

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

James L. “Jimmy” Cooper, III,
et al.,

Plaintiffs,

vs.

Brad Raffensperger, in his
official capacity as Secretary of
State of the State of Georgia,

Defendant.

Case No. 1:20-cv-01312-ELR

**Plaintiffs’ Reply in
Support of their Motion
for a Preliminary
Injunction**

On May 28, 2020—one day before the Secretary of State filed his opposition to this motion—Georgia’s Governor Brian Kemp extended the public health emergency due to COVID-19 through Sunday, July 12. (Ex. 25: Exec. Order 05.28.20.01 at 2.)¹ Gatherings of more than 25 people are prohibited. (Ex. 26: Exec. Order 05.28.20.02 at 2.) Social distancing is required by law, and face masks are “strongly encouraged.” (*Id.*) The

¹ The Secretary’s brief erroneously asserts that the public health emergency will expire on June 12. (Def’s Resp. Opp. Pls.’ Mot. Prelim. Inj., ECF 17, at 8 (hereinafter “Def’s Br.”).)

shelter-in-place and no-visitors requirements for high-risk individuals and those over 65 remain in place. (*Id.* at 5-7.)

The Secretary, however, mentions none of this in his brief. Instead, he accuses the plaintiffs of using the pandemic as a pretext for challenging Georgia's ballot-access restrictions, and he dismisses the plaintiffs' concerns about the virus as a lack of diligence. (Def's Br. at 26.) His response puts partisan politics above the public health.

The Secretary's response also puts politics above the Constitution. The First Amendment requires the Secretary to ensure that the plaintiffs have a reasonable opportunity to qualify for the ballot without endangering their own lives and the lives of others. The Secretary's arguments to the contrary rest on several misstatements of fact and have no legal merit.

I. The Secretary of State's response relies on allegations of fact that are not true.

The Secretary's response brief does not dispute any of the facts laid out in the plaintiffs' motion. He does not dispute, for example, that it has been and remains unlawful for plaintiff Martin Cowen to petition for signatures due to Governor Kemp's shelter-in-place orders. He does

not dispute that it has been and remains unlawful for many potential signers to open their doors to petitioners because of those same orders. He does not dispute that the form needed by plaintiff Georgia Green Party was not available until March 24, well after Governor Kemp declared a public health emergency. He does not dispute that COVID-19 is likely to have an impact on signature-gathering even after the public health emergency subsides. And so on.

The Secretary's brief does, however, make several new allegations of fact that are not accurate. Most importantly, the brief alleges that the Secretary's extension of the qualifying deadline by 31 days extended the petition period from 180 to 211 days. (Def's Br. at 2, 9, 22.) It did not. The Secretary's only support for that proposition is paragraph 12 of Elections Director Chris Harvey's declaration (ECF 17-1), but that paragraph does not say anything about the petition period. Harvey's letter to plaintiff Cowen informing him of the extended deadline (ECF 11-13) also says nothing about the petition period. The 180-day petition period is a statutory requirement, *see* O.C.G.A. § 21-2-170(e), and the Secretary's limited authority under O.C.G.A. § 21-2-50.1 to extend the qualifying period for certain offices does not give him authority to extend

the statutory petition window. (*See also* Answer ¶33, ECF 14.) The Secretary's order extending the qualifying deadline thus had the effect of invalidating signatures gathered during the first 31 days of the petitioning period, and that is why the complaint asks this Court to extend the petitioning period as part of the relief requested. (Compl. at 19, ECF 1.)

Second, the Secretary's brief alleges that most other states have more burdensome petitioning rules which "often restrict voters from signing more than one petition." (Def's Br. at 6.) The Secretary cites no support for this allegation, and it is simply not true. The vast majority of states do not restrict voters from signing more than one petition, and only 12 states do. (Ex. 27: Winger decl. ¶10.) And, while it is not entirely clear whether the Secretary has other rules in mind when he says "most states' more burdensome rules" (Def's Br. at 6), there are only two states other than the 12 states that restrict voters from signing more than one petition that have petitioning rules that are even arguably more burdensome than Georgia's. (Ex. 27: Winger decl. ¶11.) Fourteen states with petitioning rules that are arguably more burdensome than Georgia's does not equal "most states."

Third, the Secretary’s brief alleges that Georgia has “one of the longest signature gathering periods (if not the longest) in the nation.” (Def’s Br. at 21.) Again, the Secretary cites no support for the allegation, and it is simply not true. Most states give candidates an unlimited amount of time to gather signatures. (Ex. 27: Winger decl. ¶15.) A few states have longer petition periods, and fewer than 10 states have shorter petition periods. (*Id.*) But among those states with shorter petition periods, no state requires a candidate to gather nearly as many signatures as Georgia does. (*Id.*)

Why are these factual inaccuracies important? Because they are the main facts the Secretary relies on to support his argument that the burdens imposed by Georgia’s ballot-access scheme are not severe and therefore do not warrant strict scrutiny. And they are all wrong.

II. The Secretary of State’s reliance on the district court’s order in *Cowen v. Raffensperger* is misplaced.

The Secretary first argues that previous cases which have upheld Georgia’s petition requirements, including *Jenness v. Fortson*, 403 U.S. 431 (1971); *McCrary v. Poythress*, 638 F.2d 1308 (5th Cir. 1981); *Cartwright v. Barnes*, 304 F.3d 1138 (11th Cir. 2002); and *Coffield v.*

Handel, 599 F.3d 1276 (11th Cir. 2010), mean that Georgia’s petition requirements are necessarily constitutional now. (Def’s Br. at 12-14.)

The argument relies on the district court’s ruling in *Cowen v.*

Raffensperger, No. 1:17-cv-04660-LMM (N.D. Ga. Sept. 23, 2019) (ECF 11-18), which held that those cases were binding and controlled the outcome of the case challenging Georgia’s petition requirements for political-body candidates for U.S. Representative. But the Secretary’s reliance on those cases is misplaced for at least two reasons.

First, none of those cases took place in the context of a global pandemic caused by a highly communicable infectious disease. The fact of COVID-19 constitutes a material difference between this case and all of those, and it means that those cases are not binding in this context. *See United States v. Johnson*, 921 F.3d 991, 1003 (11th Cir. 2019) (en banc) (“As binding authority, a judicial decision is inherently limited to the facts of the case then before the court and the questions presented to the court in the light of those facts.”) (cleaned up).

Second, the Eleventh Circuit has reversed the *Cowen* decision in a unanimous, published opinion issued just seven workdays after oral argument. *See Cowen v. Ga. Sec’y of State*, ___ F.3d ___, 2020 WL

2896354 (11th Cir. June 3, 2020). The opinion makes clear that those cases did not control the outcome of that case and that the district court committed reversible error when it determined that they did. *Id.* at *4. The opinion also holds that district courts facing ballot-access challenges like this one must apply the multi-factorial balancing test set out in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), based on the full record. *Id.* at *5.

So the Secretary's search for a shortcut around the *Anderson* test based on *Cowen* and the earlier cases must fail.

III. The Secretary of State's reliance on the district court's order in *Coalition for Good Governance* is also misplaced.

The Secretary next argues, based on the district court's recent order in *Coalition for Good Governance v. Raffensperger*, No. 1:20-cv-01677-TCB (N.D. Ga. May 14, 2020) (ECF 17-2), that the plaintiffs in this case have not identified any state action necessary to sustain a claim under 42 U.S.C. § 1983. (Def's Br. at 16-17.) But this argument is easily dismissed.

The plaintiffs' complaint alleges that "Georgia's ballot-access restrictions unconstitutionally burden their rights under the First and

Fourteenth Amendments.” (Compl. ¶2, ECF 1.) The plaintiffs specifically identify the signature requirements of O.C.G.A. § 21-2-170(b) and the petition period set forth in O.C.G.A. § 21-2-170(d)(3) as the laws they seek to enjoin. (*Id.* at 19.) They allege that the Secretary of State enforces those laws and that he does so under the color of state law. (*Id.* ¶10.)² Section 1983 requires nothing more.

In addition, the *Coalition for Good Governance* opinion on which the Secretary relies does not hold that the plaintiffs there failed to allege state action, as the Secretary suggests. The order holds that the plaintiffs’ complaint presented a nonjusticiable political question, and the footnote quoted in the Secretary’s brief adds justification for that conclusion. But there is no serious argument here that ballot-access challenges like this one present non-justiciable political questions. That issue was addressed and resolved by the Supreme Court in *Williams v. Rhodes*, 393 U.S. 23, 28 (1968).

² See O.C.G.A. §§ 21-2-132 (d) & (e) (political body candidates for federal offices must file nomination petitions with the Secretary of State); O.C.G.A. §§ 21-2-171 (the Secretary of State is responsible for validating nomination petitions filed with his office). The Secretary *denies* the allegation that he enforces Georgia’s ballot-access laws (Answer ¶10, ECF 14), but that denial is at odds with his admission of an identical paragraph in the *Cowen* complaint. The denial here is probably a mistake by the Secretary’s attorney, but it would otherwise plainly violate Rule 11.

So the Secretary's search for a shortcut around the *Anderson* test based on *Coalition for Good Governance* must also fail.

IV. The Secretary of State's analysis of the burdens is lacking.

Turning to the *Anderson* test, the Secretary first argues that the burdens imposed by Georgia's ballot-access requirements under current circumstances are not severe and therefore do not warrant strict scrutiny. (Def's Br. at 17-22.) His analysis of the burdens relies primarily on *Jenness*, which is discussed in Part II above, and on other cases that have upheld petition requirements in other contexts. He also relies on assertions of fact about Georgia's ballot-access laws which, as discussed in Part I above, simply are not true. Although he concedes that the signature requirements as applied in a pandemic "may be more burdensome" than usual (Def's Br. at 22), his contention that they are nonetheless not severe does not square with the record.

The Secretary's reliance on *Jenness* and other cases to measure the burdens here is at odds with the Eleventh Circuit's recent decision in *Cowen*, which explained that "the *Anderson* test emphasizes the relevance of context and specific circumstances to each challenge to ballot access requirements." 2020 WL 2896354 at *6, "In other words, a

determination that a 1 percent petition requirement by one state's election law in one context is constitutional, *vel non*, does not guarantee the same determination of a similar law in a different context.” *Id.* at *3. Thus, the Secretary's suggestion that the burdens here are not severe simply because other courts, in other contexts, have upheld five-percent requirements turns that requirement into the kind of “litmus-paper” test that both the Supreme Court and the Eleventh Circuit have rejected.

The Secretary also points to a number of factors which, he contends, cast doubt on the severity of the burdens here. For example, he notes that two months of the original petitioning window passed before Governor Kemp took any action related to COVID-19. (Def's Br. at 22.) That much is true, but one month of the 180-day window was extinguished when the Secretary extended the deadline. Neither plaintiff Cowen nor plaintiff Cooper won his nomination until after the petition window had opened, and the form necessary for the Green Party to petition was unavailable until March 24.³ Candidates also should not be penalized for failing to foresee a global pandemic or for reasonably

³ See Ex. 21: Cooper decl. ¶5, ECF 11-21; Ex.22: Cowen decl. ¶7, ECF 11-22; Ex. 23: Esco decl. ¶7, ECF 11-23. Even after he won his party's nomination in late February, Cooper focused his early campaign on raising the money necessary to pay the qualifying fee in March. Ex. 21: Cooper decl. ¶7, ECF 11-21.

planning to focus their petition drives on later points in the petitioning window.⁴ See, e.g., *Garbett v. Herbert*, Civ. No. 2:20-cv-245-RJS, 2020 WL 2064101 at *24 n. 101 (D. Utah May 1, 2020); *Esshaki v. Whitmer*, Civ. No. 2:20-cv-10831, 2020 WL 1910154 at *4 (E.D. Mich. April 20, 2020), *aff'd in part and reversed in part*, No. 20-136, 2020 WL 2185553 at *1 (6th Cir. May 5, 2020); *Jones v. McGuffage*, 921 F. Supp. 2d 888, 897 (N.D. Ill. 2013).

The Secretary also points to the fact that the Governor lifted the shelter-in-place order for some people in May. (Def's Br. at 22.) Again, that much is true, but it's also true that plaintiff Cowen and more than a million other Georgians remain subject to a shelter-in-place and no-visitors order, thus substantially reducing the pool of potential petition circulators and signers.⁵ Social-distancing is still the law. Gatherings of any substantial size, including public events like festivals and fairs where petitioning traditionally takes places, remain prohibited.

⁴ See Ex. 21: Cooper decl. ¶11, ECF 11-21; Ex. 22: Cowen decl. ¶12, ECF 11-22; Ex. 23: Esco decl. ¶7, ECF 11-23.

⁵ Mark Niese, *Rise of Young and Diverse Georgia Voters May Influence 2020 Elections*, Atlanta Journal-Constitution, Feb. 11, 2020, available at <https://www.ajc.com/news/state--regional-govt--politics/rise-young-and-diverse-georgia-voters-may-influence-2020-elections/eyscOYUMRnDZgG2xKYAmNM/> (last visited June 11, 2020) (showing that voters over 65 represent 19.3 percent of Georgia's 7.2 million registered voters).

Petitioning—not to mention life, in general—has yet to return to normal notwithstanding the Governor’s order. The burdens on the plaintiffs’ associational rights are not simply due to the shelter-in-place order, as the Secretary claims, but they also result from the extra-difficulty of petitioning once the pandemic subsides. And we aren’t even there yet.

The Secretary also asserts that plaintiff Cowen can still collect signatures at the polls during the primary election as he previously intended, even though the Secretary postponed the primary from its originally-scheduled date of March 24 to June 9. (Def’s Br. at 22.) But no, he can’t. Cowen is above the age of 65, and it would be unlawful under Governor Kemp’s orders for him to do so. This “fact” therefore does not cast doubt on the severity of the burden in any way. But even if Cowen were not subject to the shelter-in-place order, collecting signatures at the polls during the primary and runoff elections in 2020 is likely to be much less effective because of on-going shelter-in-place and social-distancing requirements, long lines to vote (during which a petitioner may not solicit signatures, *see* O.C.G.A. § 21-2-414(a)(3)), and significantly greater use of voting by mail.

Finally, the Secretary asserts that Georgia's 180-day petitioning window is "long enough" to allow candidates to meet the requirements even if days or weeks are lost to the pandemic. (Def's Br. at 22.) This assertion, however, is supported by no evidence, and it is at odds with the plaintiffs' evidence that no third-party candidate for U.S. Representative or President has ever satisfied current signature requirements even with a 180-day petition window. It would thus appear that the petition window is not nearly "long enough."

The Secretary acknowledges that every court to have considered candidate-petitioning requirements during the pandemic has found the burdens to be severe. (Def's Br. at 19-21.) He tries to distinguish those cases, however, on the ground that the petition deadlines fell "during or shortly after" shelter-in-place orders were in effect. (*Id.* at 20.) But this distinction fails for at least two reasons. First, a large number of voters in Georgia, including plaintiff Cowen, remain under a shelter-in-place order of uncertain duration. This case is thus no different from the others on that point. Second, none of the cases cited by the Secretary actually relied on the petition deadlines as the basis for finding a severe burden. Those cases that applied the *Anderson* test found a severe

burden because gathering signatures during a pandemic is exceedingly difficult. And so it is here.

