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**

REPLY IN SUPPORT OF THE MOTION FOR PRELIMINARY INJUNCTION OF PLAINTIFFS TREVA THOMPSON, DARIUS GAMBLE, AND GREATER BIRMINGHAM MINISTRIES

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INTRODUCTION

Alabama's pay-to-vote provision, which requires full payment of legal financial obligations ("LFOs") before restoring voting rights to people with certain felony convictions, violates the Equal Protection Clause of the Fourteenth Amendment as applied to those who cannot afford to pay their LFOs in full. The Eleventh Circuit's decision in *Jones v. Governor of Florida* dictates that outcome. 950 F.3d 795 (11th Cir. 2020). Notwithstanding Defendant's disagreement with and mischaracterization of *Jones*, it is binding on this Court. Defendant's attempts to distinguish Alabama's pay-to-vote provision, Ala. Code § 15-22-36.1(a)(3), from the provision struck down in *Jones* fail. The state interests asserted by Defendant in enforcing the pay-to-vote system fail heightened scrutiny. Plaintiffs are therefore likely to succeed on the merits of their claim.

The balance of equities also favors Plaintiffs. Plaintiffs are genuinely unable to pay their outstanding LFOs in full in any foreseeable future. Defendant's suggestion that the restoration of their franchise should be contingent on forgoing essential car repairs and necessary assistance to children, grandchildren, and elderly parents, while others who have the means to pay their LFOs in full may regain their right to vote without doing so, is both disingenuous and cruel.

Defendant does not dispute Plaintiffs' position on irreparable harm or the public interest, nor can she. In the absence of preliminary relief, Plaintiffs will suffer irreparable harm in the coming months, because "[t]he denial of the opportunity to cast a vote that a person may otherwise be entitled to cast—*even once*—is an irreparable harm." *Jones*, 950 F.3d at 828 (emphasis added). And of course, "[t]he cautious protection of the Plaintiffs' franchise-related rights is without question in the public interest." *Id.* at 830 (internal quotation marks omitted). Accordingly, the Court should grant Plaintiffs' Motion for Preliminary Injunction (Doc. 215) ("Motion").

ARGUMENT

I. Plaintiffs Are Likely to Succeed on Their Claim That the LFO Requirement Violates the Equal Protection Clause.

Defendant's attacks on the Eleventh Circuit opinion in *Jones* and Plaintiffs' personal finances are sensational but irrelevant. *Jones* controls this case and Plaintiffs are proper parties to bring this claim. Thus, Plaintiffs have established a likelihood of success on the Equal Protection claim against Alabama' pay-to-vote requirement.

A. Alabama's Wealth-Based Classification Does Not Survive Heightened Scrutiny, as Mandated by *Jones*.

Notwithstanding Defendant's arguments to the contrary, *Jones v. Governor of Florida*, 950 F.3d 795 (11th Cir. 2020) squarely controls this case. This Court may not refuse to apply *Jones* simply because Defendant does not agree with it.[1]

1. *Jones* holds that heightened scrutiny applies.

Jones held that heightened scrutiny applies to financial conditions placed on voting rights restoration for people with convictions. It did so based on wealth discrimination precedent applying heightened scrutiny "in at least two discrete areas: the administration of criminal justice and access to the franchise." 950 F.3d at 817; *see also id.* at 826 ("Quite simply, two strands of

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[1] The pending appeal of the final judgment in *Jones* does not warrant delay in ruling on this motion for preliminary injunction. Whether heightened scrutiny applies when voting rights restoration is denied on the basis of ability to pay was definitively resolved by *Jones*. *See Jones v. DeSantis*, __ F. Supp. 3d __, No. 4:19-CV-300-RH/MJF, 2020 WL 2618062, at *13 (N.D. Fla. May 24, 2020) ("*Jones* settles the issue . . . . The pay-to-vote system, at least as applied to those unable to pay, is subject to heightened scrutiny."). The *Jones* decision (*en banc* review of which was denied) is fully binding on any subsequent Eleventh Circuit panel considering the appeal of the final judgment in *Jones*. *See* 11th Cir. R. I.O.P. 36(2) ("Under the law of this circuit, published opinions are binding precedent."). The pending appeal of the final judgment in *Jones* does not give this Court a free pass to ignore binding precedent. Even if Florida's petition for initial review *en banc* of the final trial court judgment in *Jones* is granted, that would not vacate the prior *Jones* decision. Defendant's hope that there is a "possibility" of "correction of the law" by the Eleventh Circuit when it considers this case on appeal, Opp. at 46, cannot stop this Court from applying the law as it is bound to under *Jones*.

Supreme Court law—those embodied in its *Griffin–Bearden* line of cases outlawing different levels of punishment for similarly situated defendants, solely on account of wealth, and those found in the *Harper* line of cases underscoring the importance of access to the ballot—run together in this case."). In order to overcome this ruling, Defendant would need to distinguish *both* bases for the *Jones* opinion; instead, she offers this Court nothing but shallow criticisms of binding Circuit precedent.

i. Administration of Criminal Justice

In determining the applicable level of scrutiny under the *Griffin-Bearden* line of cases, *Jones* conclusively held that felony disenfranchisement is punitive, citing to Circuit precedent, out-of-circuit authority, and Justice Scalia. 950 F.3d at 819 ("Disenfranchisement is punishment."). This determination was not based on Florida's asserted interests in felony disenfranchisement, but instead based on the function of felony disenfranchisement, which does not shift from state to state. *Id.* And yet, despite the Eleventh Circuit's holding that "continued disenfranchisement is *indisputably* punitive in nature," *id.* at 819 (emphasis added), Defendant insists that she "*does* dispute" that holding. Opp. at 26. Defendant does not explain, however, how this Court can ignore binding precedent. It cannot.[2]

