

official capacity as Attorney General of the State of Alabama (“Atty. Gen. Strange”) (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 certain Alabama Canons of Judicial Ethics, which are being used to restrict and chill vital First Amendment speech about key public issues by a candidate for judicial office, and 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”).

2. The free speech rights of Justice Parker, a declared candidate for reelection to the Alabama Supreme Court, have already been harmed and significantly chilled by the ongoing investigation against him by the JIC. That harm is continuing and, in fact, increasing as the election approaches and forces him to engage in self-censorship. Justice Parker is facing a credible threat of sanction resulting from the JIC’s ongoing investigation of him due to his protected speech, and no person—including a sitting judge and candidate for judicial office—should be forced to choose between speech and sanction. For without any notice or a meaningful opportunity to be heard, his judicial office could be immediately forfeited by operation of a state constitutional provision that is triggered by the mere act of the JIC filing an ethics complaint against him. Yet the purported ethics violations being investigated by the JIC rest entirely upon First Amendment speech about key public issues by a candidate for judicial office. The ethics allegations purportedly based upon certain content based, overbroad and vague Alabama Canons of Judicial Ethics are thus on a collision course with the First Amendment, in which any attempt to curb or silence such speech

must satisfy the most exacting scrutiny. The government can make no such showing here. On their face and as applied to Justice Parker, the Canons ban far more speech than is necessary and, by their express terms, certain Canons apply to conduct, not speech. Accordingly, Alabama Canons of Judicial Ethics 1¹, 2A², and 3A(6)³ are unenforceable against Justice Parker for the speech that is the subject matter of the ongoing JIC investigation against him.

3. The First Amendment problem is especially magnified here, where the filing of an ethics complaint by the JIC would trigger operation of a state constitutional provision that itself violates the United States Constitution. In its entirety, Section 159 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. 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. The automatic disqualification provision also cripples the judge’s staff, wreaks havoc on

¹ Alabama Canon of Judicial Ethics 1 states that “An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.” Ala. Canon of Jud. Ethics 1.

² Alabama Canon of Judicial Ethics 2A 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.” Ala. Canon of Jud. Ethics 2A.

³ Alabama Canon of Judicial Ethics 3A(6) states that “A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.” Ala. Canon of Jud. Ethics 3A(6).

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 a 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, including judges (like Justice Parker) who are currently up for reelection. This blanket automatic disqualification provision is a Sword of Damocles hanging over every Alabama judge's head who is under investigation by the JIC.

4. As a result, this automatic disqualification provision threatens to cause impending, imminent and irreparable harm to Justice Parker, a sitting justice on the state's highest court and a present candidate for retaining that judicial office, unless the automatic disqualification provision is struck down as unconstitutional. As both a sitting judge and a candidate for judicial office, Justice Parker cannot wait to challenge the constitutionality of the provision until he is 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 Justice Parker 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 certain Alabama Canons of Judicial Ethics and the automatic disqualification provision unconstitutional and enjoining their enforcement against Justice Parker as a violation of his free speech and due process rights protected by the United States Constitution.

JURISDICTION AND VENUE

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

6. This Court has subject matter jurisdiction over Justice Parker's federal law claims pursuant to 28 U.S.C. §§ 1331 and 1343.

7. 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.

8. 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

9. Plaintiff, Justice Parker, is an adult resident of the State of Alabama. He is an elected Associate Justice of the Alabama Supreme Court. Justice Parker is currently the subject of an ongoing investigation by the JIC.

10. 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.

11. Defendant, Bedsole, is an adult resident of the State of Alabama. He is the Chairman of the JIC. He is being sued in his official capacity as the Chairman of the JIC.

12. 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.

13. 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. Further, Alabama law requires that the attorney general be notified of any constitutional challenges to Alabama law. §§ 6-6-227, Ala. Code 1975; *see also Ex parte Jefferson Cnty.*, 767 So.2d 343, 345 (Ala. 2000). The attorney general is a party defendant to this lawsuit and will receive the requisite notice via service of process.

GENERAL ALLEGATIONS

Alabama’s Judicial Elections

14. The Alabama Constitution provides that all judges are elected, including an Associate 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 Associate Justices are elected in statewide elections. *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. Other than ouster by election, an Associate 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.

