No. 20A67

IN THE
Supreme Court of the United States

JOHN H. MERRILL, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE FOR THE STATE OF ALABAMA, AND THE STATE OF ALABAMA,

Applicants,

v.

PEOPLE FIRST OF ALABAMA, ET AL.,

Respondents.

RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION FOR STAY

To the Honorable Clarence Thomas,
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Eleventh Circuit

Sherrilyn Ifill
Director-Counsel
Janai Nelson
Samuel Spital
Natasha Merle
Counsel of Record
Deuel Ross
Liliana Zaragoza
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
P: (212) 965-2200
nmerle@naacpldf.org

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

Davin M. Rosborough
T. Alora Thomas-Lundborg
Dale E. Ho
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad St.
New York, NY 10004
P: (212) 549-2500

Additional Counsel on Next Page

Katrina Robson
Stephen D. Brody
O'MELVENY & MYERS LLP
1625 Eye Street NW, Suite 1000
Washington, DC 20006
P: (202) 383-5300

William Van Der Pol
Jenny Ryan
Maia Fleischman
ALABAMA DISABILITIES
ADVOCACY PROGRAM
Box 870395
Tuscaloosa, AL 35487
P: (205)348-4928

Caren E. Short
Nancy G. Abudu
SOUTHERN POVERTY
LAW CENTER
P.O. Box 1287
Decatur, GA 30031
P: (404) 521-6700

Sarah Brannon
David D. Cole
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
915 15th Street, NW
Washington, DC 20005-2313
P: (202) 675-2337

Randall C. Marshall
ACLU FOUNDATION
OF ALABAMA, INC.
P.O. Box 6179
Montgomery, AL 36106-0179
P: (334) 420-1741

Counsel for Respondents

STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Pursuant to Supreme Court Rule 29.6, the undersigned states that none of the Respondents has a parent corporation, and no publicly held corporation holds 10 percent of more of any Respondents' stock.

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE(S)

CASES

TABLE OF AUTHORITIES
(CONTINUED)

PAGE(S)

CASES

TABLE OF AUTHORITIES
(CONTINUED)

PAGE(S)

CASES

STATUTES

TABLE OF AUTHORITIES
(CONTINUED)

PAGE(S)

STATUTES

OTHER AUTHORITIES

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

Applicants treat this case like other recent cases in which this Court granted stays of district court orders enjoining the enforcement of state voting laws for the November election. It is not. The Eleventh Circuit has already stayed the portions of the District Court's injunction that resemble orders previously stayed by this Court. The only issue before this Court is the injunction against the Alabama Secretary of State's ("Secretary") ban on curbside voting—a prohibition *found nowhere in state law*. The injunction does not *require* Applicants to provide curbside voting; it merely lifts a legally unfounded, unilaterally imposed prohibition, and thereby *allows* those counties that are able and willing to provide curbside voting to do so.

The Centers for Disease Control and Prevention ("CDC") recommends curbside voting, which is widely available in many states, as a means of reducing the risk of spreading COVID-19 at the polls. App. 95. And some Respondents live in counties that have agreed in consent orders to provide this accommodation. App. 113. The Secretary, however, will not let them—even though counties have employed curbside voting as recently as 2016 and 2018, even though state law expressly gives counties broad authority to assist voters with disabilities and to manage elections, and even though denying such access for high-risk voters violates the Constitution and the Americans with Disabilities Act ("ADA").

Applicants do not cite a single state law that curbside voting would violate, and they concede that the Secretary lacks the authority to prohibit curbside voting practices that are consistent with state law. They nonetheless urge this Court to

grant a stay. No principle of law or equity would support that extraordinary result—particularly since this case (unlike others) reaches the Court after a full trial, and where the order applies only to voting on Election Day, and therefore does not change the rules after voting has already begun.

COVID-19 has infected 172,000 Alabamians and led to the deaths of more than 2,700 of them. Every decision about whether to leave home requires Alabamians to take calculated health risks. These risks are especially acute for people who, like Respondents and their members, are at higher risk of severe illness or death from the virus due to their age and/or underlying medical conditions ("high-risk" people). To date, 96% of Alabamians who have died from COVID-19 were in a high-risk category. Respondent Howard Porter, a high-risk voter, testified to what is at stake—his life. "[S]o many of my [ancestors] even died to vote. And while I don't mind dying to vote, I think we're past that—we're past that time." App. 10.

After a two-week trial and in a 197-page opinion, the District Court ruled that Respondents had succeeded in their challenges to: (1) the requirement that an absentee ballot include an affidavit that is signed by the voter either in the presence of a notary or two adult witnesses ("Witness Requirement"); (2) the requirement that copies of photo ID accompany absentee ballot applications ("Photo ID Requirement"); and (3) the Secretary's *ultra vires* prohibition on curbside voting ("Curbside Voting Ban") (collectively, the "Challenged Provisions").

On September 30, the District Court issued a statewide injunction for the November 3 election only against the Witness and Photo ID Requirements for high-

risk Alabamians and enjoined the Secretary from enforcing the Curbside Voting Ban in those counties that wish to offer this accommodation. On October 13, the Eleventh Circuit stayed the injunction against the Witness and Photo ID Requirements but denied a stay as to the injunction against the Curbside Voting Ban.

Applicants now seek a stay of the District Court's modest injunction, which does not *require* Applicants to take any particular action, but merely allows those counties that choose to do so to "establish[ ] curbside voting procedures that *otherwise comply with state and federal election law*." App. 6 (emphasis added). By the plain terms of the injunction, Applicants are thus still permitted to offer guidance regarding curbside voting procedures.

Because of the limited scope of the injunction, Applicants cannot meet their burden to show the requirements for the requested extraordinary relief, namely: "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). The lack of irreparable harm is dispositive. The District Court did not enjoin any state law, did not require Applicants to take any additional steps, and merely lifts a prohibition not founded on state law, while allowing Applicants to enforce *all* existing laws, including those that might inform potential curbside voting procedures.

