

**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.

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

**PLAINTIFFS' REPLY IN SUPPORT OF THEIR
MOTION FOR A PRELIMINARY INJUNCTION**

It is undisputed that thousands of voters, including Plaintiffs and Plaintiffs' many members, are at greater risk from COVID-19 because of the Challenged Provisions. As COVID-19 infections and deaths are rising at alarming rates, Ex. 68, 69, the chief state health officer is now open to another shutdown. Ex. 70, 71. Given the imminent danger ahead of the July 14 elections, the Court should enjoin: 1) the Witness Requirement; 2) the Photo ID Requirement for those voters most vulnerable to COVID-19; and 3) State Defendants from interfering with probate judges who choose to use curbside voting. Far from asking the Court to "micromanage" a state election, this relief is necessary to satisfy federal law and prevent irreparable harm.

Plaintiffs have standing because they are injured by having to violate social distancing guidance to vote, and Defendants have the authority to remedy that injury. On the merits, risking one's safety to vote is a severe burden, which is not justified by unsupported speculation about voter fraud. Plaintiffs' motion should be granted.

Plaintiffs Have Standing. Plaintiffs allege an injury-in-fact because the Challenged Provisions force them to violate social distancing guidance or face disfranchisement. Doc. 1 ¶¶ 7-8, 18-19, 21-36; Doc. 20-1 at 10-11. And voters always have standing to challenge state laws that require them to take some act (like obtain a photo ID or a witness) to vote. *See Common Cause v. Billups*, 554 F.3d 1340, 1351-52 (11th Cir. 2009). Nor does it matter whether the injury is common to all voters. So long as "a harm is concrete," injury-in-fact exists even if the harm is

“widely shared.” *Fed. Elec. Com’n v. Akins*, 524 U.S. 11, 24 (1998). In fact, Plaintiffs and Plaintiffs’ members are lawful voters with disabilities that place them at high-risk of serious illness from COVID-19. Doc. 20-1 at 10-11; *see Thomas v. Andino*, 2020 WL 2617329, at *15 (D.S.C. May 25, 2020). And, given the State’s social distancing rules, Organizational Plaintiffs are pursuing new efforts, Doc. 1 ¶¶ 31, 35-36, to help voters with (and push the State to ease) the Challenged Provisions’ burdens. Accordingly, Plaintiffs and Plaintiffs’ members have standing. *Arcia v. Fla. Sec’y of State*, 772 F. 3d 1335, 1342 (11th Cir. 2014); *Billups*, 554 F.3d at 1350-51.

Defendants’ claim that it is too “speculative” to know whether Plaintiffs will contract COVID-19 due to the Challenged Provisions, Doc. 36 at 6, misunderstands the nature of Plaintiffs’ injury. The injury-in-fact is that Plaintiffs must take steps to satisfy the Challenged Provisions. *See Arcia*, 772 F.3d at 1341; *Billups*, 554 F.3d at 1351-52. The greater risk of getting COVID-19 due to the Challenged Provisions is relevant to the merits since it shows the severity of the burdens during the pandemic. But Plaintiffs’ Article III injury is being forced to comply with the Challenged Provisions, which they have standing to challenge even outside of a pandemic.

Plaintiffs’ injuries are also traceable to, and redressable by, Defendants. Because the Article III injury is the Challenged Provisions’ enforcement (not the pandemic), Defendants are sufficiently connected to such enforcement for purposes of both standing and *Ex Parte Young*. *See* Doc. 36 at 14 n.14 (agreeing that these

analyses are coequal).

Defendants rely on *Jacobson v. Florida Secretary of State*, but there the state official had no role at all in enforcing the challenged law. 957 F.3d 1193, 1207-08 (11th Cir. 2020). Where, as here, state officials have some statutory or other role in enforcing a law, an injunction against them satisfies redressability and traceability. *See, e.g., NAACP v. Browning*, 522 F.3d 1153, 1159 & n.9 (11th Cir. 2008); *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 & n.3 (11th Cir. 2005).

State Defendants have already altered the Challenged Provisions, Doc. 36 at 1-2, meaning they can provide the requisite relief. In all elections, State Defendants enforce the Challenged Provisions, Ala. Code §§ 17-11-3, 17-11-3.1, 17-11-4, 17-11-50, and related criminal penalties. *Id.* § 17-17-24. They help certify returns. Ala. Code §§ 17-12-2, 17-12-9, 17-12-17, 17-12-18, 17-13-17, 17-13-18. Defendants concede that certifying officials are proper parties. Doc. 36 at 12 n.10. And the Governor's emergency powers allow her to eliminate the Challenged Provisions. Ala. Code § 31-9-8(a)(5); Ala. Op. Att'y Gen. No. 2020-020, 2020 WL 1322057 (Mar. 17, 2020). This establishes standing. *Ga. Latino All. v. Gov.*, 691 F.3d 1250, 1260 n.5 (11th Cir. 2012); *Luckey v. Harris*, 860 F.2d 1012, 1016 (11th Cir. 1988).

Further, the photo ID law directs the Secretary to administer, interpret, and publicize it. Ala. Code § 17-9-30(g)-(p). Absentee election managers ("AEMs") issue regular or provisional absentee ballots depending on whether a voter provides

photo ID. Doc. 36 12 n.10. Ordering the Secretary to waive the photo ID law or broaden its exemption and the AEMs to issue regular ballots to voters who do not produce ID would redress the injury. *GBM v. Merrill*, 2017 WL 782776, at *4 (N.D. Ala. Mar. 1, 2017) (Secretary’s authority under photo ID law sufficient for standing).

The Secretary also provides “uniform guidance” to election officials, Ala. Code § 17-1-3(a), including guidance related to the Witness Requirement, which election officials follow. Doc. 41 at 4-5; Doc. 36 at 12 n.10. The AEMs give voters “instructions for completing and returning the absentee ballots.” Ala. Code § 17-11-9. Ordering the Secretary to instruct election officials and the AEMs to instruct voters that the Witness Requirement is waived redresses Plaintiffs’ injury. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 569 n.4 (1992) (redressability does not require complete relief). For curbside voting, the State’s witness admits that the Secretary has intervened twice to stop local election officials from using it. Doc. 34-1 ¶ 43. An injunction barring any such future interventions would redress Plaintiffs’ injuries.

