

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Treva Thompson, Timothy Lanier,	)	
Pamela King, Darius Gamble,	)	
and Greater Birmingham Ministries,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No.
v.	)	2:16-cv-783-ECM-SMD
	)	
John H. Merrill, in his official capacity	)	
as Secretary of State, Cindy Sahlie, in	)	
her official capacity as Chair of the	)	
Montgomery County Board of Registrars,	)	
and Leigh Gwathney, in her official	)	
capacity as Chair of the Board of Pardons	)	
and Paroles,	)	
	)	
Defendants.	)	

**CHAIR GWATHNEY’S OPPOSITION TO
PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION (DOC. 215)**

Nearly four years after filing this case, doc. 1, and while discovery should be wrapping up, U.S.O., doc. 195 at § 7, Plaintiffs Thompson, Gamble and Greater Birmingham Ministries have moved for a preliminary injunction, doc. 215. They seek to “enjoin Alabama Code Section 15-22-36.1(a)(3) as applied to those who lack the ability to pay their” court-ordered monies. Doc. 215 at 31. They want immediate relief for the August 2020 municipal elections, *id.* at 5, 31, (as to which it is already too late) and the November 2020 federal, State, and county General Elections, *id.* at 5 (as to which it is likely too late to provide relief in a responsible manner).

Plaintiffs demand relief now on the basis of *Jones v. Governor of Florida*, 950 F.3d 795 (11th Cir. 2020) (*per curiam*), suggesting that Chair Gwathney’s hopes of overturning that decision have been dashed by the denial of *en banc* review, doc. 215 at 5. However, *Jones* was an appeal of a preliminary injunction, and an expedited appeal from the final judgment is already pending.

More importantly, and for the reasons set out below, even while *Jones* is binding as to the different facts there, the decision is weak and does not take Plaintiffs over the finish line. The motion for preliminary injunction should be denied.

I. BACKGROUND: THE FLORIDA LITIGATION

In the unusual circumstances presented, it makes sense to start with a brief discussion of the Florida litigation before moving into the details of this case.

In November 2018, Florida voters adopted a constitutional amendment (Amendment 4) that automatically re-enfranchises most felons “upon completion of all terms of sentence.” *Jones*, 950 F.3d at 800; Fla. Const. art. VI, § 4. The Florida Legislature enacted implementing legislation which, pertinent here, said that completing the sentence includes satisfying the financial terms of the sentence. *Jones*, 950 F.3d at 803. In response to the Governor’s request for an advisory opinion, the Supreme Court of Florida agreed, holding that “‘all terms of sentence’ encompasses not just durational periods but also all” “fines, restitution, costs, and fees” “imposed in conjunction with an adjudication of guilt.” *Advisory Opn. to the Governor re: Implementation of Amendment 4, The Voting Restoration Amendment*, 288 So. 3d 1070, 1072 (Fla. 2020) (*per curiam*).

Federal court plaintiffs moved for a preliminary injunction arguing that the requirement amounted to, *inter alia*, wealth discrimination in violation of the Equal Protection Clause. *Jones v. DeSantis*, 410 F. Supp. 3d 1284, 1289-90 (N.D. Fla. 2019). The district court correctly determined as follows:

So a state can properly disenfranchise felons, even permanently, and if the state decides to restore the right to vote to anyone, the state can exercise discretion in choosing among the candidates. Consistent with this considerable leeway, a state can rationally choose to take into account not only whether a felon has served any term of imprisonment and supervision but also whether the felon has paid any financial obligation included in the sentence. A state can rationally decide that the right to vote should not be restored to a felon who is able to pay but chooses not to do so. Indeed, a state’s decision not to restore the vote to such a person survives

even strict scrutiny, so long as it is recognized, as *Richardson [v. Ramirez]*, 418 U.S. 24 (1974)] requires, that the Constitution affirmatively allows disenfranchisement.

Jones, 410 F. Supp. 3d at 1300. Plaintiffs in this case are not asking for preliminary injunctive relief for felons who can afford to pay their court-ordered monies. Doc. 215 at 31.

With respect to those unable to pay, the *Jones* court concluded that Florida must “put in place an appropriate procedure through which an individual plaintiff may register and vote if otherwise qualified and genuinely unable to pay outstanding financial obligations.” *Jones*, 410 F. Supp. 3d at 1303. “When a felon claims inability to pay, the State need not just take the felon’s word for it. The State may properly place the burden of establishing inability to pay on the felon and, to that end, may put in place an appropriate administrative process. That this places a greater burden on the felon claiming inability to pay than on felons with no unpaid obligations is unavoidable and not improper.” *Id.* Importantly, the court entered a preliminary injunction in favor of only the 17 individual plaintiffs. *Id.* at 1310-11. Nowhere did the court explain what genuine inability to pay looks like, or how many elections a felon *who can afford to pay* may constitutionally miss while paying the legal financial obligations imposed due to a felony conviction.

On appeal, the Eleventh Circuit noted that “Each plaintiff is a felon who has alleged that he or she would be eligible for re-enfranchisement under Amendment 4 but for non-payment of outstanding [legal financial obligations]. Each plaintiff has also alleged that he or she is *indigent* and, therefore, *genuinely unable* to pay those obligations.” *Jones*, 950 F.3d at 800 (emphasis added); *see also id.* at 811 (“for *these* seventeen plaintiffs, who are indigent and genuinely unable to pay despite good faith efforts”). The Eleventh Circuit recognized that the preliminary injunction was limited to the named plaintiffs, *id.* at 805, 807, and even rejected a State interest in avoiding the burden of developing an administrative process to implement the district court’s injunction

because it only applied to the 17 plaintiffs and not to thousands more alleged to be similarly situated, *id.* at 813. The Eleventh Circuit recognized that “the [district] court did not define the term ‘genuine inability to pay,’ again leaving it to the State to make a reasonable, good faith determination of how it could implement that term consistent with the court’s order.” *Id.* Indeed, Florida “is free to consider any reasonable factors including current assets and liabilities, income, and *bona fide* efforts the felon has made to pay.” *Id.* at 830. The appellate court never made a determination about whether the Plaintiffs were genuinely unable to pay, *see id.* at 816 (“the plaintiffs in this case, *if* they are genuinely unable to pay”) (emphasis added), and the court never articulated a standard for making such a determination.

The bulk of the Eleventh Circuit’s opinion is spent on determining the standard of review (the Court settled on strict scrutiny) and offering *dicta* about whether Florida’s scheme would survive under the rational basis review it rejected. *Jones*, 950 F.3d at 807-25. During the course of its discussion, the Court raised facts about Florida that are not present in this record. For instance, Florida converts criminal monies owed to civil liens if a felon is unable to pay, and these liens are part of what must be paid under Florida’s implementing legislation. *Id.* at 803 & n. 4. Additionally, 80.5% of felons had outstanding legal financial obligations due and nearly 60% owed at least \$500. *Id.* at 815. While Plaintiffs in this case rely on the same expert who presented those findings in Florida, as set out below, his Alabama analysis is critically flawed. The Court also noted a Florida Court Clerks and Comptroller’s 2018 Annual Assessments and Collections Report and general information about legal financial obligations scheme, like a mandatory fine of up to \$750,000. *Id.* at 816. There is nothing comparable in the record in this case. In fact, Alabama has a general fine schedule that tops out at \$60,000; specific crimes may carry higher fines. Ala. Code § 13A-5-11.

The Florida district court certified a plaintiff class in early April. *Jones v. DeSantis*, Case No. 4:19-cv-300-RH-MJF, doc. 321 (N.D. Fla. April 7, 2020). The case was tried in late April and early May, *Jones v. DeSantis*, Case No. 4:19-cv-300-RH-MJF, docs. 387, 390, 392, 399, 401, 407, 410, 418 (N.D. Fla. 2020) (minute entries for 8 days of trial). The district court rendered its decision in late May, *Jones v. DeSantis*, ___ F. Supp.3d ___, 2020 WL 2618062 (N.D. Fla. 2020), days before the Plaintiffs filed their motion for preliminary injunction in this case.

As Plaintiffs’ note, the district court “create[d] a rebuttable presumption of inability to pay for individuals that had an appointed attorney or [were] granted indigent status in the last proceedings that resulted in a felony conviction or [who] submit an affidavit of inability to pay.” Doc. 215-30 n. 13 (internal citations and quotation marks omitted). The first elements of this standard – appointed counsel and indigent status – speak to events that may be years or decades stale, and not necessarily to current ability to pay. The latter – an affidavit – appears contrary to the court’s earlier assertion that “the State need not just take the felon’s word for it.” *Jones*, 410 F. Supp. 3d at 1303.

The Florida Governor and Secretary of State promptly appealed. *Jones v. DeSantis*, Case No. 4:19-cv-300-RH-MJF, doc. 422 (N.D. Fla. May 29, 2020). They moved to expedite their appeal, and that motion has been granted. *Jones v. DeSantis*, No. 20-12003 (11th Cir. 2020). The Governor and Secretary also petitioned for initial hearing *en banc*, and nine States (including Alabama) have filed an *amicus* brief in support of that petition. *Id.* Plaintiffs’ response to the petition for initial hearing *en banc* is due at the end of week. *Id.*

II. BACKGROUND: THIS LITIGATION

The United States Constitution expressly approves of the right of a State to disenfranchise felons. *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974); *see also Jones*, 950 F.3d at 801

(“Regardless of the political trend toward re-enfranchisement, there is nothing unconstitutional about disenfranchising felons—even all felons, even for life.”). Alabama has long done so. The 1868 and 1875 Constitutions disenfranchised all felons and those convicted of some additional crimes. Constitution of 1868 at art. VII, § 3; Constitution of 1875 at art. VIII, § 3. The 1901 Constitution disenfranchised all felons and a laundry list of others. *Hunter v. Underwood*, 471 U.S. 222, 223 n. ** (1985). Some of that laundry list were selected on the theory that the crimes were more likely to be committed by blacks and poor whites. *Id.* at 229-33. Over the years, portions of the 1901 provision were stricken. *E.g., id.* at 225 (holding the provision unconstitutional insofar as applied to misdemeanants); *Hobson v. Pow*, 434 F. Supp. 362, 367 (N.D. Ala. 1977) (holding that the “assault and battery on the wife” clause violates Equal Protection). Still, at a minimum, all felonies remained disenfranchising until the State took affirmative action. In 1996, Alabama voters repealed the 1901 Suffrage and Elections Article and replaced it with one that, *inter alia*, provided that only felonies involving moral turpitude are disenfranchising. Docs. 43-1 & 43-3; Ala. Const. art. VIII, § 177. In 2017, Alabama enacted a statute listing (and limiting) which felonies involve moral turpitude for voting purposes. Ala. Act No. 2017-378; *see also* Ala. Code § 17-3-30.1.

In addition to casting aside any racist elements of the 1901 Suffrage and Elections Article and limiting who is disenfranchised, Alabama has further taken steps to restore voting rights. In 2003, Alabama created a new Certificate of Eligibility to Register to Vote, which made it possible for some disenfranchised felons to get their voting rights back without going through the more time-consuming and discretionary pardon process. Ala. Act No. 2003-415. Recently, Alabama revised the CERV process with an eye toward making it easier and faster. Ala. Act No. 2016-387; *see also* Ala. Code § 15-22-36.1.

As it stands now, and as pertinent here, to be eligible for a CERV, the felon must have “paid all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on the disqualifying cases.” Ala. Code § 15-22-36.1(a)(3). In Count 13, Plaintiffs Thompson, Gamble and Greater Birmingham Ministries challenge this requirement as wealth-based discrimination. Doc. 1 at ¶¶ 245-52; doc. 93 at ¶¶ 65-69. This Count is brought only against Chair Gwathney.¹ Doc. 1 at ¶¶ 245-252; doc. 93 at ¶¶ 65-69.

A. Restoration of Voting Rights through Pardons and CERVs.

Section 177(b) of the Alabama Constitution provides that “No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote *until restoration of civil and political rights* or removal of disability.” Ala. Const. art. VIII, § 177(b) (emphasis added). When that provision was adopted in 1996, the Alabama Board of Pardons and Paroles had “the authority and power, after conviction and not otherwise, to grant pardons and paroles and to remit fines and forfeitures” “[i]n all cases, except treason and impeachment and cases in which sentence of death is imposed and not commuted.” Ala. Code § 15-22-36(a). The ABPP has the same power today. *Id.* “Between January 1, 2015 and April 30, 2020, the Board of Pardons and Paroles held 4,083 pardon hearings and granted a pardon about 75% of the time, resulting in 3,080 pardons.” **Exhibit 1** at 4-5 (Interrogatory No. 1).

The ABPP has produced additional evidence about the pardon process in the form of its testimony pursuant to Fed. R. Civ. P. 30(b)(6), and that transcript *sans* exhibits has already been filed with the Court as doc. 211-5. Eddie Cook was, at the time of the testimony, the Executive Director of the Board, and he had previously spent about nine months serving on the Board. Doc.

¹ Leigh Gwathney became the Chair of the Alabama Board of Pardons and Paroles in October 2019 and was substituted as a defendant in this case pursuant to Fed. R. Civ. P. 25(d). Doc. 172.

211-5 at 17:9-11; *id.* at 20:9-12. He testified that monies owed is one important factor the Board Members consider in determining whether to grant a pardon, *id.* at 31:14-32:8, 48:12-51:2, 56:8-11, 57:22-58:5, and he explained at least some of the reasons why it is important that the felon have paid his monies due, or “made great efforts to pay that,” *id.* at 45:15-46:8; 99:9-23. For instance, it indicates rehabilitation, *id.* at 45:15-46:8, as well as remorse and a desire to do right, *id.* at 99:9-23.

Owing monies is not a disqualifier that will prevent a felon from even being considered by the Board. Doc. 211-5 at 37:2-38:19; *id.* at 42:19-43:13. Mr. Cook testified that the Board has sometimes denied pardons because of monies owed, *id.* at 59:7-13, but Plaintiffs’ counsel did not follow up for any details, *id.* at 93:16-94:3. During Mr. Cook’s service on the Board, there were a “few cases” where pardons were denied *despite* monies due where “the person had shown a history of continuous paying for years.” *Id.* at 71:9-12, 72:14-22.

Chair Gwathney has produced evidence in this case of a pardon and remission where significant court-ordered monies were due. In 1998, Odeana Fields was convicted of trafficking in cocaine. **Exhibit 2** at 5. He was sentenced to 30 years and fined \$50,000, as well as ordered to pay \$2,000 in other assessments. *Id.* In 2014, the District Attorney filed a motion to remit the DA collection fee balance, *id.* at 6, which the State court granted, *id.* at 7. The ABPP “granted Mr. Fields a pardon and remitted his trafficking fine in full (\$48,289.16)” *Id.* at 8; *see also id.* at 9-12.

Separate from pardons, in 2003 that Alabama Legislature affirmatively created the new CERV process specifically to restore the voting rights of selected felons, and in 2016 it revised the process. Ala. Code § 15-22-36.1. A CERV is available only to felons who meet certain requirements. They must have been convicted of a felony of moral turpitude, Ala. Code § 15-22-

36.1(a)(1), but not one of the enumerated felonies deemed too heinous to allow participation in the CERV program, Ala. Code § 15-22-36.1(a)(1) & (g).² The felon must not have any “criminal felony charges pending against him or her in any state or federal court,” Ala. Code § 15-22-36.1(a)(2), and must have been “released upon completion of sentence,” have been pardoned, or have “successfully completed probation or parole and ha[ve] been released from compliance by the ordering entity,” Ala. Code § 15-22-36.1(4)(a)-(c). Additionally, and pertinent here, the felon must have “paid all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on disqualifying cases.” Ala. Code § 15-22-36.1(a)(3). Thus, in order to be eligible for a CERV, a felon need not first pay court-ordered monies due on felonies that do not involve moral turpitude, court-ordered monies due on misdemeanors, or any post-sentence fees. *See id.*

The CERV program is not required by the federal or State Constitutions; it was enacted by statute as a matter of sovereign grace. It is also not automatic. Felons seeking restoration of their voting rights must apply for a CERV and await ABPP’s determination of whether they meet the requirements set out in Ala. Code § 15-22-36.1(a). If these requirements are met, the CERV is issued; CERV’s are not discretionary the way pardons are. Ala. Code § 15-22-36.1(b). The ABPP is statutorily required to issue the CERV or issue a letter of denial by the 44th day after the felon has applied. Ala. Code § 15-22-36.1(c)-(f); *see also* Decl. of Effie Hawthorne, **Exhibit 3**, at ¶ 4.

² The felonies the disqualify one from the CERV process are: “Impeachment, murder, rape in any degree, sodomy in any degree, sexual abuse in any degree, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason.” Ala. Code § 36.1(a)(1) & (g).

B. Treva Thompson.

Plaintiff Thompson pled guilty to theft of property in the first degree in 2005. Doc. 1 at ¶ 38; Deposition of Treva Thompson, **Exhibit 4**, 13:5-14. As a result of the plea, she avoided jail, but spent five years on probation and was required to pay nearly \$36,000 in *restitution*. **Exhibit 4** at 18:10; doc. 215-4 at 6 (reflecting R001 in the amount of \$2,500.00 and R002 in the amount of \$33,465.06, for a total of \$35,965.06).³ There were some other minor assessments as well, doc. 215-4, and Thompson was later assessed a DA collection fee of \$10,124.12⁴ when she failed to comply the terms of the plea agreement with regard to paying the court-ordered monies. **Exhibit 4** at 32:5-10; doc. 215-4 at ¶ 5; doc. 215-4 at 10 (D999 Amount). In 2017, Thompson's income was approximately \$13,500. **Exhibit 4** at 34:5-8. In 2019, her income was approximately \$26,929, doc. 215-4 at ¶ 6, or about double her 2017 income. She is not indigent. Nonetheless, she has not made a payment toward her court-ordered monies in nearly five years. Doc. 215-4 at 10 (Last Paid Date); *see also* **Exhibit 5** at 5 (Interrogatory No. 9).

Thompson helps support her children and her seven grandchildren, but her children are grown and she has not said she has custody of (and thus legal responsibility for) any of her grandchildren. **Exhibit 5** at 5-6 (Interrogatory No. 10); doc. 215-4 at ¶ 7; **Exhibit 4** at 32:23-33:1; 34:12-13. She says she “likely spend[s], at most, \$150 a month” on purchases for her children and grandchildren, and that she makes payment on a loan for which she co-signed. **Exhibit 5** at 5-6 (Interrogatory No. 10). When she recently received \$2,200 in the form of an Economic Impact Payment, **Exhibit 5** at 4 (Interrogatory No. 7), she spent it on car repairs and payments to creditors,

³ *See also* Ala. Code § 15-18-65 (Legislative findings and purpose); Ala. Code § 15-18-67 & Ala. Code § 15-18-69 (hearings and findings); Ala. Code § 15-18-68 (criteria for determining restitution).

⁴ This DA collection fee is a post-sentencing fee and thus need not be paid in order for Thompson to be eligible for a CERV. Ala. Code § 15-22-36.1(a)(3).

Exhibit 5 at 6 (Interrogatory No. 11), but made no payment on her court-ordered monies.⁵ In short, she prioritizes other expenses over the court-ordered monies that she agreed to pay as part of a plea deal that kept her out of jail.

Of note, Plaintiffs’ counsel objected to interrogatories about Thompson’s ability to pay, **Exhibit 5** at 4-5 (Interrogatory Nos. 7 & 10), and claimed that an interrogatory asking why Thompson’s alleged inability to pay is wholly beyond her control was “vague, irrelevant, and harassing,” *id.* at 8 (Interrogatory No. 21). *Cf. Jones*, 950 F.3d at 813 (“The district court’s preliminary injunction leaves the State ample discretion in designing the procedure to be used to provide an opportunity for these plaintiffs (and others) to demonstrate their indigency and inability to pay for reasons beyond their control.”); *id.* at 817 (referring to “best efforts” to pay and inability to do so “for reasons beyond their control”); *id.* at 822 (“on account of their indigency and inability to pay for reasons wholly beyond their control”).

Finally, Thompson’s new declaration has her now swearing to facts she did not remember at her September 2018 deposition (though they were discussed in a then-recent declaration) and identifying a related document that, again, she swore at her deposition that she did not remember. *Compare* doc. 215-4 at ¶ 4 and doc. 215-4 at 7 with **Exhibit 4** at 22:8-24:3 (does not remember attempting to register to vote in 2015 or her then-current declaration discussing it); **Exhibit 4** at 26:21-29:8 (remembers the declaration but does not understand attempting to register and does not recognize Exhibit 4 to the deposition, a document attached to her new declaration). When Plaintiffs’ counsel attempted to set things straight on cross-examination, things only got worse. Counsel asked: “With respect to the declaration that you signed that we reviewed earlier today

⁵ She also did not spend that money on the “medical procedure” she says she needs. *Compare* doc. 215-4 at ¶ 8 with **Exhibit 5** at 6 (Interrogatory No. 11).

that's marked Exhibit Two, at the time before you signed this, did you make sure you understood what it said and whether or not it was true?" **Exhibit 4** at 44:13-18. Thompson's answer was: "Not really. I'm pretty sure I just glanced [over] it, and for the most part, most of it looked pretty accurate." *Id.* at 44:19-21. Under these circumstances, this Court should not assume that, 21 months later, Thompson now remembers these events more clearly. Thompson should not be granted relief without first testifying in person so that this Court may ascertain *her* testimony.

C. Darius Gamble.

In 2006, Plaintiff Gamble was pulled over by the DEA and found to be in possession of more than \$10,000 in cash and a registered 380 pistol. Deposition of Darius Gamble, **Exhibit 6**, at 20:8-21:4; 33:23-35:12. At the time, there was approximately 30 or 35 pounds of cannabis on the way to his house *via* mail. *Id.* at 27:6-14; 29:15-17. In early 2008, Gamble entered into a plea agreement, doc. 215-10 at 14, and was sentenced accordingly, doc. 215-10 at 15. Specifically, he was sentenced to 10 years which was split with three years to serve and the remainder suspended for five years of supervised probation. *Id.* He had spent some time in jail after his arrest, and was thus released in 2009, having served his three years. **Exhibit 6** at 30:11-31:14. He then served his five years on probation. *Id.* at 35:20-22.

In addition to the time in custody and on probation, Gamble was sentenced to pay a \$50,000 fine and some minor assessments.⁶ Doc. 215-10 at 15. The plea agreement and then the sentencing order provided that all the court-ordered monies were due by February 11, 2016; otherwise, a 30% collection fee would be added "and the District Attorney shall pursue collection." Doc. 215-10 at

⁶ See also Ala. Code § 13A-5-2(b) (authorizing a sentence of a fine in addition to imprisonment); Ala. Code § 13A-5-11 (generally applicable caps on fines for felonies, if no specific statute provides otherwise).

14-15. February 2016 was eight years after sentencing, *id.*, and more than six years after Gamble was released from prison in 2009, **Exhibit 6** at 30:20-22; 49:7; 50:4-5.

Shortly after his release, Gamble started making payments of \$50 toward his court-ordered monies, but his monthly payments dropped to \$25 in July 2016. *See State of Alabama v. Darius L. Gamble*, Case No. CC-2006-001468.00 (Shelby Co. Circuit Court); *see also* **Exhibit 6** at 49:7-12; 52:12-16. After the February 2016 deadline had rolled by without Gamble having met his commitment, the DA collection fee was added, and someone reached out to Gamble to see how much he could pay. **Exhibit 6** at 56:19-58:13. That conversation resulted in Gamble paying only \$25 per month. *Id.* at 56:19-58:13. Gamble testified in deposition that he was originally paying \$50 per month because that was the court order, *id.* at 54:12-14, and that he is now paying \$25 per month because it was negotiated that way, *id.* at 58:10-13; *see also* doc. 215-6 at ¶ 12; **Exhibit 7** at 7 (Interrogatory Nos. 17 & 18). Of course, before anyone agreed to accept \$25 per month, Gamble agreed to pay in full by February 2016 and did so as part of a plea agreement to resolve his arrest. Doc. 215-10 at 14-15.

Last year, Gamble wrote to the State court of conviction. Docs. 215-6 at 13-15. The local District Attorney's office understood Gamble to be asking that his fine be remitted, and an ADA filed an opposition to that request. Doc. 215-10 at 2. The DA's response also indicated that the statute pursuant to which Gamble pled and was sentenced carried a fine of \$25,000, not \$50,000. Doc. 215-10 at 3-4, 8-11.⁷ The DA moved, "in the ends of justice and fairness" that the fine be reduced from \$50,000 to \$25,000 and that the collection fee (which is a percentage of the balance)

⁷ Plaintiffs' assertion that Gamble was "pleaded . . . under the wrong statute," doc. 215 at 9, is not supported by the evidence they filed. The felony plea agreement says Gamble was pleading to a violation of Ala. Code § 13A-12-231(1)(a). Doc. 215-10 at 14. The District Attorney's filing says the same, doc. 215-10 at 2-4, and also that the mandatory fine under that section is \$25,000, doc. 251-10 at 3, 9; *see also* Ala. Code § 13A-12-231(1)(a).

likewise be reduced. Doc. 215-10 at 8-11. The State court granted the DA's motion. Doc. 215-6 at 17. Gamble currently owes \$23,861 on his fine and \$80 in other assessments. **Exhibit 7** at 3 (Interrogatory No. 2); *See State of Alabama v. Darius L. Gamble*, Case No. CC-2006-001468.00 (Shelby Co. Circuit Court).⁸

Gamble also owes nearly \$6,000 on the DA collection fee. *See State of Alabama v. Darius L. Gamble*, Case No. CC-2006-001468.00 (Shelby Co. Circuit Court). That money need not be paid before he is eligible for a CERV. Ala. Code § 15-22-36.1(a)(3) ("at the time of sentencing").⁹ However, Gamble's monthly payments are being applied to the DA collection fee. *See State of Alabama v. Darius L. Gamble*, Case No. CC-2006-001468.00 (Shelby Co. Circuit Court). The Alabama Administrative Office of Courts created a form, which Plaintiffs filed, doc. 215-2, to assist felons in having the application of their payments reprioritized. Gamble has never requested reprioritization. *State of Alabama v. Darius L. Gamble*, Case No. CC-2006-001468.00 (Shelby Co. Circuit Court). In response to an interrogatory, Gamble "explains" that he does not think he can use the form because he is not currently applying for a CERV because he is ineligible due to the court-ordered monies he owes. **Exhibit 7** at 7 (Interrogatory No. 16). Thus, he understands the form to be a nullity insofar as it may only be used by persons who have no need for it.

⁸ Gamble said he wrote the State court because the ABPP told him to in connection with his application to the ABPP for remission. Doc. 215-6 at ¶ 8. Plaintiffs' insinuation that Gamble's application, which remains pending, was fast-tracked as a result of privileged emails between client and counsel filed as doc. 215-7, is also unsupported by the evidence they filed. The emails are redacted, doc. 215-7, and so Plaintiffs are merely speculating. Their insinuations are entirely beside the point, but Chair Gwathney will produce the un-redacted emails *in camera* if the Court would like to see them. They are, in fact, evidence only that counsel communicate with their client.

⁹ Plaintiffs have filed a 2014 letter from the ABPP to Gamble which says he is ineligible for a CERV because he must pay "all of [his] court fees, restitution and probation fees." Doc. 215-6. This is plainly a form letter since Gamble was never ordered to pay restitution. In any event, the law changed in 2016 to limit which fines, fees, court costs and restitution must be paid to be eligible for a CERV. *See* Ala. Act No. 2016-387, *codified at* Ala. Code § 15-22-36.1.

As Gamble continues to pay the DA collection fee, and make no progress whatsoever on the underlying criminal fine, he is earning \$72,599 annually, **Exhibit 7** at 4 (Interrogatory No. 4). That amount reflects a raise of more than \$4,000 since his deposition, **Exhibit 6** at 60:16-17, though his payments on his court-ordered monies have not changed during that time. Gamble is clearly paying as little as he is allowed, rather than as much as he can, *i.e.*, making best efforts.

In January 2020, Gamble had about \$2,500 in a savings account. **Exhibit 7** at 4 (Interrogatory No. 8). Since he purchased his home in February 2014, he has made approximately \$3,500 in extra payments on the principal. *Id.* at 6 (Interrogatory No. 13). Indeed, at his deposition it was clear he was spending more on extra payments on the mortgage than on his court-ordered monies each month. *See* **Exhibit 6** at 68:21-69:11 (reflecting that he pays about \$1,100 monthly on his mortgage) & Exhibit 16 thereto¹⁰ (reflecting an amount due of \$1,042.96 and a prior payment of \$1,100, or \$57.04 above the amount due).

Since January 1, 2015, Gamble had donated about \$3,000 to United Way through a campaign at his office. **Exhibit 7** at 5 (Interrogatory No. 9). And, since he joined this lawsuit on March 1, 2018, Gamble has spent approximately \$5,000 on his two adult children¹¹, *id.* at 6 (Interrogatory No. 14); **Exhibit 6** at 63:19-67:18, and more than \$13,000 on expenses for his mother, **Exhibit 7** at 5-6 (Interrogatory No. 15). If the nearly \$5,000 he has spent on life insurance for his mother is in addition to the other payments he has made on her behalf, then he has spent nearly \$19,000 on his mother in just over two years. *Id.*

Of the \$1,200 Economic Impact Payment he received earlier this year, Gamble spent \$50 on two months' worth of court-ordered monies, **Exhibit 7** at 5 (Interrogatory No. 10). and that

¹⁰ Exhibit 16 to the deposition is on page 42 of the PDF filed as Exhibit 6.

¹¹ Gamble has four children. **Exhibit 6** at 64:3-4. Two are minors for whom he owes child support. *Id.* at 62:8-63:18. The other two are adults. *Id.* at 63:19-64:2; 65:9-14.

was as a substitute for his usual payment, not in addition thereto, *State of Alabama v. Darius L. Gamble*, Case No. CC-2006-001468.00 (Shelby Co. Circuit Court). He directed \$750 to other debt. **Exhibit 7** at 5 (Interrogatory No. 10). Gamble also has a little more than \$100,000 in a retirement account though work, which he says he cannot borrow from to pay his court-ordered monies. *Id.* at 4 (Interrogatory Nos. 5 & 6). He has spent approximately \$4,500 to resolve other arrests since his 2009 release, though he says much of this was put on a credit card, *id.* at 5 (Interrogatory No 11), and he has acquired other debt as well, *id.* at 5-6 (Interrogatory No. 12).

As with Thompson, Plaintiffs' counsel claimed that an interrogatory asking why Gamble's alleged inability to pay is wholly beyond his control was "vague, irrelevant, and harassing **Exhibit 7** at 7 (Interrogatory No. 18). *Cf. Jones*, 950 F.3d at 813 ("The district court's preliminary injunction leaves the State ample discretion in designing the procedure to be used to provide an opportunity for these plaintiffs (and others) to demonstrate their indigency and inability to pay for reasons beyond their control."); *id.* at 817 (referring to "best efforts" to pay and inability to do so "for reasons beyond their control"); *id.* at 822 ("on account of their indigency and inability to pay for reasons wholly beyond their control").

D. Greater Birmingham Ministries.

The supplemental complaint added Greater Birmingham Ministries to the Plaintiffs bringing Count 13. *Compare* doc. 1 at ¶¶ 245-52 *with* doc. 93 at ¶¶ 65-69. GBM lacks standing to bring this Count, and so its presence as one of the Plaintiffs cannot expand the scope of relief sought. Because Plaintiffs Thompson and Gamble do have standing to press Count 13, and thus GBM's lack thereof is only relevant insofar as it cannot expand the scope of relief, the standing issue is addressed below in the discussion of the equities. For present purposes, it need only be noted that GBM does not assert associational standing on behalf of members, and so seeks relief

only for its own injuries. Further, GBM does not purport to operate statewide. As its name suggests, it was founded “in response to the urgent human and justice needs in the greater Birmingham, Alabama area,” doc. 1 at ¶ 61, and there is no indication that it works with felons beyond that area. *See also* doc. 215-12 at ¶ 8 (declaration discussing voter registration efforts in Birmingham).

E. Class Certification Proceedings and Decision.

Plaintiffs moved for class certification. Doc. 106. The State Defendants opposed. Doc. 113. With respect to Counts other than Count 13, the State Defendants argued that injunctions were not available and declaratory judgments on behalf of the Plaintiffs would be every bit as effective as a declaratory judgment on behalf of a class, making a class unnecessary. Doc. 113 at 8-13. With respect to Count 13, two discussions in the State Defendants’ opposition to the class certification motion are relevant.

First, Chair Gwathney specifically argued that the proposed subclass that would bring Count 13 was not ascertainable because, *inter alia*, Plaintiffs were attempting to define the class using non-objective criteria, namely an inability to pay outstanding court-ordered monies “due to” “socioeconomic status.” Doc. 113 at 3, 6-7.¹²

Second, Chair Gwathney understood Plaintiffs’ complaint to demand “a blanket declaratory judgment that Ala. Code § 15-22-36.1(a)(3) is unconstitutional.” Doc. 113 at 14; *see also* doc. 93 at 22-23 (blanket relief sought in supplemental complaint). In fact, Chair Gwathney argued that there was a disconnect between the broad relief sought in the complaint (which would apply to everyone) and the proposed class (which considered ability to pay “due to their

¹² Following on a decision first cited in Plaintiffs’ reply, this Court concluded that the ability to ascertain the members of the class was not a requirement in the Eleventh Circuit. Doc. 194 at 5; doc. 106, *generally*, doc. 114 at 7.

socioeconomic status”). Doc. 113 at 14-15. As to the Plaintiffs’ demand for a blanket declaratory judgment and even a blanket injunction, Chair Gwathney said a class was unnecessary. *Id.* But she also ended her discussion of this Count with a reiteration that “‘socioeconomic status’ is not an objective criterion.” Doc. 113 at 15.

In short, Chair Gwathney never volunteered to build an administrative process to sort out which felons can afford to pay their court-ordered monies and which are genuinely unable to pay their court-ordered monies “despite their best efforts for reasons beyond their control,” *Jones*, 950F.3d at 817, as Plaintiffs now demand at the preliminary injunction stage, doc. 215 at 31-32.

This Court declined to certify a class. Doc. 194.

F. Plaintiffs’ Expert Report.

Plaintiffs contend that they “have presented evidence that the majority of people with disqualifying felony convictions in Alabama have significant balances of [court-ordered monies], that outstanding [court-ordered monies] are the largest barrier to voting rights restoration for Alabamians, and that Alabama’s formerly incarcerated population has a median income of around \$8,000.” Doc. 215 at 22-23 n. 10; *see also id.* at 10-11, 28. As to the first two supposed facts, Plaintiffs rely on the testimony of Daniel A. Smith, Ph.D., doc. 215-13. As to the last, Plaintiffs rely on a “2014 participant self-report study,” for which they cite an online source. Doc. 215 at 12 & n.5; *id.* at 22-23 n. 10. Plaintiffs’ attempt to substitute hearsay for expert testimony must be rejected. Fed. R. Evid. 801-802. Their attempt to reply on Smith fares no better; his first conclusion is irrelevant and the second is unsupported.

Taking the second assertion first, Smith’s report does say that “[m]ost people who apply for CERVs but whose application is rejected are denied because of outstanding” court-ordered monies, doc. 215-13 at ¶ 79, but he does not provide any support for that conclusion. Indeed, later,

he says that inconsistencies in how the data are entered “makes it difficult to determine precisely the reasons why” CERV applicants had their voting rights restored or their applications denied. *Id.* at ¶ 88.¹³ Similarly, Chair Gwathney responded to an interrogatory demanding she “[i]dentify, in order, the most common reasons why a CERV application is denied and the percentage of total denials attributed to outstanding fines, fees, or restitution,” by explaining why the databases produced to Plaintiffs were insufficient to answer and why an unduly burdensome review of thousands of paper files and expert analysis would be needed to answer. **Exhibit 1** at 9-10 (Interrogatory No. 4). Not surprisingly, then, nowhere in his report does Smith detail the data to establish the primary reason applicants are denied. Instead, given the lack of pertinent analysis and the placement of the statement, Smith seems to be making an assumption based on his calculations concerning the court-ordered monies that disenfranchised felons owe.

Plaintiffs are disingenuous in relying on Smith’s analysis to argue that court-ordered monies “are a widespread barrier to voter eligibility in Alabama,” doc. 215 at 10-11 (emphasis and capitalization deleted). Smith’s analysis is irrelevant because he answered the wrong question. There are at least four problems with his financial analysis, but Chair Gwathney limits her discussion to two points because she has not yet deposed Smith. To explain the problems with his analysis, it is necessary to provide some background.

¹³ This analysis is one of the areas where Smith appears to make basic math errors. In ¶ 87 of his report, Smith says he is appending 22,365 rows with 2,618 rows of data, but only keeping the more current information in 410 rows that concern the same persons. Doc. 215-13 at ¶ 87. Adding 22,365 to 2,618 and then subtracting 410 duplicates yields 24,573. However, Smith somehow calculates 23,316. Doc. 215-13 at ¶ 87. He starts with that 23,216 in ¶ 88, where he then eliminates all races other than black and white and calculates how many people have had their voting rights “restored.” Doc. 215-13 at ¶ 88. The discussion continues with the “inconsistencies” comment, and a footnote that suggests Smith counts among the restorations persons who never lost their voting rights.” Doc. 215-13 at ¶ 88 & n. 27.

Smith explains that he has a database from the Alabama Administrative Office of Courts (AOC) containing State court felony convictions as of the Spring of 2019. Doc. 215-13 at ¶ 19. Each row of data contains one or more convictions, and some rows of data were eliminated from the analysis. *Id.* at ¶¶ 19-20. For various reasons, he is unable “to definitively link all individuals in the file,” *id.* at ¶ 21 (footnote omitted), but he uses name, race, and county in an attempt to catch instances where the same felon is the subject of multiple rows of convictions and he ends up with 363,511 “unique individuals,” *id.* at ¶¶ 22-23. Of these felons, more than 60% do not have a conviction for a felony of moral turpitude; the other 135,579 felons do. *Id.* at ¶ 28. Jumping forward to the financial analysis, Smith starts with “the 363,510 unique felons listed in the AOC file,” 135,579 of whom have been convicted of felonies of moral turpitude. *Id.* at ¶ 78. Smith then presents Table 3, which “provides a breakdown of ranges of different amounts of grand total” court-ordered monies owed by the 135,579 individuals who have “at least one” conviction for a felony of moral turpitude, as defined in Ala. Act No. 2017-378, *codified at* Ala. Code § 17-3-30.1. The next several paragraphs concern the “grand total balance” for these felons, including a breakdown by race, and Smith’s entire financial analysis is grounded in these numbers. Doc. 215-13 at ¶¶ 79-89.

With that background in place, the problems with Smith’s analysis jump off the page. One overriding problem is that Smith did not eliminate all rows of non-disenfranchising felony convictions from his analysis *before* narrowing the total convictions down to unique individuals. Instead, he says that he used name, race, and county to “group[] rows in the AOC file” into “363,511 unique individuals.” Doc. 215-13 at ¶ 23. That means that the court-ordered monies for each conviction a felon has would have been combined into a total for that felon. Then, starting with those 363,511 unique felons and the total monies they owed on all their felonies, he reduced

the pool to those felons with “at least one” conviction for a felony of moral turpitude, as defined in Ala. Act No. 2017-378. Doc. 215-13 at ¶ 28. That makes Smith’s analysis irrelevant, and Plaintiffs’ reliance on it disingenuous, because a felon need only pay “all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing *on the disqualifying cases.*” Ala. Code § 15-22-36.1(a)(3) (emphasis added). Court-ordered monies due on felony convictions that do not involve moral turpitude are irrelevant to the CERV process, and their inclusion only serves to improperly inflate Smith’s results.

The second problem Chair Gwathney now raises with Smith’s financial analysis is his decision to rely on the “grand total” court-ordered monies due. See doc. 215-13 at ¶ 78 & Table 3. The grand total figure in the AOC database includes court-ordered monies imposed post-sentence. Decl. of Stephen LeVeque, **Exhibit 8**, at ¶ 14. Again, that fact makes Smith’s analysis irrelevant, and Plaintiffs’ reliance on it disingenuous, because a felon need only pay “all fines, court costs, fees, and victim restitution ordered by the sentencing court *at the time of sentencing on the disqualifying cases.*” Ala. Code § 15-22-36.1(a)(3) (emphasis added). Court-ordered monies imposed post-sentencing do not need to be paid for a felon to be eligible for a CERV, and, again, the inclusion of these monies only serves to improperly inflate Smith’s results.

Plaintiffs may respond that it is proper to include the post-sentence monies because, they say, “[o]nly at the time of application for a CERV . . . may someone request that future payments be applied to disqualifying [court-ordered monies] directly. This only occurs if someone knows to ask for the ‘request to reprioritize costs’ form and the court so orders.” Doc. 215 at 6 n. 2. While the Plaintiffs are correct that a court order may be necessary (depending on how monies paid are being applied by default or prior court order), a felon can always ask the court for reprioritization. The form which Plaintiffs attach, doc. 215-2, was created to assist felons with a

particular scenario, and is not the only means of achieving relief. Moreover, Chair Gwathney made a point of telling Plaintiffs' counsel about the form, which allows them and their allies to make use of the form.¹⁴ It is also available online at <https://eforms.alacourt.gov/criminal-forms/> (last accessed June 7, 2020). Plaintiffs have no evidence that the form's existence carries the meaning they ascribe to it, nor do they offer any evidence about how State courts respond to requests to reprioritize. Accordingly, they have no basis for relying on Smith's analysis, which includes post-sentence fees that, pursuant to Ala. Code § 15-22-36.1(a)(3), need not be paid before a CERV may issue.

In sum, Smith makes a statement favorable for Plaintiffs about court-ordered monies and the denial of CERV applications, but that statement is unsupported. Additionally, his entire financial analysis is flawed insofar as it includes court-ordered monies that need not be paid in order for a CERV to issue, namely (for now) court-ordered monies due on felony convictions that are *not* themselves disqualifying and court-ordered monies imposed *after* sentencing. Inclusion of these monies improperly inflates Smith's calculations. And, even then, he concludes that more than 60% of felony do not have disqualifying felony convictions, doc. 215-13 at ¶ 28, and, of those who do, approximately 27% owe no court-ordered monies while the median owed for blacks and whites is less than \$1,700, *id.* at ¶¶ 78-79, 82 & Table 3. Plaintiffs' reliance on Smith's analysis to argue that more than 99,000 felons with disqualifying felonies owe court-ordered monies and that nearly 90,000 of them owe more than \$1,000 is misplaced in light of the flaws in Smith's

¹⁴ "The purpose of the Alabama Voting Rights Project has been to re-enfranchise thousands of Alabamians who are eligible to register to vote or who are eligible to have their rights to vote restored by obtaining a Certificate of Eligibility to Register to Vote (CERV)." www.alabamavotingrights.com/about (last visited June 13, 2020). It is a project of Campaign Legal Center and the Southern Poverty Law Center. *See id.* Some of Plaintiffs' counsel work at CLC.

analysis (and their own math error¹⁵). And, Plaintiffs cannot permissibly rely on hearsay as a substitute for expert evidence.

G. Consideration of Inability to Pay in Alabama State Courts.

Former Alabama Circuit Judge Tim Jolley testified in this case that, at sentencing, he would consider a criminal defendant's ability to pay certain court-ordered monies, if the issue is raised by defense counsel. Doc. 209-2 at 49:5-50:2; 136:20-138:9; 141:2:143:1. Where he presided, "[t]he DA's office basically doesn't fine people in felony cases," *id.* at 138:3-4, so fines are presumably not part of the court-ordered monies he was discussing. He testified that inability to pay can be raised after sentencing during a probationary period, and, under certain circumstances, even later. *Id.* at 138:10-139:6. Judge Jolley also testified that "the law requires that the court take into consideration the defendant's ability to pay in – in setting the amount of restitution. In other words, if someone comes into court and they're claiming \$40,000 in restitution, but the defendant can't pay that, the court is supposed to set restitution at an amount that the defendant can pay. And that's after a hearing, after a due process hearing, or in the event that the parties can agree on an amount as well." *Id.* at 140:8-18; *see also* Ala. Code § 15-18-65 (Legislative findings and purpose); Ala. Code § 15-18-67 & Ala. Code § 15-18-69 (hearings and findings); Ala. Code § 15-18-68 (criteria for determining restitution); *Hurd v. State*, 68 So.2d 219 (Ala. Crim. App. 2010) (remanding with instructions where restitution order did not set out specific findings).

¹⁵ Plaintiffs can only conclude that there are "close to 90,000" felons who "owe *more than* \$1,000" by including 11,460 felons who owe *between* \$500.01 and \$1,000. See doc. 215-13 at Table 3. Smith claims that 41,852 owe more than \$1,000 and up to \$5,000, that 16,077 owe more than \$5,000 and up to \$10,000, and that 20,581 owe more than \$10,000. These numbers total 78,510. Thus, Plaintiffs had to add the 11,460 felons with grand totals of \$500.01 to \$1000 to reach their estimate of nearly 90,000. While 78,510 felons are still a good many, and Chair Gwathney does not mean to suggest otherwise, Smith and Plaintiffs have been inaccurate in their analysis. And, as already pointed out, the amount of court-ordered monies these felons owe is inflated due to the inclusion of monies that need not be paid to achieve eligibility for a CERV.

Alabama Rule for Criminal Procedure 26.11 speaks to factors to consider in imposing restitution as well as factors to consider in imposing a non-mandatory fine. It also provides that court costs are part of the penalty. While Rule 26.11 does not state who has the burden of proof, the Alabama Court of Criminal Appeals recently held that the burden is on the defendant to present evidence of inability to pay. *State v. R.B.F.*, ___ So.3d ___, 2020 WL 1228015 (Ala. Crim. App. 2020) (juvenile case where only Rule 26.11 applies and not Ala. Code § 15-18-68).

III. PRELIMINARY INJUNCTION STANDARD.

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008). *See also Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (*en banc*) (“A district court may grant injunctive relief only if the moving party shows that: (1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.”).

“The preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly carries the burden of persuasion as to the four prerequisites. The burden of persuasion in all of the four requirements is at all times upon the plaintiff.” *U.S. v. Jefferson Cty.*, 720 F.2d 1511, 1519 (11th Cir. 1983) (internal citations and quotation marks omitted). “Failure to show any of the four factors is fatal” *ACLU of Fla., Inc. v. Miami-Dade Cty. Sch. Bd.*, 557 F.3d 1177, 1198 (11th Cir. 2009).

“Because a preliminary injunction is an extraordinary and drastic remedy, its grant is the exception rather than the rule” *U.S. v. Lambert*, 695 F.2d 536, 539 (11th Cir. 1983) (internal citation and quotation marks omitted); *Winter*, 555 U.S. at 24 (“A preliminary injunction is an extraordinary remedy never awarded as of right.”); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311 (1982) (“It goes without saying that an injunction is an equitable remedy. It is not a remedy which issues as of course”) (internal citation and quotation marks omitted).

Moreover, “[t]he purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). Thus, “[t]ypically, a preliminary injunction is prohibitory and generally seeks only to maintain the status quo pending a trial on the merits. When a preliminary injunction goes beyond the status quo and seeks to force one party to act, it becomes a mandatory or affirmative injunction and the burden placed on the moving party is increased.” *Mercedes-Benz U.S. Int’l, Inc. v. Cobasys, LLC*, 605 F. Supp. 2d 1189, 1196 (N.D. Ala. 2009) (internal quotation marks, citations, and footnote omitted). *See also Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976)¹⁶ (“Mandatory preliminary relief, which goes well beyond simply maintaining the status quo pendent lite, is particularly disfavored and should not be issued unless the facts and law clearly favor the moving party.”) (citations omitted); *Boyd v. Steckel*, 753 F. Supp. 2d 1163, 1169 (M.D. Ala. 2010) (“For such mandatory injunctions, relief should be granted [*o*]nly in rare instances.”) (alterations by the court, internal citations and quotation marks omitted).

¹⁶ This decision is binding. *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1207 (11th Cir. 1981) (*en banc*).

IV. ARGUMENT.

Plaintiffs are unlikely to succeed on the merits of their claim and the equities are decidedly against the issuance of an injunction, particularly one of the scope they desire. As to the merits, while *Jones* may favor the Plaintiffs, *Jones* does not go far enough to require that these Plaintiffs prevail on the different facts of this case, and the glaring flaws in the analysis in *Jones* suggest caution before extending its application. As to the equities, the *Jones* preliminary injunction only concerned the named Plaintiffs, not an uncertified class. Moreover, it is already too late to provide the Plaintiffs' desired relief for the August municipal elections, and it may well be too late to grant relief for the November general election. The equities further disfavor granting an injunction when the questions about Plaintiffs' merits success are weighed against the State's fundamental sovereign interest in setting the qualifications for who will select State, county, and local officials and make critical policy decisions.

A. Plaintiffs Are Not Likely to Succeed on the Merits.

Chair Gwathney recognizes that the Eleventh Circuit said "It is undeniable that the [legal financial obligations] requirement punishes those who cannot pay more harshly than those who can. Denying access to the franchise to those genuinely unable to pay solely on account of wealth does not survive heightened scrutiny." *Jones*, 950 F.3d at 807. However, unlike Florida, Chair Gwathney *does* dispute that Alabama imposes disenfranchisement is punishment, and she contends that the Eleventh Circuit failed to undertake the analysis required to determine whether a statute is punitive. That analysis demonstrates that disenfranchisement is not punitive in Alabama. Further, Chair Gwathney believes the Eleventh Circuit fundamentally erred in its wealth discrimination analysis, and that the Court failed to even consider the interests Alabama advances when the Court conducted its strict scrutiny analysis.

Even if this Court rejected all these points (or determined it was bound by *Jones* irrespective of the flaws and limits of that decision), Alabama’s result must still be different from Florida’s because the court-ordered monies requirement of Ala. Code § 15-22-36.1(a)(3) is not severable. Thus, the CERV program itself would fall, thereby ending the alleged discrimination. Alternatively, any injunction that would go beyond Plaintiffs Thompson and Gamble should be designed such that the State would be the entity to decide whether to level up or level down.

But, before reaching any of these other merits issues, this Court is confronted with the *Jones* court’s decision to not define what it means to be generally unable to pay one’s court-ordered monies for reasons beyond one’s control and our two named Plaintiffs—who do not meet a fair articulation of that standard. The Eleventh Circuit’s analysis was limited to the plaintiffs before it, *Jones*, 950 F.3d at 807, 812. The panel did not consider Plaintiffs Thompson and Gamble.

a. Alabama’s Court-Ordered Monies Requirement is not Unconstitutional.

i. Plaintiffs Thompson and Gamble are factually distinguishable from the Plaintiffs in *Jones*.

Plaintiffs Thompson and Gamble are factually distinguishable from the plaintiffs in *Jones* and nothing in the *Jones* panel’s opinion compels this Court to grant them relief—much less require Chair Gwathney to build an administrative process overnight to sort through whom among hundreds or thousands of felons is genuinely unable to pay their court-ordered monies for reasons beyond their control.

The Eleventh Circuit spoke in terms of “*these* seventeen plaintiffs, who are indigent and genuinely unable to pay despite good faith efforts.” *Jones*, 950 F.3d at 811. Later in the analysis, the opinion speaks to felons who are unable to pay “despite their best efforts for reasons beyond their control.” *Id.* at 817; *see also id.* at 822 (“on account of their indigency and inability to pay for reasons wholly beyond their control”). And, while the Court expressed concerns about missing

elections, it never expressly stated that a felon who cannot pay his court-ordered monies in full before the next election (whenever it happens to be) is one who is unable to pay. Such a broad exception, which Plaintiffs support, doc. 215 at 5, 7, 9, would swallow the rule.

Plaintiffs Thompson and Gamble are not indigent. Thompson’s annual income for 2019 was just under \$27,000, doc. 215-4 at ¶ 6, and Gamble’s current annual salary is \$72,599, **Exhibit 7** at 4 (Interrogatory No. 4). As a result, this Court should only examine Ala. Code § 15-22-36.1(a)(3)’s court-ordered monies requirement under rational basis review—a review the requirement would have “little trouble” passing. As Justice O’Connor explained when sitting with the Ninth Circuit:

We have little trouble concluding that Arizona has a rational basis for restoring voting rights only to those felons who have completed the terms of their sentences, which includes the payment of any fines or restitution orders. Just as States might reasonably conclude that perpetrators of serious crimes should not take part in electing government officials, so too might it rationally conclude that only those who have satisfied their debts to society through fulfilling the terms of a criminal sentence are entitled to restoration of their voting rights. *See Madison v. State*, 161 Wash.2d 85, 163 P.3d 757, 771 (2007); *see also Owens v. Barnes*, 711 F.2d 25, 27–28 (3d Cir.1983) (scheme restoring voting rights to unincarcerated felons satisfies rational basis review).

Harvey v. Brewer, 605 F.3d 1067, 1079-80 (9th Cir 2010). Even the Eleventh Circuit recognized that if rational basis review only looks at whether the legal financial obligations requirement “has some conceivable relation to a legitimate interest of the state, we would readily say that the [legal financial obligation] as applied to the whole class of felons is rational.” *Jones*, 950 F.3d at 814.

The Eleventh Circuit did continue by saying that it could be problematic, even under rational basis review, if most felons were genuinely unable to pay, *Jones*, 950 F.3d at 814-15, but that *dicta* makes as much sense as saying the requirement that felons complete their sentences may not be rational if most of the disqualified felons are unable to do so during their lifetimes. The absurdity of this analysis is brought home if one imagines a scenario where the only felons a State

disenfranchises are those convicted of murder, since murderers can, and should, be expected to experience long terms of incarceration and supervision. The rule being challenged is not one intended to generally govern the masses in a reasonable manner, but one intended to select among all disenfranchised felons those worthy of re-enfranchisement. The federal courts have no basis for demanding that, if Alabama chooses to re-enfranchise some felons, it must choose to re-enfranchise *most* of them. *Jones*, 410 F. Supp. 3d at 1300 (“So a state can properly disenfranchise felons, even permanently, and if the state decides to restore the right to vote to anyone, the state can exercise discretion in choosing among the candidates.”); *Harvey*, 605 F.3d at 1079-80 (quoted just above); cf. *Johnson v. Governor of State of Florida*, 405 F.3d 1214, 1234-35 (11th Cir. 2005) (*en banc*) (which felons to be enfranchised is a policy choice for the States, not the federal courts); *Richardson v. Ramirez*, 418 U.S. at 55 (policy arguments from *amici* should be directed elsewhere).

In any event, as discussed above in the section concerning **Plaintiffs’ Expert Report**, Plaintiffs have not demonstrated that most felons for whom the court-ordered monies requirement operates as a bar to re-enfranchisement are “genuinely unable to pay” those monies “despite their best efforts” and “for reasons wholly beyond their control,” *Jones*, 950 F.3d at 811, 817, 822. This is so because they have not provided this Court with reliable information about the amount of court-ordered monies owed by felons who meet the other statutory requirements for a CERV.

Further distancing themselves from the *Jones* panel’s holding, Plaintiffs Thompson and Gamble have not made good faith efforts to pay, even as they reaped the benefits of their plea agreements. Thompson has not made a payment in nearly five years. Gamble is paying as little as he can get away with paying, rather than as much as he can afford. Moreover, each agreed to pay their court-ordered monies pursuant to plea agreements that resolved their criminal conduct in

a more favorable manner than might have otherwise occurred, and they have not lived up to their ends of those bargains.

Thus, Plaintiffs Thompson and Gamble are not entitled to relief under *Jones*. They are not “indigent and genuinely unable to pay despite good faith efforts,” *Jones*, 950 F.3d at 811, or “best efforts [and] for reasons beyond their control.” *Id.* at 817; *see also id.* at 822 (“on account of their indigency and inability to pay for reasons wholly beyond their control”). Instead, their claim must be evaluated under rational basis review, which it fails. And, because Thompson and Gamble are not entitled to relief, this Court need not consider whether others (who are not before it) might be.

ii. The *Jones* Court concluded that strict scrutiny was triggered because disenfranchisement is punishment being imposed on the basis of wealth, but Alabama does not assert an interest in punishing through disenfranchisement.

The Eleventh Circuit refused to apply rational basis review in *Jones*. The Court recognized that “[w]ealth . . . is not a suspect classification” and that “felons may be stripped of their right to vote permanently.” *Jones*, 950 F.3d at 808. Nonetheless, the panel broke with the two courts it acknowledged had considered the appropriate standard of review under the same circumstances¹⁷, and held that strict scrutiny applied because wealth was being used in relation to voting and because, the Eleventh Circuit said, disenfranchisement is punishment that, again, was being

¹⁷ The Eleventh Circuit said: “The only two courts to face this precise claim—wealth discrimination in automatic felon re-enfranchisement schemes that, as a practical matter, deny indigent felons access to the franchise—concluded that rational basis scrutiny applied because felons do not have a fundamental right to vote and wealth is not a suspect classification. *See Johnson v. Bredesen*, 624 F.3d 742 (6th Cir. 2010); *Madison v. State*, 161 Wash.2d 85, 163 P.3d 757 (2007).” *Jones*, 950 F.3d at 808. Two points follow. First, the Eleventh Circuit created a circuit split. *See also Harvey v. Brewer*, 605 F.3d 1067, 1079-80 (9th Cir 2010) (addressing the question of felon re-enfranchisement conditioned on payment of court-ordered monies where no plaintiff claimed indigency, but indicating that the standard to apply in such a case would be rational basis). Second, Plaintiffs’ claim here is not limited to indigent felons; indeed, Plaintiffs are not indigent.

imposed on the basis of wealth. *Id.* at 808-09, 817-20, 823-24. Alabama does not assert a punishment interest, and that pulls a critical pillar out from under the *Jones* panel’s decision to apply strict scrutiny.¹⁸

Florida relied on a “multifaceted” interest in punishment. *Jones*, 950 F.3d at 810-12. In interrogatories directed to Secretary of State Merrill, the State’s interests in disenfranchisement of felons are articulated at length. **Exhibit 9** at 4-10 (Interrogatory No. 2). Punishment is never mentioned. *Id.* Because Alabama denies a State interest in disenfranchising felons as a further punishment or as a means of encouraging felons to pay their court-ordered monies (and disavows any prior statements or suggestions otherwise), the analysis in *Jones* is not squarely applicable, and this Court should consider the State’s asserted interests (discussed below), which the Eleventh Circuit failed to fairly consider.

Chair Gwathney recognizes that the Eleventh Circuit said that Florida’s decision to disenfranchise felons as punishment would be consistent with its Readmission Act, *Jones*, 950 F.3d at 810 & 819, and that the Plaintiffs here have viewed Alabama’s Readmission Act as the State’s source of authority to disenfranchise felons as well as a limit on that authority. *See* doc. 215-3 at 27 (Request for Admission No. 18). Alabama, in fact, is a sovereign with an inherent right to determine who shall be a part of the State’s electorate. The default rule is that the States

¹⁸ Apparently, the Eleventh Circuit recognizes that, even if disenfranchisement were punishment, that alone would not increase the level of scrutiny. *Jones*, 950 F.3d at 823-24 (distinguishing the *Shepherd v. Trevino*, 575 F. 2d 1110 (5th Cir. 1978), which applied rational basis to a challenge to Texas’ re-enfranchisement scheme on grounds that wealth was not involved). Hence, a determination that disenfranchisement is punishment is necessary, but not sufficient, to increase the level of scrutiny. To push to strict scrutiny, that punishment must be imposed on the basis of wealth. Chair Gwathney explains why the panel’s wealth-based analysis is wrong below.

set voter qualifications, even in federal elections.¹⁹ The Constitution has, of course, been amended to impose some limits on that power.²⁰ The Supreme Court has recognized that “[t]he States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, absent of course the discrimination which the Constitution condemns.” *Lassiter v. Northampton Cty. Bd. of Elections*, 360 U.S. 45, 50 (1959) (internal citations omitted). In this area, “there is wide scope for exercise of [the State’s] jurisdiction. Residence requirements, age, *previous criminal record* are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters.” *Id.* at 51 (internal citations omitted; emphasis added). To the extent, if any, that the State’s Readmission Act would purport to limit Alabama’s sovereign authority such that it is not as broad and encompassing as that of the other States, that portion would be unconstitutional, *cf. Shelby County v. Holder*, 570 U.S. 529, 544 (2013) (discussing equal sovereignty among the States), and, importantly, severable.

Further, while the *Jones* panel was adamant that disenfranchisement undeniably is punishment, 950 F.3d at 819, the Court did not perform the standard analysis that is used to determine whether a challenged provision constitutes punishment. This Court should first ask whether the challenged provision was intended to punish. *See, e.g., United States v. Ursery*, 518 U.S. 267, 288 (1996). If punishment was intended, the inquiry ends. *Smith v. Doe*, 538 U.S. 84, 92 (2003). If not, the Court should “examine whether the statutory scheme is so punitive either in

¹⁹ U.S. Const. Art. I § 2 cl. 1 (In House elections, “. . . Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.”); U.S. Const. Amend. XVII (Senators elected by the same electors as House Members); *see also* U.S. Const. Art. II § 1 cl. 2 (Presidential Electors need not even be selected by election); U.S. Const. Amend. XIV (recognizing the State’s right to set qualifications and, specifically, to disenfranchise felons).

²⁰ U.S. Const. Amend. XV (eliminating disenfranchisement based on “race, color, or previous condition of servitude”); U.S. Const. Amend. XIX (enfranchising women); U.S. Const. Amend. XXVI (lowering the voting age to 18); U.S. Const. Amend. XXIV (eliminating poll taxes).

purpose or effect as to negate [the State’s] intention.” *Id.* (internal citations and quotation marks omitted; alteration by the Court). The Supreme Court traditionally employs the seven factors outlined in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963), to analyze the second part of the test, though the list is “neither exhaustive nor dispositive.”²¹ *Smith v. Doe*, 538 U.S. at 97. “[O]nly the clearest proof will suffice to override legislative intent” *Id.* at 92 (internal citations and quotation marks omitted).

Applied here, the evidence indicates that Alabama does not disenfranchise felons as punishment. In 1995, the Alabama Legislature proposed an amendment to the Alabama Constitution that would repeal and replace the entire Suffrage and Elections article. Ala. Act No. 95-443, *available at* doc. 43-1. The Alabama electorate approved that proposal in June 1996 by a vote of 297,261 to 95,612. Certification of Results, *available at* doc. 43-3. The Amendment was summarized as:

Proposing an amendment of the Constitution of Alabama of 1901, repealing Article VIII, relating to suffrage and elections. The amendment would repeal the existing Article VIII, and provide that, in accordance with constitutional requirements, suffrage would extend to residents who are citizens, 18 years of age or older who have not been convicted of a felony involving moral turpitude. This amendment would further provide that the Legislature would provide for certain voting procedures by statute. (Proposed by Act 95-443).

Certification of Results, *available at* doc. 43-3.

Section 177(b) disqualifies not just those convicted of felonies or moral turpitude, but also those who are “mentally incompetent,” Ala. Const. art. VIII, § 177(b), and, subsection (a) limits

²¹ The factors are: (1) “[w]hether the sanction involves an affirmative disability or restraint”; (2) “whether it has historically been regarded as a punishment”; (3) “whether it comes into play only on a finding of scienter”; (4) “whether its operation will promote the traditional aims of punishment—retribution and deterrence”; (5) “whether the behavior to which it applies is already a crime”; (6) “whether an alternative purpose to which it may rationally be connected is assignable for it”; and (7) “whether it appears excessive in relation to the alternative purpose assigned.” *Mendoza-Martinez*, 372 U.S. at 168-69.

voting to citizens of the United States and to persons age 18 or older, Ala. Const. art. VIII, § 177(a). Subsection (c) requires the Legislature to “provide for the registration of voters, absentee voting, secrecy in voting, the administration of elections, and the nomination of candidates.” Ala. Const. art. VIII, § 177(c).²² Nothing in Section 177 speaks to punishment.

In the absence of evidence of punitive intent, the *Mendoza-Martinez* factors do not provide “the clearest proof” sufficient to override the State’s intent not to punish, *Smith v. Doe*, 538 U.S. at 92. As to the second factor, both the United States Supreme Court and the Supreme Court of Alabama have indicated that disenfranchisement has not been historically regarded as punishment, *see Trop v. Dulles*, 356 U.S. 86, 96-97 (1958) (noting *in dicta* that disenfranchisement for the crime of bank robbery would “designate a reasonable ground of eligibility for voting” and would be a “nonpenal exercise of the power to regulate the franchise”); *see also Washington v. Alabama*, 75 Ala. 582, 585 (Ala. 1884) (holding that disenfranchisement “must . . . be adjudged a mere disqualification, imposed for protection, and not for punishment . . .”), though there is contrary historical evidence as well.²³ As to the fourth factor, disenfranchisement does not promote the

²² Subsection (d), which also concerns secrecy of the ballot, was added later. Ala. Const. art. VIII, § 177(d).

²³ In emphatically stating that “disenfranchisement is punishment,” the *Jones* panel only cited one binding authority, namely *Johnson v. Governor of State of Florida*, 405 F.3d 1214, 1228 (11th Cir. 2005) (*en banc*), before pivoting to Florida’s Readmission Act. *Jones*, 950 F.3d at 819. In turn, *Johnson* relies on *Richardson v. Ramirez*, for the proposition that “Felon disenfranchisement laws are unlike other voting qualifications. These laws are deeply rooted in this Nation’s history and are a punitive device stemming from criminal law. *See Richardson*, 418 U.S. at 48-52, 94 S.Ct. 2655.” *Johnson*, 405 F.3d at 1228. The referenced discussion in *Richardson* concerns the Readmission Acts and the Reconstruction Act, but all in service of explaining the meaning of the Equal Protection clause, not holding that disenfranchisement is punishment. *Richardson*, 418 U.S. at 48-52. Thus, the language in *Richardson* and then *Johnson* was *dicta*, but the *Jones* panel treated *Johnson*, and non-binding authorities, as dispositive of the critical issue of whether disenfranchisement is punishment. (The *Johnson* Court had also cited to non-binding authority for a footnote earlier in the opinion stating that criminal disenfranchisement is punitive. *Johnson*, 05 F.3d at 1218 n. 5.)

traditional aims of punishment because it is “unlikely, in the best of circumstances” that “losing the right to vote is a punishment that could give a would-be criminal pause.” *Jones*, 950 F.3d at 812. As to the sixth factor, disenfranchisement for conviction of a felony involving moral turpitude is rationally connected to the State’s interest in protecting the ballot box, as discussed below and recognized in both *Trop* and *Washington*. And as to the seventh factor, it is settled law that Alabama may disenfranchise all felons for life, *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974); *Jones*, 950 F.3d at 801, undermining any suggestion that disenfranchisement could be excessive in relation to the State’s interest in protecting the ballot box.

Thus, Alabama does not disenfranchise as a form of punishment. That reality removes a pillar necessary to support the *Jones* panel’s conclusion that strict scrutiny is required because punishment is being imposed on the basis of wealth. *Jones*, 950 F.3d at 800, 817-20. To the extent that the Court concludes that Alabama necessarily has some punitive interests in disenfranchisement, that should not be allowed to negate or overwhelm the State’s substantial and primary interest in regulating access to the ballot box.

iii. The *Jones* Court was wrong to conclude that strict scrutiny was triggered because declining to re-enfranchise a felon based on his failure to pay court-ordered monies is wealth discrimination.

As set out further below, Alabama’s interest in felon disenfranchisement is in what the Eleventh Circuit referred to as “Safeguarding the ballot box from a singularly unqualified group of potential voters.” *Jones*, 950 F.3d at 812. Indeed, the group is so “singularly unqualified” that the United States Constitution singles them out in approving their disenfranchisement. *Richardson*, 418 U.S. at 54; *see also Jones*, 950 F.3d at 801. Nonetheless, the Court gave short shrift to this State interest, quickly maneuvering to a wealth discrimination mindset. *Jones*, 950 F.3d at 813. The Eleventh Circuit said:

This interest, however, is not plausibly furthered by the distinction Amendment 4 draws between those who have paid their financial obligations and those who have not. This is because the classification at issue is not between people who have disregarded the laws of society and those who have not, nor among groups of felons who have committed crimes that demonstrate that they are more hostile to democracy and the rule of law than are others. Rather, the classification is simply drawn between those who have paid their financial obligations and those who have not. This distinction is unrelated entirely to a felon's prudent exercise of the franchise and cannot be said to reasonably further that purpose. *See Harper [v. Virginia State Bd. of Elections]*, 383 U.S. [663,] 666, 86 S.Ct. 1079 ("Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax.").

Jones, 950 F.3d at 813. With all respect, the Court is wrong. Saying that requiring a felon to pay the court-ordered monies arising from his conviction, despite an alleged inability to do so, before re-enfranchising him amounts to wealth-based discrimination makes as much sense as saying that denying the franchise to a 40-year-old felon with a 60-year sentence of incarceration amounts to age discrimination.

We do not deal here with an across-the-board fee that has been imposed on all voters as a test of wealth: in the case of Plaintiff Thompson, the unpaid court-ordered monies are almost entirely *restitution* for the money she stole and, in the case of Plaintiff Gamble, the unpaid court-ordered monies are almost entirely a *criminal fine* that is undeniably as much a part of the sentence as his time in prison was, *see* Ala. Code § 13A-5-2(b) ("In addition to imprisonment, every person convicted of a felony may be sentenced by the court to pay a fine authorized by Section 13A-5-11."); Ala. Code § 13A-5-11 ("A sentence to pay a fine for a felony . . ."); Ala. Code § 13A-5-11 and Ala. Code § 13A-5-12 Commentary ("The Criminal Code continues recognition of the use of a fine as a traditional means of punishment or deterrence . . ."). These court-ordered monies are individually tied to their criminal convictions—a direct reflection of the harm they imposed on society, not some arbitrary test of wealth. That is, to require payment of court-ordered monies before a felon's voting rights can be restored is not "to introduce a capricious or irrelevant factor,"

as was the case in *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 668 (1966), where wealth was at issue.

Indeed, *Harper* reasoned that “once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment. That is to say, the right of suffrage ‘is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed.’” *Harper*, 383 U.S. at 665. It is undeniable that a State cannot disenfranchise all felons and then re-enfranchise only the female, Episcopalian felons. But here, the restitution and fines go to the very essence of the Plaintiffs’ status as felons, and the Fourteenth Amendment, even as it ensures Equal Protection, simultaneously approves disenfranchising felons for life. *Richardson v. Ramirez*, 418 U.S. at 54. Moreover, the outstanding nature of these court-ordered monies indicates that Plaintiffs Thompson and Gamble have not fully met the obligations arising from their convictions.

