No. 1030398

IN THE SUPREME COURT OF ALABAMA

ROY S. MOORE,
Appellant

v.

JUDICIAL INQUIRY COMMISSION,
Appellee.

Appeal from the
Court of the Judiciary

BRIEF OF THE APPELLANT

ORAL ARGUMENT REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

Because of the historical importance of this case to the citizens and justice system of Alabama, because the unique issues of this case have not been authoritatively decided, because the decisional process would be greatly aided by oral argument, and pursuant to Rules 28(a)(1) and 34(a), Ala. R. App. P., **ORAL ARGUMENT IS REQUESTED** in the case at bar.

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STATEMENT OF JURISDICTION

This appeal from a final judgment of the Alabama Court of the Judiciary is brought to this Court pursuant to Ala. Const. of 1901, Amend. 581, § 6.18(b).

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STATEMENT OF THE CASE

This case is a direct appeal from a final judgment of the Alabama Court of the Judiciary.

On August 22, 2003, the Judicial Inquiry Commission ("Commission") filed a complaint against Chief Justice Roy S. Moore in the Court of the Judiciary of Alabama alleging that he "willfully failed to comply with an existing and binding court order directed to him." (C. 11.) The Commission alleged that Chief Justice Moore committed six violations of the Alabama Canons of Judicial Ethics, specifically Canons 1, 2, 2A, and 2B, for his decision to not move from the rotunda of the Alabama Judicial Building a granite monument depicting the moral foundation of law. (C. 1-14.) Before trial, Chief Justice Moore filed a series of motions, nearly all of which were denied. (C. 110-13, 268-73, 281-87, 347-69, 373-91, 397, 400-14, 506-09, 513-14.)

The Court of the Judiciary tried Chief Justice Moore on August 12, 2003. The next day, the Court of the Judiciary issued a twelve-page opinion, holding that Chief Justice Moore "violated the Alabama Canons of Judicial Ethics as

alleged by the JIC in its complaint" and removing him from office. (C. 549-61.)

Chief Justice Moore now appeals to this Court the ruling of the Court of the Judiciary removing him from the office of Chief Justice of the Supreme Court of Alabama and for alleged violations of the Canons of Judicial Ethics.

STATEMENT OF THE ISSUES

I. Whether the Court of the Judiciary erred in removing Chief Justice Moore for alleged unethical conduct and precluded consideration regarding whether the federal court order to remove the Ten Commandments monument was itself unlawful and/or unethical.

II. Whether, under the Alabama and United States constitutions, the Court of the Judiciary erred in imposing a religious test upon Chief Justice Moore by removing him for publicly acknowledging God through the monument.

III. Whether, under the Alabama and United States constitutions, the Court of the Judiciary deprived Chief Justice Moore of his property and liberty without due process of law.

IV. Whether the Court of the Judiciary erred by using the Alabama Canons of Judicial Ethics to punish Chief Justice Moore for acknowledging the Creator God upon Whom those same ethical canons are predicated.

STATEMENT OF THE FACTS

In November 2000, an overwhelming majority of Alabama voters elected Roy S. Moore to serve as Chief Justice of the Supreme Court of Alabama. (R. 85.) On January 15, 2001, Chief Justice Perry Hooper administered the oath of office to Roy S. Moore as follows:

> I, Roy S. Moore, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Alabama, so long as I continue a citizen thereof, and that I will faithfully and honestly discharge the duties of the office of Chief Justice of the Alabama Supreme Court, upon which I am about to enter, to the best of my ability. So help me God.

(R. 85.)

After his election, Chief Justice Moore designed a monument depicting the moral foundation of law and reflecting the sovereignty of God over the affairs of men. (C. 38-39; R. 90-91.) On August 1, 2001, in his capacity as the administrative head of the Alabama judicial system, and by his authority under Ala. Code 1975 § 41-10-275, and as the leaseholder of the Judicial Building, Chief Justice Moore installed and unveiled the monument in the rotunda of the Alabama Judicial Building. (C. 39; R. 92.) No state money was used to construct the monument or install it.

Thereafter, three Alabama attorneys filed suit in the United States District Court for the Middle District of Alabama against Chief Justice Moore in his official capacity, claiming that the placement of the monument violated the Establishment Clause of the First Amendment to the United States Constitution. (R. 39-40, 44, 92-93.) Following a trial, on November 18, 2002, United States District Court Judge Myron H. Thompson issued an opinion in favor of the Plaintiffs. (C. 15-42; JIC exhibits 1, 2.) Judge Thompson also entered an Order directing Chief Justice Moore to voluntarily remove the monument within thirty days. (C. 37.) When the monument was not moved, Judge Thompson issued a permanent injunction requiring Chief Justice Moore to remove the monument by January 3, 2003. (C. 42; JIC exhibit 3.) Chief Justice Moore then filed a motion requesting that Judge Thompson stay the injunction pending completion of his appeal to the United States Court of Appeals for the Eleventh Circuit. On December 23, 2002, Judge Thompson issued a stay of the permanent injunction pending completion of the appeal. (C. 43-44; JIC exhibit 4.)

On July 1, 2003, the United States Court of Appeals for the Eleventh Circuit affirmed Judge Thompson's November 18, 2002, decision that the placement of the monument violated the Establishment Clause of the First Amendment to the Constitution of the United States. (C. 45-61; JIC exhibit 6.) Included in the last paragraph of the Eleventh Circuit Court of Appeals ruling is the following:

> The rule of law does require that every person obey judicial orders when all available means of appealing them have been exhausted . . . . We do expect that if he is unable to have the District Court's order overturned through the usual appellate processes, when the time comes, Chief Justice Moore will obey that order.

(R. 93-95; JIC exhibit 6.) According to the opinion of the Eleventh Circuit, Chief Justice Moore understood that the time for the monument to be moved would not manifest until the appeals process initiated by Chief Justice Moore to the United States Supreme Court was complete. (R. 94.)

Nevertheless, after receiving the mandate from the Eleventh Circuit, the United States District Court for the Middle District of Alabama, on August 5, 2003, entered an Order dissolving its stay entered on December 23, 2002. (C. 93; JIC Exhibit 9.) Judge Thompson ordered Chief Justice Moore to remove the monument from the non-private

areas of the Judicial Building by no later than August 20, 2003. (JIC exhibit 9; R. 40.) On August 15, 2003, Chief Justice Moore filed in the United States Supreme Court a Petition for a Writ of Mandamus and/or Prohibition, seeking relief from the High Court from the District Court's order. (C. 81-82.) On the same day, Chief Justice Moore requested that Judge Thompson issue a stay of the order pending the disposition of the Petition for Writ of Mandamus and/or Prohibition. (C. 81-82.) Judge Thompson denied Chief Justice Moore's Motion for a Stay. (C. 81-90.) The United States Court of Appeals for the Eleventh Circuit and the Supreme Court of the United States denied similar entreaties by Chief Justice Moore. (C. 92-95.)

On August 14, 2003, Chief Justice Moore read a public statement in the rotunda of the Judicial Building announcing his decision that he would not remove the monument from the rotunda because Judge Thompson's order was unconstitutional and that to obey it would force him to act contrary to his oath and to his conscience. (R. 96-97.) That day, Stephen Glassroth, one of the three Plaintiff-attorneys in the federal court litigation, filed

a written complaint against Chief Justice Moore with the Judicial Inquiry Commission.

The monument remained in the rotunda of the Judicial Building on August 21, 2003. (R. 96.) On that day, the eight Associate Justices of the Supreme Court of Alabama entered an order directing the Building Manager of the Alabama Judicial Building, who was not named as a defendant in the federal litigation, to take all steps to comply with the injunction as soon as practicable. (C. 103-09.) The Building Manager removed the monument from the rotunda of the Judicial Building on August 27, 2003, pursuant to the directive of the eight Associate Justices. (R. 96.) At no time did Judge Thompson hold in contempt, or otherwise sanction, Chief Justice Moore or the State of Alabama. (R. 103-04.)

On August 22, 2003, the day after the eight Associate Justices entered their order, the Alabama Judicial Inquiry Commission filed its Complaint against Chief Justice Moore in the Alabama Court of the Judiciary. (C. 1-14; R. 41.) Circuit Judge Randall L. Cole, Chairman of the Judicial Inquiry Commission, signed the Complaint. (C. 14.) In its subsequent formal complaint, the Alabama Judicial Inquiry

Commission alleged six separate charges based on one act: Chief Justice Moore's failure to remove the monument. (R. 41-42.) In Charge One, found at Paragraph 22 of the complaint, the Judicial Inquiry Commission charged that the Chief Justice "did fail to uphold the integrity and independence of the Judiciary as required by Canon 1." (C. 11.) In Charge Two, found at Paragraph 23, the Judicial Inquiry Commission charged that while Chief Justice Moore was serving as Chief Justice of the Alabama Supreme Court, he did "fail to observe high standards of conduct so that the integrity and independence of the Judiciary may be preserved as required by Canon 1 . . . ." (C. 11-12.) In Charge Three, at Paragraph 24, the Judicial Inquiry Commission alleged that while serving as Chief Justice, Chief Justice Moore did fail to "avoid impropriety and the appearance of impropriety in all his activities as required by Canon 2 of the Alabama Canons of Judicial Ethics. . . ." (C. 12.) In Charge Four, found at Paragraph 25, the Judicial Inquiry Commission charged that Chief Justice Moore, while serving as Chief Justice of the Alabama Supreme Court, did "fail to respect and comply with the law as required by Canon 2A of the Alabama Canons of Judicial

Ethics . . . ." (C. 12.) In Charge Five, the Judicial Inquiry Commission alleged that Chief Justice Moore, while serving as Chief Justice of the Alabama Supreme Court, did "fail to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary as required by Canon 2A of the Alabama Canon's of Judicial Ethics . . . ." (C. 13.) And, in Charge Six under Paragraph 27, the Judicial Inquiry Commission alleged that Chief Justice Moore, while serving as Chief Justice of the Alabama Supreme Court, did "fail to avoid conduct prejudicial to the Administration of Justice which brings the Judicial Office into disrepute as required by Canon 2B of the Alabama Canons of Judicial Ethics . . . ." (C. 13.)

