

Civil Action No. 2:20-cv-00619-AKK

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MOTION FOR SUMMARY JUDGMENT

Defendant JoJo Schwarzauser, sued in her official capacity as Circuit Clerk of Mobile County (“Mobile AEM”), moves this Court in accordance with Fed. R. Civ. P. 56 and this Court’s Scheduling Order (Doc. 93) for the entry of summary judgment in her favor. As explained below, there is no genuine dispute as to any material fact and she is entitled to a judgment as a matter of law on all claims raised by Plaintiffs.

I. Relevant Procedural History and Description of Parties

On May 1, 2020, four individuals and three organizations filed a Complaint (Doc. 1) against the State of Alabama, its Governor and Secretary of State, three Circuit Court Clerks, and an Absentee Election Manager. The plaintiffs sought injunctive relief from two state law requirements relating to absentee voting, and a determination as to whether voting by car was permitted, during the 2020 elections. (*Id.*) These plaintiffs alleged that the state laws and a *de facto* prohibition on “curbside voting” combined with the global pandemic to deprive them of rights, in violation of the First and 14th Amendments, the Americans with Disabilities Act (“ADA”), and the Voting Rights Act (“VRA”). (*Id.*)

On June 15, 2020, the Court granted in part a Preliminary Injunction and dismissed the Governor. (Docs. 58 & 59). The Court ordered certain restrictions to the state laws at issue for the then-upcoming July 14, 2020, runoff election. (*Id.*)

The Preliminary Injunction was stayed by the United States Supreme Court on July 2, 2020. *Merrill v. People First of Ala.*, No. 19A1063, __ S. Ct. __ 2020 WL 3604049 (U.S. July 2, 2020)(mem.).

Days later, on July 6, 2020, the operative First Amended Complaint (Doc. 75) was filed by the original group of plaintiffs in addition to three more individuals and an additional organization (“Plaintiffs”). On the defense side, the Governor was omitted; Mobile AEM was substituted for the Absentee Election Manager; and 14 additional defendants were added, consisting of absentee election managers, circuit clerks, and probate judges from various counties in Alabama (“Defendants”). (*See id.*) The First Amended Complaint contains an additional state law requirement being challenged by Plaintiffs, and also contains a new count based on 42 U.S.C. §1983. (*Id.* at ¶¶ 229-233.)

During the course of the litigation thus far, in addition to the Governor, three of the Circuit Clerks (Docs. 76 & 144), two Probate Judges (Doc. 144), and two individual Plaintiffs (Doc. 150) have been dismissed or have unopposed motions pending. The remaining Plaintiffs are as follows: Individuals - Eric Peebles (“Peebles”), Howard Porter, Jr. (“Porter”), Annie Carolyn Thompson (“Thompson”), Teresa Bettis (“Bettis”), and Sheryl Threadgill-Matthews (“Threadgill-Matthews”); Organizations - People First of Alabama (“PFA”), Greater Birmingham Ministries (“GBM”), Alabama State Conference of the NAACP

(“NAACP”), and Black Voters Matter Capacity Building Institute (“BVM”). The remaining Defendants are as follows: the State of Alabama (“State”); John Merrill as Alabama’s Secretary of State (“Merrill”); Absentee Election Managers/Circuit Clerks Mobile AEM, James Majors, Gina Jobe Ishman, Debra Kizer, Ruby Jones Thomas, Johnnie Mae King, and Carolyn Davis-Posey; and probate judges Don Davis, Bill English, Lashandra Myrick, Frank Barger, J.C. Love, III, and Britney Jones-Alexander. The absentee election managers, circuit clerks, and probate judges are located in Lee, Lowndes, Madison, Mobile, Montgomery, and Wilcox counties. (See Doc. 75 ¶¶ 1, 26-62.)

II. Statement of Relevant Undisputed Material Facts¹

Due to the continuing national spread of the pandemic caused by the coronavirus COVID-19, on March 13, 2020, Governor Ivey declared a State of Emergency in Alabama.² (Doc. 34-1, pp. 37-39.)³ As a result, the primary runoff election scheduled for March 31, 2020, was postponed until July 14, 2020. (*Id.* at

¹ In compliance with the Scheduling Order (Doc. 93), Mobile AEM is submitting this Motion for Summary Judgment prior to the close of discovery. To the extent that subsequent material facts are discovered which bear relevance to this motion, Mobile AEM reserves the right to supplement or amend this motion to reflect the actual facts of the case.

