

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

FRED L. PLUMP,)	
)	
Plaintiff,)	
)	
v.)	No. 2:07-cv-01014-MEF-CSC
)	
BOB RILEY, Governor,)	
)	
Defendant.)	

**NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES**

The defendant Bob Riley, in his official capacity as Governor of the State of Alabama, hereby appeals to the Supreme Court of the United States from the Judgment entered in this case on January 22, 2008, (doc. 29) and the Memorandum Opinion of the same date (doc. 28), as amended by this Court’s Order of January 25, 2008, (doc. 32) and reduced to an Amended Judgment (doc. 33) on the same date. This appeal is intended to be fully inclusive of any and all matters currently, finally resolved by the district court and thereby supporting an appeal.

The United States District Court expressly characterized the Judgment (doc. 29) and the Amended Judgment (doc. 33) as final. Governor Riley has advanced a contrary argument that neither the Judgment (doc. 29) nor the Amended Judgment (doc. 33) is yet a true final judgment, because, *inter alia*, both the Judgment (doc. 29) and the Amended Judgment (doc. 33) cause injunctive relief to spring into being next month, if preclearance is not obtained. *See* doc. 34. To prevent a jurisdictional cloud from forming

over the present litigation, however, and to secure the fundamental right to appellate review, this notice of appeal is being filed.

In related litigation (*Riley v. Kennedy*, Case No. 07-77, United States Supreme Court, pending), the plaintiffs have argued that Governor Riley's failure to appeal from an earlier declaratory judgment of the United States District Court is fatal to his appeal. In response, Governor Riley has argued that the declaratory judgment which failed to effect final relief was not a final judgment for purposes of an appeal. Governor Riley believes that his appeal in *Riley v. Kennedy* was timely, and the United States has agreed with the Governor's position. The United States Supreme Court has not decided the issue, however. Moreover, unlike the subsequent injunction at issue in *Riley v. Kennedy*, the injunction in this case springs into being upon the occurrence of events, without further order of the United States District Court. In any event, both the circumstances of this case and prudence dictate that a notice of appeal be filed at this time. Governor Riley reserves his right to file additional notices of appeal, as necessary, should the injunctive relief contemplated by the Judgment (doc. 29) and the Amended Judgment (doc. 33) actually spring into being next month, or should other relief be awarded to the plaintiff.

This appeal is taken pursuant to 42 U.S.C. § 1973c(a) ("Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court."); 28 U.S.C. § 1253 ("Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.");

and, 28 U.S.C. § 2101(b) (“Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.”).

Respectfully submitted,

Of counsel:

Kenneth D. Wallis, II (WAL064)
Chief Legal Advisor
Office of the Governor

Scott L. Rouse (ROU010)
Deputy Legal Advisor
Office of the Governor

ADDRESS OF COUNSEL:

Office of the Governor
State Capitol, Suite NB-05
600 Dexter Avenue
Montgomery, Alabama 36130
(334) 242-7120 Phone
(334) 242-2335 Fax

ken.wallis@governor.state.al.us
scott.rouse@governor.alabama.gov

Troy King (KIN047)
Attorney General

s/ Margaret L. Fleming
Margaret L. Fleming (FLE001)
James W. Davis (DAV103)
Misty S. Fairbanks (FAI005)
Assistant Attorneys General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ALABAMA
11 South Union Street
Montgomery, Alabama 36130
Telephone: (334) 242-7300
Facsimile: (334) 353-8440
mfleming@ago.state.al.us
jimdavis@ago.state.al.us
mfairbanks@ago.state.al.us

Counsel for Governor Riley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of March, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel: Edward Still (docket@votelaw.com), and James U. Blacksher (jblacksher@ns.sympatico.ca).

s/ Margaret L. Fleming
Margaret L. Fleming (FLE001)