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Matt Murphy: [00:00] Obviously the huge story, the huge news over the last week has been a decision on the part of a Mobile County federal district judge – Judge Granade ... Jenny Granade – to ban or to strike down the ban on same-sex marriage that was passed by the people of the state of Alabama by a Constitutional amendment in 2006.

Weighing in on this has been the Chief Justice of the Alabama Supreme Court, Roy Moore, who said that a federal judge's ruling that the state's ban on same-sex marriage is unconstitutional [00:30] does not mean that probate courts have to issue marriage licenses to same-sex couples.

To speak to the matter, we welcome back to the program the Chief Justice of the Supreme Court of the state of Alabama, Roy Moore. Judge, good morning.

Roy Moore: [00:44] Morning Matt, how are you doing?

Matt Murphy: [00:45] I'm doing well. We haven't spoken in a long time. I trust you and the family are doing okay?

Roy Moore: [00:49] We're very well. Thank you.

Matt Murphy: [00:51] Very good. Very good. Obviously you've weighed in on this now, and folks are very curious to hear your thoughts on the matter. Just generally speaking, [01:00] give us your perception of the ruling from this past Friday.

Roy Moore: [01:03] Well it's simply against our constitution. But the point is about federal court, many people think that federal courts are higher than state courts, and that's not the fact. Courts have long shared a concurrent obligation with lower federal courts to interpret the United States Constitution and protect the rights contained in it.

State courts ... and I'll quote from the United States Supreme Court ... have the [01:30] solemn obligation and responsibility equally with the federal courts to safeguard our constitutional rights. Historically, Matt, because a lower federal court exercises no appellate jurisdiction over state tribunals, decisions of lower federal court are not conclusive on state courts.

In other words, what the federal courts decide are not conclusive on our state courts because there's a parallel track to the United States Supreme Court. [02:00]



This is something that's long recognized in our law. This is something I'm not making up, you know, out of 1800 law. This court is not bound by the decisions of lower federal courts. That's the 1993 Alabama Supreme Court opinion.

Matt Murphy:

[02:16] That was not ... was that the majority opinion?

Roy Moore:

[02:19] Yes. This is Alabama's Supreme Court decisions. Here's another one in 1974, the decisions of federal courts – other than the Supreme Court of the United States [02:30] – are not binding to public state court of last resort.

This court, here's another quote in, umm, from 2008. I mean, that's pretty recent. This court is not bound by decisions of United States courts of appeals or the United States district courts. This is something that is recognized not just by Alabama, but we can go to the opinion of Thomas in a federal decision of *Lockhart v. Fretwell* [03:00] in 1993.

This is Justice Thomas who is still on the Supreme Court. Says the supremacy clause demands that state law yield to federal law, but neither federal supremacy nor any other principle of federal law require that state court's interpretation of federal law give way to a lower federal court's interpretation.

In our federal system, the state trial court's interpretation of federal law is no less authoritative than that of the federal court of appeals in whose circuit the trial court is located. [03:30] That's the United States Supreme Court.

Matt Murphy:

[03:31] Judge it seems it is your position, and you're citing some of these various opinions, that any dispute between the state and the federal government has to be decided by the United State Supreme Court, ultimately.

Roy Moore:

[03:48] Yes. And that's because historically, Matt, when our country was created there was one court, federal court. There was the Supreme Court of the United States. Under the Constitution [04:00] Congress can create whatever federal district courts and courts of appeal as they choose. And they have.

But their opinions are no more binding on our state than our opinions are binding on theirs, and that's because they don't have appellate jurisdiction over state courts. And I'll quote from the 7th Circuit – because lower federal courts exercise no appellate jurisdiction ... this is a court of appeals now, federal court ... because lower federal courts exercise no appellate jurisdiction over state tribunals [04:30] decisions of lower federal courts are not conclusive on state courts.

1970. But if you want something really recent, you can go to

the United States Supreme Court in 2013. That's Johnson v. Williams. It says the views of the federal courts of appeal do not bind the California Supreme Court when it decides a federal Constitutional question. You can also go to the United States Supreme Court in 1993.

The supremacy clause [05:00] demands that state law yield to federal law, but neither federal supremacy nor any other principle of federal law requires that state court's interpretation of federal law give way to a lower federal court's interpretation.

