FILED
2020 Jul-31 PM 04:33
U.S. DISTRICT COURT
N.D. OF ALABAMA

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

PEOPLE FIRST OF ALABAMA, et al.,

Plaintiffs,

v.

JOHN MERRILL, in his official capacity as the Secretary of State of Alabama, et al.,

Defendants.

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

**PLAINTIFFS' BRIEF IN OPPOSITION TO**
**STATE DEFENDANTS' MOTION TO DISMISS**

Plaintiffs oppose the State of Alabama and Secretary of State John H. Merrill's ("State Defendants") motion to dismiss certain claims under Rule 12(b). Plaintiffs are organizations and individuals who—because of age, disabilities including medical conditions, and race—are at higher risk of serious illness or death from COVID-19 ("high-risk voters") and seek to vote safely in the pandemic. They are seeking to protect their rights and have standing to assert their sufficiently alleged claims under the United States Constitution, the Voting Rights Act ("VRA"), and the American with Disabilities Act ("ADA") against State Defendants.

## I. Background

Our country faces an unprecedented health crisis due to the rapid spread of COVID-19, "a novel severe acute respiratory illness that has killed . . . more than 100,000 nationwide. At this time, there is no known cure, no effective treatment, and no vaccine." *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J.). COVID-19 has infected more than 4.1 million Americans.[1] Alabama alone has over 79,000 confirmed COVID-19 cases and over 1,400 confirmed deaths.[2] "[P]eople may be infected but asymptomatic, they may unwittingly infect others." *Newsom*, 140 S. Ct. at 1613 (Roberts, C.J.). For this

[1] Ctrs. for Disease Control, *Cases in the U.S.*, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html (last updated July 27, 2020).
[2] Ala. Dep't of Pub. Health, *Alabama's COVID Data and Surveillance Board: 7/01/20*, https://alpublichealth.maps.arcgis.com/apps/opsdashboard/index.html#/6d2771faa9da4a2786a509d82c8cf0f7 (last updated July 27, 2020).

reason, the Centers for Disease Control and Prevention ("CDC") recommend that states "[e]ncourage voters to use voting methods that minimize direct contact with other people," including absentee and curbside or "drive-up voting." Doc. 75 ¶ 19.

Multiple Alabama laws that govern in-person and mail voting pose direct and severe obstacles to voting both during and outside of the pandemic, namely: (1) strict limitations on the categories of people who may vote absentee for elections beyond 2020, Ala. Code § 17-11-3 ("Excuse Requirement"); (2) the requirement that the affidavit accompanying an absentee ballot be signed by the voter in the presence of either a notary or two adult witnesses, *id*. §§ 17-11-7 to 17-11-10 ("Witness Requirement"); (3) the requirement that copies of photo identification accompany absentee ballot applications, *id*. § 17-9-30(b), and certain absentee ballots, *id*. §§ 17-11-9 and 17-11-10(c) ("Photo ID Requirement"); and (4) the ban on curbside voting ("Curbside Voting Ban") (collectively, the "Challenged Provisions"). Doc. 75 ¶ 7.

The risk of disenfranchisement from the Excuse and Witness Requirements and Curbside Voting Ban fall more heavily on Black voters in Alabama, who are more likely to live alone or with young children, more likely to have a disability than the white population, less likely to have videoconferencing technology, and more likely to live below the poverty line, and who are afflicted by and die from COVID-19 at starkly disproportionate rates. Black Alabamians are 39.25% of COVID-19 patients and 46% of COVID-19-related deaths, despite making up just 27% of

Alabama's total population. *Id*. ¶ 23. Past and present racial discrimination in various areas, such as voting, education, employment, and healthcare, interact with these provisions to hinder Black people's ability to vote. *See id*. ¶¶ 105–114, 210–220.

## II. Argument

### A. Plaintiffs have standing to bring their claims.

To assert Article III standing, Plaintiffs must have (1) suffered an injury in fact, (2) that is fairly traceable to the defendant, and (3) that is likely to be redressed by a favorable decision. *See Common Cause Ga. v. Billups*, 554 F.3d 1340, 1349-50 (11th Cir. 2009). The State Defendants do not contest that Plaintiffs have suffered an injury, but rather argue that (1) Plaintiffs' challenges to the Witness and Photo ID Requirements are not traceable to the Secretary, (2) the State may assert sovereign immunity, and (3) Plaintiffs' Excuse Requirement claim is moot. They are incorrect.