Finally, for the ADA and VRA claims against the State, sovereign immunity has been abrogated; thus, Defendants’ *Ex Parte Young* and redressability arguments have “no role to play here.” *OCA-Greater Houston v. Texas*, 867 F.3d 604, 614 (5th Cir. 2017); *see NAACP v. Alabama*, 949 F.3d 647, 655 (11th Cir. 2020); *Nat’l Ass’n of the Deaf v. Florida*, 945 F.3d 1339, 1351 (11th Cir. 2020). Defendant Roberson is sued in her official capacity as Circuit Clerk and AEM. Doc. 1 ¶ 40. If she has

resigned from those roles, Doc. 41 at 1-2, her “successor is automatically substituted as a party,” which does not moot Plaintiffs’ claim. Fed. R. Civ. P. 25(d).

Plaintiffs Are Likely to Succeed on the Merits. *First*, Plaintiffs are likely to prevail on their constitutional claims. Under *Anderson-Burdick*, Plaintiffs have identified burdens inflicted by the Challenged Provisions that warrant relief. *Thomas*, 2020 WL 2617329, at *19. As to the Witness Requirement, Defendants fail to address the very real burden on Plaintiffs or Plaintiffs’ members who live alone or with one person. Doc. 20-1 at 16. Because Plaintiffs do not encounter two people *simultaneously*, Doc. 20-1 at 10-11, the Witness Requirement forces them to violate social distancing rules to interact with one or more people outside their household.

But COVID-19 is spread easily, Ex. 3 ¶ 6-7, and stays in the air for up to 14 minutes after an infected person talks. Ex. 72 ¶ 2. “Strikingly,” Defendants seek to enforce the Witness Requirement for everyone, requiring an “asymptomatic COVID-19 voter [to] unknowingly place potential witnesses at risk” and a symptomatic voter to “find a willing witness.” *Thomas*, 2020 WL 2617329, at *24. Defendants speculate that a witness could “watch the signing through a window,” Doc. 36 at 20, but even then “many would be dissuaded from exercising their vote both on account of the remaining health risks and required steps to mitigate them.” *League of Women Voters v. Bd. of Elec.*, 2020 WL 2158249, at *8 (W.D. Va. May 5, 2020). Defendants suggest that Plaintiffs could ask individuals like a grocer or

delivery driver to be a witness. Doc. 34-1 ¶ 41(d)(ii). But such hypothetical witnesses cannot “confirm[]” a voter’s identity, Doc. 36 at 27, and are essential workers who are at higher risk of contracting and spreading COVID-19. Ex. 51 at 2.

Without any support, Defendants also claim “[m]any voters” could use remote notarization. Doc. 36 at 20. But this can require the payment of an unconstitutional fee to vote and not all voters or notaries have videoconferencing. Doc. 20-1 at 6, 16-17. Even remote notarization still requires a notary and voter to sign the same physical ballot, Doc. 34-1 ¶ 41(d)(i), posing significant logistical issues and risks.

Weighed against these severe burdens, Defendants cannot simply point to election integrity generally and note that “witnesses are required for signatures of many legal documents.” Doc. 36 at 20. Because election integrity is protected by many other means, *see* Doc. 20-1 at 18-20, Defendants have not identified a state interest that makes the Witness Requirement “necessary to burden the plaintiff’s rights,” and, thus, this Requirement fails heightened scrutiny. *Tashjian v. Republican Party*, 479 U.S. 208, 221-22 (1986); *see Thomas*, 2020 WL 2617329, at *21 & n.22.

The Photo ID Requirement likewise severely burdens Plaintiffs’ right to vote in the context of the pandemic. *See* Doc. 20-1 at 23-25. Nothing in *Anderson-Burdick* supports Defendants’ suggestion that voters should be put in the position of asking someone else to bear the risk of contracting COVID-19 to make a copy of their photo ID. *See* Doc. 36 at 19. And, once again, Defendants’ interest in election integrity is

not “necessary to burden” Plaintiffs’ rights. *Tashjian*, 479 U.S. at 221-22. Certain voters are already exempt from providing photo ID. Ala. Code § 17-9-30(d). Defendants do not even attempt to argue that the other means in state law that protect election integrity are sufficient for these already exempted voters but insufficient for voters vulnerable to the virus. Thus, the Photo ID Requirement is not “narrowly” drawn to satisfy a compelling state interest. *Tashjian*, 479 U.S. at 217. To cure this violation, the exemption must be construed to include Plaintiffs. Doc. 20-1 at 26-27.

Along with those who cannot satisfy the Photo ID or Witness Requirement, there are some voters, like Plaintiffs’ members, for whom absentee voting is not a viable option because they require in-person help. Doc. 20-1 at 28. In asserting that anyone can vote absentee, *see* Doc. 36 at 21, Defendants ignore these voters and the burdens placed on them by Defendants’ Curbside Voting Prohibition. Defendants contend that it would not be administratively feasible to require curbside voting at every poll site. Doc. 36 at 26. But Plaintiffs only seek an injunction prohibiting the Secretary from interfering when probate judges choose to deploy curbside voting.

