

IN THE ALABAMA COURT OF THE JUDICIARY

IN THE MATTER OF:

JAMES T. PATTERSON  
CIRCUIT JUDGE,  
MOBILE COUNTY, AL

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CASE NO. 62

**FILED**

JUN 15 2022

ALABAMA COURT OF THE JUDICIARY  
Nathan P. Wilson  
Secretary

COMPLAINT

The Alabama Judicial Inquiry Commission (hereinafter “the Commission”) files this Complaint against Circuit Judge James T. Patterson (hereinafter “Judge Patterson”), Circuit Judge of the Thirteenth Judicial Circuit, Mobile County, Alabama. The Commission alleges and charges as follows:

**I. INTRODUCTION**

1. Judge Patterson took office as Circuit Court Judge of the Thirteenth Judicial Circuit, Mobile County, Alabama in January 2017, and has continued to serve in this capacity since then, presiding over criminal cases and civil cases, excluding all domestic matters.

2. During dockets, while on the bench, in orders, and/or before attorneys, litigants, jurors, and court staff, Judge Patterson has demonstrated inappropriate demeanor and temperament by making denigrating comments about Alabama Governor Kay Ivey and the

presiding judge of the circuit; using cuss words and/or profanity;<sup>1</sup> and making otherwise highly inappropriate comments.<sup>2</sup>

3. Judge Patterson abused his judicial authority by declaring acts and statutes regarding court fees unconstitutional and issuing an order redirecting court funds to address budgetary concerns. While doing so, Judge Patterson denied the full right to be heard belonging to every person legally interested in a proceeding, including the Attorney General.

4. This Complaint charges Judge Patterson with violations of the Alabama Canons of Judicial Ethics (hereinafter “the Canons”) for exhibiting inappropriate demeanor and temperament and abusing his judicial authority, which resulted in the denial of the full right to be heard belonging to every person legally interested in a proceeding. Judge Patterson’s conduct has degraded the public’s confidence in the integrity,

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<sup>1</sup> See In re Castellano, 889 P.2d 175 (N.M. 1995) (judge removed for misconduct including using profanity).

<sup>2</sup> Judicial disciplinary bodies “sanction a judge not only for major incidents, but also for an accumulation of minor, seemingly innocuous incidents that, when considered together, demonstrate a pattern of conduct unbecoming a member of the judiciary.” Charles Gardner Geyh, James J. Alfini & James Sample, Judicial Conduct and Ethics § 3.02 [1] (6th ed. 2020).

dignity, and decorum of the judiciary and brought the judicial office into disrepute.

## **II. FACTS**

### **A. INAPPROPRIATE DEMEANOR AND TEMPERAMENT**

5. Before, during, and after official court proceedings and when issuing court orders, Judge Patterson demonstrated inappropriate demeanor and temperament. Judge Patterson subjected attorneys, litigants, jurors, and court staff to this behavior. Examples of said behavior are as follows:

6. During the beginning of the COVID-19 pandemic, on April 10, 2020, Judge Patterson issued an order in the non-confidential civil case of Ely v. Wiggins, Case No. CV-2018-902515, Doc. 66, concerning a status report for a Zoom hearing, and included the following:

Based on the Governor's stay at home order of 4/3/2020--which came out several days after I had set the zoom hearing on 3/31/2020, this court was of the opinion that it better not even hold virtual hearings because that may require someone (staff person/IT person/lawyer who doesn't have access to the technology?) to leave home and **violate Gov. MeMaw's order.**

Ex. A. (Emphasis added.)

7. Soon after its issuance, Judge Patterson's order received great attention by judges of the State as the order went "viral."

8. Judges of the State were concerned about the potential impact that Judge Patterson’s order would have on upcoming budget discussions for the next fiscal year.

9. On April 22, 2020, a then-fellow judge informed Judge Patterson that the order had gone viral.

10. That day, Judge Patterson sent a letter of apology to the Governor, copying the Chief Justice of the Alabama Supreme Court and the presidents of the Circuit and District Judges Associations, wherein Judge Patterson admitted that the “idiotic comment in that order was mine alone, and was **a poor attempt at humor** in the midst of this Covid-19 mess.”<sup>3</sup> Ex. B. (Emphasis added.)

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<sup>3</sup> See generally Cynthia Gray, Weekly tips for Ethics Awareness Month, JUDICIAL ETHICS AND DISCIPLINE, Mar. 7, 2022, <https://ncsejudicialethicsblog.org/> (providing as a weekly tip for National Judicial Ethics Awareness examples concerning judicial humor that resulted in discipline wherein the judge provided the excuse that the judge was “just joking”); see In re Moore, 626 N.W.2d 374 (Mich. 2001) (judge for no apparent reason asked a potential juror when she had last “smoked a joint or something”); Inquiry Concerning Velasquez (Cal. Comm’n on Jud. Performance 2007) (judge suggested several times as a “joke,” that a person appearing before him was about to be remanded to custody); In re Caplicki (N.Y. State Comm’n on Jud. Conduct 2007) (available at <https://cjc.ny.gov/Determinations/C/Caplicki.Edmund.V.Jr.2007.09.26.DET.pdf>) (judge repeatedly joked about a defendant’s comments about his female attorney’s physical appearance); Public

11. Besides the order that went viral, Judge Patterson has referred to Governor Kay Ivey as “Governor McMaw” on multiple occasions to attorneys and court staff, even on the bench, and has also often referred to the State’s prison system as “Governor McMaw’s prison system.”

12. Judge Patterson’s former court reporter felt that referring to the Governor in such a manner was not a good reflection on the judicial system. Further, the former court reporter would see jurors and other people in the courtroom shaking their heads at Judge Patterson’s behavior.<sup>4</sup>

13. Since November of 2020, Judge Patterson has made joking remarks to attorneys on more than one occasion about him not being able to call the Governor “Governor McMaw” anymore.

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Reprimand of Judge Gerald Webb (Tenn. Bd. of Jud. Conduct 2021) (available at [https://www.tncourts.gov/sites/default/files/docs/webb\\_public\\_reprimand\\_2021\\_11\\_05.pdf](https://www.tncourts.gov/sites/default/files/docs/webb_public_reprimand_2021_11_05.pdf)) (judge posted “legal tips of the day” on Facebook “designed to get a laugh and to make people think about life choices”).

<sup>4</sup> In a judicial disciplinary proceeding, the effect of judicial misconduct on others is not an essential element, although it can be a relevant factor in assessing the gravity of misconduct and the appropriate sanction.

14. Judge Patterson also made denigrating comments about the circuit's presiding judge.

15. In front of attorneys and staff, Judge Patterson referred to the circuit's presiding judge as a "G\*d d\*mn snowflake," and then later again as a "snowflake."

16. While on the bench, during proceedings, and in the courtroom, Judge Patterson used cuss words and/or profanity before attorneys, litigants, jurors, and court staff.

17. In court, Judge Patterson has used the following words: "f\*ck," "sh\*t," "bast\*rd," "a\*s," and "a\*shole."

18. According to his former court reporter, Judge Patterson used the word "a\*s" all the time in court as if it was his favorite word.

