



S. Pittman (“Judge Pittman”), David Thrasher (“Thrasher”), Ralph Malone (“Malone”), Augusta S. Dowd (“Dowd”), Hon. Kim J. Chaney (“Judge Chaney”), and Hon. David A. Kimberley (“Judge Kimberley”), in their official capacities as members of the JIC; Luther Strange, III, in his official capacity as Attorney General of the State of Alabama (“Atty. Gen. Strange”); and Hon. Lyn Stuart, in her official capacity as Acting Chief Justice of the Alabama Supreme Court (“Justice Stuart”) (collectively, “Defendants”), and alleges:

## **INTRODUCTION**

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality, facially and as applied, of Section 159 of the Alabama Constitution, Art. VI, § 159, Ala. Const. 1901, which immediately and automatically disqualifies a sitting judge from his judicial office the instant the JIC files any ethics complaint—regardless of its substance or merit or lack thereof—against that judge in the Alabama Court of the Judiciary (“COJ”). In its entirety, this state constitutional provision requires that “[a] judge shall be disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him filed by the [JIC] with the [COJ].” Art. VI, § 159, Ala. Const. 1901.

2. This mandatory provision disrupts the orderly functioning of the Alabama judiciary, deprives an individual judge of property and liberty interests in judicial office, and irreversibly stains and stigmatizes the name and reputation of any judge against whom the JIC files a complaint. The automatic disqualification provision also cripples the judge’s staff, wreaks havoc on cases pending on the judge’s docket, and undermines overall judicial administration throughout the state. Even though the JIC takes a judge’s office away from him or her indefinitely on the mere act of filing a complaint in the COJ, the JIC is not required to provide the judge notice or a

meaningful opportunity to be heard before the judge is suspended from office as a result of the filing of a JIC complaint. Because the suspension is automatic, the JIC can wield its significant power over Alabama's elected judges—including the Chief Justice of the Alabama Supreme Court—based upon trivialities, viewpoint-based objections, differences in legal interpretation, political motivations or, even worse, to protect itself from investigation of violations of its own rules. Rule 19, Ala. R. P. Jud. Inq. Comm'n. Yet no procedures, let alone appropriate ones, exist to curb this potential for, and actual, abuse of power by the JIC and thus to protect the due process rights of Alabama judges subject to investigation by the JIC, from trial judges to justices of the highest state court. This blanket automatic disqualification provision is a Sword of Damocles hanging over every Alabama judge's head who is under investigation by the JIC.

3. This automatic disqualification provision has already caused Chief Justice Moore substantial and grievous harm for, on May 6, 2016, the JIC filed a complaint against him in the COJ, triggering the mandatory provision and indefinitely barring him from his statewide elected office. The effect of the provision is not only ongoing, irreparable harm to Chief Justice Moore, but to the entire Alabama judicial system. Other Alabama judges currently under investigation by the JIC, including, for example, those whose confidential investigations may be strictly limited to the exercise of fundamental rights (such as First Amendment-protected speech and expression) face an impending and imminent threat of a similar fate unless the automatic disqualification provision is struck down as unconstitutional. Such judges cannot wait to challenge the constitutionality of the provision until they are subject to it, for by then it is too late to prevent the immediate and substantial damage caused by automatic disqualification from office. Therefore, absent the entry of preliminary and permanent injunctive relief, the very individuals charged with ensuring the protection of constitutional rights in Alabama courtrooms—sitting Alabama judges

like Chief Justice Moore and future Alabama judges—will themselves continue to be subject to deprivation of fundamental rights and constitutionally-protected interests by the JIC. Accordingly, this Court should sheath the JIC’s sword by declaring the automatic disqualification provision unconstitutional and enjoining its enforcement as a violation of due process rights protected by the United States Constitution.

### **JURISDICTION AND VENUE**

4. This action arises under Article VI and the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983.

5. This Court has subject matter jurisdiction over Chief Justice Moore’s federal law claims pursuant to 28 U.S.C. §§ 1331 and 1343.

6. This Court has jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 65.

7. This Court is a proper venue pursuant to 28 U.S.C. § 1391(b)(1) because one or more of the named Defendants reside in this judicial district. Alternatively, venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because “a substantial part of the events or omissions giving rise to the claim occurred” in this judicial district.

### **PARTIES**

8. Plaintiff, Chief Justice Moore, is an adult resident of the State of Alabama. He is the elected Chief Justice of the Alabama Supreme Court. On Friday, May 6, 2016, the JIC filed a complaint against Chief Justice Moore in the COJ.

9. Defendant, JIC, is a state commission comprised of nine members who are appointed to serve four-year terms “with authority to conduct investigations and receive or initiate complaints concerning any judge of a court of the judicial system of this state” and that may “file”

and “prosecute” complaints in the COJ “in the event that a majority of the members of the commission decide that a reasonable basis exists (1) to charge a judge with violation of any Canon of Judicial Ethics, misconduct in office, failure to perform his or her duties, or (2) to charge the judge is physically or mentally unable to perform his or her duties.” Art. VI, § 156(a)-(b), Ala. Const. 1901. The membership of the JIC consists of one appellate judge appointed by the Alabama Supreme Court, two judges of the circuit court appointed by the Circuit Judges’ Association, three persons who are not lawyers appointed by the Governor and subject to Senate confirmation before serving, one district judge appointed by the Governor and subject to Senate confirmation, and two members of the Alabama state bar appointed by the governing body of the Alabama State Bar. Art. VI, § 156(a), Ala. Const. 1901. The JIC is a governmental entity that is able to sue and be sued.