Second, Plaintiffs are likely to prevail on their ADA claim. They are registered voters who are eligible to vote absentee and, with accommodations, could vote. Doc. 20-1 at 21-23. This is enough to meet “essential eligibility requirements.” 42 U.S.C. § 12131(2). Defendants cannot overcome the ADA claim by simply asserting that the Photo ID and Witness Requirements are “essential.” *Compare* Doc. 36 at 23 *with*

Doe v. Rowe, 156 F. Supp. 2d 35, 59 (D. Me. 2001) (finding that a state constitution’s voting qualification was not “essential”). Rather, the Court must examine these requirements’ purpose (*i.e.*, identification) and whether it can be satisfied with a reasonable modification. *See Schaw v. Habitat for Humanity*, 938 F.3d 1259, 1266-67 (11th Cir. 2019). Alabama law already allows certain voters to prove their identity without strictly meeting the Photo ID or Witness Requirements. Ala. Code § 17-9-30(d); Ala. Admin. Code § 820-2-10-.03(4). Contradictorily, Defendants also say that identification is not a qualification. Doc. 36 at 26-27. Thus, these requirements are not “essential,” and Plaintiffs’ proposed accommodations do not “fundamentally alter” the State’s elections. *See, e.g., Martin v. PGA Tour, Inc.*, 994 F. Supp. 1242, 1253 (D. Or. 1998) (finding it relevant that the defendant had denied that plaintiff’s accommodation was reasonable, but had offered similar accommodations to others), *aff’d*, 204 F.3d 994 (9th Cir. 2000), *aff’d*, 532 U.S. 661 (2001); *Washington v. Ind. High Sch. Athletic Ass’n, Inc.*, 181 F.3d 840, 852 (7th Cir. 1999); *Doe v. Judicial Nominating Com’n*, 906 F. Supp. 1534, 1544 (S.D. Fla. 1995). And the State’s own witness notes that curbside voting is feasible with some conditions. Doc. 34-1 ¶ 46.

Defendants also assert that the Challenged Provisions do not totally bar Plaintiffs from voting. Doc. 36 at 23. But an ADA violation “does not occur only when a disabled person is completely prevented from enjoying a service.” *Shotz v. Cates*, 256 F.3d 1077, 1080 (11th Cir. 2001). The ADA forbids rules that are direct

barriers or that “screen out” people with disabilities, 28 C.F.R. § 35.130(b)(8), and otherwise “diminish” their “chances of participation.” 1990 U.S.C.C.A.N. 303, 388.

Specifically, the ADA prohibits voting barriers even where one has a “choice” of voting methods. *See Nat’l Fed’n of the Blind v. Lamone*, 813 F.3d 494, 503 (4th Cir. 2016) (ADA challenge to “inaccessible” absentee voting not barred by the availability of “accessible” in-person voting). And Plaintiffs do not merely “fear” COVID-19. Doc. 36 at 24. Rather, the CDC and undisputed expert reports agree that, now and in July, Ex. 1, Ex. 3 ¶ 15, Ex. 67 ¶ 17, Plaintiffs face the real risk that the Challenged Provisions will endanger their lives “by reason of” their disabilities. Doc. 20-1 at 22-23; *see Bragdon v. Abbott*, 524 U.S. 624, 649 (1998); *McAlindin v. San Diego Cty.*, 192 F.3d 1226, 1235 (9th Cir. 1999) (disability led to self-isolation).

Third, Plaintiffs are likely to succeed on their as-applied or facial Section 201 claim. This claim does not require a three-judge court, because it is not brought by the Attorney General. *See* 52 U.S.C. § 10504. Where the VRA “does not ‘expressly require’ a three-judge court,” courts do not convene them. *Nick v. Bethel*, 2007 WL 9718147, at *5 (D. Alaska July 31, 2007); *see Thomas*, 2020 WL 2617329, at *29.

Defendants and DOJ also wrongly contend that the Witness Requirement does not entail members of a “class” vouching for a voter’s “qualifications” or is not a “requirement.” 52 U.S.C. § 10501(b). Per Alabama Code § 17-11-7 and Defendants, a witness must vouch for or “confirm[] the identity of a person.” Doc. 36 at 27. This

is a voting qualification. Ala. Code § 17-11-9; *U.S. v. Ward*, 349 F.2d 795, 798 (5th Cir. 1965). Vouchers are restricted to a “class” of non-candidates over age 18, Ala. Code § 17-11-7(b), (c), which, as applied, has a disparate impact. Doc. 20-1 at 5-6.¹

The Witness Requirement is in fact a requirement: absentee ballots that fail to meet it are rejected. Ala. Code § 17-11-7. It does not matter that voters might opt to avoid it. The Supreme Court has enjoined a law that gave voters a “choice” between satisfying a literacy test or a then-valid property qualification. *South Carolina v. Katzenbach*, 383 U.S. 301, 319 (1966). DOJ has similarly ruled that literacy tests that applied only to absentee voters violated the VRA. Letter from DOJ to Ala. (Mar. 13, 1970), <https://www.justice.gov/crt/case-document/file/1277176/download>. And, regardless, the Witness Requirement is surely a requirement as applied in the present crisis since Plaintiffs have no choice but to vote absentee to protect their safety.

Finally, the Witness Requirement’s preclearance is irrelevant. Preclearance did “not represent approval of the voting change.” *Reno v. Bossier Par.*, 528 U.S. 320, 335 (2000). Thus, precleared laws can still be “attacked.” *Id.*; see 52 U.S.C. § 10304(a). In fact, DOJ had to preclear a voting law that was not retrogressive, even if it violated another VRA section. *Reno v. Bossier Par.*, 520 U.S. 471, 474 (1997).

Accordingly, the Court should grant Plaintiffs’ preliminary injunction motion.

¹ In contrast, in *Thomas*, the witness requirement there was not a voucher test only because it did not require a witness to “confirm” or “know” a voter’s identity and it did not require a witness to be in any class at all, *i.e.*, candidates and children could be witnesses. 2020 WL 2617329, at *30.

DATED this 1st day of June 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
P: (212) 965-2200
dross@naacpldf.org
nmerle@naacpldf.org
lzaragoza@naacpldf.org

Mahogane D. Reed*
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
700 14th Street N.W.Ste.600
Washington, DC 20005
(202) 682-1300
mreed@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

/s/ Sara Zampierin

Sara Zampierin (ASB-1695-S34H)
SOUTHERN POVERTY LAW CENTER
400 Washington Avenue
Montgomery, AL 36104
P: (334) 956-8200
F: (334) 956-8481
sara.zampierin@splcenter.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

*Admitted *Pro Hac Vice*

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to counsel of record. I further certify that I will mail a copy of the forgoing to the following parties:

Jacqueline Anderson-Smith
Circuit Clerk of Jefferson County, Alabama
Jefferson County Courthouse
716 Richard Arrington, Jr. Blvd. N.
Birmingham, AL 35203

Karen Dunn Burks
Deputy Circuit Clerk Bessemer Division of Jefferson County, Alabama
1801 3rd Ave N
Bessemer, AL 35020

/s/ Deuel Ross
Deuel Ross
Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
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PEOPLE FIRST OF ALABAMA, et
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Defendants.