² Proclamation of Gov. Kay Ivey (March 13, 2020) <https://governor.alabama.gov/newsroom/2020/03/state-of-emergency-coronavirus-covid-19/>.

³ Page references to documents previously filed through CM/ECF refer to the page number at the top of each page. Page and line number references to depositions refer to the transcripts as annotated by the court reporter.

pp. 7-9, 53-58). The Governor and State Health Officer have also issued a series of Stay at Home Orders, which restrict social gatherings and public and private services.⁴

Statistics show that COVID-19 is not limited to any particular segment of the population, and as yet it is unknown what makes some individuals more susceptible to catching it.⁵ The Centers for Disease Control (“CDC”) has not determined that any particular characteristic makes a person more or less likely to contract the virus.⁶ However, the CDC has identified certain pre-existing medical conditions that appear to cause a higher incidence of either contracting or suffering more serious, and sometimes fatal, symptoms from the virus.⁷ Although no physiological cause has been identified, Black individuals constitute a higher proportion of COVID-19 patients in Alabama than their share of the Alabama general population.⁸

⁴ See generally, Proclamations of Gov. Kay Ivey and Orders of State Health Officer Dr. Scott Harris <http://alabamapublichealth.gov/legal/orders.html>.

⁵ Assessing Risk Factors for Severe COVID-19 Illness (updated August 10, 2020), Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/assessing-risk-factors.html>.

⁶ *Id.*

⁷ *Id.*

⁸ Susan Driggers, *Fouad, Ruffin and Vickers: COVID-19 is disproportionately high in African Americans*, University of Alabama at Birmingham (July 17, 2020) <https://www.uab.edu/news/health/item/11435-fouad-ruffin-and-vickers-covid-19-is-disproportionately-high-in-african-americans>.

Plaintiffs are individuals and organizations with individual members who have either developmental disabilities or medical conditions which lead them to believe that they are at a higher risk for catching COVID-19 or for suffering from its more debilitating or fatal effects. (*See generally*, Doc. 75 at ¶¶ 26-28, 30-56.) Four of the five individual Plaintiffs are Black (*Id.* at ¶¶ 31, 32, 53, 55), and three of the four organizational Plaintiffs are largely representative of Black members or constituents. (*Id.* at ¶¶ 35, 38, 42.)

Plaintiffs Porter, Thompson, and Bettis all reside in Mobile County. (*Id.* at ¶¶ 31, 32, 53.) Peebles resides in Lee County. (*Id.* at ¶ 30.) Threadgill-Matthews resides in Wilcox County. (*Id.* at ¶ 55.) PFA has membership chapters throughout the state, including in Mobile. (*Id.* at ¶ 26.) GBM's membership is located in or near Jefferson County, far from Mobile County. (*Id.* at ¶ 35.) NAACP has members throughout the state, including within Mobile County. (*Id.* at ¶ 39.) BVM has constituents throughout the state, including in Mobile County. (*Id.* at ¶ 44.)

Plaintiffs challenge three previously-established Alabama absentee voting requirements and seek a declaration allowing for an additional in-person option to be implemented for elections held in 2020⁹ due to the effects of the COVID-19 pandemic. (*Id.* at ¶ 7.) The state laws they seek to enjoin are: 1) The “Excuse

⁹ Plaintiffs seek relief for the July 14, 2020, runoff election, but as this has already taken place the claims related to that specific election are now moot.

Requirement,” codified in Ala. Code § 17-11-3(a), which limits the right to cast absentee ballots to electors who meet at least one specially listed category;¹⁰ 2) The “Witness Requirement,” codified in Ala. Code §§ 17-11-7 through 17-11-10(b), which requires that absentee ballots must either be signed by two witnesses or notarized to be opened and counted by election officials; and 3) The “Photo ID Requirement,” codified in Ala. Code §§ 17-9-30(b) and 17-10-1(b), which requires that absentee voters include a copy of one of a number of types of photo ID when applying for an absentee ballot or, in rare circumstances, along with their ballots. (See Doc. 75 at ¶¶ 7-15.)

Plaintiffs also seek a determination that they are allowed to vote in-person “without leaving the car” and challenge a *de facto* ban on “curbside voting.” (*Id.* at ¶¶ 7, 16.) Plaintiffs admit that there is no statute or administrative rule banning the practice they seek to use. (*Id.* at ¶ 177.) However, Plaintiffs attribute the lack of in-car voting options to an unwritten policy of Secretary Merrill, citing examples where counties offered a form of the practice they seek and Secretary Merrill intervened and stopped it. (*Id.* at ¶¶ 178-180.)

