

**, IN THE COURT OF THE JUDICIARY**

**IN THE MATTER OF** )  
 )  
**ROY S. MOORE,** )  
**Chief Justice of the** )  
**Supreme Court of Alabama** )  
 ) **Court of the Judiciary**  
 ) **Case No. 46**



**MOTION TO DISMISS**

Pursuant to Rule 12(b)(6), Ala. R. Civ. P., and Rule 10, Ala. R. Ct. Jud., Chief Justice Roy S. Moore moves to dismiss the complaint filed against him in this Court in its entirety for failure to state a claim upon which relief can be granted.

Chief Justice Moore maintains that this Court is not a proper or adequate forum for the adjudication of the claims brought against him and has requested that his response deadline be extended until the adjudication of his pending claims in federal court. His request having been denied, Chief Justice Moore files this motion with full reservation of all rights, without conceding that this Court is a proper or adequate forum, and without waiving his continuing right to challenge the constitutionality, sufficiency, and adequacy of these proceedings.

**BRIEF IN SUPPORT**

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## I. Background

On January 23, 2015, United States District Judge Callie Granade issued an opinion that declared unconstitutional the Alabama laws that defined marriage as the union of a man and a woman. *Searcy v. Strange*, 81 F. Supp. 3d 1285 (S.D. Ala. 2015). The only defendant in the case was Alabama Attorney General Luther Strange. Judge Granade stayed her order until February 9, 2015. On February 8, 2015, Chief Justice Moore issued an Administrative Order to the Alabama probate judges, who have the authority to issue marriage licenses, stating that they were not bound by Judge Granade's order because they were not parties to that case or acting in concert with a party. Rule 65, Fed. R. Civ. P. See Exhibit A.

On March 3, 2015, in an opinion consistent with the Administrative Order of February 8, 2015, the Alabama Supreme Court held that the Alabama Sanctity of Marriage Amendment, Art. I, § 36.03(b), Ala. Const. 1901, and the Alabama Marriage Protection Act, § 30-1-19(b), Ala. Code 1975, were valid under the United States Constitution. "Alabama probate judges have a ministerial duty not to issue any marriage license contrary to [Alabama marriage] law. Nothing in the United States Constitution alters or overrides this duty." *Ex parte State of Alabama ex rel. Alabama Policy Institute*, No. 1140460, 2015 WL 892752, at \*43 (Ala. 2015) ("API"). The *per curiam* decision was nearly unanimous (7-1). Chief Justice Moore did not vote on that decision because his Administrative Order of February 8 was argued as a basis for granting the relief requested. On March 12, 2015, the Alabama Supreme Court made the API decision applicable to all probate judges in the state. Exhibit B. On May 21, 2015, Judge Granade issued a class-action injunction against

all Alabama probate judges that invalidated the same Alabama marriage laws the Alabama Supreme Court had just declared constitutional in *API. Strawser v. Strange*, 105 F. Supp. 3d 1323 (S.D. Ala. 2015).

On June 26, 2015, the United States Supreme Court issued its decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). On June 29, 2015, the Alabama Supreme Court issued an order to the parties in *API* inviting them “**to submit any motions or briefs addressing the effect of the Supreme Court’s decision in *Obergefell* on this Court’s existing orders in this case no later than 5:00 p.m. on Monday, July 6.**” Exhibit C (emphasis added). The relators in *API* and four of the respondent probate judges timely filed briefs in response to the June 29 order. In September and October, two probate judges filed petitions seeking declaratory relief from the anticipated effects of *Obergefell*.

On January 6, 2016, exactly six months after the July 6, 2015, deadline for filing briefs in *API*,<sup>1</sup> Chief Justice Moore issued a second administrative order to the probate judges, informing them that the Alabama Supreme Court was still in deliberation on the effect of *Obergefell* on its existing orders in *API* and that they were bound by those orders until further decision of the Court. Exhibit D.

On March 4, 2016, the Alabama Supreme Court issued an order in *API*, which prompted special writings by several Justices. *API*, 2016 WL 859009 (Ala. Mar. 4, 2016). The Court also issued the Certificate of Judgment for the case, thus bringing it to a

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<sup>1</sup> All state judges are required to file a semiannual report listing all cases that “have been under submission or advisement for a period of six months or longer.” Canon 3(A(5), Ala. Canons Jud. Ethics.

conclusion, and thereby leaving undisturbed its existing injunctive orders entered in March 2015. Exhibit E. United States District Judge Callie Granade has recently stated that in its March 4, 2016 order in *API* “the Alabama Supreme Court did not vacate or set aside its earlier writ of mandamus directing Alabama’s probate judges to comply with the Alabama [marriage] laws.” Order, *Strawser v. Strange*, No. 14-0424-CG-C, 2016 WL 3199523, at \*2 (S.D. Ala. June 7, 2016).

On April 28, 2016, prior to charges being filed in this matter, the *Montgomery Advertiser* published a story containing the following “scoop” of private and confidential information:

[A] source familiar with Moore's case said Tuesday that the JIC had completed its review and was in the process of bringing charges against the chief justice. A complaint filed by Southern Poverty Law Center president Richard Cohen against Moore appears to be the primary focus of the JIC charges, according to the source.

Exhibit F. (emphasis added). A week later, on May 5, Mat Staver, counsel for the Chief Justice, received an unsolicited telephone call from a *New York Times* reporter who stated that a credible source had informed the reporter that the Alabama Judicial Inquiry Commission (“the JIC”) would likely be filing charges that day or the next. Exhibit G.

On May 6, 2016, the JIC filed the instant complaint against Chief Justice Moore in this Court triggering his automatic suspension from office pursuant to Article VI, § 159, of the Alabama Constitution. The complaint concluded with six charges, all of which allege that the Administrative Order of January 6, 2016, violated Canons 1, 2, 2A, 2B, and 3 of the Alabama Canons of Judicial Ethics. Charge No. 4 additionally alleged a violation of Canon 3A(6).

## II. Preliminary Matters

### A. The JIC's Breach of Confidentiality

The Alabama Constitution requires that all JIC proceedings “shall be confidential.” Art. VI, § 156, Ala. Const. 1901. *See also* Rule 5, Ala. R. Proc. Jud. Inq. Comm’n (“All proceedings of the commission shall be confidential.”). Contrary to the confidentiality mandate, news of the investigation of Chief Justice Moore was published in a local newspaper and leaked to a national reporter. The timetable thereby disclosed turned out to be accurate. Rule 19, Ala. R. Proc. Jud. Inq. Comm’n, allows Chief Justice Moore to petition this Court for relief from a violation by the JIC of its own rules. Chief Justice Moore hereby reserves his right to seek such relief.

### B. The Automatic-Suspension Provision of § 159 of the Alabama Constitution

Article VI, § 159, of the Alabama Constitution provides that “[a] judge shall be disqualified from acting as a judge, without loss of salary, while there is pending ... a complaint against him filed by the judicial inquiry commission with the court of the judiciary.” The Chief Justice is currently challenging that provision in federal court as a violation of the Due Process Clause of the United States Constitution. *See Moore v. Judicial Inquiry Commission et al.*, No. 2:16-cv-00388-WHA (M.D. Ala.). Justice Tom Parker is also challenging the suspension provision in a federal filing. *See Parker v. Judicial Inquiry Commission et al.*, No. 2:16-cv-00442-SRW (M.D. Ala.). The Chief Justice hereby reserves the right to bring such a challenge in this Court.

### III. The Myth of Defiance

The underlying theme of the JIC complaint is that the Chief Justice is merely repeating the behavior that resulted in his removal from office in 2003. He defied the law then—a federal court order—and, the argument goes, he is doing the same thing now. The intent to sell the theme: “He’s doing it again!” is evident in the complaint. The opening paragraph states:

In 2003, Chief Justice Moore was removed from the Office of Chief Justice by Order of the Alabama Court of the Judiciary upon its finding he violated the Alabama Canons of Judicial Ethics by willfully refusing to obey an injunction issued by a United States District Court, when that order was in effect, directed to him, and binding upon him.

Although the facts alleged in the complaint have nothing to do with the 2003 events, the opening paragraph recites that history to influence the reader to accept the simpleminded theme: “He’s doing it again!”

Of course, in this case the Chief Justice is not bound by a federal court order. So the theme has to be modified: he is telling *other people* to disobey a federal court order, namely the Alabama probate judges. That conclusion ends the fact section of the complaint. Thus:

In his Administrative Order of January 6, 2016, Chief Justice Moore *again* refused to acknowledge and respect an injunction issued by a United States District Court -- this time, an injunction enjoining all 68 probate judges from following any orders of the Alabama Supreme Court that are contrary to the District Court's order.

Complaint, at 20, ¶ 40 (emphasis added). Having established the new theme of instructing *others* to disobey the federal courts, the complaint then immediately in a footnote ties that theme back to “the 2003 Order of the Court of the Judiciary finding Chief Justice Moore in violation of the Canons by willfully refusing to obey a United States District Court

injunction.” *Id.*, n.4. Having asserted that the 2016 administrative order is 2003 all over again, the argument concludes by suggesting the same result: “As noted, the Court [in 2003] imposed the sanction of removal from office.” *Id.*

This theme apparently sold well enough to persuade a majority of the members of the JIC to vote to file charges. After all, if the same actions that warranted removal in 2003 were being repeated in 2016, then certainly the JIC had a duty to again bring charges. But a major distinction undermines the supposed parallel between 2003 and 2016, a distinction that the complaint recognizes and labors mightily to overcome, namely that in 2016, unlike 2003, a prior *state-court* injunction was in effect that bound the probate judges to do the opposite of what the subsequently-entered federal injunction required. The heart of the complaint is an argument that by January, 2016, the *API* injunction was effectively dead, having been slain by the combined effect of *Obergefell*, the federal-court injunction, and an Eleventh Circuit “abrogation” decision. *See* Complaint, at 11-20, ¶¶ 22-29, 31-38.

The complaint, however, also notes that “[o]n June 29, 2015, three days after *Obergefell*, the Alabama Supreme Court invited additional briefing on the effect of *Obergefell* on the Court’s existing orders in *API*.” Complaint, at 15, ¶ 30 (emphasis added). Therefore, even in the wake of *Obergefell* and in the face of the imminent activation of the federal injunction, the Alabama Supreme Court did not vacate its *API* orders that bound the probate judges to follow Alabama marriage law and that had declared those laws to be valid under the United States Constitution. Instead the Court took the cautious step of requesting further briefing on how *Obergefell* affected those “existing orders.” The complaint admits as much when it states:

*On January 6, 2016, the Alabama Supreme Court, by invitation to the parties, still had before it for consideration the issue of the effect of the decision in Obergefell on the Court's decision in API.* While the Court had set July 10, 2015, as the due date for the filings, the Court had taken no action, and the certificate of judgment signifying the case was closed had not been issued.

Complaint, at 18, ¶ 36 (emphasis added).

The Administrative Order explained exactly what ¶ 36 of the complaint states: that the Alabama Supreme Court had not vacated or modified its March 2015 injunction in *API* but had to date “taken no action” and thus “still had before it for consideration the issue of the effect of the decision in *Obergefell* on the Court's decision in *API*.” The Administrative Order merely recited the status of the *API* orders and did not offer an opinion, pro or con, as to their validity. By declining to anticipate how the Alabama Supreme Court would rule, the Administrative Order fully respected the prerogative of the Alabama Supreme Court to decide the future effect of its own orders. As the complaint concedes, that decision still remained to be made: “*On January 6, 2016, API remained a pending case* although its injunction against probate judges had been eviscerated by *Obergefell* ....” Complaint, at 19, ¶ 37 (emphasis added).

Because the Administrative Order merely instructed the probate judges on the status of the *API* orders, noting that they were pending for “further decision,” it did not order the probate judges to disobey *Obergefell*, the federal injunction, or the Eleventh Circuit. The Administrative Order obviously did not counsel defiance of *Obergefell*. The Order not only recognized “the apparent conflict between the decision of the Alabama Supreme Court in *API* and the decision of the United States Supreme Court in *Obergefell*,” Administrative

Order, at 4, but also stated unequivocally that the resolution of that conflict lay with the entire Court. “I am not at liberty,” stated the Chief Justice, “to provide any guidance to Alabama probate judges on the effect of *Obergefell* on the existing orders of the Alabama Supreme Court. *That issue remains before the entire Court which continues to deliberate on the matter.*” *Id.* at 3 (emphasis added). The Chief Justice instructed the probate judges that the orders of the Alabama Supreme Court were still in effect, a fact that the JIC acknowledges. He expressly disclaimed any intent to usurp the authority of the Alabama Supreme Court to determine the effect of *Obergefell* on those orders.

For the same reason, the Chief Justice did not counsel the probate judges to disobey the federal injunction. In fact, he did not mention it. The effect of the federal injunction on the existing orders of the Alabama Supreme Court, like the effect of *Obergefell* on those same orders, was a matter for the entire Court to decide. The Chief Justice carefully avoided intruding on the exclusive prerogative of the Alabama Supreme Court to affirm, modify, or vacate its own orders. In so doing, he did not urge or counsel disobedience of the federal injunction but left the issue of its effect on the *API* orders for resolution by the Court that issued those orders. At the same time he recognized that, until modified, the *API* orders continued to exist, a fact the complaint also admits and Judge Granade acknowledged in her June 7, 2016, order in *Strawser*. This state of affairs is not unusual in a dual federal-state system of courts:

Although consistency between state and federal courts is desirable in that it promotes respect for the law and prevents litigants from forum-shopping, *there is nothing inherently offensive about two sovereigns reaching different legal conclusions.* Indeed, such results were contemplated by our federal

system, and neither sovereign is required to, nor expected to, yield to the other.