Nor can Applicants satisfy either of the other two factors. Following a bench trial, this Court reviews the decision to issue an injunction and its scope for abuse of

discretion. See *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006). "[D]eference . . . is the hallmark of abuse-of-discretion review." *General Elec. Co. v. Joiner*, 522 U.S. 136, 143 (1997). This deference is particularly important where, as here, the District Court heard from over 20 trial witnesses, made findings and credibility determinations after weighing the evidence, and then issued a discrete injunction. While Applicants disagree with the post-trial findings, they fail to show that the District Court committed clear error or otherwise abused its discretion.

Applicants' burden is especially heavy "[b]ecause this matter [was] pending before the Court of Appeals, and because the Court of Appeals denied [the] motion for a stay[.]" *Packwood v. S. Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers); *accord Edwards v. Hope Med. Grp. for Women*, 512 U.S. 1301, 1302 (1994) (Scalia, J., in chambers). An overriding stay is rare and exceptional, and therefore is granted only "upon the weightiest considerations." *O'Rourke v. Levine*, 80 S. Ct. 623, 624 (1960) (Harlan, J., in chambers) (denying a stay despite viewing the lower court decisions as inconsistent with this Court's precedent).

STATEMENT OF FACTS AND PROCEEDINGS BELOW

Since March 2020, our nation has battled one of the worst public health crises in a century. COVID-19 has infected more than 172,000 people in Alabama; more than 18,000 Alabamians have been hospitalized and more than 2,700 Alabamians have succumbed to complications caused by the disease.[1] COVID-19 is a highly

[1] Ala. Dep't of Pub. Health, Characteristics of COVID-19 Cases, https://www.alabamapublichealth.gov/covid19/assets/cov-al-cases-101620.pdf (October 16, 2020).

infectious disease and spreads through respiratory droplets from infected individuals. App. 15. The infectious disease community has coalesced around the science confirming that SARS-CoV-2, the virus that causes COVID-19, can spread through aerosols; tiny droplets containing the virus remain in the air for a period of time, which can infect people who inhale that air. *Id*. Consequently, transmission of the virus is more likely to occur indoors when people share space in a room for an extended period. *Id.* It may also spread through touching contaminated surfaces. *Id*. And although people of all ages have contracted COVID-19 and suffered adverse consequences, the disease poses special risks for people over the age of 65, people with disabilities, and people with preexisting medical conditions. App. 17–19.

There is no vaccine for COVID-19. App. 16. Thus, to slow the spread of the virus, the CDC, the Governor of Alabama, and Alabama public health officials have urged high-risk people to avoid interactions with people outside their households as much as possible and avoid contact with others who are not wearing masks. App. 156. The CDC has also issued specific guidance to address concerns about voting during the COVID-19 pandemic. Among other things, the CDC recommends that states "offer alternative voting methods that minimize direct contact and reduce crowd size at polling stations," including "drive-up voting," to limit personal contact during in-person voting. App. 32.

Since March, Alabama Governor Kay Ivey and the Alabama Department of Public Health have recommended that Alabamians "spend as much time as possible at home to prevent an increase in new infections." App. 16. The State has also, since

mid-July, recommended—but not required—that Alabamians wear masks. App. 26. However, Alabama's masking guidance contains an express exception for voters, *id*., and Secretary Merrill has instructed local election officials that "[n]o voter can be turned away [from a polling site] for any reason if they are a qualified elector," even if they are visibly ill or, have a known case of COVID-19[,]" and refuse to wear a mask. App. 34; *accord* App. 36 (Mobile County election officials cannot turn away a voter who does not wear a mask). Applicants received complaints from voters that some poll workers and voters did not wear masks during the July 14 primary runoff election. App. 34.

Contrary to CDC recommendations, and without citing any state law that prohibits the practice, Secretary Merrill has banned curbside voting outright, even during the pandemic, where indoor congregation is discouraged. Curbside voting is not new to Alabama. Yet, despite no Alabama law prohibiting it, Secretary Merrill has barred election officials in multiple counties from using curbside voting to assist voters with disabilities in 2016 and 2018. App. 93–94.

On May 1, Respondents sued the State of Alabama, Secretary Merrill, and county election officials, seeking to enjoin enforcement of the Challenged Provisions. Respondents subsequently sought a preliminary injunction to enjoin Applicants from enforcing the Challenged Provisions. On June 15, the District Court partially granted Respondents' motion, and the Eleventh Circuit declined to stay that injunction. Applicants sought relief in this Court, which granted the stay without explanation.

The case proceeded to a two-week bench trial, during which the District Court

received dozens of exhibits and heard testimony from two-dozen witnesses. At trial, there was "[n]o evidence suggest[ing] that [the 2016 and 2018 instances of curbside voting] compromised either the orderliness of those elections or ballot secrecy[,]" or otherwise violated any state law. App. 146–47; *see also* App. 167. "To the contrary, evidence showed that curbside voting would further ballot secrecy for some voters." App. 147. "Alabama law expressly allows voters to receive assistance from poll officials while casting a ballot." App. 95 (citing Ala. Code § 17-9-13). State law allows "[a]ny person who wishes assistance in voting may receive assistance from any person the voter chooses," except for an employer or union representative, Ala. Code § 17-9-13(a), and, without limitation, it requires that, "upon the request of a voter," a poll worker "shall assist the voter as necessary to deposit the ballot" in voting machine. Ala. Code § 17-8-1(b)(4); Ala. Admin. Code r. 307-X-1.10(4).

Secretary Merrill testified that he did not know any details about the curbside voting instances in 2016 and 2018. App. 94. That is, he did not know whether the secrecy of the ballots was compromised. *Id*. Nor did he know whether there were traffic-flow or other logistical issues because of those instances of curbside voting. Supp. App. 7, 10. The Secretary testified that he did not know—and "did not care"—whether the voters who received a curbside voting accommodation had a disability that accessing the polling place difficult or impossible. Supp. App. 9; *see also* App. 94.

On September 30, the District Court, in a 197-page opinion, found for Respondents and held that: (1) the Witness Requirement violated the Fourteenth Amendment and the Voting Rights Act, (2) the Photo ID Requirement violated the

Fourteenth Amendment and the ADA, and (3) the Curbside Voting Ban violated the ADA and the Fourteenth Amendment. App. 8–204. That same day, the District Court issued a statewide injunction enjoining Applicants from enforcing the Challenged Provisions for the November 3 election. App. 3–7. Applicants sought an emergency stay of that injunction in the Eleventh Circuit. On October 12, the Eleventh Circuit granted the stay motion as to the Photo ID and Witness Requirements but denied the stay as to the Curbside Voting Ban. App. 1.