Matt Murphy:

[05:11] All right. You said that state courts should consider federal court's, quote, highly persuasive ... what did you mean by that?

Roy Moore:

[05:22] That means that the state court, that's just quoting various statements of law, that a federal court's opinion should be highly persuasive [05:30] but not binding on state courts. In other words, every state court in Alabama is free to determine a Constitutional question just like the federal courts.

Now in this situation on same-sex marriage, obviously there's a dispute among the circuits.

Matt Murphy:

[05:46] Wait. Tell me when the courts have considered the 2006 Constitutional amendment. Have they? Has the Alabama Supreme Court taken up the question as to whether or not it's Constitutional?

Roy Moore:

[05:58] Oh, I don't think. I don't know that they have. [06:00]

Matt Murphy:

[06:01] But then there isn't a dispute between the federal judge's decision and a state court decision. Where's the dispute?

Roy Moore:

[06:08] There is. There is if there's a consideration. In this case, as a matter of fact, has gone through the court of appeals. It's gone through the court of appeals of the state of Alabama. It was then transferred to the ... not transferred ... it was then withdrawn after the court of appeals ruled - and I have the court of appeals opinion in my hand, of Alabama. [06:30]

It then went to the federal court. The federal district court, and proceeded from there. In fact, the federal district court recognizes that. If I can cite what the federal district court said, umm ...

Matt Murphy:

[06:46] Why was it moved while you're looking for that? Why was it moved from the state court of appeals to the federal district court?



Roy Moore:

[06:53] That's what the parties wanted. Let me quote from Judge Granade's order. That's about as specific as you can get.
[07:00]

It says the probate court's decision was appealed to the Supreme Court of Alabama, which assigned the matter to the court of civil appeals. That court affirmed the probate court, which denied the licenses, or denied the adoption. Thus plaintiffs contend they, quote, have exhausted all avenues of legal recourse in Alabama state courts, and left without the remedy they seek – the adoption.

That's exactly what happened. [07:30] This federal court was acting as a court of appeal from the Alabama Court of Appeals. That's adverse to the doctrine of *Rooker v. Feldman* – a Florida court opinion.

So basically what we're doing here is the probate courts have equally a responsibility to the United States Supreme Court. Every [08:00] official in Alabama and every judge and every executive and every legislator and so forth, has taken an obligation and an oath to the United States Constitution and the Constitution of their state.

Just like federal courts, they take an oath to the United States Constitution. Historically they have the equal obligation and responsibility to interpret and safeguard the Constitution.

Matt Murphy:

[08:28] And when there's a dispute [08:30] between that interpretation, it's your contention that the states are not bound by a federal district court or a federal appellate court. They're only bound by the United States Supreme Court?

Roy Moore:

[08:41] Exactly. That's the law. It's not something I'm making up ...

Matt Murphy:

[08:46] Well thankfully the court is set to take up the question of whether or not bans such as this would be permissible or whether or not it would be impermissible not to recognize marriages from other states. [09:00] [audio cut]

Judge Roy Moore who is on the Murphy Show hotline, brought to you by Belkin Termite [phonetic] and Pest Control. All right so judge, just to back up to catch folks up, you recognize obviously, you're well learned in these matters, you recognize Article 6 of the United States Constitution, which is commonly known as the supremacy clause.

It indicates that the Constitution trumps state Constitution. Right? The Constitution of the States is the supreme law of the land.



Roy Moore:

[09:28] Yeah. It's the supremacy clause. [09:30] It says, and I'm quoting from memory but I've got this down, this constitution is law of the United States. That's what it's talking about, the supremacy. The Constitution of the United States will be the supreme law of the land, and judges of every state shall be bounded by them. I'm skipping part of it.

And judges in every state shall be bounded by it. That's because when the supremacy clause was written, there was only one court. So they addressed that the state laws and judges would be bound thereby. [10:00] That's why we take an oath to the Constitution.

Matt Murphy:

[10:02] Are the citizens of Alabama bound by any decision by the federal district court?

Roy Moore:

[10:08] No. Well, it depends if they are in that court. Now you take this case before us, or before the federal court. These people that are in this case are bound by their decision. They're over that case.