*Surrick v. Killion*, 449 F. 3d 520, 535 (3rd Cir. 2006) (emphasis added).

Finally, the invocation in the complaint of the October 20, 2015, decision of the United States Court of Appeals for the Eleventh Circuit creates a false impression that *Obergefell* “abrogated” the orders in *API*. See Complaint, ¶¶ 35, 38 and 48. The complaint fails to mention, however, that the Eleventh Circuit has no authority to review orders of the Alabama Supreme Court. See *Arizonans for Official English v. Arizona*, 520 U.S. 43, 58 n.11 (1997) (stating that the “Supremacy Clause does not require state courts to follow rulings by federal courts of appeals on questions of federal law” (citing *Lockhart v. Fretwell*, 506 U. S. 364, 375-376 (1993) (Thomas, J., concurring)). See also *Hittson v. GDCP Warden*, 759 F.3d 1210, 1278 (11th Cir. 2014) (Carnes, J., concurring) (“[I]t is not the role of inferior federal courts, of which we are one, to sit in judgment of state courts on issues of federal law ....”); *Glass v. Birmingham So. R.R.*, 905 So. 2d 789, 794 (Ala. 2004) (“Legal principles and holdings from inferior federal courts have no controlling effect here ....” (quoted in *API*, 2015 WL 892752, at \*27)). Furthermore, according to legal experts the Eleventh Circuit was incorrect. Martin Lederman, Professor of Law at the Georgetown University Law Center, stated: “I don't think that the [Eleventh Circuit] court of appeals was correct that *Obergefell* of its own accord ‘abrogated’ the Alabama Supreme Court's order in any formal, legal sense.” Balkinization.com (Jan. 6, 2016). Howard Wasserman, Professor of Law at the Florida International University School of Law, stated that the Eleventh Circuit's "reasoning is convoluted and incorrect in some respects, including its

understanding of how *Obergefell* affected Alabama." Prawfsblawg.blogs.com (Jan. 8, 2016).

Aware that the Administrative Order is hard to pigeonhole as an act of “defiance,” the JIC reluctantly mutes its theme that the Chief Justice ordered the probate judges to disobey a federal injunction. Instead it states that his Order “directs *or gives the appearance of directing*” the probate judges to disobey the federal injunction. Complaint, at 20, ¶ 39 (emphasis added). Similarly, the JIC accuses the Chief Justice of “ordering *or appearing to order*” disobedience to the federal court, *id.*, at 21, ¶ 41 (emphasis added), and states that he “attempted to directly interfere *or gave the appearance of attempting to interfere*” with the jurisdiction of the federal court. *Id.*, at 22, ¶ 43 (emphasis added). *See also id.*, at 23, 26, ¶¶ 49, 59 (same). Although the JIC wishes to create the appearance that the Chief Justice ordered the probate judges to defy the federal courts, he, in fact, did not do so. He merely instructed them that the Alabama Supreme Court’s orders in *API* remained in effect until modified by that Court.

A comparison of the charges alleged in the complaint with the actual text of the Administrative Order reveals the double minded quality of the complaint. On the one hand, the JIC accuses the Chief Justice of failing to declare that *Obergefell*, the federal injunction, and the Eleventh Circuit had rendered the *API* orders meaningless. On the other hand, the JIC criticizes the Chief Justice for allegedly usurping the authority of the Alabama Supreme Court to decide the fate of its own orders. In the eyes of the JIC, the Chief Justice is guilty of an ethical violation no matter what he does. If he takes a position on the *API* orders, he has usurped the authority of the full Court; if he declines to take a position, he has failed to

recognize the controlling authority of three levels of the federal court system. The JIC thus requires the Chief Justice both to take a position on the *API* orders and at the same time not to take a position on them, a true *Through the Looking Glass* conundrum.<sup>2</sup>

#### **IV. The Complaint**

##### **A. Overview of Charges Nos. 1-5**

The JIC has lodged six separate charges of ethical misconduct against Chief Justice Moore. All arise out of his Administrative Order of January 6, 2016. Five of the six charges (Nos. 1-5) relate *solely* to the Administrative Order. Charge No. 6, which will be addressed separately below, alleges that the issuance of the Administrative Order required the Chief Justice to disqualify himself from participating in the March 4, 2016, decision of the Supreme Court in *API*. Because each charge, with the exception stated in n.1, *supra*, ends with the same list of Canons allegedly violated, the factual allegations in Charges No. 1-5 may logically be consolidated into a single statement to which the constantly repeated litany of alleged violations would apply. This consolidation simplifies the analysis without sacrificing any specificity. To wit:

Charge No. 1: By willfully issuing his Administrative Order of January 6, 2016, in which he directed or appeared to direct all Alabama probate judges to follow Alabama's marriage laws, completely disregarding a federal court injunction when he knew or should have known every Alabama probate judge was enjoined from using the Alabama marriage laws or any Alabama Supreme Court order to deny marriage licenses to same-sex couples,

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<sup>2</sup> “One can’t believe impossible things,” Alice said to the Queen. The Queen replied: “Why, sometimes I’ve believed as many as six impossible things before breakfast.” Lewis Carroll, *Through the Looking Glass and What Alice Found There* 102-03 (Henry Altemus Co. 1897).

Charge No. 2: In demonstrating his unwillingness in his Administrative Order of January 6, 2016, to follow clear law,

Charge No. 3: In issuing his Administrative Order of January 6, 2016, and in abusing his administrative authority by addressing and/or deciding substantive legal issues while acting in his administrative capacity,

Charge No. 4: In issuing his Administrative Order of January 6, 2016, and thereby substituting his judgment for the judgment of the entire Alabama Supreme Court on a substantive legal issue in a case then pending in that Court, i.e., the effect of the decision of the United States Supreme Court in *Obergefell*,

Charge No. 5: By issuing his Administrative Order of January 6, 2016, and willfully abusing his administrative authority to issue the Administrative Order of January 6, 2016, Chief Justice Roy S. Moore interfered with legal process and remedies in the United States District Court and/or the Alabama Supreme Court available through those courts to address the status of any proceeding to which Alabama's probate judges were parties.

The removal of duplicative language and conclusory derogatory adjectives reduces Charges Nos. 1-5 to the following: Chief Justice Moore (1) directed or appeared to direct all Alabama probate judges to follow Alabama's marriage laws in contradiction to a federal injunction enjoining them from following those laws; (2) failed to follow clear law; (3) addressed or decided substantive legal issues while acting in his administrative capacity; (4) substituted his judgment for the judgment of the entire Alabama Supreme Court on the substantive legal issue of the effect of *Obergefell* on *API*; and (5) interfered with marriage cases pending before the United States District Court and the Alabama Supreme Court to which the probate judges were parties.

## **B. The Administrative Order**

Because Charges No. 1-5 relate strictly to the Administrative Order of January 6, 2016—and to no other action alleged to have been taken by the Chief Justice—the obvious

way to judge whether those charges state a claim upon which relief may be granted is simply to examine the Administrative Order and compare it to the charges. The order consists of four pages that include 17 paragraphs. *See* Exhibit D.

### **1. Paragraphs 1-9**

The first paragraph of the Administrative Order describes the March 3, 2015, holding of the Alabama Supreme Court in *API* that upheld the Alabama marriage laws. The second paragraph describes precedent on the nature of marriage that the Alabama Supreme Court relied on in its March 3 opinion. The third paragraph quotes the conclusion of the March 3 opinion of the Court: “Alabama probate judges have a ministerial duty not to issue any marriage license contrary to [Alabama law]. Nothing in the United States Constitution alters or overrides this duty.” The fourth paragraph quotes the passage in the *API* order of March 12, 2015, that required “all probate judges in this State” to issue marriage licenses “only in accordance with Alabama law.” To this point, the Administrative Order is no more than a factual description of the *API* holdings of March, 2015.

The fifth paragraph, beginning at the bottom of page 1, describes the United States Supreme Court’s decision in *Obergefell* that “held unconstitutional certain marriage laws in the states of Michigan, Kentucky, Ohio, and Tennessee, which fall within the jurisdiction of the Sixth Circuit Court of Appeals.” *Obergefell* was an appeal of a Sixth Circuit case that had consolidated appeals from the four states within its jurisdiction. *See DeBoer v. Snyder*, 772 F.3d 388 (2014). The *Obergefell* judgment thus bound officials in the states of the Sixth Circuit who were parties to that case. Whether *Obergefell* directly abrogated

contrary federal or state court orders without further proceedings in the courts that issued those orders is a matter that will be addressed in § III(B)(3)below.

The sixth paragraph of the Administrative Order recites the operative language of an order of the Alabama Supreme Court issued on June 29, 2015, three days after *Obergefell*, which “invited the parties in *API* to address **the ‘effect of the Supreme Court's decision on this Court's existing orders in this case** no later than 5:00 p.m. on Monday, July 6.” By the plain language of its June 29 order, the Alabama Supreme Court considered its March 2015 orders in *API* to still be in effect, describing them three days after *Obergefell* as “existing orders.” Obviously no purpose would be served by requesting briefing on the effect of *Obergefell* on those orders if they had been immediately extinguished upon the release of the *Obergefell* opinion on June 26.

The seventh paragraph noted that “[s]everal parties filed briefs” in response to the Court’s order of June 29 and that Probate Judges Nick Williams and John Enslin each filed an emergency petition. The eighth paragraph noted public interest in the Court’s pending answer to the question it had raised in its June 29 order: the effect of *Obergefell* on the orders in *API*. The ninth paragraph, at the bottom of page two, noted that the probate judges of Alabama were not uniform in their understanding of the effect of *Obergefell* on the existing orders in *API*, and that “[t]his disparity affects the administration of justice in this State.”

## 2. Paragraph 10 Refutes Charges Nos. 3-5

The tenth paragraph, at the top of page three, directly refutes Charges No. 3-5. That paragraph reads:

I am not at liberty to provide any guidance to Alabama probate judges on the effect of Obergefell on the **existing orders** of the Alabama Supreme Court. That issue remains before the entire Court which continues to deliberate on the matter.

The Complaint notably (and deceptively) omits this exonerating paragraph. Although the Complaint is long on rhetoric, employing the word “flagrantly” eight times (Complaint, ¶¶ 41, 46, 47, 49-52, and 54) and the word “abused” or “abusing” seven times (Complaint, ¶¶ 6 n.1, 41, 49, 50, 52, 61, and 63), it quotes no part of the Administrative Order except the last paragraph. The Complaint, thus, is rich in invective, but poor in analysis. Vehemence, however, cannot disguise an empty argument. How can the JIC rationally charge the Chief Justice with “addressing and/or deciding substantive legal issues while acting in his administrative capacity” (Charge No. 3), when the very document that supposedly justifies this charge clearly states precisely the contrary, namely that the issue in question “remains before the entire Court which continues to deliberate on the matter.” Yes, the Chief Justice did address the issue that was perplexing certain probate judges, but equally certain is that he expressly disclaimed “deciding” that issue. What the Chief Justice said in ¶ 10 of the Administrative Order is unambiguous: “I am not at liberty to provide any guidance to Alabama probate judges on the effect of Obergefell on the **existing orders** of the Alabama Supreme Court.” The statement of the Chief Justice that he *will not provide guidance* on the question before the Court cannot be reconciled with

the allegation in Charge No. 3 that in his Administrative Order he decided “substantive legal issues.”

For the same reason that ¶ 10 demolishes Charge No. 3, it also sweeps away Charge No. 4. Charge No. 4 claims that the Chief Justice in his Administrative Order “substitut[ed] his judgment for the judgment of the entire Alabama Supreme Court on a substantive legal issue in a case then pending in that Court, i.e., the effect of the decision of the United States Supreme Court in Obergefell.” To the contrary, a plain reading of ¶ 10 indicates that the Chief Justice, far from substituting his judgment for that of the Alabama Supreme Court on the issue pending before them, expressly stated that he was “not at liberty to provide any guidance to Alabama probate judges” on the matter. Further, he also stated that the matter “remains before the entire Court which continues to deliberate on the matter.” Charges No. 3 and 4, based on the plain language of the Administrative Order, are absurd, if not fraudulent.

But that is not all. Charge No. 5, in less than elegant language, accuses the Chief Justice of “interfering with legal process and remedies in the United States District Court and/or the Alabama Supreme Court available through those courts to address the status of any proceeding to which Alabama's probate judges were parties.” How can the Administrative Order interfere with proceedings in another Court when the order says expressly that the issue at hand is under deliberation before the Alabama Supreme Court and thus not subject to any guidance from the Chief Justice?

