

COURT OF THE JUDICIARY CASE NO. 33

IN THE MATTER OF: ROY S. MOORE
CHIEF JUSTICE
OF THE SUPREME COURT OF ALABAMA

FINAL JUDGMENT

At the outset, this court emphasizes that this is a case concerning only possible violations of the Canons of Judicial Ethics. It is not a case about the public display of the Ten Commandments in the State Judicial Building nor the acknowledgment of God. Indeed, we recognize that the acknowledgment of God is very much a vital part of the public and private fabric of our country. Moreover, this is not a case to review the judgment of Judge Myron Thompson nor the actions of the United States Court of Appeals for the Eleventh Circuit or the United States Supreme Court. This court does not have the authority or jurisdiction to reexamine those issues.

The Court of the Judiciary is a nine-member constitutionally-created judicial body that is only "convened to hear complaints filed by the Judicial Inquiry Commission" pertaining to alleged violations by judges of the Canons of Judicial Ethics as adopted by the Supreme Court of Alabama. The Canons are not merely guidelines for proper judicial

conduct; they are binding on all judges by the oath taken upon assuming office, and violations of the Canons can serve as the basis for disciplinary action. The charge or charges against a judge must be proved by clear and convincing evidence before any discipline may be imposed.

On January 15, 2001, Roy S. Moore took office as Alabama's Chief Justice. On August 1, 2001, Chief Justice Moore had a monument displaying the Ten Commandments and other historic and religious quotations installed in the rotunda of the State Judicial Building. After that monument was installed, two civil actions, Glassroth v. Moore, Case No. CV-01-T-1268-N, and Maddox and Howard v. Moore, Case No. CV-01-T-1269-N, were filed in the United States District Court for the Middle District of Alabama. These actions, brought against Chief Justice Moore in his official capacity, claimed that the monument violated the Establishment Clause of the First Amendment to the United States Constitution and sought its removal. Following a hearing on November 18, 2002, the district court determined that the monument violated the First Amendment, Glassroth v. Moore, 229 F. Supp. 2d 1290 (M.D. Ala. 2002), and on December 19, 2002, it entered a permanent injunction directing Chief Justice Moore to remove the

monument from the Alabama Judicial Building, Glassroth v. Moore, 242 F. Supp. 2d 1067 (M.D. Ala. 2002). That injunction was stayed by the district court pending Chief Justice Moore's appeal to the United States Court of Appeals for the Eleventh Circuit. Glassroth v. Moore, 242 F. Supp. 2d 1068 (M.D. Ala. 2002). The Court of Appeals affirmed the judgment of the district court on July 1, 2003. Glassroth v. Moore, 335 F.3d 1282 (11th Cir. 2003).

Subsequent to the decision of the Court of Appeals, on August 5, 2003, the district court entered its "Final Judgment and Injunction." Glassroth v. Moore, 275 F. Supp. 2d 1347 (M.D. Ala. 2003). The district court ordered that its previous stay be dissolved and enjoined Chief Justice Moore to remove the monument by no later than August 20, 2003. The district court stated that it could "levy substantial fines against Chief Justice Moore in his official capacity and, thus, against the State of Alabama itself, until the monument [was] removed." 275 F. Supp. 2d at 1349. Chief Justice Moore stated publicly that he would not remove the monument as directed by the district court. On August 21, 2003, the monument remained in the rotunda of the State Judicial Building, and on that date the eight associate justices of the

Alabama Supreme Court ordered that the monument be removed.

On August 22, 2003, the Judicial Inquiry Commission (hereinafter referred to as "the JIC") filed a complaint with this court against Chief Justice Moore. In the six-charge complaint, the JIC alleged that Chief Justice Moore had committed six violations of the Canons of Judicial Ethics when he willfully failed to comply with a binding and existing court order of the United States District Court for the Middle District of Alabama. The JIC alleged that Chief Justice Moore violated the Canons of Judicial Ethics in (1) failing to uphold the integrity and independence of the judiciary; (2) failing to observe high standards of conduct so that the integrity and independence of the judiciary might be preserved; (3) failing to avoid impropriety and the appearance of impropriety; (4) failing to respect and comply with the law; (5) failing to conduct himself in a manner promoting public confidence in the integrity and impartiality of the judiciary; and (6) failing to avoid conduct prejudicial to the administration of justice so as to bring the judicial office into disrepute, and the case was thereby presented to the Court of the Judiciary. On October 2, 2003, Chief Justice Moore filed an answer to the complaint filed by the JIC,

denying the allegations. Among other things, Chief Justice Moore argued that the complaint was premature because he had not been held in contempt of the district court's order, that the district court's order was unlawful, and that to follow the order would violate his oath of office.

