

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**

ANSWER AND DEFENSES OF CHIEF JUSTICE ROY S. MOORE

Chief Justice Roy S. Moore, for his Answer and Defenses to the Complaint of the Judicial Inquiry Commission (“JIC”) dated May 6, 2016, states as follows:

1. Chief Justice Moore admits the allegations in paragraph 1 of the JIC’s Complaint, but states that they are immaterial and not pertinent to the instant case and as such should be stricken.
2. Chief Justice Moore admits the allegations in paragraph 2 of the JIC’s Complaint.
3. Chief Justice Moore denies the allegations in paragraph 3 of the JIC’s Complaint.
4. Chief Justice Moore admits the allegations in paragraph 4 of the JIC’s Complaint.
5. In response to paragraph 5 of the JIC’s Complaint, Chief Justice Moore denies that the JIC has correctly and completely quoted all relevant portions of the cited document. Chief Justice Moore further denies the JIC’s implication that Alabama was a party to the cited case. The cited document speaks for itself.

6. Chief Justice Moore denies the allegations in paragraph 6 of the JIC's Complaint.

7. In response to paragraph 7 of the JIC's Complaint, Chief Justice Moore admits that he took an oath to support the United States Constitution in conformity with Article VI, § 2 of that document.

8. In response to paragraph 8 of the JIC's Complaint, Chief Justice Moore admits the existence of the cited cases but denies that the JIC has correctly and completely identified all relevant portions of those cases. The cited cases speak for themselves.

9. In response to paragraph 9 of the JIC's Complaint, Chief Justice Moore admits the existence of the *Searcy* and *Strawser* cases but denies that the JIC has correctly and completely identified all relevant portions of those cases. The cases speak for themselves.

10. Chief Justice Moore admits the allegations in paragraph 10 of the JIC's Complaint.

11. Chief Justice Moore admits the allegations in paragraph 11 of the JIC's Complaint.

12. In response to paragraph 12 of the JIC's Complaint, Chief Justice Moore admits that he wrote a letter to Governor Bentley on January 27, 2015, that contains the quoted opening paragraph. He denies all other allegations in paragraph 12.

13. Chief Justice Moore admits the allegations in paragraphs 13 to 26 of the JIC's Complaint.

14. In response to paragraph 27 of the JIC's Complaint, Chief Justice Moore admits the first sentence. The legal conclusions of the second sentence of paragraph 27 do not require a response. To the extent a response is required, the allegations are denied.

15. The legal conclusions of paragraph 28 do not require a response. To the extent a response is required, the allegations are denied.

16. In response to paragraph 29 of the JIC's Complaint, Chief Justice Moore admits that on June 26, 2015, the United States Supreme Court issued its decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). Chief Justice Moore denies that the JIC has correctly and completely quoted all relevant portions of that case. The legal conclusions of paragraph 29 do not require a response. To the extent a response is required, the allegations are denied.

17. Chief Justice Moore admits the allegations in paragraphs 30 and 31 of the JIC's Complaint.

18. The legal conclusions of paragraph 32 do not require a response. To the extent a response is required, the allegations are denied.

19. The legal conclusions of paragraph 33 do not require a response. To the extent a response is required, the allegations are denied.

20. In response to paragraph 34 of the JIC's Complaint, Chief Justice Moore admits that document #152 was filed in the *Strawser* case and that it contains the quoted language. He further avers that the correct title of that document is "Defendants' Response in Opposition to Plaintiffs' Motion for Permanent Injunction," that it was filed on July 7, 2015, and that the quoted passage appears on pages 11 and 12. The remaining allegations

of paragraph 34 are legal conclusions that do not require a response. To the extent a response is required, the allegations are denied.

21. The legal conclusions of paragraph 35 do not require a response. To the extent a response is required, the allegations are denied.

22. Chief Justice Moore admits the allegations in paragraph 36 of the JIC's Complaint, with the exception that the referenced due date for filings was July 6, 2015, not July 10, 2015.

