

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

PEOPLE FIRST OF ALABAMA,)	
<i>et al.</i> ,)	
)	
<i>Plaintiffs</i> ,)	
)	
v.)	Civil Action No. 2:20-cv-00619-AKK
)	
JOHN H. MERRILL, Secretary)	
of State, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**ANSWER OF THE STATE DEFENDANTS TO
PLAINTIFFS’ FIRST AMENDED COMPLAINT (DOC. 75)**

The State Defendants – the State of Alabama and Secretary of State John Merrill – for their answer to the Plaintiffs’ First Amended Complaint (doc. 75), state as follows:

Responses to Numbered Paragraphs

1. Admitted that Plaintiffs bring the claims as asserted. Denied that Plaintiffs are entitled to any relief.

2. Admitted that the United States and the State of Alabama are currently in declared states of emergency. The State Defendants are otherwise without sufficient information to admit or deny the outdated allegations in paragraph 2.

3. Admitted that Governor Ivey issued a “stay-at-home” order that has since been updated several times and that includes other related provisions such as mandated masking.

4. Admitted, except that the Governor’s orders have been further amended.

5. Denied, as these allegations are outdated.

6. Admitted that Secretary Merrill has issued emergency rules permitting all persons concerned about COVID-19 to vote absentee. Otherwise denied.

7. Admitted that Alabama enacted reasonable, commonsense measures to ensure the integrity of absentee voting. Otherwise denied.

8. Admitted that Plaintiffs seek relief regarding the “excuse requirement.” Denied that they are entitled to relief.

9. Admitted that Plaintiffs seek relief regarding the witness requirement. Denied that they are entitled to relief.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Admitted that individual polling locations in Alabama have thus far not offered curbside or “drive-thru” voting in a manner comporting with Alabama law. Otherwise denied.

17. Denied.

18. Admitted, except denied that the Court’s preliminary injunction order was proper.

19. Admit that the CDC recommends such measures, among many other measures concerning voting. Otherwise denied.

20. Denied.

21. Denied.

22. Admitted, except that the State Defendants lack sufficient information to admit or deny any predictions concerning number of people who will vote absentee in the November election.

23. Denied.

24. Denied.

25. Admitted the Plaintiffs seek such relief. Denied that they are entitled to relief.

26. Admitted on information and belief.

27. Denied.

28. Denied.

29. The State Defendants lack sufficient information to admit or deny the allegations concerning Plaintiffs' circumstances or preferences. Denied that Plaintiffs have suffered any injury or that they will be prevented from voting by any challenged law. Additionally, State Defendants note that Clopton has voluntarily withdrawn himself as a Plaintiff in this case. Doc. 106.

30. The State Defendants lack sufficient information to admit or deny the allegations concerning Plaintiffs' circumstances or preferences. Denied that Plaintiffs have suffered any injury or that they will be prevented from voting by any challenged law.

31. The State Defendants lack sufficient information to admit or deny the allegations concerning Plaintiffs' circumstances or preferences. Denied that Plaintiffs have suffered any injury or that they will be prevented from voting by any challenged law.

32. The State Defendants lack sufficient information to admit or deny the allegations concerning Plaintiffs' circumstances or preferences. Denied that Plaintiffs have suffered any injury or that they will be prevented from voting by any challenged law.

33. Admitted on information and belief.

34. Admitted on information and belief.

35. Denied.

36. Denied.
37. Admitted on information and belief.
38. Admitted on information and belief.
39. Denied.
40. Denied.
41. Denied.
42. Admitted on information and belief.
43. Admitted on information and belief.
44. Admitted on information and belief as to Plaintiff BVM's general activities. Otherwise denied.
45. Admitted on information and belief.
46. Denied
47. Admitted on information and belief.
48. Admitted on information and belief.
49. Admitted on information and belief.
50. Denied.
51. Denied.
52. Denied.
53. The State Defendants lack sufficient information to admit or deny the allegations concerning Plaintiffs' circumstances or preferences. Denied that

Plaintiffs have suffered any injury or that they will be prevented from voting by any challenged law.

54. The State Defendants lack sufficient information to admit or deny the allegations concerning Plaintiffs' circumstances or preferences. Denied that Plaintiffs have suffered any injury or that they will be prevented from voting by any challenged law.