10. Defendant, Bedsole, is an adult resident of the State of Alabama. He is the Chairman of the JIC. The complaint filed by the JIC against Chief Justice Moore was signed by Bedsole on behalf of the JIC. He is being sued in his official capacity as the Chairman of the JIC.

11. Defendants Scott, Thrasher, Malone, Dowd, Judge Cole, Judge Pittman, Judge Chaney, and Judge Kimberley are adult residents of the State of Alabama and members of the JIC. The foregoing Defendants are being sued in their official capacities as members of the JIC.

12. Defendant Attorney General Strange is an adult resident of the State of Alabama. He is the elected Attorney General for the State of Alabama, an office created by the Alabama Constitution, and is the state officer who is responsible for appearing on behalf of the State of Alabama. He was first elected to that office on November 2, 2010, and then re-elected to that office on November 4, 2014, for another four-year term. Attorney General Strange has the legal duty to provide his opinions on questions of law and procedures relating to the duties of county, state, and local officials and has enforcement authority over Alabama laws. Further, under Alabama law,

“[i]t shall be the duty of the attorney general of Alabama to prosecute charges filed by the [JIC] with the [COJ] except in instances where, in the opinion of the [JIC], there exists or may arise a conflict of interest or the interests of justice would not thereby be served, in which instances the [JIC] may employ counsel to prosecute such charges.” Rule 15, Ala. R. P. Jud. Inq. Comm’n.

13. Defendant, Justice Stuart, is an adult resident of the State of Alabama. She is the most senior Associate Justice of the Alabama Supreme Court. She was first elected to that office in 2000, for a six-year term, and subsequently re-elected in 2006 and again in 2012. She is also currently the acting Chief Justice of the Alabama Supreme Court pursuant to §§ 12-2-5, 12-2-6, Ala. Code 1975. The Alabama Supreme Court is charged with “enforce[ing]” the suspension provision against any judge if he or she “act[s] as such while there is pending . . . a complaint against him or her filed by the [JIC] with the [COJ].” Rule 14, Ala. R. P. Jud. Inq. Comm’n. She is being sued in her official capacity as the acting Chief Justice of the Alabama Supreme Court.

## **GENERAL ALLEGATIONS**

### **Alabama’s Judicial Elections**

14. The Alabama Constitution provides that all judges are elected, including the Chief Justice of the Alabama Supreme Court, and that the term of office for each judge shall be six years. *See* Art. VI, §§ 152, 154, Ala. Const. 1901; *see also* §§ 12-2-1, 17-14-9, Ala. Code 1975.

15. Alabama’s Chief Justice is elected in a statewide election. *See* § 17-14-2, Ala. Code. 1975.

16. The Alabama Constitution provides that “[t]he supreme court shall be the highest court of the state and shall consist of one chief justice and such number of associate justices as may be prescribed by law.” Art. VI, § 140, Ala. Const. 1901; *see also* § 12-2-1, Ala. Code 1975

(“The Supreme Court, except as otherwise provided, shall consist of a chief justice and eight associate justices...”).

17. The Alabama Constitution provides that “[t]he chief justice of the supreme court shall be the administrative head of the judicial system.” Art. VI, § 149, Ala. Const. 1901; *see also* § 12-5-3, Ala. Code 1975 (identifying the chief justice as the “chief administrative officer of all the trial courts of this state” and recognizing his “task[s]” of “insuring that the business of said courts of the state is attend with proper dispatch” and “seeing that the dockets of said courts are not permitted to become congested and that trial of cases, civil and criminal, is not delayed unreasonably”).

18. Under Alabama law, “[t]he Chief Justice shall see that the business of the several courts of the state is attended with proper dispatch and that cases, civil and criminal, are not permitted to become congested or delayed, and he shall take care that prisoners are allowed to remain in the jails without a prompt trial.” § 12-2-30(a), Ala. Code 1975.

19. Further, “[i]n connection with these duties and other responsibilities, the Chief Justice is authorized and empowered” to perform various actions, including but not limited to “appoint[ing], employ[ing] and terminat[ing] all officers, officials, consultants and employees of the Administrative Office of the Courts, the Department of Court Management, the Permanent Study Commission on Alabama’s Judicial System and Judicial Conference,” “obtain[ing] from court officials, including clerks, registers, judges and court reporters, statistics, data and other factual information which the Chief Justice may deem advisable pertaining to the courts, the work of such court officials and said court officials’ offices, at such times as the Chief Justice may deem advisable,” “tak[ing] affirmative and appropriate action to correct or alleviate any condition or situation adversely affecting the administration of justice within the state,” and “tak[ing] any such

other, further or additional action as may be necessary for the orderly administration of justice within the state, whether or not enumerated in this section or elsewhere.” § 12-2-30(b)(4),(5),(7),(8), Ala. Code 1975.