As a result of the formal complaint by the Alabama Judicial Inquiry Commission, Chief Justice Moore was immediately disqualified from acting as a judge.

On September 26, 2003, Chief Justice Moore filed in the United States Supreme Court a Petition for a Writ of Certiorari, asking the Court to reverse the decision of the Eleventh Circuit. Chief Justice Moore's Petitions for a Writ of Certiorari and for a Writ of Mandamus and/or

Prohibition remained pending before the Supreme Court of the United States until November 3, 2003, when the Court issued a short order denying both writs. (R. 108-11.)

On September 18, 2003, Chief Justice Moore, through his attorneys, filed a Motion for Extension of Time for Filing Answer in the Court of the Judiciary of Alabama, citing among other things, Chief Justice Moore's then-unfiled Petition for Writ of Certiorari to the Supreme Court of the United States and the relationship between his appeal to that Court and the proceedings pending before the Court of the Judiciary. (C. 110-12.) The Judicial Inquiry Commission through its counsel, the Office of the Attorney General, filed an opposition to Chief Justice Moore's request, asking that the matter be set for trial "as soon as possible." (C. 114-16.) Chief Judge William C. Thompson, on September 19, 2003, granted a seven-day extension of time to answer and set the matter for oral argument. (C. 117.) During the oral argument by counsel for Chief Justice Moore, counsel began by stating that he wished to preserve any rights that his client might have including the right to *voir dire* members of the Court of the Judiciary. The Court then became engaged on that issue

and an exchange occurred between the members of the Court and counsel for Chief Justice Moore, ending with Chief Justice Moore's representative declining to go forward unless the Court would rule on the oral motion that no defense would be waived by arguing the pending motion for extension of time. The Court declined to rule at all. Chief Judge Thompson then closed the matter without hearing from the Attorney General. The Court of the Judiciary then entered an order on September 25, 2003, extending the time for answer until October 3, 2003, and setting trial for 9:00 a.m. on November 12, 2003. (C. 120.)

Subsequently, counsel for Chief Justice Moore filed a series of motions including: Motion for Recusal/Disqualification of Attorney General Bill Pryor and his Office; Motion for Reconsideration of the Denial of that Order, which contained additional evidence of affidavits from former Governor Fob James, Jr., and his son, attorney Forrest H. "Fob" James III; Motion to Recuse and Disqualify Members of the Court of the Judiciary, which included a request for disqualification of Lay-Member Sue McInnish and Sam Jones, as well as Circuit Judge Robert Kendall, Circuit Judge Scott Vowell, and attorney James

North; Motion for Voir Dire; Motion for a Jury Trial; Request for Subpoenas to Non-Parties, including representatives of the Circuit Judges' Association, the District Judges' Association, the Secretary of the Court of the Judiciary, and the Clerk of the Alabama Supreme Court; Motion to Dismiss; Motion to Strike; and Notice to take the Deposition of Circuit Court Judge Randall Cole, the Chairman of the Judicial Inquiry Commission, who was requested to bring all records that the Judicial Inquiry Commission had in its possession as to its investigations of Roy S. Moore. (C. 281-87, 347-61, 363-69, 373-91, 506-09.)

The Attorney General, acting on behalf of the Judicial Inquiry Commission filed written objections to several of these motions and/or requests for discovery. (C. 114-15, 298-346, 392-96.) The great majority of the motions and/or requests for discovery by Chief Justice Roy S. Moore, including all requests for subpoenas, were denied by the Court of the Judiciary, acting through its presiding Judge William Thompson. (C. 362, 397, 400-14, 513-14, 567, 569-71.) Thus, without benefit of requested discovery as required by the Alabama Rules of Civil Procedure and

without the benefit of inquiring as to any relevant bias, prejudices and/or inappropriate conduct or the appearance of the foregoing that may be attributed to the Court of the Judiciary presiding over him, the Court of the Judiciary forced Chief Justice Moore to defend himself.

The Court of the Judiciary tried Chief Justice Moore on all charges on November 12, 2003, in the Alabama Supreme Court courtroom. Before the trial commenced, the Court of the Judiciary held a pre-trial conference with attorneys for both sides attending. (R. 3-27.) During that conference, Judge Dobson indicated that the Court of the Judiciary would not look into the merits of the Ten Commandments case, stating, "that's something certainly this court will not do." (R. 26.)

During the trial, Chief Justice Moore testified before the Court of the Judiciary that if he had moved the monument pursuant to Federal District Court Judge Thompson's Order, he would have violated the Constitution of the United States of America, his oath of office, and his conscience. (R. 96.) Furthermore, he testified that he upheld his oath and did not violate any of the Canons of Judicial Ethics by doing so. (R. 99-102, 116.) During

cross-examination, Attorney General Pryor asked Chief Justice Moore if he would continue to acknowledge God:

> Q. [Attorney General Pryor] And your understanding is that the federal court ordered that you could not acknowledge God; isn't that right?
>
> A. [Chief Justice Moore] Yes.
>
> Q. And if your resume your duties as Chief Justice after this proceeding, you will continue to acknowledge God as you have testified that you would today, no matter what any other official says?
>
> A. Absolutely. Without -- if I can clarify that. Without an acknowledgement of God, I cannot do my duty. I must acknowledge God. It says so in the Constitution of Alabama. It says so in the 1st Amendmen[t] to the United States Constitution. It says so in everything I've read. So --
>
> Q. Well, the only point I'm trying to clarify, Mr. Chief Justice, is not why, but only that in fact if you do resume your duties as Chief Justice, you would continue to do that without regard to what any other official says; isn't that right?
>
> A. . . . I think you must.

(R. 117-18.)

Before Chief Justice Moore left the witness stand, Judge Vowell questioned Chief Justice Moore concerning the Federal District Court injunction and the future of the Ten Commandments monument:

> Q: [Judge Vowell] . . . Mr. Chief Justice, I'm afraid that there's some part of your testimony

that I don’t quite understand. You say that you don’t intend to violate the court order; is that correct?

A: [Chief Justice Moore] Sir, say that again, please?

Q: Well, let me state it more clearly. If you were returned to your office, would you follow the injunction which is a final injunction issued by the United States District Court?

A: The injunction was to move the monument. The monument has been moved. You can’t follow something that’s already been done.

Q: If you were returned, what, sir, would you do with the monument?

A: Well, I certainly wouldn’t leave it in a closet shrouded from the view of the public. I certainly wouldn’t hide the word of God. It’s an acknowledgement of God. Exactly what I would do with it, I haven’t decided.

Q: If you were --

A: But it wouldn’t stay in the monument -- the closet. I would assure you that.

Q: Would you put back in the rotunda from which it was removed?

A: I haven’t decided what I would do with it.

Q: Well, I think you should let us know that. It seems to me a very important issue as to whether if you were returned to office, you would obey the court order to remove it?

A: Of course, obeyance of the court order was to remove it from where it was. It has been removed. There would be nothing to obey. Now what would I do with the monument, I haven’t even

> thought about it, frankly, except I would not leave it in a closet. I have not entered any ideas in my mind as to where I would put it or what I would do with it.
>
> Q: I see.
>
> A: But I would not leave it where it is, sir.
>
> Q: All right. Thank you, sir.

(R. 119-20.)

On November 13, 2003, approximately eighteen hours after the trial, the Court of the Judiciary issued a twelve page opinion, holding that Chief Justice Moore had violated the Alabama Canons of Judicial Ethics because he did not remove the monument from the rotunda of the Judicial Building as ordered by the federal court. (C. 549-61.) The Court found that the Chief Justice assured the Court that he would not "follow that order or any similar order in the future" and that he "affirmed his earlier statements in which he said he would do the same." (C. 560.) Thus, the Court concluded, to "resolve this issue" and prevent "another confrontation," Chief Justice Moore was ordered removed from office. (C. 560-61.)

STATEMENT OF THE STANDARD OF REVIEW

The standard of review in this case is *de novo*, as set forth in the Alabama Constitution: "[a] judge aggrieved by a decision of the court of the judiciary may appeal to the supreme court. The supreme court shall review the record of the proceedings on **the law and the facts**." Ala. Const. of 1901, Amend. 581, § 6.18(b) (emphasis added). The standard of review for questions of law is *de novo*. *State v. American Tobacco Co.*, 772 So. 2d 417, 419 (Ala. 2000). Questions of fact are also reviewed *de novo*. The Judicial Inquiry Commission's burden of proof in the Court of the Judiciary was "clear and convincing evidence." *In the Matter of Sheffield*, 465 So. 2d 350, 355 (Ala. 1985) *See; Hayes v. Alabama Court of the Judiciary*, 437 So. 2d 1276, 1279-80 (Ala. 1983). Likewise, on appeal, "orders of the Court of the Judiciary are entitled to a presumption of correctness if the charge is supported by 'clear and convincing evidence.'" *Sheffield*, 465 So. 2d at 355 (quoting *In the Matter of Samford*, 352 So. 2d 1126, 1129 (Ala. 1977)).