19. After the conclusion of court proceedings, but still in the courtroom, Judge Patterson has used cuss words and/or profanity, specifically "sh\*t" and "f\*cking," in conversation with the assistant district attorneys and public defenders.

20. These cuss words were not directed towards the attorneys, but used by Judge Patterson in normal conversation, e.g., "Oh sh\*t" and "Oh, I forgot his f\*cking name."

21. While joking with an attorney, Judge Patterson used the abbreviated form “M f-er,” referring to the words “mother f\*cker.”

22. Judge Patterson also spelled out cuss words and/or profanity in court when referring to an attorney’s argument by saying, “I think that argument is b-u-l-l-s-h-i-t.”

23. Judge Patterson constantly referred to the circuit’s financial state as being “dead a\*s broke” and “broke a\*s,” even in orders. Ex. C.

24. On multiple occasions, Judge Patterson has made highly inappropriate comments to or in front of attorneys, litigants, jurors, and court staff, while on the bench and/or during official court proceedings. Judge Patterson has also acted inappropriately on the bench. Examples of said comments and behavior are as follows:

25. When addressing a jury pool on August 19, 2019, Judge Patterson, while using an Asian accent, asked the jury pool if everyone spoke “Engrish.” The jury pool included an Asian American.

26. Judge Patterson immediately apologized to the jury pool for this comment, later characterizing it as a “stupid, stupid joke.”<sup>5</sup>

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<sup>5</sup> The Utah Supreme Court stated the following in response to a judge’s argument that the judge had “intended to be funny, not rude”

27. On August 20, 2019, Judge Patterson issued the following apology on his Facebook pages:

Yesterday, while qualifying the jury pool, I made a joke in very poor taste about whether everyone could speak English. I immediately recognized and apologized for my blunder, and I do so again.

However, I also spoke about how underfunded our court system is, and I did so in my usual “direct” way.

As for saying the court system was “dead ass broke,” I certainly did. I have led the battle to restore court funding in this circuit and in the state and I don’t apologize for telling the jurors how broke we are and why it was so important that these jurors were there in a special jury setting where we had to scrape up the money to even get them to the courthouse.

In fact, one of the Legislators who helped kill our funding bill (HB 598) this year was in the jury pool, and a lot of what I said about the court system, the mental health system, and the prison system being broke was for his benefit.

The liberals call everyone they disagree with a racist nowadays. I am nothing of the kind.

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when the judge made “seemingly shirty and politically charged comments to a defendant in his courtroom”:

It is an immutable and universal rule that judges are not as funny as they think they are. If someone laughs at a judge’s joke, there is a decent chance that the laughter was dictated by the courtroom’s power dynamic and not by a genuine belief that the joke was funny.

In re Kwan, 443 P.3d 1228, 1231 n.1 (Utah 2019).



28. When speaking with attorneys, Judge Patterson has referred to himself as “Prison Patterson.” His former court reporter and previously assigned assistant district attorney have heard Judge Patterson referring to himself as “Judge Hard-a\*s.”

29. In probation revocation hearings, Judge Patterson has stated to defendants, “You don’t want to be somebody’s girlfriend when you go up the road,” referring to the penitentiary.<sup>6</sup>

30. Although Judge Patterson may have been trying to explain the gravity of the outcome, an assistant district attorney present, who heard the girlfriend comment, felt it was inappropriate and further demeaning to the defendant.

31. His former court reporter saw on at least one occasion what appeared to be a defendant’s mother cry after Judge Patterson made inappropriate comments to the defendant.

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<sup>6</sup> See Inquiry Concerning Lemonidis, 283 So. 3d 799 (Fla. 2019) (in reprimanding a judge for comments made to a convicted murderer at sentencing holding that said comments compromised judicial integrity and further it “was essential that judges refrain from degrad[ing] the solemnity of the proceedings by casting insults and abuse upon litigants”).

32. At the sentencing hearing in Morrow v. State, Judge Patterson told one of the victims testifying that, “And you know and I know that the State is broke. And these are not going to be considered violent. And Memaw’s prison system is going to let him out at some point.” Morrow v. State, 323 So. 3d 689, 692 (Ala. Crim. App. 2020). Judge Patterson went on to tell the victim, “And he’s going to be somebody’s girlfriend up there for a while.” Id. at 693.

33. When covering a docket for the presiding judge, Judge Patterson said more than once to defendants that they would be “butt raped in the penitentiary.”

34. The presiding judge’s court reporter and judicial assistant were offended and requested that the presiding judge not ask Judge Patterson to cover another docket for the presiding judge again.

35. As to inappropriate actions, in discussing jury instructions in State v. Matthews, Case No. CC-2016-3393, and in response to arguments by defense attorney Chase Dearman, Judge Patterson started to pull down the zipper on his robe, as if Judge Patterson was going to fight Attorney Dearman.

36. An assistant district attorney formerly assigned to Judge Patterson for more than two years felt that Judge Patterson's overall behavior did not reflect well upon the court system.

## **B. ABUSE OF AUTHORITY**

37. In 2018, the Thirteenth Judicial Circuit was struggling financially and seeking supplemental funds. Judge Patterson joined in this effort on a variety of fronts.

38. Again, Judge Patterson constantly stated in orders and in the media that the circuit was "dead a\*s broke."

39. Judge Patterson had been considering filing a lawsuit against the circuit court clerk in an attempt to enjoin the clerk from sending fees collected locally to the State until the circuit was adequately funded.

40. Rather than filing his own lawsuit, Judge Patterson abused his judicial authority by using a criminal case before him to rule on the issues of his proposed lawsuit.

41. On August 27, 2018, defendant Mandy Brady did not show up for trial before Judge Patterson, as Ms. Brady had mistakenly been released from custody.

42. At 9:40 a.m., after Ms. Brady did not show, Judge Patterson issued a show-cause order in the criminal case to the circuit court clerk and the jail warden to show why Ms. Brady was released from custody.

In his order, Judge Patterson said:

Despite the fact that I revoked her bond and despite that she was already in custody, somehow she is not here today for her jury trial. As we all know, the 13th Judicial Circuit is in an austere funding environment at present. We literally had to beg for money to keep the Circuit afloat recently to pay clerks in the Circuit Clerk's office, and to pay our law clerks working for the various judges. The Mobile County Commission graciously gave us \$400,000 several months back to cover these shortfalls, but that was a one time deal. The Circuit Clerk's office is way undermanned, and more funding is lost on September 30, 2018. Given this, undersigned is doing his best to use the resources we do have to facilitate the ends of justice as it costs the State of Alabama judicial system approximately \$4,000 per day for a 300 person jury venire to appear at the courthouse for just one day.

Thus, when this court ensures that bond is revoked, and when a defendant is already in custody when her bond is revoked, I am wondering why and how she is not here today--and again, we are wasting valuable resources when jurors are here ready to go and the accused is not.

State v. Brady, CC-2018-000834, Doc. 32.

43. At the show-cause hearing on September 12, 2018, Judge Patterson questioned the circuit clerk and the jail warden and admitted his own exhibits including emails from Judge Patterson. The circuit clerk

and jail warden were the only individuals present for the show-cause hearing.