The burdens of Georgia's signature requirements would be heavy even in the best of times. No third-party candidate has *ever* satisfied them. But we are in the midst of a global pandemic, and the "additional burdens" that the Secretary acknowledges warrant strict scrutiny under these circumstances. (Def's Br. at 23.)

V. The justifications offered by the Secretary of State do not withstand scrutiny.

The second and third steps in the *Anderson* test require the Court to "identify the interests advanced by the State as justifications for the burdens" and then to "evaluate the legitimacy and strength of each asserted state interest and determine the extent to which those interests necessitate the burdening of the plaintiffs' rights." *Bergland v. Harris*, 767 F.2d 1551, 1553-54 (11th Cir. 1985). Here, the Secretary advances only two such interests: (1) the State's interest in not burdening the general-election ballot with frivolous candidacies; and (2) the State's generalized interest in the orderly administration of elections. (Def's Br. at 23-24.)

Neither of the asserted interests is compelling. The Supreme Court described the former as merely “important.” *Jenness*, 403 U.S. at 442; *accord Lubin*, 415 U.S. at 715-18. The latter is not even that strong. Neither one, therefore, is strong enough to justify a severe burden.

The Secretary also hasn’t shown that enforcing the current petition requirements in a time of pandemic is remotely necessary to satisfy those interests. Indeed, he has admitted just the opposite. (Answer ¶¶ 55-56, 62, ECF 14.) So few independent and third-party candidates have qualified for the ballot (other than the petition requirements) by filing a notice of candidacy and paying the qualifying fee that there is no chance of an overcrowded ballot for any office. There is also no chance that the total number of such candidates is likely to cause any kind of disorder in the administration of elections. The Secretary has the burden of proving otherwise, and there is nothing in the record to support such a finding.

VI. The harm to the plaintiffs is neither speculative nor the plaintiffs’ own fault.

The Secretary argues that the plaintiffs have not shown a substantial likelihood of irreparable harm because “it remains entirely

speculative that the Plaintiffs will not be able to meet the petition requirements with the extended deadline of August 14.” (Def’s Br. at 25.) Not so. The record is full of undisputed and uncontroverted evidence that the plaintiffs are not likely to meet the current petition requirements and are therefore almost certain to lose their opportunity to participate in the 2020 general election. For example, plaintiff Cooper has explained how the pandemic completely derailed his signature-gathering strategy and that, based on his experience with petitioning in the past, the virus makes it “impossible for [him] to gather the required number of signatures to appear on the general-election ballot.” (ECF 11-21 ¶17.) This testimony is not mere speculation, and the Secretary simply ignores this and other evidence in the record.

The Secretary further argues that any difficulty in satisfying the petition requirements is not due to the pandemic but rather due to the plaintiffs’ own lack of diligence. (Def’s Br. at 26.) But, as already discussed in Part IV above, neither plaintiff Cowen nor plaintiff Cooper won his nomination until after the petition window had opened, and the form necessary for the Green Party to petition was unavailable—through no fault of the party—until March 24. And candidates should

not be penalized for failing to foresee a global pandemic or for reasonably planning to focus their petition drives on later points in the petition window. To conclude otherwise would impose an unprecedented and unreasonably high standard on third-party candidates.

VII. The balance of equities and the public interest clearly favor the plaintiffs.

The Secretary identifies no administrative or financial burdens associated with the requested injunction. (Def's Br. at 26-27.) Instead, he asserts generalized state interests in avoiding voter confusion and maintaining law and order. But he fails to explain how the requested injunction would undermine those interests.

More importantly, perhaps, the Secretary confuses the *State's* interest with the *public* interest, and it is hard to see any downside for the public that could result from the requested injunction. There is only upside: greater choice in those few elections where independent or third-party candidates have timely filed a notice of candidacy and paid the qualifying fee but where the coronavirus pandemic has made it impossible for them to satisfy the petition requirement.

VIII. The limited injunction requested by the plaintiffs is the most appropriate remedy.

This appears to be the rare case where a government defendant wants a more expansive remedy—re-writing the rules of the State’s election—than the plaintiffs do. The Secretary asks the Court to reduce the signature requirement by only 30 percent. (Def’s Br. at 28-29.) But the Court should decline the Secretary’s invitation to do so for at least two reasons.

First, as explained in the plaintiffs’ opening brief, the court’s authority to re-write the state’s election laws—at least without first giving the General Assembly an opportunity to do so—is questionable here at best. (ECF 11 at 33-34.) This is particularly true where, as here, it is possible for the plaintiffs to obtain complete relief without a mandatory injunction. Only a prohibitory injunction is necessary because of the unique circumstances of this case: the plaintiffs have met, or will have met, all of the qualification requirements *except* the petition.

Second, the math by which the Secretary arrives at his 30 percent figure simply does not compute. He asserts that a 30 percent reduction “would account for the approximately 60 days under which the State was under a declaration of a public health emergency” due to COVID-19.

(Def’s Br. at 28.) But the Governor has extended the public health emergency to July 12 (Ex. 25: Exec. Order 05.28.20.01 at 2), which will represent a total duration of 120 days from March 14 unless, *as is entirely possible*, the emergency is further extended at that point. The Secretary’s calculation also ignores the fact that the entire United States has been under a public health emergency since January 31. It penalizes the plaintiffs for failing to foresee the pandemic and for planning to focus on gathering signatures at later points in the petition window. And it relies on the dubious assumption that the days after the public health emergency has ended will be 100 percent back-to-normal. The evidence in this case and common sense suggest otherwise.⁶

The Secretary also argues that anything more than a 30 percent discount on the signature requirement would be unfair to Democratic and Republican candidates “who have faced the same burdens associated with campaigning during the current public health emergency.” (Def’s Br. at 28.) The Secretary has failed, however, to offer any evidence of those burdens or even to describe those burdens with any detail. And it

⁶ See, e.g., Domenico Montanaro, *Poll: Two Thirds Expect Return to Normal Will Take 6 Months or More*, National Public Radio, May 20, 2020, available at <https://www.npr.org/2020/05/20/859483975/poll-two-thirds-expect-return-to-normal-will-take-6-months-or-more> (last visited June 10, 2020).

is hard to see how Democratic and Republican candidates have suffered the same burdens when they have been assured of ballot access without having to collect a single signature. They need only to file a notice of candidacy and pay the qualifying fee. Any claim that Democrats and Republicans would be at a disadvantage in Georgia compared to independent and third-party candidates rings hollow.

Finally, the Secretary argues that a 30 percent reduction is in line with remedies ordered in other cases. (Def's Br. at 29.) His argument, however, overlooks key distinctions between those cases and this one, and it simply ignores the case in which the court ordered a 90 percent reduction. For example, in the Virginia case, the court reduced a 10,000-signature requirement for a Republican Senate candidate to 3,500 signatures. But the candidate had already collected more than 3,600 signatures before the pandemic struck, so the order meant that he would be placed on the ballot without collecting any more signatures. (Ex. 28: Compl. ¶31, *Faulkner v. Virginia Dep't of Elections*, No.: CL 20-1456 (Va. Cir. Mar. 23, 2020).) So it was also in the Colorado and Utah cases. The court-ordered discount meant that the plaintiffs would not have to collect any post-pandemic signatures. *See Garbett v. Herbert*, ____ F.

Supp. 3d ___, 2020 WL 2064101 at *4 (D. Utah Apr. 29, 2020); *Ferrigno Warren v. Griswold*, No. 20CV31077, slip op. at 1 (Colo. Dist. Ct. Apr. 21, 2020).⁷ All three cases dealt with March or April deadlines to appear on a primary ballot, so it made sense that the plaintiffs had already collected a great many of them before the pandemic shut things down.

In the Massachusetts case, the court ordered a 50% reduction. This meant a reduction from 2,000 signatures to 1,000 signatures for major-party candidates for U.S. Representative to appear on a September primary ballot. *Goldstein v. Sec’y of the Commonwealth*, 142 N.E.3d 560, 565 (Mass. 2020). But the Court also extended the deadline to June 2, giving the candidates more than a month to collect those signatures. *Id.* at 572. And, most importantly, the court ordered state election officials to accept a broad range of electronic signatures, allowing candidates to collect them online and by email. *Id.* at 574-75. That makes it a very different remedy than either the plaintiffs or the Secretary are proposing here.

⁷ The Colorado decision upon which the Secretary relies was also reversed on state-law grounds not applicable here by the Colorado Supreme Court on May 1. *See Griswold v. Ferrigno Warren*, 462 P.3d 1081 (Co. 2020).

Surprisingly, the Secretary does not even mention the case that is most similar to this one. In the Illinois case, the district court ordered a 90 percent discount in signatures for independent and third-party candidates to appear on the general-election ballot. *Libertarian Party of Ill. v. Pritzker*, ___ F. Supp. 3d. ___, 2020 WL 1951687 at *4, *notice of appeal docketed sub nom Libertarian Party of Ill. v. Cadigan*, No. 20-1961 (7th Cir. June 8, 2020). For a candidate for U.S. Representative, this meant a reduction from approximately 1,500 signatures to 150 signatures. The court also extended the deadline to August 7, giving candidates more than three months to collect them. And the court ordered election officials to accept electronic signatures. *Id.* If the court has an interest in re-writing the state's election rules without first giving the General Assembly an opportunity to do so, the plaintiffs submit that the Illinois case provides the best guide to an appropriate remedy here.

Respectfully submitted this 11th day of June, 2020.

/s/ Bryan L. Sells

Attorney Bar No. 635562

Attorney for the Plaintiffs

The Law Office of Bryan L. Sells, LLC

PO Box 5493

Atlanta, Georgia 31107-0493

Telephone: (404) 480-4212

Email: bryan@bryansellslaw.com

CERTIFICATE OF COMPLIANCE

I hereby certify that the forgoing PLAINTIFFS' REPLY IN
SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION
was prepared in 13-point Century Schoolbook in compliance with Local
Rules 5.1(C) and 7.1(D).

/s/ Bryan L. Sells

Attorney Bar No. 635562
Attorney for the Plaintiffs
The Law Office of Bryan L. Sells, LLC
PO Box 5493
Atlanta, Georgia 31107-0493
Telephone: (404) 480-4212
Email: bryan@bryansellslaw.com

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2020, I electronically filed the foregoing PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Charlene McGowan: cmcgowan@law.ga.gov

/s/ Bryan L. Sells

Attorney Bar No. 635562

Attorney for the Plaintiffs

The Law Office of Bryan L. Sells, LLC

PO Box 5493

Atlanta, Georgia 31107-0493

Telephone: (404) 480-4212

Email: bryan@bryansellslaw.com



THE STATE OF GEORGIA

EXECUTIVE ORDER

BY THE GOVERNOR:

RENEWAL OF PUBLIC HEALTH STATE OF EMERGENCY

- WHEREAS:** On March 14, 2020, due to the impact of COVID-19 on the State of Georgia, I issued Executive Order No. 03.14.20.01, declaring a Public Health State of Emergency in Georgia; and
- WHEREAS:** The Georgia General Assembly concurred with Executive Order 03.14.20.01 by joint resolution on March 16, 2020; and
- WHEREAS:** On April 8, 2020, I renewed the Public Health State of Emergency until May 13, 2020 by issuing Executive Order 04.08.20.02; and
- WHEREAS:** On April 30, 2020, I renewed the Public Health State of Emergency until June 12, 2020 by issuing Executive Order 04.30.20.01; and
- WHEREAS:** Code Section 38-3-51 vests the Governor with the power to renew any State of Emergency for a period not to exceed thirty (30) days; and
- WHEREAS:** There exists a continued need for protecting vulnerable populations, providing comprehensive testing, permitting economic flexibility with reduced regulations, providing increased hospital capacity, and allowing the state expanded flexibility for procurement; and
- WHEREAS:** In consultation with the Commissioner of Public Health, the Director of the Georgia Emergency Management and Homeland Security Agency, the Adjutant General of the Georgia National Guard, and other state health and emergency preparedness officials, I have determined the public health emergency created by the spread of COVID-19 persists in the State, and that it is necessary and appropriate to renew the Public Health State of Emergency for thirty (30) days.

NOW, THEREFORE, PURSUANT TO CODE SECTION 38-3-51, AND THE AUTHORITY VESTED IN ME AS GOVERNOR OF THE STATE OF GEORGIA, IT IS HEREBY

ORDERED: That the Public Health State of Emergency declared by Executive Order 03.14.20.01 and renewed by Executive Orders 04.08.20.02 and 04.30.20.01, which is set to expire on Friday, June 12, 2020 at 11:59 P.M., shall be renewed for thirty (30) days.

IT IS FURTHER

ORDERED: That the Public Health State of Emergency shall terminate on Sunday, July 12, 2020, at 11:59 P.M., unless it is renewed by the Governor.

IT IS FURTHER

ORDERED: That the terms of Executive Orders 03.14.20.01, 04.08.20.02, and 04.30.20.01 are hereby adopted by reference.

IT IS FURTHER

ORDERED: That Executive Orders 04.08.20.03 and 04.08.20.05 are hereby extended for a period of forty-five (45) days, and shall expire on Sunday, July 12, 2020, at 11:59 P.M.

IT IS FURTHER

ORDERED: That if one or more of the provisions contained in this Order shall conflict with the provisions of any previous Executive Order or Agency Administrative Order, the provisions of this Order shall control. Further, in the event of any conflict, the provisions of any Quarantine or Isolation Order issued to a specific person by the Department of Public Health shall control.

IT IS FURTHER

ORDERED: That nothing in this Order shall be construed to suspend or limit the sale, dispensing, or transportation of firearms or ammunition, or any component thereof.

IT IS FURTHER

ORDERED: That if one or more of the provisions contained in this Order shall be held to be invalid, in violation of the Georgia Constitution, in violation of Georgia law, or unenforceable in any respect, such invalidity, violation, or unenforceability shall not affect any other provisions of this Order, but, in such case, this Order shall be construed as if such invalid, illegal, or unenforceable provision had never been contained within the Order.

IT IS FURTHER

ORDERED: That no provision of this Order shall limit, infringe, suspend, or supplant any rights conferred by or any judicial order, judgment, or decree issued pursuant to the laws or constitution of this State or the laws or constitution of the United States, nor shall any person use any provision this Order as a defense to an action in violation of a judicial order, judgment, or decree by any court created pursuant to the laws or constitution of this State or the laws or constitution of the United States.

IT IS FURTHER

ORDERED: The Office of the Governor may continue to issue guidance on the scope of this Order as needed through communication media, including social media, without need for further Executive Orders.

IT IS FURTHER

ORDERED: All provisions of this Order shall become effective upon signature.

This 28th day of May 2020.

A handwritten signature in black ink, appearing to read "B. P. H.", is positioned above a horizontal line.

