court, have all missed the obvious problem –and the obvious solution: While plaintiffs complain that **Ala. Code §26-10A-27 (1975)** is a problem ("Any person may adopt his or her spouse's child..."), they miss the obvious: **Ala. Code §26-10A-5(a) (1975)** (Who may adopt.) states: "Who may adopt. (a) **Any adult**

person or husband and wife jointly who are adults may petition the court to adopt a minor." Furthermore, **§26-10A-5(a)(2) states:** "(2) No rule or regulation of the Department of Human Resources or any agency shall prevent an adoption **by a single person** solely because such person is single or shall prevent an adoption solely because such person is of a certain age." Since, of course, Alabama does not recognise Searcy and McKeand as legally-married, they are legally 'single,' and thus protected by this statute, and thus legally permitted to adopt. If, however, the judge denied adoption, then This Court can enter a ruling affirming in part (their rights of adoption), reversing in part (the lower court's Unconstitutional*[**]* ruling on legal definition of marriage), and remanding to the state court for orders consistent with this court, namely that This Court would issue an order of 'Show Cause' to the state court demanding to know by what legal standard it denied defendants the right to adopt. Perhaps the state court was justified, but only if it found on independent grounds (such as the welfare of the child), but not if it found solely on the grounds that the couple was homosexual. Thus, This Honorable Court now has a solution to defendant's problem that does not violate Equal Protection*[**]* viz. Polygamy. "[U]nless, of course, polygamists for some reason have fewer constitutional rights than homosexuals." *Romer v. Evans*, 517 U.S. 620 (1996)

CONCLUSION to 'Part I' above: This solution should satisfy plaintiffs (who can get a "fair shake" in adoption) as well as defendants (who defined marriage as it has been defined for tens of thousands of years, in all societies, cultures, and countries, since the very beginning of time, and that, for compelling state interests in promoting traditional marriage). Since I have provided a solution to defendants' problem, then any complaint about **Ala. Code §30-1-19** (the so-called "Marriage Protection Act") is unfounded, and clearly used as a "straw man" argument to strike a good law: **RULE 3 of the Fed.R.Civ.P.**, clearly state that "A civil action is commenced by filing a complaint with the court," and so with a proper solution to redress grievances (that I provided above), no complaint may legally issue: no foul, no harm, is a legal standard. **Now that this case has been appealed, This Court is divested of any "subject matter" jurisdiction,** and the solution I offer could, legally, only be enacted by The Appeals Court, above**; however, I am stating, for the record, my solution, in the event that it proves helpful to broker a compromise,** and help my fellow-man (and woman) come to a truce –and reduce arguments and strife. – I hope to be helpful to the goodwill of several parties in getting a solution acceptable to all.

Additionally, there are many, many more unfair laws, which target both straights and gays and single adults, and, in my brief, lodged in the court above, I

strongly oppose the mistreatment of Sloan Grimsley, a homosexual firefighter, who can not name her homosexual spouse as a beneficiary of her life-insurance policy (Brief, p.14) or, for example, the "Marriage Penalty," which penalises straight people, based solely on marital "status," in things such as disability, retirement, and even higher taxes required from some married couples that would not be required by two otherwise identical single people with exactly the same income. (A straight friend of mine would see his disability 'go down' if he married his girlfriend.) So, prejudice exists in law against both straights and gays, but it is not due to the Alabama Law defining marriage as 1-man and 1-woman, and thus an attack on that law is misplaced. **I add this paragraph solely to be respectful and courteous -and show plaintiffs that I am not prejudiced, and, indeed, most 'conservatives' are strongly opposed to gays to be mistreated in any form or fashion.**

ADOPTION REDUX: While I have satisfied the 'traditional' role of an *Amicus Curiae* (to show the court/parties something they missed), one more point needs to be mentioned with connection to adoption. At first, it would seem that the Alabama Law defining marriage solely as 1-man and 1-woman would be prejudiced, since, in adoption, gays are disfavoured, while traditional marriages are given 'preferential' treatment. *But, is this really prejudiced?* Well, we remember

that singles can adopt, but, all things being equal, preference is given the married couples, and yet no one cries foul here. Likewise, it would not be prejudice here: Indeed, see "DECLARATION OF LOREN MARKS, PH.D.," page 20, lodged on docket of the case at bar, where a small, but statistically-significant, group of children were compared, and all things being equal, married couples had the best development from objective teacher reports (and not biased parental reporting), and next, singles, and lastly, homosexual rearing. In fact, many studies have been done on child-rearing, and it is this author's recollection that most (but not all) support those findings of Dr. Marks, which begs the question of diversity. To see some of these studies, both pro and con, see the many *Amici Curium* briefs in *Brenner v. Armstrong* or *Grimsley v. Armstrong*, in the court above. All the briefs are available via PACER –for a fee –but are also available **for free** download on the unofficial docket hosted by *The Register:*

http://GordonWatts.com/DOCKET-GayMarriageCase.html

http://GordonWayneWatts.com/DOCKET-GayMarriageCase.html

Even though this *amicus* is a 'conservative,' I admit that the 'liberals' are correct to assert and promote "diversity": Racial diversity (Blacks, Whites, Hispanics, and Asians), and gender-diversity (men and women) in the workplace. How, then, is it wrong to promote "gender-diversity" in the family? While this is

merely a liberal cliché, nonetheless, I mention it to show that it is a *true* cliché: Dr. Marks' research is "right on mark" with its implicit claims that gender diversity is beneficial, and thus the State has an interest in promoting it, as shown by peer-reviewed scientific research. **Therefore, this is a sound legal argument which I am including in my brief, as I see all the parties have overlooked it.**

VII. Inferior Federal Courts don't even have jurisdiction to address 'Gay Marriage' dispute

On it's face, it would seem that the Supremacy Clause would allow a Federal District Court, such as this one, to 'strike down' any state law or state Constitutional provision, such as has been happening in the 'Gay Marriage' dispute, nationwide. *But, is this so?*

Doe v. Pryor, 344 F.3d. 1282, 1286 (11th Cir. 2003), held that: "The only federal court whose decisions bind state courts is the United States Supreme Court." Their advisory opinion on this head evokes the Rooker-Feldman doctrine, which, in essence, holds that lower United States federal courts may not sit in direct review of state court decisions. This would give a strong support to Federalism, and 10th Amendment State's rights, that is, that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States." Accord: *Arizonans for official English and Robert D. Park,*

Petitioners v. ARIZONA et al., 520 U.S. 43, at Syllabus 23, note 11, in which the U.S. Supreme Court held: "(Supremacy Clause does not require state courts to follow rulings by federal courts of appeals on questions of federal law)." In other words, lower Federal Courts (including the Circuit Courts of Appeals) may not sit in appellate review of state court decisions; this court may only address these issues through original jurisdiction (which, apparently, the plaintiffs allege, insofar as they claim that the state laws in question are unconstitutional).

While this case law seems counter-intuitive, let me illustrate why this, if taken to its logical end, is not unreasonable: What if, for example, residents from 49 U.S. states appeared in one single Federal District Court (of the 50th state), demanding that their states' laws, recognising marriage one way or the other, should yield to the State Law of the 50th State, where the case is being heard, and demand The Court enter a ruling that the laws of these 49 states are unconstitutionally-restrictive, and ask The Court to exercise "Long Arm Jurisdiction" to enforce such an order against these 49 states? Well, what if, then, *another* U.S. District Court entered a ruling just the opposite? Can you not see the mayhem and confusion that would surely ensue? (And, as it stands, the nation-wide 'patchwork' of Gay Marriage Laws has effectively made my prophecy, here, come true!) So, the case law that holds that the Supremacy Clause is restricted in

this regard is 'good' case law: **Only The U.S. Supreme Court may exercise jurisdiction in this regard,** and most other courts, while well-meaning and well-intentioned, have exceeded their authority.

