

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

PEOPLE FIRST OF ALABAMA, ROBERT CLOPTON, ERIC PEEBLES, HOWARD PORTER, JR., ANNIE CAROLYN THOMPSON, GREATER BIRMINGHAM MINISTRIES, and the ALABAMA STATE CONFERENCE OF THE NAACP,

Plaintiffs,

v.

JOHN MERRILL, in his official capacity as the Secretary of State of Alabama, KAY IVEY, in her official capacity as the Governor of the State of Alabama, the STATE OF ALABAMA, ALLEEN BARNETT, in her official capacity as Absentee Election Manager of Mobile County, Alabama; JACQUELINE ANDERSON-SMITH, in her official capacity as Circuit Clerk of Jefferson County, Alabama; KAREN DUNN BURKS, in her official capacity as Deputy Circuit Clerk of the Bessemer Division of Jefferson County, Alabama; and MARY B. ROBERSON, in her official capacity as Circuit Clerk of Lee County, Alabama,

Defendants.

Case No.: _____

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

INTRODUCTION

1. Plaintiffs People First of Alabama, Robert Clopton, Eric Peebles, Howard Porter, Jr., Annie Carolyn Thompson, Greater Birmingham Ministries, and the Alabama State Conference of the NAACP, file this Complaint for immediate injunctive and declaratory relief against the Defendants Secretary of State John Merrill, Governor Kay Ivey, the State of Alabama, Mobile

County Absentee Election Manager Alleen Barnett, Jefferson County Circuit Clerk Jacqueline Anderson-Smith, Deputy Circuit Clerk of the Bessemer Division of Jefferson County Karen Dunn Burks, and Lee County Circuit Clerk Mary B. Roberson for failing to take adequate steps to protect the fundamental right to vote ahead of the 2020 elections, including the July 14, 2020 primary runoff election, in the midst of the unprecedented national and statewide COVID-19 public health crisis.

2. The United States and the State of Alabama are in a state of emergency. COVID-19 is spreading rapidly throughout the country, infecting tens of thousands of people, including in Alabama, which has over 7,000 confirmed cases of COVID-19 and 270 deaths. Experts estimate that, for every confirmed COVID-19 case, there could be as many as eleven unconfirmed cases.

3. As a result, in early April Governor Ivey ordered Alabama residents to stay at home absent specific reasons not to, and the Alabama Department of Public Health and the Centers for Disease Control 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, strongly urged people to limit person-to-person interactions to their family, and to avoid large gatherings.

4. On April 28, 2020, Governor Ivey amended Alabama's COVID-19 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 and extended the prohibition on gatherings of ten or more people or where a six-foot distance could not be maintained. This crisis is likely to persist for months or longer.

5. Given these extraordinary circumstances, Secretary Merrill has waived the excuse

requirement for absentee voters for the July 14, 2020 primary runoff election.

6. Nonetheless, in this unprecedented situation, multiple provisions of Alabama law, policy, and/or practice that establish requirements for voting in-person and by-mail are now posing direct and severe obstacles to voting. These provisions are: (1) the requirement that the affidavit that must be included with an absentee ballot be signed by the voter in the presence of either a notary or two adult witnesses, Ala. Code §§ 17-11-7 to 17-11-10; (2) the requirement that copies of photo identification accompany absentee ballot applications, *id.* § 17-9-30(b); (3) the requirement that copies of photo identification accompany certain absentee ballots, *id.* §§ 17-11-9 and 17-11-10(c); and (4) the prohibition on curbside voting (collectively, the “Challenged Provisions”).

7. First, Plaintiffs challenge Alabama’s requirement that a voter casting an absentee ballot sign it before a notary or two witnesses (the “Witness Requirement”). State law requires that, in addition to the signature of the voter, all mail-in ballots must contain a signed affidavit witnessed by either a notary public or two third-party witnesses over age 18; otherwise, the ballot goes uncounted. In the current environment, this poses an unreasonable obstacle to many thousands of vulnerable Alabamians, like Plaintiffs Thompson and Peebles, who live alone and cannot—and should not have to—risk the threat of contagion in order to vote.

8. The Witness Requirement threatens to disenfranchise many thousands of voters who, like Plaintiffs Thompson and Peebles, are adhering to social distancing guidelines to protect themselves and others. Indeed, about 30% of households in Alabama constitute people living alone

(555,330),¹ including 165,582 Alabamians over age 18 with a disability² and 95,102 persons over age 65 with a disability³—that is, two of the groups who are most vulnerable to COVID-19.