44. On September 24, 2018, Judge Patterson issued an injunction in Ms. Brady's criminal case declaring certain Alabama statutes unconstitutional as applied to the citizens of Mobile County. Judge Patterson further ordered the circuit court clerk to withhold ten percent of court fees and costs collected until the State adequately and reasonably funded the Mobile circuit clerk's office. The order stated:

**Declaration that Alabama Acts 1992-227, 2004-636, 2010-438, 2012-535, 2013-193, Ala. Code § 12-19-72, Ala. Code § 32-5A-191, and any other Alabama act or statute that requires the Mobile County Circuit Clerk to remit costs collected in Mobile County—from litigation taking place within Mobile County—to the state general fund is unconstitutional *as applied*.**

Ex. D. (Emphasis in original.)

45. In this September 24, 2018 order, Judge Patterson also specifically found the following:

- a. The office of the circuit court clerk was not reasonably or adequately funded.
- b. The constitutional requirement of reasonable and adequate financing for the court system encompasses various

administrative costs necessary to deliver constitutionally mandated judicial services.

- c. Court costs and fees collected from litigation in Mobile County generated more than seven million dollars in revenue for the State.
- d. The circuit clerk “is in imminent danger of not fulfilling her constitutional and statutory duties to support” the circuit and district courts in the Thirteenth Judicial Circuit.
- e. Because the circuit clerk’s office is not reasonably and adequately funded, the constitutional rights of all litigants in the Thirteenth Judicial Circuit are in jeopardy.
- f. Because the circuit court clerk’s office is not reasonably and adequately funded, an individual who is a danger to the citizens of Mobile County was inadvertently released from jail.
- g. “Any state statute or act that charges litigants in Mobile County Alabama any fee involving litigation, which then takes funds away from this county leaving the Clerk and her

staff underfunded, thereby causing the inadvertent release of [a defendant], is unconstitutional as applied.”

Id.

46. When issuing the injunction in Ms. Brady’s criminal case and declaring certain Alabama acts and statutes unconstitutional as applied to the citizens of Mobile County, Judge Patterson failed to give notice to the Office of the Alabama Attorney General that the constitutionality of these acts and statutes would be an issue at the show-cause hearing as required by Ala. Code § 6-6-227 (1975).

47. On September 27, 2018, three days after Judge Patterson’s injunction and declaration of the unconstitutionality of Alabama acts and statutes, Ms. Brady pleaded guilty.

48. However, Ms. Brady’s conviction was not final because of the introduction of issues totally unrelated to her case.

49. Upon receiving notice of Judge Patterson’s order, the Attorney General intervened in Ms. Brady’s case and filed a petition for writ of

mandamus and a motion to stay Judge Patterson's order. The Supreme Court granted his motion to stay Judge Patterson's order on Oct. 5, 2018.<sup>7</sup>

50. On May 31, 2019, the Supreme Court granted the Attorney General's petition for a writ of mandamus. In that opinion, the Court made the following observations:

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<sup>7</sup> The Attorney General, in the first motion to stay, stated:

The only case before this Court was a criminal prosecution. No party challenged the constitutionality of court fees or the distribution thereof, and no notice was provided this Court would consider such issues. As a result, the State had no notice of the issue and this Court did not have the benefit of argument or briefing on these important issues. As the Alabama Supreme Court held in Chapman v. Gooden, 974 So. 2d 972 (Ala. 2007), it violates due process for a court to take up issues that are not presented in the case before it, and a court that does so exceeds its authority by issuing an improper advisory opinion. This Court also lacked jurisdiction to declare the statutes unconstitutional because there was no party before it with standing to challenge the statutes. See Town of Cedar Bluff v. Citizens Caring for Children, 904 So. 2d 1253, 1256 (Ala. 2004). Moreover, this Court essentially converted this action to one *against* the State, in violation of the State's sovereign immunity. See Ala. Const. (1901) art. I, § 14; Ex parte Town of Lowndesboro, 950 So. 2d 1203, 1206 (Ala. 2006) (collecting cases and stating that "courts of this State have generally held that an action may be barred by § 14 if it seeks to recover . . . funds from the State treasury.").

Brady, Case No. CC-2018-000834, Doc. 51 (emphasis in original).



Given that no party invoked the circuit court’s jurisdiction to enter a declaratory judgment, there simply was no case, i.e., no declaratory-judgment action, pending before the circuit court that gave it authority to enter such a declaration of rights. Thus, although a circuit court generally has subject-matter jurisdiction to enter a declaratory judgment under the Declaratory Judgment Act when one is sought by a litigant, a circuit court has no authority to do so when no party has invoked its jurisdiction for that purpose.

. . . . This Court has long held that “ ‘[t]here must be a bona fide existing controversy of a justiciable character to confer upon the court jurisdiction to grant declaratory relief under the declaratory judgment statutes.’ ” “ ‘ “The declaratory judgment statutes do not empower courts to decide moot questions, abstract propositions or to give advisory opinions, however convenient it might be to have the questions decided for the government of future cases.” ’ ”

. . . .

. . . . By finding unconstitutional any act or statute that requires the circuit clerk to remit any part of court costs or fees collected from litigation in Mobile County to the State’s General Fund, the circuit court went far beyond its authority to conduct a contempt proceeding.

State v. Brady, 291 So. 3d 855, 861–63 (Ala. 2019) (emphasis added by Court; citations omitted).

51. Chief Justice Parker, in a special concurrence, observed:

I strongly disagree with the overreaching actions of the circuit court, and I write separately to emphasize that the circuit court’s actions directly contravene the judiciary’s role in securing adequate funding of the Unified Judicial System of the State of Alabama, including the 13th Judicial Circuit.

.....

.... The constitutional mandate for adequate and reasonable funding of the judiciary does not provide authority for a circuit judge (or any other member of the judiciary) to sua sponte reach beyond the case or controversy before the court to unilaterally fashion remedies no party has requested. As this Court recognized in Folsom: “[E]ven as the Judiciary is one of the three separate branches of government, it is also a part of government, and as a part of government, the Judiciary must cooperate in every way possible with the Legislature as it performs its difficult task of allocating limited resources.” 631 So. 2d at 900. As judges, we are bound by the law even as we enforce it.

Id. at 863, 865.

52. Justice Bolin, in a special concurrence, stated:

First, this case began as a criminal prosecution of Mandy Nicole Brady, who was accused of trafficking in methamphetamine, a violation of § 13A-12-231(11)(a), Ala. Code 1975, but was soon contorted into a civil proceeding -- complete with an injunction against the circuit clerk and presiding judge of the Mobile Circuit Court and a constitutional challenge to statutes imposing court fees. Second, the circuit-court judge, in addressing an issue that was extant to the criminal proceeding before it, unilaterally created an adversarial civil proceeding, without paying a filing fee, essentially as an unnamed plaintiff, while simultaneously acting as the judge in the case. Third, the circuit-court judge usurped legislative power by determining how state moneys are to be appropriated and spent, without a proper case before him. Fourth, the circuit-court judge declared a state statute unconstitutional without notifying the attorney general that the constitutionality of the statute was being questioned. As far as the State knew, this was a

criminal prosecution, and the circuit court judge was inquiring as to why a prisoner had inadvertently been set free after her bail had been revoked. The State did not have a scintilla of notice that court-fee statutes would be addressed in this case. Fifth, the circuit-court judge converted the criminal action brought by the State into an action proceeding effectively against the State.