18. Justice Parker was first elected to the office of Associate Justice in November 2004, and officially took office in January 2005, for a six-year term. He was reelected for another six-year term in November 2010, with approximately 59% of the vote of Alabama citizens. He is presently a candidate in this year’s judicial election in November 2016.

19. Since first taking office in January 2005, Justice Parker has continuously served in that position without any suspension.

Procedures Of The JIC And In The COJ

20. 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.

21. The Alabama Constitution states that “[t]he Supreme Court shall adopt rules governing the procedures of the [JIC].” Art. VI, § 156(c), Ala. Const. 1901.⁴

22. 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.

The Rules of Procedure of the JIC (hereinafter, “JIC Rules”) similarly provide that “[a]ll

⁴ 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.”).

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.

23. 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. Thus, Alabama law clearly mandates that the JIC and its members, staff, and agents keep strictly confidential all JIC investigations and proceedings.⁵

24. 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.

⁵ 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.

25. 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, a 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.

26. 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.

27. 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.

28. 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.

29. 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.*

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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).

37. 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 Justice Parker

38. 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 v. King*, No. 1140460, 2015 WL 892752 (Ala. 2015) (“hereinafter, *APP*”).

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

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

41. 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.”

42. On October 6, 2015, Justice Parker participated in a radio interview with Mr. Bryan Fischer of the American Family Association on the “Focal Point” radio show. That interview is the sole focus of the JIC investigation of Justice Parker.

43. During the interview, Justice Parker announced that he had qualified to run for reelection to a third term as an Associate Justice of the Alabama Supreme Court. He also discussed his reelection bid.

44. During the interview, Justice Parker discussed political processes, structures and forms of government, how the courts operate and should operate, judicial and constitutional theory, and vital issues of public significance.

45. During the interview, Justice Parker mentioned American political, historical, and legal icons such as Supreme Court Justices Oliver Wendell Holmes, John Roberts, and Antonin

Scalia and former Presidents Thomas Jefferson and Andrew Jackson, and he also referred to *The Federalist Papers*, the U.S. Constitution, and opinions of the U.S. Supreme Court.

46. At one point in the interview, Justice Parker discussed a series of Wisconsin cases relating to the Fugitive Slave Act that have become known as “the *Booth* case.”⁶ This discussion of a judicial reaction to the *Dred Scott* case occurs before and apart from any mention of an Alabama case. This historical discussion also includes political and constitutional theory.

47. During the interview, the only discussion regarding a case pending before the Alabama Supreme Court was entirely and purely descriptive.

48. The discussion concluded with the radio host purportedly stating: “That injunction is still in place, and the issue is whether the Supreme Court there will leave it in place or make it permanent. Is that correct?” Justice Parker purportedly responded: “That’s one issue before the Alabama Supreme Court.”

49. Justice Parker did not predict, promise, pledge or commit to a certain course of action on the merits of any pending case.

50. Justice Parker said nothing about a case before the Alabama Supreme Court that might reasonably be expected to affect its outcome or impair its fairness.

51. Justice Parker’s knowledge of the Wisconsin cases came from his participation in a legal seminar at Princeton University during the summer of 2015. Judge Diane Sykes of the Seventh Circuit Court of Appeals, and formerly a Justice on the Wisconsin Supreme Court, gave a presentation on the *Booth* cases in the aftermath of *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015).

⁶ This reference is to a series of decisions from the Wisconsin Supreme Court beginning in 1854, *Ex parte Booth*, 3 Wis. 1 (1854), as well as one from the United States Supreme Court, *Ableman v. Booth*, 62 U.S. 514 (1859), and ending with a published decision from the Wisconsin Supreme Court in *Ableman v. Booth*, 11 Wis. 501 (1859).

Judge Sykes referred the seminar participants to the account of the Wisconsin cases posted on the Wisconsin Supreme Court's website. Justice Parker read the entire posting by the Wisconsin Supreme Court in conjunction with Judge Sykes' presentation at the Princeton seminar.

52. On October 12, 2015, the Southern Poverty Law Center ("SPLC") lodged an ethics complaint against Justice Parker with the JIC, attaching an unverified purported transcript of the October 6, 2015 "Focal Point" radio interview of Justice Parker. *See* Exhibit "1."