¹⁰ The categories are: (1) Absence from the county, or the municipality for municipal elections, on election day; (2) Physical illness or infirmity which prevents attendance at the polls; (3) Working on a shift which has at least 10 hours which coincide with the hours the polls are open at his or her regular polling place; (4) Out of county students; (5) Members of the Armed Forces of the United States, along with their spouses and dependents; and (6) Working as an election officer or named as a poll watcher at a polling place other than his or her regular polling place.

Plaintiffs claim that the Excuse and Witness Requirements and *de facto* Curbside Voting ban violate the First and Fourteenth amendments on their face and as applied. (*Id.* at ¶¶ 190, 194.) Plaintiffs claim the Photo ID Requirement, as applied during the pandemic only, “severely and unreasonably burden[s] the fundamental right to vote for Plaintiffs Porter, Thompson, and the members of [PFA], as well as other similarly situated Alabama voters.” (*Id.* at ¶ 191.)

Plaintiffs further allege that the Excuse and Witness Requirements and Curbside-Voting ban constitute a failure or refusal to offer a reasonable accommodation to voters in violation of the ADA, and identify numerous Plaintiffs to whom a waiver or injunction of such requirements (or ban) would be beneficial. (*Id.* at ¶¶ 203, 205.) However, Plaintiffs only allege that refusing to broadly interpret the Photo ID Requirement violates the ADA for “certain elderly and/or disabled voters as also applicable to Plaintiffs Porter, Thompson, and the members and constituents of [PFA] and BVM.” (*Id.* at ¶ 204.) Plaintiffs’ other counts in this lawsuit assert that the Excuse Requirement and Witness Requirement, and Curbside-Voting ban violate the VRA, and assert that the Witness Requirement constitutes a poll tax. (*See id.* at ¶¶ 210-233.)

Mobile AEM is the statutorily-mandated election official in charge of processing absentee ballot applications and collecting completed absentee ballots. Ala. Code § 17-11-2. Like the absentee election managers from other counties,

Mobile AEM, in accordance with Alabama law, verifies the information contained on absentee ballot applications, including the “excuse” chosen allowing the use of an absentee ballot. Ala. Code § 17-11-5. (Affidavit of A. Barnett, Ex. 1 at ¶ 2.) Mobile AEM verifies that a copy of an accepted form of identification is included with the ballot application, or that such is not necessary due to the statutory exemption for individuals who suffer from one or more of a list of conditions and who are age 65 or older or have a disability. Ala. Code §§ 17-9-30(b) and 17-11-2. (*Id.*) Mobile AEM issues absentee ballots to those voters that submit an absentee-ballot application meeting the statutory requirements. Ala. Code § 17-11-5. Mobile AEM also receives completed ballots from absentee voters and enters the receipt into the state’s tracking system. Ala. Code § 17-11-10. Mobile AEM plays no role in counting or canvassing votes, or determining whether a completed ballot has met the “witness” requirement. Ala. Code § 17-11-10(b). (*Id.* at ¶¶ 3-4; *see also* Majors Dep., Ex. 2 at 53:16-54:3, 59:3-15, 60:8-10.)¹¹ Mobile AEM does not track whether ballots received have – or have not – been witnessed in compliance with Alabama’s

¹¹ This Court’s protective order (Doc. 128) instructs parties to follow the procedures outlined in the order to designate and protect confidential information contained in discovery materials. Counsel for Plaintiffs has previously expressed an expectation that information such as health records be designated as confidential information and protected accordingly. This motion contains general information about Plaintiffs’ medical conditions that Plaintiffs have already disclosed in the amended complaint and other public filings. However, out of an abundance of caution, Mobile AEM is filing the underlying deposition transcripts by individual and organizational Plaintiffs (Exs. 3, 5, 7, 9, 10, 11, 12, and 13) under seal, as the expedited schedule has not allowed Mobile AEM the opportunity to consult with Plaintiffs about specific material they designate as confidential.

law. *Id.* (Ex. 2 at 59:3-7.) By definition, and again like all absentee election managers, Mobile AEM has no authority or responsibility in relation to in-person voting. *See generally*, Ala. Code §§ 17-11-1 *et seq.* (Ex. 1 at ¶ 6.)

