State of Alabama  
County of Jefferson

Before me the undersigned authority personally appeared Forrest H. “Fob” James III, and being duly sworn, deposed and said as follows:

Affidavit of Forrest H. “Fob” James III

1. I am a lawyer in Birmingham and have been a member of the State Bar of Alabama since 1982. Yesterday I became aware of a “MOTION FOR RECUSAL / DISQUALIFICATION OF ATTORNEY GENERAL BILL PRYOR AND HIS OFFICE” filed before the COURT OF THE JUDICIARY OF ALABAMA in the matter of ROY S. MOORE, CHIEF JUSTICE OF THE SUPREME COURT OF ALABAMA; CASE NO. 33. Since I have personal knowledge of some factual issues raised by the Motion, I may well have an ethical duty as a member of the Alabama Bar to come forward with testimony on these issues.

2. My father, Forrest H. “Fob” James Jr., served as Governor of Alabama from 1979-1983 and from 1995-1999. In late 1996, when Governor James was considering whether to appoint Bill Pryor as Attorney General of Alabama, the Governor met with Senator Jeff Sessions in the Governor’s office in Montgomery. Senator Sessions was strongly encouraging the Governor to appoint Pryor to be his replacement. During their meeting I entered the room and joined Governor James and Senator Sessions. No one else was present to my recollection.

3. I raised the issue with Governor James and Senator Sessions of whether Pryor would support Governor James in contempt-of-court situations if the Governor, as he had stated in his campaign and on many occasions to me personally, refused to enforce or prevented enforcement of certain federal or state court orders, especially in the church-state arena. At the time I had made the Governor aware of an Alabama circuit court in Montgomery that had recently issued an order prohibiting then circuit court Judge Roy Moore in Gadsden from having public prayer in his courtroom. Judge Moore had publicly indicated he would not obey the other circuit court’s order. The Montgomery circuit court, which had issued the order prohibiting courtroom prayer, also had before it a “Motion to Reconsider”
by the ACLU aimed at having the Ten Commandments removed from Judge 
Moore's courtroom as well (which the Montgomery circuit court had 
initially declined to do).

4. In response to my question about defying court orders and contempt-
of-court situations, Senator Sessions, with great emphasis, said words to the 
effect that the Governor could find no one who would stand with him more 
strongly in such situations than Bill Pryor. After Senator Sessions left, or 
soon thereafter, I counseled the Governor to sit down with Pryor himself and 
specifically discuss this matter with him, and also to discuss the same thing 
with the other candidate under consideration for the Attorney-General's job, 
State Senator John Amari. The Governor told me he would talk with them 
about it.

5. Within a short time thereafter, no more than a few days, the Governor 
told me he had discussed this matter with Amari, who agreed that the judges 
were "out of control." The Governor said Amari did not offer commentary 
beyond that on the subject. The Governor also told me that he discussed the 
same matter with Pryor, and that Pryor indicated his support of the 
Governor. The Governor also said that Pryor supplied him with material 
from the Tulane Law Review, of which Pryor had been editor-in-chief, on 
the subject of "non-acquiescence" to orders of the U.S. Supreme Court. A 
senior adviser to the Governor, Champ Lyons, indicated to me at the time, it 
was "fortuitous" for Pryor that he had been able to supply such cogent 
material to the Governor on the issue of central importance to him. The 
Governor informed me that he was going to appoint Pryor, which he did in 
early 1997.