53. The SPLC, an advocacy organization that has a distinct animus against Justice Parker and his philosophy of constitutional interpretation, pursues an agenda to intimidate and vilify anyone who speaks out in any way (in its view) against the promotion of homosexuality and same-sex "marriage" ("SSM") or the "five lawyer"⁷ majority opinion of the United States Supreme Court in *Obergefell*.

54. In its complaint against Justice Parker, the SPLC alleged that he violated Alabama Canons of Judicial Ethics during the Focal Point radio interview by (1) "publicly comment[ing] on proceedings pending before the Alabama Supreme Court" and (2) "undermin[ing] the integrity of the federal judiciary by suggesting that the Alabama Supreme Court should defy and refuse to give effect to the United States Supreme Court's decision in *Obergefell v. Hodges*, 576 U.S. ___, 135 S.Ct. 2584 (2015)." *See* Exhibit "1," at p. 1.

55. More specifically, among other things, the SPLC alleged in its complaint against Justice Parker that his "actions constitute a plain and knowing violation of the prohibition set forth in Canon 3A(6)"; he "comments approvingly on the argument raised by the [API] relators that the Alabama Supreme Court may defy a United States Supreme Court decision"; he "knowingly and

⁷ The Chief Justice of the United States Supreme Court repeatedly referred to the majority opinion in *Obergefell* as that of "five lawyers." *See Obergefell*, 135 S.Ct. at 2612, 2624 (Roberts, C.J., dissenting).

expressly made a public comment on the merits of a case pending before the Alabama Supreme Court in violation of Alabama Canon of Judicial Ethics 3(A)(6)”; his “comments in the interview assault the authority and integrity of the federal judiciary and instead publicly endorse purported ‘judicial tyranny’ by defying the Supreme Court’s decision in *Obergefell*”; his comments “violate two related Canons of Judicial Ethics”; he has “disdain for the federal judiciary and the Supreme Court’s interpretation of the Constitution as set forth in *Obergefell*”; he “offers ridicule and suggests defiance” of the judiciary; he “foments the false impression in the public’s mind that the federal judiciary has tyrannically taken for itself unconstitutional power such that state courts like the Alabama Supreme Court must initiate a ‘revival,’ that is, stand up to and defy the United States Supreme Court”; and his “rallying cry not only violates the Canons of Judicial Ethics, it violates his oath to uphold the Constitution.” *See* Exhibit “1,” at pp. 1-6.

56. On October 13, 2015, the SPLC issued a press release announcing the filing of its ethics complaint against Justice Parker and stating that Justice Parker “derided [the] federal judiciary,” “suggested that Alabama should defy the U.S. Supreme Court’s marriage equality decision,” “improperly commented on pending cases,” “disrespected the dignity of the judiciary,” and “undermined public confidence in the integrity of the judiciary.” The SPLC press release also stated that the host of the “extremist radio show” purportedly makes “denigrating claims about LGBT people” and has “demonized LGBT people” and that he is a “bigot,” even though no such remarks were made in Justice Parker’s radio interview. The SPLC press release also mentioned that the SPLC previously filed an ethics complaint against Alabama Chief Justice Roy Moore and stated that he “also urged defiance of the same-sex marriage decision.” *See* Exhibit “2.”

57. As a result of the SPLC’s press release announcing its ethics complaint against Justice Parker, multiple local and national news sources published stories detailing the SPLC’s

allegations against Justice Parker and repeating verbatim many of the SPLC's allegations. For example, news stories covering the SPLC's vitriolic allegations appeared in the *Montgomery Advertiser*⁸, AL.com⁹, WEACTION 24¹⁰, CBS¹¹ and NBC¹² affiliates, and Law360¹³, to name a few.

