

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

HON. TOM PARKER, Associate Justice	:	
of the Supreme Court of Alabama,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	CASE NO. 2:16-CV-442-WKW
v.	:	
	:	
JUDICIAL INQUIRY COMMISSION OF	:	
THE STATE OF ALABAMA, et al.	:	
	:	
Defendants.	:	

AGREED PERMANENT INJUNCTION AND JUDGMENT

On June 15, 2016, Plaintiff, Hon. Tom Parker, Associate Justice of the Supreme Court of Alabama (“Justice Parker”), filed this action against Defendants, The Judicial Inquiry Commission of the State of Alabama, including its individual members in their official capacities (“JIC”), charged by the Alabama Constitution with enforcing the Alabama Canons of Judicial Ethics as promulgated by the Alabama Supreme Court, and the Attorney General of the State of Alabama (“Attorney General”) (collectively, “Defendants”). Justice Parker is alleging, among other things, that Canons 1, 2A and 3A(6) of the Alabama Canons of Judicial Ethics are unconstitutional on their face and as applied.

On March 2, 2018, the Court granted in part a motion for preliminary injunction filed by Justice Parker, and enjoined Defendants from enforcing Canon 3A(6) to the extent that it proscribes public comment by a judge about a pending or impending proceeding in a court outside the State of Alabama, or public comment by a judge that cannot reasonably be expected to affect the outcome or impair the fairness of a proceeding in Alabama. (Dkt. 103) (“Preliminary Injunction”).

The Parties have now advised the Court that they wish to resolve all matters and claims in this action, based upon the remedies stipulated herein.

Accordingly, the parties hereby agree and the Court ORDERS as follows:

1. For the reasons fully set out in the Preliminary Injunction, Canon 3A(6) as presently constituted facially violates the First Amendment to the United States Constitution because it is not narrowly tailored to meet a compelling government interest, and is both overinclusive and substantially overbroad.

2. As this Court has found, “A judicial candidate’s discussion of *issues* is protected by the First Amendment” (dkt. 103, p. 26 (emphasis original)), and judges’ and candidates’ “discussion of an *issue* related to a proceeding, but not about the merits thereof, is protected by the First Amendment.” (*Id.* at 27 (emphasis in original)).

3. Accordingly, the Preliminary Injunction shall now be made permanent, as modified herein. Defendants are hereby PERMANENTLY ENJOINED from enforcing Canon 3A(6) to proscribe or punish any public comment by a judge unless the public comment can reasonably be expected to affect the outcome or impair the fairness of a proceeding pending or impending in any court. Public discussion by judges or judicial candidates of an issue of public importance cannot be proscribed or punished under Canon 3A(6) merely because that issue may happen to be the subject of a pending or impending proceeding in any court.

4. The First Amendment limitations imposed by the Court upon Canon 3A(6) apply with equal force to Canon 1 and Canon 2A. Accordingly, Defendants are hereby PERMANENTLY ENJOINED from enforcing Canon 1 or Canon 2A to proscribe or punish any public comment by a judge unless the public comment can reasonably be expected to affect the outcome or impair the fairness of a proceeding pending or impending in any court. Public

discussion by judges or judicial candidates of an issue of public importance cannot be proscribed or punished under Canon 1 or Canon 2A merely because that issue may happen to be the subject of a pending or impending proceeding in another court.

5. Defendants and the State of Alabama shall pay the sum of \$100,000.00 as and for reasonable attorney's fees and costs expended on Justice Parker's behalf in this action. Said payment shall be made by check or bank draft payable to "Liberty Counsel" and delivered to Justice Parker's counsel of record within 30 days of the entry of this Agreed Permanent Injunction and Judgment.

6. Justice Parker agrees to voluntarily dismiss with prejudice his as-applied challenges against Defendants, and they are hereby so dismissed.

7. Nothing herein shall be construed to limit in any way Justice Parker's right to seek relief for any prospective alleged violations of his constitutional rights which are alleged to take place after the entry of this Agreed Permanent Injunction and Judgment.

8. Nothing herein shall be construed to limit in any way Defendants' right to enforce the Alabama Canons of Judicial Ethics against any judge for any violation of the Alabama Canons of Judicial Ethics, so long as such enforcement is consistent with the terms of the permanent injunctive relief entered herein.

9. The parties are willing to compromise their respective rights to litigate this action to a permanent injunction and judgment on the merits, but only in reliance upon and to the extent the Court enters this Agreed Permanent Injunction and Judgment. If any portion of this Agreed Permanent Injunction and Judgment is not approved by the Court, or is subsequently vacated, abrogated or modified for any reason, the parties may insist upon litigating their claims on the merits to a permanent injunction and final judgment.

10. Any party may petition the Alabama Supreme Court to consider revision of the Alabama Canons of Judicial Ethics at issue in this lawsuit, or to promulgate a new canon or canons, in a manner not inconsistent with the minimum First Amendment protections afforded by this Permanent Injunction. This Permanent Injunction is not intended to preempt the field of the applicable Canons, but to provide a minimum constitutional safeguard.

11. The Court shall retain jurisdiction of this action to the extent necessary to enforce the terms of this Agreed Permanent Injunction and Judgment as between the parties herein, until the Alabama Supreme Court revises the Alabama Canons of Judicial Ethics at issue in this lawsuit.

12. The Clerk shall enter Final Judgment consistent with the terms of this Agreed Permanent Injunction and Judgment.

DONE and ORDERED this ___ day of _____, 2018.

Chief U.S. Judge W. Keith Watkins

APPROVED AS TO FORM:

For Justice Parker

/s/ Horatio G. Mihet

Mathew D. Staver (FL Bar 0701092)[†]

Horatio G. Mihet (FL Bar 0026581)[†]

Liberty Counsel

P.O. Box 540774

Orlando, FL 32854

(407) 875-1776 (Tel.)

(407) 875-0770 (Fax)

court@lc.org

hmihet@lc.org

[†]Admitted *pro hac vice*

Phillip L. Jauregi

Judicial Action Group

7013 Lake Run Drive

Birmingham, AL 35242

(202) 216-9309 (Tel.)

plj@judicialactiongroup.com

For Defendant Judicial Inquiry Commission

/s/ R. Ashby Pate

Samuel H. Franklin (FRA006)

sfranklin@lightfootlaw.com

R. Ashby Pate (PAT077)

apate@lightfootlaw.com

LIGHTFOOT, FRANKLIN, & WHITE, LLC

The Clark Building

400 N. 20th Street

Birmingham, AL 35203

(205) 581-0700 (Tel.)

For Defendant Attorney General Marshall

/s/ James W. Davis

Steven T. Marshall

Attorney General

James W. Davis (ASB-4063-I58J)

Deputy Attorney General

Laura E. Howell (ASB-0551-A41H)

Assistant Attorney General

STATE OF ALABAMA

OFFICE OF THE ATTORNEY GENERAL

501 Washington Avenue

Montgomery, AL 36130

(334) 242-7300 (Tel.)

(334) 353-8440 (Fax)

lhowell@ago.state.al.us

jimdavis@ago.state.al.us