*First*, to establish traceability, the plaintiff must show "a causal connection between her injury and the challenged action of the defendant—*i.e.*, the injury must be fairly traceable to the defendant's conduct, as opposed to the action of an absent third party." Doc. 58 at 18 (citations omitted). Traceability is distinct from proximate cause, *see Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 n.6 (2014), and is satisfied where a defendant's actions might constrain or influence the conduct of third parties, *see Alabama-Tombigbee Rivers Coal. v. Norton*, 338 F.3d 1244, 1254-55 (11th Cir. 2003) (quoting *Bennett v. Spear*, 520 U.S. 154, 168-

69 (1997)). To satisfy redressability, a defendant need not be able to provide complete relief to Plaintiffs. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 569 n.4 (1992).

In their motion, the State Defendants again rely on *Jacobson v. Florida Secretary of State* to argue that the Secretary is not responsible for enforcing the Photo ID and Witness Requirements. 957 F.3d 1193 (11th Cir. 2020). Plaintiffs respectfully disagree with this Court's prior ruling, Doc. 58 at 22-26, because the Secretary's role in implementing these requirements is materially different from that of the Florida Secretary of State with respect to candidate ballot order at issue in *Jacobson*. There, Florida law was clear that the Secretary had no role in designing ballots. 957 F.3d at 1208. Here, state law explicitly makes the Secretary responsible for enforcing the Photo ID and Witness Requirements, and gives him the sole authority to design and set the content of absentee ballot affidavits and applications.

In a case directly challenging the Photo ID law, this Court already found that the Secretary "has various responsibilities specific to the Photo ID Law," conferring standing. *Greater Birmingham Ministries v. Alabama*, 2017 WL 782776, at *6 (N.D. Ala. Mar. 1, 2017). Unlike in *Jacobson*, the photo ID law explicitly delegates authority to the Secretary for issuing administrative rules, providing voter ID cards, and educating the public about the law. *Id.* at *4-*6. The Secretary also prescribes the form and design of the absentee ballot application, including information about the exemption. Ala. Code § 17-11-4. Per this authority, the Secretary has included

his interpretation of the exemption to the photo ID law on the absentee ballot application. Ala. Admin Code R. 820-2-9-.12. While the Absentee Election Manager ("AEM") reviews the application to determine if a voter meets the exemption, the AEM acts according to the information on the application written by the Secretary. An order prohibiting the Secretary from enforcing the photo ID law, requiring him to inform voters and AEMs about a broadened exemption, or to modify the absentee ballot application to let high-risk voters check a box to avoid producing ID, would "likely" redress Plaintiffs' injuries. *Norton*, 338 F.3d at 1256.

As to the Witness Requirement, the Secretary has the authority to establish the contents and form of the absentee ballot and accompanying affidavit envelope. *See* Ala. Code § 17-11-3(a); Admin Code R. 820-2-3-.01. The Secretary is also "charged with adopting standards 'that define what constitutes a vote and what will be counted as a vote.'" Doc. 58 at 29 (quoting Ala. Code § 17-2-4(f)). An order requiring him to alter the affidavit to either exclude the Witness Requirement or to add an option on the affidavit to exempt high-risk voters from this requirement would also very "likely" act to redress Plaintiffs' injuries. *Norton*, 338 F.3d at 1256.

*Second*, the State's assertion of sovereign immunity lacks merit. This Court has already ruled that the ADA and VRA validly abrogate state sovereign immunity on any claims against the State. *See* Doc. 58 at 30. An injunction barring the State and its agents and officers, including AEMs and probate judges, from enforcing the

Challenged Provisions would fully redress all of Plaintiffs' injuries.

