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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

PEOPLE FIRST OF ALABAMA, et al.,

Plaintiffs,

v.

JOHN MERRILL, et al .,

Defendants)

order to exercise their right to vote, leading to potentially deadly consequences for vulnerable voters whose age, race, disabilities, or health conditions place them at heightened risk from the virus. The plaintiffs contend that forcing voters to bear that risk runs afoul of their fundamental right to vote and violates federal law, and they seek an order barring the defendants from enforcing the Challenged Provisions for the general election in November. Without this relief, the plaintiffs believe voters will face an impossible choice between jeopardizing their health by engaging in person-to-person contact they would not otherwise have or sacrificing their right to vote during the COVID-19 pandemic.

These issues are important to all people, but the plaintiffs find them particularly significant. Their testimony speaks for itself. Plaintiff Eric Peebles, an Alabama voter who uses a wheelchair and suffers from spastic cerebral palsy, described what voting means for people with disabilities: "Voting is important to

to do so "[w]ithout any obstacle being placed in their way." However, he and the other defendants maintain that the Challenged Provisions are necessary to preserve the legitimacy of the general election by preventing voter fraud and safeguarding voter confidence. The defendants also contend that the Challenged Provisions do not impose any undue burdens on the plaintiffs, especially when balanced against the State's interests, and that enjoining the Challenged Provisions so close to the election will result in voter confusion and unduly burden the defendants.

Based on the evidence presented during the trial the court held from September 8 to 18, the plaintiffs have proved that their fears are justified. As applied during the COVID-19 pandemic, the Challenged Provisions unduly burden the

against Black citizens to deny Black voters' their right to vote, this provision violates the Voting Rights Act during the pandemic.

Thus, the plaintiffs have met their burden and are entitled to declaratory and injunctive relief. Consistent with the findings and conclusions detailed below, for the November 3, 2020 general election, the court will enjoin: (1) the witness requirement for absentee ballots for voters who provide a statement that they have an underlying medical condition that puts them at a heightened risk from COVID-19 and, thus, they cannot safely obtain the signatures of two witnesses or a notary public; (2) the photo ID requirement for absentee voters over 65 or those under 65 who cannot safely obtain a copy of their photo ID during the COVID-19 pandemic due to an underlying medical condition, and, as required by the application, who provide other identifiers such as their driver's license number and last four digits of their social security number; and (3) the de facto ban on curbside voting. To be clear, lifting the ban on curbside voting permits counties willing to implement the

I. FINDINGS OF FACT

A. The COVID-19 Pandemic

1. Our nation is now in the midst of a public health emergency due to the spread of COVID-19, the respiratory disease caused by the novel coronavirus SARS-CoV-2. Since April, the United States has led the world in the total number of COVID-19 cases. Agreed Facts at ¶ 24.[10] As of September 29, 2020, the United States has confirmed 7,129,383 cases of COVID-19 and reported 204,598 deaths and counting due to COVID-19.[11] See id. at ¶ 25 (citing CDC data). The COVID-19 pandemic has deeply affected Alabama, and as of September 29, Alabama reported 137,564 confirmed COVID-19 cases and 3,299 confirmed COVID-19 deaths,[12] including family members and a friend of some of the individual plaintiffs. See Agreed Facts at ¶ 59 (citing ADPH data, 9/14/20 at 9-11, 69-71).

2. The most common symptoms of COVID-19 are fever, cough, and shortness of breath, of[illegible] 0 0 8.2 (la)14412wm

5. No vaccine for COVID-19 currently exists, and it is unlikely a vaccine will become widely available until well into 2021. See Pl. Ex. 269 at ¶¶ 12, 15; 9/8/20 at 26, 29. Accordingly,

6. Though people of all ages have contracted COVID-19 and suffered severe manifestations of the disease, the illness poses special risks for older people and the risk of COVID-19 increases steadily with age. 9/8/20 at 64; 9/9/20 at 44; Pl. Ex. 269 at ¶ 8; Agreed Facts at ¶ 10. As of September 17, 73 percent of COVID-19 related deaths in Alabama have been people 65 or older,[18] and 80 percent of deaths in the United States have been people over age 65.[19] Agreed Facts at ¶ 10; Pl. Ex. 270 at 8. Thus, the CDC warns that older people should avoid interacting with people outside of their households and people who have been exposed to the virus.[20] Pl. Ex. 270 at 8.

