

BEFORE THE JUDICIAL INQUIRY COMMISSION OF ALABAMA

Inquiry Concerning a Judge, No. ____.

COMPLAINT AGAINST CHIEF JUSTICE ROY S. MOORE

Introduction:

We write to lodge a complaint against Chief Justice Roy S. Moore relating to the January 27, 2015, letter he sent to Governor Robert Bentley and his related public statements. The letter, attached hereto as Exhibit A, addresses a recent federal court order of the United States District Court of the Southern District of Alabama that declared that Alabama’s Marriage Protection Act and Sanctity of Marriage Amendment violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

Specifically, Chief Justice Moore, writing on Supreme Court of Alabama letterhead, instructs Governor Bentley that the definition of marriage is biblical and therefore beyond the reach of the United States Constitution (pp. 1-2); declares all contrary federal court orders to be “specious” pretexts intended to bring about the “destruction of that institution” (p. 2); urges the Governor to join with him to “oppose such tyranny” in order to preserve morality (p. 2); “advises” Alabama judges that their issuance of marriage licenses to same-sex couples “would be in defiance of the laws and Constitution of Alabama” (p. 3); notifies the public that he

will continue to enforce Alabama’s marriage restrictions, regardless of any federal court order (p. 3); and asks the Governor to join with him in defying “the judicial tyranny” reflected in federal court orders regarding same-sex marriage (p. 3).

In addition, Chief Justice Moore released the letter to the press and gave interviews to the media regarding the letter. In an interview with WSFA television, Moore states that “forty-four federal courts and 22 states have bowed down to the tyranny of the federal government” but that “Alabama isn’t doing that” and that “we will have a confrontation” if the district court’s order is enforced. *See* <http://www.wsfa.com/story/27954281/alabama-chief-justice-criticizes-gay-marriage-ruling>.

Chief Justice Moore’s actions violate Alabama’s Canons of Judicial Ethics in numerous and significant regards, including as set forth below.

A. Canon 3(A)(6) – Improper Public Comment on Pending and Impending Proceedings

Chief Justice Moore’s actions constitute a plain violation of the prohibition set forth in Canon 3(A)(6): “A judge should abstain from public comment about a pending or impending proceeding in any court”

First, the letter and press interviews constitute “public comment.” According to press accounts, Chief Justice Moore decided to write the letter after receiving press inquiries regarding his reaction to the recent ruling holding the marriage

restrictions unconstitutional. He then gave interviews to the press regarding the letter and the substance of the ruling. Rather than simply replying that the Canons of Judicial Ethics prevented him from speaking publicly about pending cases, Chief Justice Moore penned and made public a letter to the Governor, expressing his reaction to the ruling and urging defiance.

Second, Chief Justice Moore’s public comment expressly addresses a “pending case.” The case is the widely reported case of *Searcy v. Strange*, No. 1:14-cv-00208-CG-N (S.D. Ala.), in which U.S. District Judge Callie V.S. Granade on January 23, 2015, entered a Memorandum Decision and Order declaring that Alabama’s marriage restrictions violate the United States Constitution. *See* Exhibit B. Chief Justice Moore expressly references this order, entered in a “pending” case, in the first sentence of his letter. *See* Exhibit A at 1 (“The recent ruling of Judge Callie Granade of the United States District Court for the Southern District of Alabama has raised serious, legitimate concerns . . .”).

Third, Chief Justice Moore’s letter and press interviews also improperly address “impending cases.” It is no secret that legalization and recognition of same-sex marriages in this state may meet resistance, both public and private, and that related disputes almost certainly will end up in this state’s courts. Family relations matters, for example, including those relating to divorce and adoption, typically are heard in state court. Indeed, the plaintiffs in the *Searcy* case

previously had litigated the question whether their out-of-state marriage provided a basis for a second-parent adoption in Alabama state court. *See* Exhibit B at 1-2.

The number and variety of potential cases that relate in some way to the recognition due to same-sex marriages – including cases that could end up before the Alabama Supreme Court – is nearly limitless.

More immediately, however, the Chief Justice’s letter acknowledges that upon the expiration of the stay of the district court’s order in the *Searcy* case, same-sex couples across the state will seek marriage licenses from the Probate Judges of the various counties. In his letter, Chief Justice Moore purports to instruct all of these Probate Judges that issuing licenses in these *future* cases would be contrary to law: “I would advise them that the issuance of such licenses would be in defiance of the laws and Constitution of Alabama.” *See* Exhibit A at 3. It is difficult to imagine a more patent and undeniable violation of the prohibition against public comment on “impending” cases than for the sitting Chief Justice to advise an entire class of judges on how they must rule on what likely will be hundreds of license applications to be filed in just two short weeks. Chief Justice Moore has violated Canon 3(A)(6) in this regard as well.

B. Canon 3(A)(1) – Lack of Faithfulness to the Law and Failure of Professional Competence

Chief Justice Moore also has violated his responsibility “to be faithful to the law and maintain professional competence.” *See* Canons of Judicial Ethics 3(A)(1). He denies the supremacy of federal law and maintains that it is trumped by the Alabama constitution and biblical principles. *See* Exhibit A at 1-2. In doing so, Chief Justice Moore has demonstrated complete disregard of and disdain for one of the foundational principles of our constitutional system—the Supremacy Clause of the United States Constitution. U.S. Const. art. IV, § 2.