In constitutional terms, the circuit-court judge's actions violated due process and fair play, because no one or no entity had filed a complaint challenging the court-fee statutes the circuit-court judge, on his own motion, ruled to be unconstitutional. . . . The circuit court judge's actions went both beyond his authority and beyond the pale, violating the separation-of-powers doctrine, when the circuit court effectively amended the state court fee statutes without a proper case before it, thereby effectively assuming legislative powers of enactment and appropriation. . . . The circuit-court judge ignored the sovereign immunity of the State by addressing constitutional questions that were not part of the criminal case before him and entering an order directly affecting moneys in the state treasury. . . .

As the State noted in its petition for the writ of mandamus, many, if not all[,] state agencies and departments wish they could receive more funding from the legislature, each having the proper motive of better serving the State's citizenry. Nevertheless, the circuit-court judge's actions in seeking to address additional funding for the circuit in which he sits, in a judicially inappropriate manner, were an insult to the numerous circuit judges who follow the law, as well as to the citizens of the State of Alabama who expect, and deserve, more from its judiciary.

Id. at 865–66 (emphasis in original).

53. The then-presiding judge, who is now retired, did not discuss the Alabama Supreme Court’s ruling in Brady with Judge Patterson, as he felt the Court made it “crystal clear” that Judge Patterson’s actions were unacceptable and unorthodox.

### **III. CHARGES**

#### **A. CHARGE 1 - INAPPROPRIATE DEMEANOR AND TEMPERAMENT**

54. By exhibiting inappropriate demeanor and temperament as alleged in Paragraphs 5 through 36, separately and severally, Judge Patterson violated the following provisions of the Alabama Canons of Judicial Ethics by making denigrating comments about the Governor of the State and the presiding judge of the circuit, using cuss words and/or profanity, and making otherwise highly inappropriate comments:

Canon 1            A judge should uphold the integrity and independence of the judiciary.

A judge should participate in . . . maintaining . . . and should himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

- Canon 2A<sup>8</sup> A judge . . . should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- Canon 2B A judge should at all times maintain the decorum and temperance befitting the office and should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.
- Canon 3A(2) A judge should maintain order and decorum in proceedings before him.
- Canon 3A(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity . . . .<sup>9</sup>

**B. CHARGE 2 - ABUSE OF JUDICIAL AUTHORITY**

55. By abusing his judicial authority as alleged in Paragraphs 37 through 53, separately and severally, Judge Patterson violated the

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<sup>8</sup> This Court may not view Canon 2 as a stand-alone canon. Nevertheless, the general heading of Canon 2, directing judges to “avoid impropriety and the appearance of impropriety” permeates the subparts of Canon 2 and, indeed, all of the canons. Thus, this Court should consider the alleged violations of Canons 2A and 2B in light of the requirement that judges “must avoid all impropriety and appearance of impropriety.” Commentary to Canon 2.

<sup>9</sup> Canon 3A(3) “emphasizes a judge’s unique role as exemplar and guardian of the dignity of the court.” Charles Gardner Geyh, James J. Alfani & James Sample, Judicial Conduct and Ethics § 3.02 [1] (6th ed. 2020).

following provisions of the Alabama Canons of Judicial Ethics by declaring acts and statutes regarding court fees unconstitutional and issuing an order redirecting court funds to address budgetary concerns, thereby denying the full right to be heard belonging to every person legally interested in a proceeding:

Canon 1           A judge should uphold the integrity and independence of the judiciary.

A judge should participate in . . . maintaining . . . and should himself observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

Canon 2A           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.

Canon 2B           A judge should at all times maintain the decorum and temperance befitting the office and should avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.

Canon 3A(1)       A judge should be faithful to the law and maintain professional competence in it.

Canon 3A(4)       A judge should accord to every person who is legally interested in a proceeding, full right to be heard according to law.

Done this 15th day of June, 2022.

THE JUDICIAL INQUIRY COMMISSION



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William C. Thompson  
Acting Chair

BY ORDER OF THE COMMISSION



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Elizabeth C. Bern



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John A. Selden



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CIRCUIT COURT OF  
MOBILE COUNTY, ALABAMA  
JOJO SCHWARZAUER, CLERK

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

ELY DORIS,	)	
ELY TINA,	)	
Plaintiffs,	)	
	)	
V.	)	Case No.: CV-2018-902515.00
	)	
WIGGINS WILLIE IV,	)	
GEICO CASUALTY COMPANY,	)	
Defendants.	)	

ORDER

Thanks for the status report regarding the zoom hearing [Doc. 63]. Here is what happened:

Based on the Governor's stay at home order of 4/3/2020--which came out several days after I had set the zoom hearing on 3/31/2020, this court was of the opinion that it better not even hold virtual hearings because that may require someone (staff person/IT person/lawyer who doesn't have access to the technology?) to leave home and violate Gov. McMaw's order.

Therefore, I cancelled all zoom hearings I had set (I had set about 7 of them), and sent apparently everyone but you guys and order so stating.

Since this was a motion to opt out, and because we have no trial date yet, I simply granted that motion back on 3/31 so there was never any need for the hearing. I was learning how to use the system at the time, and goofed this one up.

Sorry for the confusion, and sorry I did not get you the order saying the hearing was cnx'd. (I am not the best civil clerk I ever had).

DONE this 10<sup>th</sup> day of April, 2020.

/s/ JAMES T PATTERSON  
CIRCUIT JUDGE





James T. Patterson  
Circuit Judge, 13<sup>th</sup> Judicial Circuit, Alabama

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205 Government Street, Suite 6300, Mobile, Alabama 36644

April 22, 2020

Hon. Kay Ivey, Governor  
600 Dexter Ave.  
Montgomery, AL 36130

Dear Governor Ivey:

I received a call from a judge friend asking me about an order I entered on April 10, 2020 in an auto accident case where I canceled a "Zoom" virtual hearing. In that order, I stated:

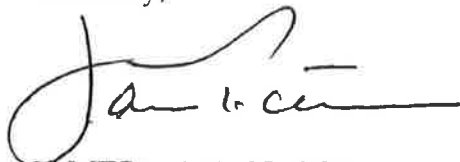
Based on the Governor's stay at home order of 4/3/2020--which came out several days after I had set the zoom hearing on 3/31/2020, this court was of the opinion that it better not even hold virtual hearings because that may require someone (staff person/IT person/lawyer who doesn't have access to the technology?) to leave home and violate Gov. McMaw's order."

I had no earthly idea that my order would go anywhere except to the lawyers in that case. However, I have since learned that it somehow went viral. I also learned today that my idiotic order may have damaged the relationship and goodwill Chief Justice Parker and the Circuit and District Judges Association were building with the Executive Branch of State Government.

Please understand. I have never heard any colleague refer to you in anything but the highest regard. I hold you in high regard as well. The idiotic comment in that order was mine alone, and was a poor attempt at humor in the midst of this Covid-19 mess.

