

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**MEMPHIS A. PHILLIP RANDOLPH** )  
**INSTITUTE, THE EQUITY ALLIANCE,** )  
**FREE HEARTS, THE MEMPHIS AND** )  
**WEST TENNESSEE AFL-CIO** )  
**CENTRAL LABOR COUNCIL, THE** )  
**TENNESSEE STATE CONFERENCE** )  
**OF THE NAACP, SEKOU** )  
**FRANKLIN, and KENDRA LEE,** )  
**Plaintiffs,** )

**Case No. 3:20-cv-00374**  
**Judge Richardson**  
**Magistrate Judge Frensley**

v. )

**TRE HARGETT, in his official capacity** )  
**as Secretary of State of the State of** )  
**Tennessee, MARK GOINS, in his** )  
**Official capacity as Coordinator of** )  
**Elections for the State of Tennessee,** )  
**and AMY WEIRICH, in her official** )  
**capacity as the District Attorney General** )  
**for Shelby County, Tennessee,** )  
**Defendants.** )

---

**DEFENDANTS’ RESPONSE IN OPPOSITION TO  
MOTION FOR PRELIMINARY INJUNCTION**

---

The Attorney General, on behalf of the above-captioned defendants, in their official capacities only, hereby submits this Response in Opposition to Plaintiffs’ Motion for Preliminary Injunction (DE 40).

**INTRODUCTION AND BACKGROUND**

The United States Constitution provides that States may prescribe “[t]he Times, Places and Manner of holding Elections for Senators and Representatives,” Art. I, § 4, cl. 1, and the Supreme Court, therefore, has recognized that State retain the power to regulate their own elections.

*Sugarman v. Dougall*, 413 U.S. 634, 647 (1973); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 217 (1986). Thus, States have “broad powers to determine the conditions under which the right of suffrage may be exercised.” *Lassiter v. Northampton Cty. Bd. of Elections*, 360 U.S. 45, 50 (1959). Like all states, Tennessee balances its compelling interest in protecting the integrity of the election process with its citizens’ right to vote. Indeed, “[a] State indisputably has a compelling interest in preserving the integrity of its election process,” *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 231 (1989), and confidence in the integrity of a state’s electoral processes is vital to the functioning of a participatory democracy. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006).

But the balancing does not stop there. Tennessee must also consider the public’s interest in the validity of elections, certainty of results, the sanctity of the ballot box, and saving of expense. Tennessee has historically struck this balance by providing opportunities for every Tennessean to cast their vote in person. And even though the overwhelming majority—nearly 98%—of Tennesseans choose to exercise their right to vote in this way, the State also permits certain voters—those who are ill, hospitalized, disabled, away from their homes, observing a religious holiday, or beyond a certain age—to cast their votes by mail.

But now, the State must balance yet another factor: COVID-19. To account for this new factor, Tennessee has quickly taken steps to revise its election procedures so that the coming elections may proceed safely and securely. On April 23, 2020, the Secretary of State’s Division of Elections released its Tennessee Election COVID-19 Contingency Plan (the “Plan”) that implements numerous safeguards for in-person voters and poll workers and also accounts for increased mail-in voting for eligible voters. *See generally* DE 40-2, Ex. 4, ID#214–314.; Exhibit A, Goins Decl., ¶¶ 3–4. This Plan is a result of “research regarding not only elections[,] but the

current state of healthcare.” *See* DE 40-2, Ex. 4, ID#215. In crafting this Plan, the Division of Elections worked with county, state, and federal election officials both in Tennessee and across the country. *See id.*

The Plan has been carefully designed to protect the interest of voters in having their votes count while also furthering the State’s interests in the integrity and efficiency of the election process. The Plan does this in two main ways. First, it maintains the State’s traditional focus on in-person voting and establishes safety guidelines for polling places. Each polling location, for example, has been instructed to: keep doors open to minimize the need to touch handles or knobs; post signs advising voters to wear masks and gloves whenever possible; comply with CDC guidelines by maintaining six feet of separation at all times; spread out voting machines to facilitate social distancing; place plexiglass barriers between poll workers and voters; regularly sanitize voting machines; and screen polling workers for symptoms before election and early voting days. *See* DE 40-2, Ex. 4, ID#244–52.

And second, the Plan accounts for a dramatic increase in absentee voting. The Plan contemplates absentee voting by every registered voter over the age of 60—a group of about 1.4 million, or approximately 36% of the State’s registered voters. *See id.* at ID#224; *see also* Tennessee Secretary of State, *Election Statistics, Voter Registration December 2019*, <https://sos-tn-gov-files.tnsosfiles.com/RptSixMonthSumDec2019.pdf?bwg.F1B6O64zPY8baFShlOjro1wu1OvP>. In the last presidential election, by contrast, fewer than 3% of Tennessee voters cast their votes by mail. *See* DE 40-2, Ex. 4, ID#228. But the State must now account for an even more dramatic increase. Because of a June 4, 2020 Order entered by the Davidson County Chancery Court compelling the State to permit any registered voter to submit an absentee ballot, *see* DE 40-

2, Exh. 1, ID# 173–204, the State is currently facing an unprecedented surge in absentee ballot requests.

But Plaintiffs want more. On May 1, 2020, Plaintiffs filed a complaint in which they allege that Tennessee’s longstanding requirement that votes must generally be cast in person is an unconstitutional limitation on the right to vote, Complaint, DE 1, ID#2, 27–28, ¶¶ 1, 65–70, that the prohibition against providing unsolicited absentee ballots violates their rights to free speech and association, *Id.* at ¶¶ 71–76, that the process used to verify signatures violates procedural due process, *Id.* at ¶¶ 77–81, and that signature-verification process unconstitutionally burdens the right to vote, *Id.* at ¶¶ 82–85. On June 12, 2020, Plaintiffs amended their complaint which added a challenge to the long-standing requirement that all first-time voters must vote in person. *Id.* at ¶¶ 92–96. That same day, six weeks after filing their complaint, Plaintiffs moved for a preliminary injunction, *see generally* Motion for Preliminary Injunction, DE 40, ID#160–62, seeking injunctive relief including enjoining the defendants from enforcing Tenn. Code Ann. §§ 2-6-202(c)(4) & 2-2-115(b)(7), rewriting the signature-verification process, printing all-new ballot application forms with a signature-verification disclaimer, and publicizing any relief ordered on the Secretary of State’s webpage. Proposed Order, DE 40-1, ID#163 – 66.

In short, Plaintiffs seek this Court’s intervention at the last minute to upend the current election plans and substitute a plan of their own design. In doing so, they impermissibly attempt to transform a *policy* issue into a *constitutional* issue. But “federal courts should not quickly ‘become entangled, as overseers and micromanagers in the minutiae of state election processes.’” *Nemes v. Bensinger*, No. 3:20-CV-407-CRS, 2020 WL 3402345, at \*8 (W.D. Ky. June 18, 2020) (quoting *Ohio Dem. Party v. Husted*, 834 F.3d 620, 622 (6th Cir. 2016)). This Court, then, should decline Plaintiffs’ invitation to do so and deny Plaintiffs’ motion for a preliminary injunction.

## STANDARD OF REVIEW

When evaluating a request for preliminary injunction, a court must evaluate four factors:

(1) Whether the movant has a “strong” likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of an injunction.

*Am. Civil Liberties Union Fund of Mich. v. Livingston County*, 796 F.3d 636, 642 (6th Cir. 2015) (quoting *Bays v. City of Fairborn*, 668 F.3d 814, 818–19 (6th Cir. 2012)). “These factors are not prerequisites but are factors that are to be balanced against each other.” *Overstreet v. Lexington-Fayette Urban Cty. Gov’t*, 305 F.3d 566, 573 (6th Cir. 2002) (citing *United Food & Commercial Workers Union, Local 1099 v. Southwest Ohio Reg’l Transit Auth.*, 163 F.3d 341, 347 (6th Cir.1998)).

The purpose of a prohibitory preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held. *Tennessee Scrap Recyclers*, 556 F.3d 442, 447 (6th Cir. 2009). But here Plaintiffs are requesting mandatory relief which would change the status quo, not preserve it. A “mandatory injunction is a particularly extraordinary remedy that is not regarded with judicial favor,” *In re Columbia Motor Exp., Inc.*, 33 B.R. 389, 392 (M.D. Tenn. 1983) (citations omitted), and the plaintiff seeking such mandatory relief bears an “especially heavy burden” in convincing the Court that an injunction is appropriate. *Doughtie & Co. v. Rutherford Cty.*, No. 3-13-0209, 2013 WL 3995277, at \*1 (M.D. Tenn. Aug. 5, 2013) (citations omitted); *see also In re Microsoft Corp. Antitrust Litig.*, 333 F.3d 517, 525 (4th Cir. 2003) (explaining that the standard of review for granting preliminary injunction “even more searching when” relief requested is mandatory in nature) abrogated on other grounds by *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006).

Here, all four factors counsel against granting Plaintiffs’ requested relief—especially where an injunction would have the drastic effect of judicially rewriting Tennessee’s electoral procedure on the eve of two elections.

## **ARGUMENT**

### **I. Plaintiffs are unlikely to succeed on the merits.**

Plaintiffs cannot demonstrate that they are likely to succeed on the merits of their claims: First, because all Plaintiffs’ claims are barred by the doctrine of laches; second, because all Plaintiffs lack standing; third, because the Organizational Plaintiffs cannot show that the challenged laws violate their First and Fourteenth Amendment rights; and finally, because no Plaintiff can show that the challenged laws deprive them of procedural due process.

#### **A. Plaintiffs’ claims are barred by laches.**

The Sixth Circuit has recognized that, in the injunction context, “[t]iming is everything.” *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016). Thus, “a party requesting a preliminary injunction must generally show reasonable diligence.” *Benisek*, 138 S.Ct. at 1944. Here, Plaintiffs have failed to show such “reasonable diligence” and this Court should decline to accept Plaintiffs’ invitation to rewrite Tennessee’s absentee-voting protocols—particularly when absentee voting has been ongoing for almost two months.

The doctrine of laches is rooted in the principle that “equity aids the vigilant, not those who slumber on their rights.” *Lucking v. Schram*, 117 F.2d 160, 162 (6th Cir. 1941). And “in election-related matters, extreme diligence and promptness are required. When a party fails to exercise diligence in seeking extraordinary relief in an election-related matter, laches may bar the claim.” *McClafferty v. Portage Cty. Bd. of Elections*, 661 F.Supp.2d 826, 839 (N.D. Ohio 2009) (internal citations and quotation marks omitted). Indeed, the federal courts of appeal have long cautioned

that “any claim against a state electoral procedure must be expressed expeditiously,” *see Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990) (citing *Williams v. Rhodes*, 393 U.S. 23, 34–35 (1968)), and the Supreme Court has “repeatedly emphasized that lower federal courts should ordinarily not alter election rules on the eve of an election.” *See, e.g., Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S.Ct. 1205, 1207 (2020); *Purcell v. Gonzalez*, 549 U.S. 1, 5–6 (2006) (per curiam) (vacating an injunction where an election was “imminen[t]”); *Reynolds v. Sims*, 377 U.S. 533, 585 (1964) (“[U]nder certain circumstances, such as where an impending election is imminent and a State’s election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief. . . .”); *see also Husted v. Ohio State Conference of the NAACP*, 573 U.S. 988 (2014) (staying a district court order that required Ohio to restore portion of early voting period and was issued two months prior to the November 2014 election); *North Carolina v. League of Women Voters*, 574 U.S. 927 (2014) (staying preliminary injunction that enjoined portions of a North Carolina statute concerning early voting and counting ballots cast in the wrong precinct and was issued a month before the November 2014 election); *Frank v. Walker*, 574 U.S. 929 (2014) (vacating Seventh Circuit’s stay that permitted enforcement of Wisconsin’s voter identification statute and was issued two months before the November 2014 election); *Veasey v. Perry*, 135 S.Ct. 9 (2014) (affirming Fifth Circuit’s stay of district court injunction that enjoined Texas’s voter identification law and was issued weeks prior to early voting beginning).

Moreover, federal intervention when an election is imminent risks “a disruption in the state electoral process [which] is not to be taken lightly” as “[t]his important equitable consideration goes to the heart of our notions of federalism.” *Cortes*, 218 F.Supp.3d at 405 (quoting *Page v. Bartels*, 248 F.3d 175, 195–96 (3rd Cir. 2001)). This principle is particularly pertinent where, as

here, Plaintiffs ask the Court to “impose large-scale changes to the election process.” *Bryan v. Fawkes*, 61 V.I. 416, 469 (V.I. 2014) (collecting cases); *see also Perry v. Judd*, 840 F.Supp.2d 945, 950 (E.D. Va. 2012) (“The doctrine applies with particular force in the context of preliminary injunctions against governmental action where litigants try to block imminent steps by the government.”). Finally, as the Sixth Circuit has explained, as an election grows closer, “the state’s interest in proceeding with the election increases in importance as resources are committed and irrevocable decisions are made, and the [plaintiff’s] claim to be a serious [plaintiff] who has received a serious injury becomes less credible by his having slept on his rights.” *Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980) (barring challenge to state election-law statute filed less than two months prior to election because plaintiff had known of injury for more than two weeks prior to filing suit).

An action may be barred by laches if: (1) the plaintiff delayed unreasonably in asserting its rights and (2) the defendant is prejudiced by this delay. *United States v. City of Loveland*, 621 F.3d 465, 473 (6th Cir. 2010) (citation omitted); *Brown-Graves Co. v. Central States, Southeast and Southwest Areas Pension Fund*, 206 F.3d 680, 684 (6th Cir. 2000). Both criteria are met here, thus laches bars preliminary injunctive relief.

First, Plaintiffs did not seasonably assert their entitlement to injunctive relief. Tennessee’s absentee ballot statutes are not new. The signature verification requirements have been part of Tennessee’s absentee voting protocols for over half a century; the other two election laws challenged by Plaintiffs have been in effect for fifteen years or more. Why would anyone need preliminary injunctive relief to enjoin laws that have been on the books and actively enforced for decades? Plaintiffs respond by pointing to COVID-19 to justify preliminary injunctive relief.



COVID-19 has spawned any number of challenges to state election laws and procedures in state and federal court, most of which have been timely filed and expeditiously pursued. For example, the plaintiffs challenging Texas's absentee voting statutes in state court filed their complaint on March 7, 2020—only three days after the first case of coronavirus was reported in that state and six days before the Texas Governor declared a state of emergency. *See In re State of Texas*, No. 20-0394, 2020 WL 2759629 (Tex. May 27, 2020). And the plaintiffs in *Texas Democratic Party v. Abbott* filed suit in federal court challenging Texas's absentee voting statutes on April 7—the day after the Supreme Court issued its decision in *Republican Nat'l Comm. v. Democratic Nat'l Comm.* staying a preliminary injunction issued on the eve of the Wisconsin primary election. *See Texas Democratic Party v. Abbott*, No. SA-20-CA-438-FB, 2020 WL 2541971, at \*2 (W.D. Tex., May 19, 2020).

But if Tennessee's absentee voting laws in the context of COVID-19 are so allegedly problematic, why did Plaintiffs delay six weeks before filing for preliminary injunctive relief? Plaintiffs waited until May 1 to file their complaint and then another six weeks—until June 12—before asking this Court for injunctive relief, despite full knowledge that absentee voting had been underway since May 8, and that the deadline for requesting an absentee ballot—July 30—is fast approaching. Amended Compl., DE 39, ID#127, ¶ 11, Memorandum, DE 43, ID#1666. Plaintiffs offer no legitimate explanation for the delay—nowhere in either Plaintiffs' Amended Complaint or their Motion for Preliminary Injunction do Plaintiffs explain why they were unable to file their claims sooner, or what caused them to delay for so long.

Here, Plaintiffs seek a mandatory change to established and long-standing election procedures yet provide no explanation for waiting until less than eight weeks before the election. Plaintiffs simply have not pursued their claim with any semblance of diligence. *See, e.g., Kay*,

621 F.2d at 813; *Gelineau v. Johnson*, 896 F. Supp. 2d 680, 683–86 (W.D. Mich. 2012) *aff'd* (6th Cir. Sept. 19, 2012) (barring challenge to state election-law statute filed less than two months prior to election because plaintiffs had known of injury for more than four months prior to filing suit); *Simkins v. Gressette*, 631 F.2d 287, 295–96 (4th Cir. 1980) (refusing to enjoin election when suit was filed two days before filing deadline and preliminary hearing could not be held until 5 ½ weeks before election); *Arizona Pub. Integrity Alliance Inc. v. Bennett*, 2014 WL 3715130, at \*2–3 (D. Ariz. June 23, 2014) (barring challenge to state election-law statute filed more than two months prior to election because (1) the statute was not new and (2) the plaintiffs had been considering its constitutionality for more than six months before filing suit).

Second, Plaintiffs' lack of diligence has prejudiced the Secretary of State and State Election Coordinator. Prejudice can be inferred simply as a result of the Plaintiffs' delay, and the greater the delay, the less the prejudice required to show laches. *Perry*, 840 F. Supp. 2d at 954; *Marshall v. Meadows*, 921 F. Supp. 1490, 1494 (E.D. Va. 1996). By waiting until the last minute, Plaintiffs have unjustifiably forced the parties and the Court to address their claims on an expedited basis and has prejudiced Defendants' ability to fully prepare and defend against Plaintiffs' claims, including the development of facts for the Court to assess in ruling on whether to grant Plaintiffs' request for preliminary injunctive relief and the hiring of their own experts and cross-examination of Plaintiff's experts.

Additionally, Plaintiffs' lack of diligence has clearly prejudiced the Defendants and Tennessee's 95 County Election Commissions, whose planning and preparations for the upcoming election will be thrown into far greater confusion that would have been the case with a timely legal action. Defendants and the County Election Commissions have relied on and acted according to the expectation that the signature-verification requirements of Tenn. Code Ann. § 2-6-202 and the

first-time voting requirements of Tenn. Code Ann. § 2-2-115(7) would apply as usual in the upcoming elections.

If, however, Plaintiffs' remedy were granted, the County Election Commissions would be required to canvass their absentee ballot applications to identify any applications that were rejected because they were first-time voters who had registered to vote by mail and then contact those voters so that they could re-submit their applications for an absentee ballot—with a looming deadline of July 30 as the last day to request an absentee ballot. And with respect to the signature verifications, the Defendants would have to develop an entirely new uniform procedure for the County Election Commissions who would then have to implement that procedure, including retraining their election officials and absentee counting boards. The time and expense to implement Plaintiffs' proposed remedy would be considerable and would have to be done while Defendants and County Election Commissions are also processing voter registration applications,<sup>1</sup> responding to requests for absentee ballots, and preparing for early voting which begins July 17. *See generally* Goins Decl., ¶¶ 8, 10.

Plaintiffs had every opportunity to challenge Tenn. Code Ann. § 2-6-202 and § 2-2-115(7) at a time when the challenge would not create the disruption that this last-minute request for injunction relief has. Given that Plaintiffs' legal challenges to these statutes exist regardless of whether there is an ongoing public health emergency, Plaintiffs could have filed suit well before the arrival of COVID-19. But to the extent COVID-19 is the catalyst for Plaintiffs' action, then Plaintiffs could have filed suit in March when the Governor declared a state of emergency, or in April after the litigation in state and federal court involving the Wisconsin primary. At the very

---

<sup>1</sup> The deadline to register to vote for the August 2020 election is July 7, 2020. *See* Tenn. Code Ann. § 2-2-102(a)(1).

least, Plaintiffs could have requested injunctive relief at the same time they filed suit on May 1, before absentee voting had begun. Plaintiffs instead waited until less than eight weeks before the election to request injunctive relief.

As the Sixth Circuit has stated,

[a]ll of this should impress on ... other would-be challengers to election protocols, the need to bring as applied (and for that matter facial) challenges sooner rather than later—first to give election officials an opportunity to make corrections where corrections are due and second to give district and appellate courts ample time to resolve the merits of the dispute long before the election. A manufactured emergency does not warrant emergency relief.

*Crookston v. Johnson*, 841 F.3d at 399. Plaintiffs’ unreasonable delay has caused substantial prejudice to the Defendants and the County Elections Commissions. Laches therefore applies and bars injunctive relief.

**B. Plaintiffs lack standing to seek the requested injunctive relief.**

“The first and fundamental question presented by every case brought to the federal courts is whether it has jurisdiction to hear a case.” *Evans v. Allen*, No. 3:13-CV-480-TAV-CCS, 2014 WL 585392, at \*1 (E.D. Tenn. Feb. 14, 2014) (quoting *Douglas v. E.G. Baldwin & Assocs.*, 150 F.3d 604, 607 (6th Cir.1998), *abrogation on other grounds recognized by Heartwood, Inc. v. Agpaoo*, 628 F.3d 261, 266 (6th Cir.2010)). “Standing goes to a court’s subject matter jurisdiction.” *Kepley v. Lanz*, 715 F.3d 969, 972 (6th Cir. 2013) (internal quotation and brackets omitted).

The requirement of standing is “rooted in the traditional understanding of a case or controversy.” *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1547 (2016). Plaintiffs have the burden “to allege facts demonstrating that [they are] proper part[ies] to invoke judicial resolution of the dispute.” *Warth v. Seldin*, 422 U.S. 490, 518 (1975). Furthermore, standing “must affirmatively appear in the record”; it cannot be “inferred argumentatively from averments in the pleadings.”

*FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990). And the inquiry into whether plaintiffs have standing should be “especially rigorous” where, as here, Plaintiffs seek to have the actions of a sovereign state declared unconstitutional. *See Crawford v. U.S. Dept. of Treasury*, 868 F.3d 438, 457 (6th Cir. 2017) (citing *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408–10 (2013)).

The “irreducible constitutional minimum” of standing is that each plaintiff must allege an actual or imminent injury that is traceable to the defendant and redressable by the court for each claim asserted. *Lujan v. Defendants of Wildlife*, 504 U.S. 555, 560–62 (1992). An injury must be an “injury in fact,” i.e., “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) ‘actual or imminent, not “conjectural” or “hypothetical.””” *Id.* at 560 (citations omitted). In *Spokeo*, the Court held that an injury must be both “concrete *and* particularized,” and for an injury to be “particularized,” it “must affect the plaintiff in a personal and individual way.” 136 S.Ct. at 1548 (emphasis in original) (citations omitted). For an injury to be “concrete,” it must be “‘de facto’; that is, it must actually exist.” *Id.*

And the Supreme Court has “repeatedly reiterated that threatened injury must be *certainly impending* to constitute injury in fact, and that allegations of *possible* future injury are not sufficient.” *Clapper*, 568 U.S. at 409 (internal quotation marks and alterations omitted). Finally, that Court has recognized that lawsuits that do not challenge “specifically identifiable Government violations of law,” but instead challenge “particular programs agencies establish to carry out their legal obligations are . . . rarely if ever appropriate for federal-court adjudication.” *Lujan*, 504 U.S. at 568 (citation omitted).

Even if a plaintiff alleges an actual or imminent injury that is concrete and particularized, the plaintiff must also show that the injury is “fairly traceable to the defendant’s allegedly unlawful conduct.” *Allen v. Wright*, 468 U.S. 737, 751 (1984). An injury is not fairly traceable to the

defendant's conduct if the plaintiffs have "inflict[ed] the harm on themselves based on their fears of hypothetical future harm." *Clapper*, 568 U.S. at 416. Finally, a plaintiff must also plead facts sufficient to establish that the court is capable of providing relief that would redress the alleged injury. *Lujan*, 504 U.S. at 561.

None of the harms alleged in the amended complaint are sufficient to demonstrate that Plaintiffs have the standing necessary to seek the requested injunctive relief.

**1. The Individual Plaintiffs Lack Standing.**

As discussed *supra*, Plaintiffs have requested a preliminary injunction enjoining the Defendants from enforcing Tenn. Code Ann. §§ 2-6-202(c)(4) and 2-2-115(b)(7) and requiring Defendants to rewrite the signature-verification process, print all-new ballot application forms with a signature-verification disclaimer, and publicize any relief ordered on the Secretary of State's webpage. However, neither of the individual Plaintiffs allege that they are first time voters who registered by mail or that, if they vote an absentee ballot, such ballot will be rejected because the signature does not match. Nor do either of the individual Plaintiffs allege that they intend to provide unsolicited requests for absentee ballots to other voters. Rather, the individual Plaintiffs' allegations center solely upon their desire to vote an absentee ballot in light of COVID-19. Accordingly, neither of the individual Plaintiffs have alleged any harm sufficient to establish standing to challenge the provisions of Tenn. Code Ann. § 2-2-115(7) and § 2-6-202 or to seek the requested injunctive relief. *Cf. McDonald v. Bd. of Election Comm'rs of Chicago*, 394 U.S. 802, 808 (1969) (upholding an Illinois law which limited absentee ballots to specific enumerated groups against a constitutional challenge because "there [was] nothing in the record to indicate that the [law] [had] an impact on appellants' ability to exercise the fundamental right to vote"); *Texas*

*Democratic Party v. Abbott*, 961 F.3d 389, 403 (5th Cir. 2020) (citing *McDonald* and concluding that the denial of mail-in ballots to a certain group of voters “did not restrict their right to vote”).

**2. The Organizational Plaintiffs Lack Standing to Challenge the First-Time Voter Requirements.**

In order to pursue their challenge to the first-time voter requirements of Tenn. Code Ann. § 2-2-115(7), Plaintiffs Memphis A. Phillip Randolph Institute, Free Hearts, The Memphis and West Tennessee AFL-CIO Central Labor Council (“MCLC”), The Equity Alliance and the Tennessee State Conference of the NAACP (the “Organizational Plaintiffs”), each as an organization, must allege facts sufficient to establish that it has either organizational standing or associational standing.

Organizational standing is the right of an organization to sue on its own behalf rather than through its members. “An organization has standing [to sue] on its own behalf if it meets the same standing test that applies to individuals.” *Spann v. Colonial Village, Inc.*, 899 F.2d 24, 27 (D.C. Cir. 1990). Thus, in order to have standing, an organizational plaintiff must show (1) injury in fact, (2) a causal connection between the injury and conduct complained of, and (3) the likelihood that the injury will be redressed by a favorable decision. *See Lujan*, 504 U.S. at 560–61.

An organization may satisfy the Article III requirement of injury in fact if it can demonstrate: “(1) frustration of its organizational mission; and (2) diversion of its resources to combat the [effects of the particular law] in question.” *Smith v. Pac. Properties & Dev. Corp.*, 358 F.3d 1097, 1105 (9th Cir. 2004). Here, none of the Organizational Plaintiffs allege that they have had to divert resources in educating voters how to comply with *newly enacted* election laws. Rather, the Organizational Plaintiffs allege that “*in light of the ongoing COVID-19 pandemic*, [they] will dedicate additional resources” in assisting voters with how to comply with *existing*

*laws*. Amended Complaint DE 39, ID#132–35; *see also* DE 40-5, ID#1561, DE 40-6, ID#1570, DE 40-7, ID#1577–78, DE 40-8, ID#1586–88 and DE 40-9, ID#1596–97.

That the Organizational Plaintiffs are diverting their resources to educating voters on *existing laws* about absentee voting because of COVID-19 is not fairly traceable to the Defendants and is therefore insufficient to establish an injury in fact. *Compare Fair Elections Ohio v. Husted*, 770 F.3d 456, 459–60 (6th Cir. 2014) (finding that allegations of diversion of resources to educate voters on existing absentee ballot procedures not sufficient to confer standing on organization) *with Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612, 624 (6th Cir. 2016) (finding that organization’s allegations of diverting limited resources to “overhaul” get-out-the vote strategy in response to newly enacted laws constituted imminent, concrete and particularized injury).

And, because the Organizational Plaintiffs themselves do not have the right to vote, they have no standing to assert the loss of a right to vote. *See Johnson v. Bredesen*, No. 3:07-0372, 2007 WL 1387330, at \* 1 (M.D. Tenn. May 8, 2007) (finding that since non-profit organization may not exercise a right to vote in any election, organization has no standing to assert the loss of a right to vote if injunction is not granted). Accordingly, as the Organizational Plaintiffs have not alleged a sufficient injury in fact, they cannot demonstrate that they have organizational standing to challenge the first-time voting requirement of Tenn. Code Ann. § 2-2-115(7).

The Organizational Plaintiffs also cannot demonstrate that they have associational standing to challenge this statute. In order to have associational standing, an organizational plaintiff must show that:

- (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.



*Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977); see also *Nat'l Rifle Ass'n of Am. v. Magaw*, 132 F.3d 272, 294 (6th Cir. 1997).

Thus, in order to have associational standing, the Organizational Plaintiffs must establish that “at least one of [its] members would have standing to sue on his own.” *Waskul v. Washtenaw County Community Mental Health*, 900 F.3d 250, 253 (6th Cir. 2018). And the Sixth Circuit has held that this requires a specific allegation of the name of the member harmed unless all members of the organization have been harmed by the defendant’s conduct. *Tennessee Republican Party v. Sec. and Exch. Comm'n*, 863 F.3d 507, 520 (6th Cir. 2017) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 498–99 (2009) (noting that the “requirement of naming the affected members has never been dispensed with in light of statistical probabilities, but only where *all* the members of the organization are affected by the challenged activity”) (emphasis in original)).

None of the Organizational Plaintiffs have specifically alleged the identity of a member of their organization that has or will be harmed by operation of Tenn. Code Ann. § 2-2-115(7), i.e., a first-time voter who registered by mail. Rather, the Organizational Plaintiffs allege: “In support of its advocacy and engagement efforts, APRI sponsors voter education and Get-Out-The-Vote programs in the community, which include outreach to first-time registrants to vote who submit their registration forms by mail” (Amended Complaint, DE 39, ID#132–35, ¶ 24); “Some voters that Free Heart registers are first-time voters who submit by mail their voter registration forms” (*Id.* at ¶ 25); “In support of its advocacy agenda, MCLC routinely engages in voter outreach efforts, . . . including of first-time voters who are registering by mail” (*Id.* at ¶ 26); “The Equity Alliance also engages first-time registrants to vote, including some who submit their registration to vote by mail” (*Id.* at ¶ 28); and “Some of Tennessee NAACP’s engaged voters are first-time registrants, including high school and college students, who submit their registration forms by mail.” (*Id.* at

¶ 30.)<sup>2</sup> These allegations fall short of establishing that any of the Organizational Plaintiffs’ members have suffered or will imminently suffer a concrete, actual injury traceable to the enforcement of the first-time voter requirements of Tenn. Code Ann. § 2-2-115(7). *See Northeast Ohio Coalition for Homeless and Service Employees Intern. Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1010 (6th Cir. 2006); *Green Party of Tennessee v. Hargett*, 194 F.Supp.3d 691, 696–99 (M.D. Tenn. 2016).

As the Organizational Plaintiffs do not have either organizational or associational standing, they cannot demonstrate a likelihood of success on the merits of their challenge to the first-time voter requirements of Tenn. Code Ann. § 2-2-115(7).

### **3. The Organizational Plaintiffs Lack Standing to Challenge the Ballot Solicitation Provisions.**

The Organizational Plaintiffs also challenge the constitutionality of Tenn. Code Ann. § 2-6-202(c)(4) which provides that a “person who is not an employee of an election commission commits a Class A misdemeanor if such person gives an unsolicited request for application for absentee ballot to any person.” The Organizational Plaintiffs allege that this “restriction on the unsolicited distribution of absentee ballot requests . . . unconstitutionally burdens the Organizational Plaintiffs’ right to engage in core political speech and activity, in violation of the First and Fourteenth Amendment.” Amended Complaint, DE 39, ID#128, ¶ 13. The Organizational Plaintiffs seek an order enjoining Defendant Weirich from enforcing this statute

---

<sup>2</sup> Additionally, several of Organizational Plaintiffs assert that the first-time voter requirement “limits the effectiveness of [their] voter registration activity.” *See* DE 40-6, ID#1573, DE 40-7, ID#1581, DE 40-8, ID#1591–92. However, “[t]he First Amendment right to associate and to advocate ‘provides no guarantee that a speech will persuade or that advocacy will be effective.’” *Shelby County Deputy Sheriff’s Association v. Shelby County Sheriff’s Office*, No. 07-2420-JPM, 2007 WL 9706716, at \*3 (W.D. Tenn. Nov. 14, 2007) (quoting *Smith v. Ark. State Highway Employees*, 441 U.S. 463, 465 (1979)).

and enjoining Defendants Hargett and Goins from “referring for prosecution or investigation, or participating in any prosecution or investigation, of any alleged violations of Tenn. Code Ann. § 2-6-202(c)(4).” Proposed Order, DE 40-1, ID#163, ¶¶ 2, 3.

The Sixth Circuit has recognized that a Plaintiff may seek injunctive relief through a “pre-enforcement challenge[, which] may be made before the actual completion of any injury.” *Grendell v. Ohio Supreme Court*, 252 F.3d 828, 832 (6th Cir. 2001). “To establish standing for a free-speech claim, the Plaintiffs generally must show that ‘the rule, policy of law in question has explicitly prohibited or proscribed conduct on the[ir] part.’” *Phillips v. DeWine*, 841 F.3d 405, 415 (6th Cir. 2016) (quoting *Parsons v. U.S. Dep’t of Justice*, 801 F.3d 701, 711 (6th Cir. 2015)). Plaintiffs must also satisfy the “injury-in-fact” requirement of standing and may do so by alleging “ ‘an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution.’” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)).

The Organizational Plaintiffs do not allege either in the Amended Complaint or in their Declarations any threat of imminent enforcement of Tenn. Code Ann. § 2-6-204(c)(4)—only that the statute chills their absentee voter engagement efforts. Amended Complaint, DE 39, ID#146, ¶ 58. The Sixth Circuit has held that in the absence of “some other indication of imminent enforcement,” “mere allegations of a ‘subjective chill’ on protected speech are insufficient to establish an injury-in-fact for pre-enforcement standing purposes.” *McKay v. Federspiel*, 823 F.3d 862, 868–69 (6th Cir. 2016) (quoting *Berry v. Schmitt*, 688 F.3d 290, 296 (6th Cir. 2012) (internal quotation marks and alterations omitted)). Thus, in order to find a credible threat of prosecution

when there are only allegations of subjective chill, the Sixth Circuit has required the plaintiffs to “point to some combination of the following factors”:

- (1) a history of past enforcement against the plaintiffs or others; (2) enforcement warning letters sent to the plaintiffs regarding their specific conduct; and/or (3) an attribute of the challenged statute that makes enforcement easier or more likely, such as a provision allowing any member of the public to initiate an enforcement action.

*Plunderbund Media, L.L.C. v. DeWine*, 753 Fed. App’x. 362, 366–67 (6th Cir. 2018) (quoting *McKay v. Federspiel*, 823 F.3d at 869 (internal citations omitted)).

As to the first and second factors, none of the Organizational Plaintiffs allege that Tenn. Code Ann. § 2-6-202(c)(4) has ever been enforced or threatened against them. Nor do the Organizational Plaintiffs point to any case where an entity or individual was prosecuted or threatened with prosecution for violation of this statute—even though it has been in effect for over 15 years. As such, Plaintiffs have not sufficiently alleged “substantial risk that the harm will occur,” *SBA List*, 573 U.S. at 158 (internal quotation marks omitted) and, therefore have not established the first and second factor. The Organizational Plaintiffs also cannot establish the third factor as Tenn. Code Ann. § 2-6-202(c)(4) may only be enforced by a District Attorney General—there is no ability for a private complainant to initiate either an enforcement or administrative action under the statute. *Cf. SBA List*, 573 U.S. at 164–66 (recognizing that the “credibility” of a future-enforcement threat was “bolstered by the fact that authority to file a complaint” was not “limited to a prosecutor or an agency” and instead rested with “‘any person’ with knowledge of the purported violation”).

Because the Organizational Plaintiffs have not established any of the factors to substantiate their allegations of subjective chill, the Organizational Plaintiffs have not established a credible

threat of prosecution<sup>3</sup> and, therefore, have failed to satisfy the “injury-in-fact” requirement for pre-enforcement standing purposes. *Schickel v. Dilger*, 925 F.3d 858, 865–66 (6th Cir. 2019); *Plunderbund Media L.L.C. v. DeWine*, 753 Fed. App’x. at 372. Accordingly, Plaintiffs cannot demonstrate a likelihood of success on the merits of their challenge to Tenn. Code Ann. § 2-6-202(c)(4).

#### **4. The Organizational Plaintiffs Lack Standing to Challenge the Signature Verification Provisions.**

The Organizational Plaintiffs also challenge Tennessee’s signature verification provisions by asserting that they “anticipate[] that given the procedural deficiencies in Tennessee’s system for receiving and rejecting absentee ballots, at least some of [their] members who are already eligible to vote by mail will have their votes not counted.” Amended Complaint, DE 39, ID# 132, 134, 136, ¶¶ 24, 27, and 31. This allegation is insufficient to provide standing to APRI, MCLC, and NAACP to assert this procedural due process claim.

Again, organizations cannot vote. *Fair Elections Ohio v. Husted*, 770 F.3d at 461. So, in order for Organizational Plaintiffs to establish “organizational standing,” they must demonstrate that they have suffered an injury in fact, that the injury is fairly traceable to the conduct of the defendant and that the injury can be remedied by a favorable decision. *Id.* at 459. Moreover, plaintiffs seeking injunctive or declaratory relief face an even higher burden. *Shelby County Advocates for Valid Elections v. Hargett*, 2:18-cv-02706-TLP-dkv, 2019 WL 4394754, at \*5 (W.D. Tenn. Sept. 13, 2019) (citing *Vaduva v. City of Xenia*, 2019 WL 3714790, at \*6 (6th Cir.

---

<sup>3</sup> The Organizational Plaintiffs’ inability to establish a credible threat of prosecution is highlighted by the fact that they only seek to enjoin one District Attorney General—Defendant Weirich—from enforcing Tenn. Code Ann. § 2-6-202(c)(4), even though several of the Organizational Plaintiffs allege that they are active statewide, the statute is of statewide application and there are 31 District Attorneys General with the authority and prosecutorial discretion to enforce Tenn. Code Ann. § 2-6-202(c)(4).

Aug. 7, 2019). Indeed, “plaintiffs seeking injunctive or declaratory relief must show ‘*actual* present harm or a *significant* possibility of future harm.’” *Vaduva*, 2019 WL 3714790, at \*6 (quoting *Grendell*, 252 F.3d at 833) (emphasis added); *see also Shelby County Advocates*, 2019 WL 4394754 at \*5.

Plaintiffs fail to present any evidence that “actual present harm” has occurred, or a “*significant* possibility” that harm will occur in the future. Specifically, they have failed to establish that the signature verification process has arbitrarily disenfranchised *any* voter, let alone one of their own members. Indeed, the facts demonstrate the contrary. *Infra* at 47-50.

Further, Organizational Plaintiffs cannot establish “associational standing,” because each of the three organizations fails to make “*specific* allegations establishing that at least one *identified* member had suffered or would suffer harm.” *See Waskul*, 900 F.3d at 254–55 (emphasis added). For example, APRI’s representative, Plaintiff Lee (who, again, is not personally eligible to vote by absentee ballot), generally states that “[t]he majority of APRI’s members are over 60 most of them usually vote in person.” Lee Decl., DE 40-7, ID#1577, ¶ 7. However, she has not “identified”—by name—any such members. *Id.* Further, while APRI (through Ms. Lee) expresses *its* “concern[] that the signature matching process will be used as a mechanism to disenfranchise voters,” *id.* at ¶ 29, it has not “specifically” identified any particular member who shares that concern or who has been adversely impacted by the signature-verification process. The declarations from representatives of MCLC and the NAACP are similar in nature, and equally as deficient. *See Sweet-Love Decl.*, DE 40-5, ID#1563–64, ¶¶ 56–67; *Lichtenstein Decl.*, DE 40-6, ID#1568, 1572, ¶¶ 6, 25–29. For these reasons, Organizational Plaintiffs have no standing to raise this procedural due process challenge to the signature verification provisions. *See Waskul*, 900

F.3d at 253 (affirming the denial of injunctive relief sought on behalf of “166 *unnamed* members” of Washtenaw Association for Community Advocacy).

**C. Plaintiffs Cannot Demonstrate a Likelihood of Success on the Merits of Their Challenge to the First-Time Voter Requirements.**

Tenn. Code Ann. § 2-2-115(7) provides that “[e]ach person who registers by mail shall appear in person to vote in the first election the person votes in after such registration becomes effective. Before voting at the appropriate polling place or election commission office, such person shall present satisfactory proof of identity.” Plaintiffs assert that this “first-time voter” restriction imposes “an unnecessary and undue burden on the right to vote for eligible absentee voters.” But as discussed *supra*, neither of the individual Plaintiffs are first-time voters and, therefore are not subject to this restriction. And, the Organizational Plaintiffs are just that—organizations—and cannot vote. Thus, this statute does not even apply to any of the Plaintiffs.

Even so, the provisions of Tenn. Code Ann. § 2-2-115(7) do nothing more than implement Congress’s intent as reflected in both the National Voter Registration Act (“NVRA”), 52 U.S.C. § 20505(c) and Section 303(b) of the Help America Vote Act of 2002, Pub.L. 107-252 (codified at 52 U.S.C. § 21083). The NVRA was enacted by Congress in 1993 “to establish procedures that will increase the number of eligible citizens who register to vote in elections for federal office.” 52 U.S.C. § 20501. Section 20505(c) of the NVRA provides that “a State may by law require a person to vote in person if—(A) the person was registered to vote in a jurisdiction by mail; and (B) the person has not previously voted in that jurisdiction.”

The Help American Vote Act (“HAVA”) is bipartisan legislation enacted by Congress in response to the controversy surrounding the 2000 U.S. Presidential election. 52 U.S.C. §§ 20901–21145. The Act provides for federal funding for the replacement of outmoded voting equipment, established the Election Assistance Commission, which disburses those funds and assists in

ensuring compliance with the law, and established new minimum administration standards for federal elections. *Id.* The legislative history reflects that “[a] principal concern of Congress addressed in this bill is the abuse of mail registration cards, created by Congress as part of the National Voter Registration Act” and that “[t]o address this [concern], we created an identification requirement for first-time voters who register by mail.” 148 Cong. Rec. S10488-02, S10489-89, 2002 WL 31317844. Accordingly, in addition to the provisions of Section 20505(c) of the NVRA, Section 21803(b) of HAVA requires the State, “in a uniform and nondiscriminatory manner” to require an individual who registered to vote by mail and who has not previously voted in an election for federal office in that state to meet the following requirements:

- (i) in the case of an individual who votes in person—
  - (I) presents to the appropriate State or local election official a current and valid photo identification; or
  - (II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or
  
- (ii) in the case of an individual who votes by mail, submits with the ballot—
  - (I) a copy of a current and valid photo identification; or
  - (II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

52 U.S.C. § 21083(b)(2).

This provision of HAVA is intended to “work alongside the National Voter Registration Act,” and more importantly, it reflects “the intent of Congress that voters who register by mail show identification.” 148 Cong. Rec. at S10490. The first-time voter requirements of Tenn. Code Ann. § 2-2-115(7) were enacted in order to comply with Section 20505(c) of the NVRA and Section 21083(b) of the NVRA in a “uniform and nondiscriminatory” manner.



**D. The Organizational Plaintiffs Cannot Demonstrate a Likelihood of Success on the Merits of Their Challenge to the Ballot Solicitation Provisions.**

Even if the Organizational Plaintiffs can demonstrate that they have the requisite standing to assert their pre-enforcement challenge to Tenn. Code Ann. § 2-6-202(c)(4), they still cannot demonstrate a likelihood of success on the merits of such challenge.

As previously discussed, Tennessee Code Ann. § 2-6-202(c)(4) provides that a “person who is not an employee of an election commission commits a Class A misdemeanor if such person gives an unsolicited request for application for absentee ballot to any person.”

The Organizational Plaintiffs maintain that Tenn. Code Ann. § 2-6-202(c)(4) will severely hamper their ability to assist their members and engaged voters with obtaining the absentee ballot requests that they need to exercise their right to vote by mail in the upcoming August and November elections. Amended Complaint, DE 39, ID#127–28, ¶¶ 11–13. Specifically, the Organizational Plaintiffs claim that the traditional tactics that they use to engage voters, like in-person voter turnout activities, may not be available to them due to the ongoing COVID-19 pandemic. *Id.* at 145–46, ¶ 55. Thus, they plan to focus additional resources on organizing their members and communities by mail:

This will necessarily include providing assistance in requesting and obtaining an absentee ballot, reminding eligible absentee voters about application and ballot submission deadlines and requirements, and following up with voters to ensure their ballots were both cast and counted. As a key part of this absentee voter engagement, Organizational Plaintiffs wish to provide potential absentee voters with blank absentee ballot requests that the prospective voter may complete and return to their county election official.

*Id.* The Organizational Plaintiffs claim that they will not be able to effectively execute their absentee vote engagement strategy because they cannot send their members and other engaged voters mass mailing literature about the benefits of absentee voting “that includes an unsolicited

blank absentee ballot request” that the voter can complete and return to county election officials. *Id.* at 146, ¶ 56.

Notably, the Organizational Plaintiffs’ own allegations tacitly admit that Tenn. Code Ann. § 2-6-202(c)(4), by its terms, does not prevent them from sending literature about absentee voting to its target audience nor does it prevent them from offering their services to those desiring help with the absentee voter application process—the very things in the block quote above that the Organizational Plaintiffs say that they wish to do.<sup>4</sup> Tennessee Code Ann. § 2-6-202(c)(4) *only* restricts them from distributing “*unsolicited* request[s] for application for absentee ballot[s].”

Nevertheless, the Organizational Plaintiffs allege that the restriction on the unsolicited distribution of absentee ballot requests unconstitutionally burdens their right to engage in core political speech and activity in violation of the First and Fourteenth Amendments. *See id.* at 128, ¶ 13; 144–45, ¶ 52; 146, ¶ 58; 151–53, ¶¶ 77–82.

Plaintiffs’ memorandum of law in support of their motion for temporary injunction essentially reiterates the Amended Complaint’s allegations, *see* DE 43, ID#1671–79, and claims that Tenn. Code Ann. § 2-6-202(c)(4) is unconstitutional because it cannot withstand the “exacting scrutiny” test set forth in *Meyer v. Grant*, 486 U.S. 414 (1988). *Id.* at 1672. Plaintiffs claim that a law subject to exacting scrutiny “may be upheld *only if* it is shown to be narrowly tailored to serve a compelling interest.” *Id.* (emphasis added).

As explained below, Plaintiffs’ description of the “exacting scrutiny” test is incomplete. The Sixth Circuit Court of Appeals in *Citizens for Tax Reform v. Deters*—a case cited several

---

<sup>4</sup> In fact, Tenn. Code Ann. § 2-6-203 specifically provides that “[t]he voter may have anyone the voter chooses write the voter’s request for an absentee ballot or for an absentee voting by mail application or write out the voter’s absentee voting by mail application except for the voter’s signature or mark.”

times by Plaintiffs, *see id.* at 1672, 1675, 1678—explains that courts should employ a “sliding-scale” analysis under *Meyer*. 518 F.3d 375, 383 (6th Cir. 2008). The level of scrutiny under the “exacting scrutiny” standard depends on the severity of the burden. Only when a state law “severely burdens” speech is it subject to the scrutiny propounded by Plaintiffs. Because Tenn. Code Ann. § 2-6-202(c)(4) imposes a minimal burden on Plaintiffs’ First Amendment rights, it should be subject to a lesser standard of scrutiny. Nevertheless, Tenn. Code Ann. § 2-6-202(c)(4) satisfies even the most stringent “exacting scrutiny” test that Plaintiffs urge. Legislative history concretely establishes that Tenn. Code Ann. § 2-6-202(c)(4) advances very important, compelling State interests and does so in a narrowly tailored manner to serve the State’s interests.

**1. Tennessee’s Absentee Voting Provisions Are Procedural Safeguards That the General Assembly Has Enacted to Secure the Purity of Elections.**

Article IV, § 4 of the United States Constitution assures the States a republican form of government. Consequently, the Tennessee Supreme Court observed over a century ago that “[n]o government can be republican that fails to secure the purity of elections.” *Cook v. State*, 16 S.W. 471, 473 (1891). And the United States Supreme Court has similarly recognized that a State “indisputably has a compelling interest in preserving the integrity of its election process.” *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (quoting *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989)).

The Tennessee Supreme Court has also expressly recognized that the integrity of the ballot is jeopardized upon violation of any of the “procedural safeguards” that the General Assembly has included in the election laws, which are obviously designed to (1) prevent undue influence or intimidation of the free and fair expression of the will of the electors or (2) to insure that only those who meet the statutory requirements for eligibility to vote cast ballots. *Foust v. May*, 660 S.W.2d

487, 489 (Tenn. 1983) (citing *Emery v. Robertson Cty. Election Comm'n*, 586 S.W.2d 103, 109 (Tenn. 1979)).

