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

**ANSWER AND DEFENSES OF
DEFENDANT JOJO SCHWARZAUER**

COMES NOW Defendant JoJo Schwarzauser (“Mobile AEM”), in her official capacity as the Circuit Clerk of Mobile County, by and through undersigned counsel, and Answers Plaintiffs’ First Amended Complaint for Injunctive and Declaratory Relief and avers Defenses to same as follows:

AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. Admitted that the enumerated Plaintiffs have filed the First Amended Complaint seeking injunctive and declaratory relief from the enumerated Defendants

for the reasons alleged in this paragraph. Denied that Plaintiffs are entitled to any such relief.

2. Mobile AEM is without knowledge as to whether “at least 24 million Americans and upwards of 440,000 Alabamians have been infected” with COVID-19 as of July 6. Otherwise admitted.

3. Admitted that Governor Ivey issued a stay at home order, that ADPH and the CDC advised people to remain in their homes and to follow social distancing protocols, and that the stay at home order closed schools and some offices and businesses. Otherwise denied.

4. Admitted that the “Safer-at-Home” order was amended on April 28, 2020, and that it allowed some businesses to re-open subject to sanitation and social-distancing guidelines, and that it was renewed and amended on June 30, 2020. Otherwise denied.

5. Mobile AEM is without knowledge as to how long COVID-19 will persist or how the rate of identified cases in Alabama compared over an undefined time with other states. Otherwise admitted.

6. Admitted that Secretary Merrill waived the excuse requirement for absentee voters for the July 14, 2020 primary runoff election. Otherwise denied.

7. Denied.

8. Mobile AEM is without knowledge as to whether “Plaintiffs or other high-risk voters like people who are aged 65 and older or people with disabilities, like diabetes, asthma, or autoimmune deficiencies, that place them at higher risk of death or serious illness from contracting COVID-19” fit within any of the seven delineated categories for absentee voting under Alabama law. Otherwise admitted.

9. Admitted.

10. Denied.

11. Mobile AEM is without knowledge of whether any individual Plaintiffs are acutely aware of dangers of COVID-19 or whether they know individuals who have been hospitalized or died because of COVID-19 infections. Otherwise denied.

12. The census statistics quoted in this paragraph are admitted. Otherwise denied.

13. Admitted that many other provisions of Alabama law safeguard the integrity of absentee voting and that Alabama is one of 12 states that require an individual submitting an absentee ballot to have it witnessed. Otherwise denied.

14. Denied.

15. Mobile AEM is without knowledge as to how many voters, if any, lack a photo ID. Otherwise denied.

16. Admitted that Alabama does not offer curbside voting. Mobile AEM is without knowledge as to whether Secretary Merrill prohibits local election officials

from implementing curbside voting; how many voters with disabilities are unable to access polling places or vote absentee, or need assistance from poll workers; or whether Clopton and Peebles have a higher susceptibility to death or serious health problems due to COVID-19 than any undescribed comparator group. Otherwise denied.

17. Denied.

18. Admitted that the Court granted a preliminary injunction on June 15, 2020, for the July 14 primary runoff and enjoined the witness and Photo ID requirements for certain voters in Jefferson, Lee, and Mobile Counties and the Curbside Voting Ban statewide. Admitted that the Eleventh Circuit motions panel unanimously refused to stay the injunction and that the Supreme Court split 5-4 in favor of staying the injunction, and the citations to those cases. Otherwise denied.

19. Denied that the Challenged Provisions directly contradict the specific guidance from the CDC concerning safe voting practices during the COVID-19 pandemic. Otherwise admitted.

20. Denied.

21. Admitted that Alabama voters almost unanimously vote in-person on Election Day. Admitted that the 2018 voting statistics are accurate and that the Witness Requirement accounted for about a quarter of the rejected ballots in 2018.

Mobile AEM is without knowledge as to whether most Alabama voters are unfamiliar with the absentee voting process. Otherwise denied.

22. Denied that 34,000 voters could expect to have their ballots rejected because of the Witness Requirement. Otherwise admitted.

23. Denied.

24. Denied.

25. Admitted that Plaintiffs ask the Court for an injunction and declaration in their favor. Denied that they are entitled to any such relief.