REASONS FOR DENYING THE APPLICATION

I. *Purcell* Neither Requires Nor Favors a Stay.

Purcell v. Gonzales, 549 U.S. 1 (2006), does not create a hard-and-fast deadline by which a court must resolve all election-related issues. Rather, *Purcell* was concerned with conflicting court orders and alterations to rules close in time to elections which might lead to "voter confusion and consequent incentive to remain away from the polls," and therefore required courts to weigh the proximity to an election as part of its equitable considerations. *Id.* at 4–5. Here, the District Court did precisely that. It carefully weighed the timing of the election and found that *Purcell* does "not preclude the [district] court from providing a remedy to the plaintiffs in this case." App. 124.

Purcell is entirely inapposite as to the injunction permitting curbside voting. Unlike every other case where this Court has stayed an injunction under *Purcell*, the narrow curbside voting injunction is consistent with Alabama law, which affords county officials broad discretion to "determine how to lawfully handle 'voting logistics'

in their counties." App. 167. "[L]ifting the ban on curbside voting permits counties willing to implement the practice . . . to do so," but the injunction "does not mandate that counties must provide curbside voting in Alabama." App. 12. The injunction imposes no new requirements or rules; it merely permits county officials to use their state law authority to accommodate voters should they so choose.

Nor is the injunction "déjà vu" or failure to "treat like cases alike." Stay Br. 1, 2. The instant order is readily distinguishable from the July preliminary injunction, which this Court stayed. The focus of the parties' briefing concerning the stay of the June order was on the Witness and Photo ID Requirements, which are not at issue here. *See generally* Stay Br., *Merrill, et al. v. People First of Alabama, et al.*, __ S. Ct. __ (June 29, 2020), No. 19A1063, 2020 WL 3604049 (Mem); Resp. Opp. Br. (July 2, 2020); Reply Br. (July 2, 2020). Further, the injunction against the curbside voting ban for November 3 is based on findings after development of a robust trial record—findings of the harm the Curbside Voting Ban caused to Respondents and the lack of harm to Applicants. Voting necessarily varies from polling place to polling place and county to county, and the injunction does not change that. As the District Court recognized, it is a decision left up to county officials under Alabama law, and officials in some counties had offered curbside voting in both 2016 and 2018 without any evidence of voter confusion. Finally, unlike in July and as explained below, the District Court found that Applicants are judicially estopped from raising *Purcell*.

A. The District Court Entered Its Injunction After a Trial and Properly Weighed *Purcell* Among its Equitable Considerations.

In *Purcell*, this Court stayed the issuance of a preliminary injunction by the appellate court (entered notwithstanding the trial court's denial of an injunction) and underscored that it was expressing no opinion "on the ultimate resolution" of the case, which involved "hotly contested" facts, but an "inadequate time to resolve the factual disputes[]" before the election. 549 U.S. at 5–6. By contrast, the District Court here had the opportunity to resolve the parties' factual disputes after a two-week trial.

Applicants do not argue that the District Court's findings on the merits, including its finding that there is no potential for voter confusion, are clearly erroneous. And Applicants cannot cite a single case where the Court relied on *Purcell* to reverse a Court of Appeals' denial of *a stay after a trial had resolved all factual disputes in advance of Election Day*. Indeed, the Court has left in place election-related injunctions entered after a trial on the merits and where, as here, a stay might disrupt the *status quo*. *See, e.g.*, *North Carolina v. N. Carolina State Conf. of NAACP*, 137 S. Ct. 27 (2016) (declining to a stay a post-trial injunction with seven Justices voting to keep the injunction entirely or partially in place); *Frank v. Walker*, 574 U.S. 929 (2014) (vacating an appellate court's stay of an injunction entered after trial).

Here, the District Court made three significant findings relevant to *Purcell* and, as this Court has recognized, those findings are entitled to deference. 549 U.S. at 7–8.

First, the District Court found that, as recently as the 2016 and 2018 elections, the *status quo* is that "several Alabama counties have provided [curbside voting] for disabled citizens who need assistance voting[.]" App. 143. The only reason those counties stopped providing curbside voting is because of the Secretary's intervention. *Id*. Consistent with state and federal law and the expectations and experiences of voters and counties, the injunction simply restores the *status quo*, *i.e.* the ability of willing counties to offer this option. App. 120–21.

At trial, there was "[n]o evidence suggesting that [these past instances of curbside voting] compromised either the orderliness of those elections or ballot secrecy," or *violated any state law*. App. 146; *see also* App. 167. "To the contrary, evidence showed that curbside voting would further ballot secrecy for some voters." App. 147. Indeed, "Alabama law expressly allows voters to receive assistance from poll officials while casting a ballot." App. 95 (citing Ala. Code § 17-9-13). Without limitation, state law requires that, "upon request of a voter," a poll worker "shall assist the voter as necessary" with depositing the ballot in a voting machine. Ala. Code § 17-8-1(b)(4).

Although Secretary Merrill stopped curbside voting in several counties in 2016 and 2018, the District Court found that the Secretary was unaware of whether any voter or election official had violated state law; nor was he aware of any compromises of ballot secrecy. App. 94. At trial, Secretary Merrill also testified that he was unaware of any traffic flow or logistical issues arising from curbside voting; nor had he received any complaints from the county election officials who were offering

curbside voting. Supp. App. 7, 10. Accordingly, the trial evidence demonstrated that the only abrupt (and potentially confusing) reversals of policy as to curbside voting stemmed from Secretary Merrill intervening on Election Day in 2016 and 2018 to stop some counties from offering this accommodation. App. 93–95.

Second, there was no trial evidence that allowing counties to resume curbside voting would cause voter confusion that might keep voters away from the polls. App. 120. Either a county will offer curbside voting, or it will not. The District Court found that those counties—like Jefferson and Montgomery, which entered into unchallenged and court-approved consent orders agreeing to offer curbside voting, App. 113, and others that may choose to provide it—are fully capable of publicizing whether and how the option might be available. App. 120. The injunction here is no different from consent orders entered into between counties and plaintiffs, like the U.S. Department of Justice, that allow election officials to offer temporary accommodations to assist voters with disabilities so long as those officials comply with state law and determine that it is feasible to do so.[2] Thus, the injunction enables more people to vote—it does not keep people away.