7. COVID-19 also presents special risks for people with disabilities. "The CDC [] warns that people with disabilities may be at increased risk of becoming infected with COVID-19 to the extent that they "(1) 'have limited mobility or cannot avoid coming into close contact with others who may be infected;' (2) 'have trouble understanding information or practicing preventative measures;' or (3) are 'not able to communicate symptoms of illness.'" Pl. Ex. 270 at 10. As Susan Ellis, the Executive Director of People First of Alabama, explained, people with intellectual disabilities are not able to identify risky behavior in the same way as other people

[18] See ADPH, Characteristics of Laboratory Confirmed Cases of COVID-19, https://www.alabamapublichealth.gov/covid19/assets/dd-cases-090120.pdf.

[19] CDC, Older Adults,

9. Alabamians suffer from high rates of the underlying health conditions that increase their risk for COVID-19 complications: more than 14 percent have diabetes, 41.9 percent have high blood pressure, 10.4 percent have asthma, approximately 33 percent are obese, and about 1 in 11 have kidney disease. Agreed Facts at ¶ 13; Pl. Ex. 270 at 52; 9/14/20 at 198. As Alabama State Health Officer Dr. Scott Harris stated, "[c]hronic disease factors are a real risk for dying from this disease, and chronic diseases are found in about a third of our citizens."

prevalence of asthma, high blood pressure, kidney disease, COPD, and diabetes, than predominately White areas of the city. Compare doc. 228-5 at 8, 10, 12–14, with doc. 228-6. Moreover, about 42.2 percent

looking [across] age groups, that Black people, regardless of health conditions, have higher rates of death compared to Whites." 9/9/20 at 12:21-

13. The higher risk of COVID-19 infection for African Americans is tied to pre-existing and evolving inequities in structural systems and social conditions. See Pl. Exs. 268 at ¶¶ 6-10; 271 at ¶ 14; dpT266t erfo3 (d sr (l c)med1 (sk)-8.em (C)4.9ic)

minorities at increased risk of getting sick and dying from COVID-19. See Agreed Facts at ¶ 6; 9/10/20 at 9; Pl. Ex. 270 at 9.

14. The discrimination and systemic racism that contribute to elevated COVID-19 risk for Black people and other minorities nationally are evident in Alabama. Agreed Facts at ¶ 6. For example, in Alabama's Black Belt counties, residents face multiple stressors that lead to a relatively poor quality of life: high levels of poverty and unemployment, inadequate education, high rates of illiteracy, lack of jobs, ma14.yiisyalackmulnt

B. Alabama's Response to the Pandemic

15. Governor Ivey and the ADPH have taken steps to combat the spread of COVID-19 in Alabama, including by issuing a series of orders since March 13, when Governor Ivey declared a State of Emergency. See Pl. Exs. 299-303; State. Ex. 7. First, on March 19, Dr. Harris issued a statewide health order implementing several mandatory measures, including: prohibiting "[a]ll gatherings of 25 persons or more, or gatherings of any size that cannot maintain a consistent six-foot distance between persons[,]" closing all public and private schools, colleges, and universities and Senior Citizen Center gatherings; requiring hospitals and nursing homes to prohibit visitation except for certain compassionate care situations; and prohibiting

enabled corporations to hold remote shareholder meetings to further reduce the need for in-person meetings in light of COVID-19. See id. at 4-5.

17. Then, on April 3, Governor Ivey and Dr. Harris issued a mandatory statewide order requiring "every person . . . to stay at his or her place of residence except as necessary to perform" an enumerated list of "essential activities." Pltf. Ex. 85 at 2 for jovial

at Home" order through October 2, 2020. Agreed Facts at ¶ 58.[30] Under this most recent order, all individuals—especially vulnerable persons—are encouraged to stay home and follow good sanitation practices, and all non-work related gatherings of any size that cannot maintain a consistent six foot distance between persons from different households are prohibited. Id. at ¶¶

I don’t see any reason why, if people maintain [six] distancing,

polling places|eading

practices to 'de-densify' [] polling locations as possible," including by offering more hours at the polls, early voting, and curbside voting, and by encouraging absentee voting. 9/10/20 at 151-174.

