

799 F.3d 918
United States Court of Appeals,
Eighth Circuit.

Jennie ROSENBRAHN; Nancy Rosenbrahn;
Jeremy Collier; Clay Schweitzer; Lynn Serling–
Swank; Monica Serling–Swank; Krystal Cosby;
Kaitlynn Hoerner; Barbara Wright; Ashley Wright;
Greg Kniffen; Mark Church, Plaintiffs–Appellees

v.

Dennis DAUGAARD, in his official capacity as
Governor; Marty Jackley, in his official capacity as
Attorney General; Kimberley Malsam–Rysdon, in
her official capacity as Secretary of Health; Trevor
Jones, in his official capacity as Secretary of Public
Safety; Carol Sherman, in her official capacity as
Brown County Register of Deeds, Defendants–
Appellants

Liberty, Life, and Law Foundation; North Carolina
Values Coalition; Foundation for Moral Law;
Eagle Forum Education & Legal Defense Fund;
David Boyle; Robert Oscar Lopez, Amici on Behalf
of Appellant(s)

Howard University School of Law Civil Rights
Clinic; COLAGE; Family Equality Council;
Americans United For Separation of Church and
State; American Association for Marriage and
Family Therapy; American Psychiatric
Association; American Psychoanalytic
Association; American Psychological Association;
Arkansas Psychological Association; National
Association of Social Workers; National
Association of Social Workers Missouri, Arkansas,
South Dakota, and Nebraska Chapters; Leadership
Conference Education Fund; Leadership
Conference on Civil and Human Rights; American
Sociological Association; Affirmation; Covenant
Network of Presbyterians; Friends for Lesbian,
Gay, Bisexual, Transgender, and Queer Concerns;
General Synod of the United Church of Christ;
Methodist Federation for Social Action; More
Light Presbyterians; Muslims for Progressive
Values; Parity; President of the House of Deputies
of the Episcopal Church and the Episcopal Bishops
of Missouri and Nebraska; Reconciling Ministries
Network; Reconciling Works: Lutherans for Full
Participation; Reconstructionist Rabbinical
Association; Reconstructionist Rabbinical College
and Jewish Reconstructionist Communities;
Religious Institute, Inc.; Union for Reform
Judaism; Unitarian Universalist Association;
Historians of Marriage; 24 Employers; Historians
of Antigan Discrimination; Constitutional Law

Scholars; Gary J. Gates, Amici on Behalf of
Appellee(s).

No. 15–1186.

Submitted: July 15, 2015.

Filed: Aug. 11, 2015.

Synopsis

Background: Same-sex couples brought action against various South Dakota officials, alleging that prohibition of same-sex marriage and refusal to recognize valid out-of-state same-sex marriages violated equal protection and due process. The United States District Court for the District of South Dakota, Karen E. Schreier, J., 61 F.Supp.3d 862, granted summary judgment to couples and issued a permanent injunction but stayed it pending appeal. State officials appealed.

The Court of Appeals held that Supreme Court’s *Obergefell* decision did not render the action moot.

Affirmed.

West Codenotes

Recognized as Unconstitutional

S.D.Const. Art. 21, § 9; SDCL §§ 25–1–1, 25–1–38

Attorneys and Law Firms

***920** Shannon Price Minter, Christopher F. Stoll, San Francisco, CA, Joshua A. Newville, Madia Law, Minneapolis, MN, Kylie Marie Riggins, Viken & Riggins, Rapid City, SD, Debra M. Voigt, Burd & Voigt, Sioux Falls, SD, for Plaintiffs–Appellees.

Ellie Bailey, Jeffrey Paul Hallem, Attorney General’s Office, Robert B. Anderson, Justin L. Bell, May & Adam, Pierre, SD, for Defendant–Appellant.

Deborah J. Dewart, Swansboro, NC, amicus curiae, North Carolina Values Coalition and Liberty, Life, and Law Foundation. John Eidsmoe, Montgomery, AL, amicus curiae, Foundation for Moral Law. Lawrence J. Joseph, Washington, DC, amicus curiae, Eagle Forum Education & Legal Defense Fund. David Boyle, Long Beach, CA, amicus curiae Robert Oscar Lopez. Prof. Aderson B.

