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

IN RE: EMPLOYMENT DISCRIMINATION LITIGATION AGAINST THE STATE OF ALABAMA, et al:	)	
EUGENE CRUM, JR., et al.,	)	**CIVIL ACTION NO. 94-T-356-N**
Plaintiffs,	)	**JUDGE THOMPSON**
v.	)	
STATE OF ALABAMA, et al.,	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR CERTIFICATION PURSUANT TO 28 U.S.C. 1292(b)

COME NOW Defendants and submit the following Memorandum of Law in Support of Motion for Certification Pursuant to 28 U.S.C. 1292(b) regarding Order Number 737 Denying Defendants' Motion for Summary Judgment (Doc. no. 741).

I. INTRODUCTION

On May 3, 2005, the Court issued an Order (Doc. no. 737) denying Defendants' Motion for Summary Judgment (Doc. no. 701). This two-sentence Order stated simply that the Court was denying Defendants' Motion based on "the understanding that plaintiffs are pursuing only traditional Title VII, §1981, etc., claims, and are not seeking enforcement of the *Frazer* injunction."[1] Presumably, the Court's understanding is based on written and oral representations made by Plaintiffs' counsel while litigating this summary judgment motion. Defendants

[1] As relief, the *Crum* plaintiffs seek declaratory, injunctive, and compensatory relief under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. §§ 1981a, 2000e through 2000e-17l of the Civil Rights Act of 1866, as amended, 42 U.S.C.A. § 1981; and the fourteenth amendment as enforced through 42 U.S.C.A. § 1983. *In re Employment Discrimination Against the State of Alabama*, 213 F.R.D. 592, 594 (M.D. Ala. 2003).

respectfully submit that in making this determination, the Court overlooked the overwhelming evidence that Plaintiffs' claims are in fact based solely on the *Frazer* injunctions and that they merely have recast their arguments in the aftermath of the Court's dismissal of all *Frazer* claims.

On June 2, 2005, Defendants filed a Motion for Rule 54(b) Judgment, or in the Alternative, Motion for Certification Pursuant to 28 U.S.C. § 1292(b).[2] (Doc. no. 741) (hereinafter "Defendants' Motion for Certification"). On June 7, 2005, the Court issued an Order stating that Defendants' Motion for Certification would be set for submission on July 15, 2005 with all briefs due on that date. (Doc. no. 742).

The issue that Defendants seek to present on appeal is whether Defendants are entitled to summary judgment on Plaintiffs' remaining claims when they are merely repackaged *Frazer* claims, notwithstanding Plaintiffs' representations that they are pursuing only traditional Title VII, §1981 or §1983 claims. Defendants contend that there are substantial grounds for difference of opinion regarding whether the putative *Crum* class can pursue claims in a separate action regarding alleged discriminatory employment practices that are already subject to the *Frazer* injunctions, simply by repackaging those claims as Title VII, §1981 or §1983 claims, rather than requiring the proper party to pursue those claims through contempt proceedings filed in *Frazer*. Defendants further assert that governing Eleventh Circuit case law requires the Court to look beyond Plaintiffs' denomination of their claims to determine whether, in fact, the challenged discriminatory practices are, in substance, alleged *Frazer* violations that must be addressed through civil contempt proceedings in *Frazer*.[3] Allowing the *Crum* Plaintiffs, however, to merely repackage

[2] Defendants' research indicates that 28 U.S.C. § 1292(b) is the more appropriate vehicle for certification for appeal purposes. However, to the extent the Court finds that certification under Fed. R. Civ. P. 54(b) is appropriate or necessary, Defendants assert that certification under that rule is appropriate for the reasons stated herein.

[3] The Court previously has ruled that to the extent the Crum plaintiffs assert violations of the *Frazer* injunction, only the United States as the original party-Plaintiff in *Frazer* has standing to pursue civil contempt against the State Defendants for those alleged violations. *See In re Employment Discrimination Against the State of Alabama*, 213 F.R.D. 592 (M.D. Ala. 2003).

their claims and pursue as a class a separate lawsuit alleging in substance the same alleged discriminatory practices which they asserted for years as *Frazer* violations would clearly circumvent the procedural requirement that such alleged violations be addressed through contempt proceedings rather than through a separately filed action.

For these and other reasons set out more fully herein, the Court should grant Defendants' Motion for Certification Pursuant to 28 U.S.C. 1292(b) regarding Order Number 737 Denying Defendants' Motion for Summary Judgment (Doc. no. 741).