[2] Moreover, in *Jones*, the Eleventh Circuit recognized the Readmission Act "authorized felony disenfranchisement *only* as punishment." 950 F.3d at 819. The same restriction applies to Alabama. In an astonishing maneuver, Defendant now argues that the Readmission Act—the law which allowed Alabama back into the union after it engaged in a bloody rebellion in order to preserve the institution of slavery against Black people—is unconstitutional. Opp. at 32. Not only is this assertion absurd, it appears to be unserious. Construing Alabama's felony disenfranchisement scheme as non-punitive, as Defendant suggests, would place the legitimacy of the entire scheme at issue, while challenging the constitutionality of the Readmission Act would raise serious questions about Alabama's statehood. These questions are not quelled by Defendant's unsupported assertion that the punishment provision—which is described in the Act as a "fundamental condition" of readmission, *see* Act of June 25, 1868, ch. 50, 15 Stat. 73, 73—is severable. Furthermore, if Defendant were serious about raising this argument she would be

Defendant's attack on the *Jones* holding with respect to punishment fails on its merits as well. First, it is far from clear that Defendant's invocation of the *Smith v. Doe* framework for assessing the distinction between punishment and civil sanction—ordinarily applied in the Eighth Amendment and Ex Post Facto Clause—applies in the *Griffin-Bearden* context. Defendant cites no authority for that proposition. But even under *Smith v. Doe,* 538 U.S. 84 (2003), Defendant concedes that legislative intent is not determinative, and that if the scheme is functionally punitive, legislative intent can be overcome. Opp. at 32-33. The parties have extensively briefed the application of *Smith v. Doe* and the *Mendoza-Martinez* factors to Alabama's felony disenfranchisement scheme, and they tilt decidedly on the side of punishment. *See* Doc. 97 at 7-18; Doc. 48 at 68-78.[3] Plaintiffs incorporate those arguments herein. And in *Jones,* the Eleventh Circuit expressly found that felony disenfranchisement is functionally punitive. 950 F.3d at 819; *see also id*. at 820 ("The sanction of disenfranchisement cannot be described merely as a one-time revocation of the right to vote; rather, the punishment visits the felon at each and every election.").

ii. Access to the Franchise

But Defendant's protestations of the punitive nature of Alabama's felony disenfranchisement scheme are—while incorrect—largely academic. *Jones* also held that heightened scrutiny applies to pay-to-vote rights restoration schemes like Florida's and Alabama's because they involve access to the franchise:

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compelled to notify the Attorney General under Rule 5.1 and join the State to defend its interests pursuant to Rule 19, neither of which she has done. *Cf.* Doc. 186 (Defendants' Rule 5.1 notice to the Attorney General of a constitutional challenge to the NVRA).

Fortunately, the Court need not reach these issues because the Readmission Act is constitutional and Defendant's flippant assertion to the contrary has not raised a serious attack on it. Constitutional avoidance dictates that this Court should interpret Alabama's felony disenfranchisement scheme as punitive and compliant with the Readmission Act.

[3] Thankfully, Defendant appears to have dropped the assertion that permanent loss of the right to vote is a mere "minor disability" in support of this argument. Doc. 95 at 7.

> The Supreme Court expressly and repeatedly extended *Griffin*'s equality principle beyond the realm of criminal justice; it has been applied to state action that burdens important constitutional interests, such as fundamental associational and political participation interests. . . .
>
> Voting is squarely among the interests that fall within *Griffin*'s grasp.

950 F.3d at 821 (emphasis added).

Defendant admits that her argument on this score is "predominantly an argument that the *Jones* panel got it wrong." Opp. at 39. Indeed, it is entirely an argument that the *Jones* panel got it wrong. Opp. at 36 ("With all respect, the Court is wrong."). Since this Court cannot hold that the *Jones* panel "got it wrong," Defendant's arguments are misdirected.

Furthermore, the *Jones* panel got it right. It is well-established that a state cannot set qualifications for voting that turn on "the affluence of the voter or payment of any fee." *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966); *Jones*, 950 U.S. at 821*; see also Harper* at 666 ("Voter qualifications have no relation to wealth nor to paying [any tax]"). And this is true even if the state need not extend the right to vote in the first instance. *Id.* at 665 ("[T]he right to vote in state elections is nowhere expressly mentioned [in the Constitution]. It is argued that the right to vote in state elections is implicit . . . . *We do not stop to canvass the relation between voting and political expression.* For it is enough to say 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.") (emphasis added).

Defendant focuses on the punitive nature of criminal fines and restitution to distinguish these obligations from poll taxes. Opp. at 36. But the State's ability to disenfranchise citizens based on felony convictions and its authority to impose different amounts of criminal fines or restitution based on culpability are not contested here. Indeed, in this motion the State's ability to require payment of LFOs for rights restoration is questioned only so far as it is applied to those who are unable to pay. And with respect to that issue, Defendant fails to address the distinction that matters: that as between two people who committed the same crime and are subject to the same sanction, only the one who is "unable to pay (and [has] no reasoned prospect of being able to pay) will remain barred from voting." *Jones*, 950 F.3d at 820. "Protecting the ballot box" from those who cannot pay while allowing people with the same felony convictions who can pay to access the ballot box, is irrational and impermissible for the same reasons as extending punishment based on ability to pay: because the distinction drawn is not based on the offense committed or the culpability of the individual, but on the size of their pocketbook. *See id*. Thus, the State of Alabama may not "protect the ballot box" on the basis of wealth. *See Harper*, 383 U.S. at 668 ("To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor . . . .").

Defendant's misunderstanding of the wealth discrimination claim in *Jones* and in this case is illustrated by the "absurd result" Defendant argues will result from *Jones*. Defendant argues that under *Jones*, a plaintiff who owes $59 million may have her voting rights restored before someone who owes $5,000; Defendant laments that the *Jones* district court never asked "how much harm that felon [who owes $59 million] must have caused to be ordered to pay that much in restitution." Opp. at 38-39. But the prohibition on conditioning access to the ballot on wealth applies to both individuals, whether they owe $59 million or $5,000. As such, Defendants' scenario would come about only if the person who owed $5,000 was genuinely *able* to pay and yet had willfully declined to do so. But, no one should miss an election solely because she does not have enough money in her pocket; this result is not absurd, it is constitutionally mandated. Thus, the relevant comparison here is *not* between an individual who owes $59 million and an individual who owes $5,000; it is between two individuals both of whom owe $59 million—or both of whom owe $5,000—where one is able to pay whatever is owed while the other is unable to do so. *See Jones*, 950 F.3d at 813 ("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."). Treating *these* two individuals differently—according to *Jones* and numerous Supreme Court cases before it—is unconstitutional, because the disparity in wealth neither justifies extended punishment nor speaks to the person's qualifications to vote.