Regarding the constitutional claims under 42 U.S.C. § 1983, the State waived its sovereign immunity defense when it appealed this Court's rulings and argued to the Supreme Court that it sought to act as a defendant-intervenor. *See* Doc. 75 ¶ 60. The State cannot insist that it is like a "defendant-intervenor" to defend a state law on appeal, Doc. 112 at 6 n.4, and then argue that it has not waived sovereign immunity here. When a state acts as a defendant-intervenor, it "voluntarily invoke[s]" federal jurisdiction and waives its immunity. *See Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 620 (2002). The State cannot argue that it is an improper party here, but then maintain that it *is* a proper party when it wants to appeal. *See Maine v. New Hampshire*, 532 U.S. 742, 750 (2001) (explaining that judicial estoppel prohibits "parties from deliberately changing positions according to the exigencies of the moment[]") (citations omitted). "[A] Constitution that permitted States to follow their litigation interests by freely asserting both claims in the same case could generate seriously unfair results." *Lapides*, 535 U.S. at 619.

*Third*, the State Defendants' argument that Plaintiffs' challenge to the Excuse Requirement is moot ignores the scope of relief sought. Plaintiffs seek to permit all voters to vote absentee "as long as the pandemic continues to present a danger to Plaintiffs and other voters" and not just for the November general election. *See* Doc. 75 at 78; *see also id.* ¶¶ 74-77 (noting that social distancing is necessary until a

vaccine is available). Several Plaintiffs assert that they will likely be unable to "meet any of the Excuse Requirements for future elections" amid the pandemic. *Id.* ¶¶ 54, 56, 58. Plaintiffs have also alleged facts showing that this pandemic is likely to continue well past November 3, 2020. *Id.* ¶¶ 73–75. There are elections on November 17, 2020, and January 19, 2021, and major elections in March and August 2021. "Upcoming Elections", https://www.sos.alabama.gov/alabama-votes/voter/election-information/2020. Thus, Plaintiffs still have impending injuries from the Excuse Requirement despite the Secretary's actions for most 2020 elections as their injuries are "capable of repetition, yet evading review." *Morse v. Republican Party of Va.*, 517 U.S. 186, 235 n.48 (1996).

**B. The Amended Complaint adequately states claims for relief.**

Defendants contend that Plaintiffs have failed to sufficiently plead several of their claims. Plaintiffs have alleged enough to meet the motion to dismiss standard, however, which only requires the complaint to contain sufficient factual matter to state a claim for relief that is plausible on its face. *See Ala. State Conf. of NAACP v. City of Pleasant Grove*, 372 F. Supp. 3d 1333, 1338 (N.D. Ala. 2019).

**1. Plaintiffs state a claim that the Curbside Voting Ban violates the VRA and the ADA regardless of the pandemic.**

In addition to alleging that the Curbside Voting Ban is illegal in the pandemic, Plaintiffs allege that the ban violates the ADA and VRA outside of the pandemic.

First, to establish a prima facie claim under the ADA, Plaintiffs need prove

only that (1) they are qualified persons; (2) they were denied access to a service; and (3) that denial was by reason of the plaintiff's disability. *See Nat'l Fed. of the Blind v. Lamone*, 813 F.3d 494, 502-03 (4th Cir. 2016). "Plaintiffs need not, however, prove that they have been disenfranchised or otherwise 'completely prevented from enjoying a service, program, or activity' to establish discrimination." *Disabled in Action v. Bd. of Elec.*, 752 F.3d 189, 198 (2d Cir. 2014) (citation omitted).

Once Plaintiffs establish a prima face case, they must offer "reasonable modifications to rules, policies, or practices." 42 U.S.C. § 12131(2); *see also* 28 C.F.R. § 35.130(b)(7). A modification is reasonable if it will not cause "undue hardship." *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 401-03 (2002). It "is enough for the plaintiff to suggest the existence of a plausible accommodation." *Lamone*, 813 F.3d at 507-08. This determination of reasonableness is "fact-specific." *Id*.

Here, the Complaint alleges an ADA violation. Plaintiffs Peebles, Porter, and organizational Plaintiffs' members are registered voters with ambulatory disabilities. Doc. 75 ¶¶ 28, 30-31, 207. Plaintiffs' rights have been burdened by the Curbside Voting Ban insofar as, for years, the Secretary has repeatedly barred curbside voting as a means of accommodating voters with disabilities. *See id.* ¶¶ 177-81. "Even outside of the COVID-19 pandemic, the Curbside Voting Ban has acted and will continue to act to hinder the rights of those 450,000 adults in Alabama with ambulatory disabilities, particularly, those voters who are assigned to polling places

that are inaccessible." *Id*. ¶ 187. The Deputy Secretary of State offered a plausible accommodation, testifying that a "polling place with curbside voting would be feasible and permissible under Alabama law" if it met certain requirements. *Id*. ¶ 193. These facts sufficiently allege an ADA violation outside of the pandemic.

