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Facing Mixed Messages, Alabama May Gain Clarity on Gay Marriage

MOBILE, Ala. — After days of judicial confusion, some clarity may come on Thursday to Alabama's approach to same-sex marriage, as a federal judge considers whether to compel a probate judge here to issue marriage licenses to gay couples.

While a ruling would pertain only to the probate judge in Mobile County, it would send a signal to judges statewide, who are caught between a federal ruling that lifts the state ban on same-sex marriage and an order from the State Supreme Court chief justice to ignore the ruling.

For now, probate judges in 23 of Alabama's 67 counties are issuing marriage licenses to gay couples. Licenses are being handed out only to straight couples in 18 counties, and no marriage licenses at all are being issued in 26 counties.

"I think the great majority are essentially kind of confused," said Shannon Minter, the legal director for the National Center for Lesbian Rights, who is representing four gay couples in Thursday's hearing.

Their confusion is understandable.

On Jan. 23, Judge Callie V. S. Granade of Federal District Court ruled that Alabama's ban on same-sex marriage was unconstitutional. On Monday, with the United States Supreme Court electing not to intervene, same-sex marriages were expected to begin taking place across the state.

But on Sunday night, the chief justice of the State Supreme Court, Roy S. Moore, ordered Alabama's probate judges not to issue marriage licenses to gay couples. He argued that the ruling, in which only the state attorney general was the defendant, did not compel the state's probate judges to act.

Judge Granade recognized that as technically correct in a separate ruling this week, though she emphasized that the state's ban had been ruled unconstitutional and that probate judges had an obligation to obey the law.

On Tuesday, to clear all this up, six gay couples asked Judge Granade to rule on the issue and listed the probate judge here in Mobile County, Don Davis, as a defendant. The result is Thursday's hearing, though it is not known whether the judge will rule immediately.

Among the issues being closely watched is whether, if Judge Granade rules in favor of the gay couples, she will impose a fine or some other penalty on a probate judge who does not comply.

Mr. Davis, who has kept his office closed because of the "conflicting orders," asked the State Supreme Court on Monday for guidance. That request was turned down unanimously on Wednesday night for procedural reasons.

In a concurring opinion, Justice Michael F. Bolin of Alabama Supreme Court called the whole episode a "circus" and had kind words for almost no one involved. But, echoing Chief Justice Moore, he raised the question of whether lower federal court rulings are truly binding on states, and he suggested that only a United States Supreme Court decision, expected in June, would settle the matter.

This line of thinking, in addition to Chief Justice Moore's insistence that he would never accept same-sex marriage, suggests that the judicial quarrel roiling Alabama could continue for some time [...].

Mr. Minter, however, does not seem fazed.

"I'm confident that if we get a positive ruling from Judge Granade tomorrow, it will resolve any remaining confusion or uncertainty on the part of other probate judges," he said [...].