IN CONCLUSION: I believe that this court acted with good intentions in trying to help the gay couple adopt, but not only was the solution an unconstitutional over-reach, wholly unnecessary when a simpler (less invasive) solution was available, but This Court probably does not even have the authority to address the merits of this type of tort, as I show above. Lastly, since the matter has been appealed to The U.S. 11th Circuit Court of Appeals, all subject-matter jurisdiction is divested –**except the authority to enter a stay Pending Appeal; This Court may (and, I think, should) still enter a Stay Pending Appeal, and let the appellate court deal with it, if the stay was inappropriate.** For further clarification and supporting case-law, you may see the rough draft of a proposed filing to the U.S. Supreme Court (an inferior version of which is already filed with that court) at this link below, and take note of how I take fellow-conservatives to task, proving, once again, that I am not prejudiced or_biased: "Argument V. Correcting common errors of 'Traditional Marriage' advocates." LINKS:

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I am serving it today, Mon 2-2-2015

Dated: --day, ~~XX Month 20145~~ Respectfully submitted,

s/ _____

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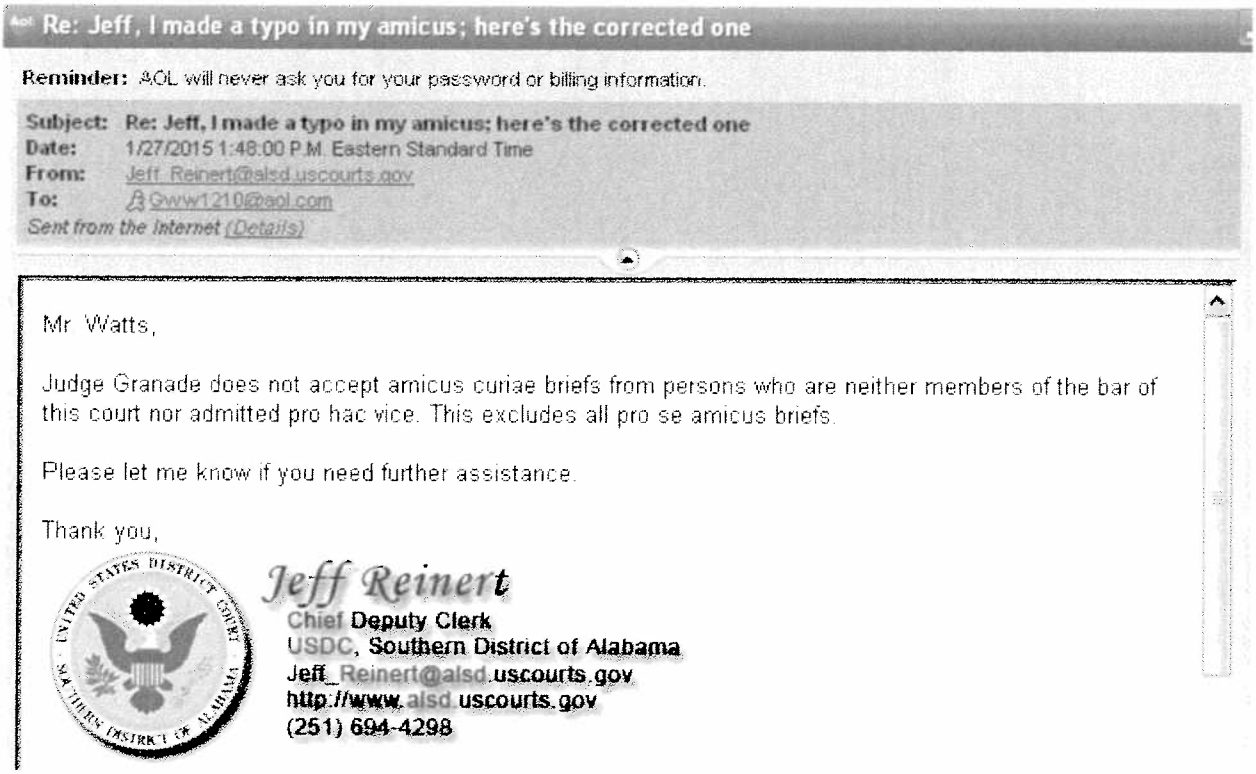
APPENDIX-A



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Please let me know if you need further assistance.

Thank you,

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Certificates of Notice

Although the Fed.R.Civ.P. have no analogue to the Rule 29 of Fed.R.App.P., requiring consent of parties for the filing of an *amicus (consent is not legally binding on This Court even were I to have actually obtained consent of all parties),*

as a courtesy, I gave both parties notice of my intent to file an *amicus* brief in this case and sought consent, and I am authorised to report the following: The defendant consented to the filing of my amicus, and the attorneys for the plaintiff politely entertained my request, but they did not grant consent, but rather, left that matter up to This Court to address and decide.

Certificates of Service

In accordance with Rule 5, Fed.R.Civ.P., regarding Service of pleadings, I hereby certify that on (today) Mar 2-2-2015, I am serving a True Copy of the foregoing by ~~both U.S. Postal Mail (or~~ FedEx??) as well as Electronic Mail to the following parties, below:

s/ Gordon Wayne Watts

Gordon Wayne Watts, Amicus

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 2nd of ~~January~~ February, 2015, a true copy of the foregoing appendix was filed with the Clerk of This court and served upon all parties of record as indicated below: In accordance with Rule 25(c)(4), Manner of Service, "Service by mail or by commercial carrier is complete on mailing or delivery to the carrier," which I hereby certify that I am doing today, to the following parties (below), by Fed Ex –and by Electronic Mail, when/where possible. Additionally, I hope to post a TRUE COPY of these filings on my Open Source online docket, for free download, at the following two (2) URL's, as soon as practically possible:

http://www.GordonWatts.com/DOCKET-GayMarriageCase.html
and:
http://www.GordonWayneWatts.com/DOCKET-GayMarriageCase.html

/s/ Gordon Wayne Watts
Gordon Wayne Watts, *Amicus*

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Original

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-10313

JAMES STRAWSER, *et al.*, *Plaintiffs-Appellees,*
v.
LUTHER STRANGE, ATTORNEY GENERAL,
STATE OF ALABAMA, *Defendant-Appellant.*
_____/

Appeal from the U.S. District Court, Southern District of Alabama
Civil Action No. 1:14-cv-0424-CG-C, before Hon. Callie V.S. Granade

***Amicus Curiae* Brief of Gordon Wayne Watts in support of Atty. General's motion for stay, but offering a Compromise to redress legitimate grievances of Plaintiffs, Strawser & Humphrey**
(Time-sensitive: RULING REQUESTED BEFORE FEB. 9, 2015)

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U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Strawser, et al v. Strange, Appeal No: 15-10313

Amicus, Gordon Wayne Watts, pursuant to 11th Cir. R. 26.1-1, hereby certifies that the following is a list of trial judge(s), and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party those who have an interest in the outcome of this case and/or appeal:

1. Agricola, Jr., Algert Swanson, Attorney for Alabama Probate Judges Association ("APJA") & Gov. Bentley

2. Alabama Probate Judges Association

3. Allen, Wes, Probate Judge, Pike County, Alabama, APJA Treasurer

4. Bentley, Robert J., Governor of Alabama

5. Boyd, Fernambucq, Dunn & Fann, P.C., attorneys for plaintiffs

6. Brasher, Andrew Lynn, Solicitor General

7. Byrne, Jr., David B., Attorney for Governor Robert J. Bentley

8. Davis, James W., Assistant Attorney General

9. English, Bill, Probate Judge, Lee County, Alabama, APJA Vice President

10. Fann, Heather, counsel for Plaintiffs-Appellees

11. Granade, Hon. Callie V. S., United States District Judge

12. Howell, Laura Elizabeth, Assistant Attorney General

U.S. COURT OF APPEALS FOR THE 11th CIR., CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT
***Strawser, et al v. Strange*, Appeal No: 15-10313**

13. Humphrey, John E., Plaintiff-Appellee

14. Minter, Shannon P., counsel for Plaintiffs-Appellees

15. Mitchell, Terry, Probate Judge, Coosa County, Alabama, APJA President Emeritus

16. National Center for Lesbian Rights, attorneys for Plaintiffs-Appellees

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18. Paluzzi, John Earl, Probate Judge, Pickens County, Alabama, APJA Secretary

19. Ryals, Joseph Lenn, Attorney for Alabama Probate Judges Association

20. Stoll, Christopher F., counsel for Plaintiffs-Appellees

21. Strawser, James N., Plaintiff-Appellee.

22. Strange, Luther, Attorney General

23. Watts, Gordon Wayne, Amicus Curiae

No counsel for any party authored this brief in whole or part, nor did anyone make any monetary contribution intended to subsidise/fund preparation/submission of this brief. I, Gordon Wayne Watts, alone, both wrote & funded it. *Amicus*, Gordon Wayne Watts, is an individual, not a corporation, and accordingly does not does not issue any stock and does not have any parent corporations or any publicly held corporations that own 10 percent or more of stock of that nonexistent parent corporation.