GOVERNOR



THE STATE OF GEORGIA

EXECUTIVE ORDER

BY THE GOVERNOR:

REVIVING A HEALTHY GEORGIA

- WHEREAS:** On March 14, 2020, due to the impact of COVID-19 on the State of Georgia, I issued Executive Order No. 03.14.20.01, declaring a Public Health State of Emergency in Georgia; and
- WHEREAS:** The Georgia General Assembly concurred with Executive Order 03.14.20.01 by joint resolution on March 16, 2020; and
- WHEREAS:** On April 8, 2020, I renewed the Public Health State of Emergency until May 13, 2020 by issuing Executive Order 04.08.20.02; and
- WHEREAS:** On April 30, 2020, I renewed the Public Health State of Emergency until June 12, 2020 by issuing Executive Order 04.30.20.01; and
- WHEREAS:** Code Section 38-3-51(c)(4) vests the Governor with the power to perform and exercise such other functions, powers, and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population; and
- WHEREAS:** Code Section 38-3-51(d)(1) vests the Governor with the power to suspend any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency if strict compliance with any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster; and
- WHEREAS:** Code Sections 31-2A-4 and 31-12-4 vests the Department of Public Health with the power to segregate and isolate certain individuals with certain communicable diseases or conditions when said individuals' exposure to the general population is likely to endanger the health of others; and

WHEREAS: Corporations that are calling and holding meetings of shareholders pursuant to Code Sections 14-2-701 or 14-2-702 are required to deliver advance notice and meet other legal requirements under the laws of the State of Georgia, as well as the federal securities laws of the United States, in advance of convening such meetings; and

WHEREAS: In consultation with the Governor's Coronavirus Task Force and health and emergency preparedness officials, I have determined that the following actions are necessary and appropriate to protect the strength of Georgia's economy and provide for the health, safety, and welfare of Georgia's residents and visitors.

NOW, THEREFORE, PURSUANT TO THE AFOREMENTIONED GEORGIA LAW, CODE SECTION 38-3-51, AND THE AUTHORITY VESTED IN ME AS THE GOVERNOR OF THE STATE OF GEORGIA, IT IS HEREBY

I. GENERAL PROVISIONS

ORDERED: That unless otherwise noted, the provisions contained in this Order shall be effective from June 1, 2020 at 12:00 A.M. until June 15, 2020 at 11:59 P.M.

IT IS FURTHER

ORDERED: That all residents and visitors of the State of Georgia shall practice Social Distancing as defined herein and refrain from Gathering as defined herein.

IT IS FURTHER

ORDERED: That all residents and visitors of the State of Georgia are strongly encouraged to wear face coverings as practicable while outside their homes or place of residence, except when eating, drinking, or exercising outdoors.

IT IS FURTHER

ORDERED: All residents and visitors of the State of Georgia shall practice sanitation in accordance with the guidelines published by the Centers for Disease Control and Prevention.

IT IS FURTHER

ORDERED: That no business, establishment, corporation, non-profit corporation, organization, or county or municipal government shall allow Gatherings of persons. This provision shall not apply to

cohabitating persons, family units, or roommates residing together in private homes, whether inside or outside of their homes or place of residence. This provision shall also not apply to entities defined as “Critical Infrastructure.”

II. DEFINITIONS

IT IS FURTHER

ORDERED:

That the following definitions shall apply to this Order:

1. “Camper” shall mean any person that attends a Summer Camp as a participant. This provision shall specifically exclude those persons who volunteer or work at Summer Camps.
2. “Critical Infrastructure” shall include all Workers, businesses, establishments, corporations, non-profit corporations, and organizations included in versions 1.0, 2.0, and 3.0 of Guidance on Essential Critical Infrastructure Workers released by the U.S. Department of Homeland Security on March 19, 2020, March 28, 2020, and April 17, 2020, respectively. The term “Critical Infrastructure” shall also include those suppliers which provide essential goods and services to the Critical Infrastructure workforce as well as entities that provide legal services, home hospice, and non-profit corporations or non-profit organizations that offer food distribution or other health or mental health services.
3. “Essential Services” shall include those activities outlined below:
 - A. Obtaining necessary supplies and services for family or household members, such as food and supplies for household consumption and use, medical supplies or medication, supplies and equipment needed to work from home, and products needed to maintain safety, sanitation, and essential maintenance of the home or residence. Preference should be given to online ordering, home delivery, and curbside pick-up services wherever possible as opposed to in-store shopping;
 - B. Engaging in activities essential for the health and safety of family or household members;
 - C. Seeking medical, behavioral health, or emergency services;
 - D. Activities that may preserve the health and welfare of persons within this State;
 - E. The transport, visitation, and regular care of family members and persons dependent on the services of others, and similar actions that ensure the welfare and

- best interests of persons in the State of Georgia, specifically including the elderly, children, and disabled populations;
- F. Children obtaining public internet access to fulfill educational obligations; and
- G. Engaging in outdoor exercise activities so long as Social Distancing is practiced during such activities between all persons who are not occupants of the same household or residence.
4. "Gathering" shall mean more than twenty-five (25) persons physically present at a Single Location if, to be present, persons are required to stand or be seated within six (6) feet of any other person. Therefore, groups of more than twenty-five (25) people are permitted if their grouping is transitory or incidental, or if their grouping is the result of being spread across more than one Single Location.
 5. "Hand Sanitizer" shall mean any hand antiseptic, hand rub, soap, or agent applied to the hands for the purpose of removing common pathogens.
 6. "Necessary Travel" shall mean such travel as is required to conduct or participate in Essential Services or Critical Infrastructure as defined by this Order.
 7. "Overnight Summer Camp" shall mean a Summer Camp where Campers stay overnight on the Summer Camp premises. This term shall not include those entities commonly referred to as "day camps."
 8. "Personal Protective Equipment" shall mean surgical masks, N95 masks, respirators, other facemasks, protective gloves, protective clothing, protective garments, and shoe coverings.
 9. "Restaurants and Dining Rooms" shall mean any entity defined as a "food service establishment" pursuant to Code Section 26-2-370(2).
 10. "Shelter in Place" shall mean a person is required to remain in their home or place of residence and take every possible precaution to limit social interaction to prevent the spread or infection of COVID-19 to themselves or any other person, subject to the provisions and exceptions of this Order.
 11. "Single Location" shall mean a space where all persons gathered cannot maintain at least six (6) feet of distance between themselves and any other person.
 12. "Social Distancing" shall mean keeping space between yourself and other people outside of your home or place of residence. Persons practicing Social Distancing should stay at least six (6) feet from other people, avoid assembling in groups, avoid crowded places, and avoid large crowds. This provision shall not apply to cohabitating persons, family

- units, or roommates residing together in private homes, whether inside or outside of their homes or place of residence.
13. "Summer Camp" shall mean any entity offering organized sessions of supervised recreational, athletic, or instructional activities held between typical school terms. This term shall include those entities commonly referred to as "day camps."
 14. "Summer School" shall mean extended school year classes, credit recovery classes, and all other learning classes that are offered by schools or school districts between the 2019-2020 school year and the 2020-2021 school year.
 15. "Symptoms of COVID-19" shall mean symptoms identified by the Centers for Disease Control and Prevention as symptoms of COVID-19 and shall include at least the following: fever or chills; cough; shortness of breath or difficulty breathing; fatigue; muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; and diarrhea.
 16. "Worker" shall include employees, independent contractors, agents, volunteers, or other representatives of a business, establishment, corporation, non-profit corporation, organization, or other entity.

III. SHELTERING IN PLACE

IT IS FURTHER

ORDERED: That pursuant to Executive Order 04.30.20.01, this Section, titled "Sheltering in Place" shall be effective until Friday, June 12, 2020, at 11:59 P.M.

IT IS FURTHER

ORDERED: That all residents and visitors of the State of Georgia who meet the following criteria for higher risk of severe illness as defined by the Centers for Disease Control and Prevention are required to Shelter in Place within their homes or places of residence:

1. Those persons who are 65 years of age or older.
2. Those persons who live in a nursing home or long-term care facility, including inpatient hospice, assisted living communities, personal care homes, intermediate care homes, community living arrangements, and community integration homes.
3. Those persons who have chronic lung disease.
4. Those persons who have moderate to severe asthma.
5. Those persons who have severe heart disease.

6. Those persons who are immunocompromised. Many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medication.
7. Those persons, of any age, with class III or severe obesity.
8. Those persons diagnosed with the following underlying medical conditions: diabetes, liver disease, and persons with chronic kidney disease undergoing dialysis.

IT IS FURTHER

ORDERED:

That persons required to Shelter in Place shall be permitted to engage in the following activities:

1. Conducting or participating in Essential Services;
2. Performing Necessary Travel;
3. Engaging in gainful employment or the performance of, or travel to and from the performance of, minimum necessary activities to maintain the value of a business, establishment, corporation, non-profit corporation, or organization not classified as Critical Infrastructure; or
4. Working in or for Critical Infrastructure and being actively engaged in the performance of, or travel to and from, their respective employment.

IT IS FURTHER

ORDERED:

That persons required to Shelter in Place shall not receive visitors, except as follows:

1. Visitors providing medical, behavioral health, or emergency services or medical supplies or medication, including home hospice;
2. Visitors providing support for the person to conduct activities of daily living or instrumental activities of daily living;
3. Visitors providing necessary supplies and services, such as food and supplies for household consumption and use, supplies and equipment needed to work from home, and products needed to maintain safety, sanitation, and essential maintenance of the home or residence; or
4. Visitors received during end-of-life circumstances.

To the extent practicable under the circumstances, visitors shall maintain a minimum distance of six (6) feet between themselves and all other occupants of the person's home or residence. Any visitors visiting for the sole purpose of delivering medication, supplies, or other tangible goods shall, to the extent practicable, deliver such

items in a manner that does not require in-person contact or require the deliverer to enter the person's home or residence.

IT IS FURTHER

ORDERED:

That the provisions of this Order related to visitors listed in the immediately preceding paragraph shall be strictly enforced upon nursing homes or other long-term care facilities, including inpatient hospice, assisted living communities, personal care homes, intermediate care homes, community living arrangements, and community integration homes.

IT IS FURTHER

ORDERED:

That an exception to any Shelter in Place requirement set forth hereunder applies in the event of an emergency. In such cases, persons are encouraged to leave their homes or residences and Shelter in Place in accordance with the rules included in this Order at a safe alternate location. Persons experiencing homelessness are urged to obtain shelter and contact governmental and other entities for assistance.

IV. RESTAURANTS & DINING SERVICES

IT IS FURTHER

ORDERED:

That for the purposes of Section IV of this Order, titled "Restaurants & Dining Services," the term "Single Location" as used in the definition of "Gatherings" in Section I of this Order shall mean 300 square feet of public space. This formula shall only apply to patrons. Therefore, for restaurants, no more than ten (10) patrons should be allowed in the facility per 300 square feet of public space. In calculating the total number of public space square feet, such calculation shall include waiting and bar areas as well as patios or any outdoor dining space, if any, but shall not include hallways, restrooms, and spaces closed to patrons.

IT IS FURTHER

ORDERED:

That all Restaurants and Dining Rooms as well as all banquet facilities, private event facilities, and private reception venues where food is served that operate during the effective dates of this Order ***shall*** implement measures which mitigate the exposure and spread of COVID-19 among its patrons and workforce. Such measures ***shall*** include the following:

1. Screen and evaluate Workers who exhibit Symptoms of COVID-19;
2. Require Workers who exhibit Symptoms of COVID-19 to not report to work or to seek medical attention. Per existing U.S. Food and Drug Administration Food Code requirements, Workers who are sick should remain home. If a Worker becomes ill or presents Symptoms of COVID-19 at work, the operator should identify the Worker's condition during a pre-work screening and send the Worker home. Restaurants shall create, maintain, and follow established policies regarding when Workers who have become ill are permitted to return to work. A Worker with known or suspected COVID-19 must follow Centers for Disease Control and Prevention guidelines to self-isolate for at least ten (10) days after onset of Symptoms of COVID-19 and end isolation only after Symptoms of COVID-19 have improved and the Worker has been fever-free and/or free of Symptoms of COVID-19 for three (3) consecutive days without medication before returning to work;
3. Implement teleworking for all possible Workers;
4. Implement staggered shifts for all possible Workers;
5. Hold all meetings and conferences virtually, whenever possible;
6. Train all Workers on the importance and expectation of increased frequency of handwashing, the use of Hand Sanitizers with at least 60% alcohol, and provide clear instruction to avoid touching hands to face;
7. Require all Workers to wear face coverings at all times. Workers may also wear face shields in addition to their face coverings. Such face coverings and face shields shall be cleaned or replaced daily;
8. Discourage Workers from using other Workers' phones, desks, offices, or other work tools and equipment;
9. Where possible, stagger workstations to avoid Workers standing adjacent to one another or next to each other. Where six (6) feet of separation is not possible, consider spacing options that include other mitigation efforts with increased frequency of cleaning and sanitizing surfaces;
10. Establish a limit for the maximum number of Workers permitted in Worker breakrooms to reduce contact;
11. Prohibit handshaking and other unnecessary person-to-person contact in the workplace;
12. Enforce Social Distancing of non-cohabitating persons while present on such entity's leased or owned property;
13. Increase physical space between Workers and patrons;
14. Limit contact between Workers and patrons;
15. Discard all food items that are out of date;

16. Discontinue use of salad bars and buffets, unless the salad bar or buffet is being used for cafeteria style service where a Worker is responsible for serving the patron, handling the utensils, and ensuring proper distancing in lines;
17. If providing a "grab and go" service, stock coolers to no more than minimum levels;
18. Ensure the Food Safety Manager certification of the person in charge is up-to-date and provide food handler training to refresh Workers;
19. Thoroughly detail, clean, and sanitize the entire facility prior to resuming dine-in services and continue to do so regularly, focusing such cleaning and sanitation on high contact areas that would be touched by Workers and/or patrons;
20. Between diners, clean and sanitize table condiments, digital ordering devices, check presenters, self-service areas, tabletops, and commonly touched areas, and discard single use items;
21. Use rolled silverware and eliminate table presets;
22. Remove items from self-service drink, condiment, utensil, and tableware stations and have Workers provide such items to patrons directly wherever practicable;
23. The use of disposable paper menus is strongly encouraged, which should be discarded after each patron use. Otherwise, businesses subject to this Section shall clean and sanitize reusable menus between each use by a patron. Non-touch menus are also acceptable for use;
24. Clean and sanitize restrooms regularly, check restrooms based on the frequency of use, and always ensure adequate supply of soap and paper towels;
25. Implement procedures to increase cleaning and sanitizing frequency of surfaces in the back-of-house. Avoid all food contact surfaces when using disinfectants;
26. Verify that ware-washing machines are operating at the required wash and rinse temperatures and with the appropriate detergents and sanitizers;
27. Update floor plans for common dining areas, redesigning seating arrangements to ensure at least six (6) feet of separation from seating to seating. Utilize physical barriers on booth seating when available to ensure Social Distancing;
28. Limit party size at tables to no more than ten (10);
29. Where practical, consider a reservations-only business model or call-ahead seating;
30. Remind third-party delivery drivers and any suppliers of your internal distancing requirements;
31. Post signage on entrances that no one with Symptoms of COVID-19 is permitted in the facility;

32. Where practicable, physical barriers such as partitions or Plexiglas at registers should be used;
33. Use technological solutions where possible to reduce person-to-person interaction: mobile ordering, mobile access to menus to plan, text on arrival for seating, and contactless payment options;
34. Provide Hand Sanitizer for use by patrons, including contactless hand sanitizing stations when available;
35. Do not allow patrons to congregate in waiting areas or bar areas. Design a process to ensure patron separation while waiting to be seated that can include floor markings, outdoor distancing, or waiting in cars;
36. If possible, use an exit from the facility separate from the entrance;
37. Mark ingress/egress to and from restrooms to establish paths that mitigate proximity for patrons and Workers;
38. Where practicable, take-out and curbside pick-up services should be prioritized over dine-in services; and
39. All restaurant or dining room playgrounds shall be closed.

