

Plaintiffs,

Defendant.

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This case is about who gets to cast absentee votes electronically, rather than by filling out paper ballots and envelopes. Alabama law allows overseas voters to choose between paper or electronic absentee ballots. Plaintiffs, who are blind or have print disabilities, allege that the Secretary of State must extend that statutory privilege to them too.

But the Alabama Legislature has not given the Secretary of State the power to expand electronic absentee voting to domestic voters, nor is the Secretary in charge of distributing and collecting absentee ballots. So the court finds that Plaintiffs lack standing, and will thus grant Plaintiff's Motion to Dismiss their lawsuit. (Doc. 13).

Alabama provides blind voters and voters with print disabilities with electronic machines and other auxiliary aids when they vote in person. But the same voters must use paper ballots and envelopes when voting from home. The court finds that Plaintiffs lack standing because Alabama law requires paper ballots for absentee voters, except certain overseas voters.



(making the Secretary responsible for rules voters with permanent disabilities). The county AEM handles the applications and ballots.

For example, Section 17-11-4 requires the Secretary to design a standard application for absentee ballots. The AEMs are charged with distributing and collecting these applications at the county level. The AEM, not the Secretary, is then responsible for giving an absentee ballot to anyone who files an application and appears on the state voter registration list. Ala. Code § 17-11-5. Again, that ballot is on paper. Ala. Code §§ 17-6-26; 17-11-6.

Along with the paper ballot, the Legislature requires the AEM to also give absentee voters three envelopes for returning the ballot: one for secrecy, one for an affidavit, and one for return shipping. Ala. Code § 17-11-9. Once he receives these materials, the absentee voter must complete these steps:

- The voter must place the ballot in the secrecy envelope, the affidavit envelope, and the return shipping envelope.

- Article 2: Overseas Absentee Voting (Ala. Code § 17-11-40, \_\_\_\_\_)

In 2009, Congress amended the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to require States to establish procedures allowing military and overseas voters to vote either electronically or by mail.

Pub. L. 111-84, Subtitle H, § 578. Two years later, the Alabama Legislature established for use by the Secretary of State to conduct overseas absentee voting. Ala. Code § 17-11-40, \_\_\_\_\_.

Both the Secretary and a representative of the Circuit Clerks Association [\_\_\_\_\_, the AEMs] were placed on the 13-member Electronic Overseas Voting Advisory Committee. Ala. Code § 17-11-41. If the Committee determined that secure electronic voting was possible for overseas voters and it did not, then the Committee had to propose rules for the Secretary to promulgate.

While the Legislature gave the Secretary the responsibility for promulgating the Committee's suggested rules for overseas electronic voting, the Legislature kept responsibility for handling applications, ballots, and voter qualification [\_\_\_\_\_, Ala. Code § 17-11-40, \_\_\_\_\_].

The Joint Committee on Administrative Regulation Review, after review, shall return the proposed rules, with comments, to the Secretary of State. The Secretary of State shall proceed to adopt a rule pursuant to the Alabama Administrative Procedure Act. The rules for conducting overseas absentee voting by secure remote electronic transmission shall authorize the absentee election manager, as defined in Section 17-11-2, to accept requests for absentee ballots and voted absentee ballots from overseas voters and provide a process for verifying the identity of a voter, ensuring the security of the transmission, accepting a voted ballot, and recording each ballot received.

Consistent with that division of power, the Legislature tasked the Secretary with creating rules that ensure military and overseas voters can apply to vote consistent with UOCAVA, 52 U.S.C. § 20302, and requires the AEMs to

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The regulations that carry out Article 2 comply with this legislative division of authority. Ala. Admin. Code r. 820-2-10 (procedures for implementing UOCAVA). The regulations limit the absentee voters who can vote electronically to three categories: (1) active duty military and their spouses who are overseas; (2) members of the Merchant Marines and their spouses who are overseas; and (3) other Alabama citizens who are registered and qualified to vote in Alabama but are temporarily f Y g ] X ] b [ i f Y g ] X ] b [ c i h c Z the country. Ala. Admin. Code r. 820-2-10-.06(2)(a). Those voters submit their application for an absentee ballot to the AEMs in their home county. Ala. Admin. Code r. 820-2-10-.03(1).

The AEMs, not the Secretary, must determine whether the applicants fit within

Plaintiffs Gail Smith and Jill Rossiter are blind, and Plaintiff Eric Peebles has a print disability.<sup>1</sup> Each is registered to vote in Alabama, eligible to vote absentee, and prefers to vote absentee in future elections. Because of their disabilities, these plaintiffs cannot use paper absentee ballots without help from a third party. Which, in turn, means that they cannot vote privately and independently when they vote absentee.

voters with vision and print disabilities who are eligible to vote absentee; (3) Uk UfX cZ D`U]bh]ZgÑfYUgcbUV`Y UhcfbYmġ ZYgž `]h][ Uh]cb Yl dYbgYgž UbX Vtghg/ and (4) issue other relief as the court may deem just and proper. ( Doc. 12, pp. 19





any vetoed proposed rule to the committee, and may provide an alternative rule for consideration by the committee.

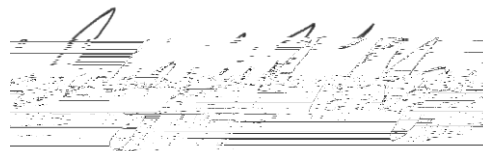
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This court lacks jurisdiction over Plaintiff's "Gc h\Y court  
h\Y GYWYhufm\A ch]cb hc 8 ]ga ]gg (doc. 13) and will enter a separate order that  
all claims against the Secretary and closes this case.

on March 15, 2023.

A handwritten signature in black ink, appearing to read "A. J. ...", is written over a set of horizontal lines. The signature is somewhat stylized and partially obscured by the lines.

UNITED STATES DISTRICT JUDGE