55. The State Defendants lack sufficient information to admit or deny the allegations concerning Plaintiffs' circumstances or preferences. Denied that Plaintiffs have suffered any injury or that they will be prevented from voting by any challenged law.

56. The State Defendants lack sufficient information to admit or deny the allegations concerning Plaintiffs' circumstances or preferences. Denied that Plaintiffs have suffered any injury or that they will be prevented from voting by any challenged law.

57. The State Defendants lack sufficient information to admit or deny the allegations concerning Plaintiffs' circumstances or preferences. Denied that Plaintiffs have suffered any injury or that they will be prevented from voting by any challenged law. Additionally, State Defendants note that Bentley has voluntarily withdrawn himself as a Plaintiff in this case. Doc. 142.

58. The State Defendants lack sufficient information to admit or deny the allegations concerning Plaintiffs' circumstances or preferences. Denied that Plaintiffs have suffered any injury or that they will be prevented from voting by any challenged law.

59. Admitted that John Merrill is the Alabama Secretary of State, that he is required to give uniform guidance to elections officials, and that he may in certain circumstances adopt an emergency rule to allow persons to vote by absentee ballot. Otherwise denied.

60. Admitted that Alabama is a State and is a defendant in this action. Otherwise denied.

61. Admitted that the listed defendants serve as local elections officials and that they have been sued in this action. Otherwise denied.

62. Admitted that the listed defendants serve as local elections officials and that they have been sued in this action. Otherwise denied.

63. Admitted that this case presents federal questions. Denied that the Court has jurisdiction.

64. Admitted that personal jurisdiction is not challenged.

65. Admitted that declaratory relief is claimed. Denied that Plaintiffs are entitled to relief.

66. Admitted.

67. Denied that COVID-19 is currently exponentially spreading and that it is spread aggressively by asymptomatic people. Otherwise admitted.

68. Denied as the cited statistics are out of date.

69. Denied.

70. The State Defendants lack sufficient information to admit or deny these allegations.

71. Admitted that COVID-19 may cause severe symptoms in some individuals. Otherwise denied.

72. Admitted that people of all age groups have contracted COVID-19 and that some have died from it. Admitted that some persons are at greater risk for suffering severe symptoms because of certain underlying medical conditions. Otherwise denied.

73. The State Defendants lack sufficient information to admit or deny any prediction of how COVID-19 will affect Alabamians in the future.

74. The State Defendants lack sufficient information to admit or deny any prediction of how COVID-19 will affect Alabamians in the future.

75. Admitted that Alabama officials have encouraged the public to practice social distancing and the CDC generally recommends that persons stay at least six feet away from others and avoid crowded places. Otherwise denied.

76. The State Defendants lack sufficient information to admit or deny the allegations.

77. Admitted.

78. Admitted that the CDC has made suggestions concerning voting procedures. Denied that the CDC recommended that any State violate its law or that the CDC has expertise in managing elections.

79. Admitted on information and belief that the USPS has altered policies during the pandemic. Denied that amending election procedures is necessary to ensure a safe election.

80. Denied.

81. Admitted, although the statistics that Plaintiffs cite are out of date.

82. Denied as the cited statistics and models are out of date.

83. Admitted on information and belief.

84. Admitted on information and belief, although the statistics that Plaintiffs cite are out of date.

85. Admitted on information and belief.

86. Admitted that Black Alabamians suffer at higher rates from certain conditions that cause a person to be at greater risk for suffering severe effects of COVID-19. Denied that Black Alabamians are more likely overall to be at high risk.

87. Admitted that Alabama officials have provided this guidance, though the guidance about spending as much time as possible at home is out of date.

88. Admitted as of the date of the allegation.

89. Admitted.

90. Admitted.

91. Admitted.

92. Admitted.

93. Admitted.

94. Admitted.

95. Admitted.

96. Admitted.

97. Admitted.

98. Admitted.

99. Admitted.

100. Admitted, except that the allegations in this paragraph lump two Safer at Home orders together, whereas those orders contain terms that differ in respects from each other.

