IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-10313

JAMES STRAWSER*, et al., Plaintiffs-Appellees,*
v.
LUTHER STRANGE, ATTORNEY GENERAL,
STATE OF ALABAMA, *Defendant-Appellant.*
_____/

Appeal from the U.S. District Court, Southern District of Alabama
Civil Action No. 1:14-cv-0424-CG-C, before Hon. Callie V.S. Granade

Amicus Curiae Brief of Gordon Wayne Watts in support of
Atty. General's motion for stay, but offering a Compromise to
redress legitimate grievances of Plaintiffs, Strawser & Humphrey
(Time-sensitive: RULING REQUESTED BEFORE FEB. 9, 2015)

APPENDIX

The name, office address, and telephone number of counsel*[*]*
representing the party for whom the brief is filed:

Gordon Wayne Watts, Amicus
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BS, The Florida State University, Biological & Chemical Sciences;
Class of 2000, double major with honours
AS, United Electronics Institute, Class of 1988, Valedictorian

LAYMAN OF THE LAW:
Gordon W. Watts, PRO SE / PRO PER
[*] Mr. Watts, acting as his own counsel, is not a lawyer.

INDEX TO APPENDIX

Instrument **Docket/Tab#**

Certificate of Service

A

Re: Jeff, I made a typo in my amicus; here's the corrected one

Reminder: AOL will never ask you for your password or billing information.

Subject: **Re: Jeff, I made a typo in my amicus; here's the corrected one**
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Mr. Watts,

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Please let me know if you need further assistance.

Thank you,

Jeff Reinert
Chief Deputy Clerk
USDC, Southern District of Alabama
Jeff_Reinert@alsd.uscourts.gov
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(251) 694-4298

B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

CARI D. SEARCY and KIMBERLY MCKEAND, individually and as parent and next friend of K.S., minor, ***Plaintiffs,***	)	
vs.	)	**Civil Action No. 1:14-cv-0208-CG-N**
LUTHER STRANGE, in his capacity as Attorney General for the State of Alabama, ***Defendant.***	)	

Motion of Gordon Wayne Watts for leave to appear as *amicus curiae* in support of Defendant's Motion to Stay, but offering a 'Compromise' to redress legitimate grievances of Plaintiffs, Searcy and McKeand

Comes Now Gordon Wayne Watts, *pro se* and *in persona propia*, and moves **This Honorable Court** to grant it leave to appear as *amicus curiae* in support of the motion filed by Defendant Luther Strange for stay [Doc. 55] of this Court's Memorandum Opinion and Order entered herein on January 23, 2015 [Doc. 53] – **but also in support of Plaintiffs who appear to have some legitimate grievances, a solution of which has not, heretofore, been considered.** In support of its motion, Gordon Wayne Watts states as follows:

1. I am a citizen of Florida, which is in the 11th U.S. Circuit, and the definitions of 'marriage,' which will be affected by any ruling of this court, currently on appeal in the court above (Case #:15-10295) materially affect me as more carefully described in my 01/06/2015 amended *amicus* brief lodged with that court (Case #'s 14-14061 & 14-14066), pp.5-6 & Argument II.B., "Prejudice

against heterosexuals (straight people)...," p.17ff.

2. Besides a personal stake in the matter, which borders on the right to intervene (a right which I am declining to assert, p.6, *brief*), I am greatly grieved by the hate and discontent that has been generated by the differences and arguments in the Gay Marriage case here, and elsewhere, and I do not like the toxic atmosphere that results, and, as a result, am hoping that a compromise amenable to all sides can be reached, where each side "walks away a winner," and get something of value, which is appropriate, because both sides (plaintiffs & defendants) have some legitimate grievances.
3. Shortly after the Order of this court, dated January 23, 2015 [Doc. 53], granting a temporary, 14-day stay pending appeal, I realised that This Court had missed something, in weighing the 4 factors that govern "stays pending appeal," and, although I am not a lawyer (and thus very rarely file anything), I did recently lose a 4-3 split decision in my petition to be Terri Schiavo's next friend, *In Re: Gordon Wayne Watts (as next friend of Theresa Marie 'Terri' Schiavo)*, No. SC03-2420 (Fla. Feb.23, 2003), which did <u>better</u> than a sitting governor, *In Re: Jeb Bush, Governor of Florida, et al. v. Michael Schiavo, Guardian: Theresa Schiavo,* No. SC04-925 (Fla. Oct.21, 2004), denied 7-0, before the same panel, implying I know something about law.

