

BEFORE THE COURT OF THE JUDICIARY
OF
ALABAMA

IN THE MATTER OF)
ROY S. MOORE,) Court of the Judiciary
CHIEF JUSTICE OF) Case No. _____
THE SUPREME COURT
OF ALABAMA

COMPLAINT

The Judicial Inquiry Commission of the State of Alabama brings this Complaint against Chief Justice Roy S. Moore (hereinafter "Chief Justice Moore") of the Supreme Court of Alabama. The facts and charges upon which this Complaint is based, averred separately and severally, are as follows:

1. On January 15, 2001, Roy S. Moore became Chief Justice of the Supreme Court of the State of Alabama and has continued in that position until the present. In that capacity, Chief Justice Moore, in addition to his other responsibilities, has served continuously as the administrative head of the judicial system of the State of Alabama.

2. Civil Actions were filed in the United States District Court for the Middle District of Alabama (hereinafter "the District Court") to have a monument

removed from the rotunda of the State Judicial Building as a violation of the Establishment Clause of the First Amendment to the Constitution of the United States.

These civil actions were brought against Chief Justice Moore in his official capacity as Chief Justice of the Supreme Court of Alabama. *Glassroth v. Moore*, CV-01-T-1268-N, and *Maddox and Howard v. Moore*, CV-01-T-1269-N.

3. On November 18, 2002, the District Court held the monument violated the Establishment Clause of the First Amendment to the Constitution of the United States. *Glassroth v. Moore*, 229 F. Supp. 2d 1290 (M.D. Ala. 2002).

4. On December 19, 2002, the District Court entered a permanent injunction directing Chief Justice Moore to remove the monument from the Alabama Judicial Building. *Glassroth v. Moore*, 242 F. Supp. 2d 1067 (M.D. Ala. 2002). That injunction was stayed by the District Court pending Chief Justice Moore's appeal to the United States Court of Appeals for the Eleventh Circuit (hereinafter "Court of Appeals"). *Glassroth v. Moore*, 242 F. Supp. 2d 1068 (M.D. Ala. 2002).

5. On July 1, 2003, the Court of Appeals affirmed the judgment of the District Court. *Glassroth v. Moore*, 335 F.3d 1282 (11th Cir. 2003).

6. After the decision of the Court of Appeals, Chief Justice Moore did not ask the court for a rehearing, nor did he request the Court of Appeals, pursuant to Rule 41 of the Federal Rules of Appellate Procedure, to stay the issuance of its mandate to the District Court pending the filing of a petition to the United States Supreme Court for a writ of certiorari.

7. On July 30, 2003, having received no request to stay the mandate, the Court of Appeals issued its mandate to the District Court in *Glassroth v. Moore*, 335 F.3d 1282 (11th Cir. 2003).

8. On August 5, 2003, the District Court entered its "Final Judgment and Injunction." In that Order the Court stated:

On July 28, before receipt of the appellate mandate, this court held a conference call to determine if the Chief Justice had asked the Eleventh Circuit to stay its mandate pursuant to Rule 41(d)(2)(A) of the Federal Rules of Appellate Procedure, which provides that, "A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court."

The court scheduled the conference out of concern that the mandate might issue while the undersigned was away on a family matter. During the call, counsel for the Chief Justice indicated that, although the Chief Justice was aware of Rule 41, he had not filed such a motion.

Two days later, on July 30, the Eleventh Circuit issued its mandate, and, on August 1, this court received it. Thus, although the Chief Justice could have requested a stay of the mandate (and thereby of the injunction the court enters today) pending a request for review by the United States Supreme Court, the Chief Justice chose, for reasons not made known to this court, not to do so.

On August 4, this court held another conference call to determine if the parties had any opposition to the court carrying out the mandate and lifting its stay. Although the court had made clear in its December 23 order that the stay would be lifted immediately upon receipt of the appellate mandate, the court wanted to give all parties a final opportunity to voice any concerns. In a written response filed after the call, the Chief Justice stated that he opposes the lifting of the stay and the issuance of an injunction "on the grounds that the Court does not have the authority or the jurisdiction to enter an injunction in this case." Of course, the Chief Justice's argument has already been rejected by both this court, Glassroth v. Moore, 229 F. Supp. 2d 1290 (M.D. Ala. 2002), and the Eleventh Circuit, Glassroth v. Moore, [338 F.3d 1282 (11th Cir. 2003)]. But most notably, the Chief Justice took the same stance in this

court as he had in the Eleventh Circuit by not expressly asking that the stay be continued pending any effort to obtain review in the United States Supreme Court.