IT IS FURTHER

ORDERED: That none of the provisions of Section IV of this Order, titled “Restaurants & Dining Services,” shall apply to the operation of dine-in services in hospitals, health care facilities, nursing homes, or other long-term care facilities, but such facilities should implement measures to prevent the spread of COVID-19 if possible.

IT IS FURTHER

ORDERED: That the routine inspection timelines under Georgia Administrative Rule 511-6-1-.10(2) may be extended by the Georgia Department of Public Health by one hundred and twenty (120) days for any permit holder of a food service establishment maintaining an “A” food safety grade for any such food service establishment which was scheduled to have a routine inspection at any time between March 14, 2020 and September 10, 2020.

IT IS FURTHER

ORDERED: To the extent that the provisions of Section IV of this Order, titled “Restaurants & Dining Services,” conflict with the provisions of Section V of this Order, titled “Industry & Commerce,” the provisions of Section IV shall control.

V. INDUSTRY, COMMERCE, ORGANIZATIONS, & NON-PROFITS

IT IS FURTHER

ORDERED: That the Georgia Department of Economic Development is authorized to issue guidance to any business, corporation, organization, or industry trade group regarding its status as Critical Infrastructure. This guidance shall not require a finding of fact but shall be in writing and shall be considered a final agency action for the purpose of proceedings under Code Section 50-13-19.

IT IS FURTHER

ORDERED: Critical Infrastructure that continue in-person operation during the effective dates of this Order ***shall*** implement measures which mitigate the exposure and spread of COVID-19. Such measures ***may*** include, but shall not be limited to the following, which shall be implemented to the maximum extent practicable:

1. Screening and evaluating Workers who exhibit Symptoms of COVID-19;
2. Requiring Workers who exhibit Symptoms of COVID-19 to not report to work or to seek medical attention;
3. Enhancing sanitation of the workplace as appropriate;
4. Disinfecting common surfaces regularly;
5. Requiring handwashing or sanitation by Workers at appropriate places within the business location;
6. Prohibiting Gatherings of Workers during working hours;
7. Permitting Workers to take breaks and lunch outside, in their office or personal workspace, or in such other areas where proper Social Distancing is attainable;
8. Implementing teleworking for all possible Workers;
9. Implementing staggered shifts for all possible Workers;
10. Holding all meetings and conferences virtually, whenever possible;
11. Delivering intangible services remotely, whenever possible;
12. Discouraging Workers from using other Workers' phones, desks, offices, or other work tools and equipment;
13. Prohibiting handshaking and other unnecessary person-to-person contact in the workplace;
14. If in use, open sales registers must be at least six (6) feet apart;
15. Point of sale equipment, including PIN entry devices and signature pads, should be frequently cleaned and sanitized; and
16. Placing notices that encourage hand hygiene at the entrance to the workplace and in other workplace areas where they are likely to be seen.

IT IS FURTHER

ORDERED:

That all businesses, establishments, corporations, non-profit corporations, or organizations that are not Critical Infrastructure that continue in-person operations during the effective dates of this Order **shall** implement measures which mitigate the exposure and spread of COVID-19 among its workforce. Such measures **shall** include the following:

1. Screening and evaluating Workers who exhibit Symptoms of COVID-19;
2. Posting a sign on the front of the facility stating that individuals who have Symptoms of COVID-19 shall not enter the store;
3. Requiring Workers who exhibit Symptoms of COVID-19 to not report to work or to seek medical attention;
4. Enhancing sanitation as appropriate;
5. Disinfecting common surfaces regularly;
6. Requiring handwashing or sanitation at appropriate places within the location;
7. Prohibiting Gatherings during hours of operation;
8. Permitting Workers to take breaks and meals outside, in their office or personal workspace, or in such other areas where proper Social Distancing is attainable;
9. Implementing teleworking as practicable;
10. Implementing staggered shifts as practicable;
11. Holding all meetings and conferences virtually as practicable;
12. Delivering intangible services remotely as practicable;
13. Discouraging use of other Worker's phones, desks, offices, or other tools and equipment;
14. Prohibiting handshaking and unnecessary person-to-person contact;
15. Placing notices that encourage hand hygiene at the entrance to the facility and in other areas where they are likely to be seen;
16. Enforcing Social Distancing of non-cohabitating persons while present on such entity's leased or owned property;
17. For retailers and service providers, providing for alternative points of sale outside of buildings, including curbside pick-up or delivery of products and/or services if an alternative point of sale is permitted under Georgia law;
18. For retailers and service providers, open sales registers must be at least six (6) feet apart;
19. Point of sale equipment, including PIN entry devices and signature pads, should be frequently cleaned and sanitized;
20. Increasing physical space between Workers and patrons; and
21. If the entity engages volunteers or has members of the public participate in activities, prohibiting volunteering or participation in activities for persons diagnosed with COVID-

19, having exhibited Symptoms of COVID-19, or having had contact with a person that has or is suspected to have COVID-19 within the past fourteen (14) days.

IT IS FURTHER

ORDERED:

That Critical Infrastructure and all other businesses, establishments, corporations, non-profit corporations, or organizations that continue in-person operation during the effective dates of this Order **should** implement the following measures if practicable:

1. Providing Personal Protective Equipment as available and appropriate to the function and location of the Worker within the business location;
2. Providing disinfectant and sanitation products for Workers to clean their workspace, equipment, and tools; and
3. Increasing physical space between Workers' worksites to at least six (6) feet.

IT IS FURTHER

ORDERED:

That all live performance venues **shall not** engage in in-person operations and shall remain closed to the public while this Order is in effect.

IT IS FURTHER

ORDERED:

That all retail businesses, including Food Establishments (such as retail and wholesale grocery stores), as defined by Ga. Comp. R. & Regs. r. 40-7-1-.02 but not to include food processing plants or wholesale sandwich and salad manufacturers, **shall** implement additional measures to prevent the spread of COVID-19, as practicable. Such measures **shall** include:

1. Limiting the number of patrons inside the store to 50% of fire capacity occupancy of the entire store or eight (8) patrons per 1,000 square feet;
2. Encouraging patrons to use Hand Sanitizer upon entering;
3. Encouraging non-cash payments when possible;
4. Sanitizing entrance and exit doors at least three times per day;
5. Encouraging Workers to report any safety and health concerns to the employer; and
6. Installing protective screens or other mitigation measures where patron-Worker interactions are likely.

IT IS FURTHER

ORDERED:

That in addition to the applicable requirements above, Food Establishments (such as retail and wholesale grocery stores), as

defined by Ga. Comp. R. & Regs. r. 40-7-1-.02 but not to include food processing plants or wholesale sandwich and salad manufacturers, **shall** implement additional measures to those listed above as practicable. Such measures **may** include, but shall not be limited to the following, which shall be implemented to the maximum extent practicable:

1. Scheduling specific hours of operation for vulnerable populations to shop;
2. Reducing store hours to allow for increased cleaning and sanitation while the store is closed;
3. Enacting policies and procedures to encourage Social Distancing for patrons and Workers. Measures may include:
 - a. Protective Plexiglass screens at service counters and at cash registers;
 - b. Decals on the floor or aisles with messaging on Social Distancing;
 - c. Signs throughout the store giving visuals on Social Distancing;
 - d. Limited occupancy if store becomes too crowded; and
 - e. Use of one-way aisles;
4. Providing Personal Protective Equipment as available and appropriate to the function and location of the Worker within the business location;
5. Encouraging patrons to wear face coverings;
6. Utilizing in-store messaging to educate and remind patrons and Workers on recommended hygiene and Social Distancing;
7. Discontinuing sampling or cooking stations;
8. Closing self-serve salad bars and buffets;
9. Adding additional Workers to specifically oversee increased sanitation of grocery carts, and other high-touch areas such as door handles, point of sales equipment, conveyor belts, and other surfaces;
10. Checking restrooms regularly, cleaning and sanitizing based on frequency of use, and always ensuring adequate supply of soap and paper towels;
11. Allowing time for frequent handwashing for Workers, including cashiers, that interact directly with patrons;
12. Increasing or add hand sanitizing stations around stores for patrons and Workers; and
13. Procuring options with third-party cleaning companies to assist with the increased cleaning demands as needed.

IT IS FURTHER

ORDERED:

That in addition to the applicable requirements above, gyms and fitness centers ***shall*** implement additional measures to prevent the spread of COVID-19, as practicable. Such measures ***shall*** include:

1. Placing signage at any entrance to instruct patrons that they cannot enter if they have been diagnosed with COVID-19, had Symptoms of COVID-19, or had contact with a person that has or is suspected to have COVID-19;
2. Placing signage at any entrance and throughout the facility to instruct patrons of the enhanced sanitation procedures, Social Distancing requirements, and other instructions and limitations, as applicable, set forth below;
3. If Workers are present at the gym or fitness center, screening patrons at the entrance and prohibiting entrance for patrons exhibiting Symptoms of COVID-19;
4. Limiting occupancy to enforce Social Distancing requirements and to prohibit Gatherings;
5. Utilizing contactless forms of patron check-in;
6. Providing Hand Sanitizer stations as available for patrons;
7. Providing antibacterial sanitation wipes as available at or near each piece of equipment and requiring users to wipe down the equipment before and after use;
8. Requiring Workers, if any, to patrol patron areas to enforce the equipment wipe-down policy and conduct additional cleanings during times when equipment is not being used;
9. Limiting use of cardio machines to every other machine or distancing machines to maintain acceptable Social Distancing between users;
10. Enforcing Social Distancing and prohibiting congregating between non-cohabitating patrons, especially in pools, group fitness classes, and areas where group sports regularly occur;
11. Encouraging patrons to conduct their workout and exit the facility without unnecessary delay;
12. Complying with the regulations for "Childcare Facilities" included in Section VII of this Order titled "Children" if childcare services are provided;
13. Closing the following facilities and equipment within a gym or fitness center: hot tubs, saunas, and steam rooms;
14. Requiring patrons to spray showers with a provided cleaning spray after use;
15. In addition to the regular cleaning schedule, cleaning and sanitizing high touch surfaces, bathrooms, and locker rooms regularly throughout hours of operation;
16. Prohibiting patrons from sharing equipment without cleaning and sanitizing between uses;
17. Practicing Social Distancing between trainers and patrons as practicable;

18. Requiring no less than ten (10) feet of distance between patrons participating in group fitness classes; and
19. Requiring rooms and equipment used for group fitness classes to be disinfected between classes.

IT IS FURTHER

ORDERED:

That in addition to the applicable requirements above, body art studios permitted pursuant to Code Section 31-40-2, businesses registered pursuant to Code Sections 43-10-11 and 43-10-18, estheticians as defined by Code Section 43-10-1(8), hair designers as defined by Code Section 43-10-1(9), persons licensed to practice massage therapy pursuant to Code Section 43-24A-8, and tanning facilities as defined by Code Section 31-38-1(6) **shall** implement additional measures to prevent the spread of COVID-19, as practicable. Such measures **shall** include:

1. Providing services by appointment only. Walk-in patrons should not be allowed;
2. Patrons should be required to sanitize their hands upon entering the facility and before any treatment;
3. Providing Hand Sanitizer or sanitization wipes to patrons upon arrival;
4. Posting signs at the entrance and at eye-level at each workstation stating that any patron who has Symptoms of COVID-19 must reschedule their appointment;
5. Allowing only one patron per service provider in the business at any one time;
6. Allowing one parent to be within a facility if their minor child is receiving a haircut;
7. Requiring patrons to wait in their vehicle or outside the establishment until the service provider is ready, or patrons may wait in a waiting area inside the facility provided that all seating within the waiting area is spaced so that no waiting patron is seated within six (6) feet of any other person and all waiting patrons are required to wear face coverings;
8. Staggering use of every-other workstation or spacing workstations more than ten (10) feet apart, whichever option is practicable given the facility's configuration;
9. Staggering work schedules so that no more than 50% of the normal number of Workers providing services will be in the business at a time;
10. Requiring all Workers to wear Personal Protective Equipment as available and appropriate to the function and location of the Worker within the business location;
11. Sanitizing all equipment, chairs, and tables used by Workers and patrons between each client visit;

12. Utilizing disposable materials and supplies as much as practicable according to state rules and regulations; and
13. Training all Workers on additional measures both verbally and in writing.

IT IS FURTHER

ORDERED:

That in addition to the applicable requirements above, indoor movie theaters and cinemas choosing to operate during the effective dates of this Order **shall** implement additional measures to prevent the spread of COVID-19. Such measures **shall** include:

1. Each party of patrons must be seated at least six (6) feet apart. No party seated together may number more than ten (10) individuals;
2. At least one usher must be used in each theater room before and at some point during each showing to ensure that proper Social Distancing protocol is enforced;
3. Seats, armrests, handrails, doors, doorknobs, and door handles in each theater must be thoroughly sanitized before and after each showing;
4. Tape must be applied to floors at ticket counters and concession stands to enforce proper Social Distancing protocol for patrons who are waiting in line;
5. Restrooms must be cleaned and disinfected regularly, and touchpoints must be cleaned and sanitized no less than once per hour;
6. Food service areas must adhere to the same guidelines set forth in Section IV, titled "Restaurants & Dining Services", above;
7. Party rooms located at theaters may not host parties or Gatherings; and
8. Playgrounds, if any, must be closed.

IT IS FURTHER

ORDERED:

That in addition to the applicable requirements above, bowling alleys choosing to operate during the effective dates of this Order **shall** implement additional measures to prevent the spread of COVID-19. Such measures **shall** include:

1. Placing signage at entrance and throughout the facility to instruct patrons of Social Distancing requirements and other instructions and limitations, as applicable;
2. Providing Hand Sanitizer stations for patrons throughout the facility;
3. Food service areas must adhere to the same guidelines set forth in Section IV, titled "Restaurants & Dining Services", above;

4. Tape must be applied to floors at ticket counters and rental stations to enforce proper Social Distancing protocol for patrons who are waiting in line;
5. Removing items from all self-service bowling ball, bowling shoe, and other bowling accessory stations and having Workers provide such items to patrons directly;
6. Limiting the number of patrons per lane to groups of ten (10) or less;
7. Staggering use of lanes so that only every other lane or every third lane is in use to maintain proper Social Distancing between groups of patrons. Each party of patrons must be seated at least six (6) feet apart;
8. Score keeping machines, ball returns, tables, seats, and other fixtures at each bowling lane must be thoroughly sanitized before and after each use;
9. Bowling balls and bowling shoes must be thoroughly sanitized before and after each use;
10. Party rooms located at bowling alleys may not host parties or Gatherings; and
11. Closing playgrounds, if any.