II. BACKGROUND OF MOTION FOR SUMMARY JUDGMENT

Plaintiffs' self-identified remaining claims are based on alleged violations of the injunctions entered in *United States v. Frazer*; violations which this Court unequivocally has ruled can only be prosecuted by the United States through contempt proceedings filed in *Frazer* and not by private party litigants in this action. Defendants contend that Plaintiffs cannot jettison the *Frazer*-based theory of their case on the eve of summary judgment merely to avoid the inevitable dismissal of their remaining claims.

As established in Defendants' original summary judgment brief and accompanying Exhibit A thereto, from the outset of this case, Plaintiffs have described this case as an action to enforce "the injunctive and declaratory remedies entered against the current defendants in *United States v. Frazer*." (Doc. no. 70 at 17). That theme continued throughout the intervening ten-year period. For example, in the early 1990s, Plaintiffs successfully sought consolidation of the four separately filed lawsuits that became *Crum*, arguing that, "the four cases proposed for consolidation allege the same violations of the injunction in *United States v. Ballard*." (Doc. no. 4). In 1997, Plaintiffs sought and obtained consolidation of the *Crum* and *Frazer* cases, arguing that "the central issues in the present case (*Crum*, *et al.*) are the same as those in the older case

(*Ballard*)", and that "the two cases overlap[ed] ***in their entirety***."[4] (Doc. no. 92 at 1-2, 8) (emphasis added). In fact, Plaintiffs submitted an extensive brief in support of consolidation, setting forth in great detail the factual bases for their argument that the central issues in *Crum* and *Frazer* were identical, including a detailed discussion of the very practices they now allege survived this Court's dismissal of their *Frazer* claims. *Id.* Given these facts, as well as the abundance of pleadings and briefs filed by Plaintiffs alleging the commonality of *Crum* and *Frazer*, their current eleventh-hour attempt to abandon their *Frazer*-based theory is disingenuous at best.

In contrast, Defendants consistently have opposed Plaintiffs' attempts to prosecute *Frazer* claims as private litigants in this action and in *Frazer*. Since 1993/94, Defendants have maintained that only the original party-plaintiff – the United States – can seek enforcement or modification of the *Frazer* injunctions *viá* contempt proceedings in *Frazer*.[5] In fact, Plaintiffs cited and acknowledged both of these arguments by Defendants as early as August 1994, when they urged the Court to consolidate *Crum* and *Frazer* based on the commonality of the claims therein. (Doc. no. 92 at 5) (stating that, "defendants have also filed multiple briefs with the Court arguing that the plaintiffs' claims in the consolidated cases in *Crum* are identical to those adjudicated in *Frazer/Ballard*. …"). The Court ultimately agreed with Defendants' position and dismissed all *Frazer* claims from this action on April 5, 2001. (Doc. no. 416).[6]

---

[4] In fact, in their brief supporting consolidation of the *Crum* and *Frazer* cases, Plaintiffs present a detailed 12-page argument explaining why the claims that they now allege are violations of the *Frazer* injunctions. *See Crum* Doc. no. 92 at 8-20.

[5] As illustrated by Exhibit B submitted in support of Defendants' Summary Judgment Motion, in 1993 and 1994, Defendants collectively submitted 30 separate pleadings and briefs opposing Plaintiffs' attempts to enforce the *Frazer* injunctions through this action as private litigants. *Crum* Doc. no. 702 at Ex. B.

[6] Contrary to Plaintiffs' earlier assertions, the Court did not dismiss the *Frazer* claims "without prejudice to the private plaintiffs filing a contempt motion in *Frazer*." *See* Pls. Opp. Br. (*Crum* Doc. no. 720) at 4. Rather, the Court dismissed the *Frazer* claims without prejudice to the "appropriate person or entity to file a motion for contempt." *Crum* Doc. no. 416; *Frazer* Doc. no. 514. Ultimately, the Court found that only the United States had standing to enforce the *Frazer* injunctions. *See Crum* Doc. no. 619; *Frazer* Doc. no. 616.

As a result of the Court's dismissal of Plaintiffs' *Frazer* claims and the denial of their contempt motions for lack of standing, Defendants moved for summary judgment, arguing that there were no claims remaining for trial in this case. Consequently, Defendants asked the Court to direct Plaintiffs to identify any non-*Frazer* claims that remained to be litigated in this case.[7] The Court agreed and entered an order on June 3, 2003, directing Plaintiffs to identify the scope of their remaining claims. (Doc. no. 634). On June 4, 2003, Plaintiffs identified their alleged remaining claims. (Doc. no. 639 at 2).