The procedural safeguards that the General Assembly has put in place for absentee voting have particular significance because voting by mail constitutes a special privilege that is granted in derogation of the common law. *See Emery*, 586 S.W.2d at 108; *cf. Mays v. LaRose*, 951 F.3d 775, 792 (6th Cir. 2020) (recognizing that “there is no constitutional right to an absentee ballot”). Further, legislative conditions imposed upon those voting by mail are necessary because “the purity of the ballot is more difficult to preserve when voting absent than when voting in person.” *Emery*, 586 S.W.2d at 108; *see Foust*, 660 S.W.2d at 490. Violations of statutory safeguards in the absentee voting statutes “present[] the opportunity for fraud, whether committed or intended.” *See Foust*, 660 S.W.2d at 490. *See also* Commission on Fed. Election Reform, *Building Confidence in U.S. Elections*, 46 (2005), [http://www.1.american.edu/ia/cfer/report\\_full.pdf](http://www.1.american.edu/ia/cfer/report_full.pdf) (“Absentee ballots remain the largest source of potential voter fraud.”).

A review of Tennessee’s absentee voting provisions reveals the many procedural safeguards that the General Assembly has enacted toward the goal of securing the freedom and the purity of the ballot. These provisions address the forms that are to be approved by the State’s election coordinator, the procedure for a voter to apply to vote absentee, the process by which a county election commission is to determine if the voter may vote absentee, how the ballot is to be mailed to an absentee voter, the manner in which the absentee voter is to complete and return the ballot, the requirements for absentee ballot boxes, and the process by which a county election commission is to determine whether an absentee voter’s ballot may be properly cast. *See* Tenn. Code Ann. §§ 2-6-201 to -207; 2-6-301 to -312.

Especially pertinent here, the General Assembly has determined that the State’s election coordinator “shall adopt uniform forms for each county election commission for an application for . . . absentee voting.” Tenn. Code Ann. § 2-6-308; *see* Tenn. Code Ann. § 2-6-202(c)(1) (“The coordinator of elections shall either supply to a county election commission the forms for applications for ballots or approve the usage of a county’s forms.”). A voter desiring to vote absentee may complete the sanctioned application form at the voter’s county election commission office, Tenn. Code Ann. § 2-6-202(a)(2), or request an application:

A voter may also request from the county election commission office an application to vote absentee. A voter may make the request or submit an application to vote by mail, facsimile transmission or e-mail with an attached document that includes a scanned signature. . . . The request shall be in writing over the voter’s signature. The request serves as an application for a ballot if the request contains the following information:

- (A) The name of the registered voter;
- (B) The address of the voter’s residence;
- (C) The voter’s date of birth;
- (D) The voter’s social security number;
- (E) The address to mail the ballot outside the county, if applicable;
- (F) The election the voter wishes to participate in; and
- (G) The reason the voter wishes to vote absentee.

Tenn. Code Ann. § 2-6-202(a)(3).

Notably, the General Assembly has taken care to assure that a voter desiring to vote absentee receives just one application. A county commission may furnish only one application for absentee voting to a voter unless the voter notifies the commission that the voter has spoiled the application. Tenn. Code Ann. § 2-6-202(c)(2). In that case, the commission may furnish the voter with another application, but the commission must note on the records that a subsequent application was sent. *Id.*

Further recognizing the gravity of the absentee voter application process, the General Assembly has provided that “[a] person who is not an employee of an election commission

commits a Class E felony if such person gives an application for an absentee ballot to any person,” Tenn. Code Ann. § 2-6-202(c)(3), and “[a] person who is not an employee of an election commission commits a Class A misdemeanor if such person gives an unsolicited request for application for absentee ballot to any person.” Tenn. Code Ann. § 2-6-202(c)(4).<sup>5</sup>

In sum, the application process is designed so that only two entities are involved so that the “freedom and purity of the ballot” to be secured: the voter who desires to vote absentee and the county election commission that is authorized to provide the sanctioned application form to the voter. While the voter is permitted to ask others for help with the application process,<sup>6</sup> the decision to ask for that help must be the voter’s decision, not another’s.

Finally, the General Assembly’s regard for the freedom and the purity of the ballot is observed again at the end of the process when the voter completes and returns the absentee ballot. Appreciating that secrecy of the ballot is a vital component of preserving the integrity of elections, *See Burson*, 504 U.S. at 201 (“the failure of the law to secure secrecy opens the door to bribery and intimidation”); *see also Mooney v. Phillips*, 118 S.W.2d. 224, 226 (1938) (in upholding the constitutionality of voting machines, the Tennessee Supreme Court stated that “the word ‘ballot’ is not used in a literal sense but merely by way of designating a method of conducting elections that will guarantee the secrecy and integrity of the ballot”), the General Assembly requires absentee voters to sign an affidavit that accompanies the absentee ballot, swearing that the ballot has been “marked by me in secret . . . .” Tenn. Code Ann. § 2-6-309(b).

---

<sup>5</sup> The specific reasons for the addition of this provision to the Election Code are addressed in the next section of this memorandum.

<sup>6</sup> *See* note 4, *supra*.

**2. The General Assembly Enacted Tenn. Code Ann. § 2-6-202(c)(4) to Further the Compelling State Interests of Preventing Voter Confusion and Protecting the Integrity of the Electoral Process.**

Prior to the passage of Tenn. Code Ann. § 2-6-202(c)(4) in 2002,<sup>7</sup> Tenn. Code Ann. § 2-6-202(c)(3) provided (as it currently does) that “[a] person who is not an employee of an election commission commits a Class E felony if such person *gives an application* for an absentee ballot to any person.” *See* Tenn. Code Ann. § 2-6-202(c)(3) (Supp. 1994) (emphasis added).

Tennessee Code Ann. § 2-6-202(c)(4), which provides that “a person who is not an employee of an election commission commits a Class A misdemeanor if such person *gives an unsolicited request for application* for absentee ballot to any person,” was passed in response to the request of the State’s election coordinator.<sup>8</sup> County election commissions had notified the State’s election coordinator that various groups were creating and printing forms that were labeled “requests” for application for absentee ballots.<sup>9</sup> The forms were problematic for several reasons:

- 1) The forms were not approved by the State’s election coordinator, as required by the Election Code. As the State’s election coordinator testified: “There is no such form as a request for an application.”<sup>10</sup> “It looks like an official form, even though it’s not coming from an election commission office.”<sup>11</sup>

---

<sup>7</sup> *See* 2002 Tenn. Pub Acts, ch. 698.

<sup>8</sup> *See* Senate State and Local Gov’t Comm. (SB 2801), Tape # 1, Feb. 26, 2002 [ Exhibit B, McCormack Decl., Ex. A at 1]; House State and Local Gov’t Comm. (HB 3193), Tape # 1, Feb. 26, 2002 [McCormack Decl., Ex. B at 1, 2, 3].

<sup>9</sup> *Ibid.*

<sup>10</sup> *See* Statement of Brook Thompson, then-State election coordinator, House State and Local Gov’t Comm. (HB 3193), Tape # 1, Feb. 26, 2002 [McCormack Decl., Ex. B at 3].

<sup>11</sup> *See* Statement of Brook Thompson, then-State election coordinator, Senate State and Local Gov’t Comm. (SB 2801), Tape # 1, Feb. 26, 2002 [McCormack Decl., Ex. A at 4]. *See also* Statement of Brook Thompson, then-State election coordinator, House State and Local Gov’t Comm. [McCormack Decl., Ex. B at 3].

- 2) And more disturbingly, the Election Code provided then, as it does now, that a voter's "request serves as an application for a ballot" if the request is in writing, over the voter's signature, and contains the following: name of the registered voter, the address of the voter's residence, the voter's social security number, the address to mail the ballot outside the county, the election the voter wishes to participate in, and the reason the voter wishes to vote absentee. *See* Tenn. Code Ann. § 2-6-202(a)(3) (Supp. 1994).<sup>12</sup> Thus, the creators of the request form were "savvy enough to put all the information on there," which made the form tantamount to an application for absentee ballot.<sup>13</sup>
- 3) Recipients of the forms, often older voters, were frequently confused and thought that they had to complete the forms in order to vote. They thought it was an official form. And many of those who completed the forms and submitted them to the county election commission offices were still showing up at the polls on election day only to learn that they could not vote in-person because they had completed an application for an absentee ballot.<sup>14</sup> Further compounding the problem, they were also not able to vote absentee because the time to mail in their ballots had passed by the day of the election.<sup>15</sup>

Accordingly, the State's election coordinator asked for the passage of Tenn. Code Ann. § 2-6-202(c)(4) in order to put an end to this practice of others distributing unsolicited request forms

---

<sup>12</sup> *See* Statement of Brook Thompson, then-State election coordinator, Senate State and Local Gov't Comm. (SB 2801), Tape # 1, Feb. 26, 2002 (confirming that request for absentee ballot will be treated an application for an absentee ballot if it has all of the requisite information) [McCormack Decl., Ex. A at 1]; Statement of Brook Thompson, then-State election coordinator, House State and Local Gov't Comm. (HB 3193), Tape # 1, Feb. 26, 2002 (same) [McCormack Decl., Ex. B at 1, 3, 8].

<sup>13</sup> *See* Statement of Brook Thompson, then-State election coordinator, House State and Local Gov't Comm. (HB 3193), Tape # 1, Feb. 26, 2002 [McCormack Decl., Ex. B at 8-9].

<sup>14</sup> *See* Statements of Brook Thompson, then-State election coordinator, and Senator Rochelle, Senate State and Local Gov't Comm. (SB 2801), Tape # 1, Feb. 26, 2002 [McCormack Decl., Ex. A at 1, 3]; Statements of Brook Thompson, then-State election coordinator, and Representative Hargrove, House State and Local Gov't Comm. (HB 3193), Tape # 1, Feb. 26, 2002 [McCormack Decl., Ex. B at 1, 2, 3, 6-7].

<sup>15</sup> *See* Statement of Senator Rochelle, Senate State and Local Gov't Comm. (SB 2801), Tape # 1, Feb. 26, 2002 [McCormack Decl., Ex. A at 1]; Statement of Brook Thompson, then-State election coordinator, House State and Local Gov't Comm. (HB 3193), Tape # 1, Feb. 26, 2002 [McCormack Decl., Ex. B at 1].



for absentee ballots.<sup>16</sup> “It has just caused confusion and led to the disenfranchisement of voters.”<sup>17</sup>

The requested measure was passed following the General Assembly’s decision to reduce the violation of Tenn. Code Ann. § 2-6-202(c)(4) from a Class E felony to a Class A misdemeanor.<sup>18</sup>

Clearly, the legislative history establishes that the statute was enacted to further compelling State interests. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008) (recognizing that safeguarding voter confidence is part of the compelling interest that a State has in protecting the integrity and reliability of the electoral process); *Burson*, 504 U.S. at 199 (observing that State has a compelling interest in protecting voters from confusion and undue influence); *Eu*, 489 U.S. at 231 (noting that the State indisputably has a compelling interest in preserving the integrity of its election process). Yet, Plaintiffs bewilderingly claim that Tenn. Code Ann. § 2-6-202(c)(4) is “not meaningfully designed to serve *any* legitimate government interest, let alone a compelling one . . . .” DE 43, ID#1676 (emphasis added). To support this assertion, Plaintiffs advance two specious arguments, neither of which acknowledges the very serious voter confusion issue that the statute was enacted to address.

---

<sup>16</sup> See Statement of Brook Thompson, then-State election coordinator, House State and Local Gov’t Comm. (HB 3193), Tape # 1, Feb. 26, 2002 [McCormack Decl., Ex. B at 9].

<sup>17</sup> See Statement of Brook Thompson, then-State election coordinator, House State and Local Gov’t Comm. (HB 3193), Tape # 1, Feb. 26, 2002 [McCormack Decl., Ex. B at 2].

<sup>18</sup> As originally introduced, the penalty for giving a request for application was to be a Class E felony because that was the penalty for “giving an application for an absentee ballot” to any person under Tenn. Code Ann. § 2-6-202(c)(3). See Statement of Brook Thompson, then-State election coordinator, Senate State and Local Gov’t Comm. (SB 2801), Tape # 1, Feb. 26, 2002 [McCormack Decl., Ex. A at 2]. See also Statement of Brook Thompson, then-State election coordinator, House State and Local Gov’t Comm. (HB 3193), Tape # 1, Feb. 26, 2002 (same) [McCormack Decl., Ex. B at 4].

Plaintiffs argue that the legislative history indicates that the statute was passed because it “is bad policy to encourage people to vote absentee.” *Id.* at 1677–78. In full context, the then-State election coordinator had just explained that *non-election* commission persons were creating *unofficial* request forms for applications for absentee ballots, and the aim of the bill was to stop this practice.<sup>19</sup> Then he testified:

I would suggest to you that we don’t want to be encouraging people to be handing out requests for absentee ballots. I mean, the whole absentee ballot law was set up so that voters that can’t otherwise vote get to vote. But we don’t want half the state voting absentee. We want them voting early, and we want them voting at the polls on election day. We want people that can’t vote at the polls on election day to vote absentee. But I would tell you that I think it’s bad public policy for candidates to be handing out requests for absentee ballots just by the dozens. The whole process is set up to be guarded against fraud, and more absentee ballots you have, the more likely the chance for fraud there is.<sup>20</sup>

Plaintiffs also argue that “there is no ‘anti-fraud’ interest at stake in prohibiting the physical distribution of publicly available forms.” *Id.* at 1678. Plaintiffs misstate the issue because “[t]here is no such form as a request for an application.”<sup>21</sup> The fabrication of unofficial election forms is fraud. Moreover, the United States Supreme Court has pronounced that there does not have to be an ongoing fraud problem. Protection of the integrity of the election process empowers the States to enact laws to prevent voter fraud before it occurs, rather than only allowing the state to remedy fraud after it has become a problem. *See Munro v. Socialist Workers Party*, 479 U.S. 189, 195–96 (1986) (“Legislatures ... should be permitted to respond to potential deficiencies in the electoral

---

<sup>19</sup> *See* Statement of Brook Thompson, then-State election coordinator, House State and Local Gov’t Comm. (HB 3193), Tape # 1, Feb. 26, 2002 [McCormack Decl., Ex. B at 4].

<sup>20</sup> *Id.*

<sup>21</sup> *See* Statement of Brook Thompson, then-State election coordinator, House State and Local Gov’t Comm. (HB 3193), Tape # 1, Feb. 26, 2002 [McCormack Decl., Ex. B at 3].

process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights.”).

In sum, Tenn. Code Ann. § 2-6-202(c)(4) unquestionably furthers the State’s compelling interests of preventing voter confusion and protecting the integrity of the electoral process.<sup>22</sup>

**3. Tennessee Code Ann. § 2-6-202(c)(4) Places a Minimal Burden on the Organizational Plaintiffs’ Right to Engage in Core Political Speech and Activity.**

Tennessee Code Ann. § 2-6-202(c)(4) restricts one thing and one thing only: “giv[ing] an *unsolicited* request for application for absentee ballot to any person.” Thus, by its terms, this statute does not prevent the Organizational Plaintiffs from sending any and all literature that they wish to send to their target audience, nor does it prevent them from sending letters or otherwise contacting their target audience to inquire whether assistance is needed with the absentee ballot application process. If assistance is desired by members of their audience, they are free to help them with the process, including helping them obtain an application. In fact, Tenn. Code Ann. § 2-6-203 expressly permits that.<sup>23</sup> Thus, the statute is narrowly drawn to further the State’s interest in preventing the distribution of non-election commission absentee ballot request forms that were confusing voters.<sup>24</sup>

---

<sup>22</sup> In fact, the Davidson County Chancery Court Order that Plaintiffs include as part of the support for their motion is even more blunt about the purpose of Tenn. Code Ann. § 2-6-202(c), which is “[t]o guard against ‘ballot harvesting.’” DE 40-2, ID#189.

<sup>23</sup> See note 4, *supra*.

<sup>24</sup> Organizational Plaintiffs puzzlingly suggest that Tenn. Code Ann. § 2-6-202(c)(4) could be more narrowly tailored by the placement of a notice on the “request form” that lets voters know that they are not required to submit the request in order to vote in person. DE 43, ID#1677. This is illogical. As explained earlier, the election commission does not create a request for application for absentee ballot form.

**4. Tennessee Code Ann. § 2-6-202(c)(4) Satisfies the “Exacting Scrutiny” Test.**

The Sixth Circuit Court of Appeals has explained the “exacting scrutiny” test as follows:

‘Exacting scrutiny,’ despite the name, does not necessarily require that kind of searching analysis that is normally called strict judicial scrutiny; although it may. To withstand ‘exacting scrutiny,’ the Supreme Court has explained, ‘the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.’

*Libertarian Party of Ohio v. Husted*, 751 F.3d 403, 414 (6th Cir. 2014) (quoting *John Doe No. 1 v. Reed*, 561 U.S. 186, 196 (2010) (internal quotation marks omitted).

Accordingly, a statutory provision that imposes a severe burden on speech is subject to strict scrutiny and must be narrowly tailored to serve a compelling state interest. *Id.* at 414 (citing *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182, 192 n.12, 206 (1999)). A statutory provision that does not impose a severe burden on speech, however, is subject to lesser scrutiny. *Id.* (citing *Reed*, 561 U.S. at 199 n.2). In short, “the level of scrutiny to be applied depends on the severity of the burden.” *Id.*

Hence, courts are to use a “sliding-scale” analysis when deciding whether a state election law violates First Amendment associational rights. *See Citizens for Tax Reform*, 518 F.3d at 383 (recognizing “the question is fact-intensive, given the ‘sliding-scale’ analysis outlined by the Supreme Court in *Meyer*, *Buckley* and other decisions”); *Libertarian Party*, 751 F.3d at 414 (noting its prior decision recognizing sliding-scale analysis); *see also, e.g., Burson*, 504 U.S. at 209 (finding that when the exercise of a First Amendment right threatens to interfere with the act of voting itself, a State’s response that is reasonable and does not significantly impinge on constitutionally protected rights will be upheld).

The Sixth Circuit’s decision in *Citizens for Tax Reform* provides a practical example of how the sliding-scale analysis is to be employed. In that case, the court considered an Ohio statute

that made it a felony to pay anyone for gathering signatures on election-related petitions on any basis other than time worked. See *Citizens for Tax Reform*, 518 F.3d at 377. In considering where the statute fit on the sliding scale, the court observed that the Supreme Court's *Meyer* decision lay at one end of the spectrum. *Id.* at 385. In *Meyer*, the State of Colorado had banned proponents of petitions from paying circulators, among other restrictions. *Id.* at 380–81 (citing *Meyer*, 496 U.S. at 420). On the other end of the spectrum were statutes enacted in North Dakota, Oregon, and New York that banned payments made on a per-signature basis; courts had found these types of statutes were constitutional. The court found the Ohio statute more restrictive than these latter statutes because it banned all remuneration except on a per-time basis. The less-restrictive statutes left open various other means of payment besides one based solely on the time worked. *Id.* at 385. The court also found the Ohio statute to be more restrictive because the violation for violating the North Dakota, Oregon, and New York statutes was a misdemeanor, while the penalty for violating the Ohio statute was a felony. *Id.* at 386. For these reasons, the court found that the Ohio provision created a significant burden on the petitioners' core political speech rights because it lay closer the complete ban in *Meyer* than the partial-ban statutes. *Id.* Consequently, the State had to justify the Ohio statute with a compelling interest and narrowly tailored means. The court found that the State failed to satisfy this standard. *Id.* at 388.

Tennessee Code Ann. § 2-6-202(c)(4) is like the North Dakota, Oregon, New York statutes examined in *Citizens for Tax Reform*. The penalty for violating the statute is a misdemeanor, not a felony, and the statute leaves all but one discrete avenue for Organizational Plaintiffs to execute their absentee vote engagement strategy. Moreover, the one prohibited avenue serves the State's compelling interest in preventing voter confusion and protecting the integrity of the election process.

Similarly, the *Burson* decision guides the inquiry in our case. In this case, the United States Supreme Court applied exacting scrutiny to an election law that forbid campaign-related speech within 100 feet of the entrance to a polling place. The Court recognized two compelling interests for buffer zones around polling places: (1) the State’s duty to protect the right to vote freely for the candidate of one’s choice; and (2) the State’s interest in preserving the integrity and reliability of the electoral process itself. *Burson*, 504 U.S. at 198–99 (citations omitted). Put more pointedly, the Court recognized the State’s interest in protecting voters from “confusion and undue influence” and “ensuring that an individual’s right to vote in not undermined by fraud.” *Id.* at 199.

The *Burson* Court then determined that a 100-foot buffer did not constitute a significant impingement on political speech. *Id.* at 210. In so finding, the Court stated that the only way to preserve the secrecy of the ballot is to limit access to the area around the voter. *Id.* at 208–209. Thus, “*some* restricted zone around the voting area is necessary to secure the State’s compelling interest.” *Id.* at 208 (emphasis in original).

Like the law examined in *Burson*, Tenn. Code Ann. § 2-6-202(c)(4) was enacted to serve the State’s compelling interest in protecting voters from confusion and undue influence and ensuring that an individual’s right to vote in not undermined by fraud. Tennessee Code Ann. § 2-6-202(c)(4) only restricts Organization Plaintiffs from giving an “*unsolicited* request for application for absentee ballot to any person.” This lone, modest prohibition is equivalent to the 100-foot buffer that the *Burson* Court found was reasonable to serve the State’s compelling interests in preserving the integrity of the electoral process and protecting its citizens’ autonomy to vote freely in the manner that they desire.

**E. Plaintiffs have Failed to Demonstrate a Substantial Likelihood of Success on the Merits of their Challenges to the Signature Verification Process.**

**1. Description of the Signature Verification Process, Training, and its Effectiveness.**

**a. Signature Verification Occurs Twice, Not Once.**

For an eligible voter who seeks to vote by absentee ballot, the voter's signature is evaluated, not once, but twice; because, prior to casting an absentee ballot, the voter must first submit a written request or application for such a ballot. *See* Tenn. Code Ann. § 2-6-202(a)(2) and (3). Such request or application may be made in-person, by mail, by facsimile, or by email. *See* Tenn. Code Ann. § 2-6-202(a)(3). Regardless of the manner of submission, the request or application must be signed by the voter, and that signature is subject to the first of two signature evaluations. *See* Tenn. Code Ann. § 2-6-202(b) and (d).

If the signature on the request or application is determined to be inconsistent (in accordance with the process described below) with the signature on the voter's registration record, the request or application is rejected, and the applicant is immediately notified. If the voter submitted their request or application by email, the administrator of elections may send notification of the rejection by email. Otherwise, the voter is notified in writing by mail. *See* Tenn. Code Ann. § 2-6-204(a); Goins Decl., ¶ 14. If, on the other hand, the signature on the request or application is determined (in accordance with the process described below) to be consistent with the signature on file, an absentee ballot—together with instructions, *see* Goins Decl., Ex. 1, a ballot envelope, and a mailing envelope—is delivered to the voter by U.S. Mail. *See* Tenn. Code Ann. § 2-6-202(b) and (d).

Pursuant to Tenn. Code Ann. § 2-6-202(a)(1), an eligible voter who seeks to vote by absentee ballot may request or apply for a ballot as early as 90 days before an election, but in no

event later than 7 days before the election. A request or application for an absentee ballot must be received no later than 7 days before the election. *See* Tenn. Code Ann. § 2-6-202(d)(3).

The exterior of the ballot envelope contains a “Voter’s Affidavit,” *see* Goins Decl., Ex. 2, which must be executed by the voter and which attests under penalty of perjury that he/she is a registered voter and that the submitted ballot has been completed by the voter him-/herself. *See* Tenn. Code Ann. §§ 2-6-202(e) and 2-6-309(b). Thereafter, voter must place the ballot in the sealed ballot envelope and mail it back to the county election commission in the pre-addressed outer envelope, so that it is received on or before Election Day. *See* Tenn. Code Ann. § 2-6-202(e).

Next, after receipt of an absentee ballot from the voter, county election officials open the outer mailing envelope, and—without opening the ballot envelope itself—the signature of the voter as it appears on the Voter’s Affidavit is compared a second time to the signature of the voter on file to authenticate the validity of the ballot. *See* Tenn. Code Ann. § 2-6-202(g). If the signature on the Voter’s Affidavit is determined (again, in accordance with the process described below) to be consistent with the signature on file, the ballot is accepted and placed (unopened) in the absentee ballot box to be counted on Election Day. *Id.* If, on the other hand, the signature is determined to be inconsistent with the signature on file, the ballot is rejected and notice of the rejection is mailed immediately to the voter. *See* Tenn. Code Ann. § 2-6-204(b). If time allows, a voter whose absentee ballot has been rejected can submit another absentee ballot. Alternatively, that voter could cast a provisional ballot in accordance with Tenn. Code Ann. § 2-7-112(a)(3).

**b. Tennessee’s signature verification process.**

For evaluation of both the request/application and the actual ballot, the signature verification process performed by county election officials is a painstaking process, and—as described below—is structured with the emphasis to *accept* a signature, rather than reject it. *See* Goins Decl., ¶ 26; Exhibit C, Warren Decl., ¶ 4; Exhibit D, Farley Decl., ¶ 4; Exhibit E, Phillips



Decl., ¶ 4. Training in this process is mandatory, and it consists of a 45-minute video which is supplemented with additional directives from my office. *See* Goins Decl., ¶ 19.

The video, which is entitled “Signature Verification” and which may be viewed at <https://www.youtube.com/watch?v=UKiYGONnNT0&feature=youtu.be>, was prepared by the Director of Elections for Oregon, and comprehensively addresses the proper manner to conduct signature comparisons. *Id.* at ¶ 20. The presenters are Ms. Summer Davis and Ms. Lydia Plukchi, who are Compliance Specialist 3s in the Elections Division of the Oregon Secretary of State and who have been with the Election Division for over 15 years. *Id.* Both Ms. Davis and Ms. Plukchi received their training from Ms. Heather Carlson, a forensic handwriting expert.<sup>25</sup> *Id.*

The video explores the various components of a signature: line-forms and style (cursive or printed), unconscious variations from line-forms, intentional “personalization” of a signature, alignment, signature speed, “pen lifts,” line quality (which can deteriorate with the age of the signer), elements of proportion, size, spacing, and slant. *Id.* at ¶ 21. Beginning at time index 23:44, viewers are instructed as to “What to Look For,” “What to Examine,” and “Evaluating Signatures.” At 29:04, the video begins to discuss whether to “Accept or Reject” a signature. *Id.* at ¶ 22.

Importantly, at time index 29:54, the viewer is told “You’re looking for reasons to keep the signature *in*—to *validate* the signature—rather than reasons to throw the signature *out*. . . . We’re looking for *any* reason to keep a signature.” *Id.* at ¶ 23 (emphasis in original.) Seconds later, at time index 30:29, the viewer is presented with numerous comparative examples of actual

---

<sup>25</sup> A copy of Ms. Carlson’s *curriculum vitae* is attached as Exhibit 3 to the Declaration of Mark Goins.

signatures submitted versus signatures on file, and from those examples the viewer is shown that all but the most obvious of inconsistent signatures are to be regarded as acceptable. *Id.* at ¶ 24.

At time index 29:28 the viewer is instructed that a signature should be reviewed by “at least two different county elections officials” before it is rejected. *Id.* at ¶ 25. However, the Tennessee Coordinator of Elections has instructed county election officials that a signature on the absentee Voter’s Affidavit, should *not* be rejected unless it is reviewed by *three* local election officials including the administrator. *Id.* See also Warren Decl., at ¶ 5; Farley Decl., at ¶ 5; Phillips Decl., at ¶ 5.

Given the presumption of signature validity, very few absentee ballots are rejected in Tennessee for signature irregularity under Tenn. Code Ann. § 2-6-204(b).<sup>26</sup> See Goins Decl., at ¶ 27. For the national election in November of 2016, 73,338 absentee ballots were mailed to requesting voters, and 65,235 absentee ballots were received by county election officials statewide. *Id.* at ¶ 28. Of those absentee ballots received, only 20 were rejected for signature irregularities. *Id.* And of those 20 rejected ballots, 13 were cast under the federal Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 52 U.S.C. § 20301, *et seq.*, which permits U.S. citizens—both military and civilian—who are living abroad to vote. *Id.*

For the national election in November of 2018, 49,421 absentee ballots were sent to voters, and 44,392 absentee ballots were received by county election officials statewide. See Goins Decl., at ¶ 29. Of those absentee ballots received, only 42 were rejected for signature irregularities. *Id.* See also Warren Decl., at ¶ 7 (describing fraudulent submission of a deceased voter). Of the 42

---

<sup>26</sup> See Warren Decl. at ¶ 5 (“[M]y office takes every possible step to ensure that an eligible voter, who wants to vote by absentee ballot, may do so. This includes contacting voters by multiple means (i.e., mail, email, and/or telephone) if a defect is noted”); Farley Decl. at ¶¶ 6–7 (describing efforts to contact voters to correct deficiencies in ballot applications and ballots).

rejected ballots, 13 were cast under UOCAVA. *See* Goins Decl., at ¶ 29. *See also* Farley Decl., at ¶ 9; Phillips Decl., at ¶ 10.

Thus, for the 109,627 absentee ballots cast in the 2016 and 2018 national elections, only 36 absentee ballots cast pursuant to Tenn. Code Ann. § 2-6-201 (i.e., .03%) were rejected for signature irregularities. *See* Goins Decl., at ¶ 30.

**c. Tennessee’s additional safeguard.**

In addition, to the training discussed above, any voter who is concerned that—for whatever reason—his/her absentee ballot may not be counted, also may cast a provisional ballot in accordance with Tenn. Code Ann. § 2-7-112(a)(3). *See* Goins Decl., at ¶ 17. Under that circumstance, if a voter’s absentee ballot is determined to be valid and counted, the voter’s provisional ballot will be discarded. *Id.* Alternatively, if the voter’s absentee ballot is rejected for a signature irregularity or any other reason, the provisional ballot will stand. *Id.*

**2. Plaintiffs’ Procedural Due Process Claim Fails for Lack of a Substantive Entitlement Under *Fowler v. Benson*.**

While “‘voting is of the most fundamental significance under our constitutional structure,’ . . . ‘[i]t does not follow . . . that the right to vote in any manner . . . [is] absolute.’” *Mays v. LaRose*, 951 F.3d 775, 783 (6th Cir. 2020) (citations omitted). “The Constitution explicitly provides State legislatures with authority to regulate the ‘Times, Places and Manner of holding Elections.’” *Id.* (quoting U.S. Const. art I, § 4, cl. 1). In this regard, the State has “broad powers to determine the conditions under which the right of suffrage may be exercised.” *Lassiter v. Northampton Cty. Bd. of Elections*, 360 U.S. 45, 50 (1959).

In this respect, “[t]he Due Process Clause ‘does not protect procedure for procedure’s sake.’” *Fowler v. Benson*, 924 F.3d 247, 259 (6th Cir. 2019). “Procedural due process is traditionally viewed as the requirement that the government provide a ‘fair procedure’ when

*depriving* someone of life, liberty, or property. . . .” *EJS Properties, LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir. 2012) (emphasis added). Yet, this is not an instance where the State has created an entitlement and then has taken it away. To the contrary, this is a case where the entitlement claimed by Plaintiffs—the ability to vote by absentee ballot—was not created at all. As Plaintiffs readily concede in their Amended Complaint, they do not fall within the eligibility requirements of Tenn. Code Ann. § 2-6-201. When the asserted interest does not exist, a procedural due process claim does not lie. *Fowler*, 924 F.3d at 256–60.

Plaintiffs assert that “the State’s strict limits on eligibility for voting absentee . . . impose an undue burden on prospective voters<sup>[27]</sup> who must now choose between risking their health by voting in person, or forgoing their right to vote entirely. . . .” Am. Compl., DE 39, ID#125, ¶ 5. But “there is nothing in the record to indicate that the [Tennessee] statutory scheme has an impact on [Plaintiffs’] ability to exercise the fundamental right to vote.” *See McDonald v. Bd. of Election Comm’rs of Chicago*, 394 U.S. 802, 807 (1969); *see also Texas Democratic Party*, 961 F.3d at 403 (citing *McDonald* and concluding that the denial of mail-in ballots to a certain group of voters “did not restrict their right to vote”). Plaintiffs Franklin and Lee, and the members of APRI, MCLC, and NAACP,<sup>28</sup> *can* vote, and Plaintiffs do not suggest otherwise. Instead, Plaintiffs’ claim is based—not on an alleged deprivation of the right to vote—but, instead, on the perceived right to vote *in a certain manner*—i.e. “a *claimed* right receive absentee ballots.” *McDonald*, 394 U.S. at

---

<sup>27</sup> This is not a class action case. Thus, as previously discussed none of the plaintiffs have standing to assert claims on behalf of “prospective voters.” *See Warth*, 422 U.S. at 498 (a party “generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.”).

<sup>28</sup> As discussed *supra*, APRI, MCLC, and NAACP do not have standing to assert a procedural due process claim on behalf of their members.

807 (emphasis added); *see also Texas Democratic Party*, 961 F.3d at 409.<sup>29</sup> But, “there is no constitutional right to an absentee ballot.” *Mays*, 951 F.3d at 792. That being the case, the fact that the State “make[s] it easier for some electors to vote” absentee, does not impose a “burden” or “make it *harder* to vote for electors that don’t get the same benefit.” *Id.* at 783 n.4 (emphasis in original); *see also Texas Democratic Party*, 961 F.3d at 403–04 (quoting *McDonald* and holding that a “statutory scheme, which is ‘designed to make voting more available to some groups who cannot easily get to the polls,’ does not itself ‘deny’ the plaintiffs ‘the exercise of the franchise’”); *id.* at \*19 (Ho, J., concurring) (observing that absentee voting “increase[s] options—not restrictions”).

Plaintiffs’ asserted interest in voting by absentee ballot is “not created by the Constitution. Rather, [it is] created and [its] dimensions are defined by existing rules or understandings that stem from an independent source”—i.e., “state law.” *Fowler*, 924 F.3d at 256 (quoting *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972)). Accordingly, because Tenn. Code Ann. § 2-6-201 defines which citizens are eligible to vote by absentee ballot and *none* of the Plaintiffs fall within that definition,<sup>30</sup> Plaintiffs have no procedural due process rights that are implicated by Tenn. Code Ann. §§ 2-6-202(b), (d), and (g), and -204.

“A procedural due process claim cannot survive without the existence of a protected liberty or property interest.” *Marin-Garcia v. Holder*, 647 F.3d 666, 674 (7th Cir. 2011). Where state

---

<sup>29</sup> *See also Fowler*, 924 F.3d at 256 (“Plaintiffs do not claim merely a general property interest in a driver’s license; their specific claim is to a property interest, as indigent individuals, in maintaining their driver’s licenses when state law requires they be suspended due to unpaid court debt.”).

<sup>30</sup> *See Amended Complaint*, DE 39, ID#131, ¶ 22 (Plaintiff Franklin “does not qualify to vote by mail”); *id.* at ¶ 23 (Plaintiff Lee “does not qualify to vote by mail”); DE 39, ID#132–36, ¶¶ 24–31 (organizational plaintiffs cannot vote at all; *see Fair Elections Ohio v. Husted*, 770 F.3d at 461).

law has not “establish[ed] the entitlement that Plaintiffs’ claim,” *Fowler*, 924 F.3d at 258, and “Plaintiffs do not claim a legal entitlement that falls within the Fourteenth Amendment’s protection, . . . [the] procedural due process claim fails.” *Id.* at 259.

**3. The Current Signature Validation Process Satisfies Procedural Due Process.**

Even if the Court finds that one or more of the Plaintiffs has standing to assert this procedural due process claim, the signature-verification process easily satisfies the standard established by *Mathews v. Eldridge*, 424 U.S. 319 (1976). The *Mathews* standard weighs three factors:

[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*Id.* at 335. Because procedural due process concerns are “flexible” and measured against the “demands” of a “particular situation,” *id.* at 334, these factors are intended to function as a “balance,” where no single factor is determinative. *Id.* at 347.

**(i) Private Interest Affected.**

Plaintiffs begin their argument from a false premise: i.e., that their procedural due process claim is based on “their fundamental right to vote,” *see* Plaintiffs’ Brief (DE 43) at 1688, and that “pre-deprivation notice” is essential for “having their vote counted.” *Id.* at 1688–89. But, again, this is not a right-to-vote case, and no one—not Plaintiffs, nor anyone else—have been deprived of the right to vote. *McDonald*, 394 U.S. at 807; *Texas Democratic Party*, 961 F.3d at 408–09. This case, instead, pertains to the particular *manner* by which Plaintiffs seek to exercise their vote, which is not a fundamental right. *Mays*, 951 F.3d at 792. Further, while every voter has an interest

in having his or her vote “counted,” that interest is defined by the time, place and manner restrictions imposed by the State under the authority delegated by the Constitution. *Id.* at 783. Indeed, if the converse were true, the State would be obligated to “count” votes that were cast hours, days, or weeks after the close of the polls. As concisely stated by the Fifth Circuit Court of Appeals, the emergence of COVID-19 “has not suddenly obligated [the States] to do what the Constitution has never been interpreted to command, which is to give everyone the right to vote *by mail.*” *Texas Democratic Party*, 961 F.3d at 409 (emphasis added).

Moreover, the every-vote-counts argument cuts both ways. As discussed below, “[e]very voter’s vote is entitled to be counted”—and that means every vote must be ‘protected from the diluting effect of illegal ballots.’” *Id.* at 413 (Ho, J., concurring; quoting *Gray v. Sanders*, 372 U.S. 368, 380 (1963)). The restrictions imposed by the absentee ballot statutes, specifically the signature verification provisions, are structured to address that interest.

Thus, contrary to Plaintiffs’ assertion, this factor does not “weigh[] heavily” in their favor. Plaintiffs’ Brief (DE 43) at 1689.

#### **(ii) Risk of Erroneous Deprivation.**

Plaintiffs argue that “Tennessee’s signature match procedures are virtually certain to lead to the erroneous rejection of valid ballots.” *Id.* at 1690. Yet, they have produced no proof that such erroneous rejections have—in fact—occurred in Tennessee. Indeed, Plaintiff APRI—in which “[t]he majority of [its] members are over 60,” Lee Decl., DE 40-7, ID#1577, ¶ 7—has not proffered an affidavit from any member identifying that their absentee ballot was improperly rejected in a prior election.

The best evidence the Plaintiffs have to offer are the conclusory opinions of Dr. Linton A. Mohammed, who states that “Tennessee signature match procedures do not set forth sufficient standards for determining reasonably whether a signature on a ballot return envelope matches the

voter signature displayed in the voter’s file.” Mohammed Decl., DE 40-4, ID#1535, ¶ 20. Yet, this opinion is based on Dr. Mohammed’s belief that—apart from the statute itself—Tennessee has “no further written statewide standards or procedures to guide election officials in evaluating whether the signature on the absentee ballot application matches the signature on the back of the absentee ballot envelope (the voter’s affidavit).” *Id.* at ¶ 18. As demonstrated by the Declaration of the State’s Coordinator of Elections, Mark Goins, this belief is incorrect. *See* Goins Decl., ¶¶ 18–26. Warren Decl., ¶¶ 4–5; Farley Decl., ¶¶ 4–5; Phillips Decl., ¶ 5.

Moreover, the lack of any significant risk of erroneous deprivation is statistically demonstrable. Again, in the 2016 national election, only 20 out of 65,235 absentee ballots were rejected for signature irregularities; i.e., .03% (three one-hundredths of one percent) of the absentee ballots cast statewide. *See* Goins Decl., at ¶ 20. For the 2018 national election, 42 out of 44,392 absentee ballots were rejected for signature irregularities; i.e., .09% (nine one-hundredths of one percent) of the absentee ballots cast statewide. *See id.* at ¶ 29. Even if some of the 62 absentee ballots were rejected erroneously, “[s]uch isolated discrepancies” would not demonstrate the existence of a constitutionally infirm process.<sup>31</sup> *Lemons v. Bradbury*, 538 F.3d 1098, 1106 (9th

---

<sup>31</sup> It also should be noted that—of the 62 absentee ballots rejected in 2016 and 2018—26 of them were cast pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 52 U.S.C. § 20301, *et seq.*, which permits U.S. citizens—both military and civilian—who are living abroad to vote.

The UOCAVA comprehensively defines the “State responsibilities” associated with these absentee ballots. *See* 52 U.S.C. § 20302. While the statute requires the State to provide “notice” if a ballot is rejected, and to provide a method for the voter to “track” his/her ballot, *see* § 20302(d) and (h), the statute does not require the State provide an opportunity to cure an inconsistent signature on either the ballot application or the ballot itself.

Plaintiffs do not challenge the constitutionality of UOCAVA, nor do they purport to be or represent UOCAVA voters. Thus, for the 109,627 absentee ballots cast in the 2016 and 2018 national elections, only *thirty-six* (36) *state law* absentee ballots (i.e., .03%) were rejected for signature irregularities. *See* Goins Decl. at ¶ 30. *See also* Farley Decl. at ¶ 9; Phillips Decl. at ¶ 10.



Cir. 2008); *see also Howard v. State of Tennessee*, No. 3:16-cv-2829, 2017 WL 4877111 at \*9 (M.D. Tenn. Oct. 27, 2017), *aff'd*, 740 Fed. Appx. 837 (6th Cir. 2018) (stating that a “handful” of instances do not “suggest[]” the presence of “a systemic risk”).

In many ways, this case is closely analogous to *Lemons*, in which the Ninth Circuit Court of Appeals upheld a very similar signature-comparison procedure in the State of Oregon. *See Lemons*, 538 F.3d at 1104–05. In *Lemons*, which pertained to signature-comparison in the context of a public referendum,

- the only “uniform standard” at issue was “whether a referendum petition signature matches the signature on the signer’s existing voter registration card,” *id.* at 1105;
- “the verification process [was] . . . weighted in favor of accepting questionable signatures,” *id.*;
- “[d]uring the verification of Referendum 303, all counties subjected initially rejected signatures to a second level of review,” *id.* at 1106;
- “Oregon law [did] not provide procedures by which a voter can introduce extrinsic evidence to rehabilitate a referendum signature after its rejection,” *id.* at 1101; and
- “[n]o county gave notice to voters with rejected signatures.” *Id.*

The Ninth Circuit upheld the signature-comparison process, finding that “[p]roviding notice and allowing individuals to contest a determination that a signature did not match would further skew the process in favor of accepting invalid signatures.” *Id.* at 1105. The court further found that “[t]he value of additional procedural safeguards therefore is negligible,” and that “the administrative burden of the additional process plaintiffs propose outweighs any marginal benefit that would result from additional procedures.” *Id.*

As demonstrated above, Tennessee’s procedures are—in some ways—more favorable to the voter than Oregon’s. First, and as discussed above, the signature-verification process occurs not once—but twice: i.e., when an absentee ballot is requested, and when an absentee ballot is cast.

If a request or application for an absentee ballot is rejected for a signature irregularity, the voter *may re-submit the application* with a proper signature. *See* Tenn. Code Ann. § 2-6-204(a)(1).<sup>32</sup> *See also* Farley Decl., at ¶ 6 (describing instance in which a voter was able to correct a signature deficiency on her ballot application).

Second, similar to the procedure in Ohio, county election administrators in Tennessee are trained to look for ways to *validate* the signature, rather than reject it. *See* Goins Decl., at ¶ 26. Yet, Ohio subjects signatures only to “a second level of review” before rejection. In contrast, Tennessee requires independent review by *three* election officials who must unanimously agree that a signature should be rejected. *Id.* at ¶ 25.<sup>33</sup> Further, where officials in Oregon employed a process of “statistical sampling” in which only “five percent of the submitted signatures” were reviewed, *Lemons*, 538 F.3d at 1100, county officials in Tennessee review *every* signature on both the ballot request/application and on the Voter’s Affidavit of the ballot itself. *See* Goins Decl., at ¶ 13-14, 17, 23, 25-26.

Lastly, any voter who is concerned that—for whatever reason—his/her absentee ballot may not be counted, also may cast a provisional ballot in accordance with Tenn. Code Ann. § 2-7-112(a)(3). *Id.* at ¶ 17. Under that circumstance, if a voter’s absentee ballot is determined to be valid and counted, the voter’s provisional ballot will be discarded. *Id.* Alternatively, if the voter’s

---

<sup>32</sup> Obviously, the sooner a voter submits a request or application for an absentee ballot, the more time the voter has to correct any deficiency. Thus, if a request or application is received on or close to the statutory deadline (i.e., “seven (7) days before the election” per Tenn. Code Ann. § 2-6-202(a)(1)) a voter may not have enough time to make the necessary corrections. This, however, does not render the process constitutionally deficient. Voters who “fail to [request a ballot] early cannot blame [Tennessee] law for their inability to vote; they must blame ‘their own failure to take timely steps to effect their [absentee voting ability].’” *Mays*, 951 F.3d at 792.

<sup>33</sup> If time allows, a voter whose absentee ballot has been rejected can submit another absentee ballot. Alternatively, such voter could cast a provisional ballot in accordance with Tenn. Code Ann. § 2-7-112(a)(3). *See* Goins Decl. at ¶ 17.

absentee ballot is rejected for a signature irregularity or any other reason, the provisional ballot will stand. *Id.*

Thus, given these various procedural safeguards, the risk of a voter being erroneously deprived of his or her ability to vote is profoundly low.

**(iii) Government's Interest.**

As previously discussed, Tennessee has an interest and duty to protect the integrity of the ballot. *Foust*, 660 S.W.2d at 489; *Emery*, 586 S.W.2d at 109. And “the purity of the ballot is more difficult to preserve when voting absent than when voting in person.” *Emery*, 586 S.W.2d at 108. Indeed, “[t]here should be ‘no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters.’” *Texas Democratic Party*, 961 F.3d at 413 (Ho, J., concurring; quoting *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196 (2008) (plurality op. of Stevens, J.)). “The right to vote is fundamental to our constitutional democracy. But it means nothing if your vote doesn’t count. And it won’t count if it’s cancelled by a fraudulent vote. . . .” *Id.*

In this regard, “‘the risk of voter fraud’ is ‘real’ [and] courts have repeatedly found that mail-in ballots are particularly susceptible to fraud.” *Id.* at 414 (citing *Crawford*, 553 U.S. at 195). *See also Veasey v. Abbott*, 830 F.3d 216, 263 (5th Cir. 2016) (citing evidence that “mail-in voting . . . is far more vulnerable to fraud” and that “fraudulent absentee ballots” is a “prevalent issue”); *Alabama State Conference of NAACP v. Alabama*, \_\_\_ F. Supp. 3d \_\_\_, 2020 WL 583803 at \*53 n.51 (M.D. Ala. 2020) (discussing “several significant voter fraud convictions,” including a case in which “two individuals forged 600 absentee ballots and were convicted on voter-fraud charges in Wilcox County [Alabama] in the wake of the 1994 election”); *Greater Birmingham Ministries v. Merrill*, 284 F. Supp. 3d 1253, (N.D. Ala. 2018), *on appeal* 18-10151 (discussing absentee voter fraud, including “ballots cast in the names of dead people,” “voter brokers following mail trucks

and removing absentee ballots from mailboxes,” and “bulk mailing of hundreds of absentee ballots by just a few individuals in some counties”). Recently, *Time* magazine reported that a West Virginia postal carrier was charged with attempted election fraud “after eight mail-in requests for absentee voter ballots had their party affiliations altered, including five from Democrat to Republican. . . .” *West Virginia Mail Carrier Charged With Altering Absentee Ballot Requests*, *Time*, (5/27/20) <https://time.com/5843088/west-virginia-mail-carrier-fraud-absentee-ballots/>.

In Tennessee, at least one district court has recognized that the “absentee ballot . . . is a documented source of voter fraud.” *Green Party of Tennessee v. Hargett*, No. 2:13-cv-224, 2014 WL 11638572 at \*2 (E.D. Tenn. Feb. 20, 2014). Indeed, in the 2018 national election, officials in Wilson County, Tennessee, encountered an episode of voter fraud, when they received a fraudulent absentee ballot from someone attempting to cast a ballot in the name of a deceased voter. *See* Warren Decl., ¶ 7.

In light of these “real” and “documented” problems associated with absentee balloting, the State’s interest clearly outweighs the factually unsupported “concern[s]” of the Plaintiffs. Further, the signature verification process is a reasonable (and statistically sound) method of addressing those problems. Accordingly, the State’s process passes the *Mathews v. Eldridge* test.

## **II. Plaintiffs are unlikely to suffer irreparable injury absent an injunction.**

A plaintiff seeking preliminary injunctive relief must demonstrate that irreparable harm is *likely* in the absence of the requested injunction. *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983); *O’Shea v. Littleton*, 414 U.S. 488, 502 (1974). Indeed, a specific finding of immediate and irreparable injury to the movant is considered the most important prerequisite that a court must examine and find when ruling upon a motion for a preliminary injunctive relief. *See* 11A C. Wright, A. Miller, & M. Kane, *Fed. Practice and Procedure* § 2948.1 (3d ed.). As a result, the

absence of irreparable injury must end the court's inquiry. *See Lyons*, 461 U.S. at 111–12, 103 (1983); *Warner v. Central Trust Co., N.S.*, 715 F.2d 112, 123–24 (6th Cir. 1983); *Aluminum Workers Int'l Union v. Consolidated Aluminum Corp.*, 969 F.2d 437, 444 (6th Cir. 1982).

To demonstrate irreparable harm, each and every plaintiff must show that they “will suffer ‘actual and imminent’ harm rather than harm that is speculative or unsubstantiated.” *Abney v. Amgen, Inc.*, 443 F.3d 540, 552 (6th Cir. 2006). A preliminary injunction, then, will not be issued simply to prevent the possibility of some remote future injury—a presently existing threat must be shown. *Id.* As the Supreme Court has explained, “[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). Plaintiffs here cannot make this “clear showing.”