23. In response to paragraph 37 of the JIC's Complaint, Chief Justice Moore admits that "on January 6, 2016, *API* remained a pending case." The remaining allegations of paragraph 37 are legal conclusions that do not require a response. To the extent a response is required, the allegations are denied.

24. In response to paragraph 38 of the JIC's Complaint, Chief Justice Moore denies that the JIC has correctly construed or interpreted the Administrative Order which it purports to selectively quote. The Administrative Order issued by Chief Justice Moore on January 6, 2016 speaks for itself.

25. Chief Justice Moore denies the allegations in paragraphs 39 to 41 of the JIC's Complaint.

26. Chief Justice Moore admits that he made the statement quoted in paragraph 42 of the JIC's Complaint. He denies all other allegations in paragraph 42 and avers that the JIC does not have jurisdiction to review or prosecute a judge's interpretations of law.

27. Chief Justice Moore denies the allegations in paragraphs 43 to 46 of the JIC's Complaint.

28. Chief Justice Moore denies the allegations in paragraph 47 of the JIC's Complaint. The Administrative Order that the JIC purports to interpret speaks for itself.

29. Chief Justice Moore denies the allegations in paragraph 48 of the JIC's Complaint. The Administrative Order that the JIC purports to interpret speaks for itself.

30. Chief Justice Moore denies the allegations in paragraphs 49 to 50 of the JIC's Complaint.

31. In response to paragraph 51 of the JIC's Complaint, Chief Justice Moore admits that in his Administrative Order of January 6, 2016, he stated "that he could not address the issue pending before the Court in *API*, i.e., the effect of *Obergefell* on the existing orders of the Alabama Supreme Court in *API*." Chief Justice Moore denies all other allegations in paragraph 51.

32. Chief Justice Moore denies the allegations in paragraphs 52 to 55 of the JIC's Complaint.

33. In response to paragraph 56 of the JIC's Complaint, Chief Justice Moore admits that he filed a special concurrence to the order issued by the Alabama Supreme Court in *API* on March 4, 2016, and also a statement of nonrecusal. Chief Justice Moore denies all other allegations in paragraph 56.

34. In response to paragraph 57 of the JIC's Complaint, Chief Justice Moore admits that his Administrative Order of January 6, 2016, contains the sentence: "Confusion and uncertainty exist among the probate judges of this State as to the effect of *Obergefell* on the 'existing orders' in *API*." Chief Justice Moore denies all other allegations in paragraph 57.

35. Chief Justice Moore admits that paragraph 58 purports to base the six charges in the JIC's Complaint "on the totality of the facts and circumstances, separately and severally" alleged in the Complaint, but denies that the JIC has provided any factual or legal basis for its charges.

36. Chief Justice Moore denies the allegations in paragraphs 59 to 64 of the JIC's Complaint and also denies that he violated any of the Canons of Judicial Ethics listed therein.

37. Chief Justice Moore denies each and every allegation in the JIC's Complaint other than those specifically admitted above.

DEFENSES

38. The JIC has failed to state a claim upon which relief may be granted.

39. The JIC and this Court lack subject-matter jurisdiction to review the administrative orders of the Chief Justice. The Alabama Code lodges such authority exclusively in the Justices of the Alabama Supreme Court pursuant to § 12-5-20, Ala. Code 1975.

40. Because of its failure to comply with Rules 6C and 6D, Ala. R. P. Jud. Inq. Comm'n, the JIC is precluded from bringing Charge No. 6. The JIC is precluded from bringing any charges against the Chief Justice that do not comply with the mandatory notice requirements of Rules 6C and 6D.

