

PEOPLE FIRST OF ALABAMA, ROBERT CLOPTON, ERIC PEEBLES, HOWARD PORTER, JR., ANNIE CAROLYN THOMPSON, GREATER BIRMINGHAM MINISTRIES, ALABAMA STATE CONFERENCE OF THE NAACP, BLACK VOTERS MATTER CAPACITY BUILDING INSTITUTE, TERESA BETTIS, SHERYL THREADGILL-MATTHEWS, and GREGORY BENTLEY,

Plaintiffs,

v.

JOHN MERRILL, in his official capacity as the Secretary of State of Alabama, STATE OF ALABAMA, JOJO SCHWARZAUER; JACQUELINE ANDERSON-SMITH; KAREN DUNN BURKS; MARY B. ROBERSON; JAMES MAJORS; GINA JOBE ISHMAN; DEBRA KIZER; RUBY JONES THOMAS, JOHNNIE MAE KING; CAROLYN DAVIS-POSEY; SHERRI FRIDAY; JAMES NAFTEL II; DON DAVIS; BILL ENGLISH; LASHANDRA MYRICK; FRANK BARGER; J.C. LOVE, III; and BRITNEY JONES-ALEXANDER, all in their official capacities as the absentee election managers, circuit clerks, or probate judg

1. Plaintiffs People First of Alabama, Robert Clopton, Eric Peebles, Howard Porter, Jr., Annie Carolyn Thompson, Greater Birmingham Ministries, the Alabama State Conference of the NAACP, Black Voters Matter Capacity Building Institute, Teresa Bettis, Sheryl Threadgill-Matthews, and Gregory Bentley (collectively, “Plaintiffs”) file this First Amended Complaint for

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the Centers for Disease Control and Prevention (CDC), Robert Redfield, now estimates based on antibody tests that the actual number of infections is 10 times as high as the confirmed cases,³ meaning that at least 24 million Americans and upwards of 440,000 Alabamians have been infected as of July 6.

3. As a result, in early April, Governor Kay Ivey ordered Alabama residents to stay at home absent specific reasons not to, and the Alabama Department of Public Health (“ADPH”) and the CDC likewise advised people to remain in their homes and follow social distancing protocols. In a communal effort to slow the spread of the disease and save lives, the Governor also closed government offices, schools, and businesses, and strongly urged people to limit person-to-person interactions to their family and avoid large gatherings.

4. On April 28, 2020, Governor Ivey amended Alabama’s “Safer-at-Home” public health order, allowing some businesses to open subject to sanitation and social-distancing guidelines, but still encouraged individuals—especially those at higher risk of death or serious illness from COVID-19 infection—to stay home. The Safer-at-Home order was most recently renewed and amended on June 30, 2020, and, among other restrictions and recommendations, it prohibits as of May 11, 2020, all non-work related gatherings of any size where a six-foot distance could not be maintained.⁴

5. This crisis is likely to persist for many more months or longer. Indeed, as soon as Alabama began to lift many of these restrictions in place, COVID-19 cases began rising even faster

³ Lena H. Sun & Joel Achenbach, *CDC chief says coronavirus cases may be 10 times higher than reported: Agency expands list of people at risk of severe illness, including pregnant women*, Wash. Post (Jun. 25, 2020), <https://www.washingtonpost.com/health/2020/06/25/coronavirus-cases-10-times-larger/>.

⁴ Order of the State D5Jdihingtrde

in Alabama than most other states in the nation. Over the past two weeks, Alabama has had the second highest number of new cases per capita in the country⁵ and, as of June 25, 82% of Alabama's intensive care unit beds are now full due to COVID-19 patients.⁶

6. Given these extraordinary circumstances, Secretary Merrill has waived the excuse requirement for absentee voters for the July 14, 2020 primary runoff election. But despite fast-rising COVID-19 cases and deaths and the reality that community transmission will continue throughout at least the remainder of

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fundamental right to vote under the First and Fourteenth Amendments to the U.S. Constitution.

16. Fourth, Alabama does not offer—and Secretary Merrill prohibits local election officials from implementing—curbside or “drive-thru” voting, which allows voters to cast their ballots in person, but outside of a poll site, without leaving the car (“Curbside Voting Ban”). Many voters with disabilities are unable to access polling places or vote absentee. Other voters must vote in-person because th

1,368 of the absentee ballots cast.¹³ The Witness Requirement accounts for about a quarter of those rejected absentee ballots.

22. Contrary to the usual limitations on absentee voting in Alabama, however, for the July 14 primary runoff election, Secretary Merrill has made it clear that any registered voter is permitted to vote absentee in light of the COVID-19 pandemic. Alabama is expecting a large increase in absentee voting during 2020 elections. Thus, if a

25. Plaintiffs therefore ask that the Court enjoin the Challenged Provisions and declare them unconstitutional for the duration of the 2020 election cycle.

because of

and only comes into contact with his caregivers—who work separate shifts—he will not be able to comply with the Witness Requirement. Finally, Mr. Peebles understands that Alabama does not allow voters—including voters with disabilities—

at her home in Mobile, Alabama. She is Black, a U.S. citizen, has never lost her right to vote by reason of a felony conviction or court order, and is a lawfully registered voter in Alabama. Ms. Thompson is at higher-risk of contracting and having severe complications from COVID-19 because of her age and preexisting conditions, including diabetes and high blood pressure. After she retired as a cosmetologist, Ms. Thompson began working as a caretaker for people who required extra assistance in assisted living homes. She recently had to leave that job when her patient spiked a very high fever and was taken to the hospital to test for COVID-19 on or around April 1. Fearing for her own health, Ms. Thompson received a COVID-19 test, which came back negative at that time. Although Ms. Thompson had been taking measures to protect herself, Ms. Thompson has been quarantining herself at home since April 1, 2020, restricting all in-person contact except when her daughter or granddaughter bring her groceries. Ms. Thompson has internet

1969 in response to the urgent human rights and justice needs of the residents of the greater Birmingham, Alabama area. GBM is a multi-faith, multi-racial membership organization that provides emergency services for members and constituents in need. It engages in community efforts to create systemic change with the goal of building a strong, supportive, and politically active society that pursues justice for all people.

