

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

PEOPLE FIRST OF ALABAMA,	)	
<i>et al.</i> ,	)	
	)	
<i>Plaintiffs</i> ,	)	
	)	
v.	)	Civil Action No. 2:20-cv-00619-AKK
	)	
JOHN H. MERRILL, Secretary	)	
of State, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	

**STATE DEFENDANTS’ SECOND EVIDENTIARY SUBMISSION**

In anticipation of filing their motion to dismiss, Defendants John H. Merrill, in his official capacity as Secretary of State of Alabama, and the State of Alabama (collectively, “State Defendants”) hereby submit their second evidentiary submission as set out below.

- Exhibit 15            CERTIFICATION OF EMERGENCY RULES  
Ala. Admin. Code § 820-2-3-.06-.03ER  
Absentee Voting During State of Emergency—Special  
Elections House District 49. (July 17, 2020)
  
- Exhibit 16            CERTIFICATION OF EMERGENCY RULES  
Ala. Admin. Code § 820-2-3-.06-.04ER  
Absentee Voting During State of Emergency—General  
Election of 2020. (July 17, 2020)
  
- Exhibit 17            Declaration of David A. Z. Brewer (July 17, 2020)

Respectfully submitted,

Steve Marshall,  
*Attorney General*

s/ Jeremy S. Weber

James W. Davis (ASB-4063-I58J)  
Winfield J. Sinclair (ASB-1750-S81W)  
Jeremy S. Weber (ASB-3600-X42G)  
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*Counsel for State Defendants*

## CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2020 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to all counsel of record.

/s/ Jeremy S. Weber  
Counsel for State Defendants

## EXHIBIT 15

### CERTIFICATION OF EMERGENCY RULES

Ala. Admin. Code § 820-2-3-.06-.03ER  
Absentee Voting During State of  
Emergency—Special Elections House  
District 49. (July 17, 2020)

APA-4  
Revised 1/2018

**CERTIFICATION OF EMERGENCY RULES  
FILED WITH LEGISLATIVE SERVICES AGENCY  
OTHNI LATHRAM, DIRECTOR**

Pursuant to Code of Alabama 1975, §§41-22-5(b) and 41-22-6(c)(2)a. and b.

I certify that the attached emergency (amendment, new rule, new chapter, repeal or adoption by reference) is a correct copy as promulgated and adopted on the 17th day of July, 2020.

AGENCY NAME: Alabama Secretary of State

RULE NO. AND TITLE: 820-2-3-.06-.03ER Absentee Voting During State of Emergency-Special Elections House District 49

EFFECTIVE DATE OF RULE: July 17, 2020

EXPIRATION DATE (If less than 120 days): \_\_\_\_\_

NATURE OF EMERGENCY:

It was unforeseen that a vacancy would occur in State House District 49, that the governor's original state of emergency would be extended, and that the coronavirus pandemic would continue in Alabama, thus necessitating the need for an emergency absentee rule for the special election in House District 49.

STATUTORY AUTHORITY: 17-11-3(e); 41-22-5

SUBJECT OF RULE TO BE ADOPTED ON PERMANENT BASIS \_\_\_\_\_ YES X NO

NAME, ADDRESS, AND TELEPHONE NUMBER OF PERSON TO CONTACT FOR COPY OF RULE:

Hugh Evans  
State Capitol Suite E-201  
600 Dexter Avenue, Montgomery, AL 36130  
(334)353-7857

REC'D & FILED

JUL 17 2020

LEGISLATIVE SVC AGENCY

*J. H. Merrill*  
Secretary of State

JULY 17, 2020  
(For APA Use Only)

**820-2-3-.06-.03ER Absentee Voting During State of Emergency – Special Elections House District 49.**

(1) Pursuant to 17-11-3(e) of the *Code of Alabama*, and without limitation, due to the State of Emergency issued by the Governor of Alabama on March 13, 2020, as amended, any qualified voter who determines it is impossible or unreasonable to vote at their voting place for the Special Primary Election, Special Runoff Election, or the Special General Election for House District 49 due to the declared states of emergency, shall be eligible to check the box on the absentee ballot application which reads as follows:

“I have a physical illness or infirmity which prevents my attendance at the polls. [ID REQUIRED]”

(2) Any qualified voter of this state who applies and successfully submits an application, with proper identification, for an absentee ballot pursuant to this Emergency Administrative Rule shall be eligible to vote an absentee ballot for the Special Primary Election, Special Runoff Election, or the Special General Election for House District 49.

