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

JAMES N. STRAWSER, *et al.*	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No.
	)	1:14-cv-00424-CG-C
LUTHER STRANGE, Attorney General, *et al.*,	)	
	)	
Defendants.	)	

REPLY OF DEFENDANT ATTORNEY GENERAL STRANGE
IN SUPPORT OF HIS MOTION TO DISMISS (DOC. 166)

Defendant Attorney General Luther Strange respectfully submits this reply brief in support of his Motion to Dismiss the claims against him (doc. 166):

1. The Attorney General is subject to a permanent injunction in a related action (*Searcy v. Strange*), and after a binding Supreme Court decision, that injunction was affirmed by the Eleventh Circuit. Where a law has been declared unconstitutional by a controlling court, pending requests for identical declaratory relief become moot. *Longley v. Holahan*, 34 F.3d 1366, 1367 (8th Cir. 1994). The Attorney General has fully complied with the orders of this Court, the Eleventh Circuit, and the Supreme Court, and has stated unambiguously that he will follow binding court decisions.

2. The claims against the Attorney General in this action no longer present a "live controversy with respect to which the court can give meaningful relief," and are therefore moot. *Al Najjar v. Ashcroft*, 273 F.3 1330, 1335-36 (11th Cir. 2001). In cases involving the voluntary cessation of the challenged conduct, courts presume that public officials will not return to the challenged behavior and that the case is moot. *Troiana v. Supervisor of Elections*, 382 F.3d 1276,

1283 (11th Cir. 2004). A case is thus moot if the challenged behavior stops and (i) the termination of the challenged practices is unambiguous, (ii) that termination is the product of deliberation and not an effort to manipulate jurisdiction, and (iii) the new policy has been consistently applied. *Rich v. Fla. Dept. of Corr.*, 716 F.3d 525, 531 (11th Cir. 2013). [1]

3. On this authority, the Attorney General moved that the claims against him be dismissed. In response, Plaintiffs point to no reason to disbelieve the Attorney General's statements that he is in compliance with the Court's injunction in *Searcy* or that he will remain so. They offer no evidence of a violation or any statement by the Attorney General suggesting that he will not continue to follow binding authority.

4. Instead, Plaintiffs point to actions of *other* state officials, and allege that *other* officials are resistant to the courts' rulings. They do not show that a second, duplicative injunction against the Attorney General would offer meaningful relief to Plaintiffs, and what other officials have allegedly said and done has no bearing on whether the claims against the Attorney General are moot.

5. A good portion of Plaintiffs' response (doc. 167) appears to argue that this case in its *entirety* should not be dismissed. But the Attorney General has not moved for dismissal of the claims against other defendants. Those other defendants may have arguments that the claims against them are moot as well, but the Attorney General's motion is directed only at the claims against *him*.

[1] *See also Atlantic States Legal Foundation, Inc. v. Tyson Foods, Inc.*, 897 F.2d 1128, 1135 (11th Cir. 1990) ("If, after the complaint is filed, the defendant comes into compliance…, then traditional principles of mootness will prevent maintenance of the suit for injunctive relief as long as there is no reasonable likelihood that the wrongful behavior will recur."); *Reich v. Occupational Safety & Health Review Comm'n*, 102 F.3d 1200, 1201 (11th Cir. 1997) ("A claim for injunctive relief may become moot if: '(1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violations.'") (quoting *County of Los Angeles v. Davis*, 440 U.S. 625 (1979)).

6. As Judge Proctor noted in a related case, worries about what a future Attorney General might do are too speculative to support Article III jurisdiction, and claims against Attorney General Strange related to Alabama's marriage laws are moot. *See* Order of Dismissal, *Aaron-Brush v. Strange, et al.*, Case No. 2:14-cv-01091 (N.D. Ala.), doc. 44 (attached as Exhibit A). In yet another related case, Judge Watkins also agreed that the claims against the Attorney General are moot. *See* Order, *Paul Hard v. Strange*, Case No. 2:13-cv-922 (M.D. Ala.), doc. 89 (attached as Exhibit B). In this case as well, the claims against the Attorney General no longer present a live controversy in which the Court can grant meaningful relief, and they are due to be dismissed.

