

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

JAMES N. STRAWSER, <i>et al.</i> ,)	
Plaintiffs,)	
v.)	
LUTHER STRANGE, in his official)	
capacity as Attorney General for the)	Civil Action No. 14-0424-CG-C
State of Alabama, <i>et al.</i> ,)	
Defendants.)	
)	
)	

PLAINTIFFS’ RESPONSE TO DEFENDANT RUSSELL’S
MOTION TO DISMISS SECOND AMENDED COMPLAINT (DOC. 108)

Defendant Russell’s motion to dismiss (Doc. 108) adds no new arguments to those already made by the Attorney General and Defendant Davis. Each of Defendant Russell’s contentions – that the Alabama Supreme Court’s order divests this Court of jurisdiction to proceed in this action,¹ that Defendant Russell is entitled to judicial immunity,² that Plaintiffs lack standing,³ and that this Court should refrain from ruling pending the Supreme Court’s review of the Sixth Circuit cases⁴ – is without merit, and the motion should be denied.

¹ See Doc. 108 at ¶¶ 1–2 (citing *Ex parte State ex rel. Ala. Pol’y Inst.*, --- So. 3d ----, 2015 WL 892752 at *43 (Ala. Mar. 3, 2015); *Ex parte State ex rel. Ala. Pol’y Inst.*, --- So. 3d ----, 2015 WL 1036064 at *3 (Ala. Mar. 10, 2015)).

² Doc. 108 at ¶ 3.

³ Doc. 108 at ¶ 4.

⁴ Doc. 108 at ¶ 5.

Each of Defendant Russell's contentions has been fully responded to by Plaintiffs or addressed by the Court.

- The Alabama Supreme Court's decision in *Ex parte State ex rel. Ala. Pol'y Inst.*, --- So. 3d ----, 2015 WL 892752 (Ala. Mar. 3, 2015); *Ex parte State ex rel. Ala. Pol'y Inst.*, --- So. 3d ----, 2015 WL 1036064 at *3 (Ala. Mar. 10, 2015), are no impediment to this Court's jurisdiction or the granting of relief to Plaintiffs. *See* Pls.' Resp. to Def. Davis's Mot. to Dismiss Second Am. Compl., Doc. 106 at 11–12; Pls.' Reply in Supp. of Certification of Pl. and Def. Classes and Issuance of Prelim. Inj., Doc. 100 at 19–22.
- Judicial immunity does not apply. *See* Doc. 106 at 5–7.
- Plaintiffs have standing. *See* Doc. 106 at 3–5.⁵ *See also* Doc. 105 at 1–7.
- No stay or withholding of action by this Court is warranted or justified. *See* Doc. 106 at 2–3. *See also* Pls.' Resp. in Opp. to Emergency Mot. for Stay, Doc. 83; Pls.' Resp. to Def. Davis's Suppl. to Emergency Mot. to Stay, Doc. 87; Order denying Def. Davis's Mot. to Stay, Doc. 88.

Defendant Russell, in a footnote to his motion (Doc. 108 n.1), suggests that he wishes to submit an opposition to Plaintiffs' motion for class certification. He has been on notice of the pending motion and briefing since he was served with process on March 20, 2015. *See* Proof of Service, Doc. 97; Pls.' Reply in Supp. of Certification of Pl. and Def. Classes and Issuance of Prelim. Inj., Doc. 100 at 30 (Certificate of Service). Defendant Russell has had a full opportunity to weigh in on that issue and

⁵ Each of the plaintiff couples added in the Second Amended Complaint sought to determine whether Defendant Russell's office in Baldwin County would issue them a marriage license. All were informed that Baldwin County was issuing licenses only to opposite-sex couples. *See* Docs. 76-3, 76-4, 76-5. Hence these plaintiffs were all adversely affected by Defendant Russell's policy to refuse marriage licenses to same-sex couples, and Defendant Russell is capable of redressing the injury to them.

has chosen not to do so. Plaintiffs respectfully ask that the Court not permit his belated request to delay its determination of the pending motion.

Respectfully Submitted,

NATIONAL CENTER FOR LESBIAN RIGHTS

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** Motion for admission *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system on April 13, 2015. I certify that service will be accomplished by the CM/ECF system to the following parties:

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