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FULL TEXT

**Lawsuit challenges Ala. anti-gay marriage law**

*The Associated Press*

February 13, 2014

MONTGOMERY, Ala. (AP) — A gay man whose partner was killed in a car accident has filed a federal lawsuit challenging Alabama laws that bar the recognition of his marriage, which took place in Massachusetts.

The lawsuit, filed in Montgomery federal court, seeks to force Alabama to recognize same-sex marriages performed in states that allow them. Lawyers said the bans are unconstitutional and treat Alabama gays and lesbians as second-class citizens.

"The sanctity laws silence and demean lesbian and gay Alabamians by sending a clear message: You are less than other citizens and your relationships mean nothing here," said Samuel E. Wolfe, a lawyer with the Southern Poverty Law Center, which is representing the plaintiff.

Notice of the lawsuit was delivered to Alabama's governor and attorney general Thursday, Wolfe said.

The suit — coming just one day after a federal judge in Kentucky struck down that state's similar ban — was initiated by Paul Hard, 55, of Montgomery. Hard says he was treated cruelly after the death of his husband, David Fancher, virtually ignored at the Alabama hospital where Fancher was taken after the accident.

Hard said he is also fighting to be considered as the surviving spouse in ongoing litigation over Fancher's death.

Fancher, 53, died within moments of the crash, but Hard said hospital staff refused to give him any information about his condition because the two weren't considered legally related. An orderly later passed on the news that Fancher had died, Hard said.

The pain was compounded when the death certificate listed Fancher as never married. Hard said he futilely begged to have that changed.

"If I can let people know how this law unjustly and cruelly affects people, I will do it. Ultimately, I hope these laws are overturned so it no longer gives folks permission to treat Americans as second-class citizens," Hard said.

The Alabama Legislature in 1998 approved the Defense of Marriage Act that said Alabama would not recognize same-sex unions. Alabamians in 2006 voted to put a similar ban in the state constitution.

That vote proved that the state's residents believe "marriage in our state exists only between a man and a woman," said Alabama Speaker of the House Mike Hubbard in a statement criticizing the lawsuit.

"This lawsuit is part of a coordinated liberal agenda that is designed to erode the conservative Alabama values that the citizens of our state hold close to their hearts," Hubbard said.

The lawsuit is the latest in a string challenging gay marriage bans in socially conservative states.

In addition to Kentucky, federal judges in Utah and Oklahoma also recently that struck down gay marriage bans in those states. A case is also awaiting a federal judge's decision in Virginia. Couples in Louisiana and Missouri filed similar challenges this week.

Southern Poverty Law Center David Dinielli said the lawsuit relies on the precedent set by the case that overturned the federal Defense of Marriage Act. He said he hopes the case will continue a trend of federal judges finding the state bans unconstitutional.

Like recent challenges in other states, the lawsuit asserts that the Alabama laws violate the Equal Protection Clause of the U.S. Constitution by treating gays and lesbians differently than heterosexual couples.

Dinielli said the lawsuit was filed in Montgomery federal court because Fancher and Hard both lived in the city and that Alabama Gov. Robert Bentley and Attorney General Luther Strange are defendants in the case.

Strange's office said it had no comment. Jennifer Ardis, Bentley's communications director, said the governor believes in the "traditional definition of marriage as being between a man and a woman" and would fight the lawsuit.

Hard, a therapist and former Baptist preacher, and Fancher married in a 2011 ceremony in Massachusetts, one of the states that allow same-sex couples to wed.

Part of the legal peg for the lawsuit is that Hard can't be considered the surviving spouse and can't collect any judgment in the ongoing wrongful death litigation over the crash. However, Hard said his motivation is principle, not money.

Hard said he believed Fancher, who he said was a strong advocate for the gay community, would be proud.

"I think, frankly, he would tell me to go for it," Hard said.

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### **Alabama House calls for Article V convention to amend U.S. Constitution**

*The Associated Press*

February 13, 2014

MONTGOMERY, Alabama — The Alabama House is calling on Congress to convene a state-led convention to amend the U.S. Constitution to impose limits on the federal government.

A resolution sponsored by Republican Rep. Ken Johnson of Moulton cleared the Alabama House on Thursday and now goes to the Senate. It proposes a convention under Article V of the Constitution. It would be limited to imposing fiscal restraints on the federal government, limiting the power and jurisdiction of the federal government, and implementing term limits on federal elected officials.

