

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

HON. TOM PARKER, Associate )  
Justice, Supreme Court of )  
Alabama, )

Plaintiff, )

v. )

CASE NO. 2:16-CV-442-WKW

JUDICIAL INQUIRY )  
COMMISSION OF THE STATE )  
OF ALABAMA, BILLY C. )  
BEDSOLE, in his official capacity )  
as Chairman of the Judicial Inquiry )  
Commission of the State of )  
Alabama, RANDALL L. COLE, )  
CRAIG S. PITTMAN, DAVID )  
THRASHER, RALPH D. )  
MALONE, KIM J. CHANEY, )  
DAVID A. KIMBERLY, and )  
MAIBETH J. PORTER, in their )  
official capacities as members of )  
the Judicial Inquiry Commission )  
of the State of Alabama, and )  
STEVEN T. MARSHALL, in his )  
official capacity as Attorney )  
General of the State of Alabama, )

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 alleges, 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 (“Preliminary Injunction”). (Doc. # 103.)

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

Accordingly, the parties have agreed, and it is the ORDER, JUDGMENT, and DECREE of the court, 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 the court has found, “[a] judicial candidate’s discussion of *issues* is protected by the First Amendment” (Doc. # 103, at 26), and judges’ and candidates’ “discussion of an *issue* related to a proceeding, but not about the merits thereof, is protected by the First Amendment” (Doc. # 103, at 26).

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 has agreed 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 have compromised their respective rights to litigate this action to a permanent injunction and judgment on the merits 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 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.

The Clerk of the Court is DIRECTED to enter this document on the civil docket as a final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DONE this 11th day of June, 2018.

/s/ W. Keith Watkins

CHIEF UNITED STATES DISTRICT JUDGE