After the Court dismissed Plaintiffs' *Frazer* claims, and in response to this Court's order directing Plaintiffs to clarify the nature and scope of their remaining claims, Plaintiffs filed a response on June 4, 2003, alleging that Defendants had engaged in racially discriminatory conduct with respect to the following employment practices:

(a) "the filling of vacancies through hiring, promotions, which includes failure to provide on the job experience and other training,"

(b) job duty assignments, evaluations, or compensation "as they relate to promotions or training,"

(c) "recruitment and exam eligibility/minimum qualifications criteria,"

(d) "examinations," and

(e) "manipulation of the registers and certificates of eligibles to avoid or disadvantage African-American eligibles in the certification and appointment phase of the selection procedures."

Crum Doc. no. 639 at 2.[8] Nowhere in their Opposition Brief do Plaintiffs dispute the fact that these remaining claims concern allegation of specific discriminatory practices by the State

[7] Defendants' counsel made this request orally during the June 2003 class certification pre-trial hearing.

[8] Plaintiffs withdrew their previous claims regarding layoffs, termination, discipline, transfers (non-promotional), demotions, rollbacks and sick leave. *Crum* Doc. no. 639 at p. 1.

Defendants that were addressed in the *Frazer* injunctions. In fact, Plaintiffs have described these same practices as *Frazer* violations. *See, e.g., Crum* Doc. no. 92 at 19 ("[T]he foregoing discriminatory recruitment practices. ... [have] been a continuing pattern and practice of racial discrimination that cannot be challenged in *Crum* without overlapping the question of compliance with the remedies in *Ballard*."). Furthermore, these are the ***same*** alleged discriminatory practices Plaintiffs described in detail as *Frazer* violations in support of their contempt show cause motion. *Crum* Doc. no. 413 at 4-14. The crux of Plaintiffs' case is, and always has been, the enforcement of the injunctive and declaratory remedies entered in *Frazer*.

Plaintiffs' current attempt to recast the *Crum* litigation as a Title VII case was not unforeseen. Defendants anticipated that, once the Court denied Plaintiffs' attempts to enforce the *Frazer* injunctions through *Crum*, Plaintiffs would attempt to salvage their case by recasting their claims as Title VII claims:

> [I]f plaintiffs at some future date want to swap arguments and say, "no, we didn't mean we're trying to enforce *Frazer*, we meant this is just a Title VII case," then they should not be heard because *Frazer* violations and enforcement is at the heart of every EEOC charge and allegation filed in this case.

Mem. in Opp. to Consolidation with *Frazer-Ballard* & Mem. in Support of Motion for Judgment on the Pleadings (Doc. no. 95 at 42).

Furthermore, Plaintiffs' attempt to recast their *Frazer* claims as Title VII, §1981 or §1983 claims presents a false dichotomy that this Court should reject. In particular, the *Frazer* injunctions redressed those violations by implementing agency-wide systemic injunctive relief that, in essence, required (and continues to require) the State to comply with all federal discrimination statutes. In fact, the *Frazer* court modified the August 20, 1976 Decree on June 29, 1982 specifically "to facilitate the implementation of employee selection procedures

developed by and for the State Personnel Department and to ensure the use of such procedures in a manner consistent with the intent of the previous orders of this Court and of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.*" *See* Order dated June 29, 1982 (*Frazer* Doc. no. 368). Therefore, whether denominated as Title VII, §1981, §1983 or *Frazer* claims, the bases of the claims, *i.e.*, the discriminatory employment and selection practices, have been litigated and enjoined in *Frazer*.

Plaintiffs previously have admitted that, although violations of the *Frazer* injunctions may be technically independent of their statutory claims under Title VII, §1981 or §1983, it is a distinction without a difference because all of the claims are based on Defendants' alleged violations of the *Frazer* injunctions. In fact, Plaintiffs made this precise argument when they sought to consolidate the *Crum* and *Frazer* actions:

> Consolidation is necessary because ***the proof of plaintiffs' Title VII claims independent of Ballard is the same as the proof needed to establish violations of Ballard and the need for further relief in that case.*** Even if the plaintiffs' effort to enforce *Ballard* in the current action were dismissed rather than consolidated, the plaintiffs' independent Title VII and §1983 claims would still remain to be tried in this lawsuit. ***The common premise which must be proven in [Crum] for both the named plaintiffs and the class is that the defendants have continued to utilize the same type of practices with the same racial result that were condemned in Ballard and that violate the injunctive decrees entered there.*** The common feature of that continuing pattern is the avoidance of black applicants through a selection process that refuses to engage in the recruitment ordered in *Ballard* (including the continued use of "closed" Registers) and that disqualifies or disadvantages black applicants in the examination and certification process in the same ways that were condemned in *Ballard* (including manipulation of the composition of Registers and Certificate-of-Eligibles through delay, previewing simulated Certificates, cancellation of Registers and Certificates, and use of exam eligibility criteria and examinations that favor prior experience of whites, etc.). ***The numerous briefs previously filed on various issues in this case have fully described the nature of the defendants' activities which perpetuate the discrimination found to exist in Ballard and***

> ***violate the remedial decrees entered there.*** (exhibit citation omitted).

Pls.' Mem. In Op. to Motions For Judg. on the Pleadings (*Crum* Doc. no. 118 at 14-15) (emphasis added). Thus, Plaintiffs clearly have recognized and argued, there is no practical difference between their *Frazer*-based claims and claims based on federal statutory remedies such as Title VII, §1981 or §1983. In sum, the Court must look to the nature of the relief Plaintiffs have requested rather than the current name they choose to give it.

Plaintiffs' unswerving description of their claims and the legal basis of their procedural maneuvering compellingly establish that their claims are based on alleged violations of the *Frazer* injunctions. Any attempt by Plaintiffs at this late date to recast their claims as anything other than alleged *Frazer* violations should be rejected as an end-run on this Court's previous orders dismissing all *Frazer* claims and prohibiting the *Crum* Plaintiffs from seeking the enforcement of the *Frazer* order through contempt proceedings either in *Crum* or in *Frazer*. As cogently stated by Judge Johnson nearly 30 years ago, to "start anew another class action that involves the same issues already litigated and decided is not the proper course for petitioners to follow." *Frazer* Order dated August 25, 1975.

III. ARGUMENT

A. CERTIFICATION UNDER 28 U.S.C. § 1292(B) IS WARRANTED.

28 U.S.C. § 1292(b) states as follows:

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

After such a certification by the district court, the Eleventh Circuit, in its discretion, may permit an appeal of such order upon timely application.[9] *Sikes v. Teleline, Inc.*, 281 F.3d 1350 (11th Cir. 2002); *Rutstein v. Avis Rent-A-Car Sys., Inc.,* 211 F.3d 1228, 1233 (11th Cir. 2000) (granting §1292(b) appeal from class certification).

Thus, §1292(b) requires that the following three criteria be satisfied in order for the Court to certify its order denying the Defendants' Motion for Summary Judgment (Doc. no. 701): (1) that the order involve a controlling question of law, (2) as to which there is substantial ground for a difference of opinion, and (3) that an immediate appeal from the order may materially advance the ultimate termination of the litigation. "While the individual elements of the statutory criteria may be examined separately for purposes of analysis and a decision may occasionally find one or another of them lacking, in practice the courts treat the statutory criteria as a unitary requirement, and decisions granting and discussing interlocutory appeals under 28 U.S.C. §1292(b) uniformly cite all three of the elements as being present in any particular case." 19 *Moores Federal Practice,* § 203.31[1] (Matthew Bender 3d ed.) (citing *Cuban American Bar Ass'n, Inc. v. Christopher,* 43 F.3d 1412, 1422 (11th Cir. 1995); *see, e.g., Allapattah Servs., Inc. v. Exxon Corp.*, 333 F.3d 1248, 1252 (11th Cir. 2003); *Tucker v. Fearn*, 333 F.3d 1216, 1218 (11th Cir. 2003).

1. DEFENDANTS' SUMMARY JUDGMENT MOTION CONCERNS A CONTROLLING QUESTION OF LAW.

"[I]f resolution of the question being challenged on appeal will terminate the action in a district court, it is clearly controlling." 19 *Moore's Federal Practice,* §203.31 [2] (Matthew Bender 3d ed.); *McFarlin v. Conseco Servs., LLC*, 381 F.3d 1251, 1259 (11th Cir. 2004)

[9] Fed. R. App. P. 5(a)(3) specifically authorizes the district court to amend a prior order so as to include the required permission or statement pursuant to 28 U.S.C. §1292(b), and a party's time to petition for appeal begins to run from the date of entry of the amended order.