/s/ Gordon Wayne Watts **Date:** Mon 2-2-2015

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STATEMENT OF JURISDICTION

In accordance with Rule 29. Brief of an Amicus Curiae, (a) When Permitted, I hereby certify the following: I, Gordon Wayne Watts, state that I have consulted with lead attorneys for both parties, seeking consent to filing of this amicus brief, and I state that both parties have consented to its filing.

STATEMENT OF THE CASE / FACTS

Plaintiffs-Appellees, James Strawser and John Humphrey, are Alabama residents who attempted to obtain a marriage license, but were denied, because it's against Alabama Law, Ala. Code §30-1-19, the so-called "Marriage Protection Act." Their lawsuit describes a denial of various rights, such as Contract Law rights regarding the naming of a person to Power of Attorney for medical decisions, *inter alia*, as well as Equal Protection claims regarding loss of Federal Social Security benefits, which, legally, are only due a spouse. Their suit lays blame on Ala. Code §30-1-19, and seek to repeal it under due process and/or equal protection constitutional grounds. (Brief at page 5) The court below found in favour of Plaintiffs, and now the State is appealing the decision in the case at bar. *Amicus*, Watts, who has studied this issue at length, feels Plaintiffs have some legitimate complaints and has found what he believes may be some solutions that could be acceptable to both sides, and, counsel for both sides were gracious enough to grant consent to file an *amicus*, which is the instant brief, in the case *sub judice.*

Argument I. New developments require a Stay Pending Appeal

The court below found against the defendant, claiming he wasn't likely to succeed on the merits, but entered a 14-day stay, set to expire *circa* Feb. 09, 2015. **Well-settled case-law (and Order of the court below) state the 4-prong test governing 'Stays Pending Appeal':** *(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.* Defendant makes a 'balance of equities' argument, citing *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986), and *amicus*, Alabama Probate Judges Assn., made a 'public interests' argument (citing "substantial confusion" that would result if SCOTUS reversed). *Amicus*, Gov. Bentley, makes "biological family" & 10th Am. States' Rights arguments, but neither States' Rights, nor *Stare Decisis*, that is, precedent, *as is sometimes argued,* are absolute standards guaranteeing legality. Although defendant's motion for stay pending appeal cited the U.S. 6th Circuit's recent *DeBoer* ruling (upholding 'Gay Marriage' ban), *and* the recent grant of Certiorari by the U.S. Supreme Court, supporting his prong-4 argument (public interest), he altogether *failed* to make an argument that he's likely to succeed on the merits (prong-1). Based on the Watts *amicus*, in the *Brenner* (14-14061) and *Grimsley* (14-14066), there's one argument that guarantees defendant

will likely succeed on the merits. Said brief makes an argument that has never heretofore been advanced**:** even though polygamy has been invoked as either *obiter dictum* or for 'slippery slope' arguments, it has never been properly used as an 'Equal Protection' argument -until, that is, here**:** However, now that the Watts amicus is lodged before This Court, there is absolutely no way that 'Gay Marriage' can remain legal at all "[U]nless, of course, polygamists for some reason have fewer constitutional rights than homosexuals." *Romer v. Evans*, 517 U.S. 620, at 648 (1996). Since polygamy has a much stronger legal and historical precedent (see Watts brief, *supra*), than Gay Marriage, it would *perforce*, via Equal Protection, be impossible to grant 'Gay Marriage' any greater legal status**; and,** since polygamy is **very** unlikely to become legal in the near future, then Gay Marriage is even more certain to fail, and thus defendant, Luther Strange, has made a strong showing that he's likely to succeed on the merits, even if it was by proxy (by the instant memorandum of law), thus fully satisfying prong-1 and requiring a stay pending appeal in the case at bar. These facts, when added to the points *supra*, only clinch what is already certain legal justification for granting a stay pending appeal. Furthermore, a stay pending appeal is typically mandatory in many state courts, implying that, absent "extreme" circumstances (life-or-death jeopardy), a stay pending appeal is appropriate. Even if the court below fails to issue a stay

pending appeal, This Court has "oversight" responsibility (see: Fed.R.App.P., RULE 8(a)(1)(A)), and, so, as the old saying goes: "The buck stops here."

Argument II: Plaintiffs have legitimate complaints too

Even though plaintiffs are certain to lose on the merits, with regard to the definition of 'marriage,' they do have legitimate grievances, which I shall endeavor to address in Argument II, here:

First, they complain (Brief, pp.1-2, 17) about the ability to appoint one another the legal ability to make medical decisions, and that is a legitimate concern. The legal term, here, is "Power of Attorney" (POA) which, basically, is written authorisation to act on another's behalf in private affairs, business, or otherwise legally represent them in some legal matter—sometimes even against the wishes of the other. However, Alabama law already allows a non-family member to become a POA: See e.g., Alabama Code §26-1-2(4), (6) (1975), which reads:

> "(4) Subject to any limitation in the durable power of attorney, an attorney in fact may, for the purpose of making a health care decision, request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records, execute a release or other document required to obtain the information, and consent to the disclosure of the information."
>
> (6) No health care provider or any employee or agent thereof who in good faith and pursuant to reasonable medical standards follows the direction of a duly authorized attorney in fact shall, as a result thereof, be subject to criminal or civil liability..."

It, then, is quite clear: these sections taken *in pari materia* clearly give the POA the

legal right to make medical decisions. If, however, the hospital is refusing to honour Alabama Law on this head, the proper solution is to sue the hospital, but in any event, any complaint about **Ala. Code §30-1-19** (the so-called "Marriage Protection Act") is unfounded, and clearly used as a "straw man" argument to strike a good law**: RULE 3 of the Fed.R.Civ.P.**, clearly state that "A civil action is commenced by filing a complaint with the court," and so with a proper solution to redress grievances (that I provided above), no complaint may legally issue**:** no foul, no harm, is a legal standard.

Next, they complain (Brief, p.18) that the "right to receive social security benefits as a surviving spouse—hinge directly on the length of the marriage." This is a valid complaint, but the unconstitutional law in question is the Social Security Law, not the Alabama State Law. To put things in perspective, what if, for example, someone wanted to name his brother as a surviving recipient of Social Security? What if (as I would agree) that Equal Protection demands a right to do so? Then, should that *perforce* make it legal to marry your brother? God forbid, and certainly not! Again, I sympathise with the just and legitimate complaints of plaintiffs, but they make a Straw Man argument and attack the good law, whist leaving alone the bad one!

Then, they complain about the 'stigma' of inability to get married (Brief, p.18). I would agree that there is unfortunately some lingering prejudice against

homosexuals (and this is wrong), but, leaving aside our human weakness, looking at the argument in question: What if, for example, a woman in UTAH (where polygamy was recently very common—and still practiced by 'splinter' groups) felt 'stigma' for inability to be legally 'married' to a man –and his 5 other wives? While no one would condone or support making fun of this plural-marriage family, would this allow her to get 'legal' status for her polygamous relationship? Certainly not, and by this, we see this logic is "bad logic" and must, perforce, reject any conclusions on such premises.