20. Other than ouster by election, the Chief Justice of the Alabama Supreme Court “may be removed from office for willful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties, or for any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith, by the senate sitting as a court of impeachment, under oath or affirmation, on articles or charges preferred by the house of representatives.” Art. VI, § 173, Ala. Const. 1901.

21. Chief Justice Moore was first elected to the office of Chief Justice in November 2000, and served in that office from January 2001 through November 2003 when he was removed from office by the COJ. In November 2012, he was re-elected to the office of Chief Justice, and he officially took office in January 2013, for a six-year term. In the most recent election to that office, he was elected with approximately 52% of the vote of Alabama citizens.

22. Since taking office, Chief Justice Moore has continuously served in that position until he was automatically suspended from his judicial office on May 6, 2016.

### **Procedures Of The JIC And In The COJ**

23. The Alabama Constitution provides for the creation of a “Judicial Inquiry Commission” which “shall be convened permanently with authority to conduct investigations and receive or initiate complaints concerning any judge of a court of the judicial system of this state.” Art. VI, § 156(a)-(b), Ala. Const. 1901.



24. The Alabama Constitution states that “[t]he Supreme Court shall adopt rules governing the procedures of the [JIC].” Art. VI, § 156(c), Ala. Const. 1901.<sup>1</sup>

25. The Alabama Constitution mandates that “[a]ll proceedings of the [JIC] shall be confidential except the filing of a complaint with the [COJ].” Art. VI, § 156(b), Ala. Const. 1901.

26. The Rules of Procedure of the JIC (hereinafter, “JIC Rules”) similarly provide that “[a]ll proceedings of the [JIC] shall be confidential, except the filing of a complaint with the [COJ].” Rule 5A, Ala. R. P. Jud. Inq. Comm’n.

27. Other than the filing of a complaint by the JIC in the COJ, the JIC Rules identify certain “actions” that are “permitted to be taken by the [JIC]” which “shall [not] be deemed a violation of confidentiality.” Rule 5A, Ala. R. P. Jud. Inq. Comm’n. Of these four permitted actions, the first two allow the JIC to issue public statements *only* “at the request of the judge” being investigated, charged, or exonerated and *only* in a statement “approved by the judge.” The third action allows generic public statements by the JIC which “shall not identify by name, position, address, or otherwise the identity of any judge or other person involved in any inquiry before the commission.” The fourth action refers to disclosures made in connection with the Alabama Lawyers Assistance Program. Rule 5A(1)-(4), Ala. R. P. Jud. Inq. Comm’n.

28. Thus, Alabama law clearly mandates that the JIC and its members, staff, and agents keep strictly confidential all JIC investigations and proceedings.<sup>2</sup>

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<sup>1</sup> See also Art. VI, § 150, Ala. Const. 1901 (“The supreme court shall make and promulgate rules governing the administration of all courts and rules governing practice and procedure in all courts; provided, however, that such rules shall not abridge, enlarge or modify the substantive right of any party.”).

<sup>2</sup> The JIC “shall have no power to restrict speech or communications by persons other than the members, staff, and agents of the [JIC] itself.” Rule 5B, Ala. R. P. Jud. Inq. Comm’n. Moreover, the confidentiality mandate “shall [not] be construed to abrogate or restrict in any way the obligations of the [JIC] to communicate with, and to disclose information to, a judge under investigation or who has been charged. Rule 5C, Ala. R. P. Jud. Inq. Comm’n.

29. JIC Rules also require the JIC to “advise the judge of those aspects of the complaint that it then considers worthy of investigation,” and, every six weeks after forwarding the initial allegations, the JIC “shall serve upon the judge a full statement of whether the commission intends to continue the investigation and any modification of the previous advice as to aspects of the complaint that it then deems worthy of some investigation.” Rules 6B & 6C, Ala. R. P. Jud. Inq. Comm’n.

30. JIC Rules further require that “[a]t any time during the pendency of a charge or investigation but more than 10 days before the trial, the judge being charged or investigated may demand, and the whole commission must conduct, hearing before the whole commission to discuss the charge or suspected conduct and to attempt to resolve the charge or investigation on terms to be presented by joint motion to the [COJ]” (hereinafter referred to as the “JIC Rule 10 Hearing”). Rule 10, Ala. R. P. Jud. Inq. Comm’n.

31. The Alabama Constitution provides that the JIC may only “file a complaint with the [COJ] in the event that a majority of the members of the commission decided that a reasonable basis exists, (1) to charge a judge with violation of any Canon of Judicial Ethics, misconduct in office, failure to perform his or her duties, or (2) to charge that the judge is physically or mentally unable to perform his or her duties.” Art. VI, § 156(b), Ala. Const. 1901.

32. Under JIC Rules, “no charges against any judge may be filed with the [COJ] except upon affirmative vote of a majority of all the members of the [JIC], taken at a duly called meeting of the [JIC].” Rule 9, Ala. R. P. Jud. Inq. Comm’n.

