

Alabama judge asks courts to defy order granting same-sex marriage licenses

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Alabama Supreme Court Chief Justice Roy Moore is ordering probate judges in his state to ignore a US federal court order allowing gay and lesbian Alabamians to exercise their right to marry.

Judge Moore's maneuver is in violation of the Fourteenth Amendment to the US Constitution, which states: "No state shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Fourteenth Amendment gives the federal government power to prohibit states from carrying out actions that violate these basic rights.

Moore's action flouts a February 12 ruling by US District Court Judge Callie V.S. Granade ordering Mobile County Probate Judge Don Davis to begin allowing same-sex marriages in the state's largest county. Davis had previously failed to abide by an earlier court order.

Judge Granade's ruling was the latest in a lawsuit filed by four homosexual couples who were denied marriage licenses under the Alabama state constitution's ban on same-sex marriage. One of the plaintiffs, whose partner faces serious health issues, is unable to enforce a medical power of attorney document because of the couple's non-married status.

In late January, Judge Granade granted the plaintiff couples' motion for a preliminary injunction against the state law. In effect, Judge Granade's decision prohibited Alabama from enforcing its marriage ban on the grounds that it denied the plaintiffs' fundamental right to marriage.

Judge Granade ordered a stay on her own decision, which expired on February 9. The Eleventh Circuit Court of Appeals and the Supreme Court of the United States denied the Alabama Attorney General's request to extend the stay, and probate judges in many

Alabama counties began issuing marriage licenses to same-sex couples the same day the stay expired.

Judge Moore, however, sought to block the federal court's decision and ordered probate judges to continue to refuse marriage licenses. Although most probate judges are issuing marriage licenses, a substantial minority of counties are following Judge Moore's orders and refusing to abide by the District Court's decision.

In refusing to abide by the federal district court ruling, Moore invoked the "states' rights" arguments that were traditionally utilized by southern states in opposing desegregation and other civil rights legislation. "It's my duty to speak up when I see the jurisdiction of our courts being intruded by unlawful federal authority," Moore declared.

This argument was supported by US Supreme Court Justice Clarence Thomas, who filed a dissent in the Supreme Court's decision not to intervene in the case. The decision, Thomas wrote, "represents yet another example of this court's increasingly cavalier attitude toward the states."

The basic conclusion that flows from Judge Moore's pseudo-legal rationale is that the states have the right to ignore the Equal Protection and Due Process Clauses, which were ratified alongside the amendment banning slavery (Thirteenth) and the amendment granting former slaves the right to vote (Fifteenth).

The three amendments are together known as the "Civil War Amendments," because they codified the egalitarian outcome of the war between the union and the slaveocracy. In this sense, Judge Moore is repudiating a fundamental legal product of the defeat of the confederacy: that the federal government can prevent the states from violating the democratic rights of the people.

The actions of Moore in relation to gay marriage are also a continuation of his efforts to integrate religion and the state, a direct violation of the Establishment Clause of the US Constitution.

“It seems as if the foundations of our nation are becoming rotten, and Christians seem to act as if they think that God does not see what they do in politics,” Judge Moore said in 2012, arguing for what amounts to a theocratic conception of the state. He has often complained of the “moral decay” of American society, noting that gay marriage would lead to the “ultimate destruction” of the country and that homosexuality is an “inherent evil.”

Judge Moore has been on the forefront of religious assaults on the separation of church and state. In 2003, he made a name for himself when he disobeyed a federal court order requiring the removal of a monument to the biblical ten commandments on the steps of the state judicial building. At the time, Moore denounced jurists who believe “obedience of a court order [is] superior to all other concerns, even the suppression of belief in the sovereignty of god.”

Moore is no small-town magistrate—he is the most powerful judge in the state who won election with significant political and financial backing from the state’s political establishment. His efforts to create a controversy over the gay marriage issue serve both to whip-up homophobic sentiment in Alabama and to elevate his own profile to national prominence.

That someone like Judge Moore occupies the highest judicial position in an American state is an indictment of the entire American ruling class. Increasingly detached from its democratic traditions, the political establishment elevates the political progeny of southern segregationists to occupy leading positions in the most impoverished regions of the country.

While President Barack Obama issued mild criticisms of Moore’s actions, they have largely been left to stand. This is in line with the continuous efforts of the White House to accommodate the anti-democratic actions of the religious right, as the administration has carried out a wholesale attack on every other democratic principle.

Most recently, Obama’s pandering to right wing religious elements found expression in his decision to exclude non-profit religious organizations from the requirement that employers provide contraceptives to

their workers, following a campaign by religious fundamentalists denouncing the provision as a “war on religion.”

Obama’s climb-down was followed by two reactionary rulings by the US Supreme Court, undermining the Establishment Clause. In particular, the Court ruled last year that in *Burwell v. Hobby Lobby* that contraceptive provisions of the Affordable Care Act violated the “religious liberty” of “Christian corporations.”

As a concession to those supporting the measure, the Obama administration did not raise the Establishment Clause in the defense of the contraception mandate.



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