SUMMARY OF THE ARGUMENT

Chief Justice Roy S. Moore was found guilty of ethical violations and removed from public office for refusing to follow an unlawful court order to violate the Constitution, his solemn oath thereto, and his conscience. Chief Justice Moore installed in the rotunda of the Alabama Judicial Building a granite monument acknowledging God as the moral foundation of law and, to that end, prominently displaying the Ten Commandments. Federal District Court Judge Myron Thompson held that it was unconstitutional and ordered it removed. Chief Justice Moore's consistent position was and is that: (1) the federal court order was unlawful because the federal judge refused to interpret the law (the Constitution); and (2) to remove the monument would be a denial of Almighty God Who is invoked at the establishment of the justice system in the preamble of the Alabama Constitution of 1901. For his stance, and his refusal to follow the unlawful court order, Chief Justice Moore was tried on allegations of judicial misconduct and removed from office.

Incredibly, despite the fact that the allegations brought against Chief Justice Moore concerned matters of

ethics, the Court of the Judiciary refused to consider the lawfulness of the very court order at issue. For the Court below, it was sufficient that a court order had been issued and disobeyed; no consideration of the ethical, legal, or moral basis of the order was permitted. The failure to first determine whether the court order was lawful leaves the decision devoid of clear and convincing evidence necessary to prove any ethical violations. Not only did the Court err in precluding consideration of the court order's unlawfulness from this case, it has established a dangerous precedent for all oath-bound officials to the effect that **any** court order must be absolutely obeyed -- regardless of its lawfulness -- on pain of removal from office. Additionally, the evidence at trial did not clearly and convincingly show that Chief Justice Moore, if returned to office, would put the monument back into the Rotunda and that he would violate a federal court order in the future.

The Court of the Judiciary's decision to remove Chief Justice Moore from office also erects a religious test to public office in violation of both the Alabama and the United States Constitutions. This unique religious test

required Chief Justice Moore to forsake an acknowledgment of God (e.g., the monument) or else suffer ethical allegations and removal from public office. Both the Alabama and the federal constitution prohibit Alabama from forcing public officers to choose between their job or their God. Alabama's Constitution expressly acknowledges Almighty God as integral to the founding of the State's system of justice. Alabama's judicial officers should not be punished for acknowledging that same God.

Additionally, the Court of the Judiciary denied Chief Justice Moore of his property and liberty without due process of law. First, by precluding -- even before trial began -- any consideration of the federal court order's lawfulness, the Court denied Chief Justice Moore his right to be heard on his ethical justification for disobeying the court order, and severely restricted his ability to defend himself against the ethical charges. Second, by denying all substantive motions filed below by Chief Justice Moore, the Court denied him a fair and impartial hearing.

Finally, the history of Alabama's ethical codes reveals that Chief Justice Moore has been punished for acknowledging the very God upon Whose precepts the first

ethical code was predicated. Thomas Goode Jones, author of Alabama's code of legal ethics (America's first) relied heavily upon the ethical writings of George Sharswood and David Hoffman, who, in turn, undeniably based their ethical rules on scriptural teachings and divine moral principles. Jones himself commented in the first ethics code that the duty to God was supreme, even above an attorney's duty to his client. The Court of the Judiciary misused the Alabama Canons of Judicial Ethics when it punished Chief Justice Moore for publicly acknowledging the God upon Whom the ethics code is based.

In short, Chief Justice Moore was removed because the Ten Commandments monument that acknowledged God was not. The Court of the Judiciary did not bother to explain how Chief Justice Moore, who, in good faith, chose to follow the Constitution, his oath, and his conscience, violated the Canons of Judicial Ethics. For the Court below, it was simply enough that he had disobeyed a federal court order and that he would continue to acknowledge God. This Court must reverse the Court of the Judiciary's final judgment, render judgment in favor of Chief Justice Moore, and restore him to his elected office.

ARGUMENT

I. THE COURT OF THE JUDICIARY ERRED IN REMOVING CHIEF JUSTICE MOORE BECAUSE IT FAILED TO EVEN CONSIDER -- AND THE JUDICIAL INQUIRY COMMISSION FAILED TO PROVE -- THAT THE FEDERAL COURT ORDER TO REMOVE THE TEN COMMANDMENTS MONUMENT WAS ETHICALLY BINDING AND LAWFUL.

The Court of the Judiciary's decision must be reversed because of the court's failure to determine the threshold question of whether Chief Justice Roy Moore was ethically bound by a *lawful* court order. All of the Judicial Inquiry Commission's ("Commission") charges against Chief Justice Moore were founded upon the sole factual assertion that the Chief Justice "willfully failed to comply with an existing and binding court order directed to him." (R. 11-13 (emphasis added).) If, however, the order was not **lawful** (a word conspicuously absent from any of the charges), then Chief Justice Moore was ethically bound by his solemn oath to comply with the Constitutions of the United States and of Alabama, not the unlawful court order. The Court of the Judiciary's crucial failure to distinguish between lawful and unlawful orders sets a dangerous precedent for all judicial officials in that, as a matter of judicial ethics, it requires obedience to all court orders including those that are illegal and unethical.

Chief Justice Moore does not desire or intend to re-litigate the federal *Glassroth v. Moore* matter in this Court. He is, however, before this Court appealing a ruling that he violated rules of ethical behavior in failing to follow a federal court order that issued in the *Glassroth* matter.[1] It is entirely necessary and proper, therefore, that this Court -- and the court below -- examine whether the underlying court order was itself lawful. If said court order was unlawful, then our constitution requires that Chief Justice Moore, bound by

[1] The Judicial Inquiry Commission brought six charges against Chief Justice Moore alleging that he violated numerous Canons of Judicial Ethics. Each allegation was based on the same factual allegation: that Chief Justice Moore "willfully failed to comply with an existing and binding court order directed to him." Charge One alleges that Chief Justice Moore violated Canon 1 by "fail[ing] to uphold the integrity and independence of the judiciary." Charge Two alleges that Chief Justice Moore violated Canon 1 by "fail[ing] to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved." Charge Three alleges that Chief Justice Moore violated Canon 2 by "fail[ing] to avoid impropriety and the appearance of impropriety in all his activities." Charge Four alleges that Chief Justice Moore violated Canon 2A by "fail[ing] to respect and comply with the law." Charge Five alleges that Chief Justice Moore violated Canon 2A by "fail[ing] to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Charge Six alleges that Chief Justice Moore violated Canon 2B by "fail[ing] to avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute." (C. 11-13.)

his solemn oath to that constitution, must be expected to decline to obey such an unlawful order without fear of violating ethical norms. Furthermore, if the order was unlawful, then Chief Justice Moore's refusal to follow it was not unethical.

A. The federal court order to remove the monument was unlawful because it violated the First and Tenth Amendments to the United States Constitution.

Judge Myron Thompson's August 5, 2003 *Final Judgment and Injunction* (hereinafter "order") directing Chief Justice Moore to remove the monument from the rotunda of the Alabama Judicial Building was unconstitutional and unlawful. *See Glassroth v. Moore*, 275 F. Supp. 2d 1347 (M.D. Ala. 2003). The order was not lawfully premised upon the First Amendment and it infringed upon the Tenth Amendment power of the State of Alabama to acknowledge God.

1. First Amendment

In the federal case concerning the monument, the plaintiffs argued that the monument ought to be removed from the rotunda of the Judicial Building because it violated the Establishment Clause of the First Amendment of the United States Constitution. *Glassroth v. Moore*, 229 F. Supp. 2d 1290 (M.D. Ala. 2002). That clause provides that

"Congress shall make no law respecting an establishment of religion . . . ." U.S. Const., amend. I. Chief Justice Moore argued in the trial court that he could not, as Chief Justice, make a law; that the granite monument itself was no "law"; and that the monument was not an "establishment" of "religion," under the proper definition of religion. Judge Thompson agreed with the plaintiffs and the Court of Appeals for the Eleventh Circuit affirmed and sent the case back to Judge Thompson. *Glassroth v. Moore*, 353 F.3d 1282 (11th Cir. 2003). Judge Thompson then entered his August 5 order directing Chief Justice Moore to remove the monument. *Glassroth v. Moore*, 275 F. Supp. 2d 1347 (M.D. Ala. 2003).

The order to remove the monument, however, was never properly predicated on the First Amendment. In Judge Thompson's November 18, 2002 opinion, he specifically refused to define the word "religion" in the First Amendment, claiming it was "unwise, and even dangerous" to do so. 229 F. Supp. 2d at 1313 n.5. Nevertheless, Judge Thompson used the word "religion" or "religious" over 110 times in his opinion. Thus, Judge Thompson unlawfully held that he, a federal judge, did not know what religion was, but that Chief Justice Moore had established it.

Moreover, Judge Thompson made the shocking profession that as a United States District Court judge he lacked the expertise to define the primary First Amendment legal concept at issue in this case -- the word "religion." 229 F. Supp. 2d at 1314. If a federal court lacks the expertise to define the law, then it cannot interpret the law. And if a court cannot interpret the law, then any rulings made in purported pursuance thereof are not based upon the law and are, therefore, by definition unlawful.

