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September 7, 2022

Mr. David J. Smith, Clerk of Court  
U.S. Court of Appeals for the 11th Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

**Re: *Treva Thompson, et al. v. Secretary of State, et. al.*, No. 21-10034**

Dear Mr. Smith:

Plaintiffs' lead claim is that Alabama's constitutional provision governing felon disenfranchisement, Ala. Const. art. VIII, § 177(b), is intentionally discriminatory in violation of the Fourteenth and Fifteenth Amendments. Recently, the *en banc* Fifth Circuit Court of Appeals upheld Mississippi's felon disenfranchisement provision against a similar challenge. *Harness v. Watson*, \_\_\_ F.4th \_\_\_, 2022 WL 3646289 (5th Cir. Aug. 24, 2022) (*en banc*) (*per curiam*).

In both States, constitutional provisions governing felon disenfranchisement were enacted with discriminatory intent more than a century ago. Mississippi's 1890 provision was subsequently amended to selectively add to, and subtract from, the list of disenfranchising crimes. The current provision was upheld in *Cotton v. Fordice*, 157 F.3d 388 (5th Cir. 1998), and then again in *Harness*. Alabama's 1901 provision, which was at issue in *Hunter v. Underwood*, 471 U.S. 222 (1985), was *repealed and replaced* in 1996 by the current provision, which Plaintiffs challenge here.

The *Harness* Court “f[ou]nd that *Cotton*'s result is consistent with the seminal Supreme Court decision in *Hunter v. Underwood*[.]” *Harness*, 2022 WL 3646289, \*1. Discussing *Hunter*, *Johnson v. Governor of Florida*, 405 F.3d 1214 (11th Cir. 2005) (*en banc*), *Abbott v. Perez*, 585 U.S. \_\_\_, 138 S.Ct. 2305 (2018), and other authorities, the *Harness* Court concluded that “courts must look to the most recent enactment of the challenged provision, not the original tainted version[.]” *Harness*, 2022 WL 3646289, \*5-\*7. Further the Court understood *Abbott* to “stand[] for three propositions. *First*, it squarely placed the burden of proof of intentional

discrimination on the law's challenger. *Second*, the most recent enactment is the one that must be evaluated under the Equal Protection Clause. *Third*, the presumption of legislative good faith persists." *Harness*, 2022 WL 3646289, \*8.

The State Defendants' arguments on appeal heavily rely on *Hunter*, *Cotton*, *Johnson*, and *Abbott* and make each of the points established by *Abbott* as stated in *Harness*. See Appellees' Brief at 23-37; see also *id.* at 2-15 (factual background). Section 177(b), which is substantively different from the 1901 provision and was enacted through a deliberative process, is not intentionally discriminatory. The district court should be affirmed.

Respectfully submitted,

s/ Edmund G. LaCour Jr.  
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## CERTIFICATE OF COMPLIANCE

1. I certify that this document complies with the type-volume limitations set forth in Fed. R. App. P. 28(j) and 11th Cir. R. 28, I.O.P. 6. The body of the letter contains 349 words.

2. In addition, this letter complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 MSO in 14-point Times New Roman font.

/s/ Edmund G. LaCour Jr. \_\_\_\_\_

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*Counsel for the State Defendants*

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## **CERTIFICATE OF INTERESTED PERSONS**

In accordance with 11th Cir. R. 26.1-1(a)(3) and 26.1-2(b), undersigned counsel certifies that the persons and entities listed in the Certificate of Interested Persons and Corporate Disclosure Statement contained in the Brief of Appellants as modified by the Certificate of Interested Persons contained in the Brief of the State Appellees are all persons or entities known to undersigned counsel to have an interest in the outcome of this appeal.

/s/ Edmund G. LaCour Jr.

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*Counsel for the State Defendants*

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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed on September 7, 2022, using the CM/ECF Document Filing System, which will send notification of such filing to all noticed parties.

/s/ Edmund G. LaCour Jr.

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