On March 18, Secretary Merrill filed an emergency rule permitting any voter who determined it was impossible or unreasonable to vote at his or her voting place for the runoff election due to the COVID-related states of emergency to apply for an absentee ballot using the pre-printed excuse, “I have a physical illness or infirmity which prevents my attendance at the polls.” (Doc. 34-1, pp. 9-10, 59-60.) On July 17, Secretary Merrill filed an identical rule in relation to the November 2020 general election.¹² (Doc. 107, pp. 1-14.)

Pursuant to the emergency rules filed by Secretary Merrill, all Plaintiffs, including all members of each organizational Plaintiff, may vote by absentee ballot in the remaining 2020 elections, including the July 14 runoff, without being rejected for failing to have an accepted “excuse” under Alabama law. *See* Ala. Code § 17-11-3(e).

Plaintiff Porter is a 69-year-old resident of Mobile County with Parkinson’s Disease and asthma. (Doc. 75 at ¶ 31.) Because he is over 65 and has a

¹² This rule also applies to the House District 33 special election set for January 2021. Alabama Secretary of State (July 24, 2020) <https://www.sos.alabama.gov/newsroom/secretary-state-extends-absentee-voting-house-district-33-special-election> (last visited Aug. 16, 2020).

“neurological... or other life altering disorder” which “affects [his] ability to perform manual tasks, stand for any length of time, walk unassisted, see, hear or speak” he qualifies under Alabama law to vote absentee despite the Excuse Requirement, and is exempt from the Photo ID Requirement. (Porter Dep., Ex. 3 at 25:22-23, 33:16-20; Porter Absentee Ballot Application for July 2020 Primary Runoff (AEM 004627), Ex. 4.) For the July 14, 2020, runoff election, Porter applied to vote absentee and acknowledged this status by checking the appropriate box on the application. (Ex. 3 at 14:21-15:14, 33:16-34:6, 48:17-49:18, 56:23-57:17, 77:21-80:16; Ex. 4.) Even if Porter was to somehow lose his exemption to the Photo ID Requirement, he readily admits that he has a printer in his home which has functioned properly since the filing of this lawsuit. (*Id.* at 14:21-15:14.) Porter’s claims of injury in this case stem from his uncertainty as to whether his printer will function in the future. (*Id.* at 103:10-15; Doc. 75 at ¶ 31.) Despite this concern, Porter refused to attempt to make a copy of his ID during his deposition. (*Id.* at 87:21-88:22.) Porter disclaims any inability to meet the Witness Requirement, as he lives with his wife and adult son, giving him two readily available witnesses within his own household. (*Id.* at 19:18-20, 21:7-12, 48:4-9.)

Like Porter, Plaintiff Thompson is a 69-year old resident of Mobile County with physical ailments. (Doc. 75 at ¶ 32.) For the July 14, 2020, runoff election, Thompson was qualified to vote absentee in Alabama, both due to Secretary

Merrill's suspension of the Excuse Requirement and based on her averment that she suffers from a qualifying condition. (Thompson Dep., Ex. 5 at 49:22-49:1, 76:8-78:6; Thompson Absentee Ballot Application for July 2020 Primary Runoff (AEM 004622), Ex. 6.) This averment also exempted Thompson from providing a copy of her photo ID. (Ex. 6.) Although eligible to vote absentee, due to the late timing of her application and ensuing receipt of the ballot, Thompson voted in person during the July 14, 2020, runoff election and stated that she "felt safe" doing so. (Ex. 5 at 48:1 to 50:13.) Before voting in person, Thompson had arranged to have two neighbors witness her absentee ballot from a safe distance outdoors in order to comply with the Witness Requirement. (*Id.* at 55:3-56:12.) For the November general election, even if Thompson no longer believes that she suffers from a qualifying condition, Thompson will again be qualified to vote absentee due to Secretary Merrill's suspension of the Excuse Requirement. Further, Thompson has stated that her daughter or granddaughter, who she sees regularly, could make a copy of her photo ID for her, and that she would be able to make a copy of her photo ID at the public library. (*Id.* at 107:12-108:4.)¹³ Finally, Thompson has stated no reason that she cannot have two neighbors witness her absentee ballot from a safe distance

¹³ Mobile Public Libraries are currently providing curbside services including copying and scanning. See Mobile Public Library, Curbside Service, <https://www.mobilepubliclibrary.org/covid-19/curbside.php> (last visited August 17, 2020).

outdoors in order to comply with the Witness Requirement as she had previously arranged for the July runoff election. (*Id.* at 110:19-111:4.)

