

IN THE SUPREME COURT OF ALABAMA

In the Matter of Compliance with Writ of Injunction of the
United States District Court for the Middle District of
Alabama

Order No. 03-01

At a Special Conference of the Associate Justices of the Supreme Court of Alabama called for the purpose of considering the question whether to invoke Ala. Code 1975, § 12-5-20,¹ the following findings were made:

(1) On August 1, 2001, Chief Justice Roy S. Moore, without prior notice to the Court, installed and unveiled a monument in the rotunda of the Alabama Judicial Building. The Ten Commandments and quotations from history are inscribed on the monument.

¹Section 12-5-20 provides as follows:

"The justices of the Supreme Court shall have the power and authority to review, countermand, overrule, modify or amend any administrative decision by either the Chief Justice or the Administrative Director of Courts. A majority of all the justices shall constitute a quorum for such purpose. The concurrence of a majority of all the justices shall be sufficient to determine the question of whether and how such decision shall be so reviewed, countermanded, overruled, modified or amended."

(2) At the time this monument was installed by the Chief Justice, there existed some cases holding that the display of the Ten Commandments on public property was not constitutionally impermissible in certain circumstances.² Subsequent to the installation of the monument, some courts have upheld depictions of the Ten Commandments.³

(3) Actions were filed in the United States District Court for the Middle District of Alabama to have the monument removed from the rotunda of the State Judicial Building as a violation of the First Amendment to the Constitution of the United States. On November 18, 2002, the United States District Court for the Middle District of Alabama held that the monument violated the First Amendment to the Constitution

²See, e.g., Anderson v. Salt Lake City Corp., 475 F.2d 29 (10th Cir. 1973) (holding that Ten Commandments monument in prominent place near entrance to city-county courthouse did not violate U.S. Constitution), cert. denied, 414 U.S. 879 (1973), and State v. Freedom from Religion Found., Inc., 898 P.2d 1013 (Colo. 1995) (holding that Ten Commandments monument on the grounds of State Capitol did not violate U.S. Constitution), cert. denied, 516 U.S. 1111 (1996).

³See Freethought Soc'y of Greater Philadelphia v. Chester County, 334 F.3d 247 (3d Cir. 2003) (holding that county did not violate U.S. Constitution when it refused to remove plaque depicting Ten Commandments from courthouse facade), and King v. Richmond County, 331 F.3d 1271 (11th Cir. 2003) (holding that image representing Ten Commandments on court seal did not violate U.S. Constitution).

of the United States, Glassroth v. Moore, 229 F. Supp. 2d 1290 (M.D. Ala. 2002). On December 19, 2002, the United States District Court for the Middle District of Alabama entered a permanent injunction to remove the monument from the Alabama Judicial Building, Glassroth v. Moore, 242 F. Supp. 2d 1067 (M.D. Ala. 2002). On December 23, 2002, the United States District Court entered an order staying its injunction pending appeal, Glassroth v. Moore, 242 F. Supp. 2d 1068 (M.D. Ala. 2002).

(4) On July 1, 2003, the United States Court of Appeals for the Eleventh Circuit affirmed the judgment of the United States District Court for the Middle District of Alabama, Glassroth v. Moore, ____ F.3d ____ (11th Cir. 2003). The Chief Justice did not move for a stay pending filing of a petition to the United States Supreme Court for a writ of certiorari prior to the issuance of the mandate by the United States Court of Appeals for the Eleventh Circuit to the United States District Court for the Middle District of Alabama on July 30, 2003.

(5) On August 5, 2003, the United States District Court for the Middle District of Alabama entered its "FINAL JUDGMENT AND INJUNCTION" in which it ordered that its stay entered on

December 23, 2002, was dissolved and in which it enjoined "defendant Roy S. Moore, his officers, agents, servants, and employees, and those persons in active concert or participation with him who received actual notice of this injunction," from "failing to remove, by no later than August 20, 2003, the Ten Commandments monument at issue in this litigation from the non-private areas of the Alabama State Judicial Building." On August 6, 2003, the United States District Court ordered the United States Marshal to serve a copy of the final judgment and companion writ on each of the associate justices of this Court and on the clerk of this Court.

(6) The Chief Justice publicly stated on August 14, 2003, that he would not comply with the injunction of the United States District Court for the Middle District of Alabama.

(7) On August 14, 2003, the Chief Justice advised the associate justices that he would file a Petition for Writ of Mandamus and/or Prohibition in the Supreme Court of the United States on Friday, August 15, 2003, and that he would thereafter file a motion for a stay of the writ of injunction in the United States District Court for the Middle District of

Alabama. At a special conference on the afternoon of August 14, 2003, a majority of the associate justices agreed to defer consideration of further action pending the possibility of the entry of an order staying the writ of injunction.