Obviously, referring to you in that manner gave offense. If I could go back in time and erase this, I would. Since I cannot, I offer you, Justice Parker, and everyone else I offended my sincere and humble apology.

Sincerely,



JAMES T. PATTERSON

JTP/jtp





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 2/12/2019 2:33 PM  
 02-CV-2017-902545.00  
 CIRCUIT COURT OF  
 MOBILE COUNTY, ALABAMA  
 JOJO SCHWARZAUER, CLERK

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

WILLIAMS JOSEPH,  
 Plaintiff,

V.

SAFEWAY INSURANCE COMPANY,  
 Defendant.

)  
 )  
 )  
 ) Case No.: CV-2017-902545.00  
 )  
 )

ORDER CONTINUING

Notwithstanding that I set this case for trial only after a motion to set and certificate of readiness was filed 9/25/18 [see Doc. 25], and despite all the time since then--but because it is unopposed, the un-objected to MOTION TO CONTINUE filed by SAFEWAY INSURANCE COMPANY is hereby GRANTED. Your most precious 2/25/19 jury trial setting is now VACATED.

However, because the 13th Circuit is so dead-ass broke that jury terms are fewer and farther between, you go to the back of the line.

*Counsel are therefore directed to file another motion to set and certificate of readiness when you have done what discovery needs to be done.*

Until then, I will set a status one year from now, so the case doesn't fall completely off the court's radar. Next status: 2/7/2020 at 0830 in CR 6300 if the landlord hasn't repossessed the courthouse by then.

"Not only is the Legislature required to make adequate and reasonable appropriations for the entire judicial system under § 6.10; **all three branches are charged with a constitutional duty to ensure adequate and reasonable financing for the Judiciary.**" Folsom v. Wynn, 631 So. 2d 890, 900 (Ala. 1993) (emphasis added).

DONE this 12<sup>th</sup> day of February, 2019.

/s/ JAMES T PATTERSON  
 \_\_\_\_\_  
 CIRCUIT JUDGE





ELECTRONICALLY FILED  
12/18/2018 9:12 AM  
02-CV-2016-901990.00  
CIRCUIT COURT OF  
MOBILE COUNTY, ALABAMA  
JOJO SCHWARZAUER, CLERK

**IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA**

BURT MICHAEL,	)	
Plaintiff,	)	
	)	
V.	)	Case No.: CV-2016-901990.00
	)	
BAKER KARON ELAINE,	)	
PROGRESSIVE	)	SPECIALTY
INSURANCE COMPANY,	)	
Defendants.	)	

**ORDER CONTINUING**

Plaintiff's motion to continue the January 14, 2019 trial setting is reluctantly GRANTED. (I would have expected the carrier to step right in and try the case as scheduled if the elect to front per Lambert. However, its your case.) The trial setting 1/14/19 is VACATED.

Please don't expect a quick reset since jury terms are fewer and farther between in 2019 because the 13th Circuit is so dead-ass broke. Case set for status 1/25/19 so I can see where we are. *If filed before 4 pm on the Thursday before*, the Court will accept a written joint status report filed in the record in lieu of an appearance.

**DONE this 18<sup>th</sup> day of December, 2018.**

**/s/ JAMES T. PATTERSON**  
**CIRCUIT JUDGE**



ELECTRONICALLY FILED  
9/24/2018 2:05 PM  
02-CC-2018-000834.00  
CIRCUIT COURT OF  
MOBILE COUNTY, ALABAMA  
JOJO SCHWARZAUER, CLERK

**IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA**

STATE OF ALABAMA	)	
	)	
V.	)	Case No.: CC-2018-000834.00
	)	
BRADY MANDY NICOLE	)	
Defendant.	)	

**I. ORDER RE: SHOW CAUSE HEARING**

**II. Declaration that Alabama Acts 1992-227, 2004-636, 2010-438, 2012-535, 2013-193, Ala. Code § 12-19-72, Ala. Code § 32-5A-191, and any other Alabama act or statute that requires the Mobile County Circuit Clerk to remit costs collected in Mobile County—from litigation taking place within Mobile County—to the state general fund is unconstitutional *as applied*.**

**III. INJUNCTION DIRECTED TO THE MOBILE COUNTY CIRCUIT CLERK AND THE PRESIDING JUDGE, 13<sup>TH</sup> JUDICIAL CIRCUIT**

**I. ORDER RE: SHOW CAUSE HEARING**

**A. Background.** Before this court on September 12, 2018 appeared the Circuit Clerk of Mobile County, Alabama and the Warden of the Metro Jail, Mobile County Sheriff’s Office. Their appearances were in response to a “show cause” order entered by this Court in the instant case, State of Alabama v. Brandy Nicole Brady. Testimony was obtained from the Mobile County Circuit Clerk, Ms. Jo Schwarzauger, and from Metro Jail Warden, N. Price Oliver, III. Court Exhibits 1 through 9A were also entered into evidence.

The background for this hearing is that Brandy Nicole Brady was indicted by the Grand Jury of Mobile County in December of 2017 for alleged trafficking in methamphetamine in violation of Ala. Code 13A-12-231(11)(a). See Clerk's record, Doc. 1 (Indictment). Per that statute and her existing criminal record, Ms. Brady is subject to enhanced punishment per the habitual felony offender act. Her meth trafficking case was set for a jury trial on Monday, August 27, 2018 at 9:00 a.m. However, despite that this Court revoked her existing bond 11 days before her scheduled trial-- based on new charges Ms. Brady had picked up-- and despite that she was in custody and in handcuffs when said bond was revoked-- she did not appear for her scheduled trial on August 27th. See Clerk's record, Doc.s 25 and 27.

Therefore, because an accused meth trafficker with a prior criminal history was somehow let out of jail despite my order to the contrary from 11 days before her trial, this Court issued a



“show cause” order to the Clerk of the Mobile County Circuit Court, and to the Warden of the Mobile County Metro Jail to ascertain what happened and why. See Clerk’s record, Doc. 32.

**B. Show Cause Hearing.** The Warden for the Metro jail initially responded to the “show cause” order by e-mail stating that the jail did not find where an order to revoke Mandy Nicole Brady’s bond was ever sent to the jail by the clerk. See Court’s Exhibit 9. However, an e-mail is not sworn testimony; it is hearsay. Thus, this Court subpoenaed the Warden to appear, and Warden Oliver testified to what was contained in his e-mail at the show cause hearing. Simply put, based on what happened, it was not the Warden nor the jail’s fault that this woman was set free.

A response to my “show cause” order was also sent by the Mobile County Circuit Clerk via e-mail, stating that Ms. Brady’s mistaken release was in large part due to the lack of personnel in the Clerk’s office, and the lack of personnel was because of a lack of adequate funding. Since e-mails are hearsay, Ms. Schwarzauer was asked to testify at the show cause hearing about what happened that let Mandy Brady get out of jail, and she did. The Clerk testified in sum, that funding shortfalls have left her office in a position whereby her office is short-staffed to the point she does not have sufficient experienced trained personnel to handle the workload of this circuit, and that this was the reason the criminal defendant in this case walked out of jail.