On November 12, 2003, the case was called for trial before the Court of the Judiciary. At the hearing on that date, Chief Justice Moore was the only witness, although numerous exhibits were admitted by stipulation of the parties. Justice Moore testified regarding his belief that compliance with the federal court injunction would violate his oath of office. He was shown JIC Exhibit 18, admitted by stipulation, which was the transcript of his testimony before the JIC on August 22, 2003, which he read over carefully before testifying about it. This transcript includes the following testimony before the JIC:

"I did what I did because I upheld my oath. And that's what I did, so I have no apologies for it. I would do it again. I didn't say I would defy the court order. I said I wouldn't move the monument. And I didn't move the monument, which you can take that as you will."

At the time he made this statement before the JIC, all efforts by Chief Justice Moore and his attorneys to prevent the federal court injunction from becoming legally and

ethically binding and obligatory had been exhausted in the federal district court, the Eleventh Circuit Court of Appeals, and the United States Supreme Court. Moore was asked on November 12, 2003, during the trial if he still stood by this statement, and he testified under oath that he stood by this statement without any changes. When he so testified on November 12, 2003, the United States Supreme Court had, at that time, also denied his petition for certiorari on November 3, 2003.

Chief Justice Moore contends that the disciplinary proceedings against him are improper because they were instituted in the absence of any finding of contempt by the federal district court that entered the judgment barring him from displaying the Ten Commandments monument in the rotunda of the State Judicial Building. We disagree. The motion to hold Chief Justice Moore in contempt was filed in the federal district court on August 21, 2003, but the other eight justices of the Alabama Supreme Court ordered the removal of the monument on that same date, thereby rendering the motion moot. As the Supreme Court of Connecticut has said:

"Whether a judge's conduct compromises the integrity of the court or lessens public confidence in the judicial system cannot turn on whether contempt can lie. By accepting his office, a judge undertakes to

conduct himself in both his official and personal behavior in accordance with the highest standard that society can expect. That standard cannot be gauged by whether the conduct is punishable by contempt."

In re Dean, 246 Conn. 183, 196, 717 A.2d 176, 183 (1998)
(emphasis added; citations and quotation marks omitted).

Chief Justice Moore also claims that the district court order was in conflict with the Alabama Constitution, relying primarily upon the preamble to the Alabama Constitution of 1901:

"We, the people of the State of Alabama, in order to establish justice, insure domestic tranquility, and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God, do ordain and establish the following Constitution and form of government for the State of Alabama."

The general rule is that courts interpret preambles as statements of general purpose and intent and not as sources of authority for the government. Jacobson v. Massachusetts, 197 U.S. 11, 22 (1905). Further, the oath taken by Chief Justice Moore commands him to support both the United States and Alabama Constitutions. In the event of conflict between the constitutions of Alabama and the United States, the Constitution of the United States must prevail. The Supremacy Clause of the United States Constitution provides that "[t]his

Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding." U.S. Const., art. VI.

Chief Justice Moore further contends that the JIC complaint was premature because, he says, he had not exhausted all avenues of possible review in that the United States Supreme Court had not issued its order denying certiorari review of Glassroth v. Moore, 335 F.3d 1282 (11th Cir. 2003). However, the court notes that the federal district court that entered the judgment against Chief Justice Moore clearly stated that "upon receipt of an appellate mandate affirming this court's decision and injunction, the court will immediately lift the stay and enter another injunction, along the lines of the December 19[, 2002,] injunction, requiring the removal of the Ten Commandments monument within fifteen days." Glassroth v. Moore, 242 F. Supp. 2d 1068, 1070 (M.D. Ala. 2002). Further, the possibility that the United States Supreme Court would grant certiorari to review the Eleventh Circuit's judgment affirming the judgment of the district court did not affect the binding nature of the district

court's and appellate court's judgments. It is well settled that "neither the right to petition for a writ of certiorari nor the actual filing of such a petition stays the enforcement of the underlying judgment." Peabody Coal Co. v. Navajo County, 117 Ariz. 335, 338, 572 P.2d 797, 800 (1977).

Chief Justice Moore did not have the legal authority to decide whether the federal court order issued to him in his official capacity as the State's highest judicial officer should be obeyed; rather, he was constitutionally mandated to obey it. "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." Cooper v. Aaron, 358 U.S. 1, 19 (1958).