23. In contrast to Dr. Cotti, the State defendants' expert, Dr. Quentin Kidd, a political scientist at Christopher Newport University, found that there was no increase in COVID-19 infection rates in the 14-day period following elections in Wisconsin, Virginia, West Virginia, Georgia, and Kentucky, based on his review of data from Johns Hopkins University. 9/16/20 at 164-59a, 214(

safer during the COVID-19 pandemic. To begin, on March 13, Secretary Merrill sent a letter to probate judges to suggest that they should sanitize polling machines and equipment frequently during voting, provide hand sanitizer to voters, and provide gloves to poll workers. State Ex. 5. Then, on March 18, Governor Ivey rescheduled the March 31 primary runoff election to July 14. State Exs. 15, 16; Agreed Facts at ¶ 80. That same day, Secretary Merrill promulgated an emergency rule titled "Absentee Voting During State of Emergency," providing in part as follows:

> [A]ny qualified voter who determines it is impossible or unreasonable to vote at their voting place for the Primary Runoff Election of 2020 due to the declared states of emergency, shall be eligible to check the box on the absentee ballot application which reads as follows: "I have a physical illness or infirmity which prevents my attendance at the polls. [ID REQUIRED]."

State Ex. 17; Agreed Facts at ¶ 81. In effect, this rule meant that any voter concerned about potential exposure to COVID-19 at a polling place could vote absentee in the July 14 primary runoff election. See 9/11/20 at 3. Secretary Merrill issued a press release in March informing voters about the emergency absentee voting rule for the July election. State Ex. 18.

26. In April, Congress appropriated funds for Alabama to prepare for voting during the pandemic in the July and November elections, and the Secretary of State's office also dedicated increased funding to this effort. 9/15/20 at 149; State Ex. 35. The Secretary of State will use some of those funds to reimburse counties

for masks, gloves, and cleaning supplies for polling places. Id. And, Secretary Merrill testified that his office will provide a mask to any voter at a polling place who would like one. 9/11/20 at 61. Still, Secretary Merrill's office received letters from some probate judges expressing concern about their ability to comply with CDC recommendations and State and Federal election laws during the July runoff election. State Exs. 36; 38. And, the Secretary received a report that in Mobile County, the polling sites that would have the biggest issues complying with CDC guidelines serve predominately minority communities. 9/11/20 at 35.

27. Alabama saw a record turnout of voters for a runoff election on July 14, with 17.6 percent of eligible voters voting. 9/11/20 at 45. During and after the July 14 election, Secretary

30. Voters may go in person to an AEM's

79. Mr. Porter, a Black man in his seventies, further explained: "[S]o many of my [ancestors] even died to vote. And while I don't mind dying to vote, I think we're past that – we're past that time. And that should not be a requirement . . . . Because voting is the only day that rich, the poor, sick, the healthy, all should be counted as one and just as easy. And any obstacle placed in the way of the opportunity to vote places an effect on the process itself."

them due process and equal protection of the laws. Const. Amend. XIV. Finally, the Fifteenth Amendment granted them the right to the men among our nation's newest citizens. Const. Amendment XV. Backed by the federal government, the

governments, and, in Alabama's Black Belt, they eliminated elections altogether so that the Governor could appoint White leaders. Id.

35. Their later efforts included enacting new laws nominally geared toward curbing voter fraud. Agreed Facts at ¶ 145. The Alabama legislature passed the Sayre Law in 1893, which entrenched "a more respectable and cunning way of con0 1 Tf 3.7 (e)l (l)8.5 (n)8.2 (g-t)8.5

committed by [Black residents]." Agreed Facts at ¶ 146 (quoting Hunter v. Underwood, 471 U.S. 222, 232 (1985)). The number of registered Black voters in Alabama dropped from 180,000 to 3,000 under the 1901 Constitution. Id.