Ms. Schwarzauer testified about a manpower study done by the Alabama Administrative Office of Courts, whereby the AOC found that the Mobile County Circuit Clerk’s office was supposed to have 57.7 people working in it during Fiscal year (FY) 2016 (the latest numbers available). See Court’s Exhibit 6. However, due to funding shortfalls and associated layoffs that have taken place, the Mobile County Circuit Clerk only has 38 people now. Per this study from the Alabama Administrative Office of Courts, our circuit clerk is currently short 19.7 folks. Id. Moreover, at her current inadequate funding level, she cannot compete with local offices like the District Attorney and the Probate Court when it comes to hiring and at times retaining qualified employees. See Show Cause Hearing Transcript, p. 17, lines 3-25; p. 18 line 1 to p. 19, line 20; p. 38, lines 1-10.

Ms. Schwarzauer further testified that she, as the Mobile County Circuit Clerk, has the statutory duty to support Circuit Courts per Ala. Code § 12-17-94 and to support the District Courts per Ala. Code § 12-17-160. See Court’s Exhibits 3 and 4. Despite these mandates, the lack of reasonable and adequate funding for her office has adversely impacted the Clerk’s ability to perform her legal duties.

Ms. Schwarzauer further testified about statistics supporting her claims. Per Court’s Exhibit 7 and manpower studies contained therein, Circuit Courts in Mobile County had 26,373 cases filed in FY 2016, which is an average case load of 2398 cases per each of the 11 circuit judges. In comparison, the 10<sup>th</sup> Judicial Circuit in Jefferson County (Birmingham Division), with 23 circuit judges in it, had 21,842 cases filed in FY 2016 which was 950 cases per circuit judge.

In the four (non-juvenile) 13<sup>th</sup> Judicial Circuit District Courts, which the Mobile County Circuit Clerk must also support per Ala. Code § 12-17-160, things are even worse off. The District Courts in Mobile County had 40,292 cases filed in FY 2016, which equals 10,073 cases per judge. In comparison, The Jefferson County District Court, Birmingham Division, had 50,848 cases filed, which equates to 5,085 cases per district judge.

The Clerk then discussed the plight of one District Judge, Hon. Joe Basenberg, who has been forced to hold dockets in court by himself—ALONE—because his one judicial assistant was away from work ill and the Circuit Clerk's office was so short-staffed that it had no one that could support him. The Clerk testified that when she was properly staffed, personnel from a fully and adequately funded clerk's office used to sit with the District Judges in court when they had docket, and enter orders and such as required (and still required by) Ala. Code §§ 12-17-94 and 12-17-160. Per her testimony at the show cause hearing on September 12<sup>th</sup>, the lack of reasonable and adequate funding has prevented this.

Lastly, Ms. Schwarzauer testified that with only 38 persons on staff to support the workload for the Mobile County Circuit and District Courts, which was a combined 66,665 cases per Court's exhibit 7, pages 3 and 4, the Mobile County Circuit Clerk is in imminent danger of not fulfilling her constitutional and statutory duties. She further recounted other times where defendants accused of crimes even worse than meth trafficking, had walked out of jail by mistake due to problems within her office.

The sum of the Mobile County Circuit Clerk's testimony at the show cause hearing—in plain English—is this:

*Orders such as the bond revocation in the instant case are not being processed properly; judges both circuit and district are not being supported despite statutory mandates; and this is because the Mobile County Circuit Clerk is not adequately and reasonably funded.*

**C. Court Costs and Fees Imposed on Mobile County Litigants.** Despite that their Circuit Clerk's office is short-staffed and overwhelmed, the citizens of Mobile County are charged consistently for access to their court system. In fact, the State of Alabama has enacted court cost bills that resulted in Mobile County civil litigants, as well as Mobile County criminal defendant litigants, paying over \$7M in case fees and costs in FY 16 (the latest numbers available). See Court's Exhibit 8. At the show cause hearing on September 12<sup>th</sup>, Ms. Schwarzauer was asked about these court costs and court imposed fees.

She testified that she is required to collect fees and costs from Mobile County litigants per various court cost bills that have been enacted into law by the State of Alabama. The Clerk was shown Court's Exhibit 8, which documents that the Mobile County Circuit Clerk collected \$7,085,354.88 in FY 2016 from litigants appearing in Mobile County Circuit and District Courts. She was asked about filing fees generated by one such line item on that exhibit, Alabama Statute 1992-227, which was House Bill 605. Per Exhibit 8, that bill alone generated

\$244,782.63 in combined filing fees from litigants in Mobile County. Ms. Schwarzauer was then shown the language in HB 605/Alabama Act 1992-227, in which the legislature declared the that stated intent of that Act:

“It is the intent of the Legislature that the funds generated by the fee increases provided for in this bill shall first be used to maintain on the district and circuit court and Clerks of Courts payrolls of Court the positions jeopardized by proration in the fiscal year ending September 30, 1992.”

See <http://arc-sos.state.al.us/cgi/actdetail.mbr/detail?year=1992&act=227&page=subject> (visited September 12, 2018).

Indeed, this Court takes judicial notice of the fact that there are many such acts and statutes that require the Mobile County Circuit Clerk to remit costs collected in Mobile County—from litigants in Mobile County—to the state general fund. These include but are not limited to Alabama Acts 1992-227, 2004-636, 2010-438, 2012-535, 2013-193, Ala. Code § 12-19-72 (circuit and district court filing fee – distribution), and Ala. Code § 32-5A-191 (court fines imposed for DUI).

If one looks at just what was collected in Mobile County last fiscal year, this means that Mobile County litigants funded 70.85% of the entire State judicial FY 2017 budget.

Making citizens pay for access to their court systems via court costs and fees imposed, and then taking those fees and using them for extra-judicial purposes--leaving the court clerks underfunded to where access to the court system is restricted or reduced-- must certainly be unconstitutional.

**II. Declaration that Alabama Acts 1992-227, 2004-636, 2010-438, 2012-535, 2013-193, Ala. Code § 12-19-72, Ala. Code § 32-5A-191, and any other Alabama act or statute that requires the Mobile County Circuit Clerk to remit costs collected in Mobile County—from litigation taking place within Mobile County—to the state general fund is/are unconstitutional *as applied*.**

**A. Analysis.** As we begin our analysis of whether Alabama Acts 1992-227, 2004-636, 2010-438, 2012-535, 2013-193, Ala. Code § 12-19-72, Ala. Code § 32-5A-191, and any other Alabama act or statute(s) collecting money from litigation in Mobile County and sending same to the State general fund is constitutional as applied, we recognize that “we must look to the entire Act instead of isolated phrases or clauses; Opinion of the Justices, 264 Ala. 176, 85 So.2d 391 (1956). Moreover, just as statutes dealing with the same subject are in pari materia and should be construed together, League of Women Voters [v. Renfro], 292 Ala. 128, 290 So.2d 167 (1974) ], parts of the same statute are in pari materia and each part is entitled to equal weight.” Darks Dairy, Inc. v. Alabama Dairy Comm'n, 367 So.2d 1378, 1380–81 (Ala. 1979).