Johnson said, "The federal government under the Obama administration has become a rabid beast that oversteps its authority with regularity."

The Constitution has never been amended through an Article V convention.

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## **Alabama House passes resolution calling for Convention of the States**

*Yellowhammer News*

February 13, 2014

Cliff Sims

The Alabama House of Representatives today passed House Joint Resolution 49, an application to Congress calling for a Constitutional Convention under Article V of the United States Constitution.

Article V of the U.S. Constitution says that a convention of the states can be convened if two-thirds of the state legislatures (34) approve an application for the convention to occur.

By design, that's a high bar to clear. And the bar gets even higher when it comes to actually passing a constitutional amendment. It takes an affirmative vote from three-fourths (38) of the states to actually amend the constitution. Each state would only get one vote on proposed amendments.

The resolution passed today by the Alabama House strictly limits the purpose of the proposed convention to three areas:

- 1) imposing fiscal restraints on the federal government through a balanced budget amendment;
- 2) limiting the power and jurisdiction of the federal government; and
- 3) implementing term limits on federal elected officials.

Rep. Ken Johnson, R-Moulton, told *Yellowhammer* that he introduced the resolution because he believes a convention is the last available option to force the federal government to live within its means.

"We're calling for restraints on the federal government," Johnson said. "That means an amendment that forces them to balance the budget and stops these overreaching federal mandates. We're also calling for term limits on federal elected offices."

Johnson said it is important that the states are able to limit the scope of the convention ahead of time, which his resolution does, to mitigate the risk of a "runaway convention."

"Because we've never done it, the idea that there could be a 'runaway convention' is always brought up as a concern," Johnson said. "The convention would be limited to a small set of issues. But on top of that, the safeguard is that it only takes 13 states to kill any runaway convention. If there aren't 13 conservative states left, we're in trouble, period. And Washington is a runaway train right now anyway. How much more damage could be done?"

This resolution, unless rescinded by a succeeding Legislature, constitutes a continuing application until at least two-thirds of all State Legislatures have made application for a convention to provide for these purposes.

It now goes up to the Senate, where several legislators have already been actively involved in the process leading up to a potential Constitutional Convention.

In December of last year, Alabama state senators Arthur Orr, R-Decatur, and Trip Pittman, R-Daphne, joined roughly 100 state legislators from 32 states at Mt. Vernon, Virginia to discuss the ground rules of a potential Convention of the States.

State Sens. Trip Pittman, R-Daphne, and Arthur Orr, R-Decatur, at the Mount Vernon Assembly  
State Sens. Trip Pittman, R-Daphne, and Arthur Orr, R-Decatur, at the Mount Vernon Assembly

The full resolution passed by the Alabama House today can be read below.

WHEREAS, the Founders of our Constitution empowered state legislators to be guardians of liberty against future abuses of power by the federal government; and

WHEREAS, the federal government has created a crushing national debt through improper and imprudent spending; and

WHEREAS, the federal government has invaded the legitimate roles of the states through the manipulative process of federal mandates, most of which are unfunded to a great extent; and

WHEREAS, the federal government has ceased to live under a proper interpretation of the Constitution of the United States; and

WHEREAS, it is the solemn duty of the states to protect the liberty of our people, particularly for the generations to come, to propose amendments to the Constitution of the United States through a Convention of the States under Article V to place clear restraints on these and related abuses of power; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That the Legislature of the States of Alabama hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the states limited to proposing amendments that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials.

BE IT FURTHER RESOLVED, That the Secretary of State is hereby directed to transmit copies of this application to the President and Secretary of the United States Senate and to the Speaker and Clerk of the United States House of Representatives, and to the members of the Senate and House of Representatives of the United States Congress from this state; and to also transmit copies hereof to the presiding officers of each of the legislative houses in the several states, requesting their cooperation.

BE IT FURTHER RESOLVED, That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until the Legislatures of at least two-thirds of the several states have made applications on the same subject.

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### **Legislature creates Alabama Workforce Council to advise colleges and schools**

*The Associated Press*

February 13, 2014

MONTGOMERY, Alabama — The Alabama Legislature agreed Thursday to create a council of business executives to advise state leaders on workforce development issues.

The Senate voted 28-1 to go along with changes the House made in a bill sponsored by Republican Sen. Paul Bussman of Cullman. The bill now goes to the governor, who said he will sign it into law.