(§1292(b) appeal appropriate where resolution of a controlling legal question would serve to avoid a trial or otherwise substantially shorten the litigation); *In re Virginia Elec. & Power Co.*, 539 F.2d 357, 364 (4th Cir. 1976) (§1292(b) appeal appropriate where resolution of controlling question could prevent substantial delay); *U.S. Fid. & Guar. Co. v. Thomas Solvent Co.*, 683 F. Supp. 1139, 1176 (W.D. Mich. 1988) (§1292(b) appeal appropriate where resolution of controlling questions could shorten the time, effort, and expense of the litigation). The question of whether a party has standing to maintain the action has been held to involve a controlling question of law. *See Harris. v. Evans,* 20 F.3d 1118, 1120 (11th Cir. 1994); *E. F. Hutton & Co. v. Hadley*, 901 F.2d 979, 980 (11th Cir. 1990) (denial of summary judgment on issue of standing reviewed). In the present case, the Defendants' motion for summary judgment sought a judgment on all of Plaintiffs' remaining claims on the grounds that Plaintiffs' remaining *Crum* claims were merely repackaged *Frazer* claims for which Plaintiffs lack standing to pursue. Clearly, Defendants' Motion for Summary Judgment (Doc. no. 701) involves a controlling question of law.

2. GRANTING THE STATE DEFENDANTS' PETITION WILL ADVANCE THE DISPOSITION OF THE LITIGATION.

Pursuant to §1292(b), it is enough that a court finds that the controlling question of law involves an issue whose determination may materially advance the ultimate termination of the case. In other words, the controlling question of law does not necessarily have to immediately result in the termination of the case in its entirety. 19 *Moore's Federal Practice,* §203.3[3] (Matthew Bender 3d ed.). Nevertheless, in the present case, the issue presented in Defendants' Motion for Summary Judgment, if adopted by the Eleventh Circuit on appeal, would result in a

judgment in favor of Defendants on all of Plaintiffs' remaining claims in this action, thus terminating this litigation.[10]

3. THERE EXISTS A SUBSTANTIAL GROUND FOR DIFFERENCE OF OPINION REGARDING THE ISSUE AT HAND.

"If the law is clear and there is no question that the district court's order is correct as a matter of law, there is no purpose in appealing the ruling." 19 *Moore's Federal Practice,* § 203.31[4] (Matthew Bender 3d ed.) (citing *Burrell v. Board of Trustees of Georgia Military College,* 970 F.2d 785, 789 (11th Cir. 1992)). In the present case, Defendants contend that there are substantial grounds for difference of opinion regarding whether the putative *Crum* class can pursue claims in a separate action regarding alleged discriminatory employment practices that are already subject to the *Frazer* injunctions, simply by repackaging those claims as Title VII, §1981 or §1983 claims, rather than requiring the proper party to pursue those claims through contempt proceedings filed in *Frazer*. Although the Court denied their summary judgment motion, Defendants respectfully assert that governing Eleventh Circuit case law requires the Court to look beyond Plaintiffs' denomination of their claims to determine whether, in fact, the challenged discriminatory practices are, in substance, alleged *Frazer* violations that must be addressed through the civil contempt proceedings in *Frazer*.[11] *See Florida Ass'n for Retarded Citizens v. Bush*, 246 F.3d 1296, 1298 (11th. 2001) (holding that the proper procedure for seeking to enforce injunctive relief is through contempt proceedings); *Reynolds v. Roberts*, 207 F.3d 1288, 1298 (11th Cir. 2000) (same). Defendants respectfully submit that the *Crum* plaintiffs are leading the Court down the same (or at least similar) garden path that led to error in

[10] Defendants further note that the resolution of Defendants' Motion for Summary Judgment presents solely a question of law. Its resolution does not call for the determination of any questions of fact.

[11] The Court previously has ruled that to the extent the Crum plaintiffs assert violations of the *Frazer* injunction, only the United States and the original party-Plaintiff in *Frazer* has standing to pursue civil contempt against the State Defendants for those alleged violations. *See In re Employment Discrimination Against the State of Alabama*, 213 F.R.D. 592 (M.D. Ala. 2003).

Reynolds v. Roberts. Allowing the *Crum* Plaintiffs to merely repackage their claims and to pursue as a class a separate lawsuit alleging in substance the same alleged discriminatory practices, which they asserted for years as *Frazer* violations, would clearly circumvent the procedural requirement that such alleged violations be addressed through contempt proceedings rather than through a separately filed action.

