

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

**RANDAL CRAGUN, CHRIS NELSON,  
HEATHER COLEMAN, and  
ROBERT CORKER,**

*Plaintiffs,*

vs.

**JOHN H. MERRILL, in his official capacity  
as Secretary of State of Alabama,**

*Defendant.*

**CIVIL ACTION NO.:**

**COMPLAINT**

**Introduction**

1. The Alabama Secretary of State excludes Alabama citizens from being able to vote if they are unable to swear a religious oath. The Secretary of State's official policy is to hinder the registration of voters who are unable to swear "so help me God." This policy violates the rights of the Plaintiffs and others under the First and Fourteenth Amendments to the United States Constitution.

2. Alabama is the only state in the United States that requires voters to register on a form that mandates that they swear "so help me God." In addition, states, including Alabama, routinely allow attorneys, jurors, witnesses, and many others who must take an

oath to make a secular affirmation instead when they are unable to swear “so help me God” as a matter of conscience.

3. The United States Supreme Court has held as a settled First Amendment principle that “neither a State nor the Federal Government can constitutionality force a person ‘to profess a belief or disbelief in any religion.’” *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961). In addition, the Court wrote, “[n]either [a state nor the Federal Government] can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.” *Id.*

4. The Supreme Court has also recognized that, “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). The Alabama Secretary of State is violating basic First Amendment freedoms by unconstitutionally compelling Alabama — and United States — citizens who want to register to vote to swear “so help me God” in violation of their conscience.

5. At least one federal court has previously resolved a case involving the State of Alabama’s requiring an individual to swear “so help me God.” *Nicholson v. Bd. of Comm’rs of Alabama State Bar Ass’n*, 338 F. Supp. 48, 58 (M.D. Ala. 1972) (“[W]e hold that it is a violation of the Constitution for the State of Alabama to compel plaintiff to swear an oath invoking the help of God as a prerequisite to entering upon the practice of law.”).

6. The Plaintiffs seek to ensure that the Secretary of State provides forms that allow individuals who are unable to swear “so help me God” to be able to register to vote.

### **Jurisdiction and Venue**

7. This action arises under the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983.

8. This Court has jurisdiction under Article III of the United States Constitution, 28 U.S.C. § 1331, and 28 U.S.C. § 1343(a)(3).

9. The Court is authorized to award declaratory relief under 28 U.S.C. §§ 2201 and 2202.

10. The Court further has the authority to award injunctive relief under 28 U.S.C. § 1343.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391 as a substantial part of the events giving rise to Plaintiffs’ claims arose in the district.

### **Parties**

12. Plaintiff Randal Cragun is a resident of Jefferson County, Alabama. Mr. Cragun seeks to register to vote and to vote in future elections in Alabama.

13. Plaintiff Chris Nelson is a resident of Shelby County, Alabama. Mr. Nelson seeks to remain a registered voter and to vote in future elections in Alabama.

14. Plaintiff Heather Coleman is a resident of Shelby County, Alabama. Ms. Coleman seeks to remain a registered voter and to vote in future elections in Alabama.

15. Plaintiff Robert Corker is a resident of Calhoun County, Alabama. Mr. Corker is a college student and plans to re-register as a voter in his present polling location. Mr. Corker seeks to vote in future elections and to help others register to vote in Alabama.

16. Defendant John H. Merrill is the Secretary of State of Alabama and is sued in his official capacity. The Secretary of State is the State's chief election officer. Ala. Code § 17-1-3(a).

### **Facts**

17. Voting in Alabama is a right guaranteed to citizens who meet constitutional and statutory requirements. See Ala. Code § 17-3-30; Ala. Const. Art. VIII, § 177.

18. The Plaintiffs meet the constitutional and statutory requirements to vote in Alabama, but their right to vote is impaired by the registration form that is required by the Secretary of State.

### ***Duties of the Secretary of State***

19. The Secretary of State is the chief elections official in Alabama and is charged with providing uniform guidance on election activities pursuant to Ala. Code § 17-1-3(a).

20. The Secretary of State is charged with promulgating rules for the receipt of applications for registration and the expedient administration of those applications pursuant to Ala. Code § 17-3-1.

21. The Secretary of State also is charged with providing each county board of registrars with the necessary forms to effectuate voting pursuant to Ala. Code § 17-3-57.

22. Pursuant to Alabama Code § 17-3-52, “the form and contents” of voter registration forms “shall be promulgated by rule by the Secretary of State of the State of Alabama.”

23. The Secretary of State periodically updates voter registration forms, including the State of Alabama Agency-Based Voter Registration Form and the State of Alabama Mail-In Voter Registration Form. These forms were last updated by the Secretary of State in 2019.