IT IS FURTHER

ORDERED:

That in addition to the applicable requirements above for non-Critical Infrastructure, businesses which possess a license to operate as or otherwise meet the definition of “bar” as defined by Code Section 3-1-2(2.1) **shall** implement additional measures to prevent the spread of COVID-19, as practicable. Such measures **shall** include:

1. Screening and evaluating Workers who exhibit Symptoms of COVID-19;
2. Requiring Workers who exhibit Symptoms of COVID-19 to not report to work or to seek medical attention. Per existing U.S. Food and Drug Administration Food Code requirements, Workers who are sick should remain home. If a Worker becomes ill or presents Symptoms of COVID-19, the operator should identify the Worker’s condition during a pre-work screening and send the Worker home. Bars shall create, maintain, and follow established policies regarding when Workers who have become ill are permitted to return to work. A Worker with known or suspected COVID-19 must follow Centers for Disease Control and Prevention guidelines to self-isolate for at least ten (10) days after onset of Symptoms of COVID-19 and end isolation only after Symptoms of COVID-19 have improved and the Worker has been free of Symptoms of COVID-19 for three (3) consecutive days without medication before returning to work;

3. Limiting the number of total persons inside the bar to twenty-five (25) persons or thirty-five percent (35%) of total listed fire capacity occupancy of the entire bar, whichever is greater;
4. Implementing teleworking for all possible Workers;
5. Implementing staggered shifts for all possible Workers;
6. Holding all meetings and conferences virtually, whenever possible;
7. Training all Workers on the importance and expectation of increased frequency of handwashing, the use of Hand Sanitizers with at least 60% alcohol, and provide clear instruction to avoid touching hands to face;
8. Requiring all Workers to wear face coverings at all times. Workers may also wear face shields in addition to their face coverings. Such face coverings and face shields shall be cleaned or replaced daily;
9. Discouraging Workers from using other Workers' phones, workstations, or other work tools and equipment;
10. Where possible, staggering workstations to avoid Workers standing adjacent to one another or next to each other. Where six (6) feet of separation is not possible, consider spacing options that include other mitigation efforts with increased frequency of cleaning and sanitizing surfaces;
11. Establishing a limit for the maximum number of Workers permitted in Worker breakrooms to reduce contact;
12. Prohibiting handshaking and other unnecessary person-to-person contact in the workplace;
13. Enforcing Social Distancing of non-cohabitating persons while present on such entity's leased or owned property;
14. Increasing physical space between Workers and patrons;
15. Limiting contact between Workers and patrons;
16. Thoroughly detailing, cleaning, and sanitizing the entire facility prior to reopening and continue to do so regularly, focusing such cleaning and sanitation on high contact areas that would be touched by Workers and/or patrons;
17. Between patrons, cleaning and sanitizing tables, digital ordering devices, check presenters, self-service areas, tabletops, and commonly touched areas, and discarding single use items;
18. Removing any self-service items and have Workers provide such items to patrons directly wherever practicable;
19. Requiring the use of disposable paper menus, if applicable, and discarding such menus after each patron use. Non-touch menus are also acceptable for use;
20. Cleaning and sanitizing restrooms regularly, checking restrooms based on the frequency of use, and always ensuring adequate supply of soap and paper towels;

21. Implementing procedures to increase cleaning and sanitizing frequency of surfaces;
22. Verifying that ware-washing machines are operating at the required wash and rinse temperatures and with the appropriate detergents and sanitizers;
23. Establishing seating areas for patrons to discourage loitering at the bar or in commonly trafficked areas;
24. Providing service only to seated patrons, or, if not applicable, to patrons in designated areas that are practicing Social Distancing;
25. Updating floor plans for common service areas, redesigning seating arrangements to ensure at least six (6) feet of separation from seating to seating. Utilizing physical barriers on booth seating when available to ensure Social Distancing;
26. Limiting party size at tables to no more than six (6) patrons;
27. Where practical, considering a reservations-only business model or call-ahead seating;
28. Posting signage on entrances that no one with Symptoms of COVID-19 is permitted in the facility;
29. Where practicable, physical barriers such as partitions or Plexiglas at registers should be used;
30. Using technological solutions where possible to reduce person-to-person interaction: mobile ordering, mobile access to menus to plan, text on arrival for seating, and contactless payment options;
31. Providing Hand Sanitizer for use by patrons, including contactless hand sanitizing stations when available;
32. Preventing patrons from congregating; designing a process to ensure patron separation that can include floor markings or outdoor distancing;
33. If possible, using an exit from the facility separate from the entrance;
34. Marking ingress/egress to and from restrooms to establish paths that mitigate proximity for patrons and Workers;
35. Preventing activities that enable close human contact;
36. Establishing pathways for patrons' ingress and egress and ensuring that they are clear and unobstructed;
37. Setting up hand sanitizing stations at every entrance to the establishment and encouraging patrons to use Hand Sanitizer upon entering;
38. Requiring Workers to wash or sanitize their hands upon entering the establishment, and between interactions with patrons; and
39. Sanitizing the bar at least twice daily before opening and after closing.

IT IS FURTHER

ORDERED: That professional sports teams and professional sports organizations that engage in practices or other in-person operations during the effective dates of this Order **shall** operate solely pursuant to the rules or guidelines that have been promulgated or approved by the respective professional league of the sport. All amateur sports teams and amateur sports organizations that continue in-person operation during the effective dates of this Order **shall** adhere to the guidelines for non-Critical Infrastructure organizations listed above. Any previous executive order or departmental rule which would prevent professional sports teams, professional sports organizations, amateur sports teams, and amateur sports organizations from operating or operating in a manner inconsistent with the above requirements is hereby suspended.

IT IS FURTHER

ORDERED: That operators of amusement rides as defined by Code Section 25-15-51, traveling carnivals, water parks, circuses, and other temporary amusement rides shall not begin operation until June 12, 2020.

IT IS FURTHER

ORDERED: That in addition to the applicable requirements above for non-Critical Infrastructure, operators of amusement rides as defined by Code Section 25-15-51, traveling carnivals, water parks, circuses, and other temporary amusement rides operating during the effective dates of this Order **shall** implement additional measures to prevent the spread of COVID-19. Such measures **shall** include:

1. Enforcing social distancing at all times;
2. Increasing physical space between Workers and patrons;
3. Limiting contact between Workers and patrons;
4. Providing online training programs for workers instructing them on how to stay safe and keep patrons safe;
5. Providing workers with Personal Protective Equipment, as appropriate;
6. Requiring Workers to wear face coverings at all times;
7. Other than at water parks, encouraging patrons to wear face coverings at all times when they are not experiencing a ride or an attraction;
8. Utilizing touch-free or contactless payment options when possible;
9. Limiting occupancy on the premises to allow for patrons to abide by the Gathering ban at all times;

10. Prohibiting parties from entering when at least one patron in the party is exhibiting Symptoms of COVID-19;
11. Communicating new operational procedures to guests prior to arrival, on the attraction's website, and through social media to establish expectations and instill confidence, including:
 - i. Identifying Symptoms of COVID-19;
 - ii. Notifying patrons that if anyone in their party is experiencing Symptoms of COVID-19, the entire party will be denied entry;
 - iii. Directives on wearing masks/ face coverings for employees and guests;
 - iv. Social Distancing guidelines;
 - v. Capacity limits that facilitate Social Distancing;
 - vi. Enhanced cleaning and sanitization protocols;
 - vii. Use of temperature checks/thermal scanning cameras; and
 - viii. Procedures for isolating and seeking medical assistance for a patron or worker who may become ill on the premises.
12. Establishing uniform entrances where patrons are screened;
13. Prohibiting entrance of patrons exhibiting Symptoms of COVID-19;
14. Placing signage at any entrance to instruct patrons that they cannot enter if they have been diagnosed with COVID-19, had Symptoms of COVID-19, or had contact with a person that has or is suspected to have COVID-19 within the past fourteen (14) days;
15. Implementing processes to perform contactless security checks, as appropriate;
16. Reducing face-to-face purchase transactions when possible;
17. Removing any self-service items and have Workers provide such items to patrons directly wherever practicable;
18. Placing acrylic or other types of barriers or screens in areas where there is frequent patron-Worker contact;
19. Placing signs that remind patrons to adhere to the guidelines published by the Centers for Disease Control and Prevention to prevent the spread of COVID-19;
20. Requiring Workers to monitor queues and enforce Social Distancing and prevent Gatherings;
21. Encouraging the use of Hand Sanitizer by patrons at the entrance of the premises and the entrance to all ride or attraction queues;
22. Cleaning or sanitizing the contact surfaces on any ride or attraction after each patron's use;
23. Reducing the number of patrons per ride or attraction in the following manner:

- i. For open-air rides where patrons are arranged in rows, such as roller coasters, log flumes, train rides, and similar types of rides and attractions, only allowing cohabitating persons to be seated on the same row and only seating every other row;
 - ii. For open-air rides where patrons are arranged in groups, such as free-fall rides, rafting rides, and other similar types of rides and attractions, seating cohabitating persons adjacent to each other and providing at least six (6) feet between non-cohabitating groups or patrons;
 - iii. For open-air rides where patrons are seated in cars, such as bumper cars, sky lifts, classic Ferris wheels, swing rides, and similar types of rides and attractions, only allowing cohabitating persons to be seated together in each car;
 - iv. For open-air rides where patrons are seated in an interspersed manner, such as carousels and similar types of rides and attractions, seating patrons so that there is at least six (6) feet between non-cohabitating patrons;
 - v. For closed car rides, such as monorails, gondola-style Ferris wheels, and similar types of rides and attractions, only allowing cohabitating persons to be seated together in each car or unit; and
 - vi. For self-guided rides where enforcing Social Distancing is not practicable and there are surfaces subject to multiple contacts, such as fun houses, ball pits, jump-arounds, haunted houses, and similar types of rides and attractions, closing such rides or attractions unless Social Distancing can be enforced and the ride or attraction can be sanitized between groups of participants.
24. Reconfiguring queues so that patrons must adhere to Social Distancing while waiting on a ride or attraction;
 25. Closing live performance venues, if any, and other rides or attractions where Social Distancing cannot be effectively managed;
 26. Recognizing that it may not be possible to open some attractions if Social Distancing and sanitation protocols cannot be implemented;
 27. Reconfiguring locker arrangements or availability to allow for Social Distancing;
 28. Sanitizing lockers between each use;
 29. Reconfiguring seating and lounge areas to allow for Social Distancing;
 30. Cleaning and sanitizing restrooms regularly, checking

- restrooms based on the frequency of use, and ensuring adequate supply of soap and paper towels at all times;
31. Implementing procedures to increase cleaning and sanitizing frequency of surfaces;
 32. Food service areas must adhere to the same guidelines set forth in Section IV of this Order, titled "Restaurants & Dining Services;" and
 33. Water parks and water amusement rides shall implement the following additional measures:
 - i. Ensuring pool water is treated in accordance with Georgia Department of Public Health and applicable county pool ordinance or Boards of Health regulations;
 - ii. Utilizing a timed or controlled entry system to limit patron distancing in pools to allow for Social Distancing and have Workers regularly monitor capacity;
 - iii. Not opening wave pools and other rides or attractions where Social Distancing cannot be effectively managed; and
 - iv. Following applicable guidance from the Georgia Department of Public Health and Centers for Disease Control and Prevention on managing public swimming pools.

IT IS FURTHER

ORDERED: That in instances where persons are working outdoors without regular contact with other persons, such as delivery services, contractors, landscape businesses, and agricultural industry services, such persons ***shall*** only be required to practice Social Distancing and implement sanitation processes in accordance with the guidelines published by the Centers for Disease Control and Prevention.

VI. HEALTHCARE

IT IS FURTHER

ORDERED: That any person, service, or entity delivering healthcare during the effective dates of this Order shall adhere to the guidelines listed in Section V for Critical Infrastructure in addition to the guidelines listed in this Section.

IT IS FURTHER

ORDERED: That in addition to compliance with the guidelines for Critical Infrastructure, dental practices and clinics that continue in-person operation during the effective dates of this Order **shall** adhere to the American Dental Association's Interim Guidance for Minimizing Risk of COVID-19 Transmission and Interim Mask and Face Shield Guidelines. Any previous Executive Order or rule which would prevent dental practices and clinics from providing the full scope of their services subject to the above requirements is hereby suspended.

IT IS FURTHER

ORDERED: That in addition to compliance with the guidelines for Critical Infrastructure, licensed optometrists and their Workers that continue in-person operation during the effective dates of this Order **shall** adhere to the American Optometric Association's Practice Reactivation Preparedness Guide and the Georgia Optometric Association's COVID-19 guidelines for practices issued March 17, 2020 and updated April 20, 2020. Any previous Executive Order or rule which would prevent optometrists from providing the full scope of their services subject to the above requirements is hereby suspended.

IT IS FURTHER

ORDERED: That in addition to compliance with the guidelines for Critical Infrastructure, licensed opticians and their Workers that continue in-person operation during the effective dates of this Order **shall** adhere to the Centers for Disease Control and Prevention's Recommendations for Office Disinfection and Recommendations for Employers. Any previous Executive Order or rule which would prevent opticians from providing the full scope of their services subject to the above requirements is hereby suspended.

IT IS FURTHER

ORDERED: That in addition to compliance with the guidelines for Critical Infrastructure, Ambulatory Surgical Centers that continue in-person operation during the effective dates of this Order **shall** implement additional measures to prevent the spread of COVID-19 as practicable. Such measures **may** include, but shall not be limited to the following, which shall be implemented to the maximum extent practicable:

1. Screening patients before visits and monitoring their health prior to starting surgery as part of the pre-operative procedure;
2. Requiring Workers to self-monitor and screen for Symptoms of COVID-19 daily;

3. Continuing to use Personal Protective Equipment in accordance with the latest Centers for Disease Control and Prevention recommendations for all procedures;
4. Following waiting room spacing guidelines, Social Distancing, face masking, and other recommended procedures for patients and visitors prior to entering the facility;
5. Ensuring heightened disinfection to prevent and mitigate risk of spread;
6. Ensuring patients have been medically cleared by their primary care physician where applicable;
7. Balancing the needs of patient care with the risk of providing that care by prioritizing procedures for patients who have comorbidities and surgical risks and procedures accompanied by lower risk regarding airborne transmission and those with minimal risk of unintended hospital admissions;
8. Performing regular rapid COVID-19 testing on providers and Workers where feasible; and
9. Performing COVID-19 testing on patients suspected to be experiencing COVID-19 and factoring the results of such testing into clinical decisions as to whether to proceed with procedures.

IT IS FURTHER

ORDERED: Any previous Executive Order or rule which would prevent Ambulatory Surgical Centers from providing the full scope of their services subject to the above requirements is hereby suspended.

IT IS FURTHER

ORDERED: That to the extent possible, hospitals, health care institutions, medical facilities, nursing homes, and other long-term care facilities should offer in-room dining.

VII. EDUCATION & CHILDREN

IT IS FURTHER

ORDERED: That nothing in this Order shall prevent any school, technical school, college, or university from requiring faculty and Workers to attend meetings or other necessary activities at a school or facility for the purpose of supporting distance learning, research, administration, maintenance, or preparation for the 2020-2021 school year.

IT IS FURTHER

ORDERED:

That because of the limited resources of school districts in this state, schools and school districts offering Summer School shall not be required to comply with the ban on Gatherings, but during the effective dates of this Order, such schools and school districts **shall** implement additional measures to prevent the spread of COVID-19 among Summer School students. Such measures **may** include:

1. Screening and evaluating Workers and students who exhibit Symptoms of COVID-19;
2. Requiring Workers and students who exhibit Symptoms of COVID-19 to not report to school and to seek medical attention;
3. Enhancing sanitation of the school as appropriate;
4. Disinfecting common surfaces regularly;
5. Encouraging handwashing or sanitation by Workers and students at appropriate places within the school;
6. Prohibiting Gatherings of students on the school premises outside of instructional times;
7. Permitting students to take breaks and lunch outside, in their personal workspace, or in such other areas where proper Social Distancing is attainable;
8. Holding all meetings and conferences virtually, whenever possible;
9. Discouraging students from using other students' phones, desks, offices, or other work tools and equipment;
10. Prohibiting handshaking and other unnecessary person-to-person contact; and
11. Placing notices that encourage hand hygiene at the entrance to the school and in other areas where they are likely to be seen.