Plaintiff Bettis is a 51-year old resident of Mobile County whose medical conditions alone would not qualify her for absentee voting if not for the Emergency Rule. (Bettis Dep., Ex. 7 at 26:11-37:22, 102:4-106:22.) She has a photocopier in her home and she does not challenge the Photo ID Requirement. (Plaintiffs' First Answers to Interrogatories, Ex. 8 p. 19; Ex. 7 at 107:2-110:22, 146:7-147:4.) She also applied to vote absentee in the July runoff, and had her absentee ballot witnessed by her husband and her husband's nephew, which can be done again in November. (Ex. 7 at 95:8-96:5, 131:5-132:4, 154:12-22.)

Plaintiff Peebles lives in Lee County, and suffers from cerebral palsy. (Doc. 75 at ¶ 30; Peebles Dep., Ex. 9 at 28:7-33:7.) Like Porter and Thompson, Peebles' medical conditions would qualify him under the Excuse Requirement to vote absentee in any case, and without the need to submit a copy of his photo ID. (Ex. 9 at 53:21-54:8, 12:4-7, 54:9-55:21, 97:19-100:15.) Peebles does not challenge the Photo ID Requirement. (Ex. 8, p. 18; Ex. 9 at 63:23-64:2.) He also makes no claims against Mobile AEM. (Ex. 9 at 115:3-6.)

Plaintiff Threadgill-Matthews lives in Wilcox County, and like Bettis has no medical conditions which would ordinarily allow her to vote absentee. (Doc. 75 at ¶¶ 55-56.) However, she voted absentee in July under the Emergency Rule, and can

do so again in November. (Threadgill-Matthews Dep., Ex. 10 at 33:7-34:7, 52:15-58:18.) She does not challenge the Photo ID Requirement, as she has a working copier at home. (*Id.* at 11:11-18, 34:8-10, 64:5-66; Ex. 8, p. 19.) She also does not challenge the Witness Requirement. (Ex. 10 at 63:23-64:4, 93:18-94:3.:8.) She also makes no claims against Mobile AEM. (*Id.* at 89:22-90:11.)

Each of the Mobile County resident-Plaintiffs leave their homes on occasion, which would allow for opportunities to fulfill any absentee voting requirement which they claim to lack the ability to meet. Porter has been to family doctor appointments. (Ex. 3 at 35:3-38:5, 38:12-19, 39:11-40:6, 42:20-41:13.) Thompson has repeatedly taken her dog to the groomer and visits with her daughter and granddaughter weekly, plus she voted in person. (Ex. 5 at 33:22-38:14, 42:22-50:13, 58:18-64:1, 65:12-69:9.) Bettis regularly runs errands, shops, and visits family. (Ex. 7 at 47:2-48:20, 49:5-59:5, 60:16-79:4, 79:20-80:15, 96:6-101:12, 172:8-173:21.)

Although PFA has chapters in Mobile, it has not identified a single member in Mobile County on whose behalf it brings its claims in this lawsuit. Through the deposition of its Executive Director, and its discovery responses, PFA identified only seven people statewide who allegedly could not safely comply with the absentee voting requirements. (Ex. 8, pp. 13-14.) Of these seven, one resides in Blount County, one in Cullman County, two reside in Jefferson, two in Madison

County, and one in Shelby County. (*Id.*) To the extent that PFA would still have to divert funds due to these pre-existing requirements, PFA's Executive Director admitted that PFA has not held any voter education programs in either 2019 or 2020, and it cannot show that any member has attended any training, or developed any training or educational materials relating to absentee voting in 2020. (Ellis Dep., Ex. 11 at 58:21-76:13, 141:7-143:7, 149:1-17.)

Similarly, GBM has identified no members in Mobile County on whose behalf it brings claims in this lawsuit. Through its deposition and discovery responses, it identified eleven (11) individuals whom it alleges cannot comply with state law absentee voting requirements. (Ex. 8, pp. 11-12.) All reside in either Jefferson or Shelby County. (*Id.* at p. 10.)

BVM has no members *per se*, but claims injury based on having to explain Alabama's absentee ballot laws instead of other types of voter education. (Doc. 75 at ¶ 46.) BVM coordinates with community partners and individuals to educate voters and encourage turnout. (*Id.* at ¶ 45.) BVM identified only one Mobile County person with whom it contacts who had "concerns about meeting the requirements of absentee voting." (Ex. 8, p. 15.) That contact is Plaintiff Bettis who, as noted above, does not challenge the Photo ID Requirement. (*Id.* at pp. 15, 19.)