Second, the Complaint establishes that, regardless of the pandemic, the ban violates Section 2 of the VRA because it has a racially discriminatory impact and that impact is linked to sociohistorical discrimination. *See Burton v. City of Belle Glade*, 178 F.3d 1175, 1198 (11th Cir. 1999). "Black voters are more likely to have ambulatory disabilities, Black people aged 65 and over are more likely to have ambulatory disabilities, Black voters are disproportionately assigned to inaccessible polling locations, and Black voters disproportionately reside in [those counties] where Secretary Merrill has intervened to stop or prohibit curbside voting." Doc. 75 ¶ 219. The Complaint links these disparities to ongoing discrimination in "education, employment, and health," *id*. ¶ 217, including less access to healthcare. *Id*. at 109.

**2. Amid the pandemic, the Challenged Provisions violate the ADA.**

The State Defendants argue that Plaintiffs do not adequately plead ADA claims against the Witness and Photo ID Requirements because Plaintiffs are not qualified insofar as they fail to meet essential eligibility requirements. To satisfy the first prong of a prima facie ADA claim, Plaintiffs must show that they meet the "essential eligibility requirements for the receipt of services." 42 U.S.C. § 12131(2).

As this Court correctly has found, Plaintiffs "state a prima facie case of disability discrimination relating to the photo ID requirement as applied in the COVID-19 pandemic." Doc. 58 at 61. The Individual Plaintiffs and the members of the organizational Plaintiffs, Doc. 75 ¶¶ 26–58, are (1) registered voters; (2) the Photo ID Requirement operates to exclude Plaintiffs (3) "by reason of . . . [their] disability." Doc. 58 at 61-62. The Court has correctly concluded that the Photo ID Requirement, by virtue of its several exceptions, is not an essential requirement. *Id*.

The State Defendants' argument with respect to the Witness Requirement also fails. While this Court found at the preliminary injunction stage that, on the record then before it, the Witness Requirement was an essential requirement, Plaintiffs respectfully disagree. The Witness Requirement is not related to a voter's eligibility to participate in an election—it is merely a procedure applied to already-qualified voters. "'[E]ssential eligibility requirements' are those requirements without which the 'nature' of the program would be 'fundamentally alter[ed].'" *Mary Jo C. v. N.Y. State & Loc. Ret. System*, 707 F.3d 144, 158 (2d Cir. 2013).

Yet, if this Court were to enjoin the Witness Requirement, Alabama would retain the ability to confirm a voter's identity, eligibility, and qualifications—therefore, the "requested modification would [not] fundamentally alter [the] nature[]" of Alabama's absentee voting regime. *Id.* (quoting *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 689 (2001)). Rather, a voter's eligibility has already been

verified (or can be verified) through other absentee procedures. Doc. 75 ¶¶ 161–66.

The Witness Requirement is not essential, so Plaintiffs have properly alleged that they are "qualified individual[s] with a disability[.]" 42 U.S.C. § 12132. They have further alleged that they are "excluded from" political participation "or . . . denied the benefits of the services, programs, or activities of a public entity or otherwise discriminated [against] by such entity . . . by reason of such disability." Doc. 58 at 51-52 (citations & internal quotation marks omitted). Plaintiffs are high-risk voters whose "health statuses severely limit their ability to leave home or have any personal contacts with others amid the COVID-19 pandemic." Doc. 75 ¶ 202; *see* 28 C.F.R. §§ 36.105(b)(1), 36.105(c)(1)(i). Plaintiff Organizations' members also include people who "have or have had COVID-19." *Id*. ¶ 35, 39. *See Bragdon v. Abbott*, 524 U.S. 624 (1998); 28 C.F.R. §§ 36.105(b)(2). The Witness Requirement will abridge Plaintiffs' rights because of their disabilities. *See Thomas v. Andino,* 2020 WL 2617329, at *24 (D.S.C. May 25, 2020). And Plaintiffs' proposed modification provides other reasonable means of satisfying the Witness Requirement's purpose (i.e., identification). *See Schaw v. Habitat for Humanity*, 938 F.3d 1259, 1266-67 (11th Cir. 2019). State law already allows voters to prove their identity without strictly meeting the Witness Requirement. Ala. Admin. Code § 820-2-10-.03(4). Plaintiffs have stated an ADA claim against this requirement.

