



ADMINISTRATIVE OFFICE OF COURTS
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Roy S. Moore
Chief Justice

Rich Hobson
Administrative Director of Courts

February 3, 2015

Re: Federal Intrusion into State Sovereignty

Dear Probate Judges of Alabama:

Attached hereto is a Memorandum with regard to the orders of United States District Judge Callie Granade dated January 23 and January 26, 2015, and the subsequent "Order Clarifying Judgment" dated January 28. The Memorandum presents substantial authority in support of the proposition that state courts are not bound by the opinions of lower federal courts. Furthermore, nothing in the orders of Judge Granade *requires* Alabama probate judges to issue marriage licenses that are illegal in Alabama. Pursuant to Rule 65(d)(2) of the Federal Rules of Civil Procedure, Alabama probate judges are not subject to those orders because the probate judges are not parties or associated with any party in those cases. I further submit that the federal district court lacked jurisdiction over these cases under the Eleventh Amendment to the United States Constitution, as explained in the appendix attached to the memorandum.

My letter to Governor Robert Bentley on January 27, 2015, expressed "serious, legitimate concerns about the propriety of federal court jurisdiction over the Alabama Sanctity of Marriage Amendment, Art. I, § 36.03, Ala. Const 1901."

The day after my letter was released, Judge Granade issued a "clarifying" order that warned the probate judges of this state that "if the stay is lifted, the Judgment in this case makes it clear, that Ala. Const. Art. I, § 36.03 and Ala. Code § 30-1-19 are unconstitutional." Yet, paradoxically, that order of clarification quoted from an opinion of a Florida federal judge that stated: "The preliminary injunction now in effect thus does *not* require the Clerk to issue licenses to other applicants." (Emphasis added). Neither Judge Granade's orders nor her "clarification" ordered the state officials who are charged with the responsibility to issue marriage licenses *to do anything*. Consequently, the injunction and the stay or the lifting thereof can only apply to the sole defendant, the Alabama Attorney General.

The attached Memorandum demonstrates that both state and federal law recognize the principle that state courts are not bound by the judicial opinions of federal district or appeals courts on questions of federal constitutional law. While state courts may consider as "persuasive authority" the opinions of federal courts that are beneath the United States Supreme Court (referred to as lower or "inferior Courts" in Article III, Sec. 1 of the U.S. Constitution), the state courts are not bound by such rulings.

Under the principle of "dual sovereignty," the authority of state courts to interpret the federal Constitution is equal to that of the lower federal courts for the simple reason that both state and federal courts are equally sworn to uphold the United States Constitution. Only the United States Supreme Court can be the final arbiter of constitutional disputes between state and federal courts.

While my disagreement with Judge Granade's orders in the cases attacking Alabama marriage law has been criticized as "religious," "defiant," and "unethical," my actions are entirely consistent with my responsibility as Chief Justice of the Alabama Supreme Court. As Administrative Head of the Unified Judicial System, I am charged with the responsibility "to take affirmative and appropriate action to correct or alleviate any condition or situation adversely affecting the administration of justice within this state." § 12-2-30(b)(7), Ala. Code 1975. I am further charged with the obligation to "take any such further or additional action as may be necessary for the orderly administration of justice within this state." § 12-2-30(b)(8), Ala. Code 1975. Interference with the right of state courts to make independent judgments based on their own view of the U.S. Constitution is a violation of state sovereignty. Moreover, the *amicus curiae* briefs of Governor Robert Bentley and of the Alabama Probate Judges Association filed with the Eleventh Circuit Court of Appeals make it very clear that "substantial" and even "mass" confusion will result if Judge Granade's orders are construed to apply to the entire state court system. Pursuant to my authority under Alabama law, I submit this advisory letter and memorandum as appropriate and necessary to the orderly administration of the Alabama Unified Judicial System and to warn against any unlawful intrusion into the jurisdiction and sovereignty of this state and its courts.

The authority of the federal judiciary to redefine marriage is now before the United States Supreme Court because a conflict exists among the federal Courts of Appeals on this issue. The United States Constitution contains neither the word "family" nor the word "marriage." The power to redefine these fundamental institutions of society is not enumerated in any of the provisions of Article 1, Section 8. Because the power to define marriage is not delegated to the United States, it is retained by the people. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States

respectively, or to the people." Amend. X, U.S. Const. (emphasis added).

Marriage has long been recognized as a divine institution ordained of God. According to the United States Supreme Court, the basic foundation of marriage and family upon which our Country rests is "the union for life of one man and one woman in the holy estate of matrimony." *Murphy v. Ramsey*, 114 U.S. 15, 45 (1885) (quoted in *United States v. Bitty*, 208 U.S. 393, 401 (1908)). The Alabama Supreme Court has described marriage as a "divine institution" imposing upon the parties "higher moral and religious obligations than those imposed by any mere human institution or government." *Hughes v. Hughes*, 44 Ala. 698, 703 (1870). In *Smith v. Smith*, 141 Ala. 590, 592, 37 So. 638, 639 (1904), our Supreme Court referred to marriage as a "sacred relation." More recently, the people of Alabama amended our state constitution to provide that marriage is a "sacred covenant, solemnized between a man and a woman" and that a "marriage contracted between individuals of the same sex is invalid in this state." Art. 1 § 36.03, Ala. Const. 1901.

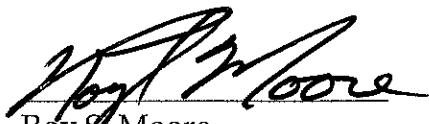
The right to enter into the institution of marriage, namely a union between one man and one woman, is established in history and law as a fundamental right. Although not enumerated in the Constitution, that right is retained by the people under the Ninth Amendment: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

The freedom to marry is an "unalienable right." *The Declaration of Independence* states: "We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness . . ." Even Judge Granade's order, quoting *Loving v. Virginia*, 388 U.S. 1, 11 (1967), acknowledges that "[t]he freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men' and women." No court or other human authority should pretend to redefine that right. Such an enterprise would disregard the Bill of Rights contained in the United States Constitution as well as the Organic Law of our Country.

Lower federal courts are without authority to impose their own interpretation of federal constitutional law upon the state courts. Furthermore, they have absolutely no legitimate authority to compel state courts to redefine marriage to include persons of the same sex. Not only is the Mobile federal court acting without constitutional authority, but it is doing so in a manner inconsistent with the Eleventh Amendment to the United States Constitution.

I urge you to uphold and support the Alabama Constitution and the Constitution of the United States to the best of your ability, So Help You God!

Submitted for your consideration this 3rd day of February, 2015.

A handwritten signature in black ink, appearing to read "Roy S. Moore". The signature is written in a cursive style with a horizontal line drawn through the middle of the letters.

Roy S. Moore
Chief Justice
Alabama Supreme Court