

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

PEOPLE FIRST OF ALABAMA,
et al.,

Plaintiffs,
v.

JOHN MERRILL, et al.,

Defendants.

Case No.: 2:20-cv-00619-AKK

PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION

Plaintiffs People First of Alabama, Robert Clopton, Eric Peebles, Howard Porter, Jr., Annie Thompson, Greater Birmingham Ministries, and the Alabama State Conference of the NAACP (collectively “Plaintiffs”) respectfully move for a preliminary injunction restraining Defendants for the July 14, 2020 primary runoff from enforcing: (1) the requirement that the affidavit that must be included with an absentee ballot be notarized or signed by the voter in the presence of two adult witnesses, Ala. Code §§ 17-11-7 to 17-11-10 (the “Witness Requirement”); (2) the requirement that voters provide copies of photo ID to accompany absentee ballot applications, *id.* § 17-9-30(b), and, in some cases, absentee ballots, *id.* §§ 17-11-9 and 17-11-10(c) (the “Photo ID Requirement”); and (3) Secretary Merrill’s ban on curbside voting (the “Curbside Voting Prohibition”) (collectively, the “Challenged Provisions”).

Our country is in an unprecedented state of emergency. COVID-19 has rapidly infected over one million people. Alabama alone has over 10,000 confirmed COVID-19 cases and over 400 deaths, and there could be up to 11 unconfirmed cases for every confirmed one. This crisis is likely to last for many months or longer.

As a result of COVID-19, Governor Ivey, the Centers for Disease Control and Prevention, the Alabama Department of Public Health, and medical professionals have all advised Alabamians to remain at home and to follow social distancing protocols, like staying six-feet away from people not part of their household.

In these extraordinary circumstances, Plaintiffs are substantially likely to succeed on their claims that the Challenged Provisions, as enforced and interpreted by Defendants, pose direct and severe obstacles to their fundamental right to vote.

First, Plaintiffs seek an injunction on behalf of all voters against the Witness Requirement. By requiring another person to vouch for the voter's identity, the Witness Requirement violates Section 201 of the Voting Rights Act ("VRA"). Even beyond this VRA violation, in the current environment, this requirement poses a serious obstacle to many thousands of vulnerable Alabamians, like Plaintiffs, who cannot—and should not have to—risk the threat of contagion to obtain witnesses. The Witness Requirement violates the fundamental right to vote under the U.S. Constitution and the Americans with Disabilities Act ("ADA") because it does not meaningfully advance any valid government interest since many other provisions of

state law safeguard the integrity of absentee voting without endangering voters.

Second, Plaintiffs People First of Alabama, Porter, and Thompson seek an injunction against the Photo ID Requirement. This requirement creates an unreasonable barrier for many voters seeking to exercise their fundamental right to vote amid the pandemic. Many voters lack a reliable means of photocopying their ID, so they would need to leave their homes and come into close contact with other people to do so. Others have no photo ID at all. Secretary Merrill narrowly interprets the existing exemption to the Photo ID Requirement not to apply to voters like Plaintiffs Porter and Thompson who cannot comply with the requirement without violating social distancing protocols and endangering their safety. Given his interpretation, the Photo ID Requirement, as applied in the current crisis, violates the ADA and the U.S. Constitution. Plaintiffs ask that it be enjoined at least as to those voters who are most vulnerable to death or serious illness from COVID-19.

Finally, Plaintiffs seek an injunction against Defendants' policy prohibiting people from voting at their polling location without leaving their vehicle. Many voters must vote in person because they require assistance or cannot satisfy the Witness and Photo ID Requirements. By reducing the number of people coming into close contact at the polls, curbside voting can limit the opportunities for COVID-19 to spread at in-person poll sites. Yet, in violation of the U.S. Constitution and Title II of the ADA, the Curbside Voting Prohibition 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.

Plaintiffs are also entitled to relief because they will suffer irreparable harm absent relief, and traditional legal remedies will not adequately protect their rights. Further, the harm to Plaintiffs and other Alabama voters outweighs any putative harm to the Defendants. Finally, the relief sought by Plaintiffs is in the public interest.

To protect the lives and rights of them and others, Plaintiffs respectfully request that the Court enter a preliminary injunction for the July 14 primary runoff that: (1) prohibits Defendants from enforcing the Witness Requirement for all voters; (2) enjoins Defendants from enforcing the Photo ID Requirement for any eligible voter who, because of age or medical condition, is more susceptible to serious illness from COVID-19; and (3) bars Defendants from enforcing the Curbside Voting Prohibition. Plaintiffs also ask that Defendants be ordered to educate all voters about the injunction, in coordination with local officials.

DATED this 12th day of May 2020. Respectfully submitted,

/s/ Deuel Ross

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of May 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

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