37. As the federal courts awakened to southern efforts to disenfranchise Black citizens, Alabama innovated. When the Supreme Court invalidated the all-White primary in 1944, the state legislature responded by enacting the "Boswell Amendment" to its 193 (or)3.6 wd3 (a)3.5 5 (l)8.5 (e)3.6 (g) -2.291 TD [(Am)n.5

communities. Id.; see also 9/14/20 at 122. Federal courts consistently blocked their implementation. See Pl. Ex. 264 at 15.

41. In the 1990s, the Alabama legislature again enacted so-called reform measures that disproportionately impacted Black voters in the name of rooting out voter fraud. 9/14/20 at 126. These laws formally mandated that citizens interested in voting absentee include with their ballots either two witness signatures or the signature of a notary public. Id. at 127; see also Pl. Ex. 264 at 20-21. This legislation had a "laser focus on Black political activists" who had used Alabama's absentee ballot process to increase Black voter turnout. 9/14/20 at 126. At the time, only four state senators opposed these new restrictions; all were Black.

record shows that voter fraud rarely occurs today, and the defendants point to only two instances of voter fraud convictions secured in Alabama since the 1990s. See 9/16/20 at 67–70.

44. Regardless of whether they were designed to address fraud or to suppress the Black vote, the absentee ballot reforms enacted in the 1990s disproportionately disadvantaged the rural Black citizens who historically relied on absentee voting. 9/14/20 at 129; see also Pl. Ex. 264 at 21–22. Because these citizens regularly worked long hours outside their counties and often lacked access to vehicles, they struggled to reach "far

in Alabama have continued, with dozens remaining under desegregation orders today. 9/14/20 at 137.

47.

Alabama was also overrepresented nationally in racially-based employment discrimination claims based on its population. Id.

49. Relatedly, Black communities in Alabama suffer from higher concentrations of unemployment and underemployment. See Doc. 228 at ¶¶ 5-6. The unemployment rate among Black Alabamians over age 16 is more than double the rate among White residents of the same age. Id. at ¶ 5. Those Black Alabamians who are employed are more likely to work lower paying jobs than White workers. Of employed Black adults in the State, 20.7 percent work in service occupations compared to just 14.8 percent of Whites. Id. at ¶ 7; see also Pl. Ex. 268 at ¶ 14. Only 26.2 percent of employed Black Alabamians hold management or professional roles; 39.1 percent of White Alabamians hold such positions. Doc. 228 at ¶ 6.

50. In Alabama, Black households also have fewer economic resources. The median household income for Black Alabamians is $33,503 compared to $58,257 for White households. Doc. 228 at ¶ 9. More than one quarter of Black Alabamians live in poverty compared to only 11.3 percent of White Alabamians. Id. at ¶ 10. This economic inequality has consequences. Roughly 13 percent of Black families in Alabama lack access to a vehicle compared to only 3.9 percent of White families. Id.

51. These economic conditions intersect with other legacies of racial discrimination in Alabama to make the State's Black residents more likely to suffer negative health outcomes. Pl. Ex. 268 at ¶ 6. Historic racial residential segregation is a principal driver. 9/10/20 at 13–14. State and federal laws and practices "produced and maintained" racial residential segregation in Alabama by incentivizing discriminatory zoning, redlining, and predatory lending. Pl. Ex. 268 at ¶ 8. Racial residential segregation has devalued neighborhoods, reduced access to quality and affordable food, and produced disproportionately high concentrations of poverty in Black communities. 9/10/20 at 15–16; Pl. Ex. 268 at ¶ 8. It is "one of the strongest indicators of chronic illness patterns in the Black community." 9/10/20 at 13. Because of racial residential segregation, Black individuals are more likely than White individuals to suffer from chronic conditions such as obesity, cancer, and asthma. See id. at 16; Pl. Ex. 268 at ¶ 8.

52. This is particularly true in Alabama's Black Belt counties, where "a shortage of infrastructure to support economic stability and growth compounds the inability of [residents] to move upward economically, contributing to generational poverty, especially among rural Black people who are less likely to be able to mobilize out of rural areas." Pl. Ex. 271 at ¶ 8. Health outcomes for Black Alabamians in rural counties are much worse than for White Alabamians in those counties. 9/9/20 at 43; Pl. Ex. 271 at ¶ 9. Although impoverished people of all races face structural obstacles that adversely impact their health, a Black person living in

poverty "typically [] would have a worse outcome compared to their counterparts." 9/9/20 at 69, 72.