PARTIES

26. Mobile AEM is without knowledge of the allegations in this paragraph.

27. Mobile AEM is without knowledge of whether People First members include voters with conditions that put them at higher risk of death or severe complications from COVID-19, or whether any of these voters are ineligible to vote absentee during any 2020 elections. Otherwise denied.

28. Mobile AEM is without knowledge of the allegations in this paragraph.

29. Admitted that Clopton is a lawfully registered Alabama voter and that he is eligible to vote in the July 14, 2020 primary runoff election. Mobile AEM is without knowledge of Clopton's age, skin color, or current county of residence; of his medical history or prognosis; of his preference regarding absentee voting; whom

he resides with; how he feels about voting in person; or what options he would consider for voting on Election Day. Otherwise denied.

30. Denied that Peebles needs to vote by absentee ballot in the general election in November; that he cannot comply with the Witness Requirement; and that voting curbside would allow him to avoid person-to-person contact. Otherwise Mobile AEM is without knowledge of the allegations in this paragraph.

31. Admitted that Porter is eligible to vote in the July 14, 2020 primary runoff. Mobile AEM is without knowledge of Porter's age, skin color, or current county of residence; of whether he has been registered since he was 18; what medical conditions he has, and whether those place him at high-risk; whether he has left his home since April 3rd; his future plans; how he would feel safest; whether he has a printer at home; what his profession or sources of income are; what he worries about; or how he wants to vote. Otherwise denied.

32. Admitted that Thompson is a lawfully registered Alabama voter, that she voted in person in the March 3, 2020 primary election, and that public libraries in Mobile are currently closed. Mobile AEM is without knowledge of Thompson's age, skin color, current city of residence, whether she has ever lost her right to vote; her employment status or history; her medical history; whether she has been quarantining herself since April 1st; whom she interacts with; or her voting desires. Otherwise denied.

33. Mobile AEM is without knowledge of the allegations in this paragraph.

34. Mobile AEM is without knowledge of the allegations in this paragraph.

35. Denied that the Excuse and Witness Requirements and Curbside Voting Ban force any GBM members to choose between risking their lives and the lives of other people or not voting in the 2020 elections. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

36. Denied.

37. Mobile AEM is without knowledge of the allegations in this paragraph.

38. Mobile AEM is without knowledge of the allegations in this paragraph.

39. Denied that Alabama NAACP members will be unable to meet the Witness Requirements; that the individual member described in this paragraph cannot vote in-person or meet the Witness Requirement without risking her life; and that the Excuse and Witness Requirements and Curbside Voting Ban forces any members to choose between risking their lives and the lives of others or not voting in the 2020 elections. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

40. Denied.

41. Denied.

42. Mobile AEM is without knowledge of the allegations in this paragraph.

43. Mobile AEM is without knowledge of the allegations in this paragraph.

44. Mobile AEM is without knowledge of the allegations in this paragraph.

45. Mobile AEM is without knowledge of the allegations in this paragraph.

46. Denied that Defendants have failed to eliminate the Excuse, Witness, and Photo ID requirements, or that any such “failure” has required BVM to do anything. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

47. Mobile AEM is without knowledge of the allegations in this paragraph.

48. Mobile AEM is without knowledge of the allegations in this paragraph.

49. Mobile AEM is without knowledge of the allegations in this paragraph.

50. Denied that voting in-person would put the health of voters at significant risk; that Defendants have failed to eliminate the Challenged Provisions; and that due to such “failure” BVM’s constituents and community partners’ members will be forced to risk their health to vote or have their ballots rejected. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

51. Denied.

52. Denied.

53. Admitted that Bettis is a lawfully registered voter in Alabama, and that Prichard is located in Mobile County. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

54. Admitted that Bettis voted in-person in the March 3, 2020 primary election and that she is eligible to vote in the July 14 primary runoff. Denied that Bettis is eligible because of Secretary Merrill's broader interpretation of the absentee statute for that election. Denied that Bettis would have to venture outside of the house to have her absentee ballot notarized or to find another adult to witness her ballot. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

55. Admitted that Camden is in Wilcox County. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

56. Mobile AEM is without knowledge of the allegations in this paragraph.

57. Admitted that Huntsville is in Madison County. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

58. Mobile AEM is without knowledge of the allegations in this paragraph.

59. Admitted.

60. Mobile AEM is without knowledge of whether the State has waived or is estopped from raising a sovereign immunity defense. Otherwise admitted.