The organizational Plaintiffs cannot demonstrate that they are likely to suffer irreparable harm absent an injunction. These Plaintiffs allege that “in light of the ongoing COVID-19 pandemic, [they] will dedicate additional resources” to helping voters comply with existing laws. *See* DE 39, ID#132–35. And they further allege that they engage in voter education programs that can include outreach to first-time registrants. *See, e.g.*, DE 39, ID#132–35. But Plaintiffs’ potential diversion of resources for voter education in light of COVID-19 and the possibility that Plaintiffs’ voter-education programs might reach first-time voters are not immediate and irreparable injuries sufficient to warrant preliminary injunctive relief. *See Mazurek*, 520 U.S. 972 (explaining that “[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief”).

And the individual Plaintiffs fare no better. Like the organizational Plaintiffs, they have failed to show that they are likely to suffer irreparable harm without an injunction. Neither of the individual Plaintiffs allege that they are first-time voters who registered by mail. Nor do they allege that, if they vote an absentee ballot, their ballot will be rejected because the signature does not match. And finally, neither of the individual Plaintiffs allege that they intend to provide unsolicited requests for absentee ballots to other voters. Rather, the individual Plaintiffs' allegations center solely upon their desire to vote an absentee in light of COVID-19. In short, Plaintiffs have not alleged anything close to the "actual and imminent" injury necessary to obtain a preliminary injunction. *See Abney*, 443 F.3d at 552 (recognizing that, to demonstrate irreparable harm, each and every plaintiff must show that they "will suffer 'actual and imminent' harm rather than harm that is speculative or unsubstantiated").

### **III. Plaintiffs' Requested Relief Will Cause Substantial Harm to the State and Will Not Further the Public Interest.**

Both the Supreme Court and the Sixth Circuit have recognized that while the preliminary-injunction analysis usually entails consideration of the harm to the opposing party and a weighing the public interest, these two factors "merge when the Government is the opposing party." *Wilson v. Williams*, No. 20-3447, 2020 WL 3056217, at \*11 (6th Cir. June 9, 2020) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Tennessee's Supreme Court has recognized that the State and its citizens have an interest in the "validity of elections, certainty of results, the sanctity of the ballot box, and saving of expense." *See Taylor v. Armentrout*, 632 S.W.2d 107, 114 (Tenn. 1981). Similarly, the Sixth Circuit has observed that there is a "strong public interest" in "permitting legitimate statutory processes to operate to preclude voting by those who are not entitled to vote" and in the "smooth and effective administration of the voting laws that militates against changing the rules in the hours immediately preceding the election." *Summit Cty. Democratic Cent. & Exec.*

*Comm. v. Blackwell*, 388 F.3d 547, 551 (6th Cir. 2004). Plaintiffs’ requested relief would thwart these interests.

Plaintiffs requested relief will undermine the State’s interest in the validity of its elections. Both the United States and Tennessee Supreme Courts have consistently observed that there is a compelling interest in the integrity of the election. *See, e.g., Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989) (noting that a State “indisputably has a compelling interest in preserving the integrity of its election process”); *City of Memphis v. Hargett*, 414 S.W.3d 88, 103 (Tenn. 2013) (“[t]his Court has previously recognized the compelling nature of the state’s interest in the integrity of the election process.”). The “integrity of the ballot is jeopardized” by removal of the “procedural safeguards” that the General Assembly has included in the election laws. *See Foust v. May*, 660 S.W.2d 487, 489 (Tenn. 1983) (citing *Emery v. Robertson Cty. Election Comm’n*, 586 S.W.2d 103, 109 (Tenn. 1979)). These “procedural safeguards” are designed to “(1) prevent undue influence or intimidation of the free and fair expression of the will of the electors or (2) to insure that only those who meet the statutory requirements for eligibility to vote cast ballots.” *Id.* The State has already been forced to remove one safeguard—the limitation on who may vote absentee—and Plaintiffs ask this Court to remove even more. Because the State’s signature-verification process, ban on unsolicited distribution of absentee ballot applications, and requirement that first-time voters appear in person exist to ensure the integrity of the election process, the removal of these safeguards is not in the interest of the State or the public.

And, what is more, Plaintiffs’ requested relief will add to the intense financial pressure already felt by the State and its counties. Worse, it will have this effect while the State is already facing a billion-dollar budget shortage for the coming year. (*See Ex. B to Ex. 10, Apple-Jones Decl.*, 100.) In light of this looming budget crisis, every State agency has been asked to cut 12%

of its operating budget. (*See* Ex. A to Exhibit F, Apple Jones Decl., 1.) Each agency is expected to submit its proposed cuts by July 1, 2020. (*See id.*) This budget crisis is not limited to the State—it affects all levels of government. Metro Nashville, for example, is projecting a three-hundred-million-dollar budget gap for the coming year. (*See* Ex. 1 to Exhibit G, Jameson Decl., 22.) Still, Plaintiffs have asked this Court to compel the State to implement several last-minute changes to its election process. Implementing these changes will require time and effort—neither of which will be free. *See* Goins Decl., ¶ 10–11. Thus, Plaintiffs do not simply ask State and county authorities to spend money implementing unnecessary last-minute changes to their election systems—they ask them to spend money that they do not have at a time when they are being forced to make massive, unprecedented cuts to every other portion of their budgets.

Plaintiffs, however, brush aside these harms to the State and its citizens. They argue, for example, that “administrative burdens and costs do not outweigh fundamental voting rights.” *See* DE 43, ID#1700. But this argument misses the mark. It is true, of course, that financial and administrative burdens are not generally sufficient to “justify stripping . . . voters of their fundamental right to vote and have their votes counted.” *See Fla. Democratic Party*, 2016 WL 6090943, at \*8. But the laws Plaintiffs challenge are not “stripping” Tennesseans of their right to vote. Indeed, Plaintiffs own arguments reveal that the alleged burdens stemming from these laws are a far cry from disenfranchisement. They allege, for example, that several organizational Plaintiffs will be prevented from distributing unsolicited absentee ballot requests, *see* DE 43, ID#1671–79; that first-time voters are denied the ability to cast an absentee ballot, *see* DE 43, ID#1679–85; and that Tennessee’s signature-matching system threatens to deprive many Tennesseans of the right to vote, *see* DE 43, ID#1685–96. Each argument fails. The first, because the organizational Plaintiffs have no right to vote at all—much less one that is impaired by the



challenged laws. The second, because there is no constitutional right to vote absentee. *See McDonald v. Bd. of Election Comm'rs of Chicago*, 394 U.S. 802, 808 (1969). And the third, because—as discussed in Part E above—voters whose ballots are rejected do indeed have an opportunity to submit a corrected ballot and, thus, are not deprived of the right to vote.

At bottom, Plaintiffs allege only inconvenience—not loss of access to the right to vote. And there can be no doubt that the State’s interests in the integrity of its election process and the fiscally responsible use of its resources are more than sufficient to outweigh any inconvenience to Plaintiffs. In other words, the harm to the State and the public interest both militate against granting Plaintiffs’ requested relief.

### CONCLUSION

For these reasons, Defendants respectfully request that this Court deny Plaintiffs’ request for preliminary injunctive relief in its entirety.

Respectfully submitted,

HERBERT H. SLATERY III  
Attorney General and Reporter

/s/ Janet M. Kleinfelter  
JANET M. KLEINFELTER (BPR #13889)  
Deputy Attorney General  
[Janet.kleinfelter@ag.tn.gov](mailto:Janet.kleinfelter@ag.tn.gov)

ANDREW B. CAMPBELL (BPR #14258)  
Senior Assistant Attorney General  
[Andrew.campbell@ag.tn.gov](mailto:Andrew.campbell@ag.tn.gov)

ALEXANDER S. RIEGER (BPR 029362)  
Assistant Attorney General  
[Alex.rieger@ag.tn.gov](mailto:Alex.rieger@ag.tn.gov)

MATTHEW D. CLOUTIER (BPR 036710)  
Assistant Attorney General  
[Matt.cloutier@ag.tn.gov](mailto:Matt.cloutier@ag.tn.gov)

Office of the Tennessee Attorney General  
Public Interest Division  
P.O. Box 20207  
Nashville, TN 37202  
(615) 741-7403

*Attorneys for Defendants*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing documents have been forwarded electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to the parties named below. Parties may access this filing through the Court's electronic filing system.

William L. Harbison  
Lisa K. Helton  
Christopher C. Sabis  
Christina R.B. López  
Sherrard, Roe, Voigt & Harbison, PLC  
150 3<sup>rd</sup> Avenue South, Suite 1100  
Nashville, TN 37201

Danielle Lang  
Ravi Doshi  
Molly Danahy  
Jonathan Diaz  
Campaign Legal Center  
1101 14<sup>th</sup> Street NW, Suite 400  
Washington, DC 20005

Ezra Rosenberg  
Pooja Chaudhuri  
Jacob Conarck  
Lawyers' Committee for Civil Rights Under Law  
1500 K Street NW, Suite 900  
Washington, DC 20005

Date: June 25, 2020

/s/ Janet M. Kleinfelter  
JANET M. KLEINFELTER  
Deputy Attorney General

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**MEMPHIS A. PHILLIP RANDOLPH )  
INSTITUTE, THE EQUITY ALLIANCE, )  
FREE HEARTS, THE MEMPHIS AND )  
WEST TENNESSEE AFL-CIO )  
CENTRAL LABOR COUNCIL, THE )  
TENNESSEE STATE CONFERENCE )  
OF THE NAACP, SEKOU )  
FRANKLIN, and KENDRA LEE, )**

**Case No. 3:20-cv-0374  
Judge Eli Richardson**

**Plaintiffs, )**

**v. )**

**TRE HARGETT, in his official capacity )  
as Secretary of State of the State of )  
Tennessee, MARK GOINS, in his )  
Official capacity as Coordinator of )  
Elections for the State of Tennessee, )  
and AMY WEIRICH, in her official )  
capacity as the District Attorney General )  
for Shelby County, Tennessee, )**

**Defendants. )**

---

**DECLARATION OF MARK GOINS, COORDINATOR OF ELECTIONS, TENNESSEE  
SECRETARY OF STATE, DIVISION OF ELECTIONS**

---

I, Mark Goins, pursuant to the provisions of 28 U.S.C. § 1746, do hereby declare as follows:

1. My position is Coordinator of Elections for the Division of Elections for the Tennessee Department of State, and I am competent to testify upon personal knowledge regarding the matters set forth herein.

2. I have served as the Coordinator of Elections since February 2009. As part of my duties as Coordinator of Elections, I am statutorily charged with “[a]dvis[ing] election commissions,

**EXHIBIT A**

primary boards, and administrators of elections as to the proper methods of performing their duties” and “[a]uthoritatively interpret[ing] the election laws for all persons administering them.” Tenn. Code Ann. § 2-11-202(a)(3) and (4). I am further statutorily charged with the duty of furnishing “instructions for election officials as to their duties in the conduct of elections and copies of election law manuals and updating materials to the election commissions, primary boards, and administrators.” Tenn. Code Ann. § 2-11-202(a)(8).

**The Current Tennessee Election COVID-19 Contingency Plan.**

3. As part of my official duties, I oversaw the Tennessee Division of Elections’ preparation and issuance of the April 23, 2020 Tennessee Election COVID-19 Contingency Plan (“Plan”), which Plaintiffs have submitted to the Court at DE 40-2, Exh. 4 ID# 214-295. “This plan is drafted under *current Tennessee laws* for the purpose of preparing for and administering an election with the coronavirus disease (COVID-19) still a public health issue.” (Plan at 1). The Plan is a continuing work in progress, which may evolve as more information is available about COVID-19 and appropriate public health standards. (*Id.*) The Plan was prepared based upon elections and public health information extensively gathered, including through consultation with Tennessee’s county Administrators of Elections (AOEs), other state and federal election administrators, legislators, public health officials, election-related vendors and others. (*Id.*) A list acknowledging some of the participants in the development of the Plan is set forth at its page 51.

4. The Plan allows Tennessee’s election officials time to prepare for and inform the public about safety procedures being taken and who is eligible to vote absentee by-mail, prior to Tennessee’s next statewide election on August 6, 2020. (Plan at 1.) The Plan recognizes the difficult challenge and the “need for the intense preparation and training required to give Tennessee voters the best election experience they deserve available under these less than ideal

circumstances.” (*Id.*) AOE’s will need to master the comprehensive uniform processes and procedures set forth in the Plan for success in the August and November election cycle. (*Id.*)

5. As of the date of this declaration, Tennessee has 3,950,409 active voters and 240,201 inactive voters for a total of 4,190,610 registered voters eligible to vote in the upcoming August and November election. In the 2016 presidential election cycle, only 11,806, or 2.12%, of the 557,507 voters who participated in the August election voted absentee by-mail. The remaining 97.88% of voters voted in-person, with 272,898 votes cast during early voting and 272,803 votes cast on Election Day. In the November election, only 64,199, or 2.52%, of the 2,545,271 voters who participated voted absentee by-mail. November elections typically see our highest early voting turnout. 1,625,790 voters voted in-person early (63.87%), and another 855,282 voted in-person on Election Day (33.60%). In 2018, the percentages of absentee by-mail voting were even lower. In August, only 17,474, or 1.42%, of the 1,227,913 voters who voted in August voted absentee by-mail. The remaining 98.58% split between in-person early voting (613,624 voters) and voting in-person on Election Day (596,815 voters). In November, only 43,236, or 1.91%, of the 2,267,428 voters who participated voted absentee by-mail. Of those, 1,343,140 voters voted in-person early (59.24%), and another 881,052 voted in-person on Election Day (38.86%). As the Plan recognizes, “Tennessee election officials have designed election preparation around the habits of the 97.5% of Tennessee voters who vote in-person.” (Plan at 1). “Less than 2.5% of Tennessee voters historically voted absentee by-mail.” (*Id.*) The Plan includes a chart demonstrating the small percentage of voters by county who voted absentee by-mail in the last Presidential election—64,199 absentee voters out of 2,545,271 total voters, or 2.52%. (Plan at 11-14). The Plan presumes that there will be a significant increase in absentee by-mail ballots cast by those statutorily qualified to do so. (*Id.* at 1.)

6. Historically, less than 2.5% of Tennessee voters have voted using the absentee by-mail voting process. Therefore, our 95 county election commissions carefully prepare for 97.5% of Tennessee voters to vote in-person either during early voting or on Election Day. Significant increases in voters using the absentee by-mail voting process involve converting the voting in-person preparation and election commission resources to a different type of voting process.

7. The Division of Elections collected information from the Tennessee county election commissions, who all reported that converting to a substantial number of absentee by-mail voting will require a significant increase in the following:

- a. Equipment used to process the absentee by-mail ballots;
- b. Workers to process the requests and applications for absentee by-mail ballots;
- c. Workers to process and count the absentee by-mail ballots;
- d. Time to count the absentee by-mail ballots;
- e. Space needed to count absentee by-mail ballots.

8. The State is assisting counties in preparing for the anticipated increase in absentee by-mail ballots using a significant portion of the \$9.578 million we received as part of the CARES Act to offset the cost of scanners, personnel, and other election supplies needed to process the absentee ballots; however, these funds do not come close to covering all of the State's and counties' costs.

9. Tennesseans are used to getting results soon after polls close on election night, and counties are required to complete the vote tabulation on election night and report unofficial results to my office. *See* Tenn. Code Ann. § 2-8-101(c). With the anticipated substantial increase in absentee by-mail ballots by qualified voters, the results will most likely be delayed. And, in some of our larger counties, this delay could be several days.

10. Implementing Plaintiffs' requested changes would necessitate new training, the acquisition of more absentee ballots and envelopes, the creation of an entirely new cure form or template, and additional processing time. These changes will require additional financial resources when all State departments have been asked to reduce their budgets by 12%. And, what is more, the new cure process may present significant logistical challenges to the smooth administration of the coming elections. For example, Plaintiffs give no consideration to the length of the timeframe to cure. The State must certify election results quickly. This concern is especially acute with respect to primaries because ballots in the general election cannot be prepared until the results of the primary election are certified. After the general election, results must be certified quickly in preparation for the meeting of the electors and submission of the results to Congress.

11. Further, Plaintiffs' requested relief could reduce the integrity of the election process. In-person voting easily facilitates the checking of voter identification and, thus, aids in the prevention of fraud. But by its nature, absentee voting deprives the State of the ability to efficiently verify a voter's identity. Further, because no proof of identity is required under Tennessee's absentee voting laws, a voter could fraudulently fill out and sign a voter registration form and an absentee application using the same information. If a voter does so, the signatures will match, and that voter will receive a ballot without the State ever having an opportunity to verify that voter's identity. Such a scenario could lead to "ghost voting."

12. I have reviewed Plaintiffs' Amended Complaint and Motion for Preliminary Injunction, and their description of the absentee ballot process—specifically the signature-verification process—is not accurate.

### **Signature Verification Occurs Twice, Not Once.**

13. For an eligible voter who seeks to vote by absentee ballot, the voter's signature is evaluated, not once, but twice; because, prior to casting an absentee ballot, the voter must first submit a written request or application for such a ballot. *See* Tenn. Code Ann. § 2-6-202(a)(2) and (3). Such request or application may be made in-person, by mail, by facsimile, or by email. *See* Tenn. Code Ann. § 2-6-202(a)(3). Regardless of the manner of submission, the request or application must be signed by voter, and that signature is subject to the first of two signature evaluations. *See* Tenn. Code Ann. § 2-6-202(b) and (d).

14. If the signature on the request or application is determined to be inconsistent (in accordance with the process described below) with the signature on the voter's registration record, the request or application is rejected, and the applicant is immediately notified. If the voter submitted their request or application by email, the administrator of elections may send notification of the rejection by email. Otherwise, the voter is notified in writing by mail. *See* Tenn. Code Ann. § 2-6-204(a). If, on the other hand, the signature on the request or application is determined (in accordance with the process described below) to be consistent with the signature on file, an absentee ballot—together with instructions (an exemplar of which is attached as *Exhibit 1*), a ballot envelope, and a mailing envelope—is delivered to the voter by U.S. Mail. *See* Tenn. Code Ann. § 2-6-202(b) and (d).

15. Pursuant to Tenn. Code Ann. § 2-6-202(a)(1), an eligible voter who seeks to vote by absentee ballot may request or apply for a ballot as early as ninety (90) days before an election, but in no event later than seven (7) days before the election. A request or application for an absentee ballot must be received no later than seven (7) days before the election. *See* Tenn. Code Ann. § 2-6-202(d)(3).



16. The exterior of the ballot envelope contains a “Voter’s Affidavit,” which must be executed by the voter and which attests under penalty of perjury that he/she is a registered voter and that the submitted ballot has been completed by the voter him-/herself. *See* Tenn. Code Ann. §§ 2-6-202(e) and 2-6-309(b). An exemplar of the “Voter’s Affidavit” is attached hereto as *Exhibit 2*. Thereafter, voter must place the ballot in the sealed ballot envelope and mail it back to the county election commission in the pre-addressed outer envelope, so that it is received on or before Election Day. *See* Tenn. Code Ann. § 2-6-202(e).

17. Thereafter, after receipt of an absentee ballot from the voter, county election officials open the outer mailing envelope, and—without opening the ballot envelope itself—the signature of the voter as it appears on the Voter’s Affidavit is compared a second time to the signature of the voter on file to authenticate the validity of the ballot. *See* Tenn. Code Ann. § 2-6-202(g). If the signature on the Voter’s Affidavit is determined (in accordance with the process described below) to be consistent with the signature on file, the ballot is accepted and placed (unopened) in the absentee ballot box to be counted on Election Day. *Id.* If, on the other hand, the signature is determined to be inconsistent with the signature on file, the ballot is rejected and notice of the rejection is mailed immediately to the voter. *See* Tenn. Code Ann. § 2-6-204(b). If time allows, a voter whose absentee ballot has been rejected can submit another absentee ballot. Alternatively, such voter could cast a provisional ballot in accordance with Tenn. Code Ann. § 2-7-112(a)(3).

#### **Signature Verification Process in Tennessee.**

18. For evaluation of both the request/application and the actual ballot, the signature verification process performed by county election officials is a painstaking process, and—as described below—is structured with the emphasis to *accept* a signature, rather than reject it.

19. Training in this process is mandatory, and it consists of a 45-minute video which is supplemented with additional directives from my office.

20. The video, which is entitled “Signature Verification” and which may be viewed at <https://www.youtube.com/watch?v=UKiYGONnNT0&feature=youtu.be>, was prepared by the Election Division of the Oregon Secretary of State, and comprehensively addresses the proper manner to conduct signature comparisons. Based on information provided to me by the Director of Elections for Oregon, the presenters are Ms. Summer Davis and Ms. Lydia Plukchi, who are Compliance Specialist 3s in the Elections Division of the Oregon Secretary of State and who have been with the Election Division for over 15 years. I understand that both Ms. Davis and Ms. Plukchi received their training from Ms. Heather Carlson, a forensic handwriting expert, whose *curriculum vitae* (as filed in *Lemons v. Bradbury*, 07-1782-MO (D. Or.) is attached hereto as *Exhibit 3*.

21. The video explores the various components of a signature: line-forms/style (cursive or printed), unconscious variations from line-forms, intentional “personalization” of a signature, alignment, signature speed, “pen lifts,” line quality (which can deteriorate with the age of the signer), elements of proportion, size, spacing, and slant.

22. Beginning at time index 23:44, viewers are instructed as to “What to Look For,” “What to Examine” and “Evaluating Signatures.” At 29:04, the video begins to discuss whether to “Accept or Reject” a signature.

23. Most importantly, at time index 29:54, the viewer is told “You’re looking for reasons to keep the signature *in*—to *validate* the signature—rather than reasons to throw the signature *out*. . . . We’re looking for *any* reason to keep a signature.” [Emphasis in original.]

24. Thereafter, at time index 30:29, the viewer is presented with numerous comparative examples of actual signatures submitted versus signatures on file, and from those examples the viewer is shown that all but the most obvious of inconsistent signatures are to be regarded as acceptable.

25. At time index 29:28 the viewer is instructed that a signature should be reviewed by “at least two different county elections officials” before it is rejected. During a statewide training session, I instructed county election officials that a signature on the absentee Voter’s Affidavit, should *not* be rejected unless it is reviewed by *three* local election officials including the administrator.

26. My office provides this instruction because—due to the number of absentee ballots received in any given district—the administrators often have a deputy administrator of elections participate in signature comparisons, and requiring a concurrence of three individuals (including the administrator) adds a further safeguard against an erroneous rejection. In addition, my office emphasizes that the signature comparison process always should begin with the presumption that the signature at issue is valid, and that the signature in question should be compared with as many exemplars on file as possible.

#### **Signature Rejections.**

27. Given the presumption of signature validity, very few absentee ballots are rejected in Tennessee for signature irregularity under Tenn. Code Ann. § 2-6-204(b).

28. For the national election in November of 2016, 73,338 absentee ballots were mailed to requesting voters, and 65,235 absentee ballots were received by county election officials statewide. Of those absentee ballots received, only 20 were rejected for signature irregularities. Of the 20 rejected ballots, thirteen (13) of those ballots were cast under the federal Uniformed and

Overseas Citizens Absentee Voting Act (“UOCAVA”), 52 U.S.C. § 20301, *et seq.*, which permits U.S. citizens—both military and civilian—who are living abroad to vote.


29. For the national election in November of 2018, 49,421 absentee ballots were sent to voters, and 44,392 absentee ballots were received by county election officials statewide. Of those absentee ballots received, only 42 were rejected for signature irregularities. Of the 42 rejected ballots, thirteen (13) of those ballots were cast under UOCAVA.

30. Thus, for the 109,627 absentee ballots cast in the 2016 and 2018 national elections, only thirty-six (36) absentee ballots cast pursuant to Tenn. Code Ann. § 2-6-201 (i.e., .03%) were rejected for signature irregularities.

#### **Additional Safeguard.**

31. In addition, to the training discussed above, any voter who is concerned that—for whatever reason—his/her absentee ballot may not be counted, also may cast a provisional ballot in accordance with Tenn. Code Ann. § 2-7-112(a)(3). Under that circumstance, if a voter’s absentee ballot is determined to be valid and counted, the voter’s provisional ballot will be discarded. Alternatively, if the voter’s absentee ballot is rejected for a signature irregularity or any other reason, the provisional ballot will be counted.

I declare under penalty of perjury that the foregoing is true and correct. Executed by me this 26th day of June 2020 at Nashville, Tennessee.

  
\_\_\_\_\_  
MARK GOINS

## Instructions for Voting Absentee By-Mail

- Mark ballot.
- Fold ballot and seal in appropriate absentee ballot envelope.
- Swear to and **SIGN VOTER'S AFFIDAVIT** on each absentee ballot envelope.
- If assistance in completing the ballot has been given, both the person giving assistance and the person witnessing assistance must sign in the appropriate places on the ballot envelope.
- Seal the absentee ballot envelope(s) in the large envelope with the county election commission's return address.
- Place postage on the large envelope and mail ballot. **First-Class Mail postage must be applied unless the voter is a military/overseas voter.**
- Ballots must be received by mail in the county election commission office by the time the polls close on Election Day.

**Notice: A person who votes absentee by-mail who is not entitled to do so commits a felony punishable by not less than two (2) years nor more than twelve (12) years imprisonment or a fine of \$5,000 or both.**

Questions? Call the \_\_\_\_\_ County Election Commission at \_\_\_\_\_.



SS-3011 (Rev. 05/2020)

**Goins Decl. – Exhibit 1**

County \_\_\_\_\_ District \_\_\_\_\_ Precinct \_\_\_\_\_ Ward \_\_\_\_\_

Election \_\_\_\_\_ Date of Election \_\_\_\_\_

**Voter's Affidavit**

(Name of Voter - Please Print)

do solemnly swear/affirm that I am a registered voter and resident of the state of Tennessee in the county, district, precinct, and ward as shown above and that I am registered to vote in the above election. I further swear/affirm that this envelope contains the absentee ballot marked by me in secret and that I am not registered to vote in any other state or county for this election and that I am entitled to vote absentee by mail in this election.

It is a felony for a person to falsify any information pertaining to the absentee voting process.

X \_\_\_\_\_

Signature of Voter

Assistance Signatures: (Required if voter cannot sign or if assistance given.)

Signature of Person Assisting \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Signature of Witness \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

**Do not write in this section:**

The signatures above and on the permanent registration record (are) (are not) the same.

Ballot accepted.  
 Ballot rejected because: \_\_\_\_\_

Administrator or Deputy \_\_\_\_\_

Date \_\_\_\_\_

**▲ DO NOT DETACH ▲**

**ABSENTEE BY MAIL BALLOT ENVELOPE**

Election \_\_\_\_\_ Date \_\_\_\_\_

District \_\_\_\_\_ Precinct \_\_\_\_\_ Ward \_\_\_\_\_



SS-3017 (Rev. 12/2011)

**Goins Decl. – Exhibit 2**



**CURRICULUM VITAE**

**HEATHER M. CARLSON**

**FORENSIC DOCUMENT EXAMINER**

**Contact information:**

P.O. Box 898  
Chehalis, WA 98532  
(360) 740-1700  
[heathersntbk@aol.com](mailto:heathersntbk@aol.com)

**FORMAL EDUCATION:**

Wartburg College Waverly, Iowa	1992-1996 (BA)	Majors – Chemistry and Biology
University of Alabama Birmingham, Alabama	1996-1998 (MSFS)	Forensic Science

**PROFESSIONAL EDUCATION AND TRAINING:**

Oregon State Police Document Unit, apprenticeship-style training  
Washington State Patrol Crime Laboratory, apprenticeship-style training  
California Criminalistics Institute, Special Topics in Questioned Documents Course  
Oregon State Police Forensic Services Division - 2 weeks supplemental training  
San Diego County Sheriff's Office Crime Laboratory - 2 weeks supplemental training  
Southwestern Association of Forensic Document Examiners, Ink Analysis Workshop  
Southwestern Association of Forensic Document Examiners, History of Writing Workshop  
Federal Law Enforcement Training Center, United States Secret Service Questioned Document Course  
Rochester Institute of Technology, Printing Process Identification Course  
Northwest Association of Forensic Scientists, Identification Science Workshop  
Oregon State Police, Questioned Document Laboratory Training Seminar

**MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS:**

Southwestern Association of Forensic Document Examiners

**INTERNSHIP:**

United States Secret Service, Birmingham Field Office – six month criminal justice internship

**RESEARCH:**

*Observations on the Brain, Perception and the Critical Examination of Questioned Documents* presented at the 2003 ASQDE conference in Baltimore, MD and at the Fall 2003 SWAFDE conference in Albuquerque, NM

**WORK EXPERIENCE:**

July 1997 to August 1998 Laboratory Technician Alabama Department of Forensic Sciences Birmingham, Alabama	January 2001 to July 2003 Forensic Document Examiner Oregon State Police Forensic Services Division Salem Forensic Laboratory Salem, OR
August 1998 to December 2000 Forensic Document Examiner Washington State Patrol Forensic Laboratory Services Bureau Crime Laboratory Marysville and Seattle, WA	August 2003 to present Forensic Document Examiner Private Practice Chehalis, WA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>MEMPHIS A. RANDOLPH</b>	)	
<b>INSTITUTE, ET AL.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>3:20-cv-00374</b>
	)	<b>JUDGE RICHARDSON</b>
<b>TRE HARGETT, ET AL.,</b>	)	<b>MAGISTRATE JUDGE FRENSELY</b>
	)	
<b>Defendants.</b>	)	

---

**DECLARATION OF WENDY McCORMACK**

---

I, Wendy McCormack, pursuant to 18 U.S.C. § 1746, declare as follows:

1. I have been employed since September 2001 by the Office of the Tennessee Attorney General and Reporter, where I serve as a paralegal. As such, my duties include listening to, transcribing, and reviewing transcription of legislative history tapes for attorneys in the Office of the Attorney General for their use in preparing litigation and giving legal advice. I am over the age of 18 and have personal knowledge of the matters herein stated.
2. In keeping with those duties, I have listened to a copy of Tape #1 of the Senate State & Local Government Committee (2-26-02) and a digitized copy of same, which were furnished to me by Laura Kidwell, a lawyer employed by Office of the Tennessee Attorney General and Reporter, and I transcribed the portion thereof pertaining to Senate Bill 2801. I created the transcript, which is contained in Exhibit A

**EXHIBIT B**



hereto. Exhibit A is a true and correct transcription of the discussion on Tape #1 pertaining to Senate Bill 2801, to the best of my ability.

3. I have also listened to a digitized copy of Tape #1 of the House State & Local Government Committee (2-26-02), which was likewise provided to me by Laura Kidwell, and I transcribed the portion thereof pertaining to House Bill 3193. I created the transcript, which is contained in Exhibit B hereto. Exhibit B is a true and correct transcription of the discussion on Tape #1 pertaining to House Bill 3193, to the best of my ability.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 22, 2020.

  
\_\_\_\_\_  
Wendy McCormack

**Senate State and Local Government Committee**  
**February 26, 2002**

CHAIRMAN: Senator Rochelle, 2801.

ROCHELLE: Every year we have the administrator of elections bill, and this is where all the administrators of elections through their organization get together and talk and try to come up with things that would improve the election process working through their offices and address problems that have occurred. I usually carry the bill because Lynn Harris, who is here today, has been long active in that association. This year it's a short bill. We only have four sections. Because we normally go through these section by section so that you can understand the history of each one of them, I'd ask for Mr. Thompson to come up, so I'd move the bill first and then ask him to come up.

CHAIRMAN: Senator Rochelle moves. Senator Haun seconds. We go into recess. Brook, if you'd come forward, please.

THOMPSON: As Senator Rochelle said, this year the bill is quite short, given all the election legislation that there was last year. The bill does four things. The first section might be the one that would cause the most consternation.

Absentee balloting is a two-step process. You have to send in something to the county election commission requesting an absentee ballot, and they will typically send back an application which then gets sent in. If your initial mailing to the county election commission has all the requisite information, we treat that as an application for an absentee ballot, and we send one back.

In the past several years, a lot of candidates and sometimes the parties have been sending unsolicited mailings to voters, especially those that are over 65 because they're automatically eligible to vote absentee. The voters get those, they think they have to send them in to vote, and they've started the absentee process. The voter then wants to vote at the polls on election day, and they can't do that because once you start voting through the absentee process, you must vote absentee. So there has been a lot of confusion as to what has to happen with these unsolicited pieces of mail that are being sent to voters encouraging them to vote absentee. The administrators of election feel that it's caused more problems than it's solved. The intent of the absentee balloting law all along was that a person should be asking for that without any prodding from someone else, so this is an attempt to limit unsolicited requests to voters who vote through the absentee voting process. But that has been done in recent elections.

Section 2 would just increase from 650 to 750 the number of registered voters per voting machine at the precinct on election day because we've had so many people voting during the early voting period, we've found that we probably need a few less voting machines most of the time on election day.



Section 3 cleans up something that got done in the administrative bill last year. We tried to change the by mail registration date to the last business day before the 29<sup>th</sup> day before the election, but that appears to conflict with federal law, and we think we need to change it back to what it was, and that is the 29<sup>th</sup> day before the election.

And finally, Section 4 eliminates certain language from the permanent registration record. That information as I'm told by the administrators is never used anyway.

CHAIRMAN: Any questions for Mr. Thompson? Senator Ramsey.

RAMSEY: Just out of curiosity, how do you decide on a Class E felony?

THOMPSON: It was already a Class E felony for someone outside the election commission office to have an application for an absentee ballot. This just adds something to that list, the request for an application for a ballot. So, it was just adding to the list that was already there, really.

CHAIRMAN: Further questions? Senator Haynes.

HAYNES: I'm not quite sure how you are preventing the unsolicited process, how you are denying that or stopping that.

THOMPSON: Well, it will be illegal for someone, anyone to send something to a voter unsolicited that would be prompting them to vote absentee.

HAYNES: Oh, okay. So, it would be what, a Class C misdemeanor?

THOMPSON: A Class E felony.

HAYNES: A Class E felony?

THOMPSON: It is already a Class E felony for someone outside the election commission—

HAYNES: That's pretty strong, isn't it?

THOMPSON: It is already a Class E felony for someone outside the election commission office to have an application for an absentee ballot or an absentee ballot. When the absentee balloting laws were first written, I think everybody was of the opinion that we need to keep this as close to the election commission office as possible because once the ballots get out of the election commission office, the possibility of fraud is there. You can make the felony anything you want to as far as I'm concerned. I think what the administrators of elections feel is it needs to be illegal, that these unsolicited requests for absentee ballots have caused voters to not understand the process, and it's caused a lot of problems within the county election commission office. But a different penalty I don't think would be ... The reason that penalty was chosen is it's already a Class E felony to have an application for an absentee ballot out there.

HAYNES: Well, that causes me some concern to make it a Class E felony. I don't know why if you didn't make it a Class B misdemeanor or a Class A misdemeanor it wouldn't be a little better. I'll yield to Senator Rochelle.

CHAIRMAN: Senator Rochelle.

ROCHELLE: Even though we haven't had an absentee scandal in recent years, we've had counties in the state where more people voted absentee than voted at the polling place on election day. Things have improved a great deal, a lot because of this association and certified administrators and such as that, but it's still serious business to have an application for an absentee ballot that people take out and get somebody to fill in and then put a ... you know, say mail it to me, or know to stop back by and to pick it up. So that heavy of a penalty was there in order to protect against people abusing the absentee voter process. Now, it was intended not to stir up that issue and just to use the same penalty so that all of it .... That applies to applications for absentee ballot. Under the bill it would also apply to requests for applications for absentee ballots that is causing all of this confusion where people, once they put in a request for an application, they've got to go vote absentee. And we had a lot of folks at the last election that it's too late on election day to vote absentee, but they can't vote at the polls because they've got an application for an absentee ballot. So, it addresses a very serious problem. And the thing about absentee ballots, it's something that could rear its ugly head again. It's appropriate for it to be a very severe penalty to mess with it. That's my opinion.

CHAIRMAN: Senator Ramsey I think was next, then Senator Haynes.

RAMSEY: First of all, there's a difference between voting absentee and voting early. (Inaudible) you say there's more people that are voting absentee than on election day. Well, they're not absentee. They are voting early. There's a difference.

UNIDENTIFIED SPEAKER: (Inaudible).

RAMSEY: Okay, in the old days. Okay. So, under this legislation, if AARP sent a letter to its membership and said that if you can't vote on election day, you need to make application for absentee ballot, and that's about all the letter said, would they be then subject to a Class E felony?

THOMPSON: No, I think what this is trying to get at is the people that send out already printed up forms that you can fill out and send in. And they get those and think, I'm having to send this in. If it's a letter that tells you to go out and do something, then you are going to send something in that was not unsolicited. You've done it yourself.

RAMSEY: So in other words, for a Class E felony to apply, they have to have physical possession of the application, not just say, "please send in and get one?"

THOMPSON: No. Right now, it is already a Class E felony for someone to have physical possession of an application. What is happening is they are sending out preprinted forms with blanks there for voters to fill in saying, "Fill out this form, send it in so you can vote absentee." And the voters get that and think, "I've got to do this so I can vote," and they send that in. It looks like an official form, even though it's not coming from an election commission office. They fill that out and they send it in, and they are in the absentee process at that point. If you send them a letter urging them to exercise their constitutional right to vote, whether it's through absentee process or another way, I don't think that falls under what this bill is trying to get. This bill is trying to get at forms that are mass produced that have to be filled in, that are then sent to the voters to send in.

RAMSEY: Okay. The AARP sends out a letter and attached to that letter is a form. And it says, "If you are going to be out of town on election day, please fill out this form and send it in for an absentee ballot." Would they then be subject to Class E felony?

THOMPSON: Yes. Yes, that's what we're trying to prevent is forms out there that voters look at and think, "I've got to send this in in order to vote." That's exactly what it's trying to prevent.

CHAIRMAN: Senator Haynes, I believe, then Senator Haun.

HAYNES: I think I just answered my question. I was talking to Senator Rochelle, and my concern was I'm not trying to change current law in reducing this from an E to perhaps a B or an A misdemeanor. I'm trying to change what we're doing now, which is the unsolicited aspect. And I think Senator Rochelle would consider that a friendly amendment, so at the proper time, Mr. Chairman, I will make that amendment.

HAUN: Thank you, Mr. Chairman. Brook, the association, have they determined who has been the most abusive of this process? Is it candidates for office, or is it political parties, or is it groups and organizations?

THOMPSON: Well, I don't think anybody thinks it's been abusive, because it's been illegal.

HAUN: I understand, but—

THOMPSON: It has come I think mainly from candidates and parties. I think it would be safe to say it's mostly candidates and parties. There may be other organizations that have done it, but the ones I hear about typically are candidates and parties.

HAUN: Which of the two major parties seem to have caused people the most inconvenience?

THOMPSON: I have no idea. It's the process that's causing the inconvenience, not the parties.

HAUN: Well, if they're the ones that send out the mailings, it's a particular party.

THOMPSON: Either party sending it is causing the inconvenience.

HAUN: But have they determined which party might have sent the most out?

THOMPSON: Not to my knowledge.

HAUN: I'm betting it ain't your party, or we wouldn't be changing it.

THOMPSON: No, that ain't right. That ain't right, Senator. (Inaudible).

HAUN: I'm sorry. I stand corrected. Brook says that is not right, and I am now for the bill amended by Senator Haynes.

CHAIRMAN: Any further questions? Thank you, Mr. Thompson. Senator Haynes for an amendment.

HAYNES: I move that we, rather than making this new offense a Class E felony, that we make it a Class A misdemeanor.

ROCHELLE: Second.

CHAIRMAN: Seconded by Senator Rochelle. All those in favor, say aye.

SENATORS: Aye.

CHAIRMAN: Opposed? The ayes have it. All right, bill as amended. Call the roll.

(Roll call vote)

CLERK: Nine ayes.

CHAIRMAN: Nine ayes. It will be recommended as amended.



**House State and Local Government Committee**  
**February 26, 2002**

CHAIRMAN: Representative Hargrove, you're recognized on House Bill 3193.

HARGROVE: Thank you, Mr. Chairman. House Bill 3193 is the annual bill that comes from our Tennessee Association of County Election Officials, some of whom I'm sure have already spoken to you about this bill. The first section would prohibit any non-election commission employee from distributing a request for application for absentee ballots. The problem has been that when these are mailed, it's confusing to many voters, particularly those that are over age 65. And once you process this request for application, you must go ahead and vote by absentee, and they show up on election day and are prohibited from doing so because they can't vote because they have already started this process. Currently an application for absentee ballots is included in this. This would include the request as well.

Section 2 increases from 650 to 750 the number of registered voters per machine on election day. The reason for that is with the early voting, there is less need on election day for as many machines.

Section 3 would delete the second sentence of the statute and restores the postmark and by mail registration forms to the 29<sup>th</sup> day. We had changed that and found that to be in violation of federal law, or in conflict with federal law. And then the fourth section deletes some extraneous language in there about a description of a person's hair, height, weight, color of eyes, and so forth.

That's the bill. It does come from our Association of Election and registrars and officials. Motion on the bill.

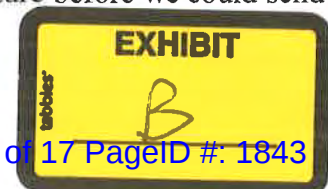
CHAIRMAN: I have a motion and a second on House Bill 3193. Representative Sargent, you're recognized.

SARGENT: The only question I had on the bill, if you had a student or you had a child away at school, could you not go down and request, as a parent, request an absentee ballot? Are we eliminating ...

HARGROVE: I want my (inaudible) to come forward and respond. Mr. Chairman, Mr. Thompson is here with the (inaudible).

CHAIRMAN: If there is no objection, we'll stand in recess to hear from Brook Thompson.

THOMPSON: This wouldn't change the current law with respect to that. Currently, we have to have something signed by the voter themselves and not by a parent or guardian, so we would have to have something from the college student to compare the signature before we could send out an absentee ballot. This wouldn't change that.



SARGENT: How about the armed services? It wouldn't change any of that?

THOMPSON: No. We have to have a request from the voter, signed by the voter, before we can process that information, and we compare that signature to the signature that's on file with the permanent voter registration record. And this is not changing any of that.

SARGENT: Okay, then maybe I'm lost to what it is changing.

THOMPSON: All right. Currently, it is illegal for anyone outside the election commission office to have an application for an absentee ballot. But if someone sends in a request for an application for an absentee ballot, that can serve as an application for an absentee ballot. And the problem has been campaigns and candidates have gone out and preprinted these requests for applications for absentee ballots. They send them out to elderly voters because voters over 65 are automatically entitled to vote absentee. The voters get that, look at it, think, "I need to send this in to vote." They send it in. They're in the absentee voting queue at that point and can't get out because once you start voting absentee, you have to vote absentee. They then a day before the election realize because they've gotten a ballot in the mail that they haven't sent that in. They want to vote at the polls on election day. They can't because they've requested an absentee ballot. It has just caused confusion and led to the disenfranchisement of voters.

SARGENT: What I was thinking basically would be a son or daughter away at school and wanted an absentee ballot. So, you're saying they would have to request it in writing.

THOMPSON: They have to send something with their signature, but that's already the law. They can fax it in, and that's not changing (inaudible).

SARGENT: Okay. Thank you.

CHAIRMAN: Representative Bunch.

BUNCH: Thank you, Mr. Chairman. Just a couple of questions following that same line. If my grandfather who is 90 years old, if I go down and ask for a request now, I can't do that? Is that what you're saying?

THOMPSON: You can't do that now. In order for him to get an absentee ballot, he's going to have to send in something with his signature. Now, you can help. You can write out a letter that says, "I request this ballot." The law specifically provides that assistance can be given to someone wanting an absentee ballot. But he's going to have to write out something that says he wants to vote absentee and sign that, and that be sent to the county election commission.

BUNCH: Let me go back a step. I can't even bring a request, though, because now you're outlawing requests.

THOMPSON: Well, I'm not in that case, because that wouldn't be unsolicited. He'd be asking you to do that.



BUNCH: So if I go on behalf of a third party, that's not unsolicited.

THOMPSON: You can't go to the election commission office and get an absentee ballot for someone, or even an application for an absentee ballot.

BUNCH: I'm not talking about an absentee ballot. I'm talking about a request for an application for an absentee ballot. If I go and ask my election commission for a request for an application.

THOMPSON: There is no such form as a request for an application (inaudible).

BUNCH: Well, this says we're outlawing requests for application.

THOMPSON: That's right. What we're doing is outlawing preprinted requests. It's something that somebody else makes up. The election commission doesn't have any. Candidates and campaigns have made up requests. They have made up a form that is not an official form, that is printed at someone else's expense and sent to the voters, and the voters think it's an official form and fill it out and send it in. A request is something that a voter makes of the election commission. They can do it on a piece of paper. But that's not an official form. The preprinted form is the application itself.

It's a two-step process, unfortunately, where you write in to the election commission office, you ask for an absentee ballot. If it's got all the requisite information on there, they will treat that as an application for a ballot. If it doesn't, they treat it as a request for an absentee ballot and send you an application that can then be sent back in.

BUNCH: Now, I am very concerned that we're hampering people to vote by doing this because it seems like we could do the same thing without making this a criminal offense, which I'm sure is going to have a fiscal note on it. And I don't know what that is, but we're making it a Class E felony where something didn't exist before, so to me that's got to have a fiscal note. But could we not just say if you mail in this application, then you must vote absentee, if that's what we're trying to address? If we're trying to address edification of the voters and clear up the problem with them showing up and not voting absentee and showing up at the precinct on election day or on early voting, aren't there other ways to do this without making a crime or a fiscal note here?

THOMPSON: No. I mean, we already tell them that if they send that in, that they're going to be voting absentee. Well, we don't tell them that, because we don't make those forms. But that's part of the problem is this request for an application for absentee ballot is not under the control of the election commission. It was done by somebody that doesn't have anything to do with the election commission.

BUNCH: Could we not then just create our own forms in the election commission and say here is an election commission form, rather than creating a crime, making it a crime trying to get people registered to vote?

THOMPSON: Well, presumably you could create that form. The problem is there's nothing that prohibits somebody else from creating that form. What we're trying to do is prohibit someone else from creating that form, and this is the administrative way of doing that. I would point out to you that it's already a Class E felony to possess an application for an absentee ballot outside of the election commission office. The reason that this is being put in that posture is adding it to the list of the things that you can't have outside of the election commission office.

BUNCH: Again, I go back. Why can't we ask you all to create a request for an application for an absentee ballot, and that's it? That's the only way. And then that way, if I'm out campaigning and I want to get people to vote absentee, I have the official form from you all that you've approved, and we can put whatever language we want on it, that clarifies that if you turn this in, a request for an absentee ballot, that you can't vote at the precinct on election day.

THOMPSON: I would suggest to you that we don't want to be encouraging people to be handing out requests for absentee ballots. I mean, the whole absentee ballot law was set up so that voters that can't otherwise vote get to vote. But we don't want half the state voting absentee. We want them voting early, and we want them voting at the polls on election day. We want people that can't vote at the polls on election day to vote absentee. But I would tell you that I think it's bad public policy for candidates to be handing out requests for absentee ballots just by the dozens. The whole absentee process is set up to be guarded against fraud, and the more absentee ballots you have, the more likely the chance for fraud there is.

BUNCH: Do we not have stringent requirements as to who can qualify for absentee balloting?

THOMPSON: Yes, we do. Well, yes and no. There are wholesale groups that can. Anybody over 65 can. And frankly, that's who has been targeted, and that's the target of this legislation is people over 65 are targeted with these requests for absentee ballots, and they send them in. It comes on something looking like a semi-official form. They send it in. They think they have to do that in order to vote, and then they don't get to go to the polls on election day.

BUNCH: I guess I'm missing here. It seems like we're creating a crime for trying to help folks out who fit the criteria, who are eligible for absentee voting, and we're creating a crime by saying if you have a request for an application for absentee ballots, that's a crime.

THOMPSON: If it's unsolicited. If you want to request it yourself, you're more than welcome to do that. But for somebody to go out and wholesale encourage people to vote absentee, yes, that's right. That's what this is trying to do.

BUNCH: Is there not a better way we can do this?

THOMPSON: I don't think so. I mean, the administrators of election, at least one or two are here today. We've been around and around this. It is a problem in all counties of the state.

BUNCH: May I ask or inquire as to what the next best option was that it came down to?

THOMPSON: There wasn't a next best option that I know of. The problem is these are getting sent in and we have no way, absent a statutory change, to limit them. Without limiting them, the problems are going to persist.

BUNCH: Then I guess I'm back to my question of could we not have you create a form that we have under your control that says this is the official request for application of ballots, that candidates could give to those who are eligible for absentee voting?

THOMPSON: Once again, I would just tell you I think that's bad public policy for candidates to be walking around handing out absentee ballot requests at that point. I mean, there's a reason application for absentee ballots, which we already create, are not to be handed out.

BUNCH: Well, if it's a bad public policy, then it would be bad public policy to have absentee voting. I don't understand your logic there. It's not making sense.

THOMPSON: I would argue it's bad public policy to have absentee voting for any wider group of people than is absolutely necessary.