33. The filing of a complaint by the JIC in the COJ immediately and automatically disqualifies the judge who is the subject of the complaint, regardless of its substance or merits. Art. VI, § 159, Ala. Const. 1901.

34. The Alabama Constitution provides for creation of a “Court of the Judiciary,” consisting of nine members, which “shall be convened to hear complaints filed by the [JIC].” Art. VI, § 157(a), Ala. Const. 1901. The COJ is comprised of one judge of an appellate court selected by the Alabama Supreme Court who serves as Chief Judge of the [COJ], two judges of the circuit court selected by the Circuit Judges’ Association, one district judge selected by the District Judges’ Association, two members of the Alabama state bar who are selected by the governing body of the Alabama state bar, and three persons who are not lawyers appointed by the Governor and subject to Senate confirmation before serving. *Id.*

35. Similar to the JIC, the Alabama Constitution states that “[t]he Supreme Court shall adopt rules governing the procedures of the [COJ].” Art. VI, § 157(c), Ala. Const. 1901.

36. Under the Rules of Procedure for the COJ (hereinafter, “COJ Rules”), “[f]ormal proceedings respecting any judge shall be commenced by the filing of a complaint in the office of the Secretary in Montgomery. The complaint shall specify in plain and concise language the charges against the judge and the allegations of fact upon which such charges are based.” Rule 3, Ala. R. P. COJ.

37. COJ Rules provide that “[t]he Court shall fix a date for hearing upon the complaint as expeditiously as possible. Notice of the date, time, and place of the hearing shall be served upon the judge and any counsel designated by him not less than thirty (30) days prior to the date upon which the hearing is set unless otherwise agreed to by the parties and the Court.” Rule 8, Ala. R. P. COJ.

38. COJ Rules also provide that “[t]he process and procedure before the Court shall be as simple and direct as reasonably may be. Except where inappropriate, or otherwise provided for by these rules, the provisions of the Alabama Rules of Civil Procedure and the rules of evidence

used in civil cases in Alabama shall govern proceedings before the Court, but the allegations of the complaint must be proved by clear and convincing evidence.” Rule 10, Ala. R. P. COJ.

39. However, as noted above, the mere act of the JIC filing a complaint in the COJ triggers the immediate and automatic disqualification of the judge who is the subject of the complaint. *See* Art. VI, § 159, Ala. Const. 1901. The JIC Rules further provide that “[i]f any judge shall continue to act as such while there is pending (1) an indictment or an information charging him or her in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him or her filed by the [JIC] with the [COJ], such conduct shall constitute misconduct in office, and the [JIC] may apply to the Supreme Court of Alabama for such writ or writs as many be appropriate to enforce § 156, Constitution of Alabama of 1901.” Rule 14, Ala. R. P. Jud. Inq. Comm’n.

40. The Alabama Constitution provides that the COJ “shall have authority, after notice and public hearing (1) to remove from office, suspend without pay, or censure a judge, or apply such other sanction as may be prescribed by law, for violation of a Canon of Judicial Ethics, misconduct in office, failure to perform his or her duties, or (2) to suspend with or without pay, or to retire a judge who is physically or mentally unable to perform his or her duties.” Art. VI, § 157(a), Ala. Const. 1901.

41. COJ Rules provide that “[w]ithin 10 days following submission of the matter, the Court shall enter an appropriate order, exercising the authority vested in it by § 157, Ala. Const. 1901, or shall dismiss the complaint. With respect to all matters other than removal from office, the Court shall convict only with the concurrence of no fewer than six of its nine members. With respect to removal from office, the Court shall convict only with the concurrence of all members

sitting. A failure to convict within 10 days after the conclusion of the hearing shall constitute an acquittal.” Rule 16, Ala. R. P. COJ (internal citation omitted).

42. The Alabama Constitution provides that “[a] judge aggrieved by a decision of the [COJ] may appeal to the Supreme Court” and, on any such appeal, “[t]he Supreme Court shall review the record of the proceedings on the law and the facts.” Art. VI, § 157(b), Ala. Const. 1901; *see also* Rule 10, Ala. R. P. COJ (“The decision of the Court shall be final, subject to appeal rights contained in § 157, Ala. Const. 1901.”).

### **The JIC’s Investigation Against Chief Justice Moore And Its Breach Of Confidentiality**

43. On January 23, 2015, United States District Judge Callie Granade issued an opinion that declared unconstitutional the Alabama laws that defined marriage as the union of a man and a woman. *Searcy v. Strange*, 81 F. Supp. 3d 1285 (S.D. Ala. 2015). The only defendant in the case was Alabama Attorney General Luther Strange. Judge Granade stayed her order until February 9, 2015.

44. On February 8, 2015, Chief Justice Moore issued an administrative order to the Alabama probate judges, who have the responsibility to issue marriage licenses, stating that they were not bound by Judge Granade’s order because they were not parties to that case. Incorporated in the Administrative Order was a memorandum to probate judges dated February 3, 2015, which explained in detail why they were not bound by the federal court order.