34. A central goal of GBM is the pursuit of social justice in the governance of Alabama. GBM actively opposes state laws, policies, and practices that result in the exclusion of vulnerable groups or individuals from the democratic process. Toward that end, GBM regularly communicates with its members and engages in efforts to register, educate, and increase turnout, particularly among Black, Latinx, disabled, and low-income registered voters.

35. GBM has about largely low-income 5,000 members located in or near Jefferson County

Black, and/or have medical conditions, like diabetes or hypertension, that put them at higher risk for death or serious illness from COVID-19. Many members also live alone or with only one other adult person. These members and others are staying at home to avoid contracting COVID-19. They will be unable to meet the Excuse and Witness Requirement. The difficulties already faced by the Alabama NAACP's most vulnerable members in complying with the Excuse and Witness Requirements are magnified substantially by the COVID-19 crisis. For example, one active member is in her 80s, lives alone, and has breast cancer and heart disease. She is extremely vulnerable to COVID-19. She does not have ready access to videoconferencing technology. She, and other members like her, cannot vote in-person or meet the Witness Requirement without risking her life by coming into contact with others. Members of the Alabama NAACP have or have had COVID-19. Because of the Excuse and Witness Requirements and Curbside Voting Ban, these members are forced to choose between risking their lives (and the lives of others) or not voting in the 2020 elections.

40. As a result of the State's social distancing guidelines and expanded absentee voting options, the Excuse and Witness Requirement and Curbside Voting Ban are requiring the Alabama NAACP to divert resources from its traditional voter registration and education efforts to undertake such new activities as (1) assessing who, among its constituency will be unable to comply with the Excuse and Witness Requirements, while taking protective measures against COVID-19 infection, like staying home; (2) increasing efforts to educate Black and disabled voters, as well as the general public, about the Excuse and Witness Requirements; and (3) advocating for the adoption of measures like no-excuse absentee voting and curbside voting that would ease the burdens on voters during the pandemic. In absence of the Excuse and Witness Requirements and Curbside Voting Ban, the Alabama NAACP would not have had to engage in these activities.

41. Thus, the Excuse and Witness Requirements and Curbside Voting Ban are causing, and will continue to cause, the Alabama NAACP to divert a portion of its limited financial and other organizational resources to investigating, responding to, mitigating, and addressing the concerns of its members and constituents impacted or who will be disenfranchised by the Excuse and Witness Requirements, the Curbside Voting Ban, and Defendants' inadequate efforts to protect voters from COVID-19 ahead of the 2020 elections. As a result, the Alabama NAACP is limited, and will continue to be limited, in the organizational resources that it can devote to its other core goals.

42. Plaintiff BLACK VOTERS MATTER CAPACITY BUILDING INSTITUTE ("BVM") is a nonprofit organization organized under Section 501(c)(3) of the Internal Revenue Code. BVM's goal is to empower voters and improve voting efficacy in marginalized communities of color. BVM mainly works in Black communities and other communities of color who often face barriers to voting that other communities do not. BVM focuses on removing those barriers with several principle beliefs as guidance. These principles include understanding, respecting, andmpr1b2 (V)2 (

focuses on those communities because they tend to be the most neglected and have higher rates of poverty than other areas or communities.

44. BVM has a significant community of constituent individuals and organizations in Alabama's Black communities who are the primary beneficiaries of BVM's activities including constituents in Jefferson, Mobile, Lee, Montgomery, Madison, Lowndes, and Wilcox counties, among many others. These individuals and organizations help inform the needs BVM must address and local organizational strategy, participate in BVM-organized efforts like text-message voter mobilization, and volunteer at these events. BVM also partners with over three dozen local organizational partners and individuals in Alabama in an umbrella-organization-like role. Many of these local organizational partners are membership organizations comprised of individuals who are directly affected by Alabama's restrictive vote by mail laws. BVM works on behalf of its constituents and partners.

45. One of BVM's key priorities in advancing its mission is leading and supporting voter registration, education, and mobilization efforts, as well as advocating for policies to expand voting rights and access. BVM engages with its communities in multiple ways when it comes to voting. First, BVM focuses on voter education and encourages voter turnout by providing voting guidance and exciting Black voters about their participation. BVM does so through multimedia campaigns, including social media and radio ads, text messaging, and phone banking, among other strategies. Second, BVM also supports voter education and mobilization by providing assistance and financial grants to partner organizations, who themselves engage in voter education and on-the-ground efforts to increase voter participation.