### 3. Paragraphs 11-14

Setting Charges No. 1 and 2 aside for a moment, let us continue. The eleventh paragraph in the Administrative Order notes that the United States Court of Appeals for the Eighth Circuit stated that *Obergefell* did not directly invalidate the marriage laws of the states under its jurisdiction.<sup>3</sup> “The [*Obergefell*] Court invalidated laws in Michigan, Kentucky, Ohio, and Tennessee—not Nebraska.” *Waters v Ricketts*, 798 F.3d 682, 685 (8th Cir. 2015). *See also Jernigan v Crane*, 796 F.3d 976, 979 (8th Cir. 2015) (“not Arkansas”); *Rosenbrahn v Daugaard*, 799 F.3d 918, 922 (8th Cir 2015) (“not South Dakota”). The twelfth paragraph of the Administrative Order quoted a federal district court in the Tenth Circuit to the same effect:

“While *Obergefell* is clearly controlling Supreme Court precedent, it did not directly strike down the provisions of the Kansas Constitution and statutes that bar the issuance of same-sex marriage licenses .... *Obergefell* did not rule on the Kansas plaintiffs’ claims.” *Marie v Mosier*, 2015 WL 4724389 (D. Kan. August 10, 2015) [122 Fed. Supp. 3d 1085, 1102 (D. Kan. 2015)].

Paragraphs 11 and 12, which cite federal authority in post-*Obergefell* cases, indicate that the orders in *API* would continue in effect until addressed by the Alabama Supreme Court.<sup>4</sup>

The thirteenth paragraph states the legal principle reflected in the federal decisions, namely that “a judgment only binds the parties to the case before the court.” *Obergefell*

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<sup>3</sup> The Eighth Circuit includes the states of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

<sup>4</sup> In a brief to the Eleventh Circuit, the ACLU agreed with this reasoning. *Obergefell*, the brief stated, “did not directly rule on Alabama’s constitutional and statutory provisions ... because those provisions were not before the Supreme Court.” Appellant's Reply Brief, *Aaron-Brush v. State of Alabama*, No. 16-10028, 2016 WL 1376047, at \*3 (11th Cir. March 25, 2016).

controlled the defendants in that case but would have to be applied as precedent by courts in other states for it to take effect elsewhere. Having suggested that the judgment in *Obergefell* was limited to the defendants in that case, the Administrative Order in the fourteenth paragraph *disclaimed any intention of applying that principle to the API case then pending before the Alabama Supreme Court*: “Whether or not the Alabama Supreme Court will apply the reasoning of the United States Court of Appeals for the Eighth Circuit, the United States District Court for the District of Kansas, or some other legal analysis *is yet to be determined.*” (Emphasis added.) Furthermore, the Order then recognized the existence of an “apparent conflict between the decision of the Alabama Supreme Court in *API* and the decision of the United States Supreme Court in *Obergefell*” that “adversely affected” the administration of justice in Alabama.

#### **4. Paragraphs 15-17**

In the fifteenth paragraph, the Chief Justice cited his statutory authority to take action on behalf of “the orderly administration of justice within the state.” §§ 12-2-30(b) (7) and -(8), Ala. Code 1975. In the sixteenth paragraph he cited authority that “an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings.” *United States v. Mine Workers*, 330 U.S. 258, 293 (1947) (quoted in *Fields v. City of Fairfield*, 143 So. 2d 177, 180 (Ala. 1962)). In *Mine Workers*, the Supreme Court stated further that “[t]his is true without regard for even the constitutionality of the Act under which the order is issued.” 330 U.S. at 293. In *Ex parte Metropolitan Life Ins. Co.*, 707 So. 2d 229 (Ala. 1997), the

Alabama Supreme Court stated: “It is for the court of first instance to determine the question of the validity of the law, and *until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected ....*” *Id.* at 231-32 (emphasis added) (quoting *Howat v. Kansas*, 258 U.S. 181, 189-90 (1922)).

Having explained (1) that the March 2015 orders in *API* had not to date been modified or vacated by the Alabama Supreme Court, (2) that the Court had requested briefing on the impact of *Obergefell* on those “existing orders,” and (3) that, as indicated by the reasoning in post-*Obergefell* federal decisions and well-established Supreme Court precedent, those orders remained valid until changed “by orderly and proper proceedings,” the Chief Justice in the last paragraph pointed the probate judges to the undeniable truth that “[u]ntil further decision by the Alabama Supreme Court,” those orders remained “in full force and effect.”

### **C. Analysis of Charges Nos. 1 and 2**

The Chief Justice did not attempt, as charged by the JIC, to resolve the conflict between federal and state courts on the constitutionality of Alabama’s marriage laws. He merely pointed out that the state court orders were still in effect pending further decision by the Alabama Supreme Court—an indisputable fact based on the June 29, 2015, briefing order. Until the Alabama Supreme Court addressed those orders, as, for instance, the Eighth Circuit had done with its existing orders in the wake of *Obergefell*, they were still binding. That the orders of the Alabama Supreme Court may have been in conflict with a federal

injunction addressed to the same probate judges was not a matter for the Chief Justice to address or resolve in an administrative order. Nor did he attempt to do so. Far from ordering the probate judges to violate a federal injunction to which they were parties, the Chief Justice never mentioned that injunction. By pointing out the status of the *API* orders, he did not directly or by implication order the probate judges to repudiate the federal injunction. Although the Administrative Order may have increased the probate judges' awareness of the conflicting orders to which they were subject, it did not instruct them how to resolve that dilemma. The status of the state order, as the Chief Justice explained, awaited "further decision by the Alabama Supreme Court."

Mobile County Probate Judge Don Davis, for example, did not consider the Administrative Order as an instruction to repudiate the federal injunction. He viewed it instead as a recognition that six months after *Obergefell* the *API* orders to follow Alabama law had not yet been modified by the Alabama Supreme Court. Considering himself caught between two incompatible obligations, he withdrew from issuing all marriage licenses. Casey Toner, "Mobile Probate Judge Stops Issuing Marriage Licenses, Cites Roy Moore's Order," AL.com (Jan. 6, 2016). Judge Davis did not repudiate the federal injunction nor did the Chief Justice order him to do so.

Two months after the Administrative Order, the Alabama Supreme Court, as anticipated in that order, released its "further order" in *API* and brought the case to a conclusion. Addressing the invitation in its June 29, 2015, order for submission of "motions or briefs," the Court summarily ordered "that all pending motions and petitions are

DISMISSED.” Order of March 4, 2016, *API*.<sup>5</sup> The *API* order discussed neither the status of the “existing orders” nor the effect of *Obergefell* on them.

However, simultaneous with release of the March 4 order, the Court also issued the certificate of judgment in *API* which certified the three March 2015 orders that had been entered in the case:

### CERTIFICATE OF JUDGMENT

...

WHEREAS, the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the orders indicated below were entered in this cause:

**Petition Granted. Writ Issued.** March 3, 2015. PER CURIAM - Stuart, Bolin, Parker, Murdock, Wise, and Bryan, JJ., concur. Main, J., concurs in part and concurs in the result. Shaw, J., dissents.

**Writ Issued as to Judge Don Davis.** March 11, 2015. PER CURIAM - Stuart, Parker, Murdock, Main, Wise, and Bryan, JJ., concur. Shaw, J., dissents.

**Writ Issued as to additional respondents.** March 12, 2015. PER CURIAM - Stuart, Bolin, Parker, Murdock, Main, Wise, and Bryan, JJ., concur. Shaw, J., dissents.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date.

By certifying its March 2015 orders in the March 2016 certificate of judgment, the Court did not alter, vacate, or disturb those orders, but instead left them in place and indeed

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<sup>5</sup> The “petitions” referred to were the emergency petitions (mentioned in the seventh paragraph of the Administrative Order) that were filed in *API* after the June 29 order.

made them permanent. Federal judge Callie Granade agrees with this understanding. *See* Order, *Strawser v. Strange*, 2016 WL 3199523, at \*3 (noting “[t]he failure of the Alabama Supreme Court to set aside its earlier mandamus order and its willingness to uphold that order in the face of the United States Supreme Court’s ruling in *Obergefell*”). In a filing with the United States Court of Appeals for the Eleventh Circuit, the ACLU of Alabama Foundation, representing parties in one of the Alabama marriage cases, also acknowledged this reality: “[T]he Alabama Supreme Court has acted in a manner that leaves in place its earlier order to Alabama’s probate court judges to follow Alabama law with regard to its prohibition of same-sex marriage, notwithstanding *Obergefell*.” Appellant's Reply Brief, *Aaron-Brush v. State of Alabama*, No. 16-10028, 2016 WL 1376047, at \*2-\*3 (11th Cir. March 25, 2016).

Undoubtedly, if the March 2016 certificate of judgment left the March 2015 *API* orders in place, then surely those same orders were in place on January 6, 2016, when the Chief Justice issued his Administrative Order. If that order offended the Alabama Canons of Judicial Ethics, then so did the certificate of judgment that the entire Court issued two months later. The Chief Justice in his order merely noted the status of the “existing orders” without prejudging their validity in light of *Obergefell*. The Court itself made the decision to leave the orders in place. Does the JIC now purport to sit in judgment of the decisions of the Alabama Supreme Court?

Thus, the allegation in Charge No. 1 that the Chief Justice ordered the Alabama probate judges to obey state law when a federal injunction required them to ignore state law overlooks the reality that the purpose of the Administrative Order was to explain the

status of the *state-court* orders and not to address or resolve the question of the disagreement between those orders and the federal order. Complaining in Charges No. 3 and 4 that the Chief Justice wrongly decided “substantive legal issues,” the JIC then inconsistently accuses the Chief Justice in Charge No. 1 of not addressing the weighty and substantive legal issue of the resolution of a conflict between state and federal court orders. To accuse the Chief Justice of an ethical violation for something he did *not* do is a questionable tactic, especially when the standard of proof in a judicial-conduct proceeding is clear-and-convincing evidence. How clear, how convincing is the evidence that the Chief Justice ordered the probate judges to disregard a federal injunction when the sole evidence offered in support of that charge—his four-page order of January 6, 2016—does not mention the federal injunction at all?

Finally, Charge No. 2 alleges in its entirety that in the Administrative Order the Chief Justice failed “to follow clear law.” But all he stated in that order was that the March 2015 orders in *API* were still in effect. The Chief Justice was not obligated in his Administrative Order to apply *Obergefell* as precedent to the *API* orders, a matter clearly reserved to the Court itself. *See* discussion of paragraph 10, *supra* (“I am not at liberty to provide any guidance to Alabama probate judges on the effect of *Obergefell* on the **existing orders** of the Alabama Supreme Court.”).

In its eagerness to portray the Chief Justice as a rebel against federal law, the JIC both accuses him of making substantive legal decisions (Charges No. 3 and 4) and of refusing to make such decisions (Charges No. 1 and 2), and finally of interfering with the courts that had the authority to make those decisions (Charge No. 5). Tellingly, the JIC

does not quote or paraphrase any portion of the Administrative Order except for the last paragraph. Separating the conclusion from the legal reasoning that preceded it, the JIC creates a fictional scenario that may be persuasive to those who have not read the Administrative Order, but is clearly at odds with its logic and reasoning.

Because the Administrative Order itself refutes the allegations made about it, Charges No. 1-5 should be dismissed.

**D. Charge No. 6 Is Factually Unfounded And Violates the JIC's Own Rules.**

Charge No. 6: By taking legal positions in his Administrative Order of January 6, 2016, on a matter pending before the Alabama Supreme Court in *API*, Chief Justice Roy S. Moore placed his impartiality into question on those issues, thus disqualifying himself from further proceedings in that case; yet he participated in further proceedings in *API*, after having disqualified himself by his actions ....

The remainder of Charge No. 6 is the same list of generic Canons that follows each of the other charges.

The premise of Charge No. 6 is demonstrably untrue. The Chief Justice did not take a legal position in his Administrative Order on the effect of *Obergefell* on the *API* case, the issue that had been pending before the Court since its June 29, 2015, order for further briefing. In fact, he did exactly the opposite. As explained in detail above, the Chief Justice in his Administrative Order deferred completely to the Alabama Supreme Court for its future resolution of that question and expressly declined to forecast or recommend how that issue should be resolved. In Charge No. 6, like the other five charges, the JIC continues to peddle the false narrative that the Chief Justice did something other than simply instruct the probate judges that the Alabama Supreme Court's orders remained in effect pending

“further decision” of that Court. Charge No. 6, like the other charges, should therefore be dismissed because it factually contradicts the Administrative Order itself.

Furthermore, Charge No. 6 blatantly violates the JIC’s own rules. Rule 6A, Ala. R. P. Jud. Inq. Comm’n, provides that proceedings before the JIC may be instituted “upon a verified complaint filed ... by a member of the public.” If, upon preliminary review, a complaint is not dismissed, the JIC “shall serve upon the judge who is the subject of the complaint copies of the complaint” and all related documentation provided by the complainant or accumulated by the Commission. Rule 6C, Ala. R. P. Jud. Inq. Comm’n. *“Further, the commission shall advise the judge of those aspects of the complaint that it then considers worthy of some investigation.” Id.* (emphasis added).

On January 22, 2016, the Commission served upon Chief Justice Moore a Rule 6C investigation letter that advised him of four allegations arising from the Administrative Order of January 6, 2016, that it considered “worthy of some investigation.” *See* Exhibit H. None of those allegations stated that the Administrative Order raised a question about his impartiality in the *API* case, “thus disqualifying him[] from further proceedings in that case.”