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

DECLARATION OF DEUEL ROSS

DEUEL ROSS declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am over the age of 18 and competent to make this declaration. I am admitted *Pro Hac Vice* as an attorney for Plaintiffs in this case. Attached are exhibits 68 to 72 submitted in support of Plaintiffs' Preliminary Injunction Motion (Doc. 15).

2. **Exhibit 68** is a true and correct copy of "Characteristics of Laboratory-Confirmed Cases of COVID-19," a report published daily on the website of the Alabama Department of Public Health, dated June 1, 2020, and available at:

<http://www.alabamapublichealth.gov/covid19/assets/cov-al-cases-060120.pdf>.

3. **Exhibit 69** is a true and correct copy of "Alabama adds 526 coronavirus cases since yesterday; 145 from 3 counties; 18,020 statewide," an article by the

Alabama Media Group, dated June 1, 2020, and available at:

<https://www.al.com/news/2020/06/alabama-adds-526-coronavirus-cases-since-yesterday-145-from-3-counties-18020-statewide.html>

4. **Exhibit 70** is a true and correct copy of “Alabama state health officer concerned about ongoing community transmission of COVID-19,” a WSFA 12 News article and video interview, updated May 27, 2020, and available at:

<https://www.wsfa.com/2020/05/26/alabama-state-health-officer-concerned-about-ongoing-community-transmission-covid-/>

5. **Exhibit 71** is a true and correct copy of “Senator And State Health Officer Tackle Complex Slate Of Coronavirus Questions,” a news article by Public Radio WBHM 90.3 FM, dated May 30, 2020, and available at:

<https://wbhm.org/2020/senator-and-state-health-officer-tackle-complex-slate-of-coronavirus-questions/>

6. **Exhibit 72** is a true and correct copy of the Supplemental Declaration of Dr. Arthur Reingold, dated May 30, 2020.

7. I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Dated: June 1, 2020


Deuel Ross

EXHIBIT 68

CHARACTERISTICS OF LABORATORY-CONFIRMED CASES OF COVID-19

ALABAMA
PUBLIC
HEALTH

18,020 **1,855**

**LABORATORY-
CONFIRMED CASES**

**TOTAL
HOSPITALIZATIONS**

222,371 **644**

TOTAL TESTED

COVID-19 DEATHS

CLINICAL AND EPIDEMIOLOGIC CHARACTERISTICS



In ICU	591
On Mechanical Ventilation	355

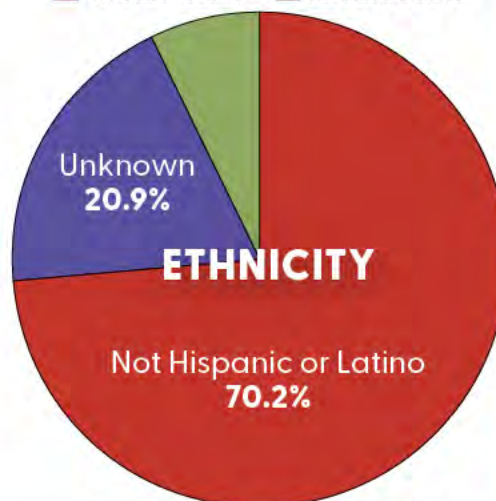
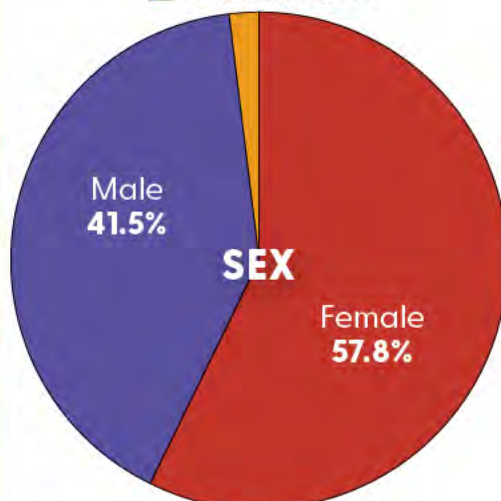
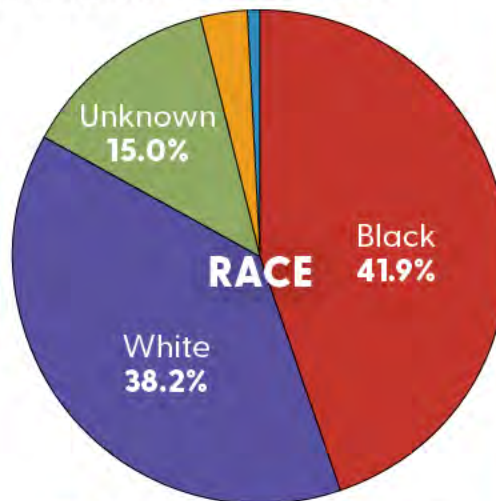
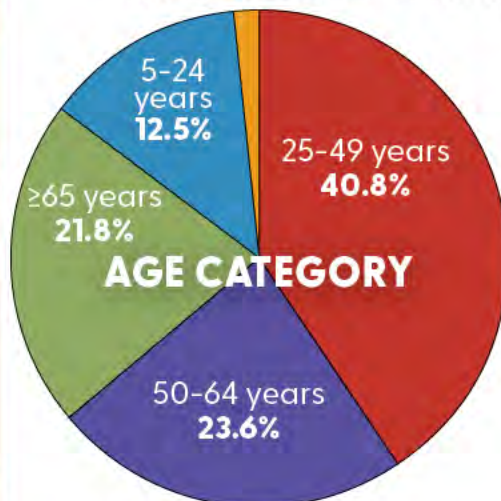


