

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

PEOPLE FIRST OF ALABAMA, et
al.,

Plaintiffs,

v.

JOHN MERRILL, et al.,

Defendants.

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

**PLAINTIFFS' BRIEF IN OPPOSITION TO
DEFENDANT RUBY JONES-THOMAS'
MOTION TO DISMISS**

Plaintiffs oppose the motion to dismiss filed by Defendant Ruby Jones-Thomas, Circuit Clerk for Lowndes County. Plaintiffs seek to enjoin all Defendants—including the Jones-Thomas—from enforcing the Witness, Photo ID, and Excuse Requirements for absentee voters, and the Curbside Voting Ban (collectively, the “Challenged Provisions”).

Defendant, Ruby Jones-Thomas, asserts in her motion to dismiss that as the Circuit Clerk for Lowndes County, she is not a proper party in this matter because she does not have responsibility for enforcing or overseeing the Challenged provisions at issue in this case. Doc. 138 ¶ 3. This is not correct. Defendant Jones-Thomas does have responsibility in her official capacity as Circuit Clerk of Lowndes County for enforcing and administering aspects of the Challenged Provisions. She is a proper party and the Court has jurisdiction over the claims against her. Plaintiffs incorporate by reference their prior briefs in opposition to the Defendants’ motions to dismiss. *See* Docs. 66, 134, 141.

FACTUAL BACKGROUND

Plaintiffs are organizations and individuals who—because of age, disabilities including medical conditions, and race—are at higher risk of serious illness or death from COVID-19 (“high-risk voters”) and seek to vote safely in the pandemic. Doc. 75 ¶¶ 188–233. Plaintiffs also seek relief from the Curbside Voting Ban and Witness Requirement outside of the pandemic. *Id.* ¶¶ 181, 187, 207, 219, 228, 232; *see also*

Doc. 134 at 7–9, 13–15. They are seeking to protect their rights and have standing to assert their sufficiently alleged claims under the U.S. Constitution, the Voting Rights Act of 1965 (“VRA”), and the American with Disabilities Act of 1990 (“ADA”) against all Defendants.

On June 15, 2020, this Court found that Plaintiffs are likely to succeed on the merits of their constitutional and ADA claims, held that Plaintiffs have standing, and granted their preliminary injunction, thereby confirming—at a minimum—the sufficiency of the pleadings at this stage. Doc. 58.

Argument

Defendant asserts that she does not perform functions related to absentee ballot administration, Doc. 138 ¶ 3, and seems to imply that Alabama law dictates that the duties pertaining to the Excuse, Photo ID, and Witness Requirements are carried out solely by the absentee election manager, *id* at. ¶¶ 1, 3. But state law, the factual allegations in the Amended Complaint, and requests for relief implicate Defendant Jones-Thomas’ role as Lowndes County Circuit Clerk in enforcing and administering the Challenged Provisions, and thus satisfies the Article III inquiry and establish that she is a proper party. Doc. 75 ¶ 61; *also id.* at 77–80.

To assert Article III standing, Plaintiffs must have (1) suffered an injury in fact, (2) that is fairly traceable to the defendant, and (3) that is likely to be redressed by a favorable decision. *See Common Cause Ga. v. Billups*, 554 F.3d 1340, 1349–

50 (11th Cir. 2009) (citations omitted). To establish traceability, the plaintiff must show “a causal connection between her injury and the challenged action of the defendant—*i.e.*, the injury must be fairly traceable to the defendant’s conduct, as opposed to the action of an absent third party.” Doc. 58 at 18 (citations omitted). Traceability is distinct from proximate cause, *see Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 n.6 (2014), and is satisfied where a defendant’s actions might have a “coercive effect” on—*i.e.*, constrain or influence—the conduct of third parties, *see Alabama-Tombigbee Rivers Coal. v. Norton*, 338 F.3d 1244, 1254 (11th Cir. 2003) (quoting *Bennett v. Spear*, 520 U.S. 154, 168-69 (1997)). Moreover, the causation and redressability requirements of Article III standing are easily satisfied where the facts alleged indicate a “fairly traceable” link to the defendants’ conduct and the potential for redress of the injury. *See Ga. Latino All. For Human Rights v. Governor of Ga.*, 691 F.3d 1250, 1257 (11th Cir. 2012).