Chief Justice Moore has himself taken an oath to uphold the *federal* constitution, even if there are other sources of authority he agrees with or prefers. This is simply “Constitutional Law 101” – a principle that every first-year law student at every law school in every state in the Union would grasp instantly. Chief Justice Moore’s express rejection of this foundational principle evidences either a lack of faithfulness to a principle of law that is beyond dispute or an utter lack of competence that renders him subject to discipline.

Chief Justice Moore’s failure in this regard is especially noteworthy given that he was removed from the office of Chief Justice of the Supreme Court of Alabama in 2003 on account of his rejection of this same foundational principle. On November 13, 2003, the Court of the Judiciary issued a “Final Judgment” in

the Matter of: Roy S. Moore, Chief Justice of the Supreme Court of Alabama, attached hereto as Exhibit C. By that Final Judgment, the Court of the Judiciary removed then-Chief Justice Moore because of his refusal to obey a federal court order requiring the removal of a statue of the Ten Commandments from the State Judicial Building. Then-Chief Justice Moore justified his refusal in part on his belief that the federal order was in conflict with the Alabama Constitution. *See* Exhibit C at 7.

The Court of the Judiciary *rejected* this argument, which in fact was simply further evidence of then-Chief Justice Moore’s faithlessness to the law.

[T]he Oath taken by Chief Justice Moore commands him to support both the United States and Alabama Constitutions. In the event of a 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.

Exhibit C at 7 (emphasis added). The Court of the Judiciary, quoting the United States Supreme Court, further reminded then-Chief Justice Moore that “[n]o state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it.” *See* Exhibit C at 9 (quoting *Cooper v. Aaron*, 358 U.S. 1, 19 (1958)).

Chief Justice Moore can point to no change in law or other circumstance that could justify his continued defiance of the foundational principle that federal law is supreme. His continued resistance to the principle demonstrates faithlessness and incompetence in violation of Canon 3(A)(1).

C. **Canon 1 – Disrespect for the Dignity of the Judiciary; and Canon 2(A) – Undermining Public Confidence in the Integrity of the Judiciary.**

Chief Justice Moore’s letter and comments in the press assault the authority and integrity of the federal judiciary and publicly urges Alabama’s Governor to join him in opposing its purported “tyranny.” His letter thereby violates two related Canons of Judicial Ethics. Canon 1 obligates Chief Justice Moore to observe “high standards of conduct so that the integrity . . . of the judiciary may be preserved.” Similarly, Canon 2(A) requires that he “conduct himself at all times in a manner that promotes public confidence in the integrity . . . of the judiciary.”

The disregard for the integrity of members of the federal judiciary that Chief Justice Moore propounds in his letter is nearly unprecedented. He accuses the federal judiciary of being intent on “destruction” of the institution of marriage. *See* Exhibit A at 2. He complains that the forty-four federal courts that have found marriage restrictions unconstitutional have done so by means of “judicial fiat.” *See id.* He further characterizes the growing number of such decisions as “tyranny.” *See id.*

Canons 1 and 2 command Chief Justice Moore to act to preserve the integrity and public confidence in the integrity of “the judiciary.” Chief Justice Moore is duty bound to uphold the integrity “the judiciary” as the impartial branch of our government to which all Alabamians – Christian or Jew, man or woman, gay or straight – can turn for justice or for protection from government overreach or intrusion. His wild and unfounded invocation of purported federal judicial “tyranny” directly undermines, and indeed appears intended to undermine, public confidence in the federal judiciary.

Chief Justice Moore’s letter goes beyond simply expressing his own personal disdain for the federal judiciary, however. He expressly and openly invites Governor Bentley and other judges to join in his defiance and disregard for the integrity of the federal judiciary. “[W]e must act to oppose such tyranny!” he proclaims. *See* Exhibit A at 2. “I ask you to continue to uphold and support the Alabama Constitution with respect to marriage” *See* Exhibit A at 3. In this way, Chief Justice Moore attempts to conscript a virtual army of state officials and judges, whom he hopes to array in unified defiance of the federal judiciary. This threatened confrontation is unethical, irresponsible, and lawless. It is the precise opposite of what we should expect from the chief judicial officer.

The words that Chief Justice Moore has expressed might be words we could expect to read in an op-ed, to hear on a street corner, or to debate at a coffee shop.

But the Court of the Judiciary previously has instructed Moore that the Canons of Judicial Ethics impose on him a different set of rules than those that apply to the man on the street: “[W]hen 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.” *See* Exhibit C at 10. The fact that Chief Justice Moore continues to disregard the previous conclusions and instructions from the Court of the Judiciary calls out for discipline in this case.

* * * *

Chief Justice Roy Moore has improperly commented on pending and impending cases; demonstrated faithlessness to foundational principles of law; and taken affirmative steps to undermine public confidence in the integrity of the judiciary. For all these reasons, we respectfully request that this Judicial Inquiry Commission investigate the allegations in this complaint and recommend that Chief Justice Moore face charges in the Court of the Judiciary.

Dated: January 28, 2015

SOUTHERN POVERTY LAW CENTER

By: J. Richard Cohen, President
Ala. Bar No. ASB-1092-N73J

Subscribed and Sworn to or affirmed before me this 28th day of January, 2015.

My commission expires: _____

Notary Public