And the state would effect the state interfering with their rights, or what the court says is their rights. [10:30]

Matt Murphy:

[10:32] So let me be ... I want to be clear. So the states that have passed same-sex marriage laws allowing same-sex couples to get married ... if an appellate court determined those laws were unconstitutional, then you would argue that that state did not have to recognize that appellate court?

Roy Moore:

[10:51] Yep. [crosstalk] It's a state court.

Matt Murphy:

[10:54] All right. Now that's consistent.

Roy Moore:

[10:55] You're just flip-flopping the ...

Matt Murphy:

[10:57] Yeah I'm just flip-flopping the terms, but yeah. I'm just trying to be clear. [11:00] So as the Supreme Court is set to decide this, I guess for all parties involved, do you feel like we'll get a determination once and for all? What is and is not Constitutional?

Roy Moore:

[11:13] Well I think they wouldn't take it if they wouldn't do a determination. And I do think they're going to rule something. And basically, like in all the cases recently before the Supreme Court, you've got a 4-4 split, with Justice Kennedy flip-flopping between the different opinions. And he generally makes the decision. [11:30] So I think that's where it will come down.

Now where they lose me is that when Justice Kennedy wrote Lawrence v. Texas in 2003 – about sodomy. He put there explicitly, that it was a right of privacy, and they were not

saying that this could be taken into the public arena.

Now they're taking it into the public arena through same-sex marriage. But there is a split now in the circuits. The courts of appeals of the federal court, some courts ruled that [12:00] there is no right and some have ruled there is a right. So that's why the Supreme Court is being forced nearly to take this decision, and they said they'd take it in April.

We'll wait and see. But I submit to you that 21 states have already bowed down to the federal court decisions when they don't have to. That's a ...

Matt Murphy: [12:22] Thankfully if the court is to decide it this summer, then thankfully we'll have our answer come this summer, right? On [12:30] whether or not they have to.

Roy Moore: [12:33] Yes.

Matt Murphy: [12:34] So what's the purpose ... I don't mean to be overly simplistic but I'm trying to understand. What's the purpose of taking a state matter to federal district court? If I assume you're correct that states do not have to recognize those decisions necessarily, on Constitutional questions, then what's the purpose for taking them into those courts in the first place? [13:00]

Roy Moore: [13:01] You'd have to ask the petitioners. [Matt laughing] I ... I didn't take the case into the federal court. I think it's another federal district judge trying to push her will, in this case, on the state of Alabama. That's what I object to and that's what I stand for.

That's why I wrote the letter to the governor. I'm not just a justice or a judge on the court, I'm the chief administrative officer of the judicial system. That's a ... I have a duty to protect and defend the integrity and jurisdiction of the courts of this state. [13:30]

That includes the probate courts. When a federal district judge like Judge Granade declares the Alabama sanctity of marriage amendment to the Constitution unconstitutional, and then they couple it with threats. That's very important. Attorneys in the case and court costs and attorney fees could be allowed if probate judges refuse to follow Granade's order. That's an attempt for force state judges to comply with an unlawful order when the temporary stay is removed. [14:00]

In other words she's got a temporary stay, but if it's removed they're going to try to force the probate judges to comply.

Matt Murphy: [14:06] But judge you seem to have a disagreement with the

process. I mean the Supreme Court is going to demand that these matters that involve petitioners and the state go through the federal district court and go through the appellate process before they would consider hearing the case.

You seem to take exception with that part of the process.

Roy Moore: [14:28] What part of the process? The stay?

Matt Murphy: [14:30] She has to come up with a decision on the Constitutional question. And you're arguing that ...

Roy Moore: [14:35] She's come up with a decision on a Constitutional question, Matt. But that applies only to these parties. It doesn't apply to state courts to have an equal obligation and responsibility to interpret the United States Constitution.

Until the Supreme Court rules, they are not bound by her ruling.

Matt Murphy: [14:53] Would you be satisfied if the appellate court decided to extend the stay [15:00] to beyond the United States Supreme Court's ruling?

Roy Moore: [15:03] Yes. You know, that would answer the question as to those parties and supposedly according to them it would answer the position of me ... of myself. If they can't rule before the Supreme Court, they can't mandate before the Supreme Court rules.