Glassroth v. Moore, Order of August 5, 2003 at pp. 2-4.

9. The District Court then ordered that its stay entered on December 23, 2002, be dissolved and enjoined Chief Justice Moore, his officers, agents, servants, and employees and those persons in active concert or participation with him who received actual notice of this injunction from "failing to remove, by no later than August 20, 2003, the Ten Commandments monument at issue in this litigation from the non-private areas of the Alabama State Judicial Building." *Glassroth v. Moore*, Order of August 5, 2003 at p. 5.

10. The District Court further stated in its order of August 5, 2003, that if the injunction should not be complied with within the time allowed, the court could "levy *substantial* fines against Chief Justice Moore in his official capacity and, thus, against the State of Alabama itself, until the monument is removed." *Glassroth v. Moore*, Order of August 5, 2003 at p. 7.

11. The United States District Court further ordered that its final judgement and injunction be served on the Governor, the Attorney General, the Treasurer, the Comptroller, the Administrative Director of Courts, the eight Associate Justices, and the Clerk of the Supreme Court of the State of Alabama. *Glassroth v. Moore*, Order of August 5, 2003 at p. 7.

12. On August 14, 2003, Chief Justice Moore stated publicly that he would not comply with the injunction issued to him by the District Court. Among other things, Chief Justice Moore said in his statement in response to the Order directing him to remove the monument:

As Chief Justice of the State of Alabama, it is my duty to administer the justice system of our state, not to destroy it. I have no intention of removing the monument of the Ten Commandments and the moral foundation of our law. To do so would, in effect, result in the [be a] disestablishment of our system of Justice in this State. This I cannot and will not do!

13. On August 15, 2003, Chief Justice Moore filed a Motion in the District Court asking the court to stay its Writ of Injunction entered on August 5, 2003. He

also filed a Petition for a Writ of Mandamus and/or Prohibition in the Supreme Court of the United States.

14. On Monday, August 18, 2003, the District Court denied Chief Justice Moore's Motion for Stay finding that:

[T]his court, not once but twice, essentially invited the Chief Justice to invoke the orderly and established process under the federal rules for a stay of any injunction pending a petition to the United [States] Supreme Court for writ of certiorari -- invitations which the Chief Justice declined.

Therefore, the fact that the court issued a final judgment and injunction on August 5, without allowing for a stay pending review by the United States Supreme Court, is the direct, willed result of the actions of the Chief Justice himself. As the court explained in its August 5 final judgment and injunction, on two separate occasions this court conducted conference calls with counsel for all parties to discuss how to proceed regarding an injunction for removal of the monument once the appellate mandate had issued pursuant to the decision of the Eleventh Circuit Court of Appeals upholding the removal [of] the monument.

Glassroth v. Moore, Order of August 18, 2003 at pp.

5-6. The court further noted that Chief Justice Moore still had not asked for a stay pending any

filing of a petition for a writ of certiorari in the United States Supreme Court. *Id.* at FN 1.

15. On Monday, August 18, 2003, Chief Justice Moore filed a Motion to Recall the Mandate and a Motion for Stay in the Court of Appeals. On August 19, 2003, the Court of Appeals declined to recall its mandate or to enter a stay.

16. On August 20, 2003, the final day set by the District Court for the removal of the monument, Chief Justice Moore filed with the United States Supreme Court an Application to Recall and Stay the Mandate. That Application was denied the same day.

17. At 12:01 A.M. on August 21, 2003, the monument remained in the rotunda of the Alabama Judicial Building at 300 Dexter Avenue, Montgomery, Alabama, in violation of the Order of the District Court issued to Chief Justice Moore on August 5, 2003. As of the opening of the business day on August 21, 2003, the monument remained in the same position in the rotunda of the Alabama Judicial Building.

