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1301 K Street, NW
Suite 850, East Tower
Washington, DC 20005

February 11, 2015

Hon. Tim Russell, Probate Judge
Baldwin County
P.O. Box 459
Bay Minette, AL 36507-0459

Dear Judge Russell:

We have been retained by a local same-sex couple that has been unable to obtain a marriage license from your Probate Court. The denial of marriage licenses to same-sex couples is inconsistent with the federal Constitution, so we write to ask that you immediately take steps to ensure that marriage licenses are made available to all qualified marriage-license applicants, regardless of sexual orientation or gender.

On January 23, 2015, the United States District Court for the Southern District of Alabama entered judgment in *Searcy v. Strange*, No. 14-0208-CG-N, (S.D. Ala. Jan. 23, 2015), declaring Alabama's Marriage Protection Act and Sanctity of Marriage Amendment invalid under the federal Constitution and holding that the State must recognize same-sex marriages performed out-of-state. On January 26, 2015, that same federal court entered a preliminary injunction in *Strawser v. Strange*, No. 1:14-CV-424-CG-C (S.D. Ala. Jan. 26, 2015), holding that the federal Constitution prohibits the State from denying marriage licenses to same-sex couples. The District Court enjoined the enforcement of Alabama's anti-same-sex-marriage laws, but stayed the rulings for 14-days to give the United States Court of Appeals for the Eleventh Circuit and the United States Supreme Court an opportunity to intervene.

On January 27, 2015, Alabama Chief Justice Roy Moore released a letter urging a biblical interpretation of the institution of marriage and arguing that the issuance of marriage licenses is beyond the reach of the federal Constitution, that all contrary federal court orders are "specious" pretexts intended to bring about the "destruction of that institution," and that he will continue to enforce Alabama's marriage restrictions, regardless of any federal court order. The letter urged the Alabama Governor to "oppose ... judicial tyranny," and advised Alabama judges that issuing same-sex marriage licenses "would be in defiance of the laws and Constitution of Alabama."

The next day, January 28, 2015, the federal District Court clarified that, although her order did not technically bind Probate Judges who are not parties to

the litigation, Probate Judges remain subject to a federal constitutional obligation to issue licenses to same-sex couples. Order Clarifying Judgment, *Searcy v. Strange*, No. 14-0208-CG-N (S.D. Ala. Jan. 28, 2015). Nonetheless, on February 3, 2015, Chief Justice Moore issued a further letter to all Alabama Probate Judges, entitled “Federal Intrusion into State Sovereignty,” in which he urged Probate Judges to disregard to federal court order and to support the “divine institution ordained by God.” Moore followed that up with a February 8, 2015, administrative order restating his views and directing that “no Probate Judge of the state of Alabama nor any agent or employee of any Alabama Probate Judge shall issue or recognize a [same-sex] marriage license.”

Thereafter, on February 9, 2015—after both the United States Court of Appeals for the Eleventh Circuit and the United States Supreme Court declined to disturb the federal District Court’s injunction—the federal District Court lifted the stay on its decision and many Probate Judges around the State began issuing marriage licenses to all couples, same-sex and different-sex alike.

Your office, however, has refused to do so. That choice cannot be reconciled with the Supremacy Clause of the United States Constitution, which provides that “[t]his Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding.” U.S. Const., art VI. Thus, your obligation to comply with the federal Constitution—which has now been interpreted to forbid discrimination against same-sex couples with respect to the issuance of marriage licenses—must take precedence over any contrary state laws or obligations. As administrative head of the Alabama judicial system, the Chief Justice is empowered to take appropriate action in administering that system, but he is assuredly not empowered to contravene the federal constitution or to direct others to do so.

Moore claims in his February 3, 2015, memorandum that Alabama probate judges are not bound by the federal District Court’s rulings because they are not parties to that litigation. While that may technically be correct, it is beside the point: “as set out in the order that announced issuance of the preliminary injunction, the *Constitution* requires the [probate judges] to issue such licenses.” Order Clarifying Judgment at 2, *Searcy*, No. 14-0208-CG-N (emphasis added) (quoting *Brenner v. Scott*, 2015 WL 44260 at *1 (N.D. Fla. Jan. 1, 2015)). No pronouncement by the Chief Justice of Alabama can override that federal constitutional imperative.

As you may know, this is not the first time that Chief Justice Moore has propounded the view that state officials may defy federal obligations. In 2003, Moore was removed from office for similarly defying a federal court order to remove a Ten Commandments monument he had erected. In unambiguous terms, the Court

of the Judiciary squarely rejected his argument that state sovereignty justified judicial defiance of the federal Constitution. *See Moore v. Judicial Inquiry Comm'n*, 891 So. 2d 848, 858 (Ala. 2004).

For these reasons, we ask that you reverse course and immediately begin issuing marriage licenses to all qualified applicants, regardless of sexual orientation or gender.

Sincerely,



Ayesha N. Khan
Legal Director



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February 11, 2015

Hon. Susan Shorter, Probate Judge
Barbour County
P.O. Box 758
Eufaula, AL 36072-0758

Dear Judge Shorter:

We have been retained by a local same-sex couple that has been unable to obtain a marriage license from your Probate Court. The denial of marriage licenses to same-sex couples is inconsistent with the federal Constitution, so we write to ask that you immediately take steps to ensure that marriage licenses are made available to all qualified marriage-license applicants, regardless of sexual orientation or gender.

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February 11, 2015

Hon. Patrick Davenport, Probate Judge
Houston County
P.O. Box 6406
Dothan, AL 36302-6406

Dear Judge Davenport:

We have been retained by a local same-sex couple that has been unable to obtain a marriage license from your Probate Court. The denial of marriage licenses to same-sex couples is inconsistent with the federal Constitution, so we write to ask that you immediately take steps to ensure that marriage licenses are made available to all qualified marriage-license applicants, regardless of sexual orientation or gender.

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February 11, 2015

Hon. James Hall, Probate Judge
Lauderdale County
P.O. Box 1059
Florence, AL 35631-1059

Dear Judge Hall:

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