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(Admitted to practice law in Alabama and the District of Columbia)

WE DARE DEFEND *your* RIGHTS

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23 July 2008

Hon. William K. Suter
Clerk of the Court
Supreme Court of the United States
Washington, DC 20543

Re: No. 07-1460, *Riley v. Plump*

Dear General Suter:

I am writing to inform the Court of a development in this case that occurred subsequent to the printing of our Motion to Dismiss or Affirm.

This case presents the question whether Alabama must obtain preclearance under section 5 of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973c, for the use of gubernatorial appointment rather than special election to fill vacancies on the Jefferson County Commission. The State, pursuant to an order from the three-judge district court that is the subject of this appeal, filed a preclearance submission on March 18, 2008, and provided an additional response on July 1, 2008. See Motion to Dismiss or to Affirm at 8.

On July 22, 2008, Christopher Coates, the Chief of the Voting Section of the Department of Justice sent a letter to Alabama Attorney General Troy King regarding that submission. The letter states that "it would be inappropriate for the Attorney General to make a preclearance determination on the instant change" in light of a "directly related" but "unsubmitted change" (discussed in our Motion at pages 10-14 and 29-32). See Letter from Christopher Coates to Troy King at 2.

I ask that you circulate this letter and the Department's letter (a copy of which is attached) to the Court.

If you have any questions, please contact me.

Sincerely,



Edward Still

Encl.

cc

James W. Davis, Esq.



U.S. Department of Justice
Civil Rights Division

CC:TFM:DJ:jdh
DJ 166-012-2
2008-1576
2008-3861

*Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530*

July 22, 2008

The Honorable Troy King
Attorney General
State of Alabama
Alabama State House
11 South Union Street
Montgomery, Alabama 36130

Dear Attorney General King:

This refers to the procedures for filling vacancies on the Jefferson County Commission, in Jefferson County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. We received your response to our May 8, 2008, request for additional information on May 27, 2008; supplemental information was received through July 1, 2008.

We understand that on June 30, 2008, the Supreme Court of Alabama issued its decision in *Working v. Jefferson County Election Commission*, ___ So.2d ___, 2008 WL 2569255, which held that the county commission vacancy caused by the election of Larry Langford as Mayor of Birmingham would be filled initially by gubernatorial appointment, but that subsequently, the unexpired term would be filled by special election by the voters on the November general election date. 2008 WL 2569255, at *11-*12. It noted that this procedure was in accordance with Ala. Code § 11-3-1(b). *Id.*, at *11. According to our records, this change affecting voting effectuated by Ala. Code § 11-3-1(b) has not been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act. In fact, when the State submitted the underlying legislative act, Act No. 2007-488, which included Ala. Code § 11-3-1(b), for Section 5 review, it specifically excepted Ala. Code § 11-3-1(b) from the changes for which preclearance was being requested. Letter from Troy King, Attorney General, and Winfield Sinclair, Assistant Attorney General, to Chief, Voting Section, Feb. 4, 2008, at 1.

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If our information is correct, it is necessary that these changes be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that they do not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. Changes which affect voting are legally unenforceable unless Section 5 preclearance has been obtained. *Clark v. Roemer*, 500 U.S. 646 (1991); Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. § 51.10).

Because the change now before us and the unsubmitted change are directly related, they must be reviewed simultaneously. Accordingly, it would be inappropriate for the Attorney General to make a preclearance determination on the instant change until the related change has been submitted for Section 5 review. See 28 C.F.R. §§ 51.22(b) and 51.35.

Should you elect to make a submission to the Attorney General for administrative review rather than seek a declaratory judgment from the District Court for the District of Columbia, it should be made in accordance with Subparts B and C of the procedural guidelines. At that time, we will review all changes simultaneously; however, any documentation previously provided need not be resubmitted.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Alabama plans to take concerning these matters. If you have any questions, you should call Donald Jacobsen (202-305-8299) of our staff. Refer to File Nos. 2008-1576 and 2008-3861 in any response to this letter so that your correspondence will be channeled properly.

Since the Section 5 status of these changes is before the court in *Plump v. Riley*, No. 2:07-cv-01014-MEF-CSC (M.D. Ala.), we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,



Christopher Coates
Chief, Voting Section

cc: Court and Counsel of Record