***Required Religious Oath with No Secular Alternative***

24. Since November of 2019, Mr. Cragun has sought to register to vote in Alabama and has been unable to do so because of the policies of the Secretary of State.

25. Mr. Cragun identifies as an atheist. As a matter of conscience, Mr. Cragun is unable to swear “so help me God.”

26. In November of 2019, Mr. Cragun accessed the State of Alabama Mail-In Voter Registration Form (“Mail-In Form”) from the Secretary of State’s website (sos.alabama.gov). Exhibit 1 is a true and correct copy of this form.

27. The Mail-In Form, as well as other registration forms, include a section titled “Voter Declaration – Read and Sign Under Penalty of Perjury.” The bottom of this section says, “If you falsely sign this statement, you can be convicted and imprisoned for up to five years.”

28. Voters submitting the voter registration form in Alabama must sign the Voter Declaration, which includes an oath that begins “I solemnly swear or affirm.” The oath concludes with “so help me God.”

29. The Secretary of State has failed to create, promulgate, distribute, or make available any voter registration forms that omit the language “so help me God.”

30. The Secretary of State continues to distribute voter registration forms that require voters to swear “so help me God” to Alabama citizens who reside in the Northern District of Alabama and the entire state. These forms include the Agency-Based Form, the Mail-In Form, and a Voter’s Reidentification/Update Form used for provisional voting. The Secretary of State has distributed these forms to counties in the Northern District of Alabama, including to Jefferson and Shelby Counties, as well as to every county in Alabama.

31. It is the official position of the Secretary of State that citizens are ineligible to vote without swearing an oath that concludes “so help me God.”

32. On November 24, 2019, Mr. Cragun contacted the Secretary of State’s office to ask about the process for registering to vote without swearing an oath that says “so help me God.” Exhibit 2 includes a true and correct copy of Mr. Cragun’s email.

33. On November 25, 2019, Mr. Clay Helms, Director of Elections for the Office of the Secretary of State, informed Mr. Cragun that there was no legal mechanism for him to register to vote. Exhibit 2 includes a true and correct copy of Mr. Helms’ email.

34. Mr. Helms stated to Mr. Cragun: “There is not a legal mechanism to register to vote in AL without signing the oath as it is stated. If you cross out a portion, the board of registrars in your county will reject the application and ask you to re-submit.”

35. Independently, the Freedom From Religion Foundation (“FFRF”) sent a letter regarding the religious oath on voter registration forms to the Secretary of State on Nov.

26, 2019. FFRF is a national nonprofit organization that works to protect the separation between state and church, and to educate the public on matters relating to nontheism.

Exhibit 3 is a true and correct copy of the FFRF letter.

36. The FFRF letter asserted that the religious oath requirement violated the First Amendment. The FFRF letter said in part:

Any requirement for religious oaths violates the First Amendment of the Constitution. *See Torcaso v. Watkins*, 367 U.S. 488 (1961). The Supreme Court held that neither a State nor the Federal government can force a person “to profess a belief or disbelief in any religion.” *Id.* (quoting *Everson v. Board of Education*, 330 U.S. 1, 15-16 (1947)). The prohibition on mandatory religious oaths is a well-settled issue. There must be a secular affirmation available for any state resident that does not wish to swear, “[S]o help me God.”

37. The FFRF letter further urged the Secretary of State to drop the religious oath altogether or to provide forms that allow a voter to avoid swearing to a deity when signing.

38. FFRF received a response letter dated Dec. 3, 2019, from the Secretary of State’s office. The letter was signed by Mr. Hugh Evans, III. Exhibit 4 is a true and correct copy of the Dec. 3, 2019, letter.

39. The Dec. 3, 2019, letter did not respond to the First Amendment claims made by FFRF. The Dec. 3, 2019, letter falsely stated that registration forms are “prescribed by statute” and that “any changes would require legislative action.”

40. The Secretary of State has the authority to create and amend voter registration forms. Pursuant to Alabama Code § 17-3-52, “the form and contents” of voter registration forms “shall be promulgated by rule by the Secretary of State of the State of Alabama.”

41. Following complaints from Mr. Cragun and FFRF, the Secretary of State has failed, indeed refused, to create a form that omits the “so help me God” language for citizens to use to register to vote.

42. The Secretary of State has willfully excluded nontheist citizens from registering to vote by failing to address their complaints about the required “so help me God” oath.

43. The Secretary of State has failed to provide any guidance to county registrars informing them of how voters who are unable to swear “so help me God” may register to vote.