Nonetheless, Applicants argue that, because the injunction "relieves voters of the necessity of going into a polling place on Election Day," this case is similar to

[2] *See, e.g.*, *Settlement Agreement Between the United States of America and Jefferson County, Alabama Regarding the Accessibility of Polling Places*, October 27, 2016, at 8 ¶ 39, https://www.justice.gov/usao-ndal/press-release/file/905967/download (last accessed Oct. 18, 2010) ("Nothing in this Agreement relates to other provisions of the ADA or affects the County's obligations to comply with any other federal, *state, or local* statutory, administrative, regulatory, or common law obligation . . . .") (emphasis added); *see also* U.S. Dep't of Justice, *Consent Decrees*, Information and Technical Assistance on the Americans with Disabilities Act, https://www.ada.gov/enforce_activities.htm#cds (listing numerous other settlements between the Justice Department and election officials) (last visited Oct. 18, 2020).

those cases where this Court stayed lower courts that caused voter confusion by "taking away requirements" from voters. Stay Br. at 14 (collecting cases). But Applicants' cited cases are inapposite. In each one, state law imposed *some* affirmative requirement. Here, as Applicants concede, no state law bars curbside voting, nor requires that voting take place indoors. App. Br. at 6. And although Applicants repeatedly cite to the Secretary's authority to "provide uniform guidance for election activities[,]" Stay Br. at 3, 15, 17, 22 (quoting Ala. Code § 17-1-3(a)), *they cite no provision of state law or state court decision supporting Secretary Merrill's view that curbside voting violates Alabama law*. Nor was the Secretary able to point to any provision of state law which was violated when curbside voting occurred in 2016 and 2018. Supp. App. 7, 10.

Importantly, unlike other cases recently before this Court on motions for stays, the injunction only concerns in-person voting on Election Day and in no way alters voting that is already occurring.

And, as the District Court found, "curbside, or drive-up, voting is a form of in-person voting (which State law of course permits)—the practice involves a voter who is present in person to sign the poll book, complete a ballot, and give it to a poll worker, who then inserts it into a tabulation machine." App. 165. Alabama law expressly provides that poll workers may assist voters with each step in this process: signing the poll book, completing their ballots, and inserting the ballot into the tabulation machine. *See* Ala. Code §§ 17-9-11; 17-9-13; 17-8-1(b)(4).

Applicants "admit[ted] that [absentee election officials] can hold events outside of their offices to process and collect absentee ballots, and they encourage the practice," even though "no provision of the [Alabama] Code on absentee voting explicitly provides" for that practice. App. 166. Similarly, at four polling places during the July 14 primary runoff election, Defendant Mobile County Probate Judge Don Davis—the county's election official—"moved some of the poll workers and some of the poll administrative operations" into outdoor tents where voters signed the poll lists and, in some cases, received ballots. Supp. App. 25–26. Judge Davis provided this accommodation even though the Alabama code does not contemplate it. *Id.* at 113. And there was no evidence that this practice in Mobile County caused any voter confusion. The District Court correctly found that the fact that counties have already taken these steps and others during the pandemic significantly undercuts any argument about voter confusion. App. 166.

Applicants' own witness, Director of Elections and Secretary Merrill's Deputy Chief of Staff, testified that the latitude that county officials are given in implementing elections and different practices across counties are hallmarks of Alabama election administration, not an aberration. Supp. App. 28–30. "Alabama's voting practices are already decentralized across the State, with different counties utilizing different procedures." App. 167. Because the injunction leaves county-level officials with their preexisting discretion to determine how best to operate poll sites on Election Day, it is unlikely to cause confusion among voters accustomed to relying on county officials for guidance.

Third, there was no evidence at trial that the injunction would confuse election officials. The injunction does not, as Applicants assert, impose a "gag order" on Secretary Merrill simply because it requires him to risk contempt or to abandon his own unlawful reading of Alabama's election laws. Stay Br. 15. But he can still offer uniform guidance on election procedures, including those concerning curbside voting logistics and compliance with relevant state laws, so long as he does not prohibit curbside voting outright in violation of federal law.

Applicants speculate that the injunction will cause some election officials to wonder or worry about their obligations under the order. Stay Br. 16. But the injunction is clear that it runs only against Secretary Merrill and does not demand anything from the counties. App. 120–21. Further, as the District Court explained, the ADA inquiry requires a court to determine whether an accommodation is reasonable. App. 164–68. Here, some counties where Respondents reside have stated that they would offer curbside voting but-for the Secretary's actions. The District Court's opinion simply recognizes that, in those counties that find it feasible to do so, curbside voting is a reasonable accommodation under the ADA. *Id*. The order does not determine that curbside voting is always required by the ADA. Instead, because counties where Respondents reside agreed to provide it so long as Secretary Merrill does not interfere, the District Court did not need to decide whether federal law requires curbside voting in counties that do not find it feasible. App. 113–14.

Applicants also raise a host of potential logistical problems that county election officials would have to work through alone without the Secretary's guidance. Stay Br.

15. But state law already leaves matters of logistics to local officials. App. 167. For those counties that choose to offer curbside voting, they would be no more burdened than they desire to be or are in discharging their other election duties. App. 147.

B. Applicants Are Judicially Estopped from Raising *Purcell*.

The District Court correctly determined that Applicants are judicially estopped from relying on *Purcell* to contend that the injunction is too close to the November election because of Applicants' argument in May that the concerns raised about the November election were too speculative to litigate then. App. 123–24. Applicants assert that their argument in May and their position now that September was too late for Respondents to obtain any relief are not in direct contradiction of each other. Stay Br. 13. But in anticipation of *Purcell* concerns, Plaintiffs sought an August trial date, App. 118–19; yet Applicants pushed to delay the trial until *after* September. *See* App. 119 (noting the Defendants' numerous objections to the expedited discovery and trial schedule). Applicants should not be permitted to "chang[e] positions according to the exigencies of the moment." *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001) (citation omitted).