(8) On Friday, August 15, 2003, the Chief Justice filed a Petition for Writ of Mandamus and/or Prohibition in the Supreme Court of the United States and filed a motion for a stay in the United States District Court for the Middle District of Alabama.

(9) On Monday, August 18, 2003, the United States District Court for the Middle District of Alabama denied the Chief Justice's motion for a stay. The Chief Justice immediately filed a Motion to Recall the Mandate and a Motion for Stay in the United States Court of Appeals for the Eleventh Circuit. On August 19, 2003, the United States Court of Appeals for the Eleventh Circuit declined to recall its mandate or to enter a stay.

(10) On August 20, 2003, the Chief Justice filed with the United States Supreme Court an Application to Recall and Stay the Mandate, which was denied.

(11) As of the time of the entry of this order, the Chief Justice has not complied with the injunction for the

removal of the monument from the non-private areas of the Judicial Building.

(12) Article VI of the Constitution of the United States provides that the Constitution is "the supreme Law of the Land ... and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." The justices of this Court are bound by solemn oath to follow the law, whether they agree or disagree with it, because: "All of the officers of the government, from the highest to the lowest are creatures of the law, and are bound to obey it." United States v. Lee, 106 U.S. 196, 220 (1882).

(13) The refusal of officers of this Court to obey a binding order of a federal court of competent jurisdiction would impair the authority and ability of all of the courts of this State to enforce their judgments.

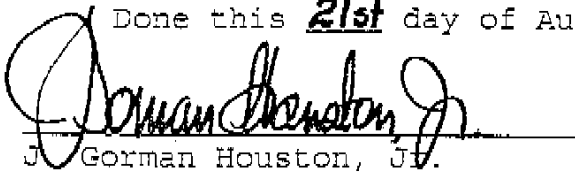
(14) The "FINAL JUDGMENT AND INJUNCTION" of the United States District Court for the Middle District of Alabama entered on August 5, 2003, proposes substantial, escalating, daily fines against the State of Alabama as a penalty for failure to comply with its writ of injunction.

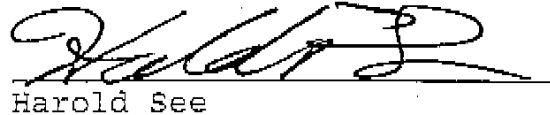
Based on the foregoing findings, it is

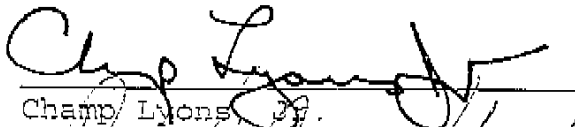
ORDERED that, pursuant to the authority vested in this Court by § 6.11 of Amendment 328 to the Constitution of Alabama of 1901, and by Ala. Code 1975, § 12-5-20, the administrative decision of the Chief Justice to disregard the writ of injunction of the United States District Court for the Middle District of Alabama be, and the same hereby is, COUNTERMANDED and, it is

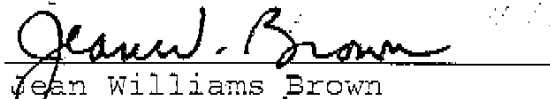
FURTHER ORDERED that the Building Manager of the Alabama Judicial Building be, and the same hereby is, DIRECTED to take all steps necessary to comply with the injunction as soon as practicable.

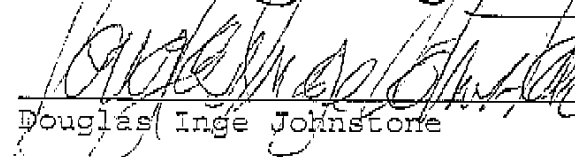
Done this 21st day of August, 2003.

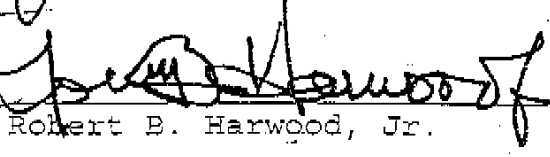

J. Gorman Houston, Jr.


Harold See

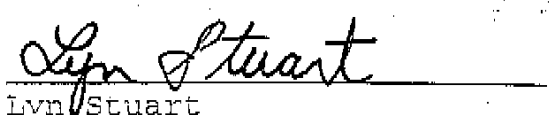

Champ Lyons, Jr.



Jean Williams Brown


Douglas Inge Johnstone


Robert B. Harwood, Jr.


Thomas A. Woodall


Lyn Stuart

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears(s) of record in said Court.
Witness my hand this 21st day of August, 2003

Clerk, Supreme Court of Alabama