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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

IN THE COURT'S ORIGINAL JURISDICTION

The State of South Carolina,  
ex rel Alan Wilson, Attorney General ..... Petitioner,

v.

Irvin G. Condon, in his capacity as  
Judge of Probate Charleston County, ..... Respondent

**RETURN**

Respondent Irvin G. Condon, in his capacity as Probate Judge of Charleston County, South Carolina, files the following return to the petition for original jurisdiction pending before this Court. The Court should deny the petition. Alternatively, the Court should deny the injunctive relief Petitioner seeks.

As Petitioner points out, the Fourth Circuit Court of Appeals held that the statutory scheme in Virginia banning same-sex marriage violates the Constitution of the United States. *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014). Importantly, the Court noted:

Three other states in this Circuit have similar bans: North Carolina, N.C. Const. art. XIV, § 6; N.C. Gen.Stat. §§ 51-1, 51-1.2; South Carolina, S.C. Const. art. XVII, § 15; S.C. Code Ann. §§ 20-1-10, 20-1-15; and West Virginia, W. Va. Code § 48-2-603. The Southern District of West Virginia has stayed a challenge to West Virginia's statute pending our resolution of this appeal. *McGee v. Cole*, No. 3:13-cv-24068 (S.D.W.Va. June 10, 2014) (order directing stay).

*Bostic*, at 368 n.1 (bold added). There is no question that the Fourth Circuit intended its holding to control throughout the federal circuit, including South Carolina.

As Petitioner also points out, there is currently pending before United States District Court Judge J. Michelle Childs the case of *Bradacs v. Haley*, 3:13-cv-02351-JMC. In April 2014, Judge Childs entered an order staying further proceedings in *Bradacs* pending a ruling in *Bostic*. The Fourth Circuit filed its opinion in August 2014, and on October 6, 2014, the Supreme Court of the United States declined to review the opinion. *McQuigg v. Bostic*, 14-251 (U.S. filed Oct. 6, 2014) (2014 WL 4354536). Thus, *Bostic* is now the law throughout the Fourth Circuit, including South Carolina.

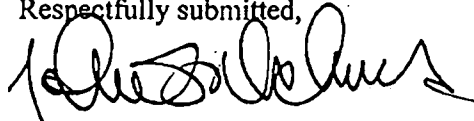
Petitioner asserts that *Bostic* is somehow limited to a ruling regarding the specifics of Virginia law, and thus the ban in South Carolina remains extant and enforceable. This contention, however, ignores two critical facts. First, as noted above, the Fourth Circuit announced it was cognizant that its ruling would impact North Carolina, South Carolina, and West Virginia, States that the Court stated "have similar bans." Furthermore, insofar as Petitioner contends it gets a "second shot" before the Fourth Circuit, the Court follows a rule that any panel of that Court shall be bound by a decision of any other panel absent en banc decision or a superseding decision from the Supreme Court. See *Busby v. Crown Supply, Inc.*, 896 F.2d 833, 840-841 (4th Cir. 1990) ("a panel considers itself bound by the prior decision of another panel, absent an in banc overruling or a superseding contrary decision of the Supreme Court").

Respondent agrees that he needs direction from this Court as to how to proceed. It may well be that Justice Kennedy's decision in the Ninth Circuit case portends

something, but then again, it may portend nothing but the Court agreeing to permit the parties to fully brief both sides before the Court finally decides what to do. See *Otter v. Latta*, 2014 WL 4996356 (U.S. Oct. 8, 2014), in which the Supreme Court stated, "IT IS ORDERED that the mandate of the United States Court of Appeals for the Ninth Circuit, case Nos. 12-17668, 14-35420 & 14-35421, is hereby stayed pending further order of the undersigned or of the Court. It is further ordered that a response to the application be filed on or before Thursday, October 9, 2014, by 5 p.m." Thus, the Court is giving the respondents the opportunity to respond to Governor Otter's petition for a stay before ruling, which makes sense (but does not indicate a final ruling).

Given the expedited manner in which this Court requested a response, Respondent respectfully asks this Court to deny the petition but, assuming the Court grants the Petition, then to give Respondent guidance on how to proceed.

Respectfully submitted,



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