

Alabama Chief Justice obstructing gay marriage - AvvoStories

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It's not surprising that some people have a hard time understanding the difference between personal morality and public legality. What is surprising is that some of those people are legal professionals.

Last year, the Supreme Court's decision in Obergefell v. Hodges secured marriage equality in the United States once and for all. But that didn't stop some public officials from using their offices to enforce their own religious beliefs.

The power of denial

In Alabama, Chief Justice Roy Moore issued an administrative order on January 6 asserting that Alabama probate judges should not issue marriage licenses to gay couples pending the resolution of "lingering questions about the impact of the federal decision."

Moore neglected to say what those questions were (who should wash the dishes, maybe?), but his supporters have since provided a rationale that Obergefell v. Hodges only overturned same-sex marriage bans in Michigan, Kentucky, Ohio and Tennessee. Even if it were the case—and it's not—that a U.S. Supreme Court ruling only applies in the states from which the case originated, Alabama would still be required to recognize same-sex marriages. That's because in January of 2015, the case of Searcy v. Strange was decided in favor of marriage equality by a federal judge in Alabama.

Most probate judges in Alabama acknowledge the role and authority of the U.S. Supreme Court and are ignoring the ban. But needless to say, civil rights organizations are calling for Moore's removal from office. Again.

Losing his job, winning over voters

Roy Moore has already lost his seat once before, after famously defying a federal court order to remove a monument of the Ten Commandments from public property. In a prescient 2003 ruling, a state ethics panel found that Moore had no intention of following any federal order with which he disagreed. Stating that any punishment other than removal from office would simply result in a repeat performance, the panel removed him from the bench.

In 2012, Moore ran for office again, and was returned to the same office he had been removed from. Even now, after (and in part because of) his repeat performance of thumbing his nose at the federal courts, Moore has strong support among the voters of Alabama. In 2006 in a state referendum, over 80 percent of Alabama voters supported a gay marriage ban in the state. Moore's philosophy of "parallelism," which views state autonomy as a central feature of American government, has broad appeal, despite its similarities to states' rights arguments that were used during the Civil War in the 1860s and again during desegregation battles in the 1960s.

In fact, despite both legal and public calls for his removal from office, at least one academic has stated that Moore is popular enough to win re-election—if he was eligible to run. He is not, because the Alabama

Constitution forbids the election of judges who will reach the age of 70 during the term for which they are running.

The odds are good that Moore will abide by the re-election ban. It is a state law—which he consistently supports and abides by—rather than a federal law. But once a judge starts cherry-picking which laws he will recognize, there's really no telling what he might do.

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