

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS  
NEW YORK NEW YORK 10019-6064

TELEPHONE (212) 373-3000

LLOYD K GARRISON (1946-1991)  
RANDOLPH E PAUL (1946-1956)  
SIMON H RIFKIND (1950-1995)  
LOUIS S WEISS (1927-1950)  
JOHN F WHARTON (1927-1977)

UNIT 3601 OFFICE TOWER A BEIJING FORTUNE PLAZA  
NO 7 DONGSANHUAN ZHONGLU  
CHAOYANG DISTRICT  
BEIJING 100020  
PEOPLE'S REPUBLIC OF CHINA  
TELEPHONE (86 10) 5828 6300

12TH FLOOR HONG KONG CLUB BUILDING  
3A CHATER ROAD CENTRAL  
HONG KONG  
TELEPHONE (852) 2846-0300

ALDER CASTLE  
10 NOBLE STREET  
LONDON EC2V 7JU U K  
TELEPHONE (44 20) 7367 1600

FUKOKU SEIMEI BUILDING  
2-2 UCHISAIWAICHO 2 CHOME  
CHIYODA-KU TOKYO 100-0011, JAPAN  
TELEPHONE (81-3) 3597-8101

TORONTO-DOMINION CENTRE  
77 KING STREET WEST SUITE 3100  
PO BOX 226  
TORONTO ONTARIO M5K 1J3  
TELEPHONE (416) 504-0520

2001 K STREET NW  
WASHINGTON DC 20006-1047  
TELEPHONE (202) 223 7300

500 DELAWARE AVENUE SUITE 200  
POST OFFICE BOX 32  
WILMINGTON DE 19899-0032  
TELEPHONE (302) 655-4410

MATTHEW W ABBOTT  
EDWARD T ACKERMAN  
ALLAN J ARFFA  
ROBERT J ATKINS  
DAVID J BAILEY  
JOHN F BAUGHMAN  
LYNN B BAYARD  
DANIEL J BELLER  
CRAIG A BENSON  
MITCHELL L BERG  
MARK S BERGMAN  
BRUCE BIRENBOIM  
H CHRISTOPHER BOEHNING  
ANGELO BONVINO  
JAMES L BROCHIN  
RICHARD J BRONSTEIN  
DAVID W BROWN  
SUSANNA M BUERGERL  
PATRICK S CAMPBELL  
JESSICA S CAREY  
JEANETTE K CHAN  
YVONNE Y F CHAN  
LEWIS R CLAYTON  
JAY COHEN  
KELLEY A CORNISH  
CHRISTOPHER J CUMMINGS  
CHARLES E DAVIDOW  
THOMAS V DE LA BASTIDE III  
ARIEL J DECKELBAUM  
ALICE BELISLE EATON  
ANDREW J EHRLICH  
GREGORY A EZRING  
LESLIE GORDON FAGEN  
MARC FALCONE  
ROSS A FIELDSTON  
ANDREW C FINCH  
BRAD J FINKELSTEIN  
BRIAN P FINNEGAN  
ROBERTO FINZI  
PETER E FISCH  
ROBERT C FLEDER  
MARTIN FLUMENBAUM  
ANDREW J FOLEY  
HARRIS B FREIDUS  
MANUEL S FREY  
ANDREW L GAINES  
KENNETH A GALLO  
MICHAEL E GERTZMAN  
ADAM M GIVERTZ  
SALVATORE GOGLIORMELLA  
ROBERT D GOLDBAUM  
NEIL GOLDMAN  
CATHERINE L GOODALL  
ERIC GOODISON  
CHARLES H GOOGE JR  
ANDREW G GORDON  
UDI GROFMAN  
NICHOLAS GROOMBRIDGE  
BRUCE A GUTENPLAN  
GAINES GWATHMEY III  
ALAN S HALPERN  
JUSTIN G HAMILL  
CLAUDIA HAMMERMAN  
GERARD E HARPER  
BRIAN S HERMANN  
MICHELE HIRSHMAN  
MICHAEL S HONG  
DAVID S HUNTINGTON  
AMRAN HUSSEIN  
LORETTA A IPPOLITO  
BRIAN M JANSON  
JAREN JANGHORBANI  
MEREDITH J KANE

