

PEOPLE FIRST OF ALABAMA,)
et al.,)
))
Plaintiffs,)
))
v.) **Civil Action Number 2:20-cv-619-AKK**
))
JOHN MERRILL, et al.)
))
Defendants.)

**REPLY OF DEFENDANT BRITNEY JONES-ALEXANDER AND
LASHANDRA MYRICK TO PLAINTIFF’S OPPOSITION TO THEIR
MOTIONS TO DISMISS**

Defendant Britney Jones-Alexander, in her official capacity as Probate Judge of Wilcox County, Alabama, and LaShandra Myrick, in her official capacity as Probate Judge of Lowndes County, Alabama, hereby respectfully files this Reply to Plaintiff's Opposition to their Motions to Dismiss.

1. These Defendants are aware that, prior to their appearance in this matter, co-Defendants had argued to the Court that local officials are the appropriate parties to this matter based on *Jacobson v. Florida Secretary of State*, 957 F.3d 1193 (11th Cir. 2020). With due respect, this reliance on *Jacobson* is seriously misplaced.

2. Florida and Alabama have chosen to set up their respective systems

of governance differently. For example, it is well-established in Alabama that, pursuant to the Alabama Constitution of 1901, sheriffs are State officials who are entitled to share in the State's immunity. *McMillian v. Monroe County, Ala.*, 520 U.S. 781, 787 (1997). In contrast, in Florida, they are county officials who are generally not entitled to share in the State's immunity. *See, e.g., Stanley v. Israel*, 843 F.3d 920, 925 (11th Cir. 2016) (holding that a sheriff in Florida acts as a county official in hiring and firing corrections officers and noting that case law regarding the role of sheriffs in other states is not dispositive); *Abusaid v. Hillsborough County Bd. of County Com'rs*, 405 F.3d 1298, 1303-1313 (11th Cir. 2005). These differences are a feature, not a flaw, of the state sovereignty allowed under our federal system. *See, e.g., Murphy v. National Collegiate Athletic Ass'n*, 138 S.Ct. 1461, 1477 (2018) (noting that the Constitution's protection of the states' sovereignty is not done for the benefit of states "as abstract political entities," but rather to help protect the people's liberty); *McMillian*, 520 U.S. at 795 (It is a "crucial axiom of our government" that the "States have wide authority to set up their state and local governments as they wish.")

3. The local officials discussed in *Jacobsen* were county election supervisors who were "constitutional officers who are elected at the county level by the people of Florida." 957 F.3d at 1207. Florida law did not grant its Secretary of State any manner of control over these officials, except to provide that she could

sue them if they failed to perform their duties. *Id.*

4. In Alabama, however, the Secretary of State is the “chief elections official in the state and shall provide uniform guidance for election activities.” Ala. Code (1975) § 17-1-3. As such, the Legislature specifically granted him direct rule making authority to implement Alabama law relating to elections, *Id.*, which specifically includes, but is not limited to, the authority to adopt emergency rules in a declared state of emergency (such as the current pandemic) that would allow all qualified voters to vote by absentee ballot. Ala. Code § 17-11-3 (e). In light of these important differences between the States, it would be inappropriate to apply the holding of *Jacobsen* to the local officials in this case.¹ Therefore, because under Alabama law, neither traceability or redressability exists as to these Defendants, all claims against them are due to be dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

5. Plaintiffs’ arguments regarding the sufficiency of the individual allegations against these Defendants are also without merit. The cited allegations, such as the blanket accusation that Defendants are “failing to take adequate steps to protect the fundamental right to vote” are precisely the sort of conclusory legal statements that the United States Supreme Court has consistently held are not

¹ This argument should not be taken as any sort of waiver or admission as to the substance of Plaintiff’s claims, including the issue of whether Secretary Merrill can be forced to exercise these emergency powers as requested by Plaintiffs.

entitled to any presumption of proof and are therefore insufficient to meet a plaintiff's burden under Fed. R. Civ. Pro. 8. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662 (Ala. 2009).

WHEREFORE, THESE PREMISES CONSIDERED, Probate Judge of Wilcox County, Alabama, and LaShandra Myrick, in her official capacity as Probate Judge of Lowndes County, Alabama hereby respectfully submit this Reply to Plaintiffs' Opposition to their Motion to Dismiss.

Respectfully submitted this the 13th day of August, 2020.

s/Jamie H. Kidd

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CERTIFICATE OF SERVICE

I hereby certify that on this the 13th day of August, 2020, I electronically filed the foregoing Reply with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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