Healthcare Worker (Hospitals and doctor's offices)	2,253
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Long-Term Care Facility Employee	1,031
Long-Term Care Facility Resident	1,695

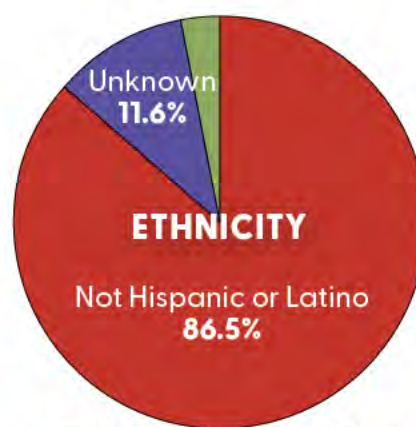
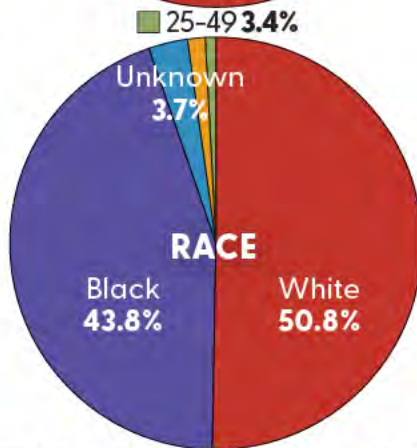
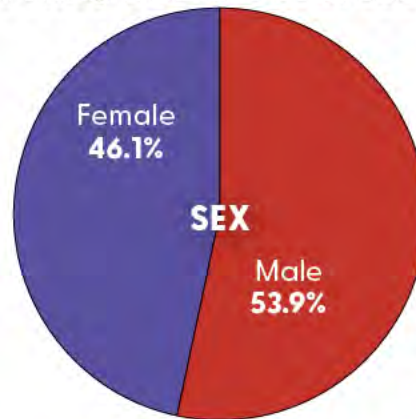
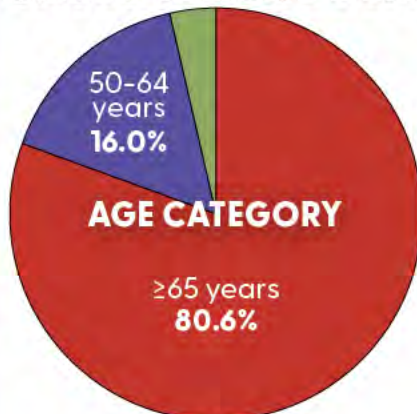
DEMOGRAPHIC CHARACTERISTICS



LABORATORY-CONFIRMED COVID-19 CASE CHARACTERISTICS

ALABAMA
PUBLIC
HEALTH

DEMOGRAPHIC CHARACTERISTICS OF LABORATORY-CONFIRMED COVID-19 CASES WHOSE DEATH HAS BEEN VERIFIED



Other Race 1.2% Asian 0.5% Hispanic or Latino 1.9%

UNDERLYING MEDICAL CONDITIONS FOR LABORATORY-CONFIRMED COVID-19 CASES WHOSE DEATH HAS BEEN VERIFIED

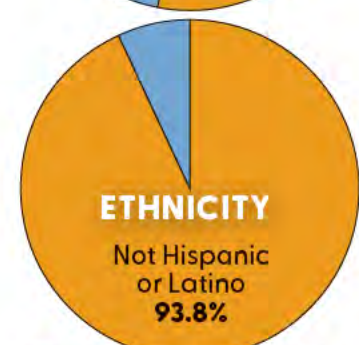
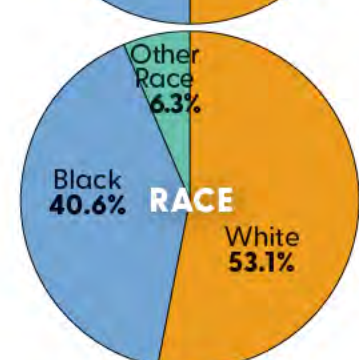
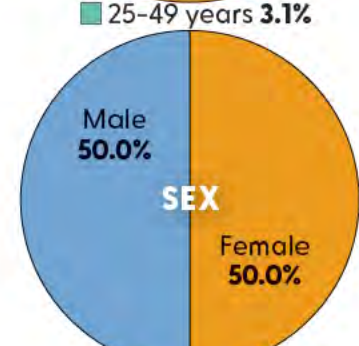
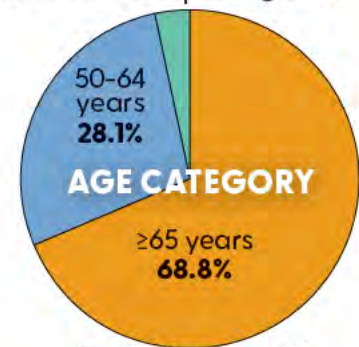
UNDERLYING MEDICAL CONDITIONS	LABORATORY-CONFIRMED COVID-19 CASES	
Cardiovascular Disease	415	64.4%
Chronic Liver Disease	19	3.0%
Chronic Lung Disease	155	24.1%
Chronic Renal Disease	166	25.8%
Diabetes Mellitus	241	37.4%
Immunocompromised Condition	113	17.5%
Multiple Underlying Medical Conditions	351	54.5%
None	32	5.0%
Currently Pregnant	0	0.0%