4. Also, besides filing an *amicus* brief in the court above (*Brenner v. Armstrong*, 14-14061, consolidated: *Grimsley v. Armstrong*, 14-14066, 11th Cir., 2014), which that court accepted for review (see dockets via PACER) I, as the legal reporter for *The Register*, also posted every *single* merits brief in that case, and several from the courts above and below, and did extensive commentary on each and every brief: http://GordonWatts.com/DOCKET-GayMarriageCase.html and http://GordonWayneWatts.com/DOCKET-GayMarriageCase.html which forced me to be up-to-date on the subject matter of 'Gay Marriage.'

5. Although the Federal Rules of Civil Procedure do not address the matter of *Amici Curiae*, the general concepts of 1st Amendment Redress would suggest that I have a right to Redress the courts, and so, I contacted Jeff Reinert, the clerk of this court, and asked him to allow me to email my amicus brief and motion for leave to appear as amicus, since email would expedite this time-sensitive issue. His initial response was to set me up an EF/CMF account in case an email to him was not appropriate protocol (he did not know at that time). He initially said that filing by U.S. Postal Mail was the proper protocol, but then said (APX-A), in email dated 1/27/2015, that Hon. "Judge Granade does not accept amicus curiae briefs from persons who are neither

members of the bar of this court nor admitted pro hac vice. This excludes all pro se amicus briefs." However, he did assure me that my proposed amicus brief was given to Hon. Judge Granade in chambers for her review, but that she refused to allow my motion and brief to be posted on the docket.

6. I have carefully reviewed both the local rules of This Court and the Fed.R.Civ.P., and neither has an "absolute prohibition" against *pro se amici* briefs, and so I infer that either Mr. Reinert made an honest mistake, or, perhaps, Hon. Judge Granade made an honest mistake/error in judgment. Also: While I know that no rules guarantee my right to have an amicus (friend of the court) brief accepted, I do know that it is my **absolute right,** under the First Amendment's guarantee of Redress, to file such a brief, and so, based on the local rules, the Fed.R.Civ.P., and the 1st Amendment, I have concluded that it is permitted to file an amicus. Wherefore, with no disrespect meant to Judge Granade or Clerk Reinert, I am filing a short and to-the-point memorandum of law and following the proper protocol, so far as I can ascertain –and in such a way as to be most respectful (and hopefully, also, helpful) towards all parties involved, court, plaintiffs, and defendants.
7. Although this is Civil Court, since the Fed.R.Civ.P. are silent on the matter of *Amici Curiae*, I feel that the Federal Rules of Appellate Procedure should

provide a useful, and common-sense, guide, and to that end, I find that **Rule 37.1 of the U.S. Supreme Court** offers guidance on that head: *"1. An amicus curiae brief that brings to the attention of the Court relevant matter* ***not already brought to its attention by the parties*** *may be of considerable help to the Court."* Since Judge Granade was probably not aware of a very recent legal development that tipped the balance of power regarding one of the factors for a "stay pending appeal," I felt a moral obligation to make her court aware of these new developments. **Well-settled case-law (and This Court's Order) state the 4-prong test governing 'Stays Pending Appeal':** *(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.* Although defendant's motion for a stay pending appeal cited the U.S. 6th Circuit's recent ruling in *DeBoer*, et al. (upholding a 'Gay Marriage' ban), and the recent grant of Certiorari by the U.S. Supreme Court of these cases, supporting his argument of prong-4 (public interest), he altogether failed to make an argument that he is likely to succeed on the merits (prong-1).

8. The very recent *amicus* brief by Gordon Wayne Watts, makes an argument that has never heretofore been advanced (see Watts brief, cited *supra*, Arg.