44. The Secretary of State and the State of Alabama are coercing a statement of belief in a monotheistic deity by requiring nontheists to swear “so help me God” in order to register to vote.

45. Citizens who move their domicile to a new county are required to register to vote again pursuant to Ala. Code § 17-3-56.

46. Plaintiff Chris Nelson has been a registered voter for many years in Alabama. He identifies as an atheist and is opposed to being coerced into swearing “so help me God.” The Alabama Secretary of State’s failure to provide a way to register to vote without swearing “so help me God” placed Mr. Nelson in the position of acceding to the violation of one of his First Amendment rights in order to exercise another constitutional right.

47. Any future registration to vote signed by Mr. Nelson would require him to swear “so help me God.”

48. Plaintiff Heather Coleman registered to vote in Shelby County in 2016. Ms. Coleman identifies as an atheist and is opposed to being coerced into swearing “so help

me God.” The Alabama Secretary of State’s failure to provide a way to register to vote without swearing “so help me God” placed Ms. Coleman in the position of acceding to the violation of one of her First Amendment rights in order to exercise another constitutional right.

49. Any future registration to vote signed by Ms. Coleman would require her to swear “so help me God.”

50. Plaintiff Robert Corker moved from Baldwin County to Calhoun County in 2019. He has registered to vote in Calhoun County and he plans to re-register to vote in future elections at a new address in Calhoun County. Mr. Corker identifies as an atheist and is opposed to swearing “so help me God.” Mr. Corker would like to register to vote without swearing “so help me God,” but is prevented from doing so by the policies implemented by the Secretary of State.

51. Mr. Corker is interested in helping others register to vote. Because of that, Mr. Corker obtained copies of voter registration forms that include the “so help me God” oath.

52. Nonreligious citizens who are similarly situated to the Plaintiffs are negatively impacted by the Secretary of State’s failure to provide a way to register to vote without swearing “so help me God.”

53. Likewise, religious citizens who are unable to swear “so help me God” because of their religious beliefs are negatively impacted by the Secretary of State’s failure to allow them to register to vote.

54. The Secretary of State and the State of Alabama have no valid reason or interest in requiring all voters to take an oath that requires them to swear “so help me God.”

55. County registrars and the State of Alabama have adequate means of ensuring the truthfulness of voter information without requiring voters to violate their conscience by swearing “so help me God.” Indeed, the information provided by voters is objectively either correct or incorrect, regardless of any oath.

56. The Secretary of State has created numerous other forms related to elections and election activities that include an oath but omit the language “so help me God.”

57. Upon information and belief, 48 states in the United States do not require voters to swear “so help me God” in order to register to vote. The lone exception, North Dakota, does not require voters to register at all. Alabama is the only state that has voter registration forms that violate the rights of conscience of voters who are nontheists.

### **Claims**

#### ***First Claim for Relief:***

#### ***Violation of the Establishment Clause of the First Amendment to the United States Constitution***

58. The preceding factual allegations above are incorporated as if fully set forth herein.

59. The Establishment Clause of the First Amendment to the United States Constitution prohibits laws “respecting an establishment of religion.” This provision applies fully to state governments, including Alabama, through the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

60. Alabama’s policy, custom, and practice of requiring citizens to register to vote to swear “so help me God,” without an alternative option, violates the Establishment Clause for a number of reasons, including those stated below.

61. Alabama’s policy, custom, and practice has the purpose and effect of favoring, advancing, endorsing, and coercively supporting theistic beliefs and individuals, while disfavoring, disadvantaging, and discriminating against nontheistic beliefs and individuals, including the Plaintiffs.

62. In addition, Alabama’s policy, custom, and practice of requiring citizens to swear “so help me God” in order to register to vote violates the Establishment Clause because it coerces a statement of belief in a monotheistic god.

***Second Claim for Relief:  
Violation of the Free Exercise Clause of the First Amendment to the United States  
Constitution***

63. The preceding factual allegations above are incorporated as if fully set forth herein.

64. The Free Exercise Clause of the First Amendment to the United States Constitution provides that “Congress shall make no law . . . prohibiting the free exercise [of religion].” This provision applies fully to state governments, including Alabama, through the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

65. The Free Exercise Clause prohibits the government from conditioning participation in the electoral process on the basis of adopting or professing a religious belief.

66. The State's policy, custom, and practice of disallowing nontheists to register to vote violates the Free Exercise Clause by requiring nontheists, including the Plaintiffs, to adopt or profess religious beliefs to which they do not subscribe as a condition of participation in the electoral process.