46. Before the issuance of the Governor's social distancing rules after the onset of the COVID-19 pandemic, BVM's focus was on in-person voter education. The education component

included informing voters about election dates, how to find their polling place, how to get to a polling place if the voter has no realistic transportation options, instructions on how to vote in person (such as having photo identification, using the machine, etc.), and other instructions. Since the onset of COVID (ng p)5 (l)-tidDC su(c)-0 (i)3 (su(c)-0 (i)3 5.17 COVID)-49e

49. BVM's constituents and its community partners, and their members, include registered voters in the State of Alabama who plan to vote in future elections, including the August 25 and November 3, 2020 elections.

50. Many of these constituents, and community partners, and their members, are staying at home and practicing social distancing to avoid contracting COVID-19. Additionally, many of these individuals have conditions that put them at higher risk of death or severe complications if they contract COVID-19. Thus, public health professionals and experts strongly recommend that these individuals self-quarantine. Voting in-person would, therefore, put the health of those voters at significant risk because of person-to-person contact.

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of the 2020 elections. As a result, BVM is limited and will continue to be limited, in the organizational resources that it can devote to its other core goals.

53. Plaintiff TERESA BETTIS is a 51-year-old Alabama citizen who lives at her home

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by absentee ballot in all future 2020 elections. Because only one other adult lives in her home, Ms. Bettis would also have to venture outside of the house to have her absentee ballot notarized or to find another adult to witness her ballot, thus, endangering her health.

55. Plaintiff S Tw4 d

elections because of Secretary Merrill’s broader interpretation of the absentee statute for that election, she likely does not meet any of the Excuse Requirements for future elections.

57. Plaintiff GREGORY BENTLEY is a 50-year-old Alabama citizen who lives at his home in Huntsville, Alabama with his wife and minor daughter. His home is in Madison County. He is Black, a U.S. citizen, has never lost his right to vote by reason of a felony conviction or court order, and is a lawfully registered voter at his current address in Alabama. He is Presbyterian Minister at Fellowship Presbyterian in Huntsville, Alabama and President of the Huntsville Southern Christian Leadership Conference, which partners with BVM on registering voters and getting voters to the polls. Mr. Bentley has been practicing social distancing since the start of the COVID-19 pandemic because his daughter has a pre-existing condition—she contracted necrotizing enterocolitis as an infant, which may place her at higher risk for severe complications from COVID-19. He knows at least ten people who have had COVID-19 and five people who have passed from COVID-19 and does not want to risk exposure since he well knows how easily it can be transmitted. He is currently practicing social distancing by wearing a mask whenever he goes out and he has stopped attending social functions. For example, his church now conducts virtual services rather than in-person services.

58. Mr. Bentley is a dedicated va-19-w-10-24-2019-05-8-adv-hung-c-s-g-n-t-c-s-t-c-n-r-b-a-n-k-c-p-l-w-c-5-3-11-c-s-6

59. Defendant JOHN MERRILL is the Secretary of State of the State of Alabama. He is sued in his official capacity. As a constitutional officer and a member of the State’s executive department, he is Alabama’s chief election official. Ala. Const., art. V, § 112. He is charged with administering elections and enforcing the Challenged Provisions, including instructing probate judges, absentee election managers, and other officials on the proper interpretation and implementation of the Challenged Provisions, issuing related administrative rules, and canvassing and certifying election results in a manner that is consistent with the Challenged Provisions. The Secretary of State is also responsible for prescribing and designing the absentee ballot application form that “shall be used throughout the state,” Ala. Code § 17-11-4, which include instructions to election officials and voters regarding the Excuse and Photo ID Requirements. The Secretary of State, and no other defendant, election official, or state officer, is statutorily required to “inform the public” about the Photo ID Requirement, *id.* § 17

State has indicated to the Eleventh Circuit U.S. Court of Appeals and the Supreme Court of the United States that it intends to subject itself to federal jurisdiction to defend the constitutionality of the Challenged Provisions as a defendant-intervenor as to the 42 U.S.C. § 1983 claims in this action⁵⁶ p

the U.S. Constitution, the ADA, and the VRA, and is brought under 42 U.S.C. §§ 1983 and 1988, 42 U.S.C. §§ 12131, *et seq.*, and 52 U.S.C. §§ 10301, 10302(b) and 10501 to seek injunctive and declaratory relief for violations of federal law. This Court therefore has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

64. This Court has personal jurisdiction over Defendants, who are sued in their official capacities as government officials. The violations complained of concern their conduct in such capacities.

65. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

66. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events that gave rise to Plaintiffs' claims occurred there.



67. Our nation is in the midst of a public health emergency due to the exponential spread of COVID-19, the respiratory disease caused by the novel coronavirus SARS-CoV-2.

19 and reported 122,370 deaths due to COVID-19 and counting.¹⁸ As of June 25, CDC Director

[and] are unable to get enough oxygen to the bloodstream”²⁴ Severe cases of COVID-19 cause acute respiratory distress syndrome (“ARDS”) in which fluid displaces air in the lungs. COVID-19 patients with ARDS “are essentially drowning in their own blood and fluids because their lungs are so full.”²⁵ The virus frequently causes extreme symptoms, including fever and chills that can last for weeks, excruciating pain, debilitating fatigue, an unremitting cough, uncontrollable diarrhea, and an inability to keep down food and water.²⁶