101. Denied that the June 30, 2020 Safer at Home order required restaurants and senior centers to offer curbside pickup services. Otherwise admitted.

102. Admitted that the number of COVID-19 cases rose in Alabama in June and July. Denied that the number of cases continues to rise.

103. Admitted that the number of COVID-19 cases rose in Alabama in June and July. Denied that the number of cases per day continues to rise.

104. Admitted.

105. Admitted on information and belief.

106. Denied.

107. Denied.

108. Admitted on information and belief, although the statistics that Plaintiffs cite are out of date.

109. Denied.

110. Denied.

111. Admitted that Black Americans suffer at higher rates from certain medical conditions. Otherwise denied.

112. Denied.

113. The State Defendants lack sufficient information to admit or deny the allegations.

114. Admitted.

115. Denied.

116. Admitted.

117. Admitted.

118. Admitted.

119. Admitted.

120. Admitted.

121. Admitted.

122. Admitted.

123. Admitted.

124. Admitted.

125. Admitted.

126. Admitted.

127. Admitted.

128. Admitted.

129. Denied that Plaintiffs were “offering suggestions” as opposed to seeking grounds for litigation.

130. Admitted that the State Defendants did not adopt procedures demanded by the Plaintiffs. Denied that such demands are reasonable or that Secretary Merrill has not adopted or implemented any other reasonable accommodations in response to the COVID-19 pandemic.

131. Admitted.

132. Admitted that Secretary Merrill did not request funds for “curbside voting.” Denied that Secretary Merrill possesses the authority to either demand that counties provide curbside voting or to prevent them from doing so or that any form of “curbside voting” that has been suggested would be legal or prudent.

133. Admitted that most Alabamians have traditionally voted on election day. Denied that in-person voting is necessarily unsafe.

134. Admitted that in-person voting should be available to voters. Otherwise denied.

135. Admitted that Alabama does not have in-person “early voting.” Otherwise denied.

136. Denied.

137. Denied.

138. Denied.

139. Denied.

140. Denied.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

145. Denied.

146. Denied.

147. Admitted that Alabama law contains other provisions that relate to the integrity of the elections. Denied that this in any way prevents Alabama from instituting additional procedures that protect the integrity of elections.

148. Admitted that Alabama law contains other provisions that relate to the integrity of the elections. Denied that this in any way prevents Alabama from instituting additional procedures that protect the integrity of elections.

149. Admitted that Alabama law contains other provisions that relate to the integrity of the elections. Denied that this in any way prevents Alabama from instituting additional procedures that protect the integrity of elections.

150. Denied.

151. Denied.

152. Denied.

153. Admitted.

154. Admitted that many people live alone. Denied that such persons are burdened by any challenged procedure.

155. Denied that any person's right to vote is burdened by the challenged procedures.

156. Admitted on information and belief.

157. Admitted on information and belief.

158. Admitted that in Alabama and elsewhere African-Americans suffer at higher rates from certain underlying conditions that increase their risk for severe COVID-19 symptoms.

159. Denied.

160. Admitted that Governor Ivey issued an emergency order permitting some notaries public to notarize documents by videoconferencing in lieu of personal appearance, and order that was soon thereafter broadened. Otherwise denied.

161. Denied.

162. Denied.

163. Admitted that Alabama law contains other provisions that relate to the integrity of the elections. Denied that this in any way prevents Alabama from instituting additional procedures that protect the integrity of elections.

164. Admitted that Alabama law contains other provisions that relate to the integrity of the elections. Denied that this in any way prevents Alabama from instituting additional procedures that protect the integrity of elections.

165. Admitted that Alabama law contains other provisions that relate to the integrity of the elections. Denied that this in any way prevents Alabama from instituting additional procedures that protect the integrity of elections.

166. Denied.

167. Denied.

168. Denied that a voter who fails to provide photo ID with the application cannot receive an absentee ballot, as provisional ballots may be issued when an application is received without photo ID within eight days of the election. Otherwise admitted.