***Third Claim for Relief:  
Violation of the Free Speech Clause of the First Amendment to the United States Constitution***

67. The preceding factual allegations above are incorporated as if fully set forth herein.

68. The Free Speech Clause of the First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech." This provision applies fully to state governments, including Alabama, through the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

69. The Free Speech Clause prohibits the government from conditioning participation in elections on the basis of a person's agreement with a particular religious statement.

70. The Free Speech Clause also prohibits the government from compelling individuals to express their agreement with certain religious viewpoints.

71. The State's policy, custom, and practice of requiring citizens to swear "so help me God" in order to vote, without a secular option, violates the Free Speech Clause because it (a) prohibits nontheists, including Mr. Cragun, from voting on the basis of their

inability to express a particular religious viewpoint, and/or (b) compels nontheists, including the Plaintiffs, to engage in a particular religious expression.

***Fourth Claim for Relief:  
Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution***

72. The preceding factual allegations above are incorporated as if fully set forth herein.

73. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

74. The Equal Protection Clause prohibits governmental bodies from treating citizens differently based on their religious beliefs.

75. Religion is a suspect classification that triggers strict scrutiny under the Equal Protection Clause. To meet such scrutiny, a governmental classification must be necessary to further a compelling governmental interest and must be narrowly tailored to that interest.

76. Nontheists are entitled to particularly heightened protection under the Equal Protection Clause because they are a discrete and insular minority, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness.

77. The State’s policy, custom, and practice of allowing theists but not nontheists to register to vote violates the Equal Protection Clause by treating nontheists, including the

Plaintiffs, differently based on religious belief and identity, without a compelling governmental interest served by narrowly tailored means.

**Requests for Relief**

78. The preceding factual allegations above are incorporated as if fully set forth herein.

79. By violating the Establishment, Free Exercise, Free Speech, and Equal Protection Clauses of the United States Constitution as described above, the Secretary of State has harmed the Plaintiffs, is continuing to harm them, and threatens future harm against them.

80. By violating the Establishment, Free Exercise, Free Speech, and Equal Protection Clauses as set forth above, the Secretary of State has, acting under color of statutes, regulations, policies, custom, or usage, deprived or threatened to deprive the Plaintiffs of rights secured by the First and Fourteenth Amendments to the United States Constitution, entitling them to a remedy under 42 U.S.C. § 1983.

81. In addition, or in the alternative, by virtue of the State's violations of the Establishment, Free Exercise, Free Speech, and Equal Protection Clauses, the Plaintiffs are entitled to a remedy directly under the United States Constitution.

82. The Plaintiffs accordingly request the relief specified below.

***Injunction***

83. The Plaintiffs have no adequate remedy at law.

84. By requiring the Plaintiffs to swear “so help me God” in order to register to vote, without a secular option, the Secretary of State has inflicted, and will continue to inflict, irreparable harm upon the Plaintiffs.

85. Accordingly, the Plaintiffs request a permanent injunction (a) prohibiting the Secretary of State from requiring voters who register to swear “so help me God,” and (b) ordering the Secretary of State to provide registration forms that permit the Plaintiffs to register to vote without swearing “so help me God.”

***Declaratory Judgment***

86. An actual controversy exists between the parties as to whether the Secretary of State has violated and continues to violate the United States Constitution by requiring voters to register on forms that mandate that they swear “so help me God.”

87. Accordingly, the Plaintiffs request a declaratory judgment that the Secretary of State has violated, and is continuing to violate, the United States Constitution by promulgating voter registration forms that require all registrants to swear “so help me God” without the option of a secular affirmation.

***Attorneys’ Fees and Costs***

88. The Plaintiffs request an order awarding them the costs of this action, including reasonable attorneys’ fees and expenses, under 42 U.S.C. § 1988.

***Other Relief***

89. The Plaintiffs request any other relief that the Court deems just and proper.

Respectfully Submitted,

Date: October 1, 2020

/SPG/

Steven P. Gregory  
ASB-0737-R73S

Gregory Law Firm, P.C.  
505 N. 20th Street, Suite 1215  
Birmingham, AL 35203  
(205) 208-0312  
[steve@gregorylawfirm.us](mailto:steve@gregorylawfirm.us)

Patrick C. Elliott\*  
Elizabeth Cavell\*  
Freedom From Religion Foundation, Inc.  
10 N. Henry St.  
Madison, WI 53703  
608-256-8900  
[patrick@ffrf.org](mailto:patrick@ffrf.org)  
[ecavell@ffrf.org](mailto:ecavell@ffrf.org)

\* Pro Hac Vice Application Forthcoming

Defendant to be served by certified mail as follows:

John H. Merrill  
Office of the Alabama Secretary of State  
600 Dexter Ave. S-105  
Montgomery, AL 36130