The Florida district court originally seemed to understand this distinction. The court reasoned that the difference between (1) a hypothetical requirement that felons have a net worth of \$100,000 to earn re-enfranchisement and (2) the reality of Florida’s challenged provisions “is that the financial condition in the hypothetical is unrelated to a felon’s sentence, while the final obligations at issue under” Florida law “are part of a felon’s sentence.” *Jones*, 410 F. Supp. 3d at 1302. That is, the difference is that the hypothetical is about “[w]ealth, [which] like race, creed, or color is not germane to one’s ability to participate intelligently in the electoral process,” *Harper*, 383 U.S. at 668, such that “[t]o introduce wealth or payment of a fee as a measure of a voter’s qualifications is to introduce a capricious or irrelevant factor,” *id.* By contrast, one’s status as a felon is not irrelevant; its relevance is written into the Fourteenth Amendment. *Richardson v.*

Ramirez, 418 U.S. at 54 (“the exclusion of felons from the vote has an affirmative sanction in § 2 of the Fourteenth Amendment”).

The *Jones* district court itself acknowledged that, given the difference between the hypothetical and the challenged provisions before it, “one could reasonably argue both sides of the question whether this difference changes the result” of the constitutional analysis, “[i]f writing on a clean slate.” *Jones*, 410 F. Supp. 3d at 1302. The district court thought, however, that the slate was not clean, *id.* at 1302-1303, and that the matter had been resolved by the *en banc* Eleventh Circuit in *Johnson v. Governor of Florida*, 405 F.3d 1214 (11th Cir. 2005) (*en banc*). The district court was wrong on this score. *Jones*, 950 F.3d at 824 (“[W]e also disagree with the district court that this Court’s *en banc* decision in *Johnson* controls the resolution of this case.”²⁴). Properly considered, the State’s interest is strong enough to win the intellectual tug-of-war.

In moving to a strict scrutiny analysis and holding that the legal financial obligations requirement failed that analysis, the *Jones* courts created an absurd result which should have caused them to question their analysis. For instance, following trial, the Florida district court explained that on plaintiff “was convicted of a federal felony and ordered to pay over \$59 million in restitution jointly and severally with others. She is unable to pay that amount.” *Jones v. DeSantis*, ___ F. Supp. 3d ___, 2020 WL 2618062, at *7 (N.D. Fla. May 24, 2020) (footnote omitted). The court never stopped to ask how much harm that felon must have caused to be ordered to pay that much in restitution, or to ponder the absurdity of concluding that her voting rights must, as a matter of constitutional law, be restored immediately while someone who owes \$5,000 in

²⁴ The way the *Jones* panel proceeds to explain the *Johnson* language is inconsistent with the what the *Johnson* Court said. *Jones* says the *Johnson* footnote resolved a wealth discrimination claim. *Jones*, 950 F.3d at 824-25. The *Johnson* Court said it was addressing a poll tax claim and doing so on the facts. *Johnson*, 405 F.3d at 1216 n.1.

restitution may be made to miss one or more elections while he pays his financial obligation to his victim. Perhaps the *en banc* Court or the Supreme Court will.

Ultimately, this argument is predominantly an argument that the *Jones* panel got it wrong. Chair Gwathney, of course, recognizes that the decision is binding for so long as it stands. However, the obvious analytical flaws in that decision should suggest caution before accepting Plaintiffs' invitation to (1) extend *Jones* to the very different facts in this case as well as (2) hold that what amounts to a genuine inability to pay court-ordered monies (despite best efforts and for reasons wholly beyond the felon's control) actually means "can't pay by the next election" or otherwise applies in such a way as to allow the exception to swallow the rule.

iv. Even if strict scrutiny applies, Alabama's CERV process is constitutional when the State's true interests are fairly weighed.

When the Eleventh Circuit considered Florida's interests during its strict scrutiny analysis, the Court wholly failed to consider the interest Alabama asserts, though Florida asserted it too and though the panel said that the State's interests were, unsurprisingly, part of the analysis to be undertaken. Specifically, the panel said it would address "four considerations: (1) the nature of the individual interest affected; (2) the extent to which it is affected; (3) the rationality of the connection between legislative means and purpose; and (4) the existence of alternative means for effectuating the purpose." *Jones*, 950 F.3d at 825 (internal citations and quotation marks omitted).

"[V]oting is undoubtedly a weighty interest." *Jones*, 950 F.3d at 825. With respect to the extent to which that interest is affected, separate from the CERV process, Alabama continues to have a pardon process. The evidence in this case does not indicate that the process is as slow as it apparently is in Florida, *see id.* at 826. And, while pardons are discretionary, the ABPP has granted a rather high percentage of the applications in recent years. Specifically, "[b]etween January 1, 2015 and April 30, 2020, the [ABPP] held 4,083 pardon hearings and granted a pardon about 75%

of the time, resulting in 3,080 pardons.” **Exhibit 1** at 4-5 (Interrogatory No. 1). Chair Gwathney has also offered evidence about a felon who received a pardon despite a large, unpaid drug trafficking fine. **Exhibit 2**. To the extent that Plaintiffs or the Courts consider a pardon opportunity to be an inadequate alternative, it must be remembered that the CERV process is not constitutionally required and may be repealed.

The third and fourth considerations deal with Alabama’s interests in regulating voter qualifications, which were set out as follows in discovery:

Felon disenfranchisement is based on the philosophy of republican government and theory of social compact. “[S]uch provisions are for the protection of the public by permitting only those who have lived up to certain minimum moral and legal standards (by not committing a crime classed as a felony) to exercise the high privilege of participating in government by voting.” *State ex rel. Barrett v. Sartorius*, 175 S.W.2d 787, 788 (Mo. 1943) (*en banc*). The Alabama Supreme Court has explained that, like children or the insane, “[t]he presumption is, that one rendered infamous by conviction of felony, or other base offense indicative of great moral turpitude, is unfit to exercise the privilege of suffrage, or to hold office, upon terms of equality with freemen who are clothed by the State with the toga of political citizenship.” *Washington v. State*, 75 Ala. 582, 585 (1884). These are Alabama’s interests.

Judge Friendly offered the following State interests, which Alabama asserts as her own:

The early exclusion of felons from the franchise by many [S]tates could well have rested on Locke’s concept, so influential at the time, that by entering into society every man ‘authorizes the society, or which is all one, the legislature thereof, to make laws for him as the public good of the society shall require, to the execution whereof his own assistance (as to his own decrees) is due.’ [An Essay Concerning the True Original, Extent and End of Civil Government P89.] A man who breaks the laws he has authorized his agent to make for his own governance could fairly have been thought to have abandoned the right to participate in further administering the compact. On a less theoretical plane, it can scarcely be deemed unreasonable for a [S]tate to decide that perpetrators of serious crimes shall not take part in electing the legislators who make the laws, the executives who enforce these, the prosecutors who must try them for further violations, or the judges who are to consider their cases. This is especially so when account is taken of the heavy

incidence of recidivism and the prevalence of organized crime. *See* The Challenge of Crime in a Free Society, A Report by the President's Commission on Law Enforcement and Administration of Justice, 45-47, 187-196 (1967). A contention that the equal protection clause requires New York to allow convicted mafiosi to vote for district attorneys or judges would not only be without merit but as obviously so as anything can be.

Green v. Bd. of Elections, 380 F.2d 445, 451-52 (2d Cir. 1967) (bracketed citation replaces a footnote in the original).

Exhibit 9 at 5-6 (Interrogatory No. 2).²⁵

Given these interests, requiring a felon to have completed his full sentence (including any financial terms of that sentence) and to have taken steps to make society whole before inviting him back into the voting booth is rationally connected to the State's interests. The *Jones* Court shortchanged the State's interests by again over-reading *Harper* and failing to understand that the payment of court-ordered monies arising from a felony conviction is nothing like an irrelevant test of wealth. *Jones*, 950 F.3d at 827.

Moreover, there is no alternative means for effectuating the State's purpose, which is the fourth consideration the Court said applied, *Jones*, 950 F.3d at 825. If felons who have not completed their sentences and made society whole are permitted to vote, then the State's fundamental sovereign interests in determining the qualifications for the persons who will be entrusted with electing State, county, and local officials and setting policy will be undermined. *Cf. Johnson v. Governor of Florida*, 405 F.3d 1214, 1232 n. 35 (11th Cir. 2005) (*en banc*). Further,

²⁵ Plaintiffs' twist language in the State Defendants first motion to dismiss, doc. 43, saying: "the State's contention that only those who *can* pay their [legal financial obligations] are 'sufficiently rehabilitated to be entitled to vote, Defs.' Mot. to Dismiss at 64 (Doc. 43), essentially constitutes an admission of wealth discrimination." Doc. 215 at 25 (emphasis added). The motion to dismiss actually relied on "a determination that only those convicted felons who have fully paid restitution are sufficiently rehabilitated to be entitled to vote." Doc. 43 at 64. The statement did not address ability to pay.

the votes of persons who meet the State’s qualifications will be diluted by these improper votes, and the general population may experience a lack of confidence in the integrity of the government as felons who have not paid the restitution they owe their victims (like Thompson) and who have not paid their criminal fines (like Gamble) “participate in the collective decisionmaking of a democratic society,” *Jones*, 950 F.3d at 828. These harms are substantial and obvious. The Eleventh Circuit never addressed them. *Id.* at 827 (considering only an alternative means of effectuating debt collection). This Court should.

b. If the Court-Ordered Monies Requirement is Unconstitutional, It Cannot be Severed and the Entire CERV Process Falls.

“Severability is of course a matter of state law.” *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996). While Ala. Code § 15-22-36.1 does not contain its own severability provision, the Alabama Code contains a general severability provision that applies to all statutes, seeking to give them “effect without the invalid provisions or application,” Ala. Code § 1-1-16; *see also State ex rel. Pryor v. Martin*, 735 So.2d 1156, 1159 (Ala. 1999) (“We regard § 1-1-16 as an expression of legislative intent regarding the general power and duty of the judiciary to sever and save statutory provisions not tainted by the unconstitutionality of other provisions in the same statute.”).

“The guiding star in severability cases is legislative intent.” *In the Matter of Beck v. State*, 396 So.2d 645, 658 (Ala. 1980). “One of the tests used to determine whether an act is or is not severable, so that a portion may be rejected, is that it ought not to be held wholly void unless the invalid portion is so important to the general plan and operation of the law in its entirety as reasonably to lead to the conclusion that *it would not have been adopted if the legislature had perceived the invalidity of the part so held to be unconstitutional.*” *Id.* (quoting *A. Bertolla & Sons v. State*, 247 Ala. 269, 271, 24 So.2d 23 (1945)) (emphasis added); *see also Newton v. City of Tuscaloosa*, 36 So.2d 487, 493 (Ala. 1948); *King v. Campbell*, 988 So.2d 969, 982 (Ala. 2007);

Bynum v. City of Oneonta, 175 So.3d 63, 68-69 (Ala. 2015). The Supreme Court of Alabama has cited the United States Supreme Court for the proposition that “if a clause in a statute which violates the Constitution cannot be rejected without causing the act to enact what the legislature never intended, the whole statute must fall.” *City of Mobile v. Salter*, 255 So.2d 5 (Ala. 1971).

The Alabama Legislature would not have created the CERV process found in Ala. Code § 15-22-36.1 if the court-ordered monies requirement could not be enforced as to restitution and fines (which are at issue in the cases of Thompson and Gamble). It is true that one could re-write the statute without Ala. Code § 15-22-36.1(a)(3)’s court-ordered monies requirement without the statute becoming incomprehensible; however, it would then reflect a policy choice that the Alabama Legislature would not have made. Similarly, one could strike the provision that a felon have fully served his carceral sentence, Ala. Code § 15-22-36.1(a)(4), that he not have pending felony charges against him, Ala. Code § 15-22-36.1(a)(2), or that he not convicted of murder or rape, Ala. Code § 15-22-36.1(g), and the statute would not be incomprehensible; however, again it would then reflect a policy choice that the Alabama Legislature would not have made.

Any exception for inability to pay would have to be powerfully cabined for the Court to reach any other result. Plaintiffs’ rule that, for a felon to be required to pay in court-ordered monies in an constitutionally acceptable manner, the felon must be able to pay by the next election (whenever that may be) goes much too far, and would render the court-ordered monies requirement invalid in too many circumstances.²⁶ Eliminating the court-ordered monies requirement would cause Ala. Code § 15-22-36.1 to, “by reason of its generality,” “have a broader scope as to subject

²⁶ Cf. *Bynum v. City of Oneonta*, 175 So.3d 63, 75 (Ala. 2015) (“[U]sing severability to save Act No. 2009–546 was not permissible” where it was obvious that the Legislature intended to exclude the three counties from the alcohol regulation, and “to edit Act No. 2009–546 by severing that language excluding the three counties would be to undermine the clear intent of the legislature.”).

or territory” such that “its operation is not in accord with the legislative intent.” *Wilkinson v. Stiles*, 76 So. 45, 46 (Ala. 1917). As a result, the entire statute is “made void by the invalidity of such part. . . . If a clause in a statute which violates the Constitution cannot be rejected without causing the act to enact what the Legislature never intended, the whole statute must fall.” *Id.*

There have been multiple bills introduced in the Legislature to eliminate the court-ordered monies requirement, but these attempts have all failed. For instance, during the 2019 Regular Session, Rep. McClammy introduced House Bill 443, which was exclusively focused on the court-ordered monies requirement and ability to pay. **Exhibit 10.** The bill would have made a CERV available if the other requirements were met and either the court-ordered monies requirement were met or “the sentencing court modifies the payment of the fines, court costs, victim restitution, and fees pursuant to Section 2 of the act amending this subdivision.” *Id.* Section 2 was focused on felons who were unable to pay. *Id.* It failed, as did other bills that proposed changes beyond the court-ordered monies requirement. Also during the 2019 Regular Session, Rep. Hall introduced House Bill 454, **Exhibit 11.** It would have replaced the CERV program with automatic restoration of rights to eligible felons, and it would have expanded eligibility in two ways, one of which was eliminate the court-ordered monies requirement. *Id.* Rep. Hall introduced a similar bill during the 2020 Regular Session; that bill, House Bill 250, **Exhibit 12**, also failed. That same Session, Senator Coleman introduced Senate Bill 209 which would have made multiple changes to the CERV program, including eliminating the requirement to pay fines, court costs and fees—but not the requirement to pay restitution—and it too failed. **Exhibit 13.**

Thus, any broad exception to the requirement to pay to restitution and fines (which are at issue in the cases of Thompson and Gamble) of the sort demanded by Plaintiffs would plainly expand the CERV program far beyond the limits set by the Legislature in its adoption, and create

a program that the Legislature did not adopt and would not approve. Given the facts concerning Plaintiffs Thompson and Gamble, a ruling that the court-ordered monies requirement is unconstitutional should cause the entire CERV program to fall.

In the alternative, should the Court conclude that these Plaintiffs are entitled to relief on Count 13, it should allow the State to make the decision whether to expand or cancel the CERV program, *i.e.*, to level up or level down. As the Supreme Court recently reiterated, “[w]hen the right invoked is that to equal treatment, the appropriate remedy is a mandate of equal treatment, a result that can be accomplished by withdrawal of benefits from the favored class as well as by extension of benefits to the excluded class.” *Sessions v. Morales-Santana*, 582 U.S. ___, 137 S. Ct. 1678, 1698 (2017) (alteration by the Court; internal citations and quotation marks omitted). “[T]he manner in which a State eliminates discrimination is an issue of state law” *Id.* at 1668 n. 23 (internal citations and quotation marks omitted).

B. The Balance of Equities Favors Maintaining the *Status Quo* Until Plaintiffs’ Novel Theory Has Been Conclusively Resolved.

a. The equities do not favor granting relief to Plaintiffs Thompson and Gamble.

The equities do not favor granting relief to Plaintiffs Thompson and Gamble. Even if this Court were to conclude that they are “genuinely unable to pay” their court-ordered monies, they have not made “good faith efforts”—or “best efforts”—to pay those monies,” *Jones*, 950 F.3d at 811, 817. Thompson has not made a payment in nearly five years. Gamble is paying as little as he can get away with paying, rather than as much as he can afford. Moreover, each agreed to pay their court-ordered monies pursuant to plea agreements that resolved their criminal conduct in a more favorable manner than might have otherwise occurred, and they have not lived up to their end of that bargain. Thus the equities do not favor these Plaintiffs.

Beyond that, Plaintiff Thompson was convicted in 2005 and completed probation in 2010, **Exhibit 4** at 13:11-12; 18:4-20, while Gamble was convicted in 2008 and completed probation in 2014, doc. 215-10 at 15; **Exhibit 6** at 30:20-22; 35:17-22, but this lawsuit was not filed until 2016, and this preliminary injunction was not sought until 2020, *cf. Hand v. Scott*, 888 F.3d 1206, 1215 (11th Cir. 2018) (“Nor have appellees explained why they’ve waited until now to sue over these rights”). There is no urgent need for a mandatory injunction as Plaintiffs have let numerous other elections come and go without seeing a need to ask for this extraordinary relief.

Under these circumstances, and with the possibility of further review of the *Jones* decision and even correction of the law during any appeal of this Court’s preliminary injunction ruling, relief should be denied at this stage of the proceedings. *Cf. Hand*, 888 F.3d at 1214 (“there is wisdom in preserving the status quo ante” “when there is a good chance the district court’s order may be overturned, and the system would need to be changed still again”).²⁷ If the Court were to conclude that some relief should be entered, such relief should be limited to Plaintiff Thompson, who is less well off financially of the two named Plaintiffs, or to just Plaintiffs Thompson and Gamble.

b. The equities do not favor granting relief beyond Plaintiffs Thompson and Gamble.

Plaintiffs seek more relief at the preliminary injunction stage than was awarded in the *Jones* case, where the preliminary injunction only concerned the 17 named plaintiffs. The Plaintiffs in this case want relief—and an injunction—not just for themselves but for “others similarly situated.” Doc. 215 at 31-32. They demand this relief despite the absence of a class. Doc. 194.

²⁷ Procedurally, *Hand* is the decision of an Eleventh Circuit panel granting a stay of a district court injunction where the State Executive Clemency Board was likely to prevail on the merits. *Hand*, 888 F.3d at 1207.

Even assuming the absence of a class were not a barrier to the grant of such relief, the scope of relief demanded would weigh against its grant.

While this Court could certainly make a determination about whether Plaintiffs Thompson and Gamble are “genuinely unable to pay despite good faith efforts,” *Jones*, 950 F.3d at 811, or even “best efforts” and “for reasons beyond their control,” *id.* at 817; *see id.* at 822 (“on account of their indigency and inability to pay for reasons wholly beyond their control”), and may, over Chair Gwathney’s objection, determine these two felons are entitled to relief, opening the door to others brings massive implications. On appeal, Florida asserted an interest in avoiding “the administrative costs associated with conducting individualized determinations of ability to pay.” *Id.* at 813. The *Jones* panel recognized that “ease of administration and reduction of costs may be a legitimate state interest,” *id.*, but rejected that interest on appeal of the preliminary injunction motion because the relief was limited to only the 17 named plaintiffs, *id.* The relief Plaintiffs demand here is not so limited.

Instead, the relief sought here is similar to a different felon voting case out of Florida, *Hand v. Scott*, 888 F.3d 1206 (11th Cir. 2018). Plaintiffs there complained about the discretionary nature of the pardon process. *Id.* at 1207. The district court entered a *permanent* injunction that required the State Executive Clemency Board to “fashion out of whole cloth new standards,” namely “specific and neutral criteria to direct voter-restoration decisions in accordance with this Order.” *Id.* at 1213. The Board apparently had 30 days to do so. *Hand v. DeSantis*, 946 F.3d 1272, 1274 n.2 (11th Cir. 2020). The stay panel reasonably thought this was insufficient:

What’s more, the permanent injunctions entered by the district court command the Governor and three cabinet members to promulgate new standards no later than April 26. These standards must determine when and how to exercise the Governor’s power in order to reenfranchise convicted felons. As a court sitting in equity, that seems to us to be a tall order, even assuming the district court had the authority to enter this command in the first place. After all, there are a multitude

of considerations for them to study, including but not limited to whether the Clemency Board should adopt mathematical criteria, how “specific and neutral” the criteria should be, whether arrests or convictions for certain kinds of misdemeanor or felony offenses (and there are many) should be either relevant or categorically disqualifying, the kinds of rules previous Florida officials and other states have put in place and how they have worked in practice, and whether the Board should create a newly bifurcated system for processing applications involving civil rights other than voting rights, such as the right to serve on a jury or to hold or run for public office.

Hand v. Scott, 888 F.3d at 1214. The task that the Plaintiffs ask this Court to impose on Chair Gwathney is no less burdensome.

First, and obviously, Chair Gwathney would need to determine what it means for a felon to be “genuinely unable to pay despite good faith efforts,” *Jones*, 950 F.3d at 811, or “best efforts [and] for reasons beyond their control,” *id.* at 817; *see also id.* at 822 (“on account of their indigency and inability to pay for reasons wholly beyond their control”). There is clearly ground for disagreement on this matter when Plaintiff Gamble has moved for a preliminary injunction despite the fact that he earns \$72,599 annually, **Exhibit 7** at 4 (Interrogatory No. 4), and has been paying \$25 monthly towards his court-ordered monies, *See State of Alabama v. Darius L. Gamble*, Case No. CC-2006-001468.00 (Shelby Co. Circuit Court); *see also* doc. 215-6 at ¶ 11; **Exhibit 6** at 56:21-23.

Even assuming that were easy, the declaration of ABPP’s Director of the Board Operations Division, Effie Hawthorne, develops what more would be required. “[P]olicies and forms would have to be created or amended . . . to reflect the requirement for applicants to provide specified reliable information” for conducting an analysis of genuine inability to pay, and “the CERV application itself and accompanying rules would have to go through the emergency rulemaking process and then the regular rulemaking process,” to achieve that. **Exhibit 3** at ¶ 13. That would just be to start:

14. Moreover, before the [ABPP] could implement a new investigation process into CERV applicants' claimed genuine inability to pay, significant statewide training for hundreds of investigating officers/staff would be required to ensure that each person performing CERV investigations understands the added requirements and applies objective scrutiny of reliable information provided by applicants in a relatively uniform manner to make a call on whether the individual is genuinely unable to pay, for reasons beyond his control, the court-ordered monies owed. Training curriculum would have to be developed to include amended/new policies and forms. Trainers would have to be identified to cover the hundreds of impacted employees expeditiously. Typically, the [ABPP] conducts mandatory training in regional locations throughout the entire State, with multiple opportunities to attend training for employees surrounding each location, including makeup training sessions. Subsequent periodic training would be needed to maintain the new system and to ensure that new employees received the same instruction as those initially receiving it. . . .

Exhibit 3 at ¶ 14. New staff would likely need to be hired, and the field offices are already understaffed. *Id.* at ¶¶ 15-16. Moreover, Director Hawthorne is concerned about the ABPP's ability to comply with the statutory 44-day turnaround time because evaluating a CERV applicant's ability to pay will, *inter alia*, make the ABPP dependent on information from the applicant and add to the analysis to be conducted at each step of the process. *Id.* at ¶¶ 7-12.

This is not a quick, easy, or inexpensive proposition. And, if the Florida officials or Chair Gwathney prevail on appeal, all the time and money will have been for naught. Thus Chair Gwathney has a substantial interest in avoiding a preliminary injunction that goes beyond Plaintiffs Thompson and Gamble, and requires her to create a system for evaluating the alleged inability to pay of felons not before the Court. *Cf. Hand*, 888 F.3d at 1214-15 ("The State Executive Clemency Board also has a substantial interest in avoiding chaos and uncertainty in its election procedures, and likely should not be forced to employ a rushed decision-making process created on an artificial deadline now, just because a more thorough decision-making process could be employed later. We are reluctant to upset the system now in place—particularly since the district court order creates so truncated a schedule—when there is a good chance the district court's order may be

overturned, and the system would need to be changed still again, potentially re-disenfranchising those who have been reenfranchised pursuant to the district court's injunction. Put another way, there is wisdom in preserving the status quo ante until a panel of this Court, on an expedited basis, has had an opportunity on full briefing to come to grips with the many constitutional and equitable issues that have been raised.").

c. Plaintiff Greater Birmingham Ministries cannot expand the scope of relief because it lacks standing to bring Count 13.

The supplemental complaint added Greater Birmingham Ministries to the Plaintiffs bringing Count 13. *Compare* doc. 1 at ¶¶ 245-52 *with* doc. 93 at ¶¶ 65-69. GBM lacks standing to bring this Count²⁸, and so its presence as one of the Plaintiffs cannot expand the scope of relief sought. Because Plaintiffs Thompson and Gamble do have standing to press Count 13, and thus GBM's lack thereof is only relevant insofar as it cannot expand the scope of relief, this issue is addressed here.

Organizations like GBM may assert associational standing, wherein they sue for their members, or organizational standing, wherein they sue based on an injury to themselves. *Jacobson v. Fla. Sec'y of State*, 957 F.3d 1193, 1204-05 (11th Cir. 2020). GBM does not allege that it has associational standing on behalf of any members, or even that it has members. Doc. 1 at ¶¶ 61-64; doc. 93 at ¶¶ 28-31. Scott Douglas' declaration speaks in terms of helping "clients" and strangers to the organization. *See* Doc. 215-12 at ¶¶ 6, 8. Thus, GBM is not suing on the basis of

²⁸ Article III of the Constitution limits the jurisdiction of federal courts to cases and controversies. *See* U.S. Const. art. III, § 2. For a case or controversy to exist, a plaintiff must have standing, among other Article III requirements. *United States v. Amodeo*, 916 F.3d 967, 971 (11th Cir. 2019). To establish standing, a plaintiff must prove three elements: an injury in fact, traceability, and redressability. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). "Standing is not dispensed in gross. Rather, a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Davis v. FEC*, 554 U.S. 724, 734 (2008)) (citations and internal quotations omitted).

associational standing and is not seeking redress on behalf of anyone else. *Cf. Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977); *see also Jacobson*, 957 F.3d at 1204-05.

For organizational standing, diversion of organizational resources to address the allegedly unlawful action is a cognizable injury. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982). The Eleventh Circuit has held that “an organization has standing to sue on its own behalf if the defendant’s illegal acts impair its ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts.” *Fla. State Conference of NAACP v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008). An organizational plaintiff claiming an injury by means of resource diversion must specify what activities it would be diverting resources away from. *See Jacobson*, 957 F.3d at 1205-06.²⁹

GBM has not alleged a sufficient injury to support standing in its own right. GBM alleges that the court-ordered monies requirement causes “GBM to divert a portion of its limited financial and other organizational resources to helping citizens with felony convictions navigate the procedures for re-enfranchisement only to determine that unaffordable [court-ordered monies] render them ineligible.” Doc. 215-12 at ¶ 14. But GBM has failed to specify the priorities that the court-ordered monies requirement forces it to divert resources *away from*, as the Eleventh Circuit requires, *see Jacobson*, 957 F.3d at 1205-06; *Fla. State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1166 (11th Cir. 2008) (“These resources would otherwise be spent on registration drives and election-day education and monitoring.”); *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1350 (11th Cir. 2009) (“[The NAACP] would have to divert volunteers and resources from

²⁹ Chair Gwathney reserves the right to challenge the constitutionality of the organizational standing doctrine.

getting [voters] to the polls to helping them obtain acceptable photo identification.”) (internal quotations omitted). GBM thus fails to establish an injury in fact.

Even if GBM had alleged an injury in fact, the relief that it requests would not redress that injury. GBM asserts that it currently expends significant time and resources looking into outstanding court-ordered monies, *see* doc. 215-12 at ¶¶ 8-13, but there is no reason to believe that the relief GBM seeks would reduce that burden. *Jones* does not demand that Chair Gwathney cease enforcing its court-ordered monies requirement as to all felons; indeed, *Jones* authorizes an administrative process to require felons to establish a genuine inability to pay before exempting them from the court-ordered monies requirement of Ala. Code § 15-22-36.1(a). *Jones*, 410 F. Supp. 3d at 1303; *Jones*, 950 F.3d at 805. Such a process would continue to require felons to determine if they have outstanding court-ordered monies and felons may continue to seek remission. In addition, felons may continue to assess whether they believe themselves able to pay, and, if they answer in the negative, they may then invoke whatever administrative process ABPP puts in place (if required to do so). To the extent that GBM wishes to continue assisting these felons, there is no reason to believe its workload would be decreased, rather than increased, by a new administrative process implemented pursuant to *Jones*. This practical result undermines GBM’s organizational interests in requiring a new process and thus its standing. *See GBM v. Alabama*, 161 F. Supp. 3d 1104, 1114-15 (N.D. Ala. 2016) (doubting that GBM’s injury was redressable because granting an injunction as to the positively identify provision of Alabama’s photo ID requirement would not affect GBM’s “interests and efforts in educating the voters about obtaining a photo ID”); *cf. Thole v. U.S. Bank N.A.*, 590 U.S. ___, 2020 WL 2814294, at *5 (2020) (holding that the plaintiffs lacked an injury because “[w]inning or losing this suit would not change” the plaintiffs’ monetary interests).

Thus, GBM does not sufficiently allege an injury and any injury would not be redressable by the relief authorized in *Jones*. Thus, GBM's status as a Plaintiff on Count 13 does not expand the scope of any relief that might be granted.

d. The equities do not favor relief for August 2020 Municipal Elections.

Plaintiffs seek preliminary injunctive relief for municipal elections that will be held in August 2020, doc. 215 at 5, and they seek it for themselves "and others similarly situated," doc. 215 at 31-32. The elections are scheduled for August 25, 2020. Ala. Code § 11-46-21; *see also* Municipal Election Calendar, *available at* <https://alalm.org/Assets/Files/2020%20Elections%20Calendar%20for%20Web.pdf> at 3 (*last accessed* June 14, 2020). The voter registration deadline for these elections is August 10. Ala. Code § 17-3-50; Ala. Code § 11-46-38. Forty-four days before August 10 is Saturday, June 27. Thus, CERV applications would have to be submitted to the ABPP by no later June 26, and that does not leave time for mailing the CERV to the successful applicant. Thus, there is about a week available for the Court to render any decision and for ABPP to take initial necessary steps to implement the same (like updating the CERV application). Exceptionally little time would be available for ABPP to complete all additional necessary steps. That timeline is obviously insufficient, and this alone is reason enough to deny Plaintiffs' preliminary injunction motion as to the August municipal elections.

e. The equities likely do not favor relief for the November 2020 General Election.

Plaintiffs also seek preliminary injunctive relief for the federal, State, and county elections on November 3, 2020, doc. 215 at 5, and, again, they seek it for themselves "and others similarly situated," doc. 215 at 31-32. As to those elections, the voter registration deadline is October 19. Ala. Code § 17-3-50 (no registration within 14 days before the election); *see also* Voter Guide

2020, *available* *at* <https://www.sos.alabama.gov/sites/default/files/2020%20Voter%20Guide%205-15-2020.pdf> at 3 (last accessed June 14, 2020). Forty-four days before October 19 is Saturday, September 5. While that is certainly more time than the nearly-instantaneous demands associated with the August municipal elections, it is less than three months after the filing of this opposition. That leaves little time for this Court to consider the issues before it and for the ABPP to take the necessary steps to implement any systemwide injunction.

As discussed above, ABPP would need to determine what it means for a felon to be “genuinely unable to pay despite good faith efforts,” *Jones*, 950 F.3d at 811, or “best efforts [and] for reasons beyond their control,” *id.* at 817; *see also id.* at 822 (“on account of their indigency and inability to pay for reasons wholly beyond their control”). Then, “policies and forms would have to be created or amended . . . to reflect the requirement for applicants to provide specified reliable information” for conducting an analysis of genuine inability to pay, and “the CERV application itself and accompanying rules would have to go through the emergency rulemaking process and then the regular rulemaking process,” to achieve that. **Exhibit 3** at ¶ 13. Moreover, hundreds of investigating officers/staff would need to be trained (using training curriculum that would need to be developed), *id.* at ¶ 14, and new staff would likely need to be hired, including for field offices that are presently understaffed, *id.* at ¶¶ 15-16.

Hand v. Scott, 888 F.3d 1206 (11th Cir. 2018), cautions against enjoining the government to quickly “fashion out of whole cloth new standards,” *id.* at 1213, and recognizes the complexity of building a new system, *id.* at 1214. Like Florida’s State Executive Clemency Board, Chair Gwathney “has a substantial interest in avoiding chaos and uncertainty in . . . election procedures, and likely should not be forced to employ a rushed decision-making process” *Id.*

V. SECURITY

Fed. R. Civ. P. 65(c) provides that “[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). Thus, should this court preliminarily enjoin Chair Gwathney, it must require security. As detailed in the declaration of Director Hawthorne, for s systemwide injunction, new or amended forms and policies would be needed, training would be needed, and new staff would likely be needed. **Exhibit 3** at ¶¶ 13-16. A specialist would have a salary range of \$33,921.60 to \$51,400.80 while an Administrative Support Assistant II would have a salary range of \$23,397.60 to \$38,335.20. *Id.* at ¶ 15. New personnel would likely be needed at Headquarters and/or the field offices, especially considering the increase of work and the fact that the field offices are already understaffed. *Id.* at ¶¶ 10-11, 15-16. Thus, Chair Gwathney requests that the security be at least \$100,000 if any relief extends beyond Plaintiffs Thompson and Gamble.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs’ motion for preliminary injunction should be denied. If the motion is granted, the relief should be narrow. Security should be required in direct proportion to the scope of relief granted. Additionally, the Court should enter a stay of its injunction pending Chair Gwathney’s prompt appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on June 15, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Armand Derfner (aderfner@derfneraltman.com); Danielle Lang (dlang@campaignlegalcenter.org); James U. Blacksher (jblacksher@ns.sympatico.ca); Jessica Ring Amunson (jamunson@jenner.com); J. Gerald Herbert (gherbert@campaignlegalcenter.org); J. Mitch McGuire (jmcguire@mandabusinesslaw.com); Mark P. Gaber (mgaber@campaignlegalcenter.org); Michael E. Stewart (mstewart@jenner.com); Jason P. Hipp (jhipp@jenner.com); Jennifer J. Yun (jyun@jenner.com); Molly Danahy (mdanahy@campaignlegal.org); Jonathan Diaz (jdiaz@campaignlegalcenter.org); Christopher W. Weller (cww@chlaw.com); and, Marc James Ayers (mayers@bradley.com).

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Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Treva Thompson, Timothy Lanier,)
Pamela King, Darius Gamble,)
and Greater Birmingham Ministries,)
)
Plaintiffs,)

v.)

Civil Action No.
2:16-cv-783-ECM-SMD

John H. Merrill, in his official capacity)
as Secretary of State, Cindy Sahlie, in)
her official capacity as Chair of the)
Montgomery County Board of Registrars,)
and Leigh Gwathney, in her official)
capacity as Chair of the Board of Pardons)
and Paroles,)
)
Defendants.)

**ALABAMA BOARD OF PARDONS AND PAROLES CHAIR LEIGH GWATHNEY'S
OBJECTIONS AND ANSWERS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES TO HER**

Pursuant to Fed. R. Civ. P. 26 and Fed. R. Civ. P. 33, Alabama Board of Pardons and Paroles Chair Leigh Gwathney, who is sued in her official capacity in this litigation, hereby objects and responds to Plaintiffs' interrogatories to her dated March 11, 2020, as set out below.¹

General Statement

Chair Gwathney has relied on the information presently available to her. Further or different information may be discovered during this phase of the litigation. Chair Gwathney will amend her Objections and Responses to the extent required under Fed. R. Civ. P. 26.

Chair Gwathney's Answers to each Interrogatory are made subject to all objections as to privilege, competence, relevance, materiality, propriety, and admissibility, as well as any and all

¹ Due to the COVID-19 pandemic, in emails dated March 26, 2020, the State Defendants requested, and were granted, an extension of time until May 11, 2020 to respond.

other objections and grounds that would require the exclusion of evidence. Chair Gwathney reserves the right to make any and all such objections at the appropriate time.

General Objections

Chair Gwathney objects to each and every one of Plaintiffs' *Definitions* and *Instructions* to the extent they purport to impose any requirements or obligations different from, or greater than, those contained in the Federal Rules of Civil Procedure, applicable orders of the Court, and/or related agreements.

Chair Gwathney objects to each and every one of Plaintiffs' *Definitions* and *Instructions* as inconsistent with the GUIDELINES TO CIVIL DISCOVERY PRACTICE IN THE MIDDLE DISTRICT OF ALABAMA, which provide that "Lengthy and complex preambles and definitions in discovery requests are discouraged, particularly where they operate to give unexpected breadth or inappropriate effect to the meaning of words which are otherwise reasonably clear." GUIDELINES TO CIVIL DISCOVERY PRACTICE IN THE MIDDLE DISTRICT OF ALABAMA at § I. C.

Chair Gwathney objects to *Definition no. 1* and *Instruction no. 3*, which purport to impose a duty on her to consult with "all persons acting or purporting to act on her behalf, including but not limited to her predecessors, agents, representatives, employees, officers, consultants, and/or contractors" and consultants, respectively. Chair Gwathney will not look beyond current Pardons and Paroles employees. Not only do her predecessors not act on her behalf, but it is unreasonable to expect her to provide sworn testimony about information unknown to her office, *e.g.*, consultants and contractors. Additionally, Plaintiffs' *Definition no. 1* and *Instruction no. 3* attempt to impose a burden that is not proportional to the needs of the case.

Chair Gwathney objects to *Instruction no. 1*, which states that "these Interrogatories seek responsive information and Documents authored, generated, disseminated, drafted, produced,

reproduced, or otherwise created or distributed relating to the period from January 1, 2015 to the present.” While Chair Gwathney will read each Interrogatory as seeking information from no earlier than January 1, 2015, Interrogatories do not seek documents, and Plaintiffs’ Instruction is thus contrary to Fed. R. Civ. P. 33 and the GUIDELINES TO CIVIL DISCOVERY PRACTICE IN THE MIDDLE DISTRICT OF ALABAMA. Should Chair Gwathney opt to produce business records to answer an Interrogatory, she will do so consistent with Fed. R. Civ. P. 33(d), and not with the Plaintiffs’ contrary *Instruction No. 2*.

Chair Gwathney objects to *Instruction no. 8*, which purports to add a discrete subpart to each Interrogatory seeking a description of “all efforts made . . . to obtain the information necessary to answer the Interrogatory” if she lacks knowledge herself.

Chair Gwathney objects to *Instruction no. 10*, which purports to add a discrete subpart to each Interrogatory seeking identification of any individual whom she believes may have “knowledge necessary to respond to the Interrogatory” if she does not.

Chair Gwathney objects that some Interrogatories contain discrete subparts and should be fairly counted as more than one Interrogatory. She reserves the right to object to any subsequently-propounded Interrogatories that she believes take Plaintiffs beyond the number permitted by Fed. R. Civ. P. 33 or any Order of this Court.

Chair Gwathney objects to producing any information from pardon files on the basis of the State’s pardon file privilege, which is codified at Ala. Code § 15-22-36(b). While Magistrate Judge Doyle rejected application of the privilege in this federal lawsuit, he recognized the great burden placed on Chair Gwathney in producing privileged records. Doc. 200 at 4-5. At a minimum, that burden is undeniably part of any Fed. R. Civ. P. 26(b)(1) analysis.

Interrogatory No. 1

Identify all individuals who have received pardons from YOUR office from January 1, 2015 to the present who had outstanding fines, fees, or restitution at the time of the pardon, the date of the pardon, and the amount of outstanding fines, fees, or restitution at the time of the pardon.

Objections:

Chair Gwathney objects to this Interrogatory as not “proportional to the needs of the case, considering . . . the parties’ relative access to the relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

This Interrogatory demands the Board of Pardons and Paroles conduct a review of records for persons who are not parties to this case. Because the Plaintiffs have not established “how information in non-parties’ parole files is relevant to their individual claims,” such a review of all pardon files is unduly burdensome in light of the needs of the case. Doc. 200 at 4.

To the extent that the Plaintiffs are trying to use this Interrogatory to secure an update to previously provided databases, Chair Gwathney objects on grounds that the Interrogatory is not proportional and is unduly burdensome insofar as she has already produced the databases—twice—and they contain thousands of records for non-parties. Chair Gwathney will not produce another update to the databases.

To the extent that this Interrogatory seeks a review of paper pardon files—since databases have already been provided to the Plaintiffs and updated—such a paper-based review would be disproportional and unduly burdensome. Between January 1, 2015 and April 30, 2020, the Board of Pardons and Paroles granted 3,080 pardons to non-parties. The Board will not undertake a paper-based review.

Answer:

The Board has previously produced databases, which include records of all individuals who applied for a pardon and were electronically tracked by the Board of Pardons and Paroles along with identifying information for each individual. The databases also include the result of the individual's application and a free text field used to provide additional details to application handlers. The database does not record amounts of outstanding fines, fees, or restitution owed. Thus, the databases would not be sufficient on their own to fully answer this Interrogatory, and a complete answer could only be obtained through an unduly burdensome physical review of paper pardon files. Between January 1, 2015 and April 30, 2020, the Board of Pardons and Paroles held 4,083 pardon hearings and granted a pardon about 75% of the time, resulting in 3,080 pardons. A physical file review of all 3,080 of these pardon files would be required to answer this Interrogatory.

Interrogatory No. 2

Identify all individuals who have received remission of fines from January 1, 2015 to the present, the date of the remission, and the amount of the remission.

Objections:

Chair Gwathney objects to this Interrogatory as not "proportional to the needs of the case, considering . . . the parties' relative access to the relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1).

This Interrogatory demands the Board of Pardons and Paroles conduct a review records for persons who are not parties to this case. Because the Plaintiffs have not established "how information in non-parties' parole files is relevant to their individual claims," such a review of all remission files is unduly burdensome in light of the needs of the case. Doc. 200 at 4.

To the extent that the Plaintiffs are trying to use this Interrogatory to secure an update to the previously provided remittance database, Chair Gwathney objects on grounds that the Interrogatory is not proportional and is unduly burdensome insofar as she has already produced the database and it contains records for non-parties. Chair Gwathney will not produce an update to the database.

To the extent that this Interrogatory seeks a review of paper pardon files—since the remittance database has already been provided to the Plaintiffs—such a paper-based review would be disproportional and unduly burdensome. While there are many fewer entries in the remittance database and so fewer paper pardon files to pull, they are still the paper pardon files of non-parties. The Board will not undertake a paper-based review.

Answer:

The Board of Pardons and Paroles has a remissions database that currently contains roughly 250 entries. This database was produced to the Plaintiffs in its then-current form in 2018. The database includes records of all individuals who applied for a remission of fine and were electronically tracked by the Board of Pardons and Paroles along with identifying information for each individual. The database also includes the result of the individual's application but does not record the amount of the remission. Thus, the database would not be sufficient on its own to fully answer this Interrogatory, and a complete answer could only be obtained through an unduly burdensome physical review of paper pardon files.

Interrogatory No. 3

Describe in detail the process by which YOUR office identifies what outstanding fines, fees, and restitution are owed by a CERV applicant, including the officials involved, the databases consulted, and any procedures or guidelines used, with respect to applicants with Alabama convictions, applicants with federal convictions, and applicants with out-of-[S]tate convictions.

Objections:

Chair Gwathney objects to this Interrogatory as not “relevant to any parties’ claim or defense and proportional to the needs of the case, considering . . . the parties’ relative access to the relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). Plaintiffs Thompson and Gamble do not deny that they owe court-ordered monies, and this Interrogatory goes far beyond asking what they would need to pay in order to be eligible for a CERV. Additionally, Plaintiffs Thompson and Gamble do not have federal or out-of-State convictions, and Plaintiffs have already secured sworn deposition testimony about matters contained in this Interrogatory.

Answer:

Generally, the process that should be followed in the field offices for investigating an application for a CERV is as follows:

- Run an NCIC to determine all felony convictions involving moral turpitude. (Staff were trained on the list of felonies involving moral turpitude found in Ala. Act No. 2017-378.)
- Run a statewide index search on AOC to search for all felony convictions involving moral turpitude.
- Review any old PSIs (pre-sentence and post-sentence reports) for felony convictions involving moral turpitude.
- If a CERV applicant has a conviction for a felony involving moral turpitude, verify that all fines, court costs, fees, and victim restitution ordered at the time of sentencing on the disqualifying conviction(s) has/have been paid. Do so by checking AOC’s Enforcement SSN Account Browse (screen EC02) by going to F-10 from the Face Sheet. If the applicant

has out-of-State or Federal convictions, contact that jurisdiction to verify all fines, court costs, fees, and victim restitution ordered at the time of sentencing on the disqualifying conviction(s) has/have been paid. For out-of-State or Federal convictions, document under the “Remarks” section the name of the person who verified the costs were paid.

- Check the Face Sheet on AOC to determine that the applicant is no longer under sentence. If the applicant was on Community Corrections, Unsupervised Probation, *etc.*, verify he/she has completed the sentence. If the conviction is an out-of-State or Federal conviction, document under the “Remarks” section the name of the person who verified the applicant has completed his/her sentence.

In addition to using AOC and NCIC databases, the Board of Pardons and Paroles’ practice for investigating a CERV application also involves searching for pending criminal felony charges or active warrants. Records from the prosecuting District Attorney’s Office may also be reviewed by investigating staff as well as the local Circuit Court Clerk’s Office. For older cases, local probation and parole field office files may be reviewed. Alacourt.com is an additional resource used to review images of court documents by investigating staff. For applicants with federal or out-of-State convictions, established contacts with other jurisdictions are consulted as necessary. Also, the agency may contact the applicant for additional information as needed and applicants may contact the agency to bring errors to the attention of investigating staff.

Effective March 16, 2020, Pardons and Paroles’ Administrative Rules, specifically Alabama Administrative Code Section 640-X-7-.02, provided interested individuals with an application form for a CERV. This rule and the CERV application are posted to the agency’s official website.

Interrogatory No. 4

Identify, in order, the most common reasons why a CERV application is denied and the percentage of total denials attributed to outstanding fines, fees, or restitution.

Objections:

Chair Gwathney objects to this Interrogatory as not “proportional to the needs of the case, considering . . . the parties’ relative access to the relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

This Interrogatory seeks statistical information not currently maintained by the Board of Pardons and Paroles and which would be unduly burdensome to obtain and analyze. *Cf.* Fed. R. Civ. P. 26(b)(2)(B). Existing agency data has already been produced to Plaintiffs *via* databases, which may be responsive in part to this Interrogatory; however, the databases alone would be insufficient to fully respond, and a manual review of thousands of paper files of non-parties would be required.² It would be unduly burdensome to conduct a physical review of thousands of paper pardon files and collect statistical data not currently maintained or available in order to supplement databases previously produced to Plaintiffs. Moreover, if such a review were to be undertaken, expert analysis would likely be needed to ascertain the answer to this Interrogatory, and paying an expert for that purpose would be unduly burdensome and unnecessarily expensive for the Board of Pardons and Paroles. Thus, gathering and analyzing the information needed to respond to this Interrogatory would be unduly burdensome and not proportional to the needs of the case.

² Because the Plaintiffs have not established “how information in non-parties’ parole files is relevant to their individual claims,” such a statistical review of all CERV files is unduly burdensome and not proportional in light of the needs of the case. Doc. 200 at 4.

Answer:

The only way to accurately ascertain this information would be for the Board of Pardons and Paroles to conduct an unduly burdensome physical review of thousands of paper pardon files and collect statistical data not currently maintained or available in order to supplement databases previously produced to Plaintiffs in this case. Analysis of manually collected data in conjunction with produced databases would be required. Analysis of the databases alone cannot answer this Interrogatory. The databases include records of all individuals who applied for a CERV and were electronically tracked by the Board of Pardons and Paroles along with identifying information for each individual. The databases also include the result of the individual's application and a free text field used to provide additional details to application handlers. However, these data were used to assist in the processing of applications and were not recorded in a uniform way to produce statistics such as frequency counts or percentages. Moreover, in cases where multiple applications were received by the Board of Pardons and Paroles for the same applicant, data pertaining to previous applications would have been overwritten due to database design and the agency's practice of updating an applicant's existing record rather than creating a new record for each application. Also, instances of duplicate records exist in the databases in error.

Interrogatory No. 5

Identify all court costs, fees, surcharges, criminal fines or other legal financial obligations (other than restitution) imposed under Alabama [S]tate law that can disqualify an applicant from obtaining a CERV, the payee for each legal financial obligation identified, the purpose of each legal financial obligation identified, and the use for which the funds for each legal financial obligations are directed.

Objections:

Chair Gwathney objects to this Interrogatory as not "proportional to the needs of the case, considering . . . the parties' relative access to the relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the

proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). Chair Gwathney does not have this information, and it would be unduly burdensome for her to have to acquire it for Plaintiffs, especially when they likely have access to many of the sources of information to which she would look. Moreover, there is no dispute that (1) Plaintiff Thompson owes more than \$33,000 in victim restitution that she has not made payments toward since 2015, (2) Plaintiff Gamble owes nearly \$49,000 on a fine, but is making \$25 monthly payments toward a post-sentencing fee, and (3) Plaintiff Thompson’s restitution and Plaintiff Gamble’s fine make these Plaintiffs ineligible for a CERV.

Answer:

The Board of Pardons and Paroles investigates CERV applications to determine whether the felon has outstanding fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on disqualifying cases. *See* Ala. Code § 15-22-36.1(a)(3). The Board of Pardons and Paroles does not determine or oversee the payees, purposes, and uses for the court ordered monies imposed on felons, and thus does not have the information demanded by this Interrogatory.

Interrogatory No. 6

Describe in detail the process by which YOUR office determines that a financial obligation owed by an applicant is disqualifying, including the officials involved, the databases consulted, and any procedures or guidelines used, with respect to applicants with Alabama convictions, applicants with federal convictions, and applicants with out-of-[S]tate convictions.

Objections:

Chair Gwathney objects to this Interrogatory as not “relevant to any parties’ claim or defense and proportional to the needs of the case, considering . . . the parties’ relative access to the relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed.

R. Civ. P. 26(b)(1). Plaintiffs Thompson and Gamble do not deny that they owe court-ordered monies, and this Interrogatory goes far beyond asking what they would need to pay in order to be eligible for a CERV. Additionally, Plaintiffs Thompson and Gamble do not have federal or out-of-State convictions.

Chair Gwathney further objects to this Interrogatory as vague and/or ambiguous.

Answer:

The response to Interrogatory No. 3, above, covers the general process for investigating a CERV application. The Board of Pardons and Paroles looks to an individual's case(s) of conviction to determine whether each conviction is disqualifying for purposes of issuing a CERV. If fines, court costs, fees, and/or victim restitution ordered by the sentencing court at the time of sentencing is/are owed on any disqualifying conviction, the same must be paid for a CERV to be granted under law. *See* Ala. Code § 15-22-36.1(a)(3); Ala. Admin. Code § 640-X-7-.02.

Interrogatory No. 7

Describe in detail the process by which YOUR office determines whether an outstanding balance on LFOs is applicable to a disqualifying LFO rather than a non-disqualifying LFO, including the officials involved, the databases consulted, and any procedures or guidelines used, with respect to applicants with Alabama convictions, applicants with federal convictions, and applicants with out-of-[S]tate convictions.

Objections:

Chair Gwathney objects to this Interrogatory as not "relevant to any parties' claim or defense and proportional to the needs of the case, considering . . . the parties' relative access to the relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). Plaintiffs Thompson and Gamble do not deny that they owe court-ordered monies, and this Interrogatory goes far beyond asking what they would need to pay in order to be

eligible for a CERV. Additionally, Plaintiffs Thompson and Gamble do not have any non-disqualifying convictions, any federal convictions, or any out-of-State convictions.

Chair Gwathney further objects to this Interrogatory as vague and/or ambiguous.

Answer:

The response to Interrogatory No. 3, above, covers the general process for investigating a CERV application. The Board of Pardons and Paroles looks to an individual's case(s) of conviction to determine whether each conviction is disqualifying for purposes of issuing a CERV. If fines, court costs, fees, and/or victim restitution ordered by the sentencing court at the time of sentencing is/are owed on any disqualifying conviction, the same must be paid for a CERV to be granted under law. *See* Ala. Code § 15-22-36.1(a)(3); Ala. Admin. Code § 640-X-7-.02.

Interrogatory No. 8

Identify all instances where YOUR office initially denied a CERV but ultimately determined that the individual was in fact entitled to a CERV at the time of application and granted the CERV, including information about who identified the error, how quickly the error was identified, and how the applicant was notified.

Objections:

Chair Gwathney objects to this Interrogatory as not "relevant to any party's claim or defense," Fed. R. Civ. P. 26(b)(1), and therefore outside the scope of permissible discovery. Count 13 does not allege that the Board of Pardons and Paroles made errors in the processing of CERV applications; it alleges that the process as set forth in Ala. Code § 15-22-36.1(a)(3) amounts to wealth-based discrimination. Doc. 1 at ¶¶ 245-252; doc. 93 at ¶¶ 65-69. Evidence of errors in the processing of CERV applications is neither relevant nor probative in proving this Count.

Chair Gwathney objects to this Interrogatory as not "proportional to the needs of the case, considering . . . the parties' relative access to the relevant information, the parties' resources, the

importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

Plaintiff’s Interrogatory seeks for the Board of Pardons and Paroles to conduct an extensive review of databases already supplied to the Plaintiffs and thousands of paper pardon files of non-parties. Because the Plaintiffs have not established “how information in non-parties’ parole files is relevant to their individual claims,” such a review is unduly burdensome in light of the needs of the case. Doc. 200 at 4.

Answer:

The only way to accurately ascertain this information would be for the Board of Pardons and Paroles to conduct an unduly burdensome physical review of thousands of paper pardon files and collect statistical data not currently maintained or available in order to supplement databases previously produced to Plaintiffs in this case. These databases include records of all individuals who applied for a CERV and were electronically tracked by the Board of Pardons and Paroles along with identifying information for each individual. The databases also include the result of the individual’s application and a free text field used to provide additional details to application handlers. However, these data were used to assist in the processing of applications and were not recorded to contain the level of detail sought by this Interrogatory. Moreover, in cases where multiple applications were received by the Board of Pardons and Paroles for the same applicant, data pertaining to previous applications would have been overwritten due to database design and the agency’s practice of updating an applicant’s existing record rather than creating a new record for each application. Thus, the databases alone would be insufficient and an unduly burdensome review of thousands of paper pardon files of non-parties would need to be reviewed to answer this Interrogatory.

Interrogatory No. 9

Describe in detail all policies and procedures in place to perform quality control of CERV applicant investigations and identify errors in the processing of CERV applications.

Objections:

Chair Gwathney objects to this Interrogatory as not “relevant to any party’s claim or defense,” Fed. R. Civ. P. 26(b)(1), and therefore outside the scope of permissible discovery. Count 13 does not allege that the Board of Pardons and Paroles made errors in the processing of CERV applications; it alleges that the process as set forth in Ala. Code § 15-22-36.1(a)(3) amounts to wealth-based discrimination. Doc. 1 at ¶¶ 245-252; doc. 93 at ¶¶ 65-69. Evidence of errors in the processing of CERV applications is neither relevant nor probative in proving this Count.

Chair Gwathney objects to this Interrogatory as not “proportional to the needs of the case, considering . . . the parties’ relative access to the relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

Answer:

Current Board of Pardons and Paroles’ quality control practices involve promptly issuing the initial CERV assignment to the local field office for investigation where pertinent local records may be accessed as necessary, especially for older disqualifying felony convictions. After local supervisor review and approval, the initial investigation is returned to Pardons and Paroles Headquarters for specialized Board Operations staff in the Pardon Unit to conduct a review and correct any issues identified. Within Board Operations, supervisory staff conduct a secondary review as well. The Pardons and Paroles Director’s designee conducts a final review and issues the CERV. During the investigation and review process, in-house attorneys are available to answer questions that require legal research or a legal opinion as they arise. Regular training is conducted

both formally and informally for impacted agency staff as to the CERV law, updates thereto, and applicable processes, and procedures. Also, the agency may contact the applicant for additional information as needed and applicants may contact the agency to bring errors to the attention of investigating staff.

Interrogatory No. 10

Identify all instances where YOUR office has identified errors or problems in the processing of CERV applications and what actions YOUR office took to correct those errors or problems, including any efforts to notify applicants wrongly denied a CERV.

Objections:

Chair Gwathney objects to this Interrogatory as not “relevant to any party’s claim or defense,” Fed. R. Civ. P. 26(b)(1), and therefore outside the scope of permissible discovery. Count 13 does not allege that the Board of Pardons and Paroles made errors in the processing of CERV applications; it alleges that the process as set forth in Ala. Code § 15-22-36.1(a)(3) amounts to wealth-based discrimination. Doc. 1 at ¶¶ 245-252; doc. 93 at ¶¶ 65-69. Evidence of errors in the processing of CERV applications is neither relevant nor probative in proving this Count.

Chair Gwathney objects to this Interrogatory as not “proportional to the needs of the case, considering . . . the parties’ relative access to the relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).

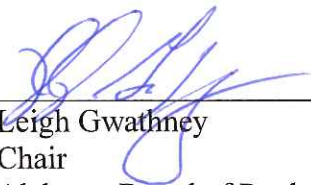
Plaintiff’s Interrogatory seeks for the Board of Pardons and Paroles to conduct an extensive review of databases already supplied to the Plaintiffs and thousands of paper pardon files of non-parties. Because the Plaintiffs have not established “how information in non-parties’ parole files is relevant to their individual claims,” such a review is unduly burdensome in light of the needs of the case. Doc. 200 at 4.

Answer:

The only way to accurately ascertain this information would be for the Board of Pardons and Paroles to conduct an unduly burdensome physical review of thousands of paper pardon files and collect statistical data not currently maintained or available in order to supplement databases previously produced to Plaintiffs in this case. These databases include records of all individuals who applied for a CERV and were electronically tracked by the Board of Pardons and Paroles along with identifying information for each individual. The databases also include the result of the individual's application and a free text field used to provide additional details to application handlers. However, these data were used to assist in the processing of applications and were not recorded to contain the level of detail sought by this Interrogatory. Moreover, in cases where multiple applications were received by the Board of Pardons and Paroles for the same applicant, data pertaining to previous applications for the same individual would have been overwritten due to database design and the agency's practice of updating an applicant's existing record rather than creating a new record for each application. Thus, the databases alone would be insufficient and an unduly burdensome review of thousands of paper pardon files of non-parties would need to be reviewed to answer this Interrogatory.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing Answers to Interrogatories are true and correct to the best of my knowledge, information and belief.

Executed on: 5/11/2020



Leigh Gwathney
Chair
Alabama Board of Pardons and Paroles

Respectfully submitted,

Steve Marshall
Attorney General

James W. Davis (ASB-4063-I58J)
Deputy Attorney General

s/ Misty S. Fairbanks Messick
Winfield J. Sinclair (ASB-1750-S81W)
Misty S. Fairbanks Messick (ASB-1813-T71F)
Brad Chynoweth (ASB-0030-S63K)
Assistant Attorneys General

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Certificate of Service

Pursuant to an agreement memorialized in the Report of the Parties' Planning Meeting, electronic service is acceptable for this document. I hereby certify that I have served a copy of the foregoing document on Danielle Lang (dlang@campaignlegalcenter.org), Mark P. Gaber (mgaber@campaignlegalcenter.org), Molly Danahy (mdanahy@campaignlegal.org); Jim Blacksher (jblacksher@ns.sympatico.ca), Jason P. Hipp (JHipp@jenner.com), and J. Mitch McGuire (jmcguire@mandabusinesslaw.com), six of the counsel for Plaintiffs, *via* email on this the 11th day of May 2020.

s/ Misty S. Fairbanks Messick
Of Counsel

AC80379
OPER: COM
PAGE: 1ALABAMA JUDICIAL INFORMATION SYSTEM
CASE ACTION SUMMARY
CIRCUIT CRIMINAL

CASE: CC 98 000493.00

RUN DATE: 07/09/98

IN THE CIRCUIT COURT OF CULLMAN

JUDGE: HFB

OF ALABAMA

VS

FIELDS ODEANA FREDRICK

CASE: CC 98 000493.00

HANCEVILLE, AL 35077 0000

DOB: [REDACTED] SEX: M RACE: B HT: 6 01 WT: 205 HR: BRO EYES: BRO
SSN: [REDACTED] ALIAS NAMES:CHARGE1: TRAFFICKING-COCAINE
MORE?: OFFENSE DATE:CODE1: VDRY LIT: TRAFFICKING-COC TYP: F
AGENCY/OFFICER: CCSD BLACKWODATE WAR/CAP ISS:
DATE INDICTED: 07/02/98
DATE RELEASED: 10/11/97
BOND AMOUNT: \$50,000.00DATE ARRESTED: 10/10/97
DATE FILED: 07/08/98
DATE HEARING:
SURETIES: ALL STATESTATE OF ALABAMA, CULLMAN COUNTY
I, [REDACTED] Clerk of Circuit Court in and for
said County and State, hereby certify that the
within and foregoing is a true and correct copy as
the same appears of record in this office.DATE 1: 08/07/98 DESC: ARRG
DATE 2: DESC:TIME: 0900 A
TIME: 0000Witness my hand and official seal, this
day of October 20, 1998.DEF/ATY: DRAKE, THOMAS E, II
PROSECUTOR: BROOKS, LEN D

TYPE: R

OTH CSE: DC 97 640

CHK/TICKET NO: 97100122

GRAND JURY: 98 667

COURT REPORTER:

SID NO:

DEF STATUS: BOND

DEMAND:

OPER: COM

DATE ACTIONS, JUDGEMENTS, AND NOTES

8/6/98

NOTICE OF INTENT TO OFFER PROOF BY A CERTIFICATE OF ANALYSIS

8/18/98

OBJECTION TO ANALYSIS BY STATE AND REQUEST FOR INDEPENDENT ANALYSIS

8/18/98

MOTION TO SUPPRESS

8-19-98

ORDERED this matter comes before the Court on the defendant's Motion to Suppress and, after hearing, the Court does deny said Motion to Suppress. Further, the defendant has objected to the introduction to the Certificate of Analysis, the Court does deny said objection but will allow the defendant to conduct his own independent analysis on the alleged contraband. The defendant shall inform the Court of the name of said expert and said expert's address so that the custodian of evidence of Cullman County Sheriff's Department may provide said alleged contraband to the expert for analysis.

JUDGE

11/2/98

MOTION FOR APPOINTED COUNSEL ON APPEAL IN FORMA PAUPERUS

11-3-98

ORDERED, the defendant having appealed his conviction stating that he is indigent and requesting an appointed counsel, the Court does hereby appoint Ms. Kimberly J. Dobbs-Ramey, 116 Lee Street, N.E., Decatur, AL 35602. Defendant shall serve his sentence pending the appeal. The court reporter shall prepare a transcript for the defendant as an indigent.

JUDGE

11/10/98

MOTION FOR NEW TRIAL, MOTION IN ARREST OF JUDGMENT, MOTION FOR JUDGMENT OF ACQUITTAL

11/10/98

COURT OF CRIMINAL APPEALS DOCKETING STATEMENT

11/10/98

REPORTERS TRANSCRIPT ORDER

11/10/98

NOTICE OF APPEAL

12/10/98

RECORD ON APPEAL MAILED

1-25-99

ORDERED, on motion of the State to correct or modify the record, the Court having reviewed same does grant said motion. The Court Reporter shall supplement the transcript and the Clerk shall transmit same to the Alabama Court of Criminal Appeals within 10 days.

1/26/99 SUPPLEMENT MAILED

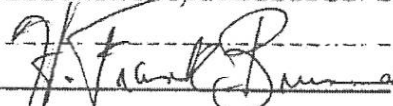
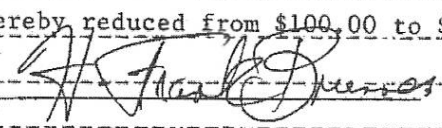
JUDGE

7/3/2000	In Forma Pauperis Declaration
7/3/2000	Pettition For Relief From Conviction Or Sentence
7/3/2000	Motion For Judgment Of Recusal
7/3/2000	Motion For Evidentiary Hearing And Appointment Of Counsel
7-17-00 7/17/00 copy to DA Dist.	Ordered, the Defendant having filed a Rule 32 Petition, the State shall respond as required by ARCrP. [Signature]
7/24/2000	Affidavit Of Odeana Fields
8/9/2000	Motion To Extend Time
9/7/2000	Motion To Extend Time
10/6/2000	Motion To Extend Time
10/13/2000	Petitioners objection To The District Attorneys Extention Of Time

ACR0369 ALABAMA JUDICIAL INFORMATION CENTER

CASE ACTION SUMMARY
CONTINUATIONCASE: CC 1998 000493.60
JUDGE ID: HFB

STATE OF ALABAMA VS FIELDS ODEANA FREDRICK

DATE	ACTION, JUDGMENTS, CASE NOTES
11/9/2000	Motion For Summary Judgment/Motion To Dismiss
11/17/2000	Motion To Enter Default Judgment Against The State Of Alabama
11/21/2000	ORDER, Petition Denied
12/1/1000	Notice Of Appeal
12/11/2000	Record On Appeal Mailed
12/10/2001	Certificate Of Judgment From Court Of Criminal Appeals
10/5/04	Motion To Transmute Fines And Restitution Imposed
10/13/04	ORDERED, the Defendant having filed a Motion to Transmute Fines and Restitution
10/13/04 copy to DA, Def.	Imposed, the Court has reviewed same and does deny his request to reconsider amount of said fines, restitution and other Court-ordered monies. The Court does hereby set Defendant a monthly payment of \$100.00 commencing November 1, 2004.
	 JUDGE
11/8/04	ORDERED, Probation Officer Gloria Greening having filed a Request for
11/10/04 copy to DA, Def.	Reduction of Monthly Payment Amount on Court-Ordered Monies, this Court has reviewed same and request is granted. Therefore, the Defendant's payment on court ordered monies is hereby reduced from \$100.00 to \$50.00 per month.
	 Judge

State of Alabama
Unified Judicial System

CRIMINAL CASE ACTION SUMMARY CIRCUIT COURT OF CULLMAN COUNTY

Case Number

CC 98 493
ID YR Number

STATE OF ALABAMA VS.

ODEANA FREDRICK FIELDS

Page Number ____ of ____ Pages

ACTIONS, JUDGEMENTS, CASE NOTES

ARRAIGNMENT

☒ Ordered, Hon. Tommy Drake Esq. is ☐ appointed, ☒ retained to represent the defendant.
☐ Defendant petitions the Court for treatment as a Youthful Offender.
☒ Ordered, defendant ☐ files written waiver of arraignment, ☒ with his attorney in open court waives the reading of the indictment, ☐ with his attorney in open court, the indictment having been read, then pleads ☒ not guilty, ☐ not guilty by reason of mental disease or defect.
 Ordered, defendant has 10 days to file motions, and hearing on said motions shall be had if necessary on 8-19-98 Further Pleading Day. Further ordered, discovery is granted pursuant to Rule 16, ARCrP.
 Date: 8-8-98 [Signature], Judge

YOUTHFUL OFFENDER

Ordered, defendant, with his attorney, in chambers, the Court having considered the Youthful Offender report and evidence for the defendant.
☐ denies, ☐ grants the request to be adjudicated as a Youthful Offender.
☐ The Court having denied the defendant's petition, the Court now arraigns the defendant. Ordered, defendant ☐ files written waiver of arraignment, ☐ with his attorney in open court waives the reading of the indictment, ☐ with his attorney in open court, the indictment having been read, then pleads ☐ not guilty, ☐ not guilty by reason of mental disease or defect. Defendant has 10 days to file motions, discovery is granted pursuant to Rule 16, ARCrP.
☐ Trial as a Youthful Offender, to the Court without a jury is set on _____.
☐ Ordered, defendant, with his attorney, files an executed explanation of rights and plea of guilty form, the court having reviewed the same with the defendant and having found the defendant to be knowledgeable of his constitutional rights and that he knowingly waives the same, and after Colloquy for the record, defendant pleads guilty as a Youthful Offender and the Court adjudges defendant guilty as a Youthful Offender.

Asked if he has anything to say before sentence is pronounced, defendant says: _____, then was told by the Court that credit would be allowed on the sentence for time in jail on the current charge, and explained to him the terms of the sentence or probation.

Ordered as punishment defendant is sentenced in accordance with the plea agreement filed herein.

Ordered, the defendant is informed he has 42 days to appeal this conviction, that if he is indigent the Court will appoint counsel to represent him and provide him a certified copy of the record and transcript without cost to him; defendant ☐ did not ☐ did give notice of appeal and _____, Esq. is ☐ appointed, ☐ retained to represent defendant on appeal; bond is set at \$ _____ and ☐ sentence is suspended, ☐ defendant will serve his sentence pending appeal.

Date: _____, Judge

GUILTY PLEA

Ordered, defendant, with his attorney, files an executed explanation of rights and plea of guilty form, the court having reviewed the same with the defendant and having found the defendant to be knowledgeable of his constitutional rights and that he knowingly waives the same, and after Colloquy for the record, defendant pleads guilty ☐ as charged in Count _____ of the (amended) indictment, ☐ to _____, a lesser offense of that charged, and the court adjudges the defendant guilty. Further ordered, the parties and the court waive a written presentence report and hearing, and the court now sentences the defendant.

☐ The defendant acknowledges for the record prior felony convictions, with aid of counsel therein, as follows: _____

Asked if he has anything to say before sentence is pronounced, defendant says: _____, then was told by the court that credit would be allowed on the sentence for time in jail on the current charge, and the Court explained to him the terms of the sentence or probation.

Ordered as punishment defendant is sentenced in accordance with the plea agreement filed herein.

☐ Defendant applies for probation and ☐ is continued under his current bond, ☐ will be released when he makes \$ _____ bond, ☐ is held without bail, pending probation hearing, and he will be notified of the hearing date.

☐ Sentence herein is suspended and defendant is placed on ☐ supervised ☐ unsupervised probation for _____ ☐ years ☐ months.

Ordered, the defendant is informed he has 42 days to appeal this conviction, that if he is indigent the Court will appoint counsel to represent him and provide him a certified copy of the record and transcript without cost to him; defendant ☐ did not ☐ did give notice of appeal and _____, Esq. is ☐ appointed, ☐ retained to represent defendant on appeal; bond is set at \$ _____, and ☐ sentence is suspended, ☐ defendant will serve his sentence pending appeal.

