The Campaign for Southern Equality's Attempt to Reopen its Case Against the Governor of Mississippi: a "Hail Mary Pass?"

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The Campaign for Southern Equality ("CSE") has done what many litigators consider the "Hail Mary Pass" – they filed a motion to reopen a judgment they received in Campaign for Southern Equality, et al., v. Bryant, and have asked the Court to modify a permanent injunction. The injunction, which was entered last summer, provided that "In light of the United States Supreme Court's decision in Obergefell v. Hodges, No. 14-556, 2015 WL 2473451 (U.S. June 26, 2015), and the issuance of the mandate from the United States Court of Appeals for the Fifth Circuit, it is now appropriate to permanently enjoin the enforcement of Mississippi's same-sex marriage ban."

Why would they seek to reopen this case? HB 1523.

The Defendant in this law suit, Phil Bryant, is the governor of Mississippi. Less than a year after the permanent injunction entered in the Campaign for Southern Equality matter, Governor Bryant signed HB 1523, the so-called "Protecting Freedom of Conscience from Government Discrimination Act," into law. In its Motion, the CSE explains that the Court that issued the injunction was heavily involved in implementing its order when Mississippi clerks refused to issue marriage licenses to same-sex couples. HB 1523 effectively defies the Court's ruling by permitting "[a]ny person employed or acting on behalf of the state government who has authority to authorize or license marriages" to recuse themselves from issuing marriage licenses to gay or lesbian couples so long as they profess to hold the "sincerely held religious belief" that "[m]arriage is or should be recognized as the union of one man and one woman." HB 1523 §§ 2(a), 3(8)(a).

In reopening its lawsuit, the CSE seeks to "create an enforcement mechanism to ensure that [same-sex couples'] constitutional right to marry will be adequately protected." You can read the CSE's complete motion HERE.

Rule 60 of the Federal Rules of Civil Procedure allows a party to ask a court to reconsider a final judgment where "extraordinary circumstances" exist and the party asks the court to do so within a reasonable time. Fed. R. Civ. P. 60(b)(6), 60(c). These types of motions are fairly uncommon and fall within the Court's discretion, which means that the

judge has the authority to decide whether the circumstances at issue in any given matter are sufficient to warrant relief.

The CSE argues that the Governor's actions in enacting HB 1523 circumvent the Court's injunction and deny same-sex couples the protections afforded to them by the Court. The Governor has not yet filed an opposition to the CSE's motion.

So, is this really a hail Mary pass? It's hard to say. HB 1523 does seem to permit clerks to discriminate on the basis of LGBT status – something the permanent injunction specifically intended to prohibit. This may rise to the level of "extraordinary circumstances" that would warrant 60(b) relief. The opposition to the CSE's motion hasn't been filed yet, so we only have half of the story at this point. This will be an issue to watch and could prove to be an interesting use of Rule 60(b).