The order to remove the monument was based not on the law -- the First Amendment -- but upon Judge Thompson's predilections and his personal incorrect opinion as to the propriety of the monument. Accordingly, that "order" to remove the monument was *ultra vires*, beyond the lawful authority of the federal court. Chief Justice Moore's unwillingness to follow an unlawful order did not violate the Judicial Code of Ethics because the ethical duties of his office require that he disobey unlawful orders.

2. Tenth Amendment

The preamble of the Alabama Constitution of 1901 provides that the people of Alabama, "in order to establish justice, . . . invoking the favor and guidance of Almighty

God, do ordain and establish the following constitution and form of government for the State of Alabama." Like most every other state's constitution, Alabama's acknowledges God. *See* Catherine Millard, *The Christian Heritage of the 50 United States of America* (2000). As Judge Samford of the Court of Appeals of Alabama once held:

> [E]very Constitution ever adopted by the people of Alabama was framed and adopted with a full recognition of the powers of a Supreme Being with powers to control and direct the destinies of men. **This recognition is given voice in the Preamble to the Constitution of 1901 . . . .**

Wright v. State, 24 Ala. App. 378, 380, 135 So. 636, 637 (1931) (emphasis added), *rev'd on reh'g on other grounds*. In his capacity as the administrative head of Alabama's justice system, Chief Justice Moore placed the monument in the Judicial Building's rotunda to depict the moral foundation of our law, and to remind judges, lawyers and citizens that "in order to establish justice, we must invoke the 'favor and guidance of Almighty God.'" *Glassroth v. Moore*, 229 F. Supp. 2d at 1322 (quoting Ala. Const. of 1901, pmbl.). (R. 91-92.)

The Tenth Amendment to the United States Constitution provides that "powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are

reserved to the states respectively, or to the people." The people of the State of Alabama saw fit to acknowledge and invoke the favor of God in their constitution, and no federal court has held (nor should it) that doing so violates the federal constitution. Consistent with that constitutional divine acknowledgment, Chief Justice Moore installed a monument recognizing that same God as the moral foundation of our laws and justice system. No power has been granted to the United States to deny Alabama, or its officers, the right to acknowledge Almighty God.

Every state inherently holds the power to establish a system of justice for the application of its laws regulating the health, safety, and welfare of its citizenry, which has been repeatedly affirmed by the United States Supreme Court as a state power and function. *See, e.g., United States v. Morrison*, 529 U.S. 598, 618 (2000); *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 125 (1978); *Miller v. California*, 413 U.S. 15, 30-34 (1973); *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 61 (1973). Alabama's system of justice is established "invoking the favor and guidance of Almighty God." Ala. Const. of 1901, pmbl. Any order prohibiting the

acknowledgment of God is a direct and unlawful interference with a power expressly reserved to this State.

Although Judge Thompson never held that the Alabama constitution violated (or even conflicted with) the federal constitution, he held that Chief Justice Moore violated the First Amendment by installing the monument that similarly (if not more expressly) acknowledged Almighty God. But Judge Thompson did more than issue a declaratory judgment expressing his opinion. He issued an injunctive order to Alabama's highest judicial officer directing him in his official capacity to remove a state monument from a state court building. The Tenth Amendment prohibits Judge Thompson from issuing such an order that infringes upon a "power" reserved to the State of Alabama.

B. The Court of the Judiciary lacked clear and convincing evidence below because it failed to even consider whether the federal court order giving rise to the ethical complaint was a lawful order.

The first paragraph of the Court's final judgment revealed that the Court, at the outset, shirked its duty to ascertain the validity of the order imposed upon Chief Justice Moore:

> [T]his is not a case to review the judgment of Judge Myron Thompson nor the actions of the United

States Court of Appeals for the Eleventh Circuit or the United States Supreme Court. This Court does not have the authority or jurisdiction to reexamine those issues.

(C. 549.) In *Butler v. Alabama Judicial Inquiry Commission*, Associate Justice Houston wrote:

> In a proceeding before the Alabama Court of the Judiciary, a defendant can raise and have decided a constitutional challenge to a judicial canon that the defendant is charged with violating.
>
> . . .
>
> . . . I contend, and the Court held in *Boggan v. Judicial Inquiry Commission*, 759 So. 2d 550 (Ala. 1999), that a constitutional challenge could and should be made in the Court of the Judiciary. Who decides which courts have the power to rule on the constitutionality of statutes or canons? The Constitution gives the Court of the Judiciary the sole power to try a judge or justice for a violation of one or more of the canons; and the Constitution does not prohibit the Court of the Judiciary from deciding constitutional issues involving the canons. [FN7] In Marbury v. Madison, 5 U.S. (1 Cranch) 137, 179, 2 L.Ed. 60 (1803), in reference to the United States Constitution, the United States Supreme Court wrote:
>
>> Could it be the intention of those who gave this power, to say that in using it the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises? This is too extravagant to be maintained. In some cases, then, the Constitution must be looked into by the judges."

Butler v. Ala. Judicial Inquiry Commission, 802 So. 2d 207, 221, 222 (Ala. 2001) (Houston, J., dissenting) (footnote omitted). If the Court of the Judiciary can examine the constitutionality of an ethical canon that is the basis of a charge against a judge, it can also examine the constitutionality of a court order that is the basis of the charges here.

Nevertheless, the Court proceeded to determine whether Chief Justice Moore "had committed six violations of the Canons of Judicial Ethics when he willfully failed to comply with a *binding and existing court order* of the United States District Court for the Middle District of Alabama." (C. 552 (emphasis added).) But the binding or legal aspect of said court order was never discussed -- it was simply assumed. Despite Chief Justice Moore's oath to the Constitution, the Court concluded that Chief Justice Moore "did not have the legal authority to decide whether the federal court order . . . should be obeyed"; that "he was constitutionally mandated to obey it"; and that he "was bound by, and had the duty to follow, the rulings of the federal courts." (C. 557, 559.) Indeed, the Court contemplated not one scenario in which a judicial officer

may choose to obey the Constitution itself above "the rulings of the federal courts." (C. 559.) Not surprisingly, the Court justified its removal of Alabama's Chief Justice by consoling itself only with the fact that "Chief Justice Moore . . . willfully and publicly defied the orders of a United States district court," and would "do the same" again. (C. 560.)

At trial, the prosecution and the Court itself both indicated that the only concern was **whether** Chief Justice Moore would, contrary to the federal court order, continue to acknowledge God. No reason for acting contrary to the federal court would suffice, or even be heard. Even before open trial, in proceedings in-chambers, the Court of the Judiciary (via Judge John Dobson) stated that any discussion or evidence "that goes into the merits of the 10 Commandments case [*Glassroth v. Moore*], that's something certainly this court will not do." (R. 26.) During cross-examination of Chief Justice Moore, Attorney General Bill Pryor, lead prosecutor for the Judicial Inquiry Commission, stated that he was interested solely in **whether** Chief Justice Moore would continue to acknowledge God if restored to office, not **why** he would do so. When Chief Justice

Moore tried to offer his explanation as to why he would continue to acknowledge God as Chief Justice, the Attorney General cut him off:

> [T]he only point I'm trying to clarify, Mr. Chief Justice, is **not why**, but **only that** in fact if you do resume your duties as Chief Justice, you would continue to do that [acknowledge God] without regard to what any other official says; isn't that right?

(R. 117.) After cross-examination, the only question the Court (via Judge Vowell) asked of Chief Justice Moore was whether he would either "follow the injunction" and "obey the court order to remove [the monument]" or "put [the monument] back in the rotunda from which it was removed"? (R. 119-120.) Like the Attorney General, the Court below did not care to know why the court order was not followed.

The Court of the Judiciary's refusal to ascertain the validity of the federal court order, and its insistence that Chief Justice Moore must never disobey a court order, imposes a new rule on public officials: a public official's oath is not to a fixed Constitution, but to a court's opinion contrary to that Constitution.[2] Under this oath-

[2] Ironically, the Court below held that Chief Justice Moore was "constitutionally mandated to obey [the unconstitutional court order]." (C. 557.) Moreover, the Court appeared unable to differentiate between the "federal

transfer rule, any refusal to obey a court order, regardless of its unlawfulness or moral depravity, is now an "ethical" violation worthy of the punishment of removal from public office. This is the undeniable and logical consequence of the Court of the Judiciary's holding, and the consequences are devastating.

The Court of the Judiciary's oath-transfer rule would require unflinching obedience to **any** court order that issues from the mouth or pen of a federal judge or court. What if, hypothetically, a federal judge issued an order that Chief Justice Moore be required to publicly and summarily execute, without any due process of law, certain persons that currently reside in the State of Alabama? On formidable moral, ethical, and constitutional grounds, Chief Justice Moore would be expected to ignore -- even "defy" -- such a treacherous order. Or would he? Under the Court of the Judiciary's decision, Chief Justice Moore would "not have the legal authority to decide whether [such a] federal court order . . . should be obeyed." Chief

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court order" and "the Constitution," equating the two with an insinuation that Chief Justice Moore's refusal to follow the dictates of a court order somehow became a "war against the Constitution." *Id.* (quoting *Cooper v. Aaron*, 358 U.S. 1, 19 (1958)).

Justice Moore would be "bound by" and "ha[ve] the duty to follow" such a ruling, or risk losing his job on, of all things, grounds of ethical violations? There is not a canon of judicial ethics in any state in the Union that would compel obedience of that sort. Under that scenario, this honorable Court would expect Chief Justice Moore to not "just follow orders." Rather, this Court would expect him to follow his oath to the Constitution, rather than obey an unlawful "order." And it would be the height of moral irony to remove him on ethics charges for taking such an ethical stand.