53. These health disparities reflect, in part, callousness among elected officials in Alabama to the needs of Black residents. For example, Alabama's legislature has rejected requests to expand Medicaid under the Affordable Care Act notwithstanding the urging of Black leaders and a racial gap in insurance coverage. 9/14/20 at 147-48. Expanding Medicaid would have insured an additional 220,000 Alabamians, particularly benefiting Black residents. 9/10/20 at 23; Pl. Ex. 268 at ¶ 13. This healthcare and insurance inequality

uncle both died from COVID-19, and Mr. Porter is very fearful about becoming infected. 9/14/20 at 69-72.

55. Since Governor Ivey's Stay at Home order on March 13th, Mr. Porter has left his home to attend his doctor's appointments. Id. at 71-72; Agreed Facts at 3, ¶ 3. He also attended one of his wife's medical appointments to provide support for her while she was receiving treatment for a serious medical condition. 9/14/20 at 71-72. Every time Mr. Porter leaves his home, he wears a mask, and he practices social distancing. Id. at 75. In addition, the medical providers he saw also wore masks. Id. Upon arriving home, Mr. Porter washes his clothes and showers. Id.

56. Mr. Porter's wife and son leave the house to obtain groceries, and they wear a mask and follow social distancing protocols while out. Id. at 75. Upon their return home, they also wash their clothes and take a shower. Id. Since the pandemic hit, Mr. Porter's daughter and grandchildren have visited him once in his home. Id. at 76. His daughter and grandchildren had also adhered to social distancing protocols before their visit. Id.

57. Mr. Porter has always voted in person, but now he does not want to risk a COVID-19 infection. Agreed Facts at 3, ¶ 3. Mr. Porter chose not to vote in the July 14 primary runoff election when he did not receive his absentee ballot. 9/14/20 at 78. He did not vote in person in the election because he did not want to risk being infected with COVID-19. Id. When Mr. Porter votes in person at his polling place, he is required to walk 100 to 150 feet from his disabled parking space to the

he did not have his phone. Id. at 123. Therefore, he reasonably did not believe he

62. Dr. Peebles typically votes in person and did so during the March 3, 2020 primary election. Id. at 124, 129. Dr. Peebles cannot operate the voting machines unassisted and thus brings an individual into the voting booth to assist him in filling out the ballot. See id. at 124-25. He has had trouble navigating the physical space in his polling place,

technology or equipment to make a copy of her photo ID at home and would, therefore, have to venture out of her home to obtain the copy. Id. at 1767-77. She also indicated that she would have difficulty meeting the witness requirement

restaurants and fast-food drive-thru windows. Id. at 17, 33-34. Ms. Bettis shops at the grocery store once or twice a week, and she has also been to Lowe's, Marshall's, and the Shoe Station. Id. at 35. When Ms. Bettis ventures out for such errands, she wears a mask and practices social distancing, and she keeps gloves, hand sanitizer, and disinfectant in her car. Id. at 10-11, 35-36.

71. Since mid-March, Ms. Bettis has had visitors at her home on limited occasions. See id. at 11-12. First, in early or mid-March, her sister-in-law visited 0 Tw [(Id)-4.3

Id. at 14, 30-31, 52, 61. On those occasions, everyone wore masks and stayed socially distant in a large conference room. Id. at 31. In addition to those meetings, Ms. Bettis met the board president in a parking lot in order for him to sign documents required to open a new bank account. Id. at 28-29, 53. Ms. Bettis testified that her office will remain closed for the foreseeable future to minimize the risk of exposure to COVID-19. See id. at 16.

73. Ms. Bettis is especially concerned about avoiding exposure to COVID-19 because she has known several people who have had the disease, including a close friend who became very sick and two women in their 80s who are like second mothers to her. 9/14/20 at 9, 58. One of the older women had to be hospitalized, and one of the women's son also contracted COVID-19 and died from the disease. Id. at 9-11. Although Ms. Bettis normally would have attended the funeral to support her friend, she did not go to avoid potentially exposing herself to COVID-19. See id. at 11. In addition, her bookkeeper's daughter recently tested positive for COVID-19, and as a result, she is requiring her bookkeeper to work solely from home for thirty days, or until mid-October. Id. at 9-10, 14, 32-33.

