

Judge Roy Moore Faces a Setback

A federal court judge who was asked to decide on the constitutionality of a provision of the Alabama Constitution that requires the automatic removal of a judge when a complaint is filed presented Alabama Supreme Court Chief Justice Roy Moore a setback Thursday.

According to Liberty Counsel, which has been representing Moore in the proceedings, U.S. District Judge Harold Albritton issued a ruling stating the federal court will abstain from deciding the constitutionality of the provision. He used a so-called "Younger abstention" to effectively take the federal courts out of the matter entirely.

Liberty Counsel explained:

While federal courts have authority to decide cases within their jurisdiction, the Younger case has been applied to require some federal courts to abstain from ruling on an ongoing state case if that ruling would interfere with the state proceeding.

Liberty Counsel argued that striking down the automatic removal provision would not interfere with the ongoing state proceeding as the merits of the charges filed by the Judicial Inquiry Commission will be separately decided in the Court of Judiciary.

Chief Justice Moore sued the JIC in federal court in May arguing that the automatic provision is unconstitutional. Alabama is the only state that has a provision in which judges are automatically removed from the bench when the JIC files a complaint, no matter how minor the complaint.

The judge is removed from the bench until a final

resolution. It turns due process on its head because the judge has to prove innocence to return to the bench. While the constitutional challenge to the automatic removal provision is pending in federal court, the merits of the JIC charges are before the Court of the Judiciary and will be heard next Monday.

Mat Staver, founder and chairman of Liberty Counsel, said the provision goes against the assumption of law in America that a person is innocent until proven otherwise. He suggested an appeal may be in order.

“We have preserved this issue in the state proceeding and will continue our challenge to this automatic removal provision,” he said. “We are ready for Monday’s hearing to address the politically-motivated charges filed against Chief Justice Moore.”