Once the State restores voting rights of some individuals with felony convictions, it cannot refuse to restore the same rights of other similarly situated individuals solely based on their ability to pay their LFOs. *Jones*, 950 F.3d at 821-23 ("The long and short of it is that once a state provides an avenue to ending the punishment of disenfranchisement—as the voters of Florida plainly did—it must do so consonant with the principles of equal protection and it may not erect a wealth barrier absent a justification sufficient to overcome heightened scrutiny.").

2. *Jones* forecloses Alabama's arguments that its scheme survives heightened scrutiny.

Defendant argues two reasons why Alabama's pay-to-vote scheme should survive heightened scrutiny. Both are foreclosed by *Jones*.

First, Defendant argues that Alabama's pay-to-vote scheme passes muster because Alabama's pardon system fares slightly better than Florida's. Even if true, *Jones* rejection of the clemency alternative was based on a characteristic shared with Alabama's pardon process: its discretionary nature. 950 F.3d at 826 ("We can hardly call pursuing a discretionary grant that at best will take years to receive, if received at all, a suitable alternative.").[4]

And Defendant's evidence of *one single individual* whose pardon was granted despite owing LFOs, Opp. at 40, does not counter the significant record evidence that by and large applicants with outstanding LFOs are cast aside before they even reach a hearing. Motion at 10-12. Likewise, her argument that a "rather high percentage of [pardon] applications in recent years" have been granted, Opp. at 39, obscures the record. The record demonstrates that not all applications lead to a hearing and citizens are dissuaded from applying until they have paid their LFOs. *See* Motion at 10-13. Yet, Defendant fails to disclose the number of pardons requested during the cited time period that were closed without a hearing or the number of pardon hearings that involved applications where individuals had outstanding LFOs. Thus, the 75 percent grant figure is irrelevant to whether the pardon process is a viable alternative remedy for those who are unable to pay their LFOs.

Second, Defendant reasserts her protection of the ballot box theory, Opp. at 40-41, and argues that it survives heightened scrutiny.[5] *Jones* already rejected this argument, and that ends the matter. 950 F.3d at 827 ("Nor does the State have a readily identifiable interest in protection of the ballot box, because, as the Supreme Court has made clear, '[v]oter qualifications have no relation to wealth nor to paying or not paying this or any other tax.' *Harper*, 383 U.S. at 666. Two hypothetical felons here have committed the same crime, with identical culpability, yet one is

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[4] Plaintiffs do not understand Defendant's admonition that the Court "remember[] that the CERV process is not constitutionally required and may be repealed." Opp. at 40. Perhaps this admonition is actually intended for the Legislature, but it is not relevant to this Court's analysis here.

[5] Actually, Defendant asserts that the LFO requirement is "rationally connected to the State's interests," Opp. at 41. But since this argument appears under the header asserting that the State would prevail under "strict scrutiny," Plaintiffs treat it as raised with respect to the heightened scrutiny employed by the *Jones* court.

deemed more qualified to vote based on ability to pay. *Harper* demands that we reject such a classification."). Indeed, Defendant concedes this point, and argues only that *Jones* got it wrong. *See* Opp. at 41 ("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.").

B. The LFO Requirement Is Severable from the CERV Statute, and Defendant Cannot Simply "Level Down."

Defendant's severability arguments likewise miss the mark. First, Defendant starts from a faulty premise: contrary to Defendant's claims, should this Court grant Plaintiffs' Motion, it does not prevent the State from requiring LFO payments from those who *can* afford to pay their LFOs in full—nor does it prevent the State from continuing to seek collection of outstanding LFOs after voting rights are restored. Any severability analysis that assumes this Court would prevent the State from collecting any LFOs, regardless of ability to pay, is therefore flawed. *See* Opp. at 43 (arguing that the Legislature would not have enacted the CERV statute "if the court-ordered monies requirement could not be enforced").

Second, Defendant's argument that the pay-to-vote provision cannot be severed from the CERV statute runs counter to Alabama's severability doctrine.[6] As a threshold matter, Alabama operates under a strong presumption of severability: a provision's "invalidity shall not affect the provisions or application of this Code . . . that can be given effect without the invalid provisions

[6] Indeed, in *Jones*, Florida similarly argued that its pay-to-vote requirement was inseverable from the remainder of its re-enfranchisement scheme. Applying a substantially similar severability doctrine under Florida law, the Eleventh Circuit held that "the unconstitutional LFO requirement is *easily* severable." 950 F.3d at 807 (emphasis added). Furthermore, as evidenced by the cases relied on by *Jones* and Plaintiffs herein, courts routinely grant relief on as-applied wealth discrimination claims without requiring a severability analysis. *See e.g., Griffin v. Illinois*, 351 U.S. 12 (1956); *Mayer v. City of Chicago*, 404 U.S. 189 (1971); *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Williams v. Illinois*, 399 U.S. 235 (1970); *Bearden v. Georgia*, 461 U.S. 660 (1983); *M.L.B. v. S.L.J.*, 519 U.S. 102, 122 (1996).

or application." Ala. Code § 1-1-16. This Court's power to sever an invalid provision extends to cases in which the invalid portions are "not so intertwined with the remaining portions that such remaining portions are rendered meaningless by the extirpation." *State ex rel. Pryor ex rel. Jeffers v. Martin*, 735 So. 2d 1156, 1159 (Ala. 1999) (quotations marks omitted). As Defendant acknowledges, "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." Opp. at 43. Thus, the pay-to-vote requirement as applied to those who cannot pay is not so intertwined as to render the rest of the CERV process meaningless. Without the pay-to-vote provision as applied to those who cannot afford to pay their LFOs in full, an officer of the Board of Pardons and Paroles must still "verify, through court records, records of the board, and records of the Department of Corrections," an applicant's compliance with the rest of Ala. Code § 15-22-36.1, namely, that: (1) the applicant's conviction is not one of the crimes listed in subsection (g); (2) the applicant has no criminal felony charges pending against him or her, and (3) the applicant has been released, pardoned, or completed probation or parole. Ala. Code § 15-22-36.1(a)(1), (2), (4), (b).