74. Due to her concern about COVID-19, Ms. Bettis intended to vote absentee in the July runoff election. 9/14/20 at 18, 46. But, she sealed the envelopes for the absentee ballot incorrectly and did not have time to request another absentee ballot. Id. at 18, 40-41. Accordingly, she voted in person at her polling site in a large auditorium. Id. When Ms. Betis arrived at the site mid-morning, only one or

two people were inside the site voting and they were wearing masks along with the poll workers. Id. at 21, 41. However, not all of the poll workers wore gloves, and Ms. Bettis did not observe any cleaning or disinfecting at the site. Id. at 21-22, 41.

75. Ms. Bettis does not believe she can vote in person in November because her polling site is typically extremely crowded for a presidential election. Id. at 22. Since she is at high-risk from C

Ms. Threadgill-Matthews also served as an absentee election official in Wilcox County for over 20 years, and in that role she reported to the county's probate judge, circuit clerk, and AEM. Id. at 6-7. Ms. Threadgill-Matthews testified that the absentee election officials check the absentee ballot envelopes for compliance with the witness requirement and that the probate judge provided some training for the polling officials. Id. at 7-10. During her years as an absentee polling official, Ms. Threadgill-Matthews never personally noted anything suspicious that she felt should be flagged as fraudulent. Id. at 9.

77. Ms. Threadgill-Matthews faces a higher risk of contracting and having severe complications from COVID-19 because of her age and hypertension, which she treats with prescription medication. Id. at 10. She knows several people in Wilcox County who have had COVID-19, including two neighbors who were hospitalized. Id. at 11. For that reason and because she is at risk, Ms. Threadgill-Matthews has been very diligent about social distancing and wearing a mask, and she has stopped traveling to visit her [illegible] son-

advice as to how to satisfy the requirements for absentee voting. Agreed Facts at 8 ¶ 15.

(2) Organizational Plaintiffs

(a) People First of Alabama

80. People First is a statewide nonprofit dedicated to elevating the living experience of people with intellectual and developmental disabilities, such that they can be valued members of their community. Agreed Facts ¶ 1; 9/11/20 at 100-101. People First is funded by a single grant of $97,000. 9/11/20 at 118. It employs one full-time executive director, a part-time outreach coordinator, a part-time financial director, and a part-time grant writer. Id. at 119. People First is made up of 150 to 200 members with developmental disabilities located throughout the State. 9/11/20 at 100-101, 108, 110. It has 25 chapters across the State, including in Jefferson, Madison, and Mobile Counties. Id. at 110-111, 126. People First members include people from all racial and ethnic backgrounds, and roughly 25 percent of its members are Black. 9/11/20 at 130-131.

81. People First educates its members on voting during election years. Id. at 141. But, in the past, it has not spent time educating members about voting absentee. Id. at 120. After the pandemic hit, People First developed training on how to correctly apply and cast an absentee ballot. Id. at 116-117. The orga (in)8.359 0 g

absentee voter training on August 7, 2020 with 20 members from the statewide leadership board in attendance. Id. 123-124. It also held another training in Jefferson County a week later with 18 people in attendance. Id. 125-146. The organization also held trainings in Shelby County and Huntsville and plans to hold sessions in Tuscaloosa and Mobile. Id. at 126. Additionally, a committee of People First members in Madison County donated volunteer time to create a public service announcement which included information about absentee voting. Id. at 122-123.

82. People First members' disabilities have impacted how they vote, and, at times, resulted in the members facing additional challenges when voting. For example, based on her interactions with them, Ms. Ellis testified that some of the members have vision impairments that would preclude them from casting their ballot without assistance. 9/11/20 at 137-138. Such assistance would involve them verbally telling their helper what candidate they would like to vote for so that the helper can fill out the ballot for them. Id. Another example is Jenny Lux, a member who has a disability requiring her to use an Automark machine to vote. Id. at 172. Using the Auto30.5988ohe