

**UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA—NORFOLK DIVISION**

TIMOTHY B. BOSTIC,

TONY C. LONDON,

CAROL SCHALL, and

MARY TOWNLEY,

Plaintiffs,

v.

CASE NO. 2:13-cv-395

JANET M. RAINEY, in her official  
capacity as State Registrar of Vital Records, and

GEORGE E. SCHAEFER, III, in his official  
capacity as the Clerk of Court  
for Norfolk Circuit Court,

Defendants.

**PLAINTIFFS' STATUS REPORT**

Plaintiffs Timothy B. Bostic, Tony C. London, Carol Schall, and Mary Townley respectfully submit this status report in response to the Court's Order dated January 23, 2014. *See* R. 99: Order.

This Court has before it briefing from the parties and *amici curiae* sufficient to enable it promptly to issue rulings on Plaintiffs' motion for a preliminary injunction and the parties' cross-motions for summary judgment. In addition to the extensive briefing submitted in connection with those motions, the Court also now has the benefit of the Attorney General's arguments as to why "Virginia's same-sex marriage ban cannot withstand constitutional scrutiny," R. 96-1: Memorandum in Support of Change in Legal Position at 7, including the Attorney General's

careful consideration of other recent federal court decisions invalidating analogous laws that deny gay men and lesbians their fundamental right to marriage. *See, e.g., id.* at 11–13 (discussing *Bishop v. United States*, No. 04-484, 2014 U.S. Dist. LEXIS 4374 (N.D. Okla. Jan. 14, 2014) and *Kitchen v. Herbert*, No. 13-217, 2013 U.S. Dist. LEXIS 179331 (D. Utah Dec. 20, 2013)). These submissions furnish an ample basis for the Court to rule and to bring an end to the irreparable harm that Virginia’s Marriage Prohibition imposes on Plaintiffs and their families.

To the extent that other parties desire to present oral argument on January 30, Plaintiffs do not object and, in the event that the Court proceeds with oral argument, Plaintiffs request to be heard as well. If there is oral argument, Plaintiffs request a total of 30 minutes to argue in support of their motion for summary judgment, and in opposition to Defendants’ cross-motions for summary judgment (to be presented by Theodore B. Olson), and in support of Plaintiffs’ alternative request for a preliminary injunction (to be presented by David Boies).

The Court also has inquired, in view of the Attorney General’s change in legal position, what persons or entities have grounds to defend Virginia’s Marriage Prohibition. The Attorney General’s change in position does not require that other non-parties be invited to present argument in defense of the laws. As the Court is aware, Defendant Schaefer and Intervenor McQuigg are defending the Prohibition forcefully and vigorously. And this Court also “has the benefit of the previous briefing by the former Solicitor General in support of the ban,” R. 96-1: Memorandum in Support of Change in Legal Position at 6, as well as the *amicus* briefs submitted by the Family Foundation of Virginia and the Alliance Defending Freedom on behalf of five professors. *See* R. 62-1: The Family Foundation of Virginia’s *Amicus Curiae* Brief; R. 64-1: Proposed Brief of *Amici Curiae* Professors. The Attorney General’s change in position should not delay this Court’s resolution of Plaintiffs’ motions for a preliminary injunction and summary

judgment. If anything, the Attorney General's change in position makes clearer the appropriateness of immediate relief.

Dated: January 24, 2014

Respectfully submitted,

/s/ Charles B. Lustig

Thomas B. Shuttleworth, VSB # 13330

tshuttleworth@srgslaw.com

Robert E. Ruloff, VSB # 13471

rruloff@srgslaw.com

Charles B. Lustig, VSB # 29442

clustig@srgslaw.com

Andrew M. Hendrick, VSB # 42852

ahendrick@srgslaw.com

Erik C. Porcaro, VSB # 84793

eporcaro@srgslaw.com

SHUTTLEWORTH, RULOFF, SWAIN,

HADDAD & MORECOCK, P.C.