Defendant cites nothing in the legislative record from the enactment of the CERV statute or any other contemporaneous evidence that demonstrates that the Alabama Legislature "would not have created the CERV process . . . if the court-ordered monies required could not be enforced." Opp. at 43. And it certainly cites no evidence from that period showing that the legislature would not have created the CERV process if it knew that the LFO requirement was unconstitutional as applied to those unable to pay.

Instead, Defendant lists several unenacted bills related to the CERV process as evidence of the legislature's intent to maintain the LFO requirement. However, as a rule of statutory interpretation, reliance on legislative inaction to prove intent is fraught with imprecision. *See, e.g.*, *Bostick v. Clayton County*, No. 17-1618, 2020 WL 3146686, at *12 (U.S. June 15, 2020) ("All we can know for certain is that speculation about why a later Congress declined to adopt new legislation offers a 'particularly dangerous' basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt.") (citing *Pension Benefit Guaranty Corporation v. LTV Corp.*, 496 U. S. 633, 650 (1990); *United States v. Wells*, 519 U. S. 482, 496 (1997); *Sullivan v. Finkelstein*, 496 U. S. 617, 632 (1990) (Scalia, J., concurring) ("Arguments based on subsequent legislative history . . . should not be taken seriously, not even in a footnote")). As Justice Scalia explained, "one must ignore rudimentary principles of political science to draw any conclusions regarding that intent from the failure to enact legislation." *Johnson v. Transportation Agency, Santa Clara Cty.*, 480 U.S. 616, 671–72, (1987) (Scalia, J., dissenting). It is impossible to know whether "congressional failure to act represents (1) approval of the status quo, as opposed to (2) inability to agree upon how to alter the status quo, (3) unawareness of the status quo, (4) indifference to the status quo, or even (5) political cowardice." *Id.*; *see also Alexander v. Sandoval*, 532 U.S. 275, 292–93 (2001) (citing Justice Scalia's dissent and explaining that "it is impossible to assert with any degree of assurance" that "congressional failure to act" represents its intent to do the opposite (quotation marks omitted)). Applied here, the failure of more recent bills related to the CERV process only reflects that the legislature was not willing to change the CERV process in a way proposed by certain legislators; it falls far short of establishing that the legislature in 2003 would not have enacted the CERV statute at all if they could not have discriminated on the basis of wealth.

Defendant's assertions about legislative intent are mere speculation. Indeed, to suggest that the Alabama Legislature was *solely* concerned with collecting LFOs from *those who cannot afford to pay* when it passed the CERV statute disrespects the co-equal branch of the government by assuming that the legislature's intent was to enact an unconstitutional statute. *See Beck v. State*, 396 So.2d 645, 658 (Ala. 1980) ("Another guiding principle of paramount importance is that courts seek to sustain, and not strike down, the enactments of a coordinate department of government. Every legislative act is presumed to be constitutional and every intendment is in favor of its validity."). Arguing that the entire CERV statute must fall with the unconstitutional pay-to-vote provision directly contravenes the guiding principle in Alabama severability doctrine of maintaining comity with a coordinate branch of government.

Lastly, Defendant's argument that she should be able to wholly revoke the CERV program is flawed. It is not clear what gives Defendant the authority to make that choice absent legislative action. And while the Supreme Court in *Sessions v. Morales-Santana*, 137 S. Ct. 1678 (2017) explained that so-called "leveling down" may be a permissible remedy to an Equal Protection violation, the Court concluded that "[o]rdinarily . . . extension, rather than nullification, is the proper course." *Morales-Santana*, 137 S. Ct. at 1699 (internal quotation marks omitted). Unlike *Morales-Santana*—which eliminated a "*favorable* benefit for a discrete group"—this case involves "discriminatory exceptions denying benefits to discrete groups," which means "benefits previously denied" should be extended: here, citizens who cannot afford to pay their LFOs in full are discriminated against and denied the benefit of regaining their voting rights. *Id.* Moreover, *Morales-Santana* calls for "consider[ing] the degree of potential disruption of the statutory scheme that would occur by extension as opposed to abrogation." *Id.* at 1700 (quotation marks omitted). Tossing the entire CERV process, of course, is more disruptive to the statutory scheme than it is to ensure that those who are unable to pay can still use the process. The Court should reject the argument that Defendant should be given a free rein to decide whether to dismantle the CERV process entirely.

C. Plaintiffs Are Proper Parties to Raise Their Wealth Discrimination Claim.

1. Plaintiffs Treva Thompson and Darius Gamble

Defendant does not dispute that Plaintiffs Thompson and Gamble have standing. Instead, Defendant begins her opposition with an inflammatory broadside against what Defendant deems to be Plaintiffs' improper decisions about how to spend their limited incomes in light of their material needs and the immediate needs of their families. Opp. at 10-16. Essentially, Defendant ask this Court to scrutinize Plaintiffs' every expense.

But such an invasive procedure conflicts with *Jones*. First and foremost, Defendant does not argue that either Plaintiff Thompson or Plaintiff Gamble *can* genuinely pay their outstanding LFOs in full prior to any upcoming election. Nor could Defendant credibly do so. *See infra.* And yet that is precisely the standard set forth in *Jones*. 950 F.3d at 804, 825. And while Defendant demeans the tough choices Plaintiffs face every day as they attempt to support their families' material needs, Defendant does not even assert that absent these choices Plaintiffs would have been able to pay their LFOs in full. With respect to Plaintiff Thompson in particular, such an assertion would be absurd. Thus, Defendant's attacks are largely *ad hominem* and beside the point.

The *Jones* Court based its conclusion that the Plaintiffs were "genuinely unable to pay," 950 F.3d at 811, not on an item-by-item examination of the plaintiffs' other essential expenses, but rather on the *plaintiffs' own sworn statemen*ts (and in the case of two plaintiffs, on the sole basis of their complaint). *See id.* at 804 ("Fifteen of the seventeen named plaintiffs have submitted affidavits attesting to their inability to pay. Two plaintiffs did not, but rather alleged in their complaint that they were unable to pay their outstanding legal financial obligations."). Neither the district court nor the Eleventh Circuit interrogated the plaintiffs' expenses to determine whether they were truly "necessary," or whether, in the courts' view, the plaintiffs merely chose to "prioritize[] other expenses over" their LFOs. Opp. at 10-11. They accepted the Plaintiffs' honest and reasonable assessments that they were not able to pay their LFOs. *See Jones*, 950 F.3d at 804-05, 811.[7] This approach is also consistent with the logic behind the Eleventh Circuit's holding: citizens should not have to forgo fixing their cars or paying for their children's education to restore their right to vote, because "once a state provides an avenue to ending the punishment of disenfranchisement," wealth should not be a barrier to voting. *Jones*, 950 F.3d at 823.[8] This Court should conclude the same.

