

**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 TIM RUSSELL'S ANSWER
TO SECOND AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW Tim Russell, in his official capacity as Probate Judge of Baldwin County, and hereby Answers the Second Amended Complaint for Declaratory and Injunctive Relief as follows:

CLASS ACTION

1. Judge Russell admits that Alabama law denies the issuance of marriage licenses to same-sex couples, and refuses to recognize the marriages of same-sex couples performed in other jurisdictions. All other averments in this paragraph are denied.

2. Judge Russell admits that he is required to enforce Alabama's prohibition against the issuance of marriage licenses to same-sex couples pursuant to the decision of the Alabama Supreme Court in Ex parte State ex rel. Alabama Policy Institute. Judge Russell is without sufficient knowledge or information as to the situation of each individual Plaintiff to form a belief as to the truth of any averments regarding their "situation." All other averments in this paragraph are denied.

3. Admitted.

4. Denied.

5. Judge Russell is without sufficient knowledge or information to form a belief regarding the truth of the averments in this paragraph.

6. Judge Russell is without sufficient knowledge or information to form a belief regarding the truth of the averments in this paragraph.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Judge Russell denies that Plaintiffs are entitled to relief of any kind.

12. Judge Russell denies that Plaintiffs are entitled to relief of any kind.

13. Judge Russell denies that Plaintiffs are entitled to relief of any kind.

14. Judge Russell denies that Plaintiffs are entitled to relief of any kind.

15. Judge Russell denies that Plaintiffs are entitled to relief of any kind.

JURISDICTION AND VENUE

16. Judge Russell admits that Plaintiff is seeking to bring this action pursuant to the Constitution and laws of the United States but denies that jurisdiction exists in this case. All other averments in this paragraph are denied.

17. Judge Russell admits that venue would be proper if this Court had jurisdiction over this case; however, in the absence of jurisdiction, all averments in this paragraph are denied.

PARTIES

A. The Named Plaintiffs

18. Judge Russell is without sufficient knowledge or information to form a belief regarding the truth of the averments in this paragraph.

19. Judge Russell is without sufficient knowledge or information to form a belief regarding the truth of the averments in this paragraph.

20. Judge Russell is without sufficient knowledge or information to form a belief regarding the truth of the averments in this paragraph.

21. Judge Russell is without sufficient knowledge or information to form a belief regarding the truth of the averments in this paragraph.

22. Judge Russell is without sufficient knowledge or information to form a belief regarding the truth of the averments in this paragraph.

23. Judge Russell is without sufficient knowledge or information to form a belief regarding the truth of the averments in this paragraph.

24. Judge Russell is without sufficient knowledge or information to form a belief regarding the truth of the averments in this paragraph.

B. The Named Defendants

25. Admitted.

26. Judge Russell admits that Judge Davis is the duly elected Probate Judge for Mobile County, Alabama, and that his duties include the issuance of marriage licenses pursuant to Alabama law. Judge Russell admits that these duties are not judicial in nature except that, in complying with the order issued by the Alabama Supreme Court, that Judge Russell acts in a judicial capacity. All other averments in this paragraph are denied.

27. Judge Russell admits that he is the duly elected Probate Judge for Mobile County, Alabama, and that his duties include the issuance of marriage licenses pursuant to Alabama law. Judge Russell admits that these duties are not judicial in nature except that, in complying with the order issued by the Alabama Supreme Court, that Judge Russell acts in a judicial capacity. All other averments in this paragraph are denied.

28. Judge Russell admits that Defendants are responsible for enforcing Alabama's laws regarding marriage. All other averments in this paragraph are denied.

GENERAL ALLEGATIONS

Alabama's Laws Barring Same-Sex Couples from Marriage

29. Admitted.

Harms Caused by Alabama's Laws Barring Same-Sex Couples from Marriage

30. Judge Russell is without sufficient knowledge or information to form a belief as to the truth of these averments.

31. Denied.

32. Denied.

33. The contents of this Court's orders speak for themselves. Judge Russell is without sufficient knowledge or information to form a belief as to the truth of the remaining averments in this paragraph.

34. Judge Russell is without sufficient knowledge or information to form a belief as to the truth of Plaintiffs' averments regarding their inability to procure a marriage license from him; however, he admits that he is not issuing marriage licenses to same-sex couples pursuant to the decision of the Alabama Supreme Court in Ex parte State ex rel. Alabama Policy Institute.

