

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 ALTER, AMEND OR VACATE (DOC. 114)

Defendant Russell’s motion to alter, amend or vacate the Court’s order (Doc. 114) is an improper attempt to re-litigate his original motion to dismiss (Doc. 108), which was denied by the Court (Doc. 111). The motion should be denied for both procedural and substantive reasons.

Procedurally, Defendant Russell fails to address the strict standard for seeking the “extraordinary remedy” of reconsideration, which, as a general rule, “is only available when a party presents the court with evidence of an intervening change in controlling law, the availability of new evidence, or the need to correct clear error or manifest injustice.” *Anderson v. Greene*, SDAL 05-0393-WS-M, 2005 WL 2233470 (S.D. Ala. Sept. 14, 2005) (citations omitted). Instead, Defendant Russell simply reiterates the same argument regarding quasi-judicial immunity that this Court already considered and rejected in denying his motion to dismiss. *Compare* Doc. 108

at 11-13 with Doc. 114. As noted by Judge Steele in *Northstar Marine, Inc. v. Huffman*, SDAL No. 13-0037-WS-C, 2014 WL 3894076 at \*2 (S.D. Ala. Aug. 8, 2014), “[a] dissatisfied federal litigant is not entitled to reconsideration of anything and everything, merely because he or she disagrees with a court’s ruling or thought of something else to say.” (citations omitted). Defendant Russell presents no compelling reason why the Court should reconsider his prior arguments,<sup>1</sup> and the Court should decline to do so.

Substantively, Defendant Russell misunderstands Plaintiffs’ claims. Plaintiffs do not seek to hold Defendant Russell liable because he is complying with the Alabama Supreme Court’s decision in *Ex parte State ex rel. Alabama Policy Institute*, --- So. 3d ---, 2015 WL 892752 (Ala. Mar. 3, 2015), and its subsequent order, --- So. 3d ---, 2015 WL 1036064 (Ala. Mar. 10, 2015). Rather, Plaintiffs seek to redress the deprivation of their constitutional rights because of the application of Alabama’s marriage laws which the Court has determined violate the Fourteenth Amendment.<sup>2</sup>

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<sup>1</sup> Indeed, to the extent that Defendant Russell believed that Plaintiffs had misconstrued his judicial immunity argument in their Response, Doc. 110, he could have filed a reply brief to make that assertion.

<sup>2</sup> *Roland v. Phillips*, 19 F.3d 552 (11th Cir. 1994), cited by Defendant Russell both in his motion to dismiss and his motion to alter, amend or vacate, is inapplicable. In *Roland*, the plaintiff sought to hold a law enforcement officer liable for a civil rights violation where the officer was acting pursuant to “the explicit instructions of a written, judicial restraining order” and later pursuant to “a verbal judicial order.” *Id.* at 556-57. Thus, the officer was shielded from § 1983 liability. As noted above, Plaintiffs do not seek to hold Defendant Russell liable for his compliance with a judicial order. Rather, they seek to hold him liable for his violation of Plaintiffs’ Fourteenth Amendment rights based upon the application of Alabama’s unconstitutional laws excluding same-sex couples from marriage.

See Order (denying Davis motion to stay), Doc. 88 at 3; Order (granting preliminary injunction), Doc. 29 at 2-4; *Searcy v. Strange*, SDAL Civil Action No. 14-00208-CGN, Doc. 53 (Memorandum Opinion and Order). As the Court has already found, the Alabama Supreme Court's decision and order is no bar to the exercise of jurisdiction in this case. Order, Doc. 111 at 8-9. "A mandamus proceeding in a state court against state officials to enforce a challenged statute does not bar injunctive relief in a United States District Court." *Id.* (citation omitted). Hence, Defendant Russell's reliance on *Ex parte State* is misplaced and has already been rejected by the Court.

Therefore, Defendant Russell's Motion to Alter, Amend or Vacate (Doc. 114) should be denied.

Respectfully Submitted,

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**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 May 8, 2015. I certify that service will be accomplished by the CM/ECF system to the following parties:

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