ROBERTA A KAPLAN  
BRAD S KARP  
PATRICK N KARSNITZ  
JOHN C KENNEDY  
BRIAN KIM  
ALAN W KORNBERG  
DANIEL J KRAMER  
DAVID K LAKHDHIR  
STEPHEN P LAMB  
JOHN E LANGE  
DANIEL J LEFFELL  
XIAOYU GREG LIU  
JEFFREY D MARELL  
MARCO V MASOTTI  
EDWIN S MAYNARD  
DAVID W MAYO  
ELIZABETH R MCCOLM  
MARK F MENDELSON  
WILLIAM B MICHAEL  
TOBY S MYERSON  
CATHERINE NYARADY  
JANE B O BRIEN  
ALEX YOUNG K OH  
BRAD R OKUN  
KELLEY D PARKER  
MARC E PERLNUITTER  
VALERIE E RADWANER  
CARL L REISNER  
LORIN L REISNER  
WALTER G RICCIARDI  
WALTER RIEMAN  
RICHARD A ROSEN  
ANDREW N ROSENBERG  
JACQUELINE F RUBIN  
RAPHAEL M RUSSO  
ELIZABETH M SACKSTEIN  
JEFFREY D SAFERSTEIN  
JEFFREY B SAMUELS  
DALE M SARRO  
TERRY E SCHIMEK  
KENNETH M SCHNEIDER  
ROBERT B SCHUMER  
JOHN M SCOTT  
STEPHEN J SHIMSHAK  
DAVID R SICULAR  
MOSES SILVERMAN  
STEVEN SIMKIN  
JOSEPH J SIMONS  
AUDRA J SOLOWAY  
SCOTT M SONTAG  
TARUN M STEWART  
ERIC ALAN STONE  
AIDAN SYNNOTT  
ROBYN F TARNOWSKY  
MONICA K THURMOND  
DANIEL J TOAL  
LIZA M VELAZQUEZ  
MARIA T VULLO  
ALEXANDRA M WALSH  
LAWRENCE G WEE  
THEODORE V WELLS JR  
BETH A WILKINSON  
STEVEN J WILLIAMS  
LAWRENCE I WITDORCHIC  
MARK B WLAZLO  
JULIA MASON WOOD  
JENNIFER H WU  
JORDAN E YARETT  
KAYE N YOSHINO  
TONG YU  
TRACEY A ZACCONE  
TAURIE M ZEITZER  
T ROBERT ZOCHOWSKI JR

\*NOT ADMITTED TO THE NEW YORK BAR

WRITER'S DIRECT DIAL NUMBER

212-373-2086

WRITER'S DIRECT FACSIMILE

212-492-0086

WRITER'S DIRECT E-MAIL ADDRESS

rkaplan@paulweiss.com

September 4, 2015

**By Email and First-Class Mail**

Jim Hood, Esq.  
MS Attorney General's Office  
Walter Sillers Building  
550 High Street, Suite 1200  
Jackson, MS 39201

*Campaign for Southern Equality, et al. v. MDHS, 3:15-cv-578 (DPJ)*

Dear Attorney General Hood:

We have received your motion to dismiss and are preparing our response.  
We write this letter to clarify an issue raised by your papers.

More specifically, it is not clear whether it is the view of your Office that, in light of the Supreme Court's ruling in *Obergefell v. Hodges*, 135 S.Ct. 285 (2015), Section 93-13-3(5) of the Mississippi Code can no longer be enforced. For example, you note in your papers that "no Mississippi appellate court has interpreted or applied the State's adoption laws at issue in a reported decision in light of *Obergefell*." Memorandum of Authorities Supporting Motion to Dismiss for Lack of Subject Matter Jurisdiction, *Campaign for Southern Equality, et al. v. Mississippi Dep't of Human Services, et al.*, No. 3:15-cv-578, D.E. #16 (filed September 2, 2015), at n.1 ("Memorandum"). Your brief further states that, "post-*Obergefell*, DHS has not exercised . . . adoption-related duties in a manner inhibiting legally married spouses from seeking an adoption from a Mississippi court, and has no intention to do so." *Id.* at \*14.