Moreover, not only is Applicants' approach inconsistent, it is also inequitable. Under Applicants' "heads too soon, tails too late" approach, Respondents would *never* have a chance to vindicate their fundamental right to vote. That cannot be the law.

II. Applicants Are Unlikely to Succeed on the Merits.

The District Court correctly held that Secretary Merrill's unilateral ban on curbside voting—which prohibits all Alabama counties from providing a CDC-

recommended accommodation, even when the county is willing and able to do so—violates the ADA. The Court found, and Applicants conceded at trial, that no Alabama law bars curbside voting. App. 165–66.

Yet, the Secretary stopped counties in the 2016 and 2018 elections from offering curbside voting to assist voters with disabilities. App. 143. In a stunning rebuke of the ADA, the Secretary testified that he simply "did not care" whether the voters who received a curbside voting accommodation had a disability that made voting inside the poll site a challenge or impossibility. Supp. App. 9; *see also* App. 94.

This Court reviews the decision to grant or deny permanent injunctive relief under the highly deferential abuse-of-discretion standard. *See eBay Inc.*, 547 U.S. at 391. Despite this permissive standard, Applicants claim that the District Court legally erred insofar as the Court held that curbside voting did not violate state law. While Applicants are right that federal courts are not the "ultimate expositors of state law," Stay Br. 17, federal courts "can review a state official's interpretation of—or gloss over—state law when it is alleged to violate the United States Constitution" or federal law. *League of Women Voters of Fla., Inc. v. Detzner*, 314 F. Supp. 3d 1205, 1213 (N.D. Fla. 2018); *accord Quinn v. Millsap*, 491 U.S. 95, 106 n.9 (1989); *Obama for Am. v. Husted*, 888 F.Supp.2d 897, 899–902 (S.D. Ohio), *aff'd* 697 F.3d 423, 431 (6th Cir. 2012); *Charles H. Wesley Educ. Found v. Cox*, 324 F. Supp. 2d 1358, 1366–69 (N.D. Ga. 2004), *aff'd* 408 F.3d 1349, 1351 (11th Cir. 2005).

The District Court did not abuse its discretion in granting an injunction against the Curbside Voting Ban.

A. The Curbside Voting Ban Violates the ADA.

The ADA requires accommodations for voters with disabilities. In consent orders, two counties agreed that they are willing and able to provide curbside voting as accommodations on November 3 but-for the *ultra vires* actions of the Secretary. The injunction merely allows those counties to offer that service so long as they do so in accordance with state law.

The District Court correctly concluded that Respondents successfully proved their prima facie case under the ADA. App. 164. To establish a prima facie ADA violation, Respondents demonstrated at trial that (1) they are or, for organizational plaintiffs, have members who are "qualified individuals with a disability"; (2) they were excluded from "participation in or [ ] denied the benefits of the services, programs, or activities of a public entity"; and (3) the exclusion or denial was "by reason of such disability." 42 U.S.C. § 12132. After making out their prima facie case, Respondents were also required to "propose a reasonable modification to the challenged public program that w[ould] allow them the meaningful access they seek." *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 507 (4th Cir. 2016); *see* 28 C.F.R. § 35.130(b)(1)(7)(i). The burden then shifted to Applicants to show that such reasonable modification "would fundamentally alter the nature of the service, program, or activity," *id.*, or "would impose an undue financial or administrative burden," *Tennessee v. Lane*, 541 U.S. 509, 532 (2004).

Applicants challenge Respondents' showing of only the second and third prongs. To satisfy the second, the public entity's exclusion need not be absolute;

rather, the public entity violates the ADA when a person with a disability cannot "readily access[]" the program at issue. 28 C.F.R. 35.150(a). The third prong requires proof of a causal link between the disability and the exclusion or denial of benefits. *See* 42 U.S.C. § 12132. Respondents satisfy both prongs.

1. The Curbside Voting Ban Excludes Respondents from Participating in In-Person Voting.

With respect to the second prong, the District Court correctly held that, in light of the serious health risks posed by COVID-19, in-person voting was not "readily accessible" to Respondents. Thus, the Curbside Voting Ban operates to exclude from voting Respondents and Respondents' members who are high-risk voters. App. 157–63. Applicants argue that the Curbside Voting Ban does not "exclude" Respondents from voting because they can still participate by voting absentee. Stay Br. 23–24. But that argument is both factually and legally specious.

To succeed, "Plaintiffs need not prove that they [were] disenfranchised or otherwise 'completely prevented from enjoying a service, program, or activity to establish discrimination.'" *Disabled in Action v. Bd. of Elections in City of N.Y.*, 752 F.3d 189, 198–99 (2d Cir. 2014) (citation omitted); *see Lane*, 541 U.S. at 514 (affirming denial of a motion to dismiss an ADA claim where the plaintiff was able to attend court proceedings, but had to crawl upstairs or allow officers to carry him). Rather, an ADA violation requires only a showing that Applicants failed to "provide[] [them] with meaningful access to the benefit that [it] offers." *Disabled in Action*, 752 F.3d at 198–99 (quoting *Alexander v. Choate*, 469 U.S. 287, 301 (1985)). It is not enough to

permit "merely the opportunity to vote at some time and in some way" where doing so "afford[s] persons with disabilities services that are not equal to that afforded others.'" *Id.*; *see also Alexander*, 469 U.S. at 304 ("Section 504 [of the Rehabilitation Act][3] seeks to assure evenhanded treatment and the opportunity for handicapped individuals to participate in and benefit from programs . . . .").

Here, not all high-risk voters have the means to vote absentee. Respondents and their members include individuals who need in-person assistance to vote due to their disability. *See* App. 144–45 (citing testimony of People First member Jenny Lux, who testified that "she needs assistance on Election Day due to her visual impairment"). As Applicants concede, Alabama law does not impose any limit on the kind of assistance poll workers may provide voters to cast their ballot. *See* App. 165–66; Ala. Code §§ 17-11-1–17-11-19; *see also* Supp. App. 11. Alabama law is consistent with curbside voting: Counties must staff each poll site with ballot clerks who are specifically responsible for assisting voters with placing ballots in ballot counters or boxes, *see* Ala. Code § 17-8-1(b)(4); Ala. Admin. Code r. 307-X-1.10(4), and who take an oath to protect the secrecy of the ballot, Ala. Code § 17-6-34. Freeing counties to resume the practice of assisting voters with disabilities is appropriate, particularly in the COVID-19 crisis, and is consistent with the voter assistance provided for by state law. Respondents simply seek to avail themselves of that assistance.

