

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

**JAMES N. STRAWSER and JOHN E. )  
HUMPHREY, et al., )**

**Plaintiffs, )**

**v. )**

**STATE OF ALABAMA, LUTHER )  
STRANGE, and DON DAVIS, )**

**Defendants. )**

**Case No. 1:14-cv-424-CG-N**

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**DEFENDANT JUDGE DON DAVIS' ANSWER  
TO SECOND AMENDED COMPLAINT**

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COMES NOW Defendant Don Davis, Judge of Probate of Mobile County, Alabama, and states as follows in answer to the plaintiffs' Second Amended Complaint:

1. The defendant pleads the general issue, denies all material allegations of the Second Amended Complaint, and demands strict proof thereof.
  
2. By plaintiffs' Response (Doc. 106) in opposition to Judge Davis's Motion to Dismiss (Doc. 103) and this Court's Order of Aril 23, 2015 (Doc. 111), no claims in the Second Amended Complaint are made against Judge Davis in his individual capacity.

3. Judge Davis is not currently issuing any marriage licenses and has not been doing so, as noted in the Second Amended Complaint (pages 6, 7, 8 and 12, Doc. 95) at any time relevant to the new plaintiffs who have joined this litigation or will join this litigation under the Second Amended Complaint or the class elements of the Second Amended Complaint.

### **DEFENSES**

4. The defendant pleads that the plaintiffs' claims are barred by judicial immunity. If issuance of marriage licenses is not a judicial function, then such are not entitled to full faith and credit under the United States Constitution as a judgment in or from another State.

5. The defendant pleads the plaintiffs' claims are barred by the Eleventh Amendment and by the Tenth Amendment, since the issue raised by the plaintiffs is reserved for the States.

6. The defendant pleads the defense of sovereign immunity.

7. The defendant pleads that the plaintiffs' claims are barred by qualified immunity.

8. The defendant denies that the plaintiffs have suffered any redressable injury or harm as the result of any action or inaction by defendant Don Davis.

9. The defendant pleads that the plaintiffs' claims for declaratory relief are

moot.

10. The defendant denies that the plaintiffs are entitled to the injunctive relief sought in the Second Amended Complaint.

11. The defendant denies that it is within his authority to afford the relief sought in the Second Amended Complaint if he were ordered to do so.

12. The defendant pleads that the claims for declaratory and injunctive relief are overly broad and impermissibly vague and that the relief sought therefore cannot be ordered by the Court.

13. The defendant pleads that this Court lacks jurisdiction to order the issuance of marriage licenses to the plaintiffs.

14. The defendant pleads that neither he nor the Probate Court of Mobile County, Alabama, has either the power or the authority to enforce or recognize marriages between individuals of the same sex performed or validated in other states.

15. The defendant denies that he has violated any right of the plaintiffs under the United States Constitution.

16. The defendant denies that he has violated any right of the plaintiffs under the Alabama Constitution.

17. The defendant denies that he has violated any statutory right of the plaintiffs under federal or state law.

18. The defendant pleads that the Second Amended Complaint fails to state a claim against this defendant upon which relief could be granted.

19. The defendant pleads that the Second Amended Complaint raises non-justiciable political questions.

20. The defendant denies that the plaintiffs have stated any valid claim under 42 U.S.C. § 1983.

21. The defendant denies that the plaintiffs may recover costs, interest or attorneys' fees and pleads that those claims are barred.

22. The defendant pleads that the plaintiffs' claims fail to raise a substantial federal question and that the Court therefore lacks subject matter jurisdiction.

23. The plaintiffs' factual allegations fail to show violation of any clearly established constitutional or statutory right.

24. The defendant pleads that the plaintiffs' factual allegations do not show any injury in fact, and pleads that the alleged injuries are not redressable by Judge Davis or the Probate Court of Mobile County, Alabama.

25. The defendant pleads that the plaintiffs' claims for injunctive relief are barred by the express limitations of 42 U.S.C. § 1983 and § 1988.

26. The defendant pleads that this Court lacks jurisdiction over the plaintiffs' claims as a result of the prior judgment by the Alabama Supreme Court that Alabama

laws on same-sex marriage are constitutional.

27. The plaintiffs are not members of a protected or suspect class on the matter before the Court.

28. The defendant pleads that the plaintiffs or proposed plaintiffs who reside in the Northern District or Middle District of Alabama where litigation addressing same-sex marriage has been stayed are estopped from pursuing the same or similar claims in this Court.

29. The “law” cited by the plaintiffs is not clearly established, as a decision of the Alabama Supreme Court holds the opposite to that cited by the plaintiffs.

30. The defendant denies that the plaintiffs, or some of them, possess legal standing to assert a claim against the defendant.

31. Plaintiffs’ attempt to re-litigate an issue already decided by this Court in this litigation is an impermissible attempt to increase a claim for attorney’s fees, which plaintiffs seek to be paid by the taxpayers since Judge Davis is sued only in his official capacity.

32. The defendant denies that the proposed plaintiff class meets the requirements for class certification.

33. The defendant denies that the proposed defendant class meets the requirements for class certification.

34. The legal issues in this case are presently before the United States Supreme Court and that Court is expected to rule on those issues in June 2015. This matter should be stayed until such ruling.

35. The defendant denies that venue is proper as to plaintiffs and proposed plaintiffs who are not bona fide legal residents of Mobile County, Alabama or the Southern District's Southern Division.

36. The defendant adopts and incorporates by reference all applicable grounds and defenses asserted by any co-defendant, except to the extent such is contradicted herein, and in that event, conditionally adopts and incorporates that ground or defense.

37. The defendant adopts and incorporates by reference all grounds and defenses raised in any motion previously filed by him.

*Attorneys for Defendant Don Davis*

*s/ Mark S. Boardman*

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*s/ J. Michael Druhan, Jr.*

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**CERTIFICATE OF SERVICE**

I do hereby certify that I have on **May 7, 2015** electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all Counsel of record, and I have mailed the same to non-CM/ECF participants via United States Mail properly addressed and first class postage prepaid, to wit:

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