72. People of all ages have contracted COVID-19 and died from it. The illness poses special risks for older people and those with certain preexisting medical conditions. Preliminary reports based on WHO data show a 3.6% mortality rate for individuals between 60-69 years old, and an 8% mortality rate for those 70-79 years old.²⁷ According to the CDC’s analysis, 80% of all COVID-19 related deaths in the U.S. are people aged 65 and older.²⁸ The CDC has now explained that the risk of COVID-19 increases steadily with age.²⁹ COVID-19 also poses greater risks for

disproportionately affects Black Americans.³⁰

73. The effects of the pandemic on social life will last well into the summer and fall of 2020, if not far longer. Experts have indicated that seasonal changes are “unlikely to stop transmission.”³¹ Dr. Anthony Fauci, head of the National Institute of Allergy and Infectious Diseases and member of the White House’s coronavirus taskforce, recently called the a second round of COVID-19 in the fall “inevitable” and explained that the severity of the next wave will depend on factors like continuation of current precautionary measures.³² As Dr. Fauci has stated, “[w]e will have coronavirus in the fall I am convinced of that because of the degree of transmissibility that it has, the global nature.”³³

74. Dr. Fauci also confirmed that he “can’t guarantee” in-person voting will be safe in November, because of a potential resurgence of COVID-19 in the fall.³⁴ As Dr. Fauci testified before the Senate, “the idea of having treatments available, or a vaccine” by this this fall “would be something that would be a bit of a bridge too far.”³⁵ And even if a vaccine could be developed by the fall, Dr. Fauci has explained that “there’s no guarantee that the vaccine is actually going to

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be effective”³⁶ Yet public health experts warn that the virus will continue to pose a serious threat to public health and safety until that point.³⁷

75. With no known effective treatment and vaccines months (or more) away, public health officials have been left to urge the public to practice “social distancing,” i.e., avoidance of close contact with others.³⁸ For purposes of social distancing, the CDC recommends that individuals stay at least six feet away from others and “avoid crowded places.”³⁹

76. Even maintaining six feet of separation from others is not sufficient to avoid the risk of infection. Researchers have demonstrated that particles from a cough may spread as far as 16 feet far as 37

requests for absentee ballots and questions about voting absentee, including how to properly request an absentee ballot and how to return it in time to be considered. Election officials also dealt

83. As has been the case nationally, Alabamians of all ages have tested positive for COVID-19. At least one confirmed case in Alabama is a patient who is less than one year old; another is 97.⁵³

84. As has been the case throughout the country, Alabamians with underlying health conditions have been especially vulnerable to COVID-19: 841 of the 880 Alabamians who have died from COVID-19 had underlying conditions.⁵⁴

85. As Alabama State Health Officer Dr. Scott Harris has said, “[c]hronic diseases factors are a real risk for dying from this disease, and chronic diseases are found in about a third of our citizens.”⁵⁵ Alabamians suffer from the underlying health conditions that health officials have identified pose the greatest risk for COVID-19 complications at disproportionately higher rates: 38% of Alabamians have high cholesterol, more than 14% have diabetes, and about 400,000, or 1 in 11 Alabamians, have kidney disease.⁵⁶

86. Furthermore, Black Alabamians suffer from these underlying conditions at ,

87. In response to the outbreak of COVID-19 in Alabama, Governor Ivey and the
ADPH

employees” of enumerated categories of employers; (f) r

home and requiring that restaurants and senior centers offer curbside pickup services.⁸⁰

102. Yet, the number of COVID-19 cases are continuing to rise in both the rural and

acknowledged in May, COVID-19 has created “a true state of emergency and one whose end is not yet in sight.”⁸⁷

105. The COVID-19 pandemic has had a particularly devastating effect on Black communities. A CDC report published April 8, 2020, which included data from 1,482 patients hospitalized across 14 states, found that Black COVID-19 patients made up 33% of those for whom race or ethnicity information was available, despite representing only 18% of the states’ populations.⁸⁸

106. The higher risk of COVID-19 infection for African Americans is tied to pre-existing and evolving inequities in structural systems and social conditions. For example, according to the CDC, “[m]any members of racial and ethnic minorities may be more likely to live in densely populated areas because of institutional racism in the form of residential housing segregation. . . . People living in densely populated areas and homes may find it harder to practice social distancing.” The CDC identifies racial discrimination and disparities in living conditions, work circumstances, and health circumstances to the racial disparities in infection and outcomes for African Americans, including “[r]acial housing segregation” and “[r]acism, stigma, and systemic inequities,” which serve to “undermine prevention efforts, increase levels of chronic and toxic stress, and ultimately sustain health and healthcare inequities” among Black Americans.⁸⁹ The structural factors and systematic racism that contribute most significantly to elevated risk

⁸⁷ Dr. Scot Harris, *Safeguard Your Overall Health in the COVID-19 Pandemic*, Ala. Public Health, May 2020, <https://www.alabamapublichealth.gov/news/archived-messages.html#may2020> (last visited June 13, 2020).

⁸⁸ Shika Garg, MD, et. al., *Hospitalization Rates and Characteristics of Patients Hospitalized with Laboratory-Confirmed Coronavirus Disease 2019—COVID-NET, 14 States, March 1-30, 2020*, CDC MORBIDITY AND MORTALITY WEEKLY REPORT (Apr. 17, 2020), at 459.

⁸⁹ CDC, *Coronavirus Disease 2019: COVID-19 in Racial and Ethnic Minority Groups*, (Last Updated June 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

nationally are also evident in Alabama, including a history of anti-Black racism and discrimination.

