

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

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

**DEFENDANT PROBATE JUDGE TIM RUSSELL’S  
RESPONSE TO PLAINTIFFS’ MOTION FOR PERMANENT  
INJUNCTION AND FINAL JUDGMENT**

COMES NOW Tim Russell, in his official capacity as Probate Judge of Baldwin County, both individually and as a class representative, and hereby respectfully submits this Response to Plaintiff’s Motion for Permanent Injunction, as follows:

1. Judge Russell has resumed issuing marriage licenses to same-sex couples on the same priority and in the same manner as those licenses are issued to couples of the opposite sex. It is important to note that neither Judge Russell nor

any other probate judge has ever presented an argument as to the substance of Plaintiffs' claims, i.e., whether Alabama's marital sanctity laws violate the Fourteenth Amendment to the United States Constitution, to this Court, and they would not have the authority to do so, as defending the constitutionality of Alabama's laws are the provenance of the Attorney General. Obviously, this question was definitively answered by Obergefell v. Hodges, 576 U.S. \_\_\_, No. 14-556, 2015 WL 2473451 (June 26, 2015).

2. Judge Russell maintains that the claims brought against him, both individually and as a class representative, should have been dismissed for the reasons stated in his Motion to Dismiss and Motion for Reconsideration, which are adopted and incorporated by reference as if stated fully herein. (Docs. 108-109, 114.) He has timely appealed the denial of these Motions and the entry of the preliminary injunction. (Doc. 127). Further, Judge Russell has filed a Petition for Permissive Appeal as to the issue of class certification with the Eleventh Circuit, arguing that the certification of the Defendant class and his appointment as a Class Representative were improper for several reasons, including the fact that he was never allowed an opportunity to oppose the Motion for Class Certification, which was filed before he was a Defendant in this case and therefore was never

served on him as required by the Federal Rules of Civil Procedure. In light of these pending appeals, the entry of a permanent injunction and final judgment would be premature.

3. The entry of an injunction against a Defendant class is also inappropriate in light of the fact that Alabama's probate judges have taken three separate approaches to the circus surrounding the issuance of same-sex marriage licenses. Some judges, like Judge Russell, began issuing the licenses immediately after the entry of this Court's initial Orders in this case and in *Searcy*, issued them until they were enjoined from doing so by the Alabama Supreme Court, and began issuing them again after Obergefell; some judges, prior to the issuance of the preliminary injunction (Doc. 123), ceased issuing all marriage licenses; and some judges never issued same-sex marriage licenses but continued issuing opposite sex marriage licenses. This Court has previously stated that judges taking the second approach violated neither the Orders of this Court nor those of the Alabama Supreme Court, thus mooting any claims against them. (Doc. 123, pg. 10, n.3.)

WHEREFORE, THESE PREMISES CONSIDERED, Defendant Tim Russell, in his official capacity as Probate Judge of Baldwin County, Alabama,

individually and as a class representative, hereby objects to the entry of a permanent injunction and final judgment in this case.

**s/Kendrick E. Webb**

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 7th day of July, 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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