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January 28, 2015

By U.S. Mail and Fax

Hon. Robert Bentley
Governor of Alabama
State Capitol
600 Dexter Avenue
Montgomery, AL 36130
Fax: (334) 353-0004

Re: *Chief Justice Roy Moore's Letter of January 27, 2015*

Dear Governor Bentley:

Chief Justice Roy Moore recently sent you a letter purporting to demonstrate that Alabama need not follow the directives of federal courts upholding the constitutional Equal Protection rights of homosexual couples who wish to marry. Justice Moore's Tenth-Amendment-nullification arguments are relics straight from the Civil War, embraced only by inhabitants of the deranged right-wing fever-swamps in which the Justice has mired himself. Even a first-year law student knows that the requirements of the U.S. Constitution trump state law, and you would do well to disregard the Chief Justice's ramblings.

It is elementary that a state law cannot override the commands of the U.S. Constitution. The "Constitution and the laws passed pursuant to it are the supreme laws of the land, binding alike upon states, courts, and the people, anything in the Constitution or Laws of any State to the contrary notwithstanding." *Testa v. Katt*, 330 U.S. 386, 391 (1947) (quotation marks omitted). The overwhelming weight of legal authority has found that treating same-sex couples differently than different-sex couples, for purposes of marriage, violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *See, e.g., Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014); *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014); *Latta v. Otter*, 2014 WL 4977682 (9th Cir. Oct. 7, 2014); *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014); *contra DeBoer v. Snyder*, 2014 WL 5748990 (6th Cir. Nov. 6, 2014), *cert granted*, 83 U.S.L.W. 3315 (U.S. Jan. 16, 2015) (No. 14-571). And now, a federal judge in Alabama has followed suit. *See Searcy v. Strange*, No. 14-0208 (S.D. Ala. January 23, 2015). Although the Chief Justice imagines otherwise, the Fourteenth Amendment plainly authorizes the federal court to impose that result on the State. *U.S. Const. Amend. XIV* ("No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.").

Finally, it is worth remembering that the last time the Chief Justice dragged the State of Alabama into a conflict over interpretation of the U.S. Constitution and the validity of a federal court-order, Alabama lost the case, paid a boatload of money in legal costs, and became a national punchline. And Justice Moore lost his job, and now appears willing to ask you to risk yours. Then, and now, the Chief Justice was wrong.

Sincerely,

A handwritten signature in blue ink that reads "Ian Smith". The signature is stylized with a large initial "I" and a long horizontal stroke at the end.

Ayesha N. Khan, Legal Director
Ian Smith, Staff Attorney