Francois, Washington, DC, Benjamin G. Shatz, Brad W. Seiling, Los Angeles, CA, amicus curiae Howard University School of Law Civil Rights Clinic. Thomas E. Nanney, Kansas City, MO, Brian C. Walsh, St. Louis, MO, amicus curiae Family Equality Counsel and Colage. Ayesha N. Khan, Alex J., Richard B. Katskee, Scott M. Noveck, Hannah Y.S. Chanoine, Washington, DC, amicus curiae Americans United for Separation of Church and State. Nathalie F.P. Gilfoyle, Paul M. Smith, Aaron M. Panner, Washington, DC, amici curiae American Association for Marriage and Family Therapy, American Psychiatric Association, American Psychoanalytic Association, American Psychological Association, Arkansas Psychological Association, National Association of Social Workers and National Association of Social Workers Missouri, Arkansas, South Dakota, and Nebraska Chapters. Wade J. Henderson, Lisa M. Bornstein, Matthew M. Hoffman, Andrew Hudson, Washington, DC, amicus curiae The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund. Carmine D. Boccuzzi, Jr., Mark A. Lightner, Grant A. Bermann, Alexandra Eber, New York, N.Y., amicus curiae The American Sociological Association. Pratik A. Shah, Washington, DC, Jessica M. Weisel, Los Angeles, CA, Daniel McNeel Lane, Jr., San Antonio, TX, amicus curiae Historians of Marriage. Adam P. Romero, Benjamin G. Shatz, Brad W. Seiling, Los Angeles, CA amicus curiae Gary J. Gates. Catherine E. Stetson, Erica Knievel Songer, Mary Helen Wimberly, Madeline H. Gitomer, Katherine J. Duncan, Washington, DC, amicus curiae Historians of Antigay Discrimination. Susan Baker Manning, Michael L. Whitlock, Jawad Muaddi, Kimberley E. Lunetta, Jacquelynne M. Hamilton, Washington, DC, amicus curiae 24 Employers. Geoffrey R. Stone, Chicago, IL, Diane M. Soubly, Ann Arbor, MI, Lori Alvino McGill, Washington, DC, amicus curiae Constitutional Law Scholars. Jeffrey S. Trachtman, Norman C. Simon, Jason M. Moff, Kurt M. Denk, Michelle Ben-David, Catherine Hoge, New York, N.Y., amici curiae Affirmation, Covenant Network of Presbyterians, Friends for Lesbian, Gay, Bisexual, Transgender, and Queer Concerns, General Synod of the United Church of Christ, Methodist Federation for Social Action, More Light Presbyterians, Muslims for Progressive Values, Parity, President of the House of Deputies of the Episcopal Church and the Episcopal Bishops of Missouri and Nebraska, Reconciling Ministries Network, Reconciling Works: Lutherans for Full Participation, Reconstructionist Rabbinical Association, Reconstructionist Rabbinical College and Jewish Reconstructionist Communities, Religious Institute, Union for Reform Judaism *921 and Unitarian Universalist Association.

Before WOLLMAN, SMITH, and BENTON, Circuit Judges.

Opinion

PER CURIAM.

Plaintiffs are six same-sex couples seeking to marry in South Dakota or to have their marriage in another state recognized in South Dakota. They also seek state benefits incident to marriage. The district court¹ granted Plaintiffs' motion for summary judgment, finding laws denying them the right to marry (in Article 21, § 9 of the South Dakota Constitution and South Dakota Codified Laws §§ 25–1–1, 25–1–38) violate the U.S. Constitution's guarantees of due process and equal protection. In addition to a declaratory judgment, the court issued a permanent injunction, but stayed it pending appeal. South Dakota appeals. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

While the appeal was pending, the Supreme Court decided *Obergefell v. Hodges*, — U.S. —, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015), *abrogating Citizens for Equal Protection v. Bruning*, 455 F.3d 859 (8th Cir.2006). Plaintiffs filed a suggestion to summarily affirm and a motion to vacate the district court's stay. South Dakota filed a suggestion of mootness and a motion to vacate the district court's judgment.

South Dakota no longer disputes the merits of the district court's ruling. The challenged laws are unconstitutional. As *Obergefell* concluded:

[T]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them. *Baker v. Nelson*[,409 U.S. 810, 93 S.Ct. 37, 34 L.Ed.2d 65 (1972),] must be and now is overruled, and the State laws challenged by Petitioners in these cases are now held invalid to

the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

Obergefell, 135 S.Ct. at 2604–05. The Supreme Court also noted,

[I]t must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered. The same is true of those who oppose same-sex marriage for other reasons. In turn, those who believe allowing same-sex marriage is proper or indeed essential, whether as a matter of religious conviction or secular belief, may engage those who disagree with their view in an open and searching debate. The Constitution, however, does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex.

Id. at 2607.

South Dakota suggests that *Obergefell* moots this case. But the Supreme *922 Court specifically stated that “the

Footnotes

¹ The Honorable Karen E. Schreier, United States District Judge for the District of South Dakota.

State laws *challenged by Petitioners in these cases* are now held invalid.” *Id.* at 2605 (emphasis added). *Cf. United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454, 477–78, 115 S.Ct. 1003, 130 L.Ed.2d 964 (1995) (limiting relief to the parties before the Court and noting “we neither want nor need to provide relief to nonparties when a narrower remedy will fully protect the litigants”). The Court invalidated laws in Michigan, Kentucky, Ohio, and Tennessee—not South Dakota. *See Campaign for S. Equal. v. Bryant*, 791 F.3d 625, 627 (5th Cir.2015) (ordering district court to enter final judgment that Texas laws denying same-sex couples the right to marry are unconstitutional); *Conde-Vidal v. Rius-Armendariz*, No. 14–2184 (1st Cir. July 8, 2015) (judgment vacating and remanding district court judgment that dismissed challenge to law denying same-sex marriage). And the Court did not determine all issues raised by Plaintiffs here (for example, name-changes on driver’s licenses). South Dakota has not repealed the challenged laws.

South Dakota’s assurances of compliance with *Obergefell* do not moot the case. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (“[A] defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.”). These assurances may, however, impact the necessity of continued injunctive relief. The district court is better positioned to consider the issue on appropriate motion. *See United States v. Bailey*, 571 F.3d 791, 804 (8th Cir.2009) (noting this court reviews permanent injunctions for abuse of discretion, reversing when the injunction is based on “a legal error or a clearly erroneous finding of fact”). This court leaves to the court’s discretion whether to vacate the stay of the injunction.

The judgment is affirmed. All pending motions are denied.

All Citations

799 F.3d 918

End of Document