

**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.**

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**CASE NUMBER: 2:20-cv-00619-AKK**

**DEFENDANT DON DAVIS' RESPONSE TO PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

COMES NOW Defendant Don Davis, Judge of Probate of Mobile County,  
Alabama, and responds to the Plaintiffs' Motion for Partial Summary Judgment (Doc.  
169), as follows:

**Disputed Facts and Additional Undisputed Facts**

1. Defendant Davis disputes many of the facts listed by the Plaintiffs as  
“undisputed facts.”

2. Relevantly, Defendant Davis disputes the facts, as numbered by the  
Plaintiff (and as may be applicable related to other purported undisputed facts), as  
follows:

13. Defendant Davis disputes that poll workers are not required to wear  
masks. In Mobile County, poll workers are required to wear masks at the polls.  
**Exhibit A, Excerpts of Deposition of Judge Davis, p. 32, lines 3-7.**

16. Defendant Davis disputes that absentee ballots may only be  
delivered by the United States Post Office. Absentee ballots and applications for  
absentee may be dropped off in person or sent by any commercial carrier (such as  
FedEx, UPS, etc.). **Exhibit C, Deposition of Alleen Barnett, p. 122.**

18. Defendant Davis disputes that there were any known COVID-19 infections as a result of the July 14, 2020 primary run-off election in Mobile County. **Exhibit A, pp. 103-104.**

29 and 32. Defendant Davis disputes that the polling locations in Mobile County are anything but ADA-compliant. **Exhibit A, p. 54.**

40. Defendant Davis disputes that “high risk voters” cannot comply with the Photo ID and Witness Requirements. Specifically, in Mobile County, any person can obtain free curbside notarial services and free curbside scanning/copying services at any branch of the Mobile Public Library in Mobile County. **Exhibit B, Website and Facebook Page of Mobile Public Library.** Further, Defendant Davis notes that even the individual Plaintiffs have testified that they have left their homes for important tasks like grocery shopping and doctor’s visits, and sought assistance from third parties for other tasks. **Exhibit D, Plaintiffs’ Responses to Discovery, Request #4.** Defendant Davis disputes that obtaining a copy of a voter’s photo identification or obtaining witness signatures or a notary is any different than the activities in which Plaintiffs already engage. Furthermore, Defendant Davis disputes that curbside voting is safer or different than absentee voting where free curbside photo id copying and free curbside notarial services are available in Mobile County.

3. Defendant Davis adds that it is undisputed that it is extremely impractical, if not impossible, to safely and with election integrity, institute curbside voting. **Exhibit E, Defendant Davis’ Responses to Discovery, Request #5.** Curbside voting is not a reasonable accommodation under the ADA and constitutes a fundamental alteration.

4. Defendant Davis adopts and incorporates, as if fully set forth herein, any other Defendants’ disputes of facts and additional undisputed facts in response to the Plaintiff’s Motion for Partial Summary Judgment (Doc. 169).

### **Argument**

1. Defendant Davis notes that all of the parties agree that there is no law in Alabama that permits curbside voting. *See Plaintiff’s Motion for Partial Summary Judgment, p. 11, ¶24.* This is dispositive of the issue.

2. Under Plaintiffs' theory, if the legislature does not specifically prohibit a new form of voting, any county can enact a new form of voting. For example, as set forth by the Plaintiffs, if there is no specific law that prohibits voting by text, then any county could allow voting by text. Given the fundamental necessity that elections be conducted with integrity so that the voting public can maintain confidence in the result, using a lack of prohibition in the law as *permission* to fundamentally alter the voting process is simply dangerous and inapposite to valid election practices. Any county could enact whatever method of voting it deemed convenient, without any regard to fraud considerations, integrity considerations, practicality considerations and fairness considerations.

3. Notably, Plaintiffs offer no authority that a county can institute a new method of voting under current Alabama law simply because it is not prohibited by Alabama law, as proposed here.

4. Moreover, the lack of uniformity that would necessarily result is specifically prohibited by law. Section 190 of the Alabama Constitution (1901) reads that "[t]he legislature shall pass laws not inconsistent with this Constitution to regulate and govern elections and all such laws shall be uniform throughout the state." *See McCall v. Automatic Voting Mach. Corp.*, 180 So. 695 (Ala. 1938) (which held that a law in Alabama that permitted any county to adopt voting machines, violated the Alabama constitutional requirement that elections be uniformly conducted). Because not all of the counties would or could institute curbside voting, Secretary Merrill is correct to prohibit it.

5. Defendant Davis adopts and incorporates, as if fully reasserted herein, any argument of any other Defendant in response to the Plaintiff's Motion for Partial Summary Judgment (Doc. 169).

WHEREFORE, the premises considered, the Defendant Don Davis respectfully requests that this Court DENY the Plaintiff's Motion for Partial Summary Judgment (Doc. 169) and grant to Defendant Davis any such other, further or different relief to which he may be entitled.

/s/ Jerome E. Speegle

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**Certificate of Service**

I, the undersigned, do certify that on the **31st** day of **August, 2020**, a true and correct copy of the above and foregoing motion was filed electronically. Notice of this filing and hearing on this matter will be sent by the Court's electronic filing system to all parties on the court's electronic mailing list. Parties may access the filing through the Court's system.

/s/ Jerome E. Speegle