169. Denied.

170. Denied.

171. Admitted.

172. Admitted that the exchange was made. The State Defendants deny Plaintiffs' characterization of the exchange.

173. Admitted that the exchange was made. The State Defendants deny Plaintiffs' characterization of the exchange.

174. Denied.

175. Denied.

176. Admitted that absentee voters who are not exempt must comply with Alabama's photo ID requirement.

177. Admitted.

178. Admitted that no County has offered any form of curbside voting that complies with Alabama law. Admitted that Secretary Merrill has informed local elections officials when procedures violated State law and informed them that they should cease unlawful procedures. Otherwise denied.

179. Admitted that no County has offered any form of curbside voting that complies with Alabama law. Admitted that Secretary Merrill has informed local elections officials when procedures violated State law and informed them that they should cease unlawful procedures. Otherwise denied.

180. Admitted that no County has offered any form of curbside voting that complies with Alabama law. Admitted that Secretary Merrill has informed local elections officials when procedures violated State law and informed them that they should cease unlawful procedures. Otherwise denied.

181. Denied.

182. Admitted that the CDC has recommended certain election procedures. Denied that the CDC may require States to violate their laws, that any type of “curbside voting” suggested by the Plaintiffs is lawful or feasible, and that the CDC has expertise in the administration of elections.

183. The State Defendants lack sufficient information to admit or deny procedures in use in other States.

184. Admitted that certain of the Governor’s orders address “drive-in” gatherings and permit restaurants to offer curbside services. Denied that the Governor’s orders authorize curbside voting or that delivery of a meal is comparable to casting a ballot.

185. Denied.

186. Denied.

187. Denied.

188. The State Defendants adopt and incorporate the forgoing paragraphs.

189. The cited provisions and cases speak for themselves. No response is required to legal assertions.

190. Denied.

191. Denied.

192. Denied.

193. Denied.

194. Denied.

195. The State Defendants adopt and incorporate the forgoing paragraphs.

196. Denied that persons with disabilities are unable to vote in Alabama.

197. The cited provisions speak for themselves. No response is required to legal assertions.

198. The cited provisions speak for themselves. No response is required to legal assertions.

199. Admitted that one of the fundamental underpinnings and policy behind the cited laws is ensuring policies and procedures do not unlawfully discriminate against people with disabilities.

200. The cited provisions and cases speak for themselves. No response is required to legal assertions. Denied that the ADA requires Alabama to provide “curbside voting.”

201. Denied.

202. Denied.

203. Denied.

204. Denied.

205. Denied.

206. Denied.

207. Denied.

208. Denied.

209. Denied.

210. The State Defendants adopt and incorporate the forgoing paragraphs.

211. The cited provisions speak for themselves. No response is required to legal assertions.

212. The cited provisions speak for themselves. No response is required to legal assertions.

213. The cited provisions speak for themselves. No response is required to legal assertions.

214. Denied.

215. Denied.

216. Denied.

217. Denied that Black Alabamians lack the ability to participate effectively in the political process. Otherwise, the State Defendants lack sufficient information to admit or deny the allegations.

218. Denied.

219. Denied.

220. Denied.

221. The State Defendants adopt and incorporate the foregoing paragraphs.

222. The cited provisions speak for themselves. No response is required to legal assertions.

223. The cited provisions speak for themselves. No response is required to legal assertions.

224. The cited provisions speak for themselves. No response is required to legal assertions.

225. Denied.

226. Denied.

227. Denied.

228. Denied.

229. The State Defendants adopt and incorporate the foregoing paragraphs.

230. The cited provisions speak for themselves. No response is required to legal assertions.

231. Denied.

232. Denied.

233. Denied.

Relief Requested

The State Defendants deny that Plaintiffs are entitled to relief.

Additional Defenses

1. The State Defendants deny any allegation in Plaintiffs' First Amended Complaint that is not expressly admitted above.

2. The schedule imposed in this case does not provide the State Defendants a fair opportunity to present a defense.

3. The schedule imposed in this case violates the State Defendants' right to due process.

4. The schedule imposed in this case does not permit a record that will enable the Court to consider "the totality of the circumstances."

5. Plaintiffs' First Amended Complaint is an impermissible "shotgun" pleading.

6. Plaintiffs lack standing to bring some or all of their claims against the State Defendants.

7. The State Defendants are immune from suit.

8. Plaintiffs' claims concerning the "excuse requirement" are moot to the extent such claims concern elections in 2020.

9. Plaintiffs' claims concerning the excuse requirement are unripe to the extent such claims concern elections after 2020.