BUNCH: But having the request for application doesn't expand who's eligible. It just gets the availability or gets them access to that request for early voting, does it not?

THOMPSON: It causes people to request ballots through the absentee process that would not otherwise do that and wish they hadn't have done it. I mean, we see that time after time after time.

BUNCH: It sounds like you're saying that what it does is it tells people their right and availability to vote this way, and we don't want them to do that. That's what it really sounds like you're doing. I have a lot of problems with that.

THOMPSON: I disagree with that.

BUNCH: Thank you, Mr. Chairman.

CHAIRMAN: Representative Turner.

TURNER: Thank you, Mr. Chairman. I had several questions, but I think Representative Bunch answered all of them for me, or asked all of them. What you're seriously trying to do, you're trying to stop special interest groups or certain politicians from voter fraud, and we're not changing anything other than just cleaning up a mess to make sure that voters can vote on election day. Is that right?

THOMPSON: Well, we haven't had a situation where we've had a fraudulent issue with absentee ballots. I hope that continues. What we're trying to do is clear up the misconception that people that send in these unsolicited requests for applications for absentee ballots, that they can't vote at the polling place. There has been mass confusion. The administrators can tell you dozens

of stories of people that have come in and said, "I want to vote," and we tell them, "You can't vote because we sent you an application. We sent you an absentee ballot because you requested one, and now you can't vote at the polls on election day, or you can't vote early." And they can't find their ballot, or it's too late to find it and mail it in, or whatever. And it happens time after time after time.

CHAIRMAN: Representative Shaw.

SHAW: Thank you. I understand what you're trying to do. I just have a question for clarification. How does this affect people who just drive around and pick up people and take them to absentee vote? How does this legislation affect them, or does it in any way?

THOMPSON: It doesn't because if somebody's voting in person, either at early voting or on election day, that's not an absentee ballot.

SHAW: Okay. Thank you.

CHAIRMAN: Representative Goins.

GOINS: Can you tell me what the penalty is for a Class E felony?

THOMPSON: I cannot. I know that the reason this was set up as a Class E felony is because it's already a Class E felony to have an application for an absentee ballot. I would tell you that the Senate this morning in their State and Local Government committee amended this to make it a Class A misdemeanor.

UNIDENTIFIED SPEAKER: One to two years (inaudible).

GOINS: One to two years. Let me ask you this. If my grandmother, and me as a candidate, I sent her a little form where she could request to vote absentee. She would certainly fit the requirement. She's 70-something years old. Would I be guilty? If she did not ask me to send her a request, would I be guilty of a felony which would put me in prison for a year because I got my grandmother an absentee ballot form?

THOMPSON: Yes. If she did not ask you to do that, that's exactly right. If she asks you to help her request an absentee ballot, you can.

GOINS: We've got people in prison now that are getting probation and parole because we don't have room for our prisoners, and here we're going to ... if I got my grandmother an absentee ballot without her asking, you're going to put me in prison for a year. And that's just amazing.

THOMPSON: Well, if you get your grandmother an absentee ballot without her asking, that means she is forbidden from voting at the polls on election day even if she wants to.

GOINS: No, I was saying get the form. Get the form (inaudible).

THOMPSON: Once she sends that in, she's forbidden from voting at the polls on election day, even if she wants to. You've stopped her from voting at the polls on election day.

GOINS: No, I didn't say I get her the form. I send her a form to where she can send in and get an absentee ballot is exactly what I said, what we're forbidding, what is currently being done that you're saying that you're trying to get rid of.

THOMPSON: That's right.

GOINS: I would be trying to help my grandmother, and she could still vote, and she would be under the law, but I would be guilty of a felony.

THOMPSON: If you sent that to her unsolicited, that is correct.

GOINS: I think we need to think long and hard before we pass this legislation. I think we're doing some things that could have some unintended consequences.

CHAIRMAN: Representative Hargett.

HARGETT: Thank you, Mr. Chairman. Does anyone know what the parameters are on the penalty for a Class E felony? Is it one to two?

HARGROVE: It's one to two years (inaudible) one.

HARGETT: Okay. Thank you, Representative Hargrove. Mr. Thompson, a moment ago, you said that we haven't had any problem with fraud in regard to absentee ballots?

THOMPSON: I don't think we've had any wholesale fraudulent issues with absentee ballots in the past several years. I mean, I'm not speaking 100 years ago. I don't know what happened. But (inaudible).

HARGETT: It seems to me like we might be trying to address a problem that doesn't exist.

THOMPSON: Well, I would just tell you ... I mean, I'm here as a representative of the election officials across the state.

HARGETT: I understand (inaudible)

THOMPSON: And they'll tell you that the problem is that in every election commission in this state, they got these requests that came in, and they sent out absentee ballots, and then they had people saying, "I don't want to vote absentee."

HARGETT: Okay. I'll call for the question, Mr. Chairman.

CHAIRMAN: (Inaudible). Speaker DeBerry. Okay, Representative Miller. Any more questions for Mr. Thompson? Representative Overbey. For Brook? Okay.



OVERBEY: Thank you, Mr. Chairman. I've gotten confused as to what the process is. You send in a request for an application. You receive an application. You then send in the application, and you then receive the ballot?

THOMPSON: It is a confusing process, and (inaudible).

OVERBEY: Can you walk me through it, please?

THOMPSON: Yes. There are actually two ways to get an absentee ballot, one of which is you send in a piece of paper with your signature on it asking for an absentee ballot. If it doesn't contain enough information, the election commission will then send you an application for an absentee ballot which you fill out and send in, and you get a ballot. However, if you send in that piece of paper, and it has your name and social security number and your address and the reason you are voting absentee and all the requisite information for voting absentee, then we're going to skip the second step. We're going to treat that request as an application for an absentee ballot. And so, you send that in to the election commission office, and you don't get that application back. You get the ballot back. And so, what's happened is candidates have printed up these forms that have all the requisite information on there, sent them out to voters that typically are over 65. The voter sees it, thinks, "I need to sign this to vote," fills it out. It has all the requisite information and it gets sent in. It gets treated like an application for an absentee ballot because it has all the requisite information, and the ballot immediately gets sent out without the second step.

OVERBEY: So, the printed form you're talking about is not really a request for an application. It is a form that is in such detail that it in itself serves as an application.

THOMPSON: Right. It can't be called an application because the only applications have to be printed by the election commission office. But it is serving as an application because it has all the requisite information. That's correct.

OVERBEY: Okay, one other question. Let's say you send in a letter that doesn't contain all the required information, a request for an application in your terminology. You send that in. Am I understanding you to say then that makes that voter an absentee voter even though that voter has not really submitted an application?

THOMPSON: No, and if I said that, I misspoke. If they send in the piece of paper that does not have the requisite information, it is a request for an absentee ballot, and you get an application back, and you're not an absentee voter until you send that in. The problem is the preprinted forms, the request for applications done by the candidates, have enough information, they necessarily are going to serve as an application for an absentee ballot. So the voter gets those in the mail, they turn around and send those in, there's not going to be that second step because candidates who have had these printed are savvy enough to put all the information on there, and

there is no need for that second step. Therefore, you are in the absentee ballot queue because the second step has been eliminated.

OVERBEY: And you're contending ... or not you, but all the registrars are contending that the voters that fill those forms out are not actually intending to be absentee voters.

THOMPSON: I'm certainly not saying that all of them are not, but there have been enough problems in all the counties that the administrators have come on their own and said, "This needs to be stopped." We have problem after problem after problem. Clearly, if a million of those are sent out across the state, not all million of them will turn out to be problems. But there are enough problems that the administrators of elections throughout this state thought this was important enough to put in their bill to try to keep this from happening.

OVERBEY: Thank you for that explanation. Thank you, Mr. Chairman.

CHAIRMAN: Speaker DeBerry.

DEBERRY: Thank you. Since I'm from Memphis and I'm very familiar with this, what happens is in nursing homes and care homes, you have a candidate go in with these pre-form, sign the client's name on there, send it to the election commission or take it down there. Then you've got another group during the early voting that would take buses in and pick up these same people, not knowing that this other group filled out applications for early vote. And then when these elderly people get to the early vote site, they find out that they're not eligible to vote because they had a request for an absentee ballot. Now, it doesn't take a rocket scientist to realize that there are a lot of candidates out there that abuse elderly people. They know that a lot of them do not have transportation, so they go in. Now, I think this is a good bill. The Senate has amended it to make it a misdemeanor rather than a felony. And I'm going to request that we go back into session, and I'm going to call for the question on this bill.

CHAIRMAN: Without objection, we're back in session. You're recognized, Speaker DeBerry.

DEBERRY: Mr. Chairman, I'm going to call for the question on House Bill 3193.

CHAIRMAN: Question has been called for on House Bill 3193. Is there objection to the question? Without objection, all those in favor of sending House Bill 3193 to Calendar and Rules, say aye.

REPRESENTATIVES: Aye.

CHAIRMAN: Opposed?

REPRESENTATIVES: No.

CHAIRMAN: The ayes have it. We have three hands. Two hands. Three hands. Roll call.

[Roll call vote]

CLERK: 11 ayes and 6 noes.

CHAIRMAN: Representative Hargrove, you're recognized. It was 11. It passes to Calendar and Rules.

HARGROVE: Thank you, Mr. Chairman.



UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

MEMPHIS A. PHILLIP RANDOLPH )  
INSTITUTE, THE EQUITY ALLIANCE, )  
FREE HEARTS, THE MEMPHIS AND )  
WEST TENNESSEE AFL-CIO )  
CENTRAL LABOR COUNCIL, THE )  
TENNESSEE STATE CONFERENCE )  
OF THE NAACP, SEKOU )  
FRANKLIN, and KENDRA LEE, )

Case No. 3:20-cv-0374  
Judge Eli Richardson

Plaintiffs, )

v. )

TRE HARGETT, in his official capacity )  
as Secretary of State of the State of )  
Tennessee, MARK GOINS, in his )  
Official capacity as Coordinator of )  
Elections for the State of Tennessee, )  
and AMY WEIRICH, in her official )  
capacity as the District Attorney General )  
for Shelby County, Tennessee, )

Defendants. )

---

**DECLARATION OF PHILLIP WARREN, ELECTION ADMINISTRATOR FOR  
WILSON COUNTY, TENNESSEE**

---

I, Phillip Warren, pursuant to the provisions of 28 U.S.C. § 1746, do hereby declare as follows:

1. I am the Administrator of Elections for Wilson County, Tennessee, and I am competent to testify upon personal knowledge regarding the matters set forth herein.

2. I have served as the Administrator of Elections since April of 2011.

**EXHIBIT C**

3. My office is required by the State of Tennessee to participate in training with regard to the proper method of signature verification relating to both an application or request for an absentee ballot and the actual absentee ballot itself. As part of this training, my staff must watch a video that was prepared by the Election Division of the Oregon Secretary of State, and comprehensively addresses the proper manner to conduct signature comparisons.

4. Through this video, and other instructions from the Division of Elections of the Tennessee Secretary of State's Office, we are instructed that—during signature verification of a ballot request or application, or of the absentee ballot itself—the official should presume the genuineness of the signature. In other words, we are instructed to look at all possible reasons to accept a signature, and to reject a signature only when no basis is available accept it.

5. In addition, we are instructed by the Division of Elections that no signature may be rejected unless it is independently evaluated by three people (including myself) and all three people concur that the signature should be rejected. Also, my office takes every possible step to ensure that an eligible voter, who wants to vote by absentee ballot, may do so. This includes contacting voters by multiple means (i.e., mail, email, and/or telephone) if a defect is noted.

6. For the national election in November of 2016, 1,048 absentee ballots were mailed to requesting voters in Wilson County, and 1,009 absentee ballots were received by my office. Of those absentee ballots received, none were rejected for signature irregularities.

7. For the national election in November of 2018, 864 absentee ballots were sent to Wilson County voters, and 798 absentee ballots were received by my office. Of those absentee ballots received, only 1 was rejected for a signature irregularity. In that instance, the absentee ballot request had been made by a genuine voter, and an absentee ballot had been furnished in response to that request. However, on the same day that my office placed the absentee ballot in

the mail to her, the voter passed away and her passing was reported in the local news media. A few days later, my office received the absentee ballot with a forged signature on the Voter's Affidavit. We rejected the ballot.

I declare under penalty of perjury that the foregoing is true and correct. Executed by me this 25th day of June, 2020 at Nashville, Tennessee.



---

PHILLIP WARREN

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**MEMPHIS A. PHILLIP RANDOLPH )  
INSTITUTE, THE EQUITY ALLIANCE, )  
FREE HEARTS, THE MEMPHIS AND )  
WEST TENNESSEE AFL-CIO )  
CENTRAL LABOR COUNCIL, THE )  
TENNESSEE STATE CONFERENCE )  
OF THE NAACP, SEKOU )  
FRANKLIN, and KENDRA LEE, )**

**Case No. 3:20-cv-0374  
Judge Eli Richardson**

**Plaintiffs, )**

**v. )**

**TRE HARGETT, in his official capacity )  
as Secretary of State of the State of )  
Tennessee, MARK GOINS, in his )  
Official capacity as Coordinator of )  
Elections for the State of Tennessee, )  
and AMY WEIRICH, in her official )  
capacity as the District Attorney General )  
for Shelby County, Tennessee, )**

**Defendants. )**

---

**DECLARATION OF ALAN FARLEY, ELECTION ADMINISTRATOR FOR  
RUTHERFORD COUNTY, TENNESSEE**

---

I, Alan Farley, pursuant to the provisions of 28 U.S.C. § 1746, do hereby declare as follows:

1. I am the Administrator of Elections for Rutherford County, Tennessee, and I am competent to testify upon personal knowledge regarding the matters set forth herein.
2. I have served as the Administrator of Elections since August of 2014.

**EXHIBIT D**

3. My office is required by the State of Tennessee to participate in training with regard to the proper method of signature verification relating to both an application or request for an absentee ballot and the actual absentee ballot itself. As part of this training, my staff must watch a video that was prepared by the Election Division of the Oregon Secretary of State, and comprehensively addresses the proper manner to conduct signature comparisons.

4. Through this video, and other instructions from the Division of Elections of the Tennessee Secretary of State's Office, we are instructed that—during signature verification of a ballot request or application, or of the absentee ballot itself—the official should presume the genuineness of the signature. In other words, we are instructed to look at all possible reasons to accept a signature, and to reject a signature only when no basis is available accept it.

5. In addition, we are instructed by the Division of Elections that no signature may be rejected unless it is independently evaluated by three people (including myself) and all three people concur that the signature should be rejected.

6. My office takes every possible step to ensure that an eligible voter, who wants to vote by absentee ballot, may do so. This includes contacting voters by multiple means (i.e., mail, email, and/or telephone) if a defect is noted. For instance, we recently received an application for an absentee ballot for the upcoming primary election. The applicant signed her name in Chinese. However, her signature on our voter registration roll was in English. My office immediately contacted the applicant by email, and explained the problem relating to her signature. Thereafter, applicant corrected her signature and my office mailed her an absentee ballot.

7. My office conducts signature verification on the Voter's Affidavit of absentee ballots as they are received. By far the most common error we encounter are instances where voters neglect to sign the Voter's Affidavit at all. When that occurs, we contact the voter by




whatever means are available, so that the voter can come to our office, sign the Affidavit, and have his/her vote counted.

8. For the national election in November of 2016, 3,236 absentee ballots were mailed to requesting voters in Rutherford County, and 1,844 absentee ballots were received by my office. Of those absentee ballots received, none were rejected for signature irregularities.

9. For the national election in November of 2018, 1,362 absentee ballots were sent to Rutherford County voters, and 1,266 absentee ballots were received by my office. Of those absentee ballots received, only 2 were rejected for signature irregularities. In fact, one of the ballots lacked a signature on the Voter's Affidavit and the other ballot lacked the Voter's Affidavit entirely. However, both of those ballots were cast under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301, *et seq.*, which permits U.S. citizens—both military and civilian—who are living abroad to vote. Thus, because both voters were abroad, there was no means available for either voter to correct the deficiencies on their respective ballots.

I declare under penalty of perjury that the foregoing is true and correct. Executed by me this 25th day of June, 2020 at Nashville, Tennessee.

  
ALAN FARLEY

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

MEMPHIS A. PHILLIP RANDOLPH )  
INSTITUTE, THE EQUITY ALLIANCE, )  
FREE HEARTS, THE MEMPHIS AND )  
WEST TENNESSEE AFL-CIO )  
CENTRAL LABOR COUNCIL, THE )  
TENNESSEE STATE CONFERENCE )  
OF THE NAACP, SEKOU )  
FRANKLIN, and KENDRA LEE, )

Case No. 3:20-cv-0374  
Judge Eli Richardson

Plaintiffs, )

v. )

TRE HARGETT, in his official capacity )  
as Secretary of State of the State of )  
Tennessee, MARK GOINS, in his )  
Official capacity as Coordinator of )  
Elections for the State of Tennessee, )  
and AMY WEIRICH, in her official )  
capacity as the District Attorney General )  
for Shelby County, Tennessee, )

Defendants. )

---

**DECLARATION OF LINDA PHILLIPS**

---

I, Linda Phillips, pursuant to the provisions of 28 U.S.C. § 1746, do declare the following under penalty of perjury:

1. I am the Administrator of Elections for Shelby County, Tennessee and I am competent to testify upon personal knowledge regarding the matters set forth herein.

2. I have served as the Administrator of Elections since 5/16/2016.

3. My office is required by the State of Tennessee to participate in training with regard to the proper method of signature verification relating to both an application or request for an

**EXHIBIT E**

absentee ballot and the actual absentee ballot itself. As part of this training, I and my staff must watch a video that was prepared by the Election Division of the Oregon Secretary of State, and comprehensively addresses the proper manner to conduct signature comparisons.

4. Through this video, and other instructions from the Division of Elections of the Tennessee Secretary of State's Office, we are instructed that—during signature verification of a ballot request or application, or of the absentee ballot itself—the official should presume the genuineness of the signature. In other words, we are instructed to look at all possible reasons to accept a signature, and to reject a signature only when no basis is available accept it.

5. In addition, we are instructed by the Division of Elections that no signature may be rejected unless it is independently evaluated by three people (including myself) and all three people concur that the signature should be rejected.

6. Currently under Tennessee law any eligible voter that wants to vote by absentee ballot must request an absentee ballot. The voter can either use the form that is available on the Shelby County Election Commission's website or the Absentee Ballot request form on the Secretary of State's website, or they can submit a written request that contains all of the information required by statute. Regardless of the form, any request for an absentee ballot must be signed by the voter.

7. Upon receipt of a request or application for an absentee ballot, my staff begins the process of reviewing the application to determine if the individual is a registered voter in Shelby County and eligible to vote absentee and verification of the individual's signature on the application or request. Again, the mandatory training and instructions that we receive from the State emphasizes that the signature verification process always should begin with the presumption that the signature at issue is valid, and that the signature in question should be compared with as



many exemplars on file as possible. So, for example, if we receive an application where the signature does not appear to match the signature on the voter's permanent voter registration card, we will go look at the most recent poll list signed by that voter.

8. If we are ultimately unable to verify the voter's signature, the request or application is rejected, and the voter is immediately notified by mail. *See* Tenn. Code Ann. § 2-6-204(a). When we notify the voter, we send out a letter explaining that we were unable to verify their signature and we include copies of the voter's signature that we have on file.

9. When we receive an absentee ballot from the voter, we open the outer mailing envelope, and—without opening the ballot envelope itself—we compare the signature of the voter as it appears on the Voter's Affidavit with the signature of the voter as it appeared on the application or request for an absentee ballot. If the signature on the Voter's Affidavit is determined to be consistent with the signature on the application or request, the ballot is accepted and placed (unopened) in the absentee ballot box to be counted after the polls close on Election Day. If, on the other hand, the signature is determined to be inconsistent with the signature on the application or request, then we compare that signature with any other signatures of the voter on file. If ultimately we are unable to verify the signature of the voter, the ballot is rejected and notice of the rejection is mailed immediately to the voter.

10. For the federal election in November of 2016, 7,243 absentee ballots were mailed to requesting voters in Shelby County, and 6,166 absentee ballots were received by my office. Of those absentee ballots received, four were rejected for signature irregularities. All four of those ballots were cast under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301, *et seq.*, which permits U.S. citizens—both military and civilian—who are living abroad to vote.

11. For the federal election in November of 2018, 5,155 absentee ballots were sent to requesting Shelby County voters, and 3,878 absentee ballots were received by my office. Of those absentee ballots received, none were rejected for signature irregularities.

I declare under penalty of perjury that the foregoing is true and correct. Executed by me this 25th day of June, 2020 at Memphis, Tennessee.



---

LINDA PHILLIPS

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, NASHVILLE

HUNTER DEMSTER, EARLE J. )  
FISHER, JULIA HILTONSMITH, )  
GINGER BULLARD, JEFF BULLARD, )  
ALLISON DONALD, and )  
#UPTHEVOTE901, )

Plaintiffs, )

v. )

Docket No. 20-0435-I(III)

TRE HARGETT, MARK GOINS, )  
WILLIAM LEE, and HERBERT )  
SLATERY III, each in his official capacity )  
For the State of Tennessee )

Defendants. )

BENJAMIN WILLIAM LAY, CAROLE JOY )  
GREENWALT and SOPHIA LUANGRATH, )

Plaintiffs, )

v. )

Docket No. 20-0453-IV(III)

MARK GOINS, in his official capacity as )  
Coordinator of Election for the State of )  
Tennessee, TRE HARGETT, in his official )  
Capacity as Secretary of State for the State of )  
Tennessee, and WILLIAM LEE, in his official )  
Capacity as Governor of the State of Tennessee,) )

Defendants. )

---

**DECLARATION OF LEIGH ANN APPLE-JONES**

---

I, Leigh Ann Apple-Jones, do declare the following under penalty of perjury:


1. I serve as the Senior Director for Public and Legislative Affairs for the Office of the Tennessee Attorney General. Part of my duties include the monitoring of legislative proceedings and hearings, including state budget-related matters.

2. Attached as Exhibit A is a copy of a Memorandum dated May 26, 2020 that was sent to all state agency heads and budget officers from the Commissioner of the Department of Finance and Administration. Our Office received a copy of this memorandum in which Commissioner Eley requests all agencies to identify and plan to implement a 12% reduction in our budget.

3. Also attached is a copy of the presentation that was made to the Tennessee State Funding Board on May 27, 2020. I monitored this meeting and obtained a copy of the presentation from the Office of the Comptroller's website.

I declare under penalty of perjury that the foregoing is true and correct.

June 1, 2020  
Date

  
Leigh Ann Apple Jones

**To:** All Agency Heads and Budget Officers  
**From:** Butch Eley, Commissioner of Finance and Administration *BE*  
**Date:** May 26, 2020  
**Subject:** Reduction Plans

The financial challenges which have evolved over the past two months are unprecedented in recent times. Although the state is in a strong financial position, thanks to a longstanding and rich partnership with the legislature and years of bipartisan commitment to financial stability, the impact of COVID-19 on our economy and our state revenues is projected to be unparalleled in terms of both its suddenness and magnitude. While revenues are expected to drop by such a large degree that experts predict it could take years to recover, we will always uphold our constitutional duty to balance our budget.

In order to adapt quickly to the new economic environments we face, we will need to have a heightened level of fiscal prudence, invest state funds in more targeted policies that show greater returns, operate more efficiently by continuing to provide our vital services with fewer resources, all while remaining stalwart supporters of our customers: Tennesseans.

As we've all witnessed, this economic situation came on quickly and will now require a multi-year approach of restraint and reductions. While the plans to address this crisis are multifaceted, the Governor is asking that we immediately begin the process of identifying where budgetary reductions may occur. As a result, I am asking all agencies to identify and plan to implement reductions totaling 12 percent of their general fund state appropriation budget.

As plans are developed, agencies should consider the following guidelines:

- Agencies should prepare to implement all reductions identified in their plan by July 1, 2020.
- All programs should be evaluated for reduction/elimination.
- Revenue Offsets – Adjustments that propose to offset a reduction of state appropriations with a corresponding increase in departmental revenue are not encouraged and should not represent a significant portion of your reduction plan. Because the impact of COVID-19 on departmental revenues is not clear, agencies should not necessarily expect prior year collection trends to be an indicator of future collections.
- Assume all programs and associated funding reduced or eliminated through this exercise will not be added back in any future budget.
- All internal, service-funded agencies and programs are expected to participate and should develop plans to begin FY21 with a reduced billing rate of 6 percent.

Reduction plans should be submitted to the Division of Budget by June 30, 2020. We will provide more specific instructions in a later communication regarding the exact reduction amount for your agency as well as the submission format and process.

As the Governor has said, everything is on the table and we have an obligation to be good stewards of taxpayer funds. I encourage each of you to think critically and creatively about ways we can achieve our goals of financial stability and outstanding service to our customers.

**TENNESSEE STATE FUNDING BOARD**  
**MAY 27, 2020**  
**AGENDA**

1. Call Meeting to Order
2. Presentations to the State Funding Board

Presenters:

- Ms. Laurel Graefe, Regional Executive,  
Federal Reserve Bank of Atlanta, Nashville Branch
- Dr. William Fox, Professor of Economics,  
Boyd Center for Business and Economic Research,  
University of Tennessee
- Dr. Jon L. Smith, Director, Bureau of Business and Economic Research,  
East Tennessee State University
- Commissioner David Gerregano,  
State of Tennessee, Department of Revenue
- Mr. Bojan Savic, Assistant Director,  
State of Tennessee, Fiscal Review Committee

Interested members of the public may observe and listen to the meeting through electronic means on the Comptroller's website at the following link:

<https://comptroller.tn.gov/office-functions/sgf/oslf-calendar/2020/5/27/state-funding-board-meeting.html>



FEDERAL  
RESERVE  
BANK  
*of* ATLANTA

# TN State Funding Board: Perspectives on the state and national economies

Laurel Graefe

May 27, 2020

The views expressed are my own, and not necessarily those of the Atlanta Fed or the Federal Reserve System.



# Overview

- Economic activity has slowed significantly in response to the coronavirus pandemic and actions taken by government officials to limit its spread
- Numerous government actions have been taken to provide some relief to businesses and households through the disruption
  - CARES Act
  - State and local responses
  - Federal Reserve responses
- Real GDP is expected to contract sharply in 2020 Q2
- The trajectory of the recovery is very unclear

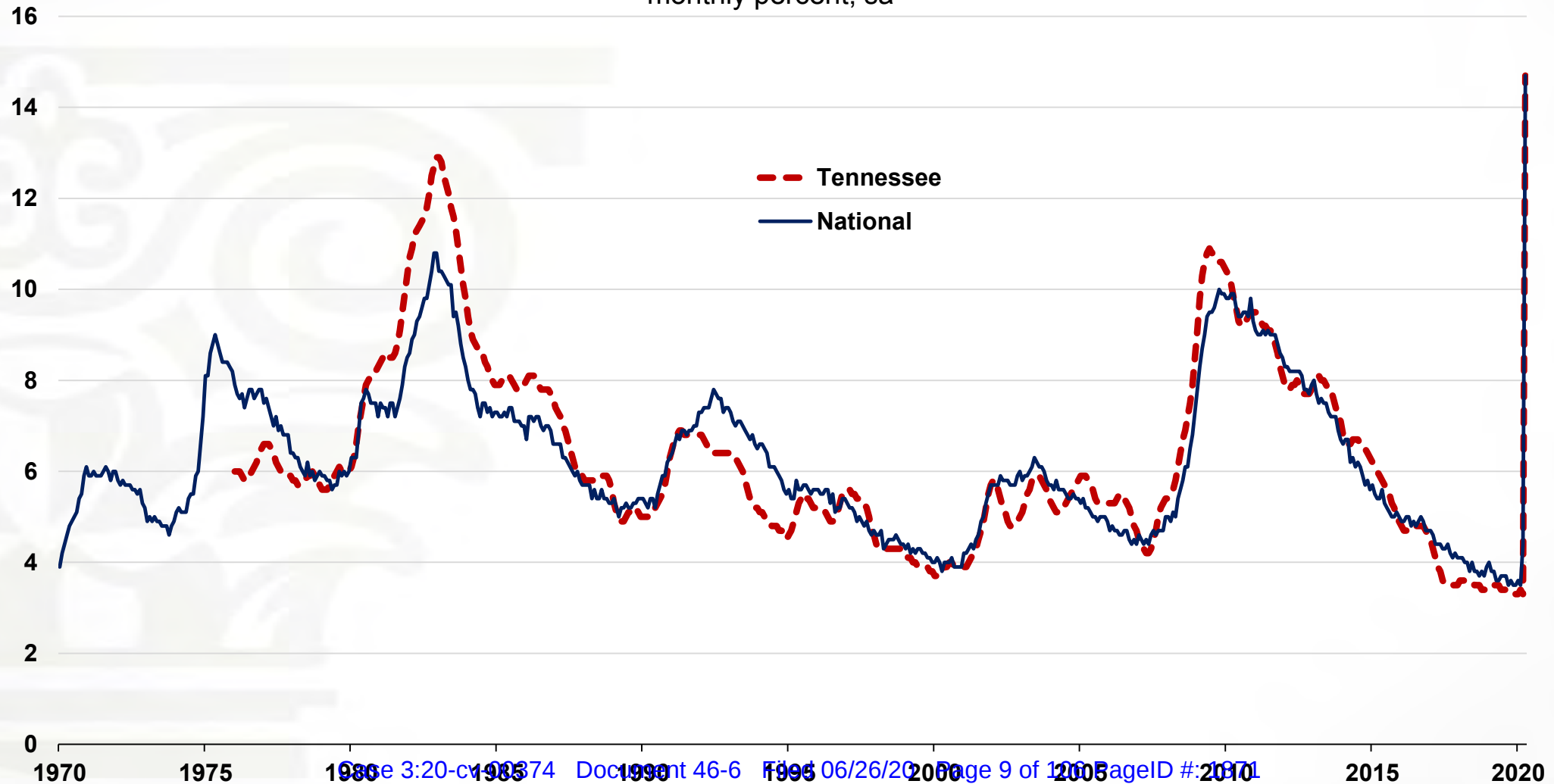
# The economy was doing very well before the virus arrived.

- A key point to remember is that this crisis is different from most economic slowdowns in that it did not result from excessive risk-taking or economic fundamentals deteriorating.
- Before the pandemic, labor markets were strong and consumers confident. Housing markets and the financial system were generally healthy.

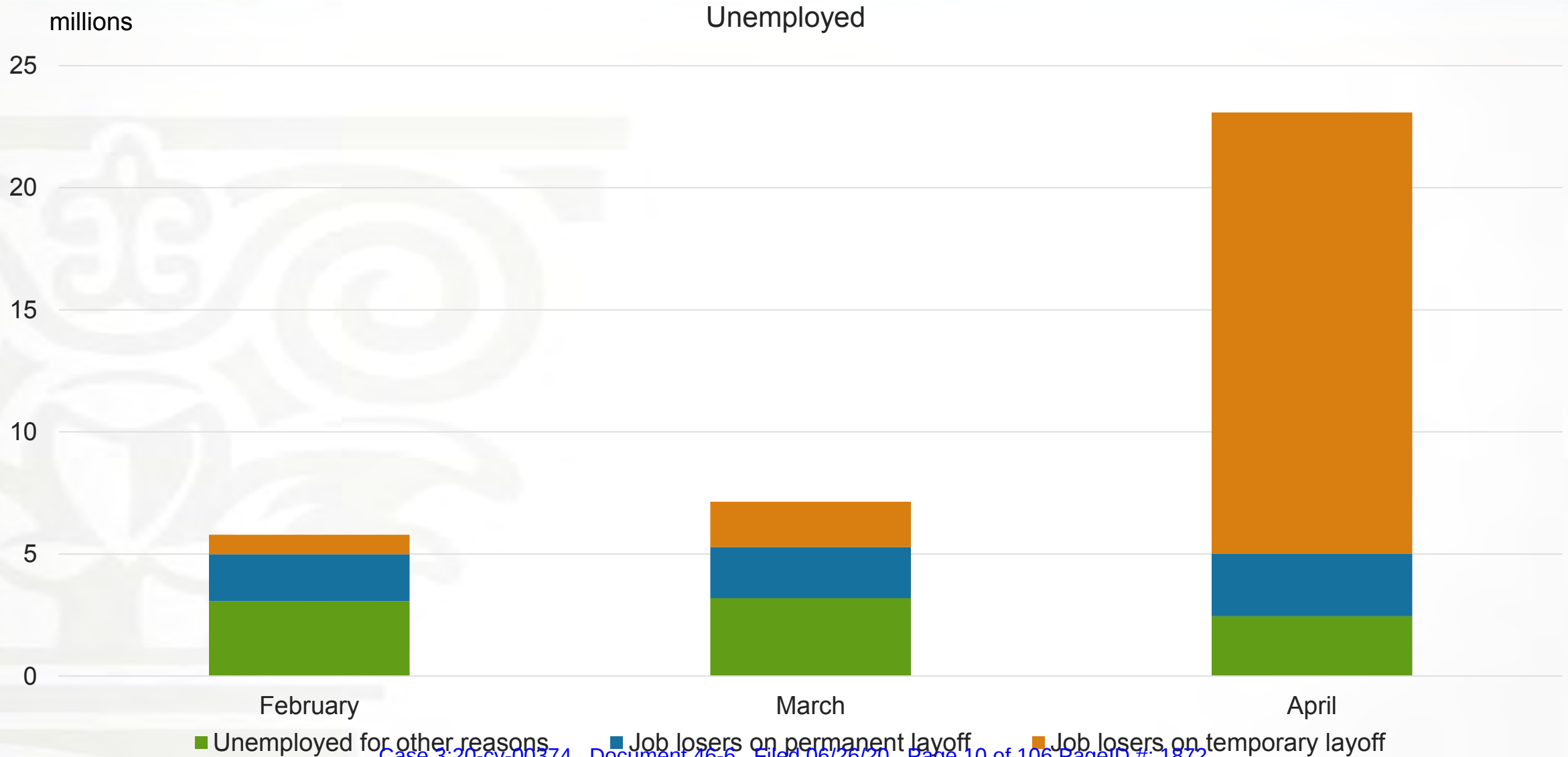


# Unemployment has spiked to the highest levels in the series' history in both Tennessee and the US.

Unemployment Rates  
monthly percent, sa

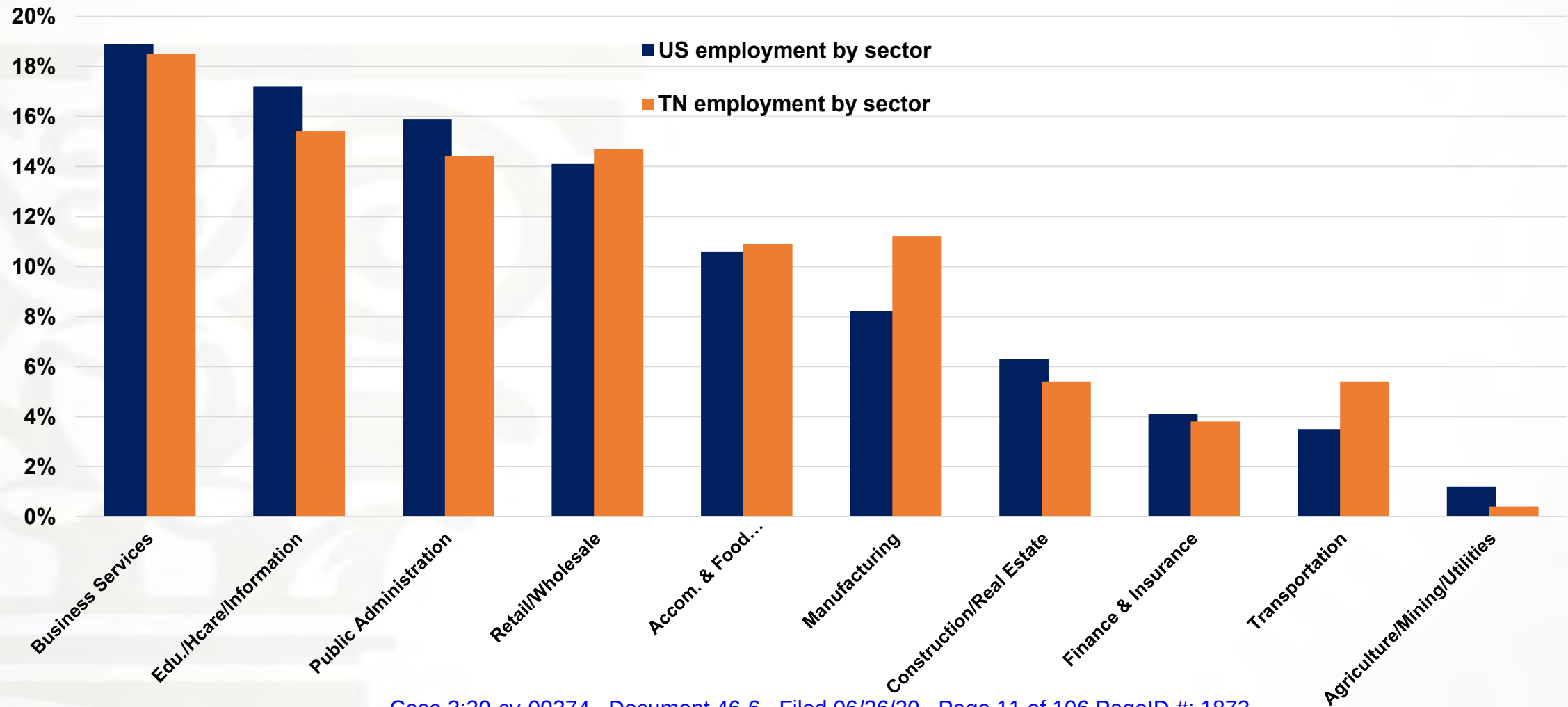


# The vast majority of the unemployed indicate that they are on temporary layoff



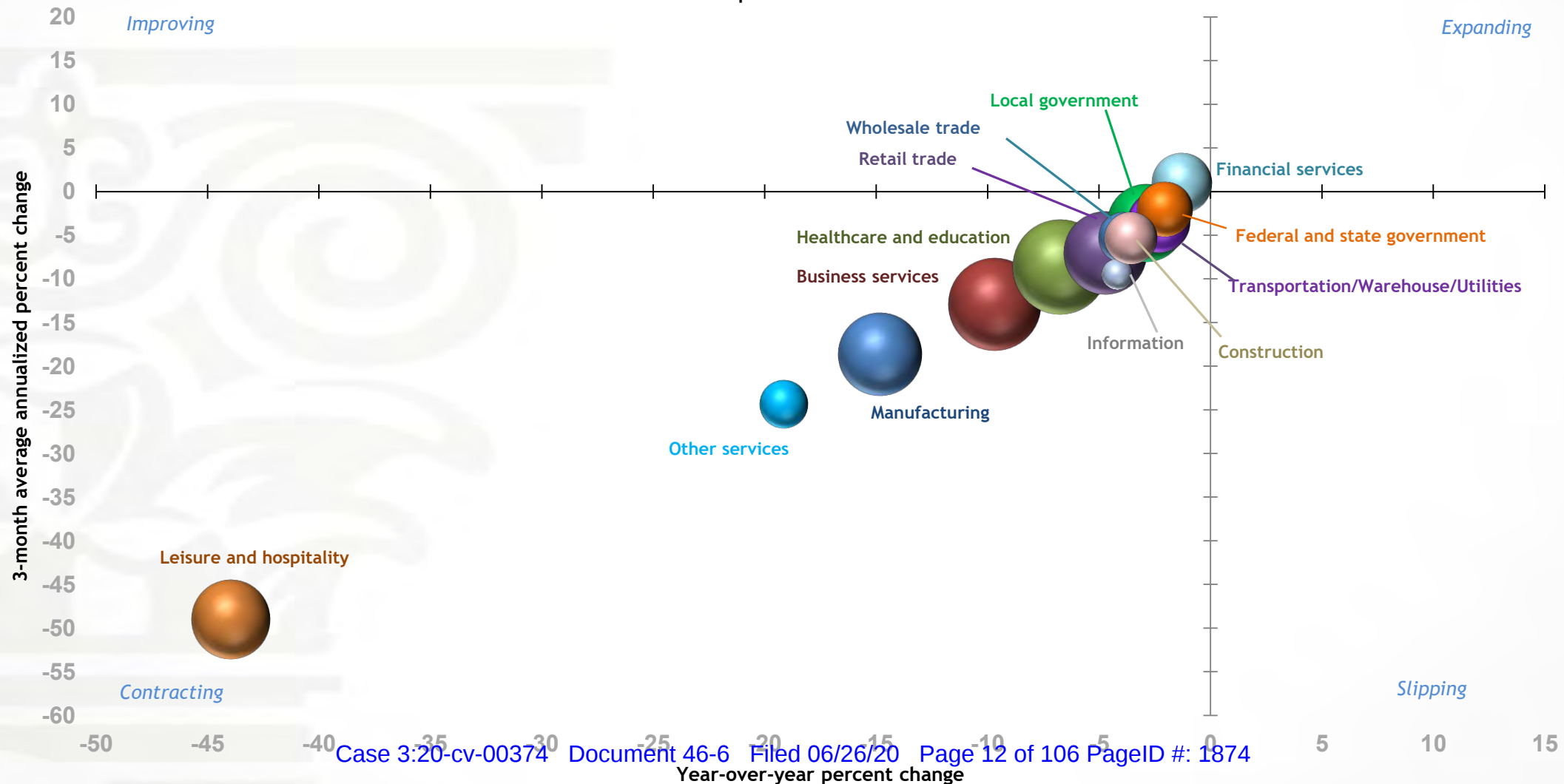
# The industry composition of employment in TN roughly matches that of the US overall

## Employment by Sector



# TN is seeing a contraction in employment across every industry

## Employment Momentum by Industry: Tennessee April 2020



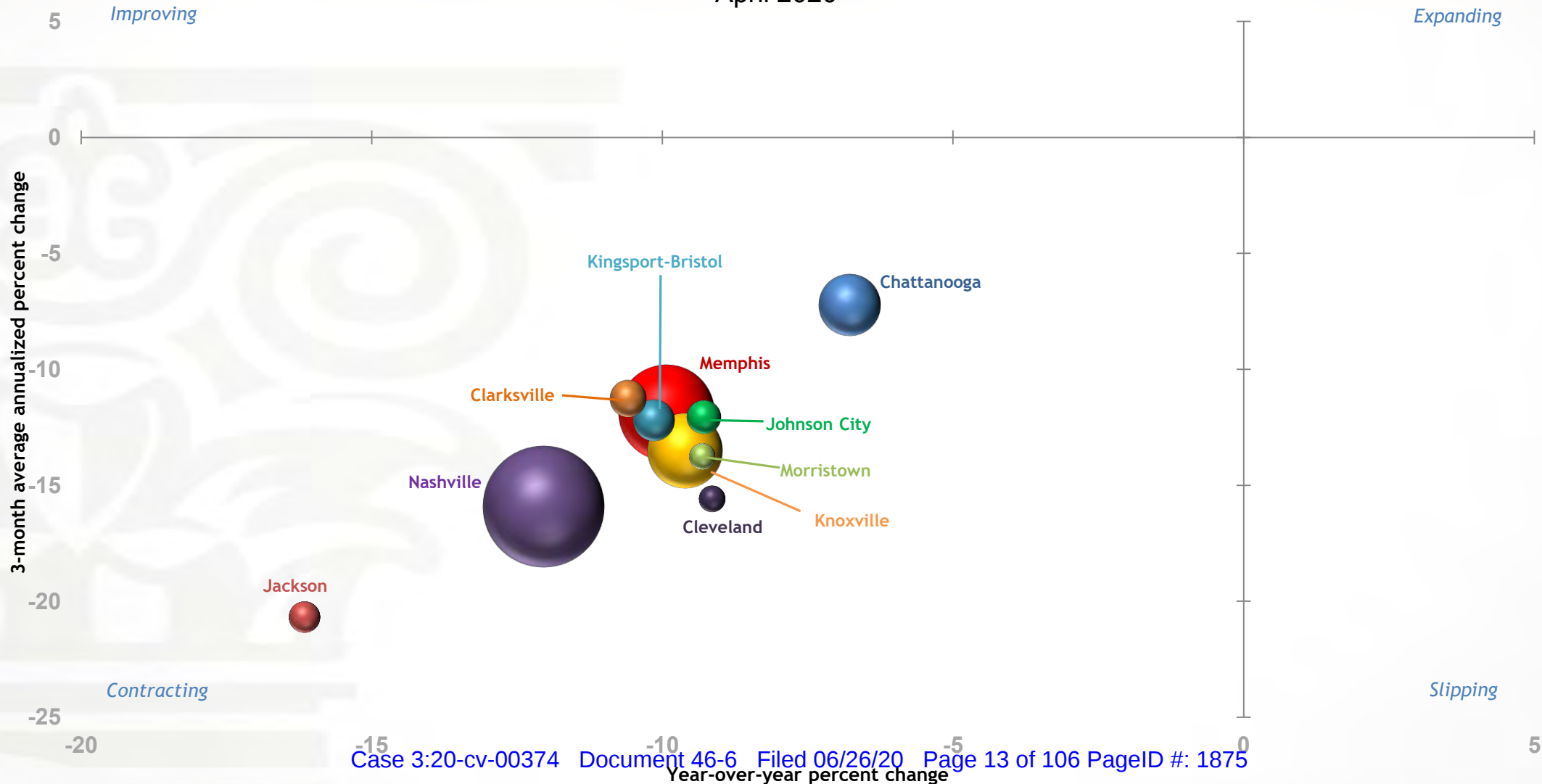
Case 3:20-cv-00374 Document 46-6 Filed 06/26/20 Page 12 of 106 PageID #: 1874



# Every metro area in the state has employment in contractionary territory

## Employment Momentum by Metro Area: Tennessee

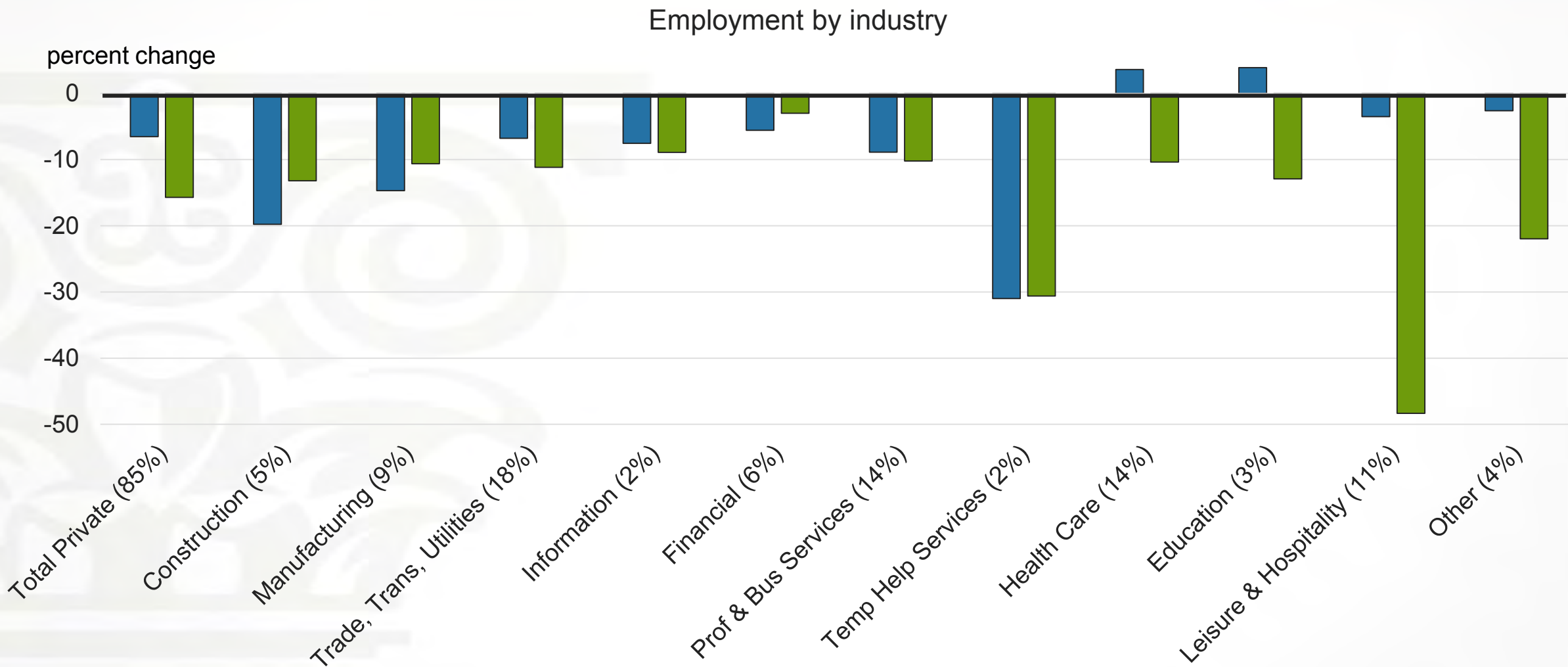
April 2020



Case 3:20-cv-00374 Document 46-6 Filed 06/26/20 Page 13 of 106 PageID #: 1875



# Nationally, the economy has shed nearly 16% of its workforce since February 2020, more than doubling the decline (6.5%) over the entirety of the last recession



