

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,

v.

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.

**ORDER GRANTING MOTION TO
LIFT STAY, GRANTING MOTION
FOR SUMMARY JUDGMENT,
AND DENYING MOTION TO
DISMISS FOR FAILURE TO
STATE A CLAIM**

Case No. 3:14-cv-58

Before the court is a Motion to Lift Stay and Enter Judgment filed by Plaintiffs Janet Jorgensen (“Jorgensen”) and Cynthia Phillips (“Phillips”).¹ The North Dakota Constitution² and the North Dakota Century Code³ both define marriage as a union between a man and a woman, and North Dakota only recognizes out-of-state marriages between a man and a woman.⁴

¹ Doc. #55.

² N.D. Const. art. XI, § 28 (“Marriage consists only of the legal union between a man and a woman. No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect.”).

³ N.D. Cent. Code. § 14-03-01 (“Marriage is a personal relation arising out of a civil contract between one man and one woman to which the consent of the parties is essential. The marriage relation may be entered into, maintained, annulled, or dissolved only as provided by law. A spouse refers only to a person of the opposite sex who is a husband or a wife.”).

⁴ N.D.C.C. § 14-03-08 (“Except when residents of this state contract a marriage in another state which is prohibited under the laws of this state, all marriages contracted outside this state, which are valid according to the laws of the state or country where contracted, are valid in this state. This section applies

On June 26, 2015, the Supreme Court held in Obergefell v. Hodges 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” and that full faith and credit extends to marriages validly performed in another state.⁵ Jorgensen and Phillips move to lift the stay and for the court to grant its Motion for Summary Judgment.⁶ Defendants do not oppose the motion.⁷

The Motion to Lift the Stay is **GRANTED**. Jorgensen’s and Phillips’ Motion for Summary Judgment is also **GRANTED** and N.D. Constitution Art. XI § 28, and North Dakota Century Code §§ 14-03-01 and 14-03-08 are declared unconstitutional and invalid as applied to same sex marriages. The defendants’ Motions to Dismiss for Failure to State a Claim are **DENIED**.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 29th day of June, 2015.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief District Judge
United States District Court

only to a marriage contracted in another state or country which is between one man and one woman as husband and wife.”).

⁵ Obergefell v. Hodges, 576 U.S. ____, slip op. at pp. 22, 28 (2015).

⁶ Doc. #56, Mem. in Support of Mot. to Lift Stay and Enter J., p. 4.

⁷ Docs. ## 57, 58.