[3] The "substantive standards for determining liability are the same" under Title II of the ADA and Section 504 of the Rehabilitation Act. *Furgess v. Penn. Dep't of Corr.*, 933 F.3d 285, 289–90 (3d Cir. 2019); *see also, e.g.*, *Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743, 749 (2017).

Further, the Eleventh Circuit granted Applicants' motion to stay the injunction against the Witness and Photo ID Requirements, reinstating those requirements for the election. App. 3. But, as the District Court found, certain Respondents and their members are unable to safely satisfy the Photo ID and Witness Requirements because they either live alone or with fewer than the two people necessary to satisfy the Witness Requirement, or lack the means to secure a copy of a photo ID. App. 182.

This means that absentee voting would not be an adequate alternative even if, as Applicants argue, the "program" here is the State's "voting program" viewed "in [its] entirety." Stay Br. 24. But Respondents are also wrong on that point: The relevant program is the State's *in-person* voting program. That is, in assessing whether a person with a disability has been provided with meaningful access to a benefit, "[t]he benefit itself . . . cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled." *Alexander*, 469 U.S. at 301 & n.21. By this standard, Respondents' "proposed focus on voting in its entirety effectively reads out much of [the statute], suggesting that Title II prohibits only complete exclusion from participation in broadly-defined programs." *Lamone*, 813 F.3d at 503. Indeed, under Applicants' argument, even an absolute ban on in-person voting for a person with disabilities would be permissible, so long as absentee voting were available. "The text of Title II compels close examination not just of broad public 'programs' but [also] of 'services, programs, or activities." *Hernandez v. N.Y.S. Bd. of Elecs.*, __ F. Supp. 3d __, 2020 WL 4731422, at *8 (S.D.N.Y. Aug. 14, 2020) (citing 42 U.S.C. § 12132).

As the District Court correctly held, the plain reading of the statute frames the relevant inquiry here as to whether the Curbside Voting Ban excludes Respondents from participating in the in-person voting program. App. 164.

2. There Is a Causal Link Between the Exclusion and Respondents' Disabilities.

The District Court correctly held the Curbside Voting Ban's exclusion of Respondents was causally related to their disabilities. App. 163–64. Applicants do not challenge that Respondents are high-risk voters or that Respondents are "disabled" under the ADA. Stay Br. at 23–24. Rather, Applicants contend that COVID-19, not Respondents' underlying conditions, is the legal cause of their "exclusion." Stay Br. at 24. That argument, too, ignores both record evidence and hornbook causation law.

First, Respondents amply proved, through individual and expert testimony at trial, that their heightened risks of death or serious illness from COVID-19 are due to their medical conditions. *See, e.g.*, App. 48–75. The members of the organizational Respondents also include people with COVID-19 who desired to vote curbside. *Id.* at 69–70; *see Sch. Bd. of Nassau Cty., Fla. v. Arline*, 480 U.S. 273, 277 (1987) (holding that highly infectious respiratory diseases are disabilities under federal law). It is these "disabilit[ies]" that the District Court found impeded the ability of Respondents to vote without a curbside voting option. App. 157–58. "The determination of a qualifying disability in this case cannot be looked at in a vacuum." *Silver v. City of Alexandria*, __ F. Supp. 3d __, 2020 WL 3639696, at *4 (W.D. La. July 6, 2020). It is

because of their disabilities that Respondents are severely limited in their ability to leave home or "interact with others" amid the pandemic. 28 C.F.R. § 36.105(c)(1)(i).

In fact, Alabama's emergency orders and the CDC advise high-risk people, like the Respondents, to limit interactions with people outside of their household and avoid others not wearing masks. App. 156–57, 164. The District Court correctly held that "[t]his CDC guidance supports a finding that it is the plaintiffs' or their members' underlying medical conditions, *not their personal choices*, that impact their ability to interact with others or work during the COVID-19 pandemic." App. 156–57. Respondents' medical experts further testified that traditional in-person voting presents a heightened risk of exposure, *id.* at 160, and recommended that high-risk voters not risk going inside a polling place to vote in November, *id.* at 160, 164.

This is even more true where, as here, Applicants are not requiring voters, even those diagnosed with COVID-19, to wear a mask to enter the polls. App. 145–46. The District Court therefore did not abuse its discretion in finding that Respondents established a causal connection between their disabilities, which make them vulnerable to serious illness from COVID-19 infection, and the inaccessibility of their polling sites during the COVID-19 pandemic. App. 163–64.

3. Curbside Voting Is a Reasonable Modification.

Having recognized that Respondents satisfied all three elements of the prima facie case, the District Court properly held that curbside voting is a reasonable accommodation in counties willing to offer it. The injunction does not require Applicants to provide any of their own resources to make curbside voting available.

Rather, the injunction simply requires the Secretary not to stop those counties who want to offer curbside voting from doing so in a way that is consistent with state law.

"Determination of a proposed modification is generally fact-specific." *Lamone*, 813 F.3d at 508. States are required to provide "'reasonable modifications' that would not fundamentally alter the nature of the service provided [ ] when the individual seeking modification is otherwise eligible for the service." *Lane*, 541 U.S. at 532. Hence, the "burden of establishing the reasonableness of an accommodation is "'not a heavy one' and [ ] 'it is enough for the plaintiff to suggest the existence of a plausible accommodation, the costs of which, facially, do not exceed its benefits." *Lamone*, 813 F.3d at 507–08 (internal quotation marks and citation omitted). And a State may not avoid its "duty to accommodate" by justifications of "ordinary considerations of cost and convenience alone." *Lane*, 541 U.S. at 532.

The District Court correctly concluded that (1) no existing accommodations address Respondents' harms, App. 164 n.73; (2) the injunction does not impose any costs or burdens on Applicants, *id.* at 147; and (3) no state law imposes a barrier to offering this accommodation. *Id.* at 165–66. Applicants fail to identify any legal error or clearly erroneous factual finding in any of these conclusions.