### 3. During the pandemic, the Excuse and Witness Requirements and Curbside Voting Ban violate Section 2 of the VRA.

The "essence of a [Section] 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986). To establish a Section 2 violation, Plaintiffs must allege a racially discriminatory impact and that that impact is at least in part linked to discrimination. *See Burton*, 178 F.3d at 1198. Here, the relevant Challenged Provisions will adversely impact Black voters, Doc. 75 ¶ 214–15, and "interact[] with social and historical conditions to cause an inequality in the opportunities," *Gingles*, 478 U.S. at 47; *see* Doc. 75 ¶¶ 105-113, 216-20. At this stage, Plaintiffs' allegations are "sufficient to survive." *See Greater Birmingham Ministries v. Merrill*, 250 F. Supp. 3d 1238, 1244 (N.D. Ala. 2017).

Nonetheless, the State Defendants argue that "to the extent that contracting COVID-19 is riskier for some than others, it is not because of race, but is instead because of underlying conditions." Doc. 112 at 12-13. They further contend that "[a] 65-year-old [w]hite voter with diabetes is in the same position as a 65-year-old Black voter with diabetes"—but that is not so. In fact, "[i]n Alabama, Black people are more than twice as likely as whites to die from diabetes[,]" Doc. 75 ¶ 111, and nearly the same is true of Black Alabamians who contract COVID-19, *id*. ¶ 108. As this

Court has stated, "[a]lthough COVID-19 presents risks to the entire population, people who . . . are over 65, African-American, or disabled have substantially higher risk of developing severe cases or dying of COVID-19." Doc. 58 at 2. This racially disparate impact on Black Alabamians is due at least in part to "Alabama's long and ongoing history of discrimination," Doc. 75 ¶¶ 109–113, and the fact that Black people are much more likely to live alone, have ambulatory disabilities, lack internet, and face other socioeconomic barriers than white Alabamians, *see id.* ¶ 217.

Further, Defendants are wrong to assert that there is no state action under Section 2. Under Section 2, a challenged voting law is not viewed in the abstract, but rather in the wider context of how it operates, *Gingles*, 478 U.S. at 47, and this Court has already correctly found that Plaintiffs' injuries are due to the State's enforcement of the Challenged Provisions—not COVID-19. *See* Doc. 58 at 15-18.

**4. The Witness Requirement violates Section 201 of the VRA.**

The State Defendants argue that Section 201 has no private right of action and that the Witness Requirement is not an impermissible voucher. These arguments fail.

First, the VRA "contemplates that private plaintiffs may bring an action challenging a state practice as an impermissible test or device," not just the U.S. Attorney General. *See* Doc. 58 at 70. Second, the State Defendants' wrongly contend the notary requirement does not function as a voucher for the voter's qualifications. Doc. 112 at 14. As this Court noted, notaries certify "the voter's identity[,]" which

is a voting "qualification," and notaries "surely . . . qualify as a class under" the VRA. Doc. 58 at 73 n.50. This is precisely the sort of voucher provision prohibited by Section 201. *See, e.g., United States v. Logue*, 344 F.2d 290, 291 (5th Cir. 1965) (invalidating a voucher test that required a witness to "affirm that he is acquainted" with the voter); *United States v. Ward*, 349 F.2d 795, 799 (5th Cir. 1965) (similar).

**C. Regardless of the pandemic, the Witness Requirement is a poll tax.**

The Fourteenth and Twenty-Fourth Amendments prevent a state from making "the affluence of the voter or payment of any fee an electoral standard." *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 666 (1966). Yet, State Defendants seek dismissal of the poll tax claim by arguing that voters are not required to vote absentee and the Witness Requirement does not expressly mandate the use of a notary alone, so no voter is being forced to pay for notary services. Doc. 112 at 15. This is incorrect.

