

**BEFORE THE JUDICIAL INQUIRY COMMISSION OF ALABAMA**

**Inquiry Concerning a Judge, No. \_\_\_\_.**

**COMPLAINT AGAINST JUSTICE TOM PARKER**

**Introduction:**

We write to lodge a complaint against Justice Tom Parker relating to the October 6, 2015, interview he gave to Bryan Fischer on his Focal Point radio show on the American Family Radio Talk Network.<sup>1</sup> In the interview, a transcript of which is attached hereto as Exhibit A, Justice Parker (a) publicly comments on proceedings pending before the Alabama Supreme Court and (b) undermines the integrity of the federal judiciary by suggesting that the Alabama Supreme Court should defy and refuse to give effect to the United States Supreme Court's decision in Obergefell v. Hodges, 576 U.S. \_\_\_\_, 135 S. Ct. 2584 (2015).

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

Justice Parker's actions constitute a plain and knowing 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 [ . . . ]." During the

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<sup>1</sup> An audio file of the interview can be found at [http://streamer1.afa.net/afr-aod/FocalPoint/fcl\\_20151006A.mp3](http://streamer1.afa.net/afr-aod/FocalPoint/fcl_20151006A.mp3).

interview, Justice Parker is asked about and comments on Ex parte State v. King, No. 1140460, pending before the Alabama Supreme Court.

In King, relators Alabama Policy Institute<sup>2</sup> and Alabama Citizen Action Program, in response to U.S. District Judge Callie V.S. Granade's decision declaring that Alabama's same-sex marriage prohibition violates the United States Constitution, sought a writ of mandamus from the Alabama Supreme Court commanding Alabama's probate judges not to issue marriage licenses to same-sex couples. On March 3, 2015, the Alabama Supreme Court issued the writ along with an opinion in support.<sup>3</sup> On June 29, 2015, three days after the issuance of Obergefell, the Alabama Supreme Court invited the King parties to submit any motions or briefs addressing the effect of Obergefell on the existing writ.<sup>4</sup> In response to this invitation, on July 6, 2015, the King relators filed a brief arguing that the Alabama Supreme Court could legally reject and ignore the Obergefell decision based on the "Booth cases" in which the state of Wisconsin, according to the King relators, refused to abide by United States Supreme Court decisions upholding the constitutionality of the Fugitive Slave Act. See Relators Ala. Policy

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<sup>2</sup> Justice Parker was the founding Executive Director of Alabama Policy Institute. See [http://www.al.com/news/index.ssf/2015/03/did\\_tom\\_parkers\\_past\\_affiliati.html](http://www.al.com/news/index.ssf/2015/03/did_tom_parkers_past_affiliati.html).

<sup>3</sup> See Ex. A at 4 (discussing the writ and opinion). Justice Parker participated in the decision and joined the majority opinion.

<sup>4</sup> Motions by Probate Judges Williams and Enslin also remain pending in the King proceeding, as noted by Justice Parker in the interview. See Ex. A at 5, 10.

Inst. and Ala. Citizens Action Program's Br. Addressing the Effect of Obergefell on This Ct.'s Existing Orders, attached hereto as Exhibit B, at 19–30.

In the interview, Justice Parker acknowledges the pendency of the King case. See Ex. A at 4–5, 10 (discussing King and, inter alia, acknowledging that “now, since Obergefell, we’re faced with the question what is the continued effectiveness of that March decision from the Alabama Supreme Court” and acknowledging that the question of whether the Alabama Supreme Court should make permanent its writ of mandamus to Alabama probate judges is “one issue before the Alabama Supreme Court”).

Furthermore, Justice Parker comments approvingly on the argument raised by the King relators that the Alabama Supreme Court may defy a United States Supreme Court decision, as the following exchange demonstrates:

**Bryan Fischer:** If you go back in history, back to Wisconsin, the state of Wisconsin refused to acknowledge the authority of that ruling. Said that ruling, the Dred Scott ruling of the Supreme Court—that is null and void, it has no effect in the state of Wisconsin.

...

There is a precedent there, Judge Parker, for individuals at the state level and federal level to stand up against this overreach of the Supreme Court.

**Tom Parker:** The Wisconsin situation in fact involved a double defiance of the Supreme Court. First they defied the Dred Scott decision, and then their decision in defiance was taken up to the U.S. Supreme Court, which reversed it, sent its mandate back to the Wisconsin Supreme Court, which

refused to accept that mandate, so the reversal was never acted on.