107. As Dr. Selwyn M. Vickers, Senior Vice President of Medicine and Dean of the University of Alabama at Birmingham School of Medicine, has explained, across the nation, the “alarming outcomes [for Black COVID-19 patients] are in large part the result of longstanding inequities in an array of health determinants, including limited access to health care (especially primary care)[.]”⁹⁰ In many parts of the country, COVID-19 “testing facilities have been concentrated in predominantly white areas” or have been “drive-through-only or not on public transportation routes, making them less accessible for people who do not own an automobile.”⁹¹

108. Alabama has lihrise1 (ount)3 (r)-2]TJETEMC -35.455 T (n publ)-2 (i57s)-1 . p5 -1 g396.42

socioeconomic life. Due to persistent structural inequities, Black Alabamians have less access to healthcare and health insurance.⁹⁷ Black voters in the Black Belt counties in particular “have fewer primary care physicians, dentists and mental health providers per resident than other counties.”⁹⁸

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35% of all patients receiving dialysis due to the condition.¹⁰³ Many of these underlying conditions result from past and present policies that both relegate Black people to particular neighborhoods and disproportionately allocate landfills, factories, and other environmental risks to Black neighborhoods.¹⁰⁴ On April 10, in light of the racial disparities in infection and death for Black Alabamians, Dr. Karen Landers, an officer at the ADPH, urged Black people in particular to “stay at home” and stringently practice social distancing.¹⁰⁵

112. Racial discrimination in Alabama has also resulted in socioeconomic inequalities

By contrast, 39.1% of white people versus only 26.2% of Black people in Alabama hold management or professional occupations—*i.e.*, “white collar” jobs that are much 9e[m(7(r’)()-5”)6ainatio (,)

118. Three days later, on March 13, there were six confirmed cases of Alabamians with COVID-19.¹¹¹

119. Also, on March 13, Governor Ivey declared a state of emergency in Alabama. That same day, Secretary Merrill stated that there were no plans to postpone the March 31 primary runoff and that he had no other agenda items.

this Emergency Administrative Rule and accept all absentee ballot applications filed hereunder immediately.”¹²³ In effect, this emergency rule means that any voter who wishes to vote absentee because they are concerned about exposure to a deadly virus may. The emergency rule expires after 120 days, *see* Ala. Code § 41-22-5(b), which occurs before both the August municipal elections and the November general election.

126. On March 19, Plaintiffs Greater Birmingham Ministries, the Alabama NAACP, and other civil rights organizations requested that Secretary Merrill take a number of steps to ensure voters could safely participate in all of the upcoming 2020 elections, including to extend emergency rule 820-2-3-.06-.01ER to all 2020 elections; ease the Photo ID Requirements for voters with the highest susceptibility to COVID-19; extend the deadline for requesting and postmarking absentee ballots to Election Day; and allow curbside voting.

127. Secretary Merrill did not respond to this letter.

128. On April 17, Plaintiffs GBM and the Alabama NAACP sent a follow up letter to Secretary Merrill. Secretary Merrill also failed to respond to their second letter.

129. Upon information and belief, Secretary Merrill has corresponded with individual voters and other civic groups who have offered recommendations similar to Plaintiffs.

130. To date, however, Secretary Merrill has neither adopted nor implemented Plaintiffs’ recommendation or any other reasonable accommodations to address their concerns.

131. On April 8, Secretary Merrill wrote a letter to the Acting Executive Director of the U.S. Election Assistance Commission requesting over \$6 million in federal funds to pay for increased absentee voting costs because of the expanded absentee voting options in the runoff,

¹²³ *Id.*

increased rates of absentee voting in the November 3 general election, additional pay for poll workers, and supplies to sanitize in-person polling locations.¹²⁴ Secret0 780.78 Tdize in

related to disabilities or personal assistance due to

including those with certain preexisting conditions and senior citizens. And even beyond these categories, people of any age or health condition can face severe complications from COVID-19 including death.

138. Therefore, the Excuse Requirement severely burdens the fundamental right of all eligible voters practicing self-quarantining and social distancing to participate in elections in Alabama in August and November. All eligible voters should be able to practice social distancing regardless of their own health condition and should not have to choose between voting and their decision to practice social distancing for the benefit of the health of their community.

139. The Excuse Requirement also egregiously burdens the fundamental right to vote of persons with disabilities, like Plaintiffs Peebles and Porter, who have medical conditions that place them at higher risk of death or serious illness from COVID-19 infection, but who are not considered “physically disabled” under the Excuse Requirement. For Plaintiffs and Plaintiffs’ members and other voters with disabilities, the Excuse Requirement places them at “high-risk” of exposure to severe illness from COVID-19 (*e.g.*, by being immunocompromised). Older individuals also already face higher rates of infection and death from COVID-19, further magnifying its impact.

140. The Excuse Requirement will therefore severely burden and/or disenfranchise tens if not hundreds of thousands of Alabama voters who might otherwise vote in scheduled elections from participating in those contests, as anyone not covered by an enumerated absentee “excuse” will have to choose between (1) exposing themselves and others to the risk of illness from COVID-19 by voting in person or (2) foregoing their right to vote.

141. The Excuse Requirement is also particularly burdensome for Black voters in Alabama, who continue to bear the effects of discrimination in areas such as voting, education,

employment, and health, which hinder their ability to participate effectively in the political process. It is precisely because of these patterns that Black Alabamians face particularly severe health risks from COVID-19 exposure arising from being forced to vote in-person rather than by mail.