Although not mentioned in this case, in a related case, *Searcy, et al., v. Strange*, 11th Cir., No. 15-10295, a lesbian couple complains about their inability to adopt, and, I feel they have a legitimate grievance**:** any outright "Gay adoption Ban" (whether statutory, or merely due to personal prejudice) is clearly an Equal Protection violation, and, in a brief in that case, I cite a Florida Law which was struck down for that reason. However, as with Plaintiffs, Strawser and Humphrey, they allege that **Ala. Code §30-1-19** (the so-called "Marriage Protection Act") is the problem, when, clearly, it is not: They can, indeed, adopt: See e.g., Ala. Code §26-10A-5(a) and Ala. Code §26-10A-27 (1975), which grant them strong statutory protections in this regard. This, then, is a pattern of behaviour, to strike the good law (§30-1-19), whilst ignoring the several bad ones.

Thus, This Honorable Court now has several solutions to the problem that don't violate Equal Protection viz. Polygamy. This solution should satisfy plaintiffs (who can get a "fair shake" in POA matters) as well as defendants (who defined marriage as it has been defined for tens of thousands of years, in all societies, cultures, and countries, since the very beginning of time, and that, for compelling state interests in promoting traditional marriage).

I do not pretend to have all the solutions, but I hope to get people focused on real solutions, not illusionary and Constitutionally-impossible ones.

Since I have provided a solution to defendants' problem, then **Now that this case has been appealed, This Court has "subject matter" jurisdiction,** and some solution I offer could, legally, work**; I hope that my solutions are acceptable compromises to both sides,** to help my fellow-man (and woman) come to a truce –and reduce arguments and strife. – I hope to be helpful to the goodwill of several parties in getting a solution acceptable to all.

Additionally, there are many, many more unfair laws, which target both straights and gays and single adults. However, in Amicus in *Brenner* and *Grimsley* (14-14061, 14-14066, 11th Cir. 2014, perfected), I strongly oppose the mistreatment of Sloan Grimsley, a homosexual firefighter, who can not name her homosexual spouse as a beneficiary of her life-insurance policy (Brief, p.14) or, for example, the "Marriage Penalty," which penalises straight people, based solely on marital

"status," in things such as disability, retirement, and even higher taxes required from some married couples that would not be required by two otherwise identical single people with exactly the same income. (A straight friend of mine would see his disability 'go down' if he married his girlfriend.) So, prejudice exists in law against both straights and gays, but it is not due to the Alabama Law defining marriage as 1-man and 1-woman, and thus an attack on that law is misplaced. **I add this paragraph solely to be respectful and courteous -and show plaintiffs that I am not prejudiced, and, indeed, most 'conservatives' are strongly opposed to gays to be mistreated in any form or fashion.**

III. Inferior Federal Courts don't even have jurisdiction to address 'Gay Marriage' dispute

On it's face, it would seem that the Supremacy Clause would allow a Federal District Court, such as here, to 'strike down' any state law or state Constitutional provision, such as has been happening in the 'Gay Marriage' dispute, nationwide. *But, is this so?*

Doe v. Pryor, 344 F.3d. 1282, 1286 (11th Cir. 2003), held that: "The only federal court whose decisions bind state courts is the United States Supreme Court." Their advisory opinion on this head evokes the Rooker-Feldman doctrine, which, in essence, holds that lower United States federal courts may not sit in direct review of state court decisions. This would give a strong support to

Federalism, and 10th Amendment State's rights, that is, that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States." Accord: *Arizonans for official English and Robert D. Park, Petitioners v. ARIZONA et al.*, 520 U.S. 43, at Syllabus 23, note 11, in which the U.S. Supreme Court held: "(Supremacy Clause does not require state courts to follow rulings by federal courts of appeals on questions of federal law)." In other words, lower Federal Courts (including the Circuit Courts of Appeals) may not sit in appellate review of state court decisions; this court may only address these issues through original jurisdiction (which, apparently, the plaintiffs allege, insofar as they claim that the state laws in question are unconstitutional).

While this case law seems counter-intuitive, let me illustrate why this, if taken to its logical end, is not unreasonable: What if, for example, residents from 49 U.S. states appeared in one single Federal District Court (of the 50th state), demanding that their states' laws, recognising marriage one way or the other, should yield to the State Law of the 50th State, where the case is being heard, and demand The Court enter a ruling that the laws of these 49 states are unconstitutionally-restrictive, and ask The Court to exercise "Long Arm Jurisdiction" to enforce such an order against these 49 states? Well, what if, then, *another* U.S. District Court entered a ruling just the opposite? Can you not see the mayhem and confusion that would surely ensue? (And, as it stands, the nation-

wide 'patchwork' of Gay Marriage Laws has effectively made my prophecy, here, come true!) So, the case law that holds that the Supremacy Clause is restricted in this regard is 'good' case law: **Only The U.S. Supreme Court may exercise jurisdiction in this regard,** and most other courts, while well-meaning and well-intentioned, have exceeded their authority. Lastly, I don't know what significance this may be, but I ask This Court to take Judicial Notice of the court below, which appears to have issued an informal edict (APPENDIX-A) outright refusing to grant Due Process/Redress to a short *pro se* amicus memorandum of law when considering difficult & time-sensitive issues, such as this stay. See also my response (APPENDIX-B) to the Due Process/Constitutional issues implicated.

IV. Addressing *Baker, Romer, Lawrence, Lofton,* and *Windsor*

Plaintiffs mention *Windsor* and *Baker* in their brief, but appear to interpret it incorrectly in their conclusion, so now would be a good time to go over key case-law on that head.

Baker v. Nelson, 409 U.S. 810, 93 S. Ct. 37 (1972) was decided when the case came to the Supreme Court through mandatory appellate review (not certiorari); therefore, its dismissal constituted a decision on the merits and established *Baker* as precedent. Though the extent of its precedential effect has been subject to debate (and ignored by several US appellate circuits), it remains

binding case law on the point of Gay Marriage: only the U.S. Supreme Court may overrule its own decisions.

There are commonly "doctrinal development" arguments made to argue that *Baker* was *de facto* overturned, [e.g., "[I]f the Court has branded a question as unsubstantial, it remains so except when doctrinal developments indicate otherwise[.]" *Hicks v. Miranda*, 422 U.S. 332, 344 (1975)], but is this really the case?

Some proponents of the 'doctrinal development' arguments for overturning *Baker* cite to such as *Lawrence v. Texas*, 539 U.S. 558 (2003), which criminalised sodomy. They sometimes claim that *Lawrence* removed any impediment to recognising that "Sexual Orientation" classifications warrant "Heightened Scrutiny," and sometimes claim that the *Lofton v. Secretary of Department of Children & Family Services*, 358 F.3d 804 (11th Cir. 2004) holding was in reliance on out-of-circuit cases that based their holdings on *Bowers v. Hardwick*, 478 U.S. 186 (1986), and thus incompatible with intervening contrary decisions of the Supreme Court and should not be followed.

Very good point! However, we must ask two questions: First, did *Lawrence* really demand use of heightened scrutiny, or, instead, was it merely a rejection of the ban on certain behaviour (sodomy, in this case)? Secondly, even if some justices in *Lawrence* personally relied on this, as Obiter Dictum, and not as a

formal holding, is heightened scrutiny actually necessary as an absolute truth? ANSWER: *Bowers* held, first, that criminal prohibitions of homosexual sodomy are not subject to heightened scrutiny because they do not implicate a "fundamental right" under the Due Process Clause, 478 U.S., at 191-194. Noting that "[p]roscriptions_against that conduct have ancient roots," id., at 192, that "[s]odomy was a criminal offense at common law and was forbidden by the laws of the original 13 States when they ratified the Bill of Rights," ibid., and that many States had retained their bans on sodomy, id., at 193, *Bowers* concluded that a right to engage in homosexual sodomy was not "'deeply rooted in this Nation's history and tradition,'" id., at 192. The U.S. Supreme Court, in *Lawrence* did not overrule this holding: Not once does it describe homosexual sodomy as a "fundamental right" or a "fundamental liberty interest," nor does it subject the Texas statute to "strict" scrutiny much less to "heightened" scrutiny! Nonetheless, some scrutiny is necessary due to the lingering prejudice that exists in both law and society against homosexuals. Thus, *Lofton* is still good case-law: a state's limitation of marriage to male-female unions must be subject only to deferential rational-basis review.