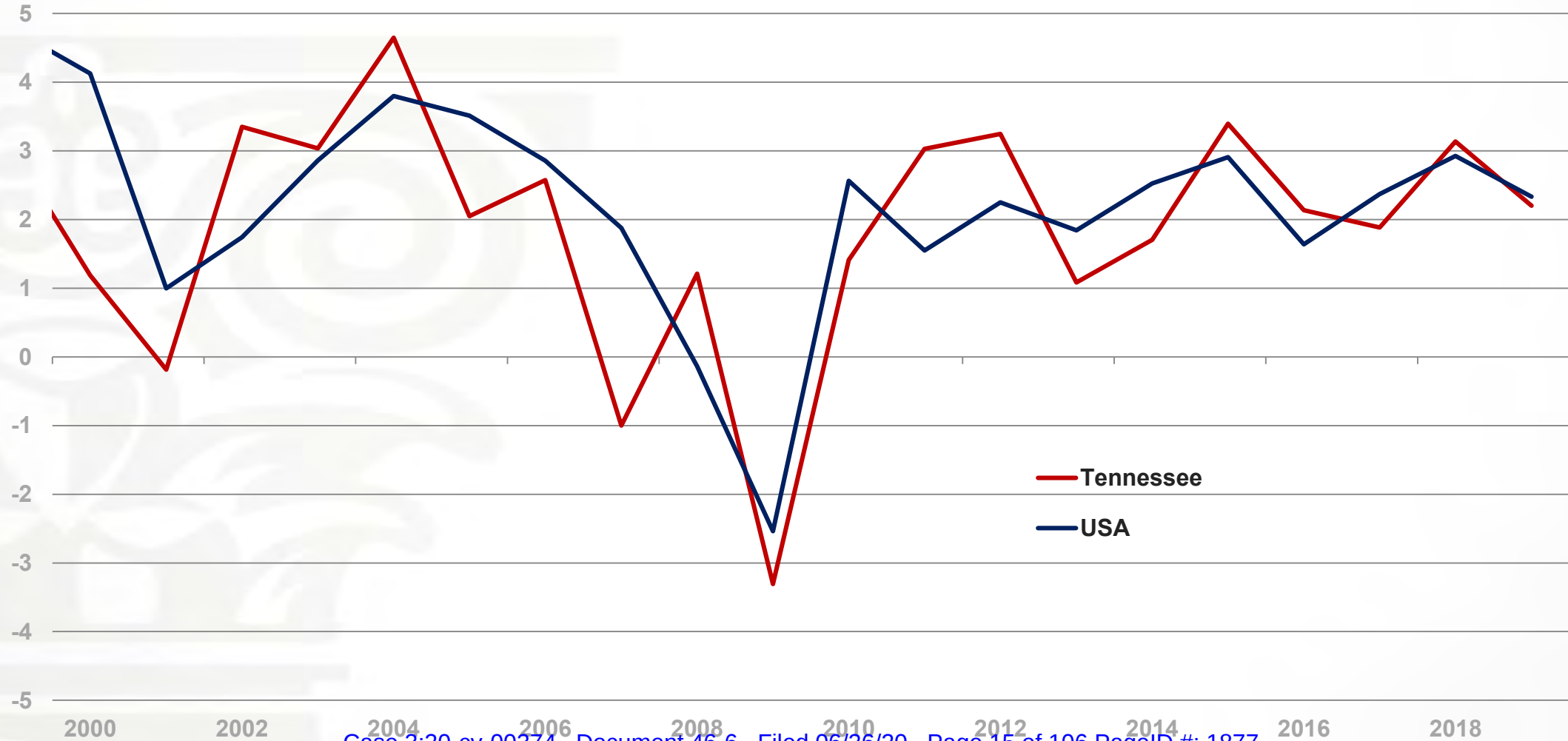
Source: Bureau of Labor Statistics

Note: Share of total nonfarm payroll employment. Case 3:20-cv-00874 Document 466 Filed 06/26/20 Page 14 of 106 PageID #: 1876

# More broadly, movements in the Tennessee economy have historically tracked closely with national developments.

## Economic Growth in Tennessee and the U.S., 2000-2019

year-over-year % change

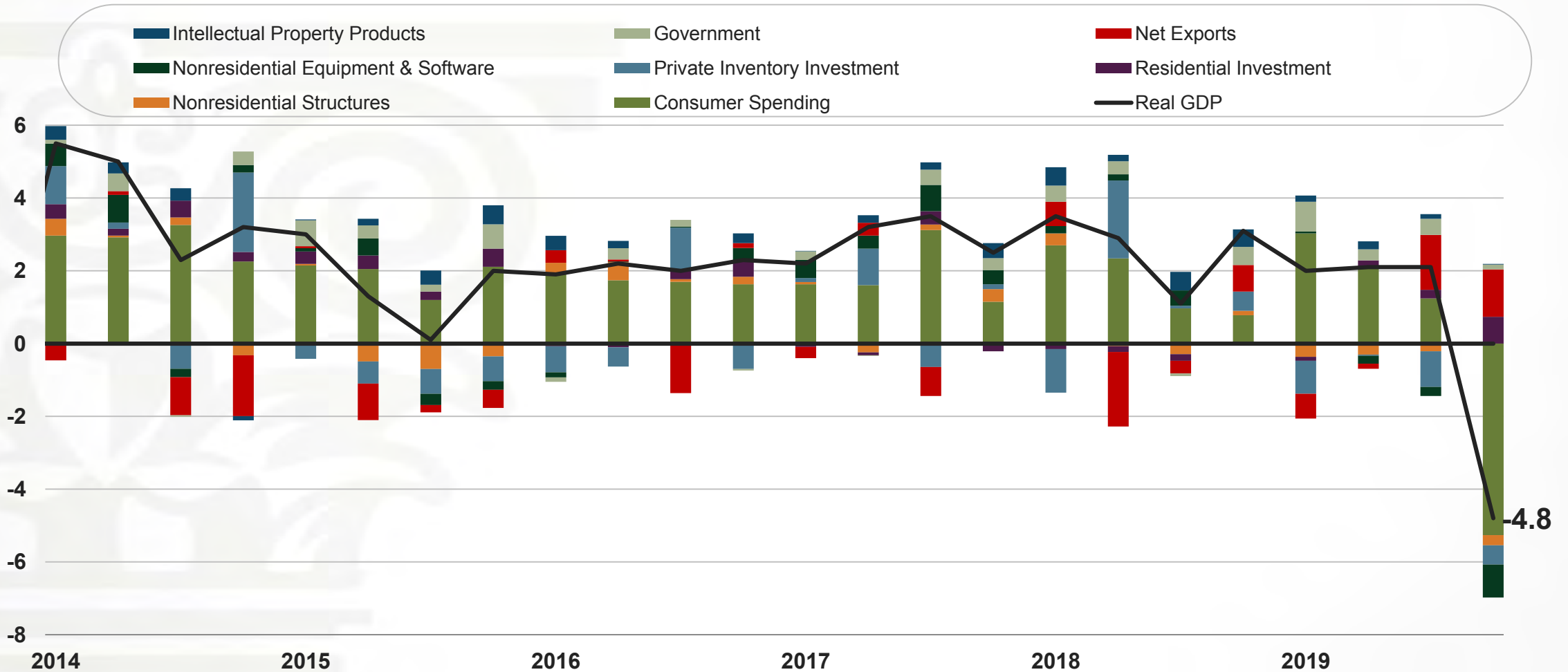


Case 3:20-cv-00374 Document 46-6 Filed 06/26/20 Page 15 of 106 PageID #: 1877

# Real gross domestic product declined 4.8 percent in the first quarter of 2020. Expectations are for a dramatic additional decline in Q2.

## Contributions to Real GDP Growth

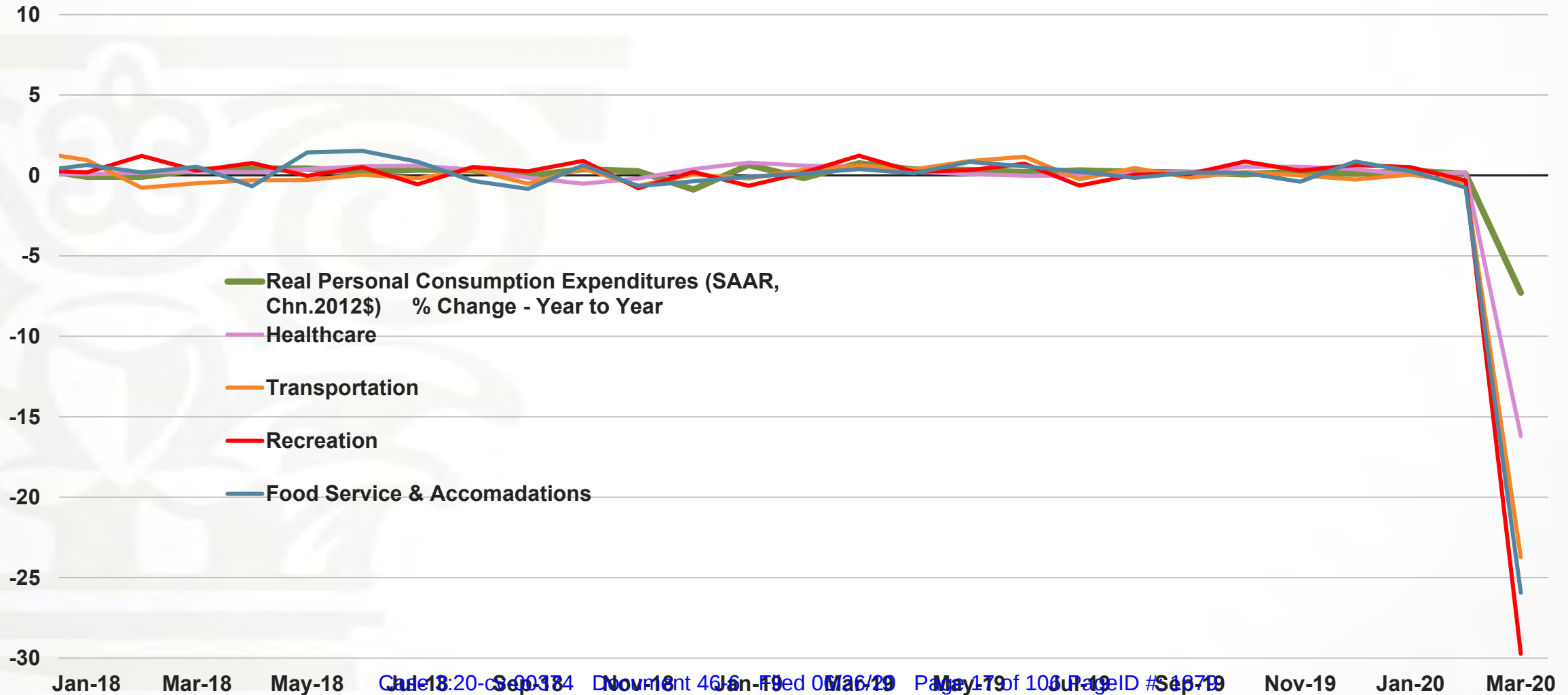
quarterly, percent, seasonally adjusted annualized rate



Real Personal Consumption Expenditures (PCE) declined 7.3 percent in March (non annualized), nearly tripling the previous record monthly decline. Much of the deterioration was concentrated in 15-to-30 percentage point declines in four services subcomponents: health care, transportation services, recreation services, and food services and accommodations.

## Real Personal Consumption Expenditures

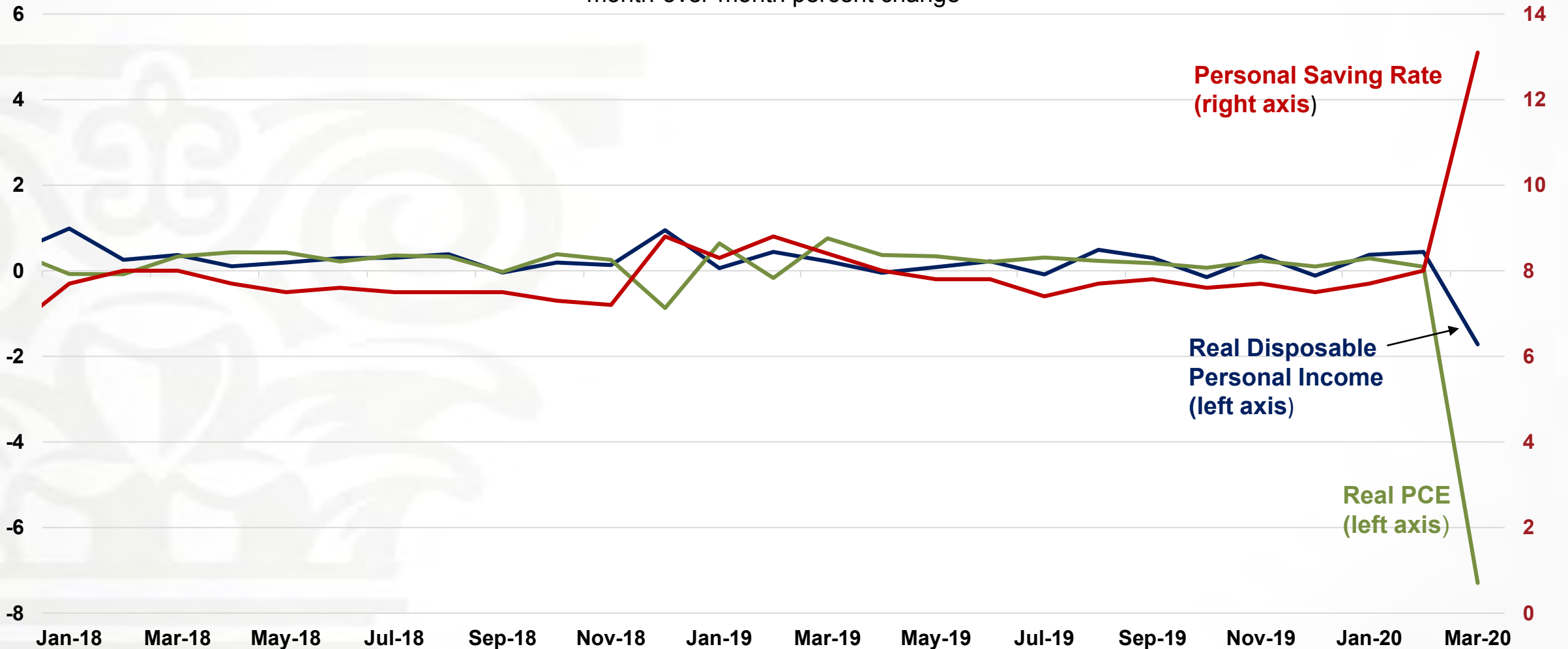
month-over-month percent change, SA



Estimates of real disposable personal income declined much less than real PCE in March (1.7 percent vs. 7.3 percent). Consequently, the personal saving rate spiked 5.1 percentage points to a 38-year high of 13.1 percent in March.

### Consumer Spending and Household Wealth

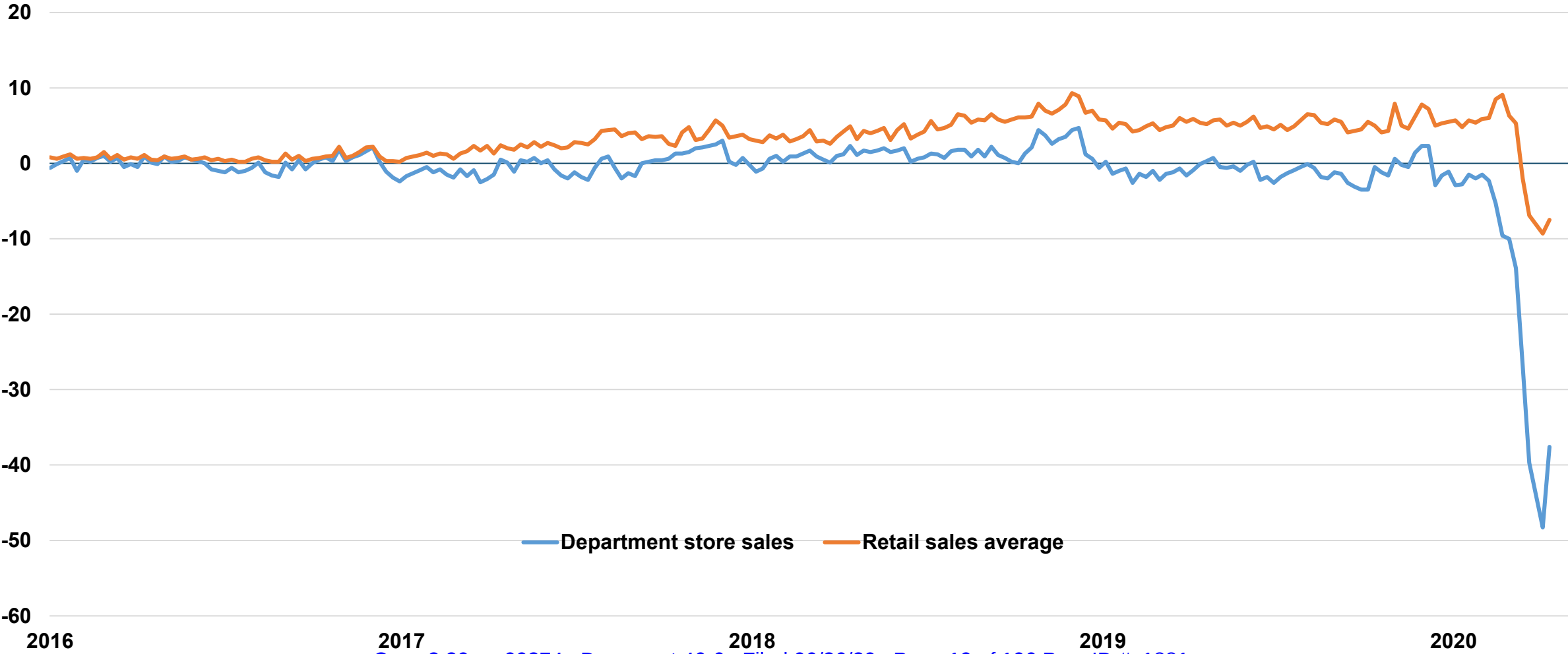
month-over-month percent change



Case 3:20-cv-00374 Document 46-6 Filed 06/26/20 Page 18 of 106 PageID #: 1880

# Declines in sales at brick and mortar retailers have been dramatic— with department stores seeing staggering dips in activity compared to a year ago.

**Redbook Research: Same Store**  
nsa, weekly, year-over-year percent change

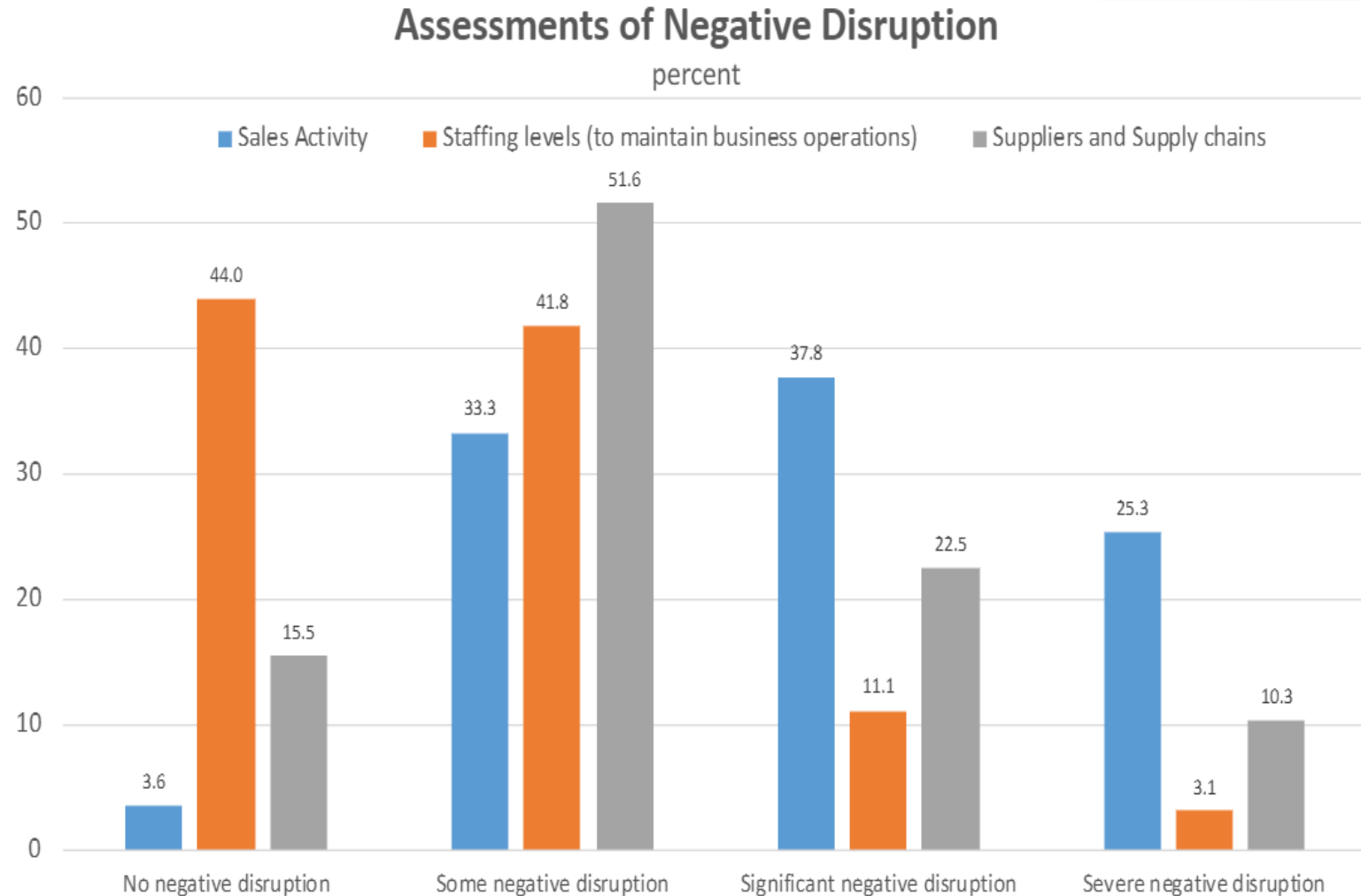


Sources: Redbook Research; Haver Analytics

data through May 9, 2020

# The disruption to business activity has been severe.

- We asked our business contacts to assess disruption to their sales activity, staffing levels and suppliers and supply chains.
- A majority of firms in our panel have experienced significant or severe disruption to their sales activity.

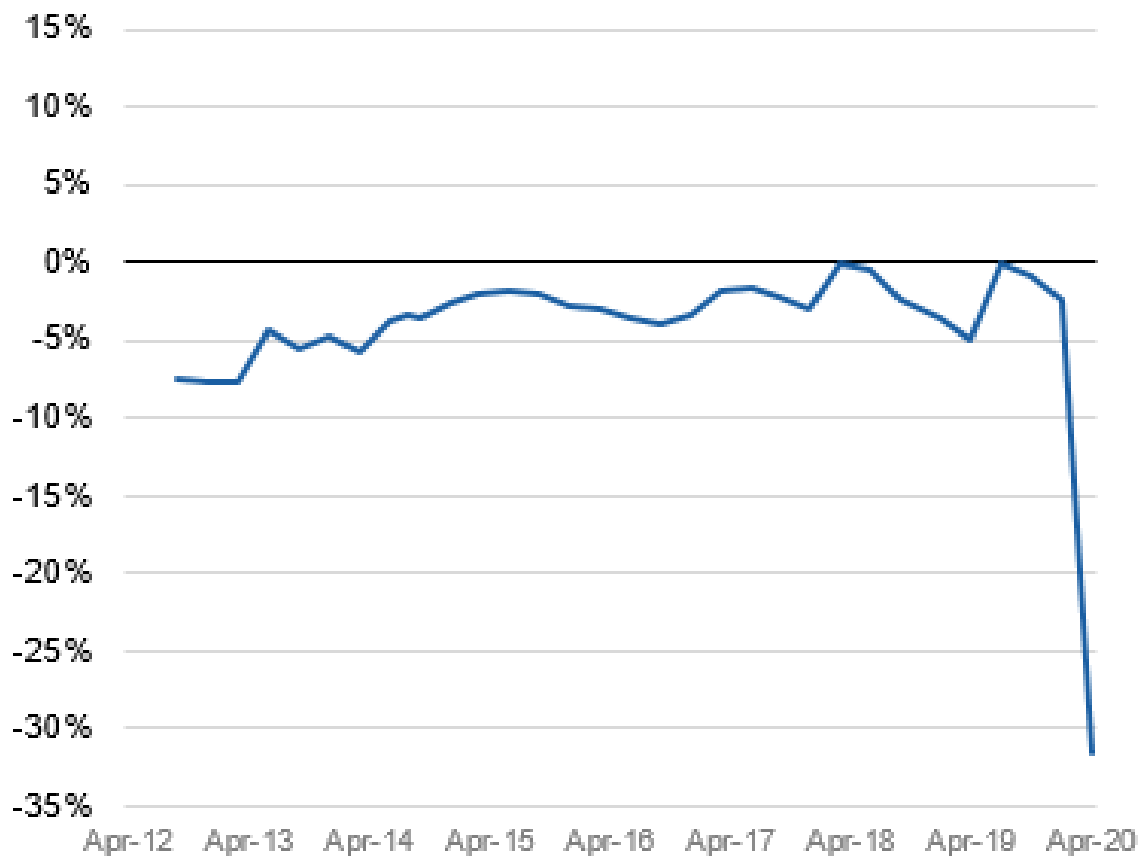


Note: There were 225 responses to both the sales activity and Staffing levels assessments of disruption, and 213 respondents who gave an assessment of disruption to suppliers and supply chains.



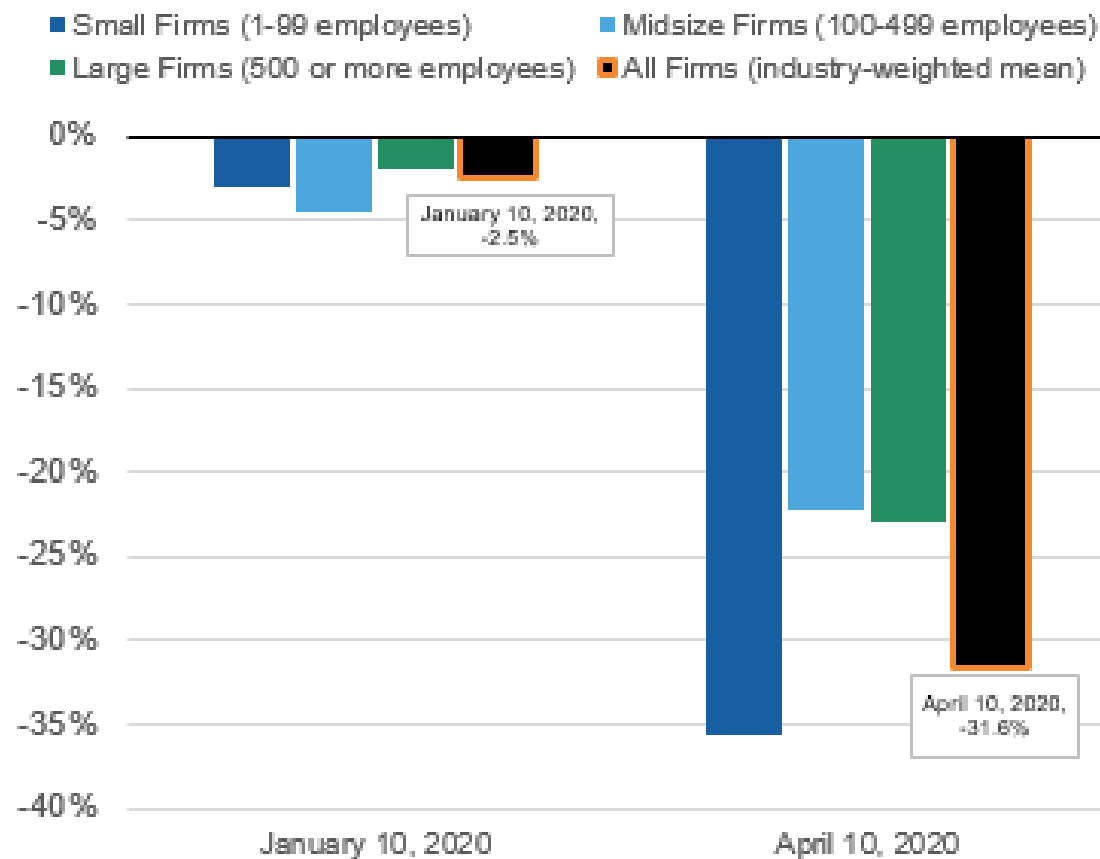
The decline in sales levels relative to what contacts reported as “normal” has been extraordinary —from 2.5 percent below normal in the first quarter to 32 percent in April. The decline in sales had an impact on firms of all sizes, but smaller firms reported a much larger decline than did firms with more than 100 employees.

Percentage below “Normal” Sales Levels  
percent



Source: Atlanta Fed Business Inflation Expectations Survey, April 2020

Percentage below “Normal” Sales Levels  
percent



Source: Atlanta Fed Business Inflation Expectations Survey, April 2020

# Businesses are anticipating sales levels to remain down a year from now, though those expectations come with a great deal of uncertainty.

Survey of Business Uncertainty (January 2017 – April 2020)

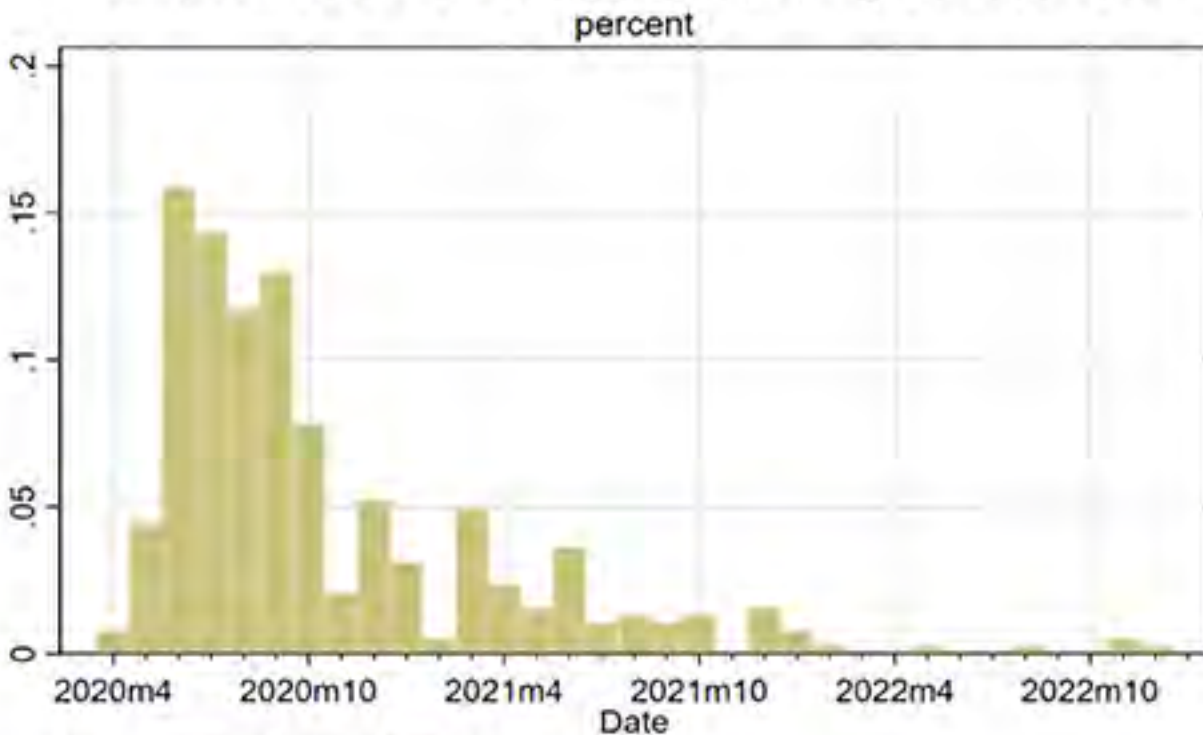


Source: Survey of Business Uncertainty conducted by the Federal Reserve Bank of Atlanta, Stanford University, and the University of Chicago Booth School of Business. For more information, see "Surveying Business Uncertainty" by David Altig, Jose Maria Barrero, Nick Bloom, Steven J. Davis, Brent Meyer, and Nick Parker, NBER Working Paper No. 25956, February 2020.

# Firms' expectations for the dissipation of covid-related uncertainty were fairly optimistic in a recent survey. However, many indicated that they would need new sources of funding to continue operating through the end of the year.

Question: *When do you think it is most likely that the coronavirus-related uncertainty facing your firm will be largely resolved?*

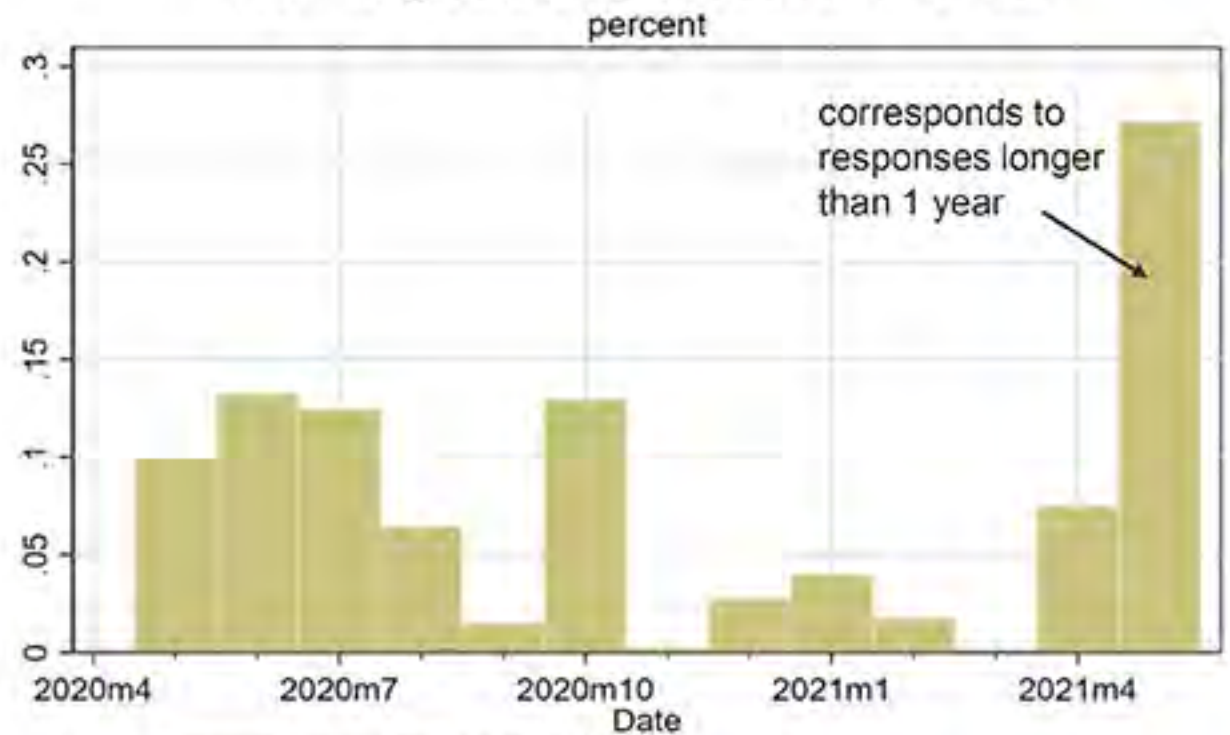
When will COVID-Related Uncertainty be resolved?



Note: Responses collected April 13-24, 2020

Question: *In light of current conditions, for how many months can your firm continue to operate without tapping new sources of funding (credit lines, emergency loans, debt markets, etc.)?*

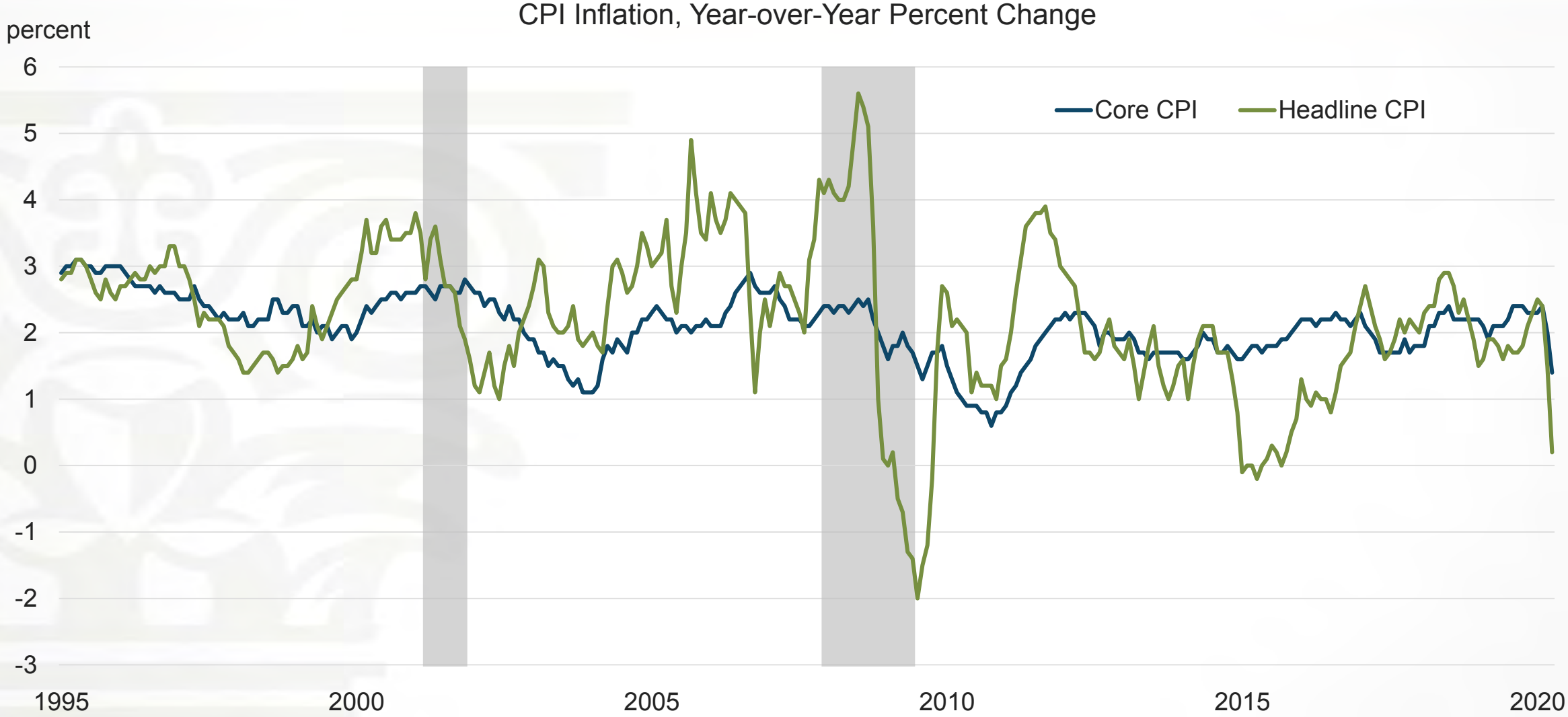
How long before need additional funds?



Note: Responses collected April 13-24, 2020

Source: Survey of Business Uncertainty conducted by the Federal Reserve Bank of Atlanta, Stanford University, and the University of Chicago Booth School of Business. Case 3:20-cv-00374 Document 46-6 Filed 06/26/20 Page 23 of 106 PageID #: 1885

# Consumer inflation decelerated sharply in April



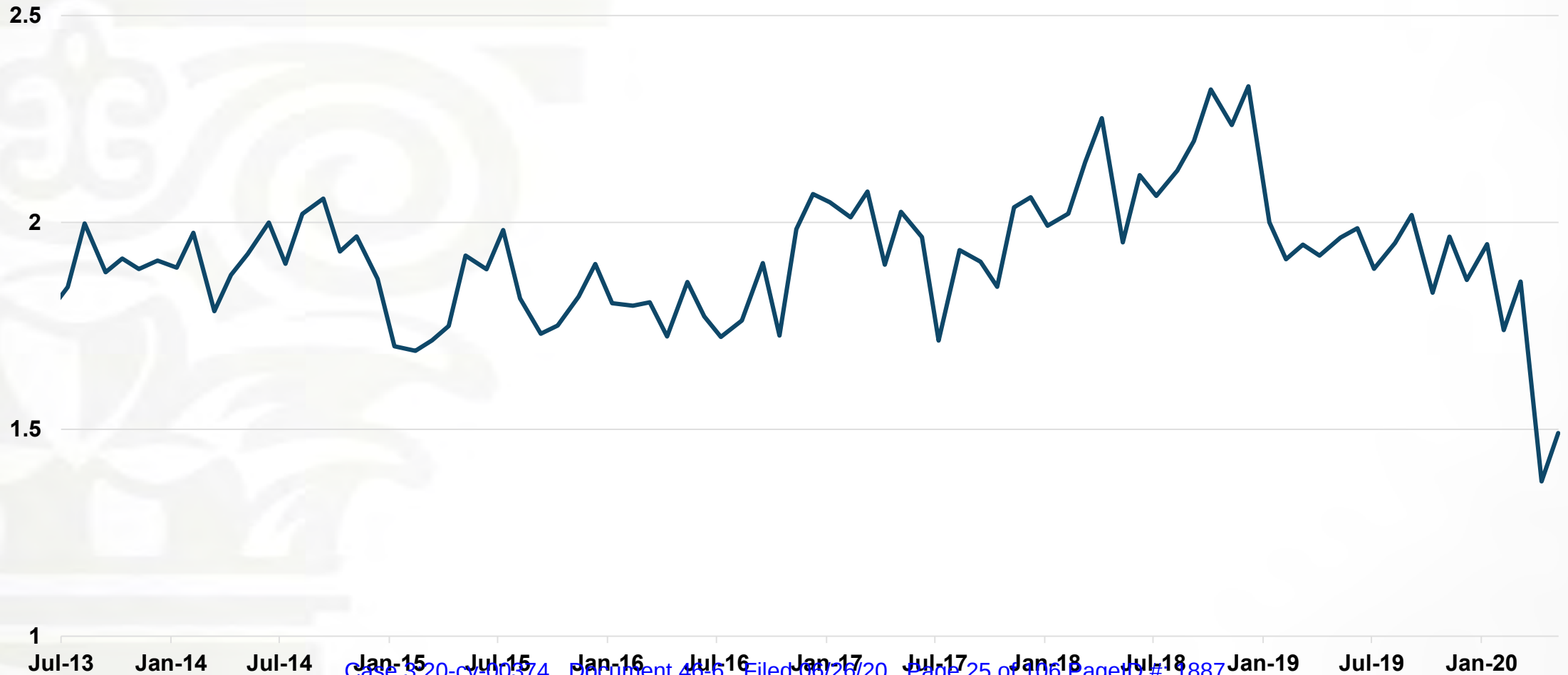
Source: Bureau of Labor Statistics., May 2020  
Case 3:20-cv-00374 Document 46-6 Filed 06/26/20 Page 24 of 106 PageID #: 1886



# Business inflation expectations declined to the lowest level in the survey's 7-year history in April, only ticking up slightly in May.

## Atlanta Fed's Business Inflation Expectations Survey

year-ahead unit cost expectations  
percent, monthly



Case 3:20-cv-00374 Document 46-5 Filed 06/26/20 Page 25 of 106 PageID #: 1887

# Economic fundamentals can support a strong recovery.

- In a sense, the pre-pandemic economic conditions offer hope. If we weather the crisis without lasting damage to those economic fundamentals, then the fundamentals can support a strong recovery.



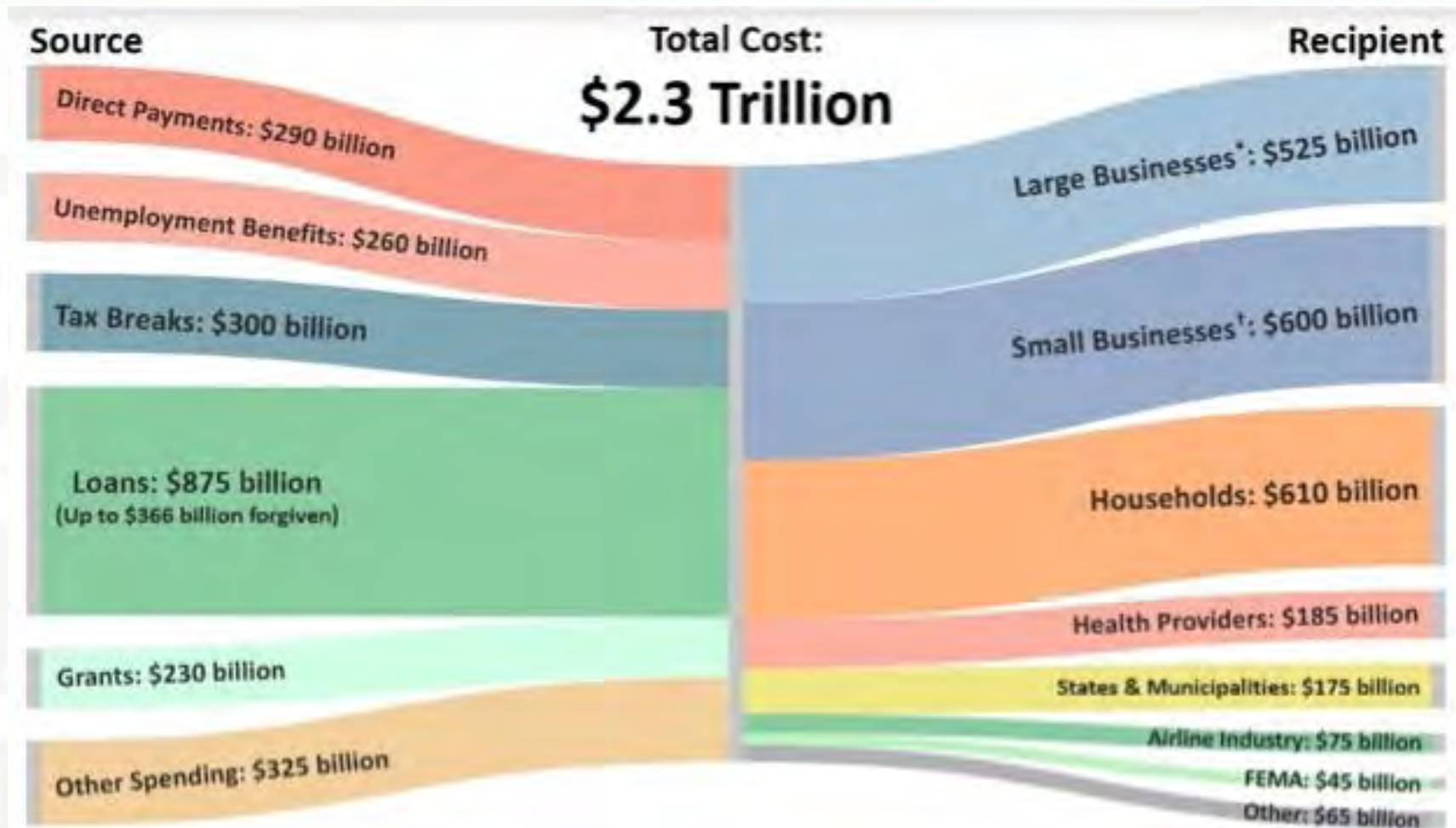
# Key issues for the outlook

- Temporary vs. permanent job losses
- Future of labor income and credit to support consumer spending
- Structural changes that might have been triggered and/or accelerated
- Employment and spending response in June/July when CARES Act support for businesses and households runs out
- Next steps for fiscal and monetary policy



# Appendix

# CARES Act



Source: Legislative Offices, JCT, bill text, CRFB estimates.

† This includes \$170 billion of tax cuts for businesses other than corporations, some of which are large companies.

\* This includes \$454 billion of tax cuts for corporations, some of which are large companies.

