

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

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

**DEFENDANT PROBATE JUDGE TIM RUSSELL’S
MOTION TO ALTER, AMEND OR VACATE**

COMES NOW Tim Russell, in his official capacity as Probate Judge of Baldwin County, and hereby respectfully submits this Motion to Alter, Amend or Vacate this Court’s Order denying his Motion to Dismiss. Judge Russell respectfully requests that this Court reconsider its denial of the Motion to Dismiss on the grounds of quasi-judicial immunity¹ and dismiss all claims against him, except those for declaratory relief, specifically including those for injunctive relief and attorneys’ costs and fees, as follows:

¹In recognition of the fact that it would be inappropriate to reargue the Motion to Dismiss in this Motion to Reconsider, Judge Russell has confined his argument to the issue of quasi-judicial immunity. In so arguing, he is in no way conceding or waiving the other arguments made in his Motion to Dismiss.

1. Respectfully, Judge Russell did not argue that he is entitled to judicial immunity in this case; but rather that he is entitled to *quasi-judicial* immunity because he is enforcing the order of a superior judicial tribunal in refusing to issue same-sex marriage licenses.² (Doc. 108, ¶ 3, Doc. 109, pgs.11-12.) Judge Russell has conceded that the issuance of marriage licenses is not a judicial function (Doc. 109, pg. 12); however, he respectfully submits that, to the extent that it is relevant to the argument for quasi-judicial immunity, it only strengthens it by emphasizing the fact that he has no authority to countermand the Alabama Supreme Court in this matter. Judge Russell (and every other Probate Judge in the State of Alabama) is instead bound by the decision of the Alabama Supreme Court in Ex parte State ex rel. Alabama Policy Institute.

2. While Judge Russell recognizes that Plaintiffs in this case were not parties before the Alabama Supreme Court, and thus are not bound by that court's order by any doctrine of estoppel or preemption, the Alabama Supreme Court has repeatedly held that he (and every other probate judge in the State of Alabama) is so bound, as follows:

Further...[to] ensure compliance with Alabama law with respect to the issuance of marriage licenses, each of the probate judges in this State other than the named respondents and Judge Davis are joined as respondents in the place of the "Judge Does" identified in the

² In the interim between this Court's Order and that issued by the Alabama Supreme Court, Judge Russell issued marriage licenses to same-sex couples.

petition...each such probate judge is temporarily enjoined from issuing any marriage license contrary to Alabama law as explained in this opinion.

Ex parte State ex rel. Alabama Policy Inst., No. 1140460, 2015 WL 892752, at *43

(Ala. Mar. 3, 2015).

Our opinion of March 3 serves as binding statewide precedent. To ensure compliance with that precedent, we also entered on that date and as part of our opinion an order specifically directing Alabama probate judges not to issue marriage licenses contrary to that precedent...As we explained in our March 3 opinion, *this Court has acted to ensure statewide compliance with Alabama law in an orderly and uniform manner.* We have before us in this case a petitioner in the form of the State that has an interest in and standing as to the actions of every probate judge in the State. Moreover, as we noted in the opinion, Alabama's probate judges took a variety of different positions in the wake of the federal district court's decisions, and no single circuit court has jurisdiction over all probate judges to enable it to address that disarray. The inclusion of Judge Davis, along with all the other probate judges in this State, as a respondent subject to this Court's March 3 order as to future marriage-license applicants is necessary and appropriate to the end of achieving order and uniformity in the application of Alabama's marriage laws.

Ex parte State ex rel. Alabama Policy Inst., No. 114060, 2015 WL 1036064, at *3

(Ala. Mar. 10, 2015) (emphasis added).

[A]ll probate judges in this State may issue marriage licenses only in accordance with Alabama law as described in [the Alabama Supreme Court's] opinion of March 3, 2015.

(Doc. 108-2, Exhibit B, March 12, 2015 Order.)

3. Judge Russell's argument in favor of quasi-judicial immunity thus arises from the fact that, in issuing marriage licenses, he is a subordinate official

who lacks the authority to defy the orders of the Alabama Supreme Court and is instead bound to enforce that court's decrees. The judicial immunity enjoyed by the Alabama Supreme Court in issuing its opinion in Ex parte State ex rel. Alabama Policy Institute thus flows down to him.³ See Roland v. Phillips, 19 F.3d 552, 555 (11th Cir. 1994). As the Roland court recognized, absolute immunity "for officials assigned to carry out a judge's orders is necessary to insure that such officials can perform their function without the need to secure permanent legal counsel. A lesser degree of immunity could impair the judicial process." Id. at 556 (quoting Valdez v. Denver, 878 F.2d 1285 (10th Cir.1989)).

4. In 1996, 42 U.S.C. § 1983 was amended to specify that injunctive relief is not available to an officer entitled to judicial immunity, and 42 U.S.C. § 1988 was amended to prohibit the recovery of costs or attorneys' fees from an officer entitled to judicial immunity. In light of Judge Russell's entitlement to quasi-judicial immunity, he therefore respectfully requests that this Court reconsider its denial of his Motion to Dismiss insofar as it pertains to the claims for injunctive relief and costs and fees.

WHEREFORE, PREMISES CONSIDERED, Judge Russell, in his official capacity as Probate Judge for Baldwin County, Alabama, both individually and as

³ Of course, even if Judge Russell did exercise judicial authority in the issuance of marriage licenses, he would still be bound by the ruling of the Alabama Supreme Court.

a class representative, hereby respectfully requests that this Court reconsider its denial of his Motion to Dismiss and partially dismiss the claims against him pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted this the 5th day of May, 2015.

s/Kendrick E. Webb

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CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of May, 2015, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will provide notice to the following CM/ECF participants:

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