IT IS FURTHER

ORDERED:

That all Child Care Learning Centers and Family Child Learning Homes under the jurisdiction of the Georgia Department of Early Care and Learning (hereinafter, "Childcare Facilities") shall maintain Worker-Child Ratios set forth by the Georgia Department of Early Care and Learning.

IT IS FURTHER

ORDERED:

That all Childcare Facilities shall cease transporting children for any purpose other than transporting children between their place of residence and the Childcare Facility. To the greatest extent possible, all permissible transports shall be conducted in such a way that maintains Social Distancing.

IT IS FURTHER**ORDERED:**

That in addition to the requirements for businesses, establishments, corporations, non-profit corporations, or organizations that are not Critical Infrastructure set forth in Section V above and the standard hygiene, sanitation, and disinfection licensing rules promulgated by the Georgia Department of Early Care and Learning, all Childcare Facilities that operate during the effective dates of this Order ***shall*** implement additional measures to prevent the spread of COVID-19. Such measures ***shall*** include the following:

1. Screening and evaluating all children prior to them entering the classroom for Symptoms of COVID-19;
2. Prohibiting children from entering a classroom if they exhibit any Symptoms of COVID-19;
3. Prohibiting unnecessary visitors;
4. Providing meals in classrooms rather than in congregated or communal settings where possible;
5. Restricting families' access to the front door of the facility or the door of their respective child's classroom only;
6. Surfaces and objects that are frequently touched must be sanitized regularly, including, but not limited to, toys, games, and objects or surfaces not ordinarily cleaned daily;
7. Toys and games that cannot be cleaned and sanitized should not be used;
8. Toys that children have placed in their mouths or that are otherwise contaminated by body secretions or excretions should be set aside until they are cleaned by hand by a person wearing gloves;
9. Machine-washable cloth toys should be used by one individual at a time or should not be used at all and should be laundered before being used by another child;
10. Toys used by a group of children must be washed and sanitized before they may be used by children in a different group or classroom;
11. Items that need to be cleaned should be set aside in a dish pan with soapy water or in a separate container marked for soiled toys;
12. Only bedding (sheets, pillows, blankets, and sleeping bags) that can be washed may be used. Each child's bedding must be kept separate and, to the extent practicable, should be stored in individually labeled bins, cubbies, or bags. Cots and mats should be labeled for each child and any bedding that touches a child's skin should be cleaned weekly or before use by any other child; and
13. Workers should sign children in and out of the facility for families if a computer or keypad system inside the facility is used. If a tablet located outside the facility is used by families

during drop-off and pick-up, the tablet must be disinfected after each use. If a paper sign-in system is used for sign-in, writing utensils should be sanitized after each use if families are permitted to sign children in themselves.

IT IS FURTHER

ORDERED: That Overnight Summer Camps are permitted to host Campers overnight beginning May 31, 2020.

IT IS FURTHER

ORDERED: That in addition to the applicable requirements for non-Critical Infrastructure above, Summer Camps and Overnight Summer Camps **shall** implement additional measures to prevent the spread of COVID-19. Such measures **shall** include, but are not limited to, the following:

1. Placing signage at any entrance to instruct Campers that they cannot enter if they have been diagnosed with COVID-19, have exhibited Symptoms of COVID-19, or had contact with a person that has or is suspected to have COVID-19 within the past fourteen (14) days;
2. Placing signage at any entrance and throughout the facility to instruct Campers of the enhanced sanitation procedures, Social Distancing requirements, and other instructions and limitations, as applicable, set forth below;
3. Screening Campers at drop-off and preventing any Camper from entering that exhibits Symptoms of COVID-19;
4. Requiring that any persons exhibiting Symptoms of COVID-19 at any time while at the Summer Camp to be separated from the group immediately and requiring such person to leave the camp facility as soon as practicable;
5. Requiring any Worker or Camper that has stayed home sick, been prevented from entering camp due to Symptoms of COVID-19, or been sent home during camp due to Symptoms of COVID-19 shall not be permitted to attend camp again until they have either had a negative COVID-19 test or have been fever and fever medication free for seventy-two (72) hours, other Symptoms of COVID-19 have improved, and at least ten (10) days have passed since Symptoms of COVID-19 first appeared;
6. Requiring parents dropping-off and picking-up Campers to remain in their vehicles;
7. Utilizing contactless forms of Camper check-in and check-out;
8. Implementing staggered drop-off and pick-up times, with specific times for each group of Campers, if practicable;

9. Providing Hand Sanitizer to Campers as soon as practicable upon drop-off;
10. Prohibiting unnecessary visitors to camp activities and facilities;
11. Discontinuing camp tours;
12. Providing training to Workers on how to identify Symptoms of COVID-19 in Campers, the proper processes for removing a potentially ill Camper, and the infection mitigation procedures to perform in such an event;
13. Providing an isolation area for sick Workers or Campers;
14. To the extent necessary, limiting groups to twenty-five (25) persons or less, including Workers and Campers, in a space where all persons gathered cannot maintain at least six (6) feet of distance between themselves and any other person;
15. To the extent possible, keeping the same Workers and Campers in the same group for the duration of the camp;
16. Enforcing Social Distancing between groups, prohibiting Gatherings, and prohibiting congregation among Campers belonging to different groups;
17. Providing a separate designated space for each Camper to store personal belongings throughout the duration of the camp;
18. Prohibiting use of camp facilities and equipment that are not able to be regularly sanitized;
19. To the extent possible, allowing only one group to use camp equipment at a time;
20. Sanitizing camp equipment after each group use;
21. Requiring Workers to patrol camp areas to enforce the equipment sanitization policy and conduct additional cleanings during times when equipment is not being used;
22. If swimming facilities are available, allowing each group to swim only once per day and staggering swimming times to avoid crowding at the swimming facilities;
23. If camp facilities are also open to other patrons, prohibiting contact between Campers and the facility's other patrons and requiring sanitization before and after camp use of any such shared facilities;
24. Providing Hand Sanitizer stations for Campers and requiring regular use;
25. Requiring Campers to wash or sanitize their hands during each group restroom break, snack break, and meal break;
26. For day camps, if possible, requiring Campers to bring their own lunch and snacks with them to camp each day, with all such food items being in a sealed lunch bag marked with the Camper's name;

27. Requiring all dining facilities to follow the criteria for restaurant dine-in services set forth in Section IV herein to the extent practicable;
28. Requiring Workers to wear gloves when helping Campers open items from meals and snacks;
29. If camp vehicles are used for transporting Campers to and from on-site or off-site activities, requiring Workers to sanitize each vehicle before and after use;
30. Requiring Workers to clean and sanitize bathrooms and all frequently touched surfaces regularly throughout the opening hours in addition to the regular cleaning schedule. Shared restrooms must be sanitized no less than twice per day;
31. Providing masks or other Personal Protective Equipment to Workers as available and appropriate to the function and location of Workers within the camp facility; and
32. Providing masks or other Personal Protective Equipment to Campers as available and appropriate to the activity and location of Campers within the camp facility; and
33. Overnight Summer Camps shall implement the following additional measures:
 - a. Campers and Workers shall be tested for COVID-19 prior to beginning an Overnight Summer Camp. Overnight Campers and Workers shall not be permitted to begin any Summer Camp unless they have received a negative test result for COVID-19 within seven (7) days prior to beginning an Overnight Summer Camp. A Camper or Worker who receives a positive test result for COVID-19 shall not be allowed access to any Overnight Summer Camp facilities or Overnight Summer Camp activities until either:
 - i. The Camper or Worker has had no fever for at least seventy-two (72) hours, without taking fever-reducing medication, and
 - ii. The Camper's or Worker's Symptoms of COVID-19 have shown progressive improvement, and
 - iii. At least ten (10) days have elapsed from the date Symptoms of COVID-19 began,

or

- i. For a Camper or Worker who has received a laboratory-confirmed positive test result, but who has experienced no Symptoms of COVID-19, until at least ten (10) days have

elapsed since the date of the first positive diagnostic test.

- b. Screening Workers and Campers each morning and evening. Persons exhibiting Symptoms of COVID-19 shall be separated from the group immediately and must leave the camp facility as soon as practicable;
- c. Requiring Workers to clean and sanitize overnight bunk rooms at least once per day;
- d. Sanitizing bunks and bunk mattresses at least once per week and before and after use by a new Worker or Camper;
- e. Limiting camp occupancy to the extent necessary to maintain overnight bunk room occupancy at twenty-five (25) persons, including Workers and Campers, or less per room;
- f. To the extent possible, arranging beds and bunk beds in overnight bunk rooms so that beds are six (6) feet apart and in a foot-to-foot style; and
- g. Requiring a Registered Nurse or Licensed Practical Nurse to be on site during all times that Campers are present at the camp facility to the extent practicable.

IT IS FURTHER

ORDERED:

That all Campers and Workers who stay overnight at an Overnight Summer Camp must remain on the Summer Camp premises at all times, except in case of emergency or for purposes of participating in an off-site activity that is part of the Overnight Summer Camp's program. Any Camper or Worker who leaves the premises of an Overnight Summer Camp for any reason shall be required to receive an additional negative test result for COVID-19 prior to re-entry. This provision shall not apply to Workers at Summer Camps who do not stay overnight, provided that such Workers wear a face covering and practice strict Social Distancing while on the premises of the Overnight Summer Camp.

IT IS FURTHER

ORDERED:

That a Camper or Worker at a Summer Camp or an Overnight Summer Camp with known exposure to COVID-19 shall not be allowed access to any Summer Camp or Overnight Summer Camp, including any facilities or activities, until at least fourteen (14) days have elapsed since the last known exposure.

IT IS FURTHER

ORDERED: That Code Section 15-11-2(10) relating to the definition of “child” is suspended for the limited purpose of ensuring that persons in the care of the Georgia Division of Family & Children Services who age out of the definition of “child” during the Public Health State of Emergency shall be eligible to remain in their placement and continue to receive services for a duration of ninety (90) days following the termination of the Public Health State of Emergency or any extension thereof. This suspension shall apply to Code Section 15-11-2(10), effective until July 1, 2020, and upon expiration to Code Section 15-11-2(10), effective July 1, 2020. Any Georgia Division of Family & Children Services policies shall also align with this provision.

IT IS FURTHER

ORDERED: That no provision of this Order shall limit, infringe, suspend, or supplant any custodial arrangements created pursuant to the laws or constitution of this State or the laws or constitution of the United States, nor shall any person use any provision of this Order as a defense to an action in violation of a custodial arrangement by any court created pursuant to the laws or constitution of this State or the laws or constitution of the United States.

VIII. GOVERNMENTS

IT IS FURTHER

ORDERED: That for the purposes of Code Section 48-5-311(e)(6A), “in-person” appearances before county boards of equalization may occur via remote communications, including, but not limited to, video teleconference. This provision shall be implemented consistent with Ga. Comp. R. & Regs. r. 560-11-12-.02, which requires hearings before county boards of equalization to “only be as formal as is necessary to preserve order and be compatible with the principles of justice.” Further, this provision does not abrogate the requirement that county boards of equalization comply with the Georgia Open Meetings Act.

IT IS FURTHER

ORDERED: That the requirements of Code Section 36-70-27 and 50-8-8 are hereby suspended to the extent that they would prevent local governments from being eligible to receive state funding for expenditures made during the current Public Health State of Emergency related to the prevention, treatment, or mitigation of COVID-19.

IT IS FURTHER

ORDERED: That county and municipal governments are authorized and empowered to make, amend, and rescind such orders, rules, and regulations as may be necessary for emergency management purposes and to supplement the carrying out of this Order, but such orders, rules, and regulations shall not be inconsistent with this Order or any other orders, rules, or regulations promulgated by the Governor or by any state agency exercising a power derived from the Public Health State of Emergency declaration. For the purpose of this provision, orders, rules, and regulations that are promulgated by county and municipal governments that are more or less restrictive than the terms of this Order shall be considered inconsistent with this Order.

IT IS FURTHER

ORDERED: That the operation of Critical Infrastructure shall not be impeded by county, municipal, or local ordinance.

IX. ENFORCEMENT

IT IS FURTHER

ORDERED: That the state agencies with primary regulatory authority over the entities listed in this Order and the Commissioner of the Department of Public Safety shall provide resources as requested to assist in the enforcement of this Order.

IT IS FURTHER

ORDERED: That pursuant to Code Section 38-3-7, any person who violates this Order shall be guilty of a misdemeanor. Officials enforcing this Order should take reasonable steps to provide notice prior to issuing a citation or making an arrest. No provision of this Order shall limit the ability of law enforcement officers to enforce the laws of this State. Particularly, the provisions of Code Section 38-3-4 remain in effect, and all law enforcement is authorized to enforce the Orders issued pursuant to Title 38, Chapter 3.

IT IS FURTHER

ORDERED: That any law enforcement officer, after providing reasonable notice and issuing at least two citations for violations of Code Section 38-3-7, is authorized to mandate the closure of any business,

establishment, corporation, non-profit corporation, or organization not in compliance with this Order for a period not to extend beyond the term of this Order.

IT IS FURTHER

ORDERED: That pursuant to Executive Order 04.02.20.01 and Code Section 38-3-51, enforcement of any county or municipal ordinance or order that is more or less restrictive than this Order is hereby suspended.

X. MISCELLANEOUS

IT IS FURTHER

ORDERED: That if one or more of the provisions contained in this Order shall conflict with the provisions of any previous Executive Order or Agency Administrative Order, the provisions of this Order shall control. Further, in the event of any conflict, the provisions of any Quarantine or Isolation Order issued to a specific person by the Department of Public Health shall control.

IT IS FURTHER

ORDERED: That nothing in this Order shall be construed to suspend or limit the sale, dispensing, or transportation of firearms or ammunition, or any component thereof.

IT IS FURTHER

ORDERED: That if one or more of the provisions contained in this Order shall be held to be invalid, in violation of the Georgia Constitution, in violation of Georgia law, or unenforceable in any respect, such invalidity, violation, or unenforceability shall not affect any other provisions of this Order, but, in such case, this Order shall be construed as if such invalid, illegal, or unenforceable provision had never been contained within the Order.

IT IS FURTHER

ORDERED: That no provision of this Order shall limit, infringe, suspend, or supplant any judicial order, judgment, or decree issued pursuant to the laws or constitution of this State or the laws or constitution of the United States, nor shall any person use any provision this Order as a defense to an action in violation of a judicial order, judgment, or decree by any court created pursuant to the laws or constitution of this State or the laws or constitution of the United States.

IT IS FURTHER

ORDERED: This Order does not attempt, nor shall it be construed, to imply that the Governor, in any instance, has the unilateral authority to overturn any judicial order, judgment, or decree.

IT IS FURTHER

ORDERED: The Office of the Governor may continue to issue guidance on the scope of this Order as needed through communication media, including social media, without need for further Executive Orders.

XI. EFFECTIVE DATE & SIGNATURE

IT IS FURTHER

ORDERED: That this Order shall be effective upon signature.

This 28th day of May 2020, at 3:57 A.M./P.M.


GOVERNOR

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION



**James L. “Jimmy” Cooper,
III**, et al.,

Plaintiffs,

vs.

Brad Raffensperger, in his
official capacity as Secretary of
State of the State of Georgia,

Defendant.