Rule 6D, Ala. R. P. Jud. Inq. Comm’n, provides that

[e]very six weeks after serving the judge pursuant to Rule 6.C., the commission ... shall serve upon the judge a full statement of whether the commission intends to continue the investigation *and any modification of the previous advice as to aspects of the complaint that it then deems worthy of some investigation.*

(Emphasis added.) Pursuant to Rule 6D, the JIC on March 4 and April 15 served on the Chief Justice “six-week letters” stating that the Commission intended to continue the

investigation that commenced on January 22. *See* Exhibit I. In neither letter did the JIC modify “the previous advice as to aspects of the complaint that it then deems worthy of some investigation.”<sup>6</sup>

By filing Charge No. 6, the JIC has violated both Rule 6C and Rule 6D. In order to file Charge No. 6, the JIC was required to advise the Chief Justice in its original investigation letter or in a subsequent six-week letter that it considered worthy of investigation the question of whether his Administrative Order of January 6 placed his impartiality into question and disqualified him from further participation in *API*. The JIC never so advised the Chief Justice. Indeed, Charge No. 6 states that the Chief Justice “participated in further proceedings in *API*,” an event that occurred on March 4, 2016, when the Court released an order and special writings in that case, including a concurrence by the Chief Justice. That event, however, occurred after the January 22 investigation letter and the first six-week letter had been served. The JIC could have modified the aspects of the complaint it considered worthy of investigation in its April 15 six-week letter to include a disqualification allegation arising from the March 4 special writing, but chose not to do so.

Therefore, the JIC filed Charge No. 6 in violation of mandatory rules that require notice to a judge of the matters being investigated. *See* Rule 6C (“Further, the commission

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<sup>6</sup> On February 2, 2016, and February 29, 2016, the JIC served upon the Chief Justice form complaints generated at political rallies that referenced the Administrative Order of January 6. However, the investigation letters that accompanied those complaints did not contain any new allegations but merely referenced the allegations in the investigation letter of January 22. *See* Exhibit J.

*shall* advise the judge ...”); Rule 6D (“Every six weeks after serving the judge pursuant to Rule 6.C., the commission ... *shall* serve upon the judge ...”). Rule 19, Ala. R. P. Jud. Inq. Comm’n, provides an express remedy to a judge who is “aggrieved” by the JIC’s violation of its own rules of procedure.

### **Rule 19. Right to Relief from Violations of These Rules by Commission**

... Any judge who is the subject of prosecution by the commission may petition the Court of the Judiciary for relief .... Such a petition shall be denominated "Petition for Relief," and a copy shall be served on the commission.

Charge No. 6, therefore, apart from being factually unfounded, is void for failure of the JIC to follow its own rules that require timely notice of the allegations being investigated. For that reason alone, Charge No. 6 must be dismissed.<sup>7</sup>

### **E. Summary**

A fair reading of the Administrative Order indicates that the Chief Justice did not provide substantive legal advice to the probate judges as to the effect of *Obergefell* on the *API* orders, but instead deferred to the Alabama Supreme Court to interpret its own orders in light of the actions of the federal courts. The JIC accuses the Chief Justice both of failing to advise the probate judges that the *API* orders were no longer effective and of substituting his judgment for that of the Alabama Supreme Court and the federal courts. But, in fact, all the Administrative Order did was to provide a status report, namely that the effect of

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<sup>7</sup> Rather than file a separate petition for relief with the Court to address Charge No. 6, the Chief Justice for judicial efficiency includes in this section of his motion to dismiss his request for Rule 19 relief to remedy the violation of Rules 6C and 6D. However, should the Court so desire, the Chief Justice will state his Rule 19 grievance in a separate petition.

*Obergefell* on the *API* orders still awaited a decision by the Alabama Supreme Court. Until that decision was made, the March 2015 orders were still in effect. Because that simple fact is undeniable, the Chief Justice did not violate any of the Canons of Judicial Ethics in issuing the Administrative Order.

## **V. The Canons Allegedly Violated**

We now turn to an examination of the Canons the JIC claims the Chief Justice violated by issuing his Administrative Order of January 16, 2016. All the charges rely on a common list of alleged violations, namely:

- a. Failed to uphold the integrity and independence of the judiciary, Canon 1;
- b. Failed to participate in establishing, maintaining, and enforcing and to himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, Canon 1;
- c. Failed to avoid impropriety and the appearance of impropriety in all his activities, Canon 2;
- d. Failed to respect and comply with the law, Canon 2A;
- e. Failed to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, Canon 2A;
- f. Failed to avoid conduct prejudicial to the administration of justice that brings the judicial office into disrepute, Canon 2B; and/or
- g. Failed to perform the duties of his office impartially, Canon 3.<sup>8</sup>

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<sup>8</sup> Some minor variation exists among the canons allegedly violated. Under Charges Nos. 4-6, the phrase “participate in establishing, maintaining, and enforcing and to himself” is omitted from § b. In Charge No. 6, the phrase “and diligently” is added to § g.

Thus, the JIC in every charge accuses the Chief Justice of violating Canons 1, 2, 2A, 2B, and 3. In Charge No. 4, the JIC additionally and implausibly alleges a violation of Canon 3A(6), the public comment canon. But that Canon expressly excludes public statements that a judge makes “in the course of ... official duties.” An administrative order is an official act. Without the Canon 3A(6) “official duties” exclusion, judges would violate the Canons by issuing opinions. “Public records are not equivalent to public comment. Otherwise, all opinions would be construed as public comment.” *In re A.H. Robins Co.*, 602 F. Supp. 243, 251 (D. Kan. 1985). Having disposed of the lone Canon 3A(6) allegation, we now turn to the Canons alleged to be violated in all of the six charges.

**A. Canon 1**

Canon 1 states in relevant part:

**CANON 1. A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY**

... A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. ...

These very general statements do not provide specific guidelines for behavior and thus allow considerable room for subjectivity in enforcement.

Effective February 1, 1976, the Alabama Supreme Court adopted the Alabama Canons of Judicial Ethics.<sup>9</sup> The Alabama Canons were modeled on the 1972 Model Code of Judicial Conduct promulgated by the American Bar Association (“ABA”). Canon 1 is

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<sup>9</sup> “The supreme court shall adopt rules of conduct and canons of ethics, not inconsistent with the provisions of this Constitution, for the judges of all courts of this state.” Art. VI, § 147(c), Ala. Const. 1901.

taken verbatim from the 1972 ABA Model Code. See E. Wayne Thode, *Reporter's Notes to Code of Judicial Conduct* 7 (1973). The reporter for the 1990 revision of the Model Code noted that the “very general nature [of Canon 1] does not establish a bright line for purposes of discipline.” Lisa L. Milord, *The Development of the ABA Judicial Code* 12 (1992). Because of its generality, the Pennsylvania Supreme Court considers Canon 1 to be “primarily a statement of purpose and rule of construction, rather than a separate rule of conduct.” *Matter of Larsen*, 616 A.2d 529, 558 (Penn. 1992). See also *In re Schenck*, 870 P.2d 185 (Or. 1994) (Unis, J., concurring in part, dissenting in part) (“Canon 1 is *not* a rule of conduct under which a judge may be disciplined. Rather, Canon 1 is the basic philosophical provision of the Code ... a guide to be used in interpreting the other canons in the Code”). For these reasons, courts rarely cite Canon 1 as a standalone basis for discipline. “In most instances where Canon 1 is cited as a basis for imposing discipline, other Canons are also cited.” American Bar Association, *Annotated Model Code of Judicial Conduct* 13 (2004).

The text accompanying Canon 1 also suffers from extreme generality. In the 1990 Model Code the word “should” is hortatory, but not binding. The word “shall,” by contrast, “is intended to impose binding obligations.” Preamble to 1990 Model Code of Judicial Conduct. In the 1990 Model Code, the relevant sentence of Canon 1 reads as follows: “A judge *should* participate in establishing, maintaining, and enforcing high standards of conduct, and *shall* personally observe those standards so that the integrity and independence of the judiciary will be preserved.” (Emphasis added.) The first part of the sentence was stated in non-mandatory terms to avoid subjecting a judge to discipline “for

merely failing to participate in the establishment of standards of conduct [or] for participating in the establishment of standards that were less than high.” Milord, *Development*, at 12. Thus, the only part of the quoted sentence that truly states a mandatory standard is the requirement that a judge “observe[] high standards of conduct.”

A requirement that a judge observe “high standards of conduct,” standing alone, says nothing about what those standards are. The JIC does not claim that the Chief Justice has engaged in neglect of duty, abuse of litigants, criminal behavior, corruption, misuse of intoxicants, or immorality. Attempting to bring the Administrative Order within its jurisdiction, the JIC has therefore resorted to generally worded canons that lack specific guidance as to what behavior is prohibited.

**B. Canons 2, 2A, and 2B**

Canon 2 states in relevant part:

**CANON 2. A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES**

**A.** A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

**B.** A judge should ... avoid conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Canon 2, like Canon 1, speaks largely in general terms and provides little specific content except for the instruction to “respect and comply with the law.” That phrase, however, is not meant to give the JIC jurisdiction over the official acts of a judge. As the leading treatise states: “[T]he responsibility to comply with the law relates primarily to the judge’s general

duty to obey the law in everyday life, and is directed at judges who commit criminal acts.” James J. Alfani et al., *Judicial Conduct and Ethics*, § 2.02, at 2-7 (4th ed. 2007).

Additionally, “Canon 2, like Canon 1, is extremely broad in scope.” Milord, *Development*, at 13. “Impropriety” and “the appearance of impropriety” are very broad terms. “The black-letter statement of Canon 2 is very broad in its terms and perhaps the nearest to being hortatory of any provision in the Code.” Thode, *Reporter's Notes*, at 49. “Propriety ... is often in the eye of the beholder. A given individual will find conduct to be within or beyond the bounds of propriety to the extent the conduct comports with that individual’s own highly subjective views of propriety.” *Matter of Larsen*, 616 A.2d at 580. One commentator observes that “amorphous standards like the appearance of impropriety and the promotion of public confidence, which apply to all activities, often are the backbone of decisions to discipline judges. The dilemma presented by these amorphous standards is that they are essentially subjective and immeasurable concepts.” James R. Nosedá, *Limiting Off-Bench Expression: Striking a Balance Between Accountability and Independence*, 36 DePaul L. Rev. 519, 532 (1987).

Thus, Canons 2, 2A, and 2B do little to mitigate the generality of Canon 1.<sup>10</sup> Because “Canons 1 and 2 are fraught with subjectivity and elasticity,” *Matter of Hey*, 452 S.E.2d 24, 33 (W. Va. 1994), they function as little more than window dressing for the complaint to create an illusion of jurisdiction. Unable to identify any specific “unethical” behavior

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<sup>10</sup> The addition of the black-letter text of Canon 3—“A judge should perform the duties of his office impartially and diligently”—does not change this conclusion. In only Charge No. 6 does the JIC invoke the phrase “and diligently.” The exercise of impartiality generally applies to adjudication between litigants, not to issuance of an administrative order.

with which to charge the Chief Justice, the JIC artfully teases and subdivides the generic introductory canons to create a list of seven offenses that may appear plausible to the casual reader, but in fact, upon examination, evaporate for lack of substance.

**Ultimately the charges all boil down to the assertion that the Chief Justice incorrectly instructed the probate judges as to the status of the March 2015 orders in *API*. The heart of the JIC’s case, therefore, is that the Chief Justice made an error of law.** The COJ, however, has no jurisdiction to review the administrative orders of the Chief Justice. Furthermore, except in very limited circumstances, the doctrine of judicial independence shields the official acts of judges from review for legal error.

## **VI. Jurisdictional Defects in the Complaint**

Comparison of the Administrative Order with the charges in the complaint reveals that those charges are without substance. Examination of the Canons allegedly violated further demonstrates the flimsiness of the complaint. In addition to those defects, the complaint exceeds the jurisdiction of the JIC by (1) usurping the legal authority of the Alabama Supreme Court to review administrative orders of the Chief Justice and (2) reviewing for legal error an official act of the Chief Justice taken in good faith.

### **A. The Alabama Supreme Court has Exclusive Authority to Review the Administrative Orders of the Chief Justice.**

The Alabama Constitution creates the JIC and specifies its limited jurisdiction and powers. The nine-member JIC has “authority to conduct investigations” concerning any Alabama judge and has the ability to file ethical charges against judges. Art. VI, § 156(a), (b), Ala. Const. 1901. The Alabama Constitution confines the scope of its powers as

follows:

The commission shall file a complaint with the Court of the Judiciary in the event that a majority of the members of the commission decide that a reasonable basis exists, (1) to charge a judge with violation of any Canon of Judicial Ethics, misconduct in office, failure to perform his or her duties, or (2) to charge that the judge is physically or mentally unable to perform his or her duties.

*Id.* Misconduct in office or failure to perform the duties of office is not alleged in the JIC investigation of Chief Justice Moore. *See In re Emmet*, 300 So. 2d 435, 438 (Ala. 1974) (describing “misconduct in office” as “an act of unlawful behavior” and not mere “judicial impropriety”). Nor is it alleged that Chief Justice Moore is physically or mentally unable to perform his duties.

Instead, all six charges arise from a single administrative order issued pursuant to the constitutional and statutory authority of the chief justice. *See* Art. VI, § 149, Ala. Const. 1901 (“The chief justice of the supreme court shall be the administrative head of the judicial system.”); §§ 12-2-30 (b) (7) and -(8), Ala. Code 1975.