9. The Witness Requirement does not meaningfully advance any valid government interest. Many other provisions of Alabama law safeguard the integrity of absentee voting without putting the lives of voters at risk. Indeed, Alabama is one of only 12 states that require an individual submitting an absentee ballot to have it be witnessed by another. Of those 12, Alabama is one of only three states that require the absentee ballot to be notarized.⁴

10. Even if the Witness Requirement did offer some additional marginal benefit to any valid state interest, such benefit is greatly outweighed by the risk of disenfranchisement. The Witness Requirement violates the fundamental right to vote under the First and Fourteenth Amendments to the U.S. Constitution, Title II of the Americans with Disabilities Act (“ADA”), and Sections 2, 3(b), and 201 of the Voting Rights Act of 1965 (“VRA”).

11. Second, the requirements that each person who applies for an absentee ballot mail-in a copy of their photo ID, Ala. Code. § 17-9-30(b) (“ID Application Requirement”), and that

¹ U.S. Census Bureau, 2010-2018 American Community Survey 1-Year Estimates: Selected Social Characteristics of the United States: Alabama (2018), https://data.census.gov/cedsci/table?q=single%20person%20households&g=0400000US01&hidePreview=true&tid=ACSDPIY2018.DP02&vintage=2018&layer=VT_2018_040_00_PY_D1&cid=DP02_0001E&moe=false (last visited Apr. 21, 2020).

² U.S. Census Bureau, 2010-2018 American Community Survey 1-Year Estimates: Selected Social Characteristics of the United States: Alabama (2018) Sample [https://data.census.gov/mdat/#/search?ds=ACSPUMS1Y2018&vv=AGEP\(18:99\)&cv=DIS&rv=ucgid&nv=HHT\(4,6\)&wt=PWGTP&g=0400000US01](https://data.census.gov/mdat/#/search?ds=ACSPUMS1Y2018&vv=AGEP(18:99)&cv=DIS&rv=ucgid&nv=HHT(4,6)&wt=PWGTP&g=0400000US01)

³ U.S. Census Bureau, 2010-2018 American Community Survey 1-Year Estimates: Selected Social Characteristics of the United States: Alabama (2018), [https://data.census.gov/mdat/#/search?ds=ACSPUMS1Y2018&vv=AGEP\(65:99\)&cv=DIS&rv=ucgid&nv=HHT\(4,6\)&wt=PWGTP&g=0400000US01](https://data.census.gov/mdat/#/search?ds=ACSPUMS1Y2018&vv=AGEP(65:99)&cv=DIS&rv=ucgid&nv=HHT(4,6)&wt=PWGTP&g=0400000US01).

⁴ Mississippi, Missouri, and Oklahoma require the notarization of absentee ballots. Alaska, Louisiana, Minnesota, North Carolina, Rhode Island, South Carolina, Virginia, and Wisconsin require witness signatures. *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options*, Nat’l Conf. of State Legislatures (Apr. 14, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (select tab titled “Processing, Verifying, and Counting Absentee Ballots” and scroll down to the chart “Verifying Authenticity of Absentee/Mailed Ballots.”)

certain absentee voters must again submit another copy of their photo ID when casting their ballot, *id.* § 17-11-9 (“ID Ballot Requirement,” collectively with the ID Application Requirement, the “Photo ID Requirements”), create nearly insurmountable barriers to exercising the fundamental right to vote amid the COVID-19 pandemic. Many voters who are more susceptible to complications from COVID-19, like Plaintiffs Porter and Thompson, lack a reliable means of photocopying their ID without endangering their lives. Others lack a photo ID at all. The Photo ID Requirements, as applied in the current COVID-19 crisis, violate Title II of the ADA and the fundamental right to vote under the First and Fourteenth Amendments to the U.S. Constitution.

12. Third, Alabama does not offer either curbside or “drive-thru” voting, which allows voters to cast their ballots in person, but outside of a poll site without leaving the car. Many voters with disabilities are unable to access polling places or vote absentee. Other voters must vote in-person because they require assistance from poll workers. Curbside voting can significantly reduce the opportunities for COVID-19 to spread at in-person poll sites. This is particularly important to voters, like Plaintiffs Clopton and Peebles, who usually vote in-person, but who have a higher susceptibility to death or serious health problems due to COVID-19. Alabama’s prohibition on curbside voting, a reasonable accommodation provided in other states, means that significant numbers of vulnerable voters who need to vote in-person have no option for doing so because of the increased risk of infection from traditional in-person voting. This violates the First and Fourteenth Amendments to the U.S. Constitution, the ADA, and Section 2 of the VRA.

13. Both together and separately, the Witness Requirement, Photo ID Requirements, and the Prohibition on Curbside Voting (collectively, the “Challenged Provisions”) needlessly force many thousands of Alabamians to choose between risking their lives or voting in 2020.

14. The Challenged Provisions directly contradict the specific guidance from the

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