NAACP has many thousands of members across the state. (Doc. 75 at ¶ 39.) It identified nine individuals allegedly injured by the state law absentee voting

requirements. (Ex. 8, pp. 8-10.) Only one member resides in Mobile County: former Plaintiff Robert Clopton (“Clopton”), who voluntarily dismissed himself from this suit. (*Id.* at p. 9; Doc. 150.) Even if Clopton’s now-dismissed claims survive such that NAACP could be seen as having representational standing in this suit against Mobile County, Clopton does not challenge either the Excuse Requirement or the Photo ID Requirement. (*Id.* at p. 9.)

III. Summary Judgment Standard

Summary judgment is appropriate under Federal Rule of Civil Procedure 56 “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Chapman v. AI Transport*, 229 F.3d 1012, 1023 (11th Cir. 2000). No genuine issue of material fact exists when there is a “complete failure of proof concerning an essential element of the nonmoving party’s case.” *Celotex Corp.*, 477 U.S. at 323. A mere scintilla of evidence is not enough to survive a summary judgment motion; a plaintiff must present enough evidence to enable a reasonable jury to find for her by a preponderance of the evidence. *Shotz v. City of Plantation*, 344 F.3d 1161, 1184 (11th Cir. 2003). All reasonable doubts about the facts and all justifiable inferences are resolved in favor of the nonmovant. *Chapman*, 229 F.3d at 1023.

IV. ARGUMENT

A. Because Mobile AEM Only Enforces the State-Law-Mandated Excuse and Photo ID Requirements, and Not the Witness Requirement or any Ban on In-Person Curbside Voting, None of the Plaintiffs Have Standing to Pursue Relief from Mobile AEM.

Plaintiffs’ challenges to the three state law absentee ballot requirements and the one in-person unwritten Curbside Voting ban all fail as to Mobile AEM. Mobile AEM enforces only the now-moot Excuse Requirement and the Photo ID Requirement, and does not enforce the Witness Requirement or any in-person voting procedures or policies, including the vote-by-car scheme desired by Plaintiffs. Because no Plaintiff can allege an injury rooted in Mobile AEM’s enforcement of either the Excuse or Photo ID Requirement, summary judgment is mandated in its favor.

i. Standing, Mootness, and Ripeness

A party seeking to invoke federal court jurisdiction must first satisfy Article III’s standing requirements. A plaintiff must show: 1) an injury in fact that is “concrete and particularized” and “actual or imminent”; 2) which is fairly traceable to the challenged conduct of the defendant; and 3) that a favorable decision is likely to redress that injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Plaintiffs must “alleg[e] such a personal stake in the outcome of the controversy as to ... justify [the] exercise of the court's remedial powers on [their] behalf.” *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976) (internal quotation marks

omitted). “[S]tanding is not dispensed in gross.” *Davis v. Federal Election Comm’n*, 554 U.S. 724, 734 (2008) (quoting *Lewis v. Casey*, 518 U.S. 343, 358, n.6 (1996); alteration omitted). Instead, “a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought.” *Davis, supra*, at 734, (internal quotation marks omitted). In multi-plaintiff cases, “[a]t least one plaintiff must have standing to seek each form of relief requested in the complaint.” *Town of Chester v. Laroe Estates, Inc.*, 137 S.Ct. 1645, 1651 (2017).

Furthermore, in order to invoke jurisdiction, a case or controversy must be neither moot nor unripe. “The doctrine of mootness derives directly from the case or controversy limitation because an action that is moot cannot be characterized as an active case or controversy.” *Soliman v. United States*, 296 F.3d 1237, 1242 (11th Cir. 2002). “If events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give meaningful relief, then the case is moot and must be dismissed.” *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001).

As to ripeness, courts decide only cases that are ripe for their review. *Club Madonna Inc. v. City of Miami Beach*, 924 F.3d 1370, 1380 (11th Cir. 2019). Ripeness, which addresses both constitutional and prudential concerns, is determined by evaluating “(1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration.” *Id.* (citing *Nat’l Advert. Co. v. City of Miami*, 402 F.3d 1335, 1339 (11th Cir. 2005)). Concerning

fitness for judicial decision, courts ask whether the parties raise an issue that can be decided without further factual development and whether the institutional interests of the court and agency favor immediate review. *Id.* (citing *Harrell v. The Fla. Bar*, 608 F.3d 1241, 1258 (11th Cir. 2010)). As for “hardship,” litigants must show that they are “forced to choose between foregoing lawful activity and risking substantial legal sanctions.” *Id.* (citing *Cheffer v. Reno*, 55 F.3d 1517, 1524 (11th Cir. 1995)).