DEATHS WITH NO UNDERLYING CONDITIONS

TOTAL NUMBER: 32
TOTAL COVID-19 DEATHS: 644

AGE IN YEARS

Median: **72** | Range: **48-96**



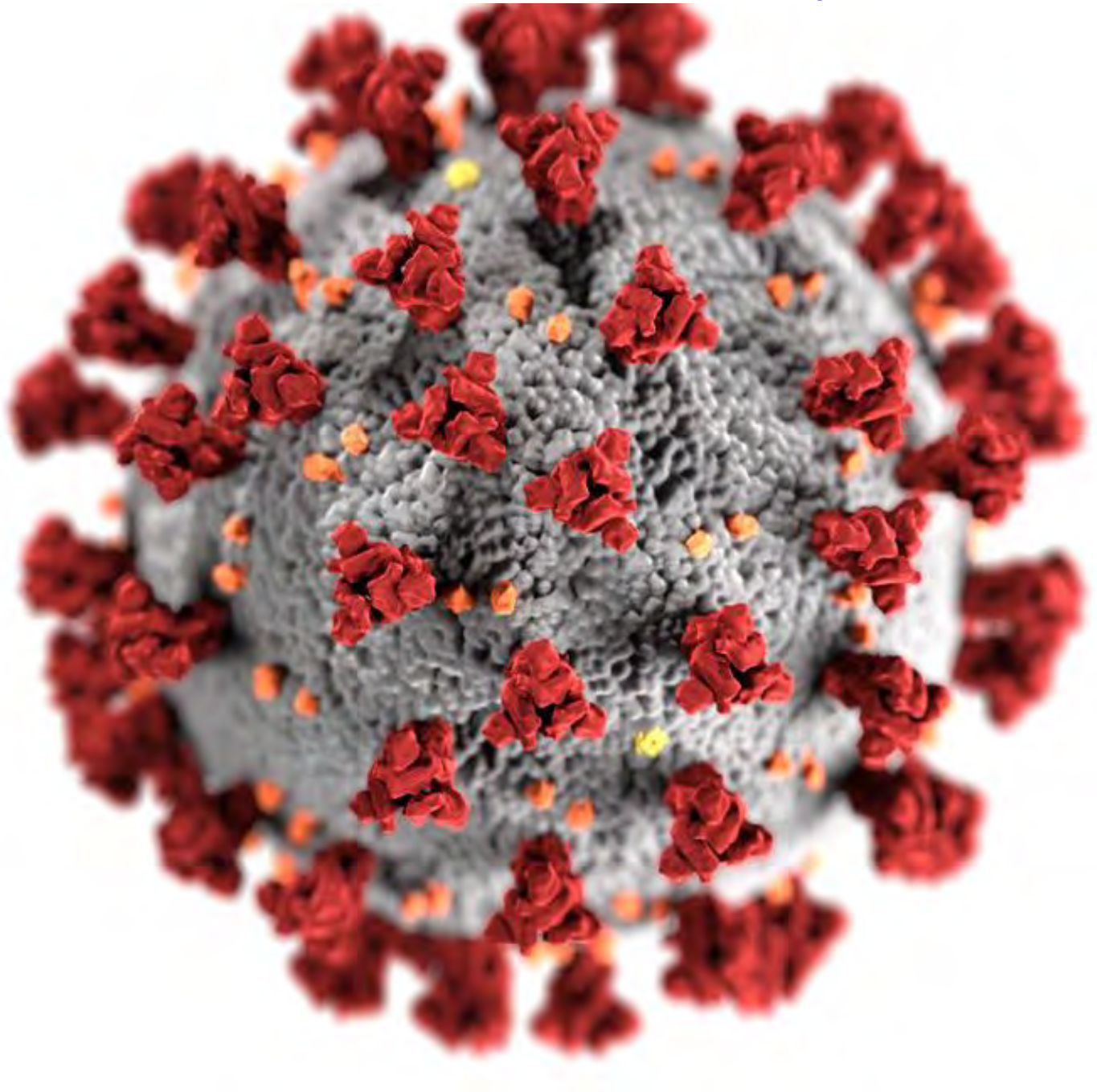
Hispanic or Latino 6.3%

EXHIBIT 69

[News](#)

Alabama adds 526 coronavirus cases since yesterday; 145 from 3 counties; 18,020 statewide

Today 9:48 AM



This illustration, created at the Centers for Disease Control and Prevention (CDC), reveals ultrastructural morphology exhibited by coronaviruses. Note the spikes that adorn the outer surface of the virus, which impart the look of a corona surrounding the virion, when viewed electron microscopically.

497
shares

By [Leada Gore](#) | Igore@al.com

The number of coronavirus cases in Alabama now tops 18,000.

The June 1 9:30 a.m. numbers from the Alabama Department of Public Health shows 18,020 coronavirus cases in Alabama, an increase of 526 from yesterday. ADPH said 9,355 cases are presumed to have recovered.

The state now has 644 COVID-19 deaths, an increase of 16 from the previous day.

Three counties – Montgomery, Tuscaloosa and Mobile – combined for the greatest number of cases at 145. Montgomery added 73 cases, Tuscaloosa 41 and Mobile 31.

The following are the latest county-by-county numbers. The figure in parenthesis is the increase from the previous day.

Autauga – 227 (+11)

Baldwin – 290 (+6)

Barbour – 168 (+17)

Bibb – 76 (+3)

Blount – 63 (+1)

Bullock – 209 (+4)

Butler – 414 (+9)

Calhoun – 162 (+8)

Chambers – 355(+1)

Cherokee – 38 (+1)

Chilton – 101 (+2)

Choctaw – 153 (+2)

Clarke – 145 (+2)

Clay – 27

Cleburne – 15 (+1)

Coffee – 236 (+4)

Colbert – 184 (+5)

Conecuh – 41 (+1)

Coosa – 40 (+2)

Covington – 80 (+2)

Crenshaw – 75

Cullman – 144 (+12)

Dale – 117 (+6)

Dallas – 273 (+10)

DeKalb – 248 (+5)

Elmore – 354 (+11)

Escambia – 66 (+9)

Etowah – 257 (+8)

Fayette – 16 (+1)

Franklin – 558 (+9)

Geneva – 43 (+3)

Greene – 94

Hale – 173 (+14)

Henry – 80 (+5)

Houston – 220 (+9)

Jackson – 78

Jefferson – 1,843 (+33)

Lamar – 26 (+3)

Lauderdale – 164 (+3)

Lawrence – 50 (+2)

Lee – 548 (+7)

Limestone – 108 (+11)

Lowndes – 247 (+8)

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EXHIBIT 70

CORONAVIRUS

Alabama state health officer concerned about ongoing community transmission of COVID-19

This ad will end in 12 seconds

State Health Officer addresses coronavirus impact

By [Sally Pitts](#) | May 26, 2020 at 4:49 PM CDT - Updated May 27 at 5:54 AM

MONTGOMERY, Ala. (WSFA) - The number of coronavirus cases continues to climb in Alabama.