Regarding adequate funding for the judiciary, just as the Supreme Court did in the 1993 proration case, Folsom v. Wynn, we note with approval Chief Justice Heflin's discussion of *Ala. Const.*, Amend. 328, § 6.10. in his dissent in Morgan County Commission v. Powell:

"The constitutional mandate 'adequate and reasonable financing' in [*Ala. Const.*, Amend. 328, § 6.10] is more expansive than the clause 'adequate and reasonable appropriations' and there is no limitation of this responsibility to a specific branch following the clause 'shall be provided'.... Further, it seems clear that adequate and reasonable financing of the court system of this state is a constitutional priority for nowhere else in the Constitution do the words 'adequate and reasonable' appear in relationship to financing and appropriations." Morgan County Commission v. Powell, 292 Ala. 300 at 326, 293 So.2d at 854–55. (Heflin, C.J., dissenting; emphasis in the original; footnote omitted.)

We further quote Folsom v. Wynn:

"Not only is the Legislature required to make adequate and reasonable appropriations for the entire judicial system under § 6.10; all three branches are charged with a constitutional duty to ensure adequate and reasonable financing for the Judiciary. Plainly, the constitutional requirement of reasonable and adequate financing encompasses the various administrative costs, including equipment and personnel, necessary to deliver constitutionally mandated judicial services." Folsom v. Wynn, 631 So. 2d 890, 900 (Ala. 1993).

In the present financial situation for the Clerk supporting the 13<sup>th</sup> Judicial Circuit, the constitutional requirement of reasonable and adequate financing encompasses the various administrative costs, including equipment and personnel, necessary to deliver constitutionally mandated judicial services. Thus, it is more the *effect* of these court cost acts and statutes that take money away from our circuit clerk leaving her unable to fully support our courts Circuit and District that is problematic, rather than their language.

**B. Lack of Reasonable and Adequate Funding for the Judicial Branch of Government.** The lack of adequate funding for Alabama's judiciary is an ongoing problem. The Alabama Supreme Court previously stated the obvious:

"With respect to the Judicial Branch, funding cannot be reduced below what is "adequate and reasonable," *Ala. Const.*, Amend. 328, § 6.10, for the performance of those duties that are constitutionally required of the Judiciary." Folsom v. Wynn, 631 So. 2d 890, 895 (Ala. 1993).

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"[A]ppropriations for the costs of administrative support essential to the delivery of constitutionally mandated judicial services may also not be reduced by proration below an adequate and reasonable level." Id. at 897.

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“The Judiciary is a separate, independent, and co-equal branch of government, and the United States Constitution and the Constitution of Alabama describe its duties at some length. \*\*\* Without attempting to list every specific duty that is constitutionally required of the Judiciary, we note that the courts are, in many respects, the means by which the people of this nation assure their most fundamental individual rights. The courts are the forum where the guarantees set out in the Bill of Rights, Amendments I–X, to the United States Constitution, and in the Declaration of Rights of the Constitution of Alabama, Art. I, §§ 1–36, gain meaning and limit governmental power.” Id.

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“The Alabama Constitution also requires the delivery of judicial services in civil proceedings. Each person in this State has, along with many other enumerated rights, a constitutionally guaranteed right to a forum for the enforcement of his or her contracts, Ala. Const. Art. I, § 22; a right to prosecute a civil cause, Ala. Const. Art. I, § 10; and a right to a jury trial, Ala. Const. Art. I, § 11. Federal constitutional requirements also directly require the delivery of similar services by the courts of this State.” \*\*\* The right to a timely civil jury trial, for example, is especially important to American jurisprudence, and that right is constitutionally guaranteed by both our Federal and State Constitutions. Under the appropriate circumstances, Federal courts have held that the Seventh Amendment to the United States Constitution means that in the Federal courts citizens may not be deprived of this essential right by financial considerations.” Id. at 898.

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We conclude that the civil jury trial system may not be suspended for lack of funds. Specifically, we conclude that the seventh amendment right to a civil jury trial is violated when, because of such a suspension, an individual is not afforded, for any significant period of time, a jury trial he would otherwise receive.” Folsom v. Wynn, 631 So. 2d 890, 895, 898 (Ala, 1993).

Obviously, no state judge can fulfill his or her constitutional obligations without the support of the circuit clerk and his or her staff. However, because of a lack of adequate funding, the Mobile County Circuit Clerk’s office is now in a position where it can barely function. Moreover, the entire court system of the State of Alabama has been essentially underfunded for many years. This underfunding is further evidenced by the fact that the Legislature has had to pass acts and statutes such as the ones referenced herein, using the courts as a source of revenue for the general fund, but still not adequately funding the court system. See Court’s Exhibit 9A, page 2, para 2.

As noted above, at hearing on September 12<sup>th</sup>, the Circuit Clerk testified that she is required to collect fees and costs from Mobile County litigants per various court cost bills that have been enacted into law by the State of Alabama. Ms. Schwarzauser was then shown the language in just one of the many such court cost bills which declared their initial stated intent:

***“It is the intent of the Legislature that the funds generated by the fee increases provided for in this bill shall first be used to maintain on the district and circuit court and Clerks of Courts payrolls of Court the positions jeopardized by proration in the fiscal year ending September 30, 1992.”***

See Alabama Act 1992-227/H 605 available at <<http://arc-sos.state.al.us/cgi/actdetail.mbr/detail?year=1992&act=227&page=subject>> (visited September 12, 2018) (emphasis added).

Indeed, this Court takes judicial notice of the fact that there are many such acts and statutes that require the Mobile County Circuit Clerk to remit costs collected in Mobile County—from litigants in Mobile County—to the state general fund. These include but are not limited to Alabama Acts 1992-227, 2004-636, 2010-438, 2012-535, 2013-193, Ala. Code § 12-19-72 (circuit and district court filing fee – distribution), and Ala. Code § 32-5A-191 (court fines imposed for DUI). Granted, not all of these bills declare their intent like 1992-227/H 605. However, if their intent is not to use the money to adequately fund the court system, then what these court cost bills really do is tax only the segment of the population that needs access to the court system to prop up the Alabama general fund.

Taxing a segment of the State population who needs access to the court system, and then using those tax revenues to support the State’s entire population is also unconstitutional. In fact, we fought a revolution against England in part because of this. Remember for example: “No taxation without representation” which was a phrase generally attributed to James Otis about 1761 that reflected the resentment of American colonists at being taxed by a British Parliament to which they elected no representatives and became an anti-British slogan before the American Revolution? See Mark Kelly, *The Root Causes of the American Revolution* (last modified Apr. 20, 2018) <https://www.thoughtco.com/causes-of-the-american-revolution-104860> (visited Sept. 17, 2018).

Given that the stated purpose of the court costs collected in Mobile County Alabama “is to maintain on the district and circuit court and Clerks of Courts payrolls of Court the positions,” and given that the vast majority of the funds collected are **not** used to fund the courts, this Court is of the opinion and below declares that these court cost statutes are unconstitutional as applied to the citizens of Mobile County Alabama.

C. **Declaration.** Alabama Code § 6-6-222 states:

**“Power of courts of record; form and effect of declarations.**

Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment is requested. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment.” Id.