142. Moreover, Black voters are disproportionately burdened by long lines at the polls. A recent study based on data from millions of smartphone users during the 2016 presidential election found that residents of mostly Black neighborhoods waited 29% longer to vote and were 74% more likely to spend more than 30 minutes at their polling place than residents of all-white neighborhoods.¹²⁹ This disproportionate wait-time problem means that the risks of voting in-

poll workers and the need to follow social distancing rules, which can lead to longer lines.¹³¹

Additionally, the fact that Alabama is one of only a few states without early in-person voting before Election Day means that there will be no opportunities to spread out the impact of in-person voting.

144. The Excuse Requirement is plainly unreasonable in the context of COVID-19 community transmission, which, by current expert predictions, will still be occurring during the

such an action. In 2018, Secretary Merrill called the Excuse Requirement “long-outdated” and inconvenient to people.¹³²

147. Beyond this, Alabama has a number of different laws and procedures that ensure integrity of the absentee voting process separate and apart from the Excuse Requirement and other Challenged Provisions. When absentee election managers receive absentee ballot applications, they must check to determine that applicants appear “on the list of qualified voters produced from the state voter registration list in the election to be held.” Ala. Code § 17-11-5(a). If the individual does not appear on the voter registration list for that jurisdiction but does appear on the voter registration list for another jurisdiction in Alabama, the absentee ballot manager shall transmit a provisional absentee ballot, which is will be counted subject to the individual meeting the required re-identification procedures. *Id.*; Ala. Code § 17-11-9.

148. Additionally, when submitting an absentee ballot, the voter must swear or affirm under penalty of perjury that the voter: (a) has “not voted nor will [] vote in person in the election to which this ballot pertains”; (b) “marked the enclosed absentee ballot voluntarily” and understands the instructions and complied with them; and (c) “that all of the information given above is true and correct to the best of my knowledge and that I understand that by knowingly giving false information so as to vote illegally by absentee ballot that I shall be guilty of a misdemeanor which is punishable by a fine not to exceed one thousand dollars (\$1,000) or confinement in the county jail for not more than six months, or both.” Ala. Code § 17-11-7.

149. And as noted with the attestation, Alabama has several provisions of law that threaten criminal penalties for individuals who misuse the absentee voting process. In addition to

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the penalty for false statements noted above, *see* Ala. Code § 17-17-8, Alabama law also criminalizes: voting when not registered in the jurisdiction, Ala. Code § 17-17-14; changing a voter's ballot contrary to the voter's intent, voting "more than once by absentee ballot in the same election," falsifying "absentee ballot applications or verification documents so as to vote absentee," soliciting or encouraging "illegal absentee voting," and voting "both an absentee and a regular ballot at any election," Ala. Code § 17-17-24; and preparing or assisting the voting of an absentee ballot of a comatose person or other individual who cannot communicate their preference, Ala. Code § 17-17-26, among others.

illness or death, the Witness Requirement will likely disenfranchise thousands of eligible voters in Alabama. And for voters forced to take the risk of voting in-person, they are putting themselves and their communities in serious danger.

(55,388) are disabled. For the subset of Black people who are over age 65 and living alone, 45.9% (22,782) are disabled. For white voting age population living alone, 30.2% (107,647) are disabled. For the subset of whites over 65 and living alone, 44.0% (70,816) are disabled.

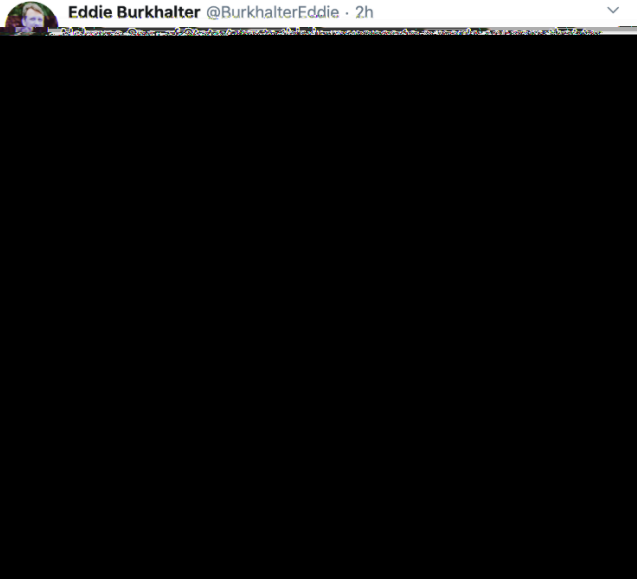
157. Of all Black households

using videoconferencing in lieu of personal appearance.¹³⁸ Videoconferencing is not an option for every notary in Alabama. Notaries who are not attorneys or are not supervised by attorneys must still personally interact with a voter to notarize a ballot. But, even for the videoconferencing option, a voter must have access to videoconferencing technology. Further, it is more burdensome for Black Alabamians who are less likely to be able to afford the potential fees of notarization, the costs of videoconferencing, or sending the affidavit to the notary. Black Alabamians are also less likely to have access to the technology needed for videoconferencing, like broadband internet, a computer, tablet or “smart phone.” Some notaries also lack access to the computer, internet, or technology necessary for notarizations via videoconferencing. Further, because Alabama law requires the absentee ballot envelope itself to be notarized, remote notarization may not be a viable option for absentee ballots.