WHEREFORE, Attorney General Strange moves that the claims against him be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 26, 2015, I electronically filed the foregoing document using the Court's CM/ECF system which will send notification of such filing to the following persons:

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EXHIBIT

A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

APRIL AARON-BRUSH,	**}**	
	}	
Plaintiff,	**}**	
	}	
v.	**}**	**Case No.: 2:14-cv-01091-RDP**
	}	
ROBERT BENTLEY, et al,	**}**	
	}	
Defendants.	**}**	

ORDER OF DISMISSAL

This matter is before the court on the Motion to Dismiss filed by Defendants Attorney General Luther Strange, Julie Magee, and John Richardson. (Doc. # 30). The Motion has been fully briefed. (Docs. # 32 – 41, 43). Defendants contend that the Supreme Court has resolved all the questions underlying Plaintiffs' claims and this matter no longer presents a live case or controversy. Plaintiffs oppose the motion.

Plaintiffs are a same-sex couple who were married outside the state of Alabama. They filed this action in order to challenge the constitutionality of Section 36.03 of the Alabama Constitution and Alabama Code § 30-1-19. When they filed their Complaint, Plaintiffs asserted that the Fourteenth Amendment to the United States Constitution requires Alabama to recognize their same-sex marriage, but that the Defendants in this action had failed to do so in certain respects (as more specifically alleged in their Pleadings). In particular, Plaintiffs sought:

> (a) a declaration that Alabama's refusal to recognize the marriages of same-sex couples validly entered into outside of the State violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution where Alabama refuses to treat same-sex couples legally married in other jurisdictions the same as different-sex couples; and (b) a permanent injunction directing Defendants to legally recognize Plaintiffs' marriage and the marriages of other same-sex couples validly entered into outside

of Alabama.

(Doc. # 1).

Since this case's filing, there have been significant developments related to it, most of which have occurred outside the litigation itself. Most significantly, in June of this year the Supreme Court decided *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015). In *Obergefell*, the Supreme Court held that the Fourteenth Amendment requires States to recognize same-sex marriages performed in other States. Defendants have acknowledged in their filings that, while they disagree with the Supreme Court's decision, it is now the law of the land and that *Obergefell* binds them in this and other cases. Indeed, they have taken steps to effectuate the ruling in *Obergefell*. (Doc. # 43).

Defendants have stated unequivocally that they are following, and will follow, the law of the land with respect to same-sex marriages. (Doc. # 28). Just as they have for other married same-sex couples, Defendants stated that they will consider Plaintiffs' marriage valid upon Plaintiffs filing of a joint tax return (in the case of the Department of Revenue), permit a name change on Plaintiffs' driver's licenses (in the case of the Department of Public Safety), and provide Plaintiffs with other benefits afforded by these agencies to married couples. (Doc. # 28). Defendants have also stated that this is not a special rule that they created for these Plaintiffs alone, but rather it is their state-wide policy in direct response to the Supreme Court's dispositive ruling in *Obergefell*. (Doc. # 33). In fact, the parties have jointly reported to the court that Plaintiffs have been issued a corrected birth certificate, they have also been issued new drivers' licenses based upon their Massachusetts' marriage certificate, and they have been able to file amended joint tax returns. (Doc. # 43).

The Supreme Court's decision in *Obergefell* is not the only development outside this litigation that affects this case. In addition, in cases pending in the Southern District of Alabama,

Judge Callie V. Granade granted permanent injunctions with respect to Attorney General Luther Strange which (1) prohibit him from enforcing Alabama's marriage laws to deny same-sex couples the right to marry, and (2) require the recognition of marriages performed in other states. *Searcy v. Strange*, 2015 WL 328728 (S.D. Ala. 2015); *Strawser v. Strange*, 44 F. Supp. 1206 (S.D. Ala. 2015). The injunctions also granted other relief to same-sex couples.