Bussman's bill creates the Alabama Workforce Council, composed of business and industry leaders appointed by the governor and by other state officials. The group will advise the state's two-year college chancellor and state school superintendent on policies and programs affecting workforce development.

Supporters said the bill is part of the state's efforts to make sure Alabama has the skilled workers needed to recruit new industries and help existing industries expand.

Gov. Robert Bentley said the bill implements a recommendation of his College and Career Ready Task Force.

"There is nothing more important than job creation, and having a skilled workforce is one of the biggest components to economic development," Bentley said Thursday.

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### **Tracking the 2014 session: Summary of Thursday's action in the Alabama Legislature**

*The Associated Press*

February 13, 2014

MONTGOMERY, Alabama — A summary of action in the Alabama Legislature on Thursday, the 14th meeting day of the regular session:

#### **HOUSE:**

—Passed a bill saying a child who withdraws from a public school to attend an accredited online school will not be counted as a dropout. Goes to Senate.

—Approved a bill raising the fines for violations of pipeline safety standards. Goes to Senate.

—Passed a bill making it a crime to repair a car using fraudulent air bags. Goes to Senate.

—Passed a bill allowing the governor to declare a state of emergency for specific counties rather than declaring one statewide. Goes to Senate.

#### SENATE:

—Approved a bill saying public schools can teach students the history of traditional winter observances, including Christmas and Hanukkah. Goes to House.

—Passed a bill saying the licensing of a physician, optometrist, chiropractor or dentist can't be tied to the health care professional participating in any health insurance program. Goes to House.

—Passed a bill to expand the types of synthetic drugs considered illegal in Alabama. Goes to House.

#### AGENDA:

—House and Senate meet at 1 p.m. Tuesday.

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### **Bill that could cut down on local amendments at election time moves forward in Alabama Senate**

*The Anniston Star*

February 14, 2014

MONTGOMERY — A bill designed to reduce the number of local amendments that appear on statewide ballots moved forward in the Alabama Senate Thursday.

"We spend 90 percent of our time dealing with local issues," said Sen. Linda Coleman, D-Birmingham.

Coleman is the sponsor of a bill that would make it harder for lawmakers to force a statewide vote on countywide laws brought before the Alabama Legislature.

The Alabama Constitution of 1901 gives Montgomery control over many aspects of city and county government, requiring Constitutional amendments for many county-level rule changes. Some of those countywide amendments appear on the ballot only in the county they affect — but if a single state lawmaker disapproves of a countywide referendum, a statewide amendment vote is needed.

If Coleman's bill passes, it would take the opposition of three senators or nine House members to place a county issue on a state ballot.

Coleman said around two dozen county-level issues have been decided as statewide amendments since the year 2000. Most voters didn't know or care about the issues they were asked to vote on, she said.

"It's the uninformed public who have to decide on poultry farms, what kind of feed they can use, and what time they wake the cows up," she said. Coleman said she counted herself among the uninformed public. She said she no longer votes on such amendments.

Coleman's bill passed by a 3-2 vote out of the Senate's Constitution and Elections Committee, and heads to the full Senate for a vote. The committee's chairman, Sen. Bryan Taylor, R-Prattville, opposed the bill.

Taylor said the current system helps prevent counties from opting out of statewide laws and thus creating a hodgepodge of county laws.

"We end up creating a slew of counties and laws," Taylor said.

Nan Ekberg of Alabama Citizens for Constitutional Reform was on hand to watch the committee vote. The group is supporting several amendments, crafted by the state's Constitutional Revision Commission, intended to modernize the state's constitution. The Commission has endorsed an amendment reform proposal similar to Coleman's.

"That's what we call momentum," Ekberg said of the bill's passage.

So far, the Constitutional Revision Commission's suggestions have advanced slowly in the Legislature. A hearing on two other constitutional reform proposals Thursday morning was canceled due to the winter weather affecting the northern part of the state.

Despite the weather, neither the House nor the Senate had trouble getting a quorum of members this week, and both chambers passed a number of bills.

— The House voted 100-0 Wednesday to offer up to \$5 million in tax credits to people or businesses who donate to scholarships that would help high school students enter dual-enrollment programs for two-year college credit. Proponents of the bill say dual enrollment helps students leave high school with a job skill. The bill heads to the Senate for consideration.