Defendant is charged with absentee ballot administration in a manner that is “fairly traceable” to Plaintiffs’ injuries. *Id.* While Secretary of State Merrill has statewide authority over election management, the Circuit Clerk is a member of the appointing and canvassing board. Ala. Code. § 17-1-2(1) and (6). As a member of the canvassing board, the Circuit Clerk is responsible for canvassing ballots and certifying election results. Ala. Code § 17-10-2(g)–(f). The Circuit Clerk is also charged with the selection, *id.* § 17-8-1(a), and training of poll workers on the proper

acceptance or rejection of absentee ballots, and the means of conducting curbside voting. *See id.* § 17-8-9 (providing that the circuit clerk, probate judge, and sheriff must provide poll worker trainings and that the probate judge notifies poll workers of this training); *see also id.* §§ 17-11-10, 17-11-11 (describing the existing process whereby poll workers count absentee ballots). Therefore, Circuit Clerks play an indispensable role in the process of absentee ballot administration, including in enforcing the Excuse, Photo ID, and Witness Requirements.

Because the Defendant plays a role in enforcing the Challenged Provisions, an injunction against her satisfies redressability and traceability. *See, e.g., Fla. State Conf. of the NAACP v. Browning*, 522 F.3d 1153, 1159 & n.9 (11th Cir. 2008); *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 & n.3 (11th Cir. 2005). An injunction barring the Defendant from enforcing the Challenged Provisions—which necessarily involves counting ballots that do not satisfy the Excuse Requirement, or ballots that are unwitnessed or lack photo ID, certifying returns that include such ballots, Doc. 58 at 20–21 (citing Doc. 34-1 at 2), training poll officials to accept such ballots, and training poll workers on the implementation of curbside voting—is “likely” to substantially or, at least, partially redress Plaintiffs’ injuries. *Norton*, 338 F.3d at 1256; *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 569 n.4 (1992) (holding that redressability does not require complete relief); *Made in the USA Found. v. United States*, 242 F.3d 1300, 1310 (11th Cir.

2001) (partial relief is sufficient for standing purposes). The Amended Complaint specifically seeks this relief. *See* Doc. 75 at 77–80 (requesting that these Defendants be ordered to “instruct . . . election officials that curbside, drive-thru, and/or drive-up voting at in-person polling sites is permitted” and “instruct[] . . . election officials . . . to count otherwise validly cast absentee ballots that are missing a specific excuse for voting absentee, witness signatures, and copies of photo ID”).

If the requested relief is granted, the Court can order the Circuit Clerks, including Defendant Jones-Thomas, to canvass and certify those election returns that include unwitnessed ballots or ballots that lack photo ID. Indeed, State Defendants have conceded that canvassing and certifying officials are proper parties. *See* Doc. 36 at 12 n.10 (acknowledging that the “canvassing board, on which the circuit clerk serves for general elections, counts the provisional ballots”).

As this Court recognized in its determination that Plaintiffs have standing to sue the AEMs, the role of the board of registrars and canvassing board in ultimately counting provisional ballots “does not somehow negate the AEMs role in screening the ballots in the first instance.” Doc. 58 at 19 n.9. Conversely, the AEMs’ initial screening of ballots, does not negate “[t]he fact that the board of registrars, in conjunction with the canvassing board”—of which the Circuit Clerk is a member—is responsible for rejecting absentee ballots without witness signatures or photo IDs. Doc. 58 at 22–23, 26.

Moreover, the Amended Complaint alleges that “Ruby Jones-Thomas . . . in [her] official capacit[y] as the circuit clerk . . . Lowndes . . . count[y] . . . [is] charged with enforcing the Excuse, Witness and Photo ID Requirements, processing and distributing absentee ballot applications, appointing and training poll workers, and issuing, validating and canvassing absentee ballots.” Doc. 75 ¶ 61. Plaintiffs assert these allegations on behalf of Organizational Plaintiffs’ members who reside in Lowndes County. *See id.* ¶¶ 39, 44. Plaintiffs, therefore, have alleged specific actions on the part of Defendant involved with enforcing the Challenged Provisions, which Plaintiffs allege are causing their injuries. And Defendant is clearly identified in the Amended Complaint as part of the collective Defendants whom Plaintiffs alleged are “failing to take adequate steps to protect the fundamental right to vote.” Doc. 75 ¶ 1; *see also id.* ¶¶ 41, 46, 186, 194, 202. These allegations must be taken as true. *See, e.g., Speaker v. U.S. Dep’t of Health & Human Servs. Ctrs. for Disease Control & Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010).

Plaintiffs’ allegations that their injuries have been caused by Defendant Jones-Thomas are sufficient to satisfy the “relatively modest” requirements that apply at “this stage of the litigation.” *Bennett v. Spear*, 520 U.S. 154, 171 (1997).

Conclusion

Plaintiffs respectfully ask that this Court deny Defendant’s motion.

DATED this 12th Day of August 2020. Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to counsel of record. Additionally, I certify that foregoing was mailed via first class mail to the Defendants not receiving CM/ECF notifications.

/s/ Sarah Brannon

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