The question to be decided is thus: to whom or what is the solemn oath sworn? When he was sworn into office, Chief Justice Moore, like all Alabama judges, took an oath not to a person or a body of persons, and not even to the United States or the State of Alabama. Rather, Chief Justice Moore swore a solemn oath to support the respective *constitutions* of the United States and of Alabama. *See* U.S. Const. art. VI; Ala. Const. of 1901, § 279. He should be expected to be, therefore, loyal to the constitutions, above even a federal court order. As Chief Justice John

Marshall wrote in *Marbury v. Madison*, the seminal case for the doctrine of judicial review:

> Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government?

5 U.S. (1 Cranch) 137, 180 (1803). If the "rule of law" requires unquestioning obedience to a judge, then it is no rule of **law** at all. The oath taken by all judicial officers would be but a farce, and the true object of the oath is no longer the "rule." Chief Justice Marshall warned of such an infringement upon the oath taken by judicial officers:

> This oath certainly applies, in an especial manner, to [judges'] conduct in their official character. How **immoral** to impose it upon them, if they were to be used as knowing instruments, for violating what they swear to support?

5 U.S. (1 Cranch) at 180 (emphasis added). Chief Justice Moore refused to be used as a "knowing instrument" to violate "what he sw[ore] to support," and chose to follow his oath instead of a federal court. The Court of the Judiciary's decision to remove him for so doing is, in the words of the venerable Chief Justice Marshall, immoral.

Chief Justice Moore's actions in this case were guided by his oath and his conscience. Never did he act in bad

faith, which this Court has held is a mandatory element for a finding of guilt under Judicial Ethics Canons 2A and 2B. *See In re Sheffield*, 465 So. 2d 350, 358 (Ala. 1984). This Court in *Sheffield* defined bad faith as "malice, ill will, or improper motive." 465 So. 2d at 358. By choosing to obey the Constitution above an unlawful court order, Chief Justice Moore acted in good faith and with the best of intentions. The Court of the Judiciary erred in failing to consider the unlawful nature of the court order and the lawful and ethical reasons for disobeying it.

C. The Court of the Judiciary lacked clear and convincing evidence that Chief Justice Moore would return the monument to the Rotunda or violate the federal court order if he was restored to office.

The Court of the Judiciary found that Chief Justice Moore "gave the court no assurances that he would follow [Judge Thompson's] order or any similar order in the future," and that he "affirmed his earlier statements in which he said he would do the same." (C. 560.) The Court erred in these findings.

First, at trial, Judge Vowell asked Chief Justice Moore what he would "do with the monument" if he were returned to office and whether he would "obey the court order to remove it." (R. 119-120.) Chief Justice Moore's only response

was that (1) the monument had already been moved in accordance with the injunctive order to *move* the monument, so there was no standing order to obey or disobey; and (2) that he had not even thought about or decided what he would do with the monument upon his return.[3] (R. 119-20.) At no time did Chief Justice Moore say he intended to put the monument back into the rotunda or that he would not "follow the injunction."

Second, Chief Justice Moore never told the Judicial Inquiry Commission that he would violate a court order in the future. He testified to the Judicial Inquiry Commission, and affirmed this statement at trial:

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

(R. 116; C. 553 (emphasis added).) Chief Justice Moore consistently maintained that, bound by his oath, he would "do it again" -- i.e., he would *not move* the monument again if the clock were turned back to August of 2003. (R. 114-117, 119-20.) But he never said that, if he were returned

[3] This is especially understandable given the fact that Chief Justice Moore has publicly offered the monument to the United States Congress for display in the Federal Capitol Building.

to office, he would put the monument *back*. As Chief Justice Moore reiterated to Judge Vowell, the monument had already been moved (and the injunction obeyed). There was, therefore, no clear and convincing evidence that Chief Justice Moore would put the monument back and that he would violate a court order in the future such that "another confrontation" would ultimately result from his return to office.

II. BY REMOVING CHIEF JUSTICE MOORE FOR PUBLICLY ACKNOWLEDGING GOD THROUGH THE MONUMENT, THE COURT OF THE JUDICIARY IMPOSED A RELIGIOUS TEST UPON CHIEF JUSTICE MOORE, CONTRARY TO THE ALABAMA AND UNITED STATES CONSTITUTIONS.

The Court of the Judiciary's holding that Chief Justice Moore violated judicial ethics and deserved removal from office for publicly and officially acknowledging God imposed a unique "religious test" upon Chief Justice Moore: he must forsake a public acknowledgment of God (particularly where a federal court orders such) or surrender his elected public office.

Chief Justice Moore was thrice questioned in cross-examination by Attorney General Pryor about his decision to "continue to acknowledge God" by maintaining the monument in the Rotunda:

> Q. [Attorney General Pryor] And your understanding is that the federal court ordered that you could not acknowledge God; isn't that right?
>
> A. [Chief Justice Moore] Yes.
>
> Q. And if you resume your duties as Chief Justice after this proceeding, **you will continue to acknowledge God as you have testified that you would today, no matter what any other official says?**
>
> A. **Absolutely.** Without -- if I can clarify that. Without an acknowledgement of God, I cannot do my duty. I must acknowledge God. It says so in the Constitution of Alabama. It says so in the 1st Amendmen[t] to the United States Constitution. It says so in everything I've read. So --
>
> Q. Well, the only point I'm trying to clarify, Mr. Chief Justice, is not why, but only that **in fact if you do resume your duties as Chief Justice, you would continue to do that without regard to what any other official says; isn't that right?**
>
> A. . . . **I think you must.**

(R. 117-18 (emphasis added).) In his closing remarks, the Attorney General characterized Chief Justice Moore as "totally unrepentant" for his refusal to cease his acknowledgment of God. (R. 153.)

For Chief Justice Moore, to remove the monument would be violating his duty under his oath of office, and acting contrary to the Constitution and his conscience. (R. 96.) The Court of the Judiciary conceded that Chief Justice

Moore testified to the same. (C. 553.) Chief Justice Moore never wavered in his testimony that he "must acknowledge God." (R. 117.)

The Court of the Judiciary, however, held that Chief Justice Moore retained the wrong belief about his oath. The Court held that, because a court order is equivalent to "the law," Chief Justice Moore's actions ran contrary to the "law" and his oath and, thereby, violated the Alabama Canons of Judicial Ethics:

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

(C. 559.) Despite his oath to the Constitution, the Court expected Chief Justice Moore to "conform his or her conduct in the exercise of public duties" to unconstitutional court orders. (C. 558.) Thus, Chief Justice Moore's "wrong" belief concerning his oath to the Constitution and his duty to acknowledge God (even when a federal judge ordered the contrary) was rejected by the Court of the Judiciary as impermissible. And precisely because of his "unrepentant"

actions consistent with those beliefs, the Court concluded that -- there being "no penalty short of removal from office that would resolve this issue" -- Chief Justice Moore should be disqualified from holding his elected office. (R. 560.)

The Court of the Judiciary gave lip-service to "the right of every American citizen to express his or her views," but immediately noted that, as a qualification of "a position of civil authority," an individual, "especially a judge . . . must conform his or her conduct in the exercise of public duties" to, essentially, "the rulings of the federal courts," which the Court equated with "established rules of law and accepted rules of ethics." (C. 558-59.) Under this qualification for office, Chief Justice Moore **had to** deny God by removing the monument because a federal judge told him so, or else forfeit his "position of civil authority."

Thomas Jefferson, in his "Bill for Establishing Religious Freedom," warned against establishing religious tests as barriers to public office:

> [P]roscribing any citizen as unworthy the publick [sic] confidence, by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that

> religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens he has a natural right.

Thomas Jefferson, "A Bill for Establishing Religious Freedom" (June 12, 1779), *in* 5 *The Founders' Constitution* 77 (P. Kurland & R. Lerner eds. 1987).

The Court of the Judiciary made it clear that Chief Justice Moore had the right to his "opinions" about the duty to acknowledge God and to not violate his oath or conscience; he simply must not act on them "in the exercise of public duties." (C. 558.) His failure to renounce his beliefs, his conscience, and his oath, therefore, led to his removal and a judgment that he was ethically "unworthy [of] the publick confidence." Oliver Ellsworth, a United States Supreme Court Justice and a member of the federal Constitutional Convention, warned that religious tests would have such a result:

> "If they exclude any persons, it will be honest men, men of principle, who will rather suffer an injury, than act contrary to the dictates of their consciences."

Oliver Ellsworth, *Landholder*, No. 7, Essays 168-71 (Dec. 17, 1787), in 4 *The Founders' Constitution* 640 (P. Kurland & R. Lerner eds. 1987). Chief Justice Moore chose not to

act "contrary to the dictates of [his] conscience" and in accordance with his oath. His actions were ethical. For that, the Court of the Judiciary removed him.

A. The Alabama Constitution prohibits a religious test "as a qualification to any office or public trust."

The same Constitution of this State that established justice invoking the favor and guidance of Almighty God also provides that "no religious test shall be required as a qualification to any office or public trust under this state . . . ." Ala. Const. of 1901, § 3. By removing Chief Justice Moore from his elected office, the Court of the Judiciary has erected a qualification to that position requiring the officeholder to deny God as the moral foundation of law, should a federal court so order it.