61. Admitted that JoJo Schwarzauer is the circuit clerk of Mobile County. Admitted that circuit clerks and absentee ballot managers are charged with enforcing the Excuse and Photo ID requirements, processing and distributing absentee ballot

applications, and issuing absentee ballots. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

62. Admitted that Don Davis is the probate judge for federal, state, and county elections in Mobile County, and the listing of duties ascribed to probate judges. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

JURISDICTION AND VENUE

63. Admitted.

64. Admitted.

65. Admitted.

66. Admitted.

STATEMENT OF FACTS

I. Transmission of COVID-19 and Public Health Guidelines

67. Admitted.

68. Admitted.

69. Denied.

70. Admitted.

71. Mobile AEM is without knowledge of the allegations in this paragraph.

72. Admitted.

73. Mobile AEM is without knowledge as to how long the effects of the pandemic will last. Otherwise admitted.

74. Denied that Dr. Fauci could “guarantee” in-person voting would be safe at any time in any situation ever. Otherwise admitted.

75. Admitted that public health officials and the CDC recommend social distancing. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

76. Mobile AEM is without knowledge of the allegations in this paragraph.

77. Mobile AEM is without knowledge of the allegations in this paragraph.

78. Admitted.

79. Denied that compliance with the specific recommendations listed in the preceding paragraph is essential. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

80. Mobile AEM is without knowledge of the allegations in this paragraph.

II. COVID-19 in Alabama

81. Admitted.

82. Admitted that Dr. Birx stated that social distancing would be required at least through the summer. Otherwise denied.

83. Mobile AEM is without knowledge of the allegations in this paragraph.

84. Mobile AEM is without knowledge of the allegations in this paragraph.

85. Admitted that Dr. Harris made the statement attributed to him.
Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

86. Mobile AEM is without knowledge of the allegations in this paragraph.

87. Admitted.

88. Admitted.

89. Admitted.

90. Admitted.

91. Admitted.

92. Admitted.

93. Admitted.

94. Admitted.

95. Admitted.

96. Admitted.

97. Admitted.

98. Admitted.

99. Admitted.

100. Denied that individuals are encouraged to stay home. Mobile AEM is without knowledge of the “rigor” of the sanitation and social distancing guidelines. Otherwise admitted.

101. Admitted that on June 30, 2020, Governor Ivey extended the Safer-at-Home order through July 31, 2020. Otherwise denied.

102. Admitted.

103. Admitted that as of June 23 Alabama was second in the nation in rising COVID-19 cases per capita, the statistics attributed to Alabama on July 3, 2020, and that more than one state requires quarantining for incoming Alabama visitors. Otherwise denied.

104. Admitted that Dr. Harris made the comments attributed to him. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

III. COVID-19's Impact on Black Alabamians Given Ongoing and Past Discrimination

105. Mobile AEM is without knowledge of the allegations in the first sentence of this paragraph. Otherwise admitted.

106. Admitted that the citations to the CDC are accurate citations. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

107. Admitted that Dr. Vickers made the comments attributed to him. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

108. Admitted that the statistics cited in this paragraph are accurate. Otherwise denied.

109. Mobile AEM is without knowledge of the allegations in this paragraph.

110. Mobile AEM is without knowledge of the allegations in this paragraph.

111. Denied that the CDC has added sickle cell disease to a list of pre-existing conditions that exacerbate the effects of COVID-19. Admitted that Dr. Landers made the comments attributed to her. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

112. Denied.

113. Admitted that the cited statistics are accurate according to the Census Bureau. Denied that “white collar” jobs are much more likely to allow employees to work from home. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

IV. The COVID-19 Crisis and 2020 Elections in Alabama

114. Admitted.

115. Mobile AEM is without knowledge of the allegations in this paragraph.

116. Mobile AEM is without knowledge of the allegations in this paragraph.

117. Mobile AEM is without knowledge of the allegations in this paragraph.

118. Admitted.

119. Admitted.

120. Admitted.

121. Mobile AEM is without knowledge of the allegations in this paragraph.

122. Mobile AEM is without knowledge of the allegations in this paragraph.

123. Denied that the Alabama Attorney General issued an opinion finding that Governor Ivey had the authority to postpone the primary runoff until July 14 at the latest. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