Date: _____, Judge

CC 98 493 State vs. ODEANA FREDRICK FIELDS Charge TRAFFICKING COCAINE

ACTIONS, JUDGEMENTS, CASE NOTES

TRIAL VERDICT

- ☒ Upon trial of this case before a duly selected jury, sworn and empaneled by law, comes the Jury of twelve, Johany M. Sears Foreperson, who upon their oaths do say: Guilty of Trafficking in Cocaine. Accordingly then, Ordered by the Court defendant is adjudged guilty ☒ as charged in Count _____ of the indictment, ☐ of _____, a lesser offense of that charged in the indictment.
- ☐ Ordered, after trial to the Court without a jury, the Court finds the defendant ☐ not guilty, ☐ guilty as charged in Count _____ of the (amended) indictment, ☐ guilty of _____, a lesser offense of that charged in the indictment, ☐ guilty as a Youthful Offender; and further ordered the Court adjudges defendant guilty.
- ☒ A written presentence report is ordered by the Court, and sentencing is set on Oct. 16, 1998 at 9:00 A.M. The court will consider habitual offender status, restitution and probation at that time.
- ☒ Defendant is ☐ continued under his current bond, ☐ ordered held without bail pending sentencing, ☒ will be released when he makes \$500,000.00 bond.

Date: 9-4-98J. Frank Brunner, Judge

SENTENCE AFTER TRIAL

- ☐ The defendant acknowledges for the record prior felony convictions, with aid of legal counsel therein, as follows: _____
- ☐ At Habitual Felony Offender hearing, the Court finds beyond a reasonable doubt the defendant to have been previously convicted of felonies, with aid of counsel therein, as follows: _____

Asked if he has anything to say before sentence is pronounced, defendant says: Nothing, then was told by the court that credit would be allowed on the sentence for time in jail on the current charge, and the Court explained to him the terms of the sentence or probation.

Ordered as punishment defendant is sentenced to ☒ imprisonment in the penitentiary of the State of Alabama, ☐ hard labor for the use of Culberson County, for a term of 30 ☒ years ☐ months; defendant is fined \$50,000.00; is ordered to make restitution in the amount of \$ _____, to the victim, _____; ordered to pay all court costs; ordered to pay \$1,000.00 Crime Victim Compensation Assessment; ordered to pay \$1,000.00 Drug Demand Reduction Assessment; and all appointed attorney's fees when ascertained, in that order. Defendant shall serve 3 full calendar years before any parole.

☐ Ordered, defendant shall successfully complete the Court Referral Officer's drug/alcohol treatment program as a condition of release on parole or probation.

☐ Sentence herein is suspended and defendant is placed on ☐ supervised ☐ unsupervised probation for _____ ☐ years ☐ months. All fines, assessments, costs and conditions remain in effect.

- ☐ Defendant applies for probation and the court having considered same, probation is ☐ denied and the defendant shall serve his sentence, ☐ granted and defendant is placed on probation pursuant to the terms and conditions set out in the probation order filed herein.

Ordered, the defendant is informed he has 42 days to appeal this conviction, that if he is indigent the Court will appoint counsel to represent him and provide him a certified copy of the record and transcript without cost to him; defendant ☒ did not ☐ did give notice of appeal and _____, Esq. is ☐ appointed, ☐ retained to represent defendant on appeal; bond is set at \$ _____, and ☐ sentence is suspended, ☐ defendant will serve his sentence pending appeal.

Date: 10-16-98J. Frank Brunner, Judge

PROBATION HEARING

- ☐ After hearing, probation is denied and the Defendant shall serve his sentence.
- ☐ After hearing, probation is granted according to the terms set out in the Probation Order filed herein.

Date: _____

_____, Judge

IN THE CIRCUIT COURT OF CULLMAN COUNTY, ALABAMA

STATE OF ALABAMA

PLAINTIFF,

VS.

ODEANA FREDRICK FIELDS,

DEFENDANT,

*
*
*
*
*
*
*
*

CASE NO: CC98-493

MOTION TO REMIT

Comes now the State of Alabama by and through C. Wilson Blaylock, District Attorney for the Thirty-Second Judicial Circuit, and moves this Honorable Court to remit the remaining balance of the D99 fee.

WHEREFORE, the State of Alabama respectfully requests that the remaining D99 fee be remitted.

This the 3rd day of September, 2014.



C. Wilson Blaylock
District Attorney



ELECTRONICALLY FILED
9/8/2014 1:51 PM
25-CC-1998-000493.00
CIRCUIT COURT OF
CULLMAN COUNTY, ALABAMA
LISA MCSWAIN, CLERK

IN THE CIRCUIT COURT OF CULLMAN COUNTY, ALABAMA

STATE OF ALABAMA

V.

FIELDS ODEANA FREDRICK
Defendant.

)
)
)
)
)
)

Case No.: CC-1998-000493.00

ORDER

This action is before this Court by the State of Alabama's Motion to Remit and said motion is well taken, it is therefore ORDERED, that the remaining balance of the D99 fee in this case be remitted.

DONE this 8th day of September, 2014.

/s/ GREGORY A NICHOLAS
CIRCUIT JUDGE



STATE OF ALABAMA
BOARD OF PARDONS AND PAROLES
JUSTICE CENTER
301 S. Ripley Street Bldg D
P.O. Box 302405
Montgomery, Alabama 36130-2405
Central Office- (334) 242-8700



CLIFF WALKER
Chairman of the Board

BILL WYNNE
Associate Member

BOBBY LONGSHORE
Associate Member

CYNTHIA DILLARD
Executive Director

PHIL BRYANT
Assistant Executive Director

EDDIE COOK, JR.
Assistant Executive Director

Ashley Wilhite
Cullman County Circuit Clerk's Office
Room 303 Cullman County Courthouse
500 2nd Ave. SW
Cullman, AL 35055

RECEIVED IN OFFICE

SEP 21 2014

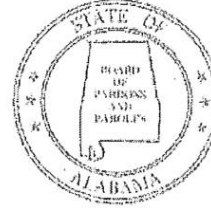
Ms. Wilhite,

Please find the enclosed copy of the Board Action Sheet and Pardon Certificate for Odeana Fields. The Board granted Mr. Fields a pardon and remitted his trafficking fine in full (\$48,289.16) for Cullman County CC1998-493.

Please advise if you need any additional information.

Sincerely,

Sarah Still
Board Operations Division Director
(334) 353-8797



STATE OF ALABAMA
BOARD OF PARDONS AND PAROLES

CERTIFICATE OF PARDON WITH RESTORATION OF
CIVIL AND POLITICAL RIGHTS

KNOW ALL MEN BY THESE PRESENTS:

IT HAVING BEEN MADE TO APPEAR TO THE ALABAMA STATE BOARD
OF PARDONS AND PAROLES THAT ODEANA FREDRICK FIELDS 201173
WAS CONVICTED OF THE FOLLOWING DISQUALIFYING OFFENSES:

COUNTY	CASE NUMBER	DATE	OFFENSE	SENTENCE
CULLMAN	CC1998-000493	10-16-1998	TRAFFICKING-COC	030 00 000CS

AND IT FURTHER APPEARING TO THE BOARD FROM THE OFFICIAL REPORT
OF THE PAROLE OFFICER, WHICH IS A PART OF THE RECORD IN THIS CASE,
THAT THE ABOVE NAMED HAS SO CONDUCTED HIMSELF AS TO DEMONSTRATE HIS
REFORMATION AND TO MERIT PARDON WITH RESTORATION OF CIVIL RIGHTS;

NOW, IN COMPLIANCE WITH THE AUTHORITY VESTED IN THE STATE BOARD
OF PARDONS AND PAROLES BY THE CONSTITUTION AND THE LAWS OF THE STATE
OF ALABAMA TO GRANT PARDONS AND TO RESTORE CIVIL AND POLITICAL RIGHTS,
IT IS

ORDERED THAT A PARDON BE GRANTED TO THE ABOVE NAMED AS A RESULT
OF THE ABOVE STATED CONVICTION(S), AND IT IS FURTHER ORDERED THAT ALL
CIVIL AND POLITICAL RIGHTS WHICH WERE FORFEITED AS A RESULT OF THE
AFORESAID CONVICTION(S) OTHER THAN THOSE RIGHTS SPECIFICALLY EXCLUDED
BY THE TERMS OF THIS CERTIFICATE BE AND THEY ARE HEREBY RESTORED.

THIS PARDON DOES NOT RELIEVE THE RECIPIENT FROM THE EFFECTS OF THE
HABITUAL OFFENDER ACT AS CONTAINED IN THE ALABAMA CODE.

GIVEN UNDER THE HAND AND SEAL OF THE STATE BOARD OF PARDONS AND
PAROLES, THIS THE 9TH DAY OF SEPTEMBER, 2014.

ALABAMA BOARD OF PARDONS AND PAROLES

Cynthia S. Dillard

CYNTHIA S. DILLARD
EXECUTIVE DIRECTOR

199 IN OFFICE

SEP 24 2014

RECEIVED
SEP 24 2014

ALABAMA BOARD OF PARDONS AND PAROLIES
Board Action on Application for Pardon with Restoration of Rights

APPLICANT: Fields, Odeana **AIS #:** 201173

This 9 day of Sept, 2014.

It is hereby **ORDERED** that a pardon be granted in this matter, with restoration of:

- ☐ all civil and political rights.
- ☐ those civil and political rights necessary to participate in elections, and no other rights.
- ☒ all civil and political rights, **EXCEPT** those listed below:

- ☒ relief from habitual offender act.
- ☐ relief from effects of conviction for sex offense.
- ☐ relief from firearms disabilities.
- ☐ Other _____

☒ remit fines in the amount of \$ 200.00

GRANT: _____

DENY: _____

FILED IN OFFICE

SEP 24 2014

ALABAMA BOARD OF PARDONS AND PAROLIES
 1000 W. MONROE ST.
 ALBANY, AL 36821

Reasons for favoring grant:

- ☐ Conduct indicates rehabilitation
- ☐ Substantially complied w/parole terms
- ☐ Family and/or community support
- ☐ Gainfully employed / legitimate support
- ☐ Paid restitution and supervision fees
- ☐ Paid Court ordered money
- ☐ Satisfactory criminal record check
- ☐ Investigating Officer recommends
- ☐ Pardon Examiner recommends
- ☐ Reasonably satisfied he will remain at liberty without violating the law
- ☐ Pardon not incompatible with society

Other: _____

Reasons for favoring grant:

- ☐ Conduct indicates rehabilitation
- ☐ Substantially complied w/parole terms
- ☐ Family and/or community support
- ☐ Gainfully employed / legitimate support
- ☐ Paid restitution and supervision fees
- ☐ Paid Court ordered money
- ☐ Satisfactory criminal record check
- ☐ Investigating Officer recommends
- ☐ Pardon Examiner recommends
- ☐ Reasonably satisfied he will remain at liberty without violating the law
- ☐ Pardon not incompatible with society

Other: _____

Reasons for favoring grant:

- ☐ Conduct indicates rehabilitation
- ☐ Substantially complied w/parole terms
- ☐ Family and/or community support
- ☐ Gainfully employed / legitimate support
- ☐ Paid restitution and supervision fees
- ☐ Paid Court ordered money
- ☐ Satisfactory criminal record check
- ☐ Investigating Officer recommends
- ☐ Pardon Examiner recommends
- ☐ Reasonably satisfied he will remain at liberty without violating the law
- ☐ Pardon not incompatible with society

Other: _____

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9-7-14

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[Handwritten signature]

STATE OF ALABAMA
BOARD OF PARDONS AND PAROLES
301 S. RIPLEY STREET
P.O. BOX 302405
MONTGOMERY, ALABAMA 36130 - 2405

09-10-2014

HON GREG A NICHOLAS
CIRCUIT JUDGE
500 2ND AVENUE SW
CULLMAN AL 35055

RE: FIELDS ODEANA FREDRICK
201173

B/M

A PARDON WAS GRANTED IN THIS CASE EFFECTIVE 09-09-2014

THE PARDON CERTIFICATE IS ATTACHED.

SINCERELY,



CYNTHIA S. DILLARD
EXECUTIVE DIRECTOR

STATE OF ALABAMA
BOARD OF PARDONS AND PAROLES

CERTIFICATE OF PARDON WITH RESTORATION OF
CIVIL AND POLITICAL RIGHTS

KNOW ALL MEN BY THESE PRESENTS:

IT HAVING BEEN MADE TO APPEAR TO THE ALABAMA STATE BOARD OF PARDONS AND PAROLES THAT ODEANA FREDRICK FIELDS 201173 WAS CONVICTED OF THE FOLLOWING DISQUALIFYING OFFENSES:

COUNTY	CASE NUMBER	DATE	OFFENSE	SENTENCE
CULLMAN	CC1998-000493	10-16-1998	TRAFFICKING-COC	030 00 000CS

AND IT FURTHER APPEARING TO THE BOARD FROM THE OFFICIAL REPORT OF THE PAROLE OFFICER, WHICH IS A PART OF THE RECORD IN THIS CASE, THAT THE ABOVE NAMED HAS SO CONDUCTED HIMSELF AS TO DEMONSTRATE HIS REFORMATION AND TO MERIT PARDON WITH RESTORATION OF CIVIL RIGHTS;

NOW, IN COMPLIANCE WITH THE AUTHORITY VESTED IN THE STATE BOARD OF PARDONS AND PAROLES BY THE CONSTITUTION AND THE LAWS OF THE STATE OF ALABAMA TO GRANT PARDONS AND TO RESTORE CIVIL AND POLITICAL RIGHTS, IT IS

ORDERED THAT A PARDON BE GRANTED TO THE ABOVE NAMED AS A RESULT OF THE ABOVE STATED CONVICTION(S), AND IT IS FURTHER ORDERED THAT ALL CIVIL AND POLITICAL RIGHTS WHICH WERE FORFEITED AS A RESULT OF THE AFORESAID CONVICTION(S) OTHER THAN THOSE RIGHTS SPECIFICALLY EXCLUDED BY THE TERMS OF THIS CERTIFICATE BE AND THEY ARE HEREBY RESTORED.

THIS PARDON DOES NOT RELIEVE THE RECIPIENT FROM THE EFFECTS OF THE HABITUAL OFFENDER ACT AS CONTAINED IN THE ALABAMA CODE.

GIVEN UNDER THE HAND AND SEAL OF THE STATE BOARD OF PARDONS AND PAROLES, THIS THE 09TH DAY OF SEPTEMBER, 2014.

ALABAMA BOARD OF PARDONS AND PAROLES

CYNTHIA S. DILLARD
EXECUTIVE DIRECTOR

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Treva Thompson, Timothy Lanier,
Pamela King, Darius Gamble,
and Greater Birmingham Ministries,

Plaintiffs,

v.

John H. Merrill, in his official capacity
as Secretary of State, Cindy Sahlie, in
her official capacity as Chair of the
Montgomery County Board of Registrars,
and Leigh Gwathney, in her official
capacity as Chair of the Board of Pardons
and Paroles,

Defendants.

Civil Action No.
2:16-cv-783-ECM-SMD

DECLARATION OF EFFIE HAWTHORNE

1. I am over nineteen years of age and a citizen of the United States and of the State of Alabama. I am competent to make this declaration and do so based on my personal knowledge.

2. I am presently the Director of the Board Operations Division for the Bureau of Pardons and Paroles ("the Bureau"). I have served in this capacity since November 1, 2019. I am an attorney, licensed to practice law as a special member in the State of Alabama. I was admitted to practice September 27, 2013. I worked in private practice and then served as an Assistant Attorney General first for the Alabama Board of Pardons and Paroles and then for the Home Builders Licensure Board. I returned to the Bureau of Pardons and Paroles in November 2019 as Board Operations Director.

3. Part of my duties as Board Operations Director involve managing the Certificate of Eligibility to Register to Vote ("CERV") process pursuant to Alabama Code Section 15-22-36.1,

applicable Administrative Code provisions or rules promulgated by the Bureau, and applicable policy and procedure of the Bureau. Section 15-22-36.1 requires the Bureau to adhere to a strict timeframe for processing CERV applications.

4. The assigned investigating officer has thirty days by law to complete and submit a CERV investigation from the date of receipt of the application. *See* Ala. Code §§ 15-22-36.1(c)-(d). Then, within fourteen days, a CERV must be issued to an eligible applicant or notice of the reason(s) for an applicant's ineligibility must be submitted to the applicant, who may reapply at any time certification criteria are met. *See* Ala. Code §§ 15-22-36.1(e)-(f). Thus, the Bureau has a total of forty-four days from the date an application is received to complete and issue a CERV to eligible applicants or respond to ineligible applicants.

5. Currently, upon receipt of a CERV application in Board Operations, an initial screening is conducted within the Division's Pardon Unit and the application is assigned for investigation to the local Probation and Parole Field Office where the applicant resides. The investigation is submitted back to Bureau Headquarters for review in the Pardon Unit. A final review is conducted and, once approved by me, the CERV is issued under the authority and signature of the Bureau Director. Currently, information and records needed by the investigating officers/staff for investigating a CERV application are accessible within the Bureau or court system. The Bureau is not ordinarily dependent upon provision of information and records by the applicant to the Bureau, although participation and the provision of accurate information by the applicant is encouraged and helpful. If an applicant fails to qualify for a CERV based on the statutory criteria established by Section 15-22-36.1, the applicant is notified of the same and the specific reason(s).

6. Currently the Bureau does not evaluate whether an applicant is genuinely unable to pay, for reasons beyond their control, the court-ordered monies that must be paid pursuant to

Section 15-22-36.1(a)(3), specifically “all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on disqualifying cases.”

7. In the event that this Court should order State Defendant Leigh Gwathney to begin evaluating CERV applicants’ claimed genuine inability to pay court-ordered monies, the Bureau would likely struggle to meet the current forty-four-day statutory deadline to complete an application. This is the case for multiple reasons.

8. First, the ability to comply with the deadline would be removed from Bureau control and the Bureau would become dependent on the applicant to submit all reliable information necessary to meaningfully evaluate his or her claim of a genuine inability to pay. If the applicant struggles to do so or fails to comply in a timely manner for whatever reason, a CERV application would be stalled.

9. Second, applicants may not know whether they owe court-ordered monies or specifically the amount they owe in order to qualify for a CERV. CERV applicants who claim an genuine inability to pay would need to know this information when they apply in order to take on the additional burden of providing all reliable information necessary for the Bureau to meaningfully evaluate their claim.

10. Currently, Bureau officers/staff communicate with applicants if they do not qualify or issue a CERV if they do, and these communications are primarily in writing. If information is needed from the applicant, minimal back and forth communication may be needed but is not the norm. If the Bureau must undertake an analysis of ability to pay, substantial back and forth communication between the Bureau and the applicant would be required by a variety of different methods. Such would become the norm and would add considerable time to the investigation process

whenever an applicant owes court-ordered monies and alleges a genuine inability to pay for reasons beyond their control.

11. Finally, a significant additional layer of analysis would be formally added to the Bureau's investigation process. That layer would require investigating officers/staff to dedicate time to review financial records and information provided by applicants that is not currently a part of the process. Each step of the investigation and review process would be expanded by this additional record review and evaluation step, thereby making it harder to comply with statutory timeframes.

12. The above listed issues are the most predictable burdens on the existing process for the Bureau, although this is not an exhaustive list.

13. Before the Bureau could implement a new investigation process into a CERV applicant's claim of genuine inability to pay, Bureau policies and forms would have to be created or amended. In order for the Bureau to modify the CERV application form and accompanying Administrative Code to reflect the requirement for applicants to provide specified reliable information, the CERV application itself and accompanying rules would have to go through the emergency rulemaking process and then the regular rulemaking process. *See* Ala. Admin. Code § 640-X-7-.02 and Form ABPP-4 (available online at <https://paroles.alabama.gov/administrative-rules/> and <https://paroles.alabama.gov/forms/>). Emergency rules are only valid for 120 days but can be implemented immediately.

14. Moreover, before the Bureau could implement a new investigation process into CERV applicants' claimed genuine inability to pay, significant statewide training for hundreds of investigating officers/staff would be required to ensure that each person performing CERV investigations understands the added requirements and applies objective scrutiny of reliable information

provided by applicants in a relatively uniform manner to make a call on whether the individual is genuinely unable to pay, for reasons beyond his control, the court-ordered monies owed. Training curriculum would have to be developed to include amended/new policies and forms. Trainers would have to be identified to cover the hundreds of impacted employees expeditiously. Typically, the Bureau conducts mandatory training in regional locations throughout the entire State, with multiple opportunities to attend training for employees surrounding each location, including makeup training sessions. Subsequent periodic training would be needed to maintain the new system and to ensure that new employees received the same instruction as those initially receiving it. The cost to initially develop and perform, and then to repeat, needed training is unknown at this time.

15. The estimated cost to fully implement the changes discussed above for the Bureau's Pardon Unit (at Headquarters) is unknown at this time and would depend on the volume of CERV applicants claiming they are genuinely unable to pay their court-ordered monies. Additional staffing would likely be needed if the Unit must take on this additional responsibility. The additional staffing would include an additional Specialist and/or an Administrative Support Assistant (ASA) II. A Specialist's salary ranges from \$33,921.60 to \$51,400.80 annually and an ASA II's salary ranges from \$23,397.60 to \$38,335.20 annually. These annual salary ranges do not include the Bureau's share of benefits (*e.g.*, retirement and health insurance), needed equipment, and training; those costs would in addition to salaries.

16. The fiscal impact to the Bureau for responsibly implementing changes for the State's Probation and Parole Offices in the field is also unknown at this time and would depend on the volume of CERV applicants claiming they are genuinely unable to pay their court-ordered monies. If a large volume of applicants makes the claim, then the Bureau will likely need to hire

Specialists and/or ASAs (at the salary ranges specified above) for the field offices to implement ordered changes. The field offices are where the bulk of specified reliable information and records submitted by applicants would be received and analyzed. With the existing workload demands of the field, the Bureau already needs to hire 116 Probation and Parole Officers and 42 Specialists to fully staff the field offices (which perform work other than processing CERV applications), and thus the offices are presently understaffed. Each new employee hired by the State generates costs for the Bureau for salary, benefits, equipment, and training, including the Alabama Peace Officers' Standards and Training Commission (APOSTC) Academy for officers. In some locations, overhead may need to be expanded to accommodate the additional field staff.

17. Further affiant sayeth not.

* * *

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 10, 2020 in Montgomery, Alabama.



Effie Hawthorne



Transcript of the Testimony of:

TREVA THOMPSON

TREVA THOMPSON, et al. v. JOHN H. MERRILL, in his official capacity as Secretary of State, et al.

CV-17-900017

Date: September 21, 2018

Boggs Reporting & Video LLC
Phone: 334.264.6227
Email: info@boggsreporting.com
Internet: www.boggsreporters.com

TREVA THOMPSON

Case No. CV-17-900017

Page 1	Page 3
IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION	1 McGuire & Associates 2 32 Clayton Street 3 Montgomery, AL 36104 4 334.517.1000 5 jmcguire@mandabusinesslaw.com
TREVA THOMPSON, et al., Plaintiffs, CIVIL ACTION VS. FILE NO. 2:16-cv-783-WKW-CSC	6 ALSO PRESENT: 7 MS. PAULA JORDAN, McGuire & Associates 8 MR. KEVIN BLACKBURN, ESQ. 9 PARDONS & PAROLES BOARD 10 * * * 11 EXAMINATION INDEX 12 Direct Examination by Ms. Messick.....7 13 Cross-Examination by Ms. Lang.....43 14 15 * * *
JOHN H. MERRILL, in his official capacity as Secretary of State, et al., Defendants. ***** COPY ***** DEPOSITION OF TREVA THOMPSON, taken on behalf of the Defendants, pursuant to the stipulations set forth herein, before Jeana S. Boggs, Certified Court Reporter and Notary Public, at the offices of Office Park South, 600 Boulevard South SW, Suite 104, Huntsville, Alabama, commencing at approximately 1:00 p.m., Friday, September 21st, 2018.	16 17 18 19 20 21 22 23
Page 2	Page 4
1 APPEARANCES 2 FOR THE DEFENDANTS: 3 MS. MISTY FAIRBANKS MESSICK 4 and 5 MR. WINFIELD SINCLAIR 6 Assistant Attorney Generals 7 OFFICE OF THE ATTORNEY GENERAL 8 Post Office Box 300152 9 Montgomery, Alabama 36130 10 334.353.1356 11 mmessick@ago.state.al.us 12 wsinclair@ago.state.al.us 13 FOR THE PLAINTIFFS: 14 MS. DANIELLE LANG 15 Attorney At Law 16 CAMPAIGN LEGAL CENTER 17 1411 K Street NW, Suite 1400 18 Washington, DC 20005 19 202.736.2200 20 dlang@campaignlegalcenter.org 21 AND 22 MR. J. MITCH MCGUIRE 23 Attorney At Law	1 DEFENDANT'S EXHIBIT INDEX 2 Defendant's Exhibit No. 1.....20 3 (Letter from Bryant to Thompson, Alabama 4 Board of Pardons and Paroles, 6/25/17) 5 Defendant's Exhibit No. 2.....22 6 (Declaration of Treva Thompson) 7 Defendant's Exhibit No. 3.....25 8 (Preliminary Statement) 9 Defendant's Exhibit No. 4.....28 10 (Letter from Madison County Board of 11 Registrars to Thompson, 1/14/16) 12 Defendant's Exhibit No. 5.....29 13 (Supplemental Factual Allegations) 14 Defendant's Exhibit No. 6.....35 15 (Invoices from Belk and The Children's 16 Place to Thompson) 17 Defendant's Exhibit No. 7.....36 18 (Paramount Capital Group letter, 5/7/18) 19 Defendant's Exhibit No. 8.....38 20 (Public Storage invoice) 21 22 23

1 (Pages 1 to 4)

TREVA THOMPSON

Case No. CV-17-900017

Page 5	Page 7
1 *** 2 STIPULATIONS 3 It is hereby stipulated and agreed by and 4 between counsel for the respective parties and the 5 witness that the deposition of TREVA THOMPSON is 6 taken pursuant to notice and stipulation on behalf 7 of the Defendants; that all formalities with respect 8 to procedural requirements are waived; that said 9 deposition may be taken before Jeana S. Boggs, 10 Certified Professional Reporter and Notary Public in 11 and for the State of Alabama At Large, without the 12 formality of a commission; that objections to 13 questions, other than objections as to the form of 14 the questions, need not be made at this time, but 15 may be reserved for a ruling at such time as the 16 deposition may be offered in evidence or used for 17 any other purpose as provided for by the Federal 18 Rules of Civil Procedure. 19 It is further stipulated and agreed by and 20 between counsel representing the parties in this 21 case that the filing of the deposition of TREVA 22 THOMPSON is hereby waived and that said deposition 23 may be introduced at the trial of this case or used	1 THE REPORTER: Usual stipulations? 2 MS. MESSICK: Fine with us. 3 MS. LANG: We would had like to 4 reserve the right to read and 5 sign; but, otherwise, we are 6 fine with the usual 7 stipulations. 8 THE REPORTER: Would you raise your 9 right hand, please. 10 Do you solemnly swear 11 that the testimony you are 12 about to give in this cause 13 will be the truth, the whole 14 truth, and nothing but the 15 truth, so help you, God? 16 THE WITNESS: Yes. 17 * * * 18 TREVA THOMPSON, 19 of lawful age, having been first duly sworn was 20 examined and testified as follows: 21 DIRECT EXAMINATION 22 BY MS. MESSICK: 23 Q Good afternoon, Ms. Thompson. My name is
Page 6	Page 8
1 in any other manner by either party hereto provided 2 for by the Statute, regardless of the waiving of the 3 filing of same. 4 It is further stipulated and agreed by and 5 between the parties hereto and the witness that the 6 signature of the witness to this deposition is 7 hereby reserved. 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	1 Misty S. Fairbanks Messick, and I 2 represent the State of Alabama, Secretary 3 of State John Merrill, the Chairman of 4 the Board of Pardons and Paroles Walker, 5 and Chairman of the Montgomery County 6 Board of Registrars Sahlie in a lawsuit 7 that you have filed challenging Alabama's 8 laws concerning felon-disenfranchisement. 9 This deposition is an 10 opportunity for us to get your testimony 11 on the record. You know there is a Court 12 Reporter here, and she is going to be 13 taking down a transcript of everything 14 that's said. For that reason, it's 15 important that we not talk over each 16 other, which is really easy to do. 17 And it's also important that, 18 when I ask you questions, that you answer 19 verbally. It's really easy to shake 20 heads, but that's harder for her to take 21 down. Is that okay? 22 A Yes. 23 Q If you do not understand a question,

2 (Pages 5 to 8)

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334.264.6227

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TREVA THOMPSON

Case No. CV-17-900017

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1 please let me know, and I would be happy 2 to reask it or rephrase it. I want to be 3 sure we are on the same page. 4 A Okay. 5 Q Sometimes a witness will give an answer 6 and then later in the deposition realize 7 that they forgot something or misstated 8 something. If that happens, you can 9 either let me know or let your counsel 10 know. Number one, we want to get it 11 fixed on the transcript before we leave 12 here today if you realize the mistake 13 while you are here. 14 We will occasionally take 15 breaks. If you need a break, you can let 16 me know. The only rule is that, if I 17 have asked a question, I want an answer 18 to that before we take a break. Is that 19 okay? 20 A Okay. 21 Q Is there any reason that you cannot 22 provide complete and truthful testimony 23 here today?	1 A A couple of hours. 2 Q And are you a named plaintiff in this 3 case? 4 A Am I what? 5 Q A named plaintiff in this case. 6 A Yes. 7 Q How did you come to be involved in this 8 case? 9 A Through Bob Harrison. 10 Q Who is he? 11 A He is a councilman that passed away a few 12 months ago. 13 Q Like a city councilman in Huntsville? 14 A Yes. 15 Q And was he a lawyer? 16 A No. 17 Q Okay. How did you know Mr. Harrison? 18 A He helped -- He had an organization where 19 he helped people that was wanting to go 20 to college that had felonies that 21 couldn't get Pell Grants. So, his 22 organization, they helped pay for 23 schooling.
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1 A No. 2 Q Do you have any questions before we 3 start? 4 A No. 5 Q Would you please state your name for the 6 record. 7 A Treva Thompson. 8 Q Have you ever been deposed before today? 9 A No. 10 Q Have you ever testified in a trial? 11 A No. 12 Q What did you do to prepare for your 13 deposition? 14 A Talked to my lawyer. 15 Q Who did you talk to? 16 A Mitch McGuire, Danielle Lang. 17 Q Was that this morning? 18 A No -- well, a little bit this morning. 19 Q When was it? When did you primarily talk 20 to them to prepare? 21 A Yesterday. 22 Q And for how long did you talk with them 23 yesterday?	1 Q Did he help -- Did he help you learn any 2 kind of degree? 3 A He did not have to. I was able to get 4 Pell and everything that I needed to go 5 back to school. 6 Q Tell me about your education. What 7 degrees do you have? 8 A I have an Associate's degree in 9 accounting and office systems technology. 10 Q And when did you get that? 11 A 2013 and '14. 12 Q Oh, is it two different degrees? 13 A Uh-huh (positive response). 14 Q Okay. So, an Associate's in accounting 15 is 2013? 16 A No. 17 Q 2014? 18 A Yes. 19 Q And the Associate's in office systems 20 technology was from 2013? 21 A Yes. 22 Q What schools -- What school was the 23 accounting degree from?

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1 A Drake Tech for both. 2 Q And those two Associate's, are those your 3 only degrees? 4 A Yes. 5 Q Thank you. What felony conviction or 6 convictions do you have? 7 A Just the theft of property. 8 Q And that was theft of property in what 9 degree? 10 A I do not remember. 11 Q When were you convicted? 12 A In 2005. 13 Q Did you plead guilty? 14 A Yes. 15 Q When did the crime occur? 16 A In 2005. 17 Q What is it that you pled guilty to theft 18 of property for? What was taken? 19 A I was threatened to take money from a 20 company that I was working with. And 21 because I told them myself and wrote a 22 statement, they didn't look into anything 23 else. They just went on my statement.	1 could have gone two ways. I am 2 not sure if she is saying 3 somebody threatened her and 4 said: You will steal from this 5 company for me or else; or if 6 she is saying she was arrested 7 and told: You will go to jail 8 unless you took -- unless you 9 plead to this when in fact -- 10 MS. LANG: What is the relevance of 11 whether or not she believed she 12 was innocent? 13 MS. MESSICK: The relevance is that 14 the reason she cannot get a 15 CERV is because she still owes 16 more than \$30,000 in 17 restitution. If she stole that 18 money, I want to know why she 19 hasn't been able to pay it 20 back. And I think it matters 21 what happened to that money 22 more than it matters what she 23 works -- what income she has
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1 So, I had two small children at 2 the time. And to keep from going to 3 jail, I just went with what they told me 4 to do. See, if I pled guilty, then I 5 would just -- I wouldn't have to do any 6 jail time. 7 Q You started by saying you were 8 threatened. Are you saying you were 9 threatened by -- 10 A Someone. 11 MS. LANG: Objection to relevance. 12 Do we need to go into 13 underlying facts since she has 14 acknowledged and there is no 15 question in the record that she 16 has a theft of property in the 17 first degree felony conviction, 18 and that is the basis for her 19 disenfranchisement? 20 MS. MESSICK: I need to know if she 21 is claiming she is innocent of 22 the theft. And I think that 23 her answer sounded like it	1 now. 2 So, I do believe that it 3 is relevant. And -- 4 MS. LANG: We will stipulate that 5 she owes this money. 6 MS. MESSICK: But will you stipulate 7 that she took this money? 8 That's the question. 9 Q Are you claiming -- 10 MS. LANG: She has pled guilty to 11 taking this money, and she, 12 therefore, must face the 13 consequences of pleading guilty 14 to taking this money. 15 MS. MESSICK: It is your position 16 that due to her socioeconomic 17 status she cannot repay for the 18 more than \$30 thousand dollars 19 she's accused of taking? If 20 she took it, she could have 21 used that to pay the 22 restitution. So, I need to 23 know if she claims that she did

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1 not take the money. And I am 2 confused by the answer. 3 MS. LANG: Okay. 4 BY MS. MESSICK: 5 Q So, I don't need every detail around it, 6 but I need to know: Did you take the 7 money that you were accused of taking 8 when you pled guilty? 9 A I took the money, but I didn't use it. 10 Q So, then, I need to know what happened to 11 it that it wasn't -- 12 A I gave it to the person who threatened 13 me. 14 Q Okay. Was that person ever prosecuted 15 for this? 16 A No. They just -- When I wrote the 17 statement of what happened, they used the 18 statement. They said they didn't need to 19 go after that person because I wrote a 20 statement saying what happened. 21 Q Okay. 22 A They didn't investigate -- look into my 23 background to see anything if -- you	1 ordered to pay restitution. Was there 2 anything else? 3 A No. 4 Q Have you applied for a pardon? 5 A Yes. 6 Q And do you remember when that was? 7 A No. That's -- no, for years. I can't 8 remember the exact year. 9 Q Do you have a copy of your pardon 10 application? 11 A Not -- I might. I am not for sure. 12 Q What communications do you remember 13 getting from the Board of Pardons and 14 Paroles after you applied for your 15 pardon? 16 A It was just saying, since I hadn't paid 17 out the restitution, I wasn't able to get 18 a pardon. I could try back within a 19 couple of years from the date I filed the 20 first time. 21 Q Did you get any document from Pardons and 22 Paroles talking about voting rights 23 being -- whether you would ever get your
Page 18	Page 20
1 know, if I had purchased anything big or 2 paid off anything. They didn't do any of 3 that. 4 Q And as a result of the plea agreement, 5 you did not serve any jail time; is that 6 correct? 7 A Correct. I was on a five-year probation. 8 Q And you have completed that probation 9 now? 10 A Yes. 11 Q What was required of you when you were on 12 probation? 13 A I just had to -- at first, I had to 14 report every month and pay, whatever, the 15 probation fee. And then I found a job, 16 and so he told me I was not a problem. 17 So, I just stopped having to 18 report. I just went every month and gave 19 my probation fee until 2010, and that's 20 when I was released of probation. 21 Q Were there any other requirements imposed 22 on you that we haven't talked about yet? 23 You were on probation, and you were	1 voting rights restored? 2 A I am not for sure if that was in the 3 letter or not. It could have been. I am 4 not for sure. 5 Q Did you receive a letter from Pardons and 6 Paroles telling you that you should pay 7 off the money that you owe before your 8 pardon hearing? 9 A I don't recall. 10 Q I am going to show you what I am marking 11 as Defendant's Exhibit One. 12 (At which time, the referred- 13 to document was marked as 14 Defendant's Exhibit No. 1 for 15 identification.) 16 Q Do you recognize this letter? 17 A Okay. 18 Q Do you recognize this letter? 19 A Somewhat, yeah. 20 Q Is this the communication you were 21 talking about earlier when you said you 22 got a letter that said that you couldn't 23 get your pardon back because you owed

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1 money? 2 A Yes. 3 Q Does it say on here anywhere that the 4 problem was that you owed money? 5 A No. 6 Q Is there another communication that you 7 received from the Board of Pardons and 8 Paroles that said that that you still 9 have? 10 A I can't remember. 11 Q Did you attend the hearing where the 12 Board considered your pardon? 13 A No. 14 Q Are you planning on applying again? 15 A I had thought about it. 16 Q Have you ever been registered to vote in 17 Alabama? 18 A Yes. 19 Q And when did you first register? 20 A I couldn't tell you that. I don't know. 21 Q Do you remember if it was before 1996? 22 A No. I don't remember. 23 Q When you were registered to vote, did you	1 -- sorry, third page. Does that appear 2 to be your signature? 3 A Yes. 4 Q I would like to ask you to take a minute 5 and read the entire document and to see 6 if you remember the document. 7 A No. 8 Q So, you're finished reading it? 9 A Uh-huh (positive response). 10 Q And you don't recognize it? 11 A No. I think this was done in 2015? 12 Q No. This was signed May 9th, 2018. 13 A 2018? 14 Q Yeah. This was four-and-a-half months 15 ago. 16 A No, I don't remember it. 17 Q Okay. This document does say that after 18 you completed your probation that you 19 believed you were eligible to vote and 20 registered. Is it still your 21 recollection, as you sit here now, that 22 you have not tried to register to vote 23 since you pled guilty?
Page 22	Page 24
1 vote regularly? 2 A Yes. 3 Q Did you receive any kind of notification 4 about your right to vote after you pled 5 guilty? 6 A I think I got -- I think I got a letter 7 saying that my rights have been revoked. 8 Q Have you applied to register to vote 9 after your conviction? 10 A No. 11 Q I am going to hand you what I am marking 12 as Defendant's Exhibit Two. 13 (At which time, the referred- 14 to document was marked as 15 Defendant's Exhibit No. 2 for 16 identification). 17 Q I would ask you to take a look at that 18 document, and particularly paragraph six. 19 See if that refreshes your recollection. 20 A No. 21 Q Do you recognize this document? 22 A No. 23 Q Would you look at the second page, please	1 A I don't remember trying to register. But 2 even though this paper is saying it, but 3 I don't remember. 4 Q Did you review any documents in 5 preparation for this deposition? 6 A I don't -- no. 7 Q What do you hope to get out of this case? 8 A Well, I would like to have my rights 9 back. I mean, what I did -- what I have 10 done, I mean, it is not like I -- I mean, 11 my conviction doesn't stop me from 12 thinking or having rights or an opinion. 13 I mean, having this first time I have 14 ever done anything regardless to whether 15 it was right or wrong, I told myself it 16 has caused me to lose a lot. 17 Q What else did you lose? 18 A I lost my house, my car, almost lost my 19 kids. I can't find a decent job. 20 Q Are there any -- 21 MS. MESSICK: Strike that. 22 Q Do you know what Greater Birmingham 23 Ministries is?

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1 A No. 2 Q Do you know what Southern Poverty Law 3 Center is? 4 A No. 5 Q Do you know if Alabama's law regarding 6 felons being able to vote has changed 7 recently? 8 A No. 9 Q Have you seen the complaints in this 10 case? And if you don't understand what I 11 am referring to, that's fine. I can show 12 you one. 13 A Okay. That's fine. I do not. 14 Q I am handing you a document that I have 15 marked as Defendant's Exhibit Three. 16 (At which time, the referred- 17 to document was marked as 18 Defendant's Exhibit No. 3 by 19 the Reporter). 20 Q Now, this one is almost 60 pages, so I 21 would just ask you to look at it briefly 22 and tell me if you recognize it. I won't 23 ask you to read the whole thing, but you	1 want to revisit that we have already 2 talked about? 3 A Well, this paper here, other than having 4 someone come -- call me and talk to me 5 about it and me signing it. I mean, at 6 the time, I guess, when I read it, it 7 looked appropriate. But with me not 8 being a lawyer, I just can't say -- 9 Q You're talking about -- 10 A -- not having a, you know, complete 11 understanding, especially when it comes 12 down to registration -- reapply for 13 registration in 2015. 14 Q Okay. And you're referring to Exhibit 15 Two? 16 A Yes. 17 Q Okay. And I am sorry. Did you say 18 somebody called you or somebody visited 19 you? 20 A Someone called me and someone visited me. 21 Q Okay. Who called you? 22 A A lady named Blair. 23 Q Okay. And who visited you?
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1 can read as much as you would like. 2 A I couldn't say. I don't know. 3 Q Okay. 4 MS. MESSICK: Can we go off the 5 record for a minute. 6 (Thereupon, a discussion was 7 held off the record.) 8 (At which time, a recess was 9 taken). 10 MS. LANG: Ms. Thompson has some 11 recollection of one of the 12 documents you have asked about. 13 So, it may be worth clearing 14 that up now or we can do it 15 later. 16 MS. MESSICK: Okay. All right. 17 That's actually what I was 18 going to do anyway. 19 MS. LANG: Okay. 20 BY MS. MESSICK: 21 Q We have taken a break. You have had a 22 few minutes with the documents and with 23 your counsel. Is there anything that you	1 A I can't remember her name. 2 Q But I believe you just said that you read 3 it before you signed it, and you thought 4 it was true at that time as best as you 5 understood it? 6 A Yes. 7 Q With respect to that paragraph six, then, 8 in Exhibit Two, I am going to show you a 9 document that I am marking as Defendant's 10 Exhibit Four. 11 (At which time, the referred- 12 to document was marked as 13 Defendant's Exhibit No. 4 for 14 identification). 15 Q I would like you to take a minute to look 16 at this document. 17 Do you recognize the document I 18 have marked as Exhibit Four? 19 A No. 20 Q Is that your name and address -- 21 A Yes. 22 Q -- at the top of the document? Thank 23 you.

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1 Does seeing this document, 2 which you admittedly don't recognize, 3 refresh your recollection about 4 registering or attempting to register to 5 vote? 6 A No, because I'm sure, when I got this, if 7 I did it when I got it, I just tossed it 8 to the side. 9 Q Thank you. And the complaint document 10 three, that continues to be unfamiliar, 11 correct? 12 A Correct. 13 Q Thank you. I would like you to bear with 14 me for one minute. I am going to show 15 you the supplemental complaint in this 16 case, which I am marking as Defendant's 17 Exhibit Five. I just ask you if you 18 recognize this document. 19 (At which time, the referred- 20 to document was marked as 21 Defendant's Exhibit No. 5 by 22 the Reporter). 23 A No.	1 Q Do you understand what responsibilities 2 that might mean -- that you would have to 3 bear? 4 A I do. 5 Q And can you tell me what those 6 responsibilities are? 7 A I mean, it's being honest and giving my 8 opinion on what I think of how they treat 9 people with felonies. That's my 10 understanding of it. 11 Q Are you aware that there may be a trial 12 in this case? 13 A Yes. 14 Q If there is a trial in Montgomery, would 15 you come to that trial -- 16 A Yes. 17 Q -- to testify? 18 When you pled guilty, were you 19 ordered to pay restitution, that is to -- 20 A Yes. 21 Q I was going to explain it, but your face 22 said you knew what I meant. 23 Do you remember how much you
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1 Q Thank you. Can you tell me what you 2 understand this case to be about, this 3 litigation? 4 A To my knowledge, I am understanding that 5 it's for -- to try to help people with 6 felony convictions get their rights back. 7 Q Do you understand what any of the legal 8 claims are? 9 A No. 10 Q Do you know what it means for this case 11 to be brought on behalf of a class of 12 plaintiffs? 13 A Not really. All these legal terms is 14 just -- I mean, it doesn't mean anything 15 to me. So, if Danielle mentions anything 16 they want me to know, they explain it to 17 me to the best of their knowledge, and I 18 just grasp with that. But this paper and 19 stuff is just a bunch of words. 20 Q Do you understand that you are seeking to 21 help a group of people beyond yourself in 22 this case? 23 A I do.	1 were ordered to pay and to whom? 2 A No. Well, I just was told to go to the 3 courthouse, and I can't remember what 4 floor and pay. 5 Q Are you aware that you owe more than 6 \$30,000 in restitution? 7 A Uh-huh (positive response). Because they 8 added almost \$8,000 to what I had paid 9 because I wasn't able to pay it off in 10 five years, which I didn't know how I 11 could do that making \$8 an hour and 12 raising two kids and having a felony 13 conviction limited my job, search status. 14 Q Do you know approximately how much of the 15 restitution you have paid? 16 A No. 17 Q Do you know when the last time you made a 18 payment toward this court debt was? 19 A No. 20 Q Have you made any payment associated with 21 your conviction in the last year? 22 A No. 23 Q Your kids are grown up now?

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1 A Yes. 2 Q And where is it that you work? 3 A Sanmina. 4 Q And am I right that's spelled 5 S-A-N-M-I-N-A? 6 A Yes. 7 Q What is Sanmina? 8 A They make -- the area I work in, we make 9 glucose meters for diabetics. 10 Q And are you paid by the hour? 11 A Yes. 12 Q And what is your rate of pay? 13 A \$10.60. 14 Q Do you sometimes work mandatory overtime? 15 A I do. 16 Q And are you paid more for that time? 17 A Am I paid more for time -- 18 Q Are you paid a higher rate for those 19 additional hours? 20 A Yes. 21 Q And what rate is that? 22 A Well, time-and-a-half, \$15.90 I think. 23 Q Do they have voluntary overtime there as	1 a break was taken.) 2 BY MS. MESSICK: 3 Q While we took a brief break, your counsel 4 showed me a document that reflects that, 5 in the approximately six months from 6 March 12th, 2018, to September 6th of 7 2018, you spent approximately \$273.49 on 8 prescriptions. Does that sound right? 9 A Yes. 10 Q Thank you. I am going to hand you a 11 document that I have marked as 12 Defendant's Exhibit Six. 13 (At which time, the referred- 14 to document was marked as 15 Defendant's Exhibit No. 6 for 16 identification). 17 Q You mentioned you sometimes help your 18 boys out with their kids. Is that what 19 this bill for Children's Place is? 20 A Yes. 21 Q And the Belk bill, do you know if that's 22 all for you or if that might be for you 23 and other people?
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1 well? 2 A Sometimes. 3 Q Do you ever work that? 4 A I have. 5 Q The information I have is that your 6 income last year was approximately 7 \$13,500. Does that sound right? 8 A Yes. 9 Q Would that involve -- included a lot of 10 overtime? 11 A It could have been. 12 Q Do you live alone? 13 A I do. 14 Q Do you live in an apartment or a house? 15 A Apartment. 16 Q Do you have any source of income other 17 than your job? 18 A No. 19 Q Do you spend any of your money to support 20 anyone else? 21 A Sometimes I help my sons with their kids. 22 (At which time, there was an 23 off-the-record discussion and	1 A My grandchildren. 2 Q How many grandchildren do you have? 3 A Six and one on the way. 4 Q Oh, my goodness. Congratulations. 5 I am going to hand you what I 6 am marking as Defendant's Exhibit Seven. 7 (At which time, the referred- 8 to document was marked as 9 Defendant's Exhibit No. 7 by 10 the Reporter). 11 Q And ask you if you can tell me if you 12 recognize this document. 13 A Yes. 14 Q So, the first page of this letter, that 15 is Exhibit Six, it says, "As cosigner on 16 this account, you are equally obligated 17 for the repayment of this debt." 18 A Are we on Exhibit Seven? 19 Q I'm sorry. Did I say six? Yes, Exhibit 20 Seven. 21 A I cosigned for my son to get a student 22 loan because he was wanting to get his 23 CDL to help better his self. So, that's

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1 what this is for. 2 Q Are you currently having to repay this 3 loan? 4 A Uh-huh (positive response). 5 Q And are you paying -- I am sorry? 6 A Go ahead. 7 Q Are you currently paying approximately 8 \$200 a month on this loan? 9 A No. He is paying it. He is behind. My 10 credit is jacked up because of that 11 because I thought he would be driving 12 trucks. And whoever he was going to be 13 driving for was supposed to pay this debt 14 back. But it didn't work out like that. 15 So... 16 Q So, right now, is he paying it or are you 17 paying it? 18 A He is giving them something. I don't 19 have anything to give them. 20 Q Okay. 21 A I am living from paycheck to paycheck. 22 Q But you are saying it's affected your 23 credit because you are a cosigner?	1 A \$550. 2 Q And you pay your utilities separate from 3 that? 4 A Yes. 5 Q Your declaration, Exhibit Two, on page 6 two in paragraph nine, it says that you 7 are unable to pay the restitution and 8 collection fee and whatever else you owe 9 associated with the conviction, quote, 10 "because of my socioeconomic status," end 11 quote. Do you see that? 12 A Uh-huh (positive response). 13 Q Do you know what that means, 14 "socioeconomic status"? 15 A No. 16 Q Do you have health insurance through your 17 job? 18 A No. I have Obamacare. 19 Q Do you have a retirement account for your 20 job? 21 A The 401-K? 22 Q (Nodding). 23 A Yes.
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1 A Yes. 2 Q I am going to hand you what I am marking 3 as Defendant's Exhibit Eight and, once 4 again, ask you if you recognize the 5 document. 6 (At which time, the referred- 7 to document was marked as 8 Defendant's Exhibit No. 8 by 9 the Reporter). 10 A Yes. 11 Q Can you tell me what this is? 12 A When I lost my apartment, I had to put 13 some of my things that I was able to keep 14 in storage. And so I think my stuff was 15 in storage for, like, a year. So, it 16 went up 20-something dollars. But, yes. 17 Q But you have a place now? 18 A I do. 19 Q And you have your stuff out of storage 20 now? 21 A Yes. 22 Q How much are you paying for your house 23 every month?	1 Q Do you know how much is in that? 2 A I think it was \$400 I think. I just 3 became permanent in January. 4 Q Okay. Did you work there in a temporary 5 capacity before that? 6 A Yes. 7 Q Did you work anywhere else -- 8 A No. 9 Q -- at that time? Do you work anywhere 10 else now? 11 A No. 12 Q How long did you work at Sanmina in a 13 temporary capacity? 14 A A year. 15 Q And where did you work before that? 16 A I was -- before that, I was just going 17 through different temp services working 18 just whatever they had available. 19 Q Do you have a car? 20 A I do. 21 Q What kind of car? 22 A 2002 Chrysler Town and Country Van. 23 Q Is it paid for?

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1 A Yes. 2 Q You mentioned that you got an Associate's 3 degree in 2013 and another one in 2014. 4 Then you mentioned Pell Grants. So, what 5 kind of -- Do you have any student loan 6 debt associated with those recent 7 degrees? 8 A No. 9 MS. MESSICK: Can we take a quick 10 break. 11 (At which time, a recess was 12 taken). 13 BY MS. MESSICK: 14 Q Ms. Thompson, I just want to ask one 15 follow-up question. I gave the list of 16 prescriptions back very quickly because I 17 don't want to pry. But I do want to make 18 clear on the record: Are you on any 19 medication that would affect your ability 20 to testify truthfully today or to 21 remember any relevant facts? 22 A I just found out I am a diabetic, and I 23 take Metformin, and I just read up on it	1 Just in followup to that, to 2 the best of your knowledge, you have 3 testified truthfully here today? 4 A Yes. 5 Q Right. 6 MS. MESSICK: We don't have any 7 further questions. 8 MS. LANG: Okay. I am just going to 9 ask a few questions. 10 CROSS-EXAMINATION 11 BY MS. LANG: 12 Q Ms. Thompson? 13 A Yes. 14 Q You mentioned that there are some 15 medication that could potentially have 16 side effects that could potentially 17 affect your memory. Do you feel as 18 though you were able to testify today 19 with a clear head? 20 A Yes. 21 Q And you were asked about a number of 22 documents that have been filed or given 23 to the Court in this case; is that right?
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1 that it causes you to -- that 2 Metformin -- something with your B12 and 3 the side effects. But, I mean -- 4 Q Did the side effects say that they would 5 affect your memory or your ability to 6 think clearly? 7 A It has something in there similar to 8 that. 9 Q Okay. 10 A I hadn't discussed it with the doctor 11 because I just -- you know, I hadn't been 12 back since I seen it because I was going 13 to ask him to put me on something else. 14 But I do know he did give me a -- having 15 to buy some B12 over the counter, and 16 every three months he gives me a B12 17 shot. He never told me that but -- 18 Q Okay. 19 A And stress doesn't help either. 20 Q I imagine. I know this has been hard for 21 you, and I am sorry for that. I do 22 appreciate you being here today. Give me 23 just one more minute.	1 A Yes. 2 Q And you were not able to recall them? 3 A Correct. 4 Q Have you received documents in the mail 5 or in email from this case? 6 A Yes. 7 Q And have at the time your attorneys, 8 without divulging the nature of that 9 conversation, explained to you those 10 documents? 11 A Yes. 12 Q And the things that -- yeah. 13 With respect to the declaration 14 that you signed that we reviewed earlier 15 today that's marked as Exhibit Two, at 16 the time before you signed this, did you 17 make sure you understood what it said and 18 whether or not it was true? 19 A Not really. I'm sure I just glanced 20 other it, and for the most part, most of 21 it looked pretty accurate. 22 Q And you testified that you weren't sure 23 about the meaning of "socioeconomic

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1 status." I will represent to you that 2 that is a reference to kind of your 3 financial status in the world. 4 A Okay. 5 Q So, is your financial status in the world 6 while you were unable to pay off your 7 fines and fees? 8 A Yes. 9 Q And Ms. Messick asked you if you 10 understood that this was a class action, 11 and then she clarified that that meant 12 you were bringing this case on behalf of 13 more people than just yourself. What do 14 you hope to get out of this lawsuit? 15 A My rights back. 16 Q Just for -- 17 A And to help others get their rights back, 18 because I don't see where certain crimes 19 should affect that. It doesn't stop your 20 thinking or your demeanor to have the 21 right to speak out. I mean, it can help 22 other people. 23 Q And do you have a feeling about whether	1 questions. 2 MS. MESSICK: We're done. Thank you 3 for your time. 4 5 (Deposition concluded at 6 approximately 2:16 p.m.) 7 * * * * * 8 FURTHER DEPONENT SAITH NOT 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23
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1 or not your ability to pay your 2 restitution should affect your right to 3 vote? 4 A No. 5 Q You don't -- 6 A I don't think my -- With me not being 7 able to pay the restitution, I don't 8 think it should affect me from having my 9 rights back. 10 Q And as far as your responsibilities in 11 this case, do you understand those 12 responsibilities include participating in 13 the lawsuit and, for example, appearing 14 for this deposition? 15 A Yes. 16 Q And providing documents? 17 A Yes. 18 Q And being responsive to your lawyers? 19 A Yes. 20 Q And discussing with your lawyers the 21 priorities of the case? 22 A Yes. 23 MS. LANG: We don't have any further	1 REPORTER'S CERTIFICATE 2 STATE OF ALABAMA) 3 ELMORE COUNTY) 4 I, Jeana S. Boggs, Certified Professional 5 Reporter and Notary Public in and for the State of 6 Alabama at Large, do hereby certify on Friday, 7 September 21st, 2018, that pursuant to notice and 8 stipulation on behalf of the Defendants, I reported 9 the deposition of TREVA THOMPSON, who was first duly 10 sworn by me to speak the truth, the whole truth, and 11 nothing but the truth, in the matter of TREVA 12 THOMPSON, et al., Plaintiff, versus JOHN H. MERRILL, 13 in his, Defendant, Case Action No. 14 2:16-cv-783-WKW-CSC, now pending in the United 15 States District Court for the Middle District, 16 Northern Division of Alabama; that the foregoing 17 colloquies, statements, questions and answers 18 thereto were reduced to 47 typewritten pages under 19 my direction and supervision; that the deposition is 20 a true and accurate transcription of the 21 testimony/evidence of the examination of said 22 witness by counsel for the parties set out herein; 23 that the reading and signing of said deposition was

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1 reserved by witness and counsel for the parties.
 2 I further certify that I am neither of
 3 relative, employee, attorney or counsel of any of
 4 the parties, nor am I a relative or employee of such
 5 attorney or counsel, nor am I financially interested
 6 in the results thereof.

7 All rates charged are usual and customary.

8 I further certify that I am duly licensed
 9 by the Alabama Board of Court Reporting as a
 10 Certified Court Reporter as evidenced by the ABCR
 11 number following my name found below.

12 This the 5th day of October, 2018, in the
 13 year of our Lord.
 14
 15
 16

17 Jeana S. Boggs, CCR
 18 ABCR NO. 7, Exp 9/30/2019
 19 Certified Court Reporter and
 20 Notary Public
 21 Commission expires: 8/9/2022

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ERRATA SHEET

2 I, TREVA THOMPSON, the witness herein,
 3 have read the transcript of my testimony and the
 4 same is true and correct, to the best of my
 5 knowledge, with the exception of the following
 6 changes noted below, if any:

7 Page / Line / Change / Reason

8			
9			
10			
11			
12			
13			
14			
15			
16			

17 TREVA THOMPSON

18 Sworn to and subscribed before me,
 19 this the ____ day of _____, 2018.

20
 21 Notary Public

22 My commission expires: _____
 23

13 (Pages 49 to 50)

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CLIFF WALKER
Chairman of the Board

LYN HEAD
Associate Member

TERRY G. DAVIS
Associate Member

STATE OF ALABAMA
BOARD OF PARDONS AND PAROLES

301 S. Ripley Street
P.O. Box 302405
Montgomery, Alabama 36130-2405
Central Office- (334) 242-8700
Pardon Unit- (334) 242-8730

June 27, 2017



PHIL BRYANT
Executive Director

EDDIE COOK, JR.
Assistant Executive Director

DARRELL MORGAN
Assistant Executive Director

Mrs. Trevia Michelle Thompson
[REDACTED]
Huntsville, AL 35805

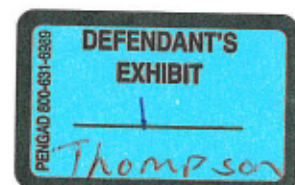
Dear Mr. Thompson

After careful consideration by the Board, your petition for a pardon with restoration of civil and political rights has been denied. You may reapply after:
June 22, 2019

Yours Truly,

Phil Bryant
Executive Director

PB/LDY



IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TREVA THOMPSON, et. al.,

Plaintiffs,

v.

STATE OF ALABAMA, et. al.,

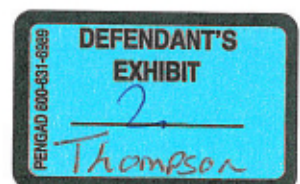
Defendants.

CIVIL ACTION NO.
2:16-cv-783-WKW

DECLARATION OF TREVA THOMPSON

I, Treva Thompson, hereby declare as follows:

1. The testimony set forth in this Declaration is based on first-hand knowledge, about which I could and would testify competently in open Court if called upon to do so.
2. I am a black 49-year-old citizen of the United States; I reside in Huntsville, Alabama.
3. In 2005, I was convicted of theft of property in the first degree, a class B felony.
4. Prior to my conviction, I was registered to vote in Madison County, Alabama.
5. I was removed from the registration list by the Madison County Board of Registrars, presumably because of my felony conviction.
6. After I completed my probation, I believed I was eligible to vote, so I reapplied for registration in 2015.



7. My application was denied on the basis of my conviction, which the Madison County Registrar deemed to be disqualifying because, in their view, it was a felony involving moral turpitude.

8. I meet all the requirements for a Certificate of Eligibility to Register to Vote ("CERV") except for payment of all legal financial obligations. I have completed my parole and probation and have no pending criminal charges. Nor was I convicted of a crime that would make me ineligible for a CERV.

9. However, I owe over \$40,000 in legal financial obligations which, because of my socioeconomic status, I am unable to pay in full at this time or any time in the foreseeable future. Because of my hourly wage, it would take me decades to repay my obligations.

10. In 2017, my total income was \$13,498. I am currently employed as an assembly lead at Sanmina. I work forty hours per week at an hourly wage of \$10.60. After paying my monthly utilities, phone bill, rent, car insurance, health insurance, and other expenses, I rarely have any income left at the end of the month.

11. I consider voting an important part of life and civic duties; before my conviction, I regularly voted in Alabama. I pay taxes. I have grandkids, nieces, and nephews, and I care about the policies that affect them. I want the opportunity to cast my ballot to speak out for them. But I cannot cast a ballot because I do not have the money to repay my legal financial obligations.

12. I wish to vote in the 2018 election and in future elections.

13. Because I care so deeply about regaining my right to vote—and the rights of those in the same position as me—I filed suit against Alabama and the relevant

Alabama officials as a plaintiff in this case. I am committed to actively participating in this lawsuit, and I understand and accept the responsibility that comes with seeking to represent this class.

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

May 9, 2018



Treva Thompson

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RECEIVED

2016 SEP 26 A 10:16

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

TREVA THOMPSON,
MELISSA SWETNAM,
ANTWOINE GILES,
ANNA REYNOLDS,
LAURA CORLEY,
LARRY JOE NEWBY,
MARIO DION YOW,
JENNIFER ZIMMER,
TIMOTHY LANIER, and
PAMELA KING, individually
and behalf of all others similarly
situated, and GREATER
BIRMINGHAM MINISTRIES,

Plaintiffs,

v.

STATE OF ALABAMA,
JOHN H. MERRILL, in his official
capacity as Secretary of State,
GEORGE NOBLIN, in his official
capacity as Chairman of the
Montgomery County Board of Registrars
and on behalf of a class of all voter
registrars in the State of Alabama,
CLIFFORD WALKER, in his official
capacity as Chairman of the Board of
Pardons and Paroles,

Defendants.

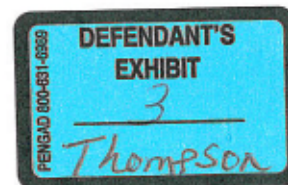
CIVIL ACTION NO. 2:16-cv-783

CLASS-ACTION COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

Plaintiffs allege that:

PRELIMINARY STATEMENT

1. This is an action challenging Alabama laws and procedures respecting felon disenfranchisement.



2. As detailed below, Section 177(b) of the Alabama Constitution, which disenfranchises individuals with convictions of felonies “involving moral turpitude,” is a direct successor to the Alabama’s 1901 racially discriminatory constitutional disenfranchisement provision. It is inextricably tied to Alabama’s long history of denying blacks citizens voting rights and equal access to the polls, using the criminal justice system to achieve those goals.

3. Soon after the Civil War and the passage of the Fourteenth and Fifteenth Amendments, Alabama began to use criminal disenfranchisement as a tool, hand-in-hand with convict leasing and other means, to deny blacks the right to vote and maintain white supremacy. Indeed, the explicit purpose of the 1901 Alabama Constitution was to formally “establish white supremacy.” The felon disenfranchisement system in Alabama continues to serve that purpose.

4. In 1985, the Supreme Court held that the drafters of the disenfranchisement provision specifically selected the vague and arbitrary “moral turpitude” standard in order to disenfranchise blacks. Nonetheless, in 1996, Alabama re-inserted that same standard into its felon disenfranchisement law, which remains to this day.

5. The Alabama Legislature has never determined what felonies “involve moral turpitude.” Yet the State of Alabama requires citizens to declare under penalty of perjury that they have not been convicted of a “disqualifying crime” in order to register to vote, stifling the registration of qualified voters.

6. The lack of any definition and the vagueness of this term has left the fundamental right to vote of hundreds of thousands of voters to ad hoc and arbitrary determinations by individual county registrars across the state.

7. The result is the disenfranchisement of approximately 7% of Alabama’s total voting-age population and 15% of Alabama’s black voting-age population.

8. In 1969, the Supreme Court held that Section 2 of the Fourteenth Amendment sanctions some form of disenfranchisement based on criminal convictions. However, Section 2's language, which speaks of disenfranchisement of "rebellion, or other crime," does not sanction the broad disenfranchisement of individuals for convictions untethered to voting and far less serious than rebellion.

9. Nor do the Fourteenth and Fifteenth Amendments, intended to guarantee equality and eliminate racial discrimination, countenance the use of criminal disenfranchisement as a means of excluding blacks from the right to vote.

10. Alabama compounds this racially discriminatory system by requiring individuals to pay all fines and fees in order to be eligible to restore their voting rights. This requirement is nothing more than a modern day poll tax that disproportionately excludes black voters from the franchise.

11. As detailed below, Plaintiffs pray that this Court strike down this discriminatory system in its entirety as racially discriminatory, unconstitutional, and unlawful under Section 2 of the Voting Rights Act.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 52 U.S.C. § 10308(f).

13. This Court has personal jurisdiction over the defendants, all of whom are either elected officials in Alabama or appointed members of their respective Boards of Registrars. All of the defendants work and reside in the State of Alabama.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b). Among other things, the offices of all three named Defendants in this action are located in this District.

15. This Court has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

LEGAL FRAMEWORK

16. Article VIII, Section 177, of the Alabama Constitution provides:

(a) Every citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his or her residence. The Legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting. The Legislature shall, by statute, prescribe a procedure by which eligible citizens can register to vote.

(b) No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.

17. A person convicted of “a felony involving moral turpitude” can have her political rights restored, and therefore be eligible to register to vote, either by receiving a discretionary pardon from the Board of Pardons and Paroles, *see* Ala. Code § 15-22-36, or by receiving a Certificate of Eligibility to Register to Vote (CERV) from the Board of Pardons and Paroles, if she meets all the relevant requirements, *see* Ala. Code § 17-3-31.

18. Alabama Code Section 15-22-36.1 outlines the requirements for a CERV and the process for applying and receiving a CERV. A person who has lost her right to vote by reason of felony conviction involving moral turpitude is eligible to receive a CERV if she meets the following requirements:

- (1) The person has lost his or her right to vote by reason of conviction in a state or federal court in any case except those listed in subsection (g).
- (2) The person has no criminal felony charges pending against him or her in any state or federal court.
- (3) The person has paid all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on disqualifying cases.
- (4) Any of the following are true:
 - a. The person has been released upon completion of sentence.

- b. The person has been pardoned.
- c. The person has successfully completed probation or parole and has been released from compliance by the ordering entity.

19. The convictions that make a person ineligible for a CERV as listed in Alabama Code Section 15-22-36.1(g) are:

Impeachment, murder, rape in any degree, sodomy in any degree, sexual abuse in any degree, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason.

20. If a person meets all the eligibility requirements for a CERV under Alabama Code Section 15-22-36.1, issuance of a CERV to the eligible voter is mandatory. Ala. Code § 15-22-36.1 (b) (“The Certificate of Eligibility to Register to Vote *shall* be granted upon a determination that all of the requirements in subsection (a) are fulfilled.”) (emphasis added).

21. By making the payment of all legal financial obligations (including fines, fees, and restitution) (hereinafter “LFOs”) a mandatory eligibility criterion for a CERV, Section 15-22-36.1 disqualifies any persons from receiving a CERV if they are unable to pay “all fines, court costs, fees, and victim restitution ordered by the sentencing court” in their criminal case.

“Felony Involving Moral Turpitude” is Undefined

22. The Alabama Legislature has failed to define the term “moral turpitude” and therefore has failed to define the qualifications for voting in the State of Alabama. Alabama Code Section 15-22-36.1(g) states that a person “who has lost his or her right to vote by reason” of specified convictions is not eligible for a CERV. But this statute does not explicitly define which felonies involve moral turpitude and may assume that all convicted felons are disfranchised, notwithstanding the “moral turpitude” qualification in Section 177(b). There is no apparent standard the Legislature used to determine which crimes make a citizen ineligible for a CERV.

23. The remaining administrative guidance, to the extent it is followed, is non-exhaustive, non-authoritative, vague, and internally inconsistent.

24. In 2005, the Attorney General of Alabama issued an opinion purporting to address, *inter alia*, the question of what felonies do or do not involve moral turpitude. Att’y Gen. Op. No. 2005-092, 2005 WL 1121853 (hereinafter “2005 Attorney General Opinion”). The opinion restates the Alabama Supreme Court’s broad definition of moral turpitude, which is “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general.” As the Attorney General has previously acknowledged, this definition ensures that the determination “will turn upon the moral standards” of the decision-maker. *Underwood v. Hunter*, 730 F.2d 614, 616 n. 2 (11th Cir. 1984), *aff’d sub. nom. Hunter v. Underwood*, 471 U.S. 222 (1985).

25. The 2005 Attorney General Opinion states that it could “not provide an exhaustive list of every felony involving moral turpitude.” Instead, it purports to provide a non-exhaustive list of crimes, or categories of crimes, thus far determined by Alabama courts to involve moral turpitude as well as a partial list of crimes thus far determined by Alabama courts *not* to involve moral turpitude.

26. However, the Attorney General does not have the power to make law or set voter qualifications in the State of Alabama. Only the Alabama Legislature has the power to pass laws, and the judiciary has the power to interpret them. Ala. Const. art. III, § 43. Moreover, Article III, Section 177, of the Alabama Constitution clearly delegates the authority to set voter qualifications to the Legislature only. The 2005 Attorney General Opinion therefore adds nothing to the clarity of the term “involving moral turpitude.” While the Attorney General sought to rely upon judicial opinions, those opinions are, for the most part, not based on cases where the Alabama courts were

defining “moral turpitude” in the context of Section 177(b). Therefore, they cannot stand for the proposition that those convictions are disqualifying under Section 177(b).

27. The Attorney General’s list of moral turpitude crimes is broader than the disqualifying crimes listed in Alabama Code Section 15-22-36.1(g) and includes murder, rape, burglary, robbery, income tax evasion, forgery, conspiracy to commit fraud, aggravated assault, possession of marijuana for resale, sale of marijuana, manslaughter, theft, transporting stolen vehicles across state lines, unauthorized sale of a controlled substance, bigamy, and all crimes where fraud is an element.

28. The Attorney General’s list of crimes *not* involving moral turpitude was limited to assault, doing business without a license, violation of liquor laws, aiding prisoner to escape, mere possession of marijuana, and driving under the influence.

29. The crimes specified in the 2005 Attorney General Opinion are not linked to specific, enumerated crimes under the Alabama Code and thus require persons with felony convictions to determine whether their crimes of conviction match the general descriptions in the opinion. For example, the 2005 Attorney General Opinion does not indicate whether all degrees of the crime are included in each category. In the case of “crimes where fraud is an element,” the opinion requires the reader to cross-reference the opinion with the elements enumerated in the criminal statute at issue.

30. The Attorney General’s list as set forth in his opinion does not address many of Alabama’s over five hundred felonies.