The canons of judicial ethics should not be used in the Court of the Judiciary, or this Court, to impose upon a judicial officer a duty to violate his conscience under pain of removal from office. This Court has wisely stated:

> Moral and theological problems are often of most difficult solution. The broadest philosophy is unconsciously warped by one's own creed. We say one's own, because by adopting it, we furnish the highest evidence that our conscience approves it. Yet, another, having equal advantages and equal intelligence, will condemn it as sincerely as we advocate it. Who is right, and who shall judge

> between us? This precise liberty of conscience -- this right to differ with our fellow-men -- our constitution not only tolerates, but guarantees to every man.

Desribes v. Wilmer, 69 Ala. 25, 1881 WL 1053, *2 (1881). Liberty of conscience is not lost to one's public position. The Court's and the Attorney General's particular philosophy of what Chief Justice Moore's oath and conscience require must not be forced upon Chief Justice Moore, or any judicial officer, as a qualification for holding office. The Alabama Constitution "guarantees to every man," even judges, the liberty of conscience necessary to fulfill one's oath and obligations -- especially in the face of facially unlawful orders.

B. The First Amendment of the United States Constitution prohibits the religious test imposed upon Chief Justice Moore.

In addition to the state constitution, the United States Constitution prohibits the Court of the Judiciary from depriving Chief Justice Moore "of a civil right [to hold office] solely because of [his] religious beliefs . . . . The Free Exercise Clause categorically prohibits government from regulating, prohibiting, or rewarding religious beliefs as such." *McDaniel v. Paty*, 435 U.S. 618, 626 (1978). As James Madison wrote, to do so would

find the State "punishing a religious profession with the privation of a civil right." *McDaniel*, 435 U.S. at 626 (quoting 5 *Writings of James Madison* 288 (G. Hunt ed. 1904)).

In *McDaniel v. Paty*, an ordained minister filed as a candidate for delegate to Tennessee's 1977 constitutional convention. Tennessee law provided that citizens who can qualify for membership in the House of Representatives were eligible to become a candidate for convention delegate. However, the minister, McDaniel, was disqualified under a constitutional provision carried over from Tennessee's 1796 Constitution, which provided that "no minister of the gospel, or priest of any denomination whatever, shall be eligible to a seat in either House of the legislature." 435 U.S. at 621 n.1. McDaniel's opponent sued in Chancery Court for a declaratory judgment that McDaniel was disqualified. The Chancery Court held that the Tennessee law prohibiting McDaniel from being on the ballot was unconstitutional, and declared him eligible for delegate election. The Tennessee Supreme Court reversed. The United States Supreme Court, however, held that Tennessee's disqualification law violated McDaniel's free exercise

right under the First Amendment "made applicable to the States by the Fourteenth Amendment." 435 U.S. at 629.

> Tennessee . . . acknowledges the right of its adult citizens generally to seek and hold office as legislators or delegates to the state constitutional convention. Yet under the clergy-disqualification provision, McDaniel cannot exercise both [the right to be a minister and the right to seek and hold office] simultaneously because **the State has conditioned the exercise of one on the surrender of the other**. . . . In so doing, Tennessee has encroached upon McDaniel's right to the free exercise of religion.

435 U.S. at 626 (emphasis added).

In this case, the Court of the Judiciary held that the Canons of Judicial Ethics forbid Chief Justice Moore from holding both his view of his oath and the law -- that he may acknowledge God as the moral foundation of law, even in the face of a contrary court opinion – and, at the same time, his public office. If, in fact, the canons forbid such belief and action, then the canons themselves "condition the exercise of" Chief Justice Moore's religious duty upon the "surrender" of his right to seek and hold public office. If so, then the canons, to the extent so applicable, constitute a religious test that violates Chief

Justice Moore's "liberty of conscience" under the First Amendment.[4]

The Court of the Judiciary, or any government entity, "may not as a goal promote 'safe thinking' with respect to religion and fence out from political participation those . . . whom it regards as overinvolved in religion." *McDaniel*, 435 U.S. at 641 (Brennan, J., concurring in the judgment). "[The Establishment Clause] may not be used as a sword to justify repression of religion or its adherents from any aspect of public life." *Id.* If, indeed, "[w]e are a religious people whose institutions presuppose a Supreme Being," *Zorach v. Clauson*, 343 U.S. 306, 313 (1952), then religious people acknowledging that Supreme Being should not be barred, under the guise of ethics rules, from those institutions they serve. *See also Wright*, 24 Ala. App. at 636-37, 135 So. at 379-80 ("The whole fabric of this nation from its inception to the

[4] The Court below never discussed **how** the language of any of the relevant Canons prohibited Chief Justice Moore's actions or beliefs. In fact, no language of any Canon was ever quoted. The Court rather abruptly concluded at the end of its judgment "that Chief Justice Moore has violated the Alabama Canons of Judicial Ethics as alleged by the JIC in its complaint." (C. 559.) The analysis of the canonical language is left to the imagination of the reader.

present time is founded on a belief in a Supreme Being whose guiding hand is recognized and invoked in our most solemn governmental pronouncements”).

III. THE COURT OF THE JUDICIARY DENIED CHIEF JUSTICE MOORE DUE PROCESS OF LAW WHEN IT FAILED TO HEAR CHIEF JUSTICE MOORE’S ARGUMENT REGARDING THE LAWFULNESS OF THE FEDERAL COURT ORDER AND BY ITS MANY DENIALS OF THE CHIEF JUSTICE’S MOTIONS.

A. The Fourteenth Amendment to the United States Constitution requires that Chief Justice Moore be given procedural due process.

If the Canons of Judicial Ethics were used by the Court of the Judiciary as a pretext to remove Chief Justice Moore from office, then the Court separated Chief Justice Moore from his liberty and property without rendering to him procedural due process of law. The Fourteenth Amendment to the United States Constitution forbids a state from depriving anyone of life, liberty, or property without due process of law. Public officials, such as Chief Justice Moore, generally hold a property interest in their position.

> [T]he United States Supreme Court held in *Board of Regents v. Roth*, 408 U.S. 564, 576-78, 92 S.Ct. 2701, 2708-10, 33 L.Ed.2d 548 (1972), that a governmental employee's contractual or statutory right to continued employment was a property interest falling within the scope of the Fourteenth Amendment's protection. Therefore, "a state employee who under state law, or rules

> promulgated by state officials, has a legitimate claim of entitlement to continued employment absent sufficient cause for dismissal may demand the procedural protections of due process." *Goss v. Lopez*, 419 U.S. 565, 573, 95 S.Ct. 729, 735, 42 L.Ed.2d 725 (1975).

Stallworth v. City of Evergreen, 680 So.2d 229, 233 (Ala. 1996). Chief Justice Moore was entitled to the "essential requirements" of due process: notice and an opportunity to respond. "The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement." *Id.* (quoting *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 545-46 (1985)).

In its haste to remove Chief Justice Moore from office,[5] the Court of the Judiciary "stopped up its ears" and ignored Chief Justice Moore's argument that the underlying federal court order was unlawful and that such order did not require his obedience as is consistent with his oath and conscience. Before the trial began, the Court told counsel in chambers that any discussion or evidence regarding "the merits of the 10 Commandments case" is

[5] It took approximately eighteen hours from the end of trial proceedings until the reading of the twelve-page final judgment for the Court to decide to remove the Chief Justice and draft the final judgment.

foreclosed and "something certainly this court will not do." (R. 26.) The Court began its final judgment by emphasizing that the case concerned "only possible violations of the Canons of Judicial Ethics." (C. 549.) Yet despite the fact that every allegation of judicial **ethical** misconduct rested upon the charge that Chief Justice Moore "willfully failed to comply" with a federal court order, the Court turned its back on any argument concerning the lawfulness or morality of that very order. This case, the Court insisted, "is not . . . about the public display of the Ten Commandments in the State Judicial Building nor the acknowledgment of God," nor is it "a case to review the judgment of Judge Myron Thompson nor the actions of the United States Court of Appeals for the Eleventh Circuit or the United States Supreme Court." (C. 549.) By its own admission, the Court of the Judiciary swept off the table Chief Justice Moore's dispositive defense that the order violated the Constitution and must be disobeyed.

The Court effectively denied Chief Justice Moore's right to be heard on his defense against the judicial ethics charges against him. It is the height of irony that

a defendant charged with serious **ethical** violations -- i.e., accused of doing **wrong** -- should not be heard on his defense that he was being told to do the **wrong** thing, and instead chose to do the **right** thing. By removing any ethical platform from which Chief Justice Moore could plead the morality of his actions, the Court stripped the trial proceedings of any due process legitimacy, and therefore lacked sufficient cause -- morally and constitutionally -- to remove Chief Justice Moore on ethical grounds.

B. The denial of all of Chief Justice Moore's substantive motions denied Chief Justice Moore due process of law.

The Court of the Judiciary denied Chief Justice Moore due process of law when it acted arbitrarily in denying every substantive motion filed on behalf of Chief Justice Moore.

> It is, of course, well-settled law in this jurisdiction that due process must be observed by all boards, as well as by all courts. "Procedural due process in this respect requires at a minimum an orderly proceeding appropriate to the case or adapted to its nature, **just to the parties affected**, and adapted to the ends to be attained; one in which a person has **an opportunity** to be heard, and **to defend, enforce, and protect his rights before a competent and impartial tribunal legally constituted** to determine the right involved; representation by counsel; procedure at the hearing consistent with the essentials of a fair trial according to established rules which do

> not violate fundamental rights, and **in conformity to statutes and rules, conducted in such a way that there will be opportunity for a court to determine whether the applicable rules of law and procedure were observed**; revelation of the evidence on which a disputed order is based and opportunity to explore the evidence, and a conclusion based on the evidence and reason.

