

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

<b>PEOPLE FIRST OF ALABAMA; etc.,</b>	)	
<b>et al,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>2:20-cv-00619-AKK</b>
	)	
	)	
<b>JOHN MERRILL, etc., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MOTION TO DISMISS OF DEFENDANT J C LOVE, III, PROBATE  
JUDGE OF MONTGOMERY COUNTY, ALABAMA**

**COMES NOW** Defendant J C Love, III, Probate Judge of Montgomery County, Alabama, pursuant to Rule 12(b)(1) and 12(b)(6), Federal Rules of Civil Procedure, and moves this Court to dismiss all claims against Defendant Love.<sup>1</sup>

**INTRODUCTION**

Defendant J C Love, III is Probate Judge of Montgomery County, Alabama. Probate Judge Love believes that voters have the right to vote and should be provided assistance and accommodations enabling them to vote to the extent reasonable, feasible and logistically possible. In Alabama, a voter desiring to apply for an

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<sup>1</sup> Counsel for the Defendant and counsel for the Plaintiffs conferred before the filing of this motion in an attempt to reach a resolution.

absentee ballot must certify that he/she meets at least one of the requirements set forth in Ala. Code § 17-11-3(a) (1975). Plaintiffs challenge these requirements (hereafter Excuse Requirement) claiming that as a result of the pandemic, they are unlawful and violate their rights. (Doc. # 75, no. 8) With respect to the 2020 primary runoff, the Alabama Secretary of State promulgated an emergency rule allowing voters to vote absentee if not possible or reasonable to vote in person due to the pandemic. (Doc. 34-1, at 59-60) This no-excuse rule has also been extended by the Secretary of State to all remaining 2020 elections. (Doc. # 107, Exs. 15-17). As a result, this claim by the Plaintiffs is now moot.

Plaintiffs also challenge the requirement under Ala. Code § 17-11-10(b) that an absentee ballot be signed before a notary or two witnesses (the “Witness Requirement”). (Doc. # 75, no. 9) Plaintiffs further challenge the “Photo ID requirement” for absentee voting in Ala. Code § 17-9-30(b) (1975) which requires that absentee voters include a copy of photo ID when casting their ballots. (Doc. # 75, no. 15)

Finally, Plaintiffs take issue with the fact that Secretary of State Merrill prohibits local election officials from implementing “curbside voting.” (Doc. # 75, no. 16) There is no Alabama statute that specifically prohibits curbside voting. (Doc. # 75, no. 177) Secretary of State Merrill has barred local, city and county

election officials from implementing curbside voting. (“Curbside Voting Ban”) (Doc. # 75, no. 178)

In Count I of the Amended Complaint, Plaintiffs bring claims pursuant to 42 U.S.C. § 1983 alleging that the Excuse and Witness Requirements and the Curbside Voting Ban unreasonably burden the right to vote in violation of the First and Fourteenth Amendments to the U.S. Constitution. (Doc. # 75, no. 190) They also allege that as applied, the photo ID requirements and their enforcement unreasonably burden the right to vote for certain Plaintiffs, and that the Curbside Voting Ban also violates their fundamental right to vote secured by the First and Fourteenth Amendments. (Doc. # 75, no. 191-194)

In Count II, Plaintiffs assert that Defendants have violated Title II of the Americans with Disabilities Act by failing to provide reasonable accommodations with respect to the above challenged provisions. (Doc. # 75, nos. 202-205) In Count III, Plaintiffs claim that the Excuse and Witness Requirements and Curbside Voting Ban violate Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. (Doc. # 75, nos. 214-216)

In Count IV, Plaintiff claim that the Witness Requirement violates sections 3 and 201 of the Voting Rights Act, 52 U.S.C. §§ 10302, 10501. (Doc. # 75, nos. 222-228) And, in Count V, Plaintiffs claim that the Witness Requirement with respect

to absentee voting violates the prohibition against poll taxes in the Fourteenth and Twenty-Fourth Amendments to the U.S. Constitution. (Doc. # 75, no. 230) Plaintiffs seek declaratory and injunctive relief.

