

May 3, 2023

VIA ELECTRONIC MAIL

To: Nathaniel Ledbetter
Speaker of the House of Representatives
11 South Union Street
Montgomery, AL 36130
nathaniel.ledbetter@alhouse.gov

Cc: Members of the Alabama House of Representatives

Re: Opposition to House Bill 209

Dear Speaker Ledbetter,

We, the Southern Poverty Law Center Action Fund and Campaign Legal Center, along with the additional undersigned organizations, write to express our opposition to HB 209, and to urge the Alabama House of Representatives to oppose HB 209. As we explain below, HB 209 would harm the tens of thousands of lawfully registered and eligible voters in this state who rely on assistance in receiving absentee ballot applications or absentee ballots. HB 209 will create what is effectively a total ban on voting for many individuals within Alabama's jails and prisons, will bar voter engagement organizations from exercising their First Amendment rights, and will prevent voters with disabilities from casting their ballots. It would also be one of the most punitive and administratively burdensome restrictions on absentee ballot application, distribution, and pre-filling in the country.

1) HB 209's Legal Issues

HB 209 makes it unlawful for any person to “knowingly distribute, order, request, collect, prefill, complete, obtain, or deliver an absentee ballot application or absentee ballot in addition to his or her own absentee ballot application or absentee ballot,” with only narrow exceptions. It additionally makes it unlawful for any person to “receive payment” or to “pay” for this conduct. Violation of these provisions can result in a class D, class C, or class B felony, respectively. We are concerned that these provisions violate several federal laws, as well as the United States Constitution. Passage of HB 209, then, would almost certainly guarantee that the State would face legal hurdles regarding this issue, instead of focusing its limited resources on ensuring that eligible Alabamians can cast their ballots on Election Day.

a. HB 209 is Likely Unconstitutional.

HB 209's provisions violate the First and Fourteenth Amendments. First, the provisions violate the free speech rights of voters and voter engagement organizations. In *VoteAmerica v. Schwab*, a federal court in Kansas determined that “[c]onduct that is sufficiently imbued with elements of communication—known as inherently expressive conduct—falls within the scope of

the First and Fourteenth Amendments.”¹ Nonprofit organizations distribute absentee ballot applications to communicate a pro-voter message that intends to encourage voter participation. Many nonprofit organizations include these pro-voter communications alongside the absentee ballot applications. Bills like HB 209, then, infringe on First Amendment rights because they criminalize the distribution of these pro-voter messages. Just as Kansas’ prohibition against pre-filled absentee ballots unconstitutionally penalizes expressive conduct, HB 209 threatens to unconstitutionally stifle expressive conduct from individuals and organizations to Alabama voters.

Second, HB 209 would violate the right to vote for incarcerated voters in Alabama. The Supreme Court has long held that eligible voters in jail cannot be denied ballot access simply because they are in jail.² Furthermore, many voters in Alabama who are currently incarcerated for a felony conviction are eligible to vote while incarcerated, because the State only disenfranchises people convicted of certain state crimes (or analogous federal and out-of-state crimes), which are enumerated in Ala. Code § 17-3-30.1. All Alabamians convicted of crimes *not* listed in § 17-3-30.1 retain the right to vote, even while incarcerated. HB 209 would virtually deny the right to vote to many incarcerated, eligible voters because the only means of casting a ballot from jail or prison is via absentee ballot; this bill would create a complete ban on incarcerated individuals’ opportunity to request and submit an absentee ballot freely, without assistance from a limited list of third parties. And, because HB 209 broadly prohibits any person from being paid to distribute absentee ballot applications and absentee ballots, they cannot receive assistance from jail or prison staff—who are not included in the narrow list of third parties who may assist a voter *and* who are paid to do their work assisting incarcerated voters. Nor would paid staff of any nonprofit organization who might wish to assist people in jails or prisons with voting be able to do so. This would clearly violate the First and Fourteenth Amendment rights of those voters by creating what is effectively a total ban on voting for many eligible individuals within Alabama’s jails and prisons.

b. HB 209 Likely Violates Section 208 of the Voting Rights Act and the Americans with Disabilities Act.

We are also concerned that HB 209, as introduced and as amended, will conflict with Section 208 the federal Voting Rights Act and the Americans with Disabilities Act. Section 208 explicitly protects voters’ choice of who may assist them in the voting process. For voters with disabilities and voters who cannot read or write, the Voting Rights Act only draws narrow exclusions against employer and union representative assistance. Further, the Americans with Disabilities Act requires that Alabama administer voting in a way that does not screen out or discriminate against voters with disabilities—yet without the assistance banned in HB 209, Alabama will do just that. Thus, this federal statute preempts Alabama’s attempt to exclude additional categories of assistance to voters with reading or writing impairments or disabilities. These voters and those helping them should never face arrest, charges, or government harassment for their protected political participation.

¹ *VoteAmerica v. Schwab*, No. CV 21-2253-KHV, 2021 WL 5918918, at *7 (D. Kan. Dec. 15, 2021).

² *See O'Brien v. Skinner*, 414 U.S. 524 (1974).

2) **HB 209's Devastating Impact on the Community**

HB 209 seeks to criminalize and minimize participation in our democratic process. Beyond its clear and direct conflicts with federal law, HB 209 will have devastating effects on Alabama voters and civic engagement organizations. Alabama voters rely on the voter engagement work provided by local civic engagement organizations like the undersigned, who provide direct assistance to voters with disabilities, elderly voters, and voters impacted by the criminal legal system—all of whom require assistance to vote absentee. As we outline below, HB 209 will prevent countless eligible Alabamians from casting their ballots.

a. Impact on Community Groups.

HB 209 will have a devastating and entirely foreseeable impact on the civic organizations who support their neighbors and communities in voting. Any group that has provided absentee ballot request forms while tabling at civic events may risk being criminalized. Homebound disabled and immunocompromised citizens often need the help of community groups or other individuals outside of the narrowly-drawn exceptions to HB 209's assistance ban to vote absentee, but caretakers or volunteer groups serving these vulnerable populations are not exempt under this bill. Worse still, the bill threatens the development of a healthy civic culture among the next generation—this bill likely prohibits most or all forms of assistance for students at Alabama's many colleges and universities who may be voting absentee, away from home, for the first time. Many of these communities of voters served by civic groups are already marginalized to begin with. For example, there are already significant disparities between voters with disabilities and their counterparts without disabilities in ease of voting without difficulty and need for assistance.³ Alabama's rules and its form for requesting an absentee ballot are complex, yet this bill will strip away from Alabama voters the civic culture and organizations that have helped take democracy the last mile for so many.

b. Collateral Consequences of the Criminalization of Absentee Ballot Application and Distribution.

HB 209 will almost entirely foreclose access to the ballot box for eligible incarcerated voters, as described above. The ability to vote while incarcerated improves those individuals' connection to and engagement with their communities, as well as their transition back into society post-release.⁴ However, HB 209 will all but bar those incarcerated individuals from access to

³ See, e.g., U.S. Election Assistance Commission, U.S. Election Assistance Commission Study on Disability and Voting Accessibility in the 2020 Elections, 2020, available at <https://www.eac.gov/election-officials/us-election-assistance-commission-study-disability-and-voting-accessibility-2020>.

⁴ See, e.g., Civic Nebraska, *Recidivism & Voting Rights, Case Study: Florida* (Jan. 30, 2019), <https://www.civicnebraska.org/wp-content/uploads/2019/02/2019-Florida-recidivism-case-study.pdf>; Victoria Shineman, *Restoring Rights, Restoring Trust: Evidence that Reversing Felon Disenfranchisement Penalties Increases Both Trust and Cooperation with Government* (Oct. 25, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3272694.

voting. It would also criminalize the activities of jail staff, prison staff, and community groups who distribute absentee ballots and applications within Alabama jails and prisons. HB 209 destroys participation in the democratic process—both for eligible incarcerated voters and those trying to bring them absentee ballots.

Additionally, HB 209 restricts returning citizens' participation in the political process. For those Alabamians who were disenfranchised while incarcerated or who remain disenfranchised once out of jail or prison, distributing absentee ballot applications and absentee ballots is a way to remain politically engaged. HB 209 would have a chilling effect on this type of voter engagement, further disenfranchising an already marginalized population. And while marginalized, this community makes up a large portion of Alabama's voting age population: more than 135,579 Alabamians cannot vote due to a felony conviction.⁵ This estimate is certainly underinclusive, as it only accounts for in-state convictions, not out-of-state or federal convictions, which disenfranchise countless more Alabamians. HB 209 will result in further disenfranchisement of that population by barring them from engaging in the political process through absentee ballot distribution.

In a state that already restricts access to the ballot box for many people with felony convictions, making it a crime to distribute absentee ballots to the remaining population of eligible voters is a perverse proposition. Democracy works best when all eligible voters can meaningfully participate, and HB 209 seeks to ensure that democracy is not working at its best in Alabama.

c. HB 209's Impact on Election Administration

HB 209 dramatically increases the burden on election administrators, who would need to identify and implement the bill's changes. New and additional responsibilities that may be added to state and local election staffs' workload may include: responding to voter inquiries about the impact of the law, determining whether an individual is qualified to provide assistance under the law, updating and re-publishing election guidance on forms and websites, and processing requests for absentee ballot applications in a timely and responsive manner. The bill's immediate effective date magnifies and heightens these burdens, as these offices' limited staff and resources will be required to urgently engage in implementation, increasing the risk of administrative confusion, error, and inefficient use of taxpayers dollars.

Conclusion

For the above reasons, we respectfully urge the Alabama House of Representatives to reject HB 209.

⁵ Mot. for Prelim. Inj., ECF No. 215-13, Exhibit 12 - Dr. Daniel Smith Expert Report at 22, *Thompson v. Merrill*, 2:16-cv-00783-ECM-SMD (M.D. Ala. 2020).

Sincerely,

Jerome Dees, Alabama Policy Director
SPLC Action Fund
400 Washington Avenue
Montgomery, AL 36104
jerome.dees@splcaction.org

Blair Bowie, Director, Restore Your Vote
Campaign Legal Center
1101 14th Street NW, Suite 400
Washington, DC 20005
bbowie@campaignlegalcenter.org

Kendra Love, Senior Media Strategist
Alabama Values Progress
7956 Vaughn Road PMP 180 Montgomery AL 36116
kendra@alabamavaluesprogress.org

Angela Curry, Executive Director
United Women of Color
Post Office Box 296, Capshaw, AL 35742
theunitedwoc@gmail.com

Evan Milligan, Executive Director
Alabama Forward Action
3066 Zelda Road PMB 231; Montgomery, AL 36106
evan@alforward.org

Julie Reese
LWVGB
LWV.org
Pitviper.Reese@Gmail.com

Kathy Jones; President League of Women Voters of
Alabama
League of Women Voters of Alabama
P.O. Box 12938 Huntsville, AL 35815
kathy.u.jones@gmail.com

Rayford Mack, President
Metro Montgomery County Branch NAACP
P. O. Box 240593 Montgomery, Al 36124
jmack2717@aol.com

Justin Vest, Executive Director

Hometown Organizing Project
P.O. Box 150, Montevallo, AL 35115
justin@hometownaction.org

Benard Simelton, President AL NAACP
Alabama State Conference of the NAACP
809 Hwy 72 W Ste D Athens, AL 35611
president@alnaacp.org

Rev. Titannia Maria Thomas
AME Zion Church
483 Holcombe Street
Maria36105@hotmail.com

Collins Pettaway, III, Democracy Center Coordinator
Selma Democracy Center
536 Washington Street, Selma, AL 36701
collins@centerforcommonground.com

Muaath Al-Khattab, Community Organizer
Faith in Action Alabama
2100 4th Avenue North Birmingham, AL 35203
Muaath@fiaal.org

Rev. Valtoria Jackson
ST. PETER A.M.E. CHURCH
512 Liberty atreet
Pastorvaltoria@gmail.com

Jon A Broadway, Alabama resident
Mobius Engineering
3124 Le Bron road
jonabroadway@gmail.com

Leon Henderson
AME Zion Church
5254 Long Rd. Ramer Al. 36069
lilrevhen@yahoo.com

Rev. Dr. Letitia Watford
Tuskegee District AME Church
1718 So Perry St. Montgomery, AL 36104
Elderwatford@aol.com

Dr. Shannette Bone
Faith In Action Alabama

Huntsville Alabama
alajzhabone@yahoo.com

Rev. Dr. Glenda L Smith
Alabama-Florida Episcopal District AME Zion Church
808 South Lawrence Street, Montgomery, AL 36104-5055
gsmithdsn@gmail.com

Rev. Tiffany Chaney, Pastor
Gathered by Grace
6670 Vaughn Road, Montgomery, AL 36116
pastortiffanychaney@gmail.com

Yvette Martinez-Hochberg
Faith in Action
1941 Winona Ave, Montgomery, AL 36107
yhochb2@gmail.com

Pastor Robert Wagstaff
New Mt. Calvary Missionary Baptist Church
901 Alexander Street
rwagstaff53@yahoo.com

Rev. Robert L. Shuford
Mt. Zion Chapel AME Zion Church
PO BOX 510 Wetumpka, AL 36092
rshuford@elmore.rr.com

Joanne Compton

Tari Williams, Organizing Director
Greater Birmingham Ministries
2304 12th Ave North
tari@gbm.org

Dillon Nettles, Policy & Advocacy Director
ACLU of Alabama
P.O. Box 6179 Montgomery, AL 36106
dnettles@aclualabama.org

Tara Bailey, President
I Vote Madison
Madison, AL
ivotemadison@gmail.com

Alabama Black Women's Roundtable

1229 14th Place SW, Birmingham, AL
dtyson@bellsouth.net

Onoyemi Williams
Faith In Action Alabama
P. O. Box 311242, Birmingham, AL, 35231
onoyemi@fiaal.org

Southern Poverty Law Center Action Fund

SPLC Action Fund is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. SPLC Action Fund is the 501(c)4 affiliate organization to the Southern Poverty Law Center. For more information, visit www.splcactionfund.org.

Campaign Legal Center

Campaign Legal Center (CLC) is a nonpartisan organization that advances democracy through law at the federal, state and local levels, fighting for every American's right to responsive government and a fair opportunity to participate in and affect the democratic process. CLC seeks a future in which the American political process is accessible to all citizens, resulting in representative, responsive, and accountable government.

Alabama Values Progress

Alabama Values Progress is media advocacy organization working to disrupt the cycle of misinformation and counter disinformation to raise awareness and increase transparency around Alabama politics.

United Women of Color

As a diverse 501(c)(3) organization, United Women of Color empowers girls, women and their communities by uniting people across ethnicities to address civic and educational gaps for advancement.

Alabama Forward Action

Alabama Forward Action's mission is to build progressive power across differences through policy advocacy, support, and development of progressive political leaders, and strengthening of infrastructure among Alabama's progressive social welfare organizations.

LWVGB

To ensure safe access for voting rights for all people who are eligible

League of Women Voters of Alabama

Mission

The League of Women Voters, a nonpartisan political organization, encourages the informed and active participation of citizens in government and influences public policy through education and advocacy.

Metro Montgomery County Branch NAACP

The mission of the National Association for the Advancement of Colored People is to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination.

Hometown Organizing Project

To build inclusive and sustainable rural communities where all people can thrive.

Alabama State Conference of the NAACP

Our mission is to achieve equity, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color.

AME Zion Church

To transform lives as we teach God's Word and make disciples for Jesus Christ

Selma Democracy Center

The Selma Democracy Center works under the Center for Common Ground to help spread awareness to the community to mobilize voters and increase the voter turnout.

Faith in Action Alabama

To honor God by dismantling systemic racism to create pathways of opportunity for all Alabamians.

ST. PETER A.M.E. CHURCH

To Encounter, Encourage and Empower all persons for a different tomorrow.

Mobius Engineering

Universal voter access.

AME Zion Church

Always be ready to help a traveler.

Tuskegee District AME Church

To minister to the spiritual, intellectual, physical, emotional, and environmental needs of all people by spreading Christ's liberating gospel through word and deed.

Faith In Action Alabama

Faith based organization to dismantle racism.

Alabama-Florida Episcopal District AME Zion Church

To show God's loving kindness to all the world. Through prayer and study, our goal is to live by the Grace and Spirit of God. Living in this abundant life, we can cultivate the spirit of love using Jesus' example to become servants and disciples.

Gathered by Grace

Gathered by Grace is a community of young adults in Montgomery, Alabama, gathered by Christ, growing spiritually, serving our community, getting to know our neighbor, welcoming all, and sharing the Good News of Jesus.

Faith in Action

Its stated mission is "to increase access to health care, improve public schools, make neighborhoods safer, build affordable housing, redevelop communities and revitalize democracy."

New Mt. Calvary Missionary Baptist Church

We we exalt the Lord, Seek the lost & equip the Saints to Serve.

Mt. Zion Chapel AME Zion Church

Save souls for Christ

Greater Birmingham Ministries

Greater Birmingham Ministries strives to serve people, build community, and pursue justice. Founded in 1969 in response to urgent human and justice needs in the greater Birmingham area. GBM is a multi-faith, multi-racial organization that provides emergency services for people in need and engages the poor and the non-poor in systemic change efforts to build a strong, supportive, engaged community and pursue a more just society for all people.

ACLU of Alabama

The American Civil Liberties Union of Alabama is freedom's watchdog; we work in the courts, legislatures and communities to defend the individual rights and personal freedoms guaranteed to us by the Constitution and the Bill of Rights.

I Vote Madison

To increase civic engagement in Madison, AL by providing educational opportunities to residents and removing participation barriers at the community level.

Alabama Black Women's Roundtable

The Alabama Black Women's Roundtable adopts the principle's and mission of the National Organization. The Black Women's Roundtable is an empowerment program from the National Coalition on Black Civic Participation, a nonprofit organization that works to engage, educate, organize and mobilize African Americans of all ages to participate in our democracy. Through educational programs and leadership training, the Coalition works to expand, strengthen, and empower Black communities to make voting and civic participation a cultural responsibility and tradition.