Defendant's disapproval notwithstanding, Plaintiffs Thompson and Gamble have shown a genuine and reasonable inability to pay. *See* Doc. 215-4 ("Thompson Decl.") ¶¶ 7-9; Doc. 215-5 ("Gamble Decl.") ¶¶ 11-12.

Plaintiff Thompson earned an annual income in 2019 of $26,929. Thompson Decl. ¶ 6. Defendant, without reference to any particular standard, asserts that Thompson is not "indigent." Opp. at 10. Yet, Ms. Thompson owes over $42,561 in outstanding LFOs. Thompson Decl. ¶ 5. And as Defendant notes, Ms. Thompson's 2019 salary was a recent high-water mark: in 2017, she made only $13,500. Opp. at 10. Other years, she made even less. Since her conviction, Plaintiff Thompson has found herself without a stable home or any income at times. *See* Doc. 222-4,

[7] To the extent Defendant suggests that Plaintiffs, or others like them, are in fact able to pay but are trying to "game" the system to restore their voting rights, there is simply no reason to believe that Alabamians will attempt to bilk the State in this way. States have any number of means to collect LFOs from those who owe them—including means beyond those available to ordinary creditors. *See Jones*, 950 F.3d at 827. "[G]iven the State's other methods for enforcing the requirement to pay, there is no reason to believe . . . that any significant number of felons were able to pay but chose not to." *Jones*, 2020 WL 2618062, at *16.

[8] Likewise, neither the district court nor the Eleventh Circuit adopted indigence as a measure of inability to pay, instead adopting a standard based on "genuine inability to pay." *See, e.g.*, *Jones*, 950 F.3d at 807 ("Denying access to the franchise to those genuinely unable to pay solely on account of wealth does not withstand heightened scrutiny."); *cf*. Opp. at 10, 28, 30 (arguing that Plaintiffs are "not indigent"). Whether the State considers someone indigent or not does not change the fact that Plaintiffs Thompson and Gamble's genuine inability to pay their LFOs in full prevents them from voting, and every election they miss due to their wealth status inflicts irreparable harm.

Thompson Dep. at 24:18-19 ("I lost my house, my car, almost lost my kids. I can't find a decent job."). Thus, while she has finally edged closer to a living wage, she is saddled with substantial debt from those years.

Ms. Thompson still "live[s] paycheck to paycheck." Thompson Decl. ¶ 7. She must pay $550 in rent per month, along with "utilities, phone bill, food, car insurance, health insurance, and expenses for [her] seven grandchildren." *Id.*[9] She also needs to spend $500 to $600 per month on insulin, which she is "only sometimes able to pay." *Id.* ¶ 8. Defendant's accusation that Ms. Thompson merely "prioritizes other expenses over the court-ordered monies that she agreed to pay," Opp. at 10, trivializes the impossible choices that Ms. Thompson and similarly-situated Alabamians must make between ensuring their life and livelihood and restoring their right to vote. Given her personal circumstances, Ms. Thompson simply cannot make pay her LFOs in full in the foreseeable future.[10] And while Defendant's impugning of Ms. Thompson's (or her counsel's) honesty because of her confusion at a deposition is uncalled for, Ms. Thompson would testify as to all these circumstances if the Court so requires.

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[9] While Ms. Thompson does not have legal "custody" of her grandchildren, Opp. at 10, it is hardly unusual for a grandmother to have to "often help take care of" her grandchildren in a large family, Thompson Decl. ¶ 7. And *Jones* does not distinguish between expenses that one *legally* must pay and others—such as food or health care—that constitute practical essentials. In fact, as discussed above, neither the district court nor the Eleventh Circuit in *Jones* engaged in such an item-by-item analysis of whether plaintiffs are genuinely unable to pay. *Jones*, 950 F.3d at 804.

[10] Defendant's suggestion that Ms. Thompson should not have spent her pandemic relief money on car repairs or other expenses is also not only illogical but irrelevant for the same reasons: *even if* she put all of the $2,200 stimulus payment towards her LFOs, instead of ensuring the proper functioning of her car, she would *still* owe more than $40,000 in LFOs. And had she foregone those car repairs, she would then be unable to drive to the job that provides her livelihood.

Finally, Defendant's critique that Ms. Thompson paid creditors and car bills rather than spending on her outstanding medical needs displays a sharp lack of awareness of the financial difficulties facing many Americans.

Plaintiff Gamble also cannot afford to pay his LFOs in full any time soon. He currently owes more than $29,000 in LFOs. Gamble Decl. ¶¶ 9, 11. While Mr. Gamble has made a slow financial climb at his job—with a current salary of $72,599 annually—he has to provide financially for his entire family. And since Mr. Gamble left prison eleven years ago with almost nothing, he still carries substantial debt from those years. Despite many competing demands on his limited income, Mr. Gamble came to an agreed upon payment plan with the Shelby County clerk based on his ability to pay and has made his monthly payments dutifully.

Mr. Gamble's monthly financial commitments include a $1,090 monthly mortgage payment, $300 in utility bills, $1,000 in child support, college tuition for his daughter, and payments toward $36,000 in household debt he has accumulated helping his family. Gamble Decl. ¶ 12. In the end, Mr. Gamble rarely has more than a few hundred dollars a month left over, *id.*—which, even if paid *entirely* to the State, would require a decade or more to pay his LFOs. Defendant faults Mr. Gamble for spending money on basic living expenses for his children and his elderly mother. Opp. at 15. No ability to pay standard Plaintiffs are familiar with requires cutting off basic familial support. But even if Mr. Gamble cut off *all* the payments of which Defendant complains and abstained from paying his debts to other creditors, he would struggle to restore his voting rights by paying his LFOs in full in the foreseeable future. *See id.* at 15-16. Like Ms. Thompson, Mr. Gamble is genuinely unable to pay.