31. The Board of Pardons and Paroles’ website also asserts that “possession of drugs” does not involve moral turpitude. Even accepting the authority of this statement from an agency that lacks the power to determine voter qualifications, it is not clear whether possession of drugs

for resale is disqualifying since the 2005 Attorney General Opinion lists possession of marijuana for resale as disqualifying.

32. In 2007 and 2008, the Administrative Office of Courts (AOC) issued memos regarding the definition of moral turpitude for the purposes of criminal disenfranchisement. *See* Exhibit A. The AOC concluded that the list of crimes involving moral turpitude should be construed to include only those crimes previously so determined by Alabama appellate courts or listed in the 2005 Attorney General Opinion. It developed a list of approximately seventy such felonies.

33. This AOC list is incongruent with the Attorney General Opinion. For example, the AOC limits disqualifying forgery and theft of property crimes to convictions in the first and second degrees and excludes lesser degrees of those crimes, while the Attorney General's list does not contain such limitations. The Attorney General's list includes income tax evasion and all crimes involving fraud as an element, while the AOC list does not include those crimes.

34. The AOC list is also not authoritative under Alabama law. The Legislature has the power to pass laws and the judiciary has the power to interpret them. Ala. Const. art. III, § 43. The AOC list relies upon judicial opinions, but those opinions are, for the most part, not based on cases where the Alabama courts were defining "moral turpitude" in the context of Section 177(b). Therefore, they cannot stand for the proposition that those convictions are disqualifying under Section 177(b).

35. In 2008, the AOC distributed its list to circuit clerks, probate judges, and sheriffs, and urged them to disqualify only voters convicted of these crimes.

36. The AOC list has been incorporated into the Alabama Law Institute's Alabama Election Handbook.¹ However, the handbook does not indicate that this list is the comprehensive list of convictions involving moral turpitude. The handbook also clearly states that it is "not an authoritative statement of the law."

37. Upon information and belief, the Boards of Registrars do not rely solely on the 2007 AOC list of moral turpitude crimes in determining whether an applicant is eligible to register to vote.

PARTIES

PLAINTIFFS

Individual Plaintiffs

38. Plaintiff Treva Thompson is a black 48-year-old citizen of the United States who resides in Huntsville, Alabama, in Madison County. In 2005, Ms. Thompson was convicted of theft of property in the first degree, a class B felony, *see* Ala. Code § 13A-8-3. Ms. Thompson's crime of conviction does not appear as a disqualifying felony in Alabama Code Section 15-22-36.1(g). Prior to her conviction, Ms. Thompson was registered to vote in Madison County. Upon information and belief, on the basis of her conviction, the Madison County Board of Registrars removed her from the voter registration list. Ms. Thompson, believing she was eligible to vote after serving her time, reapplied to vote in 2015. Her application to vote was denied on the basis of her conviction, which the county registrar deemed disqualifying as a felony "involving moral turpitude."

39. Ms. Thompson meets all the requirements for a CERV, *see* Ala. Code § 15-22-36.1, except the payment of all legal financial obligations. She has completed parole and probation and

¹ Available at <http://ali.state.al.us/documents/election-handbook.pdf>.

has no pending criminal charges, and was not convicted of a crime ineligible for a CERV, *see* Ala. Code § 15-22-36.1(g). Ms. Thompson, however, owes over \$40,000 in legal financial obligations that she is not financially able to pay in full at this time or anytime in the foreseeable future. Her inability to pay these fines makes her ineligible for a CERV that would restore her voting rights. Ms. Thompson wishes to vote in the 2016 and future elections.

40. Plaintiff Melissa Swetnam is a white 44-year-old citizen of the United States who resides in Huntsville, Alabama, in Madison County. In 2001, she was convicted of assault in the first degree, a class B felony, *see* Ala. Code § 13A-6-20. Ms. Swetnam's crime of conviction does not appear as a disqualifying felony in Alabama Code Section 15-22-36.1(g). Prior to her conviction, Ms. Swetnam was registered to vote in Madison County. Upon information and belief, on the basis of her conviction, the Madison County Board of Registrars removed her from the voter registration list. Ms. Swetnam would like to register to vote, but she is not sure whether her conviction is disqualifying and therefore cannot affirm under penalty of perjury on the voter registration application that she has not been convicted of a "disqualifying crime."

41. Ms. Swetnam meets all the requirements for a CERV, *see* Ala. Code § 15-22-36.1, except the payment of all legal financial obligations. She is not on parole or probation, has no pending criminal charges, and was not convicted of a crime ineligible for a CERV, *see* Ala. Code § 15-22-36.1(g). Ms. Swetnam, however, owes over \$9,000 in legal financial obligations that she is not financially able to pay in full at this time or anytime in the foreseeable future. She is currently paying \$100 per month. At that rate, she would not pay off these fines for at least another seven and a half years. Her inability to pay these fines makes her ineligible for a CERV that would restore her voting rights. Ms. Swetnam wishes to vote in the 2016 and future elections.

42. Plaintiff Antwoine D. Giles is a black 38-year-old citizen of the United States who resides in Montgomery, Alabama, in Montgomery County. In 2006, Mr. Giles was convicted of stalking in the first degree, a class C felony, *see* Ala. Code § 13A-6-90. Prior to his conviction, Mr. Giles was registered to vote in Montgomery County. Upon information and belief, on the basis of his conviction, the Montgomery County Board of Registrars removed him from the voter registration list. His sole crime of conviction, however, does not appear as a disqualifying felony in Alabama Code Section 15-22-36.1(g), nor in the 2005 Attorney General Opinion, nor in the list of disqualifying convictions compiled by the AOC. Mr. Giles is not sure whether his conviction is for a “felony involving moral turpitude” and therefore fears affirming under penalty of perjury that he has not been convicted of a “disqualifying crime.” Mr. Giles wishes to register to vote and vote in the 2016 and future elections.

43. Plaintiff Anna Reynolds is a black 60-year-old citizen of the United States who resides in Dothan, Alabama in Houston County. In 1997, Ms. Reynolds was convicted of theft of property in the second degree, a class C felony, *see* Ala. Code § 13A-8-4. In 2005, Ms. Reynolds was convicted of felony possession of a controlled substances, a class D felony, *see* Ala. Code § 13A-12-212(a)(1). In 2008, believing that none of her criminal convictions were disqualifying, Ms. Reynolds successfully registered to vote in Houston County. She was permitted to vote in 2008 and 2012 and in intervening state or local elections. This year, Ms. Reynolds checked her voter registration status and discovered that the Houston County Board of Registrars had removed her from the voter registration list. She contacted the registrar’s office, which informed her that she was removed from the registration list on the basis of her 1997 theft of property conviction. Upon information and belief, she did not receive any notice of this removal from the voter registration list. Ms. Reynolds wishes to vote in the 2016 and future elections.

44. Plaintiff Laura Corley is a white 28-year-old citizen of the United States who now resides in Trussville, Alabama, in Jefferson County. In 2015, she was convicted of two counts of possession of a controlled substance, class C felonies, *see* Ala. Code § 13A-12-212. Her crimes of conviction do not appear as disqualifying felonies in Alabama Code Section 15-22-36.1(g), nor in the 2005 Attorney General Opinion, nor in the list of AOC list of disqualifying crimes. Nonetheless, she was informed by a Board of Pardons and Paroles official that her convictions are disqualifying under Alabama law and that she is not eligible to vote unless her rights are restored. She proceeded to apply to restore her rights and received a letter informing her that her convictions were not disqualifying. Prior to her convictions, Ms. Corley was registered to vote in Mississippi, where she previously resided. She has never registered to vote in Alabama. Ms. Corley plans to register to vote on the basis of the Board of Pardons and Paroles' letter, but is not sure whether the Jefferson County Board of Registrars will consider her convictions disqualifying and deny her application. Furthermore, she is required to affirm under penalty of perjury that she has not been convicted of a disqualifying felony, which is uncertain in light of the conflicting information she has received. Ms. Corley wishes to vote in the 2016 and future elections.

45. Plaintiff Larry Joe Newby is a black 60-year-old citizen of the United States who resides in Huntsville, Alabama, in Madison County. Mr. Newby has been convicted of two counts of receiving stolen property in the second degree, class C felonies, *see* Ala. Code § 13A-8-18, two counts of theft of property in the second degree, also class C felonies, *see* Ala. Code § 13A-8-4, and one count of possession of a controlled substance by fraud, also a class C felony, *see* Ala. Code § 13A-12-212(a)(2). Mr. Newby's crimes of conviction do not appear as disqualifying felonies in Alabama Code Section 15-22-36.1(g). Prior to his convictions, Mr. Newby was registered to vote in Madison County. Upon information and belief, on the basis of one or more of

his convictions, the Madison County Board of Registrars removed Mr. Newby from the voter registration list. Mr. Newby, believing he was eligible to vote after serving his time, applied to register to vote in 2015. His application to vote was denied on the basis of one or more of his convictions, which the county registrar deemed disqualifying as a felony “involving moral turpitude.” Mr. Newby wishes to vote in the 2016 and future elections.

46. Plaintiff Mario Dion Yow is a black 38-year-old citizen of the United States who resides in Mobile County. In 2014, Mr. Yow was convicted of trafficking cocaine, a class A felony, *see* Ala. Code § 13A-12-231(2). Mr. Yow’s crime of conviction does not appear as a disqualifying felony in Alabama Code Section 15-22-36.1(g) nor in the 2005 Attorney General Opinion, nor in the AOC list of disqualifying crimes. Prior to his sole conviction, Mr. Yow was registered to vote in Mobile County and was an elected county constable. Upon information and belief, on the basis of his conviction, the Mobile County Board of Registrars removed Mr. Yow from the voter registration list. Mr. Yow would like to register to vote but is not sure whether his conviction is disqualifying and therefore cannot affirm under penalty of perjury that he has not been convicted of a “disqualifying crime.” Mr. Yow wishes to vote in the 2016 and future elections.

47. Plaintiff Jennifer Zimmer is a white 39-year-old citizen of the United States who resides in Montgomery, Alabama, in Montgomery County. In 2007, she was convicted of three class C felonies: theft of property in the second degree, breaking and entering a vehicle, and fraudulent use of a credit card, *see* Ala. Code §§ 13A-8-4, 13A-8-11(b), 13A-9-14(B). Her crimes of conviction do not appear as disqualifying felonies in Alabama Code Section 15-22-36.1(g). Prior to her convictions, Ms. Zimmer was registered to vote in Michigan, where she previously resided. She has never registered to vote in Alabama. Ms. Zimmer would like to register to vote, but she is not sure whether her convictions are disqualifying and therefore cannot affirm under

penalty of perjury that she has not been convicted of a “disqualifying crime.” Ms. Zimmer wishes to vote in the 2016 and future elections.

48. Plaintiff Timothy Lanier is a black 50-year-old citizen of the United States who resides in Birmingham, Alabama, in Jefferson County. Mr. Lanier has previously been convicted of two counts of burglary in the first degree, class A felonies, *see* Ala. Code § 13-7-5, 2 counts of attempted murder, class A felonies, *see* Ala. Code § 13A-4-2, and conspiracy to obtain drugs by fraud, a class C felony, *see* Ala. Code § 13A-12-204. His crimes of conviction do not appear as disqualifying felonies in Alabama Code Section 15-22-36.1(g). He has never voted in Alabama, nor has he attempted to register to vote. Mr. Lanier now wishes to engage in greater part with his community. He volunteers with the Empowerment Alliance, a group that provides assistance to those reentering the community from incarceration. Mr. Lanier would like to register to vote, but he is not sure whether his convictions are disqualifying and therefore cannot affirm under penalty of perjury that he has not been convicted of a “disqualifying crime.” Mr. Lanier wishes to vote in the 2016 and future elections.

49. Plaintiff Pamela King is a black 58-year-old citizen of the United States who resides in Montgomery, Alabama, in Montgomery County. In 1995, she was convicted of murder, a class A felony, *see* Ala. Code § 13A-6-2. Under Alabama Code Section 15-22-36.1(g), Pamela King is not eligible to apply to restore her voting rights under Alabama Code Section 15-22-36.1. Prior to her conviction, Ms. King was registered to vote in Montgomery County. She wishes to vote in the 2016 and future elections.

Plaintiff Class

50. The Plaintiff Class that all Plaintiffs seek to represent is defined as: All unregistered persons otherwise eligible to register to vote in Alabama who are now, or who may in the future be, denied the right to vote because they have been convicted of a felony.

51. Plaintiffs also identify several subclasses that have standing to assert specific causes of action in this complaint.

***Subclasses Related to the Scope of Any
Fourteenth Amendment Sanction of Felon Disenfranchisement***

52. All Plaintiffs seek to represent a subclass (Subclass A) defined as follows: All unregistered persons otherwise eligible to register to vote in Alabama whose felony convictions are not crimes associated with voting such as “bribery, perjury, forgery, or other high crimes or misdemeanors,” but who are now, or who may in the future be, denied the right to vote because they have been convicted of a felony, pursuant to the interpretation and enforcement of Section 177(b) of the Alabama Constitution by Defendants. The proposed Plaintiff Subclass A is by definition a subset of the broader proposed Plaintiff Class.

53. Plaintiffs Melissa Swetnam, Antwoine Giles, Laura Corley, and Mario Dion Yow seek to represent a subclass (Subclass B) defined as follows: All unregistered persons otherwise eligible to register to vote in Alabama whose felony convictions were not considered felonies at common law but who are now, or who may in the future be, denied the right to vote because they have been convicted of a felony, pursuant to the interpretation and enforcement of Section 177(b) of the Alabama Constitution by Defendants. The proposed Plaintiff Subclass B is by definition a subset of the broader proposed Plaintiff Class.

54. Plaintiffs Treva Thompson, Melissa Swetnam, Antwoine Giles, Anna Reynolds, Laura Corley, Larry Joe Newby, and Jennifer Zimmer seek to represent a subclass (Subclass C) defined as follows: All unregistered persons otherwise eligible to register to vote in Alabama

whose felony convictions are not class A felonies under Alabama law, but who are now, or who may in the future be, denied the right to vote because they have been convicted of a felony, pursuant to the interpretation and enforcement of Section 177(b) of the Alabama Constitution by Defendants. The proposed Plaintiff Subclass C is by definition a subset of the broader proposed Plaintiff Class.

Subclasses Related to the Vagueness of Section 177(b)'s Breadth

55. All plaintiffs except Plaintiff Pamela King seek to represent a subclass (Subclass D) defined as follows: All unregistered persons otherwise eligible to register to vote in Alabama who have not been convicted of felonies appearing in Alabama Code Section 15-22-36.1(g), but who are now, or who may in the future be, denied the right to vote because they have been convicted of a felony, pursuant to the interpretation and enforcement of Section 177(b) of the Alabama Constitution by Defendants. The proposed Plaintiff Subclass D is by definition a subset of the broader proposed Plaintiff Class.

56. Plaintiffs Antwoine Giles, Laura Corley, and Mario Dion Yow seek to represent a subclass (Subclass E) defined as follows: All unregistered persons otherwise eligible to register to vote in Alabama who have not been convicted of felonies appearing in Alabama Code Section 15-22-36.1(g), the 2005 Attorney General Opinion, or the AOC list, but who are now, or who may in the future be, denied the right to vote because they have been convicted of a felony, pursuant to the interpretation and enforcement of Section 177(b) of the Alabama Constitution by Defendants. The proposed Plaintiff Subclass E is by definition a subset of the broader proposed Plaintiff Class.

57. Plaintiffs Melissa Swetnam, Antwoine Giles, Anna Reynolds, Laura Corley, Mario Dion Yow, Jennifer Zimmer, and Timothy Lanier seek to represent a subclass (Subclass F) defined as follows: All unregistered persons otherwise eligible to register to vote in Alabama with felony

convictions, but who have not been convicted of felonies appearing in Alabama Code Section 15-22-36.1(g), who cannot be legally certain that their convictions are not disqualifying and therefore reasonably fear affirming under penalty of perjury that they have not been convicted of a “disqualifying crime.” The proposed Plaintiff Subclass F is by definition a subset of the broader proposed Plaintiff Class.

Subclasses Related to Plaintiffs’ Procedural Due Process Rights

58. Plaintiffs Treva Thompson and Larry Joe Newby seek to represent a subclass (Subclass G) defined as follows: All unregistered persons otherwise eligible to register to vote in Alabama who have not been convicted of felonies appearing in Ala. Code Ala. Code § 15-22-36.1(g), who have applied to register to vote, and whose applications were denied on the basis of a county registrar’s determination that their felony convictions were “disqualifying” under Section 177(b) of the Alabama Constitution. The proposed Plaintiff Subclass G is by definition a subset of the broader proposed Plaintiff Class.

59. Plaintiffs Treva Thompson, Melissa Swetnam, Antwoine Giles, Anna Reynolds, Larry Joe Newby, and Mario Dion Yow seek to represent a subclass (Subclass H) defined as follows: All previously registered persons otherwise eligible to register to vote in Alabama, who have not been convicted of felonies appearing in Ala. Code § 15-22-36.1(g), and who were removed from voter registration lists on the basis of a county registrar’s determination that their felony convictions were “disqualifying” under Section 177(b) of the Alabama Constitution. The proposed Plaintiff Subclass H is by definition a subset of the broader proposed Plaintiff Class.

Subclass Related to Payment of LFOs

60. Plaintiffs Treva Thompson and Melissa Swetnam seek to represent a subclass (Subclass I) defined as follows: All unregistered persons otherwise eligible to register to vote in

Alabama who (a) are now, or who may in the future be, denied the right to vote because they have been convicted of a felony, pursuant to the interpretation and enforcement of Section 177(b) of the Alabama Constitution by Defendants; and (b) are unable to pay their fines, fees, and restitution due to their socioeconomic status; but (c) are otherwise eligible to apply for a CERV.

Organizational Plaintiff

61. Organizational plaintiff Greater Birmingham Ministries (“GBM”) was founded in 1969 in response to the urgent human and justice needs in the greater Birmingham, Alabama area. GBM is a multi-faith, multi-racial organization that provides emergency services for people in need, and that engages the poor and the non-poor in systemic change efforts to build a strong, supportive community and to pursue a more just society for all people.

62. A central goal of GBM is the pursuit of social justice in the governance of Alabama. GBM opposes state laws, policies, and practices that result in the exclusion of vulnerable groups or persons from the democratic process. Toward that end, GBM regularly engages in efforts to register, educate, and increase turnout among African-American and Latino voters, as well as low-income voters in general.

63. As a result of Section 177(b) of the Alabama Constitution, GBM must devote staff time and resources to helping those with felony convictions (1) determine whether they may be eligible to register to vote, (2) attempt to register to vote, (3) determine whether they may be eligible for a CERV, and (4) apply for a CERV.

64. Section 177(b) of the Alabama Constitution is causing, and will continue to cause, GBM to divert a portion of its limited financial and other organizational resources to assisting citizens with felony convictions to determine if they are eligible to register to vote and/or apply for a CERV and to assisting them in registering to vote and/or applying for a CERV. As a result,

GBM is limited, and will continue to be limited, in the resources that it can devote to its other core organizational goals.

DEFENDANTS

65. Defendant State of Alabama is sued in its own name with respect to Plaintiffs' claims under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. Congress has abrogated the State's Eleventh Amendment immunity in civil actions brought to enforce the rights guaranteed by the Voting Rights Act.

66. Defendant John H. Merrill is the Secretary of State of Alabama and, as such, is the chief elections official in the state and is responsible for providing uniform guidance and promulgating administrative rules for election activities. Ala. Code § 17-1-3(a). He is sued in his official capacity only.

67. Defendant George Noblin is the Chair of the Board of Registrars for Montgomery County and is responsible for registering voters in Montgomery County. Ala. Code §§ 17-3-1 et seq. He is sued in his official capacity only.

68. The Defendant Class, represented by Defendant Noblin, is defined as: All voter registrars in the State of Alabama. The voter registrars, as a class, are sued in their official capacities only.

69. Defendant Clifford Walker is the Chairman of the Board of Pardons and Paroles. The Board of Pardons and Paroles is the agency tasked with reviewing and distributing CERV's pursuant to Alabama Code Section 15-22-36.1. He is sued in his official capacity only.

CLASS ALLEGATIONS

70. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs bring this action on behalf of themselves and all other similarly situated persons. Plaintiffs do not seek claims for

compensatory relief. Instead, Plaintiffs seek only declaratory and injunctive relief broadly applicable to members of the Plaintiff Class and the Plaintiff Subclasses, as defined above. The requirements of Rule 23, and in particular Rule 23(b)(2), are met with respect to the Plaintiff Class and Plaintiff Subclasses, as defined above.

71. The members of the Plaintiff Class and Plaintiff Subclasses are so numerous that joinder is impracticable. While exact numbers of members in the Plaintiff Class and Plaintiff Subclasses are not publicly available, upon information and belief, the total number of otherwise eligible citizens of Alabama disenfranchised on the basis of felony convictions exceeds 250,000. The Plaintiff Class and Plaintiff Subclasses are ascertainable through Defendants' records, as well as records kept by the Alabama Circuit Clerks and the Board of Pardons and Paroles.

72. The questions of law and fact common to the Plaintiff Class and Plaintiff Subclasses predominate over questions affecting only individual class members, and include, but are not limited to, the following:

- a. Whether Section 177(b) was adopted with and/or perpetuates racially discriminatory intent;
- b. Whether Section 177(b) violates Section 2 of the Voting Rights Act;
- c. Whether Section 177(b) violates Section 1 of the Fourteenth Amendment and the First Amendment by denying the right to vote to those convicted of crimes for which disenfranchisement is not affirmatively sanctioned by Section 2 of the Fourteenth Amendment;
- d. Whether Section 177(b), as applied by Defendant Secretary of State and Defendant registrars, imposes an unconstitutional burden on the right to vote of

those convicted of felonies that may not constitute “felonies involving moral turpitude”;

- e. Whether Section 177(b), as applied by Defendant Secretary of State and Defendant registrars, is unconstitutionally vague;
- f. Whether Section 177(b), as applied by Defendant Secretary of State and Defendant registrars, denies Plaintiff Class and/or Plaintiff Subclass members equal protection of the laws by arbitrarily and discriminatorily disenfranchising otherwise eligible citizens on the basis of arbitrarily chosen felony convictions;
- g. Whether the denial of Plaintiff Class and/or Plaintiff Subclass members’ voter registration applications and/or removal of Plaintiff Class and/or Plaintiff Subclass members from the voter registration lists on the basis of their felony convictions without a pre-deprivation hearing deprives Plaintiff Class and/or Plaintiff Subclass members of procedural due process;
- h. Whether Section 177(b), as applied by Defendant Secretary of State and Defendant registrars, violates the Ex Post Facto Clause;
- i. Whether Section 177(b), as applied by Defendant Secretary of State and Defendant registrars, imposes cruel and unusual punishment in violation of the Eighth Amendment;
- j. Whether the requirement that a disqualified citizen pay all legal financial obligations in order to be eligible to restore her voting rights denies Plaintiff Class and/or Plaintiff Subclass members equal protection of the laws by imposing a wealth qualification on access to the right to vote;

- k. Whether the requirement that a disqualified citizen pay all legal financial obligations in order to be eligible to restore her voting rights constitutes a poll tax and violates the Twenty-Fourth Amendment;
- l. Whether the requirement that a disqualified citizen pay all legal financial obligations in order to be eligible to restore her voting rights violates Section 2 of the Voting Rights Act.

73. The claims of Plaintiffs Treva Thompson, Melissa Swetnam, Antwoine Giles, Anna Reynolds, Larry Joe Newby, Mario Dion Yow, Jennifer Zimmer, Timothy Lanier, and Pamela King are typical of the Plaintiff Class and Plaintiff Subclasses as defined above. Plaintiffs are not aware of any conflict between their interests and those of the Plaintiff Class and Subclasses they seek to represent.

74. Plaintiffs can fairly and adequately represent the interests of the Plaintiff Class and Plaintiff Subclasses because they are similarly situated with members of their classes. Plaintiffs have retained counsel experienced in class-action litigation and voting rights litigation to represent them and the Plaintiff Class and Subclasses for the purpose of this litigation.

75. Defendants have acted, or refused to act, on grounds generally applicable to the entire class and subclasses, and final injunctive relief and corresponding declaratory relief are appropriate respecting the classes as a whole.

76. A class action is superior to other available means for the fair and efficient adjudication of the Plaintiff Class and Plaintiff Subclass members' claims because joinder of all members is impracticable. Absent the class action, the members of the Plaintiff Class and Plaintiff Subclasses will continue to suffer deprivation of their right to vote.

77. The Defendant Class, defined as all voter registrars in the State of Alabama, is also so numerous as to make it impractical to join them all before this Court. Each county in Alabama has at least three registrars. Ala. Code § 17-3-2. Alabama has sixty-seven counties.

78. The questions of law and fact common to the Plaintiff Class and Plaintiff Subclasses predominate over questions affecting only individual class members, and include, but are not limited to, the questions listed in paragraph 72, *supra*.

79. Defendant Noblin can fairly and adequately represent the interests of the Defendant Class because his interests do not conflict with the interests of the Defendant Class members he would represent and he is similarly situated with members of the Defendant Class.

80. The defenses of Defendant Noblin are typical of the Defendant Class as a whole.

81. A class action is therefore superior to other available means for the fair and efficient adjudication of the Defendant Class members' defenses.

FACTUAL ALLEGATIONS

A History of Racial Discrimination in Voting

82. Alabama's history of criminal disenfranchisement is inextricably intertwined with Alabama's long history of denying black citizens the right to vote.

83. That history is well established and documented. In addition to Alabama's constitutional protection of slavery and the restriction of the right to vote to white males until the Civil War forced it to abandon those practices, Alabama's history of racial discrimination in voting includes, *inter alia*, the use of terror and violence, economic intimidation, all-white primaries, bans on single-shot voting, at-large elections, literacy tests, poll taxes, "grandfather" clauses, and good character tests, all with the aim of excluding blacks from the franchise. *See, e.g., Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986) (detailing Alabama's "unrelenting

historical agenda, spanning from the late 1800's to the 1980's, to keep its black citizens economically, socially, and politically downtrodden, from the cradle to the grave").

84. Accordingly, in 1965, Alabama was declared a covered state under Section 4(b) of the Voting Rights Act on the basis of its enforcement of unconstitutional tests or devices and its low voter registration and turnout rates. *See South Carolina v. Katzenbach*, 383 U.S. 301, 312 (1966) ("Discriminatory administration of voting qualifications has been found in all eight Alabama cases.").

85. Since 1965 and continuing to the present, Alabama has a sustained record of racial discrimination in voting, necessitating federal intervention. *See, e.g., Renewing the Temporary Provisions of the Voting Rights Act: Legislative Options after LULAC v. Perry: Hearing Before the Subcommittee on the Constitution, Civil Rights and Property Rights of the Senate Committee on the Judiciary*, 109th Cong. 365-402 (July 13, 2006) (compiling evidence of Alabama's sustained record of racial discrimination); *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015) (redistricting); *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987) (racially selective annexations); *Hunter v. Underwood*, 471 U.S. 222 (1985) (felon disfranchisement); U.S. Dep't of Justice, Alabama Voting Determination Letters, http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=al (last visited Dec. 1, 2015) (listing all objections imposed against Alabama under Section 5 of the Voting Rights Act, including 24 objections from 1990 to 2008, as well as pre-1990 objections to voter re-identification and literacy requirements).

86. As recently as January 2014, a federal court in the Southern District of Alabama "bailed-in" the City of Evergreen in Conecuh County for preclearance under Section 3(c) of the

Voting Rights Act because voter registrars and election officials there continued to unconstitutionally discriminate against black voters.

Criminal Disenfranchisement: A Sordid History

87. Across the country and particularly in the South, felon disenfranchisement carries with it a sordid history as part and parcel of the racist practice of convict leasing and the South's intractable opposition to granting blacks the right to vote.

88. During Reconstruction, after the passage of the Fourteenth and Fifteenth Amendments, Southern states employed felon disenfranchisement as a back door to the wholesale disenfranchisement of blacks. States expanded their lists of disenfranchising offenses—which were previously closely cabined—to include a broad set of minor offenses, tailored their lists based on racial theories of crimes blacks were “prone” to commit, and then prosecuted petty crimes against blacks as a means to both push them into the pipeline of convict leasing and disenfranchise them permanently. *See* Pippa Holloway, *Living in Infamy* 80 (2014).

89. For example, South Carolina added larceny to its list of disenfranchising offenses in 1880. *Id.* at 62-63. One South Carolinian described the scene there around election time: “Negroes are frequently arraigned . . . on the most trivial charges of larceny . . . the whole proceedings clearly indicate, in many cases, that the prosecution is merely a pretext to deprive a negro of his vote.” *Id.* at 68.

90. Likewise, Virginia disenfranchised those convicted of petit larceny in 1875. *Id.* at 61. In practice, it also kept official lists of “Convicted Colored Males Who Are Thereby Disenfranchised.” *Id.* at 67.

91. North Carolina, which also expanded disenfranchisement to minor property crimes in 1875, likewise maintained lists and enforced its laws in a racist manner. *Id.* In Iredell County,

for example, 114 of 122 disenfranchised voters were black, and of those, 104 were disenfranchised based on a larceny conviction. *Id.*

92. Mississippi tied together race and disenfranchisement even more explicitly. In *Ratliff v. Beale*, 20 So. 865, 868 (Miss. 1896), the court explained that, “[r]estrained by the federal constitution from discriminating against the negro race, the [Mississippi Constitutional] convention discriminated against their characteristics and the offenses to which its weaker members were prone.” Aided by the 1876 Pig Law, which expanded the definition of larceny, Mississippi’s Constitution served to both disenfranchise blacks and increase the size of its convict-leasing program. *Id.* at 57, 59.

93. Alabama was no exception to this pattern of employing felon disenfranchisement as a means of achieving the wholesale disenfranchisement of blacks.

***Criminal Disenfranchisement Based on “Moral Turpitude”:
An Intentional Mechanism to Disenfranchise Blacks***

Alabama’s 1901 Convention

94. In 1901, Alabama held an all-white Constitutional Convention. The 1901 Convention was “part of a movement that swept the post-Reconstruction South to disenfranchise blacks.” *Hunter v. Underwood*, 471 U.S. 222, 229 (1985).

95. The explicit purpose of the 1901 Convention, as expressed by the Convention president John Knox in his opening address, was to “establish white supremacy” in Alabama. *Id.*

96. Specifically, the drafters of the 1901 Alabama Constitution sought to impose voter qualifications “that would subvert the guarantees of the fourteenth and fifteenth amendments without directly provoking a legal challenge.” *Underwood v. Hunter*, 730 F.2d 614, 619 (11th Cir. 1984), *aff’d* 471 U.S. 222 (1985).

97. To this end, the drafters expanded Alabama's criminal disenfranchisement provision, adopting Section 182 of the 1901 Constitution, which provided:

[T]hose who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any *infamous crime or crime involving moral turpitude*; also, any person who shall be convicted as a vagrant or tramp, or of selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector.

98. The purpose of this provision was, once again, to disenfranchise blacks. John Fielding Burns, who introduced the provision, boasted "the crime of wife-beating alone would disqualify sixty percent of Negroes." *Underwood*, 730 F.2d at 620 (citing J. Gross, *Alabama Politics and the Negro, 1874-1901* 244 (1969)).

99. The criminal disenfranchisement provision was framed specifically to disenfranchise blacks: "In addition to the general catchall phrase 'crimes involving moral turpitude' the suffrage committee selected such crimes as vagrancy, living in adultery, and wife beating that were thought to be more commonly committed by blacks." *Hunter*, 471 U.S. at 232.

100. To justify the disenfranchisement of blacks through this mechanism and others in the 1901 Convention, Knox, the Convention president, specifically invoked the prevalent view of the moral superiority of Anglos over blacks: "The justification for whatever manipulation of the ballot that has occurred in this State has been the menace of negro domination. . . . These provisions are justified in law and in morals, because it is said that the negro is not discriminated against on

account of his race, but on account of his intellectual and moral condition.” Angela Behrens, Christopher Uggen, & Jeff Manza, *Ballot Manipulation and the “Menace of Negro Domination”: Racial Threat and Felon Disenfranchisement in the United States, 1850-2002*, 109 Am. J. Soc. 559, 571 (2003).

101. At the same time that Alabama sought to use the criminal system to disenfranchise black voters, it was also utilizing the criminal system to reimpose involuntary servitude of blacks in the aftermath of the Civil War and the passage of the Thirteenth Amendment.

102. After the end of the Civil War, many Southern states utilized the exception to the Thirteenth Amendment’s prohibition on involuntary servitude for criminal punishment to create a massive convict-leasing system—wherein states and counties could sweep black communities for petty crimes and violations of the “Black Codes” and then lease those prisoners to private entities for forced labor—to replace slave labor. *See generally* Douglas Blackmon, *Slavery by Another Name* (2008).

103. Alabama was the worst offender. Alabama created the largest convict-leasing system in the South—providing large companies like Tennessee Coal and Iron and then U.S. Steel with nearly unlimited labor—and was the last to outlaw the practice. While ascertaining the exact number of victims of this system is not possible given shoddy record keeping, historians estimate that well over 100,000 Alabaman prisoners were “leased” during the sixty-year period that this system prevailed. The mortality rate of these prisoners was extraordinarily high, between 3 and 25 percent. *See* Douglas Blackmon, *From Alabama's Past, Capitalism Teamed With Racism to Create Cruel Partnership*, Wall St. J. (July 16, 2001).

104. These leased prisoners, like the slaves that preceded them, were nearly exclusively black. According to one source, in an average year, 97 percent of Alabama’s county convicts (those

convicted of minor crimes) were “colored.” David M. Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (1996).

105. Thus, the Black Codes, the convict leasing system, and the 1901 criminal disenfranchisement provision all worked together to establish and maintain white supremacy in Alabama. The State convicted black citizens of petty crimes and Black Code violations in the tens of thousands, leased them out to private entities for forced labor with extraordinary financial rewards for the State, and then excluded them permanently from the political franchise on the basis of those convictions. This is the legacy of disenfranchisement on the basis of “moral turpitude” in Alabama.

“Moral Turpitude” in Alabama after the 1901 Convention

106. Racially discriminatory views connecting the disenfranchisement of blacks to their “criminal attitudes” did not end in the early 1900s. In 1961, in a State Democratic Executive Committee meeting discussing a discriminatory requirement that candidates run for numbered places in all at-large elections, a committee member stated that many blacks “cannot qualify because of their criminal records or criminal attitudes,” but nonetheless argued that the State must layer additional discriminatory requirements to “protect the white people of Alabama.” *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986).

107. In 1969, a Constitutional Commission was appointed by the Governor with the purpose of updating and revising the 1901 Constitution.

108. The Commission released its proposed constitution in 1973. With respect to criminal disenfranchisement, the Commission recommended the following simplification of Section 182: “No person convicted of a felony involving moral turpitude, or who is mentally

incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.”

109. The commentary to the Commission’s drafts of the 1973 proposed Constitution explained the purpose of this simplified provision. The Commission noted that the long list of specific crimes might become “a matter of constitutional interpretation or constitutional amendment.” First Draft of Proposed Alabama Constitution at 8 (Oct. 23, 1970). Thus, the Commission sought to “describe such disqualifications in general terms, thus overcoming these objections and eliminating a long, scattered, and redundant list of disqualifying crimes.” *Id.* The commentary included no discussion of alternative motives for criminal disenfranchisement that differed in kind from Section 182 of the 1901 Constitution.

110. Upon information and belief, the 1973 proposal took the “including moral turpitude” clause directly from Section 182 of the 1901 Constitution. The only alternative models cited in the commentary to the 1973 proposal did not include that language.

111. The 1973 Commission sought to simplify the felon disenfranchisement provision, as compared to the lengthy 1901 clause, but there is no evidence that it sought to eliminate its racially discriminatory intent and effect. Indeed, in 1973, George Wallace was Governor of Alabama and there was little political appetite for meaningful change through the Commission. Accordingly, the Commission sought to limit its recommendations to modest proposals intended to streamline the lengthy and unmanageable prior constitution. *See* William H. Stewart, *The Tortured History of Efforts to Revise the Alabama Constitution of 1901*, 53 Ala. L. Rev. 295 (2001). The Commission’s proposed constitutional reforms were not adopted at that time.

112. In the 1980s, voters challenged Section 182 as intentionally racially discriminatory. The challenge focused specifically on the provision disenfranchising those convicted of the

enumerated misdemeanors and “crime[s] involving moral turpitude.” In 1984, the Eleventh Circuit found “as a matter of law that discriminatory intent motivated Section 182” and enjoined the challenged provisions, including the “crime involving moral turpitude” provision. *Underwood*, 730 F.2d at 620.

113. With respect to “moral turpitude,” the Eleventh Circuit wrote: “The attorney general in opinion has acknowledged that the classification of presently unaddressed offenses ‘will turn upon the moral standards of the judges who decide the question.’ Thus does the serpent of uncertainty crawl into the Eden of trial administration.” *Id.* at 616 n.2 (internal quotation marks and citations omitted).

114. The Eleventh Circuit held that it was “unable to discern any evidence that [Section 182] was actually intended to serve” the valid “state interest in denying the franchise to those convicted of violating its laws.” *Id.* at 620.

115. The Supreme Court affirmed the Eleventh Circuit and held that Section 182, including the provision disenfranchising citizens convicted of crimes involving moral turpitude, was motivated by racial animus. Rejecting the State’s contention “that the State has a legitimate interest in denying the franchise to those convicted of crimes involving moral turpitude,” the Court held that “such a purpose simply was not a motivating factor of the 1901 convention. In addition to the general catchall phrase ‘crimes involving moral turpitude’ the suffrage committee selected such crimes as vagrancy, living in adultery, and wife beating that were thought to be more commonly committed by blacks.” *Hunter*, 471 U.S. at 232.

116. Against this backdrop, Alabama adopted Amendment 579 to the 1901 Constitution in 1996.

117. Amendment 579's criminal disenfranchisement provision is a word-for-word adoption of the 1973 proposed revision of Section 182. Amendment 579 added Section 177(b) to the Alabama Constitution, which now provides, in relevant part, that "No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability."

118. Amendment 579 was proposed by the Legislature in 1995, submitted at the June 4, 1996 election, and proclaimed ratified on June 19, 1996.

119. The sponsor of the bill that became Amendment 579 represented to the Legislature and to the press that it would make no substantive changes to the 1901 Constitution and was intended merely to simplify the language governing voting.

120. Upon information and belief, none of the legislative history behind Amendment 579 provides any non-racial motive for the "including moral turpitude" language that was taken directly, without comment, from Section 182's intentionally racially discriminatory language.

121. Indeed, Alabama officials have questioned the inclusion of this explicitly racially tainted language in the 1996 revision. In a 2007 memo from the AOC about the "moral turpitude" provision, Griffin Sikes, Director of the Legal Division of the AOC, recounted the moral turpitude standard's "dubious, ignoble usage and history." He noted that "it is difficult to understand the decision made in the mid-1990s to reintroduce, via Amendment 579 to the Alabama Constitution, the phrase, 'involving moral turpitude,' as a basis for again disqualifying or disenfranchising Alabama citizens of their right to vote" and concluded that "[t]he use of this standard is suspect." *Id.*

122. In 1995 and 1996, the State Legislature must have been keenly aware of the strong connections between Alabama's long history of slavery, convict leasing, and the modern carceral

state. In 1995, Governor James revived the chain gang in Alabama, a powerful symbol of Alabama's racist convict-leasing system. Nancy A. Ozimek, *Reinstitution of the Chain Gang: A Historical and Constitutional Analysis*, 6 B.U. Pub. Int. L.J. 753, 758-59 (1997). At that time, roughly 70 percent of Alabamans in prison were black. Anne Hull, *Chained to a New Kind of Justice*, St. Petersburg Times, June 25, 1995, at A1.

123. Commentators repeatedly called upon the Governor to end this practice, arguing that it was an unfortunate return to Alabama's "dark ages" and a stark reminder of slavery. Linnet Myers, *Alabama Chain Gang Program Rattles Feelings*, Chi. Tribune, May 3, 1995.

124. The practice also stoked racist remarks from the public. One resident reportedly said of the practice: "I love seeing 'em in chains. They ought to make them pick cotton." Tracey Meares, *Weak Link*, U. Chi. Mag., February 1996. Echoing this sentiment in his own campaign, State Senator Charles Davidson argued that biblical teachings justified slavery. *Bible Backed Slavery, Says a Lawmaker*, N.Y. Times, May 9, 1996.

125. However, despite critiques regarding the chain gang's explicit racist connotations, the practice did not end in Alabama until a lawsuit was filed and ultimately settled by the State in 1998. In approving the settlement agreement, the court noted that the "heinous roots" of the chain gang had "provoked much concern from commentators as well as jurists." *Austin v. Hopper*, 15 F. Supp. 2d 1210, 1216 (M.D. Ala. 1998) (citing *Alabama v. Engler*, 85 F.3d 1205, 1210 (6th Cir. 1996) (Jones, J., concurring) (noting that a fugitive from Alabama, whom the Sixth Circuit held should be extradited by the State of Michigan, "will be tossed into a prison system that has adopted the barbaric 'discipline' of the chain gang" and stating that "this perpetuation of injustice cloaked in the tattered cloth of the Alabama justice system is deplorable"))).

126. While the chain gang practice was being hotly debated, the Alabama Legislature approved Amendment 579.

Disproportionate Impact of Section 177(b) on Black Citizens

127. Upon information and belief, at the time of Section 182's adoption, it disenfranchised ten times as many blacks as whites.

128. Section 182's (now Section 177(b)) disproportionate and discriminatory effects on blacks continue today.

129. At the time *Hunter v. Underwood* was decided in 1985, the experts estimated that blacks were at least 1.7 times as likely as whites to be disenfranchised under Section 182.

130. By 1996, when Amendment 579 was ratified, the impact of criminal disenfranchisement on black citizens in Alabama was greater both in comparative and actual magnitude as a result of the dramatic increase in mass incarceration in Alabama, which fell unevenly on the black community.

131. The state prison population in Alabama is now nearly three times the size it was in the mid-1980s. The number of incarcerated persons per 100,000 people has more than doubled.

132. The incarceration rate presents stark racial disparities. Based on recent estimates, black residents are incarcerated at a rate over three times that of white residents.

133. This explosion in overall incarceration, which exacerbates its extreme racially disparate impact, was well underway by 1996 when Amendment 579 was ratified. Since 1985, when *Hunter* was decided, the rate of incarceration had risen from approximately 300 per 100,000 to nearly 500 per 100,000.

134. According to a 2010 study by the Sentencing Project, approximately 7 percent of the voting age population in Alabama is disenfranchised as a result of Section 177(b).

135. Because Alabama prosecutes and convicts its black citizens at substantially higher rates than its white citizens, the rates of disenfranchisement do not fall evenly on the state's black and white citizens.

136. According to the Sentencing Project study, approximately 15 percent of the black voting age population in Alabama is disenfranchised by Section 177(b), while less than 5 percent of the white voting age population in Alabama is similarly disenfranchised. In other words, black Alabamians are three times more likely to be disenfranchised by Section 177(b) than whites. Blacks comprise well over half of all individuals disenfranchised on the basis of convictions while comprising only approximately one quarter of the total voting age population.

137. Alabama disenfranchises blacks on the basis of convictions at nearly double the nationwide rate.

Disproportionate Impact of LFOs Requirement on Black Citizens

138. Even disregarding the stark racially disproportionate effect of Section 177(b), the requirement that citizens be able to pay all LFOs in order to qualify to receive a CERV and restore their right to vote also has a disproportionate impact on black citizens.

139. According to the 2010-2014 American Community Survey, the poverty rate of blacks in Alabama (31.6%) is well over double the rate of whites (13.8%); and white per capita income (\$27,354) is nearly double black per capita income (\$16,027).

140. According to the 2010-2014 American Community Survey, the unemployment rate of blacks in Alabama (16%) is double the rate of unemployment of whites (8.1%).

141. These systemic and disproportionately lower economic conditions for blacks in Alabama are the result, at least in part, of a long history of state-sponsored racial discrimination in

Alabama across all spectrums of society including, but not limited to, education, voting, and employment.

142. These systemic and disproportionately lower economic conditions for blacks in Alabama result in blacks being less able to pay their LFOs and become eligible to restore their voting rights.

143. In a 2015 study, political scientists Marc Meredith and Michael Morse analyzed Alabama Board of Pardons and Paroles data and determined that blacks are statistically less likely to be able to pay all their LFOs. Specifically, blacks are 10% more likely to have a non-zero LFO balance in Alabama. Blacks are also 16% more likely to have their voting rights applications denied due to outstanding LFOs.

Enforcement of Section 177's "Moral Turpitude" Standard

144. As discussed above, the Alabama Legislature has failed to define the term "moral turpitude" and therefore has failed to define the qualifications for voting in the State of Alabama.

145. Alabama Code Section 15-22-36.1(g) assumes that the felonies listed therein are disqualifying but does not reference Section 177(b) or the moral turpitude standard and may assume that all convicted felons are disfranchised, notwithstanding the "moral turpitude" qualification in Section 177(b).

146. Beyond Alabama Code Section 15-22-36.1(g), there are only non-exhaustive and non-authoritative interpretations of what crimes are disqualifying under Section 177.

147. Nonetheless, the State of Alabama Voter Registration Form requires a voter to swear and sign, under penalty of perjury, that she is "not barred from voting by reason of a disqualifying felony conviction." Below the signature line, the form states: "If you falsely sign this

statement, you can be convicted and imprisoned for up to five years.” The form does not provide any additional information about what constitutes a “disqualifying felony.”

148. Similarly, the State Instructions for Alabama on the Federal Voter Registration Form state that in order to register to vote in Alabama, an applicant must “not have been convicted of a felony involving moral turpitude (or have had your civil and political rights restored).” The registration form requires the applicant to swear and affirm that she has “reviewed [her] state’s instructions” and “meet[s] the eligibility requirements of [her] state.” It warns that false information may result in fines and/or imprisonment. The form does not provide any additional information about what constitutes a “felony involving moral turpitude.”

149. Upon information and belief, the Secretary of State provides no information whatsoever on its website regarding what felonies it deems disqualifying. Upon information and belief, nowhere does it refer to the Attorney General’s list, the AOC list, or Alabama Code Section 15-22-36.1(g) or otherwise explain to voters how they would determine whether their convictions are disqualifying.

150. Registrars for each county in Alabama comprise a Board of Registrars. They are collectively and individually responsible for registering electors. Ala. Code §§ 17-3-1 et seq.

151. Registrars in Alabama are also responsible for purging electors disqualified on the basis of convictions of felonies involving moral turpitude from the voter registration lists on a continuous basis. Ala. Code § 17-4-3.

152. No legal training is required to be a registrar. Ala. Code § 17-3-2(a) (noting that qualifications include: (1) being a qualified elector, (2) being a resident of the county, (3) possessing a high school diploma or equivalent, and (4) possessing computer and map reading skills).

153. Upon information and belief, registrars in Alabama are responsible for making the determination of whether a voter applicant's felony conviction is disqualifying.

154. If an Alabama registrar improperly determines that a voter applicant's crime is disqualifying, the voter applicant must affirmatively appeal that decision to probate court in order to receive an adjudication of her qualifications as a voter. Ala. Code § 17-3-55. In the interim, she is unable to vote.

155. Upon information and belief, registrars in Alabama are also responsible for making the determination of whether a current registered voter's conviction is disqualifying and thus whether the current voter's name should be removed from the voter registration list.

156. Upon information and belief, the Secretary of State, Defendant Merrill, instructs registrars to rely upon the 2005 Attorney General Opinion where it is applicable and that they may consult, if they so decide, the Attorney General's Office if they are unsure of a crime's classification as disqualifying.

157. Before striking a voter from the registration list based on a disqualifying criminal conviction, an Alabama registrar must send the voter a notice and "on the date set in the notice . . . the board shall proceed to consider the case of the elector whose name it proposes to strike . . . and make its determination." Ala. Code § 17-4-3

158. Upon information and belief, voting registrars in Alabama do not uniformly follow this requirement or uniformly provide registered voters the opportunity to respond to the registrar's determination of whether the applicant's conviction is disqualifying.

159. If a registrar in Alabama improperly determines that a voter's crime is disqualifying and strikes her from the registration list, the voter must affirmatively appeal that decision to probate

court in order to receive an adjudication of her qualifications as a voter. Ala. Code § 17-3-55. In the interim, she is unable to vote.

160. Upon information and belief, there is no uniform system for determining the eligibility of voter applicants and voter registrants across the state.

CLAIMS

**Count 1: Intentional Race Discrimination, 14th Amendment
(42 U.S.C. § 1983)
(All Plaintiffs and Plaintiff Class)
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

161. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

162. The disenfranchisement of persons convicted of crimes “involving moral turpitude” was adopted by Alabama in 1901 with an explicit intent to exclude blacks from the electoral franchise.

163. In 1985, the Supreme Court unanimously held that Section 182, Section 177(b)’s predecessor, and particularly the disenfranchisement of those convicted of crimes “involving moral turpitude,” was intentionally racially discriminatory.

164. In 1995, the Alabama Legislature proposed Amendment 579, which reintroduced a provision disenfranchising those convicted of felonies “involving moral turpitude” despite its “ignoble usage and history.” Amendment 579 was a word-for-word adoption of a 1973 proposal to simplify, but not substantively change, Section 182. The phrase “involving moral turpitude” was lifted directly from the intentionally racially discriminatory Section 182. Ultimately, the only legislative history on the intent behind the adoption of the “involving moral turpitude” clause is the 1901 legislative history, which has already been fully adjudicated and deemed intentionally racially discriminatory.

165. Since its inception, Alabama's disenfranchisement of those convicted of crimes involving moral turpitude has had a dramatically disproportionate effect on blacks in Alabama. That effect was in full force in 1995 and remains in full force today.

166. Section 177(b) of the Alabama Constitution, which codifies Amendment 579, violates the Fourteenth Amendment to the Constitution of the United States because it purposely denies equal protection in registering and voting to Plaintiffs and other minority voters on account of race.

**Count 2: Intentional Race Discrimination, 15th Amendment
(42 U.S.C. § 1983)
(All Plaintiffs and Plaintiff Class)
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

167. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

168. Section 177(b) of the Alabama Constitution, which codifies Amendment 579, violates the Fifteenth Amendment to the Constitution of the United States because it purposely denies and abridges the right to register and vote to Plaintiffs and other minority voters on account of race or previous condition of servitude.

**Count 3: Racial Discrimination in Voting, Section 2 of the Voting Rights Act
(52 U.S.C. § 10301)
(All Plaintiffs and Plaintiff Class)
(Against Defendant State of Alabama, Defendant Merrill, Defendant Noblin, and
Defendant Class)**

169. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

170. Section 2 of the Voting Rights Act prohibits any state from enacting or administering any voting prerequisite or qualification for voting that results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color or membership in a language minority group.

171. Under the totality of the circumstances, Alabama's enforcement of Section 177(b) of the Alabama Constitution results in racial discrimination in voting because it denies black voters an equal opportunity to participate effectively in the political process and therefore violates Section 2 of the Voting Rights Act.

172. Section 177(b) of the Alabama Constitution also violates Section 2 of the Voting Rights Act because it purposefully denies black voters an equal opportunity to participate in the political process.

Count 4: Non-Racial Discrimination in Voting, 14th Amendment
(42 U.S.C. § 1983)
(All Plaintiffs and Plaintiffs Subclasses A, B, C)
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)

173. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

174. "There is no right more basic in our democracy than the right to participate in electing our political leaders." *McCutcheon v. FEC*, 134 S. Ct. 1434, 1440-41 (2014). The Supreme Court has recognized that "voting is of the most fundamental significance under our constitutional structure" and the right to an effective vote is protected by the Equal Protection Clause of the Fourteenth Amendment. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (internal quotation marks omitted). Indeed, the right to vote is the "fundamental political right . . . preservative of all rights." *Reynolds v. Sims*, 377 U.S. 533 (1964) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)).

175. The Supreme Court has held that a citizen cannot be denied the right to vote absent a compelling state interest. *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621 (1969) (holding unconstitutional a law that denied the right to vote in school board elections to those who were not parents or custodians of children in the local public schools and who did not own or lease taxable real property in the district because it did not "sufficiently further a compelling state interest to justify denying the franchise"); see also *Dunn v. Blumstein*, 405 U.S. 30 (1972) (striking down a

lengthy residency requirement); *Carrington v. Rash*, 380 U.S. 89 (1965) (striking down an exclusion of military residents).²

176. Section 2 of the Fourteenth Amendment provides as follows:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, *except for participation in rebellion, or other crime*, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

(emphasis added).

177. Even if Section 2 implicitly sanctions some criminal disenfranchisement, *see Richardson v. Ramirez*, 395 U.S. 621 (1969), the exception for “participation in rebellion, or other crime,” cannot be reasonably read in light of its textual context and history to sanction disenfranchisement for *any* crime.

178. *Richardson v. Ramirez* did not address the question of the breadth of “other crime” in Section 2 of the Fourteenth Amendment.

179. The most appropriate reading of “other crime” in light of its paradigm case, rebellion, is to limit Section 2’s affirmative sanction to crimes that are meaningfully connected to the political act of voting such as treason, bribery, or perjury.

² This Court is bound to follow Supreme Court precedent holding that the right to vote is not among the privileges or immunities of United States citizenship protected by Section 1 of the Fourteenth Amendment. *Minor v. Happersett* 88 U.S. (21 Wall.) 162 (1874). Accordingly, plaintiffs do not seek relief from this Court based on the Privileges or Immunities Clause at this time. However, Plaintiffs preserve the allegation that the right to vote is protected by both the Equal Protection Clause and the Privileges or Immunities Clause because either *Minor v. Happersett* was wrongly decided, or it has been superseded by subsequent Amendments and development of federal constitutional law. Therefore, all allegations related to the infringement of the right to vote pursuant to the Fourteenth Amendment incorporate both Equal Protection and Privileges or Immunities allegations.

180. Prior to the Civil War, Alabama only disenfranchised those convicted of precisely these crimes. The 1819 Constitution provided that only those convicted of “bribery, perjury, forgery, or other high crimes or misdemeanors” lost their right to vote. Ala. Const. of 1819, art. VI, § 5. The term of art “high crimes or misdemeanors” was at that time and still is generally understood to be limited to political crimes involving the abuse of public office.

181. The breadth of Section 2 of the Fourteenth Amendment’s sanction, at least in Alabama, should be limited to the disenfranchising crimes in Alabama’s 1819 Constitution, which are reasonably connected to the political act of voting and were the disenfranchising crimes in Alabama at the time of the Fourteenth Amendment’s drafting.

182. None of the Plaintiffs or members of Subclass A have been convicted of the limited political crimes that were disenfranchising under the 1819 Constitution; therefore, their disenfranchisement on the sole basis of their convictions denies them access to the political franchise and equal protection of the laws in violation of the Fourteenth Amendment.

183. In the alternative, at minimum, the use of the paradigm case of “rebellion,” a serious and dangerous crime, counsels that “other crime” must be restricted to common law felonies and/or particularly serious crimes.

184. Alabama’s disenfranchisement of all those convicted of “felonies involving moral turpitude,” as it is now amorphously applied, does not meet this standard however it is defined. The 2005 Attorney General Opinion lists, for example, possession of marijuana for resale, codified at Alabama Code Section 13A-12-213, as a crime of moral turpitude. It is a class C felony, until recently the least serious of the three categories of felonies and now the second to least serious category of felonies. Ala. Code § 13A-5-3 (adding class D felonies as of Jan. 30, 2016). The presumptive punishment for this crime alone is a non-prison punishment.

185. Serious crimes, akin to rebellion, may be defined in reference to common law felonies at the time of the Fourteenth Amendment's adoption. These are limited to murder, manslaughter, arson, burglary, robbery, rape, sodomy, mayhem, and larceny. *Jerome v. United States*, 318 U.S. 101, 108 n.6 (1943). This construction is supported not only by the text but also by the historical record. The Reconstruction Act of 1867 limited criminal disenfranchisement to "participation in the rebellion or for felony at common law," Reconstruction Act of Mar. 2, 1867, ch. CLII (1867), and the Readmission Acts for each of the readmitted states, including Alabama, also limited criminal disenfranchisement for "such crimes as are now felonies at common law." See Act of June 22, 1868, c. 69 15 Stat. 71; Act of June 25, 1868, c. 70, 15 Stat. 73; Act of Jan. 26, 1870, c. 10, 16 Stat. 62; Act of Feb. 1, 1870, c. 12, 16 Stat. 63; Act of Feb. 23, 1870, c. 19, 16 Stat. 7; Act of Mar. 30, 1870, c. 39, 16 Stat. 80; Act of July 15, 1870, c. 299, 16 Stat. 363.

186. Plaintiffs Melissa Swetnam, Antwoine Giles, and Mario Dion Yow, and all members of Subclass B were not convicted of crimes considered felonies at common law; therefore, their disenfranchisement on the sole basis of their convictions denies them access to the political franchise and equal protection of the laws in violation of the Fourteenth Amendment.

187. Serious crimes, akin to rebellion, may also be defined in reference to Alabama's own standards and limited to class A felonies, the top tier of felonies according to the State of Alabama.

188. Plaintiffs Treva Thompson, Melissa Swetnam, Antwoine Giles, Larry Joe Newby, and Jennifer Zimmer, and all members of Subclass C have not been convicted of any class A felonies under Alabama law; therefore, their disenfranchisement on the sole basis of their convictions denies them access to the political franchise and equal protection of the laws in violation of the Fourteenth Amendment.

Count 5: Non-Racial Discrimination in Voting, 1st Amendment
(42 U.S.C. § 1983)
(All Plaintiffs and Plaintiffs Subclasses A, B, C)
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)

189. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

190. Voting and participating in the election process is a form of speech and expression. It is the ultimate form of political speech and association and is entitled to First Amendment protection.

191. As a restriction on free speech and association, Section 177(b)'s denial of the right to vote to citizens convicted of crimes that are not crimes related to the political act of voting, felonies at common law, or class A felonies under Alabama law, violates the First Amendment.

Count 6: Unconstitutional Burden on the Right to Vote, 14th Amendment
(42 U.S.C. § 1983)
(All Plaintiffs except Plaintiff King and Plaintiff Subclasses D, E, F)
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)

192. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

193. Alabama citizens who have not been convicted of felonies involving moral turpitude are entitled to vote under Alabama law and the Fourteenth Amendment protects that right.

194. When analyzing the constitutionality of a restriction on voting, the Court "must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration

‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

195. When the right to vote is “subjected to ‘severe’ restrictions, the regulation must be ‘narrowly drawn to advance a state interest of compelling importance.’” *Burdick*, 504 U.S. at 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). “But when a state election law provision imposes only ‘reasonable, nondiscriminatory restrictions’ upon the First and Fourteenth Amendment rights of voters, ‘the State’s important regulatory interests are generally sufficient to justify’ the restrictions.” *Id.* at 434 (quoting *Anderson*, 460 U.S. at 788).

196. The federal and state voter registration forms for Alabama require Alabama citizens to sign under penalty of perjury that they have not been convicted of a “felony involving moral turpitude” (federal form) or a “disqualifying crime” (state form).

197. Neither the federal nor state voter registration forms for Alabama provide additional information about what constitutes a felony involving moral turpitude or a disqualifying crime. Neither form provides any examples of disqualifying or non-disqualifying crimes. A reasonable person cannot determine whether her felony conviction “involves moral turpitude” or is “disqualifying” under state law.

198. The failure to define or list disqualifying crimes or crimes of moral turpitude imposes an unconstitutional burden on those qualified to vote under Alabama law but who have been convicted of felonies.

199. Moreover, even if Alabama citizens investigate state law, those convicted of felonies not appearing in Alabama Code Section 15-22-36.1(g)—the only available source of disqualifying crimes (but not tied to the moral turpitude standard or Section 177(b))—cannot be certain whether their conviction is disqualifying or not. Those convicted of crimes not appearing

in the 2005 Attorney General Opinion will find it even more difficult to guess (under penalty of perjury) whether they are eligible to vote.

200. The inability to determine whether one is eligible to vote despite a prior felony conviction imposes an unconstitutional burden on those qualified to vote under Alabama law but who have been convicted of felonies.

201. Further, Alabama's application of Section 177(b) leaves registrars, untrained in the law, with the first responsibility for determining whether a voter applicant's conviction or registered voter's conviction is disqualifying or not. Registrars have neither the power to define qualifications of electors in the State of Alabama—a task delegated to the Legislature, Ala. Const. art. VIII, § 177(b)—nor interpret the Constitution—a task delegated to the courts.

202. This denial of the right to vote in circumstances where an Alabama registrar improperly determines that a voter applicant's crime is disqualifying also imposes an unconstitutional burden on those qualified to vote under Alabama law but who have been convicted of felonies.

203. The burdens described above are "severe" and discriminatory. They impose significant burdens on eligible Alabama voters with felony convictions that they do not impose on other eligible Alabama voters.

204. Defendants' application of Section 177(b) imposes an unconstitutional burden on the right to vote of eligible Alabama voters with felony convictions in violation of the Equal Protection Clause.

Count 7: Unconstitutional Burden on the Right to Vote, 1st Amendment
(42 U.S.C. § 1983)
(All Plaintiffs, except Plaintiff King, and Plaintiff Subclasses D, E, F)
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)

205. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

206. Voting and participating in the election process is a form of speech and expression. It is the ultimate form of political speech and association and is entitled to First Amendment protection.

207. For the reasons set forth in paragraphs 193 to 204, Defendants' application of Section 177(b) imposes an unconstitutional burden on the right to vote on eligible Alabama voters with felony convictions in violation of the First Amendment.

**Count 8: Deprivation of Procedural Due Process, 14th Amendment
(42 U.S.C. § 1983)
(Plaintiffs Treva Thompson, Melissa Swetnam, Antwoine Giles, Anna Reynolds, Larry Joe Newby, Mario Dion Yow, and Plaintiff Subclasses G and H)
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

208. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

209. The right to vote is a form of liberty under Alabama and federal law.

210. Defendants' enforcement of Section 177(b) provides Alabama citizens with little to no pre-deprivation process before revoking their right to vote, a fundamental right protected by both the Alabama and United States Constitutions.

211. Voter registration applicants are provided with no process whatsoever pre-deprivation, and the decision regarding a citizen's eligibility under Section 177(b) is left to registrars with no legal training. Therefore, the risk of erroneous deprivation is high.

212. Voters being removed from the voter registration lists are entitled to notice and some minimal opportunity to be heard under Alabama law. Ala. Code § 17-3-56.

213. Upon information and belief, a voter applicant's notice and opportunity to be heard is not uniformly enforced in Alabama.

214. Moreover, the Alabama Supreme Court has held that Defendants' failure to provide the necessary notice and opportunity to be heard, Ala. Code § 17-3-56, does not invalidate the deprivation. *Williams v. Lide*, 628 So.2d 531 (Ala. 1983).

215. Any minimal process provided still allows registrars, untrained in the law, to determine the voter's eligibility under Section 177(b). Therefore, the risk of erroneous deprivation is high.

216. Defendants' enforcement of Section 177(b) denies Plaintiffs whose names are removed from the voter registration lists or whose voter registration applications are denied on the basis of their felony convictions procedural due process in violation of the Fourteenth Amendment.

Count 9: Void for Vagueness, 1st and 14th Amendments
(42 U.S.C. § 1983)
(All Plaintiffs, except Plaintiff King, and Plaintiff Subclass D)
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)

217. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

218. Voting and participating in the election process is a fundamental right protected by the Fourteenth Amendment.

219. Voting and participating in the election process is also a form of speech and expression. It is the ultimate form of political speech and association and is entitled to First Amendment protection.

220. The void for vagueness doctrine addresses two interconnected constitutional concerns: "first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not

act in an arbitrary or discriminatory way.” *F.C.C. v. Fox Televisions Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012).

221. When a regulation impinges on the right to free speech, “rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.” *Id.*; see also *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870–71 (1997) (“The vagueness of [regulation of speech] raises special First Amendment concerns because of its obvious chilling effect.”).

222. The prohibition on voting for those convicted of felonies involving moral turpitude—with the possible exception of those crimes listed in Alabama Code Section 15-22-36.1(g), although that statute does not reference Section 177(b) or the moral turpitude standard—“fails to provide a person of ordinary intelligence fair notice of what is prohibited.” *Fox Televisions Stations, Inc.*, 132 S. Ct. at 2317 (quoting *United States v. Williams*, 533 U.S. 285 (2008)).

223. As such, it impermissibly chills the speech of many eligible Alabama voters.

224. Moreover, it is so “standardless that it authorizes or encourages seriously discriminatory enforcement.” *Id.* As such, it impermissibly invites and allows for discrimination with respect to access to the electoral franchise.

225. The prohibition on voting for those convicted of felonies “involving moral turpitude” is void for vagueness under the First and Fourteenth Amendments.

Count 10: Arbitrary Disenfranchisement, 14th Amendment
(42 U.S.C. § 1983)
(All Plaintiffs and Plaintiff Class)
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)

226. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

227. Defendants’ enforcement of Section 177(b) is not guided by any principled determination of which felonies “involve moral turpitude.”

228. Defendants' enforcement of Section 177(b) irrationally disenfranchises an arbitrary set of Alabama citizens with felony convictions.

229. Therefore, Defendants' enforcement of Section 177(b) cannot withstand even rational basis scrutiny.

230. Moreover, Defendants' enforcement of Section 177(b) is also not uniform across the state and allows for arbitrary disenfranchisement depending on where an Alabama citizen lives within the state.

231. "The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that another." *Bush v. Gore*, 531 U.S. 98, 105 (2000); *see, e.g., Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665 (1966) ("[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.").

232. Defendants' enforcement of Section 177(b) results in arbitrary disenfranchisement of Alabama citizens in violation of the Fourteenth Amendment.

Count 11: Retroactive Punishment, Ex Post Facto Clause
(42 U.S.C. § 1983)
(All Plaintiffs, except Plaintiff King, and Plaintiff Subclass D)
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)

233. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

234. Article 1, Section 10, of the United States Constitution prohibits States from passing ex post facto laws that impose retroactive punishments of their citizens.

235. Section 177(b)'s permanent disenfranchisement of those convicted of "felonies involving moral turpitude," unless the citizen's rights are affirmatively restored, is inherently

penal. No constitutional, non-punitive rationale for limiting the rights of citizens with felony convictions to vote can support Section 177(b). *See* Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate Over Felon Disenfranchisement*, 56 Stan. L. Rev. 1147, 1150-55 (2004).

236. Therefore, the only potentially constitutional rationale remaining for Alabama's broad felon disenfranchisement regime is a punitive one, triggering *ex post facto* scrutiny. *See Smith v. Doe*, 538 U.S. 84, 92-93 (2003) (holding that "a conclusion that the legislature intended to punish would satisfy an *ex post facto* challenge without further inquiry into its effects").

237. Moreover, the disenfranchisement of citizens has harsh punitive effects on individuals. It imposes an affirmative disability on citizens that is, in many cases, permanent, and is excessive with respect to any non-punitive purpose. *See id.* at 97 (noting that the factors most relevant to an *ex post facto* inquiry include whether the regulation imposes an affirmative disability or is excessive with respect to any non-punitive purpose).

238. Since "moral turpitude" is undefined and decided on an *ad hoc* basis by county registrars, the imposition of Section 177(b)'s penalty is necessarily retroactive and violates the Constitution's prohibition on *ex post facto* laws.

**Count 12: Disenfranchisement as Cruel and Unusual Punishment, 8th Amendment
(42 U.S.C. § 1983)
(All Plaintiffs and Plaintiff Class)
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

239. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

240. The Eighth Amendment "succinctly prohibits '[e]xcessive' sanctions," and the Supreme Court has held that "punishment for crime should be graduated and proportioned to [the] offense." *Atkins v. Virginia*, 536 U.S. 304, 311 (2002).

241. Section 177(b), as enforced by Defendant Merrill and Defendant registrars, currently indiscriminately and permanently disenfranchises individuals who have been convicted of a wide-range of minor crimes including many class C felonies. It imposes the same punishment on a person convicted of murder as a person convicted of a minor drug crime.

242. Alabama citizens like Plaintiff Thompson and many others have been convicted of crimes for which the sentencing court determined either no prison time or minimal prison time was appropriate, but nonetheless face permanent exclusion from the political franchise and thus permanent exclusion from meaningful participation in our democracy. They are sentenced, in essence, to civil death.

243. Section 177(b) is also an outlier nationwide. Only eight other states still impose permanent disenfranchisement on any subset of citizens with felony convictions, and several of those remaining eight states more narrowly limit the subset of persons subjected to permanent disenfranchisement than Section 177(b).

244. Section 177(b) imposes indiscriminate, unusual, and often widely disproportionate punishment on Alabama citizens in violation of the Eighth Amendment.

Count 13: Disenfranchisement for Failure to Pay LFOs, 14th Amendment
(42 U.S.C. § 1983)
(Plaintiffs Treva Thompson, Melissa Swetnam, and Plaintiff Subclass I)
(Against Defendant Walker)

245. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

246. A state “violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard.” *Harper*, 383 U.S. at 666; *see also Johnson v. Governor of State of Florida*, 405 F.3d 1214, 1217 (11th Cir. 2005).

247. By requiring an otherwise eligible Alabama citizen to pay all legal financial obligations before she is able to restore her right to vote, Alabama Code Section 15-22-36.1(a)(3) impermissibly makes payment of fines and fees an electoral standard.

248. By requiring an otherwise eligible Alabama citizen to pay all legal financial obligations before she is able to restore her right to vote, Alabama Code Section 15-22-36.1(a)(3) impermissibly makes the affluence of an otherwise eligible voter an electoral standard.

249. Wealth “is not germane to one’s ability to participate intelligently in the electoral process.” *Harper*, 383 U.S. at 668.

250. Plaintiffs Treva Thompson and Melissa Swetnam, and members of Plaintiff Subclass I are unable to afford to pay their remaining legal financial obligations, and this is the only reason they are not eligible to vote in the state of Alabama.

251. It is well established that “a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” *Dunn*, 405 U.S. at 336.

252. Alabama Code Section 15-22-36.1(a)(3) invidiously discriminates between Alabama citizens with prior disqualifying felonies who are able to pay their legal financial obligations and Alabama citizens with prior disqualifying felonies who are unable to pay their legal financial obligations in violation of the Fourteenth Amendment.

**Count 14: Disenfranchisement for Failure to Pay LFOs, Poll Tax, 24th Amendment
(42 U.S.C. § 1983)
(Plaintiffs Treva Thompson, Melissa Swetnam, and Plaintiff Subclass I)
(Against Defendant Walker)**

253. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

254. The Twenty-Fourth Amendment provides that “the right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for

President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay *any poll tax or other tax.*" (emphasis added).