I think it was a model of what we need to see in this county.

Ex. A at 2–3.

Therefore, Justice Parker knowingly and expressly made a public comment on the merits of a case pending before the Alabama Supreme Court in violation of Alabama Canon of Judicial Ethics 3(A)(6).

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

Justice Parker’s comments in the interview assault the authority and integrity of the federal judiciary and instead publicly endorse purported “judicial tyranny” by defying the Supreme Court’s decision in Obergefell. See e.g., Ex. A at 4. His comments thereby violate two related Canons of Judicial Ethics. Canon 1 obligates Justice Parker 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.” Canons 1 and 2 command Justice Parker to act to preserve the integrity and public confidence in the integrity of the judiciary, and he has sworn an oath to uphold the Constitution.

Justice Parker's disdain for the federal judiciary and the Supreme Court's interpretation of the Constitution as set forth in Obergefell is aptly demonstrated by the following exchange during the interview:

**Bryan Fischer:** Let me ask you this question. We're talking here with Judge Parker, Alabama state Supreme Court. And this is kind of the money question, Judge Parker. What would happen if a state Supreme Court said we are not in this state going to accept the jurisdiction of the Supreme Court, overruling our constitution on marriage.

What would happen if a state Supreme Court had that kind of courage and took that kind of stand? What would happen?

**Tom Parker:** Well, Bryan, the federalist papers told us that the states should be a check on the federal government, so that's what you're talking about right there, and the proper organ within a state to do that, versus the U.S. Supreme Court, would be a state Supreme Court.

I doubt that it would be a blanket defiance of all jurisdiction of the U.S. Supreme Court, but in regard to the Obergefell decision, where it's clear that they jumped outside of all the precedents in order to impose their will on this country, that yes, resisting that decision could maybe state a revival of what we need in this country to return to our original founding principles.

Ex. A at 9.

Far from promoting public confidence in the integrity of the judiciary, Justice Parker instead offers ridicule and suggests defiance. See also, Ex. A at 2-3. Justice Parker through his comments foments the false impression in the public's mind that the federal judiciary has tyrannically taken for itself unconstitutional power such that state courts like the Alabama Supreme Court must initiate a

“revival,” that is, stand up to and defy the United States Supreme Court. See Ex. A at 1, 2–3. Such rallying cry not only violates the Canons of Judicial Ethics, it violates his oath to uphold the Constitution because “[n]o . . . judicial officer can war against the Constitution without violating his undertaking to support it.”

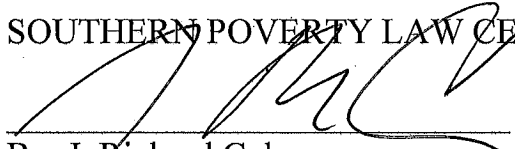
Cooper v. Aaron, 358 U.S. 1, 18 (1958).<sup>5</sup>

\* \* \* \*

Justice Parker has improperly commented on pending cases and has undermined public confidence in the integrity of the judiciary. For these reasons, we respectfully request that this Judicial Inquiry Commission investigate the allegations in this complaint and recommend that Justice Parker face charges in the Court of the Judiciary.

Dated: October 12, 2015

SOUTHERN POVERTY LAW CENTER

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

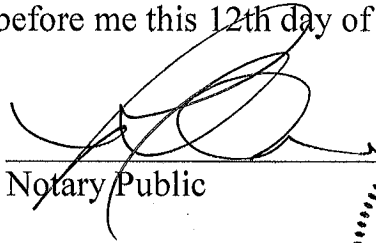
  
By: Morris Dees  
Ala. Bar No. ASB-7003-E50M

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<sup>5</sup> Cooper is the landmark school desegregation decision in which the United States Supreme Court held that states are bound by the Supreme Court’s decisions and must enforce them even if the states disagree with them. Justice Parker even appears to believe that Cooper’s holding requiring unwilling states to desegregate their schools was contrary to the country’s founding and represents the culmination of an unconstitutional power grab by the Supreme Court. See Ex. A at 2.

Subscribed and Sworn to or affirmed before me this 12th day of October, 2015.

My commission expires: 6/5/19



Notary Public