First, none of Applicants' alternative accommodations meaningfully addresses the issue here. Applicants propose that permitting voters over age 70 or with mobility issues to move to the front of the line at the polling place provides an alternative accommodation. Stay. Br. 25. But moving to the front of the line "does nothing for the plaintiffs who are under 70 and not mobility disabled, and who have underlying

conditions" and, "even for plaintiffs who could benefit from this law to go to the front of the line, they still must go inside their polling place to cast a ballot, risking exposure to other voters." App. 164–65 n.73. And the policies for addressing unmasked voters outside still "could place [unmasked voters] in proximity with vulnerable voters entering and exiting the polls." *Id.* at 146. The District Court found that, for those Respondents whose disabilities require them to spend more time at the polls, "[c]urbside voting would minimize the risk of exposure to COVID-19." *Id.* at 145. Similarly, as discussed *supra* at 20-21, absentee voting does not help those voters who require in-person assistance or cannot satisfy the Witness and Photo ID Requirements.

Because Applicants forbid poll workers from taking temperature checks or requiring voters to wear masks and do not allow poll workers to turn away persons known to have COVID-19, App. 145–46, indoor precautions do not necessarily protect a high-risk voter from encountering unmasked people or aerosolized droplets of the virus. *Id.* at 160–61. Rather, "traditional in-person voting presents a heightened risk of exposure to COVID-19, and several of the plaintiffs' experts opined that vulnerable voters with underlying conditions should not vote in person due to that risk of exposure." *Id.* at 160. Even with precautions, Respondents "still may be confronted with unmasked or visibly sick voters at their polling sites, which may dissuade them from voting in person. Indeed, [Respondent] Mr. Porter testified, for example, that he did not vote in July after not receiving an absentee ballot because he could not risk exposure to COVID-19 at his polling site." *Id.* at 161.

Next, Applicants contrive a requirement—which appears nowhere in Alabama law—that a voter's ballot must remain in the "sight" or presence of the voter. Stay Br. 10. What the law *does* contemplate is that poll workers shall "assist the voter as necessary to deposit the ballot in the precinct ballot counter." Ala. Code § 17-8-1(b)(4); *see also* Supp. Tr. 5, 15 (Secretary Merrill agreeing that voters are allowed to receive assistance from poll workers). Nothing in Alabama law requires that that assistance be given *inside* the polling place, that the poll worker place the ballot into the ballot counter within view of the voter, or that a voter wait in the presence of the poll worker to watch the ballot's submission.

Even if the imagined chain-of-custody requirement were correct, Stay Br. 30, poll workers are clearly an authorized link in that chain. "[P]oll workers take an oath to maintain the integrity of elections by complying with relevant laws," which includes keeping ballots secret and inviolate, Ala. Code. § 17-6-34, and "should be trusted to take that oath seriously." App. 167.

4. Allowing Curbside Voting Does Not Present an Undue Burden to Applicants.

Because Respondents satisfied their prima facie case, and presented a reasonable accommodation, the burden shifted to Applicants to show that the reasonable accommodation would impose an undue burden on them or otherwise "fundamentally alter the nature of the service provided." *See Lane*, 541 U.S. at 532.

There are simply no costs to Applicants here. The negative injunction enjoining Secretary Merrill from banning curbside voting imposes no burden whatsoever on the

Applicants; it simply affords those counties that *choose* to accommodate voters the leeway to do so. Applicants argue that "public entities need not 'employ any and all means to make [public] services accessible,' and 'in no event' must they 'undertake measures that would impose an undue financial or administrative burden' or fundamentally alter the nature of the service offered." Stay. Br. 24–25 (citation omitted).

That is true. But the injunction does not affirmatively require Applicants to incur any cost: it simply bars the Secretary from preventing counties from offering a service if they wish. For that reason, Applicants' reliance on *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), is misplaced. Stay Br. 25. In *Olmstead*, the Court held that the state was required to provide community-based treatment to people with mental disabilities when, among other things, the placement can be "reasonably accommodated." 527 U.S. at 607.

There is no question that some counties are willing and able to provide curbside voting. App. 113–14. Nor is there any serious concern that doing so fundamentally alters the voting program since, again, poll workers may provide broad assistance to any voter. *See* Ala. Code §§ 17-9-13, 17-8-1(b)(4); Supp. App. 5, 11. Permitting state-approved assistance curbside—rather than inside a polling location during a pandemic—is not a "fundamental alteration" of the voting program. Nothing in *Olmstead* justifies Secretary Merrill's interfering with a county's provision of that accommodation.

B. Applicants Are Unlikely to Succeed on the Merits as to the Constitutional Claims.

This Court is unlikely to reverse the district court's lifting of the *ultra vires* Curbside Voting Ban under the *Anderson-Burdick* framework. The District Court "weigh[ed] the character and magnitude of the asserted injury" to Respondents' right to vote "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) (citation and internal quotation marks omitted). Applicants mischaracterize both what this standard requires and the record before the Court.

Concerning the first step of the analysis, assessing the burden on voters, Applicants falsely contend the District Court misapplied this standard. Stay Br. 20. The District Court's finding that the Curbside Voting Ban created a "significant" burden for many high-risk Alabamians, App. 146—based on detailed factual findings supported by a two-week trial record—is fully consistent with the rule in *Burdick*.

Applicants' suggestion that the District Court needed to quantify the level of risk of infection to a specific percentage finds no support in *Crawford v. Marion County Election Board* or elsewhere. Stay Br. 20. In *Crawford*, in confronting a facial challenge to Indiana's photo ID law that sought to "invalidate the statute in all its applications," this Court noted that the record did not contain "any concrete evidence of burden" and that the only such evidence came from "extrarecord, postjudgment studies." 553 U.S. 181, 200–03 (2008). By contrast, the District Court here relied upon

unrebutted expert testimony that high-risk voters should avoid "going inside a polling place to vote in November," App. 164, as well as similar evidence from the CDC, App. 163–64. Indeed, Alabama forbids turning away not only voters who refuse to wear masks at the polls, but even a COVID-19-positive voter without a mask. App. 161. It even prohibits requiring that poll workers wear masks. Supp. App. 2. Nor, as discussed *supra* at 20–21, is mail-in voting an adequate alternative for many high-risk voters, including voters with disabilities who may "receive assistance from poll workers," App. at 144–45, or who cannot meet the Witness or Photo ID Requirements. Applicants' tone-deaf comparison of the risks faced by vulnerable citizens from voting in-person during the pandemic to rush-hour driving, Stay Br. 21, belies common sense. If that were true, this Court would be conducting business as usual rather than through telephonic oral arguments.