124. Admitted.

125. Admitted.

126. Mobile AEM is without knowledge of the allegations in this paragraph.

127. Mobile AEM is without knowledge of the allegations in this paragraph.

128. Mobile AEM is without knowledge of the allegations in this paragraph.

129. Mobile AEM is without knowledge of the allegations in this paragraph.

130. Admitted that Secretary Merrill has not adopted or implemented the requests listed in paragraph 126. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

131. Admitted.

132. Mobile AEM is without knowledge of the allegations in this paragraph.

V. The Challenged Provisions Unreasonably Burden the Voting Rights of Alabamians

A. The Excuse Requirement's substantial and unreasonable burden on Alabamians during COVID-19 transmission outweighs any State interest in maintaining it.

133. Admitted that in the past most Alabama voters have voted in person on Election Day, and that this means physically appearing at a designated polling place which may contain other voters and poll workers. Otherwise denied.

134. Denied that the CDC instructs states to encourage as many voters as possible to use “voting methods that minimize direct contact and reduce crowd size at polling locations.” Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

135. Denied.

136. Denied.

137. Mobile AEM is without knowledge of the allegations in this paragraph.

138. Denied that the Excuse Requirement severely burdens the fundamental right of anyone to participate in elections in Alabama. Otherwise admitted.

139. Denied.

140. Denied.

141. Denied.

142. Denied.

143. Admitted that Judge Davis wrote a letter to Secretary Merrill dated May 4, 2020, and the description of the contents of the letter, which speaks for itself. Otherwise denied.

144. Denied.

145. Denied.

146. Denied.

147. Admitted.

148. Admitted.

149. Admitted.

150. Denied.

B. Alabama's Witness Requirement will deny large numbers of eligible voters the right to vote without meaningfully advancing any valid State interest.

151. Denied.

152. Denied.

153. Admitted.

154. Admitted that the ACS statistics show 14.6% of Alabamians live alone.

Otherwise denied.

155. Mobile AEM denies the first sentence of this paragraph. Otherwise admitted.

156. Admitted.

157. Admitted.

158. Mobile AEM is without knowledge of the allegations in this paragraph.

159. Denied.

160. Admitted that notaries are entitled to a \$5.00 payment; that Governor Ivey issued an executive order on March 26th allowing attorneys who are also notaries and notaries who work for attorneys to notarize documents remotely; that not every notary has videoconferencing capability; and that for the videoconferencing option the voter must have access to videoconferencing technology. Otherwise denied.

161. Denied that the Witness Requirement does not meaningfully advance the State's interest in election integrity. Otherwise admitted.

162. Mobile AEM is without knowledge of the allegations in this paragraph.

163. Admitted.

164. Admitted.

165. Admitted.

166. Denied.

167. Denied.

C. The Photo ID Requirements will endanger the lives of large numbers of voters who lack access to printers and scanners or lack photo ID acceptable for voting.

168. Denied that all voters who fail to provide photo ID with the application cannot receive an absentee ballot. Otherwise admitted.

169. Mobile AEM is without knowledge as to how many households in Alabama lack a computer, smartphone, or tablet. Otherwise denied.

170. Denied.

171. Mobile AEM is without knowledge of the allegations in this paragraph.

172. Mobile AEM is without knowledge of the allegations in this paragraph.

173. Denied.

174. Admitted that the citations to ALEA's press release are accurate.

Otherwise denied.

175. Mobile AEM is without knowledge of the allegations in this paragraph.

176. Admitted that the Photo ID Requirements are in effect, and that there is no specific exemption from them solely for preexisting medical conditions in conjunction with COVID-19 infection. Otherwise denied.

D. The Curbside Voting Ban Needlessly Increases the Risks of COVID-19 Infection via Personal Interaction at In-Person Poll Sites in the 2020 Elections.

177. Admitted.

178. Admitted that Alabama does not offer curbside voting. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

179. Mobile AEM is without knowledge of the allegations in this paragraph.

180. Mobile AEM is without knowledge of the allegations in this paragraph.

181. Mobile AEM is without knowledge of the allegations in this paragraph.

182. Denied.

183. Mobile AEM is without knowledge of the allegations in this paragraph.

184. Admitted that Governor Ivey's orders permit "drive-in" gatherings.

Otherwise denied.

