

**Statement of Facts and Allegations
against
Chief Justice Roy S. Moore**

Submitted February 26, 2015

This complaint filed by People For the American Way Foundation stems from Chief Justice Moore's responses to the January 23, 2015, ruling by U.S. Judge Callie Granade of the Southern District of Alabama in *Searcy v. Strange*. Judge Granade ruled that the Alabama Marriage Protection Act and the Alabama Sanctity of Marriage Amendment violate the United States Constitution and therefore cannot be enforced. Judge Granade stayed her ruling until February 9 to allow the state to appeal.

JANUARY 27:
MOORE'S LETTER TO THE GOVERNOR
(ATTACHMENT 1)

Violated Canon 2(A): A judge should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Violated Canon 3(A)(6): A judge should abstain from public comment about a pending or impending proceeding in any court.

On January 27, 2015, Chief Justice Moore wrote and released to the public a letter to Governor Bentley on Supreme Court letterhead sharply criticizing the federal court decision and urging the governor not to comply with it. The Chief Justice wrote:

The recent ruling of Judge Callie Granade of the United States District Court for the Southern District of Alabama has raised serious, legitimate concerns about the propriety of federal court jurisdiction over the Alabama Sanctity of Marriage Amendment. Art. I, § 36.03, Ala. Const. of 1901.

As you know, nothing in the United States Constitution grants the federal government the authority to redefine the institution of marriage. The people of this state have specifically recognized in our Constitution that marriage is “[a] sacred covenant, solemnized between a man and a woman”; that “[a] marriage contracted between individuals of the same sex is invalid in this state”; and that “[a] union replicating marriage of or between persons of the same sex. . . shall be considered and treated in all respects as having no legal force or effect in this state.” Art. 1, § 36.03(c), (b) & (g), Ala, Const. of 1901.

...

Today the destruction of that institution [marriage] is upon us by federal courts using specious pretexts based on the Equal Protection, Due Process, and Full Faith and Credit Clauses of the United States Constitution. As of this date, 44 federal courts have imposed by judicial fiat same-sex marriages in 21 states of the Union, overturning the express will of the people in those states. If we are to preserve that “reverent morality which is our source of all beneficent progress in social and political improvement,” then we must act to oppose such tyranny!

...

I ask you to continue to uphold and support the Alabama Constitution with respect to marriage, both for the welfare of this state and for our posterity. Be advised that I stand with you to stop judicial tyranny and any unlawful opinions issued without constitutional authority.

By accusing dozens of federal district and appellate courts across the nation of tyranny and seeking to destroy marriage, Chief Justice Moore deliberately undermined public confidence in the integrity and impartiality of the judiciary, in violation of **Canon 2(A)**, which states that “[a] **judge should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.**”

Some citizens of Alabama may very well agree with Moore’s sentiments and are free to say so in just as inflammatory a manner. But as a judge, Roy Moore is subject to rules that do not apply to others. As the Court of the Judiciary stated in 2003 when it removed Chief Justice Moore from office:

We respect and hold in high regard the right of every American citizen to express his or her views. However, when an individual, especially a judge, undertakes a position of civil authority, that person must conform his or her conduct in the exercise of public duties according to the established rules of law and accepted rules of ethics.

Chief Justice Moore’s effort to undermine the legitimacy of the federal judiciary and rally defiance against federal judges as tyrants goes far beyond “the established rules of law and accepted rules of ethics.”

His letter cited several legal sources for the interpretation of the law he was proffering. In addition to case law from the U.S. and Alabama Supreme Courts, he cited Christian Scripture, saying:

The laws of this state have always recognized the Biblical admonition stated by our Lord:

But from the beginning of the creation God made them male and female. For this cause shall a man leave father and mother, and cleave to his wife; And they twain shall be one flesh: so then they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder. (Mark 10:6-9).

Although this is not a formal judicial opinion, Chief Justice Moore makes clear that he uses his personal sectarian beliefs as a guide to constitutional interpretation. A more inappropriate role for an Alabama judicial officer can hardly be imagined.