161. The Witness Requirement does not meaningfully advance the State’s interest in election integrity. Alabama election officials are not required to follow up with witnesses to confirm their identity or that they indeed witnessed the signing of the voter’s affidavit. *See* Ala. Code § 17-11-10. Instead, officials merely examine the affidavit for the witness signatures. If the information in the affidavit is correct and it contains the witness signatures, then officials “t(eq)1 (u)1 w 3 -20

offers no meaningful protection against fraud. Indeed, while instances of fraud are rare, a person determined to falsely submit an absentee ballot and risk imprisonment could just as easily forge the two witnesses' signatures as they could falsely attest to their identity when signing the absentee ballot affidavit.

167. The Witness Requirement places an unnecessary and dangerous burden on the voting rights of the many thousands of people in Alabama, particularly elderly, disabled, and Black voters, who will have to choose between casting their ballots safely or disenfranchisement.



174. Moreover, there are tens of thousands of Alabama voters who lack photo ID, and now cannot get one. jEMC /P ✘ MC /P rs

comply with the Photo ID Requirements without putting their lives at risk—to submit copies of their photo IDs with the absentee ballot application.¹⁴⁵ Defendants do not consider voters with preexisting medical conditions that put them at a higher risk of death or serious illness from COVID-19 infection to be exempt from the Photo ID Requirements under Alabama Code § 17-9-30(d).

177. No provision of Alabama law expressly prohibits curbside or drive-thru voting. *See generally* Ala. Code § 17-9-1 to § 17-9-15.

178. Nonetheless, Alabama does not offer curbside voting to voters whose disabilities, age, or physical condition prevent them from going into an in-person voting location. Although no state law prohibits curbside voting, Secretary Merrill bars local, city, and county election officials from using curbside or drive-thru voting. Secretary Merrill has a policy and practice of intervening to prevent local election officials from employing curbside voting to assist people with disabilities.

179. On at multiple occasions, Secretary Merrill has intervened to stop curbside voting. In an interview from 2018, Secretary Merrill described one such instance of interference: “If you came up to the polls and you were not able to get out of the car, or you said you -det (su)w 33.s7 (s)5 (t)-sc 2

reported that he then told the probate judge, “Well, let me tell you something: If you don’t like the law, change the law. Don’t make the law on the spot. That’s not acceptable.”¹⁴⁶ No Alabama law prohibits curbside voting, but federal law, including 52 U.S.C.A. § 20102,

modified to comply with the ADA.

182. To protect the lives of voters amid the COVID-19 crisis, however, the CDC has recommended that jurisdictions encourage “drive-up voting for eligible voters” as a means of complying with social distancing rules and to limit personal contact during in-person voting.¹⁴⁸

183. On information and belief, other states have already employed curbside voting as a

Requirements, many voters with disabilities, including preexisting conditions that make them more susceptible to COVID-19, are completely deprived of any alternative method of voting.

186. Under these circumstances, Defendants' failure to accommodate voters who are particularly vulnerable to COVID-19 by offering the reasonable accommodation of curbside voting constitutes a severe and undue burden on the right to vote.

187. Even outside of the COVID-19 pandemic, the Curbside Voting Ban has acted and will continue to act to hinder the rights of those 450,000 adults in Alabama with ambulatory disabilities, particularly, those voters who are assigned to polling places that are inaccessible because reasonable permanent or temporary architectural modifications are not possible.



188. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

189. Eligible individuals have a fundamental right to vote under the First and Fourteenth Amendments of the U.S. Constitution. Under the First and Fourteenth Amendments, a court considering a challenge to a state election law must carefully balance the character and magnitude of the injury to the rights that the plaintiff seeks to vindicate against the justifications put forward by the State. *See Burdick v. Takushi*

members, constituents and other

1) used e-poll books; 2) placed a tabulation booth at the site; and 3) assigned poll workers to work there. Doc. 34-1 ¶ 46. Over half of Alabama's 67 counties already use e-poll books. *Id.*

194. Therefore, Defendants, acting under color of state law, by enforcing the Challenged Provisions have and will continue to deprive Plaintiffs of the fundamental right to vote secured to them by the First and Fourteenth Amendments in violation of 42 U.S.C. § 1983.

et seq.

195. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this

Act of 2002 (the “HAVA”).

198. Under Title II of the ADA, state and local governments must not impose requirements on participation in public services, programs, or activities, including voting, that

constitutes a condition on access to the ballot box that has the effect of screening out such individuals from participating in the July 14, August 25, and November 3, 2020 elections, as well as all other 2020 elections, in violation of Title II of the ADA.

207. Even outside of the COVID-19 pandemic, the Curbside Voting Ban has acted, and continues to act, to violate the rights under Title II of the ADA of the over 450,000 adults in Alabama with ambulatory disabilities, like Plaintiffs Peebles and Porter and the members and constituents of People First, GBM, BVM and the Alabama NAACP, who would benefit from the availability of curbside voting at otherwise inaccessible polling pl(o)1 (t)3 kTArtifac ((o6 (acc)5 (ess-1 (c)-w1H

212. The “essence of a [Section] 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.” *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986). Section 2 prohibits both vote denial and vote dilution. *See id.* at 45 n.10.

213. Vote denial occurs when a state erects “formal barriers to access such as literacy or residency tests” that result in the denial or abridgment of the right to vote on account of race. *United States v. Marengo Cty. Comm’n*, 731 F.2d 1546, 1556 (11th Cir. 1984). To succeed here, Plaintiffs must prove that (1) Black people “have less opportunity than other members of the electorate to participate in the political process” and (2) that the “impact of the contested structure” is linked to historical conditions based on the Senate Factors. *Gingles*, 478 U.S. at 44.