Nonetheless, I will conclude with one final statement on the "scrutiny wars," which are waged by lawyers on both sides of this argument: Lawyers for both sides have repeatedly bragged that their arguments are "sound," no matter WHICH level of scrutiny be applied, and thus dared The Courts to apply ANY level of scrutiny to

test their arguments.

This amicus agrees with their claim on this head: While the 'Doctrine of Scrutiny' is certainly a useful guide, in the end, it matters not how much light This Court shines on all our arguments, and so "heightened scrutiny" is acceptable, and, in light of the national debate on 'Gay Marriage,' perhaps "even more scrutiny" should be given to both this case and the cases in the other U.S. Circuits, for example, the *Brenner & Grimsley* cases, where the 11th Circuit is still 'reviewing' these Florida Gay Marriage cases. (*Brenner* and *Grimsley* should be reviewed *en banc*, I think, decided upon, one way or the other, and then granted Certiorari for This Court's review, and consolidated with these instant grants in the case at bar.)

In *Romer v. Evans*, 517 U.S. 620 (1996), at 648 Justice Antonin Scalia, in his dissent, said: "[U]nless, of course, polygamists for some reason have fewer constitutional rights than homosexuals." This would seem to contradict my claims that the instant brief (by Amicus, Gordon W. Watts) was the first to use "Polygamy vs. Gay Marriage" as a formal "Equal Protection" argument; however, reading Justice Scalia's comments in the context of this holding, we see that *Romer* merely addresses denial of certain rights to gays: it did not address the legal definition of marriage, a similar, but legally distinct, question of law. Thus, Scalia's comments, while legally-correct, were merely obiter dictum: comments on the definition of marriage, and not on treatment issues.

Romer set the stage for *Lawrence v. Texas*, 539 U.S. 558 (2003), which dealt with another treatment issue: private sexual conduct (sodomy, in this case) –again, not the legal definition of marriage (which is under review in the case at bar).

In Lofton v. Sec. of the Dept. of Children and Family Services, 358 F.3d 804 (11th Cir. 2004), *inter alia*, the 11th Circuit declined to treat homosexuals as a suspect class, and then, subsequently declined the Plaintiffs petition for rehearing *en banc*.

The key point of *U.S. v. Windsor*, 133 S.Ct._2675 (2013), was not that it struck down DOMA (the The Defense of Marriage Act), nor the obiter dictum that "differentiation [in marital status] demeans the couple" in question. The only key point in the *Windsor* holding that applies to the case at bar is that The U.S. Supreme Court upheld "States' Rights" for NY to define marriage as it sees fit; if anything, this supports citizens' initiatives & legislative acts to define marriage as the elected majority see fit, as has happened in four 6th Cir. states and Florida (where an almost 62% supermajority voted for its passage).

V. CONCLUSION

I believe that the court below acted with good intentions in trying to help the Plaintiffs get married to increase the odds they would be treated fairly at the hospital—or to get benefits to which I think they should be entitled, but not only was the solution an unconstitutional over-reach, wholly unnecessary when simpler

(less invasive) solutions are available, but Inferiour Federal Courts probably don't even have the authority to address the merits of this type of tort, as I show above. Regardless, however, of whatever authority This Court may have **This Court may (and, I think, should) still enter a Stay Pending Appeal, and let the SCOTUS deal with it, if the stay was inappropriate.** For further clarification and supporting case-law, you may see the rough draft of a proposed filing to the U.S. Supreme Court (an inferiour version of which is already filed with that court) at this link below, and take note of how I take fellow-conservatives to task, proving, once again, that I am not prejudiced or_biased: "Argument V. Correcting common errors of 'Traditional Marriage' advocates." LINKS:

http://GordonWatts.com/14-571_ac_GordonWayneWatts_REPRINT.pdf

http://GordonWayneWatts.com/14-571_ac_GordonWayneWatts_REPRINT.pdf

I'm greatly grieved by the hate and discontent that has been generated by the differences and arguments in the Gay Marriage case here, and elsewhere, and I do not like the toxic atmosphere that results, and, as a result, am hoping that compromises amenable to all sides can be reached, where each side "walks away a winner," and gets something of value, which is appropriate, because both sides (plaintiffs & defendants) have some legitimate grievances, but a stay pending appeal is appropriate here, and then a reversal on the merits of the definition of marriage, while still addressing some legitimate complaints Plaintiffs have.

Dated: ~~--day, XX Month 20145~~ Mon. 2-2-2015 Respectfully submitted,

s/ Gordon Wayne Watts, II

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CERTIFICATE OF COMPLIANCE

In accordance with Rule 29, Brief of an Amicus Curiae (c), Contents and Form, Fed.R.App.P., I hereby certify the following: The instant amicus brief complies with Rule 32: see *infra.*

The cover identifies the party or parties supported and indicate whether the brief supports affirmance or reversal: This brief supports defendant, **LUTHER STRANGE**, regarding his motion for a "State Pending Appeal" –and affirmance of the Alabama Law in question, and on many other points, but supports many elements of the plaintiffs, including (but not limited to) fair and just treatment of all people, including homosexual citizens. In addition, I certify that I complied with the disclosure requirement in the CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT, *supra.*

In accordance with Rule 32(a)(7), Length., Fed.R.App.P., I hereby certify the following:

Rules 32(a)(7)(A), Page limitation, 32(a)(7)(B) Type-volume limitation, and 32(a)(7)(C)(i) Certificate of compliance [e.g., "A brief submitted under Rules 28.1(e)(2) or 32(a)(7)(B)"] do not apply: **This brief is neither a principal nor reply brief.**

Regarding Rule 32(a)(7)(C)(ii), which states in succinct part that "Use of Form 6 must be regarded as sufficient to meet the requirements of Rules 28.1(e)(3) and 32(a)(7)(C)(i)," **I am hereby following this standard to be safe:**

Form 6. Certificate of Compliance With Rule 32(a)

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

*** this brief contains [state the number of] words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or

[[[it contains no more than 14,000 words— **5,464** Words in total, to be exact; Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.]]]

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

*** this brief has been prepared in a proportionally spaced typeface using [state name and version of word processing program: OpenOffice version 3.1.0] in [state font size: 14, and name of type style: Times New Roman],

[[[A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.]]]

I believe, in good faith, that I am also in compliance with Rule 29. Brief of an Amicus Curiae, (d) Length, since I met the Rule 32 requirements above.

s/ Gordon Wayne Watts

Gordon Wayne Watts, *Amicus*

CERTIFICATE OF SERVICE

In accordance with Rule 25(c)(4), Manner of Service, "Service by mail or by commercial carrier is complete on mailing or delivery to the carrier," which I hereby certify that I am doing today, Mon. 2-2-2015, 2015, to the following parties (below), by Fed Ex –and by Electronic Mail, when/where possible. Additionally, I hope to post a TRUE COPY of these filings on my Open Source online docket, for free download, at the following two (2) URL's, as soon as practically possible:

http://www.GordonWatts.com/DOCKET-GayMarriageCase.html
and:
http://www.GordonWayneWatts.com/DOCKET-GayMarriageCase.html

/s/ Gordon Wayne Watts

Gordon Wayne Watts, *Amicus*

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-10313

JAMES STRAWSER, *et al., Plaintiffs-Appellees,*
v.
LUTHER STRANGE, ATTORNEY GENERAL,
STATE OF ALABAMA, *Defendant-Appellant.*
_____/

Appeal from the U.S. District Court, Southern District of Alabama
Civil Action No. 1:14-cv-0424-CG-C, before Hon. Callie V.S. Granade

Amicus Curiae Brief of Gordon Wayne Watts in support of
Atty. General's motion for stay, but offering a Compromise to
redress legitimate grievances of Plaintiffs, Strawser & Humphrey
(Time-sensitive: RULING REQUESTED BEFORE FEB. 9, 2015)

APPENDIX

The name, office address, and telephone number of counsel*[*]*
representing the party for whom the brief is filed:

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BS, The Florida State University, Biological & Chemical Sciences;
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AS, United Electronics Institute, Class of 1988, Valedictorian

LAYMAN OF THE LAW:
Gordon W. Watts, PRO SE / PRO PER
[*] Mr. Watts, acting as his own counsel, is not a lawyer.