2. Plaintiff Greater Birmingham Ministries

Defendant also argues that GBM lacks organizational standing. Opp. at 50-53. Not so. GBM has "suffered an injury in [its] own right by diverting resources to combat the effects of" the LFO requirement. *Jacobson v. Fla. Sec'y of State*, 957 F.3d 1193, 1205 (11th Cir. 2020). Voter registration is one of GBM's core organizational priorities. Doc. 215-12 ("Douglas Decl.") ¶¶ 4, 15. As outlined in a declaration from GBM's Executive Director, Scott Douglas, GBM has spent significant time and staff resources on helping Alabamians with felony convictions attempt to register to vote, only to determine that they owe LFOs that they cannot pay. Douglas Decl. ¶¶ 13-14. Thus, GBM must divert resources away from (1) voter registration drives, (2) registering voters with a greater likelihood of success in registering, and (3) GBM's other initiatives, such as its Emergency Food Assistance and Utility Assistance Programs and its initiative to provide clothing to low-income members of the Birmingham community. *Id.* ¶¶ 14-15; Ex. 1 ("Supplemental Decl.") ¶¶ 10-11. GBM must instead divert those resources towards resolving citizens' ineligibility to vote.

Currently, GBM's sole option for helping clients who cannot afford to pay LFOs is to assist them in applying for fine remissions, a time- and resource-consuming process that is rarely, if ever, effective. Douglas Decl. ¶ 10; Motion at 8-10. As a result, GBM registers fewer voters because it must divert time and resources away from the other activities described above and towards attempting to help people who cannot pay their LFOs obtain remissions. Douglas Decl. ¶ 15 (stating that GBM "register[s] significantly fewer voters than if those who cannot afford to pay their LFOs had a process by which they could still register to vote"). Contrary to Defendant's claim, then, GBM has explained what it has to "divert resources away *from* in order to spend additional resources on" unsuccessfully attempting to help voters who cannot afford to pay LFOs. *Jacobson*, 957 F.3d at 1206; *see Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1350 (11th Cir. 2009) (organizational injury established if organization "will divert resources from its regular activities").

Defendant also misunderstands the nature of GBM's injury. Because GBM is being forced to divert resources away from helping eligible voters register, an injunction will redress GBM's injury. GBM wishes to register as many eligible voters as possible; because those who cannot pay

LFOs have no means of registering to vote through the CERV process, GBM is forced to divert significant resources away from voter registration toward helping Alabamians file rarely (if ever) successful applications for remission of fines and on unsuccessful CERV applications—resources it could be spending on CERV applications more likely to succeed. Douglas Decl. ¶¶ 10, 15; Supplemental Decl. ¶ 10. Importantly, an injunction would ensure that GBM's efforts were successful, so long as the person they are helping is genuinely unable to pay. Indeed, if those who are unable to pay are eligible to apply for a CERV, GBM would have the option of forgoing its work seeking remissions entirely, and prioritize instead helping everyone—those who cannot pay and those who can—apply for CERVs. In either circumstance, those it helps will be able to register to vote, fulfilling GBM's mission. In contrast, under the current discretionary system, there is no showing that GBM or its clients can make that will guarantee success, rendering most of their efforts futile and preventing them from prioritizing their work.

Further, Defendant assumes that any process implemented to determine ability to pay will be equally or more complex than the current system. Opp. at 52. But it is substantially likely that whatever system would replace the current one would be easier for GBM to navigate, resulting in less resource expenditure per voter. The sought-after injunction will therefore "likely redress (at least in part) the plaintiffs' injury, and that is enough for standing purposes." *I.L. v. Alabama*, 739 F.3d 1273, 1282 (11th Cir. 2014).

II. The Other Preliminary Injunction Factors Also Favor Plaintiffs.

Defendant makes no argument as to two of the four preliminary injunction prongs: irreparable harm and the public interest. Defendant therefore concedes that these factors favor Plaintiffs. *See Adler v. Duval Cty. Sch. Bd.*, 112 F.3d 1475, 1481 (11th Cir. 1997) (arguments not made in opening brief deemed abandoned). And, in fact, they do. Enjoining the LFO requirement as applied to those unable to pay would serve the public interest. *See Jones*, 950 F.3d at 830. And unless this Court enjoins the LFO requirement as to those unable to pay, Plaintiffs will suffer irreparable harm.[11] *See Jones*, 950 F.3d at 828; *see also* Motion at 23-25; *Jones v. DeSantis*, 410 F. Supp. 3d 1284, 1310 (N.D. Fla. 2019) ("When an eligible citizen misses an opportunity to vote, the opportunity is gone forever; the vote cannot later be cast. So when a state wrongly prevents an eligible citizen from voting, the harm to the citizen is irreparable. Each of these plaintiffs have a constitutional right to vote so long as the state's only reason for denying the vote is failure to pay an amount the plaintiff is genuinely unable to pay. The preliminary injunction is necessary to prevent irreparable harm to any such plaintiff.").

Defendant contends, however, that the balance of equities weighs against an injunction. Opp. at 45-54. But the irreparable injury to Plaintiffs' right to vote far outweighs any harm a preliminary injunction might cause Defendant.

First, Defendant argues that the equities do not favor granting relief to these particular Plaintiffs, *see* Opp. at 45-46, 50-53, but these arguments are without merit, for the reasons discussed in Part I.C, *supra*. Furthermore, the requested injunction is timely, as it was filed within two months after the Eleventh Circuit denied rehearing *en banc* in *Jones*. *See, e.g.*, *Georgia ex rel. Ga. Vocational Rehab. Agency v. United States ex rel. Shanahan*, 398 F. Supp. 3d 1330, 1347 (S.D. Ga. 2019) (finding no undue delay where "Plaintiffs only waited about two-and-a-half

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[11] Defendant asserts that *Jones* did not decide 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." Opp. at 27-28. Given the irreparable harm caused by disenfranchising citizens based on their wealth, the illogic behind that assertion is palpable: once a wealth-based distinction is found unconstitutional, as the Eleventh Circuit did in *Jones*, *any* election that a citizen misses due to her inability to pay LFOs in full at the time inflicts irreparable harm. *See Jones*, 950 F.3d at 828 ("The denial of the opportunity to cast a vote that a person may otherwise be entitled to cast—*even once*—is an irreparable harm.") (emphasis added). The court needed not "expressly state," Opp. at 27-28, how many elections a state can use an unconstitutional wealth-based classification to deny citizens their fundamental right to vote, because the answer is zero.

months after" triggering event "before filing for preliminary relief"). Thus, it is not inequitable simply because the injunction "was not sought until 2020." Opp. at 46. By upholding a preliminary injunction under almost identical circumstances, *Jones* changed the legal landscape in the Eleventh Circuit sufficiently to justify this motion for preliminary injunctive relief.