255. For those who are otherwise eligible to restore their right to vote, Alabama Code Section 15-22-36.1(a)(3) denies the right to vote to those who cannot afford to pay their legal financial obligations by reason of their failure to pay fines and fees to the State of Alabama.

256. Alabama Code Section 15-22-36.1(a)(3) directly conflicts with the prohibition of the Twenty-Fourth Amendment.

**Count 15: Disenfranchisement for Failure to Pay LFOs, Section 2 of the Voting Rights Act
(52 U.S.C. § 10301)
(Plaintiffs Treva Thompson, Melissa Swetnam,
and Plaintiff Subclass I)
(Against Defendant State of Alabama and Defendant Walker)**

257. Plaintiffs reallege the facts set forth in paragraphs 1-160, above.

258. As a result of a long history of state-sponsored official discrimination that has led to continuing severe economic disparities between white and black residents, Alabama Code Section 15-22-36.1(a)(3) disproportionately disenfranchises black citizens with prior disqualifying convictions compared to white citizens with prior disqualifying convictions.

259. Regardless of Sections 2's application to felon disenfranchisement provisions because of Section 2 of the Fourteenth Amendment's specific sanction of criminal disenfranchisement, *see Johnson v. Governor of Florida*, 405 F.3d 1214 (11th Cir. 2005), Section 2 of the Voting Rights Act—which broadly applies to any "voting qualification or prerequisite to voting or standard, practice, or procedure"—applies to the prerequisites for voting and voting qualifications set by Alabama for those with prior disqualifying convictions; *see Allen v. State Bd.*

of Elections, 393 U.S. 544, 567 (1969) (noting that Section 2 was intended to have the “broadest possible scope”).

260. Alabama Code Section 15-22-36.1(a)(3) violates Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, because it results in the denial of the right to vote on account of race.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

- (1) Certify the Plaintiff Class and Plaintiff Subclasses as defined in paragraphs 50 to 60.
- (2) Certify the Defendant Class of all voter registrars in the State of Alabama.
- (3) Issue a declaratory judgment that Section 177(b) of the Alabama Constitution, by its terms and as applied, violates the Ex Post Facto Clause of Article I of the United States Constitution, the First, Eighth, Fourteenth, and Fifteenth Amendments of the United States Constitution, and Section 2 of the Voting Rights Act, 52 U.S.C. § 10301;
- (4) Issue a declaratory judgment determining that Alabama Code Section 15-22-36.1(a)(3) violates the Fourteenth and Twenty-Fourth Amendments of the United States Constitution and Section 2 of the Voting Rights Act, 52 U.S.C. § 10301;
- (5) Enjoin the Defendants, their agents, employees and all those persons acting in concert or participation with them, from enforcing Section 177(b) or Alabama Code Section 15-22-36.1(a)(3), including:
 - a. enjoining Defendants from denying any voter registration applications on the basis of felony convictions;
 - b. enjoining Defendants from removing any voters from the voter registration rolls on the basis of felony convictions;

- c. requiring Defendants to restore Alabama citizens to the voter registration rolls if they were removed on the sole basis of their felony convictions;
 - d. enjoining Defendants from denying any applications for CERVs on the basis of failure to pay any legal financial obligations;
 - e. requiring Defendants to inform those with disqualifying convictions that the failure to pay legal financial obligations does not disqualify them from restoring their right to vote under Alabama Code Section 15-22-36.1.
- (6) Award Plaintiffs their costs, expenses, and reasonable attorneys' fees incurred in the prosecution of this action, as authorized by the Voting Rights Act and the Civil Rights Attorneys Fees Awards Act of 1973, 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988;
- (7) Grant such other equitable and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,



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Attorney General's Office
General Civil/Administrative Hearings



Lynda C. Hairston - Chairman
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Kathy Linden

Madison County
Office of
BOARD OF REGISTRARS

819 Cook Avenue, Suite 150
Huntsville, Alabama 35891-5983
TEL 256-532-3510 FAX 256-532-3679
<http://www.madisoncountyalabama.gov>

January 14, 2016

Treva Michelle Thompson
[REDACTED]

Huntsville, AL 35805

Dear Ms. Thompson:

Your application for voter registration has been denied for the following reason:

Disqualifying Felony Conviction

If your rights have been restored, please send us a copy of your restoration papers so that we may approve your application. If you believe the Board is in error please discuss this matter with the Board or you may appeal this decision within 30 days by filing an appeal with the probate judge (§17-3-55). The denial of your application for registration does not prevent you from applying at some future date.

You may call this office at the above number if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lynda C. Hairston".

Lynda C. Hairston, Chairman

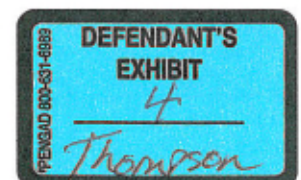
A handwritten signature in cursive script, appearing to read "Nan Guyette".

Nan Guyette, Board Member

A handwritten signature in cursive script, appearing to read "Kathy Linden".

Kathy Linden, Board Member

LH/nb



IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Treva Thompson, *et al.*,

Plaintiffs,

v.

John H. Merrill, in his official capacity
as Secretary of State, *et al.*,

Defendants.

PLAINTIFFS' SUPPLEMENTAL
CLASS-ACTION COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

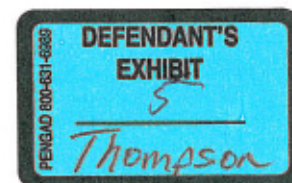
Civil Action No. 2:16-cv-783-WKW-
CSC

Pursuant to Federal Rule of Civil Procedure 15(d), Plaintiffs file this Supplemental Complaint setting forth events that occurred after the filing of their Original Complaint on September 26, 2016 and pleading additional claims based on those events. This supplemental complaint is filed in addition to, not in replacement of, Plaintiffs' original complaint. Plaintiffs allege as follows.

Supplemental Factual Allegations

1. Plaintiffs brought this case challenging Alabama's laws and procedures respecting felony disenfranchisement pursuant to the U.S. Constitution, 42 U.S.C. §1983, and the Voting Rights Act, 52 U.S.C. §10301.

2. Section 177(a) of Alabama's Constitution affirmatively guarantees the right to vote of Alabamians that meet the age, citizenship, residency, and registration qualifications and are not disqualified on the basis of Section 177(b). Section 177(a) and Section 177(c) charge the Alabama Legislature with implementing Section 177's guarantees and restrictions through statute.



3. As discussed at length in Plaintiffs' original complaint, Section 177(b) of the Alabama Constitution disenfranchises individuals "convicted of a felony involving moral turpitude" until their political rights are restored. Ala. Const. art. VIII, §177(b).

4. However, Section 177 of the Alabama Constitution does not specify any felonies "involving moral turpitude," and the Legislature did not do so until after the filing of Plaintiffs' original complaint.

5. Until the 2017 legislative session, any guidance on what felonies involved "moral turpitude" was non-exhaustive, non-authoritative, vague, and internally inconsistent.

6. In May 2017, the Alabama Legislature enacted and Governor Ivey signed into law the Felony Voter Disqualification Act, House Bill 282 ("HB 282"). 2017 Ala. Laws Act 2017-378, codified at Ala. Code § 17-3-30.1.

7. HB 282 conceded that, until its passage, "there [was] no comprehensive list of felonies that involve moral turpitude which disqualify a person from exercising his or her right to vote. Neither individuals with felony convictions nor election officials ha[d] a comprehensive, authoritative source for determining if a felony conviction involve[d] moral turpitude and [was] therefore a disqualifying felony." Ala. Code § 17-3-30.1(b)(1)(b).

8. HB 282 provides a list of forty-six disqualifying crimes tied to specific Alabama criminal code violations pursuant to Section 177. Ala. Code § 17-3-30.1(c).

9. This list includes a range of crimes not ordinarily subject to the same penalties, from various degrees of homicide and torture to non-violent trafficking in cannabis to simple non-violent theft of property and forgery convictions. *Id.*

10. HB 282 does not include bribery, perjury, abuse of public office, and other related crimes meaningfully connected to the act of voting on its list of disqualifying convictions. Yet, these were the only crimes that could take away citizens' "privilege of free suffrage" upon conviction, Ala. Const. of 1819, art. VI, § 5, in the 1819 and 1861 Alabama Constitutions, when only "male white person[s] . . . [were] entitled to vote." Ala. Const. of 1861, art. III, § 5. *See also*, Ala. Const. of 1819, art. III, § 5; Ala. Const. of 1861, art. VI, § 5.

11. On March 9, 2017, Representative John Knight entered the following statement into the House Journal: "HB 282 in its current form would enfranchise some of our citizens, so we can support it as a step in the right direction. But 'moral turpitude' was placed in the Alabama Constitution for the purpose of disfranchising African Americans, and it needs to be repealed altogether. We ask the State of Alabama to release to the public complete information about the racial impact of the crimes that this bill defines to be 'moral turpitude.'"

12. HB 282 is written in the present tense. It states that "a person is disqualified to vote by reason of conviction of a felony involving moral turpitude *only when* convicted" of the disqualifying crimes and "[t]he felonies involving moral turpitude listed in subsection (c) are the only felonies for which a person, *upon conviction*, may be disqualified from voting." Ala. Code § 17-3-30.1(c), (e) (emphasis added).

13. The effective date of HB 282 was August 1, 2017. 2017 Ala. Laws Act 2017-378, § 3.

14. Despite the prospective language in HB 282, the Secretary of State has unilaterally determined that HB 282, the only statute that implements Section 177, shall be applied retroactively to those convicted of crimes prior to HB 282's effective date. The Secretary of State has instructed registrars to purge voters and reject voter registrants who have convictions listed on HB 282 even if those convictions occurred prior to HB 282's passage and effective date.

15. As a result of the Secretary of State's unilateral retroactivity determination, Plaintiffs Treva Thompson, Melissa Swetnam, Mario Dion Yow, Jennifer Zimmer, Timothy Lanier, Pamela King, and all other similarly situated individuals whose HB 282-enumerated convictions predated the HB 282's effective date are ineligible to register and vote, unless they succeed in having those rights specifically restored.

16. As a result of HB 282, Plaintiffs Antwoine Giles and Laura Corley are now eligible to vote.

17. Since the filing of the original complaint, Plaintiffs Anna Reynolds has received a Certificate of Eligibility to Register to Vote (CERVs) and is now eligible to vote. Plaintiff Larry Joe Newby Newby has also applied for his CERV and the Board has informed him through counsel that it will be approved.

18. Despite HB 282's significant change to the law regarding voter eligibility, the Secretary of State has not updated the State of Alabama Mail-In Voter Registration Form ("State Form"), or alerted the Election Assistance Commission of these

eligibility changes, or requested changes to the state-specific instructions for Alabama on the National Mail Registration Form (“Federal Form”).

19. The State Form informs each potential voter that to register to vote: “you must: . . . [n]ot have been convicted of a disqualifying felony, or if you have been convicted, you must have had your civil rights restored.” The State Form also requires each potential voter to affirm under penalty of perjury: “I am not barred from voting by reason of a disqualifying felony conviction.” The State Form provides no information regarding HB 282’s list of “disqualifying convictions,” or how to determine whether a conviction is disqualifying.

20. A likely and reasonable interpretation of the phrase “disqualifying felony conviction,” without additional information, is that felony convictions are always disqualifying, rather than a subset of felony convictions are disqualifying.

21. The Alabama state-specific instructions on the Federal Form inform each potential voter that to register to vote: “you must: . . . not have been convicted of a felony involving moral turpitude (or have had your civil and political rights restored).” The instructions do not refer the voter to any information regarding what felonies involve “moral turpitude.”

22. The Federal Form requires voters to swear/affirm that they have reviewed the state-specific instructions in the Federal Form and that they meet the eligibility requirements of their state.

23. On December 26, 2017, this Court entered a Memorandum Opinion and Order granting and denying, in part, Defendants' motion to dismiss this action in its entirety.

24. The Order dismissed Counts 3, 4, 5, 6, 7, 8, 9, 10, 14, and 15 of the original complaint on various grounds. With respect to Counts 6, 7, 8, 9, and 10, this Court held that HB 282, as described herein, mooted Plaintiffs' claims. This Court denied Defendants' motion to dismiss as to Counts 1 and 2, alleging that Section 177 was enacted and maintained with discriminatory intent; Count 11, alleging that Section 177's application violates the *Ex Post Facto* Clause; Count 12, alleging that Section 177's application violates the U.S. Constitution's prohibition on cruel and unusual punishment; and Count 13, alleging that Alabama Code Section 15-22-36.1's requirement that individuals pay all fines and fees in order to restore their right to vote violates the Fourteenth Amendment, at least as applied to those who cannot afford to pay their fines and fees.

25. Without waiving their right to appeal the dismissal of their other claims at the appropriate time, Plaintiffs submit this Supplemental Complaint to supplement only their allegations with respect to their remaining claims in light of HB 282 and to add new claims that have arisen in light of HB 282 and Defendant Merrill's improper retroactive implementation of it.

Additional Parties

26. Plaintiff Darius Gamble is a black 42-year-old citizen of the United States who resides in Gardendale, Alabama, in Jefferson County. In or around 2008,

Plaintiff Gamble was convicted of trafficking marijuana in violation of Alabama Code Section 13A-12-231. Trafficking in cannabis is a disqualifying conviction under HB 282. Plaintiff Gamble's conviction was entered years before the passage of HB 282, but the Secretary of State considers his conviction disqualifying. Plaintiff Gamble's conviction for trafficking in cannabis did not appear on *any* of the prior lists of potentially disqualifying crimes, including Alabama Code Section 15-22-36.1(g), the 2005 Attorney General Opinion, Att'y Gen Op. No. 2005-092, 2005 WL 1121853, and the 2007 Administrative office of Courts list of "disqualifying" crimes, *see* Ex. A to Doc. 1.

27. Plaintiff Gamble meets all the requirements for a CERV, except the payment of all legal financial obligations. In or around 2014, after the completion of his probation, Mr. Gamble applied for a CERV. His CERV application was denied based on his outstanding fines and fees. At the time of his conviction, the court imposed a \$50,000 fine on Plaintiff Gamble. Ala. Code § 13-A-12-231. Mr. Gamble has regularly paid monthly installments of \$25 to \$50 toward his fine. Nonetheless, his outstanding fines have been compounded by a thirty percent collection fee. Ala. Code § 12-17-225.4. He currently owes \$63,073.30 in fines and fees. He has no outstanding restitution. All of his outstanding legal obligations are to the State. Mr. Gamble is not financially able to pay his outstanding fines and fees in full at this time or anytime in the foreseeable future. His inability to pay these fines and fees makes him ineligible for a CERV that would restore his voting rights. Mr. Gamble wishes to vote in the 2018 and future elections.

Additional Party Allegations

28. In addition to its initial allegations, organizational plaintiff Greater Birmingham Ministries (“GBM”) alleges the following.

29. As a result of Defendant Merrill’s implementation of HB 282 pursuant to Section 177(b), GBM must devote staff time and resources to helping those with felony convictions (1) determine whether they may be eligible to register to vote, (2) attempt to register to vote, (3) determine whether they may be eligible for a CERV, and (4) apply for a CERV.

30. As a result of Defendant Merrill’s retroactive implementation of HB 282, GBM must devote more staff time and resources to these activities than would be required if HB 282 was applied only prospectively. More members of GBM’s community are disenfranchised due to the retroactive application of this law.

31. As a result of Defendant Merrill’s refusal to update Alabama’s voter registration forms to include eligibility information for people with convictions pursuant to HB 282, GBM must devote more staff time and resources to these activities than would be required if the forms provided prospective voters with complete eligibility information. Many members of GBM’s community remain confused about their eligibility to vote due to Defendant Merrill’s failure to update the State and Federal voter registration forms.

Classes and Subclasses

32. The passage and implementation of HB 282 necessarily changes the scope of Plaintiffs’ alleged class and subclasses. The following class and two subclasses are

defined for purposes of the remaining claims and the new claims raised in this Supplemental Complaint.

33. The Plaintiff Class that Plaintiffs Gamble, Thompson, Swetnam, Yow, Zimmer, Lanier, and King seek to represent is now defined as: all persons otherwise eligible to register to vote in Alabama who are now, or who may in the future be, denied the right to vote pursuant to Section 177(b) because of a conviction for a felony “involving moral turpitude” as defined by section (c) of Alabama Code Section 17-3-30.1.

34. Plaintiffs seek relief for the entire Plaintiff Class pursuant to Counts 1, 2, and 12, which allege that Section 177(b) was enacted and maintained with discriminatory intent and imposes cruel and unusual punishment.

35. Plaintiffs also seek to represent a subclass relevant to their *Ex Post Facto* and additional Due Process claims (Counts 11, 16, and 17). Plaintiffs Gamble, Thompson, Swetnam, Yow, Zimmer, Lanier, and King seek to represent an *Ex Post Facto* subclass defined as follows: all persons otherwise eligible to register to vote in Alabama who were convicted of a felony “involving moral turpitude” as defined by section (c) of Alabama Code Section 17-3-30.1 *before* August 1, 2017 but are unable to register to vote pursuant to Defendant Merrill’s retroactive implementation of Alabama Code Section 17-3-30.1 to individuals with prior convictions.

36. Plaintiffs Gamble, Swetnam, and Thompson seek to represent an Legal Financial Obligation (LFO) subclass defined as follows: all persons otherwise eligible to register to vote in Alabama who (1) are now, or who may in the future be, denied

the right to vote pursuant to Section 177(b) because of a conviction for a felony “involving moral turpitude” as defined by section (c) of Alabama Code Section 17-3-30.1; and (2) are unable to pay their fines, fees, and/or restitution due to their socioeconomic status; but (3) are otherwise eligible to apply for a CERV.

37. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs bring this action on behalf of themselves and all other similarly situated persons. Plaintiffs do not seek claims for compensatory relief. Instead, Plaintiffs seek only declaratory and injunctive relief broadly applicable to members of the Plaintiff Class and the Plaintiff Subclasses, as defined above. The requirements of Rule 23, and in particular Rule 23(b)(2), are met with respect to the Plaintiff Class and Plaintiff Subclasses, as defined above.

38. The members of the Plaintiff Class and Plaintiff Subclasses are so numerous that joinder is impracticable. The Plaintiff Class and Plaintiff Subclasses are ascertainable through Defendants’ records, as well as records kept by the Alabama Circuit Clerks and the Board of Pardons and Paroles.

39. In addition to the common questions of law and fact alleged in the original complaint, common questions of law and fact predominate over questions affecting only individual class members with respect to allegations in this Supplemental Complaint. Those questions include, but are not limited to, the following:

a. Whether Defendant’s retroactive application of Section 17-3-30.1 violates the *Ex Post Facto* Clause;

b. Whether Defendants' retroactive application of Section 17-3-30.1 violates the Fourteenth Amendment; and

c. Whether Defendants' application of Section 17-3-30.1, in whole or in part, imposes cruel and unusual punishment in violation of the Eighth Amendment.

40. The claims of Plaintiffs Gamble, Thompson, Swetnam, Yow, Zimmer, Lanier, and King are typical of the Plaintiff Class and Plaintiff Subclasses as defined above. Plaintiffs are not aware of any conflict between their interests and those of the Plaintiff Class and Subclasses they seek to represent.

41. Plaintiffs can fairly and adequately represent the interests of the Plaintiff Class and Plaintiff Subclasses because they are similarly situated with members of their classes. Plaintiffs have retained counsel experienced in class-action litigation and voting rights litigation to represent them and the Plaintiff Class and Subclasses for the purpose of this litigation.

42. Defendants continue to act, or refuse to act, on grounds generally applicable to the Plaintiff Class and Plaintiff Subclasses, and final injunctive relief and corresponding declaratory relief are appropriate respecting the classes as a whole.

43. A class action is superior to other available means for the fair and efficient adjudication of the Plaintiff Class and Plaintiff Subclasses members' claims because joinder of all members is impracticable. Absent the class action, the members of the Plaintiff Class and Plaintiff Subclasses will continue to suffer deprivation of their right to vote.

Additional Allegations with Respect to Counts 1, 2, 11, 12, and 13

Count 1: Intentional Race Discrimination, 14th Amendment

(42 U.S.C. § 1983)

(All Plaintiffs and Plaintiff Class)

(Against Defendant Merrill, Defendant Noblin, and Defendant Class)

44. Plaintiffs reallege the facts set forth in paragraphs 1-45, above.

45. In addition to all of the allegations in their original complaint, Plaintiffs allege the following.

46. The passage of Section 17-3-30.1—which only implements Section 177(b) of the Alabama Constitution and does not independently disenfranchise individuals—does not affect Plaintiffs’ allegations that Section 177(b) of the Alabama Constitution was passed and maintained with racially discriminatory intent in violation of the Equal Protection Clause of the Fourteenth Amendment.

47. Upon information and belief, Section 17-3-30.1 does not cure, but rather maintains, the racially discriminatory impact of Section 177(b).

Count 2: Intentional Race Discrimination, 15th Amendment

(42 U.S.C. § 1983)

(All Plaintiffs and Plaintiff Class)

(Against Defendant Merrill, Defendant Noblin, and Defendant Class)

48. Plaintiffs reallege the facts set forth in paragraphs 1-45, above.

49. In addition to all of the allegations in their original complaint, Plaintiffs allege the following.

50. The passage of Section 17-3-30.1—which only implements Section 177(b) of the Alabama Constitution and does not independently disenfranchise individuals—does not affect Plaintiffs’ allegations that Section 177(b) violates the Fifteenth

Amendment to the U.S. Constitution because it purposely denies and abridges Plaintiffs' and other minority voters' right to register and vote on account of race or previous condition of servitude.

51. Upon information and belief, Section 17-3-30.1 does not cure, but rather maintains, the racially discriminatory impact of Section 177(b).

Count 11: Retroactive Punishment, *Ex Post Facto* Clause
(42 U.S.C. § 1983)
(Plaintiffs GBM, Gamble, Thompson, Swetnam, Yow, Zimmer, Lanier,
King and *Ex Post Facto* Subclass)
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)

52. Plaintiffs reallege the facts set forth in paragraphs 1-45, above.

53. In addition to all of the allegations in their original complaint, Plaintiffs allege the following.

54. Prior to the passage of Section 17-3-30.1 in May 2017, as alleged in Plaintiffs' original complaint, determinations about disenfranchisement based on felony convictions were made on an individualized basis by registrars at the time of registration.

55. Upon passage of Section 17-3-30.1, Defendant Merrill instructed Defendant registrars to apply Section 17-3-30.1 retroactively to disenfranchise individuals with convictions listed in Section 17-3-30.1 even if those convictions occurred prior to Section 17-3-30.1's passage and effective date.

56. The exclusion of bribery, perjury, abuse of public office, and other related crimes meaningfully connected to the act of voting from Section 17-3-30.1's list of

disqualifying convictions further demonstrates that Section 17-3-30.1 functions as a punishment.

57. As to individuals with convictions prior to August 1, 2017, Section 17-3-30.1's application imposes retroactive punishment in violation of the U.S. Constitution's prohibition on *ex post facto* laws.

**Count 12: Disenfranchisement as Cruel and Unusual Punishment,
8th Amendment
(42 U.S.C. § 1983)
(All Plaintiffs and Plaintiff Class)
(Against Defendant Merrill, Defendant Noblin, and Defendant Class)**

58. Plaintiffs reallege the facts set forth in paragraphs 1-45, above.

59. In addition to all of the allegations in their original complaint, Plaintiffs allege the following.

60. Plaintiffs bring this claim on behalf of the Plaintiff Class but also bring this claim in the alternative on behalf of the subclasses in paragraph 37.

61. Similar to the registrars' prior application of Section 177(b), Section 17-3-30.1 permanently disenfranchises a broad swath of individuals convicted of vastly disparate crimes, from various degrees of homicide to assault to non-violent trafficking in cannabis to simple non-violent theft of property and forgery. It permanently disenfranchises individuals who have been convicted of many class C felonies. It imposes the same punishment on a person convicted of murder and a person convicted of a single theft crime.

62. Alabama citizens like Plaintiff Thompson and many others have been convicted of crimes for which the sentencing court imposed either no or minimal

prison time, but nonetheless face permanent exclusion from the political franchise and thus permanent exclusion from meaningful participation in our democracy. They are sentenced, in essence, to civil death.

63. Section 17-3-30.1 is also an outlier nationwide. Only eight other states still impose permanent disenfranchisement on any subset of citizens with felony convictions, and several of those remaining eight states limit the subset of persons subjected to permanent disenfranchisement more narrowly than Section 17-3-30.1.

64. Section 17-3-30.1 imposes unusual, unreasonable, and often widely disproportionate punishment on Alabama citizens in violation of the Eighth Amendment.

**Count 13: Disenfranchisement for Failure to Pay LFOs, 14th
Amendment
(42 U.S.C. § 1983)
(Plaintiffs GBM, Gamble, Thompson, Swetnam and LFO Subclass)
(Against Defendant Walker)**

65. Plaintiffs reallege the facts set forth in paragraphs 1-45, above.

66. In addition to all of the allegations in their original complaint, Plaintiffs allege the following.

67. The passage of Section 17-3-30.1 has no impact whatsoever on the unconstitutional wealth restriction on access to the right to vote imposed by Alabama Code Section 15-22-36.1(a)(3).

68. For those disenfranchised by Section 17-3-30.1 as applied by Secretary Merrill and who are unable to pay their fines and fees—including Plaintiffs Gamble,

Thompson, Swetnam, and the LFO subclass—the LFO requirement remains a wealth barrier to political participation.

69. As alleged in the original complaint, Alabama Code Section 15-22-36.1(a)(3) invidiously discriminates between Alabama citizens with prior disqualifying felonies who are able to pay their legal financial obligations and those who are unable to do so, in violation of the Fourteenth Amendment.

Supplemental Claims

Count 16: Unlawful Deprivation of State-Created Right to Vote, Due Process Clause, 14th Amendment

(42 U.S.C. § 1983)

(Plaintiffs GBM, Gamble, Thompson, Swetnam, Yow, Zimmer, Lanier, King and *Ex Post Facto* Subclass)

(Against Defendant Merrill, Defendant Noblin, and Defendant Class)

70. Plaintiffs reallege the facts set forth in paragraphs 1-45, above.

71. In addition to all of the allegations in their original complaint, Plaintiffs allege the following.

72. It is well-established that state laws may create liberty interests that are entitled to the protections of the Due Process Clause of the Fourteenth Amendment. *See Vitek v. Jones*, 445 U.S. 480 (1980).

73. It is further well-established that the right to vote—where it is granted by state law—is a protected liberty interest under the Due Process Clause of the Fourteenth Amendment. *See, e.g., Bush v. Gore*, 531 U.S. 98, 105 (2000); *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

74. The Due Process Clause of the Fourteenth Amendment protects individuals from disenfranchisement in violation of state election law. *Duncan v. Poythress*, 657 F.2d 691, 708 (5th Cir. 1981).

75. Pursuant to Alabama law, otherwise eligible individuals with felony convictions prior to the passage and implementation of Section 17-3-30.1 have the same right to vote as other eligible citizens.

76. Section 177(a) of Alabama's Constitution affirmatively guarantees the right to vote of citizens of the United States who meet the age, residency, and registration qualifications and are not disqualified on the basis of Section 177(b).

77. As discussed at length in Plaintiffs' original complaint, Section 177(b) of the Alabama Constitution disenfranchises individuals "convicted of a felony involving moral turpitude" until their political rights are restored. Ala. Const. art. VIII, §177(b). However, the Alabama Constitution does not specify the felonies "involving moral turpitude," nor did the Legislature do so until after the filing of Plaintiffs' original complaint. Sections 177(a) and 177(c) require the Alabama Legislature to implement Section 177's guarantees and restrictions through statute.

78. Therefore, prior to the passage of Section 17-3-30.1, no operative state provision lawfully disenfranchised any persons based on their felony convictions. Citizens convicted of felonies after ratification of Amendment 579 in 1996 retained the same state right to vote, affirmatively protected by Section 177(a), as all other eligible citizens.

79. Pursuant to well-established Alabama law, Section 17-3-30.1 does not apply retrospectively. Section 17-3-30.1 is written in the present tense. It states that “a person is disqualified to vote by reason of conviction of a felony involving moral turpitude *only when* convicted” of the disqualifying crimes and “[t]he felonies involving moral turpitude listed in subsection (c) are the only felonies for which a person, *upon conviction*, may be disqualified from voting.” Ala. Code § 17-3-30.1(c), (e) (emphasis added).

80. Under Alabama law, retroactive application of statutes is highly disfavored and must be clearly expressed. *Bd. of Sch. Comm'rs of Mobile Cty. v. Christopher*, 97 So. 3d 163, 167 (Ala. Civ. App. 2012).

81. Defendant Merrill's unilateral determination to apply HB 282 retroactively to people with “disqualifying convictions” entered prior to August 1, 2017—despite HB 282's prospective language and applicable state law—constitutes unlawful disenfranchisement in violation of state election law and thus violates the Due Process Clause of the Fourteenth Amendment.

**Count 17: Unlawful Retroactive Deprivation of the Right to Vote, Due
Process Clause, 14th Amendment**

(42 U.S.C. § 1983)

**(Plaintiffs GBM, Gamble, Thompson, Swetnam, Yow, Zimmer, Lanier,
King and *Ex Post Facto* Subclass)**

(Against Defendant Merrill, Defendant Noblin, and Defendant Class)

82. Plaintiffs reallege the facts set forth in paragraphs 1-45, above.

83. In addition to all of the allegations in their original complaint, Plaintiffs allege the following.

84. Elementary notions of fairness enshrined in the Due Process Clause dictate that a person receive fair notice not only of the conduct that will subject him to punishment but also of the severity of the penalty that a state may impose. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574 (1996).

85. Even if this Court finds that Section 177(b), as enforced through Section 17-3-30.1, does not constitute punishment within the meaning of the *Ex Post Facto* Clause, the stripping of political rights on the basis of criminal convictions “share[s] key characteristics of criminal sanctions” such that “[r]etroactive imposition” of Section 17-3-30.1 “raise[s] a serious constitutional question.” *Landgraf v. USI Film Prod.*, 511 U.S. 244, 281 (1994).

86. “The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former.” *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 17 (1976).

87. Retroactive application of legislation is most suspect when it is imposed on the basis of a theory of deterrence or blameworthiness. *Id.*

88. As alleged in Plaintiffs’ original complaint, no constitutional, non-punitive rationale for limiting the rights of citizens with felony convictions to vote can support Section 177(b) and Section 17-3-30.1. See Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate Over Felon Disenfranchisement*, 56 Stan. L. Rev. 1147, 1150-55 (2004).

89. As alleged above, Section 17-3-30.1’s exclusion of bribery, perjury, abuse of public office, and other related crimes meaningfully connected to the act of voting

from its list of disqualifying convictions further demonstrates that Section 17-3-30.1 can only operate to punish individuals for their conduct.

90. Therefore, the retroactive application of Section 17-3-30.1 to individuals with convictions predating its passage violates the Due Process Clause as it cannot be sufficiently justified by its punitive goals.

**Count 18: Failure to Specify Eligibility Requirements, National Voter
Registration Act
(52 U.S.C. § 20510)
(Plaintiff GBM)
(Against Defendant Merrill)**

91. Plaintiffs reallege the facts set forth in paragraphs 1-45, above.

92. In addition to all of the allegations in their original complaint, Plaintiffs allege the following.

93. The principle purpose of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20501 *et seq.*, is to “establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.” 52 U.S.C. § 20501(b)(1).

94. Specifically, the NVRA requires states to “inform applicants . . . of [] voter eligibility requirements,” whether registrants apply via the Federal Form, a state mail-in form, the department of motor vehicles, or any other NVRA agency. 52 U.S.C. § 20507(a)(5).

95. The NVRA further requires that the Federal Form and any state-issued mail-in voter registration form used to register voters for federal elections

accurately “specif[y] each eligibility requirement” for applicants. 52 U.S.C. § 20508(b)(2)(A); *see also* 52 U.S.C. § 20505(a)(2).

96. To ensure the Federal Form’s accuracy, a state’s chief election official must notify the Election Assistance Commission (EAC) of any changes in the state’s voter eligibility requirements within 30 days. 11 C.F.R. § 9428.6.

97. Neither the Alabama-specific instructions to the Federal Form, as dictated to the EAC by Defendant Merrill, nor the State Form provide sufficient information to meaningfully “inform applicants . . . of [] voter eligibility requirements” in Alabama.

98. By failing to include complete voter eligibility requirements on these forms, Defendant Merrill has violated and continues to violate the NVRA.

99. Defendant Merrill is aware of this violation. Plaintiffs sent Defendant Merrill notice of this violation of the NVRA through counsel on June 9, 2017. *See* Ex. A.

100. Because of this ongoing NVRA violation, GBM diverts significant organizational resources to informing voters of the eligibility requirements within Section 17-3-30.1 that are not communicated via the State Form or Federal Form.

101. Plaintiff GBM is aggrieved by Defendants’ past and continuing violations of the NVRA, and has no adequate remedy at law. Declaratory and injunctive relief are required to remedy Defendants’ past and continuing violations of the NVRA and to ensure Defendants’ future compliance with the NVRA.

PRAYER FOR RELIEF

In addition to Plaintiffs' prayers for relief in their original complaint, Plaintiffs respectfully pray this Court:

- (1) Certify the class and subclasses as defined in paragraphs 33, 35, and 36;
- (2) Issue a declaratory judgment that Section 177(b) of the Alabama Constitution, by its terms and as applied through Alabama Code Section 17-3-30.1, violates the Eighth, Fourteenth, and Fifteenth Amendments of the U.S. Constitution;
- (3) Issue a declaratory judgment that Defendant Merrill's retroactive application of Alabama Code Section 17-3-30.1 to citizens with convictions entered prior to August 1, 2017 violates the *Ex Post Facto* Clause of Article I and the Fourteenth Amendment of the U.S. Constitution;
- (4) Issue a declaratory judgment that Alabama Code Section 15-22-36.1(a)(3) violates the Fourteenth Amendment of the U.S. Constitution;
- (5) Issue a declaratory judgment that Defendant Merrill's failure to update the State and Federal voter registration forms violates the NVRA, 52 U.S.C. § 20501 *et seq.*
- (6) Enjoin the Defendants, their agents, employees and all those persons acting in concert or participation with them, from enforcing Section 177(b) or Alabama Code Section 15-22-36.1(a)(3), including:
 - a. Enjoining Defendants from denying any voter registration applications on the basis of felony convictions;

- b. Enjoining Defendants from removing any voters from the voter registration rolls on the basis of felony convictions;
- c. Requiring Defendants to restore Alabama citizens to the voter registration rolls if they were removed on the sole basis of their felony convictions;
- d. In the alternative, entering injunctive relief as outlined in (a)-(c) above as to Alabama citizens with convictions entered prior to August 1, 2017;
- e. Enjoining Defendants from denying any applications for CERV's on the basis of failure to pay any legal financial obligations;
- f. Requiring Defendants to inform those with disqualifying convictions that the failure to pay legal financial obligations does not disqualify them from restoring their right to vote under Alabama Code Section 15-22-36.1;
- g. Requiring Defendant Merrill to update the Federal and State voter registration forms to reflect the voter eligibility requirements as defined by Alabama Code Section 17-3-30.1.

(7) Award Plaintiffs their costs, expenses, and reasonable attorneys' fees incurred in the prosecution of this action, as authorized by the Voting Rights Act and the Civil Rights Attorney's Fees Awards Act of 1973, 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988(b); and

(8) Grant such other equitable and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Danielle Lang

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Counsel for Plaintiffs and Plaintiff Class

CERTIFICATE OF SERVICE

I hereby certify that, on March 1, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Danielle Lang

Danielle Lang

Counsel for Plaintiffs and Plaintiff Class

THE CHILDREN'S
PLACE

NOTICE: See reverse side for important information.
Please tear at perforation above

Account number	Minimum payment
993	\$27.00
New balance	\$273.78

☐ Yes, I have moved or updated my e-mail address - see reverse.

Amount enclosed: Payment must reach us by 6 pm ET on 05/19/2018.

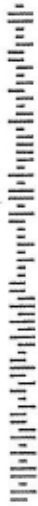
\$

Please make check payable to:

COMENTTY - MY PLACE REWARDS CREDIT CARD

Please return this portion along with your payment to:
PO BOX 659820
SAN ANTONIO TX 78265-9120

TREVA THOMPSON
HUNTSVILLE AL 35810-1595



Total Minimum Payment Due	Payment Due Date	New Balance
\$25.00	05/25/2018	\$345.38

Payment Enclosed:

Please use blue or black ink.

\$ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

New address or email? Print changes on back.



Paramount Capital Group, Inc.
PO Box 409
Conshohocken, PA 19428-0409



May 7, 2018



Treva Michele Thompson

Huntsville, AL 35810-1595

Email: questions@paracap.com
Toll Free: (866) 681-7282

Visit our website:
www.paracap.com/customer

Account#: [REDACTED]
RE: Career Path Training Corp.

Dear Treva,

This notice is to inform you that we have not received payment on the account referenced above. The payment was due 04/20/18 and the 15 day grace period has expired. As cosigner on this account you are equally obligated for the repayment of this debt.

We urge you to contact us to discuss this late payment and confirm payment has been mailed.

In the event we do not receive payment within the acceptable timeframe from Christopher De'Angelo Thompson, we expect you to make payment on this account.

If you have already mailed your payment or made payment arrangements with our office, you may disregard this notice.

Sincerely,

Paramount Capital Group, Inc.
Customer Service
Toll Free (866) 681-7282

This is an attempt to collect a debt and any information obtained will be used for that purpose.

This communication is from a debt collector.

***** DO NOT SEND CASH IN THE MAIL *****

See Reverse Side For Important Information.

Did you know that you can make your payments by check or credit card on our web site? Visit www.paracap.com/customer for more information.

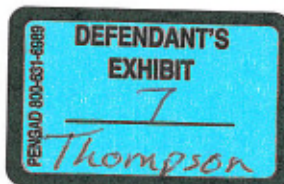
*** Please detach below and return in the enclosed envelope with your payment ***

RE: Career Path Training Corp.

Account Number	Principal Balance Not Including Unpaid Interest	Payment Due	Due Date	If payment received after	Please pay
[REDACTED]	\$7,847.97	\$199.97	04/20/18	05/05/18	\$204.97

Treva Michele Thompson

Huntsville, AL 35810-1595



Make payable to:



Paramount Capital Group, Inc.
PO Box 409
Conshohocken, PA 19428-0409

PLEASE MAKE ANY ADDRESS CORRECTIONS



Payment Due

Treva, here are your payments due as of 06/11/2018.

TOTAL DUE NOW: \$0.00

Your Account Details

Treva Thompson

Account Number

Phone

Email

Address

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
Huntsville, AL 35810

Balance Due Details

SPACE NUMBER: [REDACTED]

2902 Drake Ave SW
Huntsville, AL 35805
(256) 270-0712

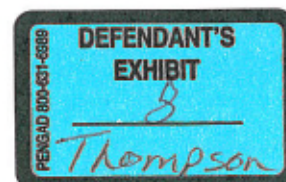
	PAST DUE/DUE NOW	DUE NEXT
		07/01/2018
Rent	\$0.00	\$101.00
Insurance	\$0.00	\$11.00
Sub Total	\$0.00	\$112.00
F294 Total	\$0.00	\$112.00

TOTAL DUE NOW: \$0.00

Glad to have you with us,

Your Public Storage Team

The information contained in this message is confidential and intended only for the recipient to which it was given.
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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

TREVA THOMPSON, et al.,

Plaintiffs,

v.

JOHN MERRILL, in his Official Capacity
as Secretary of State of Alabama, et al.,

Defendants.

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CIVIL ACTION NO.
2:16-cv-783-ECM-WMD

**PLAINTIFF TREVA THOMPSON'S OBJECTIONS AND ANSWERS TO STATE
DEFENDANTS' INTERROGATORIES**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiff Treva Thompson hereby responds and objects to the State Defendants' Interrogatories to Plaintiff Treva Thompson. In formulating these responses, Plaintiff Treva Thompson has relied on the information presently available to her. Further information may be discovered during this phase of the litigation. Plaintiff Treva Thompson will amend her objections and answers to the extent required under Fed. R. Civ. P. 26.

GENERAL OBJECTIONS

1. Plaintiff Treva Thompson objects to each and every one of the interrogatories to the extent they purport to impose upon it any obligations different form, or greater than, those established or required by the Federal Rules of Civil Procedure, local rules, an order of the Court, or a prior agreement of the parties.
2. Plaintiff Treva Thompson objects to each and every one of the interrogatories to the extent they seek information or documents protected by the attorney-client privilege, the work-product

doctrine, the common-interest privilege, or any other applicable privilege, exemption, immunity, principle, doctrine, or rule of confidentiality. If any protected information or material is disclosed, such disclosure is not intentional and shall not be deemed a waiver of any privilege or protection.

3. Plaintiff Treva Thompson objects to each and every one of the interrogatories to the extent they seek information already in the possession, custody, or control of the Defendants, or otherwise equally available to the Defendants.

4. Plaintiff Treva Thompson objects to each and every one of the interrogatories to the extent they seek information that is not relevant to any claim or defense before the court.

5. Plaintiff Treva Thompson objects to each of the interrogatories to the extent that they are unclear, ambiguous, overly broad, unduly burdensome, and/or not proportional to the needs of the case.

6. By answering these discovery requests, Plaintiff Treva Thompson does not concede the relevance or materiality of any of the information requested, nor of the subject matter to which the request for production refers. Rather, the responses are made expressly subject to, and without in any way waiving or intending to waive any question or objection as to the competency, relevance, privilege, or admissibility as evidence, of any of the matters referred to in the responses.

7. Plaintiff Treva Thompson expressly reserves:

- a. the right to object, on grounds of competency, relevance, materiality, privilege, or any other applicable ground, to the use of responses provided to this request for production or the subject matter thereof, in any subsequent proceeding in, or the hearing of, this or any other action;

- b. the right to object on any ground to other document requests, interrogatories, or other discovery proceedings involving or relating to the subject matter of the request for production; and
- c. the right to supplement Plaintiff Treva Thompson's responses should further investigation or discovery disclose additional information.

SPECIFIC RESPONSES AND OBJECTIONS

Interrogatory No. 1

Describe each and every claim you bring in Count 13. Your description should explain, *inter alia*, whether your only claim is dependent on inability to pay or whether you also bring a claim that is not contingent on ability to pay. You should also make clear whether each claim is facial or as applied.

Objections:

Plaintiff Thompson objects to this interrogatory as it calls solely for legal conclusions and legal theories. Interrogatories "may not extend to issues of 'pure law,'" see Notes to Fed. R. Civ. P. Rule 33.

Response:

Plaintiff Thompson refers Defendants to her legal filings including but not limited to her complaint, supplemental complaint, responses to Defendants' motions to dismiss, and her motion for a preliminary injunction, which outline her legal theories in detail.

Interrogatory No. 2

State your total income for 2019.

Response:

As stated in my declaration attached to my preliminary injunction motion: \$26,929.

Interrogatory No. 3

State your salary for each job you currently hold. If it is easier to state your gross pay or wages or your take-home pay or wages, be clear as to whether you are stating gross or take-home amounts and the pay period (e.g., weekly, twice monthly, monthly).

Response: As stated in my declaration attached to my preliminary injunction: \$11.10 per hour, pre-tax, paid on a bi-weekly basis. In addition to taxes, approximately \$70 is deducted bi-weekly from my wages for my insurance.

Interrogatory No. 4

If you are unemployed, state when you last worked.

Response:

Not applicable.

Interrogatory No. 5

If you are unemployed, state what your salary was when you last worked. If it is easier to state your gross pay or wages or your take-home pay or wages, be clear as to whether you are stating gross or take-home amounts and the pay period (e.g., weekly, twice monthly, monthly).

Response:

Not applicable.

Interrogatory No. 6

If you are unemployed, state whether your unemployment is due to the COVID-19 pandemic.

Response:

Not applicable.

Interrogatory No. 7

Identify any income you have received during the pendency of this case (from September 26, 2016 to the present) other than income from working. For example: rent payments, interest, or dividends; retirement payments; pension, annuity, or life insurance payments; disability payments; worker's compensation payments; unemployment payments; public assistance payments; gifts or inheritances; alimony; or, child support.

Objections:

Plaintiff Treva Thompson objects to this interrogatory as unduly burdensome and not proportional to the needs of the case, particularly to the extent that it demands *any* income received in the past four years regardless of how *de minimis*. Plaintiff Thompson is not required to document every dollar she receives in order to show she is unable to pay her LFOs. Plaintiff Thompson has answered this question to the best of her recollection.

Response:

2020 Economic Impact Payment of \$2,200.

I also took out a loan of approximately \$1,200 to help my son with legal fees to protect his visitation rights. I also took out two auto loans, which I pay at \$115 per month and \$91 per month.

Interrogatory No. 8

State the amount of money you have paid in total toward the restitution you owe for your theft of property (1st degree) conviction.

Objections:

Plaintiff Treva Thompson objects to this interrogatory as requesting information equally available to State Defendants. Plaintiff Treva Thompson answers to the best of her knowledge.

Response:

\$4,136

Interrogatory No. 9

Describe all efforts you have made to pay the restitution you owe for your theft of property (1st degree) conviction.

Response:

From October 2005 to August 28, 2015, nearly every month I paid as much as I could afford towards my restitution, ranging from \$139-\$9.

I stopped paying because could no longer afford it. At the time, I was making less than I make now and was struggling to meet my basic needs. I continue to not pay because I am unable to afford to do so given my other financial commitments and my responsibilities to my family.

Interrogatory No. 10

State approximately how much money have you spent on expenses for your adult children and your grandchildren during the time period since this lawsuit was filed on September 26, 2016 and through the present. For example, include monies spent on items like rent, utilities, tuition, clothing, car payments, and gifts.

Objections:

Plaintiff Treva Thompson objects to this interrogatory as unduly burdensome and not proportional to the needs of the case, particularly to the extent that it demands she identify a total amount spent over the past four years on daily expenses for her children and grandchildren. Plaintiff Thompson is not required to document every dollar she spends in support of her family in order to prove she is unable to pay her LFOs. Plaintiff Thompson has answered this question to the best of her knowledge.

Response:

I help support my kids and grandchildren. I periodically purchase small clothing items for my grandchildren and children if I see something on sale that might fit them. Sometimes I also get them hair products or shoes. In sum, I likely spend, at most, \$150 a month on such purchases.

I helped my son by co-signing for his car, but he failed to make payments and it was repossessed. I now owe approximately \$6,000 for that, and I pay \$20-\$50 a month when I can. I also co-signed for my son's student loans, but he makes those payments himself.

Interrogatory No. 11

State how you spent your COVID-19 pandemic-related Economic Impact Payment from the United States government.

Response:

I spent my EIP on overdue bills for essential car repairs. I needed to replace the brakes, rotors, new tires, and bearings. I used the remainder to make larger than usual payments to creditors, specifically on the two car loans and my son's repossession debt.

Interrogatory No. 12

If you have not yet received your COVID-19 pandemic-related Economic Impact Payment from the United States government, state what steps you took to receive (including expedite) that payment.

Response:

Not applicable.

Interrogatory No. 13

State how much money you had in any and all bank accounts on a day of your choosing in January 2020; a combined total is acceptable.

Response:

On January 18, 2020, the balance in my checking account was \$65.

Interrogatory No. 14

State how much money you had in any and all savings accounts on a day of your choosing in January 2020; a combined total is acceptable.

Response:

I had no money in savings on January 22.

Interrogatory No. 15

Identify any asset you own that is valued at more than \$500. For example, assets would include any automobile, real estate, stock, bond, security, trust, jewelry, artwork, or financial instrument.

Response:

My only asset worth more than \$500 is my primary vehicle, a 2006 Lincoln Navigator. I also own a secondary vehicle a 2002 Chrysler Town and Country Van, but it has been in the shop since December and is likely no longer worth more than \$500.

Interrogatory No. 16

If you exert control over any other adult's income or assets, state who that person is.

Response:

I do not exert control over any adult's income or assets.

Interrogatory No. 17

For each person identified in response to Interrogatory No. 17, describe the value of the income or assets over which you exert control.

Objection: This interrogatory refers to Interrogatory No. 17 but is itself Interrogatory No. 17. Plaintiff Thompson assumes this is meant to refer to Interrogatory No. 16 and responds accordingly.

Response:

Not applicable.

Interrogatory No. 18

If you contend that the income or assets described in response to Interrogatory No. 18 are not available to pay the restitution you owe for your theft of property (1st degree) conviction, explain why they are not available.

Objection: This interrogatory refers to Interrogatory No. 18 but is itself Interrogatory No. 18. Plaintiff Thompson assumes this is meant to refer to Interrogatory No. 17 and responds accordingly.

Response:

Not applicable.

Interrogatory No. 19

Describe any major changes to your income you expect in the next 12 months.

Response:

None.

Interrogatory No. 20

Describe any major changes to your assets you expect in the next 12 months.

Response:

None.

Interrogatory No. 21

Explain why your alleged inability to pay is wholly beyond your control.

Objection:

Plaintiff Thompson objects to this interrogatory as vague, irrelevant, and harassing.

Response:

I have tried to find a job that pays a living wage but have had difficulty because of my record of a felony conviction. I have been in my current job for 3 years. I got a raise about a year and a half ago of 50 cents per hour. I work hard and would like to find other, better paying positions within my current company.

Starting in May 2011, the clerk in Madison County started putting my payments towards the collections fee on my account. From that point on my payments were not even being applied toward the debt that keeps me from voting. I was not aware of that fact at the time. Even if I were to pay \$100 per month towards my legal financial obligations, which would be nearly impossible given my financial constraints, it would take me decades to pay off the entire amount.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing Answers to Interrogatories are true and correct to the best of my knowledge, information, and belief.

Date: June 8, 2020 Treva Thompson
Plaintiff Treva Thompson

Respectfully submitted,

s/ Danielle Lang

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CERTIFICATE OF SERVICE

Pursuant to an agreement memorialized in the Report of the Parties' Planning Meeting, electronic service is acceptable for this document. I hereby certify that I have served a copy of the foregoing document on Misty Messick (mmessick@ago.state.al.us) and Winfield J. Sinclair (wsinclair@ago.state.al.us), counsel for the State Defendants, *via* email the 9th day of June 2020.

s/ Danielle Lang

Danielle Lang
Counsel for Plaintiffs

Page 1

NORTHERN DIVISION

CASE NUMBER: 2:16-CV-783-WKW-CSC

TREVA THOMPSON; et al.,
Plaintiffs,

vs.

JOHN H. MERRILL, in his official capacity
as Secretary of State; et al.,
Defendants.VIDEO DEPOSITION TESTIMONY OF:
DARIUS GAMBLEJUNE 22, 2018
10:30 A.M.

Page 3

1 of the trial, or at the time said deposition is
2 offered in evidence, or prior thereto.3 IT IS FURTHER STIPULATED AND AGREED
4 that notice of filing of the deposition by the
5 Commissioner is waived.
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Page 2

1 S T I P U L A T I O N

2 IT IS STIPULATED AND AGREED by and
3 between the parties through their respective
4 counsel that the video deposition of DARIUS
5 GAMBLE may be taken before Tanya D. Cornelius,
6 Certified Shorthand Reporter and Notary Public,
7 at the offices of Freedom Court Reporting, 1933
8 Richard Arrington, Jr., Boulevard South,
9 Birmingham, Alabama, on the 22nd day of June,
10 2018, commencing at approximately 10:30 a.m.11 IT IS FURTHER STIPULATED AND AGREED
12 that the signature to and the reading of the
13 deposition by the witness is NOT waived, the
14 deposition to have the same force and effect as
15 if full compliance had been had with all laws
16 and rules of Court relating to the taking of
17 depositions.18 IT IS FURTHER STIPULATED AND AGREED
19 that it shall not be necessary for any
20 objections to be made by counsel to any
21 questions, except as to form or leading
22 questions, and that counsel for the parties may
23 make objections and assign grounds at the time

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1 I N D E X

2 EXAMINATION BY: PAGE NUMBER:
3 Ms. Messick 10
4 Mr. Gaber 74
5 Ms. Messick 75
6
7

8 E X H I B I T S

9 DEFENDANT'S EXHIBIT NO: PAGE NUMBER:
10 1 - Letter 15
11 2 - Letter 15
12 3 - Letter 17
13 4 - Letter 19
14 5 - Plea Agreement 24
15 6 - Case Action Summary 32
16 7 - Consolidated Bond 34
17 8 - Letter 40
18 9 - Declaration 45
19 10 - Income Withholding 62
20 11 - Order 63
21 12 - Check 64
22 13 - Account Detail 66
23 14 - Photo 68

Page 5

EXHIBITS (CONTINUED)

DEFENDANT'S EXHIBIT NO: PAGE NUMBER:

15 - Property Tax Form 68
 16 - Bank Statement 69
 17 - Spire Savings Plan 69
 18 - Earnings Statement 70
 19 - Earnings Statement 70
 20 - Account History 72

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APPEARANCES (CONTINUED)

FOR THE DEFENDANTS:

STATE OF ALABAMA BOARD OF PARDONS
AND PAROLES

BY: Kevin W. Blackburn, Esquire
 301 South Ripley Street
 Building D
 Montgomery, Alabama 36130

ALSO PRESENT: Casey Barberio
 Ted Yost, Videographer

Page 6

APPEARANCES

FOR THE PLAINTIFFS:

CAMPAIGN LEGAL CENTER

BY: Mark Gaber, Esquire

Danielle Lang, Esquire

1411 K Street NW

Suite 1400

Washington, DC 20005

FOR THE DEFENDANTS:

OFFICE OF THE ATTORNEY GENERAL

State of Alabama

BY: Misty S. Fairbanks Messick, Esquire

Winfield J. Sinclair, Esquire

501 Washington Avenue

Montgomery, Alabama 36130

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I, Tanya D. Cornelius, Certified
 Shorthand Reporter and Notary Public, acting as
 Commissioner, certify that on this date, as
 provided by the Federal Rules of Civil
 Procedure, and the foregoing stipulation of
 counsel, there came before me at the office of
 Freedom Court Reporting, 1933 Richard Arrington,
 Jr., Boulevard South, Birmingham, Alabama,
 beginning at 10:30 a.m., DARIUS GAMBLE, witness
 in the above cause, for oral examination,
 whereupon the following proceedings were had:

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VIDEOGRAPHER: This begins disk number one in the deposition of Darius Gamble in the matter of Treva Thompson; et al. vs. John H. Merrill in his official capacity as Secretary of State; et al., Case Number 2:16-CV-783-WKW-CSC in the United States District Court for the Middle District of Alabama, Northern Division.

We're on the record at 10:34 a.m. on Friday, June 22nd, 2018. This deposition is taking place at Birmingham, Alabama. My name is Ted Yost representing Freedom Court Reporting. Would counsel identify yourself and state whom you represent?

MS. MESSICK: Misty S. Fairbanks Messick for the state defendants.

MR. SINCLAIR: Winfield Sinclair for the defendants.

MR. BLACKBURN: Kevin Blackburn for the Board of Pardons and Paroles.

MS. LANG: Danielle Lang for the plaintiff.

MR. GABER: Mark Gaber for plaintiffs.

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VIDEOGRAPHER: Will the reporter please swear in the witness?

DARIUS GAMBLE,
being first duly sworn, was examined
and testified as follows:

THE REPORTER: Will this be usual stipulations?

MS. MESSICK: I believe you want to read and sign?

MR. GABER: Right. But otherwise, yes.

EXAMINATION

BY MS. MESSICK:

Q. Good morning, sir.

A. Good morning.

Q. My name is Misty F. Fairbanks Messick, and I represent the State of Alabama and the Secretary of State and the Chairman of the Board of Pardons and Paroles and the Chairwoman of the Montgomery County Board of Registrars in a

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lawsuit that you have filed regarding felon voting. This deposition is an opportunity for us to get your testimony on the record.

You know there's a court reporter here. She's going to be taking down everything you say. For that reason, it's important that you answer my questions verbally. It's very easy to say things like uh-huh (positive response) and huh-uh (negative response) or to shake your head. That's clear here, but it won't be clear on the written record later. So I would ask you to say yes and no.

If you don't understand a question, please let me know. I want you to be responding to the question that I'm answering -- asking you. Is that okay?

A. Yes.

Q. Sometime a witness will give an answer, and then later on in the deposition they'll realize that they misspoke or they forgot something or there was something inaccurate. If that happens, you can let me or your counsel know so we can give you an opportunity to correct it

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on the record here today.

We will occasionally take breaks. If we're not taking one and you need one, you're free to ask for one. If I've got a question on the table, I want you to answer that question before we take a break.

A. Understood.

Q. Is there any reason you can't provide truthful testimony here today?

A. No.

Q. Do you have any questions before we start?

A. No.

Q. Would you please state your name for the record?

A. Darius Labrelle Gamble.

Q. Have you ever been deposed before today?

A. No.

Q. When were you deposed before?

A. I said no.

Q. Oh. I thought you said yeah. Have you ever testified in a trial?

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Page 15

1 A. No, not to my recollection.
 2 Q. What did you do to prepare for your
 3 deposition?
 4 A. Nothing. Just had dinner with my
 5 lawyers.
 6 Q. Okay. That was last night?
 7 A. Yes.
 8 Q. How long did you spend with them?
 9 A. Roughly maybe two and a half hours.
 10 Q. And you are a named plaintiff in this
 11 case, right?
 12 A. Yes.
 13 Q. How did you come to be involved in
 14 it?
 15 A. I was trying or attempting to restore
 16 my right to vote. From there, I was -- about
 17 last summer, I would say, I was listening to the
 18 radio, and I heard over the radio that some of
 19 the voter rights had changed. So from that point
 20 they were having voter restorations for felons.
 21 So I went to that restoration clinic and was
 22 introduced to ALS, Alabama Legal Services. And
 23 from there, they looked into my situation, and

1 might have impacted me and my situation, and so
 2 that's how I got involved in it.
 3 Q. Okay. Great. Thank you. I'm
 4 marking as Defendant's Exhibit 1 a letter that I
 5 think you just referred to.
 6 (Defendant's Exhibit No. 1 was marked
 7 for identification.)
 8 Q. I would like you to take a look and
 9 tell me if you recognize this document.
 10 A. Yes, I do.
 11 Q. You know what, I think your lawyer
 12 sent me the signed copy last night. I'm going to
 13 go ahead and mark that, too, just so we've got
 14 it.
 15 (Defendant's Exhibit No. 2 was marked
 16 for identification.)
 17 Q. That actually looks more like the one
 18 you would have received, right?
 19 A. Yeah.
 20 Q. And can you tell me what this
 21 document is?
 22 A. It's a document that's stating, in
 23 essence, that I'm uneligible to vote. That's

Page 14

Page 16

1 they were unable to assist me, and they referred
 2 me to Blair and Danielle and this group.
 3 Q. Thank you. You said that this all
 4 started because you were trying to restore your
 5 right to vote. What were you doing?
 6 A. So, initially, once I came off of
 7 probation, I thought that automatically that my
 8 right to vote would be restored, and so from
 9 there, I tried to register with the -- I think it
 10 was Board of Registrars, and I received a letter
 11 saying that due to a fine that was outstanding at
 12 that point in time, I think it was forty-nine
 13 thousand or so, that I wasn't able to vote until
 14 that fine has been zeroed out.
 15 From there, I hired a private lawyer
 16 to attempt to get back in court to have the fines
 17 reduced and got nowhere with that, wasted
 18 probably about a year, year and a half of trying
 19 to get a court date set in Shelby County that
 20 never -- that never really happened. And so from
 21 there, it led me to last summer in which I heard
 22 the radio announcement as far as some of the laws
 23 have changed, and I thought that some of that

1 what it means to me.
 2 Q. And did you receive this in January
 3 of this year?
 4 A. Yes.
 5 Q. And that was after trying to register
 6 to vote last year?
 7 A. Yes.
 8 Q. Do you remember how many times you
 9 tried to register to vote last year?
 10 A. To my knowledge, I attempted three
 11 times. The first was right after I heard the
 12 radio announcement. I think that was roughly
 13 May, June-ish, somewhere up in there. I
 14 attempted to register online. From there, a
 15 couple of months went by. I didn't hear anything
 16 back from the Board of Registrars.
 17 From what I understand, they were
 18 supposed to respond within ten days. So I didn't
 19 hear anything, and I think I waited a month,
 20 maybe two months. And so that's when I attempted
 21 -- I think it was then at that point in time,
 22 August or September, and then right -- I think
 23 right around the last day of the elections. And

Page 17

1 then once I received these notices, as a matter
2 of fact, they were back to back, that's when I
3 didn't attempt anymore, because I got the
4 information which I was requesting basically
5 saying that the laws in which I had heard about,
6 they did not impact me in a positive manner.

7 Q. Okay. You said you received them
8 back to back. So your lawyers actually sent me
9 two copies of a letter dated January 12th last
10 night. The signatures don't look exactly the
11 same, but they are dated the same and also -- I
12 guess what we'll do is put both of them in the
13 record. So this will be Exhibit 3.

14 (Defendant's Exhibit No. 3 was marked
15 for identification.)

16 Q. Do you believe that you received
17 Exhibits 2 and 3 in the mail, that you got two
18 copies?

19 A. Yes. And both of them were certified
20 mail. As a matter of fact, they sent the regular
21 mail, I believe, and then certified mail. So I
22 remember making two different trips to the post
23 office to retrieve them.

Page 19

1 recognize this document.

2 A. I don't remember it.

3 (Defendant's Exhibit No. 4 was marked
4 for identification.)

5 Q. Okay. Though you don't remember the
6 specific document, were you aware that you had
7 lost your rights to vote when you were convicted?

8 A. Yes.

9 MR. GABER: Object. Legal
10 conclusion.

11 Q. What convictions do you have for
12 felonies?

13 A. Trafficking in Cannabis.

14 Q. And is it just one count of
15 trafficking in Cannabis?

16 A. Yes.

17 Q. And that's all the felony convictions
18 you have?

19 A. Yes.

20 Q. Okay. Did you plead or go to trial?

21 A. Eventually pled.

22 Q. What is it that you pled guilty to?
23 What was it that they were -- strike that. What

Page 18

1 Q. Okay. Thank you. You mentioned that
2 one of your attempts to register to vote was
3 online. Was that just going to the Secretary of
4 State's website?

5 A. If my memory serves correctly, all
6 three attempts were online going to the website.
7 Mine was just a Google search to register to vote
8 in Alabama, wherever it took me.

9 Q. Were any of your registration
10 attempts at the -- made in conjunction with
11 renewing your driver's license or non-driver ID?

12 A. No.

13 Q. Do you remember receiving any
14 mailings from the state last year about
15 encouraging you to register to vote?

16 MR. GABER: Object to form.

17 Q. You can still answer the question.

18 A. To my knowledge, no.

19 Q. Before you lost your right to vote,
20 were you registered to vote?

21 A. Yes, in Shelby County.

22 Q. I'm going to hand you what I'm
23 marking Defendant's Exhibit 4 and ask you if you

Page 20

1 is it that the state alleged you had done?

2 MR. GABER: Objection. Calls for
3 speculation.

4 Q. You can still answer the question.

5 A. Initiated delivery of Cannabis via
6 mail.

7 Q. I thought in the court records that I
8 saw something about a stop of a car. Do you
9 remember anything about -- did the police pull
10 you over in a car?

11 A. Yes.

12 MR. GABER: Object to form.

13 Q. And did that lead to a search of the
14 vehicle?

15 MR. GABER: Object to form.

16 Q. You can still answer the question.

17 A. Yes.

18 Q. And what is your understanding of
19 what the state says they found upon doing the
20 search?

21 A. The state found roughly -- I don't
22 think it was the state. As a matter of fact, it
23 was DEA. The DEA found roughly ten thousand plus

Page 21

1 in cash. I can't -- I don't know the exact
2 dollar amount, and a registered 380 pistol. No
3 drugs were found. I never possessed the drugs or
4 the Cannabis.

5 Q. So what is your understanding of how
6 you ended up pleading to trafficking in Cannabis?

7 MR. GABER: Object to form. Calls
8 for speculation, calls for a legal conclusion.

9 Q. And you can still answer the
10 question.

11 A. The --

12 MR. GABER: And I want just to advise
13 to the extent that this involves a conversation
14 with your criminal defense attorney, to make sure
15 not to divulge any of the contents of that
16 communication regarding the plea or regarding any
17 conversations with your attorney. And if you
18 need to talk to us about what that means, we can
19 take a break.

20 A. Ask your question again.

21 Q. I'm trying to understand how it is
22 that you pled guilty to possession -- or you pled
23 guilty to trafficking in marijuana, but there

Page 23

1 conviction.

2 MS. MESSICK: You and I have a
3 dispute in this case about what his conviction
4 means, and so I need to understand what his
5 conviction was for.

6 MR. GABER: I think his first answer
7 that they were intercepted coming into the state
8 gave you the answer.

9 MS. MESSICK: Okay. He didn't say
10 anything about that either.

11 MR. GABER: I think that was what --

12 Q. (By Ms. Messick) Where was the
13 traffic stop at?

14 A. In Homewood, Homewood. Homewood off
15 of Green Springs and Oxmoor, I believe, yeah, at
16 that gas station.

17 Q. Do you remember where you were
18 traveling from and to on the trip during which
19 you were stopped?

20 A. Yes.

21 Q. And can you tell me where you were
22 traveling from?

23 A. From my home in Pelham.

Page 22

1 were no -- you're saying there were no drugs
2 found in the car, and you actually allege that
3 you never possessed them.

4 A. That's correct.

5 Q. So I'm trying to -- I understand what
6 happened, but I'm also trying to --

7 A. I would --

8 Q. Even though you've already -- you've
9 been convicted, but I'm trying not to say, Well,
10 what did you do. So --

11 A. I would --

12 MR. GABER: If I could get an
13 objection. Object to form. I think the first
14 answer that he gave gives you the -- what you're
15 looking for, back at the beginning of this.

16 Q. Were there other defendants that you
17 were being prosecuted with?

18 A. No.

19 Q. Were you -- did you plead guilty to
20 involvement in the commercial distribution of
21 Cannabis?

22 MR. GABER: Object to form. The
23 conviction is -- I mean, we can stipulate to his

Page 24

1 Q. And to where?

2 A. Over to a friend's house in Homewood.

3 MR. GABER: Can we just -- can we go
4 off the record for a second? I think I can just
5 help.

6 MS. MESSICK: Okay.

7 VIDEOGRAPHER: Going off the record
8 at 10:56 a.m.

9 (Whereupon, a discussion off the
10 record was held.)

11 VIDEOGRAPHER: We're back on the
12 record at 11:06 a.m.

13 Q. (By Ms. Messick) Thank you for that
14 break. At what point in the proceedings did you
15 plead guilty?

16 A. I don't understand your question.

17 Q. Was it right before trial or was
18 trial still months away?

19 A. If I remember correctly, it was
20 before trial. I'm not sure of the time frame.

21 Q. I'm going to hand you an exhibit I'm
22 marking as Defendant's Exhibit 5.

23 (Defendant's Exhibit No. 5 was marked

Page 25

1 **for identification.)**

2 MR. GABER: We're going to -- before
3 you ask a question, we're going to need a second
4 to -- this is kind of long. This says document
5 three. Does this come from some broader -- I
6 mean, I see there's a whole stapled thing, but I
7 don't know if it's part of the same document.

8 MS. MESSICK: Actually, hang on a
9 second. Let me see what I just gave you both to
10 make sure it's the same document. Mark, you
11 asked what this -- what I'm pulling this from.

12 MR. GABER: Yes.

13 MS. MESSICK: I sent you all some
14 documents from AOC earlier this week. If I'm
15 remembering right for him, they had an entry on
16 their images screen that was called entire file.

17 MS. LANG: Okay.

18 MS. MESSICK: And so this is one page
19 from that.

20 MS. LANG: Okay.

21 **Q. (By Ms. Messick) Mr. Gamble, I would**
22 **ask you to review this document. I'm going to**
23 **ask you if you know what it is.**

Page 26

1 **A. Yes.**

2 **Q. And can you tell me what it is,**
3 **please?**

4 **A. Felony plea agreement.**

5 **Q. And is that your signature at the**
6 **bottom of the document?**

7 **A. Yes.**

8 **Q. And it says -- the first full**
9 **paragraph there, the last sentence, says, This is**
10 **a best interest plea with a factual basis; is**
11 **that right?**

12 **A. Yes.**

13 **Q. Do you remember the government being**
14 **required to state in open court with you present**
15 **what the factual basis was?**

16 **A. I don't recall.**

17 MR. GABER: Objection. Calls for a
18 legal conclusion.

19 **Q. Do you remember being asked to**
20 **explain what the conduct was that you were**
21 **pleading to in open court?**

22 **A. I don't understand your question.**

23 **Q. As part of your plea, were you**

Page 27

1 **required to tell the judge that you acknowledge**
2 **that you engaged in certain actions?**

3 MR. GABER: Objection. Calls for a
4 legal conclusion.

5 **A. I can't recall.**

6 **Q. You said that you -- that the state**
7 **alleged that you had initiated delivery of**
8 **Cannabis via mail. How much Cannabis did the**
9 **state allege that you initiated delivery of by**
10 **mail?**

11 **A. If I recall, it wasn't the state.**
12 **Once again, it was the DEA, and it was roughly**
13 **thirty -- thirty to thirty-five pounds of**
14 **Cannabis.**

15 **Q. Do you know what the street value of**
16 **that would have been at that time?**

17 MR. GABER: Objection. Calls for
18 speculation. Irrelevant.

19 **Q. And you can still answer the**
20 **question.**

21 **A. No, I didn't.**

22 **Q. Do you know how many joints you can**
23 **get out of a pound of marijuana?**

Page 28

1 MR. GABER: Objection. Calls for
2 speculation.

3 MS. LANG: Irrelevant.

4 MR. GABER: Ms. Messick, what are we
5 trying to do here?

6 MS. MESSICK: We're trying to get the
7 facts that we need to resolve a legal dispute
8 that you and I have.

9 MR. GABER: We have a legal dispute
10 over whether the registrar asked questions
11 regarding the underlying facts of the conviction.

12 MS. MESSICK: That's is not in
13 dispute at all.

14 MR. GABER: Well, that's my
15 understanding.

16 MS. LANG: I think we need to go off
17 the record.

18 MR. GABER: I think we need to go off
19 the record and talk about this.

20 VIDEOGRAPHER: We're going off the
21 record at 11:14 a.m.

22 (Whereupon, a brief recess was
23 taken.)

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1 VIDEOGRAPHER: We're going back on
2 the record at 11:29 a.m.

3 Q. (By Ms. Messick) Okay. I think we've
4 had a productive break. Do you know how many
5 joints can be made from a pound of marijuana?