INDEX TO APPENDIX

Instrument **Docket/Tab#**

Certificate of Service

A

Re: Jeff, I made a typo in my amicus; here's the corrected one

Reminder: AOL will never ask you for your password or billing information.

Subject: **Re: Jeff, I made a typo in my amicus; here's the corrected one**
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Mr. Watts,

Judge Granade does not accept amicus curiae briefs from persons who are neither members of the bar of this court nor admitted pro hac vice. This excludes all pro se amicus briefs.

Please let me know if you need further assistance.

Thank you,

Jeff Reinert
Chief Deputy **Clerk**
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B

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

CARI D. SEARCY and KIMBERLY MCKEAND, individually and as parent and next friend of K.S., minor, ***Plaintiffs,***	)	
vs.	)	**Civil Action No. 1:14-cv-0208-CG-N**
LUTHER STRANGE, in his capacity as Attorney General for the State of Alabama, ***Defendant.***	)	

Motion of Gordon Wayne Watts for leave to appear as *amicus curiae* in support of Defendant's Motion to Stay, but offering a 'Compromise' to redress legitimate grievances of Plaintiffs, Searcy and McKeand

Comes Now Gordon Wayne Watts, *pro se* and *in persona propia*, and moves **This Honorable Court** to grant it leave to appear as *amicus curiae* in support of the motion filed by Defendant Luther Strange for stay [Doc. 55] of this Court's Memorandum Opinion and Order entered herein on January 23, 2015 [Doc. 53] – **but also in support of Plaintiffs who appear to have some legitimate grievances, a solution of which has not, heretofore, been considered.** In support of its motion, Gordon Wayne Watts states as follows:

1. I am a citizen of Florida, which is in the 11th U.S. Circuit, and the definitions of 'marriage,' which will be affected by any ruling of this court, currently on appeal in the court above (Case #:15-10295) materially affect me as more carefully described in my 01/06/2015 amended *amicus* brief lodged with that court (Case #'s 14-14061 & 14-14066), pp.5-6 & Argument II.B., "Prejudice

against heterosexuals (straight people)...," p.17ff.

2. Besides a personal stake in the matter, which borders on the right to intervene (a right which I am declining to assert, p.6, *brief*), I am greatly grieved by the hate and discontent that has been generated by the differences and arguments in the Gay Marriage case here, and elsewhere, and I do not like the toxic atmosphere that results, and, as a result, am hoping that a compromise amenable to all sides can be reached, where each side "walks away a winner," and get something of value, which is appropriate, because both sides (plaintiffs & defendants) have some legitimate grievances.

3. Shortly after the Order of this court, dated January 23, 2015 [Doc. 53], granting a temporary, 14-day stay pending appeal, I realised that This Court had missed something, in weighing the 4 factors that govern "stays pending appeal," and, although I am not a lawyer (and thus very rarely file anything), I did recently lose a 4-3 split decision in my petition to be Terri Schiavo's next friend, *In Re: Gordon Wayne Watts (as next friend of Theresa Marie 'Terri' Schiavo)*, No. SC03-2420 (Fla. Feb.23, 2003), which did better than a sitting governor, *In Re: Jeb Bush, Governor of Florida, et al. v. Michael Schiavo, Guardian: Theresa Schiavo,* No. SC04-925 (Fla. Oct.21, 2004), denied 7-0, before the same panel, implying I know something about law.

4. Also, besides filing an *amicus* brief in the court above (*Brenner v. Armstrong*, 14-14061, consolidated: *Grimsley v. Armstrong*, 14-14066, 11th Cir., 2014), which that court accepted for review (see dockets via PACER) I, as the legal reporter for *The Register*, also posted every *single* merits brief in that case, and several from the courts above and below, and did extensive commentary on each and every brief: http://GordonWatts.com/DOCKET-GayMarriageCase.html and http://GordonWayneWatts.com/DOCKET-GayMarriageCase.html which forced me to be up-to-date on the subject matter of 'Gay Marriage.'

5. Although the Federal Rules of Civil Procedure do not address the matter of *Amici Curiae*, the general concepts of 1st Amendment Redress would suggest that I have a right to Redress the courts, and so, I contacted Jeff Reinert, the clerk of this court, and asked him to allow me to email my amicus brief and motion for leave to appear as amicus, since email would expedite this time-sensitive issue. His initial response was to set me up an EF/CMF account in case an email to him was not appropriate protocol (he did not know at that time). He initially said that filing by U.S. Postal Mail was the proper protocol, but then said (APX-A), in email dated 1/27/2015, that Hon. "Judge Granade does not accept amicus curiae briefs from persons who are neither

members of the bar of this court nor admitted pro hac vice. This excludes all pro se amicus briefs." However, he did assure me that my proposed amicus brief was given to Hon. Judge Granade in chambers for her review, but that she refused to allow my motion and brief to be posted on the docket.

6. I have carefully reviewed both the local rules of This Court and the Fed.R.Civ.P., and neither has an "absolute prohibition" against *pro se amici* briefs, and so I infer that either Mr. Reinert made an honest mistake, or, perhaps, Hon. Judge Granade made an honest mistake/error in judgment. Also: While I know that no rules guarantee my right to have an amicus (friend of the court) brief accepted, I do know that it is my **absolute right,** under the First Amendment's guarantee of Redress, to file such a brief, and so, based on the local rules, the Fed.R.Civ.P., and the 1st Amendment, I have concluded that it is permitted to file an amicus. Wherefore, with no disrespect meant to Judge Granade or Clerk Reinert, I am filing a short and to-the-point memorandum of law and following the proper protocol, so far as I can ascertain –and in such a way as to be most respectful (and hopefully, also, helpful) towards all parties involved, court, plaintiffs, and defendants.
7. Although this is Civil Court, since the Fed.R.Civ.P. are silent on the matter of *Amici Curiae*, I feel that the Federal Rules of Appellate Procedure should

provide a useful, and common-sense, guide, and to that end, I find that **Rule 37.1 of the U.S. Supreme Court** offers guidance on that head: *"1. An amicus curiae brief that brings to the attention of the Court relevant matter* ***not already brought to its attention by the parties*** *may be of considerable help to the Court."* Since Judge Granade was probably not aware of a very recent legal development that tipped the balance of power regarding one of the factors for a "stay pending appeal," I felt a moral obligation to make her court aware of these new developments. **Well-settled case-law (and This Court's Order) state the 4-prong test governing 'Stays Pending Appeal':** *(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.* Although defendant's motion for a stay pending appeal cited the U.S. 6th Circuit's recent ruling in *DeBoer*, et al. (upholding a 'Gay Marriage' ban), and the recent grant of Certiorari by the U.S. Supreme Court of these cases, supporting his argument of prong-4 (public interest), he altogether failed to make an argument that he is likely to succeed on the merits (prong-1).

8. The very recent *amicus* brief by Gordon Wayne Watts, makes an argument that has never heretofore been advanced (see Watts brief, cited *supra*, Arg.

I.): even though polygamy has been invoked as either *obiter dictum* or for 'slippery slope' arguments, it has never been properly used as an 'Equal Protection' argument -until, that is, Watts' brief (me speaking of myself in the 3rd person, as is sometimes protocol). However, now that the Watts amicus is lodged in the court above, there is absolutely no way that 'Gay Marriage' can remain legal at all "[U]nless, of course, polygamists for some reason have fewer constitutional rights than homosexuals." *Romer v. Evans*, 517 U.S. 620 (1996). Since polygamy has a much stronger legal and historical precedent (see Watts brief, *supra*), than Gay Marriage, it would perforce, via Equal Protection, be impossible to grant 'Gay Marriage' any greater legal status; and, since polygamy is **very** unlikely to become legal in the near future, then Gay Marriage is even more certain to fail, and thus defendant, Luther Strange, has made a strong showing that he is likely to succeed on the merits, even if it was by proxy (by the instant memorandum of law), thus fully satisfying prong-1 and requiring a stay pending appeal in the case at bar.

