

Case No. 1160002

IN THE SUPREME COURT OF ALABAMA

ROY S. MOORE,)
Chief Justice of the)
Alabama Supreme Court,)
)
Appellant,)
)
v.)
)
ALABAMA JUDICIAL INQUIRY)
COMMISSION,)
)
Appellee.)

MOTION OF CHIEF JUSTICE ROY MOORE
TO COUNTERMAND THE OCTOBER 11 LETTER
OF ACTING CHIEF JUSTICE LYN STUART
IN REGARD TO REMOVAL OF PERSONAL EFFECTS
FROM THE JUDICIAL BUILDING

Roy S. Moore, Chief Justice of the Alabama Supreme Court, hereby moves the Justices of the Alabama Supreme Court, who will comprise the Court that rules on this appeal, to review and countermand the October 11, 2016 letter of Acting Chief Justice Lyn Stuart that the Chief Justice remove his personal effects from his office in the Judicial Building "on or before Tuesday, October 18, 2016." See attached *Affidavit of Chief Justice Roy S. Moore*, ¶ 1 & Exhibit A.

BRIEF IN SUPPORT

Justice Stuart's letter, dated October 11, 2016, reads as follows:

Dear Chief Justice Moore,

Given the decision of the Court of Judiciary issued on Friday, September 30, 2016, please contact Marshal Willie James (334-229-0677) to arrange the removal of your personal effects from your office and to return your keys (both brass and card) to the Judicial Building on or before Tuesday, October 18, 2016. Thank you in advance for your cooperation.

Sincerely,

Lyn Stuart
Acting Chief Justice

Moore Affidavit, Exhibit A.

I. Justice Stuart has no authority to enforce the judgment of the Court of the Judiciary or to enlarge its scope.

Justice Stuart's letter of October 11 states: "Given the decision of the Court of Judiciary issued on Friday, September 30, 2016, please ... arrange the removal of your personal effects from your office." The letter, by its express terms, functions as an order to enforce the September 30 judgment of the Court of the Judiciary. That decision is currently on appeal to the Alabama Supreme Court. Any decisions as to the enforcement of that judgment are properly the province of the Alabama Supreme Court where jurisdiction over this case lies.

Any rulings to enforce, modify, or enlarge the judgment would properly arise from motion practice by the parties to the appeal, not by the unilateral action of the Acting Chief Justice. Justice Stuart is not a party to the appeal and has received no order either from the Court of the Judiciary or from the Alabama Supreme Court for the removal of the personal effects of the Chief Justice from his office. Her *ultra vires* action is an unlawful usurpation of the authority of the parties to the case and the judicial bodies entrusted with its resolution.

The Judicial Inquiry Commission ("JIC") is free to apply to the Court that is eventually qualified to hear this appeal for an order that the Chief Justice remove his furnishings from his office in the Judicial Building pending appeal. Though it is difficult to imagine that the JIC would be so petty minded as to seek such an order, such an interim remedy would properly fall within the province of the duly qualified Court that will decide this appeal.

II. Justice Stuart is disqualified from taking any action in this appeal.

Based on the facts stated in the Sealed Affidavit of Chief Justice Roy S. Moore that supports the pending motion for recusal, Justice Stuart is disqualified from taking part

in either the decision of this appeal or the choosing of replacement justices.¹ Her disqualification from acting on this appeal is a further reason why she has no authority to take the unilateral action in her letter of October 11. Any decision to interpret the Court of the Judiciary's judgment to require the immediate removal of the Chief Justice's effects pending appeal should rest with the Court that has jurisdiction to determine the validity of that judgment.

III. Justice Stuart's action is an illegal removal of the Chief Justice from office.

Removal of a judge from office requires a unanimous vote by the Court of the Judiciary. "With respect to removal from office, the Court shall convict only with the concurrence of all members sitting." Rule 16, Ala. R. Ct. Judiciary. In their opinion of September 30, the judges of the COJ confessed that the unanimity necessary for removal of Chief Justice Moore did not exist. *Final Judgment*, at p. 48.

Justice Stuart's action in evicting Chief Justice Moore and his personal effects from his office is a transparent

¹ Because Justice Stuart is disqualified by reason of bias from sitting on the Court that decides this case, she is also disqualified from playing any part in selecting replacement justices. See *Ex parte Jim Walter Homes, Inc.*, 776 So. 2d 76, 79-80 (Ala. 2000).

effectuation of the removal of the Chief Justice from office that the COJ was unable to accomplish lawfully. Accordingly, Justice Stuart's action is illegal because the COJ rules forbid removal in the absence of a unanimous vote.

IV. If Chief Justice Moore is even partially successful on appeal, he would have to suffer the needless disruption of removing his property from the Judicial Building, only to have to restore it again.

The personal effects of the Chief Justice in his office do not consist merely of a few personal papers and some books that might be tossed in a box and removed in a few minutes. He has decorated the Chief Justice's suite to reflect the dignity of his position, including historic artwork and statuary that required a team of movers to install. A massive grandfather clock stands outside the door to his private office. Large portraits of Lincoln and Washington adorn the walls. An impressive rendition of Peter Rothermel's 1851 painting of Patrick Henry's "Give Me Liberty" speech before the House of Burgesses fills a large wall space near the grandfather clock. Affidavit, ¶ 2.

