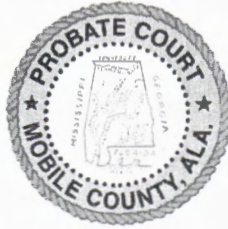


**Don Davis**  
Judge of Probate

**C. Mark Erwin**  
Chief Clerk/Administrator

**W. Rushing Payne, Jr.**  
Chief of Staff/Chief Deputy Clerk



Judicial Division - (251) 574-6001  
Recording Division - (251) 574-6040  
Records Division - (251) 574-6070  
Elections Division - (251) 574-6080  
Accounts Division - (251) 574-6101  
Facsimile - (251) 574-6003

## PROBATE COURT OF MOBILE COUNTY, ALABAMA

May 4, 2020

### VIA ELECTRONIC MAIL AND UNITED STATES CERTIFIED MAIL

The Honorable John H. Merrill  
Secretary of State  
State of Alabama  
Alabama State Capitol, Suite S-102  
600 Dexter Avenue  
Montgomery, AL 36130

Re: Upcoming Alabama Primary Runoff Election in Mobile County, Alabama Scheduled  
For July 14, 2020

Dear Secretary Merrill:

You will recall that in Alabama, our judges of probate serve as the chief election officers of their respective counties. However, notwithstanding the moniker, Alabama's judges of probate do not have total control or oversight of elections. For example, county commissions determine the election precincts, election poll locations, number of election officials utilized and number of voting machines utilized.<sup>1</sup> Alabama's county commissions also provide the funding for elections, some of which is reimbursed by the State following the conclusion of an election.

Mobile County has 88 election precincts (geographic areas), which were determined by the Mobile County Commission. Each election precinct has a poll (also determined by the Mobile County Commission), at which registered voters residing within the precinct are to vote. The number of registered voters residing within a precinct varies precinct-by-precinct. The size of the locations utilized as polls are not uniform either. Many privately-owned facilities are utilized as election polls. The number of election officials assigned to a poll also varies poll-by-poll, primarily based on the number of registered voters residing within a precinct. Overall, Mobile County utilizes approximately 1,700 election officials in a county-wide election at this time.

The Alabama Election Code provides that primary runoff elections are to be held at the same places as the first primary and the same election officers utilized.<sup>2</sup> Alabama law also specifies that

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<sup>1</sup>*Ala. Code* §§ 17-6-2 and 3 and 17-8-1 (1975).

<sup>2</sup>*Ala. Code* § 17-13-3 (1975).

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an election poll shall not be changed within three (3) months before an election is to be held.<sup>3</sup>

At least 75 percent of the election officials that served in Mobile County's 2020 Alabama Primary Election held on March 3, 2020, were 65 years or older in age. According to information provided by the United States Centers for Disease Control & Prevention ("CDC"), these persons are considered to have a higher risk of contracting COVID-19. These persons have been urged by the CDC and Governor Kay Ivey to stay at home and avoid contact with other persons.

Many of these election officials have contacted my office and expressed concern about serving as an election official in the upcoming Alabama Primary Runoff Election scheduled for July 14, 2020. We have also received notice from some of the owners of the privately- owned facilities Mobile County customarily uses for election polls that their facilities will not be available for use in the upcoming Alabama Primary Runoff Election because of the COVID-19 pandemic. Additionally, this office has fielded numerous calls from citizens who are concerned about going to an election poll on July 14, 2020, as a result of the COVID-19 pandemic.

It is Mobile County's intention and plan to utilize the CDC's recommended guidelines for election polls in terms of personal protective equipment and social distancing of election officials and voters. We have represented this to our election officials and the general public. We are in the process of procuring the necessary supplies to accomplish such.

In mid March 2020, I verbally expressed concern to the Mobile County Commission about our ability to properly conduct the July 14, 2020 Alabama Primary Election in accordance with all applicable election laws (federal and state) and the CDC recommended guidelines. I formally expressed these concerns in writing to the Mobile County Commission on April 16, 2020. Members of Governor Ivey's staff were notified on April 16, 2020, by electronic mail of this concern and on March 17, 2020, members of your staff confirmed by electronic mail that they were aware of the concern that had been shared with Governor Ivey's office by a representative of the Court.

Mobile County conducted an assessment of the facilities it used in the March 3, 2020 Alabama Primary Election. This assessment reflects that 46 of Mobile County's 88 poll locations *cannot* accommodate the same number of *election officials* who worked at the *same facilities*<sup>4</sup> used in the Primary Election. Accordingly, these election polls could not accommodate any voters. Additionally, two (2) facilities utilized in the Primary Election are not available for the Primary Runoff Election. Of the remaining 40 poll locations, ten (10) poll sites have less than 400 square

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<sup>3</sup>*Ala. Code* § 17-6-4(d) (1975).

<sup>4</sup>At ten (10) of these locations there are adjacent larger rooms that we may be able to utilize for the Runoff Election that would accommodate the same number of election officials who worked at these polls in the Primary Election.

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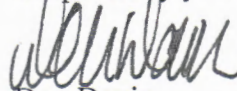
feet of space in excess of what is needed to accommodate the same number of election officials who worked at the same facility in the Primary Election. Additionally, several of the last category of poll locations have permanent fixtures and equipment that impede the ability to use the entire square footage of the facility. The assessment further reflected that in many of the election polls that can accommodate the same number of election officials who worked at these polls on March 3, 2020, these polls could only accommodate a handful of voters within the election poll at the same time if compliance with the CDC's social distancing guidelines is maintained.<sup>5</sup>

Contemporaneously herewith, I have formally notified Governor Kay Ivey, Alabama Attorney General Steve Marshall, the United States Department of Justice, and the United States Attorney for the Southern District of Alabama of the aforesaid problems, with copies to other elected officials, chairpersons of the two (2) state political parties, and the candidates who are on Mobile County's Primary Runoff ballots.

We are approximately 9 weeks out from the Alabama Primary Runoff Election. I am at a loss to determine how I will be able to discharge my legal responsibilities relating to the Runoff Election that is compliant with state and federal election law and also compliant with the CDC's recommended social distancing guidelines relating to the COVID-19 pandemic.

I respectfully request that you provide instruction as to how I should approach this upcoming election and fulfill my legal duties and responsibilities as Mobile County's chief election officer.

Respectfully yours,



Don Davis

Judge of Probate and Chief Election Officer

cc: The Honorable Kay Ivey  
The Honorable Steve Marshall  
Members of the Mobile County Commission  
Members of the Mobile County Legislative Delegation  
The Honorable Sam Cochran

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<sup>5</sup>For example: Precinct Number 66 (Creekwood Church of Christ) has 7,606 voters assigned to it. The room utilized at this poll for elections has 5,227 square feet of space, of which 4320 would be needed to accommodate assigned election officials per the CDC COVID-19 pandemic social distancing guidelines. If the guidelines are utilized and all of the same election officials are utilized, only six (6) voters could be inside the poll at one time to participate in the Runoff Election.

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The Honorable Jo Jo Schwarzauer  
The Honorable Eric S. Dreiband  
The Honorable Richard W. Moore  
Mr. Jeff Sessions  
Mr. Tommy Tuberville  
Mr. Bill Hightower  
Mr. James Averhart  
Ms. Kiani Al Gardner  
Mr. Fred Bell  
Ms. Tonya Smith Chesnut  
Mr. Ty Burden  
Ms. Sherry Dillihay-McDade  
Mrs. Terry Lathan  
Mr. Christopher J. England