ii. Peebles and Threadgill-Matthews Do Not Live or Vote Absentee in Mobile County

Neither Peebles nor Threadgill-Matthews live in Mobile County or vote in Mobile County. (Ex. 9 at 114:19-115:2; Ex. 10 at 89:9-21.) Both expressly disavow any claims against Mobile AEM. (Ex. 9 at 115:3-6; Ex. 10 at 89:22-90:11.) Moreover, even if either or both of them unexpectedly moved to Mobile County and registered to vote in time for any election covered in this lawsuit, neither alleges any claim regarding the Photo ID Requirement. (Ex. 8, pp. 18-19.) Peebles already qualifies to vote absentee in Alabama even in the absence of the Emergency Rule adopted in response to the global pandemic. *See* Ala. Code §17-11-3(a)(2) (exempting voters with “any physical illness or infirmity which prevents his or her attendance at the polls, whether he or she is within or without the county on the day of the election”). Threadgill-Matthews is able to vote absentee because of the Emergency Rule. (Ex. 10 at 54:9-21.)

Because neither Peebles nor Threadgill-Matthews can allege an injury traceable to or redressible by Mobile AEM, neither has standing to pursue claims against Mobile AEM in this lawsuit.

iii. PFA and GBM Do Not Allege Injury in Mobile County

Neither PFA nor GBM have identified a single individual in Mobile County for whom they allege claims in this suit. None of the seven persons statewide that PFA identified as burdened by the Excuse or Photo ID Requirements reside in Mobile County. (Ex. 8, pp. 13-14, 18, 20.) PFA has roughly 90 members in Mobile. (Ex. 11 at 116:4-14.) However, PFA has not heard any questions, complaints, or concerns about voting absentee from any of its Mobile members. (*Id.* at 146:14-190.) PFA acknowledges and celebrates that their members are not bound by the Excuse Requirement and has no ongoing concerns about it. (*Id.* at 24:9-19, 25:3-14.) Given that PFA could not identify even a single member with absentee voting claims in Mobile County, its claims of violations under the First and Fourteenth Amendment as applied during the pandemic, and under the ADA, cannot be sustained against Mobile AEM.

Similarly, GBM did not identify a single member in Mobile County for whom it represents interests in this lawsuit. None of the eleven (11) individuals whom it alleges cannot comply with state law absentee voting requirements live in Mobile County. (Ex. 8, pp. 11-12.) All reside in either Jefferson or Shelby County. (*Id.* at

p. 10.) GBM cannot identify any members who are registered to vote in Mobile County. (Douglas Dep., Ex. 12 at 177:8-12.) GBM also cannot identify any members who intend to vote in Mobile County. (*Id.* at 117:13-16.)

Because neither PFA nor GBM can allege an injury on behalf of itself or one of its members traceable to or redressible by Mobile AEM, neither has standing to pursue claims against Mobile AEM in this lawsuit.

iv. Porter's, Thompson's, and Bettis's Injuries, if any, Are Not Traceable to or Redressible by Mobile AEM

The remaining individual Plaintiffs – Porter, Thompson, and Bettis – all reside within the borders of Mobile County. (Doc. 75 at ¶¶ 31, 32, 53.) However, none brings any claims in this case which are due to any actions or inactions of, or which can be addressed by a ruling against, Mobile AEM.

Neither Porter nor Bettis brings any claim in regard to the Photo ID Requirement. (Ex. 8, p. 19.) Porter qualifies for the exception to the state law such that he does not have to provide a copy with an absentee ballot application. Ala. Code §17-9-30(c). (*Id.*; Ex. 4.) Additionally, even if he did, Porter has the ability to print a copy of his photo ID, and has used his printer without incident since the instigation of this lawsuit. (Ex. 3 at 87:21-88:22.)¹⁴ Porter also already qualifies

¹⁴ At deposition Porter repeatedly refused to try to print a copy of his photo ID to test whether his printer was still working and had sufficient paper and toner. (Ex. 3 at 87:21-88:22.) Porter's unwillingness to print a copy of his photo ID, or to even determine if he

under the Excuse Requirement, and will do so for the rest of his life. Ala. Code §17-11-3(a)(2). (Ex. 3 at 25:22-23, 33:16-20.) Because Porter is not subject to either the Excuse or the Photo ID Requirement, he cannot maintain a claim against Mobile AEM for a violation of his First or Fourteenth Amendment Rights or the ADA based on those requirements.