I.): even though polygamy has been invoked as either *obiter dictum* or for 'slippery slope' arguments, it has never been properly used as an 'Equal Protection' argument -until, that is, Watts' brief (me speaking of myself in the 3rd person, as is sometimes protocol). However, now that the Watts amicus is lodged in the court above, there is absolutely no way that 'Gay Marriage' can remain legal at all "[U]nless, of course, polygamists for some reason have fewer constitutional rights than homosexuals." *Romer v. Evans*, 517 U.S. 620 (1996). Since polygamy has a much stronger legal and historical precedent (see Watts brief, *supra*), than Gay Marriage, it would perforce, via Equal Protection, be impossible to grant 'Gay Marriage' any greater legal status; and, since polygamy is **very** unlikely to become legal in the near future, then Gay Marriage is even more certain to fail, and thus defendant, Luther Strange, has made a strong showing that he is likely to succeed on the merits, even if it was by proxy (by the instant memorandum of law), thus fully satisfying prong-1 and requiring a stay pending appeal in the case at bar.

9. The defendant made a 'balance of equities' argument, citing *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986), and amicus, Alabama Probate Judges Assn., made a good 'public interests' argument (citing the "substantial confusion" that would result if SCOTUS reversed). These facts, when added to the point *supra*, only clinch what is already a certain legal justification for

granting a stay pending appeal. Furthermore, a stay pending appeal is typically mandatory in many state courts, implying that, absent "extreme" circumstances (life-or-death jeopardy), a stay pending appeal is appropriate.

10. Even if the court above fails to issue a stay pending appeal, This Court has "primary" responsibility (see: Fed.R.App.P., RULE 8(a)(1)(A)), and, thus even if the court above refuses to properly stay pending appeal, that does not absolve This Court of its primary duty under the law, as "2 wrongs make not a right." [This statement, while harsh, is meant with no disrespect to This Honourable Court, but merely an observation of law.]

11. Even though plaintiffs are certain to lose on the merits, with regard to the definition of 'marriage,' they do have legitimate grievances, namely, the right to adopt**:** while not a guaranteed certainty to all people (for example: even "legally" married couples who are child-abusers will be refused adoption), so-called "Gay Adoption" bans are no more legal than, say, "pro se" bans to which Clerk Reinert alluded in his email to me. (Appendix-A) For example: a Florida State Appeals Court found that found a Florida statute prohibiting adoption by homosexuals had "no rational basis" and thus violated their equal protection rights. (*Fla. Dept. of Children and Families v. In re: Matter of Adoption of X.X.G. and N.R.G.*, Fla. 3d DCA, No. 3D08-3044, Opinion

filed September 22, 2010) This is good case law, and a Federal Court would be correct in upholding that: while opinions differ as to whether homosexual couples are "better than" or "worse than" families with a man-woman marriage, homosexuals are, in many cases, fine parents, and thus such a ban is unreasonable. (To illustrate this standard of law: It would be equally unreasonable to ban singles –or elderly –from adopting, even if these groups are not favoured as much as 'traditional' marriages.)

12. I attest that I occasionally hear reports that Alabama has a 'Gay Marriage' ban, and, if this is true, then This Court would be more appropriate in simply striking down Alabama Laws for such a Gay Marriage ban, instead of changing the definition of marriage (the latter being overkill -and also running afoul of Equal Protection, as I argue in my brief lodged in the court above—and available for download via both PACER and my own "docket").

13. If, however, my reading of Alabama Law is correct, then both plaintiffs, defendants, amici (probate judges), *and* This Honourable Court, have all missed the obvious problem –and the obvious solution: While plaintiffs complain that **Ala. Code §26-10A-27 (1975)** is a problem ("Any person may adopt his or her spouse's child..."), they miss the obvious: **Ala. Code §26-10A-5(a) (1975)** (Who may adopt.) states: "Who may adopt. (a) **Any adult**

person or husband and wife jointly who are adults may petition the court to adopt a minor." Furthermore, **§26-10A-5(a)(2) states:** "(2) No rule or regulation of the Department of Human Resources or any agency shall prevent an adoption **by a single person** solely because such person is single or shall prevent an adoption solely because such person is of a certain age." Since, of course, Alabama does not recognise Searcy and McKeand as legally-married, they are legally 'single,' and thus protected by this statute, and thus legally permitted to adopt. If, however, the judge denied adoption, then This Court can enter a ruling affirming in part (their rights of adoption), reversing in part (the lower court's Unconstitutional*[**]* ruling on legal definition of marriage), and remanding to the state court for orders consistent with this court, namely that This Court would issue an order of 'Show Cause' to the state court demanding to know by what legal standard it denied defendants the right to adopt. Perhaps the state court was justified, but only if it found on independent grounds (such as the welfare of the child), but not if it found solely on the grounds that the couple was homosexual. Thus, This Honorable Court now has a solution to defendant's problem that does not violate Equal Protection*[**]* viz. Polygamy. "[U]nless, of course, polygamists for some reason have fewer constitutional rights than homosexuals." *Romer v. Evans*, 517 U.S. 620 (1996)