6 A. No.

7 MR. GABER: Objection. Calls for
8 speculation. You can answer.

9 A. No.

10 Q. You said that the factual basis for
11 your conviction was the allegation of a delivery
12 of Cannabis via mail. Where was the Cannabis
13 going? Where was it being mailed to?

14 MR. GABER: Object to form.

15 A. The Cannabis was being mailed to my
16 home residence, which is [REDACTED],
17 Pelham, Alabama 35124 at the time.

18 Q. Thank you. Did anybody else live at
19 the home at the time?

20 A. I had a live-in girlfriend, but --

21 Q. Was the mail that was intercepted
22 addressed to you?

23 MR. GABER: Objection. Calls for

Page 31

1 2009 is not three years.

2 A. Well, you said prison.

3 Q. Okay.

4 A. You didn't mention jail.

5 Q. Okay. So were you like in jail while
6 you were --

7 A. Yes.

8 Q. Okay.

9 A. And to answer your question, did I
10 get out early, no.

11 Q. Okay. So did you go to jail when you
12 were first arrested and then to prison after you
13 pled?

14 A. Yes.

15 Q. Okay. So --

16 MR. GABER: Do we have a video
17 problem?

18 VIDEOGRAPHER: No.

19 Q. When were you in jail?

20 A. From the initial arrest, from what I
21 understand, if I remember it right or -- well --

22 MR. GABER: And if you don't know,
23 then --

Page 30

1 speculation.

2 Q. You can still answer the question, if
3 you know.

4 A. No.

5 Q. Was the girlfriend charged?

6 MR. GABER: Objection. Calls for
7 speculation.

8 Q. And you can still answer the
9 question.

10 A. Not to my knowledge.

11 Q. Did the felony plea agreement,
12 Exhibit 5 -- it said that the state would
13 recommend a sentence of ten years to be split
14 with three years to serve and the remainder
15 suspended for five years on probation. Is that
16 the sentence that was imposed on you?

17 A. Yes.

18 Q. And did you serve three years?

19 A. Yes.

20 Q. When were you imprisoned, what years?

21 A. 8, 2008, and -- partial of 2008 and
22 2009 from my recollection.

23 Q. So did you get out early? 2008 to

Page 32

1 A. I couldn't tell you exact dates and
2 times.

3 MR. GABER: Do we have a record of
4 it?

5 MS. MESSICK: Well, I think I do want
6 to know when the arrest was. So I was going to
7 ask if he knows.

8 A. I don't recall it.

9 MS. MESSICK: Let me -- this is just
10 -- I'm just handing to counsel what was the first
11 page from the AOC file. It has an arrested date
12 on it. I can look if you would like to see if we
13 actually -- if there's a document associated with
14 the arrest that I can put in front of him
15 instead.

16 MS. LANG: This seems sufficient.

17 Q. Okay. Then let me mark this as
18 Defendant's Exhibit 6, and I'll ask you to look
19 at the top part of the page and see if it
20 refreshes your recollection.

21 (Defendant's Exhibit No. 6 was marked
22 for identification.)

23 MR. GABER: And can I just -- this is

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1 like the AOC database file on it? Is that the --
2 because it could be like an entry error. I mean,
3 but -- he may know.

4 MS. MESSICK: Right. So I got this
5 from AOC as an image. It may very well be that
6 AOC entered it first.

7 MS. LANG: I see here that there's a
8 date arrested of May 23rd, but a date released of
9 June 8. So I wanted to point that out.

10 MS. MESSICK: But then it looks like
11 he was indicted after that.

12 MS. LANG: Uh-huh (positive
13 response).

14 **Q. (By Ms. Messick) So as we talk about**
15 **-- looking at the top here, it does have an**
16 **arrested date, a date indicted, a date released.**
17 **Is this triggering anything to you? Like this**
18 **suggests to me that you were arrested, released,**
19 **and then taken back into custody. Does that**
20 **sound right?**

21 MR. GABER: Object to form.

22 A. Vaguely.

23 Q. Okay. This has an arrest date of May

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1 A. Just from reading it, yeah. The -- I
2 guess where they attempted to make bond.

3 Q. And your signature is on the first
4 page there, D054944, the one with the blue
5 sticky?

6 A. Yes.

7 Q. And this has you trying to make bond
8 in June 2006, correct?

9 A. Yes.

10 Q. So you would have been arrested
11 sometime before that?

12 A. Yes.

13 Q. Thank you very much.

14 MR. GABER: That was 7; is that
15 right? Did you mark it?

16 MS. MESSICK: Yes.

17 Q. (By Ms. Messick) When you were
18 released from prison, you were put on probation?

19 A. Yes.

20 Q. And how long did you serve on
21 probation?

22 A. Five years.

23 Q. And you have completed your term of

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1 2006, specifically May 23rd. Does that refresh
2 your recollection?

3 A. Not really.

4 Q. I think for present purposes it might
5 be sufficient if we just knew the year of the
6 arrest.

7 A. To my knowledge, 2006, 2007.

8 MR. GABER: Is this something that we
9 can maybe nail down and stipulate to?

10 MS. MESSICK: It might be. I was
11 just looking to see if I had anything that would
12 make it clear while we're here.

13 Q. (By Ms. Messick) Okay. I found a
14 document I think will be helpful. Let me let
15 your counsel look at it first while I get copies
16 for you and us. I'm going mark these two pages
17 Defendant's Exhibit 7 and ask you if you
18 recognize these.

19 (Defendant's Exhibit No. 7 was marked
20 for identification.)

21 Q. Do you recognize these documents?

22 A. Vaguely.

23 Q. Okay. Do you know what they are?

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1 probation, I understood you to say earlier?

2 A. Yes.

3 Q. And you're not on parole or anything
4 like that, right? You're free and clear at this
5 point?

6 A. Correct.

7 Q. I know as part of your conviction you
8 were ordered to pay some money, and we're going
9 to come back to that. Was there anything other
10 than the time in prison, the time in probation,
11 and the money that was --

12 MR. GABER: Object to form.

13 Q. -- part of your conviction?

14 MR. GABER: Object to form.

15 A. According to the felony plea
16 agreement, I had to take a court ordered SAP,
17 substance abuse program, and once released, I had
18 to complete a CRO program.

19 Q. And have you done that?

20 A. Yeah.

21 Q. Okay. Have you applied for a pardon?

22 A. Yes.

23 Q. When did you apply?

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1 A. So, recently, within the last two
2 months, I applied to the pardon -- Board of
3 Pardon and Parole to have my fines and fees
4 reduced. I think it was roughly two months ago.
5 At that particular time, I filed the application,
6 did everything online. I waited for two -- two
7 or three weeks to see the status of it, talked to
8 a young lady in Birmingham and also Montgomery.
9 When I talked to Montgomery, they referred me to
10 Birmingham to the local office. They said that
11 -- asked me when I filed it. I told them it was
12 a couple of weeks ago. They said that it will be
13 a couple of years before I hear anything from it.
14 So I said okay. Fine.

15 And then fast forward to probably
16 about three weeks ago, someone, an officer, I
17 can't think of her name right off the top of my
18 memory, reached out to me from the Birmingham
19 office of pardons and paroles or the parole
20 office, and she was seeing was I still interested
21 in the admissions, and she had pulled my
22 application.

23 From there, I went into that office,

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1 Q. So okay. Separate from that process,
2 have you also applied for a certificate of
3 eligibility to register to vote?

4 A. Explain that, please.

5 Q. Okay. The certificate of eligibility
6 to register to vote is kind of a shortcut to just
7 get your voting rights back instead of doing a
8 full pardon, and you would have also applied for
9 that with the Board of Pardons and Paroles. Do
10 you remember doing that?

11 A. No, never heard of the process.

12 (Whereupon, a discussion off the
13 record was held.)

14 Q. The certificate of eligibility to
15 register to vote is also called a CERV.

16 A. Okay. Now I know what you're talking
17 about, yes. So I would like to amend my answer
18 and say, Yes.

19 Q. You have applied for that?

20 A. Yes.

21 Q. And I'm going to hand you what I'm
22 marking Defendant's Exhibit 8 and ask you if you
23 recognize this document.

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1 did intake, asked some basic questions, and that
2 started the remissions process and fines process.
3 From there, I had to get three -- a minimum of
4 three character reference letters back to her. I
5 got those to her within a week and a half, and I
6 contacted her and e-mailed her.

7 And from there I had a question. I
8 said, So what's the process for a pardon versus
9 just fines. It's like, Well, your application,
10 it's only for remissions of fines and fees. I
11 said, Okay, so what's the process. It's like
12 it's basically you just have to amend the
13 application. And she gave me an individual's
14 contact information in Montgomery. I called that
15 gentleman, explained him the situation. I just
16 wanted to amend the application. He agreed. He
17 said that he will work it out with the intake
18 officer. And so now I've filed as of maybe two
19 weeks, maybe three weeks ago now, a pardon and
20 also for the fines and fees to get reduced.

21 Q. Thank you. That was very helpful.

22 MS. MESSICK: I had some questions as
23 he started that he answered as he kept going.

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1 A. I do.

2 (Defendant's Exhibit No. 8 was marked
3 for identification.)

4 Q. And what is it, please?

5 A. It's from the State of Alabama Board
6 of Pardons and Paroles, and in layman's terms
7 this is telling me that I must pay off all
8 forty-nine thousand three hundred and forty-one
9 dollars of my fines and fees in order to be
10 eligible to vote.

11 Q. And how much were you originally
12 assessed at the time of your conviction in fines
13 and fees?

14 A. It was over -- I think it was right
15 around fifty-two thousand dollars.

16 Q. Okay.

17 A. It was a fifty thousand dollar fee, a
18 thousand dollars for -- then there was something
19 to the victims fund, but I didn't have any
20 victims in my case.

21 Q. And this Document 8, you did receive
22 this document?

23 A. Yes.

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MR. GABER: Object to form.

Q. We talked earlier about the fact that you tried to register two or three times last year. Have you been prosecuted for anything related to trying to register to vote last year?

MR. GABER: Object to form. Argumentative.

Q. You can still answer the question.

A. No.

Q. Thank you. What do you hope to get out of this case?

A. My right to vote back, to feel like a citizen of the United States, of Alabama, to have my voice heard. That's it, same rights as you.

Q. Are you familiar with an organization called Greater Birmingham Ministries?

A. I have heard of them, yes.

Q. Have you interacted with them?

A. On one occasion. Not so much with them, but an individual from that organization.

Q. And who would that have been?

A. I believe her name was Tara.

Q. Would it be Tara Williams?

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after?

A. Before.

Q. Can you tell me what any of the claims are that -- your understanding of the claims that you're bringing in this case?

MR. GABER: Object to form. Calls for legal conclusion.

A. I'm not a lawyer, so I really couldn't speak the lingo. But from what I understand is I am representing individuals like myself around the state who are denied their right to vote because of excessive fees. That's my understanding of it.

Q. Do you understand any of the arguments that are being made on your behalf?

MR. GABER: Object to form. Calls for legal conclusion. Vague.

Q. You can still answer the question.

A. Yes.

Q. Okay. Tell me what you understand about the claims.

A. From my understanding, these fines and fees, they equate to a poll tax, which is

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A. I'm not sure about her last name. It was all -- the interaction took place on Facebook.

Q. Did that interaction have anything to do with restoring your right to vote?

A. No.

Q. Have you seen the supplemental complaint that was filed in this case?

A. Yes.

Q. Have you read it?

A. Yes.

Q. Did you read it before it was filed?

A. I can't remember exactly.

Q. Have you seen other documents that have been filed in this case since you joined it?

MR. GABER: Can you -- he's not a lawyer, so the filed thing may --

Q. Have you seen other documents that your lawyers have submitted to the Court?

A. I've seen documents that's regarding my case, yes, so --

Q. Do you know if you normally see the documents before they are filed with the Court or

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illegal.

Q. Is there anything else you can tell me about it, about the claims that you're raising in the complaint as you understand them?

A. That's pretty much the meat of it.

Q. All right. Do you know if there are any claims in the case that don't relate to the fines, that they are just because of your status as a felon?

MR. GABER: Object to form.

A. From the information which I've gathered, which is coming from the Board of Registrars and pardons and parole, the fines and fees is the only thing that's stopping me from registering and being eligible to register to vote.

Q. Did you recently sign a declaration in this case? And I'll give you a copy to look at. Do you remember signing one?

A. Let me see it first.

Q. Okay. I'm marking Defendant's Exhibit 9.

A. To answer your question, yes.

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1 (Defendant's Exhibit No. 9 was marked
2 for identification.)

3 Q. Would you take a minute to read it
4 and let me know if you see anything that's
5 incorrect?

6 A. Nothing jumps out as being incorrect.

7 Q. Thank you. Would you please look at
8 paragraph nine, which is on pages two and three?

9 A. (Witness complies).

10 Q. And read for me the last sentence in
11 paragraph nine.

12 MR. GABER: I think it's one
13 sentence.

14 A. I am committed to actively
15 participating in the lawsuit, and I understand
16 and accept the responsibility that comes with
17 seeking to represent this class.

18 Q. Thank you. Can you tell me what you
19 mean by actively -- committed to actively
20 participating in the lawsuit?

21 A. So my definition is being engaged
22 with my lawyers, keeping them abreast of what's
23 going on, whenever they are asking for

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1 A. Being a -- just the face of the
2 movement. There is going to be some possible
3 exposure of me, possibly, I'm assuming, and take
4 in mind I'm just assuming, might appear in news
5 or newspaper, might be some interviews from
6 reporters. And in my current role, I have a very
7 high profile position in my organization, and so
8 it's -- there might be some blow back from that.
9 However, if it comes, then it comes. So that's
10 what I mean, and that's what I take from that
11 statement.

12 Q. Okay. Can you tell me what your
13 educational background is?

14 A. I have a high school diploma from
15 Central -- Central -- high school from Central
16 East in Tuscaloosa, Alabama. I have an
17 associate's degree from Shelton State Community
18 College. I have a bachelor's degree from the
19 University of Alabama in Tuscaloosa, Roll Tide,
20 and I recently -- I have a certification from the
21 HRCI, which is a PHR, which is Professional Human
22 Resources. So I'm an HR professional by trade.

23 MS. MESSICK: We're about to get into

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1 information from me, providing that information
2 in a timely manner, being as flexible as I can
3 with my work schedule to meet them, whether it's
4 in person or over the phone.

5 Naturally, this deposition, showing
6 up. You know, I had to take time off work, which
7 is fine, because this is important to me. So
8 just basically being engaged in this process.
9 That's what I mean by it, and just kind of
10 keeping the information going both ways.
11 Checking in with them. They are checking in with
12 me, just kind of preparing for our court date
13 next year, if we ever get there.

14 Q. You're talking about the trial?

15 A. Yes.

16 Q. And if there is a trial and your
17 lawyers want you to testify, you'll be there?

18 A. Absolutely.

19 Q. The second part of that last sentence
20 said that you understand and accept the
21 responsibility that comes with seeking to
22 represent the class. Can you tell me what you
23 understand the responsibility to be?

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1 another topic that I think is going to take a
2 while, and it's high noon. So I suggest we take
3 a lunch break, if everybody is agreeable to that.

4 MR. GABER: That's fine.

5 MS. MESSICK: Let's go off the
6 record.

7 VIDEOGRAPHER: We're going off the
8 record at 11:59 a.m.

9 (Whereupon, a lunch recess was
10 taken.)

11 VIDEOGRAPHER: This begins disk
12 number two in the deposition of Darius Gamble.
13 We are back on the record at 1:20 p.m.

14 Q. (By Ms. Messick) Good afternoon, Mr.
15 Gamble. Before we took a break for lunch, you
16 were saying that you're an HR professional.
17 Where do you work?

18 A. I'm employed with Spire, formerly
19 Alagasco.

20 Q. And how long have you been employed
21 there?

22 A. It will be eight years in August,
23 August 20th this year.

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1 Q. Where did you work before that?

2 A. How far do you want me to go back?

3 Q. I just want to get back to prison. I
4 understood you were released in 2009. So it
5 sounded like there was some time between when you
6 were released and when you started with Spire?

7 A. Okay. So released in 2009, I think
8 July, if I remember correctly. From there my
9 first opportunity came at Collegiate Admissions
10 Retention Solutions. It's C.A.R.S. for short,
11 C-A-R-S. From there, I worked there for, I
12 think, a year, year and a half -- no. I take
13 that back. I worked there roughly for about four
14 years, but I worked there exclusively for about a
15 year and a half before I applied to Alagasco, got
16 that job, that opportunity, and I became
17 full-time at Alagasco. And then full-time is
18 8:00 to 5:00, and then I was still working at
19 C.A.R.S. from 6:00 to 10:00 and then on weekends.
20 So I've been employed in a nutshell -- three
21 months after release I've been employed ever
22 since.

23 Q. When did you start making payments on

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1 Q. Okay.

2 A. In order to try to get my life back
3 in order.

4 Q. What is the SAP certificate?

5 A. Substance abuse program.

6 Q. Okay. So you were required to
7 complete that, and when you did --

8 A. Yeah, I was court ordered SAP, yes.

9 MS. MESSICK: Okay. I don't want to
10 trip over myself about what we're going to call
11 -- what do we want to call the money, the fifty
12 thousand dollars he was ordered to pay?

13 MR. GABER: It's not restitution.
14 It's a --

15 A. It's a fine. That's what's in the
16 paperwork.

17 MR. GABER: A fine.

18 A. They call it a fine. A fifty
19 thousand dollars fine is attached to it.

20 Q. Do you remember how much you made
21 when you started at C.A.R.S.?

22 A. Absolutely. I was making ten dollars
23 an hour.

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1 your court ordered costs?

2 A. Got out in July. August.

3 Q. So August?

4 A. August of 2009. I think that's the
5 release date. So the next -- as a matter of
6 fact, it could have been in -- as a matter of
7 fact, it was in July for the simple fact that
8 once I was released, I had to go to Shelby County
9 and report to them. I first had to show them my
10 SAP certificate, which is -- it counted as a
11 payment of a thousand dollars towards my
12 restitution and/or fees.

13 From there, I had to register, and I
14 think I had to pay fifty dollars at that time.
15 Then the CRO and all the drug screens. So it was
16 pretty much immediately, not to include all of
17 the other expenses as far as like -- excuse me --
18 getting my driver's license back, because they
19 were suspended. So that was like three fifty.
20 So it was pretty much from day -- you know,
21 within a week of being released from prison, I
22 was making some type of payment towards either
23 the fines or something related to the case.

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1 Q. And were you working full-time with
2 them before you started working at Alagasco?

3 A. When you say with them, who are you
4 referring to?

5 Q. With C.A.R.S.

6 A. I was in prison. So that was my
7 first opportunity outside of prison. And yes, I
8 was working full-time with C.A.R.S..

9 Q. Okay. When you started with
10 C.A.R.S., it was full-time?

11 A. Yes.

12 Q. Okay. Do you remember -- can you
13 tell me approximately how much you were paying on
14 your fine the first year that you were working at
15 C.A.R.S.?

16 A. Fifty dollars a month.

17 Q. Who decides how much you pay every
18 month?

19 A. That would be either a combination of
20 the clerk's office at Shelby County or the state.

21 Q. What was your starting salary at
22 Alagasco?

23 A. Thirty thousand and ninety-four

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1 dollars per year.

2 Q. And that was a raise, right?

3 A. A raise in comparison to?

4 Q. In comparison to C.A.R.S.?

5 A. I don't know what it breaks down to
6 hourly. So if you can do the math --

7 Q. Well, I think ten dollars an hour is
8 approximately twenty thousand a year.

9 A. Okay. Well, if that's the case, then
10 I took advantage of an opportunity to better
11 myself and better my family at the time. So yes.

12 Q. Okay. In 2011 --

13 A. Can I amend that answer?

14 Q. Yes.

15 A. Okay. So in regards to dollars, yes,
16 it might have -- it might look like a raise.
17 However, with C.A.R.S., I did not have any type
18 of insurance. So I was just flat ten dollars.
19 With this, now I have the opportunity to provide
20 for my family as far as medical, dental, vision,
21 all of the insurances that come along with a
22 major employer like Alagasco. So although I'm
23 making more in compensation, I'm being deducted

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1 So it was always something going out.

2 And then whenever I would go and report to my
3 parole officer, there was a -- I think it was
4 either twenty-five or thirty. I know it went up
5 while -- the five years I was on probation. So
6 it wasn't like I was just exclusively dedicated
7 to paying just the fine. There were other things
8 that were always attached with this conviction
9 that I had to pay also.

10 Q. Right now --

11 A. Even just to register, there was like
12 a hundred and twenty dollars, hundred and fifty
13 dollars here, hundred, just to register for the
14 CRO. So, I mean, it was just always some type of
15 fine. And I was kind of overwhelmed at first for
16 the simple fact, I'm like, I am really just out
17 of prison, and here it is I have to come up with
18 a minimum of seven hundred dollars to even try to
19 get my life on track, because it was three fifty
20 just for the license alone.

21 And next thing you know, my parole
22 officer, when I registered, Hey, you know you've
23 got to pay this fifty dollars. You've got pay

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1 more now, because at the time I was married, so
2 I'm having family insurance, medical, vision,
3 dental. So on dollars, yeah, it might have
4 looked like a raise. But as far as take home
5 pay, no. That's why I kept the part-time job.

6 Q. Okay. And when you were working at
7 Alagasco and at C.A.R.S. both --

8 A. Yes.

9 Q. -- what was your average monthly
10 payment? Just give me an idea of if it stayed
11 about the fifty dollars or changed.

12 A. It stayed at the fifty dollars,
13 because that was in the court order, and I was
14 just following the court orders. Besides, I had
15 other expenses that had to deal with the courts
16 for the simple fact I wasn't just paying for on
17 the fifty dollar -- fifty thousand dollar fine.
18 I was also involved in CRO, which I had to report
19 weekly, and then whenever my color code came up,
20 it was twenty-five dollars for each pee test or
21 piss test, I should say. So whenever that came
22 up, that was another twenty-five. It can come up
23 weekly. It can come up sometimes twice a week.

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1 here. You've got to pay there. You've got to
2 register for this. Now you've got your piss cup.
3 So it was just something on top of another. So
4 don't -- take in mind that it wasn't just fifty
5 dollars going towards -- that was in addition to
6 other expenses.

7 Q. Okay. Thank you. At the present --

8 A. Yes.

9 Q. -- is the only thing that you're
10 needing to pay is toward the fine?

11 A. What do you mean? What expenses are
12 you counting?

13 Q. All the other things that you're
14 talking about that you had to deal with when you
15 first got out, that's all handled and done, and
16 there's no more, right?

17 A. That's correct.

18 MR. GABER: Object to form.

19 Q. What are you currently paying per
20 month?

21 A. So I'm currently paying twenty-five,
22 and that was negotiated with the good folks at
23 Shelby County at the clerk's office and/or

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1 representative of the state for the simple fact
2 that once the thirty percent collection fee was
3 applied to the fifty thousand dollars, it was
4 turned over to a different division. I think
5 criminal division of Shelby County, because
6 that's who I make the money orders out to.

7 So they reached out to me. They
8 called me and said, Hey, Mr. Gamble, we're now in
9 charge of collecting this fee. It's now -- I
10 think it was sixty-four thousand at the time.
11 How much can you pay? And I was like -- at this
12 point in time, I'm thinking, This is my -- and I
13 call it my stay-out-of-jail-free fee, because
14 that's what it feels like, because I don't know
15 the consequences of me not paying that fee, what
16 actually happens with a fine.

17 So in a sense, it feels like I am
18 literally trying to empty the Pacific ocean with
19 a bucket, because no matter if I pay fifty
20 dollars or a hundred dollars, that amount is not
21 moving anywhere. It's moving. Yeah, it looks
22 like it's moving, but it's not going anywhere.
23 I've did the math, and I said, Okay, say, Darius,

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1 There's nothing I can do about it, nothing that
2 anyone could have done about it. It
3 automatically hit thirty percent. That's higher
4 than -- according to Payday loan rates. I think
5 the Payday loan rate is, what, twenty-nine
6 percent? This is at thirty percent. This is
7 coming from the State of Alabama on a fifty
8 thousand dollar fine. So why they put that
9 language in there, I have no idea. But there is
10 nothing that anyone could do about it. Thirty
11 percent.

12 Q. Did you ever get behind on your
13 payments?

14 A. No. Once again, I paid -- when I
15 initially went to the clerk's office, they guided
16 me or they gave me some information to repay, if
17 not monthly, don't let get it get ninety days
18 behind. So being that I was gainfully employed,
19 I made the payments. Like I say, I was in fear
20 of -- I did not want to fall behind. If there
21 was a issue, a warrant while I was either on
22 probation or off probation now, you know, issued
23 for my arrest, and the next thing you know, I'm

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1 you really want to vote. You know, let's say
2 hypothetically you bump it up to a hundred
3 dollars a month. So that's twelve hundred
4 dollars a year, right? It's still sixty-three
5 thousand dollars. The time I would be able to
6 zero that balance out, I would be ninety-four. I
7 am forty-two right now. This body, I don't
8 think, has an additional fifty plus years in it
9 in order to be eligible to vote.

10 So now I'm only paying twenty-five
11 dollars, because, guess what, it was negotiated
12 with the clerk's office to say, Hey, how much can
13 you pay towards this fine.

14 Q. What is your understanding of why the
15 D.A. collection fee was added?

16 A. It was written into the plea
17 agreement. It was just a thirty percent
18 collection fee. It had no rhyme or reason behind
19 it. It was automatically going to be triggered
20 from the date in which either I was sentenced or
21 released. It was five years automatic from that.
22 You're squinting as though you haven't read the
23 plea order. Just read it. It's automatic.

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1 behind bars until I get -- until I pay this now
2 sixty-three thousand dollar fine.

3 And, obviously, if I'm making
4 payments on it, I'm thinking I'm free and clear.
5 But, however, I will say this: If I can make
6 payments on it, you know, while I'm free, there's
7 no way I can make payments if I'm locked up. So,
8 therefore, I have a good payment as far as
9 mailing in those money orders faithfully to
10 Shelby County, I think it's criminal division,
11 each month, and I'm pretty sure you have that
12 record; or if not, I can give you copies in which
13 I've made for as far as the money order receipts.

14 Q. Thank you. What is your current
15 salary?

16 A. My current salary is sixty-eight
17 thousand one hundred gross.

18 Q. I understand from your declaration
19 you were promoted recently?

20 A. Yes.

21 Q. When was that?

22 A. Oh, man. I'm going to say probably
23 about a month, month and a half ago, promoted

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1 from HR generalist to HR business partner.

2 Q. Do you have any income personally
3 other than from your job at Spire?

4 A. No.

5 Q. Are you currently married?

6 A. No. I'm divorced.

7 Q. Is there anybody living in your house
8 with you?

9 A. Currently, no.

10 Q. I understand you have some children
11 you support?

12 A. That's correct.

13 Q. Tell me about your -- I need to know
14 about your kids and how you're supporting them.
15 Start where you want.

16 A. All right. So I currently have two
17 child support orders.

18 Q. We have those if you want to start
19 with them.

20 MR. GABER: Can we take a quick
21 break?

22 MS. MESSICK: Sure.

23 VIDEOGRAPHER: We're going off the

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1 Q. And the five hundred dollars a month
2 that's listed on here, is that the current amount
3 that you're paying?

4 A. Correct.

5 (Defendant's Exhibit No. 11 was
6 marked for identification.)

7 Q. I would ask you to look at
8 Defendant's Exhibit 11. Is this another child
9 support order?

10 A. Correct.

11 Q. And this is a different child, right?

12 A. Correct.

13 Q. In the amount of four thirty-six. Is
14 that current, what you're paying?

15 A. Yes.

16 Q. Do you have child support orders on
17 any other children that you're paying?

18 A. No.

19 Q. Do you have other children?

20 A. Yes.

21 Q. How old is that child?

22 A. Twenty-five.

23 Q. Is she in college?

Page 62

1 record at 1:37 p.m.

2 (Whereupon, a brief recess was
3 taken.)

4 VIDEOGRAPHER: Going back on the
5 record at 1:41 p.m.

6 (Defendant's Exhibit No. 10 was
7 marked for identification.)

8 Q. (By Ms. Messick) I'm handing you what
9 I've marked as Defendant's Exhibit 10. Do you
10 recognize this document?

11 A. Yes.

12 Q. Can you tell me what it is?

13 A. Income withholding for support order
14 with the case of -- with Nakeisha Breeding in
15 which we agreed to pay her directly from bank
16 account to bank account versus going through the
17 employer and withholding.

18 Q. This is child support for one of your
19 children?

20 A. Correct.

21 Q. And you said this payment is not
22 going through your employer?

23 A. Correct.

Page 64

1 A. That one -- the twenty-five-year-old,
2 no, but the twenty-three-year-old, yes.

3 Q. So you have a total of four children?

4 A. Yes.

5 Q. Do you provide any support to the
6 twenty-three-year-old?

7 A. Yeah, plenty. She's in college.

8 (Defendant's Exhibit No. 12 was
9 marked for identification.)

10 Q. I want to show you Defendant's
11 Exhibit 12. Can you tell me what this document
12 is?

13 A. This is a check made for rent.

14 Q. Is this paying rent for one of your
15 children?

16 A. Yes.

17 Q. Is that the twenty-three-year-old?

18 A. Yes.

19 Q. How often do you pay her rent?

20 A. Pretty much every month, monthly.

21 Q. And this amount of five hundred and
22 ninety, that's what it usually is?

23 A. No. The rent is five ninety.

Page 65

1 However, utilities are included. So it's an
2 additional two hundred dollars or right at two
3 hundred dollars.

4 Q. So you're saying you pay the five
5 ninety rent, and you pay her utilities?

6 A. Yes.

7 Q. Are you paying for a car for her?

8 A. No.

9 Q. Do you routinely pay expenses for
10 your twenty-five-year-old?

11 A. Yes.

12 Q. What expenses -- is that a girl or a
13 boy?

14 A. It's a guy, a male.

15 Q. What expenses do you routinely pay
16 for him?

17 A. Rent and/or tuition assistance.

18 Q. How much is the rent usually when you
19 pay it for him?

20 A. It's -- I can't recall. I'd have to
21 look.

22 (Whereupon, a discussion off the
23 record was held.)

Page 67

1 A. No.

2 Q. Okay. So what is this document?

3 A. This is payments related to my
4 daughter.

5 Q. The twenty-three-year-old?

6 A. Yes.

7 Q. Okay. What is this?

8 A. Summer tuition.

9 Q. The -- kind of in the middle of the
10 document it says a credit card payment of four
11 twenty-five. Is that how much you paid?

12 A. Yes.

13 Q. Is this a one-time thing?

14 A. It's a one-time for the summer,
15 depends if she wants to go back next summer, so
16 it might be ongoing. It just all depends. I'm
17 just trying to get her out of school, whatever
18 that takes.

19 Q. As far as housing, are you buying or
20 renting?

21 A. I have a mortgage.

22 Q. When did you buy your house?

23 A. I'm going to say 20 -- I think -- 14

Page 66

1 VIDEOGRAPHER: Going off the record
2 at 1:47 p.m.

3 (Whereupon, a brief recess was
4 taken.)

5 Q. (By Ms. Messick) Okay. Before the
6 power went out and we went to an all court
7 reporter deposition, I believe you said you don't
8 remember how much the rent is that you sometimes
9 pay for your son; is that right?

10 A. That's correct.

11 Q. And you said you also sometimes
12 provide tuition assistance?

13 A. Yeah. So we have -- I'm trying to
14 encourage him to go back to school or to finish
15 his degree, I should say. And so we kind of made
16 a deal in which I would either pay his -- I
17 either assist him with his tuition, books, fees,
18 whatever that is, or and/or his rent.

19 (Defendant's Exhibit No. 13 was
20 marked for identification.)

21 Q. I'm going to show you Defendant's
22 Exhibit 13 and ask you if that is related to
23 payments for your son?

Page 68

1 or 15.

2 Q. How much did you agree to pay for
3 your house?

4 A. One, I think, fifty-four seven. I'm
5 not sure about the details, the numbers.

6 Q. Did you make a down payment?

7 A. I can't recall.

8 (Defendant's Exhibit No. 14 was
9 marked for identification.)

10 Q. Is that your house on Defendant's
11 Exhibit 14?

12 A. Yes.

13 (Defendant's Exhibit No. 15 was
14 marked for identification.)

15 Q. Let me show you Defendant's Exhibit
16 15. A colleague pulled this off of the Jefferson
17 County website this morning, and it says that the
18 sale was in February 2014 for a purchase price of
19 one fifty-three five. Does that sound correct?

20 A. Yes.

21 Q. And how much is your monthly mortgage
22 payment?

23 A. Roughly eleven hundred a month.

Page 69

1 (Defendant's Exhibit No. 16 was
2 marked for identification.)

3 Q. Let me show you Defendant's Exhibit
4 16 for one thousand forty-two dollars ninety-six
5 cents. Is that -- does that look like your usual
6 payment?

7 A. No.

8 Q. Okay. Has it gone up?

9 A. No. I pay an additional towards the
10 principal each month, so that's why it's roughly
11 eleven hundred.

12 Q. Okay. Thank you.

13 (Defendant's Exhibit No. 17 was
14 marked for identification.)

15 Q. I'm showing you Defendant's Exhibit
16 17. Can you tell me what this is, please?

17 A. This is a summary of my 401(k), and
18 specifically a loan in which I'm taking out of
19 twenty-five hundred dollars for eighteen months
20 from my 401(k).

21 Q. Was Spire at one time an energy --
22 Energen Company?

23 A. Yes.

Page 71

1 doing two. Is that the way yours works?

2 A. No.

3 Q. Okay. Well, let's --

4 A. It depends on several factors. So it
5 depends if I have accumulated any expenses, like
6 let's say I'm based out of Birmingham, but my
7 position requires me to travel. The company
8 doesn't provide me a company car. So I have to
9 record mileage, and they reimburse me for
10 mileage. So there might be mileage on there.
11 Like these two particular pay stubs, they do not
12 include the loan from the 401(k). So that would
13 be something that will vary. The terms of that,
14 a loan in which I have to pay back, so it would
15 be like minus an additional fifty dollars or
16 whatever those terms are.

17 Q. Okay. Both of these pay stubs show
18 that your money -- your paycheck goes into three
19 different -- three different checking accounts
20 and a savings account?

21 A. Yes.

22 Q. Are all of those your accounts?

23 A. Yes.

Page 70

1 Q. How often do you get paid?

2 A. Biweekly.

3 Q. I'm sorry. I wanted to use the last
4 two pay stubs, but apparently I don't have enough
5 copies for --

6 (Defendant's Exhibit No. 18-19 were
7 marked for identification.)

8 Q. Okay. I'm going to hand you
9 Defendant's Exhibit 18 and also Defendant's
10 Exhibit 19. Can you tell me what these are?

11 A. Pay stubs.

12 Q. And it looks like your pay varies a
13 little bit between pay periods?

14 A. Yes.

15 Q. If we pulled more of these out, would
16 we find out that it fluctuates between two
17 numbers generally?

18 A. What do you mean by two numbers?

19 Q. Like I get paid twice a month, and
20 every -- at the middle of the month -- my
21 paycheck is same at every middle, and it's the
22 same at every end, but the end and the middle
23 aren't the same. Are you -- and that's why I was

Page 72

1 Q. Do you know what the balance is on
2 your savings account?

3 A. What -- the savings account? So this
4 is with First Resource Credit Union. This
5 hundred and seventy dollar payment is -- well,
6 it's the -- the direct deposit is actually a loan
7 payment. I did a consolidation loan with them,
8 and I think the loan payment is like one
9 fifty-eight. So towards the one seventy, most of
10 that is going toward a consolidation loan. So to
11 answer your question, the -- as I checked it this
12 morning, it was thirty-five dollars in savings.

13 Q. Okay. Thank you. And then are you
14 also making voluntary contributions to United
15 Way?

16 A. Yes.

17 (Defendant's Exhibit No. 20 was
18 marked for identification.)

19 Q. I'm going to hand you Defendant's
20 Exhibit 20 and ask if you can tell me what this
21 is.

22 A. This is the savings account in which
23 was -- I just mentioned. This is payments

Page 73

1 towards the consolidation loan. As you can see,
2 a hundred and seventy dollars -- well, you don't
3 see it, but a hundred and seventy dollars is
4 going in, into the account, and then it's broken
5 down into the amount of the payment that's coming
6 from savings to the actual consolidation loan.

7 Q. And so your balance on that loan is
8 approximately thirteen thousand five hundred
9 dollars as of some time last month?

10 A. Yeah. Last month, correct.

11 Q. And then you also have substantial
12 credit card balances; is that right?

13 A. Yes.

14 Q. Can you tell me offhand how many
15 credit cards you have?

16 A. Are you talking about department
17 store cards or just major credit cards?

18 Q. Major credit cards.

19 A. I have an American Express, Discover,
20 Visa Chase, so three.

21 (Whereupon, a discussion off the
22 record was held.)

23 Q. Do you have a car?

Page 75

1 twenty-five hundred dollar 401(k) loan?

2 A. At that particular time, that was the
3 only option in order to make ends meet. What
4 hasn't been disclosed is there was some
5 additional expenses that I incur each month, not
6 only helping out my two older kids and also
7 providing additional -- in addition to the child
8 support for the two younger, I provide a lot of
9 support. When I say a lot, I pay the utility
10 bills for my mother. So whether it's Alabama
11 Power, Spire gas, water, cable, whatever is
12 needed, I take care of -- in a sense, take care
13 of two households. And at that particular month,
14 the thing -- I just needed a little assistance,
15 and rather than go and get a loan with a
16 traditional bank or anything, my 401(k) was just
17 sitting right there, and I said, Okay, that's an
18 option for me.

19 MR. GABER: Thank you. I don't have
20 any further questions.

21 RE-EXAMINATION

22 BY MS. MESSICK:

23 Q. How much is in your 401(k)?

Page 74

1 A. Yes.

2 Q. How many cars do you have?

3 A. Two.

4 Q. What is one of them?

5 A. 2002 Acura TL.

6 Q. And what is the other one?

7 A. 2004 Honda Civic EX.

8 Q. Is somebody other than you the
9 primary driver of either one of those cars?

10 A. No, not now, no.

11 Q. Have any other adults lived with you
12 at your home this year?

13 A. No.

14 MS. MESSICK: Okay. We're done.

15 MR. GABER: All right. We'll chat
16 for a second.

17 MS. LANG: We'll chat for a moment.

18 (Whereupon, a brief recess was
19 taken.)

20 EXAMINATION

21 BY MR. GABER:

22 Q. Mr. Gamble, why did you take out the
23

Page 76

1 A. I can't recall right off. I can't
2 recall right off.

3 Q. Do you get statements that would have
4 that information?

5 A. Do I get statements? Statements are
6 available, but I do not receive them.

7 Q. Is that something you could go online
8 and get?

9 A. Yes.

10 MS. MESSICK: I don't have anything
11 else.

12 MR. GABER: Thank you.

13 THE REPORTER: Do you need a copy?

14 MR. GABER: Yeah, we'll take one.
15 And we need to get one for him to sign.

16
17 (Whereupon, the deposition was
18 concluded at 2:26 p.m.)

19
20 FURTHER DEPONENT SAITH NOT
21
22
23

Page 77

1 CERTIFICATE

2
3 STATE OF ALABAMA)
4 JEFFERSON COUNTY)
56 I HEREBY CERTIFY that the above
7 and foregoing transcript was taken down by me in
8 stenotype, and the questions and answers thereto
9 were transcribed by means of computer-aided
10 transcription, and that the foregoing represents
11 a true and correct transcript of the testimony
12 given by said witness.13 I FURTHER CERTIFY that I am
14 neither of counsel, nor of any relation to the
15 parties to the action, nor am I anywise
16 interested in the result of said cause.
1718
19 /s/Tanya D. Cornelius
20 TANYA D. CORNELIUS
21 CCR No. 378
22 Notary Expires 9/13/18
23

January 12, 2018

BY CERTIFIED MAIL

DARIUS GAMBLE

GARDENDALE AL 35071

Re: Notice of Non-qualification to Register to Vote

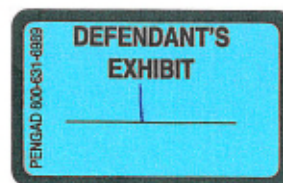
Dear DARIUS GAMBLE:

The Jefferson County Board of Registrars is informed that you have previously been convicted of a felony involving moral turpitude which renders you unqualified to register to vote pursuant to Section 17-3-54, Code of Alabama, as amended.

Pursuant to Section 17-3-55, Alabama Code, persons to whom registration is denied shall have the right of appeal to the Probate Court of Jefferson County. If you wish to appeal, you have thirty (30) days from the date of this letter to submit your written appeal to the Jefferson County Probate Court.

Sincerely,

Barry Stephenson
Chairman



D054883

JEFFERSON COUNTY COMMISSION



JAMES A. "JIMMIE" STEPHENS – PRESIDENT
GEORGE F. BOWMAN
SANDRA LITTLE BROWN – PRESIDENT PRO TEMPORE
DAVID CARRINGTON
T. JOE KNIGHT

Reporting Authority
WALTER F. JACKSON, Chief Deputy County Manager

COMMISSIONER T. JOE KNIGHT
Chairman, Judicial Administration,
Emergency Management & Land
Planning Committee

Office of
Board of Registrars
BARRY STEPHENSON, Chairman
Suite A-410
716 Richard Arrington, Jr. Blvd. N.
Birmingham, Alabama 35203
Telephone (205) 325-5550

January 12, 2018

CONFIDENTIAL

BY CERTIFIED MAIL

DARIUS GAMBLE

GARDENDALE AL 35071

Re: Notice of Non-qualification to Register to Vote

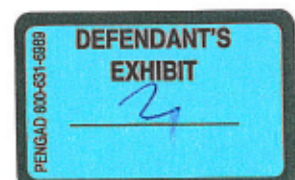
Dear DARIUS GAMBLE:

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Sincerely,

Barry Stephenson
Chairman



JEFFERSON COUNTY COMMISSION



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Office of
Board of Registrars
BARRY STEPHENSON, Chairman
Suite A-410
716 Richard Arrington, Jr. Blvd. N.
Birmingham, Alabama 35203
Telephone (205) 325-5550

January 12, 2018

BY CERTIFIED MAIL

DARIUS LABRELLE GAMBLE

GARDENDALE AL 35071

CONFIDENTIAL

Re: Notice of Non-qualification to Register to Vote

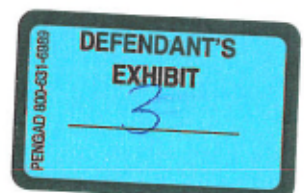
Dear DARIUS LABRELLE GAMBLE:

The Jefferson County Board of Registrars is informed that you have previously been convicted of a felony involving moral turpitude which renders you unqualified to register to vote pursuant to Section 17-3-54, Code of Alabama, as amended.

Pursuant to Section 17-3-55, Alabama Code, persons to whom registration is denied shall have the right of appeal to the Probate Court of Jefferson County. If you wish to appeal, you have thirty (30) days from the date of this letter to submit your written appeal to the Jefferson County Probate Court.

Sincerely,

Barry Stephenson
Chairman



**BOARD OF REGISTRARS**

Frank (Butch) Ellis
Community Service Building
108 West College Street, Suite 100
Columbiana, AL 35051

BOARD MEMBERS

Carol Hill, Chairman
Mary Sue Ludwig
Ginger Pitts

Heidee Vansant, Chief Clerk
Post Office Box 1642
Columbiana, AL 35051
Phone (205) 669-3913
Fax (205) 669-3986

March 2, 2010

7007 0710 0000 0852 2933

DARIUS LABRELLE GAMBLE

Voter# [REDACTED]

PELHAM, AL 35124

Re: Removal from Voter List due to Felony Conviction

Dear Mr. Gamble,

In accordance with Section 17-4-4, Code of Alabama, as amended, the Circuit Clerk has notified the Shelby County Board of Registrars that you have been convicted of a felony which disqualifies you from voting under Amendment 579 of the Constitution of Alabama. Section 17-4-3 requires that you be notified by certified mail that the Board of Registrars will strike your name from the list of registered voters.

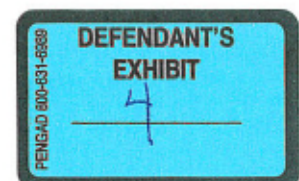
Section 17-4-3 also provides that any person whose name is stricken from this list may appeal the decision of the Board of Registrars, without giving security for costs, and a trial by jury may be had. If you wish to appeal this decision, please provide official documentation to this office as to why you feel this action to be incorrect. You have 30 days from the date of this letter to submit your formal appeal request to the Shelby County Board of Registrars. In the event that you appeal, your voting rights will be restored during the appeal process, pending final resolution. Your voting rights may also be restored should you provide official, documented proof of the restoration of your voting rights by the Board of Pardons and Paroles.

Sincerely,

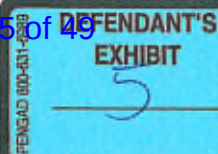
Carol H. Hill, Chairman
Shelby Co. Board of Registrars

SHELBY COUNTY!

The fastest Growing



D054954



Case Action Summary-Continuation

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA
STATE OF ALABAMA v. DARIUS LABRELLE GAMBLE

FELONY PLEA AGREEMENT
CASE NO. CC 06-1468

COMES NOW the Defendant having been advised of all relevant procedural, substantive, and constitutional rights, with counsel, and the State, to present for ratification this voluntary Plea Agreement. The Defendant waives any attorney conflict. The Defendant will **PLEAD GUILTY** to the Class A felony of **TRAFFICKING IN CANNABIS**, a violation of Ala. Code §13A-12-231(1)(a), as charged, embraced, or amended in Count I of the Information or Indictment. This is a **BEST INTEREST PLEA** with a **FACTUAL BASIS**.

The **PARTIES** stipulate the following basis for this plea: Complete discovery is believed to have been made and no sufficiently exculpatory evidence exists. The Defendant has **NO** prior adult felony conviction(s). Ala. Code §13A-5-6(a)(4) is not applicable. Each party has received a copy of this Agreement. Sentencing shall be set at the plea. A Pre-Sentence Report is waived.

The **STATE** will recommend a Sentence of **TEN (10) YEAR(S)** to be **SPLIT** with **THREE (3) YEAR(S) TO SERVE** in the **Alabama Penitentiary**. The remainder of this sentence is **SUSPENDED** for **FIVE (5) Years** on **PROBATION SUPERVISED** by the State Probation Office. Jail credit of days, as stipulated by the parties, shall be deducted from the split portion of this sentence. The Defendant shall report to the State Probation Office in Shelby County within two (2) business days of release from incarceration, cooperate fully therewith, abide by its rules and regulations, and pay a monthly supervision fee.

This Sentence shall run **concurrently** with all cases pled this date, all pending cases, and all other cases in which the Defendant has any sentence.

The Defendant **ACCEPTS** the State's recommended sentence.

The Defendant will also be **SENTENCED** to fulfill the following as **SPECIAL CONDITIONS** of this Sentence, and/or Community Corrections, Probation, Parole, Work Release, SIR, or other program. **The Defendant Shall:**

- (x) Obey all laws and ordinances. Avoid all contact with illegal drugs and submit to and pass **random drug screens** and **alcohol screens**, as directed by any Probation, Work Release, CRO, or other such officer.
- (x) Pay all **Court Costs**, all **Medical Expenses** incurred in jail, **\$50.00 to the Crime Victims' Compensation Fund**, and a **Fine of \$50,000.00**. Pay all Court-Ordered monies in the Order given to the Court Clerk as directed by any Probation, Parole, Work Release, SIR, or other such Officer, but no later than **February 11, 2016**. Pursuant to Ala. Code §12-17-225, a **30% Collection Fee** shall be added to any amount unpaid after 90 days from this date and the District Attorney shall pursue collection.
- (x) Report immediately to the Court Referral Officer (or equivalent official if incarcerated) and pay **\$50 CRO fee**. Successfully complete a Substance Abuse Treatment Program as directed by any Probation, Community Corrections, Parole, Work Release, SIR, CRO or other such officer, pay **\$100** to the Forensic Science Trust Fund, pay an additional fee of **\$1,000** (to be suspended when proof of successful completion of a Substance Abuse Program is filed with the Court Clerk), and **surrender any Driver's License for suspension** by the Department of Public Safety.
- (x) Report immediately to Alabama Department of Corrections, enroll in, cooperate fully with, and successfully complete a **Substance Abuse Treatment Assessment** and any **Substance Abuse Treatment Program** recommended by such assessment. Defendant must provide proof of completion of the assessment and treatment program to the Clerk of Court.
- (x) Defendant reserves the right to appeal regarding suppression issue held before the Court on February 4, 2008.

Date: 02/11/08

[Signature]
District Attorney

[Signature]
Defendant

[Signature]
Attorney for Defendant

Acknowledged: 02/11/08

[Signature]
G. DAN REEVES, CIRCUIT JUDGE

D054919

CONFIDENTIAL INFORMATION

ACRO370 ALABAMA JUDICIAL INFORMATION SYSTEM CASE: CC 2006 001468.00
 OPER: COH CASE ACTION SUMMARY
 PAGE: 1 CIRCUIT CRIMINAL RUN DATE: 12/07/2006
 IN THE CIRCUIT COURT OF SHELBY JUDGE: GDR

STATE OF ALABAMA

VS

GAMBLE DARIUS L

CASE: CC 2006 001468.00

PELHAM, AL 35124 5736

DOB: [REDACTED] SEX: M RACE: B HT: 5 10 WT: 185 HR: BLK EYES: BRO
 SSN: [REDACTED] ALIAS NAMES:

CHARGE01: TRAFFICKING-MARIJUAN CODE01: TRMA LIT: TRAFFICKING-MA TYP: F #: 001
 OFFENSE DATE: AGENCY/OFFICER: [REDACTED]

DATE WAR/CAP ISS: DATE ARRESTED: 05/23/2006
 DATE INDICTED: 11/15/2006 DATE FILED: 12/07/2006
 DATE RELEASED: 06/08/2006 DATE HEARING:
 BOND AMOUNT: \$1,000,000.00 SURETIES: ALTERNATIVE JUSTICE

DATE 1: 01/29/2007 DESC: ARRG TIME: 0900 A
 DATE 2: DESC: TIME: 0000

TRACKING NOS: GJ 2006 110116 00 / DC 2006 002038 00 /

DEF/ATY: ARMSTRONG RALPH L
 1818 3RD AVE NORTH

TYPE: R

TYPE:

BESSEMER

AL 35020

00000

PROSECUTOR:

OTH CSE: GJ200611011600 CHK/TICKET NO: GRAND JURY:
 COURT REPORTER: SID NO: 0000000000
 DEF STATUS: BOND DEMAND: OPER: COH

TRANS DATE	ACTIONS, JUDGEMENTS, AND NOTES	OPE
12/07/2006	ASSIGNED TO: (GDR) (AR01)	COH
12/07/2006	INITIAL STATUS SET TO: "B" - BOND (AR01)	COH
12/07/2006	FILED ON: 12/07/2006 (AR01)	COH
12/07/2006	DEFENDANT ARRESTED ON: 05/23/2006 (AR01)	COH
12/07/2006	DEFENDANT INDICTED ON: 11/15/2006 (AR01)	COH
12/07/2006	ATTORNEY FOR DEFENDANT: ARMSTRONG RALPH L (AR01)	COH
12/07/2006	BOND SET AT: \$1000000.00 (AR01)	COH
12/07/2006	SURETY ADDED: ALTERNATIVE JUSTICE BAIL (AR01)	COH
12/07/2006	DEFENDANT RELEASED FROM JAIL: 06/08/2006 (AR01)	COH
12/07/2006	SET FOR: ARRAIGNMENT ON 01/29/2007 AT 0900A (AR01)	COH
12/07/2006	CHARGE 01: TRAFFICKING-MAR/#CNTS: 001 (AR01)	COH
12/07/2006	CASE ACTION SUMMARY PRINTED (AR08)	COH
11/26-07	Def's mot to suppress is set for hearing on Dec. 4, 2007 @ 9 am. Clerk to send notice. gac lkg	

DEFENDANT'S
 EXHIBIT

D054917

CONFIDENTIAL INFORMATION

IN THE District COURT OF SHELBY COUNTY, ALABAMA
STATE OF ALABAMA V. Darius LaVette CrumbleCONSOLIDATED BOND
CASE NO. 0006-2038

I, the Defendant as principal and we, the undersigned sureties agree to pay the State of Alabama \$ 100,000 and all costs incurred unless the above-named Defendant appears before the District Court of Shelby County, Alabama at 9 o'clock A M on _____ and from time to time thereafter until discharged by law or at the next session of the court of said county, there to await the action the grand jury and from session to session thereafter to answer to the charge of trafficking Marijuana or any other charge as authorized by law

We hereby severally certify that we have property over and above all debts and liabilities that has a fair market value equal to or greater than the amount of the above bond. Each of us hereby waives the benefit of all laws exempting property from levy and sale under execution or other process for the collection of debt, our rights to claim exempt our wages or salary, and our rights to homestead exemptions conferred by the Constitution and/or the Laws of the State of Alabama.

It is hereby agreed and understood that this is a consolidated bond, eliminating the necessity for multiple bonds and that it shall continue in full force and effect, unless modified by Court Order, until the Defendant is discharged by law or until the undersigned sureties are otherwise duly exonerated. This bond does not apply to any appeal. It is also agreed and understood that all of the following shall serve as specific conditions of release under this bond, the willful failure of which will cause this bond to be revoked and the sureties thereby held liable **THE DEFENDANT SHALL:**

1. Appear and answer and submit to the orders and process of any court having jurisdiction in this matter;
2. Refrain from committing any criminal offense;
3. Not depart from the State of Alabama without permission of the Court;
4. Immediately notify the Court Clerk of any change of address;
5. Initiate no contact or communication in any form with the complainant(s) and/or alleged victim(s), nor be upon their premises;
6. Make all payments to the Alabama Fair Trial Tax Fund as ordered by the Court;
- 7.

SIGNED AND SEALED, with notice that false statements made herein are punishable as perjury

Darius L. Crumble Mailing Address _____ City/St/Zip Pelham 35124
Defendant's Signature _____ Physical Address _____ City/St/Zip _____
Phone _____ Race B Sex M DOB _____ SS# _____ DL _____

Kirk Ingram Bankers Insurance Company
Kirk Ingram
Mailing Address _____ City/St/Zip _____
Surety's Signature _____ Physical Address _____ City/St/Zip _____
Phone _____ P.O. Box 71032
Tuscaloosa, AL 35407
Ph. 205-345-0733

Surety's Signature _____ Mailing Address _____ City/St/Zip _____
Phone _____ Physical Address _____ City/St/Zip _____

Surety's Signature _____ Mailing Address _____ City/St/Zip _____
Phone _____ Physical Address _____ City/St/Zip _____

APPROVED 6/8/20 OFFICER Chief Sammie SHERIFF Chris Cury
[] Property Bond [] Professional Bond [] Cash Bond [] Pre-Trial Release [] Signature/Recognizance

(CASH BOND RELEASE)

I agree that the case bond which I have posted in this case may be applied to any outstanding fines and costs. I further understand that even though the case bond may be applied, I AM STILL REQUIRED TO APPEAR IN COURT ON THE ABOVE DATE AND TIME.

DATE: 6/8/20DEFENDANT'S SIGNATURE: Darius L. Crumble

D054944

DEFENDANT'S
EXHIBIT

PENDING 800-631-6888

BAIL ONLY
POWER AMOUNT
\$105000.00

BANKERS INSURANCE COMPANY

P.O. Box 15707 • St. Petersburg, Florida 33733

POWER OF ATTORNEY

510500729 - 6

KNOW ALL MEN BY THESE PRESENTS: that Bankers Insurance Company, a corporation duly organized and existing under the laws of the State of Florida, has made pursuant to Article IV, Section 2 of the By-Laws, which was adopted by the Directors of the said company, and is now in effect, does constitute and appoint, and by these presents does make, constitute and appoint below named agent its true and lawful Attorney-In-Fact for it and in its name, place and stead, to execute, seal and deliver for and on its behalf and as its act and deed, as surety, a bail bond only. Authority of such Attorney-In-Fact is limited to appearance bonds and **cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitation, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearance.**

This Power of Attorney is for use with Bail Bonds only. Not valid if used in connection with Federal Immigration Bonds. This power void if altered or erased, void if used with other powers of this company or in combination with powers from any other surety company, void if used to furnish bail in excess of the stated face amount of this power, and can only be used once.

THE OBLIGATION OF THE COMPANY SHALL NOT EXCEED THE SUM OF THIS STATED FACE AMOUNT, AND PROVIDED THIS Power of Attorney is filed with the bond and retained as a part of the court records. The said Attorney-In-Fact is hereby authorized to insert in this Power of Attorney the name of the person on whose behalf this bond was given.

IN WITNESS WHEREOF, BANKERS INSURANCE COMPANY has caused these presents to be signed by its duly authorized officer, proper for the purpose and its corporate seal to be hereunto affixed this 8th day of JUNE 2006.

Bond Amount \$ #100,000.00 Appearance Date TBA

Defendant Darius Labrelle Gamble

S.S. [REDACTED] D.O.B. [REDACTED]

Case # _____

Court Dist

City Shelby Co State AL

Offense TRAFFIC - MARIJUANA

If Rewrite, Original # _____

Executing Agent [Signature]

BANKERS INSURANCE COMPANY

[Signature]
DAVID K. MEEHAN, President



VOID IF NOT
 DECEMBER 31, 2006

USED BY

IT IS UNLAWFUL TO PRINT THIS
 FORM WITHOUT WRITTEN
 CONSENT OF HOME OFFICE



STATE OF ALABAMA
BOARD OF PARDONS AND PAROLES

301 S. Ripley Street
P.O. Box 302405
Montgomery, Alabama 36130-2405
(334)242-8700



CLIFF WALKER
Chairman of the Board

ROBERT P. LONGSHORE
Associate Member

WILLIAM WYNNE
Associate Member

August 13, 2014

CYNTHIA S. DILLARD
Executive Director

EDDIE COOK, JR.
Assistant Executive Director

PHIL BRYANT
Assistant Executive Director

CONFIDENTIAL

DARIUS GAMBLE

GARDENDALE, AL 35071

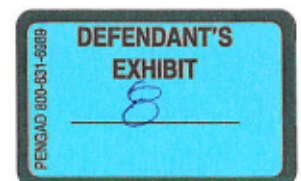
MR. GAMBLE:

Our records indicate that you have made application with the Alabama Board of Pardons and Paroles to have your "Voter Rights" restored after being convicted of a felony. In order to be eligible to have your rights restored, you must meet certain requirements. You must be off probation/parole. **You must have paid off all of your court fees, restitution and probation fees.** Your crime of conviction can not include any sexual offense or any other crime prohibited under the new legislature law Section "15-22-36.1."

After an investigation has been done in your case, it appears you are not eligible to have your "Voter Rights" restored. It was discovered that you owe \$49,341.00 in unpaid court ordered money. Once you have corrected this balance, you may call back and apply for your voting rights. If you have questions, please call 334-353-7472.

Respectfully,
Demetria B. Lewis
Pardon unit

cc: pardon unit file



IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TREVA THOMPSON, et. al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	2:16-cv-783-WKW
STATE OF ALABAMA, et. al.,	)	
	)	
Defendants.	)	

DECLARATION OF DARIUS GAMBLE

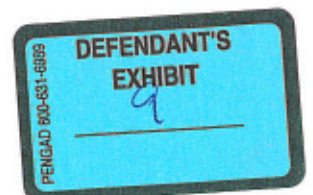
I, Darius Gamble, hereby declare as follows:

1. The testimony set forth in this Declaration is based on first-hand knowledge, about which I could and would testify competently in open Court if called upon to do so.

2. I am a black 42-year-old citizen of the United States; I reside in Gardendale, Alabama.

3. In 2008, I was convicted of trafficking marijuana. Around 2014, after I had completed my probation, I applied for a Certificate of Eligibility to Register to Vote ("CERV"). My CERV application was denied because I have outstanding fines and fees.

4. At the time of my conviction, the court imposed a \$50,000 fine. I have regularly made monthly installments of \$25 to \$50 towards my fine, but the outstanding fines have been compounded by a thirty percent collection fee.



5. As a result, I currently owe nearly \$63,000 in fines and fees. I have no outstanding restitution; my only legal financial obligations are to the State.

6. I am not financially able to pay these fines and fees in full at this time or at any time in the foreseeable future, and as a result of my inability to pay, I am ineligible to receive a CERV. My current annual salary is \$68,100. It recently increased on the basis of a promotion. After federal and state taxes, my monthly net income is approximately \$4,800. My monthly mortgage payment is \$1,043. My average utility bills total \$300 per month. My monthly child support payment is approximately \$1,000 per month. After my mortgage and child support payments, I also pay monthly toward approximately \$27,000 in debt I have accumulated for items such as my mother's heat pump for her house and other items I could not afford and needed to finance. I also support my daughter with her tuition and living expenses while she attends college. After paying for groceries, gas, living expenses, and other expenses for my children, there is rarely more than a few hundred dollars per month remaining. I currently pay \$25 per month toward my outstanding fines and fees.

7. I would like to vote in the 2018 election and in future elections.

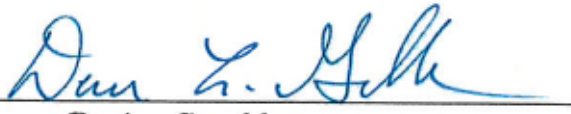
8. I strongly believe that the right to vote is crucial to being a complete citizen, and I want to vote in order to have a say in our democracy.

9. Because I care about regaining my right to vote—and making sure that others like me who simply cannot afford to pay their fines and fees can regain their right to vote—I joined this lawsuit as a plaintiff. I am committed to actively

participating in this lawsuit, and I understand and accept the responsibility that comes with seeking to represent this class.

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

May 8, 2018


Darius Gamble

INCOME WITHHOLDING FOR SUPPORT

- ☒ ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)
☐ AMENDED IWO
☐ ONE-TIME ORDER/NOTICE FOR LUMP SUM PAYMENT
☐ TERMINATION OF IWO

Date: Nov. 20, 2017

☒ Child Support Enforcement (CSE) Agency ☐ Court ☐ Attorney ☒ Private Individual/Entity (Check One)

NOTE: This IWO must be regular on its face. Under certain circumstances you must reject this IWO and return it to the sender (see IWO instructions www.acf.hhs.gov/programs/css/resource/income-withholding-for-support-instructions). If my
 you receive this document from someone other than a state or tribal CSE agency or a court, a copy of the underlying order must be attached.

State/Tribe/Territory ALABAMA

Remittance ID (include w/payment) _____

City/County/Dist./Tribe JEFFERSON COUNTYOrder ID 01-CS-2016-317

Private Individual/Entity _____

CSE Agency Case ID _____

Spire, Inc.

RE: Gambell, Darius, Labrelle

Employer/Income Withholder's Name

Employee/Obligor's Name (Last, First, Middle)

700 Market Street, St. Louis, MO 63101

Employer/Income Withholder's Address

Employee/Obligor's Social Security Number

(314) 342 - 0500

Breeding, Nakeisha

Custodial Party/Obligee's Name (Last, First, Middle)

Employer/Income Withholder's FEIN _____

Child(ren)'s Name(s) (Last, First, Middle)

Child(ren)'s Birth Date(s)

ORDER INFORMATION: This document is based on the support or withholding order from _____ (State/Tribe). You are required by law to deduct these amounts from the employee/obligor's income until further notice.

\$ 500.00 Per month current child support
 \$ _____ Per _____ past-due child support - **Arrears greater than 12 weeks?** ☐ Yes ☐ No
 \$ _____ Per _____ current cash medical support
 \$ _____ Per _____ past-due cash medical support
 \$ _____ Per _____ current spousal support
 \$ _____ Per _____ past-due spousal support
 \$ _____ Per _____ other (must specify) _____

for a **Total Amount to Withhold** of \$ 500.00 per month

AMOUNTS TO WITHHOLD: You do not have to vary your pay cycle to be in compliance with the *Order Information*. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

\$ _____ per weekly pay period \$ _____ per semimonthly pay period (twice a month)
 \$ _____ per biweekly pay period (every two weeks) \$ _____ per monthly pay period

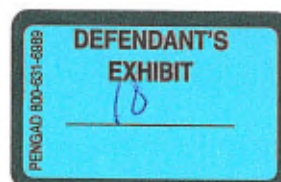
\$ _____ **Lump Sum Payment:** Do not stop any existing IWO unless you receive a termination order.

Document Tracking ID _____

1

OMB 0970-0154

CONFIDENTIAL INFORMATION



P001817

Employer's Name: Spire, Inc. Employer FEIN: _____
 Employee/Obligor's Name: Darius Labrelle Gamble SSN: _____
 CSE Agency Case Identifier: 01-CS-2016-317 Order Identifier: _____

REMITTANCE INFORMATION: If the employee/obligor's principal place of employment is Alabama (State/Tribe), you must begin withholding no later than the first pay period that occurs 30 days after the date of _____. Send payment within 10 working days of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to ____ % of disposable income. If the obligor is a non-employee, obtain withholding limits from Supplemental Information on page 3. If the employee/obligor's principal place of employment is not _____ (State/Tribe), obtain withholding limitations, time requirements, and any allowable employer fees at www.acf.hhs.gov/programs/css/resource/state-income-withholding-contacts-and-program-information for the employee/obligor's principal place of employment.

For electronic payment requirements and centralized payment collection and disbursement facility information (State Disbursement Unit (SDU)), see www.acf.hhs.gov/programs/css/employers/electronic-payments.

Include the **Remittance ID with the payment** and if necessary this FIPS code: _____.

Remit payment to ALABAMA CHILD SUPPORT PAYMENT CENTER (ACSPC) (SDU/Tribal Order Payee)
 at P.O. BOX 244015, MONTGOMERY, AL 36124-4015. (SDU/Tribal Payee Address)

☐ **Return to Sender [Completed by Employer/Income Withholder].** Payment must be directed to an SDU in accordance with 42 USC §666(b)(5) and (b)(6) or Tribal Payee (see Payments to SDU below). If payment is not directed to an SDU/Tribal Payee or this IWO is not regular on its face, you *must* check this box and return the IWO to the sender.

Signature of Judge/Issuing Official (if Required by State or Tribal Law): _____
 Print Name of Judge/Issuing Official: Judge Raymond P. Chambliss
 Title of Judge/Issuing Official: Presiding Circuit Judge - Family Court
 Date of Signature: _____

If the employee/obligor works in a state or for a tribe that is different from the state or tribe that issued this order, a copy of this IWO must be provided to the employee/obligor.

☒ If checked, the employer/income withholder must provide a copy of this form to the employee/obligor.

ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS

State-specific contact and withholding information can be found on the Federal Employer Services website located at www.acf.hhs.gov/programs/css/resource/state-income-withholding-contacts-and-program-information.

Priority: Withholding for support has priority over any other legal process under State law against the same income (42 USC §666(b)(7)). If a federal tax levy is in effect, please notify the sender.

Combining Payments: When remitting payments to an SDU or tribal CSE agency, you may combine withheld amounts from more than one employee/obligor's income in a single payment. You must, however, separately identify each employee/obligor's portion of the payment.

Payments To SDU: You must send child support payments payable by income withholding to the appropriate SDU or to a tribal CSE agency. If this IWO instructs you to send a payment to an entity other than an SDU (e.g., payable to the custodial party, court, or attorney), you must check the box above and return this notice to the sender. Exception: If this IWO was sent by a court, attorney, or private individual/entity and the initial order was entered before January 1, 1994 or the order was issued by a tribal CSE agency, you must follow the "Remit payment to" instructions on this form.

Reporting the Pay Date: You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the state (or tribal law if applicable) of the employee/obligor's principal place of employment regarding time periods within which you must implement the withholding and forward the support payments.

Multiple IWOs: If there is more than one IWO against this employee/obligor and you are unable to fully honor all IWOs due to federal, state, or tribal withholding limits, you must honor all IWOs to the greatest extent possible, giving priority to current support before payment of any past-due support. Follow the state or tribal law/procedure of the employee/obligor's principal place of employment to determine the appropriate allocation method.

OMB Expiration Date - 7/31/2017. The OMB Expiration Date has no bearing on the termination date of the IWO; it identifies the version of the form currently in use.

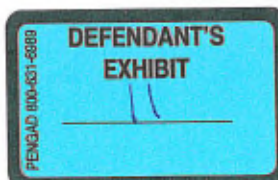
State of Alabama Unified Judicial System CS-16R Rev 3/2009 Page 1 of 2	FINDINGS / RECOMMENDATIONS/ ORDER ESTABLISHING PATERNITY AND SETTING AMOUNT OF CHILD SUPPORT	Court Case Number <u>CS10-285.00</u>
IN THE <u>FAMILY</u> COURT OF <u>JEFFERSON</u> COUNTY, ALABAMA STATE OF ALABAMA, ex rel. Plaintiff <u>Alicia Hurst</u> v. Defendant <u>Darius Gamble</u> Address _____ Address _____ _____ _____		
FINDINGS: This case having been heard on the <u>18th</u> day of <u>May</u> , 2011, this Referee finds that the Court has jurisdiction over the parties and the subject matter. This Referee further finds that the Defendant was properly served with a summons and petition by: ☒ personal service; ☐ certified mail. The following persons were present: ☒ Plaintiff: ☐ Pro se ☐ Plaintiff's Attorney _____ ☒ Defendant: ☐ Pro se ☐ Defendant's Attorney _____ ☒ State's Attorney <u>Hill</u> ☐ Other <u>Herring</u> This case being submitted ☒ upon the pleadings and upon the evidence presented or ☐ upon the agreement reached by the parties, the Referee finds that the Defendant is the father of the minor child(ren) and is obligated to pay child support for the minor child(ren) named herein. ☐ The Referee finds that health insurance is unavailable at reasonable cost or is not accessible.		
IT IS THEREFORE RECOMMENDED BY THE REFEREE AS FOLLOWS: 1. The Defendant is adjudicated to be the father of child(ren) named below:		
NAME OF CHILD	DATE OF BIRTH	BORN TO (MOTHER)
[REDACTED]	[REDACTED]	[REDACTED]
2. The Defendant shall pay the sum of \$ <u>436</u> per <u>month</u> commencing on <u>June 1, 2011</u> for the support and maintenance of the minor child(ren) named above. ☒ That the award of child support made herein was determined by application of the Child Support Guidelines established by Rule 32, Alabama Rules of Judicial Administration. The Child Support Guidelines (CS-42) and the Child Support Obligation Income Statement/Affidavit (CS-41) forms have been filed herein and are made a part of the record in this case. ☐ The Referee finds that deviation is appropriate based on the Child Support Guidelines established by Rule 32, Alabama Rules of Judicial Administration. The findings are noted in the Child Support Guidelines Notice of Compliance (CS-43). 3. The child support payments shall continue until discharged as provided by law. 4. The child support payments shall be made payable to: <u>Alabama Child Support Payment Center at P.O. Box 244015, Montgomery, AL 36124-4015.</u> 5. ☒ The Defendant OR ☐ the Plaintiff, wherever employed, shall include the child(ren) named above on any health insurance policy or health insurance coverage at his or her place of employment and shall provide proof of the coverage within thirty (30) days of the date of the Judge's signature on this form to the other party in non-Title IV-D cases OR to the <u>Jefferson</u> County Department of Human Resources in Title IV-D cases. ☐ The Defendant OR ☐ the Plaintiff shall include the child(ren) named above on any health insurance policy or health insurance coverage which he or she shall purchase and shall provide proof of the coverage within thirty (30) days of the date of the Judge's signature on this form to the other party in non-Title IV-D cases OR to the <u>Jefferson</u> County Department of Human Resources in Title IV-D cases.		