That's what they're trying to do.

Matt Murphy: [15:20] I know you hesitate to get into hypotheticals, but if the United States Supreme Court should determine that the ban on [15:30] same-sex marriage is unconstitutional, where would that leave you as Chief Justice? I know your personal position on the matter...

Roy Moore: [15:36] That's a very hard decision because I know there's nothing in the United States Constitution that authorizes the Supreme Court of the United State or any federal court anywhere to misinterpret the word 'marriage' to include something outside that.

Whether it's by the equal protection clause, the due process clause or the full faith and credit clause. They are making these things up [16:00] and they're ruling on social matters. And nothing in the Constitution gives ... you're supposed to be a Constitutional expert, point to me the Constitutional provision that gives the United States government the power to redefine marriage. You can't find it, Matt.



Matt Murphy:

[16:17] Well, but Judge it sounds to me like in your answer you're saying well if they were to decide that way that you know better.

Roy Moore:

[16:25] No, it's not saying I know better. It says I know the Constitution. And the Constitution [16:30] knows better. You ... if you can tell me one part of that Constitution that gives them the power to define social policy ... why don't you tell me right now.

Matt Murphy:

[16:41] Well it's not a matter of social policy. I think the court would tell you that it would be a matter of equal protection under the law and full faith and credit.

Roy Moore:

[16:51] They have equal protection under the law to marry one person of the opposite sex. That's equal protection. That's what equal protection means. The law applies to everybody [17:00] equally.

Marriage is between one man and one woman. In fact, that's the state ...

Matt Murphy:

[17:05] But that's not in the Constitution anywhere. I mean that marriage is between one man and one woman.

Roy Moore:

[17:12] It is in the United States Supreme Court. Umm, prior opinions. They've actually said that. They've said the basic foundation of marriage and family upon which the Constitution rests is, quote, the union for life of one man and one woman in the holy state of matrimony [17:30] the sure foundation of all that is stable and noble in our civilization, the best guarantee of that reverent morality, which is the source of all beneficent progress in social and political improvements.

That's Murphy v. Ramsey 1885, quoted again in 1900, 1908 in U.S. v. Finney.

Matt Murphy:

[17:50] All right, so when you ... and we only have a couple of minutes left. I didn't mean to interrupt you judge. When you say you'd have a difficult decision to make, does that mean whether or not [18:00] you could continue your duties under those rulings should they rule in that manner?

Roy Moore:

[18:07] Well, it would be whether or not I could comply with an unlawful order of the United States Supreme Court.

Matt Murphy:

[18:13] Yeah, but you just said the United States Supreme Court ... they rule on the Constitutional question, and ...

Roy Moore:

[18:20] It binds state courts, yes.

Matt Murphy:

[18:22] And you would be bound to honor the decision that

they made, would you not?

Roy Moore: [18:27] Well we'll cross that bridge Matt. [Matt laughing]
[18:30] You talk about a hypothetical. Yes, that's definitely a hypothetical. [crosstalk] I'm telling you in my opinion right now, in the opinion of anybody that's got any knowledge of Constitutions, there's nothing in the Constitution that allows the United States Supreme Court or federal district courts to redefine marriage.

Matt Murphy: [18:48] There's nothing in the Constitution that defines marriage whatsoever, so how can they redefine it if it's not already defined in the Constitution?

Roy Moore: [18:56] You know why it's not in the Constitution ... because it's not there. [19:00] You're exactly right. [crosstalk] You know what enumerated powers are? That is what's given to the Constitution and given to the federal government to rule on.

Federal powers, the powers not delegated to the United States by the Constitution nor prohibited by it. The Constitution to the states, are reserved to the states ...

Matt Murphy: [19:22] And judge, that's the central question. Is whether or not through the equal protection clause the prohibition exists. And there said ... answer [19:30] obviously the question. Look I really appreciated the dialog and I hope you have too. And I know the listeners are very compelled with it. I thank you for coming on and explaining your position, and hopefully we can converse very soon. Thank you.

Roy Moore: [19:43] Sure. Thank you.

Matt Murphy: [19:44] Judge Roy Moore. [end]



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