41. The JIC's Complaint is barred by the doctrine of unclean hands, and/or the JIC's flagrant violations of its own rules and Alabama law. Among others, the JIC violated its Rule of Procedure 5 and Article VI, Section 156 of the Alabama Constitution. Instead

of maintaining its purported investigation of Chief Justice Moore in the strictest confidence prior to the filing of this Complaint, the JIC leaked the status of its investigation and its intent to file this Complaint to the media prior to filing. In particular, on April 28, 2016, the *Montgomery Advertiser* reported that, on Tuesday, April 26, 2016 “a source familiar with Moore’s case said ... 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.” One week later, also before the JIC’s Complaint was filed in this case, a *New York Times* reporter called counsel for Chief Justice Moore seeking comment on information from “credible sources” that the JIC was about to “file charges” against the Chief Justice. The JIC improperly and unlawfully leaked this information to the public prior to the filing of this Complaint, at a time when it was required to keep all aspects of its investigation under strict confidence.

42. The presence of three lay members on the COJ who are untrained in the law combined with the extremely deferential standard of review adopted by the Alabama Supreme Court denies the Chief Justice the right to a fair trial as guaranteed by the Due Process Clause of the United States Constitution.

43. The automatic suspension provision of Article VI, § 159, Ala. Const. 1901, which prevents the Chief Justice from exercising the powers of his office while charges filed by the JIC are pending before this Court, violates the Due Process Clause of the United States Constitution. An elected official “who is entitled to hold office under state law has a property interest in his office which can be taken from him only by procedures meeting

the requirements of due process.” *Crowe v. Lucas*, 595 F2d 985, 993 (5th Cir. 1979). *See also, Abrahamson v. Neitzel*, 120 F. Supp. 3d 905, 922-23 (W.D. Wis. 2015) (Chief Justice of Wisconsin Supreme Court possessed property interest in her position). No one has “unfettered discretion to remove a justice from the position of chief.” *Abrahamson*, 120 F.Supp.3d at 922. “At a minimum, due process assures notice and a meaningful opportunity to be heard before a right or an interest is forfeited.” *Johnson v. U.S.D.A.*, 734 F.2d 774 782 (11th Cir. 1984). “It is now well established that ... a person may not be discharged or expelled from a public office upon a ground involving criminal guilt, infamy, disgrace, or other grave injury to the individual until after such notice and hearing as is requisite to due process of law.” *McCarley v. Sanders*, 309 F. Supp 8, 11 (M.D. Ala. 1970). By depriving Chief Justice Moore of the property interest in the position to which the citizens of Alabama elected him, through the mere filing of the JIC’s Complaint, before any adjudication of guilt and without an adequate hearing, the JIC has violated his Fourteenth Amendment right to due process. For this same reason, Article VI, § 159, Ala. Const. 1901, is unconstitutional.

Respectfully Submitted,

/s Mathew D. Staver
Mathew D. Staver[†]
Fla. Bar No. 0701092
court@LC.org

/s Horatio G. Mihet
Horatio G. Mihet[†]
Fla. Bar No. 0026581
hmihet@LC.org

LIBERTY COUNSEL
P.O. BOX 540774
Orlando, FL 32854
(407) 875-1776 (tel)
(407) 875-0770 (fax)

[†]Admitted *pro hac vice*

s/ Phillip L. Jauregui
Phillip L. Jauregui
Ala. Bar No. 9217-G43P
Judicial Action Group
plj@judicialactiongroup.com
7013 Lake Run Drive
Birmingham, AL 35242
(202) 216-9309 (tel)

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that I have this 22nd day of August, 2016, served a copy of the *Answers and Defenses of Chief Justice Roy S. Moore* on the Judicial Inquiry Commission through electronic mail to:

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

R. Ashby Pate (PAT077)
apate@lightfootlaw.com
LIGHTFOOT, FRANKLIN & WHITE, L.L.C.
The Clark Building
400 North 20th Street
Birmingham, Alabama 35203-3200
(205) 581-0700

s/ Horatio G. Mihet
Horatio G. Mihet
Attorney for Petitioner