The Alabama Code lodges the authority to review the administrative orders of the Chief Justice with the justices of the Alabama Supreme Court and makes no provision for any other body to review the validity of those orders.

*The justices of the Supreme Court shall have the power and authority to review, countermand, overrule, modify or amend any administrative decision by ... the Chief Justice .... A majority of all the justices shall constitute a quorum for such purpose. The concurrence of a majority of all the justices shall be sufficient to determine the question of whether and how such decision shall be so reviewed, countermanded, overruled, modified or amended.*

§ 12-5-20, Ala. Code 1975 (emphasis added). Accordingly, the justices of the Alabama

Supreme Court, and not the members of the JIC, have the “power and authority” to review, alter, or revoke a chief justice's administrative orders. The oft-cited canon of statutory construction of *expressio unius est exclusio alterius*—“to express or include one thing implies the exclusion of the other, or of the alternative”—supports this conclusion. *Black's Law Dictionary* (10th ed. 2014). In 2003, for example, the justices overruled an administrative order of Chief Justice Moore regarding the Ten Commandments monument, thus exercising their jurisdiction over administrative orders pursuant to § 12-5-20. *See Moore v. Judicial Inquiry Comm'n of State of Ala.*, 891 So. 2d 848, 853 (Ala. 2004). Because trial court employees had not received a merit raise since 2008, Chief Justice Moore for reasons of equity issued an administrative order in October 2013 instituting a moratorium on salary raises for Supreme Court employees. Exercising their exclusive jurisdiction over administrative orders, the justices countermanded that order a week later. Exhibit K.

Unlike the justices of the Supreme Court, the JIC is not authorized to review the administrative orders of Chief Justice Moore. In fact, in *API* itself this Court recently warned the JIC that it lacks the powers of an appellate court:

The JIC is a tribunal commissioned solely for the investigation and prosecution of 'complaints' against judges regarding violation of the Canons of Judicial Ethics and the physical and mental ability of judges to perform their duties. *It is not a court of law, and it has no authority -- and no role to play -- in the performance by this Court of its constitutional duties as a court of law to decide the cases brought before it.*

*API*, 2015 WL 1036064, at \*1 n.3 (Ala. Mar. 10, 2015) (emphasis added). Likewise, the JIC has no role to play in the performance by the justices of the Alabama Supreme Court

of their plenary statutory duty to review the administrative orders of the Chief Justice.

Despite the stern admonition in *API* and in disregard of its limited jurisdiction, the JIC lodged six charges against the Chief Justice, all arising from his Administrative Order of January 6, 2016. By making a “further decision” in its Order of March 4 in *API*, the Alabama Supreme Court effectively confirmed the Administrative Order of January 6. At the very least, the justices left the Administrative Order undisturbed by not exercising their exclusive prerogative to overrule, modify, or amend it.<sup>11</sup>

**B. The JIC Lacks Jurisdiction to Review Mere Legal Error.**

The doctrine of “mere legal error” precludes judicial conduct organizations from employing generally worded canons to undermine judicial independence. Even if the Administrative Order misstated the law, which it did not, legal error is correctable by appellate review, not by judicial-conduct inquisitions. “Mere legal error, without more, ... is insufficient to support a finding that a judge has violated the Code of Judicial Ethics.” *Oberholzer v. Comm'n on Judicial Performance*, 84 Cal. Rptr. 2d 466, 975 P.2d 663, 680 (1999). *See also People ex rel. Harrod v. Illinois Courts Comm'n*, 372 N.E.2d 53, 65 (1977) (stating that “to maintain an independent judiciary mere errors of law ... should not be the subject of discipline”).

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<sup>11</sup> An alternative method to review an administrative order is to seek a declaratory judgment in the circuit court. *See Geeslin v. On-Line Info. Servs., Inc.*, 186 So. 3d 963 (Ala. 2015) (holding that Chief Justice Malone exceeded his administrative authority in mandating e-filing in the circuit courts); *Ex parte State ex rel. James*, 711 So. 2d 952, 963-64 (Ala. 1998) (plurality) (holding that the chief justice had no power acting unilaterally to control by administrative order how trial courts manage their courtrooms). No such challenge was ever filed in response to the Administrative Order of January 6, 2016.

Even if the Chief Justice was in error to state that the March 2015 *API* orders continued in effect until modified through orderly procedures (which he was not because he stated a legal truism), such alleged error is not subject to scrutiny in a judicial conduct proceeding. “Mere legal error” is exempt from attack by judicial conduct organizations in order to protect the value of judicial independence. “That value is threatened when a judge ... must ask not ‘which is the best choice under the law as I understand it,’ but ‘which is the choice least likely to result in judicial discipline?’” *In re Curda*, 49 P.3d 255, 261 (Alaska 2002). *See also* Cynthia Gray, *The Line between Legal Error and Judicial Misconduct: Balancing Judicial Independence and Accountability*, 32 Hofstra L. Rev. 1245, 1247 (2004) (stating that “if every error of law or abuse of discretion subjected a judge to discipline as well as reversal, the independence of the judiciary would be threatened”). Without this limitation on its jurisdiction, the JIC and the COJ could operate as the ultimate appellate court in the State of Alabama, exercising review authority even over the Alabama Supreme Court.

The tendency of all power is to expand and aggrandize. The separation of powers doctrine operates as a check against this all-too-familiar human tendency. *See The Federalist No. 51* (James Madison), at 347-53 (Jacob E. Cooke ed., 1961). That an urge may stir in the breasts of some members of the JIC to exercise control over appellate judges to review their official actions for legal error is not surprising, given the temptations to which human nature is susceptible. The need for zealous vigilance against such misuse of power as is being attempted in this case is, therefore, of the utmost importance. The Alabama Constitution does not endow the JIC with the authority to review official actions

of either the appellate courts of Alabama or of the Chief Justice in his administrative capacity. “So long as the judge makes rulings in good faith, and in an effort to follow the law as the judge understands it, the usual safeguard against error or overreaching lies in the adversary system and appellate review.” James F. Alfani et al., *Judicial Conduct and Ethics* § 2.02 (4th ed. 2007). See *People ex rel. Harrod*, 372 N.E.2d at 66 (holding that the Illinois Courts Commission “exceeded its constitutional authority” by applying “its own independent interpretation and construction” of a statute); Canon 1, *Cal. Code of Jud. Ethics* (“A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this code.”).<sup>12</sup>

The orderly processes of appellate review are the exclusive method for addressing legal error except in the rare case of bad faith. “[A]bsent bad faith (i.e., absent proof of malice, ill will, or improper motive), a judge may not be disciplined under Canons 2A and 2B of the Alabama Canons of Judicial Ethics for erroneous legal rulings.” *Matter of Sheffield*, 465 So. 2d 350 (Ala. 1984). The Chief Justice in his Administrative Order explained the interim status of the *API* decision as he understood it pending “further decision” by the Alabama Supreme Court. Absent a showing of bad faith, the JIC has no authority to review this statement about the “existing orders” in *API*. Were the statement in error, the Supreme Court could have corrected it. See § 12-5-20. Because the JIC has no

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<sup>12</sup> The federal appellate courts follow a similar rule. Any judicial-conduct complaint that is “directly related to the merits of a decision or procedural ruling” must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii). Furthermore, “[a]ny allegation that calls into question the correctness of an official action of a judge ... is merits related.” Standard 2 for Assessing Compliance with the Act, *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice* 145 (2006).

role to play in the process of reviewing the administrative orders of the Chief Justice and because no allegation of bad faith has been made, the complaint is fatally deficient and must be dismissed for failure to state a claim. The JIC has no jurisdiction to review the January 2016 Administrative Order. Only the Alabama Supreme Court has such jurisdiction and that Court did not overrule, modify, or in any way set aside that order. The JIC has no authority to address legal issues and thus the JIC charge should be dismissed.

## **VII. Conclusion**

The JIC's complaint is premised upon the false proposition that in his Administrative Order of January 16, 2016, the Chief Justice defied the federal courts. The purpose of that Order, however, was to instruct the probate judges about the status of the *state-court* injunction that had first been imposed upon them in March 2015 and that the June 29, 2015 order of the Alabama Supreme Court had continued in effect post-*Obergefell* pending further briefing. The sole purpose of the Administrative Order in question was to inform the probate judges that six months after that briefing order, the Court still remained in deliberation on the matter and that, therefore, the *API* orders continued in effect pending "further decision."

An order issued by a court with jurisdiction, even if erroneous, remains in effect until modified by the court that issued it or by a superior court having jurisdiction over the order in a case before it. *See Fields v. City of Fairfield*, 143 So. 2d 177, 180 (Ala. 1962) (stating that "an order issued by a court with jurisdiction over the subject matter and person

must be obeyed by the parties until it is reversed by orderly and proper proceedings”) (quoting *United States v. Mine Workers*, 330 U.S. 258, 293 (1947)).<sup>13</sup>

Thirty years ago, Justice Sandra Day O’Connor lamented in the abortion context the practice of casting aside established legal procedures to accelerate the adoption of a favored political agenda. “Today’s decision ... makes it painfully clear that no legal rule or doctrine is safe from ad hoc nullification by this Court when an occasion for its application arises in a case involving state regulation of abortion.” *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 814 (1986) (O’Connor, J., dissenting). Likewise in this case the simple reality that the *API* orders of the Alabama Supreme Court remained in effect until modified by orderly procedure is too burdensome for the JIC to endure. Instead, the JIC has expressed its displeasure with such orderly procedures by filing an ethical complaint against the Chief Justice for respecting the authority of the Alabama Supreme Court to modify its own orders and for recognizing that those orders remained in effect until so modified.

Respectfully Submitted,

/s Mathew D. Staver  
**Mathew D. Staver**<sup>†</sup>  
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/s Horatio G. Mihet  
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s/ Phillip L. Jauregui  
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*Attorneys for Petitioner*

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<sup>13</sup> This quotation appears on page 4 of the Administrative Order, but like the rest of the Order, except for the concluding paragraph, has been carefully ignored by the JIC.

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†Admitted *pro hac vice*

**CERTIFICATE OF SERVICE**

I certify that I have this 21st day of June, 2016, served a copy of this motion to dismiss and brief in support thereof on the Judicial Inquiry Commission and counsel below through electronic mail:

John L. Carroll, Lead Counsel  
Rosa Hamlett Davis, Co-Counsel  
Judicial Inquiry Commission of Alabama  
401 Adams Avenue, Suite 720  
Montgomery, AL 36104

s/ Horatio G. Mihet  
Horatio G. Mihet  
*Attorney for Chief Justice Moore*

**STATE OF ALABAMA -- JUDICIAL SYSTEM**

**ADMINISTRATIVE ORDER OF THE  
CHIEF JUSTICE OF THE SUPREME COURT**

WHEREAS, pursuant to Article VI, Section 149, of the Constitution of Alabama, the Chief Justice of the Supreme Court of Alabama is the administrative head of the judicial system; and

WHEREAS, pursuant to § 12-2-30(b)(7), Ala. Code 1975, the Chief Justice is authorized and empowered to "take affirmative and appropriate action to correct or alleviate any condition or situation adversely affecting the administration of justice within the state"; and

WHEREAS, pursuant to § 12-2-30(b)(8), Ala. Code 1975, the Chief Justice is authorized and empowered to "take any such other, further or additional action as may be necessary for the orderly administration of justice within the state, whether or not enumerated in this section or elsewhere"; and

WHEREAS, pursuant to Article VI, Section 139(a), of the Constitution of Alabama, the Probate Judges of Alabama are part of Alabama's Unified Judicial System; and

WHEREAS, pursuant to Article XVI, Section 279, of the Constitution of Alabama, the Probate Judges of Alabama are bound by oath to "support the Constitution of the United States, and the Constitution of the State of Alabama"; and

WHEREAS, as explained in my Letter and Memorandum to the Alabama Probate Judges, dated February 3, 2015, and incorporated fully herein by reference, the Probate Judges of Alabama are not bound by the orders of January 23, 2015 and January 28, 2015 in the case of Searcy v. Strange (No. 1:14-208-CG-N) (S.D. Ala.) or by the order of January 26, 2015 in Strawser v. Strange (No. 1:14-CV-424-CG-C) (S.D. Ala.); and

WHEREAS, pursuant to Rule 65 of the Federal Rules of Civil Procedure, the aforementioned orders bind only the

Alabama Attorney General and do not bind the Probate Judges of Alabama who, as members of the judicial branch, neither act as agents or employees of the Attorney General nor in concert or participation with him; and

WHEREAS, the Attorney General possesses no authority under Alabama law to issue marriage licenses, and therefore, under the doctrine of Ex parte Young, 209 U.S. 123 (2008), lacks a sufficient connection to the administration of those laws; and

WHEREAS, the Eleventh Amendment of the United States Constitution prohibits the Attorney General, as a defendant in a legal action, from standing as a surrogate for all state officials; and

WHEREAS, the separation of powers provisions of the Alabama Constitution, Art. III, §§ 42 and 43, Ala. Const. 1901, do not permit the Attorney General, a member of the executive branch, to control the duties and responsibilities of Alabama Probate Judges; and

WHEREAS, the Probate Judges of Alabama fall under the direct supervision and authority of the Chief Justice of the Supreme Court as the Administrative Head of the Judicial Branch; and

WHEREAS, the United States District Court for the Southern District of Alabama has not issued an order directed to the Probate Judges of Alabama to issue marriage licenses that violate Alabama law; and

WHEREAS, the opinions of the United States District Court for the Southern District of Alabama do not bind the state courts of Alabama but only serve as persuasive authority; and

WHEREAS, some Probate Judges have expressed an intention to cease issuing all marriage licenses, others an intention to issue only marriage licenses that conform to Alabama law, and yet others an intention to issue marriage licenses that violate Alabama law, thus creating confusion and disarray in the administration of the law; and

WHEREAS, the Alabama Department of Public Health has redrafted marriage license forms in contradiction to the public statements of Governor Bentley to uphold the Alabama Constitution, and has sent such forms to all Alabama Probate Judges, creating further inconsistency in the administration of justice; and

WHEREAS, cases are currently pending before The United States District Court for the Middle District of Alabama and the United States District Court for the Northern District of Alabama that could result in orders that conflict with those in Searcy and Strawser, thus creating confusion and uncertainty that would adversely affect the administration of justice within Alabama; and

WHEREAS, if Probate Judges in Alabama either issue marriage licenses that are prohibited by Alabama law or recognize marriages performed in other jurisdictions that are not legal under Alabama law, the pending cases in the federal district courts in Alabama outside of the Southern District could be mooted, thus undermining the capacity of those courts to act independently of the Southern District and creating further confusion and uncertainty as to the administration of justice within this State; and

WHEREAS Article I, Section 36.03, of the Constitution of Alabama, entitled "Sanctity of marriage," states:

(a) This amendment shall be known and may be cited as the Sanctity of Marriage Amendment.