## **ARGUMENT**

### **A. Plaintiffs lack standing to assert claims against Probate Judge Love.**

Standing presents a threshold jurisdictional question of whether a court may reach the merits of the case before it. Elend v. Basham, 471 F.3d 1199, 1204 (11th Cir. 2006). The standing requirement arises from the Constitution's Article III requirement that the jurisdiction of federal courts be limited to actual cases and controversies. Id. at 1204-05. "The party who invokes a federal court's authority must show, at an 'irreducible minimum,' that at the time the complaint was filed, he has suffered some actual or threatened injury resulting from the defendant's conduct, that the injury fairly can be traced to the challenged action, and that the injury is likely to be redressed by favorable court disposition." A&M Gerber Chiropractic LLC v. Geico Gen. Ins. Co., 925 F.3d 1205, 1210 (11th Cir. 2019). Standing must be determined as of the time the plaintiff's complaint is filed. Id. at 1212. If a plaintiff lacks standing to assert a claim, the court does not acquire subject matter jurisdiction over that claim. Lewis v. Governor of Alabama, 944 F.3d 1287, 1296

(11th Cir. 2019). It is the plaintiffs' burden to establish each of the elements of standing. Bischoff v. Osceola Cnty., Fla., 222 F.3d 874, 878 (11th Cir. 2000).

Probate Judge Love challenges the traceability and redressability elements of the standing doctrine with respect to each Plaintiff herein. Specifically, Probate Judge Love challenges the standing of the Plaintiffs because any alleged injury or threatened injury claimed by the Plaintiffs cannot fairly be traced to Probate Judge Love or his office. Three of the challenges set forth in the Amended Complaint relate solely to the requirements of absentee ballots: (1) Excuse Requirement; (2) Photo-Id Requirement; and (3) Witness Requirement. Under Alabama law, however, the probate judges do not have any duties with respect to the enforcement of the laws regarding absentee ballots. See Ala. Code § 17-11-2 through § 17-11-12 (1975). Pursuant to Ala. Code § 17-22-2 (1975), each county has an absentee election manager who is required to fulfill the duties under Alabama law with respect to absentee ballots.

In Doe v. Pryor, 344 F.3d 1282, 1283 (11th Cir. 2003), the plaintiff sued the Alabama Attorney General claiming a certain Alabama criminal statute was unconstitutional. The court held that because the Attorney General had taken no action to enforce the criminal statute against the plaintiff, plaintiff's injuries were not "fairly traceable" to the Attorney General, and the plaintiff therefore lacked

standing to sue the Attorney General. Id. at 1285; see also Lewis v. Governor of Alabama, 944 F.3d at 1301 (wherein court held that “[b]ecause the Attorney General didn’t do (or fail to do ) anything that contributed to plaintiffs’ harm,” plaintiffs could not meet Article III’s traceability requirement). The same is true here. Plaintiffs have failed to allege any actual injury caused by Probate Judge Love with respect to the challenged requirements regarding absentee ballots. They have also failed to allege any facts to show they have a reasonable fear of any future injury from Probate Judge Love with respect to these absentee voting requirements.

Probate Judge Love also challenges the Plaintiffs’ standing because Plaintiffs have failed to allege and cannot demonstrate that their alleged injuries with respect to absentee voting requirements are likely to be redressed by a favorable court ruling against Probate Judge Love. In analyzing this requirement, one particular inquiry made by the court is whether a decision in the plaintiff’s favor would significantly increase the likelihood that he “would obtain relief that directly redresses the injury” he claims to have suffered. Lewis v. Governor of Alabama, 944 F.3d at 1301, quoting Harrell v. Fla. Bar, 608 F.3d 1241, 1260 (11th Cir. 2010). The court also looks to the effect the judgment would have on the defendant. Id.

For the reasons cited above, any judgment against Probate Judge Love would not provide the relief requested by the Plaintiffs with respect to absentee ballot

requirements (i.e., the Witness Requirement, the Photo Id Requirement and the Excuse Requirement). This is because Probate Judge Love has no duties or responsibilities with respect to absentee ballots, or the challenged provisions relating to absentee ballots. Any judgment against Judge Love with respect to these challenged provisions regarding absentee ballots would be of no value and would not provide redress for the injuries claimed by the Plaintiffs herein. Any such judgment could also not be implemented by Probate Judge Love. Plaintiffs therefore cannot establish the redressability requirement of standing with respect to the challenged absentee ballots requirements against Probate Judge Love. All such claims against Probate Judge are due to be dismissed pursuant to Rule 12(b)(1), Fed. R.Civ. P. due to lack of standing on the part of the Plaintiffs.