(3) All Absentee Election Managers and any other election officials of the affected counties are hereby directed and instructed to follow this Emergency Administrative Rule and accept all absentee ballot applications filed hereunder immediately.

**Authors:** David Brewer, Hugh Evans, Clay Helms, Jeff Elrod.

**Statutory Authority:** 17-11-3(e).

**History: New Rule:** Filed July 17, 2020

## EXHIBIT 16

### CERTIFICATION OF EMERGENCY RULES

Ala. Admin. Code § 820-2-3-.06-.04ER  
Absentee Voting During State of  
Emergency—General Election of 2020.  
(July 17, 2020)

APA-4  
Revised 1/2018

**CERTIFICATION OF EMERGENCY RULES  
FILED WITH LEGISLATIVE SERVICES AGENCY  
OTHNI LATHRAM, DIRECTOR**

Pursuant to Code of Alabama 1975; §§41-22-5(b) and 41-22-6(c) (2) a. and b.

I certify that the attached emergency (amendment, new rule, new chapter, repeal or adoption by reference) is a correct copy as promulgated and adopted on the 17th day of July, 2020.

AGENCY NAME: Alabama Secretary of State

RULE NO. AND TITLE: 820-2-3-.06-.04ER Absentee Voting During State of Emergency-General Election 2020

EFFECTIVE DATE OF RULE: July 17, 2020

EXPIRATION DATE (If less than 120 days): \_\_\_\_\_

NATURE OF EMERGENCY:

It was unforeseen that the governor's original state of emergency would be extended and that the coronavirus pandemic would continue in Alabama, thus necessitating the need for an emergency absentee rule for the General Election on November 3, 2020.

STATUTORY AUTHORITY: 17-11-3(e); 41-22-5

SUBJECT OF RULE TO BE ADOPTED ON PERMANENT BASIS \_\_\_\_\_ YES X NO

NAME, ADDRESS, AND TELEPHONE NUMBER OF PERSON TO CONTACT FOR COPY OF RULE:

Hugh Evans  
State Capitol Suite E-201  
600 Dexter Avenue, Montgomery, AL 36130  
(334) 353-7857

REC'D & FILED

JUL 17 2020

LEGISLATIVE SVC AGENCY

*J. H. Merrill*  
Secretary of State

JULY 17, 2020  
(For APA Use Only)

**820-2-3-.06-.04ER Absentee Voting During State of Emergency – General Election 2020.**

(1) Pursuant to 17-11-3(e) of the *Code of Alabama*, and without limitation, due to the State of Emergency issued by the Governor of Alabama on March 13, 2020, as amended, any qualified voter who determines it is impossible or unreasonable to vote at their voting place for the General Election on November 3, 2020 due to the declared states of emergency, shall be eligible to check the box on the absentee ballot application which reads as follows:

“I have a physical illness or infirmity which prevents my attendance at the polls. [ID REQUIRED]”

(2) Any qualified voter of this state who applies and successfully submits an application, with proper identification, for an absentee ballot pursuant to this Emergency Administrative Rule shall be eligible to vote an absentee ballot for the General Election on November 3, 2020.

(3) All Absentee Election Managers and any other election officials of this state are hereby directed and instructed to follow this Emergency Administrative Rule and accept all absentee ballot applications filed hereunder immediately.

**Authors:** David Brewer, Hugh Evans, Clay Helms, Jeff Elrod.

**Statutory Authority:** 17-11-3(e).

**History: New Rule:** Filed July 17, 2020

## EXHIBIT 17

Declaration of David A. Z. Brewer  
(July 17, 2020)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

PEOPLE FIRST OF ALABAMA,	)	
<i>et al.</i> ,	)	
	)	
<i>Plaintiffs</i> ,	)	
	)	
v.	)	Civil Action No. 2:20-cv-00619-AKK
	)	
JOHN H. MERRILL, Secretary	)	
of State, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	

**DECLARATION OF DAVID BREWER**

1. My name is David Brewer. I am the Deputy Secretary of State and Chief of Staff for the Alabama Secretary of State. I am over the age of 19 and the facts I have set out below are based upon my personal knowledge, the records of the Alabama Secretary of State’s Office maintained in the ordinary course of governmental business, or documents issued to the public by Alabama governmental agencies.