45. On March 3, 2015, the Alabama Supreme Court held that the Alabama Sanctity of Marriage Amendment, Art. I, § 36.03(b), Ala. Const. 1901, and the Alabama Marriage Protection Act, § 30-1-19(b), Ala. Code 1975, were valid as a matter of federal constitutional law. *Ex parte State of Alabama ex rel. Alabama Policy Institute*, 2015 WL 892752 (Ala. 2015) (“*API*”).

46. On March 12, 2015, the Alabama Supreme Court made its decision in *API* applicable to all probate judges in the state.

47. On March 20, 2015, despite the above-referenced rulings in *API*, the JIC sent a letter to Chief Justice Moore stating that it had received complaints about his Administrative Order of February 8, 2015 and certain public statements he had made about the marriage issue and had opened an “investigation” into whether he had violated the Alabama Canons of Judicial Ethics (hereinafter, “JIC Letter No. 1”).

48. On June 5, 2015, Chief Justice Moore provided a detailed response to JIC Letter No. 1.

49. On June 26, 2015, the United States Supreme Court issued its decision in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).

50. On June 29, 2015, the Alabama Supreme Court issued an order to the parties in *API* inviting them “to submit any motions or briefs addressing the effect of the Supreme Court’s decision in *Obergefell* on this Court’s existing orders in this case.”

51. On August 21, 2015, the JIC sent a letter to Chief Justice Moore stating that it had opened a second “investigation” based on subsequent public statements he had made about the *Obergefell* decision (hereinafter, “JIC Letter No. 2”).

52. Chief Justice Moore provided a detailed response to JIC Letter No. 2 on December 4, 2015.

53. On January 6, 2016, Chief Justice Moore issued a second administrative order to the probate judges, informing them that the Alabama Supreme Court was still in deliberation on the effect of *Obergefell* on its existing orders in *API* and that they were bound by those orders until further decision of the Alabama Supreme Court.

54. The Administrative Order of January 6, 2016 did not incite rebellion to a federal court order or invite disobedience to same.

55. On January 22, 2016, the JIC sent a letter to Chief Justice Moore stating that it had opened a new investigation based on his Administrative Order of January 6, 2016 (hereinafter, “JIC Letter No. 3”).

56. On February 19, 2016, Chief Justice Moore provided a detailed response to JIC Letter No. 3.

57. On February 2 and February 29, 2016, the JIC forwarded to Chief Justice Moore two additional investigation letters based on form complaints solicited at rallies. The JIC indicated in those letters that the response of Chief Justice Moore to JIC Letter No. 3 would suffice as a response to those letters.

58. In its subsequent letters, the JIC stated, without modification, its intention to continue its “investigation” without any further modification of the allegations being investigated.

59. On March 4, 2016, the Alabama Supreme Court issued an order in *API*, which prompted special writings by several Justices. *API*, 2016 WL 859009 (Ala. Mar. 4, 2016). The Alabama Supreme Court also issued the Certificate of Judgment for the case, thus bringing it to a conclusion, and thereby leaving undisturbed its own March 2015 orders.

60. On April 7, 2016, one month after the Alabama Supreme Court entered the Certificate of Judgment in *API*, the JIC convened a hearing for the purpose of questioning Chief Justice Moore in connection with its “investigation.” The entire 2.5 hour hearing was devoted almost exclusively to questioning Chief Justice Moore about his Administrative Order of January 6, 2016.

61. After this hearing Chief Justice Moore provided the JIC with a complete set of his administrative orders and also transmitted a memorandum based on matters that had come to his attention after the hearing. Specifically, Chief Justice Moore informed the JIC that the ACLU in a federal court filing argued that the *Obergefell* decision did not automatically negate Alabama's sanctity-of-marriage laws.

62. On April 14, 2016, the JIC wrote to Chief Justice Moore stating that its "investigation" was close to completion and that it had decided not to dismiss the complaints. In the same letter the JIC scheduled, pursuant to Chief Justice Moore's request, a JIC Rule 10 Hearing for May 5, 2016.

63. On April 19, 2016, Chief Justice Moore wrote to the JIC requesting verification that the investigations had been opened in compliance with the JIC Rules. The JIC responded to this letter in a memorandum dated April 22, 2016, without providing vote lines.

64. On April 28, 2016, one week before the scheduled JIC Rule 10 Hearing requested by Chief Justice Moore, the *Montgomery Advertiser* published a story containing the following "scoop" of private and confidential information: "[A] source familiar with Moore's case said Tuesday that the JIC had completed its review and was in the process of bringing charges against the chief justice . . . A complaint filed by Southern Poverty Law Center president Richard Cohen against Moore appears to be the primary focus of the JIC charges, according to the source."