10. It is too soon before the November 2020 election to alter the rules of that election. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006).

11. Plaintiffs have sat on their rights by declining to move for a preliminary injunction concerning the November 2020 election.

12. Any relief that applies only to some Alabama counties and that provides for a patchwork of laws is inequitable and confusing to voters.

13. Plaintiffs failed to join necessary parties.

14. Plaintiffs failed to join the parties necessary to receive statewide relief.

15. Laches bars Plaintiffs' facial claims against the challenged provisions.

16. The challenged provisions are neutral, nondiscriminatory provisions that do not impair any person's right to vote.

17. The State's interests that are supported by the challenged provisions outweigh any impact on any person's ability to cast a vote.

18. Although Plaintiffs argue that other provisions protect the State's interests supported by the challenged provisions, the relief Plaintiffs request would enjoin many of these other provisions as well.

19. The challenged provisions do not dilute any person's vote and do not deny any person the ability to vote.

20. Any vote denial or vote dilution allegedly caused by the challenged provisions is not on account of race or color.

21. Any de minimis cost incurred in complying with the challenged provisions is not a "poll tax."

22. Plaintiffs failed to allege sufficient facts to state a claim that the notary option for fulfilling the witness requirement conditions Plaintiffs' right to vote upon wealth.

23. The notary option for fulfilling the witness requirement does not condition Plaintiffs' right to vote upon wealth.

24. The witness signature requirement is not a prohibited "voucher."

25. The notary option for fulfilling the witness requirement is not a prohibited "voucher."

26. Neither the State Defendants nor the challenged provisions caused any injury to the Plaintiffs.

27. The Plaintiffs have suffered no injury.

28. The State Defendants did not cause any alleged injury to the Plaintiffs.

29. The State Defendants are unable to redress any alleged injury to the Plaintiffs.

30. If Section 2 of the Voting Rights Act is interpreted to prevent Alabama officials from enforcing the challenged provisions during the pandemic, Section 2 is unconstitutional in that application.

31. The equities do not favor granting relief to the Plaintiffs.

32. Granting relief to the plaintiffs would threaten the integrity of the election and undermine voter confidence in the election.

33. Plaintiffs' ADA claim fails because they have not met essential eligibility requirements for voting absentee.

34. Plaintiffs' ADA claim fails because they are not "qualified individuals."

35. Plaintiffs' ADA claim fails because they have not been excluded from voting.

36. Plaintiffs' ADA claim fails because any alleged difficulties they face are not the result of their disabilities.

37. Plaintiffs' ADA claim fails because their requested relief is not a reasonable accommodation.

38. Plaintiffs' ADA claim fails because their requested relief would be a fundamental alteration to Alabama's electoral system.
39. Plaintiffs fail to state a claim for facial relief unrelated to the pandemic.
40. Plaintiffs' constitutional claim presents a non-justiciable political question.

Respectfully Submitted,
Steve Marshall
Attorney General

A. Barrett Bowdre (ASB-2087-K29V)
Deputy Solicitor General

s/Jeremy S. Weber
James W. Davis (ASB-4063-I58J)
Winfield J. Sinclair (ASB-1750-S81W)
Misty S. Fairbanks Messick (ASB-1813-T71F)
Jeremy S. Weber (ASB-3600-X42G)
Brenton M. Smith (ASB-1656-X27G)
A. Reid Harris (ASB-1624-D92X)
Assistant Attorneys General

Office of the Attorney General
501 Washington Avenue
Montgomery, Alabama 36130-0152
Telephone: (334) 242-7300
Fax: (334) 353-8400
Jim.Davis@AlabamaAG.gov
Winfield.Sinclair@AlabamaAG.gov
Misty.Messick@AlabamaAG.gov
Jeremy.Weber@AlabamaAG.gov
Brenton.Smith@AlabamaAG.gov
Reid.Harris@AlabamaAG.gov
Barrett.Bowdre@AlabamaAG.gov

Counsel for State Defendants

Certificate of Service

I certify that on August 24, 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/Jeremy S. Weber
Counsel for State Defendants