58. On November 5, 2015, pursuant to JIC Rule 6C, the JIC sent Justice Parker a letter informing him that the JIC had “decided to investigate” two allegations of ethics violations against Justice Parker—namely, (1) that in his radio interview on October 6, 2015 he “violated Canon 3A(6) by publicly commenting on [API], then pending before the Alabama Supreme Court,” and (2) that in that same radio interview he “violated Canons 1 and 2A by making comments ... that undermine the integrity of and public confidence in the integrity of the federal judiciary and the United States Supreme Court’s interpretation of the Constitution in *Obergefell v. Hodge* [sic], e.g.,

⁸ See “SPLC files complaint against Justice Tom Parker,” *Montgomery Advertiser* (Oct. 13, 2015), *available at* <http://www.montgomeryadvertiser.com/story/news/politics/southunionstreet/2015/10/13/splc-files-complaint-against-justice-tom-parker/73884180/> (last accessed June 14, 2016).

⁹ See “Alabama Supreme Court justice violate ethics by discussing same-sex marriage case, SPLC claims,” AL.com (Oct. 13, 2015), *available at* http://www.al.com/news/index.ssf/2015/10/alabama_supreme_court_justice.html (last accessed June 14, 2016).

¹⁰ See “Complaint Against Alabama Justice,” WEACTION 24 (Oct. 13, 2015), *available at* <http://www.tv24.tv/#!/Complaint-Against-Alabama-Justice/c1tj5/561dd14e0cf2c6c643736bcc> (last accessed June 14, 2016).

¹¹ See “SPLC files ethics complaint against AL Justice Tom Parker,” CBS46.com (Oct. 13, 2015), *available at* <http://www.cbs46.com/story/30250585/splc-files-ethics-complaint-against-al-justice-tom-parker> (last accessed June 14, 2016).

¹² See “Law group files judicial complaint against Alabama justice,” WVTM13.com (Oct. 13, 2015), *available at* <http://www.wvtm13.com/news/law-group-files-judicial-complaint-against-alabama-justice/35818632> (last accessed June 14, 2016).

¹³ See “Ala. Justice Under Fire For Urging Defiance Of Obergefell,” Law360.com (Oct. 13, 2015), *available at* <http://www.law360.com/articles/713570/ala-justice-under-fire-for-urging-defiance-of-obergefell> (last accessed June 14, 2016).

suggesting that the Alabama Supreme Court should defy and refuse to give effect to the Supreme Court's decision in *Obergefell*." See Exhibit "3."

59. In subsequent letters sent every six weeks thereafter pursuant to JIC Rule 6D, the JIC has stated, without modification, its intention to continue its "investigation" against Justice Parker without any further modification of the allegations being investigated.

60. The aforementioned letters have been sent on December 17, 2015; January 28, 2016; March 10, 2016; April 21, 2016; and June 2, 2016. See Exhibit "4."

61. On January 4, 2016, Justice Parker responded in writing to the JIC regarding the allegations for which he is being investigated.

62. On March 4, 2016, the Alabama Supreme Court issued an order in *API*, which prompted special writings by several Justices, including Justice Parker. *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.

63. On May 6, 2016, the JIC filed a complaint in the COJ against the Chief Justice of the Alabama Supreme Court, Roy Moore, which immediately disqualified the Chief Justice from exercising his elected judicial office. The JIC has selected a former legal director of the SPLC to serve as the prosecuting attorney in that matter.

64. To date, the JIC has continued its investigation of Justice Parker arising from the politically-motivated complaint filed by the SPLC.

65. Justice Parker remains a judicial candidate for reelection to his current office of Associate Justice of the Alabama Supreme Court. The election is scheduled for November 8, 2016.

The Chilling Of Justice Parker's Political Speech And The Impending And Imminent Threat Of A JIC Complaint Against Justice Parker

66. The pendency of any JIC investigation, or any future ethics complaints lodged against Justice Parker for his political speech based upon the same Canons at issue in the current investigation, violates his free speech rights as a judicial candidate and sitting judge and significantly chills his First Amendment-protected speech about issues and matters of public importance.

67. The JIC's ongoing investigation against Justice Parker forces him to engage in self-censorship of his desired speech as a judicial candidate and sitting judge.

68. Justice Parker desires to engage in more discussion of public issues and matters of public importance, including issues related to the courts, in the lead-up to the November election. However, this speech may be affected and prohibited by the Defendants' interpretation and application of the Judicial Canons as applied to him and he faces at least a minimal probability that they will be enforced against him by the Defendants if he engages in similar speech.

