

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

PAUL HARD,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:13-cv-922-WKW
)	
ROBERT BENTLEY, <i>et al.</i> ,)	
)	
Defendants.)	

MOTION TO DISMISS

Defendant Luther Strange, Attorney General, pursuant to Rule 12 of the Federal Rules of Civil Procedure, respectfully moves that all claims in this action against him be dismissed on grounds that the Plaintiff has received the relief that he seeks and the United States Supreme Court has resolved the questions underlying Plaintiffs' claim. This case is now moot. In support of this motion, Defendant states as follows:

1. Plaintiff brought this action seeking to have his out-of-state same-sex marriage recognized by Alabama officials. Specifically, he sought to have the death certificate of David Fancher altered to reflect their marital status. (*See* Complaint, doc. 1). Plaintiff argued that the Fourteenth Amendment to the United States Constitution requires Alabama to recognize his same-sex marriage to the late Mr. Fancher. (*Id.*)

2. In a similar action raising the same claims, a federal court in the Southern District of Alabama entered a permanent injunction prohibiting General Strange from enforcing Alabama's marriage laws, to the extent those laws prohibit the recognition of same-sex marriages. *Searcy v. Strange*, ___ F.Supp.3d ___, 2015 WL 328728 (S.D. Ala., 2015). In yet another action, a preliminary injunction was entered that likewise prohibited General Strange from enforcing Alabama's marriage laws. *Strawser v. Strange*, 44 F.Supp.3d 1206 (S.D. Ala., 2015). General Strange has complied with those injunctions. Further injunctive relief against the Attorney General is unnecessary and would change nothing.

3. Moreover, Plaintiff has already received the relief that he seeks. Following the ruling in *Searcy*, the State of Alabama issued an amended death certificate for Mr. Fancher that reflected his marital status as Plaintiff requests. (*See* Doc. 80, 80-1) (amended death certificate).

4. In addition, a decision of the United States Supreme Court has resolved any legal dispute. Before Plaintiff filed suit, same-sex couples around the country filed similar actions in other states. The United States Supreme Court agreed to hear one of those cases, and on June 27, 2015, the Court held that the Fourteenth Amendment requires states to issue marriage licenses to same-sex couples on the same basis as they issue marriage licenses to opposite-sex couples, and to recognize same-sex marriages performed in other states. *Obergefell, et al. v.*

Hodges, Director, Ohio Department of Health, et al., 576 U.S. ____ (2015). While Attorney General Strange disagrees with the Supreme Court’s holdings, the Supreme Court’s decision is the law of the land.

5. There are no longer questions for this Court to decide, nor is there effective relief against Attorney General Strange that the Court could enter. No case or controversy exists for purposes of Article III jurisdiction. There is nothing more for this Court to do, other than to dismiss the action, and the case is now moot:

The doctrine of mootness derives directly from the case-or-controversy limitation because an action that is moot cannot be characterized as an active case or controversy. [A] case is moot when the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome. As this Court has explained, put another way, a case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief. If events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed. Indeed, dismissal is required because mootness is jurisdictional. Any decision on the merits of a moot case or issue would be an impermissible advisory opinion.

Al Najjar v. Ashcroft, 273 F.3d 1330, 1335–36 (11th Cir.2001) (per curiam) (citations and internal quotation marks omitted). *See also, Reich v. Occupational Safety & Health Review Comm’n*, 102 F.3d 1200, 1201 (11th Cir. 1997) (“A claim for injunctive relief may become moot if: ‘(1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur and (2)

interim relief or events have completely and irrevocably eradicated the effects of the alleged violations.””) (quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 99 S. Ct. 1379, 1383, 59 L. Ed. 2d 642 (1979)).

Because Plaintiff has already received the relief that he seeks and because the United States Supreme Court has resolved the underlying legal questions, this action is moot, there is no case or controversy for purposes of Article III jurisdiction, and the claims against Attorney General Strange should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 14, 2015, I electronically filed the foregoing document using the Court's CM/ECF system which will send notification of such filing to the following persons:

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