6. Thereafter, in about February, 1997, the Montgomery circuit court 
(referenced above in paragraph 3) ordered then Gadsden circuit Judge Roy 
Moore to remove the Ten Commandments from his courtroom. In response 
Governor James publicly stated that the order to remove the Commandments 
would not be carried out in Alabama without "force of arms," that is, 
without the President of the United States federalizing the national guard or 
otherwise taking control of the situation. Within the next several weeks, the 
Governor hosted a conference in his offices for attorneys involved in the 
litigation, including the Governor's attorneys, Pryor and his staff attorneys, 
Judge Moore and others. At the conference, I raised the question of what 
legal position would be taken, if after all appeals were exhausted, the U.S 
Supreme Court ruled against us, and the Governor refused to obey the
Supreme Court's order. Bill Pryor said in response, "I will be with him." This is the last time that I personally know, or was told by the Governor, that Pryor was willing to stand with Governor James in disobeying a U.S. Supreme Court order.

7. I also want to say that at the conference hosted by the Governor, Bill Pryor was in this room in the capacity of an attorney defending Judge Roy Moore, and Pryor was privy to all of the analysis of the legal issues by Judge Moore and the other lawyers in the room. At the time Judge Moore had already publicly stated that he would never obey a court order to remove the Ten Commandments from his courtroom. Judge Moore spoke candidly about his belief in the issue, and the attorneys present discussed the legal strategies that would be used to defend Judge Moore. Every attorney in the room, so far as I could tell, expressed nothing but admiration for Judge Moore for the stand that he had taken. And as I have said, the discussion included the issue, raised by me, of what legal position would be taken if the Governor chose, as he said he intended, to prevent routine enforcement of any court order requiring removal of the Ten Commandments from the courtroom.

8. During a break at the conference, I personally asked Judge Moore if he was willing to lose all that he owned, or to go to jail, or both, over this issue. He told me that he was.

9. Mindful of my duty to give as accurate an account as possible of the facts of which I have personal knowledge, I must also testify that by the end of Governor's James last term, Mr. Pryor's posture on the matters above had changed substantially. To inform the Court of the Judiciary of the context for Governor James' position during these events, which is pertinent to issues raised in the Motion For Recusal, I attach hereto as Exhibit "A" a short Brief filed in the Alabama Supreme Court by the Governor's office in September, 1997. The brief was written by then lawyer Champ Lyons and myself, and sent out under the signature of the Governor's legal adviser. It concludes:

The preeminent duty of "judges in every state" is to be bound by "this Constitution," that is, the Constitution as written and as legally amended under the authority of the "people of the United States" alone. U.S. Constitution, Article VI. All other judicial duties and judicial
precedents are subordinate to this mandate, on which the whole American structure rests. Marbury v. Madison, 5 U.S. 174-177, 179-180. The U.S. Supreme Court's church-state decisions purposely reject this mandate. If other courts do have the will to uphold it, this mandate will be lost, and the nation will be given over to lawlessness.

If the justices of the U.S. Supreme Court wish to install themselves as a super-legislature to oversee this country's social policies on every conceivable subject, with no limit to their power, and no fidelity to their oath of office, then they should be left to enforce their own decisions without the involvement or assistance of constitutional officers who faithfully discharge their duties of loyalty to the Constitution as required by their oaths of office....

Although I would like to claim authorship of the language emphasized in the quote above, I must attribute these incisive and seasoned words to a lawyer who is now an Associate Justice of the Alabama Supreme Court, Champ Lyons.

10. The last conversation I recall with Bill Pryor occurred late in Governor's James' last term after the Governor signed Alabama's "partial birth" abortion law. When the law passed, Mr. Pryor instructed Alabama district attorneys not to enforce the law as to pre-viable fetuses. In my view, this gutted the law and defeated its very purpose. An equivalent to Pryor's actions would be for U.S. Attorney-General John Ashcroft to instruct U.S. attorneys not to enforce the Act of Congress on partial birth abortion that Congress passed only yesterday, and the President is due to sign shortly, as to "pre-viable fetuses." I can say with confidence that by the time of this conversation with Pryor, Pryor's legal and political views had undergone a total reversal from the views he expressed for the first few months after his appointment as Attorney-General. I also know that at some point after my last conversation with Mr. Pryor, he said, as a matter of public record, that his ultimate career goal was to gain for himself a federal appellate judgeship. I will be glad to supplement the testimony on any of the matters above if the Court of the Judiciary so desires.
State of Alabama
County of Jefferson

Sworn to and subscribed before me this 22nd day of October, 2003.