69. Indeed, Justice Parker is threatened with sanction and faces a credible threat of sanction based upon the Defendants' refusal to dismiss the allegations lodged against him related to his speech and Defendants' ongoing commitment to investigate him for his speech while he is running for reelection to judicial office.

70. As a judicial candidate and sitting judge, the law does not compel Justice Parker to choose between speech and sanction.

71. Were the JIC to file charges against Justice Parker in the COJ, he would be immediately disqualified from acting as a judge pursuant to Section 159 of the Alabama Constitution.

72. The immediate and automatic disqualification of Justice Parker from the office of associate justice would prevent him from serving the entire term of his elected office, even though he has not been tried on any potential JIC charges, let alone convicted in the COJ, and would spoil and thwart his candidacy for reelection.

73. Immediate and automatic disqualification would cause significant harm and damage to Justice Parker's reelection bid for a third term as an associate justice of the Alabama Supreme Court.

74. Immediate and automatic disqualification would cause Justice Parker substantial and irreparable harm because he would be indefinitely prevented from exercising his duties and powers as an associate justice of the Alabama Supreme Court.

75. Immediate and automatic disqualification would cause Justice Parker substantial and irreparable harm because he would be indefinitely prevented from sitting on cases, voting on cases, and writing opinions.

76. Immediate and automatic disqualification would cause Justice Parker substantial and irreparable harm because his reputation, good name, honor, and integrity would be stained, stigmatized and tarnished by a suspension, even if temporary, from his position as Associate Justice of the Alabama Supreme Court.

77. Immediate and automatic disqualification would cause Justice Parker substantial and irreparable harm because he would be suspended from office, even if temporarily, without any due process, including notice and an opportunity to be heard in a meaningful manner, for engaging in speech protected by the First Amendment.

78. To this day, the JIC, its chairman and its members continue to pursue an investigation against Justice Parker.

79. A JIC Complaint against Justice Parker in the COJ could be filed any day between now and the November election without providing Justice Parker notice and a meaningful opportunity to be heard.

**The Far-Reaching Effects Of Any Indefinite Suspension From Office
Of Associate Justice Parker**

80. Beyond Justice Parker’s own hardship, disqualification causes the Alabama Supreme Court and the Alabama court system in general to suffer.

81. The Alabama Supreme Court decides approximately 1500 cases per year. The Alabama Supreme Court is divided into two divisions of four justices each. The senior judge in each division is the division chief. As an Associate Justice, Justice Parker has been involved in approximately 750 or more cases per year.

82. 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. 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.

83. Furthermore, any suspension of an Associate Justice has an immediate, deleterious and confusing effect upon the justice’s office and its employees.

COUNT I
First Amendment of the United States Constitution
Free Speech Clause Challenge to Alabama Canon of Judicial Ethics 3A(6)
(Plaintiff against All Defendants)

84. Justice Parker realleges and incorporates herein by this reference the allegations of paragraphs 1 through 83 above.

85. Political speech is protected by the First Amendment of the United States Constitution.

86. Criticism of judges and court decisions is protected speech.

87. Judicial candidate speech is protected speech.

88. Speech about governmental affairs, candidates, structures and forms of government, the manner in which government is operated or should operate, political processes and issues of public importance is essential speech protected by the First Amendment.

89. The speech that the JIC is investigating is deserving of the highest constitutional protection

90. The First Amendment protects the free exchange of ideas and encourages debate on public issues that is uninhibited, robust and wide-open.

91. The government's ability to restrict political speech is extremely limited.

92. The government may not circumscribe a political candidate's speech in a way that prevents the electorate from knowing the candidate's views and being able to evaluate the candidate's personal qualities and positions on vital public issues.

93. Canon 3A(6) is a content based restriction on speech.

94. Canon 3A(6) does not serve a compelling government interest that justifies the restrictions on a judge's speech.

95. Canon 3A(6) is not narrowly tailored.

96. Canon 3A(6) is not the least restrictive means of achieving the government's asserted interests.

97. Canon 3A(6) is an unconstitutional content based restriction because the content of a judge's speech must be examined in order to determine if it is prohibited.

98. Canon 3A(6) is overbroad on its face and as applied because it prohibits constitutionally-protected speech and expressive activities of Justice Parker and third parties not before the Court.