Case No. 1:20-cv-01312-ELR

**Declaration of
Richard Winger**

1. My name is Richard Winger. I am over the age of 18 and competent to testify to the matters in this declaration.
2. I have been asked by the plaintiffs to check certain assertions of fact contained in the defendant’s response in opposition to the plaintiffs’ motion for a preliminary injunction. (ECF 17.)
3. I am a recognized expert in ballot-access laws for independent and third-party candidates.

4. Since 1985 I have published a newsletter, Ballot Access News (12 issues per year), which covers legal, legislative and political developments of interest to third parties and independent candidates.

5. For 53 years I have researched the ballot-access laws of all states, for the period 1888 to the present (there were no ballot access laws in the U.S. before 1888 because there were no government-printed ballots until that year).

6. Appendix A to this declaration contains a copy of my current Curriculum Vitae which includes a complete list of all publications that I have authored in the past 10 years and all other cases in which I have testified as an expert in the last four years.

7. I am receiving no compensation for my work in this case.

8. The Secretary's brief claims that most other states have more burdensome petitioning rules which "often restrict voters from signing more than one petition." (ECF 17 at 6.) This is not accurate.

9. I track petitioning rules for purposes of my newsletter. To check the accuracy of the Secretary's claim, I examined candidate petitions from all 50 states that I maintain in my possession.

10. Based on my review of those petitions, only 12 states restrict voters from signing more than one candidate petition. Those states are:

Arizona, California, Idaho, Illinois, Kansas, Michigan, New Jersey, New Mexico, Oregon, Texas, Washington, and Wisconsin.

11. Other than those 12, there are only two states with rules for candidate petitions that are, in my view, arguably more burdensome than Georgia's. Texas does not allow voters who voted in a primary election to sign independent or third-party candidate petitions, and Minnesota has only a two-week petitioning window for independent non-presidential candidates.

12. As a result, I do not think it is accurate to say that most states have more burdensome petitioning rules than Georgia does.

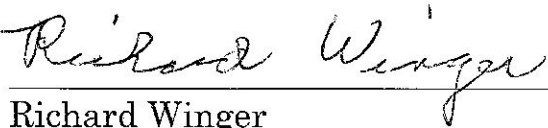
13. The Secretary's brief also claims that Georgia has "one of the longest signature gathering periods (if not the longest) in the nation." (ECF 17 at 21.) This is also not accurate.

14. I track petitioning periods for purposes of my newsletter.

15. More than half of the states give candidates an unlimited amount of time to gather signatures. A few states have petition periods that are longer than Georgia's 180-day period. Fewer than 10 states have petition periods that are shorter than Georgia's 180-day period. Among those states with shorter petition periods, no state requires candidates for President or U.S. Representative to gather nearly as many signatures as Georgia does.

16. As a result, I do not think it is accurate to say that Georgia has one of the longest signature-gathering periods in the nation.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on June 9, 2020.


Richard Winger
San Francisco, California



VIRGINIA :

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

OMARI FAULKNER FOR VIRGINIA,)

-and-)

OMARI FAULKNER)

Plaintiffs,)

v.)

Civil Action No.:

VIRGINIA DEPARTMENT OF ELECTIONS)

-and-)

VIRGINIA STATE BOARD OF ELECTIONS)

ROBERT H. BRINK, Chairman of)

The State Board of Elections, in his)

official capacity, JOHN O'BANNON,)

Vice-Chairman of the State Board of Elections,)

in his official capacity,)

JAMILAH D. LECRUISE,)

Secretary of the State Board of Elections,)

In her official capacity,)

CHRISTOPHER E. "CHRIS" PIPER,)

Commissioner Of the State Board of Elections,)

in his official capacity)

JESSICA BOWMAN, Deputy Commissioner)

Of the State Board of Elections, in her)

official capacity.)

- and -)

THE REPUBLICAN PARTY OF VIRGINIA)

-and-)

Chairman Jack R. Wilson, in his capacity)

As Chairman of the Republican Party of)

Virginia)

Defendants.)

VERIFIED COMPLAINT

Plaintiffs, Omari Faulkner and his United States Senate campaign committee, Omari Faulkner For Virginia, a political committee registered with the Federal Election Commission, by counsel and pursuant to the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, Section 8.01-620 of the Code of Virginia (the “Code”), and Rule 3:2 of the Rules of Supreme Court of Virginia, state the following verified complaint for declaratory judgment and permanent, preliminary, and emergency injunctive relief against the Virginia Department of Elections, the Virginia State Board of Elections, its Chairman, Vice-Chairman, Secretary, Commissioner, and Deputy Commissioner, the Republican Party of Virginia, and Chairman of the Republican Party of Virginia, Jack R. Wilson, in his official capacity, (together, “Defendants”) to restrain defendants, in this election only, from enforcing in full the candidate signature requirement for U.S. Senate candidates codified at Va. Code § 24.2-521(1).

PARTIES

1. Plaintiff Omari Faulkner resides in Bluemont, Virginia and is a member of the United States Navy Reserve. Mr. Faulkner is also a candidate for the Republican nomination for U.S. Senate. Mr. Faulkner filed his Statement of Candidacy with the Federal Election Commission on November 11, 2019. (Ex. A, Statement of Candidacy).

2. Plaintiff Omari Faulkner For Virginia is the official candidate committee for Mr. Faulkner’s bid for United States Senate. The campaign committee filed its Statement of Organization with the Federal Election Commission on November 11, 2019 and has the campaign ID number as C00726570. (Ex. B, Statement of Organization).

3. Defendant State Board of Elections, through the Virginia Department of Elections oversees “voter registration, absentee voting, *ballot access for candidates*, campaign finance disclosure and voting equipment certification in coordination with Virginia’s 133 local election offices.”¹ *See also* Va. Code § 24.2-103(A) (vesting the State Board of Elections, through the Department of Elections, with supervisory authority to obtain uniformity in election laws).

4. The State Board has the duty to receive both Declarations of Candidacy from candidates for United States Senate, as well as a Petition containing at least 10,000 signatures statewide, with at least 400 signatures from each congressional district. Va. Code §§ 24.2-522(C) 24.2-521(1). The State Board is then required to “transmit the material so filed to the state chairman of the party of the candidate.” Va. Code § 24.2-522.

5. The State Board of Elections also has the duty to prescribe various forms for the registration of voters and the conduct of elections. *See* Va. Code § 24.2-105. The State Board of Elections has prescribed Form SBE 506/521, the form that contains the signatures of voters to get a candidate’s name on the ballot.

6. Defendant Robert H. Brink is the Chairman of the State Board of Elections. He is sued in his official capacity.

7. Defendant John O’Bannon is the Vice-Chairman of the State Board of Elections. He is sued in his official capacity.

¹ *See* Department of Elections, *About the Agency available at <https://www.virginia.gov/agencies/department-of-elections/>* (last visited March 19, 2020) (emphasis added).

8. Defendant Jamilah D. LeCruise is the Secretary of the State Board of Elections. She is sued in her official capacity.

9. Defendant Christopher E. "Chris" Piper is the Commissioner of the State Board of Elections. He is sued in his official capacity.

10. Defendant Jessica Bowman is the Deputy Commissioner of the State Board of Elections. She is sued in her official capacity.

11. Defendant Republican Party of Virginia ("RPV") is the State Party affiliate of the Republican National Committee.²

12. Defendant Jack Wilson is the Chairman of the Republican Party of Virginia and he is sued in that capacity only. As Chairman, Mr. Wilson is responsible for verifying the number of signatures and certifying to the State Board that the candidate had a sufficient number of signatures to obtain a position on the ballot. *See* Va. Code § 24.2-527(A).

JURISDICTION

13. This Court has jurisdiction over the subject matter of this Complaint pursuant to Sections 8.01-184 and 8.01-186 of the Code. This statute permits this Court to issue both declaratory judgments as well as grant injunctive relief to effectuate its declaratory judgment.

² *See, e.g.*, RPV Party Plan at 6, §A ¶ 5 (membership on the Republican Party of Virginia's State Central Committee includes the two Virginia representatives to the Republican National Committee. *See also id.* at 7, §C ¶ 3 (stating that the Republican Party of Virginia's State Central Committee has the authority to fill vacancies for Virginia's National Committee representative in the event a vacancy occurs before the next Republican National Convention) available at <https://virginia.gop/wp-content/uploads/2020/01/Party-Plan-Amended-December-2019.pdf> (last visited March 19, 2020).

14. Venue is appropriate in the City of Richmond Circuit Court because several officers of the Commonwealth are sued in their official capacity and those officers have offices within the City of Richmond. Va. Code § 8.01-261(2).

FACTS

15. Mr. Faulkner began his bid for the Republican nomination to represent Virginia in the United States Senate back in November of 2019.

16. Within weeks, Omari Faulkner for Virginia, contracted with an individual to run the campaign's signature gathering operation to obtain the necessary signatures pursuant to Va. Code § 24.2-521(1).

17. Beginning in approximately early January of 2020, the campaign committee assiduously and diligently began circulating petitions to obtain these signatures. These efforts were done so that Mr. Faulkner's name would appear on the Virginia's Republican Primary Ballot.

18. Just as the sun was rising on 2020 and heating the campaign trails, the menace that is COVID-19, also known as the Coronavirus, landed on the shores of the Commonwealth. Within the past week alone, there has been a steady and persistent cascade of emergency actions taken to combat COVID-19.

19. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. (attached as Ex. H).

20. In response to the conflagration of cases and to combat COVID-19, on March 12, 2020 Governor Northam declared a State of Emergency. In his "Declaration Of A State Of Emergency Due To Novel Coronavirus (Covid-19)" (attached as Exhibit

C), Governor Northam declared that COVID-19 is public health threat because it is a communicable disease. (Ex. C at 1).

21. The following day, President Trump declared a national emergency.

22. Three days later on Monday, March 16, 2020, Governor Northam issued a directive stating that restaurants, fitness centers, and theatres either had to reduce capacity to 10 people or close. (attached as Ex. E). Governor Northam also banned all events with 100 or more persons.

23. Later, on Monday March 16, 2020, the Supreme Court of Virginia declared a judicial emergency. (attached as Ex. F). This order declared that a judicial emergency exists from March 16 to Monday April 6, 2020. (Ex. F at 1). The order further ordered that all non-emergency and non-essential court proceedings be suspended and that all deadlines are tolled for 21 days. Ex. F. at 2.

24. Then, on March 17, President Trump declared that for a period of 15 days, there should be no gatherings of 10 or more people.³

25. The White House in collaboration with the Center for Disease Control published guidelines for how people should conduct themselves through these next 15 days. Included within these guidelines is the recommendation that in areas where community spread of COVID-19 is present, “bars, restaurants, food courts, gyms, and other indoor and outdoor venues where groups of people congregate should be closed.” (attached as Ex. D). Additionally, people should avoid discretionary travel, including shopping trips and social visits. *Id.*

³ See The President’s Coronavirus Guidelines for America: 15 Days To Slow The Spread available at https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf (last visited March 19, 2020).

26. Finally, of specific importance, the Center for Disease Control has recommended that people maintain a safe social distance of *at least six feet*. (attached as Exhibit G). This is because contact with a person within six feet can cause transmission of COVID-19. Ex. G.

27. States have addressed COVID-19 and its impact on elections in various ways.

28. The State Defendants themselves have in fact started taking measures to limit human interaction in relation to the upcoming election. In recognizing the danger of coming into close contact with others, the Virginia Department of Elections “to protect [Voters’] health during COVID-19 outbreak” is strongly encouraging voters to vote absentee in the upcoming May elections. The Department is advising voters to choose reason “2A My disability or illness” for Absentee voting in the June 2020 elections due to COVID-19.”⁴

29. Seven states, Georgia, Louisiana, Alabama, Kentucky, Ohio, Maryland, and Connecticut, have all moved their election dates to later in the calendar. For example, Alabama’s primary runoff election was moved from March 31, 2020 to July 14, 2020.⁵ Additionally, Louisiana has moved their primary election from April 4, 2020 to June 20, 2020,⁶ while Georgia has moved its primary election from March 24, to May 19, 2020.⁷

⁴ See Va. Department of Elections, *Absentee Voting* available at <https://www.elections.virginia.gov/casting-a-ballot/absentee-voting/> last visited (March 19, 2020).

⁵ See *Supplemental State of Emergency: Coronavirus COVID-19* available at <https://governor.alabama.gov/newsroom/2020/03/supplemental-state-of-emergency-coronavirus-covid-19/> (last visited March 19, 2020).

⁶ See *Covid-19 And Elections Update* available at <https://www.sos.la.gov/Pages/NewsAndEvents.aspx#faq258> (last visited March 16, 2020).

Kentucky has moved its primary election from May 19 to June 23, 2020,⁸ while Maryland moved its primary election from April 28, 2020 to June 2, 2020.⁹ Connecticut moved its election from April 28 to June 2, 2020.¹⁰ Finally, the Ohio Department of Health canceled its March 17, 2020 primary election.¹¹

30. Then, prior to President Trump's declaration of a national emergency, and before Governor Northam's declaration of a state emergency, Governor Cuomo of New York took emergency action. On March 7, 2020, Governor Cuomo of New York issued Executive Order 202.2 which modified New York's petition signature requirement. New York reduced the number of signatures a candidate is required to obtain by 70%. *See* Ex. I at 1. Furthermore, Governor Cuomo suspended all signature gathering activity on March 17, 2020. *See id.*

31. Despite the steady drumbeat of warnings to maintain a safe social distance by the Governor, the President, the State Board of Elections, and the CDC, Mr. Faulkner

⁷ *See Secretary Of State Raffensperger Postpones The Presidential Preference Primary* available at https://sos.ga.gov/index.php/elections/secretary_of_state_raffensperger_postpones_the_presidential_preference_primary (last visited March 16, 2020).

⁸ *See Secretary Of State Moves To Delay May 19 Elections* available at <https://kentucky.gov/Pages/Activity-stream.aspx?n=SOS&prId=300> (last visited March 19, 2020).

⁹ *See Renewal Declaration of State Of Emergency and Existence of Catastrophic Health Emergency –COVID-19*, available at <https://governor.maryland.gov/wp-content/uploads/2020/03/Renewal-of-State-of-Emergency.pdf> (last visited March 19, 2020).

¹⁰ *See Executive Order No. 7G* available at <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7G.pdf> (last visited March 19, 2020).

¹¹ *See In re: Closure of Poling Locations in the State of Ohio on Tuesday March 17, 2020* available at https://content.govdelivery.com/attachments/OHOOD/2020/03/17/file_attachments/1402754/Director%27s%20Order%20Closure%20of%20the%20Polling%20Locations.pdf (last visited March 19, 2020).

has obtained 3,769 signatures statewide. Mr. Faulkner's campaign has also obtained the following amounts of signatures in each congressional district:

- a. CD 1: 242
- b. CD 2: 319
- c. CD 3: 690
- d. CD 4: 109
- e. CD 5: 262
- f. CD 6: 391
- g. CD 7: 374
- h. CD 8: 201
- i. CD 9: 168
- j. CD 10: 747
- k. CD 11: 267

32. Despite their diligence, Mr. Faulkner and his campaign are still 6,231 signatures shy of the statewide requirement and have at least 200 signatures in 9 congressional districts.

33. Because of the current health crisis in Virginia, particularly because COVID-19 is a communicable disease, Mr. Faulkner and his campaign are unlikely to be able to obtain the necessary signatures prior to the deadline absent relief sought in this lawsuit.