Second, Defendant opposes providing relief to anyone beyond Ms. Thompson and Mr. Gamble. Opp. at 46-50. Their arguments are unavailing. To start, "the absence of a class" poses no barrier to broader relief here. Opp. at 46. This Court denied class certification in part because Defendants had acknowledged that it would have to abide by this Court's ruling on the constitutionality of the LFO requirement, regardless of how many plaintiffs were involved. *See* Motion at 26 n.14. Practically speaking, then, a finding of unconstitutionality and a preliminary injunction would obligate Defendants to follow the Constitution as to all similarly situated Alabamians. To the extent the brief opposing preliminary injunction can be read to suggest that Defendant has changed her tune—and that she will *not* follow this Court's constitutional ruling on her own accord—the Court should reconsider its class certification ruling, Doc. 194, and construe this motion as seeking relief for the class.

Defendant's argument that only the individual Plaintiffs are entitled to preliminary relief also misconstrues *Jones*. Defendant claims that *Jones* rejected Florida's administrative burden argument because "the relief was limited to only the 17 named plaintiffs." Opp. at 47. But the discussion to which Defendant points concerned whether Florida could pass rational basis review; it was unrelated to the question of equities under heightened scrutiny. *See Jones*, 950 F.3d at 813. And even then, the court noted with approval that the 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.* (emphasis added).

More importantly, the Eleventh Circuit in *Jones* recognized that its ruling would apply to a broad swath of Floridians with prior felony convictions, and yet rejected Florida's administrative burden arguments when discussing the balance of the equities. "To comply with *the legal principle behind the injunction*," the court held, "the State need make only a good faith effort to ensure that *no felon otherwise eligible to vote under Amendment 4* is prevented from doing so because of his or her genuine inability to pay LFOs." *Id.* at 829-30 (emphases added). The court also noted that "it is not as though this is the first time the State will be making individualized determinations about a criminal defendant's financial situation *on a large scale*." *Id.* at 830 (emphasis added). Thus, the *Jones* court clearly determined that the equities favored voters in Plaintiffs' precise position, even when considering the administrative burden across the entire affected population statewide.

In any event, both this Court and Defendant have "a range of options available that do not appear unduly burdensome in light of the significance of [Plaintiffs'] interest." *Id*. For instance, to vindicate Plaintiffs and other Alabamians fundamental right to vote, the Court could require Defendant to issue CERVs to individuals who assert an inability to pay by declaration for the purposes of upcoming elections. *See, e.g.*, *Jones*, 410 F. Supp. 3d at 1310-11 (imposing such a preliminary injunction), *aff'd sub nom. Jones*, 950 F.3d 795,[12] while leaving room to allow

[12] Defendant points instead to a motions-panel decision staying a permanent injunction that gave state defendants only a few weeks to "determine when and how to exercise the Governor's power in order to reenfranchise convicted felons." *Hand v. Scott*, 888 F.3d 1206, 1214 (11th Cir. 2018). Importantly, the Court in *Hand* found the plaintiffs unlikely to succeed on the merits, which informed its consideration of the balance of the harms. *Id.* Here, Plaintiffs are likely to succeed, and thus the state's administrative interest carries less weight. Furthermore, a "stay-

Defendant to propose a permanent solution at the remedy stage on the merits. While Florida did not apply the *Jones* ruling beyond individual Plaintiffs until after class certification and final judgment, this tactic was not approved by the courts involved and should not be adopted by Alabama here. *See Jones v. DeSantis*, Order Denying Stay at 14, No. 4:19-cv-00300-RH-MJF, ECF No. 431 (N.D. Fla. June 14, 2020) ("The State's decision to ignore a definitive Eleventh Circuit ruling was unusual. States sometimes took positions like this in the 1950s and '60s. States have rarely done so since.").

Finally, and relatedly, Defendant argues that the State lacks sufficient time before this year's elections to implement a system for determining eligibility and registering voters who are "genuinely unable to pay" their LFOs. The State argues that this administrative burden shifts the balance of equities in their favor. Opp. at 53-54.

The degree of administrative burden imposed by a ruling for the Plaintiffs is a factor of how complex a scheme Defendant seeks to devise. *See Jones,* 950 F.3d at 829 ("[H]ow substantial a burden the district court's injunction will be is largely one of Florida's own making."). Should Defendant follow the suggestion of the Eleventh Circuit in *Jones* and utilize the State's current mechanisms, the burden is not undue. *Id.* at 830. As the court in *Jones* noted and explained above, state officials have "a range of options available that do not appear unduly burdensome in light of the significance of the plaintiffs' interest." *Id.* Moreover, here the State could consider applicants' ability to pay during the pre-existing CERV process, which would entail even less administrative burden than what Florida faced in *Jones,* where no comparable administrative scheme existed.

panel opinion *cannot* spawn binding legal consequences regarding the merits of the case," and therefore does not bind this Court. *Democratic Exec. Comm. of Fla. v. Nat'l Republican Senatorial Comm.*, 950 F.3d 790, 795 (11th Cir. 2020); *see Hand v. DeSantis*, 946 F.3d 1272, 1275 n.5 (11th Cir. 2020) (refusing to vacate as moot the *Hand* stay-panel ruling for this reason). Regardless, this Court should follow *Jones,* whose facts are far closer to this case.