35. Judge Russell is without sufficient knowledge or information to form a belief as to the truth of the averments in this paragraph.

36. Judge Russell is without sufficient knowledge or information to form a belief as to the truth of the averments in this paragraph

37. Judge Russell is without sufficient knowledge or information to form a belief as to the truth of the averments in this paragraph.

CLASS ALLEGATIONS

The Plaintiff Class

38. Denied.

39. Denied.

40. Denied.

a. Denied.

b. Denied.

c. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

The Defendant Class

45. Denied.

46. Denied.

47. Denied.

a. Denied.

b. Denied.

c. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

CLAIMS FOR RELIEF

First Claim for Relief:

Alabama's Ban on Marriage by Same-Sex Couples Deprives Plaintiffs or their Fundamental Right to Marry Under the Due Process and Equal Protection Clauses of the United States Constitution

52. Judge Russell hereby incorporates by reference his preceding responses in this Answer as if fully set out herein.

53. The text of the Due Process clause speaks for itself. To the extent there are any allegations in this paragraph against Judge Russell, all such allegations are denied.

54. Denied.

55. Denied.

56. Judge Russell admits that Judge Davis has the duty to follow Alabama's laws regarding marriage in accordance with the decision of the Alabama Supreme Court in Ex parte State ex rel. Alabama Policy Institute. All other averments in this paragraph are denied.

57. Judge Russell admits that he has the duty to follow Alabama's laws regarding marriage in accordance with the decision of the Alabama Supreme Court in Ex parte State ex rel. Alabama Policy Institute. All other averments in this paragraph are denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

RELIEF REQUESTED

64. Judge Russell denies that Plaintiffs are entitled to any relief whatsoever.

65. Judge Russell denies that Plaintiffs are entitled to any relief whatsoever.

66. Judge Russell denies that Plaintiffs are entitled to any relief whatsoever.

67. Judge Russell denies that Plaintiffs are entitled to any relief whatsoever. Judge Russell specifically denies that injunctive relief may be granted against him pursuant to 42 U.S.C. § 1983.

68. Judge Russell denies that Plaintiffs are entitled to any relief whatsoever. Judge Russell specifically denies that injunctive relief may be granted against him pursuant to 42 U.S.C. § 1983.

69. Judge Russell denies that Plaintiffs are entitled to any relief whatsoever. Judge Russell specifically denies that costs or attorneys' fees may be awarded against him pursuant to 42 U.S.C. § 1988.

70. Judge Russell denies that Plaintiffs are entitled to any relief whatsoever.

71. Judge Russell denies that Plaintiffs are entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

1. Judge Russell is entitled to quasi-judicial immunity.
2. This Court does not have jurisdiction to grant the requested relief to Plaintiffs in light of the decision of the Alabama Supreme Court in Ex parte State ex rel. Alabama Policy Institute.

3. The Anti-Injunction Act, 28 U.S.C. § 2283, bars this Court from issuing an injunction contrary to the one issued by the Alabama Supreme Court in Ex parte State ex rel. Alabama Policy Institute.

4. Pursuant to Atlantic Coast Line Railroad v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 296 (1970), this court lacks power “to sit in direct review of state court decisions.”

5. This Court should abstain from exercising its jurisdiction in this case in light of the decision of the Alabama Supreme Court in Ex parte State ex rel. Alabama Policy Institute.

6. This Court’s jurisdiction has been preempted by the final order entered by the Alabama Supreme Court in Ex parte State ex rel. Alabama Policy Institute.

7. Prudential concerns, specifically including the doctrines of comity and federalism, militate in favor of this Court declining to exercise its jurisdiction in light of the decision of the Alabama Supreme Court in Ex parte State ex rel. Alabama Policy Institute.

8. Granting the relief requested by Plaintiffs would be against public policy in light of the decision of the Alabama Supreme Court in Ex parte State ex rel. Alabama Policy Institute.

9. Plaintiffs lack standing to bring this action.

10. The claims of Plaintiffs Strawser, Humphrey, Povilat, Persinger, Miller, Carmichael, Simmons, and Safford are moot.

11. This action is barred pursuant to the Rooker-Feldman doctrine.

12. The requested relief is barred by the Tenth Amendment to the United States Constitution.

13. This Court lacks jurisdiction pursuant to the Eleventh Amendment to the United States Constitution.

Respectfully submitted this the 7th day of May, 2015.

s/Kendrick E. Webb

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CERTIFICATE OF SERVICE

I hereby certify that on this the 7th 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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