



Filed on behalf of: Claimant Deponent: Julian Robinson Affidavit No.: 1 Exhibits: None Sworn to: May , 2018 Filed on: May , 2018
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## **AFFIDAVIT OF JULIAN ROBINSON**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CLAIM NO.** 2018 HCV

<b>BETWEEN</b>	<b>JULIAN J. ROBINSON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL</b>	
	<b>OF JAMAICA</b>	<b>DEFENDANT</b>

I JULIAN JAY ROBINSON, with service address at 89 Old Hope Road, Kingston 6, in the parish of Saint Andrew, being duly sworn, make oath and say as follows:

- (1) I am a citizen of Jamaica and I am also ordinarily resident in Jamaica. I am a member of the House of Representatives representing the constituency of Saint Andrew South East, and a member and the General Secretary of the People's National Party, the political party that forms the Opposition in the Jamaican Parliament.
- (2) The Defendant, the Attorney General of Jamaica, is joined as the representative of the Crown pursuant to the Crown Proceedings Act.
- (3) I represent 21,081 electors in my constituency, and 83,990 registered members of the People's National Party, all citizens of Jamaica, and/or persons normally resident in Jamaica. As a citizen, I have standing in my own right; as a Member of Parliament, I have standing for my constituents; and, as the General Secretary and an officer of

the People's National Party, I have standing by way of the Constitution of the People's National Party.

- (4) On November 21, 2017, over my objections and the objections of the Opposition members, the Parliament enacted the National Identification and Registration Act, 2017 ("the Act"), and on December 8, 2017 his Excellency the Governor General gave his assent to the Act passing it into law.

### **Unconstitutionality of the Act**

- (5) As a citizen of and a person ordinarily resident in Jamaica, as well as the representative of a cross section of individuals (being either constituents or party members) numbering 21,081 and 83,990 respectively, I do verily believe that the Act is unconstitutional.
- (6) Certain of the Act's provisions, I verily believe, infringe my rights and the rights of those whom I represent.
- (7) The relevant constitutional provisions which I believe the Act infringes include sections:
- a. 13(3)(a) – the right to security of the person;
  - b. 13(3)(g) – the right to equality before the law;
  - c. 13(3)(j) – the right to privacy;
  - d. 13(3)(n) – the right to a passport;
  - e. 13(3)(q) – the right to protection of property rights; and
  - f. 13(3)(r) – the right to due process.
- (8) There are various sections in the Act which I verily believe contravene these constitutional rights and which I also verily believe will constitutionally harm me and those I represent. Those sections include:

- a. Section 4 – this section provides that the Act applies to all Jamaican citizens, regardless of residence, and to persons who are ordinarily resident in Jamaica. Given the requirement in section 20 for all “registrable individuals” to “enrol in the Database” and the requirement in section 41 for production of the resultant National Identification Number or National Identification Card as a precondition for delivery of goods and services from any public body, I verily believe my rights (as contained under section 13(3)(g) of the Constitution) and the same rights of those whom I represent will be violated. For example, a non-citizen and non-resident of Jamaica purchasing property in Jamaica will not be subject to the requirements of the Act, but a Jamaican resident will be. In essence, the Jamaican resident would be treated less favourably.
- b. Section 6 – the duty of the Authority under this section “to develop policies, procedures and protocols” for, inter alia, “sharing” of “information in the Database” is a violation of my right, and that of the persons whom I represent, to privacy (protected by section 13(3)(j) of the Constitution). This is because “sharing” is synonymous with “disclosure”, and “policies, procedures and protocols” are to be determined by the Authority without any requirement for prior or subsequent judicial authorization.

This is an instance in which, as provided for in section 43(1)(e), “the Act authorizes disclosure.” The effect is that my personal data and those of the persons whom I represent may be disclosed in circumstances and to persons that the Authority alone may determine, without any of us having an opportunity to enlist judicial intervention so as to prevent the disclosure from taking place. As the right to privacy is a civil right and the Authority’s decision to share the personal data could be adverse

to our interests, this lack of judicial oversight also violates my right, and that of the persons whom I represent, to a fair hearing in accordance with section 16(2) of the Constitution.