Such a role is more than inappropriate. It also violates the Canons of Judicial Ethics. Alabamans should always be confident that their rights in a court of law will never be at risk just because they do not share the religion of the judge and of the majority of the population. Chief Justice Moore has given Alabamans cause to fear by undermining that confidence. In so doing, he has committed another violation of **Canon 2(A)**, which states that “[a] judge should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

Finally, the letter was not prompted by any case before him. By publicly injecting his opinions about a still-pending high-profile case with a substantial impact on the state, Chief Justice Moore violated **Canon 3(A)(6)**, which commands that “[a] judge should abstain from public comment about a pending or impending proceeding in any court ... ” While the Canon makes clear that judges may make public statements in the course of their official duties, Chief Justice Moore’s public condemnation of the ruling in a still-pending case that was not before him, and his concomitant public prodding of the head of a co-equal branch of the Alabama government, could hardly be considered to be within his official duty.

JANUARY 28:
MOORE’S INTERVIEW WITH AL.COM
(ATTACHMENT 2)

Violated Canon 2(A): A judge should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

On January 28, 2015, Chief Justice Moore gave an interview to the prominent media outlet AL.com (the website of *The Birmingham News*, *The Huntsville Times*, and *The [Mobile] Press-Register*). As reported by AL.com, he was asked if he would comply with a United States

Supreme Court ruling that the Alabama Sanctity of Marriage Amendment violates the United States Constitution and therefore cannot be enforced:

Moore declined to say how he would respond if the Supreme Court rules the bans unconstitutional.

"I'll have to make that decision when it comes," he said.

This statement was a violation of **Canon 2(A)**, which states that “[a] judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

The correct answer to the interviewer’s questions should not have been difficult for any officer of the Alabama courts: “I will comply with the U.S. Supreme Court in this and all constitutional matters, regardless of my personal beliefs.” Alabama judges have an obligation to follow the United States Constitution and to comply with the legal conclusions and directives of the United States Supreme Court. This is so even if they believe that court to have made a significant legal error.

On both the federal and state level, the rule of law depends upon judges recognizing and following the precedents and orders issued by higher authorities, and there is no higher judicial authority than the U.S. Supreme Court when it comes to interpreting the U.S. Constitution. If judges were free to simply disregard U.S. Supreme Court decisions they disagreed with, we would no longer have the safety of living under a government of laws.

By even suggesting that he might not comply with the law as interpreted by the U.S. Supreme Court, Chief Justice Moore demonstrated disrespect for the law and undermined public confidence in the integrity and impartiality of the judiciary.

This was a frightening echo of the lawless defiance that led to his removal from office several years ago. Unfortunately, it comes as no surprise, since one of the reasons the Court of the Judiciary gave for removing Moore in 2003 was his refusal to state that he would comply with binding court orders in the future. The Court of the Judiciary stated at the time:

This court has found that Chief Justice Moore not only willfully and publicly defied the orders of a United States district court, but upon direct questioning by the court he also gave the court no assurances that he would follow that order or any similar order in the future. In fact, he affirmed his earlier statements in which he said he would do the same. Under these circumstances, there is no penalty short of removal from office that would

resolve this issue. Anything short of removal would only serve to set up another confrontation that would ultimately bring us back to where we are today.

Chief Justice Moore regained office after his removal. But he has clearly not learned from his mistakes, and the predictions made by the Court of the Judiciary about what would happen if he were allowed to remain on the bench are coming true.

FEBRUARY 8:
MOORE'S ADMINISTRATIVE ORDER TO PROBATE JUDGES
(ATTACHMENT 3)

Violated Canon 2(A): A judge should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Violated Canon 3(B)(1): A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

On February 8, 2015, the day before Judge Granade's marriage ruling was to go into effect, Chief Justice Moore issued an administrative order directing probate judges and their agents and employees from marrying same-sex couples, notwithstanding Judge Granade's ruling that this ban violated the United States Constitution. At this point in time, the Eleventh Circuit had already refused to stay Judge Granade's order, and an appeal to the United States Supreme Court was still pending (which would be denied the next day, thereby allowing Judge Granade's order to go into effect).