— The Senate voted 22-7 Thursday in favor of a bill that explicitly states schools are allowed observe "traditional winter celebrations" including Hanukkah and Christmas. Senators rejected a motion to reconsider the bill and add Kwanzaa to the list of celebrations.

— The House voted 98-0 Thursday in favor of a bill that would allow schools to count students as transfer students, instead of dropouts, if they leave school to attend an accredited online school.



— A Senate committee voted Wednesday to approve a bill that supporters say will strengthen the Alabama Open Meetings Act. The bill would ban some "serial meetings" in which members of a governing body meet in small groups to decide an issue without holding an open meeting; and it would require the Legislature to establish rules that would ensure their meetings are open to the public.

— Sen. Del Marsh, R-Anniston, on Tuesday filed a bill that would allow Weaver to annex a parcel of land on Alabama 21, across the highway from Heroes American Grille. Heroes was annexed last year, shortly after the Legislature approved Sunday alcohol sales in the city. Mayor Wayne Willis said the annexation would encourage development of the parcel across from the restaurant.

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## **2 crime-related bills pass Senate**

*Times Daily*

February 13, 2014

Mary Sell

MONTGOMERY — The list of illegal drugs in Alabama could get longer under Senate Bill 333. The bill, from Sen. Arthur Orr, R-Decatur, passed the Senate Thursday.

“It doesn’t expand punishments, it just adds these various synthetic compounds (to the list of illegal drugs),” Orr said.

He described the chemical compounds as “dangerous and mind altering” and said that new ones are popping up every year.

The Senate also passed a companion bill from Orr. Senate Bill 332, the Alabama Comprehensive Criminal Proceeds Forfeiture Act, says that any property or proceeds used in or derived from the commission of a felony is subject to civil forfeiture.

Orr said that currently there are different forfeiture laws for different types of crimes.

Both bills now go to the House.

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## **Alabama Senate bill: OK to say 'Merry Christmas,' 'Happy Hanukkah' in school**

*The Associated Press*

February 13, 2014

MONTGOMERY, Alabama — The Alabama Senate has approved a bill that the sponsor says will keep education about Christmas and Hanukkah in public schools.

The Senate voted 22-7 Thursday for the bill by Republican Sen. Gerald Allen of Tuscaloosa. His bill now goes to the House for consideration.

Allen's bill allows schools to educate students about the history of traditional winter celebrations and allows student and staff to exchange traditional greetings.

Christmas and Hanukkah are the only celebrations mentioned in the bill. Democratic Sen. Quinton Ross of Montgomery tried to add the African-American observance of Kwanza, but his amendment fell two votes short of passing.

Allen says the bill should give clarity to what educators can do. Opponents say it will prompt a legal challenge.

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**State House of Rep. bill changing Birmingham Water Works Board introduced a day after Senate version moves closer to vote**

*AL.com*

February 13, 2014

Joseph D. Bryant

BIRMINGHAM, Alabama -- The State House of Representatives version of the bill to change the operation of the Birmingham Water Works Board was introduced today by Rep. Paul Demarco.

The bill from Demarco, R-Homewood, includes fewer changes to the five-member authority than the bill from Sen. Jabo Waggoner, R-Vestavia Hills, that was approved by a committee Wednesday and heads to the full floor for a vote.

Waggoner's bill would expand the board to include members from Jefferson, Shelby, Blount, Walker and St. Clair Counties, tilting the balance of power away from the city of Birmingham. The proposed new board would have nine members with five members appointed from outside Birmingham, putting the city in the minority.

While it does not speak to board expansion, Demarco's legislation retains the other proposed board change, including shorter terms and term limits, \$500 monthly caps on board pay and mandated public hearings before rate increases.

The bill is co-sponsored by representatives who are served by the Birmingham Water Works including, David Standridge whose district includes Blount and Jefferson Counties; Dickie Drake, of Jefferson and St. Clair Counties and Randall Shedd whose district includes Blount County.

The bill is assigned to the House Judiciary Committee.

Demarco for years has been a vocal critic of the Water Works Board, saying its operation was not representative of its entire customer base and its leadership indifferent when it came to accountability.

Water Works officials have countered, and have hired lobbyists and consultants to make their point. They point to the utility's sound financial record, clean water quality and voluntarily decreasing compensation as evidence of a well-run agency.

The city of Birmingham has also hired a team of lobbyists in its opposition to any legislation that would change the composition of the Water Works Board.

The City Council and Mayor William Bell have both agreed to a general statement against all the legislation, while at the same time making overtures for some type of compromise.

