

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

DAVID RISSLING, et al.,)	
<i>Plaintiffs,</i>)	
vs.)	
MAGARIA BOBO, <i>in her official</i>)	Case No. 7:23-cv-01326-LSC
<i>capacity as Absentee Election</i>)	
<i>Manager of Tuscaloosa County,</i>)	
<i>Alabama, et al.,</i>)	
<i>Defendants.</i>)	
)	

DEFENDANTS’ JOINT ANSWER

Defendants Magaria Bobo, Susan Potts, and Jacquelin Anderson-Smith, for their Answer to Plaintiffs’ Amended Complaint (doc. 4), state as follows:

INTRODUCTION

1. Admitted that Plaintiffs bring this action against the Absentee Election Managers (“AEMs”) of Tuscaloosa, Mobile, and Jefferson counties in their official capacities. Otherwise denied.
2. Defendants lack sufficient information to admit or deny the allegations and thus deny.
3. Defendants lack sufficient information to admit or deny the allegations and thus deny.
4. Denied.

5. Denied as to the first sentence. Otherwise, Defendants lack sufficient information to admit or deny the allegations and thus deny.

6. Admitted that citizens voting pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 USC §§ 20301-20311, can receive and return their absentee ballots electronically. Denied that this “technological means” is “available” for domestic voting. Otherwise denied.

7. Denied.

8. Denied.

JURISDICTION AND VENUE

9. Admitted.

10. Admitted.

PARTIES

11. Defendants lack sufficient information to admit or deny the allegations and thus deny.

12. Defendants lack sufficient information to admit or deny the allegations and thus deny.

13. Defendants lack sufficient information to admit or deny the allegations and thus deny.

14. Defendants lack sufficient information to admit or deny the allegations and thus deny.

15. Defendant Potts admits that Dr. Peebles did not request an absentee ballot in 2022. Defendant Potts denies that Dr. Peebles was “unable” to vote in the 2022 general election. Otherwise, Defendants lack sufficient information to admit or deny the allegations and thus deny.

16. Defendants lack sufficient information to admit or deny the allegations and thus deny.

17. Defendants lack sufficient information to admit or deny the allegations and thus deny.

18. Defendants lack sufficient information to admit or deny the allegations and thus deny.

19. Defendants lack sufficient information to admit or deny the allegations and thus deny.

20. Defendants lack sufficient information to admit or deny the allegations and thus deny.

21. Denied that Ms. Clayton is not currently able to vote absentee without assistance or to vote privately and independently. Otherwise admitted.

22. Defendants lack sufficient information to admit or deny the allegations and thus deny.

23. Admitted that ballot marking devices (BMDs) provide an alternative means for voters to complete a ballot other than filling out a hardcopy, paper ballot

by hand. Otherwise, Defendants lack sufficient information to admit or deny the allegations and thus deny.

24. Defendant Bobo admits that Mr. Rissling voted absentee in person at the office of the Tuscaloosa Circuit Clerk once during the 2022 election cycle but denies that this occurred in June. Otherwise, Defendants lack sufficient information to admit or deny the allegations and thus deny.

25. Defendants lack sufficient information to admit or deny the allegations and thus deny.

26. Defendants lack sufficient information to admit or deny the allegations and thus deny.

27. Defendants lack sufficient information to admit or deny the allegations and thus deny.

28. Denied that an absentee ballot must be completed in writing and that Ms. Pressley was forced to seek assistance. Otherwise, Defendants lack sufficient information to admit or deny the allegations and thus deny.

29. Defendants lack sufficient information to admit or deny the allegations and thus deny.

30. Defendants lack sufficient information to admit or deny the allegations and thus deny.

31. Admitted that NFB-AL purports to bring this lawsuit on behalf of itself and its members. Otherwise, Defendants lack sufficient information to admit or deny the allegations and thus deny.

32. As to the first sentence, admitted that Defendant Bobo is sued in her official capacity as the Absentee Election Manager for Tuscaloosa County but denied to the extent this allegation implies she is sued in her official capacity as Circuit Clerk for Tuscaloosa County, *see, e.g.*, Doc. 4 at 1. Denied that absentee election managers are “charged with ... validating and canvassing absentee ballots” or otherwise responsible for *all* aspects of Alabama law relating to absentee ballots. *See, e.g.*, ALA. CODE § 17-11-10. Otherwise admitted.

33. Denied that absentee election managers are “charged with ... validating and canvassing absentee ballots” or otherwise responsible for *all* aspects of Alabama law relating to absentee ballots. *See, e.g.*, ALA. CODE § 17-11-10. Otherwise admitted.

34. As to the first sentence, admitted that Defendant Anderson-Smith is sued in her official capacity as the Absentee Election Manager for Jefferson County but denied to the extent this allegation implies she is sued in her official capacity as Circuit Clerk for Jefferson County, *see, e.g.*, Doc. 4 at 1. Denied that absentee election managers are “charged with ... validating and canvassing absentee ballots”

or otherwise responsible for *all* aspects of Alabama law relating to absentee ballots. *See, e.g.*, ALA. CODE § 17-11-10. Otherwise admitted.

FACTS

35. Defendants lack sufficient information to admit or deny the allegations and thus deny.

36. Defendants lack sufficient information to admit or deny the allegations and thus deny.

37. Defendants lack sufficient information to admit or deny the allegations and thus deny.

38. The citations speak for themselves. Otherwise, Defendants lack sufficient information to admit or deny the allegations and thus deny.

The Absentee Ballot Process

39. Alabama law speaks for itself. Otherwise denied.

40. Alabama law speaks for itself. Otherwise denied.

41. Alabama law speaks for itself. Otherwise denied.

42. Alabama law speaks for itself. Otherwise denied.

43. Admitted as to the first sentence. Otherwise denied.

44. Alabama law speaks for itself. Otherwise denied.

45. Denied to the extent that this paragraph implies that completing a hardcopy, paper ballot by hand is the only means of completing an absentee ballot

because, for example, ballot marking devices allow an alternative means for disabled voters to vote absentee. Otherwise admitted.

46. Admitted that these steps represent one way to vote absentee. Denied that these steps are the only way to vote absentee as all these steps are not required, for example, when voting an in-person absentee ballot. Otherwise denied.

Alabama's Absentee Ballot Process Is Not Accessible

47. Admitted.

48. Denied that the activities mentioned in this paragraph are the only means by which Plaintiffs, blind individuals, and those with print disabilities can vote absentee. Otherwise, Defendants lack sufficient information to admit or deny the allegations and thus deny.

49. Denied.

Mechanisms are Available to Provide Accessible Absentee Ballots.

50. Defendants lack sufficient information to admit or deny the allegations and thus deny.

51. Denied that Plaintiffs do not already have an equal opportunity to vote secretly, privately, and independently via absentee ballot. Otherwise denied.

52. Denied that Plaintiffs do not already have an equal opportunity to vote secretly, privately, and independently by absentee ballot. Otherwise, Defendants lack sufficient information to admit or deny the allegations and thus deny.

53. Defendants lack sufficient information to admit or deny the allegations and thus deny.

54. Defendants lack sufficient information to admit or deny the allegations and thus deny.

55. Admitted that citizens voting pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 USC §§ 20301-20311, can receive and return their absentee ballots electronically. Otherwise denied.

56. Defendants lack sufficient information to admit or deny the allegations and thus deny.

57. Defendants lack sufficient information to admit or deny the allegations and thus deny.

58. Defendants lack sufficient information to admit or deny the allegations and thus deny.

59. Defendants lack sufficient information to admit or deny the allegations and thus deny.

60. Denied.

Alabama Offers Electronic Ballots to Overseas and Military Voters but Has Refused to Provide Them to Blind and Print Disabled Voters

61. Admitted that citizens voting pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 USC §§ 20301-20311, may vote by absentee ballot. Otherwise denied.

62. Admitted that citizens voting pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 USC §§ 20301-20311, can receive and return their absentee ballots electronically. Otherwise denied.

63. Admitted that citizens voting pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 USC §§ 20301-20311, can receive and return their absentee ballots electronically. Otherwise denied.

64. The ADA and Section 504 speak for themselves. Otherwise denied.

65. Denied.

66. Admitted.

67. Admitted.

68. Admitted.

Count I
Violation of Title II of the Americans with Disabilities Act
(42 U.S.C. § 12131-12134)

69. Defendants incorporate their responses to the preceding paragraphs as if stated fully herein.

70. The ADA speaks for itself. Otherwise denied.

71. The ADA speaks for itself. Otherwise denied.

72. The Code of Federal Regulations speaks for itself. Otherwise denied.

73. The Code of Federal Regulations speaks for itself. Otherwise denied.

74. The Code of Federal Regulations speaks for itself. Otherwise denied.

75. The Code of Federal Regulations speaks for itself. Otherwise denied.

76. The Code of Federal Regulations speaks for itself. Otherwise denied.

77. Defendants lack sufficient information to admit or deny the allegations and thus deny.

78. Defendants lack sufficient information to admit or deny the allegations and thus deny.

79. Defendants lack sufficient information to admit or deny the allegations and thus deny.

80. Defendants lack sufficient information to admit or deny the allegations and thus deny.

81. Admitted that Defendants administer absentee voting in their respective counties. Denied that absentee voting alone—as opposed to voting as a whole—is a service, program, or activity as defined by the ADA. Otherwise denied.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Admitted that such systems are available, including to Plaintiffs. Denied to the extent this paragraph implies that RAVBM systems are the only such

system available. Otherwise, Defendants lack sufficient information to admit or deny the allegations and thus deny.

88. Admitted that citizens voting pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 USC §§ 20301-20311, can receive and return their absentee ballots electronically. Otherwise denied.

89. Denied.

90. Denied.

91. Denied.

COUNT II was dismissed by the Court on June 24, 2024 in Document 33. Therefore, no response is required to the allegations within paragraphs 92-109.

PRAYER FOR RELIEF: Defendants deny that Plaintiffs are entitled to any relief.

General Denial

Defendants deny each and every allegation in Plaintiffs' Amended Complaint that is not expressly admitted above.

Additional Defenses

1. The Amended Complaint fails to state a cause of action against Defendants upon which relief can be granted.

2. Defendants are not empowered to change binding Alabama law passed by the Legislature and signed by the Governor. The relevant statutes cited by Plaintiffs do not allow Defendants to exercise discretion in their enforcement of their

obligations under those laws. Defendants are also not empowered to pass binding legislation to create a law related to assistance to vision impaired and print disabled voters. Hence, Defendants are not the proper party from whom relief should be sought as to the Challenged Provisions. *See Nat'l Fed'n of the Blind of Ala. v. Allen*, 661 F. Supp. 3d 1114, 1121 (N.D. Ala. 2023).

3. The relief the Plaintiffs seek from Defendants is barred by illegality. Essentially, Plaintiffs want the Court to order Defendants to violate Alabama law, which is not preempted by the ADA. *See Nat'l Fed'n of the Blind of Ala. v. Allen*, 661 F. Supp. 3d 1114, 1121 (N.D. Ala. 2023).

4. Defendants deny that Plaintiffs have been or will be subjected to the deprivation of any right, privilege, or immunities under the Constitution or laws of the United States.

5. Plaintiffs have not shown irreparable harm, as they have not been deprived of the right to vote.

6. Plaintiffs do not seek the same rights available to sighted voters but instead seek an enhanced right to vote how they choose, which is not required by the ADA.

7. Plaintiffs already have the ability to cast an absentee secret ballot privately and independently through use of an electronic voting device available at Defendants' offices, available to the public for 55 days in advance of each election.

Plaintiffs are simply choosing not to avail themselves of this reasonable accommodation, which fulfills any ADA requirement.

8. Plaintiffs lack standing to pursue any claims against any AEM other than the AEM for their own county.

9. To the extent any Plaintiff has lost eligibility to vote under Alabama law, that Plaintiff lacks standing to pursue any claims against Defendants.

10. To the extent applicable, arguments made by Plaintiffs are barred by the doctrines of collateral estoppel (issue preclusion) and res judicata (claim preclusion).

11. To the extent Plaintiffs seek statewide enforcement of their requests, they have failed to join necessary and indispensable parties, namely the relevant election officials of each of Alabama's 67 counties.

12. To the extent applicable, laches bars Plaintiffs from receiving relief in regard to the November elections.

13. Any actions taken or required to be taken by Defendants are done in Defendants' capacity as a state official, and as such all relevant immunity defenses available to state official apply.

14. Any actions taken or required to be taken by Defendants are done solely at the lawful direction of State law and/or other parties.

Defendants reserve the right to supplement or amend these defenses as more information becomes available through the discovery and trial process.

Todd D. Engelhardt (ASB-8939-T67D)
Danielle E. Douglas (ASB-1987-T23V)

ADAMS AND REESE LLP
1901 Sixth Avenue North, Suite 1110
Birmingham, Alabama 35203-3367
Telephone: (205) 250-5000
Facsimile: (205) 250-5034
Email: todd.engelhardt@arlaw.com
danielle.douglas@arlaw.com

Counsel for Susan Potts

Respectfully submitted,

Steve Marshall
Attorney General

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

/s/ Benjamin M. Seiss
Brenton M. Smith (ASB-1656-
X27Q)
Benjamin M. Seiss (ASB-2110-
O00W)
Assistant Attorneys General

OFFICE OF THE ATTORNEY
GENERAL
501 Washington Avenue
Montgomery, Alabama 36104
Telephone: (334) 242-7300
Fax: (334) 353-8400
Jim.Davis@AlabamaAG.gov
Brenton.Smith@AlabamaAG.gov
Ben.Seiss@AlabamaAG.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2024, 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 attorneys of record.

s/ Benjamin M. Seiss
Counsel for Defendants

RETRIEVED FROM DEMOCRACYDOCKET.COM