IV. CONCLUSION

In sum, Defendants' summary judgment motion is very straightforward. Whether repackaged as Title VII, §1981 or §1983 claims, Plaintiffs' remaining claims for systemic injunctive relief allege class-wide violations of the *Frazer* injunctions, which they lack standing to pursue in this action. The Court should reject Plaintiffs' belated representations that this case is merely a Title VII, §1981 or §1983 case.

For these reasons, Defendants request that the Court certify, pursuant to 28 U.S.C. §1292(b), that its May 3, 2005 Order (Doc. no. 737) involves a controlling question of law with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation.

s/Christopher W. Weller
Christopher W. Weller (WEL020)
Deputy Attorney General &
Liaison Counsel for the Office of the Attorney General of the State of Alabama

OF COUNSEL

Capell & Howard, P.C.
P.O. Box 2069
Montgomery, Alabama 36102-2069
(334) 241-8000

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 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:

Robert F. Childs, Esq.
Robert L. Wiggins, Esq.
Rocco Calamusa, Jr., Esq.
Roderick T. Cooks, Esq.
GORDON, SILBERMAN,WIGGINS & CHILDS
301 19th Street North
Birmingham, Alabama 35203-3204

William F. Gardner, Esq.
CABANISS, JOHNSTON, GARDNER,
DUMAS & O'NEAL
Park Place Tower
2001 Park Place North, Suite 700
Birmingham, AL 35203

Patrick H. Sims, Esq.
CABANISS, JOHNSTON, GARDNER,
DUMAS & O'NEAL
700 AmSouth Center
P.O. Box 2906
Mobile, AL 36652

David R. Boyd, Esq.
BALCH & BINGHAM, LLP
1710 6th Avenue, North
P.O. Box 306
Birmingham, AL 35201

Reginald Sorrells, Esq.
Deputy Attorney General
ALABAMA STATE DEPARTMENT OF EDUCATION
5103 Gordon Persons Building
PO Box 302101
Montgomery, AL 36130-2101

Courtney W. Tarver, Esq.
DEPUTY ATTORNEY GENERAL
PO Box 301410
Montgomery, Alabama 36130

William J. Huntley, Jr., Esq.
HUNTLEY & ASSOCIATES, P.C.
708 Government Street
P.O. Box 370
Mobile, AL 36601

Robbie Alexander Hyde, Esq.
Daryl L. Master, Esq.
Ashley Hawkins Freeman, Esq.
WEBB & ELEY
P.O. Box 238
Montgomery, AL 36101-0238

Alice Ann Byrne, Esq.
GENERAL COUNSEL, ALABAMA STATE
300 Folsom Administrative Building
Personnel Department, Room 316
64 North Union Street
Montgomery, AL 36103

William F. Kelley, Jr., Esq.
GENERAL COUNSEL, RETIREMENT SYSTEMS
OF ALABAMA
135 South Union Street
Montgomery, AL 36130-4101

Honorable Mary Beth Martin, Esq.
Jay D. Adelstein, Esq.
EMPLOYMENT LITIGATION SECTION
Civil Rights Division, PHB-Rm. 49046
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20035

Susan B. Anderson, Esq.
GENERAL COUNSEL
770 Washington Avenue, Suite 570
Montgomery, AL 36130-4700

Robert D. Tambling, Esq.
OFFICE OF THE ATTORNEY GENERAL
11 South Union Street
Montgomery, AL 36130

Beverly P. Baker, Esq.
MILLER, HAMILTON, SNIDER & ODOM, LLC
2501 20th Place South, Suite 450
Birmingham, Alabama 35223

Kenneth D. Wallis, Esq.
GOVERNOR'S OFFICE
NB05 State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130-2751

Andrew P. Campbell, Esq.
Cinda R. York, Esq.
CAMPBELL WALLER & LOPER, L.L.C.
2000-A Southbridge Parkway, Suite 450
Birmingham, Alabama 35209

John J. Park, Esq.
Margaret Fleming, Esq.
ASSISTANT ATTORNEYS GENERAL
11 S. Union Street
Montgomery, Alabama 36130

R. Taylor Abbott
SPAIN & GILLON, L.L.C.
The Zinszer Building
2117 2nd Avenue North
Birmingham, Alabama 35203

s/Christopher W. Weller
OF COUNSEL