65. One week later, on the very same day Chief Justice Moore was scheduled to appear for his requested JIC Rule 10 Hearing, Attorney Mathew D. Staver ("Attorney Staver"), lead counsel for Chief Justice Moore, received an unsolicited telephone call from a reporter at the *New York Times*. This reporter said his "sources," which he said are credible, informed him the JIC is about to "file charges" against Chief Justice Moore and that his "sources" say it could be as early



as “today or tomorrow.” He wanted to know if Attorney Staver had a comment. Attorney Staver replied by saying he had no information that the JIC is about to file charges.<sup>3</sup>

66. Given the multiple breaches of this confidential mandate, no guarantee of ongoing confidentiality in the JIC proceedings, including the scheduled JIC Rule 10 Hearing, could be assured to Chief Justice Moore.

67. Chief Justice Moore expressly communicated this concern to the JIC.

68. JIC Rules provide that “Any judge who is the subject of investigation by the [JIC] and who claims to be aggrieved by any violation of these rules may petition the Supreme Court directly for relief,” and “[a]ny judge who is the subject of prosecution by the [JIC] may petition the [COJ] for relief and, if not satisfied with the [COJ’s] action on such petition, may then petition the Supreme Court for relief.” Rule 19, Ala. R. P. Jud. Inq. Comm’n.

**Sealed Proceedings of the Alabama Supreme Court**  
**Hosted by Acting Chief Justice Stuart**

69. Docketed in the Alabama Supreme Court is Case No. 1150818, captioned as *Ex parte Roy S. Moore (In re: Roy S. Moore v. Judicial Inquiry Commission of the State of Alabama)*. The records in that case, including documents filed and orders entered, currently remain under seal pursuant to an order of the Alabama Supreme Court.

70. Upon the filing of this Complaint, Chief Justice Moore will ask the Alabama Supreme Court to lift the seal on that case for purposes of this action. The events that took place in *Ex parte Roy S. Moore* will aid this Court’s consideration of the instant matter, including his contemporaneously-filed Motion for Preliminary Injunction, and will also further the public’s

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<sup>3</sup> The information contained in this Paragraph is set forth in the Declaration of Mathew D. Staver, Esq., which is being contemporaneously filed with Plaintiffs’ Complaint and Motion for Preliminary Injunction.

interest in access to judicial records. *See Romero v. Drummond Co, Inc.*, 480 F.3d 1234, 1245 (11th Cir. 2007) (recognizing a “common law right of access” to court records); *see also Clark v. Bamberger*, 2016 WL 1183180, at \*1 (M.D. Ala. Mar. 28, 2016) (applying *Romero*).<sup>4</sup>

**The JIC Complaint Against Chief Justice Moore  
And His Immediate And Automatic Disqualification From Office**

71. On May 6, 2016 the JIC filed a complaint against Chief Justice Moore in the COJ (hereinafter, the “JIC Complaint”).

72. The JIC Complaint included six charges, all of which allege that the Chief Justice’s Administrative Order of January 6, 2016, violated Canons 1, 2, 2A, 2B, and 3.

73. As a result of the complaint filed by the JIC, the Chief Justice is immediately disqualified from acting as a judge pursuant to Section 159 of the Alabama Constitution, which provides that “A judge shall be disqualified from acting as a judge, without loss of salary, while there is pending . . . a complaint against him filed by the [JIC] with the [COJ].” Art. VI, § 159, Ala. Const. 1901.

74. The immediate and automatic disqualification of Chief Justice Moore from the office of chief justice has prevented him from serving the entire term of his elected office, even though he has not been tried on the JIC charges, let alone convicted in the COJ.

75. The immediate and automatic disqualification causes Chief Justice Moore substantial and irreparable harm because he is indefinitely prevented from exercising his duties and powers as the administrative head of the judicial branch, among other unfulfilled duties and obligations.

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<sup>4</sup> In conjunction therewith, Chief Justice Moore is also filing with this Court a Motion for Leave to File Documents Under Seal, or, in the alternative, to File Unsealed and Unredacted Documents and information regarding the proceedings in *Ex parte Roy S. Moore* which are highly relevant to the claims at issue in this case.

76. The immediate and automatic disqualification causes Chief Justice Moore substantial and irreparable harm because he is indefinitely prevented from sitting on cases, voting on cases, and writing opinions.

77. The immediate and automatic disqualification causes Chief Justice Moore substantial and irreparable harm because his reputation, good name, honor, and integrity have been stained, stigmatized and tarnished by his suspension, even if temporary, from his position as Chief Justice of the Alabama Supreme Court.

78. The immediate and automatic disqualification causes Chief Justice Moore substantial and irreparable harm because he has been suspended from office, even if temporarily, without any due process, including notice and an opportunity to be heard in a meaningful manner.

79. To this day, the JIC, its chairman and its members continue to pursue the JIC Complaint in the COJ against Chief Justice Moore.

80. Chief Justice Moore's response to the JIC Complaint in the COJ is not due until Tuesday, June 7, 2016, under the Rules of that Court.

81. The COJ does not possess the legal authority to declare a state constitutional provision unconstitutional and to permanently enjoin its enforcement.

82. Moreover, the Alabama Supreme Court does not constitute an adequate state forum in which Chief Justice Moore may seek relief for reasons detailed in his Declaration to be submitted under seal.