9. The defendant made a 'balance of equities' argument, citing *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986), and amicus, Alabama Probate Judges Assn., made a good 'public interests' argument (citing the "substantial confusion" that would result if SCOTUS reversed). These facts, when added to the point *supra*, only clinch what is already a certain legal justification for

granting a stay pending appeal. Furthermore, a stay pending appeal is typically mandatory in many state courts, implying that, absent "extreme" circumstances (life-or-death jeopardy), a stay pending appeal is appropriate.

10. Even if the court above fails to issue a stay pending appeal, This Court has "primary" responsibility (see: Fed.R.App.P., RULE 8(a)(1)(A)), and, thus even if the court above refuses to properly stay pending appeal, that does not absolve This Court of its primary duty under the law, as "2 wrongs make not a right." [This statement, while harsh, is meant with no disrespect to This Honourable Court, but merely an observation of law.]

11. Even though plaintiffs are certain to lose on the merits, with regard to the definition of 'marriage,' they do have legitimate grievances, namely, the right to adopt**:** while not a guaranteed certainty to all people (for example: even "legally" married couples who are child-abusers will be refused adoption), so-called "Gay Adoption" bans are no more legal than, say, "pro se" bans to which Clerk Reinert alluded in his email to me. (Appendix-A) For example: a Florida State Appeals Court found that found a Florida statute prohibiting adoption by homosexuals had "no rational basis" and thus violated their equal protection rights. (*Fla. Dept. of Children and Families v. In re: Matter of Adoption of X.X.G. and N.R.G.*, Fla. 3d DCA, No. 3D08-3044, Opinion

filed September 22, 2010) This is good case law, and a Federal Court would be correct in upholding that: while opinions differ as to whether homosexual couples are "better than" or "worse than" families with a man-woman marriage, homosexuals are, in many cases, fine parents, and thus such a ban is unreasonable. (To illustrate this standard of law: It would be equally unreasonable to ban singles –or elderly –from adopting, even if these groups are not favoured as much as 'traditional' marriages.)

12. I attest that I occasionally hear reports that Alabama has a 'Gay Marriage' ban, and, if this is true, then This Court would be more appropriate in simply striking down Alabama Laws for such a Gay Marriage ban, instead of changing the definition of marriage (the latter being overkill -and also running afoul of Equal Protection, as I argue in my brief lodged in the court above—and available for download via both PACER and my own "docket").

13. If, however, my reading of Alabama Law is correct, then both plaintiffs, defendants, amici (probate judges), *and* This Honourable Court, have all missed the obvious problem –and the obvious solution: While plaintiffs complain that **Ala. Code §26-10A-27 (1975)** is a problem ("Any person may adopt his or her spouse's child..."), they miss the obvious: **Ala. Code §26-10A-5(a) (1975)** (Who may adopt.) states: "Who may adopt. (a) **Any adult**

person or husband and wife jointly who are adults may petition the court to adopt a minor." Furthermore, **§26-10A-5(a)(2) states:** "(2) No rule or regulation of the Department of Human Resources or any agency shall prevent an adoption **by a single person** solely because such person is single or shall prevent an adoption solely because such person is of a certain age." Since, of course, Alabama does not recognise Searcy and McKeand as legally-married, they are legally 'single,' and thus protected by this statute, and thus legally permitted to adopt. If, however, the judge denied adoption, then This Court can enter a ruling affirming in part (their rights of adoption), reversing in part (the lower court's Unconstitutional*[**]* ruling on legal definition of marriage), and remanding to the state court for orders consistent with this court, namely that This Court would issue an order of 'Show Cause' to the state court demanding to know by what legal standard it denied defendants the right to adopt. Perhaps the state court was justified, but only if it found on independent grounds (such as the welfare of the child), but not if it found solely on the grounds that the couple was homosexual. Thus, This Honorable Court now has a solution to defendant's problem that does not violate Equal Protection*[**]* viz. Polygamy. "[U]nless, of course, polygamists for some reason have fewer constitutional rights than homosexuals." *Romer v. Evans*, 517 U.S. 620 (1996)

CONCLUSION to 'Part I' above: This solution should satisfy plaintiffs (who can get a "fair shake" in adoption) as well as defendants (who defined marriage as it has been defined for tens of thousands of years, in all societies, cultures, and countries, since the very beginning of time, and that, for compelling state interests in promoting traditional marriage). Since I have provided a solution to defendants' problem, then any complaint about **Ala. Code §30-1-19** (the so-called "Marriage Protection Act") is unfounded, and clearly used as a "straw man" argument to strike a good law: **RULE 3 of the Fed.R.Civ.P.**, clearly state that "A civil action is commenced by filing a complaint with the court," and so with a proper solution to redress grievances (that I provided above), no complaint may legally issue: no foul, no harm, is a legal standard. **Now that this case has been appealed, This Court is divested of any "subject matter" jurisdiction,** and the solution I offer could, legally, only be enacted by The Appeals Court, above**; however, I am stating, for the record, my solution, in the event that it proves helpful to broker a compromise,** and help my fellow-man (and woman) come to a truce –and reduce arguments and strife. – I hope to be helpful to the goodwill of several parties in getting a solution acceptable to all.

Additionally, there are many, many more unfair laws, which target both straights and gays and single adults, and, in my brief, lodged in the court above, I

strongly oppose the mistreatment of Sloan Grimsley, a homosexual firefighter, who can not name her homosexual spouse as a beneficiary of her life-insurance policy (Brief, p.14) or, for example, the "Marriage Penalty," which penalises straight people, based solely on marital "status," in things such as disability, retirement, and even higher taxes required from some married couples that would not be required by two otherwise identical single people with exactly the same income. (A straight friend of mine would see his disability 'go down' if he married his girlfriend.) So, prejudice exists in law against both straights and gays, but it is not due to the Alabama Law defining marriage as 1-man and 1-woman, and thus an attack on that law is misplaced. **I add this paragraph solely to be respectful and courteous -and show plaintiffs that I am not prejudiced, and, indeed, most 'conservatives' are strongly opposed to gays to be mistreated in any form or fashion.**

ADOPTION REDUX: While I have satisfied the 'traditional' role of an *Amicus Curiae* (to show the court/parties something they missed), one more point needs to be mentioned with connection to adoption. At first, it would seem that the Alabama Law defining marriage solely as 1-man and 1-woman would be prejudiced, since, in adoption, gays are disfavoured, while traditional marriages are given 'preferential' treatment. *But, is this really prejudiced?* Well, we remember

that singles can adopt, but, all things being equal, preference is given the married couples, and yet no one cries foul here. Likewise, it would not be prejudice here: Indeed, see "DECLARATION OF LOREN MARKS, PH.D.," page 20, lodged on docket of the case at bar, where a small, but statistically-significant, group of children were compared, and all things being equal, married couples had the best development from objective teacher reports (and not biased parental reporting), and next, singles, and lastly, homosexual rearing. In fact, many studies have been done on child-rearing, and it is this author's recollection that most (but not all) support those findings of Dr. Marks, which begs the question of diversity. To see some of these studies, both pro and con, see the many *Amici Curium* briefs in *Brenner v. Armstrong* or *Grimsley v. Armstrong*, in the court above. All the briefs are available via PACER –for a fee –but are also available **for free** download on the unofficial docket hosted by *The Register:*

http://GordonWatts.com/DOCKET-GayMarriageCase.html

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Even though this *amicus* is a 'conservative,' I admit that the 'liberals' are correct to assert and promote "diversity": Racial diversity (Blacks, Whites, Hispanics, and Asians), and gender-diversity (men and women) in the workplace. How, then, is it wrong to promote "gender-diversity" in the family? While this is

merely a liberal cliché, nonetheless, I mention it to show that it is a *true* cliché: Dr. Marks' research is "right on mark" with its implicit claims that gender diversity is beneficial, and thus the State has an interest in promoting it, as shown by peer-reviewed scientific research. **Therefore, this is a sound legal argument which I am including in my brief, as I see all the parties have overlooked it.**

VII. Inferior Federal Courts don't even have jurisdiction to address 'Gay Marriage' dispute

On it's face, it would seem that the Supremacy Clause would allow a Federal District Court, such as this one, to 'strike down' any state law or state Constitutional provision, such as has been happening in the 'Gay Marriage' dispute, nationwide. *But, is this so?*

Doe v. Pryor, 344 F.3d. 1282, 1286 (11th Cir. 2003), held that: "The only federal court whose decisions bind state courts is the United States Supreme Court." Their advisory opinion on this head evokes the Rooker-Feldman doctrine, which, in essence, holds that lower United States federal courts may not sit in direct review of state court decisions. This would give a strong support to Federalism, and 10th Amendment State's rights, that is, that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States." Accord: *Arizonans for official English and Robert D. Park,*

Petitioners v. ARIZONA et al., 520 U.S. 43, at Syllabus 23, note 11, in which the U.S. Supreme Court held: "(Supremacy Clause does not require state courts to follow rulings by federal courts of appeals on questions of federal law)." In other words, lower Federal Courts (including the Circuit Courts of Appeals) may not sit in appellate review of state court decisions; this court may only address these issues through original jurisdiction (which, apparently, the plaintiffs allege, insofar as they claim that the state laws in question are unconstitutional).

