

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

JANET E. JORGENSEN and
CYNTHIA A. PHILLIPS,
a married couple,

Plaintiffs,

versus

CASE NO. 3:14-cv-00058-RRE-KKK

MICHAEL MONTPLAISIR, in his official
capacity as County Auditor of Cass
County, North Dakota,

WAYNE STENEHJEM, in his official
capacity as Attorney General of North
Dakota,

RYAN RAUSCHENBERGER, in his
official capacity as Tax Commissioner
of North Dakota, and

JACK DALRYMPLE, in his official
capacity as Governor of North Dakota,
Defendants.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO LIFT STAY
AND ENTER JUDGMENT**

Plaintiffs Janet E. Jorgensen (“Jan”) and Cynthia A. Phillips (“Cindy”) (together, “Plaintiffs”), by and through their attorneys, hereby move this Court to lift the stay of proceedings entered January 20, 2015 (D.E. 53), deny Defendants’ Motion to Dismiss (D.E. 24), and enter judgment in favor of Plaintiffs on Plaintiffs’ Motion for Summary Judgment (D.E. 13). Plaintiffs move this Court based on the United States Supreme Court’s now-final decision in *Obergefell v. Hodges*.

I. No Further Stay Is Warranted.

On December 20, 2015, this Court issued an Order staying this case pending a decision from the Supreme Court in *Obergefell v. Hodges*, No. 14-556, No. 14-562, No. 14-571, No. 14-574. (D.E. 53.) On June 26, 2015, the Supreme Court issued its opinion in *Obergefell*, holding that the Fourteenth Amendment requires states to license same-sex marriages and to recognize same-sex marriages lawfully licensed and performed in other jurisdictions. *See Obergefell v. Hodges*, 576 U.S. ___, ___ (2015) (slip op., at 22-23, 28). Now that the Supreme Court has resolved the merits issues presented by this case, there is no justification for any continued delay in the adjudication of this case, and this Court may proceed to enter judgment in Plaintiffs' favor.

II. *Obergefell* Controls This Case.

The Supreme Court's opinion invalidating marriage bans in Ohio, Kentucky, Michigan, and Tennessee dictates the outcome of this case. The marriage bans considered by the Supreme Court are nearly identical to North Dakota's marriage ban. Each denies licenses to same-sex couples who wish to marry, and each denies married same-sex couples any legal recognition of their marriages licensed in other jurisdictions. *Compare, e.g.,* Ohio Rev. Code Ann. § 3101.01(C) *and* Ohio Const. art. XV, § 11 *with* N.D. Cent. Code §§ 14-03-01, 14-03-08 *and* N.D. Const. art. XI, § 28. Because the Supreme Court held that the marriage bans in Ohio, Kentucky, Michigan, and Tennessee violate the Fourteenth Amendment, this Court should find that North Dakota's marriage ban is also unconstitutional.

Indeed, the Supreme Court found that “the 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.” *Obergefell*, 576 U.S. at ___ (slip op., at 22). Accordingly, the Court held that the marriage bans in Ohio, Kentucky, Michigan, and Tennessee violate the Fourteenth Amendment “to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.” *Id.* at ___ (slip op., at 23). The Court further held that all states must recognize lawful same-sex marriages performed in other jurisdictions. *Id.* at ___ (slip op., at 28). In the words of the Court:

No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.

(*Id.* at ___ (slip op., at 28).

Here, Plaintiffs’ Fourteenth Amendment claims are nearly identical to those raised by the *Obergefell* plaintiffs. (See Complaint, D.E. 1, ¶¶ 61-90.) Further, the proposed justifications for North Dakota’s marriage ban are substantially similar to the proposed justifications rejected by the *Obergefell* Court. (See Mem. in Opp’n to Pls.’ Mot. for Sum. Judg., D.E. 36, at 21.) Accordingly, the decision in *Obergefell* controls this case.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court lift the stay of proceedings, deny in full Defendants' Motion to Dismiss, and grant in full Plaintiffs' Motion for Summary Judgment. Plaintiffs further request that this Court enter judgment in favor of Plaintiffs.

DATED: June 26, 2015

Respectfully submitted,

/s/ Michael A. Ponto

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CERTIFICATE OF SERVICE

Case No. 3:14-cv-00058

I hereby certify that on June 26, 2015, the following document: **PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO LIFT STAY AND ENTER JUDGMENT** was filed electronically with the Clerk of Court through ECF and that ECF will send a Notice of Electronic Filing to all counsel of record.

/s/ Michael A. Ponto

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