

RECEIVED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

2011 MAY 26 A 10:21

DEBRA P. HACKETT, CLK
UNITED STATES COURT OF AMERICA,
MIDDLE DISTRICT ALA

Plaintiff,

v.

Case No. 2:10-cr-00186-MHT

MILTON E. MCGREGOR, et. al.

Defendants.

**FORMER GOVERNOR BOB RILEY'S MOTION
TO QUASH OR MODIFY SUBPOENA TO TESTIFY AT TRIAL**

COMES NOW, Robert R. Riley, the former Governor of the State of Alabama ("Riley"), and moves this Honorable Court to quash or modify the "Subpoena to Testify at a Hearing or at Trial of a Criminal Case" served by Defendant Milton McGregor ("McGregor"). In support of this motion, Riley states as follows:

1. Riley was the Governor of the State of Alabama from 2003 to 2011.
2. The indictment in this case alleges that McGregor conspired to bribe and otherwise corruptly influence certain Alabama State legislators to secure the passage of pro-gambling legislation from February 2009 to August 2010. The indictment further alleges that this conspiracy was executed by telephone conversations and private meetings among the conspirators.

3. This case is scheduled for an estimated eight week trial beginning on June 6, 2011.

4. Riley was served with a subpoena to testify at the trial, a copy of which is attached as Exhibit A. The subpoena requires Riley to appear and be available to testify on short notice.

5. The subpoena should be quashed or modified. “Although Rule 17(a), which governs such subpoenas, does not provide explicitly for quashal or modification, courts routinely have entertained motions seeking such relief and decided them by reference to comparable principles.” *See Stern v. United States Dist. Court for Dist. of Mass.*, 214 F.3d 4, 17 (1st Cir. 2000). “[A] subpoena ad testificandum survives scrutiny [only] if the party serving it can show that the testimony sought is both relevant and material.” *Id.*

6. Riley acknowledges that he has a duty to provide this Court with any and all relevant non-privileged testimony that tends to prove or disprove the allegations in the Indictment. But Riley does not believe that he has any personal knowledge concerning the alleged acts made the basis of the Indictment, nor any other personal knowledge of facts that are admissible or relevant to the trial of this case. Moreover, as explained in the State of Alabama’s Contemporaneously Filed Motion to Quash, which Riley adopts and incorporates as if set forth herein, any and all testimony about criminal investigations conducted during Riley’s term as

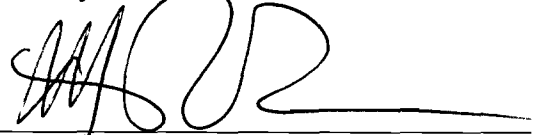
Governor, about law enforcement actions, and/or about Riley's official acts and decisions would be privileged.

7. Moreover, compliance with the subpoena as currently drafted will impose an undue and unreasonable burden on Riley because it would require him to cancel pre-existing travel arrangements and remain in the State during a multi-week trial. *See* FED. R. CRIM. P. 17(c)(2) (A court should “quash or modify [a] subpoena if compliance would be unreasonable or oppressive.”). Riley is scheduled to begin a long-planned cross-country motorcycle trip to Alaska in June, which will continue through July. Riley's plans for this trip have received public attention and press coverage since 2009. *See, e.g., Bob, Patsy Riley get farewell in Mobile*, MOBILE PRESS-REGISTER (Jan. 17, 2011) (discussing plans for motorcycle trip); *Bob Riley's post-governor plan: Harley ride cross country to Alaska*, MOBILE PRESS-REGISTER (December 21, 2009); Christian Bourge, *A look at Alabama's Governor*, WASH. TIMES (August 13, 2009) (discussing plans for motorcycle trip at end of term). Thousands of dollars have already been expended for this trip, for example, to purchase ferry passes for travel between Alaska and Washington. Meetings have also been organized along the route of the trip. And this trip cannot easily be rescheduled—these areas of Alaska can only be accessed by motorcycle during certain summer months. Due to the nature of the trip and the logistics of making travel arrangements to and from Alaska, the subpoena as written would

require Riley to cancel these pre-existing travel arrangements in order to be present in the State for the duration of the multi-week trial.

8. In light of Riley's pre-existing travels plans and the State's assertions of privilege, this Court should make an appropriate advance assessment—in camera if necessary—of whether McGregor's subpoena is reasonably calculated to elicit material and admissible testimony on any issue before the Court, and if so, whether other reasonable means for procuring such evidence are available. If the Court determines that the subpoena was not issued for an improper purpose and that the testimony McGregor seeks to elicit from Riley is not privileged and is within Riley's personal knowledge, then Riley respectfully requests the Court to modify the subpoena so that Riley is not required to remain in the State for the duration of the trial. Instead, Riley requests that he be placed on call and allowed a reasonable time (*e.g.*, 5 days) to return from wherever he may be en route to or from Alaska \ should his testimony be needed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MOR', with a long horizontal line extending to the right.

Michael R. Pennington
One of the Attorneys for
Robert R. Riley

OF COUNSEL

Michael R. Pennington (mpennington@babco.com)
Matthew H. Lembke (mlembke@babco.com)
Jack W. Selden (jselden@babco.com)
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2119
Telephone: (205) 521-8000
Facsimile: (205) 521-8800

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2011, I filed the foregoing with the Clerk of the Court and served the foregoing on the below listed counsel of record via U.S. First Class Mail.