2. On March 13, 2020, Governor Kay Ivey declared a state of emergency in Alabama concerning the appearance of the novel coronavirus known as COVID-19 in the State. <https://governor.alabama.gov/assets/2020/03/2020-03-13-Initial-COVID-19-SOE.pdf>.

3. Five days later, after the Alabama Attorney General issued an official opinion that concluded that the Secretary of State has the power to certify the results of a primary runoff election that the Governor might postpone and reschedule due to COVID-19, the Governor, Secretary of State, and Attorney General held a joint press conference and announced that the March 31, 2020, primary runoff election was being postponed until July 14, 2020 under the Governor's emergency powers. <https://www.sos.alabama.gov/newsroom/march-31-runoff-election-postponed-until-july-14>.

4. The same day that the Governor announced the postponement of the primary runoff election (March 18, 2020), the Secretary of State filed Emergency Rule 820-2-3-.06.01ER, which provided in part:

. . . due to the State of Emergency issued by the Governor on March 13, 2020, as amended on March 18, 2020, as well as the National Emergency declared by the President of the United States on March 13, 2020 related to the 2019 Novel Coronavirus known as COVID-19, any qualified voter who determines it is impossible or unreasonable to vote at their voting place for the Primary Runoff Election of 2020 due to the declared states of emergency, shall be eligible to check the box on the absentee ballot application which reads as follows:

“I have a physical illness or infirmity which prevents my attendance at the polls. [ID REQUIRED]”

[https://www.sos.alabama.gov/sites/default/files/SOS%20Emergency%20Rule%20820-2-3-.06-.01ER%20\(1\).pdf](https://www.sos.alabama.gov/sites/default/files/SOS%20Emergency%20Rule%20820-2-3-.06-.01ER%20(1).pdf).

5. The Secretary of State's Office has issued several reminders to voters about the expanded absentee voting rule, notifying voters of the availability of this option and the deadline by which to request an absentee ballot. <https://www.sos.alabama.gov/newsroom>.

6. On July 2, 2020, Governor Ivey issued her thirteenth supplemental state of emergency proclamation related to COVID-19. That proclamation extended the state of emergency from July 11, 2020 to September 9, 2020. <https://governor.alabama.gov/assets/2020/07/2020-07-02-13th-Supplemental-SOE-COVID-19.pdf>.

7. As a result of this proclamation, the Secretary of State issued a new emergency rule effective June 25, 2020. <https://www.sos.alabama.gov/sites/default/files/820-2-3-.06-.02ER.pdf>. Emergency Rule 820-2-3-.06-.02ER will allow Alabama voters who wish to do so to cast an absentee ballot for the August 25, 2020 Municipal Election and the October 6, 2020 Municipal Runoff Election, under similar provisions as those in effect for the July Primary Runoff Election.

8. On July 17, 2020, the Secretary of State issued two new emergency rules that extend expanded use of absentee voting for future elections. Emergency Rule 820-2-3.06-.03 will allow Alabama voters who wish to do so to cast an absentee ballot for the Special Primary Election, Special Runoff Election, or the Special

General Election for House District 49, under similar provisions as those in effect for the July primary runoff and August Municipal Election and October Municipal Runoff Election. <https://www.sos.alabama.gov/sites/default/files/proposedRules/820-2-3-.06-.03ER.pdf>. Emergency Rule 820-2-3.06-.04 will allow Alabama voters who wish to do so to cast an absentee ballot for the November General Election, again under similar provisions as those in effect for earlier elections. <https://www.sos.alabama.gov/sites/default/files/proposedRules/820-2-3-.06-.04ER.pdf>.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on July 17, 2020.

David A. Z. Brewer  
Deputy Secretary of State and Chief of Staff  
Office of the Alabama Secretary of State

Sworn to + subscribed  
before me on this the  
17<sup>th</sup> day of July, 2020