(b) Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting this unique relationship in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state.

(c) Marriage is a sacred covenant, solemnized between a man and a woman, which, when the legal capacity and consent of both parties is present, establishes their relationship as husband and wife, and which is recognized by the state as a civil contract.

(d) No marriage license shall be issued in the State of Alabama to parties of the same sex.

(e) The State of Alabama shall not recognize as valid any marriage of parties of the same sex that occurred or was alleged to have occurred as a result of the law of any jurisdiction regardless of whether a marriage license was issued.

(f) The State of Alabama shall not recognize as valid any common law marriage of parties of the same sex.

(g) A union replicating marriage of or between persons of the same sex in the State of Alabama or in any other jurisdiction shall be considered and treated in all respects as having no legal force or effect in this state and shall not be recognized by this state as a marriage or other union replicating marriage.

and

WHEREAS § 30-1-9, Ala. Code 1975, entitled "Marriage, recognition thereof, between persons of the same sex prohibited," states:

(a) This section shall be known and may be cited as the "Alabama Marriage Protection Act."

(b) Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting the unique relationship in order to promote, among other goals, the stability

and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state.

(c) Marriage is a sacred covenant, solemnized between a man and a woman, which, when the legal capacity and consent of both parties is present, establishes their relationship as husband and wife, and which is recognized by the state as a civil contract.

(d) No marriage license shall be issued in the State of Alabama to parties of the same sex.

(e) The State of Alabama shall not recognize as valid any marriage of parties of the same sex that occurred or was alleged to have occurred as a result of the law of any jurisdiction regardless of whether a marriage license was issued.

and

WHEREAS, neither the Supreme Court of the United States nor the Supreme Court of Alabama has ruled on the constitutionality of either the Sanctity of Marriage Amendment or the Marriage Protection Act:

**NOW THEREFORE, IT IS ORDERED AND DIRECTED THAT:**

To ensure the orderly administration of justice within the State of Alabama, to alleviate a situation adversely affecting the administration of justice within the State, and to harmonize the administration of justice between the Alabama judicial branch and the federal courts in Alabama:

**Effective immediately, no Probate Judge of the State of Alabama nor any agent or employee of any Alabama Probate Judge shall issue or recognize a marriage license that is inconsistent with Article 1, Section 36.03, of the Alabama Constitution or § 30-1-19, Ala. Code 1975.**

Should any Probate Judge of this state fail to

follow the Constitution and statutes of Alabama as stated, it would be the responsibility of the Chief Executive Officer of the State of Alabama, Governor Robert Bentley, in whom the Constitution vests "the supreme executive power of this state," Art. V, § 113, Ala. Const. 1901, to ensure the execution of the law. "The Governor shall take care that the laws be faithfully executed." Art. V, § 120, Ala. Const. 1901. "'If the governor's "supreme executive power" means anything, it means that when the governor makes a determination that the laws are not being faithfully executed, he can act using the legal means that are at his disposal.'" Tyson v. Jones, 60 So. 3d 831, 850 (Ala. 2010) (quoting Riley v. Cornerstone, 57 So. 3d 704, 733 (Ala. 2010)).

DONE on this 8th day of February, 2015.

A handwritten signature in black ink, appearing to read "Roy S. Moore". The signature is written in a cursive, flowing style.

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Roy S. Moore  
Chief Justice

IN THE SUPREME COURT OF ALABAMA  
March 12, 2015

1140460

Ex parte State of Alabama ex rel. Alabama Policy Institute, Alabama Citizens Action Program, and John E. Enslin, in his official capacity as Judge of Probate for Elmore County.

ORDER

On March 3, 2015, this Court issued an opinion in which we held that the issuance of marriage licenses to same-sex couples is contrary to Alabama law, that Alabama probate judges have a ministerial duty to comply with that law, and that nothing in the United States Constitution alters or overrides this duty. Consistent with this holding, in Part IV of our opinion, we expressly ordered the named respondents to discontinue issuing marriage licenses to same-sex couples. On March 10, 2015, we issued an order adding Judge Don Davis, Judge of Probate for Mobile County, to this proceeding as a respondent and extending our March 3, 2015, order to include him.

In Part IV of our March 3 opinion, we also joined as respondents all probate judges other than the named respondents and Judge Davis<sup>1</sup> and temporarily enjoined these

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<sup>1</sup>Judge John E. Enslin was joined and realigned as a relator.

additional respondents from issuing any marriage license contrary to Alabama law. Our order of March 3 further gave each such additional respondent five business days in which to file an answer, if the respondent elected to do so,<sup>2</sup> and to show cause, if any, as to why he or she should not be bound by the order of this Court. Having received no meritorious showing by any of the additional respondents as to why he or she should not be bound in the same manner as are the named respondents and Judge Davis, all respondents continue hereafter to be bound by the order of this Court. Accordingly, all probate judges in this State may issue marriage licenses only in accordance with Alabama law as described in our opinion of March 3, 2015.

Stuart, Bolin, Parker, Murdock, Main, Wise, and Bryan, JJ., concur.

Shaw, J., dissents.

**I, Julia Jordan Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.**

Witness my hand this 12<sup>th</sup> day of March, 2015

*Julia Jordan Weller*  
Clerk, Supreme Court of Alabama *sm*

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<sup>2</sup>We have received but one answer from among the 62 additional respondent probate judges. Among other things, that respondent states that, even in the absence of an order from this Court, she would not issue any marriage license contrary to Alabama law.

1140460

SHAW, Justice (dissenting).

As explained in my dissent in Ex parte State ex rel. Alabama Policy Institute, [Ms. 1140460, March 3, 2015] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. 2015), I do not believe that this Court has jurisdiction in this case; therefore, I dissent.



**IN THE SUPREME COURT OF ALABAMA**

June 29, 2015

1140460

Ex parte State of Alabama ex rel. Alabama Policy Institute, Alabama Citizens Action Program, and John E. Enslin, in his official capacity as Judge of Probate for Elmore County. PETITION FOR WRIT OF MANDAMUS: CIVIL (In re: Alan L. King, in his official capacity as Judge of Probate for Jefferson County, et al.).

**CORRECTED ORDER**

Pursuant to Rule 44, Sup. Ct. R., the parties in Obergefell v. Hodges, [No. 14-556] \_\_\_ U.S. \_\_\_ (June 26, 2015)], have a period of 25 days to file a petition for rehearing in that case. The parties in the present case are invited to submit any motions or briefs addressing the effect of the Supreme Court's decision in Obergefell on this Court's existing orders in this case no later than 5:00 p.m. on Monday, July 6.

Stuart, Bolin, Parker, Murdock, Main, Wise, and Bryan, JJ., concur.

I, Julia Jordan Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 29 day of June, 2015.

A handwritten signature in cursive script that reads "Julia Jordan Weller".

Clerk, Supreme Court of Alabama

**cc:**

Hon. John E. Enslin  
Roger K. Gannam, Esq.  
A. Eric Johnston, Esq.



## IN THE SUPREME COURT OF ALABAMA

June 29, 2015

Samuel Jacob Mclure, Esq.  
Horatio G. Mihet, Esq.  
Mathew D. Staver, Esq.  
Hon. Robert D. Agerton  
Hon. Ricky Allison  
Hon. Eldora Anderson  
Hon. Leon Archer  
Hon. Michael W. Armistead  
Hon. Billy Atkinson  
Hon. Kimbrough Ballard  
Hon. Steven Blair  
Hon. Jerry Boggan  
Hon. Rogene Booker  
Hon. Alfred Q. Booth  
Hon. Benjamin Bowden  
Hon. Mike Bowling, Jr.  
Hon. Dianne Branch  
Hon. Tammy Brown  
Hon. Greg Cain Hon.  
Arthur Crawford Hon.  
Patrick H. Davenport  
Hon. Valerie Davis  
Hon. Kirk Day  
Hon. George Diamond  
Hon. Brandy Clark Easlick  
Hon. Bill English  
Hon. Sherri Coleman Friday  
Hon. James W. Fuhrmeister  
Hon. Chris Green  
Hon. James Hall  
Hon. Laurie S. Hall  
Hon. Fred Hamic  
Hon. Alford Harden, Jr.  
Hon. John E. Hulett  
Hon. Earlean  
Isaac Hon.  
Bobby M. Junkins  
Hon. Alan L. King  
Hon. Victor Manning  
Hon. Alice K. Martin  
Hon. Robert M. Martin



## IN THE SUPREME COURT OF ALABAMA

June 29, 2015

Hon. W Hardy McCollum  
Hon. Alfonza Menefee  
Hon. Sharon A. Michalic  
Hon. Terry Mitchell  
Hon. Tim Mitchell  
Hon. David Money  
Hon. Barry Moore  
Hon. Sheila Moore  
Hon. Steve Norman  
Hon. Ronnie Osborn  
Hon. William Oswalt  
Hon. John E. Paluzzi  
Hon. James Perdue  
Hon. Jerry Pow  
Hon. Mike Praytor  
Hon. Tommy Ragland  
Hon. Willie Pearl Rice  
Hon. Rocky Ridings  
Hon. Ryan Robertson  
Hon. Johnny D. Rogers  
Hon. Charles D. Rosser, Jr.  
Hon. Tim Russell  
Hon. Susan Shorter  
Hon. James Tatum  
Hon. Nick Williams  
Hon. Charles Woodroof  
Hon. Wes Allen  
Hon. Don Davis  
Hon. Greg Norris  
Hon. Steven L. Reed  
Hon. Luther Strange  
Mark S. Boardman, Esq.  
Clay R. Carr, Esq.  
Fred L. Clements, Jr, Esq.  
Brad A. Cynoweth, Esq.  
J. Michael Druhan, Jr., Esq.  
Mark Englehart, Esq.  
Thomas T. Gallion, III, Esq.  
H Lewis Gillis, Esq.  
Kristen Jordana Gillis, Esq.  
Lee Louis Hale, Esq.



## IN THE SUPREME COURT OF ALABAMA

June 29, 2015

Gregory H. Hawley, Esq.  
Sam H Heldman, Esq.  
G Douglas Jones, Esq.  
Albert L. Jordan, Esq.  
Jamie Helen Kidd, Esq.  
French Andrew McMillan, Esq.  
Susan McPherson, Esq.  
Tyrone C. Means, Esq.  
Christopher J. Nicholson, Esq.  
Teresa Bearden Petelos, Esq.  
George W. Royer, Jr, Esq.  
Harry Vincent Satterwhite, Esq.  
Robert D Segall, Esq.  
Jeffrey M. Sewell, Esq.  
Constance Caldwell Walker, Esq.  
Kendrick E. Webb, Esq.  
L. Dean Johnson, Esq.  
Jack Richard Cohen, Esq.  
David Dinielli, Esq.  
Stan Glasscox, Esq.  
Ayesha Khan, Esq.  
Randall C Marshall, Esq.  
Shannon P. Minter, Esq.  
Christopher F. Stoll, Esq

**ADMINISTRATIVE ORDER OF THE  
CHIEF JUSTICE OF THE ALABAMA SUPREME COURT**

**WHEREAS, IN CONSIDERATION OF THE FOLLOWING:**

On March 3, 2015 the Alabama Supreme Court issued a lengthy opinion upholding the constitutionality of Article I, Section 36.03(b), Ala. Const. 1901 ("the Sanctity of Marriage Amendment"), and Section 30-1-19(b), Ala. Code 1975 ("the Marriage Protection Act"), which both state: "Marriage is inherently a unique relationship between a man and a woman." Ex parte State ex rel. Alabama Policy Institute, [Ms. 1140460, March 3, 2015] \_\_\_ So. 3d \_\_\_ (Ala 2015) (hereinafter "API").