4525 South Blvd., Suite 300

Virginia Beach, VA 23452

T: (757) 671-6000

F: (757) 671-6004

David Boies, *admitted pro hac vice*  
dboies@bsflp.com  
BOIES, SCHILLER & FLEXNER LLP  
333 Main St.  
Armonk, NY 10504  
T: (914) 749-8200  
F: (914) 749-8300

Robert B. Silver, *admitted pro hac vice*  
rsilver@bsflp.com  
Joshua I. Schiller, *admitted pro hac vice*  
jischiller@bsflp.com  
BOIES, SCHILLER & FLEXNER LLP  
575 Lexington Avenue  
New York, NY 10022  
T: (212) 446-2300  
F: (914) 446-2350

William A. Isaacson, *admitted pro hac vice*  
wisaacson@bsflp.com  
BOIES, SCHILLER & FLEXNER LLP  
5301 Wisconsin Avenue, N.W.  
Washington, D.C. 20015  
T: (202)237-2727  
F: (202)237-6131

Jeremy M. Goldman, *admitted pro hac vice*  
jgoldman@bsflp.com  
BOIES, SCHILLER & FLEXNER LLP  
1999 Harrison Street, Suite 900  
Oakland, CA 94612  
T: (510) 874-1000  
F: (510)874-1460

*Counsel for Plaintiffs*

Theodore B. Olson, *admitted pro hac vice*  
tolson@gibsondunn.com  
Matthew D. McGill, *admitted pro hac vice*  
mmcgill@gibsondunn.com  
Amir C. Tayrani, *admitted pro hac vice*  
atayrani@gibsondunn.com  
Chantale Fiebig, *admitted pro hac vice*  
cfiebig@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
T: (202) 955-8668  
F: (202) 467-0539

Theodore J. Boutrous, Jr., *admitted pro hac vice*  
tboutrous@gibsondunn.com  
Joshua S. Lipshutz, *admitted pro hac vice*  
jlipshutz@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071  
T: (213) 229-7000  
F: (213) 229-7520

*Counsel for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 2014, I electronically filed the foregoing Plaintiffs' Status Report with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to counsel of record.

Respectfully submitted,

/s/ Charles B. Lustig

Thomas B. Shuttleworth, VSB # 13330

tshuttleworth@srgslaw.com

Robert E. Ruloff, VSB # 13471

rruloff@srgslaw.com

Charles B. Lustig, VSB # 29442

clustig@srgslaw.com

Andrew M. Hendrick, VSB # 42852

ahendrick@srgslaw.com

Erik C. Porcaro, VSB # 84793

eporcaro@srgslaw.com

SHUTTLEWORTH, RULOFF, SWAIN,

HADDAD & MORECOCK, P.C.

4525 South Blvd., Suite 300

Virginia Beach, VA 23452

T: (757) 671-6000

F: (757) 671-6004

David Boies, *admitted pro hac vice*  
dboies@bsfllp.com  
BOIES, SCHILLER & FLEXNER LLP  
333 Main St.  
Armonk, NY 10504  
T: (914) 749-8200  
F: (914) 749-8300

Robert B. Silver, *admitted pro hac vice*  
rsilver@bsfllp.com  
Joshua I. Schiller, *admitted pro hac vice*  
jischiller@bsfllp.com  
BOIES, SCHILLER & FLEXNER LLP  
575 Lexington Avenue  
New York, NY 10022  
T: (212) 446-2300  
F: (914) 446-2350

William A. Isaacson, *admitted pro hac vice*  
wisaacson@bsfllp.com  
BOIES, SCHILLER & FLEXNER LLP  
5301 Wisconsin Avenue, N.W.  
Washington, D.C. 20015  
T: (202)237-2727  
F: (202)237-6131

Jeremy M. Goldman, *admitted pro hac vice*  
jgoldman@bsfllp.com  
BOIES, SCHILLER & FLEXNER LLP  
1999 Harrison Street, Suite 900  
Oakland, CA 94612  
T: (510) 874-1000  
F: (510)874-1460

*Counsel for Plaintiffs*

Theodore B. Olson, *admitted pro hac vice*  
tolson@gibsondunn.com  
Matthew D. McGill, *admitted pro hac vice*  
mmcgill@gibsondunn.com  
Amir C. Tayrani, *admitted pro hac vice*  
atayrani@gibsondunn.com  
Chantale Fiebig, *admitted pro hac vice*  
cfiebig@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
T: (202) 955-8668  
F: (202) 467-0539

Theodore J. Boutrous, Jr., *admitted pro hac vice*  
tboutrous@gibsondunn.com  
Joshua S. Lipshutz, *admitted pro hac vice*  
jlipshutz@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071  
T: (213) 229-7000  
F: (213) 229-7520

*Counsel for Plaintiffs*