COURT RECORD

ATTORNEY

DEFENDANT

CONFIDENTIAL INFORMATION



P001819

State of Alabama Unified Judicial System CS-16R Rev. 3/2009 Page 2 of 2	FINDINGS / RECOMMENDATIONS / ORDER ESTABLISHING PATERNITY AND SETTING AMOUNT OF CHILD SUPPORT	Court Case Number
--	--	-------------------

☒ The Defendant shall pay 50% and the Plaintiff shall pay 50% of all unreimbursed health expenses. The parties must submit within 30 days any unreimbursed health expenses to the other party and payment of the expenses must be made within 30 days of this submission.

☐ The Defendant shall pay the sum of \$_____ per _____ commencing on _____ for the medical support of the minor child(ren) named above, as health insurance is not accessible, not available, or is not available at a reasonable cost.

☐ Other arrangements regarding health insurance: _____.

6. The Defendant shall notify _____ County Department of Human Resources as to any change of address, employment, or lapse or change in health insurance coverage.

7. The Defendant shall pay the following:

☒ \$476 representing retroactive child support to be paid at the rate of \$40 per month commencing on 10/1/11

☒ \$135 representing the cost of genetic testing to be paid at the rate of \$_____ per month commencing on _____, or repaid as follows: 67.50 each within 30 days

☐ \$_____ representing previous medical expenses to be paid at the rate of \$_____ per month commencing on _____.

These sums are hereby reduced to a judgment for which let execution issue. Interest will continue to accrue on this judgment until it has been satisfied in full as provided in Ala. Code 1975, Section 8-8-10.

8. If necessary, an amended certificate(s) of birth, consistent with the findings of this Court, shall be issued pursuant to the provisions of the Ala. Code 1975, Section 26-17-636(f).

9. Costs of these proceedings are taxed as follows:

☐ against Plaintiff, for which let execution issue; ☐ against Defendant, for which let execution issue; ☒ waived.

10. Reference is hereby made in this Findings / Recommendations / Order Establishing Paternity and Setting Amount of Child Support to a separate income withholding order, the entry of which is required of this Court by law, and it is recommended that it be specifically incorporated herein as a part of this Court's Order in this case.

11. In cases where payments are ordered paid directly to the Clerk of the Court, there shall be paid an additional \$1.00 administrative fee as provided in Ala. Code 1975, Section 12-19-26, with each periodic payment.

12. Other: _____.

NOTICE

Pursuant to Rule 2.1 of the Alabama Rules of Juvenile Procedure and Ala. Code 1975, Section 12-15-106, the findings and recommendations of the Referee do not constitute an order until they are ratified by the original signature of the Judge. Within fourteen (14) days of the Referee's findings and recommendations being filed in the Clerk's Office, any party may file with the Clerk a written request for a rehearing before the Judge.

Recommended this the 18th day of May 2011

CH Brantley
 Signature of Referee

The findings and recommendations of the Referee are hereby ratified and shall constitute a final order in this case.

 Date

[Signature]
 Signature of Judge

COURT RECORD

ATTORNEY

DEFENDANT

5/16/2018

Avadian Online Banking

Check Front

DARUS L GAMBLE OR 1140
 [REDACTED] AT 2782/3100
 [REDACTED] 4/30/2018
 Pay to the Order of Woodlands of [REDACTED] \$ 590.00
Five hundred ninety DOLLARS
 [ATCU Logo] Palacios
May 2018 not Apt 6/2A Dawn L. Hall
 [REDACTED]

Check Back

[REDACTED]

Pay To the Order of
 ZIONS FIRST NATIONAL BANK
 1230054
 For Deposit Only
 Entries



[https://online.avadiancu.com/User/MainTransactions/List?Account=\[REDACTED\]&Criteria=Merchant%3ACheck#!prettyPhoto/0/](https://online.avadiancu.com/User/MainTransactions/List?Account=[REDACTED]&Criteria=Merchant%3ACheck#!prettyPhoto/0/)

CONFIDENTIAL INFORMATION

P001831

Account Detail for Term

 Shelton State Community College

S00194881 XXXXXXXXXX
May 16, 2018 05:49 pm

Review detail transactions on your account, including current and future balance totals for the selected term and other terms.

Summer 2018 Payment Due Date

All students must submit full payment for all classes prior to the dates listed below. This includes classes added after initial payments are processed. Students should view account balance information on the Student Account Detail for Term screen on myShelton.

- Tuesday, May 15, at 5:30 p.m.

201830 Summer 2018 Term Detail

Description	Charge	Payment	Balance	Pay Now
Student Accident Liability Ins	\$5.00			
Campus Access Fee	\$6.00			
Resident Tuition	\$357.00			
Facility Renewal Fee	\$27.00			
Technology Fee	\$27.00			
Bond Surety Fee	\$3.00			
Credit Card Payment		\$425.00		
	Net Term Balance		\$0.00	
	Net Balance for Other Terms:		\$0.00	
	Account Balance:		\$0.00	

 Review Authorized Financial Aid on your account and the expected payment for the selected term. To view financial aid for another term, choose the "Select Another Term" link at the bottom of the page.

Authorized Financial Aid as of May 24, 2018

Description	Expected Payment	Balance
Federal Pell Grant		\$740.00
	Authorized Financial Aid Balance:	-\$740.00
	Account Balance net of Authorized Financial Aid:	-\$740.00
	Current Due net of Authorized Financial Aid:	\$0.00

[Pay Now](#)

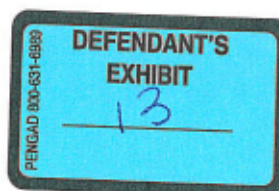
[Select Another Term](#) [Statement and Payment History](#)

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RELEASE: 8.7.1

<https://ssb-prod.sheltonstate.edu> XXXXXXXXXX

CONFIDENTIAL INFORMATION



SITE MAP

1/2

P001849

Google Maps

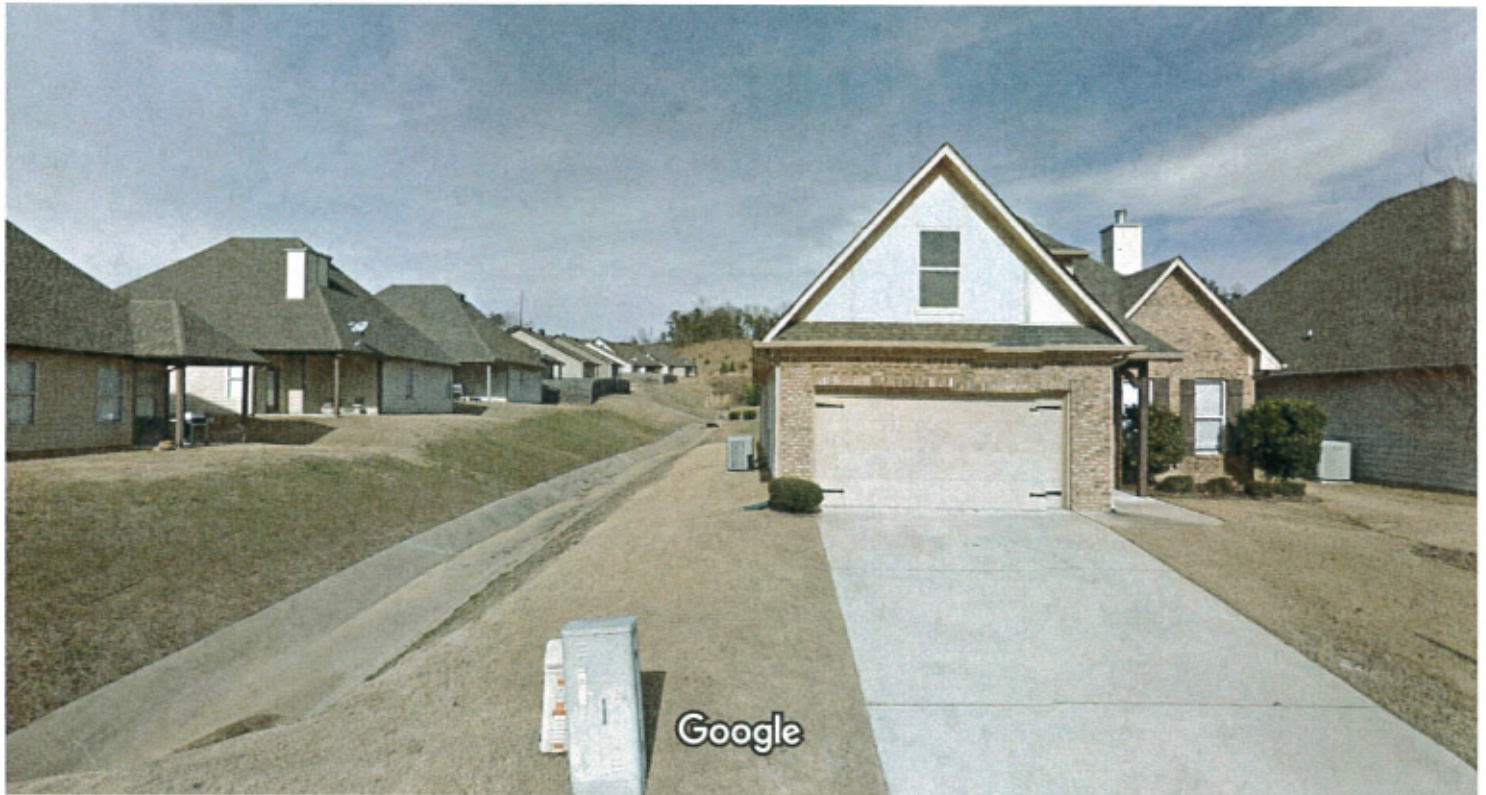
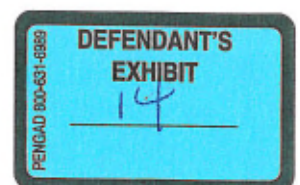
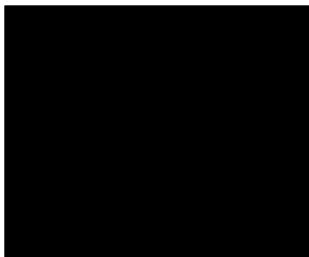


Image capture: Dec 2013 © 2018 Google

Gardendale, Alabama

 Google, Inc.

Street View - Dec 2013



CAP
Citizen Access



JEFFERSON COUNTY, ALABAMA. CITIZEN ACCESS PORTAL

- Search
- Pay Tax
- Assessment
- Forms

PARCEL #: [REDACTED]
OWNER: GAMBLE DARIUS L
ADDRESS: [REDACTED] GARDENDALE AL 35071-4223
LOCATION: [REDACTED] AL 35071

[117-C0] Baths: 2.0 H/C Sqft: 1,895
 04-011.0 Bed Rooms: 3 Land Sch: G7
 Land: 45,000 Imp: 130,100 Total: 175,100
 Acres: 0.000 Sales Info: 02/03/2014 \$153,500

<< Prev Next >> [1 / 1 Records] Processing...

Tax Year : 2018 ▼

SUMMARY LAND BUILDINGS SALES PHOTOGRAPHS MAPS

SUMMARY

ASSESSMENT

PROPERTY CLASS: 3 OVER 65 CODE:
 EXEMPT CODE: 2-2 DISABILITY CODE:
 MUN CODE: 10 GARDENDALE HS YEAR: 2015
 SCHOOL DIST: EXM OVERRIDE AMT: \$0.00
 OVR ASD VALUE: \$0.00 TOTAL MILLAGE: 60.1

CLASS USE:
 FOREST ACRES: 0 TAX SALE:
 PREV YEAR VALUE: \$178,800.00 BOE VALUE: 0

VALUE

LAND VALUE 10% \$45,000
 LAND VALUE 20% \$0
 CURRENT USE VALUE [DEACTIVATED] \$0

CLASS 2

CLASS 3
 BLDG 001 117 \$130,100

TOTAL MARKET VALUE [APPR. VALUE: \$175,100]: \$175,100

Assessment Override:

MARKET VALUE:

CU VALUE:

PENALTY:

ASSESSED VALUE:

DEEDS

INSTRUMENT NUMBER

DATE

201460-12571 2/3/2014
 201106-13298 08/01/2011
 200610-3339 06/09/2006

PAYMENT INFO

PAY DATE	TAX YEAR	PAID BY	AMOUNT
11/29/2017	2017	WELLS FARGO HOME MORTGAGE	\$1,026.59
11/21/2016	2016	CORELOGIC	\$1,020.58
12/1/2015	2015	CORELOGIC INC	\$979.71
1/6/2015	2014	CORELOGIC	\$979.71
10/31/2013	2013	-	\$795.68
12/20/2012	2012	WELLS FARGO	\$795.68
20111209	2011	***	\$844.29
20101201	2010	***	\$904.41
20091207	2009	***	\$904.41
20081120	2008	***	\$850.79
20071117	2007	***	\$813.72
20061202	2006	***	\$287.54

QUICK LINKS

- BOE
- Property Tax
- Assessment
- Collection
- Millage Rate
- Contact Us
- County Site
- ** News **

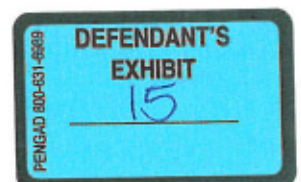
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Jefferson County
 716 Richard Arrington Jr
 Blvd N
 Birmingham, AL 35203
 (205) 328-5500



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Website Disclaimer





Return Mail Operations
PO Box 14411
Des Moines IA 50306-3411

Page 1 of 1

Statement date 05/11/18
Loan number [REDACTED]
Payment due date 06/01/18
Total amount due \$1,042.96
After 06/16/18 a late charge may apply \$44.48

Property address GARDENDALE, AL 35071

Customer Service

- Online wellsfargo.com
- Telephone* 1-800-222-0238
- Correspondence
PO Box 10335
Des Moines IA 50306
- Fax 1-866-278-1179
- Payments
PO Box 51162
Los Angeles CA 90051
- Hours of operation
Mon - Fri 8 a.m. - 10 p.m.
Sat 8 a.m. - 2 p.m. CT
- Purchase or refinance
1-866-867-3026

*We accept telecommunications relay service calls.

DARIUS L. GAMBLE
[REDACTED]
GARDENDALE, AL 35071-4223

Explanation of amount due

Principal	\$420.93
Interest	\$468.65
Escrow	\$153.38
Current payment	\$1,042.96
Total amount due 06/01/18	\$1,042.96

Account summary

Unpaid principal balance	\$140,594.21
<i>(This is not a payoff amount.)</i>	
Escrow balance	\$589.99
Interest rate	4.000%
Maturity date (month/year)	04/37

Past payments breakdown

	Since last statement	Year-to-date
Total received*	\$1,100.00	\$5,537.47
Principal	\$476.38	\$2,387.37
Interest**	\$470.24	\$2,367.10
Escrow	\$153.38	\$783.00
Insurance disbursed (YTD)		\$1,001.00

*This total may include the Unapplied funds balance from the Account summary section.
**This information should not be used for tax purposes. If you have tax related questions, please consult your tax advisor.

Activity since your last statement

Date	Description	Total	Principal	Interest	Escrow	Other
05/11	Principal payment	\$57.04	\$57.04			
05/11	Payment	\$1,042.96	\$419.34	\$470.24	\$153.38	

Important messages

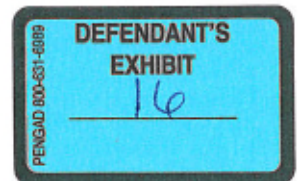
DISASTER PREPARATION

Our disaster assistance team is here to help you if you are ever affected by a disaster such as a fire, flood, or storm. If needed, please contact us at the number above or visit wellsfargo.com/recovery for additional information including the insurance claim check process.

For your consideration

Planning a move, wondering if now is a good time to refinance, or have other home financing needs?

Call 1-888-633-8662 today and mention code DMR7AFC; we are happy to help you explore home financing options and answer any questions. If you are on active military duty, please consult your legal advisor regarding the relief you may be eligible for under the Servicemembers Civil Relief Act or state law.



Please detach and return with your payment.

DARIUS L. GAMBLE
[REDACTED]
GARDENDALE, AL 35071

Loan number [REDACTED]
Current payment due \$1,042.96
Total amount due 06/01/18 \$1,042.96
After 06/16/18 a late charge may apply \$44.48

Check here and see reverse for address correction.

WELLS FARGO HOME MORTGAGE
PO BOX 51162
LOS ANGELES CA 90051-5462

Please specify additional funds

Payment x prnt amt	A	\$	
Additional principal	B	\$	
Late charges	C	\$	
Other charges	D	\$	
Additional escrow (if applicable)	E	\$	
Total amount enclosed (Please do not send cash)	F	\$	

CONFIDENTIAL INFORMATION

P001829

Make Wells Fargo your first choice

Thinking of Buying A New Home or Refinancing Your Mortgage?

Stop by the Wells Fargo Home Mortgage branch in your area or call 1-866-867-3026

Wells Fargo also offers:

- Checking, Savings, CDs, Personal Loans	1-866-932-6736
- Cash Wise Visa Card	1-800-869-3557
- Home Equity Lines of Credit	1-888-237-0186
- Auto Loans	1-877-246-1015
- Identity Theft Protection	1-877-247-1533
- Student Loans	1-888-511-7304
- International access (where available)	00-800-28832122

Fee schedule

Fees for assumptions, partial releases, and other services will be quoted upon request. Allowable fees for checks and drafts that are not honored by your bank vary by state and will be assessed automatically. States with fixed fees are as follows: ID-\$20, NV-\$25, SD-\$30. Fees are subject to change without notice.

Important information

Payments received after normal business hours will be credited the following business day.

If you send your payment to any other location, it may cause a processing delay. When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution. If your mortgage check does not clear upon initial presentation, your bank may charge a fee and we may attempt to withdraw funds from your account electronically up to a maximum of three times. If we are not able to successfully collect these funds, the check amount will be reversed from your loan.

Disputing account information reported to credit bureaus

We may furnish information about your account to credit bureaus. You have the right to dispute the accuracy of information that we have reported by writing to us at the correspondence address noted on the front of this statement and describing the specific information that is inaccurate or in dispute and the basis for any dispute with supporting documentation. In the case of information that you believe relates to identity theft, you will need to provide us with an identity theft report.

Access your account online any time

View details of your mortgage account, including official tax information, payment activity and more. Please visit the website listed on the front of this statement.

Payment options

There are multiple ways to make a payment:

- Online - You can schedule free payments online. Simply sign on to the website listed on the front of this statement and schedule your payment securely at your convenience.
- Pay by Phone - Payments can be scheduled by calling Customer Service.
- By Mail or in person - You can mail your payment or bring it into any Wells Fargo Branch at no charge. Please be sure to include your payment coupon from your statement.

Need to wire payment funds? For assistance in finding the nearest location, call 1-800-926-9400 for MoneyGram® Express Payments or 1-800-325-6000 for Western Union® "Quick Collect" payments.

Notice regarding Third Party Liens

Wells Fargo will not allow the use of a loan from another lender to pay taxes. Such loans violate your mortgage agreement as they create liens on your property that may take priority over the mortgage lien.

Notice regarding Property Tax Deferrals

Wells Fargo is not able to accept Property Tax Deferrals in all states, based on the terms of the deferral program. Please contact us to confirm if the tax deferral offered in your state is an approved program.

Servicemembers Civil Relief Act - The Servicemembers Civil Relief Act (SCRA) may offer protection or relief to members of the military who have been called to active duty. If either you have been called to active duty, or you are the spouse, registered domestic partner, partner in a civil union, or financial dependent of a person who has been called to active duty, and you haven't yet made us aware of your status, please contact our Military Customer Service Center at 1-866-936-7272 or fax your Active Duty Orders to 1-877-658-4585, attention SCRA.

Housing counselor information

For help exploring options, the Federal government provides contact information for housing counselors, which you can access by contacting the Consumer Financial Protection Bureau at <http://www.consumerfinance.gov/find-a-housing-counselor/> or obtain no-cost assistance by contacting the Department of Housing and Urban Development at <http://www.hud.gov/offices/hsp/sfh/hcc/hcs.cfm> or by calling 1-800-569-4287.

Fannie Mae educational resources - If you would like additional information regarding your loan, educational resources are available at Fannie Mae's Know Your Options™ website.

Contact us

If you'd like to request information, notify us of an error, or share any concerns you may have about the servicing of your loan, please contact us at P.O. Box 10335, Des Moines, IA 50306. Please include your account number with all correspondence.

Special note for customers with New York properties

For those customers who reside in the state of New York, the debtor may file complaints about the servicer and obtain further information from the New York Banking Department by calling the Department's Consumer Help Unit at 1-800-342-3736 or by visiting the Department's website at www.dfs.ny.gov.

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NMLSR ID 399801 -adv-Apr 2018



Address and phone number change - Please be sure to check the box on the front of payment coupon.

Borrower first name		Borrower last name	
Co-borrower first name		Co-borrower last name	
New mailing address			
City, state/zip			
Home phone		Work phone	

5/17/2018

Fidelity NetBenefits



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SPIRE SAVINGS PLAN

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[LOANS OR WITHDRAWALS](#)[ROLLOVER WITHDRAWALS](#)

Loan Details

[Print This Page](#)

The details of your outstanding loan appear below.

[Participant Loan Agreement and Terms](#) | [Amortization Schedule](#)

Loan ID:

[Glossary](#)

Loan Status, Amount and Length

Status	Active	Make an Additional Payment
Loan Origination Date	05/15/2018	Pay Off Loan
Loan Amount	\$2,500.00	
Remaining Balance*	\$2,500.00	
Loan Length	18 months	

Payments

Remaining Payments*	39
Payment Frequency	Biweekly
Payment Amount	\$66.98
First Payment Date	06/18/2018
Final Payment Date	12/02/2019
Total Payments (Interest + Principal)	\$2,612.14

Interest

Interest Rate	5.75%
Total Interest	\$112.14

Repayment Method

After-Tax Payroll Deductions

[Return to Loans](#)

* Amount reflects payment(s) already received and processed. If a delinquent loan was reamortized, Remaining Balance includes Reamortized Principal and any past due payments.

Questions? Call (800) 835-5095

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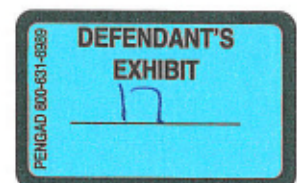


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[https://workplaceservices.fidelity.com/mybenefits/savings2/disb/loans/details?liabilityid=\[REDACTED\]&intype=active](https://workplaceservices.fidelity.com/mybenefits/savings2/disb/loans/details?liabilityid=[REDACTED]&intype=active)

CONFIDENTIAL INFORMATION

P001790

CO FILE DEPT. CLOCK VCHR. NO. DSO
AOT [REDACTED] [REDACTED] 1
Page 1(Con't Next Page)



SPIRE INC.
700 MARKET ST.
ST LOUIS MO. 63101

Earnings Statement



Period Beginning: 04/09/2018
Period Ending: 04/22/2018
Pay Date: 04/27/2018

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 2
AL: 2, Head of Family

DARIUS L GAMBLE

GARDENDALE AL 35071

Earnings	rate	hours	this period	year to date
Regular	2619.23	56.00	1,833.46	18,057.33
Fl Holiday	32.7404	24.00	785.77	1,271.88
Holiday				729.16
Sick				1,276.02
Vacation				729.16
Gross Pay			\$2,619.23	22,063.55

Deductions	Statutory		
Federal Income Tax	-232.05	1,995.66	
Social Security Tax	-144.52	1,239.04	
Medicare Tax	-33.80	289.78	
AL State Income Tax	-86.64	737.69	
Birmingham Income Tax	-23.31	199.84	
Other			
Deferral 401K	-104.77*	882.53	
Dental	-13.50*	108.00	
Dep Care Fsa	-62.50*	500.00	
Health Care Fsa	-80.13*	410.28	
Medical	-125.00*	1,000.00	
Parking	-7.50*	60.00	
Roth Aft Tax	-183.35	1,544.47	
Support	-201.23	1,811.07	
United Way	-29.43	264.87	
Vision	-4.00*	32.00	
Vol Life Child	-0.75	6.00	
Vol Life Ins Ee	-21.02	157.38	
Voluntary Ad&D	-6.39	48.04	

Other	this period	year to date
Expense Reimb		-522.50
Tuit Rmb Grad		-1,551.50

Adjustment

Expense Reimb +186.94

Net Pay \$1,446.28

Checking 1	-800.00
Checking 2	-180.00
Checking 3	-296.28
Savings 1	-170.00

Net Check \$0.00

* Excluded from federal taxable wages

Your federal taxable wages this period are
\$2,226.18

Other Benefits and Information

	this period	total to date
Er Dental	22.11	176.88
Er Medical	367.12	2,936.96
Er Vision	4.64	37.12
Grp Trm Lif Tax	4.35	31.30
Wellness Credit	25.00	200.00
401K Elig Wage	2,619.23	22,063.55
401K Er Match	130.96	1,103.20

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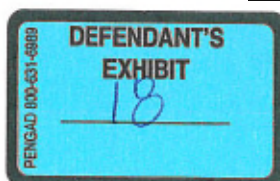


SPIRE INC.
700 MARKET ST.
ST LOUIS MO. 63101

Advice number: 00000170242
Pay date: 04/27/2018

Deposited to the account of	account number	transit	ABA	amount
DARIUS L GAMBLE	[REDACTED]	XXXX	XXXX	\$800.00
		XXXX	XXXX	\$180.00
		XXXX	XXXX	\$296.28
		XXXX	XXXX	\$170.00

THIS IS NOT A CHECK



NON-NEGOTIABLE

CONFIDENTIAL INFORMATION

P001807

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	060
AOT					1

Page 2



SPIRE INC.
700 MARKET ST.
ST LOUIS MO. 63101

Earnings Statement



Period Beginning: 04/09/2018
Period Ending: 04/22/2018
Pay Date: 04/27/2018

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 2
AL: 2, Head of Family

DARIUS L GAMBLE

GARDENDALE AL 35071

Important Notes

YOUR COMPANY'S ER PHONE NUMBER IS 314-342-0581

YOUR SALARY RATE HAS BEEN CHANGED FROM 2,430.54 TO 2,619.23.

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CONTINUED FROM PRIOR PAGE
YOUR VOUCHER IS PROVIDED ON PAGE 1

THIS IS NOT A CHECK

NON-NEGOTIABLE

CONFIDENTIAL INFORMATION

P001808

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	050
AOT					1

Earnings Statement

SPIRE INC.
700 MARKET ST.
ST LOUIS MO. 63101

Period Beginning: 04/23/2018
Period Ending: 05/06/2018
Pay Date: 05/11/2018

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 2
AL: 2, Head of Family

DARIUS L GAMBLE**GARDENDALE AL 35071**

Earnings	rate	hours	this period	year to date
Regular	2619.23	80.00	2,619.23	20,676.56
FI Holiday				1,271.88
Holiday				729.16
Sick				1,276.02
Vacation				729.16
Gross Pay			\$2,619.23	24,682.78

Other	this period	year to date
Expense Reimb		-522.50
Tuit Rmb Grad		-1,551.50

Net Pay \$1,259.34

Checking 1	-800.00
Checking 2	-180.00
Checking 3	-109.34
Savings 1	-170.00

Net Check \$0.00

Deductions	Statutory		
Federal Income Tax	-232.05	2,227.71	
Social Security Tax	-144.52	1,383.56	
Medicare Tax	-33.80	323.58	
AL State Income Tax	-86.64	824.33	
Birmingham Income Tax	-23.31	223.15	

Other

Deferral 401K	-104.77*	987.30
Dental	-13.50*	121.50
Dep Care Fsa	-62.50*	562.50
Health Care Fsa	-80.13*	490.41
Medical	-125.00*	1,125.00
Parking	-7.50*	67.50
Roth Aft Tax	-183.35	1,727.82
Support	-201.23	2,012.30
United Way	-29.43	294.30
Vision	-4.00*	36.00
Vol Life Child	-0.75	6.75
Vol Life Ins Ee	-21.02	178.40
Voluntary Ad&D	-6.39	54.43

*** Excluded from federal taxable wages**

Your federal taxable wages this period are
\$2,226.18

Other Benefits and Information

	this period	total to date
Er Dental	22.11	198.99
Er Medical	367.12	3,304.08
Er Vision	4.64	41.76
Grp Trm Lif Tax	4.35	35.65
Wellness Credit	25.00	225.00
401K Elig Wage	2,619.23	24,682.78
401K Er Match	130.96	1,234.16

Important Notes

YOUR COMPANY'S ER PHONE NUMBER IS 314-342-0581

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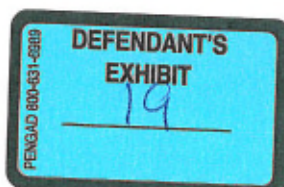


SPIRE INC.
700 MARKET ST.
ST LOUIS MO. 63101

Advice number: 00000190243
Pay date: 05/11/2018

Deposited to the account of	account number	transit	ABA	amount
DARIUS L GAMBLE		XXXX	XXXX	\$800.00
		XXXX	XXXX	\$180.00
		XXXX	XXXX	\$109.34
		XXXX	XXXX	\$170.00

THIS IS NOT A CHECK

**NON-NEGOTIABLE****CONFIDENTIAL INFORMATION****P001809**

Account History for: Darius-01

Post Date	Description	Amount	Prin	Int/Fee	Balance
05/26/2017	Distribution Transfer [Transfer From:SAV - Bonus \$\$\$]	147.00	-122.20	24.80	7,143.00
06/09/2017	Distribution Transfer [Transfer From:SAV - Bonus \$\$\$]	147.00	-122.62	24.38	7,020.38
06/23/2017	Distribution Transfer [Transfer From:SAV - Bonus \$\$\$]	147.00	-123.03	23.97	6,897.35
07/07/2017	Distribution Transfer [Transfer From:SAV - Bonus \$\$\$]	147.00	-123.45	23.55	6,773.90
07/21/2017	Distribution Transfer [Transfer From:SAV - Bonus \$\$\$]	147.00	-123.88	23.12	6,650.02
08/04/2017	Distribution Transfer [Transfer From:SAV - Bonus \$\$\$]	147.00	-124.30	22.70	6,525.72
08/18/2017	Distribution Transfer [Transfer From:SAV - Bonus \$\$\$]	147.00	-124.72	22.28	6,401.00
09/01/2017	Distribution Transfer [Transfer From:SAV - Bonus \$\$\$]	147.00	-125.15	21.85	6,275.85
09/08/2017	Refinanced Loan [new Loan]	-8713.44	8,724.15	10.71	15,000.00
09/13/2017	Misc. Adjustment [loan Fee]	-20.00	20.00	0	15,020.00
09/15/2017	Distribution Transfer [Transfer From:SAV - Bonus \$\$\$]	157.00	-119.84	37.16	14,900.16
09/29/2017	Distribution Transfer [Transfer From:SAV - Bonus \$\$\$]	157.00	-83.28	73.72	14,816.88
10/13/2017	Distribution Transfer [Transfer From:SAV - Bonus \$\$\$]	25.90	0.00	25.90	14,816.88
10/13/2017	Loan Payment	131.10	-83.69	47.41	14,733.19
10/27/2017	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-84.10	72.90	14,649.09
11/10/2017	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-84.52	72.48	14,564.57
11/24/2017	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-84.94	72.06	14,479.63
12/08/2017	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-85.36	71.64	14,394.27
12/22/2017	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-85.78	71.22	14,308.49
01/05/2018	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-86.20	70.80	14,222.29
01/19/2018	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-86.63	70.37	14,135.66



Post Date	Description	Amount	Prin	Int/Fee	Balance
02/02/2018	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-87.06	69.94	14,048.60
02/16/2018	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-87.49	69.51	13,961.11
03/02/2018	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-87.92	69.08	13,873.19
03/16/2018	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-88.36	68.64	13,784.83
03/30/2018	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-88.79	68.21	13,696.04
04/13/2018	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-89.23	67.77	13,606.81
04/27/2018	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-89.68	67.32	13,517.13
05/11/2018	Distribution Transfer [Transfer From:CHK - Extra \$\$\$]	157.00	-90.12	66.88	13,427.01

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

TREVA THOMPSON, et al.,

Plaintiffs,

V.

JOHN MERRILL, in his Official Capacity
as Secretary of State of Alabama, et al.,

Defendants.

CIVIL ACTION NO.
2:16-cv-783-ECM-WMD

**PLAINTIFF DARIUS GAMBLE’S RESPONSE TO STATE DEFENDANT’S
INTERROGATORIES**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiff Darius Gamble hereby responds and objects to the State Defendants' Interrogatories to Plaintiff Darius Gamble. In formulating these responses, Plaintiff Darius Gamble has relied on the information presently available to him. Further information may be discovered during this phase of the litigation. Plaintiff Darius Gamble will amend his objections and answers to the extent required under Fed. R. Civ. P. 26.

GENERAL OBJECTIONS

1. Plaintiff Darius Gamble objects to each and every one of the interrogatories to the extent they purport to impose upon it any obligations different form, or greater than, those established or required by the Federal Rules of Civil Procedure, local rules, an order of the Court, or a prior agreement of the parties.
2. Plaintiff Darius Gamble objects to each and every one of the interrogatories to the extent they seek information or documents protected by the attorney-client privilege, the work-product doctrine, the common-interest privilege, or any other applicable privilege, exemption, immunity, principle,

doctrine, or rule of confidentiality. If any protected information or material is disclosed, such disclosure is not intentional and shall not be deemed a waiver of any privilege or protection.

3. Plaintiff Darius Gamble objects to each and every one of the interrogatories to the extent they seek information already in the possession, custody, or control of the Defendants, or otherwise equally available to the Defendants.

4. Plaintiff Darius Gamble objects to each and every one of the interrogatories to the extent they seek information that is not relevant to any claim or defense before the court.

5. Plaintiff Darius Gamble objects to each of the interrogatories to the extent that they are unclear, ambiguous, overly broad, unduly burdensome, and/or not proportional to the needs of the case.

6. By answering these discovery requests, Plaintiff Darius Gamble does not concede the relevance or materiality of any of the information requested, nor of the subject matter to which the request for production refers. Rather, the responses are made expressly subject to, and without in any way waiving or intending to waive any question or objection as to the competency, relevance, privilege, or admissibility as evidence, of any of the matters referred to in the responses.

7. Plaintiff Darius Gamble expressly reserves:

- a. the right to object, on grounds of competency, relevance, materiality, privilege, or any other applicable ground, to the use of responses provided to this request for production or the subject matter thereof, in any subsequent proceeding in, or the hearing of, this or any other action;
- b. the right to object on any ground to other document requests, interrogatories, or other discovery proceedings involving or relating to the subject matter of the request for production; and

- c. the right to supplement Plaintiff Darius Gamble's responses should further investigation or discovery disclose additional information.

SPECIFIC RESPONSES AND OBJECTIONS

Interrogatory No. 1

Describe each and every claim you bring in Count 13. Your description should explain, *inter alia*, whether your only claim is dependent on inability to pay or whether you also bring a claim that is not contingent on ability to pay. You should also make clear whether each claim is facial or as applied

Objections:

Plaintiff Gamble objects to this interrogatory as it calls solely for legal conclusions and legal theories. Interrogatories "may not extend to issues of 'pure law.'" See Notes to Fed. R. Civ. P. Rule 33.

Response:

Plaintiff Gamble refers Defendants to his legal filings including but not limited to his complaint, supplemental complaint, responses to Defendants' motions to dismiss, and his motion for a preliminary injunction, which outline his legal theories in detail.

Interrogatory No. 2

State how much you currently owe on your fine for your trafficking in cannabis conviction. Do not include the DA collection fee; state only your balance on the actual fine.

Objections:

Plaintiff Darius Gamble objects to this interrogatory as requesting information equally available to State Defendants. Plaintiff Darius Gamble answers to the best of his knowledge.

Response:

As of 6/3/2020 I owe \$23,861 in fines, plus \$80 in fees.

Interrogatory No. 3

State whether you contend that you are unable to pay the fine you owe for your trafficking in cannabis conviction.

Response:

Yes, I am unable to pay these fines and fees in full anytime in the near future.

Interrogatory No. 4

State your present salary.

Response:

\$72,599 annually, pre-tax.

Interrogatory No. 5

State the balance of your Spire Employee Savings Plan as of the day of your choosing in January 2020.

Response:

On January 3, 2020 the balance was \$108,904 and today it's \$105,205.

Interrogatory No. 6

If you contend that the money in your Spire Employee Savings Plan is not available to pay the fine you owe for your trafficking in cannabis conviction, explain why it is not available.

Response:

This savings account represents the retirement savings that I will need to rely on to support myself when I reach retirement age and/or can no longer work. 401k plans are designed for retirement. Payment of my LFOs does not meet the IRS standards for a hardship withdrawal.

Interrogatory No. 7

State how much money you had in any and all bank accounts on a day of your choosing in January 2020; a combined total is acceptable.

Response:

On January 3, 2020, I had \$3,702.24 in my bank accounts, including the savings account listed below.

Interrogatory No. 8

State how much money you had in any and all savings accounts on a day of your choosing in January 2020; a combined total is acceptable.

Response:

On January 3, 2020, I had \$2,502.24 in my savings accounts.

Interrogatory No. 9

State how much money you have donated to United Way since January 1, 2015.

Response:

I have donated to United Way approximately \$3,000 since January 1, 2015. At Spire, we support the United Way with a campaign each year. All employees are encouraged to donate. Being in HR and in leadership, I participate and set an example for other employees to follow. I donate 1 hour every pay period, it's my way of giving back to the communities that Spire serves.

Interrogatory No. 10

If you received a COVID-19 pandemic-related Economic Impact Payment from the United States government, state how you spent it.

Response:

I received a \$1,200 Economic Impact Payment from the US Government. I put \$750 towards a consolidation loan in which I owe approximately \$31,367; \$150 I put towards my mother's Alabama power bill; \$45 towards my mother's water & Sewer bill; \$130 towards my Alabama power bill, \$40 towards my mother's Spire Gas bill, \$50 towards the purchase of two \$25 money order to pay my fines to Shelby county for April and May; and the last \$35 was spent on groceries.

Interrogatory No. 11

For every time you have been arrested since you were released from incarceration for your trafficking in cannabis conviction, state how much money you have had to pay to resolve the arrests. Include all fines, fees, court costs, restitution, supervision fees, bail and/or bond fees, payments for counsel, and any other monies you had to expend in order to resolve the arrest. An itemization is not required; a grand total is sufficient, and that grand total may be a reasonable approximation.

Response:

I estimate I have paid \$4500, about 80 percent of which was paid by using a credit card, including 800 Fine, \$1200 Counsel, \$1000 counsel, \$1000 bail, and \$500 bail.

Interrogatory No. 12

Explain why you were able to pay at least \$800 to resolve a 2014 arrest for domestic violence, but you are not able to pay \$800 on an annual basis toward your fine for your trafficking in cannabis conviction.

Objection:

Plaintiff Gamble objects to this interrogatory as vague, irrelevant, argumentative, and harassing.

Plaintiff Gamble's legal claim relates to his ability to pay his fines and fees in full in order to be able to vote. His ability to pay \$800 is not relevant to that claim since even paying \$800 annually would not resolve his fines or fees for over twenty years.

Response:

I am currently in debt and working to pay off my debt and juggle all my other expenses. The Shelby County Circuit Clerk placed me on a payment plan of \$25 per month. I've held up to our agreement and paid the amount in which we mutually agreed. I had to pay the \$800 or amount referenced in order to resolve the matter and it was paid using a credit card. I have credit card balances of AMEX \$456.87, Discover \$375.41, Belk Mastercard \$2486.86, Sam's Club credit \$1,323.52, and a Consolidation loan \$31,650.06.

Interrogatory No. 13

Since you purchased your home in February 2014, how much extra money have you paid on the principal, *i.e.*, what amount have you sent for the principal above and beyond what was due pursuant to the mortgage agreement?

Response:

Approximately \$3,500.

Interrogatory No. 14

State approximately how much money you have spent on expenses for your adult children during the time period since you joined this lawsuit on March 1, 2018 and through the present. You should include monies spent on items like rent, utilities, car payments, and tuition, but need not include any gifts for holidays and birthdays so long as the value of any single holiday or birthday gift does not exceed \$200. In the event that any holiday or birthday gift is reasonably valued at more than \$200, include such gift.

Response:

Approximately, \$5,000 which includes tuition, rent, books, and utilities.

Interrogatory No. 15

State approximately how much money you have spent on expenses for your mother during the time period since you joined this lawsuit on March 1, 2018 and through the present. You should include monies spent on items like rent, utilities, car payments, and tuition, but need not include any gifts for holidays and birthdays so long as the value of any single holiday or birthday gift does not exceed \$200. In the event that any holiday or birthday gift is reasonably valued at more than \$200, include such gift.

Response:

Approximately, \$13,875 which includes all utilities (AL Power, Tusc Sewer & Water, gas & a heat pump financed in my name). Additionally, I pay towards her life insurance, \$191.86 per month for a total of \$4,988.36 during the specified period.

Interrogatory No. 16

Explain why, between March 1, 2019 and April 20, 2020, you did not file a request with the Shelby County Circuit Court to reprioritize the application of your payments (like the one available at <https://eforms.alacourt.gov/media/0xde2ibh/request-to-reprioritize-costs-1-2019.pdf>) so that any monies you paid would be applied to your fine, rather than to the DA collection fee.

Response:

The referenced form explicitly states at the top that it is “to be completed and filed only when a person is seeking a Certificate of Eligibility.” I have been told by the Board of Pardons and Paroles that I am not eligible for a CERV, so I am not currently and have not between March 1, 2019 and April 20, 2020 been seeking application for such. If I am eligible to apply notwithstanding those instructions, I will do so.

Interrogatory No. 17

Describe all efforts you have made to pay the fine you owe for your trafficking in cannabis conviction.

Response:

I have diligently paid every month the amount that Shelby County has deemed appropriate and within my ability. I have sought to reduce my fines to a more manageable amount with the Board of Pardons and Paroles and the Shelby County Court.

Interrogatory No. 18

Explain why any inability to pay is wholly beyond your control.

Objection:

Plaintiff Gamble objects to this interrogatory as vague, irrelevant, and harassing.

Response:

I have worked hard to gain employment that allows me to support my mother and my daughters. I follow the payment plan that Shelby County has set out for me. I spend responsibly and even so, each month, my essential living expenses, payments towards my credit card debt of approximately \$36,000, and support for my family leaves me with little to none of my income remaining.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing Answers to Interrogatories are true and correct to the best of my knowledge, information, and belief.

Date: 6/9/2020



Plaintiff Darius Gamble

Respectfully submitted,

s/ Danielle Lang

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to an agreement memorialized in the Report of the Parties' Planning Meeting, electronic service is acceptable for this document. I hereby certify that I have served a copy of the foregoing document on Misty Messick (mmessick@ago.state.al.us) and Winfield J. Sinclair (wsinclair@ago.state.al.us), counsel for the State Defendants, *via* email the 9th day of June 2020.

s/ Danielle Lang

Danielle Lang
Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Treva Thompson, Timothy Lanier,
Pamela King, Darius Gamble,
and Greater Birmingham Ministries,

Plaintiffs,

v.

John H. Merrill, in his official capacity
as Secretary of State, Cindy Sahlie, in
her official capacity as Chair of the
Montgomery County Board of Registrars,
and Leigh Gwathney, in her official
capacity as Chair of the Board of Pardons
and Paroles,

Defendants.

Civil Action No.
2:16-cv-783-ECM-SMD

DECLARATION OF STEPHEN LEVEQUE

1. My name is Stephen LeVeque. I am over the age of 19; I am qualified to give this declaration; and, I have personal knowledge of the matters sets forth herein.

2. I am the Assistant IT Director at the Alabama Administrative Office of Courts.

3. I prepared the Excel file entitled ALABAMA FELONY CONVICTIONS AND GUILTY PLEAS DISPOSED 1/1/1983 THRU 5/1/2019, which was provided to the parties in this matter pursuant to a 2019 subpoena.

4. The information in this file was taken from AOC's mainframe database called the Statewide Judicial Information System (SJIS). This mainframe database contains data about proceedings in Alabama State trial courts, including data about criminal proceedings in Alabama's trial courts. Although SJIS came into existence in or around 1983, SJIS was gradually rolled out throughout the counties in Alabama before going statewide in the mid-1990s.

5. I prepared the Excel file by creating and running a program to pull the desired information from SJIS. I do not attest to the accuracy of the data contained in the report, only that the data in the report are the data that were housed in the SJIS database at the time that I generated the report on May 1, 2019.

6. The first column in the file (Column A) is entitled COUNTY, and shows the county where the conviction occurred.

7. The next column in the file (Column B) is entitled CASE NUMBER and shows the court case number for the specific conviction(s) contained in that row of data.

8. The next column in the file (Column C) is entitled DEFENDANT NAME and shows the criminal defendant's name, last name first.

9. The next column in the file (Column D) is entitled RACE and shows the reported race of the criminal defendant.

10. The next column in the file (Column E) is entitled BIRTH DATE and shows the date of birth of the criminal defendant in MM/DD/YYYY format.

11. The next column in the file (Column F) is entitled AIS NUMBER and shows the Alabama Institutional Serial number assigned by the Alabama Department of Corrections.

12. The next column in the file (Column G) is entitled SSN 4 and shows the last four digits of the criminal defendant's Social Security Number.

13. Columns I, J, K in the file contain information about the GRAND TOTAL of court ordered monies due. Column I is entitled, and shows, the GRAND TOTAL ORDERED. Column J is entitled, and shows, the GRAND TOTAL PAID. Column K is entitled, and shows, the GRAND TOTAL BALANCE DUE.

14. The GRAND TOTAL columns—I, J, and K—include fines, fees, court costs, and

restitution ordered at the time of sentencing as well as all post sentence fees. The GRAND TOTAL columns do not include bonds, refunds, and miscellaneous payments to a third party.

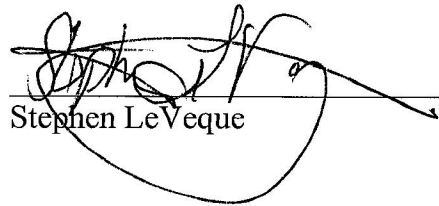
15. Columns L, M, and N in the file contain information about RESTITUTION. As with the GRAND TOTAL, the three RESTITUTION columns show information on RESTITUTION ORDERED (Column L), RESTITUTION PAID (Column M), and RESTITUTION BALANCE DUE (Column N).

16. Columns O, P, and Q of the file contain information about POST SENTENCE FEES. Again, the three POST SENTENCE FEES columns show information on POST SENTENCE FEES ORDERED (Column O), POST SENTENCE FEES PAID (Column P), and POST SENTENCE FEES BALANCE DUE (Column Q).

17. There are additional columns in the file, namely Column H and Columns R through CA. The information includes, but is not limited to, the particular charges and whether they were disposed of by a guilty plea or a conviction after trial. Some rows of data include multiple charges.

18. Many data cells are blank or filed with zeros. Data are included where they were available at the time the data was pulled on May 1, 2019.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on June 9, 2020.


Stephen LeVeque

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Treva Thompson, Timothy Lanier,
Pamela King, Darius Gamble,
and Greater Birmingham Ministries,

Plaintiffs,

v.

John H. Merrill, in his official capacity
as Secretary of State, Cindy Sahlie, in
her official capacity as Chair of the
Montgomery County Board of Registrars,
and Leigh Gwathney, in her official
capacity as Chair of the Board of Pardons
and Paroles,

Defendants.

Civil Action No.
2:16-cv-783-ECM-SMD

**ALABAMA SECRETARY OF STATE JOHN H. MERRILL'S OBJECTIONS AND ANSWERS
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO HIM**

Pursuant to Fed. R. Civ. P. 26 and Fed. R. Civ. P. 33, Secretary of State John H. Merrill, who is sued in his official capacity in this litigation, hereby objects and responds to Plaintiffs' interrogatories to him dated March 11, 2020, as set out below.¹

General Statement

Secretary Merrill has relied on the information presently available to him. Further or different information may be discovered during this phase of the litigation. Secretary Merrill will amend his Objections and Responses to the extent required under Fed. R. Civ. P. 26.

Secretary Merrill's Answers to each Interrogatory are made subject to all objections as to privilege, competence, relevance, materiality, propriety, and admissibility, as well as any and all

¹ Due to the COVID-19 pandemic, in emails dated March 26, 2020, the State Defendants requested, and were granted, an extension of time until May 11, 2020 to respond.

other objections and grounds that would require the exclusion of evidence. Secretary Merrill reserves the right to make any and all such objections at the appropriate time.

General Objections

Secretary Merrill objects to each and every one of Plaintiffs' *Definitions* and *Instructions* to the extent they purport to impose any requirements or obligations different from, or greater than, those contained in the Federal Rules of Civil Procedure, applicable orders of the Court, and/or related agreements.

Secretary Merrill objects to each and every one of Plaintiffs' *Definitions* and *Instructions* as inconsistent with the GUIDELINES TO CIVIL DISCOVERY PRACTICE IN THE MIDDLE DISTRICT OF ALABAMA which provide that "Lengthy and complex preambles and definitions in discovery requests are discouraged, particularly where they operate to give unexpected breadth or inappropriate effect to the meaning of words which are otherwise reasonably clear." GUIDELINES TO CIVIL DISCOVERY PRACTICE IN THE MIDDLE DISTRICT OF ALABAMA at § I. C.

Secretary Merrill objects to *Definition no. 1* and *Instruction no. 3* which purport to impose a duty on the Secretary to consult with "all persons acting or purporting to act on his behalf, including but not limited to his predecessors, agents, representatives, employees, officers, consultants, and/or contractors" and consultants, respectively. Secretary Merrill will not look beyond his own current employees. Not only do his predecessors not act on his behalf, but it is unreasonable to expect him to provide sworn testimony about information unknown to his office, *e.g.*, consultants and contractors. Additionally, Plaintiffs' *Definition no. 1* and *Instruction no. 3* attempt to impose a burden that is not proportional to the needs of the case.

Secretary Merrill objects to *Instruction no. 1* which states that "these Interrogatories seek responsive information and Documents authored, generated, disseminated, drafted, produced,

reproduced, or otherwise created or distributed relating to the period from January 1, 2015 to the present.” While Secretary Merrill will read each Interrogatory as seeking information from no earlier than January 1, 2015, Interrogatories do not seek documents, and Plaintiffs’ Instruction is thus contrary to Fed. R. Civ. P. 33 and the GUIDELINES TO CIVIL DISCOVERY PRACTICE IN THE MIDDLE DISTRICT OF ALABAMA. Should Secretary Merrill opt to produce business records to answer an Interrogatory, he will do so consistent with Fed. R. Civ. P. 33(d), and not with the Plaintiffs’ contrary *Instruction No. 2*.

Secretary Merrill objects to *Instruction no. 8* which purports to add a discrete subpart to each Interrogatory seeking a description of “all efforts made . . . to obtain the information necessary to answer the Interrogatory” if he lacks knowledge himself.

Secretary Merrill objects to *Instruction no. 10* which purports to add a discrete subpart to each Interrogatory seeking identification of any individual whom he believes may have “knowledge necessary to respond to the Interrogatory” if he does not.

Secretary Merrill objects to Plaintiffs’ use of the phrase “HB 282.” It is highly unlikely that there is any Regular Session of the Alabama Legislature in which there is not a bill introduced bearing the designation HB 282 and, further, if the legislation had not been passed by the Legislature and signed into law by the Governor (or otherwise become law), it would be irrelevant. The legislation became Ala. Act No. 2017-378 and should be so cited, or, when appropriate, a citation to the codification at Ala. Code § 17-3-30.1 may be used.

Finally, Secretary Merrill notes there are two Interrogatories numbered 6, two Interrogatories numbered 11, and two Interrogatories numbered 12. Thus there are no fewer than 19 Interrogatories, despite the fact that the highest number assigned by Plaintiffs is 16. Moreover, multiple Interrogatories contain discrete subparts and should be fairly counted as more than one

Interrogatory, bringing the total to 25 or more. While Secretary Merrill will respond to these Interrogatories (except for the additional discrete subparts in *Instruction no. 8* and *Instruction no. 10*, objected to above), he is not waiving, and, in fact, expressly reserves, the right to object to any subsequently-propounded Interrogatories as beyond the number permitted by Fed. R. Civ. P. 33 or any Order of this Court.

Interrogatory No. 1

Identify each person involved in the preparation of your responses to these interrogatories.

Answer:

David Brewer, Chief of Staff
Clay Helms, Deputy Chief of Staff/Director of Elections
Ed Packard, Administrator of Elections
Jeff Elrod, Supervisor of Voter Registration
Hugh R. Evans, III, General Counsel
Grace Newcombe, Press Secretary/Legislative Liaison

Counsel and their staff were additionally involved in the preparation of these responses.

Interrogatory No. 2

Identify the [S]tate interests served by Alabama's disenfranchisement of people with felonies involving moral turpitude.

Answer:

Alabama is a sovereign with an inherent right to determine who shall be a part of her electorate.² "The States have long been held to have broad powers to determine the conditions

² The default rule is that the States set voter qualifications, even in federal elections. U.S. Const. Art. I § 2 cl. 1 (In House elections, "... Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."); U.S. Const. Amend. XVII (Senators elected by the same electors as House Members); *see also* U.S. Const. Art. II § 1 cl. 2 (Presidential Electors need not even be selected by election); U.S. Const. Amend. XIV (recognizing the State's right to set qualifications and, specifically, to disenfranchise felons). The Constitution has, of course, been amended to impose some limits on that power, U.S. Const. Amend. XV (eliminating disenfranchisement based on "race, color, or previous condition of

under which the right of suffrage may be exercised, absent of course the discrimination which the Constitution condemns.” *Lassiter v. Northampton Cty. Bd. of Elections*, 360 U.S. 45, 50 (1959) (internal citations omitted). In this area, “there is wide scope for exercise of [the State’s] jurisdiction. Residence requirements, age, *previous criminal record* are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters.” *Id.* at 51 (internal citations omitted; emphasis added).

The practice of disenfranchising those convicted of certain crimes comes from the very first democracies. “In ancient Athens, the penalty for certain crimes was placement in a state of ‘infamy,’ which entailed the loss of those rights that enabled a citizen to participate in public affairs, such as the rights to vote, to attend assemblies, to make speeches, and to hold public office.” *Hayden v. Pataki*, 449 F.3d 305, 316 (2d Cir. 2006) (*en banc*) (citing Mirjan R. Damaska, *Adverse Legal Consequences of Conviction and their Removal: A Comparative Study*, 59 J. Crim. L., Criminology & Police Sci. 347, 351 (1968)). “The Roman Republic also employed infamy as a penalty for those convicted of crimes involving moral turpitude.” *Id.*

Felon disenfranchisement is based on the philosophy of republican government and theory of social compact. “[S]uch provisions are for the protection of the public by permitting only those who have lived up to certain minimum moral and legal standards (by not committing a crime classed as a felony) to exercise the high privilege of participating in government by voting.” *State ex rel. Barrett v. Sartorius*, 175 S.W.2d 787, 788 (Mo. 1943) (*en banc*). The Alabama Supreme Court has explained that, like children or the insane, “[t]he presumption is, that one rendered infamous by conviction of felony, or other base offense indicative of great moral turpitude, is unfit

servitude”); U.S. Const. Amend. XIX (enfranchising women); U.S. Const. Amend. XXVI (lowering the voting age to 18), and to eliminate poll taxes, U.S. Const. Amend. XXIV.

to exercise the privilege of suffrage, or to hold office, upon terms of equality with freemen who are clothed by the State with the toga of political citizenship.” *Washington v. State*, 75 Ala. 582, 585 (1884). These are Alabama’s interests.

Judge Friendly offered the following State interests, which Alabama asserts as her own:

The early exclusion of felons from the franchise by many [S]tates could well have rested on Locke’s concept, so influential at the time, that by entering into society every man ‘authorizes the society, or which is all one, the legislature thereof, to make laws for him as the public good of the society shall require, to the execution whereof his own assistance (as to his own decrees) is due.’ [An Essay Concerning the True Original, Extent and End of Civil Government P89.] A man who breaks the laws he has authorized his agent to make for his own governance could fairly have been thought to have abandoned the right to participate in further administering the compact. On a less theoretical plane, it can scarcely be deemed unreasonable for a [S]tate to decide that perpetrators of serious crimes shall not take part in electing the legislators who make the laws, the executives who enforce these, the prosecutors who must try them for further violations, or the judges who are to consider their cases. This is especially so when account is taken of the heavy incidence of recidivism and the prevalence of organized crime. *See The Challenge of Crime in a Free Society, A Report by the President's Commission on Law Enforcement and Administration of Justice*, 45-47, 187-196 (1967). A contention that the equal protection clause requires New York to allow convicted mafiosi to vote for district attorneys or judges would not only be without merit but as obviously so as anything can be.

Green v. Bd. of Elections, 380 F.2d 445, 451-52 (2d Cir. 1967) (bracketed citation replaces a footnote in the original).

The United States Constitution expressly approves of the right of a State to disenfranchise felons. “[T]he exclusion of felons from the vote has an affirmative sanction in [section] 2 of the Fourteenth Amendment,” which requires that Congressional apportionment include persons who are denied the right to vote “for participation in rebellion, or other crime.” *Richardson v. Ramirez*, 418 U.S. 24, 54, 72 (1974). Indeed, when the Fourteenth Amendment was ratified, “29 States had provisions in their constitutions which prohibited, or authorized the legislature to prohibit, exercise of the franchise by persons convicted of felonies or infamous crimes.” *Richardson*, 418 U.S. at

48.³ Judge Friendly tells us that “the total [had] risen to forty-two” by 1967. *Green*, 380 F.2d at 450.

Alabama’s Constitution has always disenfranchised persons who have been convicted of certain crimes. The 1819 Constitution provided that those convicted of “bribery, perjury, forgery, or other high crimes or misdemeanors” lost their right to vote. ALA. CONST. of 1819, art. VI, § 5. The 1865 Alabama Constitution, when Alabama was under military rule, provided that “no person who shall have been convicted of bribery, forgery, perjury, or other high crime or misdemeanor which may be by law declared to disqualify him, shall be entitled to vote at any election in this State.” ALA. CONST. of 1865, art. VIII, § 1. The 1868 Radical Republican Constitution, the 1875 Constitution, and the 1901 Constitution all denied the vote to, *inter alia*, those convicted of felonies. ALA. CONST. of 1868, art. VII, § 3; ALA. CONST. of 1875, art. VIII, § 3; ALA. CONST. art. VIII, § 182 (now repealed). The 1996 constitutional amendment⁴ challenged here narrowed the scope of disenfranchisement to only those felonies which involve moral turpitude. ALA. CONST. art. VIII, § 177. Thus, Alabama disenfranchised persons convicted of certain crimes back to the time she gained statehood and while slavery was legal and practiced here, and blacks were lawfully disenfranchised under that regime. She continued to disenfranchise based on criminal convictions during the Reconstruction Legislature and, like many other States, does so today.

Alabama specifically and emphatically denies any State interest in disenfranchising felons whose convictions are for felonies of moral turpitude as a means to disenfranchise based on race: Alabama has no interest in disenfranchising blacks on the basis of race.

³ The Fourteenth Amendment was ratified in 1868, at which time there were 37 States.

⁴ The 1996 constitutional amendment was adopted again in 2012 with an additional provision concerning the right to a secret ballot included.

Alabama disenfranchises persons who have self-selected to become felons and who are convicted of their felonious conduct, and, even then, only when the felony involves moral turpitude. “Moral turpitude signifies an inherent quality of baseness, vileness and depravity. It is immoral in itself, regardless of the fact that it is punished by law.” *Ex parte McIntosh*, 443 So. 2d 1283, 1284 (Ala. 1983) (quoting C. Gamble, *McElroy’s Alabama Evidence*, § 145.01(7) (3d ed. 1977)). Moral turpitude is a long-established legal term used in a variety of Alabama laws, most often concerning competence to hold office or for licensure,⁵ including in a provision impacting

⁵ E.g., Ala. Const. art. VII, § 173(a) (“The Governor, Lieutenant Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, members of the State Board of Education, Commissioner of Agriculture and Industries, and justices of the supreme court may be removed from office for willful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties for any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith.”); Ala. Code § 5-2A-6(a)(7) (“The superintendent or any member of the Banking Board may be removed from office by a vote of two thirds of the members of the entire banking board for: . . . (7) Any offense involving moral turpitude while in office, committed under color thereof or connected therewith.”); Ala. Code § 5-6A-1 (“No person convicted of a felony or a crime involving moral turpitude shall serve as a director” of a bank.); Ala. Code § 5-17-44(a)(7) (“The administrator or any member of the Credit Union Board may be removed from office by a vote of two thirds of the members of the entire Credit Union Board for: . . . (7) any offense involving moral turpitude while in office, committed under color thereof or connected therewith.”); Ala. Code § 5-17-55(c)(1) (“If a member of the Credit Union Board of the Alabama Credit Union Administration . . . is convicted of a felony or any other crime involving moral turpitude . . . the office of the member shall be declared vacant by the administrator.”); Ala. Code § 8-6-9(3)(b) (“The Securities Commission shall issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement in the sale of securities if it finds that the order is in the public interest and that: . . . (3) The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the issuer, or any underwriter has: . . . b. Has (*sic*) been convicted of a felony or any misdemeanor involving moral turpitude, a security, or any aspect of the securities business.”); Ala Code § 8-19A-11 (a)(1) (“The division may deny licensure to any applicant who: (1) Has been convicted of racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, or any other crime involving moral turpitude. . . .”); Ala Code § 11-5-33(a)(6) (“No person shall be eligible to hold the office of coroner unless he or she meets the following qualifications: . . . (6) Has not been convicted of a felony offense or any offense involving moral turpitude contrary to the laws of Alabama, or any other state, or the United States.”); Ala Code § 11-43-210(b) (“Any person

desiring appointment as a reserve law enforcement officer after April 12, 1990, shall submit a written application to the municipal appointing authority certifying that the applicant is 19 years of age or older, of good moral character and reputation, and that he or she has never been convicted of a felony or of a misdemeanor involving force, violence, or moral turpitude. . . ."); Ala Code § 11-43C-17 (" . . . If the councilman shall cease to possess any of these qualifications or shall be convicted of crime involving moral turpitude, his office shall immediately become vacant."); Ala Code § 11-44E-42 (" . . . If the commissioner shall cease to possess any of these qualifications or shall be convicted of a crime involving moral turpitude, his (her) office shall immediately become vacant."); Ala Code § 11-49B-6(d) ("The appropriate appointing authority may remove a member of the board only for neglect of duty, an unexcused failure to attend more than one of the regularly scheduled meetings held in a calendar year during the term in office of the member, malfeasance, violation of this chapter, or conviction of a felony or other crime of moral turpitude."); Ala Code § 12-16-60(a)(4) ("A prospective juror is qualified to serve on a jury if the juror is generally reputed to be honest and intelligent and is esteemed in the community for integrity, good character and sound judgment and also: . . . (4) Has not lost the right to vote by conviction for any offense involving moral turpitude."); Ala. Code § 12-21-162(b) ("As affecting his credibility, a witness may be examined touching his conviction for a crime involving moral turpitude, and his answers may be contradicted by other evidence."); Ala. Code § 15-13-159(4)(c) (" . . . That any agency, company, corporation, or other entity that represents the professional surety company in the county, has no owners or other persons having a direct or indirect financial interest in such agency, company, corporation, or other entity, that have been convicted of a felony or a crime involving moral turpitude. If any person having a direct or indirect financial interest in such agency, company, corporation, or other entity has been convicted of a felony or a crime involving moral turpitude, then the affidavit or certification shall certify that there has been such conviction, providing the name of the person convicted, and certify that the person convicted has been pardoned or has had a restoration of civil rights."); Ala. Code § 15-13-160(3)(d) ("That no person having a direct or indirect financial interest in the professional bail company has been convicted of a felony or a crime involving moral turpitude. Notwithstanding the foregoing, if any person having a direct or indirect financial interest in the bonding business has been convicted of a felony or a crime involving moral turpitude, then the person making the certification shall certify that there has been a conviction, provide the name of the person convicted, and certify that the person convicted has been pardoned or has had a restoration of civil rights."); Ala. Code § 16-24B-3(e)(1)(d) ("An employing board may cancel the contract of a contract principal for cause at any time for any of the following reasons: . . . Conviction of a felony or a crime involving moral turpitude."); Ala. Code § 22-18-6(f)(8) ("The board, following the contested case provisions of the Administrative Procedure Act, may suspend or revoke the license or certificate of an EMSP at any level, or a provider service, or it may refuse to grant a license or certificate to any individual or entity at any time that any of the following is determined with respect to the holder or applicant: . . . (8) Has been convicted of a crime involving moral turpitude, or a crime in which the victim is an EMSP provider service or an EMS patient, unless the board determines that the fact of the conviction would not likely interfere with the performance of EMS duties."); Ala. Code § 22-30D-8(b) (" . . . Any board member may be removed by the Governor after notice and hearing for incompetence, neglect of duty, malfeasance in office, or moral turpitude."); Ala. Code § 27-40-5(a)(5) ("The commissioner may revoke or suspend the license of any premium finance company when, and if, after complaint and investigation, it appears to the commissioner that: . . . (5) No

the practice of law.⁶ Moral turpitude is used in federal law as well.⁷ This standard reflects Alabama's interest in excluding from the franchise those felons whose criminal conduct is particularly reprehensible.

license shall issue or remain in force if any principal of the licensee has been convicted of a crime involving moral turpitude.”); Ala. Code § 34-2-34(3)(c) (“The board shall have the following disciplinary powers: . . . (3) To refuse to issue a certificate, to suspend a certificate for a definite period, or to revoke the certificate of registration of an architect who is found guilty of: . . . c. A felony or misdemeanor involving moral turpitude by a court of competent jurisdiction . . .”); Ala. Code § 34-4-21(c) (“ . . . The board shall require, and it shall be the responsibility of any applicant for an initial, renewal, or reciprocal license to disclose any prior felony conviction, any prior misdemeanor conviction involving moral turpitude, any pending criminal arrest of any nature except misdemeanor traffic violations, and any prior or pending disciplinary proceedings against the applicant before a board of auctioneers or real estate commission in this or any other [S]tate. . . .”); Ala. Code § 34-4-29(c)(6) (“ . . . The board may also suspend or revoke the license of any licensee for any of the following acts: . . . (6) Being convicted in a court of competent jurisdiction of this or any other state of a criminal offense involving moral turpitude or a felony.”); Ala. Code § 34-8A-4(f) (“ . . . Any board members may be removed by the Governor, after notice and hearing, for incompetence, neglect of duty, malfeasance in office, or moral turpitude. . . .”); Ala. Code § 34-8A-16(a)(1) (“(a) The board by a majority of the board members present and voting is authorized to withhold, deny, revoke, or suspend, any license or certificate issued or applied for in accordance with this chapter or otherwise discipline a licensed professional counselor or associate licensed counselor upon proof by proper hearing that the applicant, licensed professional counselor, or associate licensed counselor: (1) Has been convicted, within or without the jurisdiction of this state, of a felony, or any offense involving moral turpitude, the record of conviction being conclusive evidence thereof.”); Ala. Code § 34-9-10(d)(12) (“The applicant shall not have been convicted of a felony or misdemeanor involving moral turpitude or of any law dealing with the administering or dispensing of legend drugs, including controlled substances.”); Ala. Code § 34-9-18(a)(11) (“The board may invoke disciplinary action as outlined in subsection (b) whenever it shall be established to the satisfaction of the board, after a hearing as hereinafter provided, that any dentist or dental hygienist has been guilty of the following: . . . (11) Conviction in any court of competent jurisdiction of a felony or a misdemeanor involving moral turpitude.”); Ala. Code § 34-13-56(c)(1) (“The board may suspend, revoke, or place on probation a license if the licensee is found guilty of any of the following: (1) Conviction of a crime involving moral turpitude including, but not limited to, any crime where the individual has to register as a sex offender in any jurisdiction.”).

⁶ Ala. Code § 34-3-86(1) (“An attorney must be removed for the following causes by the circuit court: (1) Upon his or her being convicted of a felony other than manslaughter or of a misdemeanor involving moral turpitude, in either of which cases the record of his or her conviction is conclusive evidence.”).

⁷ *E.g.*, 8 U.S.C. § 1227 (deportable aliens); 8 U.S.C. § 1182 (inadmissible aliens); 21 U.S.C. § 206 (revocation of pharmacy license in areas of China); U.S. Vet. App. R. Admis & Prac, Rule 7.

Interrogatory No. 3

Identify and describe in detail Alabama's definition of "moral turpitude" prior to the passage of HB 282, and list every felony conviction YOUR office determined was a crime involving moral turpitude or for which a person was disqualified from voting prior to the passage of HB 282.

Objections:

The Secretary objects to the first discrete subpart of this Interrogatory which calls for him to describe in detail the legal definition of moral turpitude, which is a pure question of law. Fed. R. Civ. P. 33(a)(2) allows for interrogatories that call "for an opinion or contention that relates to fact or the application of law to fact," but does not authorize Plaintiffs to demand that the Secretary define the meaning of a legal term. The Secretary further objects to the suggestion that moral turpitude meant something different in Alabama than in other places.

The Secretary objects to the second discrete subpart of this Interrogatory which calls for him to list every felony conviction which his office, between January 1, 2015 and the implementation of Ala. Act No. 2017-378, advised involved moral turpitude, such that it was disenfranchising under Alabama law. To the extent that this Interrogatory contains a third subpart that calls for the Secretary to list every felony conviction for which someone in Alabama was denied application or removed from the voter rolls on the basis of a felony conviction for a crime of moral turpitude, between January 1, 2015 and the implementation of Ala. Act No. 2017-378, the Secretary objects to that subpart as well. These demands are not "relevant to any party's claim or defense and proportional to the needs of the case, considering . . . the parties' relative access to the relevant information, the parties resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1).