CRFB.org



**The Fed's efforts to support the economy and financial system during the crisis are designed to minimize long-term financial and economic damage.**



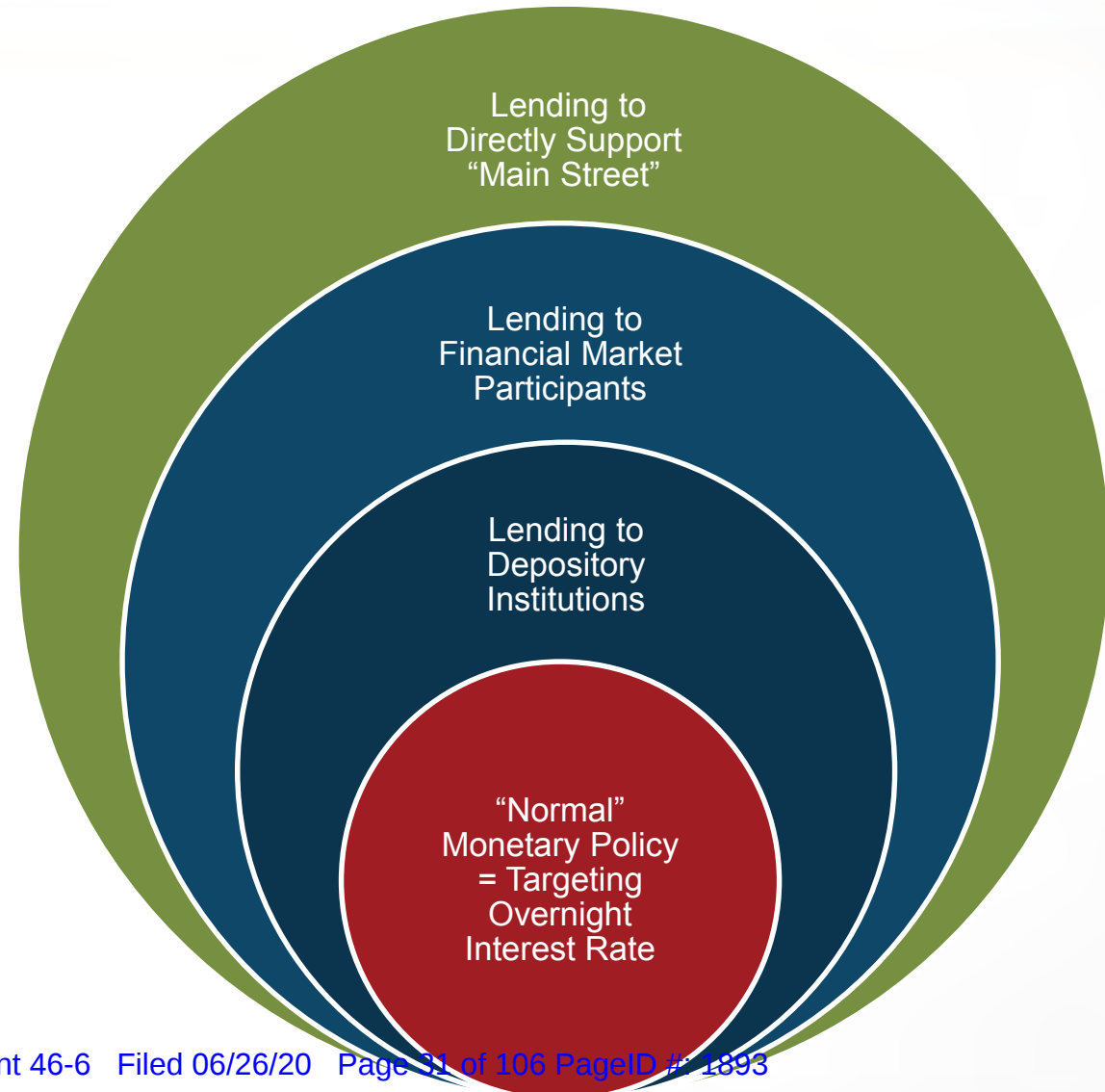
During the financial crisis of 2008, we learned that threats to economic and financial stability demand bold and swift action.

With those lessons in hand, we are once again taking actions necessary to support the financial health of households and businesses.

# The Federal Reserve's Response

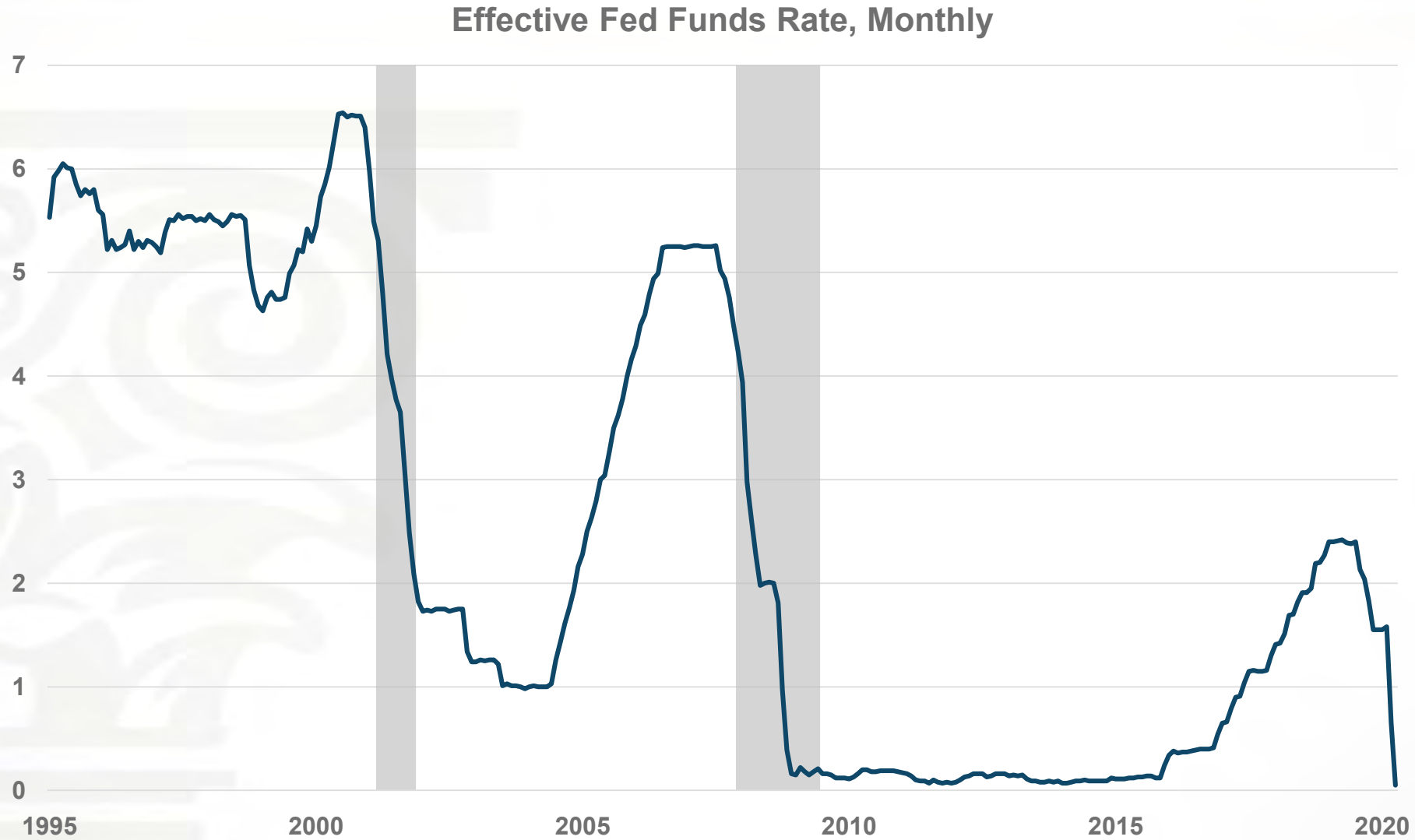
## Funding, Credit, Liquidity and Loan Facilities

- Main Street Lending Program
- Paycheck Protection Program Liquidity Facility
- Municipal Liquidity Facility
- Commercial Paper Funding Facility
- Term Asset-Backed Securities Loan Facility
- Primary and Secondary Market Corporate Credit Facilities
- Money Market Mutual Fund Liquidity Facility
- Primary Dealer Liquidity Facility





# The FOMC lowered the federal funds target range to near zero in March



Case 3:20-cv-00374 Document 46-6 Filed 06/26/20 Page 32 of 106 PageID #: 1894

Source: Board of Governors of the Federal Reserve System, May 2020

# Federal Reserve actions to support economic activity during the coronavirus pandemic

- Commercial Paper Funding Facility(CPFF)
- Primary Dealer Credit Facility (PDCF)
- Money Market Mutual Fund Liquidity Facility (MMLF)
- Primary Market Corporate Credit Facility (PMCCF): new bond and loan issuance
- Secondary Market Corporate Credit Facility (SMCCF): provide liquidity for outstanding corporate bonds credit card loans, loans guaranteed by the Small Business Administration (SBA), and certain other assets

# Federal Reserve actions to support economic activity during the coronavirus pandemic

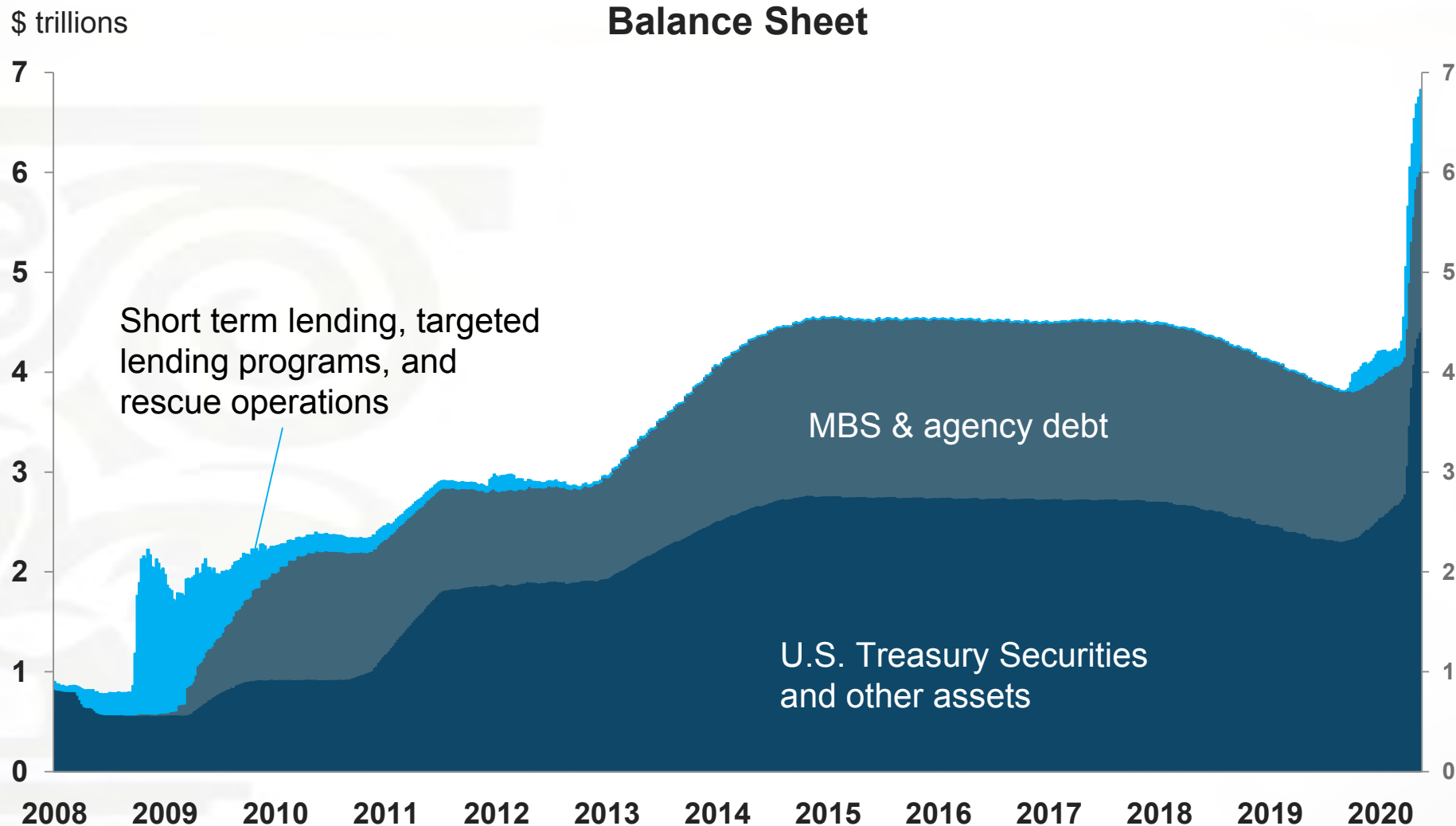
- Term Asset-Backed Securities Loan Facility (TALF): enable the issuance of asset-backed securities (ABS) backed by student loans, auto loans, credit card loans, loans guaranteed by the Small Business Administration (SBA), and certain other assets
- Paycheck Protection Program Lending Facility: provide term financing backed by PPP loans
- Municipal Liquidity Facility: offer up to \$500 billion in lending to states and municipalities



# Main Street Business Lending Program

- Support for small and mid-sized businesses that were in good financial standing before the crisis by offering 4-year loans to companies employing up to 10,000 workers or with revenues of less than \$2.5 billion
- Principal and interest payments will be deferred for one year.
- Eligible banks may originate new Main Street loans or use Main Street loans to increase the size of existing loans to businesses.
- Banks will retain a 5 percent share, selling the remaining 95 percent to the Main Street facility, which will purchase up to \$600 billion of loans.
- Firms seeking Main Street loans must commit to make reasonable efforts to maintain payroll and retain workers.

# The Fed's balance sheet has expanded to approximately \$7 trillion



Case 3:20-cv-00374 Document 46-6 Filed 06/26/20 Page 36 of 106 PageID #: 1898

Source: Board of Governors of the Federal Reserve System. "Factors Affecting Reserve Balances of Depository Institutions and Condition Statements of Federal Reserve Banks." H.4.1 (Table 1), May 2020

# This is an unprecedented time for us — socially and economically.

- As long as the novel coronavirus is spreading quickly, it will be difficult for the economy to stabilize and then recover.
- Therefore, a swift, responsible public health response is critical.
- As Fed Chair Jerome Powell said, the virus will dictate the timeline for an economic rebound.









Data at your fingertips



# EconomyNow

Stay up to date with the economy with our new mobile app.



# Tennessee Economic Outlook and Tax Revenues

William F. Fox, Director  
May 27, 2020



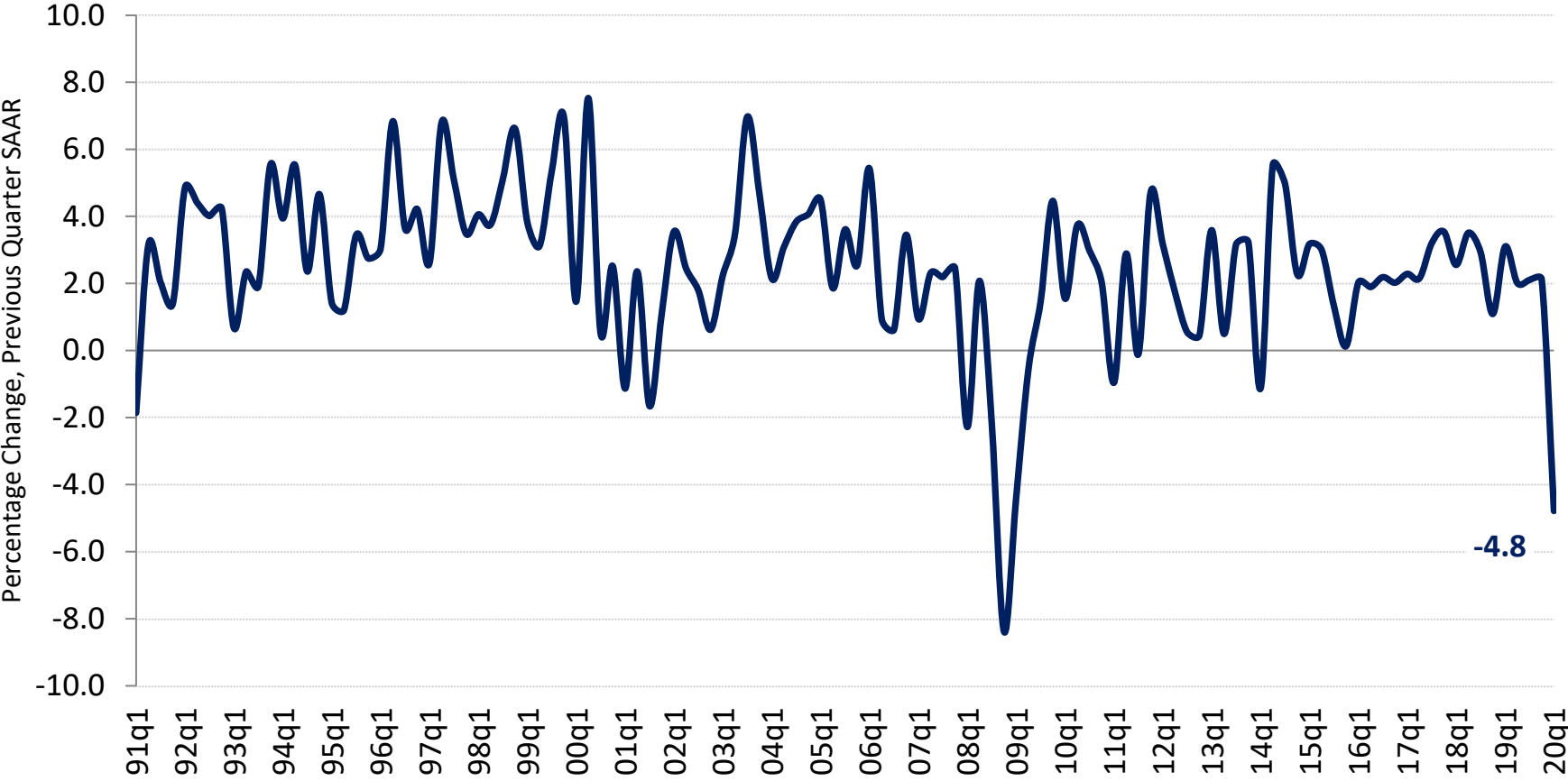
THE UNIVERSITY OF  
TENNESSEE  
KNOXVILLE

---

BOYD CENTER FOR BUSINESS  
AND ECONOMIC RESEARCH

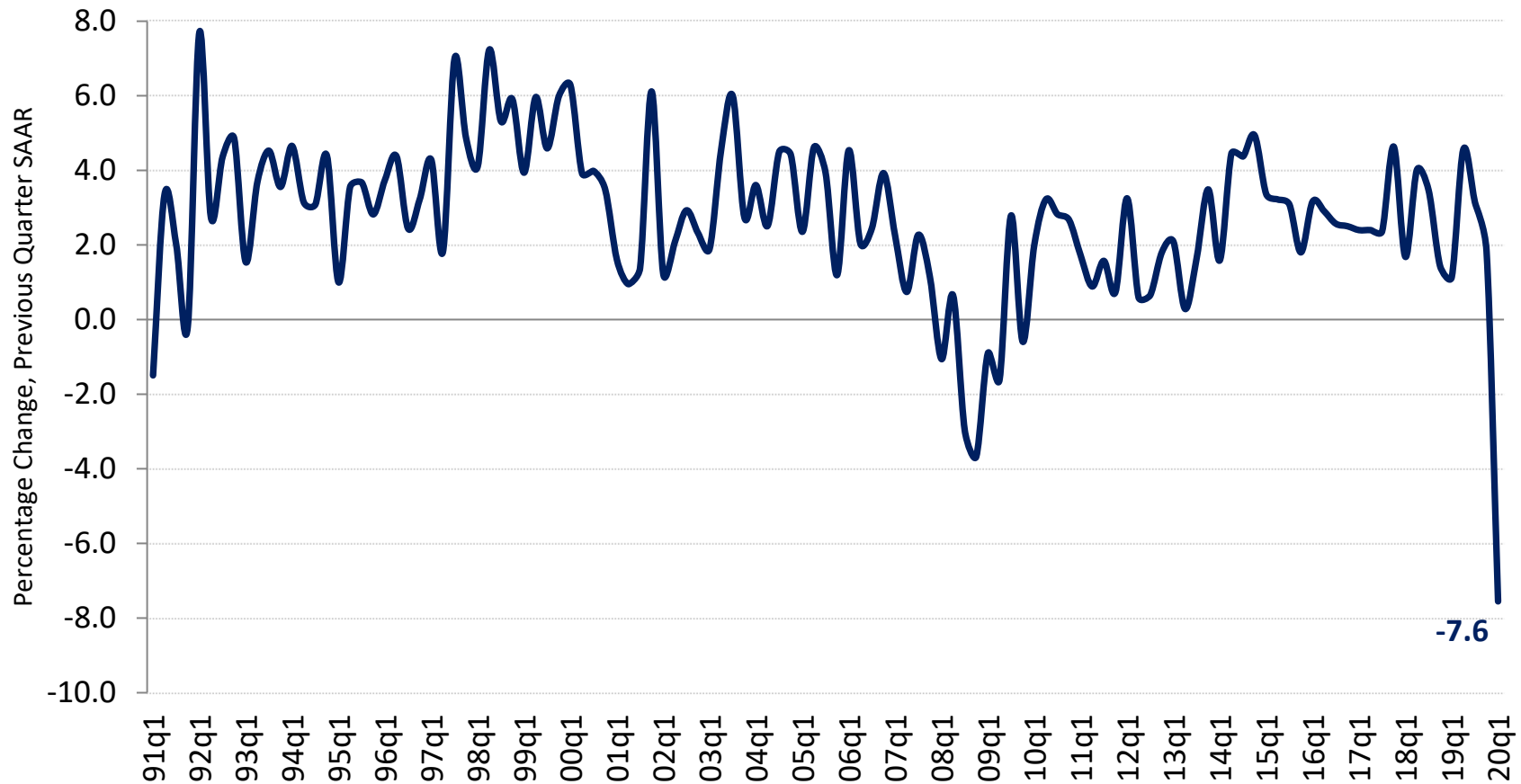
# GDP fell in Q1 and will fall much more in Q2

(chained 2012 dollars)

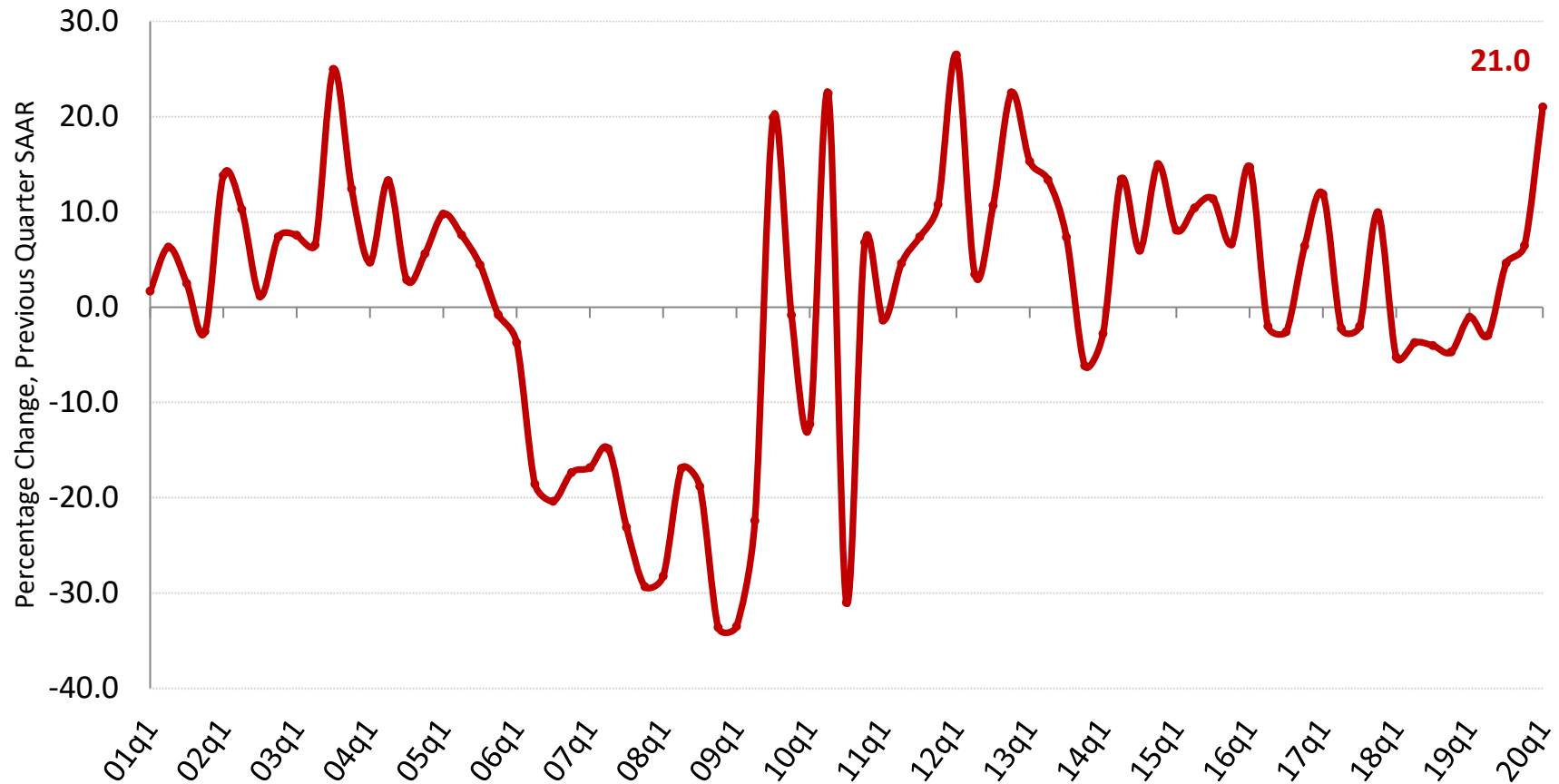




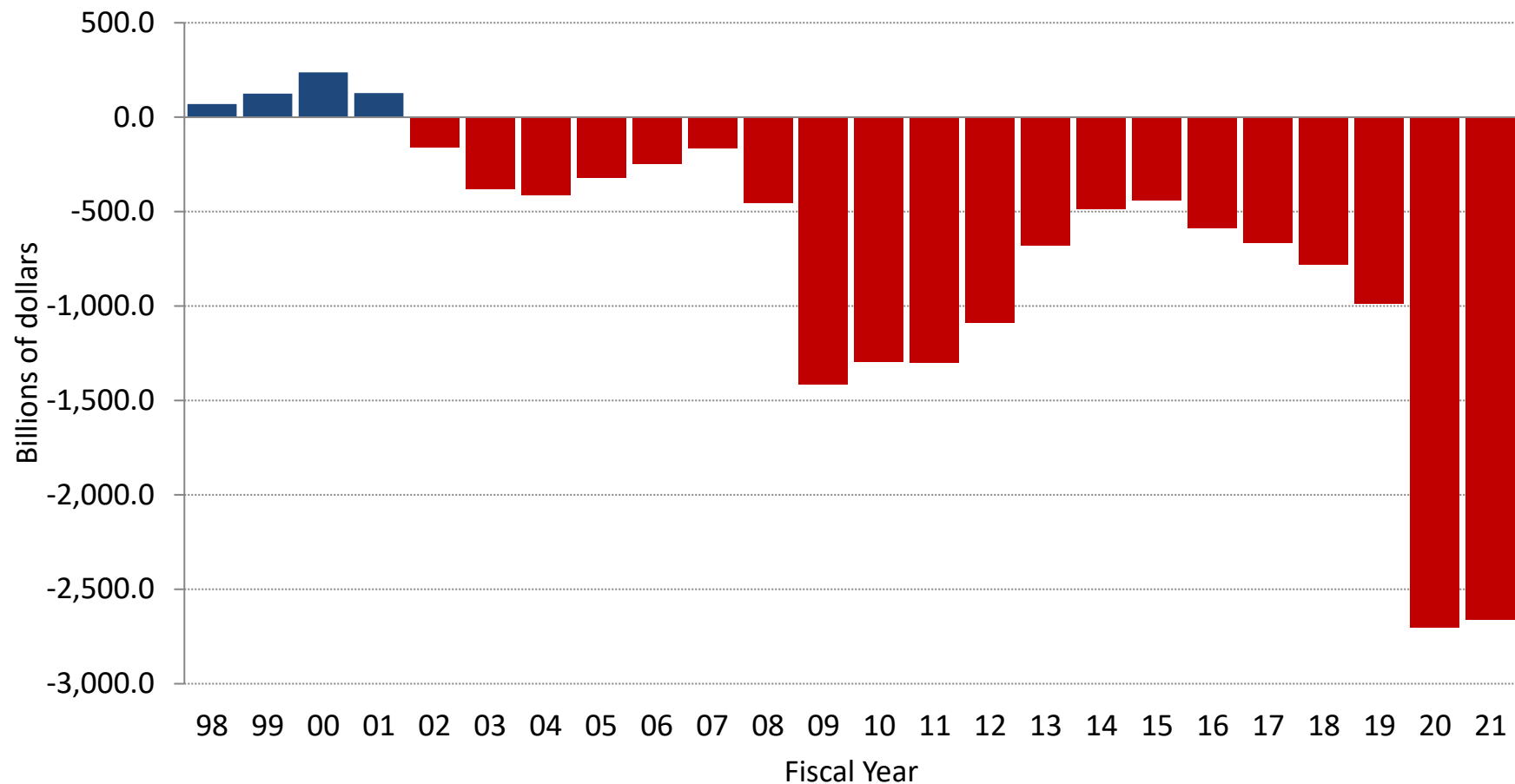
# Personal Consumption Expenditures Fell Faster than GDP (chained 2012 dollars)



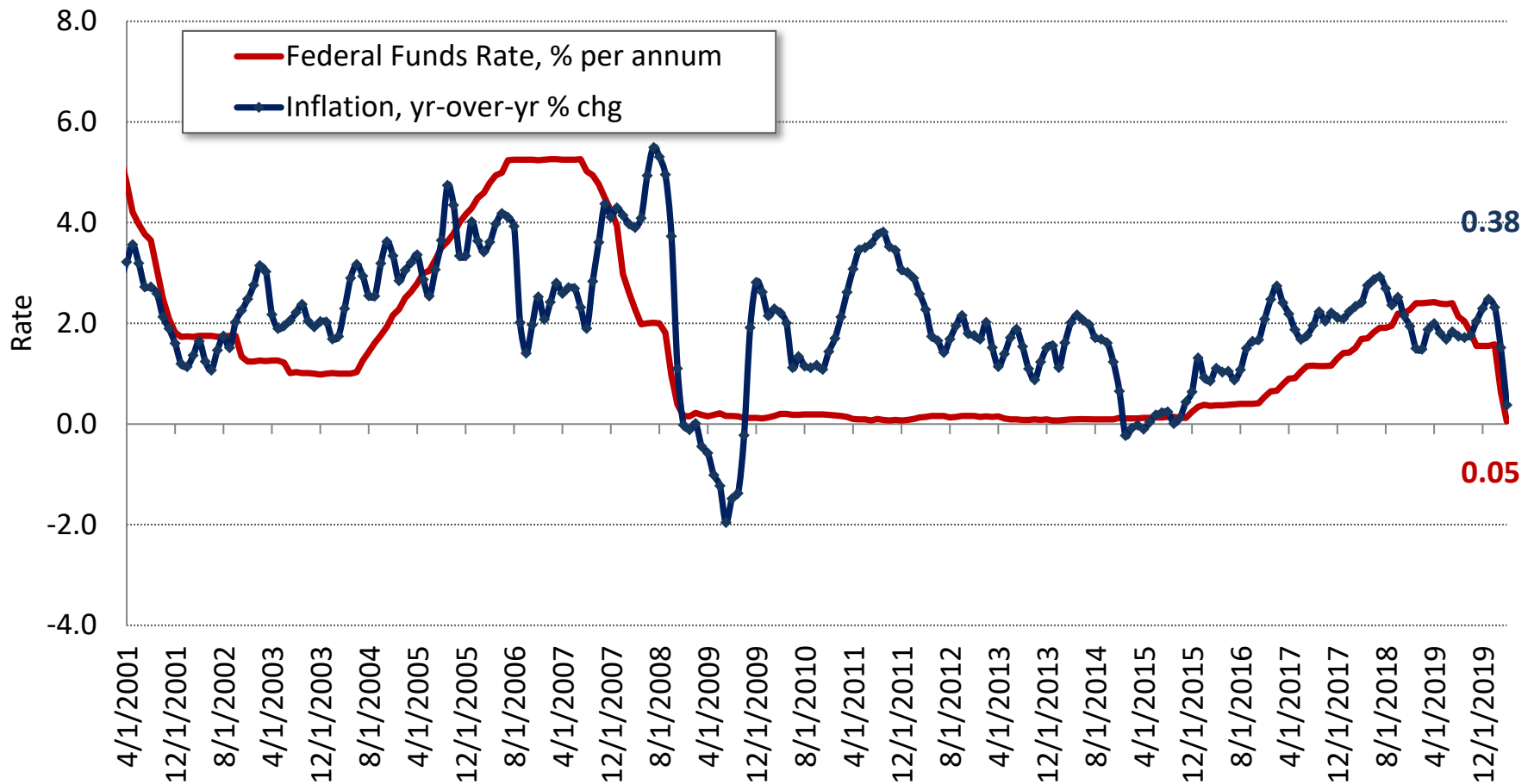
# Private Residential Fixed Investment Rose Rapidly in Q1



# Federal Budget Deficits are Expanding Quickly

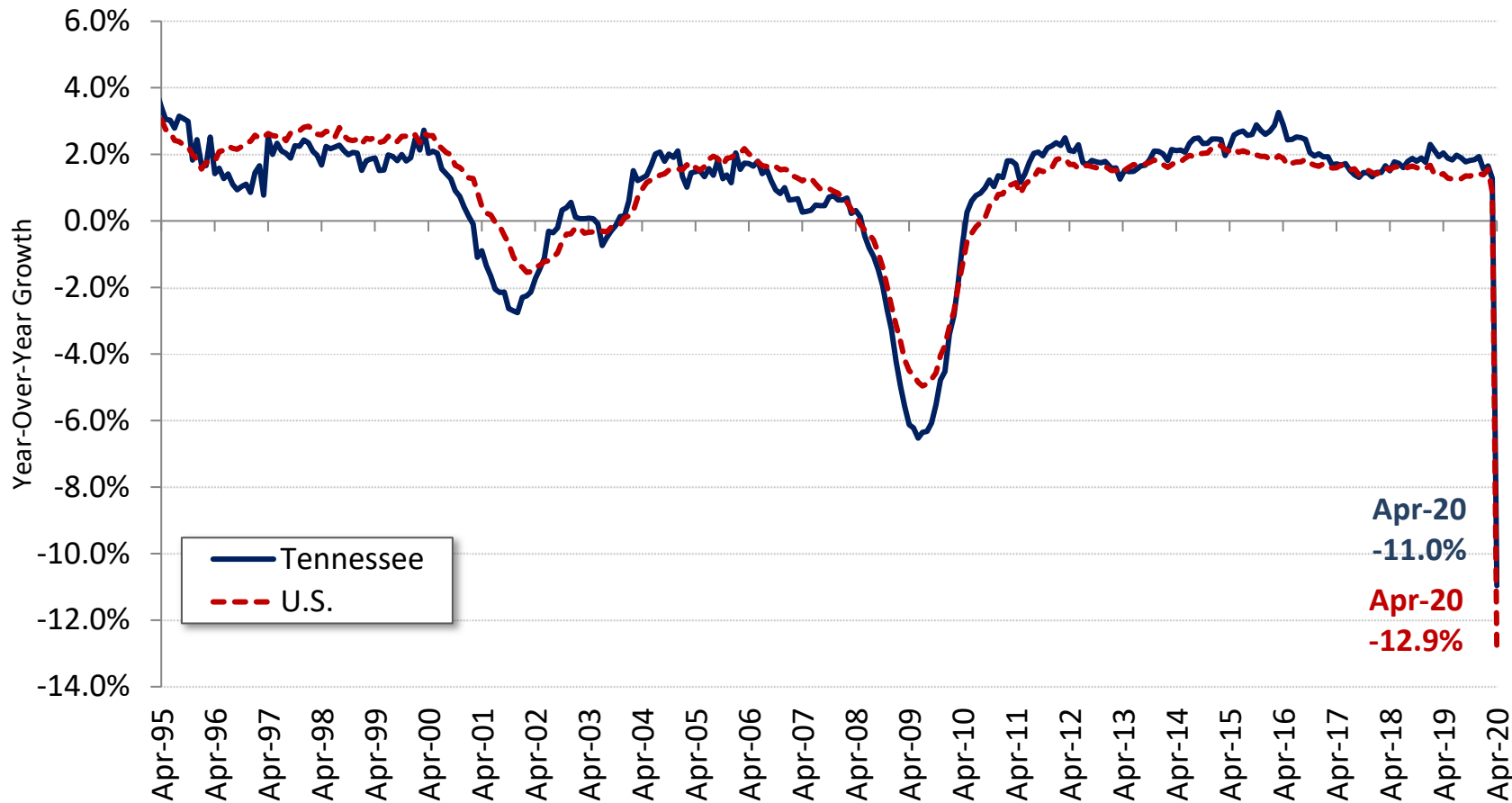


# Interest Rates and Inflation Plummeted with Covid 19

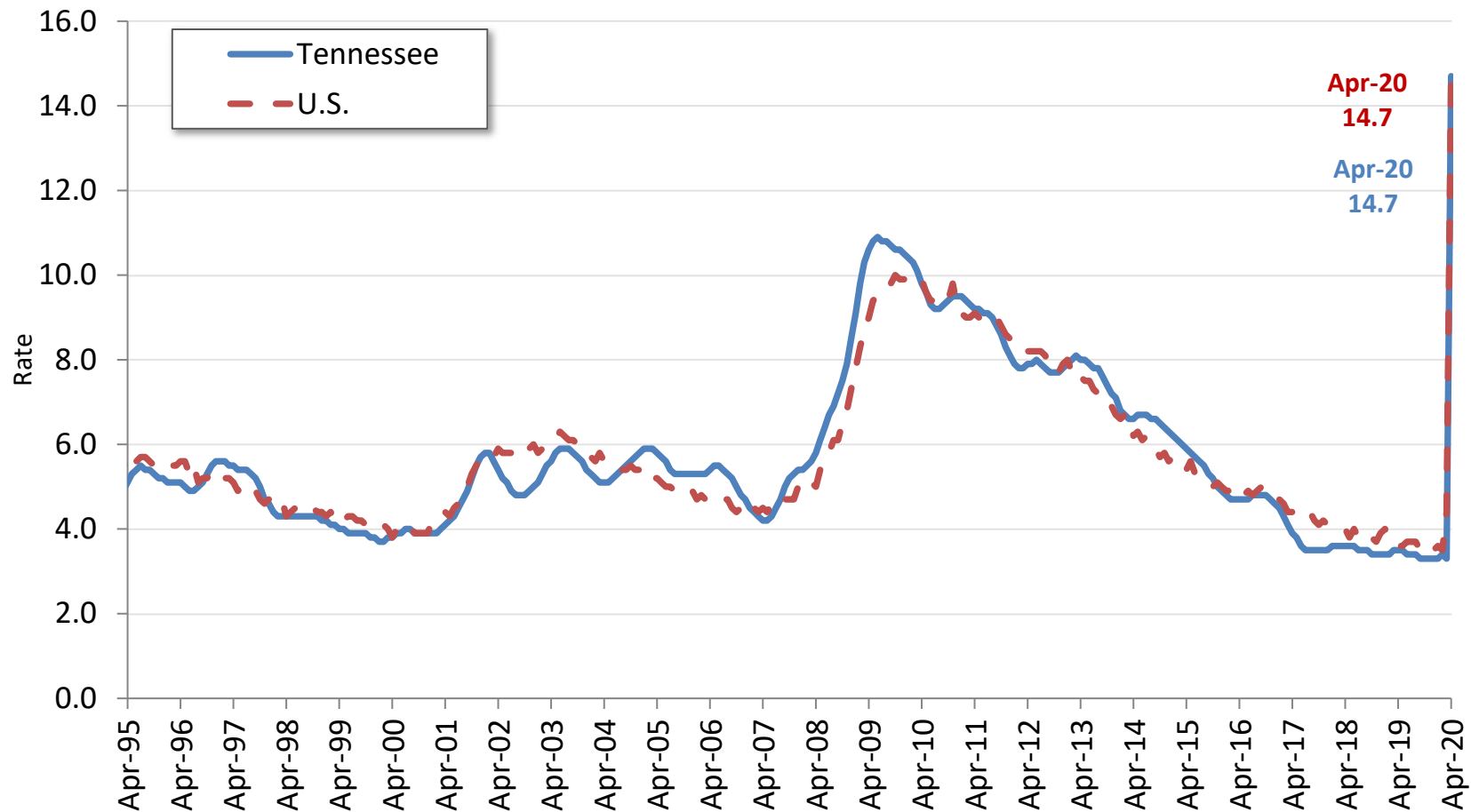


# Tennessee and U.S. Nonfarm Jobs Fell Dramatically in April

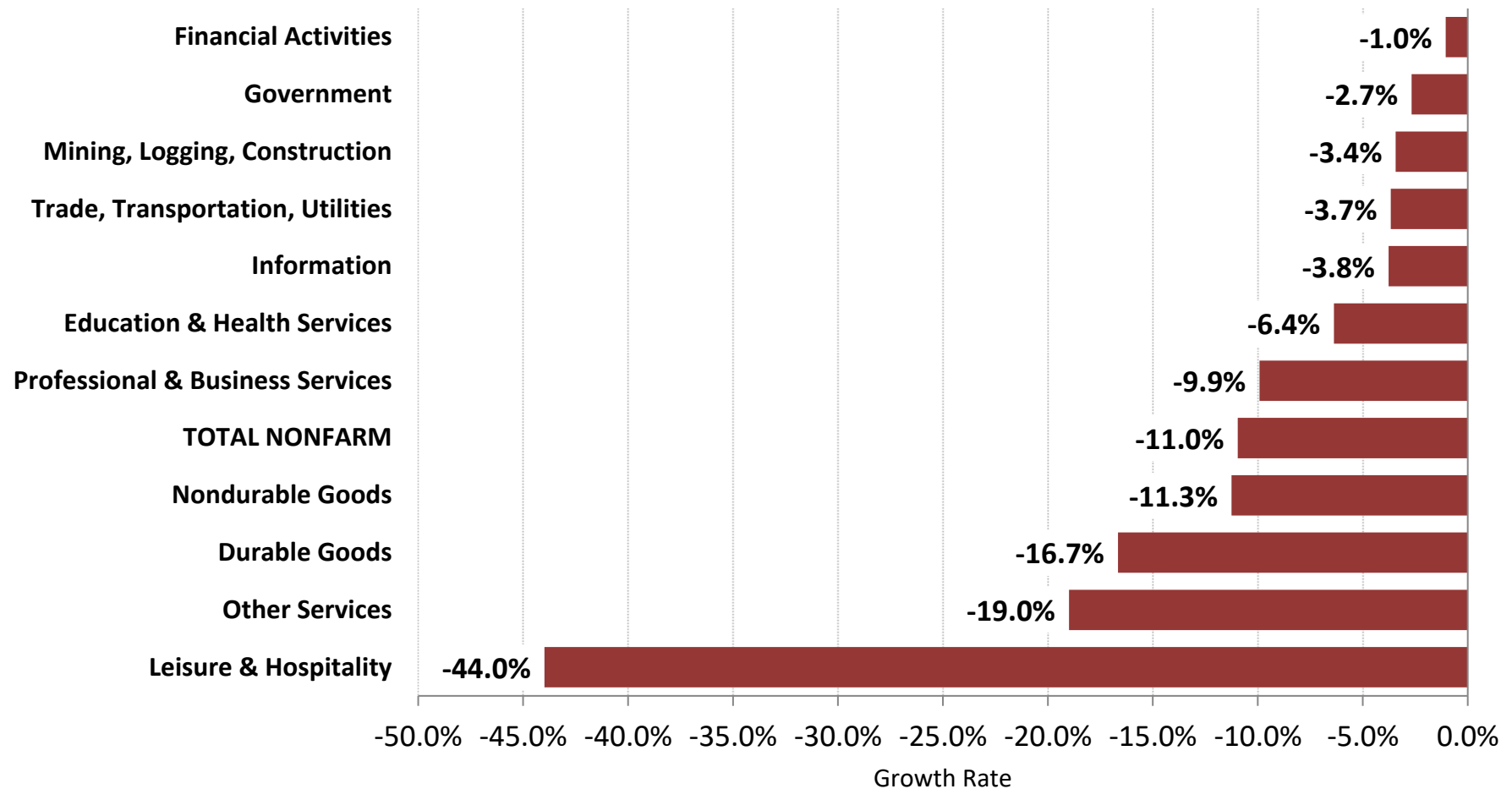
(year-over-year growth)



# Tennessee and U.S. Unemployment Rates Rose with the Employment Declines (seasonally adjusted)



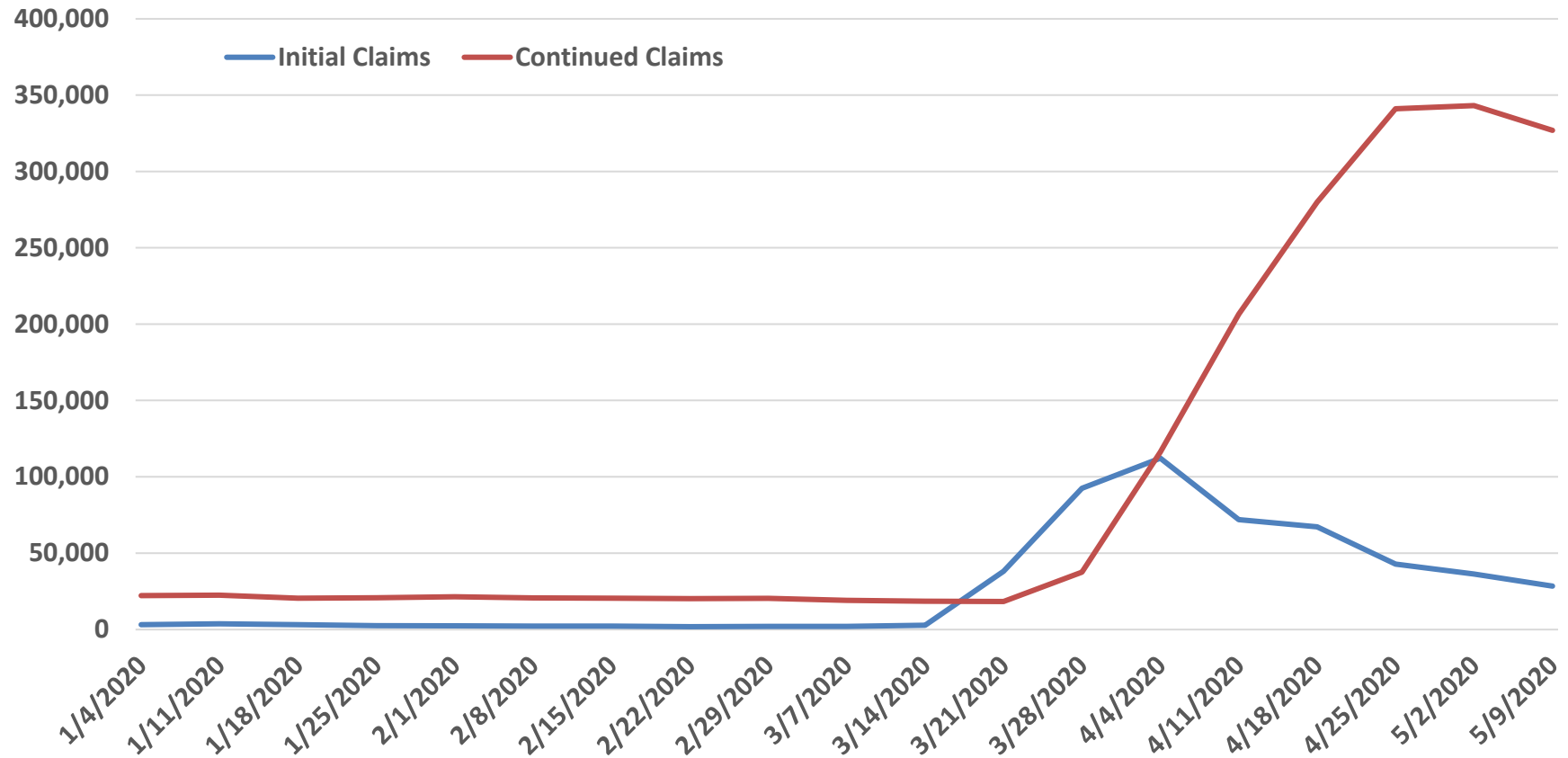
# Every Sector in Tennessee Lost Jobs in April (April Year over Year Change)