CONCLUSION to 'Part I' above: This solution should satisfy plaintiffs (who can get a "fair shake" in adoption) as well as defendants (who defined marriage as it has been defined for tens of thousands of years, in all societies, cultures, and countries, since the very beginning of time, and that, for compelling state interests in promoting traditional marriage). Since I have provided a solution to defendants' problem, then any complaint about **Ala. Code §30-1-19** (the so-called "Marriage Protection Act") is unfounded, and clearly used as a "straw man" argument to strike a good law: **RULE 3 of the Fed.R.Civ.P.**, clearly state that "A civil action is commenced by filing a complaint with the court," and so with a proper solution to redress grievances (that I provided above), no complaint may legally issue: no foul, no harm, is a legal standard. **Now that this case has been appealed, This Court is divested of any "subject matter" jurisdiction,** and the solution I offer could, legally, only be enacted by The Appeals Court, above**; however, I am stating, for the record, my solution, in the event that it proves helpful to broker a compromise,** and help my fellow-man (and woman) come to a truce –and reduce arguments and strife. – I hope to be helpful to the goodwill of several parties in getting a solution acceptable to all.

Additionally, there are many, many more unfair laws, which target both straights and gays and single adults, and, in my brief, lodged in the court above, I

strongly oppose the mistreatment of Sloan Grimsley, a homosexual firefighter, who can not name her homosexual spouse as a beneficiary of her life-insurance policy (Brief, p.14) or, for example, the "Marriage Penalty," which penalises straight people, based solely on marital "status," in things such as disability, retirement, and even higher taxes required from some married couples that would not be required by two otherwise identical single people with exactly the same income. (A straight friend of mine would see his disability 'go down' if he married his girlfriend.) So, prejudice exists in law against both straights and gays, but it is not due to the Alabama Law defining marriage as 1-man and 1-woman, and thus an attack on that law is misplaced. **I add this paragraph solely to be respectful and courteous -and show plaintiffs that I am not prejudiced, and, indeed, most 'conservatives' are strongly opposed to gays to be mistreated in any form or fashion.**

ADOPTION REDUX: While I have satisfied the 'traditional' role of an *Amicus Curiae* (to show the court/parties something they missed), one more point needs to be mentioned with connection to adoption. At first, it would seem that the Alabama Law defining marriage solely as 1-man and 1-woman would be prejudiced, since, in adoption, gays are disfavoured, while traditional marriages are given 'preferential' treatment. *But, is this really prejudiced?* Well, we remember

that singles can adopt, but, all things being equal, preference is given the married couples, and yet no one cries foul here. Likewise, it would not be prejudice here: Indeed, see "DECLARATION OF LOREN MARKS, PH.D.," page 20, lodged on docket of the case at bar, where a small, but statistically-significant, group of children were compared, and all things being equal, married couples had the best development from objective teacher reports (and not biased parental reporting), and next, singles, and lastly, homosexual rearing. In fact, many studies have been done on child-rearing, and it is this author's recollection that most (but not all) support those findings of Dr. Marks, which begs the question of diversity. To see some of these studies, both pro and con, see the many *Amici Curium* briefs in *Brenner v. Armstrong* or *Grimsley v. Armstrong*, in the court above. All the briefs are available via PACER –for a fee –but are also available **for free** download on the unofficial docket hosted by *The Register:*

http://GordonWatts.com/DOCKET-GayMarriageCase.html

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Even though this *amicus* is a 'conservative,' I admit that the 'liberals' are correct to assert and promote "diversity": Racial diversity (Blacks, Whites, Hispanics, and Asians), and gender-diversity (men and women) in the workplace. How, then, is it wrong to promote "gender-diversity" in the family? While this is

merely a liberal cliché, nonetheless, I mention it to show that it is a *true* cliché: Dr. Marks' research is “right on mark” with its implicit claims that gender diversity is beneficial, and thus the State has an interest in promoting it, as shown by peer-reviewed scientific research. **Therefore, this is a sound legal argument which I am including in my brief, as I see all the parties have overlooked it.**