Defendant's expenses are therefore within her control. This Court can also fashion a minimally burdensome process that Defendant can apply until the State develops its own. *See, e.g.*, *Jones*, 410 F. Supp. 3d at 1310-11. Surely, Defendant can devise a plan that ensures the integrity of the voting system and allows Alabamians to exercise their critical constitutional right to vote.

Defendant's objections cannot diminish the irreparable harm caused by a lost opportunity to exercise one's right to the franchise. The equities thus favor Plaintiffs. *See also* Motion at 25-26. As all four preliminary injunction factors weigh in Plaintiffs' favor, an injunction is warranted.

III. The Court Should Not Require Plaintiffs to Post a $100,000 Security.

This Court has discretion to impose security that it "considers proper" under Fed. R. Civ. P. 65(c). The Court should reject Defendant's baseless demand for "at least $100,000" for security. Opp. at 55. "It is well-established that the amount of security required by the rule is a matter within the discretion of the trial court," and the court "may elect to require no security at all." *BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005) (internal quotation marks omitted). The Eleventh Circuit has recognized an exception to the Rule 65 security requirement in cases of public interest litigation. *See City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. Unit B 1981) (affirming no security requirements for plaintiffs who were engaged in "public-interest litigation," an area in which the courts have recognized "an exception to the Rule 65 security requirement."). This exception is especially warranted here, where the basis of Plaintiffs' claims is their inability to pay, and the security demanded by Defendant would exceed what Plaintiffs are required to pay under Alabama's pay-to-vote scheme. The district court in *Jones*, recognizing these circumstances, imposed a $100 security bond in its preliminary injunction order, which was divided amongst 17 individual plaintiffs and three organizational plaintiffs for a total of $5 per person or entity. *See Jones*, 410 F. Supp. 3d at 1311. Lastly, the salary figures cited by Defendant ranging between

$23,397.60 and $51,400.80, Opp. at 55, are *annual* salaries, *see* Doc. 222-3, ¶ 15, and the state employee responsible for implementing the CERV process simply stated that the "fiscal impact to the bureau for responsibly implementing changes" is "unknown at this time." Doc. 222-3, ¶ 16. Because Defendant's demand is without even rudimentary analysis of what "the costs and damages sustained by [Defendant]" may be, Fed. R. Civ. P. 65(c), the Court should reject Defendant's request for "at least $100,000" from Plaintiffs who are too poor to pay off their court-imposed financial obligations.

CONCLUSION

Accordingly, the Court should enjoin Alabama Code Section 15-22-36.1(a)(3) as applied to those who lack the ability to pay their LFOs in full. Plaintiffs respectfully request an expeditious ruling on their motion for preliminary injunction.

Dated: June 22, 2020

Respectfully Submitted,

/s/ *Jessica Ring Amunson*

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CERTIFICATE OF SERVICE

I hereby certify that, on June 22, 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 all counsel of record as listed below:

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Exhibit 1

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

TREVA THOMPSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NO.
v.	)	**2:16-cv-783-ECM-WMD**
	)	
JOHN MERRILL, in his Official Capacity as Secretary of State of Alabama, et al.,	)	
	)	
	)	
Defendants.		

<u>SUPPLEMENTAL DECLARATION OF SCOTT DOUGLAS</u>

I, Scott Douglas, hereby declare as follows:

1. The testimony set forth in this Supplemental Declaration is based on firsthand knowledge, about which I could and would testify competently in open court if called upon to do so.

2. I am Executive Director of Greater Birmingham Ministries ("GBM")

3. GBM was founded in 1969 in response to urgent justice needs in the Birmingham, Alabama region. GBM's mission is to remedy the social conditions that unjustly affect the poor. GBM helps to feed the poor and shelter the homeless. GBM also opposes state laws, policies, and practices that result in the exclusion of the poor and other vulnerable groups or persons from the democratic process.

4. GBM regularly works to register, educate, and increase turnout among African-American and Latino voters, as well as low-income voters in general.

5. Most of GBM's 45 board members participate in voter registration and other nonpartisan get-out-the-vote activities, as do most of our 12 staff members. During periods

approaching elections as many as 75 or 80 volunteers are also involved in voter registration efforts. GBM registers hundreds of voters every year.

6. GBM interviews all clients who come to GBM for other services, such as food, clothing, or utilities. GBM inquires as to whether those clients are registered to vote and, if not, helps them register to vote if they are eligible and if they so choose.

7. Among its other election-related activities, each year GBM helps hundreds of formerly incarcerated men and women seeking to restore their voting rights and register to vote.

8. Since 2014, GBM has found increasing numbers of clients who were formerly incarcerated for felony convictions and are unsure whether they can register to vote because they had not yet fully paid their legal financial obligations ("LFOs"). Since that time, GBM has expended increasing amounts of time and resources with those who were formerly incarcerated for felony convictions and who are now hoping to register to vote.

9. Alabama's requirement that formerly incarcerated citizens entirely pay off their LFOs before becoming eligible to restore their right to vote, even if they cannot afford to pay their LFOs, is causing, and will continue to cause, GBM to register significantly fewer voters than if those who could not afford to pay their LFOs had a process by which they could still register to vote. As a result, GBM faces significant barriers in fulfilling one of its key organizational priorities.

10. The time and resources expended in helping clients who were formerly incarcerated for felony convictions navigate the State's process for determining whether they owe LFOs and are eligible to vote—only to determine that those clients are unable to pay their LFOs and therefore cannot seek rights restoration—diverts resources away from GBM's other voter registration initiatives, such as get-out-the-vote programs. GBM must also divert resources from applications that, based on the applicants' financial resources and ability to quickly pay off their LFOs, may

stand a greater chance of success. In these ways, the LFO payment prerequisite for voting rights restoration diverts GBM's staff time and resources from registering additional voters. If the State developed a process by which those unable to pay LFOs could have their voting rights restored, GBM would no longer have to waste time and resources on voter registration applications that turn out to have no chance of success.

11. The time and resources expended in assisting clients who were formerly incarcerated for felony convictions determine their eligibility to vote also diverts resources away from GBM's Emergency Food Assistance and Utility Assistance Programs, in addition to its initiative to provide clothing to low-income members of the Birmingham community. As a result, GBM must devote less time and fewer resources to these programmatic priorities.

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

Date: June 19, 2020

Scott Douglas