

AN EDUCATIONAL UPDATE FROM
THE SOUTHEAST LAW INSTITUTE™, INC.

To: SLI Supporters
Date: June 2016
From: A. Eric Johnston
Re: The New Religious Cultural War

One of the biggest things in Alabama news today is the suspension of Chief Justice Roy Moore from his position on the Alabama Supreme Court as result of a complaint by the Alabama Judicial Inquiry Commission (“JIC”). It is based on charges by those who disagree with Moore’s position on same sex marriage. The JIC issued a complaint charging Moore with violation of various judicial ethics. The initial allegation refers back to 2003 when Chief Justice Moore, then in his first term as such, placed the granite Ten Commandments monument in the Alabama Supreme Court rotunda. A federal lawsuit followed with an injunction requiring him to remove the monument. He refused to obey the court order and the Alabama Court of the Judiciary (“COJ”) removed him as Chief Justice for violating the applicable rules of ethical conduct. This is a bad, though unrelated, precedent for Moore in the latest proceeding.

The 2016 JIC complaint then goes on to refer to various administrative orders issued by Chief Justice Moore in 2015 and 2016 related to whether probate judges in Alabama should issue same sex marriage licenses. There was no federal lawsuit against him and he was acting in his administrative capacity as the chief judge in the state. Confusion resulted when a federal trial court judge in the southern district of Alabama, with a limited jurisdiction over a few counties there, declared Alabama’s marriage statute and amendment unconstitutional. Same sex advocates claimed her order applied to probate judges all over the state. Many probate judges were in a quandary. This resulted in Chief Justice Moore’s first administrative order. It also resulted in a Petition for Writ of Mandamus that we filed on behalf of Alabama Policy Institute and ALCAP. That writ was granted and seven more of the Justices on the Alabama Supreme Court agreed, in principle, with Chief Justice Moore, and issued an opinion that Alabama’s marriage laws were constitutional. Ultimately, the U.S. Supreme Court decided in the *Obergefell* case that all state laws for one man one woman marriage are unconstitutional and the Alabama Supreme Court declined to take further action on its earlier order. In other words, except for one judge on the Alabama Supreme Court, all were in agreement that Alabama’s marriage laws were constitutional, but unenforceable.

The difference between Chief Justice Moore’s 2003 and recent activities is that in one circumstance he was a party defendant in a lawsuit against him, but in the other circumstance, he was acting as a judicial officer within the parameters of his statutory duty. It is inappropriate for the JIC or the COJ to attempt to exercise jurisdiction over Moore at this time on cultural issues that are being litigated in states all over the country. The charges by the JIC speak of impropriety, integrity, conduct, *etcetera*. Those words would be used in the context of a judge who is clearly in violation of law, either through contempt for actual court orders, such as in the Ten Commandments case, or bringing disrepute to the court through extrajudicial activities, like Federal Judge Mark Fuller who resigned because he beat his wife. However, this JIC action is a symptom of a far greater problem. Anyone who opposes the juggernaut of the gay rights agenda will be attacked. Chief Justice Moore becomes the poster whipping boy for their claims of intolerance.

In the 2016 legislative session, we drafted a bill, the Alabama Child Placing Agency Inclusion Act (HB185/SB204) that would have prohibited the Department of Human Relations from refusing to license church or religious run child placing agencies if they would not make same sex marriage placements of children for adoption. The Human Rights Campaign and the ACLU both testified to the intolerance of such a law, claiming that it discriminated against homosexuals. Similarly, the U.S. Justice Department claims that the State of North Carolina is intolerant and is discriminating against transsexual individuals by requiring persons to use bathrooms factually related to their actual physical gender. The Justice Department relies on a gross misuse and redefinition of the word “sex” that was never envisioned in Title VII, the Civil Rights Act of 1964, or in Title IX, the Education Amendments, in 1972. The States of Mississippi and Indiana are attacked because of statutes recognizing religious freedom for individuals to not condone, endorse or participate in providing goods or services to homosexuals as a result of religious beliefs. Big business is promoting these actions and boycotting those states.

The efforts urged on by the gay rights agenda are the beginnings of a cultural war against religious freedom. It is not Christians who are intolerant, but it is those who seek to force their view of perverse sexuality on others that is intolerant. While *Obergefell* and its expected progeny will force on America new norms of sexuality, it does not mean that we cannot disagree and that our religious rights should not be protected. Religious freedom is our first freedom, as expressed in the Bill of Rights. Without it, many of the other freedoms would not exist.

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