185. Denied.

186. Denied.

187. Denied.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Fundamental Right to Vote under the
First and Fourteenth Amendments (42 U.S.C. § 1983)
(All Plaintiffs against All Defendants)

188. Mobile AEM realleges and incorporates by reference its responses to all prior paragraphs as if fully set forth herein.

189. Admitted.

190. Denied.

191. Denied.

192. Denied.

193. Mobile AEM is without knowledge of the statements attributed to Secretary Merrill and Mr. Helms. Otherwise denied.

194. Denied.

COUNT TWO

Failure to Provide Reasonable Accommodations in Violation of
Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131, *et seq.*)
(All Plaintiffs Against All Defendants)

195. Mobile AEM realleges and incorporates by reference its responses to all prior paragraphs as though fully set forth herein.

196. Admitted that voting is one of our nation's most fundamental rights and a hallmark of our democracy. Otherwise, Mobile AEM is without knowledge of the allegations in this paragraph.

197. Admitted.

198. Admitted.

199. Admitted.

200. Mobile AEM is without knowledge of the allegations in the first sentence of this paragraph. Otherwise admitted.

201. Denied.

202. Denied.

203. Denied.

204. Denied.

205. Denied.

206. Denied.

207. Denied.

208. Denied.

209. Admitted.

COUNT THREE

The Excuse and Witness Requirements and Curbside Voting Ban
Violate Section 2 of the Voting Rights Act (52 U.S.C. § 10301)
(All Plaintiffs, except Mr. Peebles, Against All Defendants)

210. Mobile AEM realleges and incorporates by reference its response to all prior paragraphs as though fully set forth herein.

211. Admitted.

212. Admitted.

213. Admitted.

214. Denied.

215. Denied.

216. Admitted that Alabama was covered by the preclearance provisions of the VRA from 1965 to 2013. Mobile AEM is without knowledge as to the U.S. Department of Justice's objections. Otherwise denied.

217. Admitted that the ACS statistics are accurately stated. Otherwise denied.

218. Denied.

219. Denied.

220. Denied.

COUNT FOUR

The Witness Requirement Violates Sections 3 and 201 of
the Voting Right Act, 52 U.S.C. §§ 10302, 10501
(All Plaintiffs Against All Defendants)

221. Mobile AEM realleges and incorporates by reference its responses to
all prior paragraphs as though fully set forth herein.

222. Admitted.

223. Admitted.

224. Admitted.

225. Denied.

226. Admitted that the citations to Ala. Code § 17-11-7 are accurate.

Otherwise denied.

227. Denied.

228. Denied.

COUNT FIVE

The Witness Requirement is a Poll Tax
(42 U.S.C. §1983)
(All Plaintiffs Against All Defendants)

229. Mobile AEM realleges and incorporates by reference its responses to
all prior paragraphs as though fully set forth herein.

230. Denied that the Witness Requirement violates the prohibition against
poll taxes. Otherwise admitted.

231. Denied that the Witness Requirement demands that voters pay a fee or have access to financial resources to vote absentee in federal, state, or local elections. Otherwise admitted.

232. Denied.

233. Denied.

RELIEF REQUESTED

Mobile AEM denies any claims against her contained within the Wherefore Clause and Relief Requested, including that Plaintiffs are entitled to a judgment of any kind, including for attorneys' fees or costs, or any other relief.

Mobile AEM denies each and every allegation of the Amended Complaint not heretofore responded to.

DEFENSES

Mobile AEM asserts the following affirmative defenses applicable to this case:

1. The Amended Complaint fails to state a cause of action against Mobile AEM upon which relief can be granted. Mobile AEM is not empowered to change binding Alabama law passed by the Legislature and signed by the Governor. The relevant statutes cited by Plaintiffs do not allow Mobile AEM to exercise discretion in enforcement of her obligations under those laws. Mobile AEM is also not empowered to pass binding legislation to create a law authorizing curbside voting.

Hence, Mobile AEM is not the proper party from whom relief should be sought as to the Challenged Provisions.

2. The relief the Plaintiffs seek from Mobile AEM is barred by illegality. Essentially, Plaintiffs want the Court to order Mobile AEM to violate Alabama law by not enforcing the Witness and Photo ID requirements.

3. Mobile AEM denies that Plaintiffs have been or will be subjected to the deprivation of any right, privilege, or immunities under the Constitution or laws of the United States.