First, with respect to access to the information, the Secretary's office does not keep a list of every felony it has advised to involve moral turpitude and so has no handy answer to the second subpart. Indeed, there are emails which have been produced in this case wherein only the questions, and not the answers, are recorded. Additionally, the Secretary's office does not actually deny voter registration or remove voters from the rolls for convictions of felonies involving moral turpitude; that work is done by the Boards of Registrars in each of the 67 counties. Accordingly, the Secretary could only answer these subparts by reviewing the extensive documents already produced in this case for evidence of advice given (as to the second subpart), and by analyzing the databases produced in this case for evidence of actual registration denials and voter removals (as to the third subpart) and/or reaching out to the Boards of Registrars in the 67 counties to inquire as to their information (as to both subparts). To the extent that the answers, incomplete though they may be, are found in documents and databases already produced in this case, Plaintiffs have equal access to the information.

Second, the work involved in securing this information, which will surely be incomplete, would be extremely burdensome and in no way important to, or justified by, the needs of this case. Each individual Plaintiff's felony was disenfranchising at the time it was committed. Plaintiff Treva Thompson was convicted of theft of property (1st degree) in 2005, years after it was established that theft is a crime of moral turpitude, *Stahlman v. Griffith*, 456 So.2d 287 (Ala. 1984). Plaintiff Timothy Lanier and Plaintiff Pamela King were convicted of felonies (burglary 1st and murder, respectively) before the 1996 Constitutional Amendment; at the time they committed their felonies, all felonies were disenfranchising under Alabama law. Plaintiff Darius Gamble trafficked in cannabis in 2006, years after it was established that this was a felony of moral turpitude, *Ex parte McIntosh*, 443 So.2d 1283 (Ala. 1983). Thus, none of the individual Plaintiffs is disqualified

based on felonies that had not been determined to be disqualifying at the time of the offense. The presence of Greater Birmingham Ministries as a Plaintiff in this case should not be allowed to exponentially expand discovery. Ultimately, Plaintiffs are swatting at gnats in insisting on delving into any lack of clarity or consistency before the implementation of Ala. Act No. 2017-378 because there has been no evidence that race was a factor (such that this discovery could relate to Counts 1 or 2, since it is plainly not relevant to any others) and because the felons had the opportunity to appeal their disenfranchisement to the Alabama court system, where their qualification (or not) to vote could be authoritatively established.

Answer:

In 1908, the Supreme Court of Arkansas explained that “‘Moral turpitude is defined to be an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general.’ 20 Am. & Eng. Ency. of Law, 872. *See, also, Ex parte Mason*, 29 Or. 18, 43 Pac. 651, 54 Am. St. Rep. 772; *In re Kirby*, 10 S. D. 322, 414, 73 N. W. 92, 907, 39 L. R. A. 856. Moral turpitude implies something immoral in itself, regardless of the fact whether it is punishable by law. The doing of the act itself, and not its prohibition by statute, fixes the moral turpitude. It seems clearly deducible from the above-cited authorities that the words ‘moral turpitude’ had a positive and fixed meaning at common law” *Fort v. Brinkley*, 112 S.W. 1084, 1084 (Ark. 1908). In 1916, the Supreme Court of Alabama quoted *Fort v. Brinkley* in saying “Moral turpitude implies something immoral in itself, regardless of the fact whether it is punishable by law. The doing of the act itself, and not its prohibition by statute, fixes the moral turpitude.” *Pippen v. State*, 73 So. 340, 342 (Ala. 1916).

Similar language has been used to discuss moral turpitude many other times. For instance, in 1959, the Alabama Supreme Court explained that moral turpitude refers to “something immoral

in itself, regardless of the fact that it is punished by law. It must not merely be mala prohibita, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute, fixes the moral turpitude.” *Sims v. Callahan*, 112 So. 2d 776, 785 (Ala. 1959).

In 1972, the Alabama Supreme Court leaned on a Wisconsin decision in making a similar statement: “Moral turpitude has been defined as ‘as act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general.’ *Lee v. Wisconsin State Board of Dental Examiners*, 29 Wis.2d 330, 139 N.W.2d 61 [(Wisc. 1966)]. The inherent nature of the offense itself, rather than the mere fact that such acts are made criminal offenses, determines whether any given offense involves moral turpitude.” *Meriwether v. Crown Inv. Corp.*, 268 So. 2d 780, 787 (Ala. 1972).

And, in 1983, the Supreme Court of Alabama quoted Professor Charles Gamble: “Moral turpitude signifies an inherent quality of baseness, vileness and depravity. It is immoral in itself, regardless of the fact that it is punished by law.” *Ex parte McIntosh*, 443 So. 2d 1283, 1284 (Ala. 1983) (quoting C. Gamble, *McElroy’s Alabama Evidence*, § 145.01(7) (3d ed. 1977)).

In 2005, the Alabama Attorney General issued an opinion on the meaning of moral turpitude. Opinion to Hon. William C. Segrest, Executive Director, Board of Pardons and Paroles, dated March 18, 2005, A.G. No. 2005-092. That opinion said:

The Alabama Supreme Court has defined moral turpitude as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general.” *G.M. Mosley Contractors, Inc. v. Phillips*, 487 So. 2d 876 (Ala. 1986); *Meriwether v. Crown Inv. Corp.*, 289 Ala. 504, 512, 268 So. 2d 780, 787 (1972). An act involving moral turpitude is immoral in itself, regardless of the fact that it is punished by law. *Id.* The Court also notes that all felonies do not, per se, involve moral turpitude. *Owens v. State*, 291 Ala. 107, 278 So. 2d 693 (Ala. 1973).

The Alabama Supreme Court also has explained that, while a crime is not required to have fraud as an element to be considered a crime

involving moral turpitude, the presence of fraud in a crime ensures a finding of moral turpitude: “Without exception, Federal and State Courts have held that a crime in which fraud is an ingredient involves moral turpitude.” *Phillips*, 487 So. 2d at 878, citing *Jordan v. DeGeorge*, 341 U.S. 223, 227 (1951).

Opinion to Hon. William C. Segrest, Executive Director, Board of Pardons and Paroles, dated March 18, 2005, A.G. No. 2005-092 at 2.

Prior to the implementation of Ala. Act No. 2017-378, the Secretary of State’s office advised that at least the following felonies involved moral turpitude:

- Murder
- Old Code murder (Ala. Code 014-314)
- Capital murder (Ala. Code § 13A-5-40(A)(1)-(18))
- Murder (Ala. Code § 13A-6-2)
- Murder - reckless/vehicle (Ala. Code § 13A-6-2(A)(2))
- Felony murder - reckless/vehicle (Ala. Code § 13A-6-2(A)(3))
- Manslaughter
- Rape (any degree)
- Burglary
- Burglary 1st degree
- Burglary 2nd degree
- Burglary 3rd degree
- Robbery
- Robbery 1st degree
- Robbery 2nd degree
- Robbery 3rd degree

- Income tax evasion
- Forgery
- Forgery 1st degree
- Forgery 2nd degree
- Conspiracy to commit fraud
- Aggravated assault
- Assault 1st degree
- Assault 1st degree (liquor)
- Assault 2nd degree
- Possession of marijuana for resale
- Possession of marijuana 1st degree
- Sale of marijuana
- Sale of cocaine
- Unlawful distribution/furnishing of a controlled substance
- Manslaughter
- Theft
- Theft of property 1st degree – shoplifting
- Theft by deception 1st degree
- Theft of property 1st degree
- Theft 1st degree – charitable organization
- Theft of property 2nd degree – shop lifting
- Theft by deception 2nd degree
- Theft of property 2nd

- Theft 2nd degree – charitable organization
- Theft of lost property 1st degree
- Theft of lost property 2nd degree
- Theft trade secret/ trademark
- Transporting stolen vehicles across State lines
- Unauthorized sale of controlled substances
- Bigamy
- Impeachment
- Sodomy (any degree)
- Sexual abuse (any degree)
- Sexual abuse – child less than 12 years old
- Incest
- Sexual torture/abuse
- Enticing a child to enter a vehicle for immoral purposes
- Soliciting a child by computer
- Production of obscene matter involving a minor
- Production of obscene matter
- Parents or guardians permitting children to engage in obscene matter
- Possession of obscene matter
- Possession with intent to distribute child pornography
- Display of obscene matter involving minors
- Obscene material – distribution/possession
- Obscene material – distribution/possession by wholesaler

- Obscene material - production
- Treason
- Child abuse
- Intimidating a witness
- Obstruction of justice
- Making false representation
- Knowledge of such false representation by the perpetrator
- Reliance on the representation of the person defrauded
- An intent to defraud
- Fraud
- Arson
- Blackmail
- Embezzlement
- Extortion
- False pretenses
- Larceny (grand or petty)
- Malicious destruction of property
- Knowingly receiving stolen goods
- Transporting stolen property
- Bribery
- Counterfeiting
- Fraud against revenue or other government functions
- Mail fraud

- Perjury
- Harboring a fugitive from justice (with guilty knowledge)
- Tax evasion (willful)

Interrogatory No. 4

Identify and describe all known instances of disagreements among [S]tate officials—including Board of Pardons and Paroles’ officials, county election officials, and Secretary of State officials—about which felonies involv[e] moral turpitude.

Objections:

The Secretary objects to this Interrogatory as not “relevant to any party’s claim or defense and proportional to the needs of the case, considering . . . the parties’ relative access to the relevant information, the parties resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). With respect to access to the information, the Secretary’s office does not keep a list of such disagreements and will not review the extensive documents already produced in this case for such disagreements as that evidence, if any, is now equally available to the Plaintiffs. The work involved doing so would be extremely burdensome and in no way important to, or justified by, the needs of this case. Each individual Plaintiff’s felony was disenfranchising at the time it was committed. Plaintiff Treva Thompson was convicted of theft of property (1st degree) in 2005, years after it was established that theft is a crime of moral turpitude, *Stahlman v. Griffith*, 456 So.2d 287 (Ala. 1984). Plaintiff Timothy Lanier and Plaintiff Pamela King were convicted of felonies (burglary 1st and murder, respectively) before the 1996 Constitutional Amendment; at the time they committed their felonies, all felonies were disenfranchising under Alabama law. Plaintiff Darius Gamble trafficked in cannabis in 2006, years after it was established that this was a felony of moral turpitude, *Ex parte McIntosh*, 443 So.2d 1283 (Ala. 1983). Thus, none of the

individual Plaintiffs is disqualified based on felonies that had not been determined to be disqualifying at the time of the offense. The presence of Greater Birmingham Ministries as a Plaintiff in this case should not be allowed to exponentially expand discovery. Ultimately, Plaintiffs are swatting at gnats in insisting on delving into any lack of clarity or consistency before the implementation of Ala. Act No. 2017-378 because there has been no evidence that race was a factor (such that this discovery could relate to Counts 1 or 2, since it is plainly not relevant to any others) and because the felons had—and still have—the opportunity to appeal their disenfranchisement to the Alabama court system, where their qualification (or not) to vote could be authoritatively established.

Answer:

While there may have been disagreements, we have no known instances of disagreement based upon present recollection.

Interrogatory No. 5

Identify each person involved—and their role—in the proposing, drafting, revising, or finalizing of the bill YOU proposed to the Legislature to define felonies “involving moral turpitude,” which ultimately was enacted as HB 282.

Objections:

The Secretary objects because this Interrogatory calls for information protected by legislative privilege. As Magistrate Judge Doyle has recently explained, legislative privilege “protects the legislative process itself” and covers “legislator’s actions in the proposal, formulation, and passage of legislation.” Doc. 199 at 4 (*quoting In re Hubbard*, 803 F.3d 1298, 1308 (11th Cir. 2015)). “The privilege applies with *full force* against requests for information about the *motives* for legislative votes and legislative enactments.” Doc. 199 at 4 (*quoting In re Hubbard*, 803 F.3d at 1310)) (emphasis by the *Thompson* court). “The immunity applies to executive officials and other non-legislators when they are performing a legislative function,” doc.

199 at 5, and thus protects Secretary Merrill and his staff. *See also id.* at 6 (“Therefore the privilege is not waived by discussions with third parties, such as the committee members here, who are integral to the formulation, proposal, and passage of legislation.”). Magistrate Judge Doyle specifically held that legislative immunity applies to the activity of the Voter Disenfranchisement and Restoration of Rights Exploratory Committee “because it directly concerned the formulation, proposal, and passage of the legislation.” Doc. 199 at 6. Additionally, Plaintiffs have already taken extensive testimony on the work of the Exploratory Committee in deposing Ed Packard, John Bennett, Win Johnson, and Judge Tim Jolley; there is no reason to breach the privilege here.

Moreover, even if we assumed *arguendo* that the Exploratory Committee was somehow not engaged in a legislative function sufficient to invoke legislative immunity, then it would be hard to see why anything the committee did would be discoverable in this case. Discovery is limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case,” which includes consideration of “the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). Here, the Exploratory Committee was not the final decisionmaker⁸ and so anything that happened there is of little import in proving the decisionmaker’s intent. Further, the supplemental complaint does not allege that Ala. Act No. 2017-378 was passed with a discriminatory intent, see doc. 93 at ¶¶ 46-47, 50-51, and Plaintiffs have no right to discovery on claims they have not brought.

⁸ The Supreme Court has explained: “The legislative or administrative history may be highly relevant, especially where there are contemporary statements *by members of the decisionmaking body*, minutes of *its* meetings, or reports. In some extraordinary instances the members might be called to the stand at trial to testify concerning the purpose of the official action, *although even then such testimony frequently will be barred by privilege.*” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (citations and footnote omitted; emphasis added).

Secretary Merrill further objects to this Interrogatory as not “proportional to the needs of the case, considering . . . the parties’ relative access to the relevant information, the parties resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit,” Fed. R. Civ. P. 26(b)(1), in that it would be unduly burdensome to fully respond.

Answer:

It is public information that the following persons were members of, or attended the meetings of, the Voter Disenfranchisement and Restoration of Voting Rights Exploratory Committee:

- Secretary of State John H. Merrill
- State Senator Linda Coleman, Minority Senate Leader
- Holly Caraway, Chief Counsel for the Office of the Minority Senate Leader
- State Senator Cam Ward
- State Representative David Faulkner
- State Representative Chris England
- Michael Coleman, Hope Inspired Ministries
- Darlene Biehl, crime victim’s advocate
- Jeff Dunn, Alabama Department of Corrections
- Pastor Kenneth Glasgow, a felon, representing The Ordinary Peoples Society
- Will Harrell, ACLU
- Marissa Dodson, ACLU
- Carol Hill, Shelby County Board of Registrars
- Quin Hillyer, freelance journalist

- Win Johnson, Administrative Office of Courts
- Rich Hobson, Director of Administrative Office of Courts
- Summer Scruggs, Clark County Circuit Clerk
- Gabrelle Simmons, Board of Pardons and Paroles
- Cliff Walker, Board of Pardons and Paroles
- Joel Laird, then Chief Legal Counsel of the Secretary of State
- Ed Packard, employee of the Secretary of State
- Tim Jolley, then Circuit Judge for the 27th Judicial Circuit

Additionally, John Bennett attended one or more of the Exploratory Committee meetings.

There may have been additional persons, but this is the present recollection of membership/participation in public meetings based upon available resources.

Interrogatory No. 6

Identify each legislator or other public official that YOU consulted with, the date of those consultation(s), and the nature of your consultation(s) about the bill YOU proposed to the Legislature to define felonies “involving moral turpitude,” which ultimately was enacted as HB 282.

Objections:

The Secretary objects because this Interrogatory calls for information protected by legislative privilege. As Magistrate Judge Doyle has recently explained, legislative privilege “protects the legislative process itself” and covers “legislator’s actions in the proposal, formulation, and passage of legislation.” Doc. 199 at 4 (*quoting In re Hubbard*, 803 F.3d 1298, 1308 (11th Cir. 2015)). “The privilege applies with *full force* against requests for information about the *motives* for legislative votes and legislative enactments.” Doc. 199 at 4 (*quoting In re Hubbard*, 803 F.3d at 1310)) (emphasis by the *Thompson* court). “The immunity applies to executive officials and other non-legislators when they are performing a legislative function,” doc.

199 at 5, and thus protects Secretary Merrill. *See also id.* at 6 (“Therefore the privilege is not waived by discussions with third parties, such as the committee members here, who are integral to the formulation, proposal, and passage of legislation.”).

Moreover, here Plaintiffs seek to inquire into the conversations of the legislators through Secretary Merrill and so the legislators’ privilege is directly implicated. Two legislators subpoenaed by Plaintiffs in this case have argued that the privilege is broad, doc. 146 at 2, and that it is intended “to foster the free flow of information critically needed by legislators to discharge their official duties free of the burden or threat of defending litigation either as a party or witness,” *id.* at 10. While interrogating Secretary Merrill does not convert the legislators to parties or witnesses, it would stifle the free flow of information if legislators and executive officials were unable to openly communicate about legislative matters for fear of being subject to discovery about those conversations in the future.

Secretary Merrill also objects to this Interrogatory as beyond the proper scope of discovery. Discovery is limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case,” which includes consideration of “the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). Here, the Secretary was not the final decisionmaker⁹ and so anything he did is of little import in proving the decisionmaker’s intent. Further, the supplemental complaint does not allege that Ala. Act No. 2017-378 was passed with

⁹ The Supreme Court has explained: “The legislative or administrative history may be highly relevant, especially where there are contemporary statements *by members of the decisionmaking body*, minutes of *its* meetings, or reports. In some extraordinary instances the members might be called to the stand at trial to testify concerning the purpose of the official action, *although even then such testimony frequently will be barred by privilege.*” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (citations and footnote omitted; emphasis added).

a discriminatory intent, see doc. 93 at ¶¶ 46-47, 50-51, and Plaintiffs have no right to discovery on claims they have not brought. And, finally, trying to answer this Interrogatory would be unduly burdensome.

Answer:

The Secretary stands on his objections.

Interrogatory No. 6 (sic)

Identify the [S]tate interest(s) served by denying people with past convictions a CERV because they have outstanding legal financial obligations from their criminal sentence that they cannot afford to pay.

Objections:

The Secretary objects to this Interrogatory because it exclusively concerns Count 13, and he is not a party as to that claim, doc. 1 at ¶¶ 245-52; doc. 93 at ¶¶ 65-69. *See* Fed. R. Civ. P. 33(a) (“... a party may serve on any other party”); *Ward v. Empire Vision Centers, Inc.*, 262 F.R.D. 256, 261 (W.D.N.Y.) (magistrate judge) (“Notwithstanding the timeliness issue, the federal rules provide that interrogatories may only be served upon parties to the lawsuit. Fed. R. Civ. P. 33 (‘a party may serve on any other party no more than 25 written interrogatories’) (emphasis added). Thus, service upon a non-party is inappropriate.”).

Answer:

The Secretary of State is not a party to Count 13.

Interrogatory No. 7

Identify the reason why YOUR office excluded bribery, public corruption, and voter fraud from YOUR draft bill defining felonies “involving moral turpitude.”

Objections:

The Secretary objects because this Interrogatory calls for information protected by legislative privilege. As Magistrate Judge Doyle has recently explained, legislative privilege

“protects the legislative process itself” and covers “legislator’s actions in the proposal, formulation, and passage of legislation.” Doc. 199 at 4 (*quoting In re Hubbard*, 803 F.3d 1298, 1308 (11th Cir. 2015)). “The privilege applies with *full force* against requests for information about the *motives* for legislative votes and legislative enactments.” Doc. 199 at 4 (*quoting In re Hubbard*, 803 F.3d at 1310)) (emphasis by the *Thompson* court). “The immunity applies to executive officials and other non-legislators when they are performing a legislative function,” doc. 199 at 5, and thus protects Secretary Merrill and his staff. *See also id.* at 6 (“Therefore the privilege is not waived by discussions with third parties, such as the committee members here, who are integral to the formulation, proposal, and passage of legislation.”). Magistrate Judge Doyle specifically held that legislative immunity applies to the activity of the Voter Disenfranchisement and Restoration of Rights Exploratory Committee “because it directly concerned the formulation, proposal, and passage of the legislation.” Doc. 199 at 6. Additionally, Plaintiffs have already taken extensive testimony on the work of the Exploratory Committee in deposing Ed Packard, John Bennett, Win Johnson, and Judge Tim Jolley; there is no reason to breach the privilege here.

Moreover, even if we assumed *arguendo* that the Exploratory Committee was somehow not engaged in a legislative function sufficient to invoke legislative immunity, then it would be hard to see why anything the committee did would be discoverable in this case. Discovery is limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case,” which includes consideration of “the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). Here, the Exploratory Committee was not

the final decisionmaker¹⁰ and so anything that happened there is of little import in proving the decisionmaker's intent. Further, the supplemental complaint does not allege that Ala. Act No. 2017-378 was passed with a discriminatory intent, see doc. 93 at ¶¶ 46-47, 50-51, and Plaintiffs have no right to discovery on claims they have not brought.

Answer:

The Secretary stands on his objections.

Interrogatory No. 8

Identify all research or analysis YOUR office conducted with respect to the potential racial impact of the chosen felony convictions included in YOUR draft bill defining felonies “involving moral turpitude.”

Objections:

The Secretary objects because this Interrogatory calls for information protected by legislative privilege. As Magistrate Judge Doyle has recently explained, legislative privilege “protects the legislative process itself” and covers “legislator’s actions in the proposal, formulation, and passage of legislation.” Doc. 199 at 4 (*quoting In re Hubbard*, 803 F.3d 1298, 1308 (11th Cir. 2015)). “The privilege applies with *full force* against requests for information about the *motives* for legislative votes and legislative enactments.” Doc. 199 at 4 (*quoting In re Hubbard*, 803 F.3d at 1310)) (emphasis by the *Thompson* court). “The immunity applies to executive officials and other non-legislators when they are performing a legislative function,” doc. 199 at 5, and thus protects Secretary Merrill and his staff. *See also id.* at 6 (“Therefore the privilege

¹⁰ The Supreme Court has explained: “The legislative or administrative history may be highly relevant, especially where there are contemporary statements *by members of the decisionmaking body*, minutes of *its* meetings, or reports. In some extraordinary instances the members might be called to the stand at trial to testify concerning the purpose of the official action, *although even then such testimony frequently will be barred by privilege.*” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (citations and footnote omitted; emphasis added).

is not waived by discussions with third parties, such as the committee members here, who are integral to the formulation, proposal, and passage of legislation.”). Additionally, Plaintiffs have already taken extensive testimony on the work of the Exploratory Committee in deposing Ed Packard, John Bennett, Win Johnson, and Judge Tim Jolley; there is no reason to breach the privilege here.

Answer:

The Secretary stands on his objections.

Interrogatory No. 9

Identify each person involved in drafting, proposing, and finalizing all administrative regulations, policies, guidelines, or guidance relating to the implementation of Alabama’s constitutional provision disenfranchising persons convicted of a felony involving moral turpitude or HB 282 from January 1, 2015 through the present, whether proposed or finalized, including such person’s title and office at the time, a description of the person’s involvement in those activities, and the dates of such involvement.

Answer:

The Secretary of State’s office has neither adopted nor drafted any administrative rules or guidelines relating to Ala. Act No. 2017-378.

Interrogatory No. 10

Identify and describe all actions, formal or informal, taken by YOU from 2017 to the present to inform, educate, or explain the requirements of HB 282 to election officials or the public, and specify the amount of money budgeted and spent on this activity.

Answer:

The role of voter registration falls primarily on the Boards of Registrars in the counties. In conjunction with Auburn University, the Secretary of State’s office provides on average, seven annual training sessions for registrars. A small portion of the training does involve Ala. Act No. 2017-378. We have prepared and distributed a Registrar Handbook, which also covers the topic.

While there is some variance, this year we budgeted \$94,000 for registrar training. Again, this covers more than just Ala. Act No. 2017-378.

In addition to registrar training, the Secretary of State's office has conducted a number of activities that inform the general public or portions thereof. With the exception of the printing costs for new voter registration forms, these activities are included in our general budget funding and the office is unable to break out actual costs or expenses. As to the costs for printing the revised voter registration forms, see the Answer to Interrogatory 13, below.

The activities to inform the general public or portions thereof are:

- Making mobile unit visits in each county in the State. At these visits, we have available posters, voter guides and photo ID guides.
- Adding the list of felonies involving moral turpitude found in Ala. Act No. 2017-378 to the Secretary of State's website.
- Revising the voter registration forms (paper-based and on-line) to include information on where to find the list of felonies involving moral turpitude found in Ala. Act No. 2017-378 on the Secretary of State's website.
- Working with the Alabama Board of Pardons and Paroles to revise the poster on restoration of voting rights. A second revision to the poster was recently approved.
- Working with Alabama Board of Pardons and Paroles to develop and revise voter disqualification forms that are used in the process of discharging felons from custody.
- Revising the Board of Registrars handbooks.
- Working with others in revising elections handbooks.
- Conducting events with Legal Services of Alabama and ACLU after Ala. Act No. 2017-378 was enacted.

- Issuing press releases.

In addition, information provided by our office is used by the United States Elections Assistance Commission (the “EAC”) to inform the public about voter registration via its website: <https://www.eac.gov/voters/register-and-vote-in-your-state>. For example, to access an Alabama registration form using the EAC website, the prospective voter would click on https://www.alabamainteractive.org/sos/voter_registration/voterRegistrationWelcome.action which contains a link to the list of disqualifying felonies:

<https://www.sos.alabama.gov/sites/default/files/voter-pdfs/Updated%20Version%20of%20Moral%20Turpitude%20Crimes.pdf>.

Interrogatory No. 11

Identify and describe all requests for guidance or inquiries YOUR office has received about whether a specific criminal conviction—including Alabama, out-of-state, and federal offenses—of an applicant is disqualifying under HB 282 and YOUR office’s response to such requests or inquiries.

Objections:

The Secretary objects to this Interrogatory as not “relevant to any party’s claim or defense and proportional to the needs of the case, considering . . . the parties’ relative access to the relevant information, the parties resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). With respect to access to the information, the Secretary’s office does not keep a list of such requests or inquiries and will not review the extensive documents already produced in this case for such requests or inquiries as that evidence, if any, is now equally available to the Plaintiffs. The work involved in doing so would be extremely burdensome and in no way important to, or justified by, the needs of this case. Moreover, each individual Plaintiff’s felony is included in Ala. Code § 17-3-30.1 and any phone call about those felonies (if one has been

made) should have been answered accordingly. The presence of Greater Birmingham Ministries as a Plaintiff in this case should not be allowed to exponentially expand discovery.

Answer:

While there may have been such requests, we have no way of tracking this information and there is no present recollection as to any specific instance.

Interrogatory No. 11 (sic)

Identify the number of phone calls YOUR office has received on the toll-free line indicated on the voter registration form for questions related to felonies involving moral turpitude, identify the person responsible for responding to that phone line and the hours worked by that individual, and describe the nature of the inquiries received.

Objections:

The Secretary objects to this Interrogatory as not “relevant to any party’s claim or defense and proportional to the needs of the case, considering . . . the parties’ relative access to the relevant information, the parties resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). With respect to access to the information, the Secretary’s office does not keep a list of such phone calls and will not review the extensive documents already produced in this case looking for notes of such calls as that evidence, if any, is now equally available to the Plaintiffs. The work involved doing so would be extremely burdensome and in no way important to, or justified by, the needs of this case. Moreover, each individual Plaintiff’s felony is on the list in Ala. Code § 17-3-30.1 and any phone call about those felonies (if one has been made) should have been answered accordingly. The presence of Greater Birmingham Ministries as a Plaintiff in this case should not be allowed to exponentially expand discovery.

Answer:

While the Secretary of State's office may have received such phone calls, we have no way of tracking this information and there is no present recollection as to any specific instance.

Interrogatory No. 12

State all facts supporting YOUR contention that "the requirement that felons pay 'all fines, court costs, fees, and victim restitution ordered by the sentencing court at the time of sentencing on the disqualifying cases,' Ala. Code § 15-22-36.1(a)(3), is not severable."

Objections:

The Secretary objects to this Interrogatory because it exclusively concerns Count 13, and he is not a party as to that claim, doc. 1 at ¶¶ 245-52; doc. 93 at ¶¶ 65-69. *See* Fed. R. Civ. P. 33(a) ("... a party may serve on any other party . . ."); *Ward v. Empire Vision Centers, Inc.*, 262 F.R.D. 256, 261 (W.D.N.Y.) (magistrate judge) ("Notwithstanding the timeliness issue, the federal rules provide that interrogatories may only be served upon parties to the lawsuit. Fed. R. Civ. P. 33 ('a party may serve on any other party no more than 25 written interrogatories') (emphasis added). Thus, service upon a non-party is inappropriate.").

Answer:

The Secretary of State is not a party to Count 13, and thus the contention is not his.

Interrogatory No. 12 (sic)

State all facts supporting YOUR contention that "Plaintiffs Thompson and Gamble have unclean hands as to Count 13."

Objections:

The Secretary objects to this Interrogatory because it exclusively concerns Count 13, and he is not a party as to that claim, doc. 1 at ¶¶ 245-52; doc. 93 at ¶¶ 65-69. *See* Fed. R. Civ. P. 33(a) ("... a party may serve on any other party . . ."); *Ward v. Empire Vision Centers, Inc.*, 262 F.R.D. 256, 261 (W.D.N.Y.) (magistrate judge) ("Notwithstanding the timeliness issue, the federal rules

provide that interrogatories may only be served upon parties to the lawsuit. Fed. R. Civ. P. 33 (‘a *party* may serve on any other *party* no more than 25 written interrogatories’) (emphasis added). Thus, service upon a non-party is inappropriate.”).

Answer:

The Secretary of State is not a party to Count 13, and thus the contention is not his.

Interrogatory No. 13

Identify which constitutional provision YOU rely upon in contending that “[i]f Plaintiffs are correct that the NVRA requires the State to list on voter registration forms each and every disenfranchising felony, then the provisions so requiring are unconstitutional” and all facts supporting that contention.

Objections:

To the extent this Interrogatory calls for an interpretation of the law, *i.e.*, presents a pure question of law, the Secretary objects. Fed. R. Civ. P. 33(a)(2) allows for interrogatories that call “for an opinion or contention that relates to fact or the application of law to fact,” but does not authorize Plaintiffs to demand that the Secretary brief legal issues or provide Plaintiffs legal research.

Answer:

Alabama is a sovereign with an inherent right to determine who shall be a part of her electorate. Indeed, the default rule is that the States set voter qualifications, even in federal elections. U.S. Const. Art. I § 2 cl. 1 (In House elections, “. . . Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.”); U.S. Const. Amend. XVII (Senators elected by the same electors as House Members); *see also* U.S. Const. Art. II § 1 cl. 2 (Presidential Electors need not even be selected by election); U.S. Const. Amend. XIV (recognizing the State’s right to set qualifications and, specifically, to disenfranchise felons). The Constitution has, of course, been amended to impose some limits on

that power, U.S. Const. Amend. XV (eliminating disenfranchisement based on “race, color, or previous condition of servitude”); U.S. Const. Amend. XIX (enfranchising women); U.S. Const. Amend. XXVI (lowering the voting age to 18), and to eliminate poll taxes, U.S. Const. Amend. XXIV. Thus, the Supreme Court has recognized that “[t]he States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, absent of course the discrimination which the Constitution condemns.” *Lassiter v. Northampton Cty. Bd. of Elections*, 360 U.S. 45, 50 (1959) (internal citations omitted). In this area, “there is wide scope for exercise of [the State’s] jurisdiction. Residence requirements, age, *previous criminal record* are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters.” *Id.* at 51 (internal citations omitted; emphasis added). The Tenth Amendment to the United States Constitution may protect this inherent right of sovereignty.

If Plaintiffs’ interpretation of the NVRA as requiring the State to list on voter registration forms each and every disenfranchising felony were to prevail, it would severely interfere with Alabama’s ability to “determine the conditions under which the right of suffrage may be exercised.” *Lassiter v. Northampton Cty. Bd. of Elections*, 360 U.S. at 50 (internal citations omitted). Prior to Ala. Act No. 2017-378, Alabama had no comprehensive and authoritative list of which felonies involve moral turpitude. Thus, prior to the implementation of Ala. Act No. 2017-378, it would have been impossible for Alabama to comply with a requirement to list each and every disenfranchising felony on her voter registration forms while maintaining her chosen moral turpitude standard. To list each and every disenfranchising felony, Alabama would have had to abandon her chosen standard and adopted a reasonably-listed one.

While Alabama has now legislatively adopted a comprehensive and definitive list, the threat made to Alabama's sovereignty by Plaintiffs' interpretation remains. First, there is always the possibility that Ala. Act No. 2017-378 could be invalidated by a State court. Second, experience already shows that the comprehensive and definitive list, codified at Ala. Code § 17-3-30.1, may be amended. In 2019, the Alabama Legislature created a new felony of aggravated theft by deception and added that new felony to Ala. Code § 17-3-30.1. Ala. Act No. 2019-513. Under Plaintiffs' theory, Alabama's voter registration forms would have immediately been in violation of the NVRA as soon as Ala. Act No. 2019-513 took effect. Replacing the forms to add a new felony would be so expensive and cumbersome as to potentially discourage the State from refining its electoral standard in the manner it deems appropriate.

Recently, the Alabama Secretary of State's office undertook a revision of the State's voter registration forms. The primary substantive change was to add, in the Voter Declaration section, the following language: "(The list of disqualifying felonies is available on the Secretary of State's website at sos.alabama.gov/mtfelonies)". There are six paper variants of the voter registration form to which this change was made: (1) Agency-Based Voter Registration Form (2-part form); (2) Medicaid Variant of Agency-Based Form; (3) Agency-Based Voter Registration Application (1-part form); (4) Mail-In Voter Registration Application; (5) Department of Human Resources Variant of Mail-In Voter Registration Application; and (6) Medicaid Variant of Mail-In Voter Registration Application. The Secretary of State's office printed a total of 1,650,000 forms at a price of \$114,682.10.¹¹ Once received, the new voter registration forms had to be distributed to

¹¹ The declaration of Ed Packard filed as doc. 171-1 discussed the process while it was still on-going and thus included estimates. The Secretary incorporates all details of that declaration by reference and produces the business records attached thereto, pursuant to Fed. R. Civ. P. 33(d), by specifying that they may be found in the Court's records at doc. 171-1 at pages 8 through 21.

the following entities throughout the State: Boards of Registrars, Alabama Medicaid Agency, Rehabilitation Services, WIC Program/Public Health, Department of Human Resources, and public libraries. Old forms are never fully retrieved or discarded, and, in fact, continue to be accepted. In addition to the paper-based forms, the Secretary of State makes a fillable PDF available on his website as well as an online form that can be completed electronically. The Secretary's office has had an app to assist voters in registering as well. All of these paper and electronic versions of the voter registration form would also need to be updated every time a change was made to the list of moral turpitude felonies under Plaintiffs' reading of the NVRA. Accordingly, it would be expensive and cumbersome and may discourage the State from refining its electoral standard in the manner it deems appropriate.

The Secretary of State's practice of providing information about where a list of felonies involving moral turpitude may be found and of providing contact information for his office and for the Boards of Registrars on the voter registration forms and online allows the State to determine who shall be a part of its electorate while providing applicants the opportunity to determine whether their felonies are disenfranchising.

Interrogatory No. 14

Describe in detail the process by which, and reasons why, YOU determined that HB 282 applies retroactively to those with felony convictions pre-dating the passage of HB 282 and all individuals you consulted in making that determination and their role in the process.

Objections:

The Secretary objects to this Interrogatory insofar as it calls for an interpretation of the law, *i.e.*, presents a pure question of law. Fed. R. Civ. P. 33(a)(2) allows for interrogatories that call "for an opinion or contention that relates to fact or the application of law to fact," but does not authorize Plaintiffs to demand that the Secretary brief legal issues or provide Plaintiffs legal research.

Answer:

Ala. Act No. 2017-378 applies to elections held within the State of Alabama after its effective date (indeed, the Secretary encouraged the Boards of Registrars to allow persons whose felony convictions were not on the Ala. Act No. 2017-378 list to register to vote even before the effective date so that they would be able to participate in a special federal election for United States Senate that took place shortly after the effective date). That Ala. Act No. 2017-378 applies to elections held within the State of Alabama after its effective date is so plainly obvious that Plaintiffs' interpretation has, as far as we know, never been raised to this office by anyone else or considered outside the context of addressing this litigation. That is, no "process" was necessary.

Interrogatory No. 15

Identify and describe all policies, procedures, and/or guidance—informal or formal—that YOUR office has created, disseminated, or communicated related to the voter registration process for individuals who have received a pardon or CERV, including whether a copy of that pardon or CERV must be provided and, if so, if it must be provided even if the voter has previously registered after receiving the pardon or CERV.

Objections:

The Secretary objects to this Interrogatory as overbroad, unduly burdensome, and not proportional to the needs of the case brought against him because this Interrogatory is unrelated to any of the Plaintiffs' actual situations. Fed. R. Civ. P. 26(b)(1). None of the Plaintiffs have a pardon or CERV; if they did, it would moot the particular claims they actually bring in this litigation, as it did for former Plaintiff Anna Reynolds, for example. Based on this objection, and consistent with Fed.R.Civ.P.26(b)(1), Plaintiffs should not be permitted to inquire about

registration for persons who have been granted a pardon or CERV when they have not received either. Plaintiffs cannot demand discovery on the behalf of strangers to this litigation.¹²

Answer:

No Plaintiff has received a pardon or CERV. The Secretary stands on his objections.

Interrogatory No. 16

Identify and describe all instances when YOUR office has identified errors, problems, or inaccuracies in the processing of voter registration applications or voter registration removals with respect to people with criminal convictions and YOUR response to addressing those errors, problems, or inaccuracies.

Objections:

The Secretary objects to this Interrogatory as not “relevant to any party’s claim or defense and proportional to the needs of the case, considering . . . the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). It is not at all plain why any answer would be relevant to any Count in this litigation, and thus the Interrogatory is not important to resolving the issues. Moreover, the Interrogatory is not proportional because it is clear that each individual Plaintiff’s felony is disenfranchising, and there has been no indication that a mistake of the sort inquired

¹² Cf. doc. 200 at 4-5 (“However, plaintiffs’ motion to compel fails for a more fundamental reason. Following denial of class certification, there are not only two named plaintiffs, Gamble and Thompson, pursuing County 13. (Doc. 194 at 2). Plaintiffs’ requests for production numbers 16-24 that seek information from the pardon files of every CERV applicant in the State of Alabama are now grossly disproportional to the needs of the case. Fed. R. Civ. P. 26(b)(1). Gamble and Thompson have not established how information in non-parties’ parole files is relevant to their individual claims. Plaintiffs’ sweeping discovery request that were clearly aimed at supporting the LFO subclasses’ claim now impose a burden and expense on Pardons and Paroles that completely outweighs any conceivable benefit to Gamble and Thompson. . . . [T]he Court will not order Pardons and Paroles to produce anything from their files in response to the current overbroad requests.”) (paragraph break omitted).

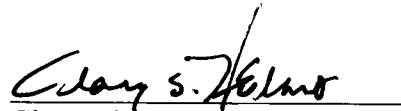
about here impacted any of them. The presence of Greater Birmingham Ministries as a Plaintiff in this case should not be allowed to exponentially expand discovery.

Answer:

While errors, problems, or inaccuracies may have occurred, we have no way of tracking this information and there is no present recollection as to any specific instance.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing Answers to Interrogatories are true and correct to the best of my knowledge, information and belief.

Executed on: 5/11/2020

A handwritten signature in black ink, appearing to read "Clay S. Helms", written over a horizontal line.

Clay Helms
Deputy Chief of Staff/Director of Elections
Alabama Secretary of State

Respectfully submitted,

Steve Marshall
Attorney General

James W. Davis (ASB-4063-I58J)
Deputy Attorney General

s/ Winfield J. Sinclair
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Certificate of Service

Pursuant to an agreement memorialized in the Report of the Parties' Planning Meeting, electronic service is acceptable for this document. I hereby certify that I have served a copy of the foregoing document on Danielle Lang (dlang@campaignlegalcenter.org), Mark P. Gaber (mgaber@campaignlegalcenter.org), Molly Danahy (mdanahy@campaignlegal.org); Jim Blacksher (jblacksher@ns.sympatico.ca), Jason P. Hipp (JHipp@jenner.com), and J. Mitch McGuire (jmcguire@mandabusinesslaw.com), six of the counsel for Plaintiffs, *via* email on this the 11th day of May 2020.

s/ Winfield J. Sinclair
Of Counsel

1 HB443
2 198605-1
3 By Representative McClammy
4 RFD: Constitution, Campaigns and Elections
5 First Read: 16-APR-19

1 198605-1:n:04/15/2019:LLR/bm LSA2019-1182
2
3
4
5
6
7

8 SYNOPSIS: Under existing law, a person who has lost
9 his or her right to vote based upon a past criminal
10 conviction, may apply to the Board of Pardons and
11 Paroles for a Certificate of Eligibility to
12 Register to Vote under certain circumstances,
13 including payment of all fines, court costs, fees,
14 and victim restitution as ordered by the sentencing
15 court and completion of probation or parole and
16 release from compliance by the court or Board of
17 Pardons and Paroles.

18 This bill would allow a person who has been
19 convicted of certain crimes of moral turpitude who
20 applies to the Board of Pardons and Paroles for a
21 Certificate of Eligibility to Register to Vote who
22 is unable to pay any fines, court costs, fees, and
23 victim restitution ordered by the sentencing court
24 at the time of sentencing to petition the
25 sentencing court to modify the payments originally
26 ordered by the court.

1 This bill would provide the procedure for
2 the modification of the payment of fines, court
3 costs, victim restitution, and fees, allow the
4 issuance of a Certificate of Eligibility to
5 Register to Vote to a person whose fines, court
6 costs, fees, and victim restitution have been
7 reduced, and provide for revocation of the
8 Certificate of Eligibility to Register to Vote if
9 the person fails to make the reduced payments.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT

14
15 Relating to voting rights; to amend Section
16 15-22-36.1, Code of Alabama 1975, to provide that a person
17 convicted of certain crimes of moral turpitude who applies to
18 the Board of Pardons and Paroles for a Certificate of
19 Eligibility to Register to Vote and who is unable to pay the
20 fines, court costs, fees, and victim restitution ordered by
21 the sentencing court at the time of sentencing may petition
22 the sentencing court to modify the payments originally ordered
23 by the court; to provide that the modification would be in
24 lieu of full payment of the fines, court costs, fees, and
25 victim restitution; and to provide the procedure for
26 modification of payment of fines, court costs, fees, and

1 victim restitution and revocation of a Certificate of
2 Eligibility to Register to Vote.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 15-22-36.1, Code of Alabama 1975,
5 is amended to read as follows:

6 "§15-22-36.1.

7 "(a) Any other provision of law notwithstanding, any
8 person, regardless of the date of his or her sentence, may
9 apply to the Board of Pardons and Paroles for a Certificate of
10 Eligibility to Register to Vote if all of the following
11 requirements are met:

12 "(1) The person has lost his or her right to vote by
13 reason of conviction in a state or federal court in any case
14 except those listed in subsection (g).

15 "(2) The person has no criminal felony charges
16 pending against him or her in any state or federal court.

17 "(3) The person has paid all fines, court costs,
18 fees, and victim restitution ordered by the sentencing court
19 at the time of sentencing on disqualifying cases or the
20 sentencing court modifies the payment of the fines, court
21 costs, victim restitution, and fees pursuant to Section 2 of
22 the act amending this subdivision.

23 "(4) Any of the following are true:

24 "a. The person has been released upon completion of
25 sentence.

26 "b. The person has been pardoned.

1 "c. The person has successfully completed probation
2 or parole and has been released from compliance by the
3 ordering entity.

4 "(b) The Certificate of Eligibility to Register to
5 Vote shall be granted upon a determination that all of the
6 requirements in subsection (a) are fulfilled.

7 "(c) Upon receipt of an application under this
8 section, investigation of the request shall be assigned
9 forthwith to an officer of the state Board of Pardons and
10 Paroles. The assigned officer shall verify, through court
11 records, records of the board, and records of the Department
12 of Corrections, that the applicant has met the qualifications
13 set out in subsection (a). Within 30 days of the initial
14 application for a Certificate of Eligibility to Register to
15 Vote, the officer shall draft a report of his or her findings
16 including a statement as to whether the applicant has
17 successfully completed his or her sentence and has complied
18 with all the eligibility requirements provided in subsection
19 (a).

20 "(d) After completing the investigation set out in
21 subsection (c), the officer shall submit his or her report of
22 investigation to the Executive Director of the Board of
23 Pardons and Paroles.

24 "(e) If the report created pursuant to subsection
25 (c) states that the applicant has met all of the eligibility
26 criteria set forth in subsection (a), and the executive
27 director or his or her designee attests that the report has

1 been submitted properly and accurately, the Board of Pardons
2 and Paroles shall issue a Certificate of Eligibility to
3 Register to Vote to the applicant within 14 days of receipt of
4 the report by the executive director.

5 "(f) If the report created pursuant to subsection
6 (c) states that the applicant has not met all of the
7 eligibility criteria set forth in subsection (a), and the
8 executive director or his or her designee attests that the
9 report has been submitted properly and accurately, the Board
10 of Pardons and Paroles shall not issue a Certificate of
11 Eligibility to Register to Vote and shall notify the applicant
12 of the decision and reason or reasons for the decision within
13 14 days of receipt of the report by the executive director.
14 The applicant, upon completion of the eligibility requirement
15 in subsection (a) for restoration of his or her rights, may
16 submit a new application at any time if he or she has met the
17 certification criteria.

18 "(g) A person who has lost his or her right to vote
19 by reason of conviction in a state or federal court for any of
20 the following will not be eligible to apply for a Certificate
21 of Eligibility to Register to Vote under this section:
22 Impeachment, murder, rape in any degree, sodomy in any degree,
23 sexual abuse in any degree, incest, sexual torture, enticing a
24 child to enter a vehicle for immoral purposes, soliciting a
25 child by computer, production of obscene matter involving a
26 minor, production of obscene matter, parents or guardians
27 permitting children to engage in obscene matter, possession of

1 obscene matter, possession with intent to distribute child
2 pornography, or treason.

3 "(h) This section shall not affect the right of any
4 person to apply to the board for a pardon with restoration of
5 voting rights pursuant to Section 15-22-36.

6 "(i) Each state or county correctional facility,
7 prison, or jail shall post materials to be prepared by the
8 Secretary of State and the Board of Pardons and Paroles
9 notifying incarcerated individuals of the requirements and
10 procedures for having one's voting rights restored."

11 Section 2. (a) A person who is unable to pay the
12 fines, court costs, victim restitution, and fees ordered by
13 the sentencing court at the time of sentencing for a
14 disqualifying crime except for a crime set forth in subsection
15 (g) of Section 15-22-36.1 may petition the sentencing court to
16 modify the payments originally ordered by the court. The
17 petition shall include a list of the actual necessary monthly
18 expenses of the person and the monthly income of the person
19 after deduction for taxes and, if appropriate, child support
20 and alimony.

21 (b) If, after reviewing the petition, the court
22 determines that the person has the ability to pay part of the
23 fines, court costs, victim restitution, and fees it shall set
24 the amount to be reimbursed and order the person to pay that
25 sum in the manner in which the court believes reasonable and
26 compatible with the person's financial ability.

1 (c) A Certificate of Eligibility to Register to Vote
2 may be issued to a person after the entry of the order
3 modifying the payment of the fines, court costs, victim
4 restitution, and fees if the person is in compliance with
5 subsection (a) of Section 15-22-36.1.

6 (d) If the person fails to make the payments, the
7 prosecutor shall seek revocation of the Certificate of
8 Eligibility to Register to Vote from the Board of Pardons and
9 Paroles.

10 (e) If a person who receives a Certificate of
11 Eligibility to register to vote pursuant to this section fails
12 to make the restitution payments authorized by the court, the
13 recipient may ask the board to revoke the Certificate of
14 Eligibility to Register to Vote.

15 (f) A person whose Certificate of Eligibility to
16 Register to Vote is revoked may file only one petition with
17 the sentencing court to modify the payments ordered by the
18 court.

19 (g) The circuit clerk of each county shall enter
20 into a database maintained by the Administrative Office of
21 Courts the names of all persons whose Certificate of
22 Eligibility to Register to Vote has been revoked, and update
23 the database for any person whose voting rights have
24 subsequently been restored pursuant to this section.

25 (h) At least twice a year, the Secretary of State
26 shall compare the list of registered voters to a list of
27 felons who are not eligible to vote as provided in this

1 section. If a registered voter is not eligible to vote as
2 provided in this section, the Secretary of State or local
3 board of registrars shall confirm the match through the date
4 of birth comparison and suspend the voter registration from
5 the official statewide voter registration list. The Secretary
6 of State or local board of registrars shall send to the last
7 known voter registration address of the person a notice of the
8 proposed cancellation. To the extent possible, the Secretary
9 of State shall time the comparison required by this
10 subparagraph to allow notice and cancellation of voting rights
11 for ineligible voters prior to a primary or general election.

12 Section 3. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.

1 HB454
2 199030-1
3 By Representative Hall
4 RFD: Constitution, Campaigns and Elections
5 First Read: 16-APR-19

1 199030-1:n:04/15/2019:ANS/bm LSA2019-988
2
3
4
5
6
7

8 SYNOPSIS: Under existing law, a person who has lost
9 his or her right to vote based upon a past criminal
10 conviction, may apply to the Board of Pardons and
11 Paroles for a Certificate of Eligibility to
12 Register to Vote under certain circumstances,
13 including payment of all fines, court costs, fees,
14 and victim restitution as ordered by the sentencing
15 court and completion of probation or parole and
16 release from compliance by the court or Board of
17 Pardons and Paroles.

18 This bill would remove the process of
19 applying to the Board of Pardons and Paroles for a
20 Certificate of Eligibility to Register to Vote for
21 a person to have his or her right to vote restored.

22 This bill would eliminate the requirement
23 that a person pay all fines, court costs, fees, and
24 victim restitution prior to having his or her right
25 to vote restored.

1 This bill would also expand restoration of
2 voting rights to a person who has been released
3 from incarceration for five or more years.

4
5 A BILL
6 TO BE ENTITLED
7 AN ACT

8
9 Relating to voting rights; to amend Section
10 15-22-36.1, Code of Alabama 1975; to remove the process of
11 applying to the Board of Pardons and Paroles for a Certificate
12 of Eligibility to Register to Vote for a person to have his or
13 her right to vote restored; to eliminate the requirement that
14 a person pay all fines, court costs, fees, and victim
15 restitution prior to having his or her right to vote restored;
16 and to expand restoration of voting rights to a person who has
17 been released from incarceration for five or more years.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Section 15-22-36.1, Code of Alabama 1975,
20 is amended to read as follows:

21 "§15-22-36.1.

22 "~~(a) Any other provision of law notwithstanding~~
23 Except as provided in subsection (b), any person, regardless
24 of the date of his or her sentence, may apply to the Board of
25 Pardons and Paroles for a Certificate of Eligibility to
26 Register to Vote shall have his or her right to vote restored
27 if all of the following requirements are met:

1 "(1) The person has lost his or her right to vote by
2 reason of conviction in a state or federal court in any case
3 except those listed in subsection (g).

4 "(2) The person has no criminal felony charges
5 pending against him or her in any state or federal court.

6 ~~"(3) The person has paid all fines, court costs,~~
7 ~~fees, and victim restitution ordered by the sentencing court~~
8 ~~at the time of sentencing on disqualifying cases.~~

9 ~~"(4)~~ (3) Any of the following are true:

10 "a. The person has been released upon completion of
11 sentence.

12 "b. The person has been pardoned.

13 "c. The person has successfully completed probation
14 or parole and has been released from compliance by the
15 ordering entity or has been released from incarceration for
16 five or more years.

17 ~~"(b) The Certificate of Eligibility to Register to~~
18 ~~Vote shall be granted upon a determination that all of the~~
19 ~~requirements in subsection (a) are fulfilled.~~

20 ~~"(c) Upon receipt of an application under this~~
21 ~~section, investigation of the request shall be assigned~~
22 ~~forthwith to an officer of the state Board of Pardons and~~
23 ~~Paroles. The assigned officer shall verify, through court~~
24 ~~records, records of the board, and records of the Department~~
25 ~~of Corrections, that the applicant has met the qualifications~~
26 ~~set out in subsection (a). Within 30 days of the initial~~
27 ~~application for a Certificate of Eligibility to Register to~~

1 ~~Vote, the officer shall draft a report of his or her findings~~
2 ~~including a statement as to whether the applicant has~~
3 ~~successfully completed his or her sentence and has complied~~
4 ~~with all the eligibility requirements provided in subsection~~
5 ~~(a).~~

6 ~~"(d) After completing the investigation set out in~~
7 ~~subsection (c), the officer shall submit his or her report of~~
8 ~~investigation to the Executive Director of the Board of~~
9 ~~Pardons and Paroles.~~

10 ~~"(e) If the report created pursuant to subsection~~
11 ~~(c) states that the applicant has met all of the eligibility~~
12 ~~criteria set forth in subsection (a), and the executive~~
13 ~~director or his or her designee attests that the report has~~
14 ~~been submitted properly and accurately, the Board of Pardons~~
15 ~~and Paroles shall issue a Certificate of Eligibility to~~
16 ~~Register to Vote to the applicant within 14 days of receipt of~~
17 ~~the report by the executive director.~~

18 ~~"(f) If the report created pursuant to subsection~~
19 ~~(c) states that the applicant has not met all of the~~
20 ~~eligibility criteria set forth in subsection (a), and the~~
21 ~~executive director or his or her designee attests that the~~
22 ~~report has been submitted properly and accurately, the Board~~
23 ~~of Pardons and Paroles shall not issue a Certificate of~~
24 ~~Eligibility to Register to Vote and shall notify the applicant~~
25 ~~of the decision and reason or reasons for the decision within~~
26 ~~14 days of receipt of the report by the executive director.~~
27 ~~The applicant, upon completion of the eligibility requirement~~

1 ~~in subsection (a) for restoration of his or her rights, may~~
2 ~~submit a new application at any time if he or she has met the~~
3 ~~certification criteria.~~

4 ~~"(g) (b)~~ A person who has lost his or her right to
5 vote by reason of conviction in a state or federal court for
6 any of the following will not be eligible to apply for a
7 ~~Certificate of Eligibility to Register to Vote~~ have his or her
8 right to vote restored under this section: Impeachment,
9 murder, rape in any degree, sodomy in any degree, sexual abuse
10 in any degree, incest, sexual torture, enticing a child to
11 enter a vehicle for immoral purposes, soliciting a child by
12 computer, production of obscene matter involving a minor,
13 production of obscene matter, parents or guardians permitting
14 children to engage in obscene matter, possession of obscene
15 matter, possession with intent to distribute child
16 pornography, or treason.

17 ~~"(h) (c)~~ This section shall not affect the right of
18 any person to apply to the board for a pardon with restoration
19 of voting rights pursuant to Section 15-22-36.

20 ~~"(i) (d)~~ Each state or county correctional facility,
21 prison, or jail shall post materials to be prepared by the
22 Secretary of State and the Board of Pardons and Paroles
23 notifying incarcerated individuals of the requirements and
24 procedures for having one's voting rights restored."

25 Section 2. This act shall become effective on the
26 first day of the third month following its passage and
27 approval by the Governor, or its otherwise becoming law.

1 HB250
2 204209-2
3 By Representative Hall
4 RFD: Constitution, Campaigns and Elections
5 First Read: 13-FEB-20

204209-2:n:01/28/2020:ANS/cr LSA2020-157

SYNOPSIS: Under existing law, a person who has lost his or her right to vote based upon a past criminal conviction, may apply to the Board of Pardons and Paroles for a Certificate of Eligibility to Register to Vote under certain circumstances, including payment of all fines, court costs, fees, and victim restitution as ordered by the sentencing court and completion of probation or parole and release from compliance by the court or Board of Pardons and Paroles.

Also under existing law, a person who been granted a Certificate of Eligibility to Register to Vote by the Board of Pardons and Paroles can register or reregister as an elector upon submission of a copy of the certificate to the board of registrars of the county of his or her residence.

This bill would remove the process of applying to the Board of Pardons and Paroles for a

1 Certificate of Eligibility to Register to Vote for
2 a person to have his or her right to vote restored.

3 This bill would eliminate the requirement
4 that a person pay all fines, court costs, fees, and
5 victim restitution prior to having his or her right
6 to vote restored.

7 This bill would also expand restoration of
8 voting rights to a person who has been released
9 from incarceration for five or more years.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT
14

15 Relating to voting rights; to amend Sections
16 15-22-36.1 and 17-3-31, Code of Alabama 1975; to remove the
17 process of applying to the Board of Pardons and Paroles for a
18 Certificate of Eligibility to Register to Vote for a person to
19 have his or her right to vote restored; to eliminate the
20 requirement that a person pay all fines, court costs, fees,
21 and victim restitution prior to having his or her right to
22 vote restored; and to expand restoration of voting rights to a
23 person who has been released from incarceration for five or
24 more years.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Sections 15-22-36.1 and 17-3-31, Code of
27 Alabama 1975, are amended to read as follows:

1 "§15-22-36.1.

2 ~~"(a) Any other provision of law notwithstanding~~
3 ~~Except as provided in subsection (b), any person, regardless~~
4 ~~of the date of his or her sentence, may apply to the Board of~~
5 ~~Pardons and Paroles for a Certificate of Eligibility to~~
6 ~~Register to Vote shall have his or her right to vote restored~~
7 ~~if all of the following requirements are met:~~

8 "(1) The person has lost his or her right to vote by
9 reason of conviction in a state or federal court in any case
10 except those listed in subsection (g).

11 "(2) The person has no criminal felony charges
12 pending against him or her in any state or federal court.

13 ~~"(3) The person has paid all fines, court costs,~~
14 ~~fees, and victim restitution ordered by the sentencing court~~
15 ~~at the time of sentencing on disqualifying cases.~~

16 ~~"(4)~~ (3) Any of the following are true:

17 "a. The person has been released upon completion of
18 sentence.

19 "b. The person has been pardoned.

20 "c. The person has successfully completed probation
21 or parole and has been released from compliance by the
22 ordering entity or has been released from incarceration for
23 five or more years.

24 ~~"(b) The Certificate of Eligibility to Register to~~
25 ~~Vote shall be granted upon a determination that all of the~~
26 ~~requirements in subsection (a) are fulfilled.~~

1 ~~"(c) Upon receipt of an application under this~~
2 ~~section, investigation of the request shall be assigned~~
3 ~~forthwith to an officer of the state Board of Pardons and~~
4 ~~Paroles. The assigned officer shall verify, through court~~
5 ~~records, records of the board, and records of the Department~~
6 ~~of Corrections, that the applicant has met the qualifications~~
7 ~~set out in subsection (a). Within 30 days of the initial~~
8 ~~application for a Certificate of Eligibility to Register to~~
9 ~~Vote, the officer shall draft a report of his or her findings~~
10 ~~including a statement as to whether the applicant has~~
11 ~~successfully completed his or her sentence and has complied~~
12 ~~with all the eligibility requirements provided in subsection~~
13 ~~(a).~~

14 ~~"(d) After completing the investigation set out in~~
15 ~~subsection (c), the officer shall submit his or her report of~~
16 ~~investigation to the Executive Director of the Board of~~
17 ~~Pardons and Paroles.~~

18 ~~"(e) If the report created pursuant to subsection~~
19 ~~(c) states that the applicant has met all of the eligibility~~
20 ~~criteria set forth in subsection (a), and the executive~~
21 ~~director or his or her designee attests that the report has~~
22 ~~been submitted properly and accurately, the Board of Pardons~~
23 ~~and Paroles shall issue a Certificate of Eligibility to~~
24 ~~Register to Vote to the applicant within 14 days of receipt of~~
25 ~~the report by the executive director.~~

26 ~~"(f) If the report created pursuant to subsection~~
27 ~~(c) states that the applicant has not met all of the~~

~~eligibility criteria set forth in subsection (a), and the~~
~~executive director or his or her designee attests that the~~
~~report has been submitted properly and accurately, the Board~~
~~of Pardons and Paroles shall not issue a Certificate of~~
~~Eligibility to Register to Vote and shall notify the applicant~~
~~of the decision and reason or reasons for the decision within~~
~~14 days of receipt of the report by the executive director.~~
~~The applicant, upon completion of the eligibility requirement~~
~~in subsection (a) for restoration of his or her rights, may~~
~~submit a new application at any time if he or she has met the~~
~~certification criteria.~~

~~"(g) (b)~~ A person who has lost his or her right to
 vote by reason of conviction in a state or federal court for
 any of the following will not ~~be eligible to apply for a~~
~~Certificate of Eligibility to Register to Vote~~ have his or her
right to vote restored under this section: Impeachment,
 murder, rape in any degree, sodomy in any degree, sexual abuse
 in any degree, incest, sexual torture, enticing a child to
 enter a vehicle for immoral purposes, soliciting a child by
 computer, production of obscene matter involving a minor,
 production of obscene matter, parents or guardians permitting
 children to engage in obscene matter, possession of obscene
 matter, possession with intent to distribute child
 pornography, or treason.

~~"(h) (c)~~ This section shall not affect the right of
 any person to apply to the board for a pardon with restoration
 of voting rights pursuant to Section 15-22-36.

1 "~~(i)~~ (d) Each state or county correctional facility,
 2 prison, or jail shall post materials to be prepared by the
 3 Secretary of State and the Board of Pardons and Paroles
 4 notifying incarcerated individuals of the requirements and
 5 procedures for having one's voting rights restored.

6 "§17-3-31.

7 Any person who is disqualified by reason of
 8 conviction of any of the offenses mentioned in Article VIII of
 9 the Constitution of Alabama of 1901, except treason and
 10 impeachment, whether the conviction was had in a state or
 11 federal court, and who has been pardoned, may be restored to
 12 citizenship with the right to vote by the State Board of
 13 Pardons and Paroles when specifically expressed in the pardon.
 14 If otherwise qualified, such person shall be permitted to
 15 register or reregister as an elector upon submission of a copy
 16 of the pardon document to the board of registrars of the
 17 county of his or her residence. In addition, any person who
 18 ~~has been granted a Certificate of Eligibility to Register to~~
 19 ~~Vote by the Board of Pardons and Paroles pursuant to Section~~
 20 ~~15-22-36.1,~~ had his or her right to vote restored shall be
 21 permitted to register or reregister as an elector ~~upon~~
 22 ~~submission of a copy of the certificate to the board of~~
 23 ~~registrars of the county of his or her residence."~~

24 Section 2. This act shall become effective on the
 25 first day of the third month following its passage and
 26 approval by the Governor, or its otherwise becoming law.

1 SB209
2 204110-2
3 By Senators Coleman-Madison, Singleton and Burkette
4 RFD: Judiciary
5 First Read: 18-FEB-20

204110-2:n:02/05/2020:ANS/bm LSA2019-2998R1

SYNOPSIS: Under existing law, a person who has lost his or her right to vote based upon a past criminal conviction, may apply to the Board of Pardons and Paroles for a Certificate of Eligibility to Register to Vote under certain circumstances, including payment of all fines, court costs, fees, and victim restitution as ordered by the sentencing court and completion of probation or parole and release from compliance by the court or Board of Pardons and Paroles.

This bill would eliminate the application requirement and require the Board of Pardons and Paroles to determine whether a person may receive a Certificate of Eligibility to Register to Vote if the person has lost his or her right to vote by reason of conviction in a state or federal court and has been pardoned or released from incarceration or period of probation or parole.

This bill would also eliminate the requirement that a person pay all fines, court

1 costs, and fees prior to having his or her right to
2 vote restored.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 Relating to voting rights; to amend Sections
9 15-22-36.1 and 17-3-31, Code of Alabama 1975; to require the
10 Board of Pardons and Paroles to determine whether a person may
11 receive a Certificate of Eligibility to Register to Vote if
12 the person has lost his or her right to vote by reason of
13 conviction in a state or federal court and has been pardoned
14 or released from incarceration or period of probation or
15 parole; and to eliminate the requirement that a person pay all
16 fines, court costs, and fees.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 15-22-36.1 and 17-3-31, Code of
19 Alabama 1975, are amended to read as follows:

20 "§15-22-36.1.

21 "(a) ~~Any other provision of law notwithstanding~~
22 Except as provided in subsection (g), any person, regardless
23 of the date of his or her sentence, may apply to the Board of
24 Pardons and Paroles for a Certificate of Eligibility to
25 Register to Vote shall have his or her right to vote restored
26 if all of the following requirements are met:

1 "(1) The person has lost his or her right to vote by
2 reason of conviction in a state or federal court in any case
3 except those listed in subsection (g).

4 ~~"(2) The person has no criminal felony charges~~
5 ~~pending against him or her in any state or federal court.~~

6 ~~"(3) (2) The person has paid all fines, court costs,~~
7 ~~fees, and~~ victim restitution ordered by the sentencing court
8 at the time of sentencing on disqualifying cases.

9 ~~"(4) (3) Any of the following are true:~~

10 "a. The person has been released ~~upon completion of~~
11 ~~sentence~~ from incarceration.

12 "b. The person has been pardoned.

13 "c. The person has successfully completed probation
14 or parole and has been released from compliance by the
15 ordering entity.

16 "(b) The Certificate of Eligibility to Register to
17 Vote shall be granted upon a determination that all of the
18 requirements in subsection (a) are fulfilled.

19 ~~"(c) Upon receipt of an application under this~~
20 ~~section~~ When a person who has lost his or her right to vote by
21 reason of conviction in a state or federal court in any case
22 except those listed in subsection (g) has satisfied one of the
23 criteria set forth in subdivision (3), the Board of Pardons
24 and Paroles shall conduct a review to determine the person's
25 eligibility to receive a Certificate of Eligibility to
26 Register to Vote. ~~investigation of the request shall be~~
27 ~~assigned forthwith to an officer of the state Board of Pardons~~

1 ~~and Pardons. The~~ An assigned officer of the board shall
2 verify, through court records, records of the board, and
3 records of the Department of Corrections, that the ~~applicant~~
4 person has met the qualifications set out in subsection (a).
5 Within ~~30~~ 14 calendar days of the initial ~~application for a~~
6 ~~Certificate of Eligibility to Register to Vote~~ review, the
7 officer shall draft a report of his or her findings including
8 a statement as to whether the ~~applicant~~ person has
9 successfully ~~completed his or her sentence and has~~ complied
10 with all the eligibility requirements provided in subsection
11 (a).

12 "(d) After completing the ~~investigation~~ review set
13 out in subsection (c), the officer shall submit his or her
14 report of investigation to the Executive Director of the Board
15 of Pardons and Paroles.

16 "(e) If the report created pursuant to subsection
17 (c) states that the ~~applicant~~ person has met all of the
18 eligibility criteria set forth in subsection (a), and the
19 executive director or his or her designee attests that the
20 report has been submitted properly and accurately, the Board
21 of Pardons and Paroles shall issue a Certificate of
22 Eligibility to Register to Vote to the ~~applicant~~ person within
23 14 calendar days of receipt of the report by the executive
24 director.

25 "(f) If the report created pursuant to subsection
26 (c) states that the ~~applicant~~ person has not met all of the
27 eligibility criteria set forth in subsection (a), and the

1 executive director or his or her designee attests that the
2 report has been submitted properly and accurately, the Board
3 of Pardons and Paroles shall not issue a Certificate of
4 Eligibility to Register to Vote and shall notify the ~~applicant~~
5 person of the decision and reason or reasons for the decision
6 within 14 calendar days of receipt of the report by the
7 executive director. The ~~applicant~~ person, upon completion of
8 the eligibility requirement in subsection (a) for restoration
9 of his or her rights, may ~~submit a new application~~ request a
10 new review at any time if he or she has met the certification
11 criteria.

12 "(g) A person who has lost his or her right to vote
13 by reason of conviction in a state or federal court for any of
14 the following ~~will~~ is not ~~be~~ eligible to ~~apply for~~ receive a
15 Certificate of Eligibility to Register to Vote under this
16 section: Impeachment, murder, rape in any degree, sodomy in
17 any degree, sexual abuse in any degree, incest, sexual
18 torture, enticing a child to enter a vehicle for immoral
19 purposes, soliciting a child by computer, production of
20 obscene matter involving a minor, production of obscene
21 matter, parents or guardians permitting children to engage in
22 obscene matter, possession of obscene matter, possession with
23 intent to distribute child pornography, or treason.

24 "(h) This section shall not affect the right of any
25 person to apply to the board for a pardon with restoration of
26 voting rights pursuant to Section 15-22-36.

1 "(i) Each state or county correctional facility,
2 prison, or jail shall post materials to be prepared by the
3 Secretary of State and the Board of Pardons and Paroles
4 notifying incarcerated individuals of the requirements and
5 procedures for having one's voting rights restored.

6 (j) No later than September 1, 2020, the Board of
7 Pardons and Paroles and the Secretary of State shall develop
8 and make available on each agency's website a form with
9 instructions for any individual who became eligible to receive
10 a Certificate of Eligibility prior to the effective date of
11 this act to submit to the Board of Pardons and Paroles for
12 review pursuant to the procedures set forth in subsections (c)
13 through (f).

14 "(k) The Board of Pardons and Paroles shall notify
15 the Secretary of State when a person who has lost his or her
16 right to vote of the date upon which the person received a
17 Certificate of Eligibility to Register to Vote. Upon receipt
18 of notification from the Board of Pardons and Paroles, the
19 Secretary of State shall notify the board of registrars of the
20 county of the person's residence and the person who has lost
21 his or her right to vote of the date upon which the person
22 received a Certificate of Eligibility to Register to Vote."

23 "§17-3-31.

24 "Any person who is disqualified by reason of
25 conviction of any of the offenses mentioned in Article VIII of
26 the Constitution of Alabama of 1901, except treason and
27 impeachment, whether the conviction was had in a state or

1 federal court, and who has been pardoned, may be restored to
2 citizenship with the right to vote by the State Board of
3 Pardons and Paroles when specifically expressed in the pardon.
4 If otherwise qualified, ~~such~~ the person shall be permitted to
5 register or reregister as an elector upon submission of a copy
6 of the pardon document to the board of registrars of the
7 county of his or her residence. In addition, any person who
8 ~~has been granted a Certificate of Eligibility to Register to~~
9 ~~Vote by the Board of Pardons and Paroles~~ complied with all the
10 eligibility requirements pursuant to Section 15-22-36.1, shall
11 be permitted to register or reregister as an elector ~~upon~~
12 ~~submission of a copy of the certificate to the board of~~
13 ~~registrars of the county of his or her residence."~~

14 Section 2. This act shall become effective
15 immediately following its passage and approval by the
16 Governor, or its otherwise becoming law.