Bettis also specifically disavowed any claims relating to the Photo ID Requirement. (Ex. 8, p. 19.) She currently has access to a printer in her home and has used it once already to make a copy of her ID, which she included with her absentee ballot application for the July primary runoff. (Ex. 7 at 108:19-109:6, 110-9-12.) She also agrees that her claim under the Excuse Requirement has been satisfied. (*Id.* at 102:4-106:22.)

Thompson, like Porter, applied to vote by absentee ballot for the July 14, 2020, runoff. (*See* Ex. 6.) She indicated on that form that she is over 65 and unable to attend the polls in person due to medical reasons. (*Id.*) This qualified her both for the Excuse Requirement and for the exception to the Photo ID Requirement. Ala. Code §§ 17-11-3(a)(2) and 17-9-30(c). Even if Thompson believes her condition has since changed, she has repeatedly left her home for less “fundamental rights” than voting, including repeated trips to the dog groomer and social visits with family.

can, does not allow him to create a claim against Mobile AEM. Besides, his claim would not be ripe, as he does not know he is harmed until he tries to print.

(*Id.* at 35:1-14, 36:20-37:8, 38:18-39:5, 68:1-4.) And she has stated that her daughter or granddaughter, who she sees regularly, could make a copy of her photo ID for her, or that she could be able to make a copy of her photo ID at the public library as she did for a prior election. (Ex. 5 at 107:12-108:4.) Like Porter, Thompson cannot create a claim against Mobile AEM by choosing to forego options she has acknowledged are available to her. Because Thompson is not subject to the Excuse Requirement and has the ability to comply with the Photo ID Requirement (if she is even subject to that requirement), she cannot maintain a claim against Mobile AEM for a violation of her First or Fourteenth Amendment Rights or a violation the ADA based on those requirements.

Because Porter, Thompson, and Bettis cannot allege any injuries traceable to or redressible by Mobile AEM, none has standing to pursue claims against Mobile AEM in this lawsuit.

v. NAACP and BVM Members' Injuries, if any, Are Not Traceable to or Redressible by Mobile AEM

The final Plaintiffs, NAACP and BVM, also lack any injuries attributable to, or fixable by, Mobile AEM. Of its many thousands of members in Alabama, NAACP could only identify one (1) in Mobile County with any claims relating to this case. (*See* Doc. 75 at ¶ 39.) That individual is Clopton, a former Plaintiff in his own right. Clopton, however, does not challenge either the Excuse Requirement or the Photo ID Requirement. (Ex. 8, p. 9.) In any case, Clopton is a 65-year-old who recently

underwent emergency surgery and is forced to recuperate at home for a period of months. (Doc. 75 at ¶ 29.) As such, Clopton would qualify for under both the State’s excuse law and photo ID exemption. Ala. Code §§17-11-3(a)(2) and 17-9-30(c). NAACP has no knowledge of any other Mobile members with absentee voting issues relating to the State laws regarding absentee voting. (Simelton Dep., Ex. 13 at 202:3-8.) In Mobile County, the NAACP is only challenging the curbside voting “ban.” (*Id.* at 220:11-19)

Like NAACP, BVM also can only identify one (1) individual with whom it has any relationship in Mobile County who allegedly has any issues with absentee voting. However, BVM’s lone contact is Plaintiff Bettis. (Ex. 8, p. 15.) As noted above, Bettis specifically disavowed any claims about the Photo ID Requirement, and admits that her claims relating to the Excuse Requirement have been satisfied. (*Id.* at p. 19; Ex. 7 at 102:4-106:22.) Because Bettis is the lone BVM member identified in Mobile County with any absentee voting-related claims, and Bettis herself disavows contesting either the Excuse Requirement or the Photo ID Requirement, BVM cannot maintain a claim against Mobile AEM for a violation of the ADA based on those requirements.

Because neither NAACP nor BVM can allege an injury on behalf of itself or one of its members traceable to or redressible by Mobile AEM, neither has standing to pursue claims against Mobile AEM in this lawsuit.

CONCLUSION

Plaintiffs in this case have raised a litany of claims against a laundry list of Defendants. However, none of the Plaintiffs has any actual cognizable claim against Mobile AEM. As such, Mobile AEM is entitled to a judgment as a matter of law.

Respectfully Submitted,

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Certificate of Service

I certify that on August 17, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to all counsel of record.

s/ A. Patrick Dungan

Counsel for Defendant JoJo Schwarzauser