# Tennessee Unemployment Claims Remain Very High

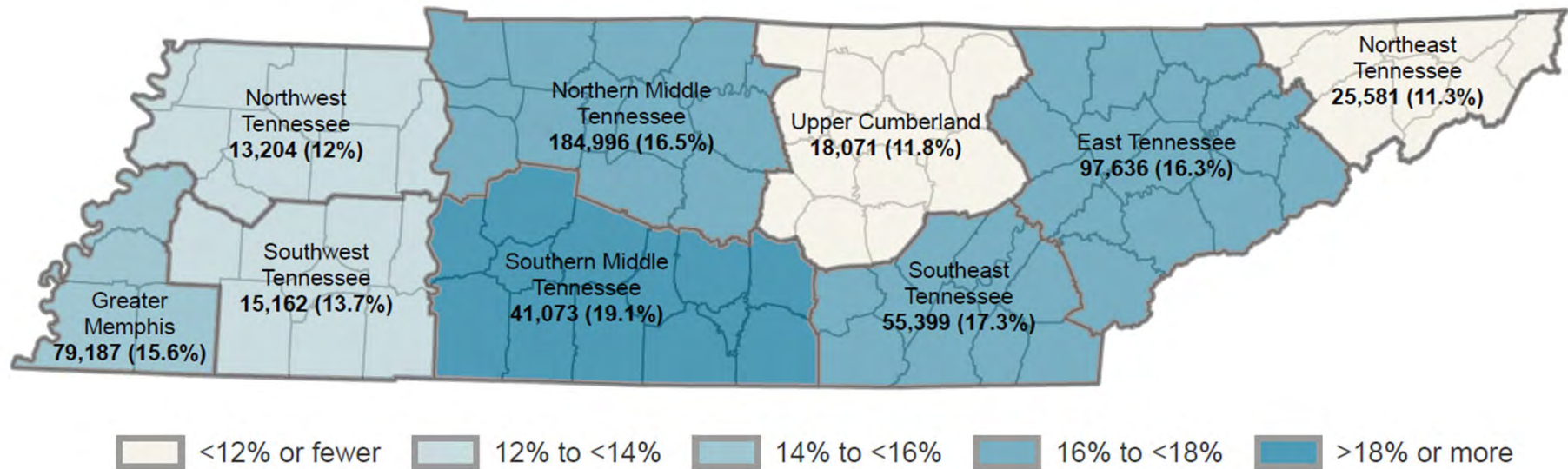
Updated weekly; last revision 5/21/20



Source: Tennessee Department of Labor and Workforce Development

# Total UI Claims since 3/21 and Percent of Workforce Filing Claims, Week Ending 5/16/2020

Updated weekly; last revision 5/21/20

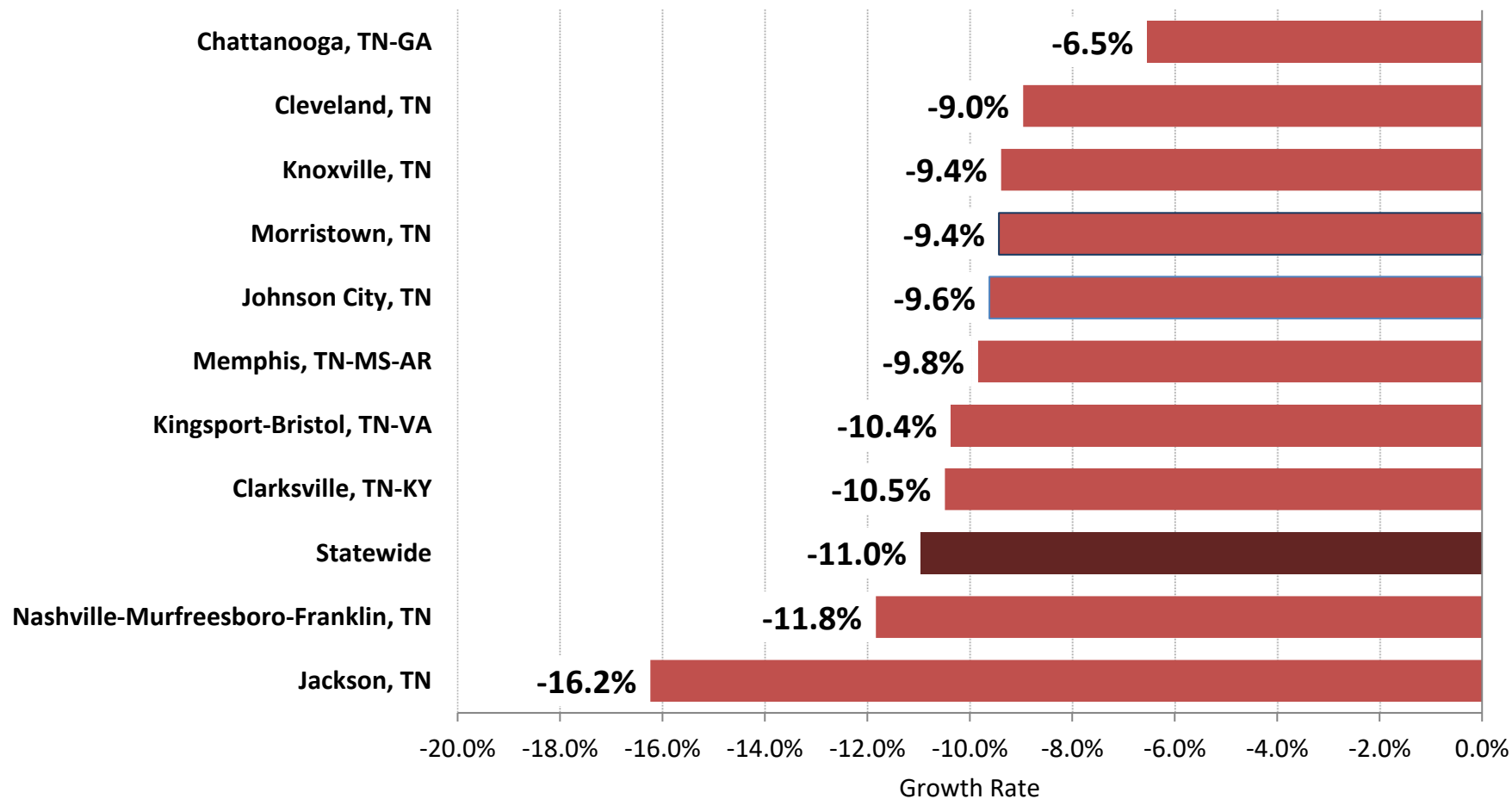


Note: Weekly new UI claims at the LWDA regions are scaled to the statewide total new claims filed as reported by the Tennessee Department of Labor & Workforce Development

Source: Tennessee Department of Labor and Workforce Development, U.S. Bureau of Labor Statistics

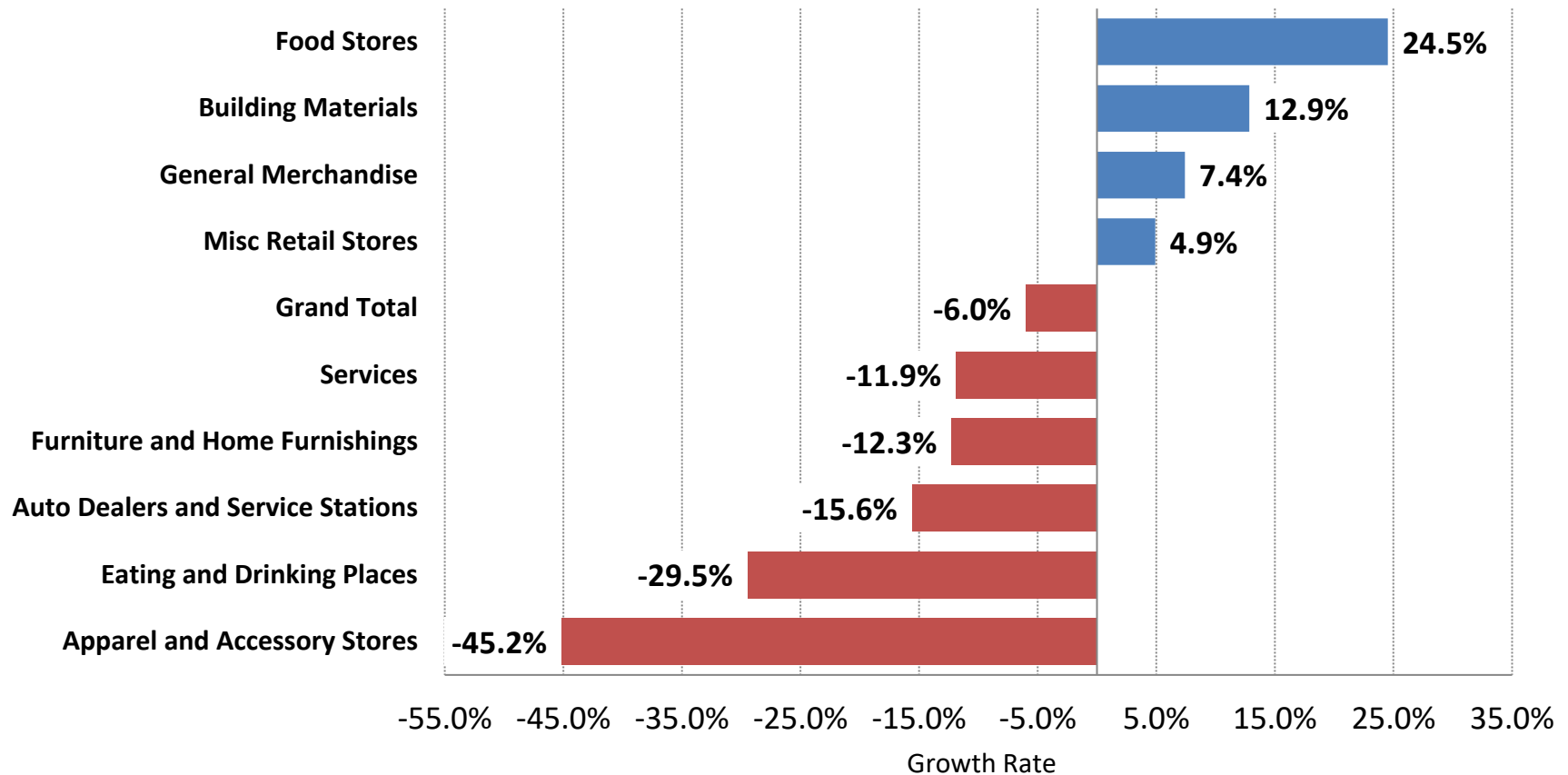
# All MSAs Experienced Large Nonfarm Employment Losses

(April Year over Year Change)



# Sales Tax Collections Fell in Many Categories but Rose in Many Others

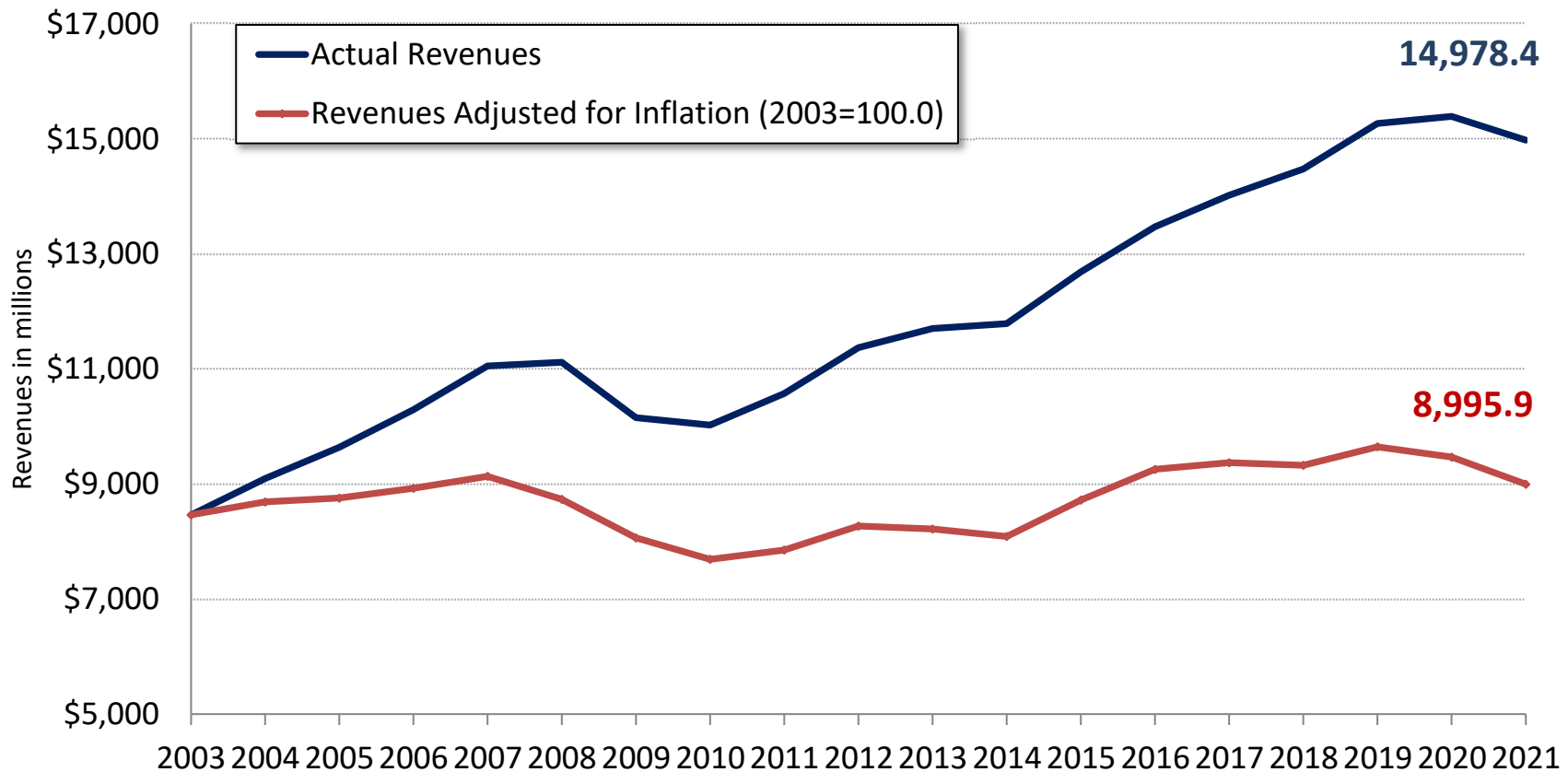
## (April Year over Year Change)



Tennessee Department of Revenue Collections (Millions of Dollars)									
	2019			2020			2021		
	Amount	Percent Change	General Fund	Amount	Percent Change	General Fund	Amount	Percent Change	General Fund
<b>Sales and Use</b>	9,337.8	5.7	8,758.2	9,418.1	0.9	8,821.1	9,360.2	-0.6	8,771.1
<b>Gasoline</b>	843.4	4.4	12.9	831.3	-1.4	13.1	838.9	0.9	13.3
<b>Motor Fuel</b>	257.7	15.7	2.1	320.1	24.2	2.8	327.5	2.3	2.9
<b>Gasoline Inspection</b>	69.8	1.2	20.3	67.8	-2.9	20.0	68.8	1.4	20.4
<b>Motor Vehicle Registration</b>	337.9	3.2	52.4	332.0	-1.7	52.4	327.5	-1.3	51.7
<b>Income</b>	203.8	-17.2	130.9	134.5	-34.0	86.3	80.7	-40.0	51.8
<b>Privilege</b>	376.8	4.6	370.2	384.6	2.1	378.2	393.6	2.3	387.1
<b>Gross Receipts</b>	393.2	6.7	225.4	391.0	-0.6	224.2	393.0	0.5	225.0
<b>Gross Receipts - TVA</b>	361.9	5.3	199.2	365.5	1.0	200.5	365.0	-0.1	199.8
<b>Gross Receipts - Other</b>	31.3	26.2	26.2	25.5	-18.5	21.9	28.0	9.8	24.1
<b>Beer</b>	17.0	1.8	11.4	17.2	1.4	11.6	17.6	2.0	11.8
<b>Alcoholic Beverage</b>	70.2	5.2	58.0	75.1	7.0	62.1	78.1	4.0	64.6
<b>Franchise &amp; Excise</b>	2,752.0	7.1	2,514.9	2,833.9	3.0	2,619.0	2,487.9	-12.2	2,315.1
<b>Inheritance &amp; Estate</b>	2.2	-414.3	2.2	-1.8		-1.8	0.0		0.0
<b>Tobacco</b>	241.8	-2.6	241.8	237.8	-1.7	237.8	233.0	-2.0	233.0
<b>Motor Vehicle Title</b>	23.6	-6.3	20.9	23.1	-2.3	20.5	23.1	-0.1	20.5
<b>Mixed Drink</b>	136.1	14.0	68.1	135.0	-0.8	67.5	146.7	8.6	73.3
<b>Business</b>	203.4	5.8	203.4	191.2	-6.0	191.2	200.8	5.0	200.8
<b>Severance</b>	1.0	0.0	0.5	0.8	-20.0	0.2	0.8	0.0	0.2
<b>Coin Amusement</b>	0.3	0.0	0.3	0.2	0.0	0.2	0.2	0.0	0.2
<b>Unauthorized Substance</b>	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>Total</b>	15,268.0	5.5	12,693.9	15,391.8	0.8	12,804.5	14,978.4	-2.7	12,441.8

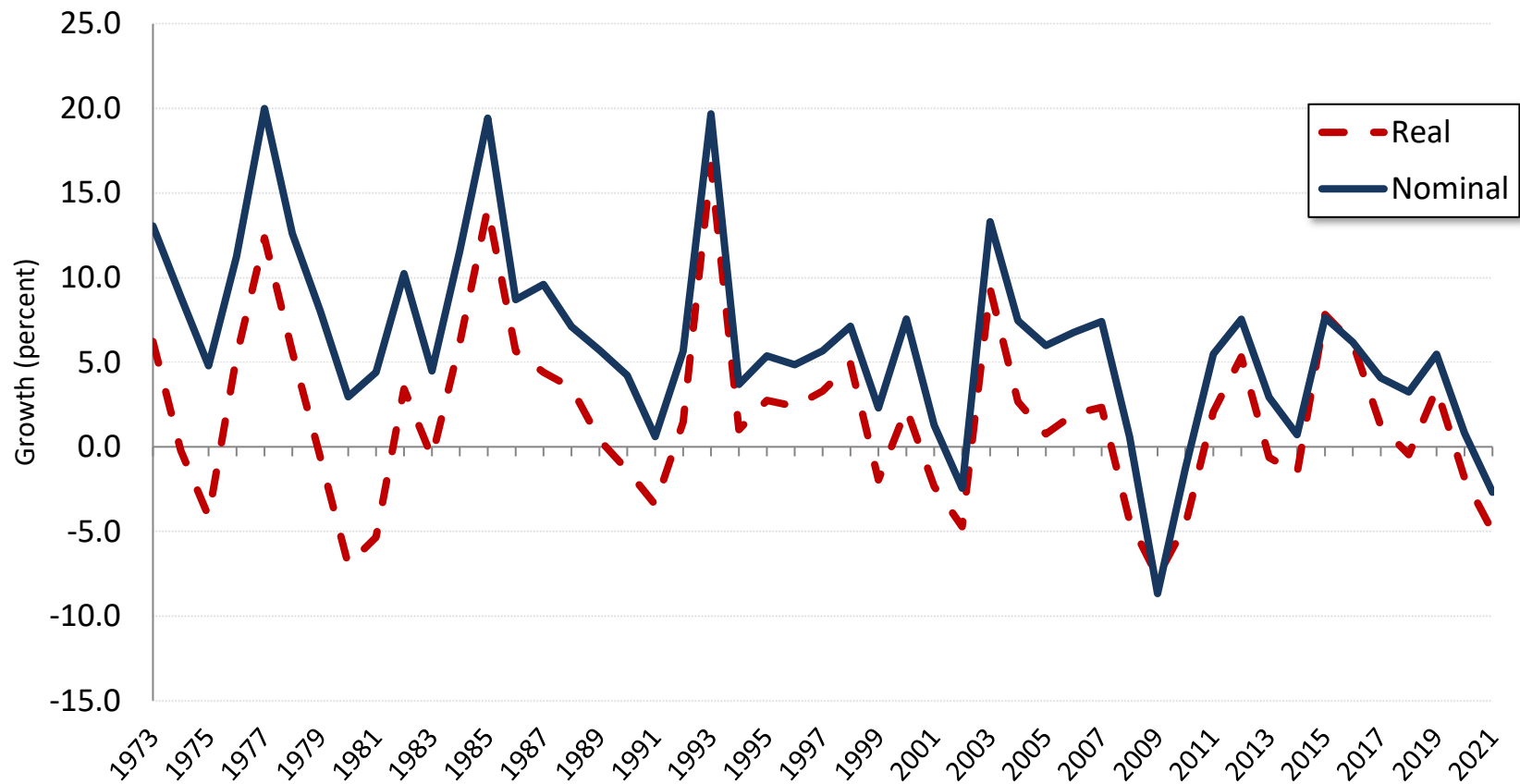
May 15, 2020  
William F. Fox  
Boyd Center for Business and Economic Research  
University of Tennessee, Knoxville

# Tax Revenues will Fall, but Much Less than During the 2008-09 Recession



# Tax Collections will Decline in 2021

## 1973–2021





# Sales Tax Revenue Grew in Most Counties during April 2020

Updated monthly; last revision 5/14/20

Area	April-19 \$	April-20 \$	Change (%)	Area	April-19 \$	April-20 \$	Change (%)	Area	April-19 \$	April-20 \$	Change (%)	Area	April-19 \$	April-20 \$	Change (%)
Anderson	2,656,294	3,152,374	18.7	Franklin	738,848	836,568	13.2	Lewis	279,410	325,554	16.5	Scott	329,696	362,280	9.9
Bedford	1,210,569	1,348,727	11.4	Gibson	1,035,866	1,234,415	19.2	Lincoln	638,332	704,646	10.4	Sequatchie	281,558	323,490	14.9
Benton	362,385	425,280	17.4	Giles	721,941	816,882	13.2	Loudon	1,036,378	1,171,947	13.1	Sevier	9,651,000	6,351,352	-34.2
Bledsoe	95,096	110,142	15.8	Grainger	214,940	272,748	26.9	McMinn	1,042,116	1,323,580	27.0	Shelby	28,953,278	33,738,787	16.5
Blount	4,196,689	4,468,592	6.5	Greene	1,591,928	1,767,154	11.0	McNairy	332,667	363,519	9.3	Smith	394,315	436,477	10.7
Bradley	3,174,453	3,295,721	3.8	Grundy	132,381	151,576	14.5	Macon	412,366	486,716	18.0	Stewart	159,790	208,807	30.7
Campbell	678,657	733,467	8.1	Hamblen	2,225,237	2,280,653	2.5	Madison	4,708,378	4,820,633	2.4	Sullivan	4,639,071	4,883,187	5.3
Cannon	125,279	143,220	14.3	Hamilton	12,581,611	13,292,866	5.7	Marion	835,197	868,581	4.0	Sumner	4,263,819	4,652,829	9.1
Carroll	452,479	531,870	17.5	Hancock	40,007	47,946	19.8	Marshall	685,772	739,875	7.9	Tipton	950,817	1,117,193	17.5
Carter	1,038,203	1,206,817	16.2	Hardeman	403,010	409,310	1.6	Mauzy	2,592,302	2,804,337	8.2	Trousdale	106,793	123,308	15.5
Cheatham	755,377	940,935	24.6	Hardin	834,285	848,505	1.7	Meigs	102,508	116,699	13.8	Unicoi	296,866	355,595	19.8
Chester	226,156	265,390	17.3	Hawkins	829,736	1,044,523	25.9	Monroe	923,213	1,037,795	12.4	Union	169,789	200,457	18.1
Claiborne	372,877	419,097	12.4	Haywood	283,736	327,512	15.4	Montgomery	6,187,805	6,402,917	3.5	Van Buren	45,333	55,439	22.3
Clay	106,570	101,677	-4.6	Henderson	637,316	715,190	12.2	Moore	107,688	75,002	-30.4	Warren	945,534	1,054,406	11.5
Cocke	800,053	890,958	11.4	Henry	943,056	968,594	2.7	Morgan	121,102	147,883	22.1	Washington	4,365,790	4,444,463	1.8
Coffee	1,960,432	2,140,914	9.2	Hickman	251,761	300,840	19.5	Obion	798,697	861,168	7.8	Wayne	184,743	210,077	13.7
Crockett	172,508	214,063	24.1	Houston	95,402	113,450	18.9	Overton	362,442	384,460	6.1	Weakley	642,774	698,119	8.6
Cumberland	1,630,638	1,789,599	9.7	Humphreys	367,904	474,098	28.9	Perry	120,167	113,141	-5.8	White	399,153	517,228	29.6
Davidson	37,773,114	36,432,972	-3.5	Jackson	79,159	101,161	27.8	Pickett	65,937	80,375	21.9	Williamson	11,567,614	12,229,810	5.7
Decatur	185,608	210,009	13.1	Jefferson	1,053,450	1,211,459	15.0	Polk	152,891	182,957	19.7	Wilson	4,176,180	4,437,680	6.3
De Kalb	379,785	415,310	9.4	Johnson	122,013	147,974	21.3	Putnam	3,421,269	3,404,076	-0.5	Out-of-state collections	23,646,939	9,960,480	-57.9
Dickson	1,795,457	1,885,219	5.0	Knox	17,187,079	17,802,203	3.6	Rhea	767,093	857,291	11.8	Telecomm collections	2,477,369	2,750,037	11.0
Dyer	1,120,564	1,182,902	5.6	Lake	63,325	72,432	14.4	Roane	1,428,692	1,663,678	16.4	Total Local Sales	245,584,431	243,558,925	-0.8
Fayette	631,406	866,677	37.3	Lauderdale	330,373	379,490	14.9	Robertson	1,869,884	2,202,444	17.8				
Fentress	291,633	323,830	11.0	Lawrence	977,101	1,081,115	10.6	Rutherford	12,010,154	13,113,729	9.2				

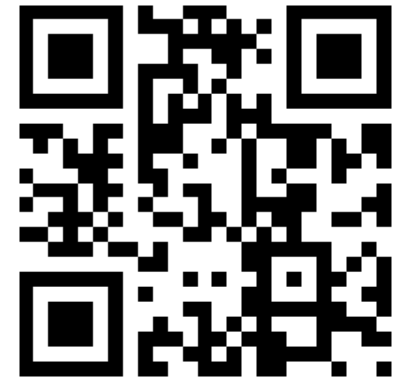
Source: Tennessee Department of Revenue, *Monthly Revenue Collections*.

**Boyd Center for Business & Economic Research  
Haslam College of Business**

The University of Tennessee, Knoxville  
716 Stokely Management Center  
916 Volunteer Boulevard  
Knoxville, Tennessee 37996-0570

phone: 865.974.5441  
fax: 865.974.3100

<http://cber.haslam.utk.edu>



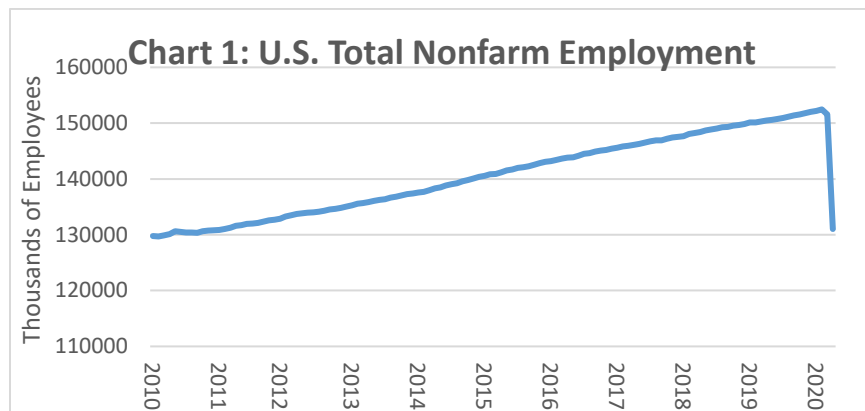
# **The Impact of Covid 19 on Tennessee's Economic Outlook: Revised Revenue Forecasts FY20 and FY21**



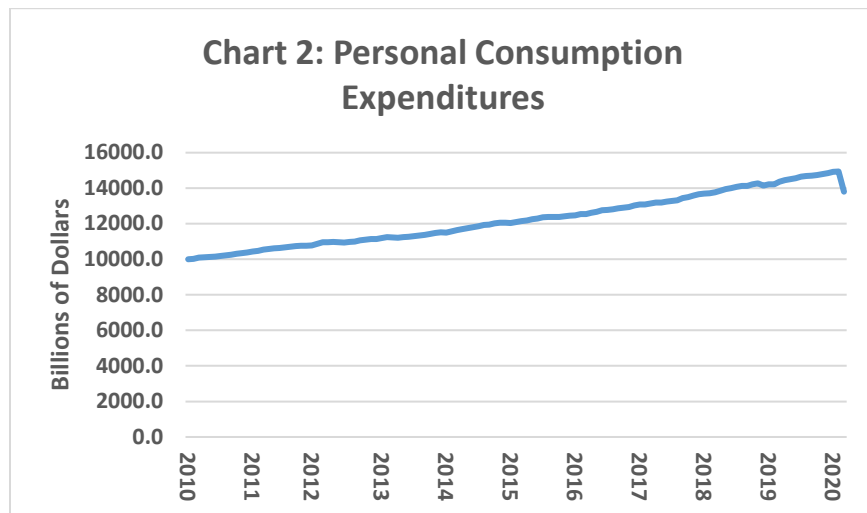
**Jon L. Smith, Director  
Bureau of Business and Economic Research**

## I. Covid 19 Impact on the National Economy:

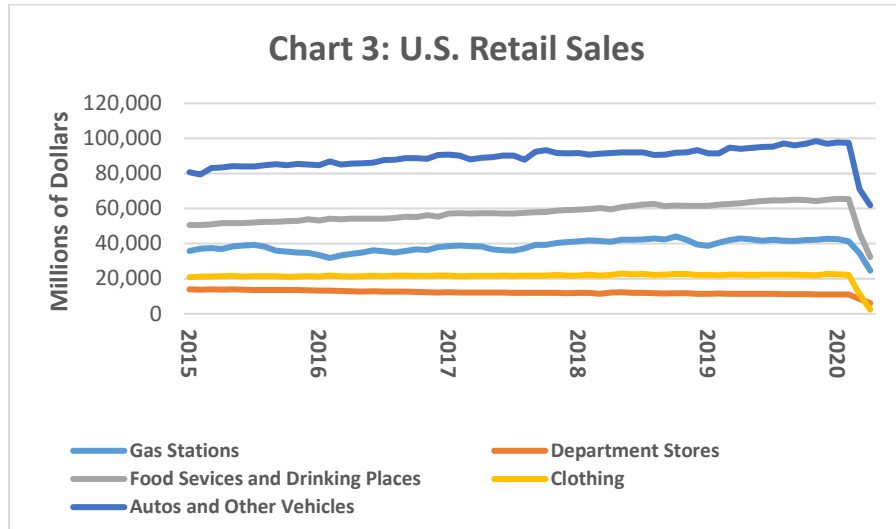
The spread of the Covid 19 virus to the United States and the subsequent measures to impose measures to limit the spread of the virus have had profound effects upon the national and state economic outlooks for the foreseeable future. By any measure, there has been a tremendous shock to the national economy. As the chart below demonstrates, the impact upon national employment has been unprecedented.



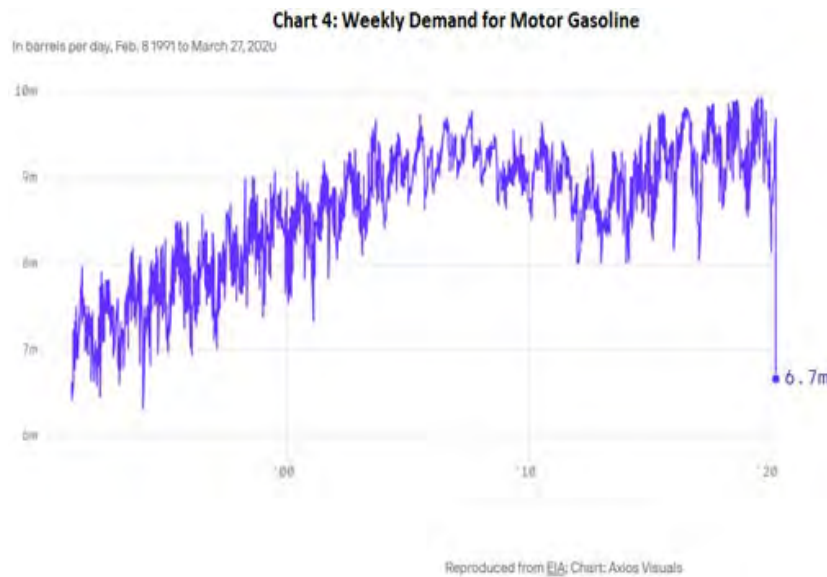
The drop in employment coupled with social distancing measures that have been imposed have also had a tremendous impact upon consumption spending as shown in Chart 2.



The most recent data from the U.S. Census Bureau’s Census of Retail Trade advance monthly sales report demonstrates that some sectors of the economy have been disproportionately impacted by the decline in consumption spending as is shown in Chart 3.

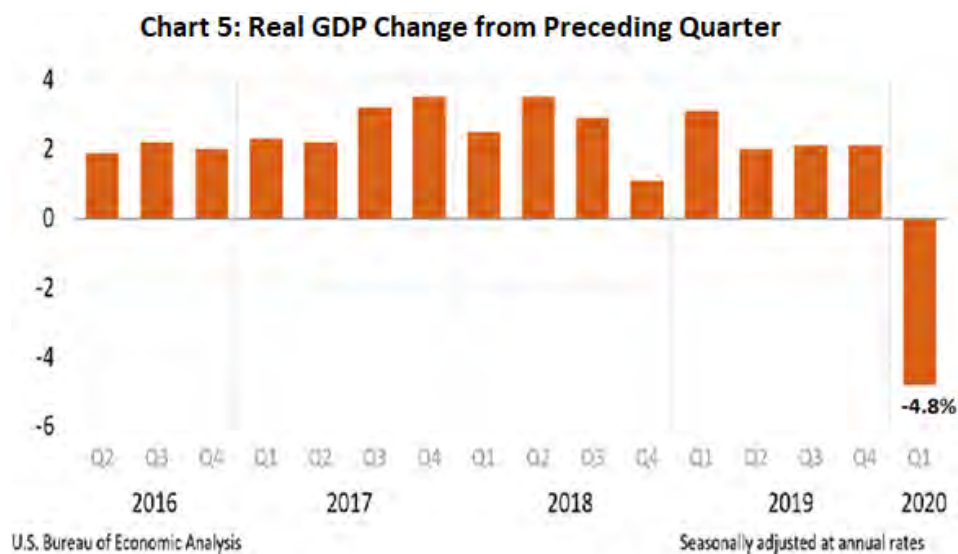


The hospitality industry has been severely affected both in terms of the demand for hotel accommodations sales of food and drinking places. Restrictions placed upon travel implicit in social distancing requirements have severely affected gasoline sales as shown in Chart 4



Department store and clothing sales have also been severely impacted. Several major department stores have indicated that they will not be able to sustain operations if the “lock down” continues.

Given that consumption spending accounts for almost 70% of economic output, it is clear that the effect of the virus upon the national economy will be profound. Indeed, as Chart 5 shown, real GDP for the first quarter of the next fiscal year recorded a 4.8% decrease over the preceding quarter.



## II. Covid 19 Impact on State Economies:

While of the virus has had a significant impact upon the national economy, its impact upon state economies has been even more severe. States are typically required by state law to present annual balanced budgets. This severely limits their ability to react to events such as the Covid 19 pandemic. The available options for dealing with severe reductions in state revenues are most often, cutting budgets, using “rainy day funds”, or if possible, imposing state tax increases. The more severe the revenue reductions, the more limited are the options open to state legislatures.

Table 1, taken from a report by the National Conference of State Legislatures, shows the impact upon various state revenue projections. These revenue changes reflect the size of annual state budgets and the sources of state revenues. States typically depend upon state personal and corporate income tax collection, state sales and use tax collections, and a variety of other revenue sources. States, such as Tennessee, that rely heavily on sales and use taxes are particularly vulnerable to events that have significant negative impacts upon personal consumption expenditures.

It is important to realize that all of these estimates are preliminary. It is also important to realize that this event is what is often referred to as a “Classic Black Swan” event, one that is unpredictable and

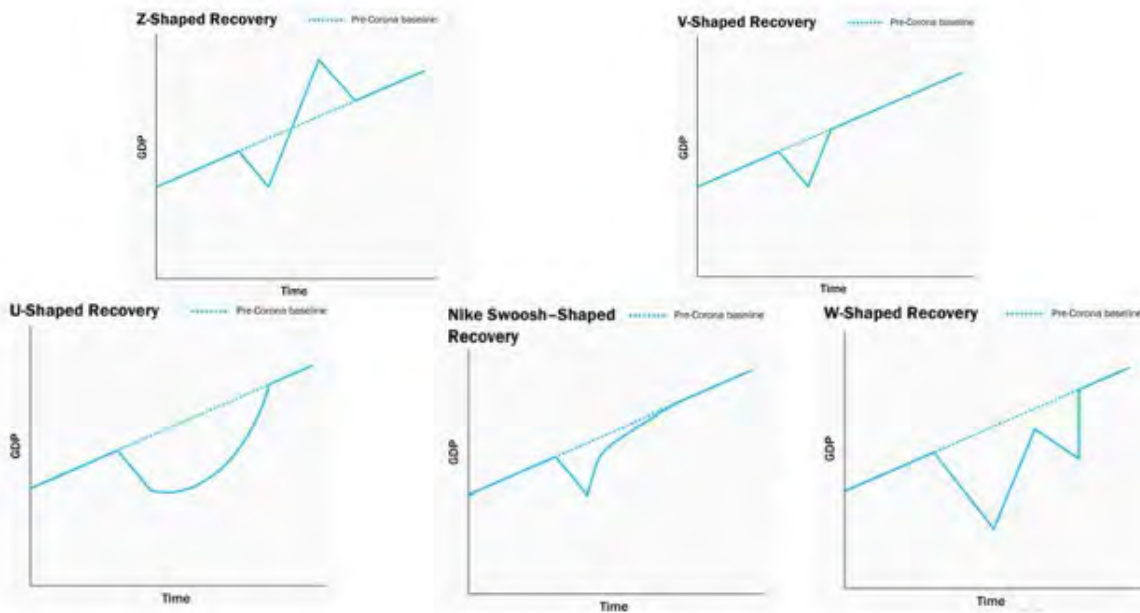
<b>Table 1: State Budget Modifications of Previous Revenue Projections</b>		
State	FY20	FY21
Alaska	General Fund Shortfall of \$527 Million	General Fund decline of \$815 Million
Arizona		\$600 Million to \$1.6 Billion revenue shortfall
Colorado	Reduced General Fund Expectations \$179.6 Million	General Down by \$749.9 Million
Connecticut	Expected end of year General Fund Deficit of \$170 Million	Decrease in General Fund revenues by \$2.2 Billion
Illinois		General Fund state source revenues revised down by \$4.6 Billion
Kansas	Decreased Estimates of Total Taxes \$826.9 Million	Decreased Estimates of Total Tax Collections by \$445 Million
Maryland	Comptroller Estimated shortfall of \$2.8 billion - nearly 15% of annual General Fund	
Minnesota	Current biennium General Fund revenue projected to be \$2.61 Billion below previous forecast	
New York	Estimated tax revenue decrease of between \$ billion and \$7 Billion	Estimated \$13.3 Billion shortfall
Oregon	Revenues projected to be down by \$2.7 Billion for 2019-2010 biennium	
Pennsylvania	Estimated revenue decrease \$2.7 billion to \$3.9 Billion for FY20 and FY21	
South Carolina	Estimated tax revenue decline of \$507 Million	General Fund revenues \$643 Million below estimates
Wyoming	Estimated revenues could fall by \$254.6 Million to \$1.4 billion over next 27 months.	
Source: National Conference of State Legislatures accessed May 24, 2020		



almost without precedent. In this case, this means that the models usually used to forecast revenue outcomes are unlikely to produce reliable estimates of future revenues. For this reason, it is necessary to develop an alternative method for estimating the impact of the virus upon anticipated revenues.

### III. Estimating the Impact of Covid 19 on Tennessee's Revenue Collections

There has been considerable discussion among economists regarding various scenarios regarding how the pandemic will affect the economy's growth path. Dr. Louise Scheiner of the Brookings Institute has summarized the general consensus regarding what path the will take over the next few years. In broad strokes, it is anticipated that employment and national output will follow the general pattern of an economic contraction, a sharp decline in employment and output followed by a return to the pre-contraction growth path. The two features of this pattern that are of note are the depth of the contraction, how far the below previous growth path the economy falls and the recovery period, how long it takes to return to the pre-contraction growth path. Below are five of the possible recovery scenarios discussed by Dr. Scheiner.



The top two are the most optimistic recovery scenarios. At the top left, the Z shaped recovery scenario postulates a sharp decline in economic activity followed by a robust recovery that rebounds over the previous growth path, returning quickly to the previous path. V shaped recovery assumes a similar

scenario, but without the extreme recovery prior to returning to the growth path. Both of these scenarios are very optimistic, and in the opinion of most economists rather unrealistic. The U shaped and “Swoosh” shaped recovery scenarios are considered the most likely recovery scenarios, with the W shaped scenario modified to admit the possibility of a virus rebound next year. Although we cannot use our usual forecasting tools to model the impact of the virus upon Tennessee’s revenues, it is possible to select a scenario that, based upon past experience, may roughly approximate a state recovery scenario that can be used to estimate the virus’ impact of state revenue collections.

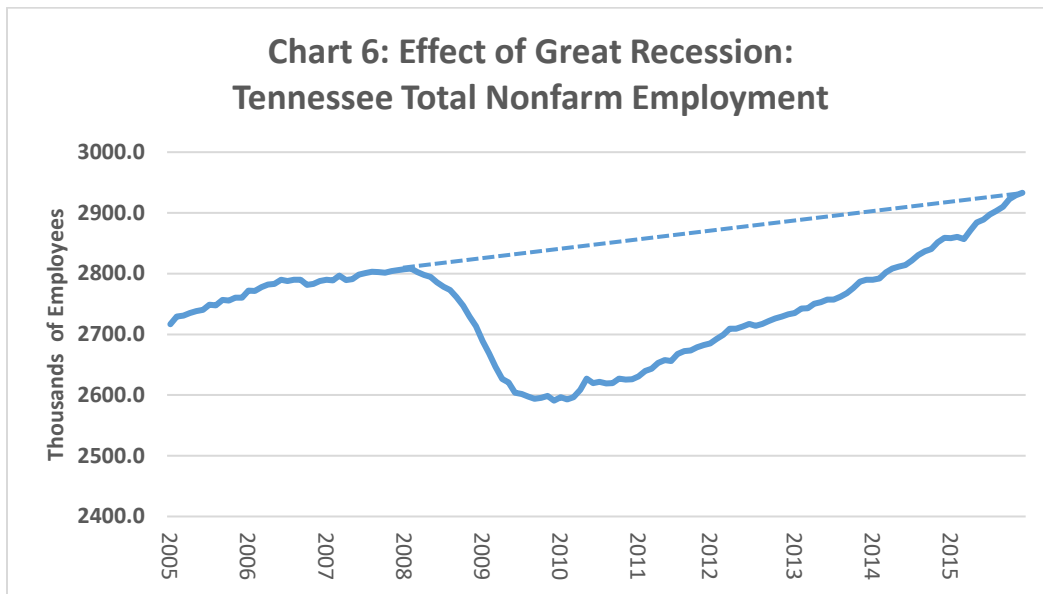
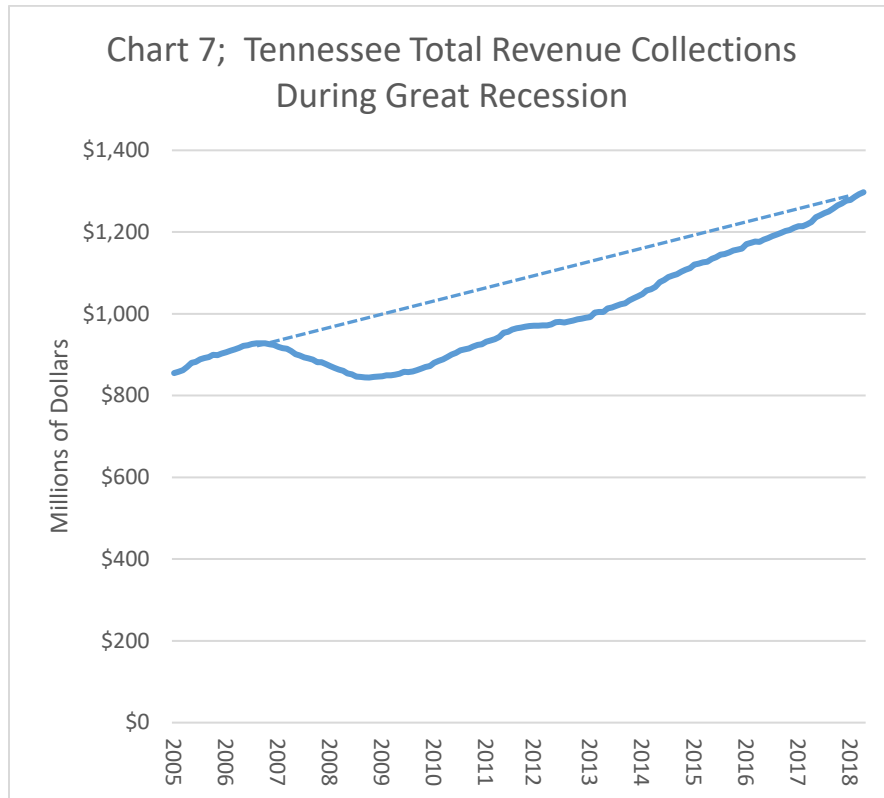


Chart 6 shows the path that total nonfarm employment in Tennessee followed during the Great Recession of 2008. Chart 7 shows how Tennessee revenue collections fared during the recession. While these patterns may not be repeated during the current pandemic, it is reasonable to assume that the state’s economy will likely follow something akin to the “Swoosh” recovery pattern. This is the scenario that a number of economists have indicated is the most likely recovery pattern for the national economy. By extension, it is reasonable to assume that the state’s recovery pattern will be similar.

Accordingly, I have adopted this scenario as a possible pattern to suggest how state revenues will react for the remainder of FY20 and FY 21 with respect to the depth and duration of the current contraction. If this scenario does indeed play out, the consequences will be severe in terms of the impact upon state revenues. Tennessee’s largest contributors revenue to total revenue collections are the finance and excise taxes, the sales and use tax, and the gasoline tax. Tennessee’s heavily reliance upon sales tax

collections makes it extremely vulnerable to the reduction in in consumption expenditures. Likewise, the sharp reductions in auto travel and gasoline consumption imply that this revenue source will be heavily impacted.



The following attachments show the revised revenue collections and allocations by fund for the current and next fiscal years. It is extremely important to realize that these estimates are based solely on the scenario selected and, given that there is very little hard data to rely on, they are very speculative. The FY20 revenue revisions were computed using actual collections through May which were provided by the Department of Revenue. The FY21 revisions are based upon the assumption that revenue collections will respond similar to the pattern followed during the recovery from the Great Recession.