VII. Inferior Federal Courts don't even have jurisdiction to address 'Gay Marriage' dispute

On it's face, it would seem that the Supremacy Clause would allow a Federal District Court, such as this one, to 'strike down' any state law or state Constitutional provision, such as has been happening in the 'Gay Marriage' dispute, nationwide. *But, is this so?*

Doe v. Pryor, 344 F.3d. 1282, 1286 (11th Cir. 2003), held that: "The only federal court whose decisions bind state courts is the United States Supreme Court." Their advisory opinion on this head evokes the Rooker-Feldman doctrine, which, in essence, holds that lower United States federal courts may not sit in direct review of state court decisions. This would give a strong support to Federalism, and 10th Amendment State's rights, that is, that "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States." Accord: *Arizonans for official English and Robert D. Park,*

Petitioners v. ARIZONA et al., 520 U.S. 43, at Syllabus 23, note 11, in which the U.S. Supreme Court held: "(Supremacy Clause does not require state courts to follow rulings by federal courts of appeals on questions of federal law)." In other words, lower Federal Courts (including the Circuit Courts of Appeals) may not sit in appellate review of state court decisions; this court may only address these issues through original jurisdiction (which, apparently, the plaintiffs allege, insofar as they claim that the state laws in question are unconstitutional).

While this case law seems counter-intuitive, let me illustrate why this, if taken to its logical end, is not unreasonable: What if, for example, residents from 49 U.S. states appeared in one single Federal District Court (of the 50th state), demanding that their states' laws, recognising marriage one way or the other, should yield to the State Law of the 50th State, where the case is being heard, and demand The Court enter a ruling that the laws of these 49 states are unconstitutionally-restrictive, and ask The Court to exercise "Long Arm Jurisdiction" to enforce such an order <u>against</u> these 49 states? Well, what if, then, *another* U.S. District Court entered a ruling just the opposite? Can you not see the mayhem and confusion that would surely ensue? (And, as it stands, the nation-wide 'patchwork' of Gay Marriage Laws has effectively made my prophecy, here, come true!) So, the case law that holds that the Supremacy Clause is restricted in

this regard is 'good' case law: **Only The U.S. Supreme Court may exercise jurisdiction in this regard,** and most other courts, while well-meaning and well-intentioned, have exceeded their authority.

IN CONCLUSION: I believe that this court acted with good intentions in trying to help the gay couple adopt, but not only was the solution an unconstitutional over-reach, wholly unnecessary when a simpler (less invasive) solution was available, but This Court probably does not even have the authority to address the merits of this type of tort, as I show above. Lastly, since the matter has been appealed to The U.S. 11th Circuit Court of Appeals, all subject-matter jurisdiction is divested **–except the authority to enter a stay Pending Appeal; This Court may (and, I think, should) still enter a Stay Pending Appeal, and let the appellate court deal with it, if the stay was inappropriate.** For further clarification and supporting case-law, you may see the rough draft of a proposed filing to the U.S. Supreme Court (an inferior version of which is already filed with that court) at this link below, and take note of how I take fellow-conservatives to task, proving, once again, that I am not prejudiced or_biased: "Argument V. Correcting common errors of 'Traditional Marriage' advocates." LINKS:

http://GordonWatts.com/14-571_ac_GordonWayneWatts_REPRINT.pdf

http://GordonWayneWatts.com/14-571_ac_GordonWayneWatts_REPRINT.pdf

Dated: --day, XX Month 20145– Respectfully submitted,

s/ _____

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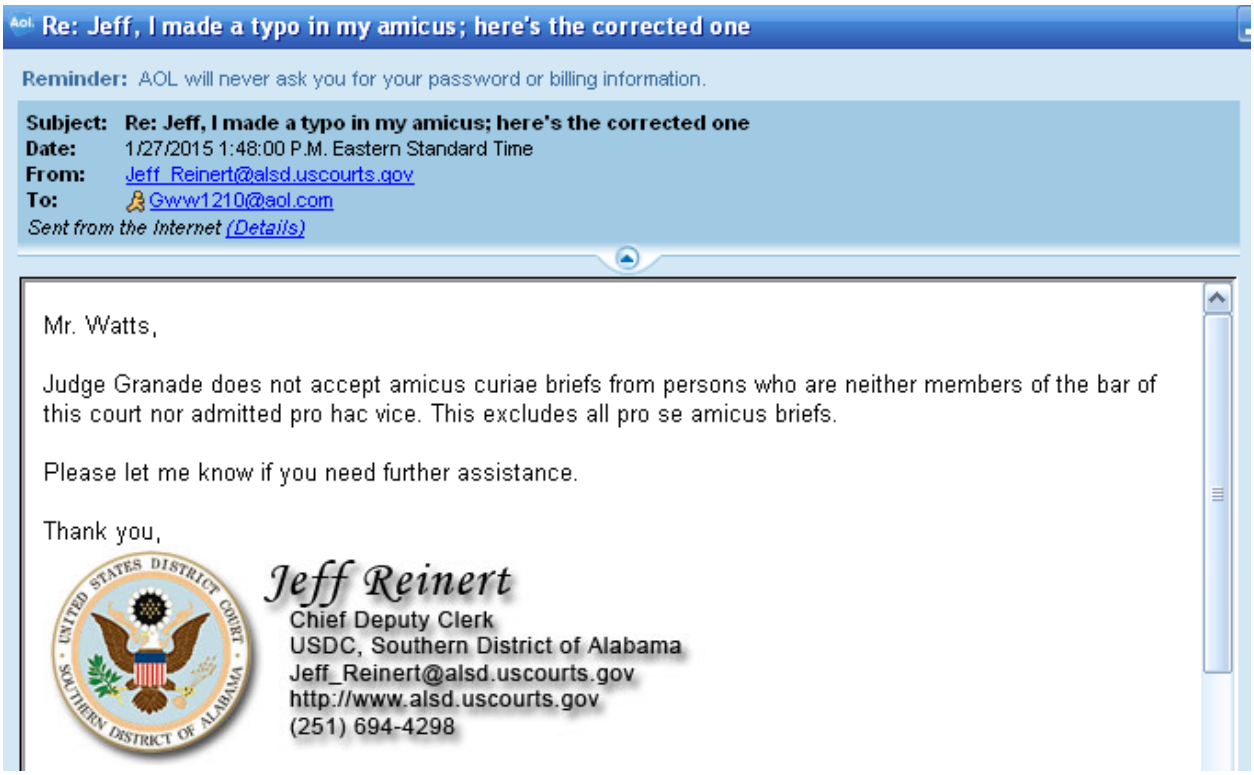
APPENDIX-A



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Thank you,

Jeff Reinert
Chief Deputy Clerk
USDC, Southern District of Alabama
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Certificates of Notice

Although the Fed.R.Civ.P. have no analogue to the Rule 29 of Fed.R.App.P., requiring consent of parties for the filing of an *amicus (consent is not legally binding on This Court even were I to have actually obtained consent of all parties),*

as a courtesy, I gave both parties notice of my intent to file an *amicus* brief in this case and sought consent, and I am authorised to report the following**:** The defendant consented to the filing of my amicus, and the attorneys for the plaintiff politely entertained my request, but they did not grant consent, but rather, left that matter up to This Court to address and decide.

Certificates of Service

In accordance with Rule 5, Fed.R.Civ.P., regarding Service of pleadings, I hereby certify that on _____, I am serving a True Copy of the foregoing by both U.S. Postal Mail (or FedEx??) as well as Electronic Mail to the following parties, below:

s/ _____

Gordon Wayne Watts, Amicus

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this **2nd** of ~~January~~, February 2015, a true copy of the foregoing appendix was filed with the Clerk of This court and served upon all parties of record as indicated below: In accordance with Rule 25(c)(4), Manner of Service, "Service by mail or by commercial carrier is complete on mailing or delivery to the carrier," which I hereby certify that I am doing today, to the following parties (below), by _____ –and by Electronic Mail, when/where possible. Additionally, I hope to post a TRUE COPY of these filings on my Open Source online docket, for free download, at the following two (2) URL's, as soon as practically possible:

http://www.GordonWatts.com/DOCKET-GayMarriageCase.html
and:
http://www.GordonWayneWatts.com/DOCKET-GayMarriageCase.html

/s/ _____
Gordon Wayne Watts, *Amicus*

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Certificate of Service Page 1 of 2	

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