The same is true with respect to Plaintiffs' claims regarding the Curbside Voting Ban. Plaintiffs acknowledge that there is no statute in Alabama that either allows or prohibits curbside voting in Alabama. They allege, however, that a ban on curbside voting has been put in place by Secretary of State John Merrill who is also a Defendant herein. (Doc. # 75, nos. 16, 179-180) In fact, it is the Alabama Secretary of State who has the authority to provide uniform guidance for election activities under Alabama law, which includes rule making authority under the Alabama Administrative Procedure Act. Ala. Code § 17-1-3 (a) (1975). Plaintiffs

do not allege any acts or omissions on the part of Probate Judge Love that have caused them harm with respect to their claim regarding the Curbside Voting Van. Because Probate Judge Love has no authority to lift any such ban, Plaintiffs cannot establish the traceability and redressability requirements of standing with respect to their claims against Probate Judge Love regarding the Curbside Voting Ban. These claims against Probate Judge Love are therefore due to be dismissed.

**C. Plaintiffs have failed to allege sufficient facts to state claims for Declaratory and Injunctive relief against Probate Judge Love.**

Plaintiffs have also failed to allege sufficient facts demonstrating there is an actual controversy between Probate Judge Love and the Plaintiffs. Under the Declaratory Judgment Act, a declaratory judgment may only be issued “in the case of an actual controversy.” 28 U.S.C. § 2201; A & M Gerber, 925 F.3d at 1210; Emory v. Peeler, 756 F.2d 1547, 1551-52 (11th Cir. 1985). “In all cases arising under the Declaratory Judgment Act, the threshold question is whether a justiciable controversy exists.” A&M Gerber, 925 F.3d at 1210, quoting Atlanta Gas Light Co. v. Aenta Cas. & Sur. Co., 68 F.3d 409, 414 (11th Cir. 1995). “That is, under the facts alleged, there must be a substantial continuing controversy between parties having adverse legal interests.” Emory, 756 F.2d at 1552. “The controversy between the parties cannot be ‘conjectural, hypothetical, or contingent; it must be real and immediate, and create a definite, rather than speculative threat of future



injury.” A&M Gerber, 925 F.3d at 1210. “The remote possibility that a future injury may happen is not sufficient to satisfy the ‘actual controversy’ requirement for declaratory judgments.” Malowney, 193 F.3d at 1347, quoting Emory, 756 F.2d at 1552. As discussed above, there is no controversy between the Plaintiffs and Probate Judge Love that is substantial and continuing. Emory, 757 F.2d at 1552. Plaintiffs’ claims are focused on absentee ballot requirements over which Probate Judge lacks any control or authority under Alabama law. Plaintiffs also focus on the Curbside Voting Ban which was instituted by Defendant Merrill – not Probate Judge Love. Plaintiffs have thus failed to allege or demonstrate a justiciable controversy between themselves and Probate Judge Love. Their claims for declaratory relief against Probate Judge Love must be dismissed.

For the same reasons, Plaintiffs have also failed to set forth sufficient facts stating a claim for permanent injunctive relief against Probate Judge Love. “[I]njunctive relief regulate future conduct only; they do not provide relief for past injuries already incurred and over with.” Strickland v. Alexander, 772 F.3d at 883. Plaintiffs’ Amended Complaint fails to plausibly portray that they are subject to an imminent threat of harm from Probate Judge Love. A plain reading of the Amended Complaint shows that any likelihood of suffering future injury at the hands of Probate Judge Love is purely speculative. This is fatal to Plaintiffs’ claims for

injunctive relief against Probate Judge Love. See, e.g., Adderley v. U.S., Docket no. 5:17-cv-01431-HNJ at \* 6 (N.D. Ala. Aug. 10, 2018) (to be entitled to injunctive relief, plaintiff must show he is subject to imminent harm from the defendant he has sued).

**WHEREFORE, THE PREMISES CONSIDERED,** Defendant respectfully moves this Court to dismiss all claims against him in the Plaintiffs' Amended Complaint, and grant him any other relief to which he may be entitled.

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**CERTIFICATE OF SERVICE**

I certify that on August 5, 2020, I filed the foregoing document electronically using the CM/ECF filing system which will serve all counsel of record.

/s/ Constance Caldwell Walker  
Of Counsel