

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

**YVONNE KENNEDY, JAMES)
BUSKEY & WILLIAM CLARK,)**

Plaintiffs,)

vs.)

**CIVIL ACTION
NO. 2:05cv1100-T**

**HONORABLE BOB RILEY,)
as Governor of the State of)
Alabama.)**

Defendant.)

ANSWER

The Honorable Bob Riley, in his official capacity as Governor of Alabama, defendant in this action, answers the Complaint as follows:

SPECIFIC RESPONSES

1. Paragraph 1 is a summary of this action as to which no response is required. To the extent a response is required, Governor Riley denies that the Kennedy Plaintiffs are entitled to the relief requested.

2. Governor Riley admits the allegations of paragraph 2.

3. With respect to the allegations of paragraph 3, Governor Riley admits that he is Governor of Alabama and that, pursuant to Code of Alabama § 11-3-6 (Supp. 2004), he is empowered to fill vacancies on county commissions in Alabama “[u]nless a local law authorizes a special election” Governor Riley denies the remaining allegations of paragraph 3. Governor Riley states further that the governor’s power to fill vacancies on county commissions was in effect before November 1, 1964.

4. Governor Riley admits the allegations of paragraph 4.

5. With respect to the allegations of paragraph 5, Governor Riley admits that, in *Riley v. Kennedy*, No. 1050087, ___ So. 2d ___ (Ala. Nov. 9, 2005), the Supreme Court of Alabama held that, as a matter of state law statutory interpretation, the vacancy on the Mobile County Commission was to be filled by Governor's appointment and that he has appointed Juan Chastang to fill the vacancy. Governor Riley denies the remaining allegations of paragraph 5.

6. For his response to paragraph 6, Governor Riley denies that there has been a change within the meaning of the Voting Rights Act and denies the allegations of paragraph 6 on that basis.

7. Governor Riley denies the allegations of paragraph 7.

8. Governor Riley denies that the Kennedy Plaintiffs are entitled to relief.

9-14. Governor Riley denies that the Kennedy Plaintiffs are entitled to the relief requested in paragraphs 9 through 14.

GENERAL DEFENSES

FIRST DEFENSE

Governor Riley's appointment of Juan Chastang to fill a vacancy on the Mobile County Commission is not a change affecting voting that requires preclearance.

SECOND DEFENSE

Governor Riley's power of appointment stems from a state law that was in effect before November 1, 1964, and that, as subsequently modified and precleared, preserves that power "[u]nless a local law authorizes a special election" No valid state law authorizes a special election to fill a vacancy on the Mobile County Commission.

THIRD DEFENSE

The United States cannot tell a State what state law is without running afoul of the Tenth Amendment to the United States Constitution.

FOURTH DEFENSE

The Alabama Supreme Court's decision in *Riley v. Kennedy* does not effect a change in a standard, practice, or procedure with respect to voting.

FIFTH DEFENSE

The Kennedy Plaintiffs had a full and fair opportunity to litigate their claims in state court and are bound by the Alabama Supreme Court's interpretation of state law in *Riley v. Kennedy*.

SIXTH DEFENSE

Governor Riley contests the Plaintiffs' entitlement to attorneys' fees and the amount thereof.

Respectfully submitted,

TROY KING (KIN047)
ATTORNEY GENERAL
BY:

s/ John J. Park, Jr.
John J. Park, Jr. Bar Number: (PAR041)
Assistant Attorney General
Office of the Attorney General
11 S. Union Street
Montgomery, AL 36130-0152
Telephone: (334) 242-7300
Fax: (334) 353-8440
E-mail: jpark@ago.state.al.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of November, 2005, 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 (or by U.S. Mail to the non CM/ECF participants):

J. Cecil Gardner, Esq.
M. Vance McCrary, Esq.
Gardner, Middlebrooks, Gibbons,
Kittrell, Olsen, Walker & Hill
Post Office Box 3103
Mobile, AL 36652

Edward Still
2112 11th Avenue South, Suite 201
Birmingham, AL 35205

s/ John J. Park, Jr.
John J. Park, Jr. Bar Number: (PAR041)
Assistant Attorney General
Office of the Attorney General
11 S. Union Street
Montgomery, AL 36130-0152
Telephone: (334) 242-7300
Fax: (334) 353-8440
E-mail: jjpark@ago.state.al.us