4. Plaintiffs are not required to have their absentee ballots notarized at all, so the Witness Requirement cannot be seen as a poll tax. Plaintiffs can have their absentee ballots witnessed for free by two adults.

5. Plaintiffs have not shown irreparable harm, as they have not been deprived of the right to vote. Plaintiffs are simply choosing not to vote in person despite CDC and state and national health guidelines detailing the use and effectiveness of masks to prevent the spread of COVID-19.

6. The individual Plaintiffs have unclean hands. They have each agreed to participate in depositions taking place with remote video technology, thereby negating any arguments that they lack access to such technology.

7. The Witness Requirement does not violate the VRA because it is neither a “test” nor a “device.” It is instead a method of verification of identification,

validly upheld repeatedly by the Supreme Court in cases like *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), and its progeny.

8. The Excuse and Witness Requirements do not materially burden any particular segment of the population as they are applied equally and consistently to all voters regardless of race, and they pre-dated the pandemic. If the excuse and Witness Requirements did not violate the VRA before the pandemic, which they did not, the individual choices of certain voters to seek absentee ballots rather than vote in person cannot make these provisions violate the VRA.

9. Mobile AEM does not require Plaintiffs to vote by absentee ballot, and collects no fees when Plaintiffs choose to do so.

10. Mobile AEM did not create the pandemic and does not control the pandemic's effects.

11. There is no Alabama law preventing counties from enacting curbside voting should they choose to do so.

12. Plaintiffs Peebles, Greater Birmingham Ministries, Threadgill-Matthews, and Bentley lack standing to pursue any claims against Mobile AEM.

13. None of Plaintiffs' claims are redressable by Mobile AEM.

14. Medical vulnerability to COVID-19 alone does not qualify any Plaintiff or member of an organizational Plaintiff as disabled under the ADA.

15. To the extent Plaintiffs are entitled to any relief, it must be obtained from another party, and not Mobile AEM.

16. Any barriers to Plaintiffs' voting are due to a global pandemic, and not due to actions, policies, omissions, or failures to act by Mobile AEM.

17. Plaintiff Porter has created his own damages, if he actually has any, in regard to the Photo ID Requirement as he can print a copy of his ID today instead of waiting until closer to the election.

18. To the extent applicable, arguments made by Plaintiffs are barred by the doctrines of collateral estoppel and res judicata.

19. Because Plaintiff Porter can resolve his own issue by printing a copy of his ID today, his claims in that regard are barred by equitable estoppel.

20. To the extent Plaintiffs seek statewide enforcement of their requests, they have failed to join necessary and indispensable parties, namely the relevant election officials of each of Alabama's 67 counties.

21. Plaintiffs' refusal to wear a mask while venturing outside the house- in accord with CDC and ADPH guidelines – renders their claims waived.

22. Plaintiffs' refusal to wear a mask while venturing outside the house- in accord with CDC and ADPH guidelines – makes them responsible for their own reticence to vote in person.

23. Plaintiffs' refusal to wear a mask while venturing outside the house- in accord with CDC and ADPH guidelines – constitutes a failure on their part to mitigate any damages they have suffered due to the Challenged Provisions.

24. Plaintiffs' refusal to wear a mask while venturing outside the house- in accord with CDC and ADPH guidelines – is the real cause of their grievance, and not any acts or omissions by Mobile AEM.

25. To the extent applicable, Plaintiffs are guilty of laches in regard to the November elections.

26. Plaintiffs' claims are not sufficiently definite, as multiple Plaintiffs allege they want to vote by absentee ballot but simply fear they will be unable.

27. Plaintiffs' claims are not ripe as no Plaintiff has applied for an absentee ballot and been rejected.

28. Any actions taken or required to be taken by Mobile AEM are done in Mobile AEM's capacity as a state employee, and as such all relevant immunity defenses available to state employees apply.

29. Any actions taken or required to be taken by Mobile AEM are done solely at the lawful direction of other parties.

Mobile AEM reserves the right to supplement or amend these defenses as more information becomes available through the discovery and trial process.

Respectfully submitted,

/s/ Todd D. Engelhardt

Todd D. Engelhardt (ASB-8939-T67D)

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Attorneys for Defendant JoJo Schwarzauser

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of July 2020, I electronically filed the foregoing Answer using the CM/ECF system, which automatically serves notice to all counsel of record.

/s/ Todd D. Engelhardt

OF COUNSEL