Because this Court has the inherent power conferred by statute to “declare rights, status, and other legal relations whether or not further relief is or could be claimed,” and because the facts of this case prove that underfunding the Circuit Clerk of Mobile County Alabama has created a situation whereby access to the court system is being restricted, and whereby a criminal defendant accused meth trafficker was allowed to walk out of jail creating a danger to the public, the court will make specific written findings of fact in support of its ruling.

- Finding of Fact 1: Undersigned is a duly elected circuit judge, and has constitutionally and statutorily mandated duties he must perform in his official position. See e.g. Ala. Const. of 1901 art. VI, § 142. See also Ala. Code §§ 12-17-21 through 94.
- Finding of Fact 2: The Mobile County Circuit Clerk is a duly elected official, and has constitutionally and statutorily mandated duties she must perform in her official position to support the circuit and district courts she serves. See e.g. Ala. Code §§ 12-17-94 and 12-17-160.
- Finding of Fact 3: The Mobile County Circuit Clerk’s office has lost experienced personnel because of the lack of reasonable and adequate funding, and is currently short 19.7 people on staff to support the combined 66,665 Mobile County Circuit and District Court cases last year.
- Finding of Fact 4: In addition to being under staffed and losing experienced personnel, at her current inadequate funding level, the Circuit Clerk of Mobile County cannot compete with other local governmental offices like the District Attorney of Mobile County and the Probate Court of Mobile County for qualified employees. See Show Cause Hearing Transcript, p. 17, lines 3-25; p. 18 line 1-p. 19, line 20; p. 38, lines 1-10.
- Finding of Fact 5: The constitutional requirement of reasonable and adequate financing for the court system encompasses the various administrative costs, including equipment and personnel, necessary to deliver constitutionally mandated judicial services. Folsom v. Wynn, 631 So. 2d 890, 895, 898 (Ala, 1993).
- Finding of Fact 6: Collected fees and costs generated by litigation in the Circuit and District courts in Mobile County alone generated revenue for the State in the amount of \$7,085,354.88 for the fiscal year October 1, 2015 through September 30, 2016. See Court’s Exhibit 8. Of this amount, filing fees alone generated \$1,951,985.26 in revenue. Id.
- Finding of Fact 7: The Mobile County Circuit Clerk is in imminent danger of not fulfilling her constitutional and statutory duties to support her courts, circuit and district, because of inadequate funding. Therefore, constitutional rights of litigants in undersigned’s courtroom, as well as constitutional rights of all litigants in all courtrooms within the 13<sup>th</sup> Judicial Circuit, are in jeopardy.

- Finding of Fact 8: With regard to public safety, meth trafficking is a danger to the general public, and to the citizens of Mobile County Alabama in particular.
- Finding of Fact 9: Because the Mobile County Circuit Clerk's office is under-funded and thus short-staffed, an accused meth trafficker was allowed to go free and is currently at large and is now a danger to the public.
- Finding of Fact 10: The lack of reasonable and adequate funding of the Mobile County Circuit Clerk's office caused the inadvertent release of someone who is a danger and threat of harm to the citizens of Mobile County.
- Finding of Fact 11: Any state statute or act that charges litigants in Mobile County Alabama any fee involving litigation, which then takes said funds away from this county leaving the Clerk and her staff underfunded, thereby causing the inadvertent release of someone who is a danger and threat of harm to the citizens of Mobile County, is unconstitutional *as applied*.

WHEREFORE, this court holds unconstitutional *as applied* Alabama Acts 1992-227, 2004-636, 2010-438, 2012-535, 2013-193, Ala. Code § 12-19-72, Ala. Code § 32-5A-191, and any other Alabama act or statute that requires the Mobile County Circuit Clerk to remit costs collected in Mobile County— from litigation taking place within Mobile County— to the state general fund-- leaving the Clerk and her staff underfunded.

### III. INJUNCTION

To the Mobile County Circuit Clerk and to the Presiding Judge, 13<sup>th</sup> Judicial Circuit, per Ala. R. Civ. P. Rule 65 (a) and (d)(2), the following is respectfully ordered:

1. Because the Mobile County Circuit Clerk's office does not have adequate and reasonable funding to ensure it can perform its' constitutional and statutorily mandated duties in support of the Circuit and District Courts of the 13<sup>th</sup> Judicial Circuit-- as outlined in the findings of fact and declaration of unconstitutionality of court cost statutes and acts in the order above, in addition to the funding she currently receives, the Mobile County Circuit Clerk is ordered to withhold 10% of the court fees and costs collected from litigants in Mobile County starting October 1, 2018 continuing month to month until such time as the State of Alabama has adequately and reasonably funded her office. See Declaratory Judgment in Part II of this combined Order and Injunction, above.
2. The funds ordered withheld will be accounted for by the Clerk at the end of each month starting at the end of October 2018, and then paid to the presiding judge of the 13<sup>th</sup> Judicial Circuit at the end of each month. The Presiding Judge is authorized to hold said funds collected in an appropriate interest-bearing account until they are needed (because hiring 19.7 people

will probably take time). *Id.* The Presiding Judge will then use these funds to pay salaries and benefits for up to 19.7 support personnel for the Mobile County Circuit Clerk's office as required by the AOC manpower study referenced in the findings of fact above, so that this Circuit can and will administer justice in a manner and in conjunction with its actual case load.

3. These funds are not—repeat--not to be used to hire law clerks for the judges or employees that work directly for a judge. These funds are also not to be used to purchase equipment, except to the extent that such equipment is necessary to buy or fund work stations for the 19.7 additional personnel required in the Clerk's office. *Id.*

4. However, these funds can be used at the Presiding Judge and the Circuit Clerk's discretion to fund normal promotions and merit raises for deserving Circuit Clerk's office employees, so that the Clerk's office can do its best to compete with other offices like the Mobile County District Attorney, and the Mobile County Probate Court, for competent and qualified employees. *See* Show Cause Hearing Transcript, p. 17, lines 3-25; p. 18 line 1-p. 19, line 20; p. 38, lines 1-10.

5. Henceforth, so long as this injunction must last, after each fiscal year (a fiscal year being from 1 October to 30 September) any funds withheld per this injunction in excess of what is required to pay salaries and benefits and equipment for workstations for additional support personnel shall be returned to the State of Alabama in the same manner as the other collected court fees and costs. *Id.*

6. This injunction will terminate upon the Mobile County Circuit Clerk (or her successor)'s declaration to undersigned (or his successor) that she has been reasonably and adequately funded by the State, and that she has not had to look for local earmarks or otherwise go begging for funds to pay her personnel that the state should allocate to the Judicial Branch of Government and her office.

7. Given this injunction concerns money collected as court costs per various Alabama Acts and statutes, the Circuit Clerk of Mobile County is directed to provide notice of this injunction to the Alabama Attorney General, to the Presiding Judge, 13<sup>th</sup> Circuit, and to herself per the Alabama Rules of Civil Procedure Rule 65 and Rule 5. *See* Ala. R. Civ. P. Rule 65 (d)(2).

**DONE this 24<sup>th</sup> day of September, 2018.**

**/s/ JAMES T. PATTERSON**  
**CIRCUIT JUDGE**