While this case law seems counter-intuitive, let me illustrate why this, if taken to its logical end, is not unreasonable: What if, for example, residents from 49 U.S. states appeared in one single Federal District Court (of the 50th state), demanding that their states' laws, recognising marriage one way or the other, should yield to the State Law of the 50th State, where the case is being heard, and demand The Court enter a ruling that the laws of these 49 states are unconstitutionally-restrictive, and ask The Court to exercise "Long Arm Jurisdiction" to enforce such an order against these 49 states? Well, what if, then, *another* U.S. District Court entered a ruling just the opposite? Can you not see the mayhem and confusion that would surely ensue? (And, as it stands, the nation-wide 'patchwork' of Gay Marriage Laws has effectively made my prophecy, here, come true!) So, the case law that holds that the Supremacy Clause is restricted in

this regard is 'good' case law: **Only The U.S. Supreme Court may exercise jurisdiction in this regard,** and most other courts, while well-meaning and well-intentioned, have exceeded their authority.

IN CONCLUSION: I believe that this court acted with good intentions in trying to help the gay couple adopt, but not only was the solution an unconstitutional over-reach, wholly unnecessary when a simpler (less invasive) solution was available, but This Court probably does not even have the authority to address the merits of this type of tort, as I show above. Lastly, since the matter has been appealed to The U.S. 11th Circuit Court of Appeals, all subject-matter jurisdiction is divested **–except the authority to enter a stay Pending Appeal; This Court may (and, I think, should) still enter a Stay Pending Appeal, and let the appellate court deal with it, if the stay was inappropriate.** For further clarification and supporting case-law, you may see the rough draft of a proposed filing to the U.S. Supreme Court (an inferior version of which is already filed with that court) at this link below, and take note of how I take fellow-conservatives to task, proving, once again, that I am not prejudiced or_biased: "Argument V. Correcting common errors of 'Traditional Marriage' advocates." LINKS:

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Served today: Mar 2-2 2015

Dated: ~~--day, XX Month 20145~~ Respectfully submitted,

s/ Gordon Wayne Watts

Gordon Wayne Watts, Amicus
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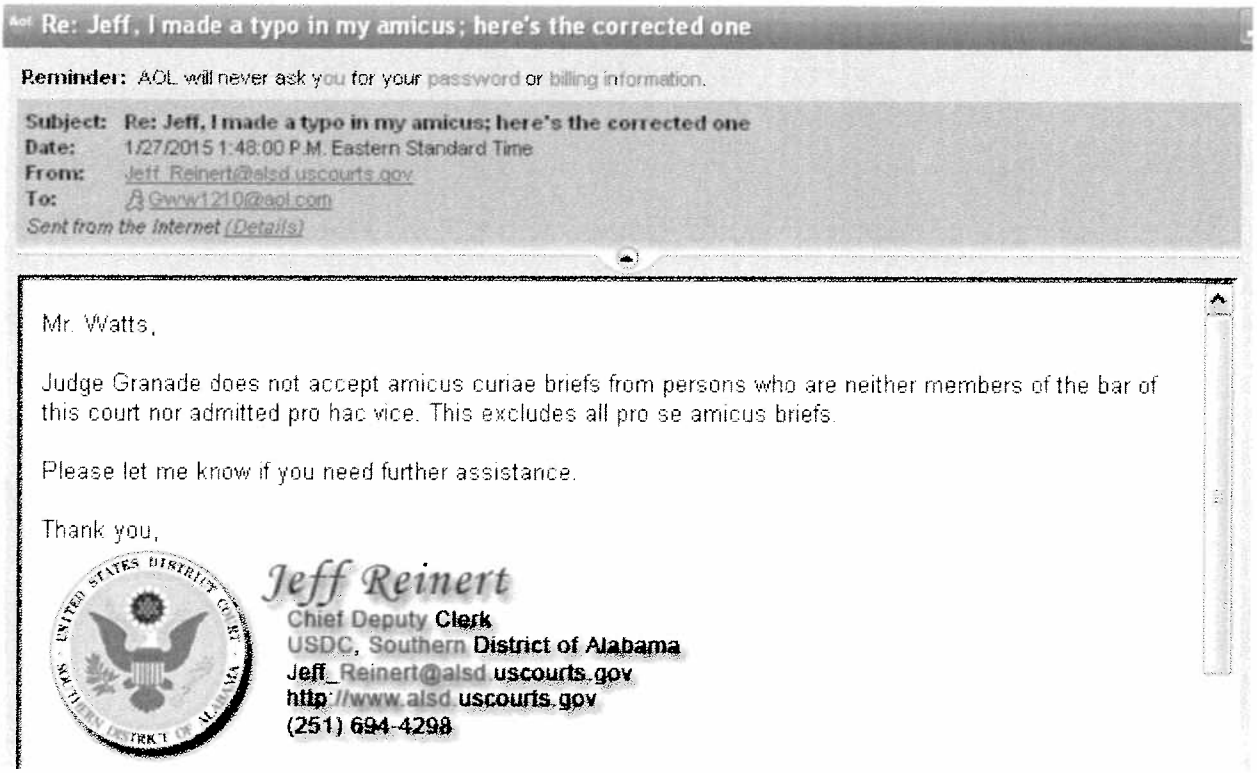
APPENDIX-A



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Thank you,

Jeff Reinert
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Certificates of Notice

Although the Fed.R.Civ.P. have no analogue to the Rule 29 of Fed.R.App.P., requiring consent of parties for the filing of an *amicus (consent is not legally binding on This Court even were I to have actually obtained consent of all parties),*

as a courtesy, I gave both parties notice of my intent to file an *amicus* brief in this case and sought consent, and I am authorised to report the following: The defendant consented to the filing of my amicus, and the attorneys for the plaintiff politely entertained my request, but they did not grant consent, but rather, left that matter up to This Court to address and decide.

Certificates of Service

In accordance with Rule 5, Fed.R.Civ.P., regarding Service of pleadings, I hereby certify that on (Friday) Mon. 2-2-2015, I am serving a True Copy of the foregoing by both ~~U.S. Postal Mail~~ (or FedEx??) as well as Electronic Mail to the following parties, below:

s/ Gordon Wayne Watts

Gordon Wayne Watts, Amicus

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 2nd of ~~January~~ February, 2015, a true copy of the foregoing appendix was filed with the Clerk of This court and served upon all parties of record as indicated below: In accordance with Rule 25(c)(4), Manner of Service, "Service by mail or by commercial carrier is complete on mailing or delivery to the carrier," which I hereby certify that I am doing today, to the following parties (below), by Fed Ex –and by Electronic Mail, when/where possible. Additionally, I hope to post a TRUE COPY of these filings on my Open Source online docket, for free download, at the following two (2) URL's, as soon as practically possible:

http://www.GordonWatts.com/DOCKET-GayMarriageCase.html
and:
http://www.GordonWayneWatts.com/DOCKET-GayMarriageCase.html

/s/ Gordon Wayne Watts
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