The API opinion relied on earlier opinions of the United States Supreme Court and the Alabama Supreme Court for authority. In 1885 the Supreme Court of the United States described marriage as "the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement." Murphy v. Ramsey, 114 U.S. 15, 45. The Alabama Supreme Court similarly stated that "'[T]he relation of marriage is founded on the will of God, and the nature of man; and it is the foundation of all moral improvement, and all true happiness.'" Goodrich v. Goodrich, 44 Ala. 670, 675 (1870).

In its March 3 order in API, the Alabama Supreme Court stated that "Alabama probate judges have a ministerial duty not to issue any marriage license contrary to [the Sanctity of Marriage Amendment or the Marriage Protection Act]. Nothing in the United States Constitution alters or overrides this duty."

A week later the Court reaffirmed that its March 3 order bound every Alabama probate judge "to the end of achieving order and uniformity in the application of Alabama's marriage laws." API (Order of March 10, 2015). The Court also stated that "all probate judges in this State may issue marriage licenses only in accordance with Alabama law as described in our opinion of March 3, 2015." API (Order of March 12, 2015).

On June 26, 2015, approximately three months after the Alabama Supreme Court issued its orders in API, the United States Supreme Court in Obergefell v Hodges, 135 S. Ct. 2584 (2015), held unconstitutional certain marriage laws in the

states of Michigan, Kentucky, Ohio, and Tennessee, which fall within the jurisdiction of the Sixth Circuit Court of Appeals. In its 5-4 opinion the high court noted that "[t]hese cases come from Michigan, Kentucky, Ohio, and Tennessee." Obergefell, 135 S. Ct. at 2593.

On June 29, 2015, three days after the issuance of the Obergefell opinion, the Alabama Supreme Court invited the parties in API to address **the "effect of the Supreme Court's decision on this Court's existing orders in this case** no later than 5:00 p.m. on Monday, July 6." API (Order of June 29, 2015) (emphasis added).

Several parties filed briefs in response to that request. Additionally, on Sept 16, 2015, Washington County Probate Judge Nick Williams filed an "Emergency Petition for Declaratory Judgement and/or Protective Order in Light of Jailing of Kentucky Clerk Kim Davis," which requested the Court "to prevent the imprisonment and ruin of their State's probate judges who maintain fidelity to their oath of office and their faith." On September 22, Elmore County Probate Judge John Enslin joined Judge Williams's Emergency Petition. On October 5, Judge Enslin filed a separate petition for a declaratory judgment arguing additional grounds for relief.

In October, Eunie Smith, President of the Eagle Forum of Alabama and Dr. John Killian, Sr., former President of the Alabama Baptist State Convention, published a guest opinion on AL.com stating that they "anxiously await" the pending decision on the effect of Obergefell on the orders in API. In December, the Southeast Law Institute of Birmingham, whose President is local counsel for some of the parties in API, stated in an online commentary that he was "encouraging all of those who have great concern over this issue to be prayerfully patient" as the Court deliberates.

Confusion and uncertainty exist among the probate judges of this State as to the effect of Obergefell on the "existing orders" in API. Many probate judges are issuing marriage licenses to same-sex couples in accordance with Obergefell; others are issuing marriage licenses only to couples of the opposite gender or have ceased issuing all marriage licenses. This disparity affects the administration of justice in this State.

I am not at liberty to provide any guidance to Alabama probate judges on the effect of Obergefell on the **existing orders** of the Alabama Supreme Court. That issue remains before the entire Court which continues to deliberate on the matter.

Nevertheless, recent developments of potential relevance since Obergefell may impact this issue. The United States Court of Appeals for the Eighth Circuit recently ruled that Obergefell did not directly invalidate the marriage laws of states under its jurisdiction. While applying Obergefell as precedent, the Eighth Circuit rejected the Nebraska defendants' suggestion that Obergefell mooted the case. The Eighth Circuit stated: "The [Obergefell] Court invalidated laws in Michigan, Kentucky, Ohio, and Tennessee -- not Nebraska." Waters v Ricketts, 798 F.3d 682, 685 (8th Cir. 2015) (emphasis added). In two other cases the Eighth Circuit repeated its statement that Obergefell directly invalidated only the laws of the four states in the Sixth Circuit. See Jernigan v Crane, 796 F.3d 976, 979 (8th Cir. 2015) ("not Arkansas"); Rosenbrahn v Daugaard, 799 F.3d 918, 922 (8th Cir 2015) ("not South Dakota").

The United States District Court for the District of Kansas was even more explicit: "While Obergefell is clearly controlling Supreme Court precedent, it did not directly strike down the provisions of the Kansas Constitution and statutes that bar the issuance of same-sex marriage licenses ...." Marie v Mosier, 2015 WL 4724389 (D. Kan. August 10, 2015). Rejecting the Kansas defendants' claim that Obergefell mooted the case, the District Court stated that "Obergefell did not rule on the Kansas plaintiffs' claims." Id.

The above cases reflect an elementary principle of federal jurisdiction: a judgment only binds the parties to the case before the court. "A judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings." Martin v. Wilks, 490 U.S. 755, 762 (1989). "[N]o court can make a decree which will bind anyone but a party ... no matter how broadly it words its decree." Alemite Mfg. Corp. v Staff, 42 F.3d 832, 832 (2d Cir. 1930). See also Rule 65, Fed R. Civ. P., on the scope of an injunction.

Whether or not the Alabama Supreme Court will apply the

reasoning of the United States Court of Appeals for the Eighth Circuit, the United States District Court for the District of Kansas, or some other legal analysis is yet to be determined. Yet the fact remains that the administration of justice in the State of Alabama has been adversely affected by the apparent conflict between the decision of the Alabama Supreme Court in API and the decision of the United States Supreme Court in Obergefell.

**NOW THEREFORE,**

As Administrative Head of the Unified Judicial System of Alabama, authorized and empowered pursuant to Section 12-2-30(b)(7), Ala. Code 1975, to "take affirmative and appropriate action to correct or alleviate any condition or situation adversely affecting the administration of justice within the state," and under Section 12-2-30(b)(8), Ala. Code 1975, to "take any such other, further or additional action as may be necessary for the orderly administration of justice within the state, whether or not enumerated in this section or elsewhere";

And in that "an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings." United States v. Mine Workers, 330 U.S. 258, 293 (1947) (quoted in Fields v. City of Fairfield, 143 So. 2d 177, 180 (Ala. 1962));

**IT IS ORDERED AND DIRECTED THAT:**

**Until further decision by the Alabama Supreme Court, the existing orders of the Alabama Supreme Court that Alabama probate judges have a ministerial duty not to issue any marriage license contrary to the Alabama Sanctity of Marriage Amendment or the Alabama Marriage Protection Act remain in full force and effect.**

DONE January 6, 2016.



**Roy S. Moore**  
Chief Justice

IN THE SUPREME COURT OF ALABAMA  
March 4, 2016

1140460

Ex parte State of Alabama ex rel. Alabama Policy Institute, Alabama Citizens Action Program, and John E. Enslin, in his official capacity as Judge of Probate for Elmore County. PETITION FOR WRIT OF MANDAMUS (In re: Alan L. King, in his official capacity as Judge of Probate for Jefferson County, et al.).

**ORDER**

IT IS ORDERED that all pending motions and petitions are DISMISSED.

Wise and Bryan, JJ., concur.

Moore, C.J., and Stuart, Bolin, Parker, Murdock, Shaw, and Main, JJ., concur specially.

# IN THE SUPREME COURT OF ALABAMA



March 4, 2016

**1140460** Ex parte State of Alabama ex rel. Alabama Policy Institute, Alabama Citizens Action Program, and John E. Enslin, in his official capacity as Judge of Probate for Elmore County. EMERGENCY PETITION FOR WRIT OF MANDAMUS (In re: Alan L. King, in his official capacity as Judge of Probate for Jefferson County, et al.)

## CERTIFICATE OF JUDGMENT

WHEREAS, the ruling on the application for rehearing filed in this cause and indicated below was entered in this cause on March 20, 2015:

**Application Overruled. No Opinion.** PER CURIAM - Stuart, Bolin, Parker, Murdock, Main, Wise, and Bryan, JJ., concur.

WHEREAS, the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the orders indicated below were entered in this cause:

**Petition Granted. Writ Issued.** March 3, 2015. PER CURIAM - Stuart, Bolin, Parker, Murdock, Wise, and Bryan, JJ., concur. Main, J., concurs in part and concurs in the result. Shaw, J., dissents.

**Writ Issued as to Judge Don Davis.** March 11, 2015. PER CURIAM - Stuart, Parker, Murdock, Main, Wise, and Bryan, JJ., concur. Shaw, J., dissents.

**Writ Issued as to additional respondents.** March 12, 2015. PER CURIAM - Stuart, Bolin, Parker, Murdock, Main, Wise, and Bryan, JJ., concur. Shaw, J., dissents.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 4th day of March, 2016.

A handwritten signature in cursive script that reads "Julia Jordan Weller".

Clerk, Supreme Court of Alabama

MONTGOMERY ADVERTISER » THURSDAY, APRIL 28, 2016

# Moore responds to critics

Staver: Judicial complaints politically motivated, Moore acted appropriately

**JOSH MOON**

MONTGOMERY ADVERTISER

Alabama Chief Justice Roy Moore hasn't violated judicial ethics and the complaints filed against him saying otherwise are politically motivated, an attorney representing Moore said at a news conference Wednesday afternoon.

Mat Staver, an attorney who rose to some level of fame following his representation of Kentucky probate clerk Kim Davis, told a group of reporters gathered in the rotunda of the Alabama Judicial Building that Moore's directions to state probate judges that they stop issuing same-sex marriage licenses was not

in defiance of the United States' Supreme Court. Instead, Staver said, Moore's orders provided direction in a time of confusion, since the nation's highest court didn't address Alabama's same-sex marriage ban specifically.

"(Moore) never instructed the judges to defy a federal court," Staver said. "He provided guidance. This case is not about defying the federal courts. It's about a disagreement between state and federal courts on an issue."

Moore, and others, has made the argument before

"(Moore) never instructed the judges to defy a federal court."

**MAT STAVER**  
ATTORNEY

See Moore, Page 6A

## Moore

Continued from Page 1A

that the Supreme Court's ruling last summer that legalized same-sex marriage applied only to the states listed in the court filing. However, that argument has been roundly dismissed by legal scholars, attorneys and even some of Moore's fellow justices on the Alabama Supreme Court.

Justice Greg Shaw called the notion that Supreme Court's Obergefell ruling applied only to the states involved in the case "silly."

Moore insisted Wednesday that his hastily called news conference was merely an opportunity for him to address the many complaints against him and not an indication that charges from the Judicial Inquiry Commission were forthcoming.

However, a source familiar with Moore's case said Tuesday that the JIC had completed its review and was in the process of bringing charges against the chief justice. It would be the second time such charges were brought — the first coming in 2003 when Moore defied a federal court order to remove a large Ten Commandments statue from the judicial building.

A complaint filed by Southern Poverty Law Center



Chief Justice Roy Moore responds to complaints.

[montgomeryadvertiser.com](http://montgomeryadvertiser.com)

president Richard Cohen against Moore appears to be the primary focus of the JIC charges, according to the source. Cohen's complaint was several pages long and provided exhibits detailing specific instances in which Cohen believed Moore violated certain canons of judicial ethics.

Moore and Staver dismissed Cohen's complaint as "politically motivated" and quickly tied the SPLC to a "known transvestite" named Ambrosia Starling. Moore went a step farther while discussing Starling's officiating of a mock same-sex wedding on the judicial building steps, saying that "transsexualism is a known mental illness."

Staver said that if the SPLC has a complaint, it should be filed with the U.S. Supreme Court, not the JIC. And he cautioned that the JIC investigating judges over orders could be abused.

**IN THE COURT OF THE JUDICIARY**

<b>IN THE MATTER OF</b>	)	
	)	
<b>ROY S. MOORE,</b>	)	
<b>Chief Justice of the</b>	)	
<b>Supreme Court of Alabama</b>	)	
	)	<b>Court of the Judiciary</b>
	)	<b>Case No. 46</b>

**DECLARATION OF MATHEW D. STAVER, ESQ.**

I, Mathew D. Staver, Esq., hereby declare:

1. I am over the age of 18 years and lead counsel for Petitioner, Hon. Roy S. Moore, Chief Justice of the Alabama Supreme Court, in the above-referenced matter. I have actual knowledge of the following facts and if called upon to testify thereto could and would do so competently.

2. On the afternoon of May 5, 2016, I received an unsolicited telephone call from a reporter at the *New York Times*. This reporter said his “sources,” which he said are credible, informed him that the Judicial Inquiry Commission is about to “file charges” against Chief Justice Moore and that his “sources” say it could be as early as “today or tomorrow.” He wanted to know if I had a comment. I replied by saying we have no information that the Judicial Inquiry Commission is about to file charges.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 20, 2016.

s/ Mathew D. Staver\*  
**Mathew D. Staver**  
\*Original signature on file



Exhibit H

## Judicial Inquiry Commission

TELEPHONE (334) 242-4089 FAX (334) 353-4043

MAILING ADDRESS:  
POST OFFICE BOX 303400  
MONTGOMERY, AL 36130-3400

STREET ADDRESS:  
401 ADAMS AVENUE, SUITE 720  
MONTGOMERY, AL 36104

January 22, 2016

CERTIFIED MAIL

Personal & Confidential

Honorable Roy S. Moore  
Chief Justice  
Supreme Court of Alabama  
300 Dexter Avenue  
Montgomery, AL 36104

**Re: Third Supplement to Complaint of Mr. J. Richard Cohen, President, Southern Poverty Law Center**

Dear Chief Justice Moore:

As required by Rule 6C, Ala. R. P. Jud. Inq. Comm'n, adopted by the Alabama Supreme Court, you will find enclosed a copy of the third supplement of the complaint filed against you by Mr. J. Richard Cohen, President, Southern Poverty Law Center. A copy of all material accompanying the complaint and accumulated or received by the Commission as of this date is also enclosed, as required by Rule 6C.