Andrew D. Arrington
Office of the Attorney General
501 Washington Avenue
Post Office Box 300152
Montgomery AL 36130-0152

Justin V. Shur
Peter J. Ainsworth
Barak Cohen
Brenda K. Morris
Edward T Kang
Emily Rae Woods
Eric Olshan
John L. Smith
United States Department of Justice
Public Integrity Section
1400 New York Ave—12 Floor
Washington DC 20005

Louis V. Franklin Sr.
Stephen P. Feaga

United States Attorney's Office
PO Box 197
Montgomery AL 36101-0197

Joseph Cleodus Espy, III
Benjamin Joseph Espy
William Martin Espy
Melton Espy & Williams PC
PO Drawer 5130
Montgomery AL 36103-5130

Fred D. Gray Sr.
Walter Edgar McGowan
Gray Langford Sapp McGowan Gray Gray & Nathanson PC
PO Box 830239
Tuskegee AL 36083

Robert David Segall
James David Martin
Ashley Nicole Penhale
Clayton Rushing Tartt
Shannon Lynn Holliday
Copeland Franco Screws & Gill
PO Box 347
Montgomery AL 36101

Samuel H. Heldman
The Gardner Firm
2805 31st Street NW
Washington DC 20008

Ruth H. Whitney
In Veritas
650 S. Shackelford Rd—Ste 305
Little Rock, AR 72211

David Jerome Harrison
David J. Harrison, Attorney at Law
PO Box 994
Geneva, AL 36340

Sandra Payne Hagood
7660 Fay Ave - Suite H-526
La Jolla, CA 92307

Thomas Julian Butler
Haskell Slaughter Young & Rediker
2001 Park Place North, Suite 1400
Birmingham, AL 35203

David McKnight
Joel E. Dillard
William J. Baxley
Baxley, Dillard, Dauphin McKnight & James
2008 Third Avenue South
Birmingham, AL 35233

Samuel Holley Franklin
Jackson R Sharman, III
Jeffrey P. Doss
Lightfoot Franklin & White LLC
The Clark Building
400 20th Street North
Birmingham, AL 35203

James P. Judkins
Larry D. Simpson
Judkins, Simpson, High & Schulte
P.O. Box 10368
Tallahassee, FL 32302

Brett M. Bloomston
Joseph James Basgier , III
Brett M. Bloomston, Attorney at Law
1330 21st Way South, Ste. 120
Birmingham, AL 35205

William N. Clark
Glory R. McLaughlin
Stephen W. Shaw

William H. Mills Redden, Mills & Clark
505 North 20th Street, Suite 940
Birmingham, AL 35203

Ronald W. Wise
Law Office of Ronald W. Wise
2000 Interstate Park Drive, Suite 105
Montgomery, AL 36109

H. Lewis Gillis
Tyrone C. Means
Thomas Means Gillis & Seay PC
3121 Zelda Court
PO Drawer 5058
Montgomery, AL 36106

Mark Englehart
Englehart Law Offices
9457 Alysbury Place
Montgomery, AL 36117-6005

J. W. Parkman , III
Joshua L. McKeown
Richard M. Adams
William C. White , II
Parkman, Adams & White, LLC
505 20th Street North , Suite 825
Birmingham, AL 35203

Susan G. James
Denise A. Simmons
Susan G. James & Associates
600 S. McDonough Street
Montgomery, AL 36104

Jeffery C. Duffey
Law Office of Jeffery C. Duffey
600 South McDonough Street
Montgomery, AL 36104

Thomas M. Goggans
Thomas M. Goggans, Attorney at Law
2030 East Second Street
Montgomery, AL 36106



OF COUNSEL

EXHIBIT A

AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case

UNITED STATES DISTRICT COURT

for the

Middle District of Alabama

United States of America)
v.)
MILTON E. McGREGOR, et al.) Case No. 2:10-cr-00186-MHT
Defendant)

SUBPOENA TO TESTIFY AT A HEARING OR TRIAL IN A CRIMINAL CASE

To: Bob Riley
210 Kowaliga Cove Road
Rockford City, AL 35010

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Table with 2 columns: Location (U.S. District Court, One Church Street, Montgomery, AL) and Courtroom No. (Judge Thompson's Courtroom). Date and Time: 06/06/2011 9:00 am.

You must also bring with you the following documents, electronically stored information, or objects (blank if not applicable):

THE PARTY WHO REQUESTED YOU TO SERVE AS A WITNESS IS RESPONSIBLE FOR PAYING THE WITNESS FEE, MILEAGE AND CERTAIN EXPENSES. THERE IS NO PROVISION FOR THE UNITED STATES TO PAY YOU. IF THE WITNESS FEE AND MILEAGE ARE NOT TENDERED WHEN THE SUBPOENA IS SERVED, THE WITNESS MAY NOT BE COMPELLED TO RESPOND TO THE SUBPOENA.

(SEAL)

Date:

4/19/11

CLERK OF COURT

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (name of party) Milton McGregor, who requests this subpoena, are:

Ben Espy
Melton, Espy & Williams, P.C.
P.O. Drawer 5130
Montgomery, AL 36103-5130
(334) 263-6621
BEspy@mewlegal.com

"A subpoena may be served by the marshal, by a deputy marshal or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to that person the fees for one day's attendance and the mileage allowed by law." (Federal Rules of Criminal Procedures 17d)