214. The Excuse and Witness Requirements, if not enjoined, will materially burden the right to vote, and will have an adverse and disparate impact on Black voters in Alabama. Black voters in Alabama are more likely to work in jobs that expose them to COVID-19, less likely to have insurance or financial resources, more likely to live alone or with young children, more likely to lack computer or internet access, and more likely to suffer from severe health complications and/or to die from COVID-19 than white voters. Black voters are therefore significantly more burdened by the effects of the Excuse and Witness Requirements.

215. Likewise, the Curbside Voting Ban, if not enjoined, will materially burden the right to vote, and will have an adverse and disparate impact on Black voters in Alabama. Black voters in Alabama are less likely to have insurance or financial resources. Black voters are more likely to be disabled, to be undereducated and in need of in-person assistance to vote (which can be provided even if voters do not leave their car), and to suffer from severe complications or to die from COVID-19 than white voters. Black voters are therefore significantly more burdened by the effects

of the Curbside Voting Ban.

216. The discriminatory results of the Excuse and Witness Requirements and Curbside Voting Ban are directly linked to social and historical conditions. Alabama has a long history of voting-related discrimination, including recent uses of

218. As-applied in the COVID-19 pandemic and as discussed above at ¶¶ 106-111, these discriminatory patterns make Black voters more vulnerable to COVID-19, such that the Excuse and Witness Requirements and Curbside Voting Ban, are particularly burdensome and dangerous for them as a group relative to other voters. In addition, voting is racially polarized in Alabama and Black voters do not hold elected office in proportion to their population, resulting in state elected officials who are less responsive to the health, voting, and other concerns of Black voters amid the COVID-19 crisis.

219. Even outside of the COVID-19 pandemic, as described above at ¶¶ 178-182, the Curbside Voting Ban has acted and continues to act to discriminate against Black voters, including Plaintiffs and Plaintiffs' members, in violation of Section 2 of the VRA. In Alabama, as compared to white voters, Black voters are more likely to have ambulatory disabilities, Black people aged 65 and over are more likely to have ambulatory disabilities, Black voters are disproportionately assigned to inaccessible polling locations, and Black voters disproportionately reside in Hale County where Secretary Merrill has intervened to stop or prohibit curbside voting.

220. Under the totality of the circumstances, the Excuse and Witness Requirements and Curbside Voting Ban interact with these social and historical conditions to abridge and deny Black people in Alabama the right to vote. As a result of these provisions, Black Alabamians will have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

221. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

222. Section 201 of the VRA categorically prohibits the use of “any test or device” as a

10501(b). An absentee ballot t

preceding paragraphs as though fully set forth herein.

230. The Witness Requirement violates the prohibition against poll taxes enshrined in the Fourteenth and Twenty-Fourth Amendments to the U.S. Constitution. The Equal Protection Clause of the Fourteenth Amendment is violated whenever a state “makes the affluence of the voter or payment of any fee an electoral standard.” *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 666 (1966).

A. Declare that Alabama's enforcement of the Excuse and Witness Requirements (as stated in Ala. Code. §§ 17-11-3, 17-11-7, 17-11-8, and 17-11-10), at least while the risk of COVID-19 transmission in Alabama remains, violates the rights of voters and the guarantees of the First, Fourteenth, and Twenty-Fourth Amendments to the U.S. Constitution, the ADA, and the VRA.

B. Issue a preliminary and permanent injunction that orders relief including:

1. Prohibiting Defendants from enforcing the Excuse Requirement (as stated in Ala. Code §§ 17-11-3 and 17-11-7) for all voters during, at least, all Alabama primary, municipal, and general elections in 2020 or as long as the pandemic continues to present a danger to Plaintiffs and other voters;
2. Permanently enjoining Defendants from enforcing the Witness Requirement (as stated in Ala. Code §§ 17-11-7, 17-11-8, and 17-11-10) for all voters or, at least, enjoining Defendants from doing so during all Alabama primary, municipal, and general elections in 2020 or as long as the pandemic continues to present a danger to Plaintiffs and other voters;
3. Prohibiting Defendants from enforcing the Photo ID Requirements (as stated in Ala. Code §§ 17-9-30(b) and 17-11-9) for all voters during, at least, all Alabama primary, municipal, and general elections in 2020 or as long as the pandemic continues to present a danger to Plaintiffs and other voters;
4. Permanently enjoining Defendants from enforcing the Curbside Voting Ban or, at least, enjoining Defendants from enforcing the Curbside Voting Ban for all Alabama primary, municipal, and general elections in 2020 or as long as the pandemic continues to present a danger to Plaintiffs and other voters;
5. Ordering Defendants to issue guidance instructing all local, city, and county

Provisions, and conduct a public information campaign, in coordination with local, city, and county officials, informing Alabama voters about both the elimination of the Excuse, Witness, and Photo ID Requirements before and during the absentee balloting period and the availability of curbside voting and ordering Defendants to issue guidance instructing local, city, and county election officials to issue absentee ballots to all eligible voters and to count otherwise validly cast absentee ballots that are missing a specific excuse for voting absentee, witness signatures, and copies of photo ID;

- C. Award Plaintiffs attorneys' fees in this action;
- D. Award Plaintiffs their costs of suit; and
- E. Grant such other and further relief as Plaintiffs request or as this Court deems just

and proper in the circumstances.

DATED this 6th day of July 2020.

/s/ Deuel Ross

Deuel Ross*

Natasha C. Merle*

Liliana Zaragoza*