First, many Plaintiffs and Organizational Plaintiffs' members are effectively "disabled from voting" in person because their conditions, COVID-19 infections, or other circumstances keep them from "go[ing] to the polls." *See O'Brien v. Skinner*, 414 U.S. 524, 525 (1974) (striking down prohibition of voters confined pretrial from voting absentee); *Price v. N.Y. State Bd. of Elections*, 540 F.3d 101, 109 (2d Cir. 2008) (recognizing that it "cannot be disputed" that the lack of absentee voting "impose[s] a substantial burden on voters physically unable to attend a polling station because they are hospitalized, homebound, or incarcerated"). Plaintiffs'

difficulty of voting in person means that they must vote absentee and so they must satisfy the Witness Requirement to vote.

Second, as this Court has stated, merely because there is an alternative to satisfying the Witness Requirement without paying a notary fee does not insulate it from constitutional attack. Doc. 58 at 38 n.20. In *Harman v. Forssenius*, the Supreme Court struck down a requirement that a voter either pay a fee or file a certificate of residence signed by a witness. 380 U.S. 528, 532 (1965). The Court enjoined the witnessed certificate requirement because it "imposed a material requirement solely upon those who refused to surrender their right to vote in federal elections without paying the poll tax." *Id*. at 541; *see also Crawford v. Marion Cty. Election Bd*., 553 U.S. 181, 198 (2008) (noting that a photo ID law may act as a poll tax, even where "most voters already possess a valid driver's license . . . , if the State required voters to pay a tax or a fee to obtain a new photo identification"); *Walgren v. Howes*, 482 F.2d 95, 100 (1st Cir. 1973) (notary fees may pose a barrier); *Common Cause/Ga. v. Billups*, 406 F. Supp. 2d 1326, 1369 (N.D. Ga. 2005) (finding that a photo ID law was a poll tax where it required voters to pay a fee or sign an affidavit to obtain ID).

Accordingly, under *Harman*, if this Court found that the notary requirement was a poll tax, it must enjoin the Witness Requirement as a whole. 380 U.S. at 544.

## III. Conclusion

Plaintiffs respectfully ask that this Court deny the State Defendants' motion.

DATED this 31st Day of July 2020.

Respectfully submitted,

/s/ Deuel Ross
Deuel Ross*
Natasha C. Merle*
Liliana Zaragoza*
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
Tel.: (212) 965-2200
dross@naacpldf.org
nmerle@naacpldf.org
lzaragoza@naacpldf.org

/s/ William Van Der Pol
William Van Der Pol [ASB-211214F]
Jenny Ryan [ASB–5455-Y84J]
ALABAMA DISABILITIES ADVOCACY PROGRAM
Box 870395
Tuscaloosa, AL 35487
P: (205)348-4928
wvanderpoljr@adap.ua.edu
jrryan2@adap.ua.edu

Sarah Brannon* ++
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
915 15th Street, NW
Washington, DC 20005-2313
202-675-2337
sbrannon@aclu.org

/s/ Caren E. Short
Caren E. Short (ASB-0646-P48N)
Nancy G. Abudu*
SOUTHERN POVERTY LAW CENTER
PO Box 1287
Decatur, GA 30031
P: (404) 521-6700
F: (404) 221-5857
caren.short@splcenter.org
nancy.abudu@splcenter.org

/s/ T. Alora Thomas-Lundborg
T. Alora Thomas-Lundborg*
Davin M. Rosborough*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad St.
New York, NY 10004
(212) 549-2693
athomas@aclu.org
drosborough@aclu.org

/s/ Randall C. Marshall
Randall C. Marshall (ASB-3023-A56M)
ACLU FOUNDATION OF ALABAMA, INC.
P.O. Box 6179
Montgomery, AL 36106-0179
(334) 420-1741
rmarshall@aclualabama.org

*Admitted *pro hac vice*
++ Not admitted in DC; DC practice

***Attorneys for Plaintiffs***

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of July 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

/s/ T. Alora Thomas-Lundborg
T. Alora Thomas-Lundborg*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad St.
New York, NY 10004
(212) 549-2693
athomas@aclu.org