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### **Federal judge strikes down Virginia same-sex marriage ban**

*Politico*

February 13, 2014

A federal judge ruled Thursday that Virginia's ban on same-sex marriage is unconstitutional.

"Tradition is revered in the Commonwealth, and often rightly so. However, tradition alone cannot justify denying same-sex couples the right to marry any more than it could justify Virginia's ban on interracial marriage," Judge Arenda Wright Allen wrote in a 41-page opinion (posted here).

Ruling on a lawsuit brought by a gay couple who lives in Norfolk, Allen said the state's prohibition on same-sex marriage could not be justified even under the most lax constitutional test for state actions: whether it had a "rational" connection to a legitimate state purpose. Her ruling will not immediately make marriage licenses available to same-sex couples in Virginia because she ordered that her decision be stayed pending an expected appeal.

(Also on POLITICO: Eric Holder to accord more recognition to same-sex couples)

"The Court is compelled to conclude that Virginia's Marriage Laws unconstitutionally deny Virginia's gay and lesbian citizens the fundamental freedom to choose to marry. Government interests in perpetuating traditions, shielding state matters from federal interference, and favoring one model of parenting over others must yield to this country's cherished protections that ensure the exercise of the private choices of the individual citizen regarding love and family," the judge wrote.

Allen's decision is in line with similar rulings in recent weeks from federal judges in Oklahoma and Utah, who ruled that bans on same-sex marriage in those states were unconstitutional. The judge in Oklahoma stayed the ruling pending appeal. The judge in Utah did not, allowing same-

sex marriages to begin immediately, but the Supreme Court stepped in a couple weeks later and suspended the ruling.

Allen, who sits in Norfolk, is an Obama appointee confirmed to the bench in 2011. She's a former Navy JAG corps officer, federal prosecutor and federal defender.

(Also on POLITICO: Comcast readies for Washington war)

Last June, the Supreme Court struck down the key part of the federal government's law barring recognition of same sex-marriage. However, the justices sidestepped a ruling on whether states could constitutionally ban gay marriage. A slew of cases re-raising that question are now working their way through the courts. It seems inevitable that the Supreme Court will consider one or more of those cases in the two years or so.

In a statement, the American Foundation For Equal Rights said the "historic" decision "continues the national momentum toward marriage equality."

Freedom to Marry founder and president Evan Wolfson applauded the ruling, saying:

The bipartisan momentum for marriage is building at an unprecedented speed. In just the past several weeks, federal judges in Utah, Oklahoma, and Kentucky; the Attorney Generals of Virginia and Nevada; the Governor of Nevada, and now a federal judge in Virginia have all said that marriage discrimination against loving and committed gay couples is indefensible under our Constitution. There has been a fundamental shift in the legal landscape. America is ready for the freedom to marry and those couples in Virginia, on the eve of Valentine's Day, are ready to marry.

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### **Right on cue, Democratic politician makes insulting, racist remark about Clarence Thomas' marriage**

*Daily Caller*

February 13, 2014

Hours after Supreme Court Justice Clarence Thomas remarked that he has endured more racism from northern liberals than from southern conservatives, an Alabama politician demonstrated that southern liberals can be just as racist as their northern counterparts.

Alabama state Rep. Alvin Holmes, a Democrat and black man, derogatorily referred to Thomas as an "Uncle Tom," and said he doesn't like the esteemed Justice because Thomas is married to a white woman.

Holmes' remarks were reported by Mary Sell, a writer for The Times Daily. She said via Twitter:

Holmes later clarified that he believed he had been misinterpreted, and meant to say that some other people dislike Thomas because he is married to a white woman. The Democratic politician

did, however, make it clear that he believes Thomas is an “Uncle Tom,” according to The Washington Times. The derogatory expression is used to demean black people who are seen by other blacks—and by white liberals—as willing defenders of white interests.

The comment underscores one of the points that Thomas made during a speech at Palm Beach Atlantic University on Tuesday. He said that people today are more obsessed with race and identity politics than ever before, and that the most racist people he ever encountered were liberal elites, not southern conservatives. (RELATED: Clarence Thomas: Northern liberal elites more racist than southerners)

Conservative pundit Dan Calabrese said of the incident: “In fairness to Rep. Holmes, all he did was say publicly what many liberals say privately about Justice Thomas and his wife Ginni, who by the way is brilliant in her own right.”