Ornately framed copies of John Trumbull's "Declaration of Independence" and of Howard Chandler Christy's "Scene at the Signing of the Constitution" fill the walls in the Chief Justice's conference room. Removal and storage of the framed

artwork and other *objets d'art* from the office of the Chief Justice would be a significant task, one that is impractical to accomplish within the few days Justice Stuart has allotted.² Affidavit, ¶ 3. Her peremptory order, issued without the courtesy of any consultation with the Chief Justice, is a demeaning insult to him personally and to the office he occupies. Affidavit, ¶ 4.

If Chief Justice Moore is even partially successful on appeal, and if even a portion of the remainder-of-term "suspension" imposed by the COJ is ultimately set aside, Justice Stuart's hurried eviction of the Chief Justice's personal effects will be for naught, and a team of movers will again be required to move them into the Chief Justice's suite. There is no reason, let alone a compelling one, for a game of musical chairs on such a grand scale. Justice Stuart has apparently pre-determined the outcome of Chief Justice Moore's appeal, but the Chief Justice is still entitled to his day in this Court, before randomly selected replacement justices who have not yet similarly made up their minds.

² Chief Justice Moore received Justice Stuart's letter on Wednesday, October 12. Affidavit, ¶ 1.

V. Conclusion

For the above reasons, Chief Justice Moore requests the Court that will rule on this appeal to countermand Justice Stuart's letter that he must remove all his personal property from the office of Chief Justice by Tuesday, October 18. Leaving the status quo in place in regard to the furnishings in the office of Chief Justice provides no hindrance to anyone. Compelling the Chief Justice to remove his property pending appeal is a mean-spirited and oppressive action that serves no purpose except to gratuitously humiliate the Chief Justice. This action is akin to Justice Stuart's standing order that the Chief Justice may enter his office only if accompanied by a court marshal. These unwarranted actions by Justice Stuart indicate her prejudgment of this appeal and her distaste for the possibility that the Chief Justice may be restored to office for even a portion of his term.

This latest attempted humiliation is further evidence that Justice Stuart should play no part in deciding the pending appeal or selecting any needed replacement justices.

WHEREFORE, Chief Justice Moore requests the Court that will be formed to adjudicate this appeal to review and countermand Justice Stuart's letter to him of October 11,

2016, and to allow his office furnishings to remain in place pending decision of the appeal in this matter.

Respectfully Submitted,

/s Mathew D. Staver
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that I have this 14th day of October, 2016, served a copy of this *Motion of Chief Justice Roy Moore to Countermand the October 11 Letter of Acting Chief Justice Lyn Stuart in Regard to Removal of Personal Effects from the Judicial Building*, and brief in support thereof, on the Judicial Inquiry Commission and counsel below through electronic mail:

John L. Carroll, Lead Counsel
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Judicial Inquiry Commission of Alabama
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/s/ Horatio G. Mihet
Horatio G. Mihet
*Attorney for Appellant Chief
Justice Roy S. Moore*

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AFFIDAVIT OF CHIEF JUSTICE ROY S. MOORE

Roy S. Moore, being duly sworn, deposes and says:

1. On October 12, 2016, I received a letter dated October 11 from Acting Chief Justice Lyn Stuart that ordered me to remove my "personal effects" from the office of Chief Justice in the Judicial Building "on or before Tuesday, October 18, 2016." A true and correct copy of that letter is attached to this affidavit as Exhibit A.

2. My personal effects do not consist merely of a few papers and some books that might be tossed in a box and removed in a few minutes. I have decorated the Chief Justice's suite to reflect the dignity of the position,

including historic artwork and statuary that required a team of movers to install. A massive grandfather clock stands outside the door to my private office. Large portraits of Lincoln and Washington adorn the walls. An impressive rendition of Peter Rothermel's 1851 painting of Patrick Henry's "Give Me Liberty" speech before the House of Burgesses fills a great wall space near the grandfather clock.

3. Large ornately framed copies of John Trumbull's "Declaration of Independence" and of Howard Chandler Christy's "Scene at the Signing of the Constitution" fill the walls in my conference room. Removal and storage of the framed artwork and other *objets d'art* from my office suite in the Judicial Building would be a significant task, one that is totally impractical to accomplish within the few days Justice Stuart has allotted to it.

4. Justice Stuart did not extend the courtesy of consulting with me before sending her letter of October 11.

5. On the afternoon of Thursday, October 13, my entire office staff, except for one clerk and a secretary, was fired and ordered to clean out their offices, and turn in their access cards.


Roy S. Moore

Subscribed and sworn to before me
this 13 day of October, 2016.

Madison Grantham
NOTARY PUBLIC

My commission expires 6/7/20.



SUPREME COURT OF ALABAMA
JUDICIAL BUILDING
300 DEXTER AVENUE
MONTGOMERY, ALABAMA 36104-3741
(334) 229-0700

ACTING CHIEF JUSTICE
LYN STUART
ASSOCIATE
JUSTICES
MICHAEL F. BOLIN
TOM PARKER
GLENN MURDOCK
GREG SHAW
JAMES ALLEN MAIN
A. KELLI WISE
TOMMY ELIAS BRYAN

October 11, 2016

Chief Justice Roy S. Moore
P.O. Box 158
Gallant, Al 35972

Dear Chief Justice Moore,

Given the decision of the Court of Judiciary issued on Friday, September 30, 2016, please contact Marshal Willie James (334-229-0677) to arrange the removal of your personal effects from your office and to return your keys (both brass and card) to the Judicial Building on or before Tuesday, October 18, 2016. Thank you in advance for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Lyn Stuart".

Lyn Stuart
Acting Chief Justice

cc: Roy S. Moore c/o The Foundation for Moral Law

EXHIBIT A