Moreover, Applicants' suggestion that any burden on voters comes solely from the virus is both factually and legally incorrect. While the virus creates part of the context in which the Curbside Voting Ban burdens voters, the burdens also stem from the consequent requirement that people vote indoors among people who can refuse to wear masks. *See, e.g.*, *Common Cause R.I. v. Gorbea*, 970 F.3d 11, 14 (1st Cir. 2020) (considering "whether enforcing the two-witness or notary requirement in the midst of the pandemic is constitutional"). Here, except-for the Curbside Voting Ban, Respondents and other high-risk Alabamians would be able to safely vote from their vehicles. App. 115–16.

As to the second analytical step, weighing these burdens against the state's interests, Applicants mischaracterize the legal standard and fail to show how the ban advances the State's interests. For one, they assert that because the District Court concluded the Curbside Voting Ban does not impose a categorically severe burden on voters, the State's proffered interests should prevail. Stay Br. 20–21. But the *Crawford* majority rejected this two-track approach in favor of *Anderson*'s "balancing approach." 553 U.S. at 190. And whatever the burden and abstract legitimacy of state interests, "some level of specificity is necessary to convert that abstraction into a definite interest for a court to weigh." *N.E. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 632 (6th Cir. 2016). Even in *Crawford*, this Court did not merely accept the State's interest in preventing voter fraud as sufficient to uphold Indiana's photo ID law—it did so only after concluding that the plaintiffs' facial challenge could not survive because of the lack of "evidence in the record" as to "the magnitude of the burden on [a] narrow class of voters," 553 U.S. at 200, or on "any class of voters," *id.* at 202.

Here, the District Court carefully weighed the interests asserted by the state—the interest in orderly elections and ballot secrecy—and found the burden on high-risk voters outweighed those interests, App. 146–48, particularly where, as Applicants agree, curbside voting is "not expressly prohibited by statute." Stay Br. 6. None of Applicants' purported concerns about chain of custody appear anywhere in state law. *See supra* at 26. And the asserted interest in orderly elections, is undercut by the fact that counties already undertake a variety of different methods to assist

voters. *See supra* at 14. The Secretary's mere invocation of theoretical problems does not make it "necessary to burden the plaintiff's rights." *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

Finally, Applicants now appear to assert that the Curbside Voting Ban helps prevent voter fraud. But "[b]ecause this argument was not raised below" as to curbside voting, "it is waived." *Sprietsma v. Mercury Marine*, 537 U.S. 51, 56 n.4 (2002).

III. The Remaining *Nken* Factors Do Not Favor A Stay.

The District Court did not abuse its discretion in granting an injunction as to curbside voting, App. 203–04, and the balance of equities counsels in favor of keeping the injunction. The Curbside Voting Ban presents high-risk voters with the untenable choice between disenfranchisement or an increased risk of contracting COVID-19. There "can be no injury more irreparable" than "serious, lasting illness or death." *Thakker v. Doll*, __ F. Supp. 3d __, 2020 WL 1671563, at *4 (M.D. Pa. Mar. 31, 2020).

The denial of the right to vote is an irreparable harm. *See Reynolds v. Sims*, 377 U.S. 533, 555 (1964); *accord Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, [threatened or occurring] for even minimal periods of time, unquestionably constitutes irreparable injury."). Moreover, the injunction also promotes the "paramount government interest" in the "[p]rotection of the health and safety of the public." *Hodel v. Va. Surface Min. & Reclamation Ass'n, Inc.*, 452 U.S. 264, 300 (1981).

In contrast, Applicants face no burden. No state law has been enjoined and no Applicant is required to affirmatively act. App. 6. The injunction does not *mandate* that the State provide curbside voting; it merely lifts an unfounded prohibition on such accommodations. Applicants may still bar any curbside voting procedures that violate existing Alabama law. Nor does the fact that local election officials may incur some costs to implement the injunction tilt the balance of equities in Applicants' favor insofar as those costs will only be borne by counties willing to bear them and, in any event, the costs "do not clearly exceed its benefits." App. 150 (quoting *Henrietta B. v. Bloomberg*, 331 F.3d 261, 280 (2d Cir. 2003)).

Finally, the public interest strongly favors denying a stay. The "protection of [Respondents'] franchise-related rights is without question in the public interest." *Charles H. Wesley Educ. Found v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005).

CONCLUSION

For the reasons above, the Emergency Application for Stay should be denied.

Dated: October 19, 2020

Respectfully submitted,

/s/ Natasha Merle
Sherrilyn Ifill
Director-Counsel
Janai Nelson
Samuel Spital
Natasha Merle
Counsel of Record
Deuel Ross
Liliana Zaragoza
NAACP Legal Defense &
Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006
P: (212) 965-2200
nmerle@naacpldf.org

Mahogane D. Reed
NAACP Legal Defense &
Educational Fund, Inc.
700 14th Street N.W.Ste.600
Washington, DC 20005
P: (202) 682-1300

Davin M. Rosborough
T. Alora Thomas-Lundborg
Dale E. Ho
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad St.
New York, NY 10004
P: (212) 549-2500

Katrina Robson
Stephen D. Brody
O'MELVENY & MYERS LLP
1625 Eye Street NW, Suite 1000
Washington, DC 20006
P: (202) 383-5300

William Van Der Pol
Jenny Ryan

Maia Fleischman
Alabama Disabilities
Advocacy Program
Box 870395
Tuscaloosa, AL 35487
P: (205)348-4928

Caren E. Short
Nancy G. Abudu
Southern Poverty Law Center
P.O. Box 1287
Decatur, GA 30031
P: (404) 521-6700

Sarah Brannon
David D. Cole
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
915 15th Street, NW
Washington, DC 20005-2313
P: (202) 675-2337

Randall C. Marshall
ACLU FOUNDATION
OF ALABAMA, INC.
P.O. Box 6179
Montgomery, AL 36106-0179
P: (334) 420-1741