

November 14, 2014

FAQ for South Carolina Couples Who Wish to Apply for a Marriage License

Couples in South Carolina have been waiting a long time to marry and, based on the actions of state officials, have been forced to wait longer than couples who live in the other states in the Fourth Circuit. Because we know that these changes can be confusing, it is likely many families will have questions about what it all means. This FAQ will provide some clarification for South Carolina residents who are ready to marry. If you feel like you need to get married at the soonest possible moment—follow the FAQ below.

What is the latest news in the marriage cases?

Lambda Legal and South Carolina Equality Coalition filed a lawsuit on October 15, 2014 in the federal court in Charleston named, *Condon v. Haley*. On November 12th the U.S. District Court for the District of South Carolina (Judge Gergel) issued a final ruling in this case, striking down South Carolina's ban on marriages for same-sex couples as unconstitutional, paving the way for same-sex couples across the state to marry. The ruling was stayed – meaning that the effect of the Order is delayed -- until noon on November 20, 2014. At the same time, the court also dismissed Governor Haley as a defendant in the case. SC Attorney General Alan Wilson has appealed Judge Gergel's decision to the Fourth Circuit Court of Appeals, and Wilson has filed an emergency motion ask the federal appeals court to stay Judge Gergel's order beyond November 20, 2014.

There is a separate federal lawsuit pending in Columbia on whether or not the State must recognize the marriages of same-sex couples entered outside of South Carolina named, *Bradacs v. Haley*. On November 10, 2014, the federal judge in that case (Judge Childs) granted the State's motion to dismiss Governor Haley from the case but otherwise ruled that the case can proceed. There has been no final ruling in this case yet.

Who can get married?

If I am married in another state or country that is recognized by the United States government, should I now get a marriage license from South Carolina?

We fully expect that the *Bradacs* decision will ultimately allow recognition of your existing out of state marriage. Unfortunately, we do not know when that decision will come.

If you were married elsewhere, can I get a second marriage license from South Carolina?

South Carolina law allows people to marry in the state even if they are already married somewhere else. But, doing so would mean you have two legally-married dates and could cause problems and confusion in the future. Proceed with caution.

If I applied for a license since October 6 and my application was accepted, what do I need to do?

If you “perfected” your marriage license application by submitting the completed application AND paying the filing fee to your county probate judge, then you need to do nothing but prepare to go pick up your license on November 20th at noon from your county probate judge. Our information is that only couples that applied in Charleston County on October 8 and 9, 2014, perfected their licenses. While Richland County accepted licenses on October 8 and 9, we understand that the probate judge did not accept filing fees. There could be additional stays (delays), so keep tuned in!

How do my partner and I get married?

If you would like to get legally married in South Carolina as soon as possible and you have not applied for a license yet, go apply for a marriage license and pay your filing fee at your county probate judge’s office by November 19th at noon, so that your license can be issued at noon on November 20th unless another stay is granted.

What if I want to apply now for a license, but the County Probate Office won’t allow us to fill out a marriage application?

It is likely that there will be some confusion as to what the stay means. And it is possible that you may not be allowed to fill out a marriage application and pay your filing fee. The court instructed that no licenses can be issued—but said nothing about filling out an application and paying filing fees.

The Court issued the stay to allow Attorney General Wilson a week to convince a higher court that there is a need for a further stay pending any appeal that may be filed and to provide time to see if the Supreme Court extends a stay in a similar case out of Kansas, *Marie v. Mossier*.

If you are denied the opportunity to apply for a marriage license or the license itself in South Carolina or have questions or concerns about discrimination or denial of a protection to which you are entitled, contact South Carolina Equality at 803-256-6500 or Lambda Legal’s Help Desk at 1-866-542-8336 or visit www.lambdalegal.org/help.

You may want to take a copy of the Order with you to the county probate office, to show them that the stay is limited to issuances of marriage licenses. http://www.lambdalegal.org/in-court/legal-docs/condon_sc_20141112_decision

Pasted below is the relevant section of the decision with our emphasis added.

This Court finds that a brief one-week stay in the enforcement of this Court's injunction is appropriate to allow the Fourth Circuit to receive Defendant's Wilson's petition for an appeal stay and to consider that request in an orderly fashion. This may also allow the pending request for an appeal stay in *Marie* to be addressed by Justice Sotomayor or the full United States Supreme Court. 14 Therefore, the Court grants a temporary stay of the Court's injunction in this matter until November 20, 2014, at 12:00 noon

Conclusion

Therefore, Plaintiffs' motion for summary judgment (Dkt. No. 13) is GRANTED. This Court hereby issues the following permanent injunction and enjoins Defendant Wilson and Condon, their officers, agents, servants and employees, from:

1. Enforcing S.C. Constitution Art. XVII, § 15, S.C. Code Ann. §§20-1-10 and 20-115 or any other state law or policy to the extent they seek to prohibit the marriage of same sex couples;
2. Interfering in any manner with Plaintiffs' fundamental right to marry or in the issuance of a marriage license to Plaintiffs; and/or
3. Refusing to issue to Plaintiffs a **marriage license** if, but for their sex, they are otherwise qualified to marry under the laws of South Carolina.

Since there is a stay until Nov 20—when can we get married?

The stay means that probate judges cannot **issue** a marriage license until noon on November 20th—but you still may be able to **apply** for the license at any time. There is a 24-hour waiting period in South Carolina so in order to get your marriage license when the stay is lifted at Noon on the 20th you will need to have completed the application by noon, Nov 19.

Could it take longer to be able to get married based on appeals?

Yes, the 4th Circuit or the U.S. Supreme Court could issue a stay that delays the timeframe to later than November 20th, but it is a day-by-day situation, so please check back to this website regularly.

Does this mean I can change my name today at the DMV if I got married in another state?

SC Equality and the ACLU have partnered to file another lawsuit in federal court in South Carolina on this very issue. That case – named Haas v. SC DMV – was filed on October 31, 2014, but it has not been ruled on yet. It is before Judge Childs, like the *Bradacs* case. Right now, the SC DMV is refusing to recognize marriage licenses of same-sex couples as evidence of a name change. The SC DMV is presently insisting on having a SC Court Order from Family Court. We expect that you will be able to get your name changed very soon, but if you want to do it sooner, you will need to go through the legal process to do a name change in Family Court. After the Order striking down the marriage ban goes into effect, the DMV should accept your SC marriage license as proof of name change. If they do not, contact us.

For more information, contact South Carolina Equality at 803-256-6500 or Lambda Legal's Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help.

Background on the case: Lambda Legal and South Carolina Equality represent Colleen Condon and Nichols Bleckley who applied, and paid, for a marriage license in Charleston County soon after the U.S. Supreme Court last month declined to review rulings out of three federal appellate circuits – including the 4th Circuit – invalidating discriminatory marriage bans in five states. However, before they received their marriage license, South Carolina's Attorney



General asked the South Carolina State Supreme Court to step in and put a halt to the issuances of marriage licenses to same-sex couples. The South Carolina Supreme Court effectively stopped state court judges from issuing marriage licenses or weighing in on marriage equality pending an order from federal court. Today's ruling strikes down South Carolina's discriminatory marriage ban citing precedent set by the Fourth Circuit's decision in the Virginia marriage case.

Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work.

South Carolina Equality Coalition works to secure civil and human rights for gay, lesbian, bisexual and transgender South Carolinians.