

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TREVA THOMPSON, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 2:16-cv-783-ECM-SMD
	)	
JOHN H. MERRILL, in his official	)	
capacity as Secretary of State, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**UNITED STATES OF AMERICA’S ACKNOWLEDGMENT OF CONSTITUTIONAL
CHALLENGE**

On December 19, 2019, Defendants John H. Merrill, in his official capacity as Secretary of State, Cindy Sahlie, in her official capacity as Chair of the Montgomery County Board of Registrars, and Leigh Gwathney, in her official capacity as Chair of the Board of Pardons and Paroles (“Defendants”) filed a notice of constitutional challenge with respect to the National Voter Registration Act of 1993, 52 U.S.C. § 20501 *et seq.* (“NVRA”). *See* ECF No. 186. Although the United States may intervene in any action wherein the constitutionality of an act of Congress is questioned, 28 U.S.C. § 2403, here the constitutional challenge has only been raised in the pleadings, and has only been raised in cursory fashion. *See* ECF Nos. 184, 186, 189, 190. The United States is unaware of any motion or other filing that details the basis of Defendants’ constitutional challenge or seeks a Court ruling striking down any provisions of the Act. Moreover, given that the parties have just commenced discovery and that briefing on dispositive motions is not expected until August 2020, *see* ECF No. 195, there is some possibility that this case may be resolved without the Court having to decide the constitutional challenge asserted by

Defendants. Therefore, the United States believes that intervention would be premature at this time. *See Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99 (1981) (“[P]rior to reaching any constitutional question, federal courts must consider nonconstitutional grounds for decision.”).

The Solicitor General decides whether to approve intervention by the United States, 28 C.F.R. § 0.21, and obtaining the Solicitor General’s approval generally takes several weeks. Therefore, if Defendants seek a Court ruling on the constitutionality of the NVRA, or any provision thereof, in a dispositive motion or other filing, the United States respectfully requests that the Court notify the United States and permit the United States to intervene within sixty days of that notice.

Dated: February 14, 2020

Respectfully submitted,

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/s/ Julie Straus Harris
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CERTIFICATE OF SERVICE

I hereby certify that, on February 14, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Julie Straus Harris

Julie Straus Harris

Trial Attorney

United States Department of Justice

Civil Division, Federal Programs Branch