The state recently saw a spike of more than 600 cases in 24 hours.

"We're concerned that we're still seeing some community level transmission," said State Health Officer Dr. Scott Harris.



Harris says the state is seeing hotspots like Montgomery, but he can't pinpoint a reason for the spike in cases.

"We've seen an increase in testing, but I don't think that explains it," he said.

Harris says he has spoken with hospitals, and they are managing the surge in cases.

Meanwhile, he's urging the public to take personal responsibility to social distance and wear a mask in public.

"Wearing a face covering is good manners, and it's a way that you show that you care about other people around you," Harris said.

Could the state see another shutdown?

Harris said we have to be willing to consider that, and right now everyone needs to cooperate to protect themselves and others.

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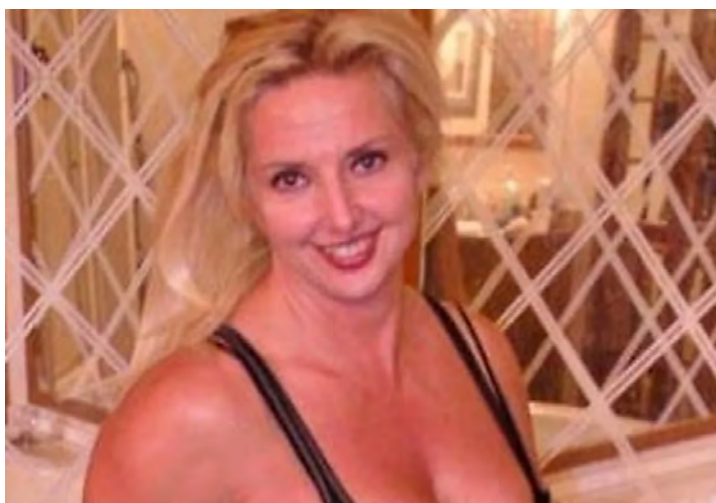
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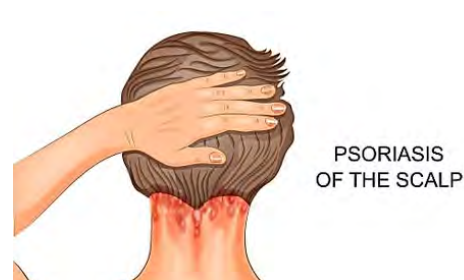
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EXHIBIT 71

Senator And State Health Officer Tackle Complex Slate Of Coronavirus Questions

Posted 05-30-2020



U.S. Sen. Doug Jones had a Facebook Live press conference with State Health Officer Scott Harris on May 28, 2020.

Nick Patterson, BirminghamWatch

By Nick Patterson, BirminghamWatch

U.S. Sen. Doug Jones and Alabama State Health Officer Dr. Scott Harris continued to sound the alarm today about the continuing rise in COVID-19 cases in the state.

In a Facebook Live appearance on Jones' feed, the freshman Democrat and the Republican-appointed health officer said people needed to see beyond politics and commit to social distancing and wearing masks if the state's infection rate is going to drop.

Harris, pointing to coronavirus outbreaks in several parts of the state, said some were spikes traced to particular businesses or health facilities — in Walker and Tuscaloosa Counties, for instance. Other increases, like the high rate of new infections in Montgomery, were not a result of a single location, but clear examples of community spread.

Thus far, Alabama has lost nearly 600 people to coronavirus, with more than 16,500 confirmed cases of the disease. While neither Jones nor Harris called for a return to the stay-at-home order that recently was lifted, both said what happens next depends on how people in the state exercise personal responsibility to slow the spread of the virus.

"Alabama is still seeing a significant number of cases. We have begun to open up ... I think, carefully, and wisely, following the science," Jones said. "And I think the governor has done a very good job of trying to get two messages out. 'Yes we want to open up. We want to get the economy rolling again. But at the same time, we've got to do it safely.'"

"And it's that latter message that I'm not sure folks are hearing as much. You only have to see the pictures from the beaches and other places in Alabama and around the country to see that folks are not quite getting the message that this virus is still out there. It is still dangerous; it's still deadly."

Harris said that this week the state had two record days for diagnosis of coronavirus cases. "We had over 600 cases reported in a single day for the first time. And we certainly understand that some of that can reflect increases in numbers of tests that are being performed, but I certainly don't think that that accounts for all of it. I think we do continue to have disease transmission at a community level throughout many parts of the state. In addition to some hotspots."

Harris said that, as Alabama reopens, people need to be more careful than ever.

“Now we do have people back out in public. We do have the economy opening up again,” Harris said.

“We need to remember that the people who are most at risk for serious disease are our senior citizens or those people who have chronic health problems and, unfortunately, Alabama’s not a healthy state, overall on average.”

Harris urged people, even if they aren’t worried about getting coronavirus themselves, to take precautions to protect others. “We need you to do that for your family, for your community, for your loved ones, those people that you’re going to be around who are affected by your own decision of whether to wear a mask or not, or whether to gather or not. ... It’s important that we all do this together if we’re going to get through this,” Harris said.

More than 5,400 of Alabama’s confirmed COVID-19 cases have happened in the past two weeks, which is almost a third of the state’s total. “That shows that this virus is still in our community. It’s community spread,” Jones said.

“The other thing I want people to remember, too, is this is not just a senior citizens’ virus. It affects everybody,” he said.

“Quite frankly it’s somewhat galling, I think, the cavalier attitude that I see with regard to some of our younger folks and some public officials with regard to the health of our senior citizens.”