99. Canon 3A(6) is overbroad on its face and as applied because it causes Justice Parker and third parties not before the Court to refrain from constitutionally protected speech.

100. Canon 3A(6) is overbroad on its face and as applied because it sweeps within its ambit a substantial amount of constitutionally protected speech.

101. Canon 3A(6) is overbroad on its face and as applied because it prohibits speech that neither affects nor would reasonably be expected to affect the outcome or impair the fairness of any judicial proceeding or interfere with a fair trial or hearing.

102. Canon 3A(6) is also unconstitutional because it vests unbridled discretion in government officials and entities tasked with enforcing Canon 3A(6), to determine what speech is (or is not) restricted by Canon 3A(6) and what expressive activity is (or is not) prohibited.

103. Canon 3A(6) is selectively enforced and applied in an unconstitutional viewpoint discriminatory manner.

104. Canon 3A(6) creates an impermissible prior restraint on constitutionally protected speech because it restricts judicial speech in advance, but provides no criteria to guide decision-makers in determining what speech is permissible.

105. As a direct and proximate result of the Defendants' actions, as alleged herein, Justice Parker is chilled and deprived of his rights to free speech.

106. Justice Parker has suffered and will continue to suffer irreparable harm to his First Amendment rights as a direct result of the Defendants' conduct, the Defendants' ongoing

investigation of Justice Parker, and the existence, enforcement, and threat of enforcement of Canon 3A(6) against his speech.

107. A properly crafted declaratory judgment and injunction ensuring that the enforcement authority exercised by the Defendants would not enforce Canon 3A(6) in a manner inconsistent with the First Amendment would redress Justice Parker's injury and eliminate any unjustified chilling of his speech.

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

COUNT II
First Amendment of the United States Constitution
Free Speech Clause Challenge to Alabama Canon of Judicial Ethics 1 and 2A
(Plaintiff against All Defendants)

108. Justice Parker realleges and incorporates herein by this reference the allegations of paragraphs 1 through 83 above.

109. Political speech is protected by the First Amendment of the United States Constitution.

110. Criticism of judges and court decisions is protected speech.

111. Judicial candidate speech is protected speech.

112. Speech about governmental affairs, candidates, structures and forms of government, the manner in which government is operated or should operate, political processes and issues of public importance is essential speech protected by the First Amendment.

113. The speech that the JIC is investigating is deserving of the highest constitutional protection.

114. The First Amendment protects the free exchange of ideas and encourages debate on public issues that is uninhibited, robust and wide-open.

115. The government's ability to restrict political speech is extremely limited.
116. The government may not circumscribe a political candidate's speech in a way that prevents the electorate from knowing the candidate's views and being able to evaluate the candidate's personal qualities and positions on vital public issues.
117. Canon 2A only applies to conduct, not speech.
118. Canons 1 and 2A, both on their face and as applied, are impermissibly vague.
119. Canons 1 and 2A are unconstitutionally vague because they do not adequately advise, notify, or inform judges subject to prosecution under these Canons of their requirements as they relate to judges' speech.
120. Canons 1 and 2A are unconstitutionally vague because they lack the clarity required of restrictions on protected speech and they fail to give fair notice as to what speech is prohibited.
121. Canons 1 and 2A are unconstitutionally vague because they lack any standards or criteria for imposing judicial speech restrictions.
122. Canons 1 and 2A are unconstitutionally vague because they do not provide minimal standards or criteria to guide those charged with enforcing them and thus allow unbridled discretion to determine what speech is, and is not, permissible.
123. As construed and interpreted by the Defendants, Canons 1 and 2A leave Justice Parker and third parties not before the Court seeking to exercise their First Amendment rights to guess at their meaning, leaves government persons to differ as to their application, and confers unfettered discretion upon their enforcers.
124. Canons 1 and 2A authorize and encourage arbitrary and discriminatory enforcement without establishing standards to guard against wrongful suppression of First Amendment rights of judges.

125. Canons 1 and 2A are also discriminatory and unconstitutional speech restrictions as applied, because they are being selectively enforced and applied.

126. As a direct and proximate result of the Defendants' actions, policies, practices, and customs as alleged herein, Justice Parker is chilled and deprived of his rights to free speech.