Sallie V. Cox
Notary Public
8-14-04
Commission Expires
State/Province of Manitoba
City Winnipeg

Before me the undersigned authority personally appeared Forrest H. "Fob" James Jr., and being duly sworn, deposed and said as follows:

Affidavit of Forrest H. "Fob" James Jr.

1. I am a citizen of the United States and the State of Alabama. I had the privilege of serving as Governor of Alabama twice.

2. One of the primary reasons I ran for Governor in 1994 was a forty year pattern of illegal acts by the U.S. Supreme Court. Forbidding pre-game prayer by young athletes, the removal of the 10 commandments from the schools, and the ever-expanding grab for power by the courts, especially the federal courts, concerned me. I repeatedly spoke on these matters throughout my campaign. The so-called "equity funding" case in Alabama was an example of judicial arrogance on the home front that I also vigorously opposed as a candidate for Governor in 1994.

3. In my second term I had the good fortune to have Jeff Sessions as Attorney-General for a time. After he was elected to the U.S. Senate, he recommended to me a young man from Mobile named Bill Pryor to replace him. I remember talking with Bill about Judge Brevard Hand, a federal judge also from Mobile. Bill spoke highly of Judge Hand and if I remember correctly, a decision the Judge had made in the Jaffree school prayer case in Mobile during my first term as Governor. Judge Hand had ruled in that case that the U.S. Supreme Court was misusing the legal system to achieve its own social agenda, while usurping authority granted only to the legislative branches of government. As Judge Hand wrote, "We must give no future generation an excuse to use this same tactic to further their ends which they think proper under the then political climate as for instance did Adolph Hitler when he used the court system to further his goals." I later asked the Judge to swear me in as Governor for a second term in 1995, which he graciously did. The main part of my Inauguration in January, 1995, was an historical festival with actors playing the parts of historical figures like George Washington warning of "change by usurpation" in our government.
4. I paid more attention to what Washington and Jefferson and Jackson and Lincoln said about the checks and balances in our legal system, especially as it relates to checking the power of the judiciary, than to ambitious and dishonest judges we saw in the 20th century. I talked with Bill Pryor about all this when I was considering him for the job of Alabama Attorney-General. He impressed me with his knowledge of these things and provided me with some legal papers on “nonacquiescence” that he was responsible for while at the Tulane Law School. I told Bill about my view that constitutional officials needed to challenge the Supreme Court. For instance, for twenty years my view has been that a Governor should refuse to allow enforcement of a patently unconstitutional court order, and force the president to take action one way or the other on the issue. I don’t mean that we should fight anyone with troops. I do mean that we should use our constitutional authority to force the great issues of the day in to the province of all the branches of the federal government, not just a judiciary that likes to sweep everything under its own rug where it has nearly exclusive control. Bill Pryor was aware of my views when I appointed him, because we discussed these things. Bill had indicated nothing but his wholehearted support to me at the time.

5. I have now heard that Bill Pryor is prosecuting Roy Moore before the Court of the Judiciary for refusing to obey a federal court order to remove the Ten Commandments from the State Judicial Building. If this is true, Bill’s actions today are utterly contrary to the political and legal convictions he expressed to me. Had he expressed his present view, I would not have found him qualified to be Attorney-General of Alabama. The main reason Pryor was appointed was his understanding, and the ability to express that understanding well, that a public official’s highest duty was to the Constitution of the United States and not to the Supreme Court or any other entity.

Forrest H. James Jr

State/Province of Manitoba
City, County of Winnipeg
Sworn to and subscribed before me this 22nd day of October, 2003.
As to preceding five paragraphs.

Notary Public

DUE NOT EXPIRE
Commission Expires