**The Far-Reaching Effects Of The Indefinite Suspension From Office  
Of Chief Justice Moore**

83. Beyond Chief Justice Moore's own hardship, disqualification causes the Alabama Supreme Court and the Alabama court system in general to suffer.

84. The Alabama Supreme Court decides approximately 1500 cases per year; the Chief Justice votes in nearly all of them. The Alabama Supreme Court is divided into two divisions of four justices each. The senior judge in each division is the division chief, but the Chief Justice sits in both divisions. The Chief Justice presides over monthly conferences of the Justices and oral argument sessions. The Chief Justice is in frequent contact with other Justices' offices regarding pending cases and other matters, and maintains a close liaison with the Clerk of Court regarding her duties and responsibilities.

85. Additionally, at any given time on the Alabama Supreme Court, as in any appellate court, cases are being heard, votes are being cast in pending cases, and opinions (majority, concurring and dissenting) are being written, revised, and distributed. However, in an instant, those votes (which may be the tie-breaking vote in certain cases) and opinions vanish, and may be irretrievable. In that way, the immediate loss of an appellate judge--and particularly one who sits on the Alabama Supreme Court setting precedent for the entire State—can change the outcome of pending cases with potentially drastic effects on specific parties and Alabama citizens in general.

86. Furthermore, the suspension of the Chief Justice has an immediate, deleterious and confusing effect upon the office of the Chief Justice and its employees. Because the Chief Justice has been suspended from his position, his employees and staff lack direction and clarity on who actually is their boss.

87. Beyond his own Court, the office of Chief Justice is constitutionally established with statutory duties and powers to supervise and administer the statewide court system. Art. VI, §§ 140, 149, Ala. Const. 1901; *see also* §§ 12-2-1, 12-2-30(b), Ala. Code 1975. As administrative head of the entire judicial branch, the Chief Justice has responsibility that encompasses all trial

and appellate courts across Alabama. The trial courts alone consist of over 1,700 employees and more than 300 officials (judges and circuit clerks).

88. In his role as the head of the judicial branch, the Chief Justice also serves as a principal representative of the Alabama judicial system vis-à-vis the other branches of government. Among his other duties in carrying out that role, the Chief Justice is responsible for shepherding the judicial budget through the legislature, a matter of some delicacy and of vital importance to the well-being of all citizens of Alabama.

89. As part of his official duties, the Chief Justice also presides over the State Bar Admissions ceremonies and regularly makes appointments, convenes and sits on numerous government bodies, boards, and councils, and throughout the year, organizes and addresses many judicial conferences and meetings of judges, clerks, judicial assistants, court reporters, and juvenile probation officers. Not only that, Chief Justice Moore and his staff are in frequent contact with the Court Marshal, the Building Engineer and other staff at the Heflin-Torbert Judicial Building regarding building needs, purchases, and events.

**The Post-JIC Complaint Removal of Chief Justice Moore From His Office  
As Orchestrated and Executed By Acting Chief Justice Stuart**

90. The Secretary of the COJ served Chief Justice Moore with a copy of the JIC Complaint on Friday, May 6, 2016 at approximately 4:15 p.m.

91. Two hours later, Justice Stuart, who became acting Chief Justice as a result of Chief Justice Moore's automatic suspension, *see* §§ 12-2-5, 12-2-6, Ala. Code 1975, informed the chief of staff for the Chief Justice that she had been notified of his suspension; that the other members of his staff, including his executive assistant, two staff attorneys, a law clerk and a summer intern, were to report to work as usual on Monday morning; and that he was to remove all of the votes of the Chief Justice in pending cases.

92. On Monday, May 9, 2016:

a. Chief Justice Moore was informed that his executive assistant would be moved out of his office to work in the Clerk of Court's office.

b. Two members of the Alabama Supreme Court's information technology ("IT") staff came to Chief Justice Moore's office and told his staff that they had been instructed to remove his executive assistant's computer and put it in storage.

c. The IT personnel also informed his staff that the log in for his computer had been deactivated.

d. Shortly thereafter the IT staff removed the Alabama Supreme Court's case management program from all computers in his office.

e. Justice Stuart told Chief Justice Moore's staff that, although she would not tell them to refrain from speaking with him, they could not talk to him about Alabama Supreme Court matters.

93. Chief Justice Moore has been told that all of the cases that were assigned to him to prepare a recommended disposition for the Court have been returned to the Clerk's Office and reassigned to other Justices.

94. Chief Justice Moore's office staff have been told that they effectively do not work for him anymore, should be careful talking to him, and that they will now receive direction from the other eight Justices.

95. On Wednesday, May 11, 2016, Justice Stuart sent a message to the chief of staff for the Chief Justice informing him that Chief Justice Moore was no longer to have access to his office in the Judicial Building at 300 Dexter Avenue in Montgomery. Furthermore, if Chief Justice

Moore wished to remove his personal belongings from the office, he would have to be accompanied by the Court Marshal.

96. Access privileges to the Court's case management systems have been revoked.

97. These actions by Justice Stuart in her capacity as Acting Chief Justice constitute enforcement measures to implement Section 159 of the Alabama Constitution.