Medical Services Administration v. Duke, 378 So. 2d 685, 686 (Ala. 1979) (citations omitted) (emphasis added); *see also* Ala. Const. of 1901, Art. I, § 6; U.S. Const. amend. 14. Most of the orders of denial by the Court of the Judiciary provide no explanation or rationale to be reviewable by an appellate court.

The Court of the Judiciary denied the Chief Justice the opportunity to subpoena records to show that certain members of the Court had not been appointed in conformity with Ala. Const. of 1901, Amendment 581, § 6.18.[6] The two circuit judges are to be selected by the Circuit Judges'

[6] The Motion to Shorten Time of Intent to Serve Subpoena on Non-Party and Issuance of Subpoena to Non-Party, four Notices of Intent to Serve Subpoena on Non-Party, the Subpoenas, the Subpoenas to Hon. John Bush, Secretary/Treasurer of the Circuit Judges Association, Hon. Jeffery Brock, District Judges Association, Robert S. Esdale, Sr., Clerk of the Supreme Court, and John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals, Order granting shortening of time of intent to serve subpoenas to non-parties, Order quashing subpoenas, Motion to Reconsider Order Quashing Subpoenas, and Order denying reconsideration are not included in the Record on Appeal but are noted on the Case Action Summary at C. 567, 569, 570, and 571.

Association and the district judge is to be selected by the District Judges' Association, while, in contrast, the two members of the State Bar are expressly authorized to be selected by "the governing body of the Alabama State Bar." Ala. Const. of 1901, amend. 581, § 6.18.

The Court of the Judiciary denied Chief Justice Moore the opportunity to serve interrogatories on and conduct *voir dire* of members of the Court of the Judiciary and to conduct a deposition to explore biases or communications about the case or the party. (C. 261-63, 261, 368-72, 412.)[7] This is made more egregious because the non-judge members of the Court of the Judiciary are not subject to the Canons of Judicial Ethics and its requirements concerning disqualification. *See* Canons of Judicial Ethics 3C; *Wright v. Turner*, 351 So. 2d 1, 3 (Ala. 1977) (members of the Court of the Judiciary are not public officials and are not subject to the State Ethics Act). Among other things, this denied the Chief Justice the opportunity to develop the information necessary to show that Court of the

[7] The Notice of Deposition, Response to Objection, and Order granting a protective order (incorrectly entered as order on subpoenas on Nov. 5, when the order on subpoenas is properly shown at C. 571 on Nov. 6) are not included in the Record on Appeal but are noted on the Case Action Summary at C. 570.

Judiciary member Sam Jones served on the Judicial Inquiry Commission when it conducted an unauthorized investigation of then Circuit Judge Moore. The Court denied the Chief Justice's motion for recusal of five of the members of the Court of the Judiciary. (C. 347-61, 405-09.) It also denied Chief Justice Moore the opportunity to obtain records and copies of *ex parte* communications to members of the Court of the Judiciary and its staff.

The Court erred in ruling that the term of office of a member of the Court was six years, based upon Alabama Constitution Amendment 328, section 6.15, which provides: "(a) The term of office of each judge of a court of the judicial system of this state shall be six years." (C. 405-09.) The Court of the Judiciary is not part of the unified judicial system as delineated in section 6.01(a). The initial sentence of section 6.01(a), which reads "Except as otherwise provided by this Constitution . . . ," could not apply to the Court of the Judiciary, which was created for the first time in Amendment 328. The sentence was meant to give leeway for future constitutional action. If it was meant to have embraced the Court of the Judiciary, it should have said, "Except as otherwise

provided by this [Article or Amendment] . . . ." Moreover, section 6.15 is clearly not applicable to the Court of the Judiciary, because the preceding section, section 6.13, provides that "[a]ll judges shall be elected." Members of the Court of the Judiciary are not elected, but are appointed by different appointing authorities, pursuant to section 6.18, as amended by Amendment 581.

The Court also erred in holding that the two laymen positions were not vacant, per the terms of their letters of appointment and action by the Senate in confirming them, because they should have continued in office until replaced. (C. 405-09.) By the provisions of the letters of appointment and as confirmed by the Senate, the terms of office of Sam Jones expired on January 31, 2003, and Sue McInnish expired on February 7, 2003. (C. 405-09.) This Court took judicial notice that the two laymen positions on the Court of the Judiciary were then vacant in its December 1999 decision in *Boggan v. Judicial Inquiry Commission*, 759 So. 2d 550, 552 (Ala. 2000). There was no holding that the two former lay members of the Court of the Judiciary should have continued to serve on the panel. If the Court of the Judiciary were to be consistent in its reasoning, if

section 6.15 (which provides that a judge's term is six years) applies, then section 6.14 would have to apply as well. Section 6.14 provides that appointees to vacancies in judicial office serve for at least one year before the next general election. Clearly, though, section 6.14 does not apply to the non-elected members of the Court of the Judiciary.

It is obvious that Governor Siegelman was prompted to act to fill those two lay vacancies by what happened in the *Boggan* case, and, perhaps, even by this Court taking judicial notice of the two vacancies. On January 26, 2000, Governor Siegelman appointed Sam Jones to the Court of the Judiciary, subject to Senate confirmation, and on February 7, 2000, he did the same for Sue McInnish. (C. 354-58.) In the letters of appointment and the letters of transmission to the Senate for confirmation, Governor Siegelman appointed the lay members to a three-year term. Assuming, solely for the sake of argument, that the term of office for a member of the Court of the Judiciary is six years, then it was permissible for the Governor to appoint the two laymen to serve the remaining portion of the terms of the then vacant offices. The Senate confirmation of the

appointments for three years, rather than the full six years argued by the Court of the Judiciary, shows agreement between the Executive and Legislative Branches for a lesser term in office to serve out the remainder of the vacant positions.

The Court of the Judiciary erred in denying Chief Justice Moore's Motion To Allow Full And Unrestricted Media Coverage In The Court Of The Judiciary For The Trial And In All Proceedings Of Chief Justice Roy S. Moore Before The Court Of The Judiciary. (C. 271-73 and C. 288-90, and C. 413-14.) Rule 9 of the Rules of Procedure for the Alabama Court of Judiciary provides that its hearings "shall be public." Rule 19 provides that the hearings should be in a place that "will best serve the public interest." Canon 3(A)(7) of the Canons of Judicial Ethics provides for courtroom media coverage. Here there was no objection by any party, attorney, or witness. *See Ex parte Birmingham News Co., Inc.*, 624 So. 2d 1117 (Ala. Cr. App. 1993). Nonetheless, the Court of the Judiciary, without stating its rationale, prohibited cameras, recording devices, or other electronic devises during the hearing (C. 414), but authorized broadcast of the reading of the judgment of the

Court. (C. 414.) Then, in violation of its own order, the Court of the Judiciary authorized filming of the hearing by the Supreme Court Library, by a hired film crew and an employee of the Administrative Office of Courts, which has subsequently been selling copies of the video. This was in addition to the fixed cameras in all of the appellate courtrooms in the State Judicial Building that record proceedings for the benefit of the judges or justices. The Court of the Judiciary failed to adhere to the rules governing media in a courtroom, self-servingly chose which portions of the proceeding to permit to be broadcast, and then violated its own order by permitting recording.

The Court of the Judiciary erred in denying Chief Justice Moore's motion to disqualify Attorney General Bill Pryor. (C. 281-87, 373-91, 362, 397.) The Attorney General previously had personally represented Chief Justice Moore in the earlier case from Etowah County involving the Ten Commandments. The issues in that case and *Glassroth v. Moore* were similar. It was a conflict of interest with a client for the Attorney General to personally prosecute the case. Moreover, the Attorney General possessed numerous appearances of impropriety and/or conflicts of interest.

Specifically, he prosecuted Chief Justice Moore for the same conduct -- refusal to obey unlawful court orders -- that the Attorney General promised he would support both before and after his appointment to the position of Attorney General by former Governor Fob James. Likewise, it was a conflict of interest for the Attorney General to issue an Attorney General's Opinion saying that the two lay members of the Court of the Judiciary could continue to serve on that Court while he was prosecuting the Judicial Inquiry Commission's complaint in that Court.

The Court of the Judiciary erred in denying Chief Justice Moore's Motion to Dismiss (C. 363-65, 411) and Motion for Acquittal and/or Motion for Judgment as a Matter of Law (C. 547-48) for the reasons provided in the substantive arguments throughout this brief.

As a result of the denial of all of Chief Justice's substantive motions by the Court of the Judiciary, he did not receive a hearing that was "just"; he was prevented from showing that the Court was "competent," "legally constituted," or "impartial"; he was denied discovery necessary to "defend, enforce, and protect his rights"; he was denied a full public trial; he was denied procedure "in

conformity to statutes and rules"; and he was denied a hearing "conducted in such a way that there will be opportunity for a [reviewing] court to determine whether the applicable rules of law and procedure were observed." *Medical Services Administration v. Duke*, 378 So. 2d at 686. These actions by the Court of the Judiciary separately and cumulatively violated his procedural due process rights.