In addition, as required by Rule 6C, the Commission must advise you of the allegations the Commission will be investigating. Those allegations are the following:

1. By way of your January 6, 2016 Administrative Order, you have continued to willfully and plainly violate the Alabama Canons of Judicial Ethics, particularly Canon 2A, i.e., by failing to respect and comply with the law and conduct yourself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
2. By way of your January 6, 2016 Administrative Order, you have advised and/or ordered all probate judges to violate a federal court order that is in effect and directly binds them.
3. In issuing your January 6, 2016 Administrative Order, you ignored the following statement by the United States Court of Appeals for the Eleventh Circuit in *Strawser v. Russell*, No. 15-12508-CC (11th Cir. Oct. 20, 2015): "the Alabama Supreme Court's order was abrogated by the Supreme Court's decision in *Obergefell v. Hodges*, 576 U.S. , 135 S. Ct. 2584 (2015) . . . ."

Chief Justice Moore  
January 22, 2015  
Page 2

4. In issuing your January 6, 2016 Administrative Order, you continued to ignore the United States Supreme Court's opinion in *Obergefell v. Hodges*.

If you wish to submit a written response to these allegations, the Commission is desirous of considering your comments and/or argument as to the application of the Canons. If you would like to submit a written response, the Commission requests you provide that response by February 19, 2016.

Please be reminded these allegations are not those of the Commission, but are allegations of the complainant.

If you have any questions, please contact the Commission's attorney, Ms. Rosa Davis, at the Commission office as listed above.

Sincerely,

JUDICIAL INQUIRY COMMISSION

A handwritten signature in black ink, appearing to read "Billy C. Bedsole". The signature is fluid and cursive, with the first name "Billy" being the most prominent.

Billy C. Bedsole  
Chairman

Enclosures: Bates numbered 004597-004612



Exhibit I

## Judicial Inquiry Commission

TELEPHONE (334) 242-4089 FAX (334) 353-4043

MAILING ADDRESS:  
POST OFFICE BOX 303400  
MONTGOMERY, AL 36130-3400

STREET ADDRESS:  
401 ADAMS AVENUE, SUITE 720  
MONTGOMERY, AL 36104

March 4, 2016

CERTIFIED MAIL

Personal & Confidential

Honorable Roy S. Moore  
Chief Justice  
Supreme Court of Alabama  
300 Dexter Avenue  
Montgomery, AL 36104

**Re: Third Supplement to Complaint of Mr. J. Richard Cohen, President, Southern Poverty Law Center**

Dear Chief Justice Moore:

As required by Rule 6D, Ala. R. P. Jud. Inq. Comm'n, adopted by the Alabama Supreme Court, this is to advise you that the Commission intends at this time to continue its investigation of the allegations made against you by Mr. Cohen in the third supplement to his complaint and specified in the Commission's investigation letter to you, dated January 22, 2016.

You have already been served with the complaints and all materials that accompanied the complaints.

The Commission appreciates your cooperation in this matter. If you have any questions, please contact the Commission's executive director, Ms. Jenny Garrett.

Sincerely,

A handwritten signature in black ink, appearing to read "Billy C. Bedsole".

Billy C. Bedsole  
Chairman



## Judicial Inquiry Commission

TELEPHONE (334) 242-4089 FAX (334) 353-4043

MAILING ADDRESS:  
POST OFFICE BOX 303400  
MONTGOMERY, AL 36130-3400

STREET ADDRESS:  
401 ADAMS AVENUE, SUITE 720  
MONTGOMERY, AL 36104

April 15, 2016

CERTIFIED MAIL

Personal & Confidential

Honorable Roy S. Moore  
Chief Justice  
Supreme Court of Alabama  
300 Dexter Avenue  
Montgomery, AL 36104

**Re: Third Supplement to Complaint of Mr. J. Richard Cohen, President, Southern Poverty Law Center**

Dear Chief Justice Moore:

As required by Rule 6D, Ala. R. P. Jud. Inq. Comm'n, adopted by the Alabama Supreme Court, this is to advise you that the Commission intends at this time to continue its investigation of the allegations made against you by Mr. Cohen in the third supplement to his complaint and specified in the Commission's investigation letter to you, dated January 22, 2016.

You have already been served with the complaints and all materials that accompanied the complaints. You will find enclosed documents Bates numbered 004804 through 004875 that are due to be served on you at this time.

The Commission appreciates your cooperation in this matter. If you have any questions, please contact the Commission's executive director, Ms. Jenny Garrett.

Sincerely,

A handwritten signature in black ink, appearing to read "Billy C. Bedsole". The signature is fluid and cursive.

Billy C. Bedsole  
Chairman



Exhibit J

## Judicial Inquiry Commission

TELEPHONE (334) 242-4089 FAX (334) 353-4043

MAILING ADDRESS:  
POST OFFICE BOX 303400  
MONTGOMERY, AL 36130-3400

STREET ADDRESS:  
401 ADAMS AVENUE, SUITE 720  
MONTGOMERY, AL 36104

February 2, 2016

CERTIFIED MAIL

Personal & Confidential

Honorable Roy S. Moore  
Chief Justice  
Supreme Court of Alabama  
300 Dexter Avenue  
Montgomery, AL 36104

**Re: Complaints by Mr. Neil Rice, Ms. Elizabeth Campbell, Ms. Bonnie L. Mitchell,  
Mr. Norm Wagner, Mr. Paul T. McCants, Mr. Kenneth Patton Turner, Ms.  
Kathleen H. Lawson, and Ms. Constance Sherrod**

Dear Chief Justice Moore:

As required by Rule 6C, Ala. R. P. Jud. Inq. Comm'n, adopted by the Alabama Supreme Court, you will find enclosed a copy of eight complaints filed against you, one by each of the following persons: Mr. Neil Rice, Ms. Elizabeth Campbell, Ms. Bonnie L. Mitchell, Mr. Norm Wagner, Mr. Paul T. McCants, Mr. Kenneth Patton Turner, Ms. Kathleen H. Lawson, and Ms. Constance Sherrod. A copy of all material accompanying the complaints and accumulated or received by the Commission as of this date is also enclosed, as required by Rule 6C.

In addition, as required by Rule 6C, the Commission must advise you of the allegations the Commission will be investigating. The allegations of the complainants are, in effect, merely a restatement of some of the issues the Commission specified, in its January 22, 2016 letter to you, it is investigating regarding the third supplement to the complaint made by Mr. J. Richard Cohen, Southern Poverty Law Center. Any response by you to the issues specified in the Commission's January 22, 2016 letter will suffice to address the allegations of the complaints enclosed.

If you have any questions, please contact the Commission's attorney, Ms. Rosa Davis.

Sincerely,

JUDICIAL INQUIRY COMMISSION

A handwritten signature in black ink, appearing to read "Billy C. Bedsole". The signature is fluid and cursive, written over a white background.

Billy C. Bedsole  
Chairman

Enclosures: Eight Complaints



## Judicial Inquiry Commission

TELEPHONE (334) 242-4089 FAX (334) 353-4043

MAILING ADDRESS:  
POST OFFICE BOX 303400  
MONTGOMERY, AL 36130-3400

STREET ADDRESS:  
401 ADAMS AVENUE, SUITE 720  
MONTGOMERY, AL 36104

February 29, 2016

CERTIFIED MAIL

Personal & Confidential

Honorable Roy S. Moore  
Chief Justice  
Supreme Court of Alabama  
300 Dexter Avenue  
Montgomery, AL 36104

**Re: Complaints by Mr. John W. Fiske; Mr. Eric Templeton; Ms. Pippa Abston; Mr. Timothy Miller; Ms. Minoc Vafai; Ms. Mary Miller; Mr. Jonathan S. Ford; Ms. Kelly McCauley; Mr. Alix Morehouse; Ms. Linda Ann Haynes; Ms. Leigh Dasinger; Ms. Lisa McKinnery**

Dear Chief Justice Moore:

As required by Rule 6C, Ala. R. P. Jud. Inq. Comm'n, adopted by the Alabama Supreme Court, you will find enclosed a copy of 12 complaints filed against you, one by each of the following persons: Mr. John W. Fiske; Mr. Eric Templeton; Ms. Pippa Abston; Mr. Timothy Miller; Ms. Minoc Vafai; Ms. Mary Miller; Mr. Jonathan S. Ford; Ms. Kelly McCauley; Mr. Alix Morehouse; Ms. Linda Ann Haynes; Ms. Leigh Dasinger; and Ms. Lisa McKinnery. A copy of all material accompanying the complaints and accumulated or received by the Commission as of this date is also enclosed, as required by Rule 6C.

In addition, as required by Rule 6C, the Commission must advise you of the allegations the Commission will be investigating. Each complainant's allegations are, in effect, merely a restatement of some of the issues the Commission specified, in its January 22, 2016 letter to you, it is investigating regarding the third supplement to the complaint made by Mr. J. Richard Cohen, Southern Poverty Law Center. Any response by you to the issues specified in the Commission's January 22, 2016 letter will suffice to address the allegations of the complaints enclosed.

If you have any questions, please contact the Commission's attorney, Ms. Rosa Davis.

Sincerely,

JUDICIAL INQUIRY COMMISSION

A handwritten signature in black ink, appearing to read "Billy C. Bedsole".

Billy C. Bedsole  
Chairman

Enclosures: 12 Complaints

STATE OF ALABAMA - - JUDICIAL DEPARTMENT  
THE SUPREME COURT

O R D E R

WHEREAS the Chief Justice of the Supreme Court of Alabama is responsible for the administration of the entire Unified Judicial System ("UJS"), pursuant to Article VI, Section 149, of the Constitution of Alabama of 1901; and

WHEREAS the trial courts of this State, to include all clerical personnel, judicial staff, probation officers, and others in the UJS have been severely underfunded and understaffed; and

WHEREAS said UJS personnel have not received merit raises since 2008; and

WHEREAS our systemic underfunding has been brought before the Governor and Legislature of Alabama most strenuously and repeatedly for the past several years; and

WHEREAS there is presently an expected \$8.5 million conditional appropriation still pending; and

WHEREAS, I must take appropriate action to ensure that every part of the UJS works in unison to achieve adequate and reasonable financing as guaranteed by the Constitution of Alabama;

THEREFORE, it is the order of this Office that

(1) All raises or salary increases for personnel under the authority of the Supreme Court must be secured by specific, written authority of the Chief Justice prior to implementation; and

(2) A moratorium is hereby established on all such raises, salary increases, or merit adjustments until such time as adequate funding for the entire judicial branch is secured or until otherwise ordered by this Office.

Done this 23rd day of October, 2013.

  
\_\_\_\_\_  
ROY S. MOORE  
CHIEF JUSTICE

IN THE SUPREME COURT OF ALABAMA

ORDER

The Supreme Court of Alabama is hereby exempt from the operation and effect of the Order of Chief Justice Moore dated October 23, 2013.

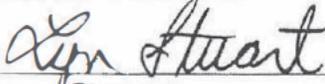
Done and ordered this 30th day of October, 2013.

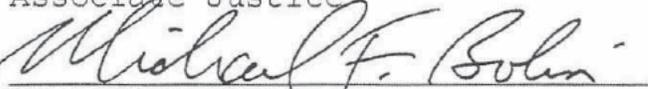
Stuart, Bolin, Parker, Murdock, Main, Wise, and Bryan, JJ., concur.

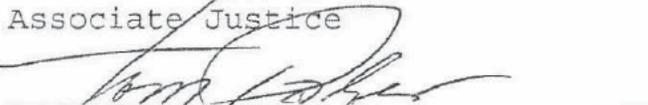
Moore, C.J., dissents.

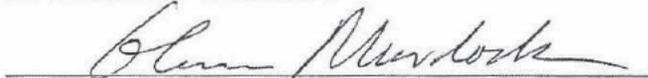
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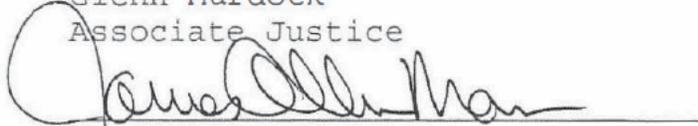
Roy S. Moore  
Chief Justice

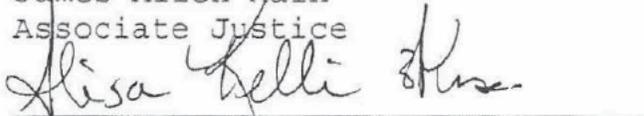
  
Lyn Stuart  
Associate Justice

  
Michael F. Bolin  
Associate Justice

  
Tom Parker  
Associate Justice

  
Glenn Murdock  
Associate Justice

  
James Allen Main  
Associate Justice

  
Alisa Kelli Wise  
Associate Justice

  
Tommy Bryan  
Associate Justice