With this background in mind, the court turns to the question of whether this case has become moot. A case becomes moot when it no longer presents a live controversy with respect to which the court can give meaningful relief. *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335–36 (11th Cir. 2001). "If, after the complaint is filed, the defendant comes into compliance ..., then traditional principles of mootness will prevent maintenance of the suit for injunctive relief as long as there is no reasonable likelihood that the wrongful behavior will recur." *Atlantic States Legal Foundation, Inc. v. Tyson Foods, Inc*., 897 F.2d 1128, 1135 (11th Cir. 1990). In cases involving the voluntary cessation of the challenged conduct, courts presume that public officials will not return to the challenged behavior and that the case is moot. *Troiana v. Supervisor of Elections*, 382 F.3d 1276, 1283 (11th Cir. 2004). A case is thus moot if the challenged behavior stops and (i) the termination of the challenged practices is unambiguous, (ii) that termination is the product of deliberation and not an effort to manipulate jurisdiction, and (iii) the new policy has been consistently applied. *Rich v. Fla. Dept. of Corr.*, 716 F.3d 525, 531 (11th Cir. 2013). Each of these elements is met here. (Doc. # 43).

Plaintiffs have stated a concern that, "though the immediate harms with regard to adoption, birth certificate, drivers' licenses, and tax returns have now been rectified," certain state actors (who not before the court in this case) will continue to enforce the laws which, under *Obergefell*, are unconstitutional, and which Judge Granade has already enjoined Attorney

General Strange from enforcing. (Doc. # 43). There are two easy answers that address this concern. First, these matters are too speculative to constitute a remaining live controversy between the parties to this case. Second, and in any event, if in the future, unconstitutional conduct is perpetrated by state actors who are not parties in this case, it appears Judge Granade will have jurisdiction and the desire to address those matters in her cases.

Therefore, the Motion to Dismiss filed by Defendants Attorney General Luther Strange, Julie Magee, and John Richardson (Doc. # 30) is **GRANTED**. This case is **DISMISSED WITHOUT PREJUDICE**.

Costs are **TAXED** against Defendants Attorney General Luther Strange, Julie Magee, and John Richardson.

DONE and **ORDERED** this October 13, 2015.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE

EXHIBIT

B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

PAUL HARD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 2:13-CV-922-WKW
	)	
LUTHER JOHNSON STRANGE, *et al.*,	)	
	)	
	)	
Defendants.	)	

ORDER

Before the court are cross-motions for summary judgment filed by Plaintiff Paul Hard (Doc. # 59), Defendant Attorney General Luther Strange (Doc. # 63),[1] and Intervenor Defendant Pat Fancher (Doc. # 65). The motions for summary judgment have remained pending during a stay of this case (Doc. # 77).

Mr. Hard has recently filed a motion to lift stay, enter summary judgment, and distribute funds (Doc. # 79). Attorney General Strange agrees that the stay of this case is due to be lifted, but he opposes the entry of summary judgment in Plaintiff's favor because, he says, the case is moot and due to be dismissed (Doc. # 88). Hence, Attorney General Strange has moved for dismissal on grounds of mootness (Doc. # 87).

[1] The motion was joined by Defendant Governor Robert Bentley, but Governor Bentley has been dismissed as a defendant to this action.

The court agrees with Attorney General Strange that the stay should be lifted and that this action should be dismissed as moot with prejudice.

Accordingly, it is ORDERED as followed:

1. Plaintiff's motion to lift stay and disburse funds (Doc. # 79) is GRANTED and the stay of this case is LIFTED;

2. Attorney General Strange's motion to dismiss (Doc. # 87) is GRANTED;

3. Plaintiff's motion for entry of summary judgment (Doc. # 79) is DENIED, and the parties' cross-motions for summary judgment (Docs. # 59, 63, 65) are DENIED;

4. Counsel for Plaintiff and for the Estate of David Fancher are DIRECTED to file a statement on or before **July 20, 2015**, advising the court how the Clerk of the Court should disburse the funds.

A separate final judgment will be entered.

DONE this 14th day of July, 2015.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE