

No. 20-13695-B

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

PEOPLE FIRST OF ALABAMA, et al.,

Plaintiffs-Appellees,

– v. –

JOHN H. MERRILL,
in his official capacity as the Secretary of State of Alabama, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
CASE NO. 2:20-cv-00619-AKK
(Hon. Abdul K. Kallon)

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*
AMERICAN DIABETES ASSOCIATION, AARP, AND
AARP FOUNDATION IN OPPOSITION TO APPELLANTS'
TIME SENSITIVE MOTION TO STAY**

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People First of Ala. v. Merrill, No. 20-13695-B

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1, 26.1-2, and 26.1-3, counsel for proposed *amici curiae* hereby certify that, to the best of their knowledge, the following persons and entities have or may have an interest in the outcome of this case and were omitted from the Certificate of Interested Persons filed on October 2, 2020 pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1(a)(3) and 26.1-2(b) by counsel for Appellants Secretary of State John Merrill and the State of Alabama:

1. AARP, proposed *Amicus Curiae*
2. AARP Foundation, proposed *Amicus Curiae*
3. Adams and Reese, LLP, Counsel for Appellant
4. American Diabetes Association, proposed *Amicus Curiae*
5. Bachus & Brom LLC, Counsel for *Amicus Curiae* Honest Elections Project
6. Consovoy McCarthy PLLC, Counsel for *Amicus Curiae* Honest Elections Project
7. Fech-Baughman, Sarah, Counsel for proposed *Amicus Curiae* American Diabetes Association
8. Holwell Shuster & Goldberg LLP, Counsel for proposed *Amici Curiae* American Diabetes Association, AARP, and AARP Foundation
9. Hoppin, Margaret B., Counsel for proposed *Amici Curiae* American Diabetes Association, AARP, and AARP Foundation

People First of Ala. v. Merrill, No. 20-13695-B

10. Kohrman, Daniel B., Counsel for proposed *Amici Curiae* AARP and AARP Foundation
11. Office of the Attorney General for the State of Alabama, Counsel for Appellants
12. O'Melveny & Myers, LLP, Counsel for Plaintiffs
13. Ordway, Demian A., Counsel for proposed *Amici Curiae* American Diabetes Association, AARP, and AARP Foundation
14. Rivera, William Alvarado, Counsel for proposed *Amici Curiae* AARP and AARP Foundation
15. Speegle, Hoffman, Holman & Holifield, LLC, Counsel for Appellant

The Internal Revenue Service has determined that the American Diabetes Association is organized and operated exclusively for charitable purposes pursuant to Section 501(c)(3) of the Internal Revenue Code and is exempt from income tax. The American Diabetes Association has no parent corporation, nor has it issued shares or securities.

The Internal Revenue Service has determined that AARP is organized and operated exclusively for the promotion of social welfare pursuant to Section 501(c)(4) of the Internal Revenue Code and is exempt from income tax. The Internal Revenue Service has determined that AARP Foundation is organized and operated exclusively for charitable purposes pursuant to Section 501(c)(3) of the Internal Revenue Code and is exempt from income tax. AARP and AARP

People First of Ala. v. Merrill, No. 20-13695-B

Foundation are also organized and operated as nonprofit corporations under the District of Columbia Nonprofit Corporation Act.

Other legal entities related to AARP and AARP Foundation include AARP Services, Inc., and Legal Counsel for the Elderly. Neither AARP nor AARP Foundation has a parent corporation, nor has either issued shares or securities.

Additionally, no publicly traded company or corporation has an interest in the outcome of this case or appeal.

Dated: October 6, 2020

By: /s/ Demian A. Ordway
Demian A. Ordway
Counsel for Amici Curiae

Pursuant to Federal Rules of Appellate Procedure 27 and 29, and Eleventh Circuit Rules 27-1 and 29-1, *amici curiae* American Diabetes Association, AARP, and the AARP Foundation respectfully move for leave to file the accompanying proposed brief in support of the district court's September 30, 2020 Injunction Order, in opposition to the time sensitive motion to stay that Order filed by Appellants, and not in support of any party. Counsel for all parties have consented to the filing.

1. The American Diabetes Association (“Association”) is a nationwide, nonprofit, voluntary health organization founded in 1940 and made up of persons with diabetes, clinicians, research scientists, and other concerned individuals. The Association’s mission is to prevent and cure diabetes and to improve the lives of all people affected by diabetes. The Association is the largest non-governmental organization that deals with the treatment and impact of diabetes.¹ The Association reviews and authors the most authoritative and widely followed clinical practice recommendations, guidelines, and standards for diabetes treatment and publishes the most influential professional journals concerning diabetes research and

¹ The Association has over 500,000 members, 12,600 of whom are Alabamians.

treatment.² As a 501(c)(3) organization, the Association neither supports nor opposes any political party or candidate for political office.

2. Alabama has the highest rate of diabetes of any state in the U.S.³ Among the Association's principal concerns is the equitable treatment of people with diabetes. Disenfranchisement of people with diabetes is usually the result of misinformation, stereotypes, or inattention. The Association has filed several amicus briefs to share information about diabetes, its relationship to COVID-19, and the effects of both on the lives of its members, including their ability to vote.

3. AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With offices in every state and nearly 38 million members, including (as of August 2020) over 409,000 members in Alabama, AARP works to strengthen communities and advocate for what matters most to families, with a focus on financial stability, health security, and personal fulfillment. AARP's charitable affiliate, AARP Foundation, works to end senior poverty. AARP and AARP

² Select publications are listed in Appendix A to the proposed brief.

³ Timothy M. Dall et al., *The Economic Burden of Elevated Blood Glucose Levels in 2017: Diagnosed and Undiagnosed Diabetes, Gestational Diabetes Mellitus and Prediabetes*, 42 *Diabetes Care* 1661, 1666 (Sept. 2019), available at <https://care.diabetesjournals.org/content/42/9/1661.full-text.pdf>.

Foundation litigate and file amicus briefs on issues that impact older adults, including laws affecting their right to vote.

4. On September 30, 2020, following a 9-day bench trial, Judge Abdul K. Kallon issued findings of fact and conclusions of law, holding, among other things, that, as applied during the COVID-19 pandemic to voters with disabilities, the Alabama Secretary of State's *de facto* curbside voting ban violates the Americans with Disabilities Act ("ADA" or "Act"). ECF. No. 250 at 167–68.⁴

5. In addition, Judge Kallon held that, as applied during the COVID-19 pandemic to voters with disabilities who cannot safely obtain a copy of their photo ID, Alabama's photo ID requirement for absentee ballot applications violates the ADA. *Id.* at 168–69.

6. On these and other grounds, Judge Kallon enjoined enforcement of the Alabama Secretary of State's *de facto* curbside voting ban and Alabama's photo ID requirement for the November 3, 2020 general election. ECF. No. 251 at 4.

⁴ All citations to "ECF" refer to the district court docket in *People First of Ala. v. Merrill*, No. 20-cv-619 (N.D. Ala.). ECF Nos. 250 and 251 are included in the appendix to Appellants' time sensitive motion for administrative stay and stay pending appeal.

7. On October 2, 2020, Appellants filed a time sensitive motion for administrative stay and stay pending appeal.

8. As organizations dedicated, respectively, to Americans affected by diabetes and Americans age 50 and older, *amici* have unique insight into the impact of COVID-19 on these vulnerable populations. *Amici* offer their expertise on the substantial burdens faced by medically vulnerable voters in the November general election as a result of COVID-19, the large proportion of Alabama voters who are medically vulnerable, the need for reasonable accommodations to make the state of Alabama's voting services accessible to those voters in the November 2020 general election, the practical ease of providing reasonable accommodations to vulnerable voters and—critically—the proper application of the ADA in these unique circumstances.

9. As set forth in *amici*'s proposed brief, enforcement of Alabama's *de facto* curbside voting ban and the photo ID requirement during the November 2020 election would expose voters with chronic medical conditions including diabetes, a disproportionate share of whom are older, to significant risk of serious illness and death from COVID-19. Such vulnerable voters comprise a large share of the Alabama electorate, and many are members of the Association or the AARP. Absent relief that protects vulnerable voters and permits them to follow CDC and state directives advising them to avoid unnecessary in-person contact, those voters

are justifiably afraid of casting ballots this year. They face a true Hobson's choice of risking their lives or not voting at all. *Amici's* proposed brief explains the heightened stakes for persons with underlying medical conditions (including diabetes) and the legal requirements of the ADA under these unusual circumstances.

10. Accordingly, *amici* request leave to file a brief in support of the district court's Injunction Order and in opposition to Appellants' motion to stay. The November 2020 election is less than a month away. Appellants' motion to stay will almost certainly be the only opportunity this Court will have to consider the issues presented in this appeal before the relief granted below becomes moot. This will therefore be *amici's* only opportunity to present their views to the Court on these issues. Under these circumstances, leave is warranted, especially where *amici* submit their brief with the consent of all parties.

11. The proposed brief contains 4,975 words, excluding the parts exempted under Federal Rule of Appellate Procedure 32(f). *Amici* do not believe the length of their brief exceeds any limitation set out in the federal rules or the local rules and practices of this Court. But should the Court decide otherwise, *amici* expressly request permission to file a brief containing 4,975 words. For the same reasons that the Court should grant leave, *amici* submit that the length of the proposed brief is proportionate to the interests at stake.

Dated: October 6, 2020

Respectfully submitted,

/s/ Demian A. Ordway

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A).

1. In compliance with Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6), the motion has been prepared in proportionally spaced Times New Roman font with 14-point type.
2. Excluding the exempted portions of the motion, as provided in Federal Rule of Appellate Procedure 32(f), the motion contains 1,067 words.

Dated: October 6, 2020

By: /s/ Demian A. Ordway
Demian A. Ordway
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on the sixth of October 2020, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system, which will serve all counsel of record.

Dated: October 6, 2020

By: /s/ Demian A. Ordway

Demian A. Ordway
Counsel for Amici Curiae

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Dated: October 6, 2020

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STATEMENT OF INTEREST¹

The American Diabetes Association (“Association”) is a nationwide, nonprofit, voluntary health organization founded in 1940 and made up of persons with diabetes, clinicians, research scientists, and other concerned individuals. The Association’s mission is to prevent and cure diabetes and to improve the lives of all people affected by diabetes. The Association is the largest non-governmental organization that deals with the treatment and impact of diabetes.² The Association reviews and authors the most authoritative and widely followed clinical practice recommendations, guidelines, and standards for diabetes treatment and publishes the most influential professional journals concerning diabetes research and treatment.³ As a 501(c)(3) organization, the Association neither supports nor opposes any political party or candidate for political office.

Alabama has the highest rate of diabetes of any state in the U.S.⁴ Among the Association’s principal concerns is the equitable treatment of people with diabetes. Disenfranchisement of people with diabetes is usually the result of misinformation,

¹ All parties consent to submission of this brief. *Amici* certify that no party’s counsel authored this brief in whole or in part and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

² The Association has over 500,000 members, including 12,600 Alabamians.

³ Select publications are listed in Appendix A.

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Amici neither support nor oppose any party in this litigation.

SUMMARY OF ARGUMENT

This Court should deny appellants’ motion to stay the district court’s Injunction Order.⁵ Because the district court correctly held that enforcement of Secretary Merrill’s *de facto* ban on curbside voting (“curbside voting ban”) and Alabama’s photo ID requirement for absentee voting (“photo ID requirement”)

⁵ ECF No. 251. All citations to “ECF” refer to the district court docket in *People First of Ala. v. Merrill*, No. 20-cv-619 (N.D. Ala.).

against medically vulnerable voters in the November 2020 general election would violate Title II of the Americans with Disabilities Act of 1990 (“ADA” or “Act”), appellants are not likely to succeed on the merits of their appeal. Because the mandated changes present no risk of voter confusion, *Purcell* does not bar the relief granted.⁶

The coronavirus pandemic presents an unprecedented threat to our nation’s democracy. For perhaps the first time in U.S. history, the mere *act* of voting in a presidential election presents a risk of serious illness and death. That risk exists for all voters, but it is acute for those Americans who are at heightened vulnerability to COVID-19 because of underlying medical conditions or age. In Alabama, these vulnerable voters comprise nearly *half* the electorate.

Pursuant to recommendations from the Centers for Disease Control and Protection (“CDC”), the Alabama Department of Public Health (“ADPH”), and Governor Ivey, medically vulnerable individuals are isolating themselves from human contact to protect their health. They justifiably fear breaking their isolation to enter a crowded polling site. They similarly fear entering a public location to

⁶ Although *amici* limit their focus here to issues on which they can be most helpful to the Court, they believe that appellants’ motion should be denied in full and that enforcement of any of the challenged provisions during the November 2020 election would violate the First and Fourteenth Amendments.

photocopy their photo ID to vote absentee. Absent safe alternatives, they face a Hobson's choice of risking their lives to vote or not voting at all.

The ADA requires public entities to make their services and benefits accessible to people with disabilities on terms *equal* to those without. Alabama voters at high risk from COVID-19 because of underlying medical conditions are “qualified individuals with disabilities” under the Act. Traditional in-person voting is not readily accessible to them because of their heightened risk. Alabama's absentee voting program is not readily accessible to vulnerable voters who do not already have a copy of their photo ID for the same reason.

The district court's limited injunctions are unquestionably reasonable accommodations under the Act. Enjoining enforcement of the curbside voting ban simply permits individual polling sites to decide for themselves whether to offer curbside voting services. Enjoining Alabama's photo ID requirement imposes no appreciable burden on the State and spares high-risk absentee voters the exposure to strangers that making a photocopy generally entails.

Appellants' motion is not justified by a *Purcell* concern over voter confusion. Election officials have been subject to disability rights laws for decades. They routinely make—and are routinely required to make—last-minute accommodations for voters with disabilities. Voters with disabilities rely upon those accommodations, and voters without disabilities are accustomed to them.

There is no realistic possibility that a curbside voting *option* (if offered) would confuse or deter Alabama voters. Curbside voting programs generally attract voters otherwise deterred by the prospect of a high-risk voting experience.

ARGUMENT

I. THE CHALLENGED RULES WOULD EXPOSE VOTERS WITH CHRONIC MEDICAL CONDITIONS LIKE DIABETES, A DISPROPORTIONATE SHARE OF WHOM ARE OLDER, TO SIGNIFICANT RISK OF SERIOUS ILLNESS AND DEATH FROM COVID-19

There is no serious dispute over the trial court’s key factual findings.

COVID-19 poses “special risks” to people with certain preexisting medical conditions (including diabetes)⁷ and to “older people,” who are independently at higher risk *and* more likely to have one or more preexisting condition that increases risk.⁸ For these vulnerable voters, the risks of serious illness, long-term symptoms, and death is *substantially* higher than the risk to everyone else.⁹

⁷ ECF No. 250, ¶¶ 6-8.

⁸ *Id.* ¶¶ 6, 9. *See also* Veronique Greenwood, *How the Aging Immune System Makes Older People Vulnerable to COVID-19*, N.Y. Times, Sept. 8, 2020, <https://www.nytimes.com/2020/09/08/health/covid-aging-immune-system.html>.

⁹ ECF No. 250, ¶¶ 6, 9. *See also, e.g.*, Erin K. Stokes et al., *Coronavirus Disease 2019 Case Surveillance — United States, January 22–May 30, 2020*, 69 Morbidity and Mortality Weekly Report, at 763, Table 3 (June 19, 2020), *available at* <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6924e2-H.pdf> (Those at increased risk are hospitalized six times as often and die twelve times as often.); Angelo Carfi et al., *Persistent Symptoms in Patients After Acute COVID-19*, 324 JAMA 6, 603–605 (July 2020), *available at* <https://jamanetwork.com/journals/jama/fullarticle/2768351>.

Approximately 40% of COVID-19 deaths nationwide—and over 40% of COVID-19 deaths in Alabama¹⁰—have been people with diabetes.¹¹ And nearly *half* of the Alabama electorate has one or more of the high-risk medical conditions identified by the CDC.¹²

The public health mandate to vulnerable Alabamians is undisputed and unequivocal: stay home and avoid unnecessary in-person interactions.¹³ According to the CDC, the risk associated with in-person interactions *increases* if they involve: (i) “new people (*e.g.*, those who don’t live with you)”; (ii) a large number of people; (iii) indoor spaces; (iv) physical proximity; (v) duration; and (vi) “[b]eing in a group with people who aren’t social distancing or wearing masks.”¹⁴

¹⁰ ADPH, *Characteristics of Laboratory-Confirmed Cases of Covid-19*, Oct. 2, 2020, available at <https://www.alabamapublichealth.gov/covid19/assets/cov-al-cases-100220.pdf>.

¹¹ Jonathan M. Wortham et al., *Characteristics of Persons Who Died with COVID-19 – United States, February 12–May 18, 2020*, 69 Morbidity and Mortality Weekly Report, at 926, Table 2 (June 19, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6928e1-H.pdf>

¹² Wyatt Koma et al., *How Many Adults are at Risk of Serious Illness if Infected with Coronavirus?*, Kaiser Family Foundation (Apr. 2020), at 6, available at <http://files.kff.org/attachment/Data-Note-How-Many-Adults-Are-at-Risk-of-Serious-Illness-If-Infected-with-Coronavirus.pdf> (43.1% of adults in Alabama—approximately 1.6M adults—are at high risk of serious illness if infected with coronavirus); see also ECF No. 250, ¶ 9.

¹³ ECF No. 250, ¶ 5.

¹⁴ *Deciding to Go Out*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/deciding-to-go-out.html> (last updated Sept. 11, 2020).

On September 30, 2020, Governor Ivey again extended the “Safer at Home” order (now in effect through November 8), which directs all Alabamians—and “especially vulnerable persons” such as those with diabetes and other “serious underlying health conditions”—to “[m]inimize travel outside the home.”¹⁵ The Order also “end[s]” all “regular programs at Senior Citizen centers” and “urge[s]” those facilities to provide “needed meals via curbside pick-up or delivery.”¹⁶

Traditional in-person voting breaches social distancing restrictions and presents most (if not all) of the increased risks of exposure to COVID-19 identified by the CDC. Alabama exacerbates this risk by *exempting* voters from its statewide facial-covering requirement.¹⁷ Secretary Merrill confirmed at trial that he took steps to ensure that un-masked voters were admitted to polling sites in Alabama’s July runoff election.¹⁸ Statistical analyses demonstrate a positive correlation

¹⁵ Order of the State Health Officer Suspending Certain Public Gatherings Due to the Risk of Infection by COVID-19 (Amended Sept. 30, 2020), ¶ 1, *available at* <https://governor.alabama.gov/assets/2020/09/Safer-at-Home-Order-Final-9.29.2020.pdf> (hereinafter “Safer at Home Order”).

¹⁶ *Id.* ¶ 13.

¹⁷ *Id.* ¶ 2.d.1.

¹⁸ *See* ECF No. 250, ¶ 27.

between in-person voter turnout and COVID-19 infection rates in Wisconsin¹⁹ and Michigan.²⁰

Absentee voting is the only alternative to traditional in-person voting available in Alabama in the November general election. But for most absentee voters, the photo ID requirement necessitates a trip to a library or store to make photocopies, which likewise generally cannot be accomplished without risky in-person interaction.²¹

II. CURBSIDE VOTING IS SAFE AND EASILY IMPLEMENTED

Curbside voting is a method of in-person voting. Voters receive, execute, and return their ballots from inside their vehicles with minimal interaction with polls workers. Sanctioned by the Department of Justice (“DOJ”) as an accommodation for voters with disabilities,²² curbside voting programs exist in

¹⁹ Chad D. Cotti et al., *The Relationship between In-Person Voting and COVID-19: Evidence from the Wisconsin Primary*, NBER Working Paper No. 27187 (revised Aug. 2020), at 14–15, available at <https://www.nber.org/papers/w27187.pdf?sy=187>.

²⁰ Dana W. Flanders et al., *The association of voter turnout with county-level coronavirus disease 2019 occurrence early in the pandemic*, *Annals of Epidemiology*, Vol. 49, Sept. 2020, at 42–49, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7328545/pdf/main.pdf>.

²¹ Trial evidence established that many vulnerable voters “do not have access to the necessary equipment to make a copy of their photo ID at home.” ECF No. 250, ¶ 142; *id.* ¶¶ 86, 98, 105, 143.

²² DOJ, *Project Civic Access Fact Sheet*, <https://www.ada.gov/civicfac.htm>.

twenty-nine states.²³ At least three Alabama counties recently offered curbside voting services until the State “intervened to stop them.”²⁴ Secretary Merrill testified at trial that he did not “know” or “care” whether the voters in question had disabilities because, in his view, Alabama state law prohibits the practice.²⁵

Multiple jurisdictions have implemented curbside voting in response to the pandemic to maintain social distancing.²⁶ The CDC and the United States Election Assistance Commission (“EAC”) have recommended it for that reason.²⁷ The estimated associated costs are remarkably low.²⁸ Curbside voting is a valuable option for all medically vulnerable Alabamians, and it is the *only* safe option for those to whom absentee voting is unavailable, including those who do not have a

²³ Appendix B (listing programs); Rabia Belt, *Contemporary Voting Rights Controversies Through the Lens of Disability*, 68 Stan. L. Rev. 1491, Appendix (2016) (summarizing results of 50-state survey).

²⁴ ECF No. 250, ¶ 147.

²⁵ *See id.*

²⁶ *See* Appendix B.

²⁷ EAC, *Preparing for In-Person Voting During Covid-19*, https://www.eac.gov/sites/default/files/document_library/files/In-Person%20Voting%20-%20Building%20Requirements%20%28004%29.pdf; EAC, *Innovative Practices and New Solutions*, https://www.eac.gov/sites/default/files/electionofficials/inpersonvoting/innovative_practices_and_new_solutions.pdf; *see also* ECF No. 250, ¶ 24.

²⁸ Christopher R. Deluzio et al., *Ensuring Safe Elections*, Brennan Center for Justice (Apr. 30, 2020), at 14–21, *available at* https://www.brennancenter.org/sites/default/files/2020-04/2020_04_5StateCostAnalysis_FINAL.pdf.

permanent mailing address or whose address recently changed,²⁹ and those whose absentee ballots will not be delivered on time despite their best efforts.³⁰

III. ALABAMA'S *DE FACTO* BAN ON CURBSIDE VOTING AND PHOTO ID REQUIREMENT VIOLATE THE ADA

Claimants establish a *prima facie* violation of Title II of the ADA when they demonstrate that they are qualified to receive a service, program or activity provided by a public entity, that they have a disability, and that the service is not “readily accessible” to them because of their disability. *See Shotz v. Cates*, 256 F.3d 1077, 1079 (11th Cir. 2001); 28 C.F.R. § 35.150. Claimants need not be “completely prevented” from participation. *Shotz*, 256 F.3d at 1080 (“If the Courthouse’s wheelchair ramps are so steep that they impede a disabled person ... it cannot be said that the trial is ‘readily accessible,’ regardless whether the disabled person manages in some fashion to attend the trial.”).

²⁹ See Danielle Root et al., *In Expanding Vote by Mail, States Must Maintain In-Person Voting Options During the Coronavirus Pandemic*, Ctr. for Am. Progress (Apr. 20, 2020), <https://www.americanprogress.org/issues/democracy/news/2020/04/20/483438/expanding-vote-mail-states-mustmaintain-person-voting-options-coronavirus-pandemic/>.

³⁰ Lydia Nusbaum, *Merrill: Voters waiting to mail absentee ballots ‘creating a problem’ for themselves*, WSFA12 (Aug. 19, 2020), <https://www.wsfa.com/2020/08/19/merrill-voters-waiting-mail-absentee-ballots-creating-problem-themselves/> (reporting that Secretary Merrill “suggests people mail in their absentee ballots about a month prior for the Nov. 3 general election because of mail delays”).

A Title II plaintiff challenging the accessibility of a government service must propose a facially “reasonable” modification to that service. *Nat’l Ass’n of the Deaf v. Fla.*, 945 F.3d 1339, 1351 (11th Cir. 2020). “[T]he burden of establishing the reasonableness of an accommodation is ‘not a heavy one’” *Nat’l Fed’n of the Blind v. Lamone*, 813 F.3d 494, 507 (4th Cir. 2016) (citing *Henrietta D. v. Bloomberg*, 331 F.3d 261, 280 (2d Cir. 2003)). It is then “up to the defendant to demonstrate why the requested accommodation would cause undue hardship” or result in a “fundamental alteration” of the service offered. *Schaw v. Habitat for Humanity of Citrus Cty., Inc.*, 938 F.3d 1259, 1265 (11th Cir. 2019) (citing *U.S. Airways v. Barnett*, 535 U.S. 391, 401–02 (2002)); *see also* 28 C.F.R. §§ 35.130(b)(7)(i), 35.164. Absent that showing, the plaintiff is entitled to relief.

A. Medically Vulnerable Alabama Voters Have a *Prima Facie* Claim to Relief from the Curbside Voting Ban and the Photo ID Requirement

Alabama voters with diabetes and other medical conditions that put them at heightened risk of COVID-19 satisfy all the elements of a *prima facie* Title II claim. They are qualified to vote,³¹ their medical status is a disability under the

³¹ For the reasons stated by the district court, vulnerable voters without a copy of their photo ID are still “qualified” to vote because the photo ID requirement is not an essential eligibility requirement of absentee voting. ECF No. 250, at 163, 168; *see also* ECF No. 58, at 67 & n.45; *Mary Jo C. v. New York State & Local Ret. Sys.*, 707 F.3d 144, 158 (2d Cir. 2013); 28 C.F.R. § 35.130(b)(7).

Act, and in-person and absentee voting will not be “readily accessible” to them in the upcoming election because of their disability.

1. Medically Vulnerable Alabama Voters are Qualified Individuals with Disabilities

“Disability” is construed broadly under the Act. 42 U.S.C. § 12102(4)(A) (the definition of disability “shall be construed in favor of broad coverage . . . [and] to the maximum extent permitted by the terms of this [Act]”). Any “physical or mental impairment” that “substantially limits” a “major life activity” constitutes a “disability.” *Id.* § 12102(1). Major life activities include, but are not limited to, walking, standing, speaking, breathing, communicating, and working. *Id.* § 12102(2)(A). The “operation of a major bodily function”—including immune, respiratory, circulatory and endocrine functions, among others—is also a “major life activity.” *Id.* § 12102(2)(B). Disability status is assessed *without* regard to mitigating measures including medication. *Id.* § 12102(4)(E)(i); 29 C.F.R. § 1630.2(j)(1)(vi). Conditions that are episodic or in remission must be assessed in their active state, when symptoms are at their worst. 42 U.S.C. § 12102(4)(D); 29 C.F.R. § 1630.2(j)(1)(vii).

Most health conditions known to increase COVID-19 risk are “disabilities” under the Act. Diabetes is almost universally recognized as such.³² So are chronic

³² See, e.g., *Jones v. McDonald*, 2018 WL 3629592, at *10 (S.D. Fla. June 12, 2018); 29 C.F.R. § 1630.2(j)(3).

kidney disease and kidney failure; diseases of the lungs and deficiencies in lung function; and certain heart conditions.³³ Moreover, as the district court correctly concluded,³⁴ heightened medical vulnerability to COVID-19 itself constitutes a “disability” under the Act because, in the context of the pandemic, it “substantially limit[s]” multiple “major life activities.” *See Silver v. City of Alexandria*, 2020 WL 3639696, at *4 (W.D. La. July 6, 2020) (rejecting argument that pre-existing impairments were not a “disability” because “they [were] only COVID-related” and explaining that the disability determination “cannot be looked at in a vacuum”).³⁵

2. *In-Person and Absentee Voting Are Not Readily Accessible to Medically Vulnerable Alabama Voters Because of Their Disabilities*

Traditional in-person voting requires entering an indoor space, waiting in line, interacting with strangers, and touching shared surfaces, all of which violate public health recommendations directed specifically to medically vulnerable Americans. The predicament of “high-risk voter[s]” “easily satisfies the [ADA’s]

³³ *See, e.g., Heiko v. Colombo Sav. Bank, F.S.B.*, 434 F.3d 249, 251, 255 (4th Cir. 2006); *Phillips v. Victor Cmty. Support Servs., Inc.*, 2015 WL 1469198, at *2 (E.D. Cal. Mar. 30, 2015), *aff’d*, 692 F. App’x 920 (9th Cir. 2017); *Keller v. W.-S. Life Ins. Co.*, 881 F. Supp. 1559, 1563 (M.D. Fla. 1995).

³⁴ ECF No. 250, at 150.

³⁵ *See also Fraihat v. U.S. Immigration & Customs Enforcement*, 445 F. Supp. 3d 709, 747–48 (C.D. Cal. 2020) (finding that people with medical conditions that increase COVID-19 risk are likely individuals with disabilities under the Rehabilitation Act).

‘not readily accessible requirement.’” *People First of Ala. v. Merrill*, 815 F. App’x 505, 515 (11th Cir.) (concurring opinion). Similarly, absentee voting is not “readily accessible” to medically vulnerable Alabamians for whom the photo ID requirement necessitates a trip to a store or public facility.

The district court correctly rejected appellants’ bizarre claim that voting in the November general election is not readily accessible to medically vulnerable Alabamians as a result of their personal choices.³⁶ *Every* exposure to COVID-19 puts medically vulnerable voters at substantial risk. The trial court found that the “vast majority” of high-risk Alabamians are complying with CDC guidance and the Safer at Home Order.³⁷ High-risk voters who by necessity engage in *some* in-person interactions during the pandemic do not waive the ADA’s promise of equal

³⁶ ECF No. 250, at 149–50.

³⁷ *Id.* ¶ 19. Virginia and Ed Stone are two of many Alabamian members of the AARP and/or Association whose major life activities are *indisputably* “substantially limit[ed]” by heightened medical vulnerability to COVID-19 and for whom voting services will not be “readily accessible” in November if the curbside voting ban and photo ID requirement are in effect. The Stones are isolating due to their advanced ages (79 and 82, respectively) and Virginia’s underlying medical conditions. Ed’s adult son, Doug, is undergoing chemotherapy for cancer and his immune system is impaired. The Stones have groceries delivered, disinfect objects that enter their home, have deferred medical appointments, and plan to rent an RV in order to travel to Doug in California while maintaining their social isolation. The Stones applied for absentee ballots but would prefer to vote curbside because they believe it is substantially safer than traditional in-person voting, safer than complying with the photo ID and witness requirements, and more reliable in assuring timely ballot delivery to election officials than absentee voting.

access to government services. And prior in-person interactions do not reduce the risk of traditional in-person voting.

Even *accepting* appellants' premise, the curbside voting ban and photo ID requirement would still exclude medically vulnerable voters "by reason of their disabilities" because the ADA "requires only the lesser 'but for' standard of causation." *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1212 n.6 (11th Cir. 2008) (internal citation omitted); *see also CG v. Pennsylvania Dep't of Educ.*, 734 F.3d 229, 236 (3d Cir. 2013) ("[T]he ADA covers discrimination on the basis of disability, even if there is another cause as well."); *Bennett-Nelson v. Louisiana Bd. of Regents*, 431 F.3d 448, 454 (5th Cir. 2005) (same).

By mischaracterizing the needs of medically vulnerable voters as obstinate "refus[als]" to meet voting requirements,³⁸ and by asserting that those voters should be "content" with the services offered to them,³⁹ appellants perpetuate the very "animus and impermissible stereotyp[ing]" the ADA was enacted to redress. *Tennessee v. Lane*, 541 U.S. 509, 515 (2004) (internal citation omitted).

³⁸ ECF No. 206, at 21.

³⁹ Emergency Mot. for Administrative Stay and Stay Pending Appeal, *People First of Ala. v. Merrill*, No. 20-12184 (11th Cir. June 17, 2020), at 5.

B. Enjoining Enforcement of the Curbside Voting Ban and the Photo ID Requirement Are Reasonable Accommodations that Do Not Work a “Fundamental Alteration” or Impose an “Undue Burden” on the State

Enjoining Alabama’s *de facto* ban on curbside voting *cannot* constitute a “fundamental alteration” under the Act because it requires nothing and “merely allows counties to implement voting procedures that comply with Alabama law.” *People First of Ala.*, 815 F. App’x at 515 (concurring opinion).

But even if it could, it doesn’t. Curbside voting does nothing more than (i) permit a person with a disability to remain in their vehicle, and (ii) move the activity at issue (here, casting a ballot) by a very short distance. Courts routinely reject the argument that moving the location of a service by a short distance constitutes a fundamental alteration. *See, e.g., Fortynone v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1084 (9th Cir. 2005) (requiring that designated movie theater seats remain available to companions of patrons using wheelchairs was not a “fundamental alteration” even though “the individual who is made to move seats will experience the film in a different manner (*i.e.*, from a different location in the Theater)”). Permitting individuals with disabilities to remain in their vehicles does not “fundamentally alter” an activity to which the difference between walking and using a vehicle “is at best peripheral.” *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 689 (2001). As this Court recently held, offering an additional method of delivering an existing government service does not “change the ‘nature’ of the service

whatsoever.” *Nat’l Ass’n of the Deaf*, 945 F.3d at 1351 (adding captioning to legislative videos provided to the public was a reasonable accommodation under Title II).

Similarly, even if the “burdens” of implementation *were* relevant here,⁴⁰ they would be “minimal.” *People First of Ala.*, 815 F. App’x at 513. Multiple jurisdictions have created and expanded curbside programs in response to the pandemic.⁴¹ At least one Alabama county has stipulated that the injunction will not require funding beyond that already allocated.⁴² And vesting discretion in local officials ensures that curbside voting options will not be offered if they impose an unwarranted burden. *League of Women Voters of Fla., Inc. v. Detzner*, 314 F. Supp. 3d 1205, 1220 (N.D. Fla. 2018) (“[A] local supervisor of elections is in a better position to evaluate the parking situation at potential sites than [the Florida Secretary of State].”).

C. Appellants Are Wrong that No In-Person Accommodation is Required Because Alabama Offers Absentee Voting

Appellants argue that voters with disabilities are entitled only to *some* form of accessible voting in the November 2020 general election, even though the state

⁴⁰ They are not, as the district court correctly held. ECF No. 250, at 158.

⁴¹ Appendix B.

⁴² ECF No. 182, ¶ 10.

is offering both in-person *and* absentee services to voters without disabilities. That argument fails as a matter of law.

The ADA requires Alabama to provide medically vulnerable voters “an opportunity to participate in or benefit from” its benefits and services “equal to that afforded others,” 28 C.F.R. § 35.130(b)(1)(ii), and prohibits denying those voters access to a particular benefit or service simply because a “permissibly separate or different program[] or activit[y]” exists, *id.* § 35.130(b)(2).⁴³ Accordingly, voters with disabilities must receive an equal opportunity to participate in in-person or absentee voting, as those voters prefer. *Disabled in Action v. Bd. of Elections in City of New York*, 752 F.3d 189, 199 (2d Cir. 2014). “Indeed, to assume the benefit is anything less—such as merely the opportunity to vote at some time and in some way—would render meaningless the mandate that public entities may not afford persons with disabilities the services that are not equal to that afforded others.” *Id.* (internal citation and quotations omitted); *see also Hernandez v. N.Y. State Bd. of Elections*, 2020 WL 4731422, at *8 (S.D.N.Y. Aug. 14, 2020) (“It would be intolerable and legally incorrect to conclude that the relevant service, program or activity is voting generally, and not absentee voting particularly.”).⁴⁴ Courts

⁴³ *See also* DOJ, ADA Update: A Primer for State and Local Governments, available at https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html.

⁴⁴ This Court’s decision in *Am. Ass’n of People with Disabilities v. Harris*, 647 F.3d 1093 (11th Cir. 2011) is not to the contrary. The only issue decided in *Harris*

routinely reject appellants' position that people with disabilities are entitled to only one accessible voting service. *Nat'l Fed'n of the Blind*, 813 F.3d at 503 (rejecting this "overbroad" approach because it "would undermine the purpose of the ADA and its implementing regulations"); *Drenth v. Boockvar*, 2020 WL 2745729, at *5 (M.D. Pa. May 27, 2020) (analyzing ADA challenge to inaccessible *absentee* voting services); *Kerrigan v. Philadelphia Bd. of Election*, 2008 WL 3562521, at *15–17 (E.D. Pa. Aug. 14, 2008) (holding Title II required accessible *in-person* voting services notwithstanding alternatives).

ADA plaintiffs also do not bear any burden of "proving a good-faith effort" to use a "proffered alternative accommodation." *Schaw*, 938 F.3d at 1269; *see also Alboniga v. Sch. Bd. of Broward Cty. Fla.*, 87 F. Supp. 3d 1319, 1341 (S.D. Fla. 2015) ("[R]efusing Plaintiff's requested accommodation if it is reasonable in favor of one the School Board prefers is akin to allowing a public entity to dictate the type of services a disabled person needs in contravention of that person's own decisions regarding his own life and care.").

IV. ENSURING DISABILITY ACCESS TO IN-PERSON VOTING ON ELECTION DAY DOES NOT RUN AFOUL OF *PURCELL*

was that voting machines are not "facilities" for the purpose of certain DOJ regulations that implement Title II because they are "temporary, movable objects." 647 F.3d at 1095, 1103. On that basis alone, this Court reversed an injunction in plaintiffs' favor. *Id.* The *Harris* court's statement that plaintiffs were "able to participate in the [County's] voting program" refers only to the district court's finding that plaintiffs were able to use the challenged machines.

This Court should not grant appellants’ motion on the ground that “lower federal courts should ordinarily not alter the election rules on the eve of an election,” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205 (2020) (per curiam). That concern is particularly inapplicable to enjoining the curbside voting ban.

First, the injunction does not “alter” election rules. It simply enjoins the State from enforcing its *de facto* ban and leaves each voting precinct free to “alter” its protocol if, in its best judgment, it makes sense to do so.

Second, curbside options here would be no more “last-minute” than other “reasonable accommodations” routinely provided at polling sites to meet Title II requirements, including in Alabama counties. A 2016 Settlement Agreement between the DOJ and Jefferson County, for example, required the latter to implement temporary accessibility measures less than two weeks before the November 2016 presidential election.⁴⁵ When necessary and feasible, as here, courts have ordered without incident comparable “last-minute” accommodations to ensure voting is accessible to individuals with disabilities. *See e.g., Spitzer v. City of Delaware*, 82 F. Supp. 2d 12, 18 (N.D.N.Y. 2000) (mandating ADA compliance

⁴⁵ Settlement Agreement Between the United States of America and Jefferson County, Alabama Regarding the Accessibility of Polling Places, effective Oct. 27, 2016, *available at* <https://www.justice.gov/usao-ndal/press-release/file/905967/download>.

27 days prior to presidential primary election and enumerating measures that were feasible to implement on that time frame); *Spitzer v. Cty. of Schoharie*, 82 F. Supp. 2d 19, 25 (N.D.N.Y. 2000) (same).

The district court's order is substantially less "last-minute" than other court-ordered changes in election administration in emergency circumstances. *See Georgia Coal. for the Peoples' Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344, 1346 (S.D. Ga. 2016) (granting preliminary injunction and directing defendants to extend voter registration deadline by one week after Hurricane Matthew); *Democratic Nat'l Comm. v. Bostelmann*, 451 F. Supp. 3d 952, 959 (W.D. Wis. 2020) (extending absentee ballot receipt deadline five days before primary election).⁴⁶

Like other accommodations before it, a curbside option would therefore not "result in voter confusion" nor create any "incentive to remain away from the polls." *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). Curbside options do not affect the procedure for "indoor" voting. Voters are in no way obligated to engage with the option. Curbside services are broadly familiar to Alabamians, and curbside voting procedures are simple. No advance preparation or education is required, and there are no associated changes to any printed forms or instructions. Where

⁴⁶ Unlike other rulings by the district court, the order extending the absentee ballot receipt deadline for the April 7 Wisconsin primary was *not* subsequently stayed. *See Republican Nat'l Comm.*, 140 S. Ct. 1205; ECF No. 250, at 109–110.

offered, curbside options *encourage* older and medically vulnerable Americans to vote because they provide a measure of reassurance that voting is not gambling with their health. Indeed, for many voters, the *absence* of reasonable accommodations to ensure that people with disabilities can participate equally, in-person, on election day would upset their expectations and cause both “confusion” and considerable distress.

CONCLUSION

For the reasons stated herein, *amici* respectfully submit that appellants’ motion to stay should be denied.

Dated: October 6, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I hereby certify that this brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 32(a)(7)(B) and 27(d)(2)(A).

1. In compliance with Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6), the brief has been prepared in proportionally spaced Times New Roman font with 14-point type.
2. Excluding the exempted portions of the brief, as provided in Federal Rule of Appellate Procedure 32(a), the brief contains 4,975 words.

Dated: October 6, 2020

By: /s/ Demian A. Ordway

Demian A. Ordway
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on the sixth of October 2020, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system, which will serve all counsel of record.

Dated: October 6, 2020

By: /s/ Demian A. Ordway

Demian A. Ordway
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APPENDIX A

Select Publications of the American Diabetes Association

- (1) *Diabetes* (monthly journal publishing original research about the physiology and pathophysiology of diabetes mellitus);
- (2) *Diabetes Care* (monthly journal for health care practitioners publishing research on topics including: cardiovascular and metabolic risk, pathophysiology/complications, emerging treatments and technologies, and epidemiology/health services);
- (3) *Clinical Diabetes* (quarterly journal for clinicians involved in the care of people with diabetes publishing information about advances in care and a discussion forum for diabetes-related problems in medical practice, case studies, research digests, and patient education materials);
- (4) *BMJ Open Diabetes Research & Care* (open access journal committed to publishing high-quality basic and clinical research articles regarding type 1 and type 2 diabetes and associated complications); and
- (5) *Diabetes Spectrum* (quarterly journal for health care professionals focused on strategies to individualize treatment and optimize patient outcomes).

APPENDIX B

Select Jurisdictions Offering Curbside or Drive-Thru Voting Services

- (1) Arizona (statewide). Permitted for voters who are unable to enter the polling location. *See* <https://azsos.gov/elections/voting-election>.
- (2) Arkansas (Jefferson County). Permitted for all voters. *See* <https://abcnews.go.com/Politics/note-voting-age-coronavirus-uncertain-test-runs/story?id=69877935>.
- (3) California (statewide). Permitted for voters with disabilities. *See* <https://voterguide.sos.ca.gov/voter-info/assistance-for-voters-w-disabilities.htm>.
- (4) Colorado (statewide). Permitted for all voters. *See* <https://www.sos.state.co.us/pubs/elections/files/COVID19guidance.pdf>.
- (5) Connecticut (statewide). Permitted for temporarily incapacitated voters. *See* <https://portal.ct.gov/SOTS/Election-Services/Voter-Information/Voters-with-Disabilities-Fact-Sheet>.
- (6) District of Columbia (select Vote Centers). Permitted for voters who are unable to enter a Vote Center due to a disability, seniority, or illness. *See* <https://www.dcboe.org/Voters/How-to-Vote/Voter-Assistance>.
- (7) Hawaii (statewide). Permitted for voters unable to leave their vehicles. *See* <https://elections.hawaii.gov/wp-content/uploads/2015/03/FS518VS002-Voter-Assistance.pdf>.
- (8) Idaho (statewide). Permitted for voters who are unable to enter the polling place. *See* <https://sos.idaho.gov/elect/clerk/Manuals/Idaho%20Election%20Handbook.pdf>.
- (9) Illinois (statewide). Permitted for all voters. *See* <https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21690>.
- (10) Iowa (statewide). Permitted for voters with disabilities. *See* <https://sos.iowa.gov/elections/voterinformation/accessibility.html>.

- (11) Kansas (statewide). Permitted for the elderly and voters with disabilities. *See* https://www.kssos.org/elections/12elec/Kansas_Election_Officer_hanbook_for_disability_accessibility.pdf.
- (12) Kentucky (Anderson and Livingston Counties). Permitted for all voters. *See* <https://andersoncountyclerk.ky.gov/Documents/WAYS%20TO%20VOTE%20IN%20GENERAL%20ELECTION.pdf>.; https://www.wpsdlocal6.com/news/livingston-county-offering-drive-thru-voting-on-election-day/article_8c3ab334-b28a-11ea-bbeb-57c3bc1e7dc7.html.
- (13) Michigan (statewide). Permitted for voters who are unable to enter the polling location. *See* https://www.michigan.gov/documents/sos/Managing_Your_Precinct_on_Election_Day_391790_7.pdf.
- (14) Minnesota (statewide). Permitted for voters who cannot enter the polling place for any reason, including concerns for their health. *See* <https://www.sos.state.mn.us/election-administration-campaigns/elections-calendar/2020-elections-and-covid-19/>.
- (15) Mississippi (statewide). Permitted for voters with disabilities. *See* <https://www.sos.ms.gov/Elections-Voting/TrainingDocs/Executive%20Committee%20Election%20Day%20Operations%20LAB.pdf>.
- (16) Missouri (statewide). Permitted for voters with limited mobility. *See* <https://www.sos.mo.gov/elections/goVoteMissouri/howtovote>.
- (17) Montana (statewide). Permitted for voters who are unable to enter the polling location. *See* <https://sosmt.gov/elections/disabilities/>.
- (18) Nebraska (statewide). Permitted for voters who are unable to enter the polling place. *See* <https://sos.nebraska.gov/elections/accessible-voting>.
- (19) New Hampshire (statewide). Permitted for voters who are unable to enter the polling place. *See* <https://sos.nh.gov/elections/voters/voting-with-disabilities/>.

- (20) North Carolina (statewide). Permitted for voters who are unable to enter the voting place without physical assistance due to age or disability. *See* <https://www.ncsbe.gov/voting/help-voters-disabilities/curbside-voting>.
- (21) Ohio (statewide). Permitted for voters who are unable to enter a polling location and voters who are symptomatic or concerned about exposure to COVID-19 or voters who refuse to wear a face covering. *See* <https://www.sos.state.oh.us/globalassets/elections/eoresources/peo-training/peotrainingmanual.pdf>.
- (22) Oklahoma (Creek County). Permitted for physically disabled voters who are unable to enter the polling place. *See* http://www.creekcountyonline.com/electionboard_files/voter_assistance.htm.
- (23) South Carolina (statewide). Available to voters who, because of physical handicap or age (65 and older), cannot enter the polling place or are unable to stand in line to vote. *See* <https://www.scvotes.gov/voters-disabilities>.
- (24) Texas (statewide). Permitted for voters who are physically unable to enter the polling place without personal assistance or likelihood of injury to their health. Also permitted for voters who have signs or symptoms of COVID-19. *See* <https://www.sos.state.tx.us/elections/forms/covid/curbside-voting-english.pdf>.
- (25) Utah (multiple counties). Curbside ballot drop-boxes available to all voters. *See* <https://ssl.utahcounty.gov/dept/clerk/aud/elections/Curbside.html>.
- (26) Vermont (statewide). Permitted for all voters who need accommodations to assist them with voting. *See* <https://sos.vermont.gov/elections/voters/accessible-voting/>.
- (27) Virginia (statewide). Permitted for voters with physical disabilities or aged 65 or older. *See* <https://www.elections.virginia.gov/casting-a-ballot/accessible-voting/>.

- (28) West Virginia (statewide). Permitted for voters who cannot leave their vehicles to vote if the polling place is not otherwise accessible, and no voters are waiting inside the polling place. *See* <https://sos.wv.gov/FormSearch/Elections/Administrators/West%20Virginia%20Voters%20with%20Disabilities.pdf>.
- (29) Wisconsin (statewide). Permitted for voters who are unable to enter the polling place due to disability. *See* https://elections.wi.gov/sites/elections.wi.gov/files/2020-09/Election%20Day%20Manual%20%282020-09%29_0.pdf.