One could easily imagine a scenario in which a probate judge's refusal to marry a same-sex couple – notwithstanding the actions of Judge Granade, the Eleventh Circuit, and the United States Supreme Court – would, through normal procedures and processes, go through the Alabama court system and eventually end up before Chief Justice Moore and the Supreme Court of Alabama. Under such circumstances, a judicial decision by the Chief Justice in favor of the probate judges, while legally incorrect, would not be a matter for the Judicial Inquiry Commission or the Court of the Judiciary unless it was made in bad faith.

But that was not the context of Chief Justice Moore's administrative order. The case was not properly before him or the court on which he serves. He initiated action on his own to interfere with how a case in another court was proceeding, as well as with the rights of citizens across the state.

His order even sought to corral the head of a co-equal branch of the government into cooperation with his scheme to sabotage Judge Granade’s ruling, including a threat that Governor Bentley would punish any probate judges who dared follow the United States Constitution as directed by Judge Granade. (Gov. Bentley, for his part, quickly said he would do no such thing.)

In so doing, Chief Justice Moore violated **Canon 3(B)(1)**, which states that “[a] judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.” Injecting himself into a case that was not before him in order to prevent probate judges from complying with the United States Constitution and a federal court order is hardly consistent with “facilitat[ing] the performance of [their] administrative responsibilities.”

His effort to engage Alabama’s probate judges in his personal opposition to the ruling of a sister court also violated Canon 2(A), which states that “[a] judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” When the public sees judges try to use the court system to score political points and defy judicial authority, it cannot help but undermine public confidence in the integrity and impartiality of the judiciary.

As noted above, Chief Justice Moore has the same right as others to disagree with a federal court ruling on the interpretation of the Fourteenth Amendment. He also has the right to believe that state law trumps the U.S. Constitution when he disagrees with how the latter has been interpreted by a federal court. But as a judge in the state of Alabama, he is prohibited by the Canons of Judicial Ethics from injecting himself into the case and seeking to rally the state judiciary into nullifying the federal court ruling.

FEBRUARY 12:
MOORE’S TELEVISION INTERVIEW ON CNN
(ATTACHMENT 4)

Violated Canon 2(A): A judge should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Violated Canon 3(A)(6): A judge should abstain from public comment about a pending or impending proceeding in any court.

Chief Justice Moore appeared on CNN for a television interview with Chris Cuomo. When discussing the constitutional issues relating to Alabama’s limitation of marriage to opposite-sex

couples, Chief Justice Moore stated, “Our rights contained in the Bill of Rights do not come from the Constitution. They come from God.”

Every federal and state judge throughout the United States takes an oath to uphold the United States Constitution. The U.S. Constitution is the supreme law of the land. Judges regularly uphold Americans’ freedom of speech, freedom of the press, free exercise of religion, right to vote, and a host of other fundamental rights based on our nation’s charter document, the U.S. Constitution. To say that our rights do not come from this document is not only legally incorrect, but it also undermines the American people’s faith in the court system to vindicate those basic rights. In making this statement on national television, Chief Justice Moore violated **Canon 2(A)** by **undermining public confidence in the integrity of the judiciary**.

In addition, by stating that the rights vindicated by courts come from God, he again sent a powerful message to anyone who might appear before him that their rights under law in his court depend on whether they share his religious beliefs. In so doing, Moore violated **Canon 2(A)** by **undermining public confidence in the integrity of the judiciary**. In addition, by going on national television to conduct this interview, Chief Justice Moore again violated **Canon 3(A)(6)**, which commands that “[a] judge should abstain from public comment about a pending or impending proceeding in any court ... ”

Conclusion

Like the United States as a whole, Alabama is governed by the rule of law. The rights of every Alabaman depends on that, and the history of the state shows the violent and tragic consequences when that ideal is not met.

Just as the Court of the Judiciary predicted when it removed him in 2003, Chief Justice Moore is unfortunately unwilling to accept the rule of law and the strictures of the Canons of Judicial Ethics. He sees the power vested in him as Chief Justice as a mechanism to impose his personal religious beliefs on others and defy any judicial opinion he disagrees with. His continued presence on the Supreme Court of Alabama poses a threat to the rights of every Alabaman. He should once again be removed.