More Testing Needed

Jones said that Congress is putting money into funding the development of more COVID-19 tests, faster tests and cheaper tests to make sure more people can be tested on an ongoing basis.

Harris agreed that more and better tests were needed, adding that the next hurdle is to make testing more accessible. “We need to have testing available at the place people go to get their health care routinely,” he said.

“Right now there are definitely barriers, particularly in some of our more rural communities, where if you maybe don’t have good access to health care or if you have access at a clinic and then perhaps you get referred for a COVID test, then you have to find a ride to get to another location where the testing’s going

on,” he said. “And the testing may not even be available every day of the week Clearly those are barriers and hamper our ability to get people tested.

He said there is a need for more rapid result point-of-care tests, so that people can be tested immediately on their first trip to a doctor or clinic and learn the results within 15 minutes or so.

Harris said another goal is to screen the population in general — not just those who have symptoms.

“Just the huge scale of that testing is something logistically we haven’t figured out yet. But that’s really our goal,” he said.

Second Wave and Balance

Harris said that while it’s difficult to predict the timing or shape of a second wave of infections, previous respiratory pandemics offer some guidance. But, he said, this is called a “novel coronavirus” because it has never been seen before.

The biggest need to prevent that second wave is to change people’s behavior so they respect social distancing guidelines, Harris said.

“If we could wave a wand and everybody literally stayed home for a month and nobody had any interaction, we would all be through with this in a month,” Harris said. “But clearly that’s not realistic because people do have to get out for certain things, but also because some people just haven’t taken it quite seriously enough yet.”

Harris said there is no magic number that would trigger a reversal of the reopening efforts. “Clearly, numbers are very concerning to us as we see deaths, as we see clusters of infections or hotspots,” he said. “There are a whole lot of factors that have to be considered.”

Harris said the governor has to balance concerns.

“Protecting the health and safety of people is what we do, and I know the governor respects that,” Harris said. “At the same time, she does have other factors that have to be considered, and so trying to balance all those public health interests with economic interests and other interests is a very difficult thing for her to do and we just try to support her in the best way we can with the information we have.”

Government Response

While Jones criticized early efforts at dealing with coronavirus — laying some blame at the feet of China, the WHO and the Trump administration —he said that government is working to alleviate suffering caused by the pandemic.

Jones said Congress is working on how to aid American workers who have lost their jobs in the pandemic. The latest \$3 trillion coronavirus relief package was passed by the House two weeks ago but is not likely to get approval in the Senate.

“It is not a perfect bill ... I do think it is a starting point that we need to be talking about as soon as we get back to Washington next week,” he said.

He cited the Paycheck Security Act he introduced, which he said may get into the next package the Senate considers.

“That bill, if passed in one form or another, would give ... businesses the opportunity to keep people on their payrolls, provide them benefits. It would use the IRS payroll structure ... to get tax credits, refundable tax credits almost immediately to help with their liquidity, and it would really provide that cushion that is necessary for businesses to keep people on the payroll but bring them back to work in a phased-in way that they can do it safely for both the business, their employees and their customers. The whole goal in that is to save lives but also save livelihoods and to save these businesses.”

Jones also said that unemployment benefits need to be modified in light of evidence that some unemployed workers have been making more on unemployment than they did on the job. The federal government has been paying an extra \$600 toward weekly unemployment payments. That provision is set to expire at the end of July if it is not renewed.

“We don’t want to give people the incentives to stay on the unemployment rolls,” he said.

Jones also noted that there is another potential unemployment problem looming “if we don’t do something for city and county governments. Right now, these city and county governments are just hanging on by a thread. They are losing revenue and at some point, it’s going to catch up to them and they’re going to have to start laying off essential workers like firemen, police officers,” he said.

Jones said he hoped the next relief package gives “some robust funding for city and county governments to be able to use this in an appropriate way.”

Jones also said he hopes to see Congress get money to hospitals and health care specialists to prevent pay cuts and layoffs and to the U.S. Postal Service.

Upcoming Elections

He said government does have to take the lead role in the upcoming elections.

He said that Alabama ought to consider ways of making absentee balloting easier. Alabama has instituted rules for the July 14 party runoffs that added coronavirus to the list of valid reasons a person could vote absentee. But no decision has been made about whether to extend that to the November election, and several groups have mounted legal challenges claiming that the requirements for absentee voting create major obstacles for thousands of Alabamians.

One of the reasons cited for avoiding mail-in voting is the possibility of voter fraud. But Jones played down those concerns, saying that there has been little to substantiate fears of wide-scale voter fraud on a statewide level for many years.

He said that, with technology, Alabama could institute safe and secure absentee balloting and even put measures in place for early voting at limited polling places where social distancing is observed. He said that whether the government will abdicate its responsibility in that matter remains to be seen.

EXHIBIT 72

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

PEOPLE FIRST OF ALABAMA, et al.,

Plaintiffs,

v.

JOHN MERRILL, et al.,

Defendants.

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

SUPPLEMENTAL DECLARATION OF DR. ARTHUR L. REINGOLD

1. I, Arthur L. Reingold, make the following supplemental declaration in support of Plaintiffs' Motion for a Preliminary Injunction:

2. As stated in my initial declaration dated May 7, 2020, the COVID-19 virus "is spread through droplet transmission," such as "when an infected individual speaks, coughs, sneezes[.]" A recent study confirms that talking not only spreads these droplets, but also that "loud speech can emit thousands of oral fluid droplets per second" which can linger in a closed, stagnant air environment for 8 to 14 minutes.¹ This study further confirms my opinion that the increased risk of exposure posed by closed air environments, like polling places, and the need for safe alternatives to voting, such as those proposed by the CDC, that minimize person to person contact.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 30, 2020.



Dr. Arthur L. Reingold

¹ Valentyn Stadnytskyi, et al., *The airborne lifetime of small speech droplets and their potential importance in SARS-CoV-2 transmission*, Proceedings of the National Academy of Sciences of the United States (PNAS), May 13, 2020, available at <https://www.pnas.org/content/early/2020/05/12/2006874117>