And, in your Answer (also filed on September 2, 2015), you respond to the paragraph in our Complaint alleging that “the Defendants and other officers of the State of Mississippi interpret the Mississippi Adoption Ban to prohibit the adoption of children by gay and lesbian couples,” Complaint, *Campaign for Southern Equality, et al. v. Mississippi Dep’t of Human Services, et al.*, No. 3: 15-cv-578, D.E. #1 (filed August 12, 2015), ¶ 39, by stating “[d]enied as stated . . . the Mississippi laws referenced in paragraph 39 speak for themselves.” Attorney General Jim Hood’s Answer and Defenses to Plaintiffs’ Complaint, *Campaign for Southern Equality, et al. v. Mississippi Dep’t of Human Services, et al.*, No. 3:15-cv-578, D.E. #17 (filed September 2, 2015), ¶ 39.

Prior to *Obergefell*, on December 20, 2013, when asked to interpret Section 93-13-3(5), your Office advised unequivocally that “Mississippi does not allow adoptions by same gender couples.” See Exhibit A; Re: Insurance Eligibility of Same Sex Spouse and Child of a Same Sex Marriage Under the State and School Employees’ Life and Health Insurance Plan, Office of the Attorney General, State of Mississippi, Op. No. 2013-00504 (2013), at n. 1. And on February 3, 2012, you issued an opinion to Chancery Court Judge Kenneth M. Burns stating again that “[c]learly, this statute prohibits adoption by same-sex couples.” See Exhibit B; Re: Adoption, Office of the Attorney General, State of Mississippi, Op. No. 2011-00515 (2012), at \*1.

While those prior opinions from your Office accurately describe the letter of Mississippi law, we believe it appropriate for your Office to clarify that the Supreme Court’s decision in *Obergefell* invalidates that provision as a matter of federal constitutional law. As you know, those opinions from your Office continue to be persuasive authority on Mississippi courts, including, of course, Mississippi Chancery Courts. See *Poppenheimer v. Estate of Coyle*, 98 So. 3d 1059, 1066 (Miss. 2012). Indeed, while we strongly disagree with the suggestion in your brief that the plaintiff couples here lack standing because they have not applied to adopt in a Mississippi Chancery court since *Obergefell* was decided, Memorandum at 11, and while we believe this matter should be decided by the federal court in the first instance, we do note that Chancellor Burns asked your Office’s opinion about how to interpret Section 93-13-3(5) in 2012 and others might do so in the future. For these reasons, we ask that you inform us of your position on the validity of Section 93-13-3(5) in plain language that gay families (not to mention the Mississippi Chancellors charged with approving individual adoptions) can understand.

On a separate point, your papers claim that the existing defendants are not proper parties in a suit to declare the statute unconstitutional, thereby suggesting that the Chancellors in the counties where the Plaintiffs reside are somehow necessary parties to this action. We obviously do not see it that way and have avoided naming them as defendants. That said, we have no interest increasing the number of issues to be decided by the Court and therefore are considering whether, in an abundance of caution, it will be necessary to file an amended complaint adding those Chancellors as individual

Jim Hood, Esq.

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defendants to this action. If, however, you do not believe that those Chancellors are necessary parties, please let us know no later than Tuesday, September 8, 2015.

Very truly yours,

A handwritten signature in black ink, appearing to read "Roberta A. Kaplan" followed by the initials "JOK". The signature is fluid and cursive.

Roberta A. Kaplan

cc (by email): Justin L. Matheny, Esq.  
Tommy Goodwin, Esq.