Any person who undertakes a solemn oath to carry out a public trust must act in a manner that demonstrates both respect for and compliance with established rules of law of the institution that person serves. Here, however, we are faced with a situation in which the highest judicial officer of this state has decided to defy a court order. The Supreme Court of the United States has said:

"No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are

creatures of the law and are bound to obey it."

United States v. Lee, 106 U.S. 196, 220 (1882). The Supreme Judicial Court of Maine, in a judicial-disciplinary case, said that "[l]awless judicial conduct -- the administration, in disregard of the law, of a personal brand of justice in which the judge becomes a law unto himself -- is as threatening to the concept of government under law as is the loss of judicial independence." In re Ross, 428 A.2d 858, 861 (Me. 1981). To that same effect is the observation of the Supreme Court of New Mexico that "judges who, as self-perceived defenders of justice, set themselves above the law, to promote a personal belief about what the law should be, do a disservice to justice." In re Eastburn, 121 N.M. 531, 538, 914 P.2d 1028, 1035 (1996).

We respect and hold in high regard the right of every American citizen to express his or her views. However, when an individual, especially a judge, undertakes a position of civil authority, that person must conform his or her conduct in the exercise of public duties according to the established rules of law and accepted rules of ethics. If a judge, or any other person, disagrees with a determination by a governmental body, that person has every right to seek legal redress. When

one exhausts all legal remedies, one must refrain from conduct adversely affecting the impartial and objective carrying out of one's official duties. Chief Justice Moore sought legal redress by appealing to the limit of judicial review; he was bound by, and had the duty to follow, the rulings of the federal courts.

As was stated by the Alabama Supreme Court in its Order No. 03-01, "the justices of this Court are bound by solemn oath to follow the law, whether they agree or disagree with it, because all the officers of the government, from the highest to the lowest are creatures of the law, and are bound to obey it." It is therefore the unanimous decision of this court that Chief Justice Moore has violated the Alabama Canons of Judicial Ethics as alleged by the JIC in its complaint.

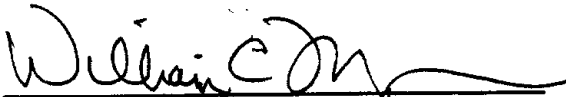
Section 6.18 of the Judicial Article of the Alabama Constitution of 1901, as amended by Amendment No. 581, provides that this court shall have the authority, after a public hearing, to remove from office, to suspend without pay, or to censure a judge or to apply such other sanction as may be prescribed by law for violation of a Canon of Judicial Ethics, misconduct in office, or failure to perform his or her duties. This court has considered all possible sanctions to

determine an appropriate disposition in this case. While this court respects Chief Justice Moore's right to his personal opinion on the underlying issues presented in the federal court litigation, the fact remains that Chief Justice Moore is the chief judicial officer of this State and is held to a higher standard than a member of the general public.

This court has found that Chief Justice Moore not only willfully and publicly defied the orders of a United States district court, but upon direct questioning by the court he also gave the court no assurances that he would follow that order or any similar order in the future. In fact, he affirmed his earlier statements in which he said he would do the same. Under these circumstances, there is no penalty short of removal from office that would resolve this issue. Anything short of removal would only serve to set up another confrontation that would ultimately bring us back to where we are today. This court unanimously concludes that Chief Justice Moore should be removed from the office of Chief Justice.

It is therefore ORDERED and ADJUDGED by the court that Roy S. Moore be, and he hereby is, removed from the office of Chief Justice of the Supreme Court of Alabama.

DATED: 11-13-03



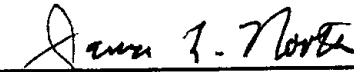
WILLIAM C. THOMPSON
Chief Judge



J. SCOTT VOWELL
Judge




JOHN V. DENSON
Judge



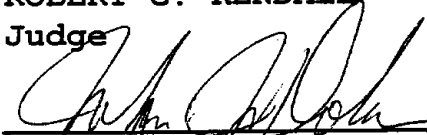
JAMES L. NORTH
Judge



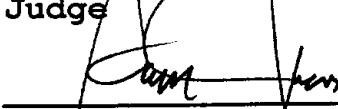
WILLIAM D. MELTON
Judge



ROBERT G. KENDALL
Judge



JOHN J. DOBSON
Judge



SAM JONES
Judge



SUE H. MCINNISH
Judge