IV. ALABAMA ETHICS RULES ARE PREDICATED UPON THE GOD THAT CHIEF JUSTICE MOORE ACKNOWLEDGES.

The very same rules wielded by the Court of the Judiciary to punish Chief Justice Moore for refusing to deny God were themselves predicated upon the Holy Scriptures and moral precepts of Almighty God. (R. 100-102.) The author of the Alabama Code of Ethics, Col. Thomas Goode Jones, who served as governor in 1890-1894, "was responsible for getting the Alabama State Bar Association to adopt in 1887 the first code of ethics for lawyers . . . ." Hon. Alva H. Maddox, *Lawyers: The Aristocracy of Democracy or "Skunks, Snakes, and Sharks"?*, 29 Cumb. L. Rev. 323, 328 (1998-99). This code "served as the example for the model code of ethics approved by the American Bar Association that was later adopted by most of

the states." Keith B. Norman, *It's a Family Affair*, 64 Ala. Law. 354 (Nov. 2003).

It is instructive to consider not only the author of the code of ethics, but his well-documented inspiration:

> Most scholars who have studied the issue concur that the code of ethics that was adopted in Alabama was based substantially on the writings of George Sharswood, a University of Pennsylvania Law School professor who had delivered lectures on ethics that were summarized and published in his 1854 Essay on Professional Ethics, and who would later serve as Chief Justice of the Pennsylvania Supreme Court. Apparently Jones also consulted the writings of David Hoffman.
>
> . . .
>
> Most agree that the early works of Hoffman and Sharswood form the basis of many of our modern day ethical codes.

Maddox, *supra*, at 328-29 (footnotes omitted). *See also* Allison Marston, *Guiding the Profession: The 1887 Code of Ethics of the Alabama State Bar Association*, 49 Ala. L. Rev. 471, 472 (Winter 1998) (Jones "based the Code on the writings of George Sharswood"). Indeed, Col. Jones kept on his desk a copy of Sharswood's Essay and "consulted it regularly." Mary E. Horton, *Alabama's Code of Legal Ethics*, 61 Ala. Law. 128 (Mar. 2000).

Sharswood and Hoffman, in turn, "relied heavily on scriptural teachings and moral principles as a basis for their work." Maddox, *supra*, at 329.

> Sharswood, for his part, believed that "law is derived from principles laid down by a Supreme Being." Both men believed that the book of "Proverbs was a source of ethical principles for lawyers."

Id. Sharswood's work has been described as "religiously based jurisprudence." John A. Eidsmoe, *Warrior, Statesman, Jurist for the South: The Life, Legacy, and Law of Thomas Goode Jones*, 5 Jones L. Rev. 51, 144 (2001) (quoting Susan D. Carle, *Lawyers' Duty to Do Justice: A New Look at the History of the 1908 Canons*, 24 Law & Soc. Inquiry 1, 13 (Winter 1999)). Likewise, Hoffman's jurisprudence, including his view of legal ethics, "was steeped in religious conviction."

> Hoffman envisioned human law, human morality, and the laws of nature and the physical world as part of **one integrated, divinely inspired system**: Law, in its most comprehensive signification, is that system of rules to which the intellectual and physical worlds are subjected; either by **God their creator** or by man; by which the existence, rest, motion, and conduct of all created and uncreated entities are regulated, and on the due observance of which their being and happiness depends.

Eidsmoe, *supra*, at 144 (quoting Carle, *supra*, at 11) (emphasis added).

Col. Jones incorporated into the 1887 Code of Legal Ethics those principles laid down by the "Supreme Being." Hoffman and Sharwood's jurisprudence "is clearly visible in the code." Marston, *supra*, at 498. For example, Col. Jones wrote that an attorney's duty to God was supreme even to his duty to his client, an "emphasis on societal morality [that] recalls Hoffman's philosophy." Marston, *supra*, at 499 n.163.

> When addressing what a lawyer owes his client, Jones quotes from Sharswood that the duty is "entire devotion to [the client's] interest . . . ." However, Jones quickly adds the caveat: "it is steadfastly to be borne in mind that the great trust is to be performed within and not without the bounds of the law which creates it. **The attorney's office does not destroy the man's accountability to the Creator** . . . and the obligation to his neighbor . . . ."

Marston, *supra*, at 498-99 (footnotes omitted) (emphasis added).

The celebrated author of Alabama's first legal ethics code acknowledged God and, like his intellectual predecessors, George Sharswood and David Hoffman, based the morality of the ethics rules upon the divine religious principles of the Creator and the Holy Scriptures. Alabama's first legal ethics code reminded lawyers and judges that "high moral principle" serves to a lawyer as

"the only torch to light his way amidst darkness and obstruction." Marston, *supra*, at 498. Chief Justice Moore has held up that divine torch by continuing to acknowledge God as the moral foundation of our law -- including our ethics code. It hardly serves the purpose and spirit of any ethical code when Alabama's judicial ethics are misused to punish Chief Justice Moore for acknowledging the Creator God upon Whom our legal ethics are predicated.

CONCLUSION

The Judicial Inquiry Commission did not charge -- and could not charge -- Chief Justice Moore with violating a court order because, as the Court of the Judiciary concedes in its "Final Judgment," the Court "is only 'convened to hear complaints filed by the Judicial Inquiry Commission' pertaining to alleged violations by judges of the Canons of Judicial Ethics." (C. 549.) The Court was not empowered to remove Chief Justice Moore for failing to follow a court order; rather it was only empowered to remove him for "ethical" misbehavior. Therefore, in order for the Court to remove Chief Justice Moore it was required to prove not just that Chief Justice Moore failed to comply with a court

order, but rather that such failure was unethical under the Canons of Judicial Ethics.

The Court of the Judiciary refused to do so. Nowhere in the final judgment does the Court explain how or why the actions of Chief Justice Moore are unethical. Nowhere in the final judgment does the Court explain how Chief Justice Moore: (1) failed to uphold the integrity and independence of the judiciary, (2) failed to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, (3) failed to avoid impropriety and the appearance of impropriety in all his activities, (4) failed to respect and comply with the law, (5) failed to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, or (6) failed to avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute. The Court did not address these essential issues because it could not without forfeiting its predilection that all court orders -- lawful and unlawful, ethical and unethical -- must be obeyed and that the failure to obey all such orders is unethical *per se*.

Chief Justice Moore did not violate the Alabama Canons of Judicial Ethics. Specifically, as to charge one, Chief Justice Moore's refusal to follow an unlawful court order upheld "the integrity and independence of the judiciary" because the integrity and independence of the judiciary are strengthened when unlawful orders are refused. As to charge two, Chief Justice Moore "observe[d] high standards of conduct so that the integrity and independence of the judiciary may be preserved," because a high standard of conduct requires that an individual rise above the simple defense of "just following orders" and decide to follow only "lawful" orders. As to charge three, Chief Justice Moore "avoid[ed] impropriety and the appearance of impropriety in all his activities" because it is unethical to follow an unlawful order and, likewise, it is ethical to refuse to follow an unlawful order. As to charge four, Chief Justice Moore did "respect and comply with the law" because the law in the federal case was the "supreme law of the land" -- the Constitution -- not a federal court's illegitimate amendment of the constitution under the guise of interpretation. As to charge five, Chief Justice Moore did "conduct himself at all times in a manner that promotes

public confidence in the integrity and impartiality of the judiciary" because his refusal to follow a patently unlawful order communicates to the citizens that its elected officers will fulfill their oaths to serve the Constitution first and their fellow officers second. Instead, as evidenced in published public opinion polls, it was the actions of the Associate Justices in consort with the Attorney General and the federal district court that called into question the independence of the Alabama judiciary and it was the way the Judicial Inquiry Commission and the Court of the Judiciary conducted their proceedings that called into question the impartiality of the judiciary. Canon of Judicial Ethics 7B(1)(c) states that a candidate for judicial office "[s]hall not make any promise of conduct in office other than the faithful and impartial performance of the duties of the office; . . . and shall not misrepresent his or her identity, qualifications, present position, or other fact." Chief Justice Moore's campaign pledge was to restore the moral foundation of law. Our justice system is established by the Alabama Constitution "invoking the favor and guidance of Almighty God." By acknowledging God, he fulfilled his

campaign promise and, thus, maintained public confidence in the integrity of the judiciary. Those who purport to believe in the word of God and then hide the Ten Commandments from public view by surrounding them with a partition or locking them in a closet to appease a federal court destroy the public confidence in the integrity of the judiciary. As to charge six, Chief Justice Moore did "avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute" because the administration of justice is utterly dependent on judges confining themselves to the law. However, when judges, under the guise of interpretation, go beyond interpretation to actual legislation they violate the very Constitution they are sworn to support. The orderly administration of "justice" requires that other sworn officers of the law refuse to go along with such unlawfulness.

The above six charges were not addressed and analyzed by the Court of the Judiciary. Rather the Court summarily concluded that the Chief Justice failed to comply with the federal court order and thereby "violated the Alabama Canons of Judicial Ethics as alleged by the JIC in its

complaint." (C. 559.) It is, therefore, the dangerous and reversible holding of the Court below that all court orders -- lawful and unlawful, moral and immoral -- must be obeyed.

For the foregoing reasons, Chief Justice Moore respectfully prays that this Court reverse the Court of the Judiciary's finding below, render judgment for Chief Justice Moore, and restore Chief Justice Moore to his elected office.

Oral argument is requested in this case.

Respectfully submitted this 8th day of January, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing upon the following persons by placing a copy of the same in the United States Mail this 8th day of January, 2004:

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Pursuant to Rule 34(a), I have demanded oral argument and have so indicated on the cover of my brief.

DATED this 8th day of January, 2004.

_____
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