

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA**

KELLY McGINLEY and RICHARD C.  
DORLEY,

Plaintiffs,

v.

GORMAN HOUSTON, Senior  
Associate Justice of the Alabama  
Supreme Court, HAROLD SEE,  
Associate Justice of the Alabama  
Supreme Court, CHAMP LYONS,  
Associate Justice of the Alabama  
Supreme Court, JEAN BROWN,  
Associate Justice of the Alabama  
Supreme Court, BERNARD HARWOOD,  
Associate Justice of the Alabama  
Supreme Court, THOMAS WOODALL,  
Associate Justice of the Alabama Supreme  
Court, LYN STUART, Associate Justice of the  
Alabama Supreme Court, and DOUGLASS  
JOHNSTONE, Associate Justice of the  
Alabama Supreme Court,

Defendants

Case No.: 03-0563-WS-M

**MOTION TO DISMISS**

Under Federal Rules of Civil Procedure 12(b)(1), 12(b)(3), and 12(b)(6), the defendants, Gorman Houston, in his official capacity as Senior Associate Justice and acting Chief Justice of the Supreme Court of Alabama, Harold See, in his official capacity as Associate Justice of the Supreme Court of Alabama, Champ Lyons, in his official capacity as Associate Justice of the Supreme Court of Alabama, Jean Brown, in her official capacity as Associate Justice of the Supreme Court of Alabama, Bernard Harwood, in his official capacity as Associate Justice of the Supreme Court of Alabama, Thomas Woodall, in his official capacity as Associate Justice of the Supreme Court of

Alabama, Lyn Stuart, in her official capacity as Associate Justice of the Supreme Court of Alabama, and Douglass Johnstone, in his official capacity as Associate Justice of the Supreme Court of Alabama, defendants in this action, (the “Associate Justices” unless otherwise stated), move to dismiss the Complaint on the grounds that this Court lacks subject-matter jurisdiction, venue in this District is improper, and plaintiffs Kelly McGinley and Richard C. Dorley have failed to state a claim as to which relief may be granted. More specifically:

1. The complaint fails to state a claim upon which relief can be granted in that the plaintiffs are complaining that the defendants are complying with a judgment of another federal district court, with which the defendants do not necessarily agree, affirmed by the U.S. Court of Appeals for the Eleventh Circuit.

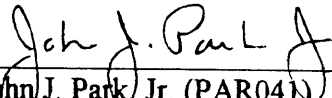
2. This Court lacks subject matter jurisdiction because the plaintiffs lack standing to complain that the defendants are complying with a federal injunction, with which the defendants do not necessarily agree, entered by another federal district court in a collateral action, *Glassroth v. Moore*, Civil Action No. 02-T-1268-N (M.D. Ala.).

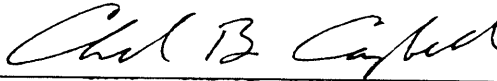
3. Venue in this District is improper because this action concerns a res located in another District over which a court of competent jurisdiction has already taken jurisdiction, and none of the events at issue have occurred or will occur in this District.

WHEREFORE this Court should dismiss the Complaint.

Respectfully submitted,

**WILLIAM H. PRYOR, JR. (PRY002)**  
**ATTORNEY GENERAL**  
**BY:**

  
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John J. Park Jr. (PAR041)  
Assistant Attorney General

  
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Charles B. Campbell (CAM046)  
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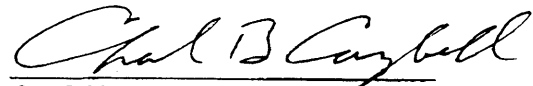
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has this the 26th day of August, 2003 been furnished by facsimile and United States mail to:

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