34. At best, continued attempts to obtain signatures is challenging, and at worst is in direct conflict with directives from everyone in the public health community,

which only risks making a very serious situation worse and specifically exposes campaign staff to additional dangers.

35. Mr. Faulkner and his campaign must submit the requisite signatures by Thursday, March 26, 2020. Va. Code § 24.2-522(A). This is because Virginia's primary is scheduled for June 9, 2020 and the statute requires candidates to file their declaration of candidacies and petition signatures 75 days prior to the election. Va. Code § 24.2-522(A).¹²

36. When the State Board receives Mr. Faulkner's petition papers, the State Board is then required to "transmit the material so filed to the state chairman of the party of the candidate" within 72 hours of receipt. Va. Code § 24.2-522. In this case, the State Board must transmit this material to Jack Wilson, chairman of the Republican Party of Virginia.

37. Only the State Chairman is permitted to open the sealed containers containing the signed petitions. Va. Code § 24.2-522.

38. Then, the State Chairman of the Republican Party of Virginia must certify to the State Board that the Party reviewed the petitions and found that the requisite number of petitions was satisfied. Va. Code § 24.2-527. The State Chairman must provide the State Board with this certification by March 31, 2020, or seventy days before June 9, 2020. Va. Code § 24.2-527.

39. Mr. Faulkner would have been able to satisfy the signature requirement but for the unanticipated and unprecedented pandemic of COVID-19.

¹² See Upcoming Elections, Virginia Department of Elections *available at* <https://www.elections.virginia.gov/casting-a-ballot/calendars-schedules/upcoming-elections.html> (last visited March 19, 2020).

40. Absent an injunction, Mr. Faulkner's name will not appear on the ballot. This will violate his constitutional right to free speech and free association.

41. Defendants at all times are acting under the color of state law.

U.S. CONSTITUTIONAL LAW

42. The First Amendment declares in no uncertain terms that Congress shall make no law abridging the freedom of speech. U.S. Const. amend. I. *See also Citizens United v. FEC*, 558 U.S. 310, 336 (2010). This restriction against governmental power is applied to the states through the Fourteenth Amendment. *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015).

43. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *NAACP v. Alabama*, 357 U.S. 449, 460 (1958).

44. The Supreme Court has made clear, "whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters ... state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny" *Id.* at 460-61.

45. The right to "voluntary political association ... is an important aspect of the First Amendment freedom" that the Supreme Court "has consistently found entitled to constitutional protection." *Lefkowitz v. Cunningham*, 431 U.S. 801, 808 (1977).

46. A person's ability to exercise their rights guaranteed under the First Amendment is "[u]ndeniably enhanced by group association." *Buckley v. Valeo* 424 U.S. 1, 15 (1976) (quoting *NAACP v. Alabama*, 357 U.S. at 460).

47. Both the First and the Fourteenth Amendments therefore, guarantee the “freedom to associate with others for the common advancement of political beliefs and ideas...” *Id.*; see also *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983) (“[T]he right of individuals to associate for the advancement of political beliefs . . . rank[s] among our most precious freedoms.”).

48. Further, because the freedom of association enhances the effectiveness of the freedom of speech, the government cannot limit or dictate who an association chooses to associate with for the common advancement of the association’s beliefs. *Tashjian v. Republican Party*, 479 U.S. 208, 224 (1986) (emphasis added).

49. Although states are entrusted with administering their elections and imposing reasonable restrictions “in exercising their powers of supervision over elections . . . the States may not infringe upon basic constitutional protections.” *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973).

50. “[Ballot] Access restrictions also implicate the right to vote because, absent recourse to referendums, voters can assert their preferences only through candidates or parties or both.” *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979).

51. In constitutional analysis, the primary concern of courts is “with the tendency of ballot access restrictions to limit the field of candidates from which voters might choose.” *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983).

52. “By limiting the choices available to voters, the State impairs the voters’ ability to express their political preferences.” *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979).

VIRGINIA LAW

53. Under Virginia law, Mr. Faulkner and his campaign are required to obtain 10,000 signatures statewide. Included within that 10,000 signatures is a requirement to obtain 400 signatures within each congressional district. Va. Code § 24.2-521(1).

54. Mr. Faulkner and his campaign are required to submit these signatures to the State Board of Elections on March 26, 2020. Va. Code § 24.2-522(A).

55. Then, within 72 hours of receipt, the State Board is required to “transmit the material so filed to the state chairman of the party of the candidate” who is Jack Wilson of the RPV. Va. Code § 24.2-522.

56. Only the State Chairman, Mr. Wilson, is permitted to open the sealed containers containing the signed petitions. Va. Code § 24.2-522.

57. Then, by March 31, 2020, the State Chairman of the Republican Party of Virginia must certify to the State Board that the Party reviewed the petitions and found that the requisite number of petitions was satisfied. Va. Code § 24.2-527.

CLAIMS

COUNT I

Violation of The First Amendment’s Free Speech And Association Clauses
1983 Action

58. Plaintiffs incorporate by reference paragraphs 1-57 as if fully restated herein.

59. It is impracticable for Mr. Faulkner and his campaign to complete their task of obtaining 10,000 signatures statewide and 400 signatures in each of Virginia’s eleven congressional districts given recent events. Given the impracticability of Mr.

Faulkner and his campaign to obtain signatures since the declaration of a State emergency, Mr. Faulkner seeks redress.

60. “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964).

61. Ballot restrictions that severely burden the right to vote and associate violate the First Amendment to the U.S. Constitution. *See Storer v. Brown*, 415 U.S. 724, 728-29 (1974).

62. Accordingly, “[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms. If the State has open to it a less drastic way of satisfying its legitimate interests, it may not choose a legislative scheme that broadly stifles the exercise of fundamental personal liberties.” *Kusper v. Pontikes*, 414 U.S. 51, 59 (1973) (internal quotation marks and citations omitted).

63. Therefore, in recognizing that States must enact election codes for orderly, fair, and honest elections, courts reviewing challenges to ballot access cases impose a flexible standard. *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992). If the election regulation imposes a severe burden, then the regulation must survive strict scrutiny. *Id.* at 434. By contrast, if the election regulation imposes a light burden, rational basis or intermediate scrutiny applies. *Id.*

64. Under the current conditions created by COVID-19, including a declared state of emergency in our Commonwealth as well as a declared National emergency, Virginia’s signature requirement imposes a severe burden on Plaintiffs.

65. This burden is compounded because of the various government recommendations that individuals maintain at least six feet distance between them.

66. Virginia does not have a compelling justification to require Plaintiffs to continue circulating large numbers of petitions between now and March 26 when there are guidelines from the U.S. Government, Virginia government, and the Center for Disease Control recommending people to maintain a safe distance of six feet or more.

67. Furthermore, Virginia cannot claim a compelling justification when Virginia, recognizing the danger imposed by the communicable disease COVID-19, is encouraging voters to cast absentee ballots rather than go to the polls and vote. The fact that State Defendants are encouraging voters to vote absentee and not travel to the polls insinuates that it is contrary to the health of Virginians to come into close contact with others. Virginia cannot say that for the health of voters, do not vote in person but still demand that Plaintiffs still send volunteers out to neighborhoods and business and collect signatures in person.

68. In analogous situations, courts have extended voter registration deadlines in light of natural disasters, like hurricanes. *See Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250 (N.D. Fla. 2016). In that court's analysis of the burden, the court noted that in the final week before voter registration closed, an estimated 100,000 people were expected to register. *Id.* at 1257. But because of Hurricane Matthew, these potential voters were forced to flee the State. *Id.* Thus, these potential voters could not vote because they were unregistered. *Id.* Florida's voter registration statute imposed a severe burden that it could not justify. *Id.*

69. Because the inability to register to vote meant these 100,000 people could not vote, the court ruled that was a severe burden. *Id.*

70. Florida could not justify its severe burden because, similar to here, several other states impacted by Hurricane Matthew either extended their voter registration deadlines or permitted voter registration on Election Day. *Id.* Accordingly, under the flexible approach explained in *Burdick*, the court ruled that under any standard, Florida could not justify its decision not to extend voter registration in light of Hurricane Matthew. *Id.* at 1257-58; *see also Ga. Coalition for the Peoples' Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344 (S.D. Ga. 2016) (ordering an extension of voter registration deadline due to Hurricane Matthew because the loss of the right to vote would be an irreparable harm and when balanced to administrative burden of extending registration deadline, the harm to voting rights outweighed the administrative burden).

71. Accordingly, Virginia does not have a compelling or even sufficiently important interest to justify maintaining its 10,000-signature requirement and 400-signature per congressional district requirement in light of the current public health emergency.

72. Absent an injunction, Mr. Faulkner will not appear on the ballot, a severe burden to his First Amendment rights. *See Fla. Democratic Party*, 215 F. Supp. 3d at 1257.

73. Additionally, because Mr. Faulkner and his campaign have obtained 3,769 signatures, he has demonstrated a sufficient modicum of support in the context of this election. *See Bowe v. Board of Election Comm'rs*, 614 F.2d 1147, 1152 (7th Cir. 1980) (“The ultimate question was said to be whether in the context of California politics, a

reasonably diligent candidate could be expected to be able to meet the requirements and gain a place on the ballot.”) (citing *Storer*, 415 U.S. at 742). Given the global pandemic that has seized our Commonwealth and our Nation, Mr. Faulkner and his campaign have demonstrated a modicum of support to merit a place on the ballot.

74. At all times, State Defendants were acting under the color of state law.

PRAYER FOR RELIEF

A. Declare Va. Code § 24.2-521(1) unconstitutional as applied to Senate candidates in this particular pending election.

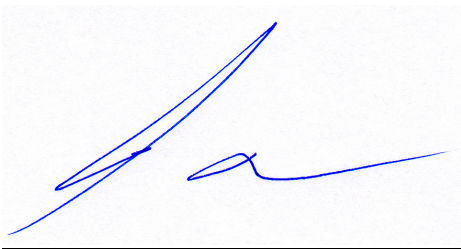
B. Enjoin all Defendants from enforcing Va. Code § 24.2-521(1) in full against United States Senate candidates in this primary election.

C. Order that, to obtain a position on the partisan primary election ballot for U.S. Senate, candidates for the U.S. Senate must obtain 3,500 signatures statewide and 100 signatures in each of Virginia’s eleven congressional districts.

D. DEMAND FOR ATTORNEYS’ FEES: Pursuant to Rule 3:25 of the Rules of the Supreme Court of Virginia, Plaintiffs seek reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988.

E. Award all other relief that this Court deems just and necessary.

Respectfully submitted, March 23, 2020

A handwritten signature in blue ink, appearing to be 'Jason Torchinsky', written over a horizontal line.

Jason Torchinsky (VA Bar# 47481)
Jonathan P. Lienhard (VA Bar# 41648)
Shawn Sheehy (VA Bar# 82630)

Holtzman Vogel Josefiak Torchinsky
45 N. Hill Drive
Suite 100
Warrenton, VA 20186
(W) 540-341-8808
(F) 540-341-8809
jtorchinsky@hvjt.law
jlienhard@hvjt.law
ssheehy@hvjt.law
Counsel to Plaintiffs

VERIFICATION PURSUANT TO VIRGINIA CODE SECTION 8.01-4.3

I, Omari Faulkner have reviewed the factual averments in the Verified Complaint and I can swear under penalty of perjury that those factual averments are true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Omari Faulkner", written over a horizontal line.

Omari Faulkner

VERIFICATION PURSUANT TO VIRGINIA CODE SECTION 8.01-4.3

I, Lisa Lisker, serve as the treasurer for Omari Faulkner for Virginia, Inc. I have reviewed the factual averments in the Verified Complaint and I can swear under penalty of perjury that those factual averments are true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Lisa R. Lisker". The signature is written in a cursive style with a large, stylized 'L' and 'S'.

Lisa Lisker

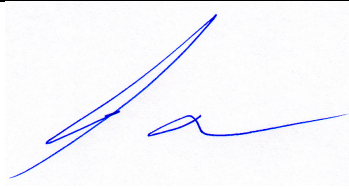
Treasurer, Omari Faulkner for Virginia

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was this 23rd day of March 2020 served, by email and FedEx, postage pre-paid, upon the following:

<p>Carol Lewis & Heather Hays Lockerman Assistant Attorneys General 202 North 9th Street Richmond, VA 23219 (804) 692-0558 CLewis@oag.state.va.us HLockerman@oag.state.va.us</p> <p><i>On behalf of:</i></p> <p>VIRGINIA DEPARTMENT OF ELECTIONS</p> <p>-and-</p> <p>VIRGINIA STATE BOARD OF ELECTIONS ROBERT H. BRINK, Chairman of The State Board of Elections, in his official capacity, JOHN O'BANNON, Vice-Chairman of the State Board of Elections, in his official capacity, JAMILAH D. LECRUISE, Secretary of the State Board of Elections, In her official capacity, CHRISTOPHER E. "CHRIS" PIPER, Commissioner Of the State Board of Elections, in his official capacity JESSICA BOWMAN, Deputy Commissioner Of the State Board of Elections, in her official capacity.</p>	<p>Chris Marston 110 Shooters Ct. Alexandria, VA 22314 (571) 482-7690 chris@electioncfo.com</p> <p><i>Counsel to:</i></p> <p>THE REPUBLICAN PARTY OF VIRGINIA)</p> <p>-and-</p> <p>Chairman Jack R. Wilson, in his capacity As Chairman of the Republican Party of Virginia.</p>
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By: _____



Jason B. Torchinsky

EXHIBIT INDEX

Exhibit 1	Executive Order 03.14.20.01
Exhibit 2	Executive Order 03.16.20.01
Exhibit 3	Executive Order 03.23.20.01
Exhibit 4	Executive Order 03.26.20.02
Exhibit 5	Executive Order 04.01.20.01
Exhibit 6	Executive Order 04.02.20.01
Exhibit 7	Executive Order 04.08.20.02
Exhibit 8	Executive Order 04.23.20.02
Exhibit 9	Executive Order 04.30.20.01
Exhibit 10	Raffensperger announcement of March 14, 2020
Exhibit 11	Raffensperger announcement of March 24, 2020
Exhibit 12	Raffensperger announcement of April 9, 2020
Exhibit 13	letter from Harvey to Cowen
Exhibit 14	WHO statement
Exhibit 15	WHO director's remarks
Exhibit 16	Azar determination
Exhibit 17	Presidential Proclamation

- Exhibit 18 Order, *Cowen v. Raffensperger*, Civ. No. 1:17-CV-4660-LMM (N.D. Ga. Sept 23, 2019) (ECF 113)
- Exhibit 19 Def's Resp. to Pls. Statement of Undisputed Material Facts, *Cowen v. Raffensperger*, Civ. No. 1:17-CV-4660-LMM (N.D. Ga. Aug. 07, 2019) (ECF 97)
- Exhibit 20 Declaration of Scott Chambers
- Exhibit 21 Declaration of Jimmy Cooper
- Exhibit 22 Declaration of Martin Cowen
- Exhibit 23 Declaration of Hugh Esco
- Exhibit 24 Declaration of Joe Reed
- Exhibit 25 Executive Order 05.28.20.01
- Exhibit 26 Executive Order 05.28.20.02
- Exhibit 27 Declaration of Richard Winger
- Exhibit 28 Complaint, *Faulkner v. Virginia Dep't of Elections*, No.: CL 20-1456 (Va. Cir. Mar. 23, 2020)