98. In sum, despite no notice, no opportunity to be heard, no adequate state forum, and no conviction, the Chief Justice has been entirely disqualified from exercising his judicial office and has been excluded from the Supreme Court floor of the Judicial Building.

**COUNT I**  
**Fourteenth Amendment of the United States Constitution**  
**Due Process Clause**  
**Plaintiff against Defendants**

99. Chief Justice Moore realleges and incorporates herein by this reference the allegations of paragraphs 1 through 98 above.

100. The Fourteenth Amendment forbids a state from depriving Chief Justice Moore of life, liberty or property without due process of law.

101. Chief Justice Moore possesses a constitutionally-protected property interest in the office of chief justice of the Alabama Supreme Court.

102. Chief Justice Moore possess a constitutionally-protected liberty interest in his reputation, good name, honor, and integrity as it relates to remaining in his office as chief justice of the Alabama Supreme Court.

103. Chief Justice Moore, and the citizens who elected him, had an objective expectation that he would continue to function in his elected position as chief justice for his full term.

104. The office of chief justice of the Alabama Supreme Court is created by the Alabama Constitution, and the powers and duties of that office are set forth in the Alabama Constitution and in Alabama statutes.

105. Chief Justice Moore has a legitimate claim of entitlement to remain in office for the duration of his term absent some legitimate countervailing cause or appropriate process.

106. No one has unfettered discretion to remove Chief Justice Moore from his office of chief justice.

107. Chief Justice Moore has been stigmatized in connection with his indefinite removal from the office of chief justice by the filing of a JIC Complaint against him and the resulting automatic disqualification.

108. Section 159 of the Alabama Constitution impairs and burdens the constitutionally protected property and liberty interests that Chief Justice Moore has in his office as chief justice by depriving him indefinitely of his judicial office.

109. The filing of the JIC Complaint by the JIC in the COJ triggered application of Section 159 of the Alabama Constitution by operation of law against Chief Justice Moore.

110. Chief Justice Moore did not receive minimal due process from any adjudicatory body, including notice and a meaningful opportunity to be heard, before his office of chief justice of the Alabama Supreme Court was indefinitely taken from him.

111. The loss of the office of chief justice for any period of time constitutes a grievous loss to Chief Justice Moore that can never be recouped.

112. No extraordinary circumstances exist warranting postponement of notice and opportunity for a hearing at a meaningful time and in a meaningful manner until after the deprivation of Chief Justice Moore's interests and judicial office have occurred.



113. Additional and appropriate procedural safeguards not currently attached to the filing of a complaint by the JIC would reduce the risk of an erroneous deprivation of rights and constitutionally-protected interests, as has occurred in Chief Justice Moore's case.

114. Any interest in the operations of the courts and the judicial conduct of judges does not permit the Defendants to eviscerate Chief Justice Moore's own fundamental due process rights.

115. Section 159 of the Alabama Constitution violates the federal due process rights of Chief Justice Moore to continue to serve as chief justice during the remainder of his elected term.

116. Chief Justice Moore has no administrative remedies available to him and any attempts to obtain administrative relief would be futile.

117. No state law or state forum provides adequate relief from the deprivation of rights and liberties suffered by Chief Justice Moore described herein.

118. Chief Justice Moore has no adequate remedy at law to satisfy the harm caused to him by operation of Section 159 of the Alabama Constitution and the Defendants' application and enforcement of same against him.

119. As detailed above, Defendants are applying and enforcing Section 159 of the Alabama Constitution against Chief Justice Moore while the JIC Complaint is pending against him in the COJ.

120. Absent declaratory and injunctive relief, Chief Justice Moore will continue to face substantial and irreparable harm resulting from Section 159 of the Alabama Constitution and the Defendants' application and enforcement of same.

WHEREFORE, Plaintiff prays for relief against Defendants as hereinafter set forth in his prayer for relief.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court:

- a. Declare that Section 159 of the Alabama Constitution violates the Fourteenth Amendment of the United States Constitution;
- b. Preliminarily and permanently enjoin the enforcement of Section 159 of the Alabama Constitution by Defendants or any of their officers, members, agents, or others acting in concert with them;
- c. Award Plaintiff the costs of this action and reasonable attorney's fees; and
- d. Award such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff requests a trial by jury on all issues so triable.

Dated: May 27, 2016

Respectfully Submitted,

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<sup>†</sup>Motion for admission *pro hac vice*  
forthcoming

*Attorneys for Plaintiff Hon. Roy S. Moore,  
Chief Justice of the Supreme Court of  
Alabama*

**VERIFICATION**

I, Hon. Roy S. Moore, Chief Justice of the Alabama Supreme Court, state that I have read and reviewed the foregoing complaint regarding the allegations related to my claims and declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed on: \_\_\_\_\_

\_\_\_\_\_  
HON. ROY S. MOORE

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed via the Court's ECF filing system and will be served upon the named Defendants in accordance with Federal Rule of Civil Procedure 4.

DATED: May 27, 2016

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Phillip L. Jauregui  
*Attorneys for Plaintiff*