- c. Section 15 – the requirement under the Act to collect and store our personal data (or “information”, the term euphemistically used by the Act) is a violation of our privacy rights protected by sections 13(3)(j), 13(3)(m) and 13(3)(n). This is so particularly because enjoyment of our constitutional rights to privacy, to a passport, and to vote, will be contingent on our compliance with the requirement to enrol in “the Database”. Further, this requirement violates our rights under sections 13(3)(a) and 13(3)(q), vis-à-vis our security of person and the protection of our property rights. Biometric data are the subject of informational property rights; rights the privacy of which is guaranteed protection as “other property” under section 13(3)(j) of the Constitution.
- d. Section 20(1) – the requirement for “registrable individuals” to enrol in “the Database” is a violation of the right to privacy under section 13(3)(j), and the right to security of the person under section 13(3)(a), of the Constitution. These violations affect me and the persons whom I represent. Both those rights include the right to bodily integrity, which entitles a person to be the final arbiter of what is done or not done to his or her body. The right to bodily integrity also involves the right to freedom from physical coercion or other interference. This last-mentioned right, while not absolute, may only be justifiably infringed where a person is charged with (and especially once the person is convicted of) a criminal offence. The Act’s coercive provisions on enrolment in “the Database” are not predicated on a criminal charge or conviction.

- e. Section 39 – the power of the Authority, under subsection (2), to allow a “requesting entity” to “access” the Database violates my right to privacy under section 13(3)(j) of the Constitution, and the same right of those whom I represent. Section 39(2) itself acknowledges that in the course of this “access” a “requesting entity” may obtain information that it could use for purposes other than “verification purposes”. This “access” therefore amounts to constructive disclosure of our personal data, which is yet another instance of the potential for personal data to be disclosed without prior judicial oversight. This “access” poses a risk to the integrity of our personal data in a way that is capable of compromising the protection of our private and family lives (to which we have a right, as set out in section 13(3)(j)(ii) of the Constitution).
  
- f. Section 41 – the requirement of this section for the production of a National Identification Number or a National Identification Card as a precondition for the provision of goods and services by a public body, and the way the section is likely to be implemented, constitute a violation of the rights contained under sections 13(3)(m), 13(3)(n) and 13(3)(p) of the Constitution.
  
- g. Section 43 – the Act’s provisions at 43(1)(e) (i.e. that the Act may authorise disclosure) and at section 43(3) (i.e. that the Authority may disseminate personal data variously and without the data subjects’ consent) constitute an infringement of our right, to privacy as protected by section 13(3)(j) of the Constitution. The provisions of section 43 of the Act (of which subsection (1)(e) should be read in conjunction with section 6(1)(e)) appear open-ended, particularly as the Regulations that are to underpin the Act have not yet been made or even produced in draft form. As

such, I verily believe there is a real and present possibility that our constitutional rights to privacy will further be affected.

h. Section 60 – this section, insofar as it relates to the Sixth Schedule to the Act (and, in particular, the Passport Act), is contrary to the Constitution’s due process clause (i.e. section 16(2)). It makes enjoyment of the constitutional right to be granted a passport contingent on our submitting to the unconstitutional violation of our right to bodily integrity, which submission is required by section 20 of the Act. As failure to enrol in “the Database” will inevitably and automatically preclude the issuing of a passport to the unenrolled person, the Act’s provisions will in this way negatively affect me and the persons whom I represent by violating our right (under section 13(3)(n) of the Constitution) not to be denied a passport except by due process of law.

- (9) I also verily believe that the Act’s various provisions, as further set out in paragraph 8 above, contravene or are likely to contravene the constitutional rights guaranteed under Chapter III of the Constitution.
- (10) I am advised by my attorneys and verily believe that the above-mentioned contraventions of the Constitution cannot be adequately redressed by any means other than this action.
- (11) It is my belief that these contraventions are not “demonstrably justified in a free and democratic society” (the standard to which, by section 13(2) of the Constitution, any right/freedom-infringing law must attain in order to be saved from unconstitutionality). The Act’s purpose, as set out in its section 16, is purely for identification purposes. I contend that any perceived deficiency in existing identification mechanisms is not attributable to the current protection of the several fundamental rights that the Act violates. Accordingly, there is no basis on which to contend that such violations are

required to remove some sort of “prejudice [to] the rights and freedoms of others” (the eventuality which Chapter III of the Constitution limits the guarantee of rights and freedoms in order to prevent from materializing).

(12) In the circumstances I humbly ask this Honourable Court to grant the declarations and orders sought in the fixed date claim form.

(13) The facts and matters deposed to in this affidavit, are within my own personal knowledge, true and correct, except where otherwise stated, or evidently based on other information or belief, in which case, I verily believe the same to be true and correct.

SWORN TO by the said )

**JULIAN JAY ROBINSON** )

At )

On the day of May, 2018 )

Before me: )

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**JULIAN JAY ROBINSON**

**JUSTICE OF THE PEACE**

**FOR THE PARISH OF:**

Filed by PAULWELL FRAZER-BINNS & CO., of 25 Dominica Drive, Kingston 5, with telephone number is (876) 960-8207, Attorney-at-Law for and on behalf of the CLAIMANT