18. On August 21, 2003, when Chief Justice Moore failed to comply with the August 5, 2003, Order of the

District Court, the eight associate justices of the Supreme Court of Alabama, recognizing that "[t]he refusal of officers of this Court to obey a binding order of a federal court of competent jurisdiction would impair the authority and ability of all of the courts of this State to enforce their judgments," entered an order countermanding the "administrative decision of the Chief Justice to disregard the writ of injunction of the United States District Court for the Middle District of Alabama" and ordered "that the Building Manager of the Alabama Judicial Building be, and the same hereby is, DIRECTED to take all steps necessary to comply with the injunction as soon as practicable."

19. On August 21, 2003, notice of the entry of the order of the Supreme Court of Alabama was filed in *Glassroth v. Moore*, CV-01-T-1268-N and *Glassroth v. Maddox*, CV-010T01269-N, M.D. Ala.

20. On August 21, 2003, Chief Justice Moore stated publicly, concerning the above stated actions of the eight associate justices:

I am very disappointed with my colleagues on the Court who have decided to act in

response to Judge Thompson's Order, to exercise authority under Section 12-5-20 Alabama Code to remove the monument of the Ten Commandments from the rotunda of the Alabama Judicial Building

21. Attached to this complaint are true and correct copies of the following documents that are incorporated herein by reference:

- (a) *Glassroth v. Moore*, 229 F. Supp. 2d 1290 (M.D. Ala. 2002);
- (b) *Glassroth v. Moore*, 242 F. Supp. 2d 1067 (M.D. Ala. 2002);
- (c) *Glassroth v. Moore*, 242 F. Supp. 2d 1068 (M.D. Ala. 2002);
- (d) *Glassroth v. Moore*, 335 F. 3d 1282 (11th Cir. 2003);
- (e) 11th Circuit United States Court of Appeals Mandate in *Glassroth v. Moore*;
- (f) Transcript of telephone conference in the U.S. District Court in *Glassroth v. Moore* on July 28, 2003;
- (g) Transcript of telephone conference in the U.S. District Court in *Glassroth v. Moore* on August 4, 2003;
- (h) U.S. District Court Order in *Glassroth v. Moore* denying a stay on August 18, 2003;
- (i) Clerk's response, August 19, 2003;
- (j) Order denying motion to Recall Mandate, issued by the Court of Appeals in *Glassroth v. Moore* on August 19, 2003;

- (k) Order of the United States Supreme Court denying application to recall the mandate and for a stay, entered on August 20, 2003;
- (l) Motion to Hold Defendant in Contempt, filed in the District Court in *Glassroth v. Moore* on August 21, 2003; and
- (m) Notice of Filing in the District Court in *Glassroth v. Moore* on August 21, 2003.

CHARGE ONE

22. Chief Justice Moore, while serving as Chief Justice of the Alabama Supreme Court, did fail to uphold the integrity and independence of the judiciary as required by Canon 1 of the Alabama Canons of Judicial Ethics in that, in the circumstances described in paragraphs 1-21, he willfully failed to comply with an existing and binding court order directed to him.

CHARGE TWO

23. Chief Justice Moore, while serving as Chief Justice of the Alabama Supreme Court, 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 of the Alabama Canons of Judicial Ethics in that, in the circumstances described in

paragraphs 1-21, he willfully failed to comply with an existing and binding court order directed to him.

CHARGE THREE

24. Chief Justice Moore, while serving as Chief Justice of the Alabama Supreme Court, 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 in that, in the circumstances described in paragraphs 1-21, he willfully failed to comply with an existing and binding court order directed to him.

CHARGE FOUR

25. 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 in that, in the circumstances described in paragraphs 1-21, he willfully failed to comply with an existing and binding court order directed to him.

CHARGE FIVE

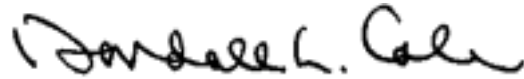
26. Chief Justice Moore, while serving as Chief Justice of the Alabama Supreme Court, did fail to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary as required by Canon 2A of the Alabama Canons of Judicial Ethics in that, in the circumstances described in paragraphs 1-21, he willfully failed to comply with an existing and binding court order directed to him.

CHARGE SIX

27. 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 in that, in the circumstances described in paragraphs 1-21, he willfully failed to comply with an existing and binding court order directed to him.

DONE this 22nd day of August, 2003.

THE ALABAMA JUDICIAL
INQUIRY COMMISSION

A handwritten signature in cursive script that reads "Randall L. Cole".

Randall L. Cole
Chairman

BY ORDER OF THE COMMISSION