127. Justice Parker has suffered and will continue to suffer irreparable harm to his First Amendment rights as a direct result of the Defendants' conduct, the Defendants' ongoing investigation of Justice Parker, and the existence, enforcement, and threat of enforcement of Canons 1 and 2A against his core protected political speech.

128. A properly crafted declaratory judgment and injunction ensuring that the Defendants would not enforce Canons 1 and 2A in a manner inconsistent with the First Amendment would redress Justice Parker's injury and eliminate any unjustified chilling of his speech.

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

COUNT III

Fourteenth Amendment of the United States Constitution Free Speech and Due Process Clause Challenge to Section 159 of the Alabama Constitution (Plaintiff against All Defendants)

129. Justice Parker realleges and incorporates herein by this reference the allegations of paragraphs 1 through 83 above.

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

131. Justice Parker possesses a constitutionally-protected property interest in the office of associate justice of the Alabama Supreme Court.

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

133. Justice Parker, and the citizens who elected him, had an objective expectation that he would continue to function in his elected position as associate justice for his full term.

134. The office of associate 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.

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

136. No government body has unfettered discretion to remove Justice Parker from the office of associate justice.

137. Justice Parker is threatened with being stigmatized in connection with any indefinite removal from his office of associate justice by the filing of a JIC Complaint against him and the resulting automatic disqualification.

138. Section 159 of the Alabama Constitution threatens to impair and burden the constitutionally protected property and liberty interests that Justice Parker has in his office as associate justice by depriving him indefinitely of his judicial office.

139. The JIC investigation currently pending against Justice Parker represents state action.

140. The filing of the JIC Complaint by the JIC in the COJ would immediately trigger application of Section 159 of the Alabama Constitution by operation of law against Justice Parker.

141. Under JIC Rules, Justice Parker is currently under the threat of not receiving minimal due process from any adjudicatory body, including notice and a meaningful opportunity to be heard, before being indefinitely suspended from the office of associate justice of the Alabama Supreme Court.

142. The loss of the office of associate justice for any period of time would constitute a grievous loss to Justice Parker that can never be recouped.

143. 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 Justice Parker's interests and judicial office have occurred.

144. Additional and appropriate procedural safeguards not currently attached to JIC investigations or the filing of a complaint by the JIC would reduce the risk of an erroneous deprivation of Justice Parker's rights and constitutionally-protected interests.

145. Any interest in the operations of the courts and the judicial conduct of judges does not permit the Defendants to eviscerate Justice Parker's own fundamental rights.

146. As both a judicial candidate and a sitting judge, Justice Parker possesses free speech rights protected by the First Amendment that are effectively chilled by the continued existence and enforcement of Section 159 of the Alabama Constitution.

147. Section 159 of the Alabama Constitution threatens to violate the free speech and due process rights of Justice Parker to continue to serve as associate justice during the remainder of his elected term.

148. Justice Parker has no administrative remedies available to him and any attempts to obtain administrative relief would be futile.

149. No state law or state forum provides adequate relief from the deprivation of rights and liberties suffered by, or on the verge of being suffered by, Justice Parker described herein.

150. Justice Parker 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.

151. As detailed above, Defendants are threatening to apply and enforce Section 159 of the Alabama Constitution against Justice Parker.

152. Absent declaratory and injunctive relief, Justice Parker will continue to face imminent and ongoing threats of 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 the Alabama Canons of Judicial Ethics 1, 2A and 3A(6) violate the First Amendment of the United States Constitution;
- b. Declare that Section 159 of the Alabama Constitution violates the Fourteenth Amendment of the United States Constitution
- c. Preliminary and permanently enjoin the Defendants from taking any enforcement action against Justice Parker based upon statements made during the "Focal Point" radio interview that occurred on October 6, 2015;

- d. 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;
- e. Award Plaintiff the costs of this action and reasonable attorney's fees; and
- f. 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: June 15, 2016

Respectfully Submitted,

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*Attorneys for Plaintiff Hon. Tom Parker,
Associate Justice of the Supreme Court of
Alabama*

VERIFICATION

I, Hon. Tom Parker, Associate 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:

June 14, 2016


HON. TOM PARKER

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: June 15, 2016

Phillip L. Jauregui
Attorneys for Plaintiff