Source of Revenue	Fy19	Fy20	% Change Over Previous Year	FY21	% Change Over Previous Year
Sale & Use Tax	\$9,337,817,700	\$9,593,294,435	2.74%	\$9,132,690,158	-4.80%
Gasoline Tax	\$843,361,000	\$793,949,187	-5.86%	\$766,417,637	-3.47%
Motor Fuel Tax	\$257,667,600	\$322,210,970	25.05%	\$277,641,524	-13.83%
Petro Special Tax	\$69,800,800	\$69,656,984	-0.21%	\$68,404,892	-1.80%
Motor Regis. Tax	\$337,862,900	\$324,426,453	-3.98%	\$309,012,483	-4.75%
Income Tax	\$203,817,800	\$50,778,845	-75.09%	\$55,528,089	9.35%
Privilege Tax	\$376,758,200	\$352,136,382	-6.54%	\$268,856,235	-23.65%
Gross Receipts - TVA	\$361,934,700	\$373,616,695	3.23%	\$379,742,350	1.64%
Gross Receipts - Other	\$31,298,200	\$26,144,976	-16.46%	\$35,443,757	35.57%
Beer Tax	\$16,954,100	\$17,398,254	2.62%	\$16,307,333	-6.27%
Alcoholic Beverage Tax	\$70,246,200	\$75,801,651	7.91%	\$78,808,040	3.97%
Franchise and Excise Tax	\$2,752,023,800	\$2,234,537,173	-18.80%	\$1,966,622,408	-11.99%
Inheritance Tax	\$2,221,300	\$0	-100.00%	\$0	0.00%
Tobacco Tax	\$241,773,000	\$328,748,220	35.97%	\$327,050,000	-0.52%
MotorTitle Tax	\$23,600,900	\$24,209,476	2.58%	\$21,499,987	-11.19%
MixDrinks Tax	\$136,145,200	\$143,349,892	5.29%	\$142,794,124	-0.39%
Business Tax	\$203,359,900	\$139,300,672	-31.50%	\$210,358,406	51.01%
Severance Tax	\$1,012,400	\$1,100,906	8.74%	\$1,081,753	-1.74%
CoinAmus Tax	\$261,100	\$96,547	-63.02%	\$109,327	13.24%
Usub Tax	\$6,000	\$0	-100.00%	\$0	0.00%
Total:	\$15,267,922,800	\$14,870,757,719	-2.60%	\$14,058,368,502	-5.46%

<b>FY20 Allocation by Fund</b>		<b>General Fund</b>	<b>Education Fund</b>	<b>Highway Fund</b>	<b>Debt Service Fund</b>	<b>Cities &amp; Counties</b>
<b>Source of Revenue</b>	<b>Total Revenue</b>					
Sales and Use Tax	\$9,593,294,435	\$3,477,029,621	\$5,508,145,196	\$22,325,379	\$68,161,556	\$517,632,684
Gasoline Tax	\$793,949,187	\$12,547,918	\$0	\$410,470,376	\$68,246,229	\$302,684,665
Motor Fuel Tax	\$322,210,970	\$2,778,639	\$0	\$234,961,707	\$0	\$84,470,623
Gasoline Inspection Tax	\$69,656,984	\$20,551,280	\$0	\$37,249,196	\$0	\$11,856,508
Motor Vehicle Registration Tax	\$324,426,453	\$51,140,179	\$95,056	\$273,191,217	\$0	\$0
Income Tax	\$50,778,845	\$32,581,519	\$0	\$0	\$0	\$18,197,326
Privilege Tax	\$352,136,382	\$346,124,984	\$187,856	\$0	\$0	\$5,823,541
Gross Receipts Tax - TVA	\$373,616,695	\$204,961,819	\$0	\$0	\$0	\$168,654,876
Gross Receipts Tax - Other	\$26,144,976	\$22,468,338	\$0	\$3,676,637	\$0	\$0
Beer Tax	\$17,398,254	\$11,664,739	\$0	\$2,174,782	\$0	\$3,558,734
Alcoholic Beverage Tax	\$75,801,651	\$62,640,934	\$0	\$0	\$0	\$13,160,717
Franchise Tax	\$2,234,537,173	\$2,065,104,215	\$0	\$0	\$140,073,850	\$29,359,108
Inheritance and Estate Tax	\$0	\$0	\$0	\$0	\$0	\$0
Tobacco Tax	\$328,748,220	\$40,311,621	\$288,436,599	\$0	\$0	\$0
Motor Vehicle Title Fees	\$24,209,476	\$21,485,910	\$0	\$0	\$2,723,566	\$0
Mixed Drink Tax	\$143,349,892	\$0	\$71,627,321	\$0	\$0	\$71,722,570
Business Tax	\$139,300,672	\$139,300,672	\$0	\$0	\$0	\$0
Severance Tax	\$1,100,906	\$330,272	\$0	\$0	\$0	\$770,634
Coin-operated Amusement Tax	\$96,547	\$96,547	\$0	\$0	\$0	\$0
Unauthorized Substance Tax	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$14,870,757,719</b>	<b>\$6,511,119,207</b>	<b>\$5,868,492,029</b>	<b>\$984,049,294</b>	<b>\$279,205,201</b>	<b>\$1,227,891,987</b>

<b>FY21 Allocation by Fund</b>		General	Education	Highway	Debt Service	Cities &
Source of Revenue	Total Revenue	Fund	Fund	Fund	Fund	Counties
Sales and Use Tax	\$9,593,294,435	\$3,477,029,621	\$5,508,145,196	\$22,325,379	\$68,161,556	\$517,632,684
Gasoline Tax	\$793,949,187	\$12,547,918	\$0	\$410,470,376	\$68,246,229	\$302,684,665
Motor Fuel Tax	\$322,210,970	\$2,778,639	\$0	\$234,961,707	\$0	\$84,470,623
Gasoline Inspection Tax	\$69,656,984	\$20,551,280	\$0	\$37,249,196	\$0	\$11,856,508
Motor Vehicle Registration Tax	\$324,426,453	\$51,140,179	\$95,056	\$273,191,217	\$0	\$0
Income Tax	\$50,778,845	\$32,581,519	\$0	\$0	\$0	\$18,197,326
Privilege Tax	\$352,136,382	\$346,124,984	\$187,856	\$0	\$0	\$5,823,541
Gross Receipts Tax - TVA	\$373,616,695	\$204,961,819	\$0	\$0	\$0	\$168,654,876
Gross Receipts Tax - Other	\$26,144,976	\$22,468,338	\$0	\$3,676,637	\$0	\$0
Beer Tax	\$17,398,254	\$11,664,739	\$0	\$2,174,782	\$0	\$3,558,734
Alcoholic Beverage Tax	\$75,801,651	\$62,640,934	\$0	\$0	\$0	\$13,160,717
Franchise Tax	\$2,234,537,173	\$2,065,104,215	\$0	\$0	\$140,073,850	\$29,359,108
Inheritance and Estate Tax	\$0	\$0	\$0	\$0	\$0	\$0
Tobacco Tax	\$328,748,220	\$40,311,621	\$288,436,599	\$0	\$0	\$0
Motor Vehicle Title Fees	\$24,209,476	\$21,485,910	\$0	\$0	\$2,723,566	\$0
Mixed Drink Tax	\$143,349,892	\$0	\$71,627,321	\$0	\$0	\$71,722,570
Business Tax	\$139,300,672	\$139,300,672	\$0	\$0	\$0	\$0
Severance Tax	\$1,100,906	\$330,272	\$0	\$0	\$0	\$770,634
Coin-operated Amusement Tax	\$96,547	\$96,547	\$0	\$0	\$0	\$0
Unauthorized Substance Tax	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$14,870,757,719</b>	<b>\$6,511,119,207</b>	<b>\$5,868,492,029</b>	<b>\$984,049,294</b>	<b>\$279,205,201</b>	<b>\$1,227,891,987</b>



# Estimated State Tax Revenue

May 27, 2020



# Risks to the Forecast

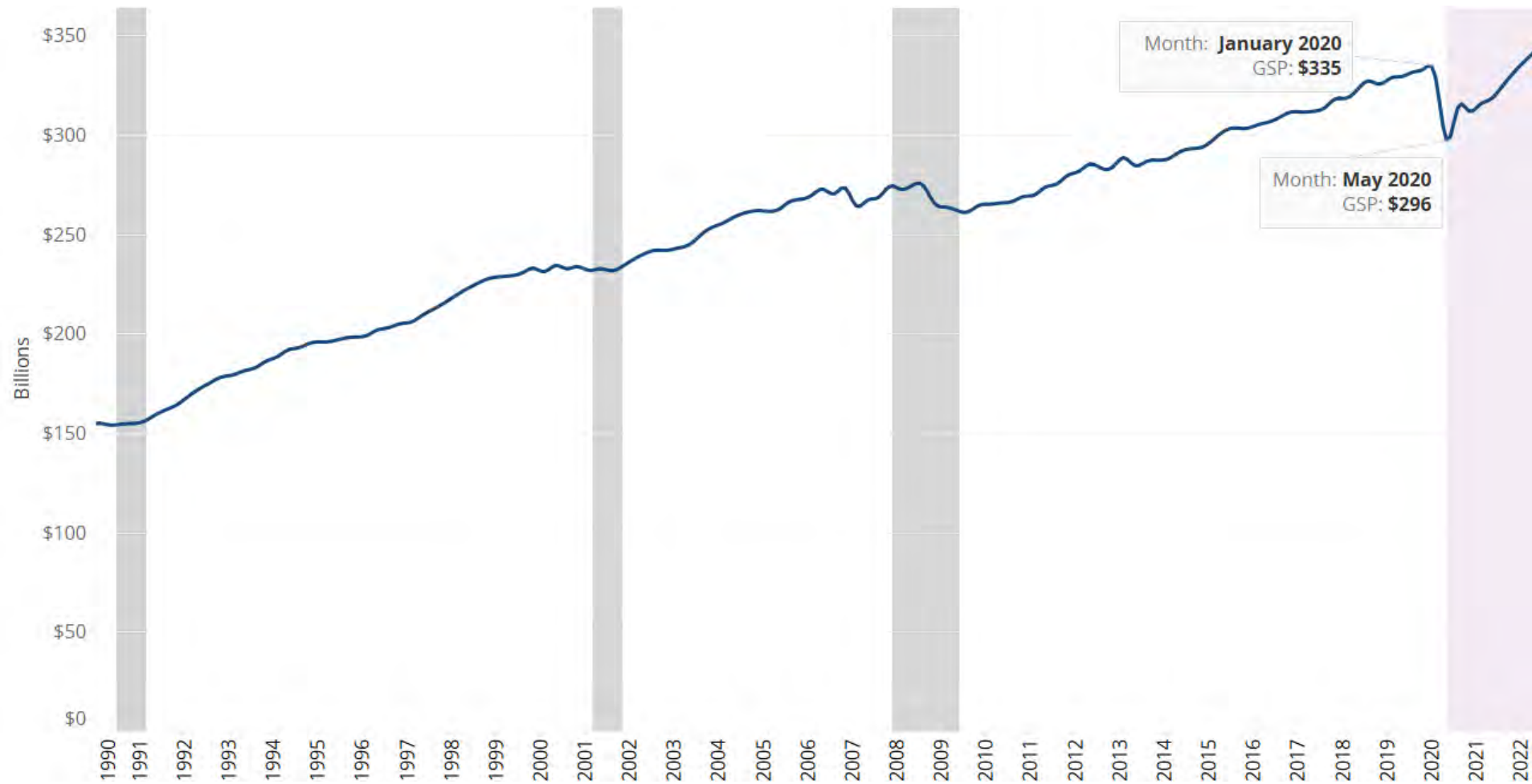
- Uncertainty
  - Forecasting is an uncertain business in the best of times
  - Filing/payment deferrals are a major source of uncertainty in F&E, Business Tax, Hall Income Tax, and Privilege Tax, as well as motor vehicle registrations.
  - Recovery shape and duration unknown (epidemiological uncertainty as well as economic uncertainty)
- Lags in collections data
  - Monthly data is notably delayed
  - For Sales and Use Tax, sales activity in one month is not reported until the 20<sup>th</sup> of the following month
- Econometric model limitations
  - Significant manual adjustments to model outputs

# Filing Extensions

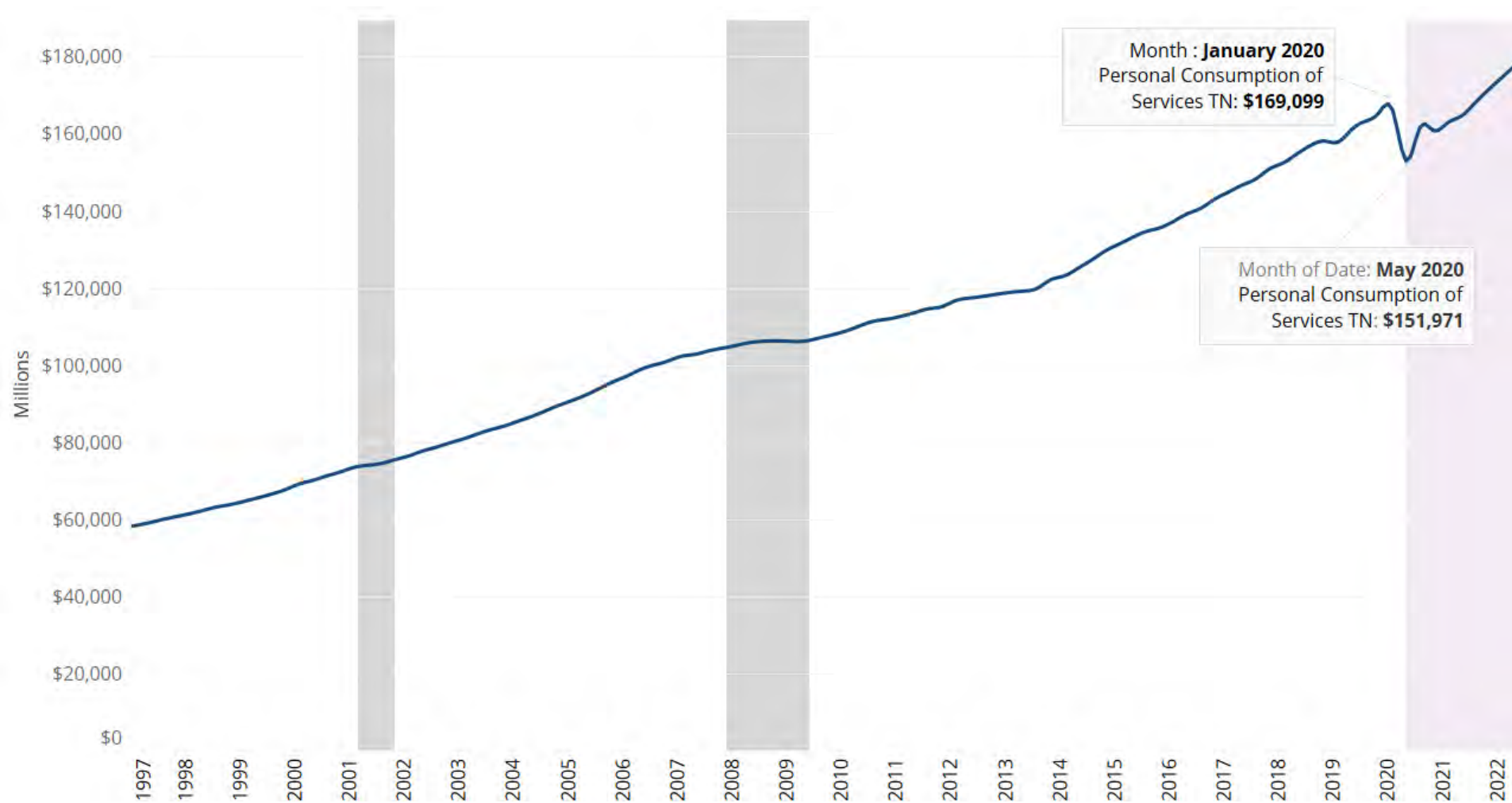
Filing deadline deferrals across multiple tax programs:

- **F&E Tax** (July 15 for returns originally due in April)
- **Hall Income Tax** (July 15 for returns originally due in April)
- **Professional Privilege Tax** (July 1 for returns originally due June 1)
- **Business Tax** (June 15 for returns originally due in April)
- **Automotive Registrations** (March, April and May registrations extended to June 15)

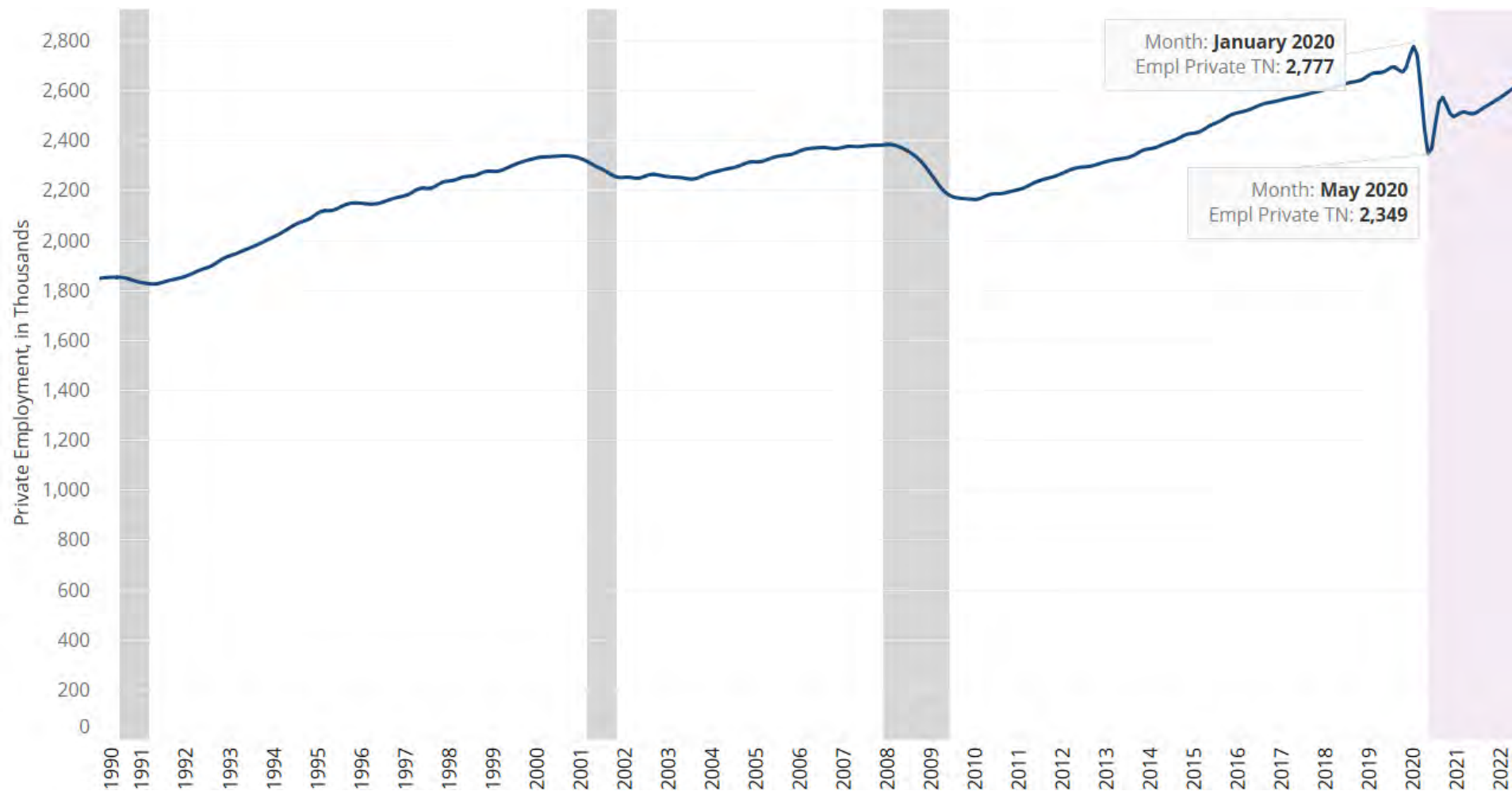
# Tennessee Gross State Product



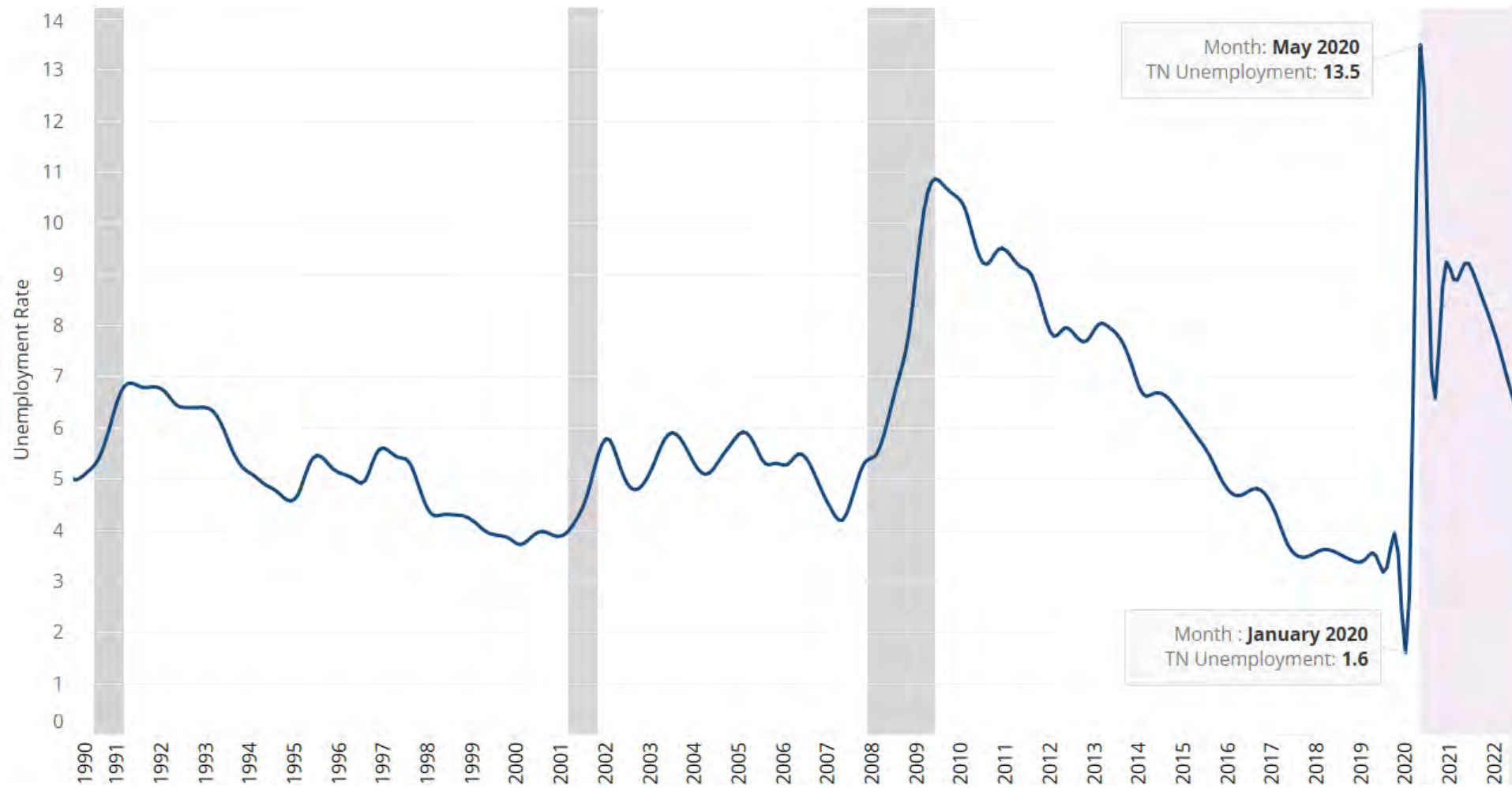
# Tennessee Personal Consumption of Services



# Tennessee Employment

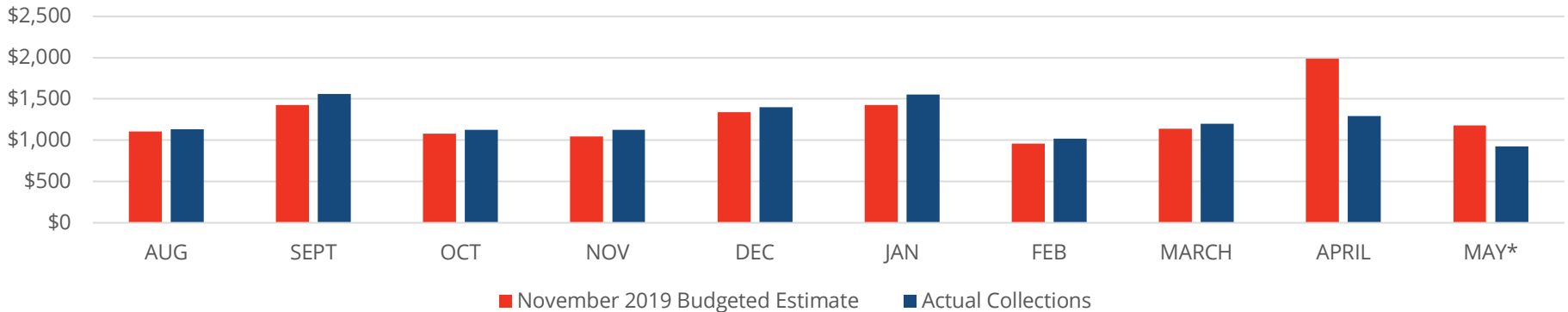


# Tennessee Unemployment

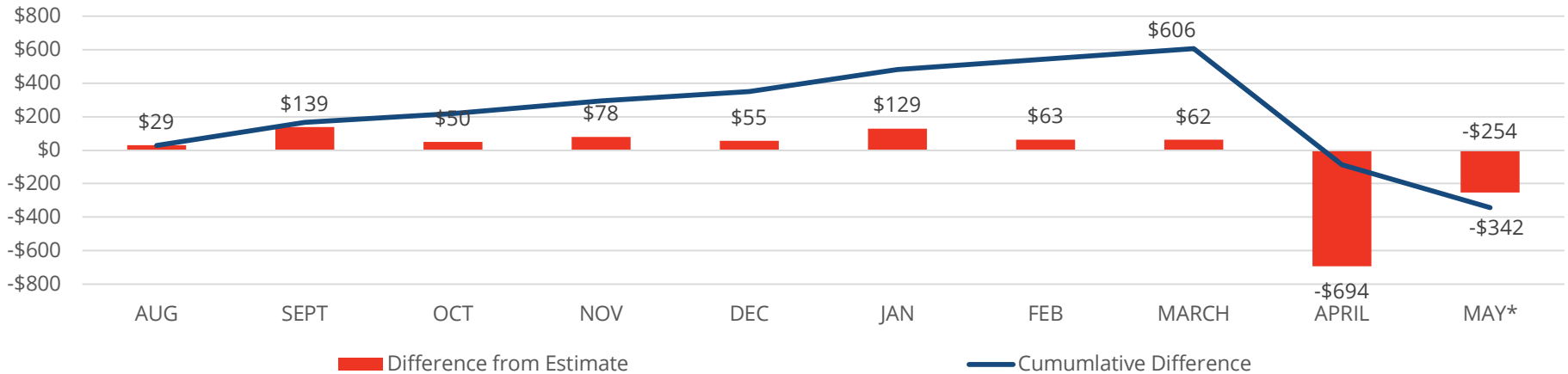


# Fiscal Year 2020 Tax Revenue Through April

## Actual Vs. Budgeted Collections



## Collections Difference from Budgeted Estimate





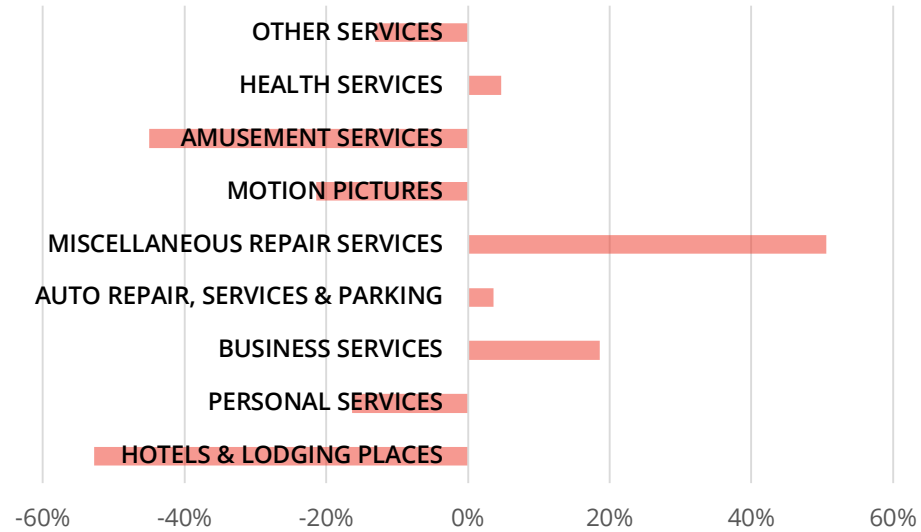
# Sales Tax - SIC Sector Changes

April 2020 Vs. April 2019

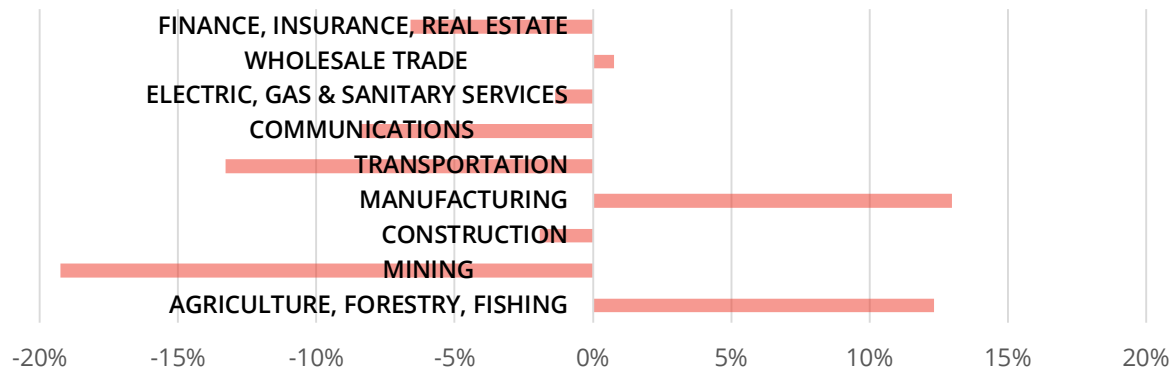
PERCENT CHANGE RETAIL SALES APRIL COLLECTIONS



PERCENT CHANGE SERVICES APRIL COLLECTIONS



PERCENT CHANGE NON-RETAIL, NON-SERVICE APRIL COLLECTIONS





**Revenue Collections Estimates**  
**State Funding Board Meeting - 5/27/2020**  
**Accrual Basis (USD)**

	Accrual Revenues		FY 2020 Closing Estimates (5/13/20)		FY 2021 Revised Estimates (5/18/20)	
	FY 2019	FY 2020	% Change from FY2019		FY 2021	% Change from FY2020
Sales and Use Tax <sup>1</sup>	\$9,337,800,000	9,369,300,000	0.34%		9,129,000,000	-2.56%
Gasoline Tax	843,400,000	847,900,000	0.53%		797,600,000	-5.93%
Motor Fuel Tax	257,700,000	260,300,000	1.01%		206,200,000	-20.78%
Gasoline Inspection Tax	69,800,000	63,400,000	-9.17%		57,400,000	-9.46%
Motor Vehicle Registration Tax	337,900,000	305,400,000	-9.62%		337,900,000	10.64%
Income Tax	203,800,000	100,700,000	-50.59%		56,500,000	-43.89%
Privilege Tax <sup>2</sup>	376,800,000	364,200,000	-3.34%		336,000,000	-7.74%
Gross Receipts Tax - TVA	361,900,000	324,000,000	-10.47%		361,900,000	11.70%
Gross Receipts Tax - Other	31,300,000	23,700,000	-24.28%		31,300,000	32.07%
Beer Tax	17,000,000	15,200,000	-10.59%		17,600,000	15.79%
Alcoholic Beverage Tax	70,200,000	67,400,000	-3.99%		77,500,000	14.99%
Franchise & Excise Tax	2,752,000,000	2,628,800,000	-4.48%		2,500,000,000	-4.90%
Inheritance and Estate Tax	2,200,000	-	-100.00%		-	-
Tobacco Tax	241,800,000	235,800,000	-2.48%		232,200,000	-1.53%
Motor Vehicle Title Fees	23,600,000	23,600,000	0.00%		23,600,000	0.00%
Mixed Drink Tax	136,100,000	111,800,000	-17.85%		120,700,000	7.96%
Business Tax	203,400,000	206,300,000	1.43%		201,400,000	-2.38%
Severance Tax	1,000,000	700,000	-30.00%		1,000,000	42.86%
Coin-operated Amusement Tax	300,000	200,000	-33.33%		300,000	50.00%
Unauthorized Substance Tax	6,000	-	-100.00%		-	-
<b>Total Department of Revenue</b>	<b>\$15,268,000,000</b>	<b>\$14,948,700,000</b>	<b>-2.09%</b>		<b>\$14,488,100,000</b>	<b>-3.08%</b>
<b>General Fund Only</b>	<b>\$12,693,900,000</b>	<b>\$12,489,800,000</b>	<b>-1.61%</b>		<b>\$12,128,000,000</b>	<b>-2.90%</b>

<sup>1</sup>Excludes \$112.0 million estimated earmarked fees collected under sales tax for 911 telecommunication service (2016 PG 1047)

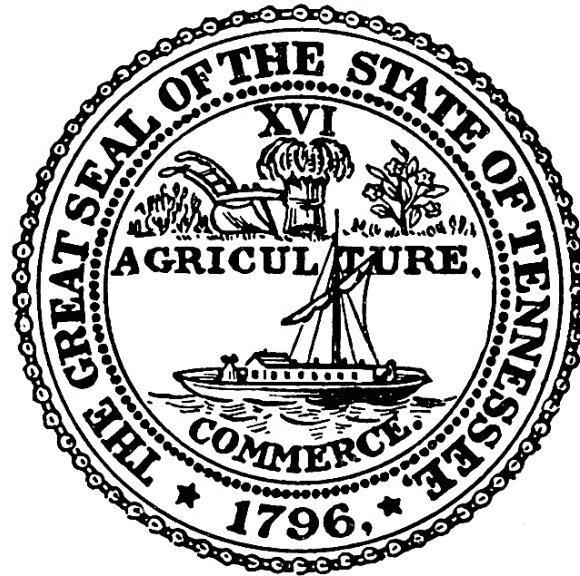
<sup>2</sup>Excludes \$52.0 million estimated earmarked funds collected under the privilege tax.

Note: Totals may differ due to rounding

# Sources

- Data Sourced From:
  - Moody's Analytics (May, 2020)
  - BEA (May, 2020)
  - BLS (May, 2020)
  - U.S. Census Bureau (May, 2020)
  - TN Department of Revenue (May, 2020)
  - TN Department of Finance & Administration (May, 2020)

# Economic Outlook and Tax Revenue Estimates



Fiscal Review Committee Staff  
May 27, 2020

# Overview

- Unprecedented uncertainty
- Government actions
- Impact of business restrictions
  - Economic impact
  - Tax revenue impact
- Revised estimates

# Federal Government Action

- Four emergency aid packages - \$2.7 trillion
  - Paycheck Protection Program - \$700 billion
  - One-time payments - up to \$1,200 per person
  - Expanded unemployment insurance benefits - \$600 per week; suspension of certain qualifying criteria
  - IRS tax filing deferred from April 15, 2020 to July 15, 2020
  - Waived early withdrawal penalty on RA distributions

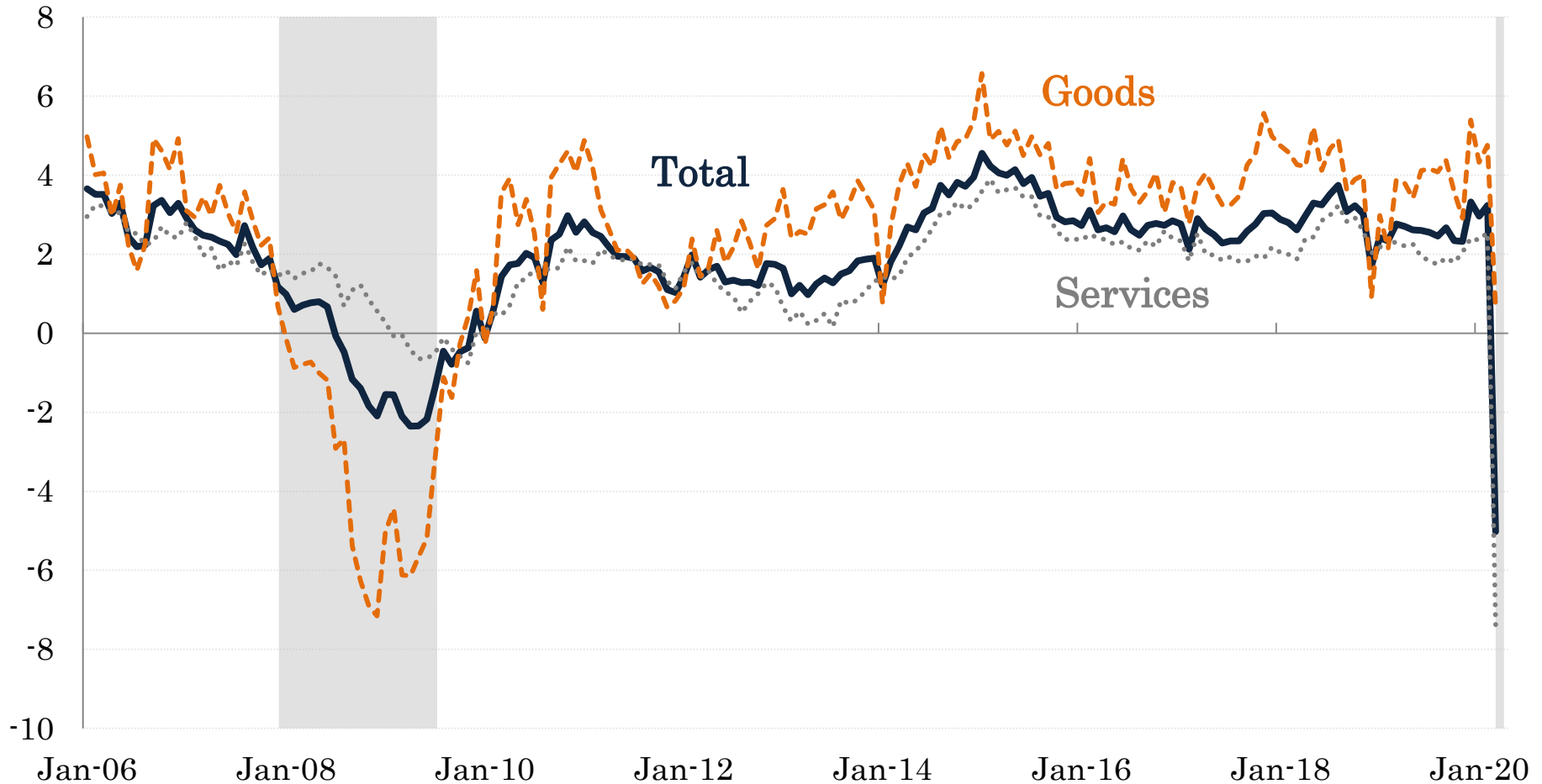
# State Government Action

- Safer at Home Order
  - Essential business operations
  - Phased removal of restrictions
- Tax Actions
  - F&E and HIT from April 15, 2020 to July 15, 2020
  - Professional Privilege from June 1, 2020 to July 1, 2020
  - Business Tax from April 15, 2020 to June 15, 2020
  - MVR March & April renewals to June 15, 2020
  - Other tax changes



# Real PCE and its Components

## Year-over-Year % Change (Monthly, SAAR)



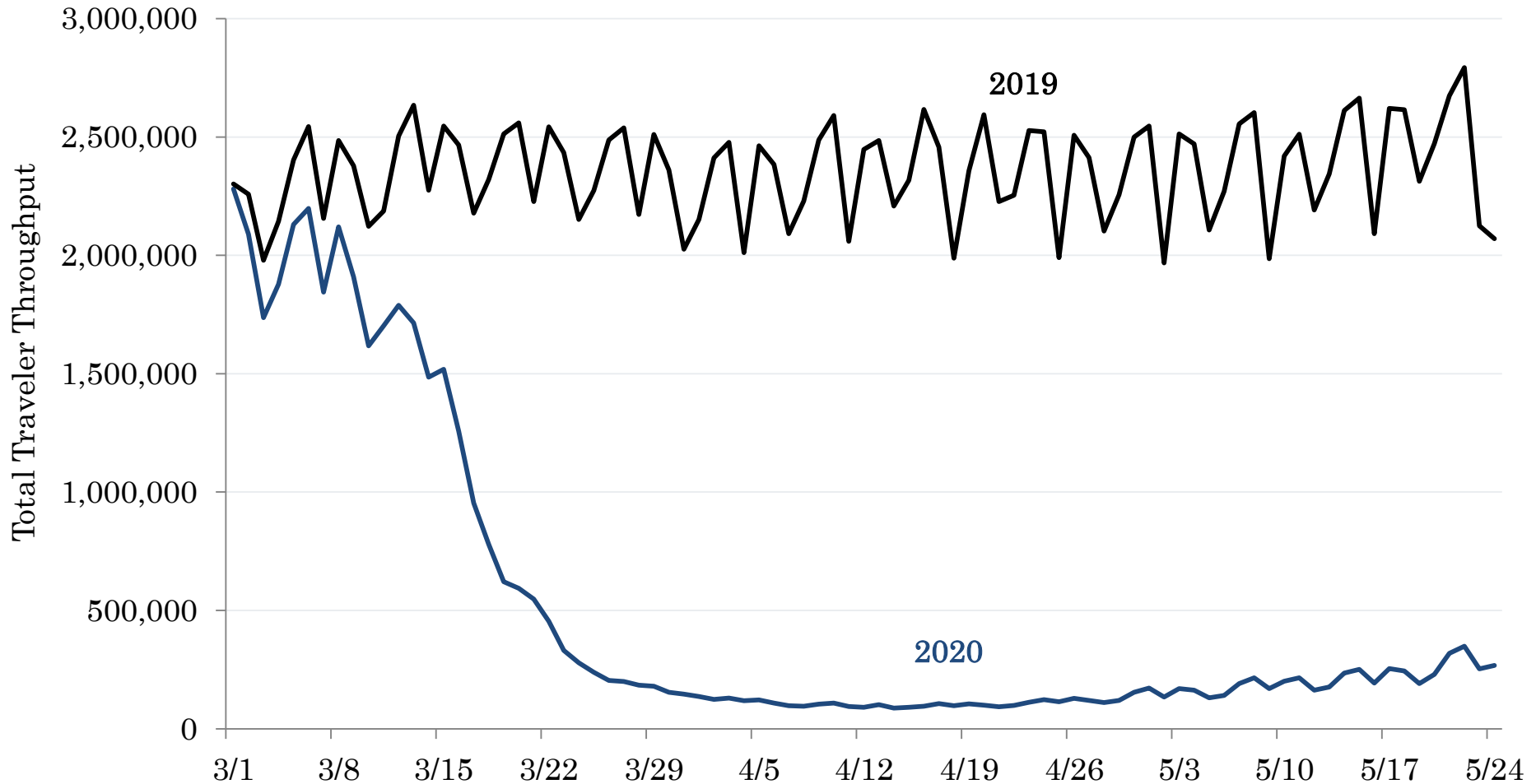
Case 3:20-cv-00374 Document 46-6 Filed 06/26/20 Page 84 of 106 PageID #: 1946

Sources: U.S. Bureau of Economic Analysis; retrieved from FRED, Federal Reserve Bank of St. Louis, May 26, 2020.

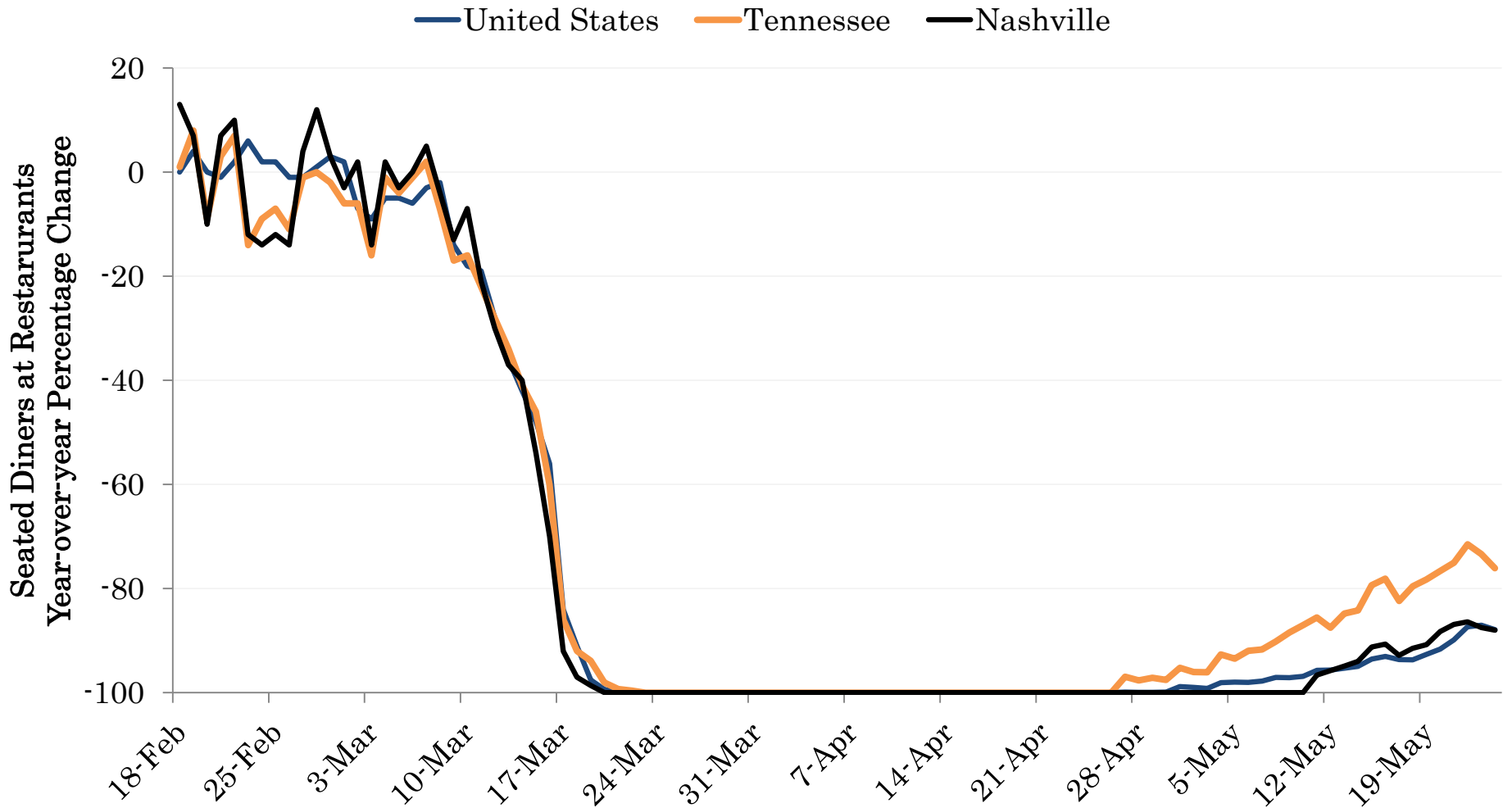
# Stock Market



# Airport Travel

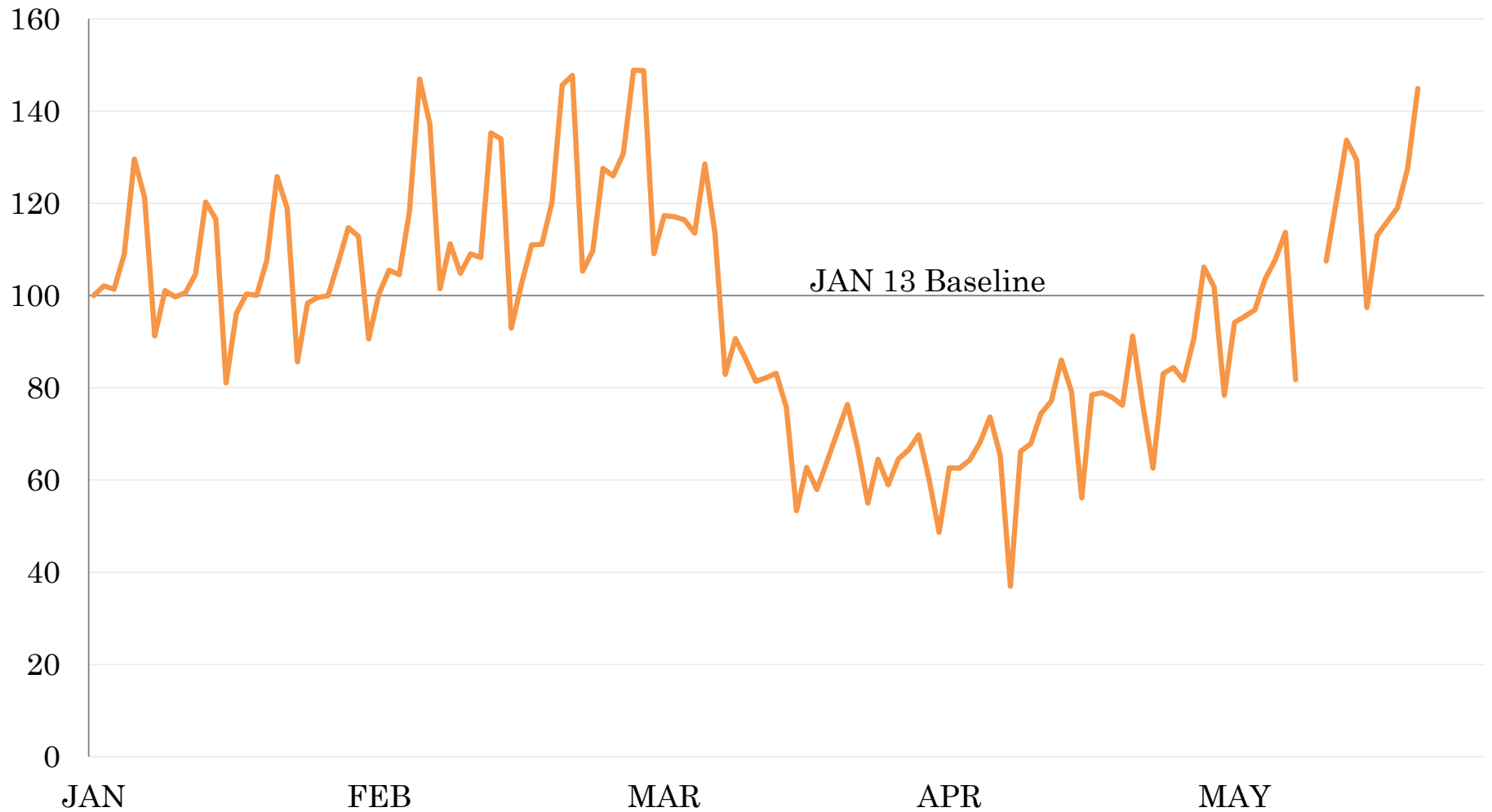


# Restaurant Dining

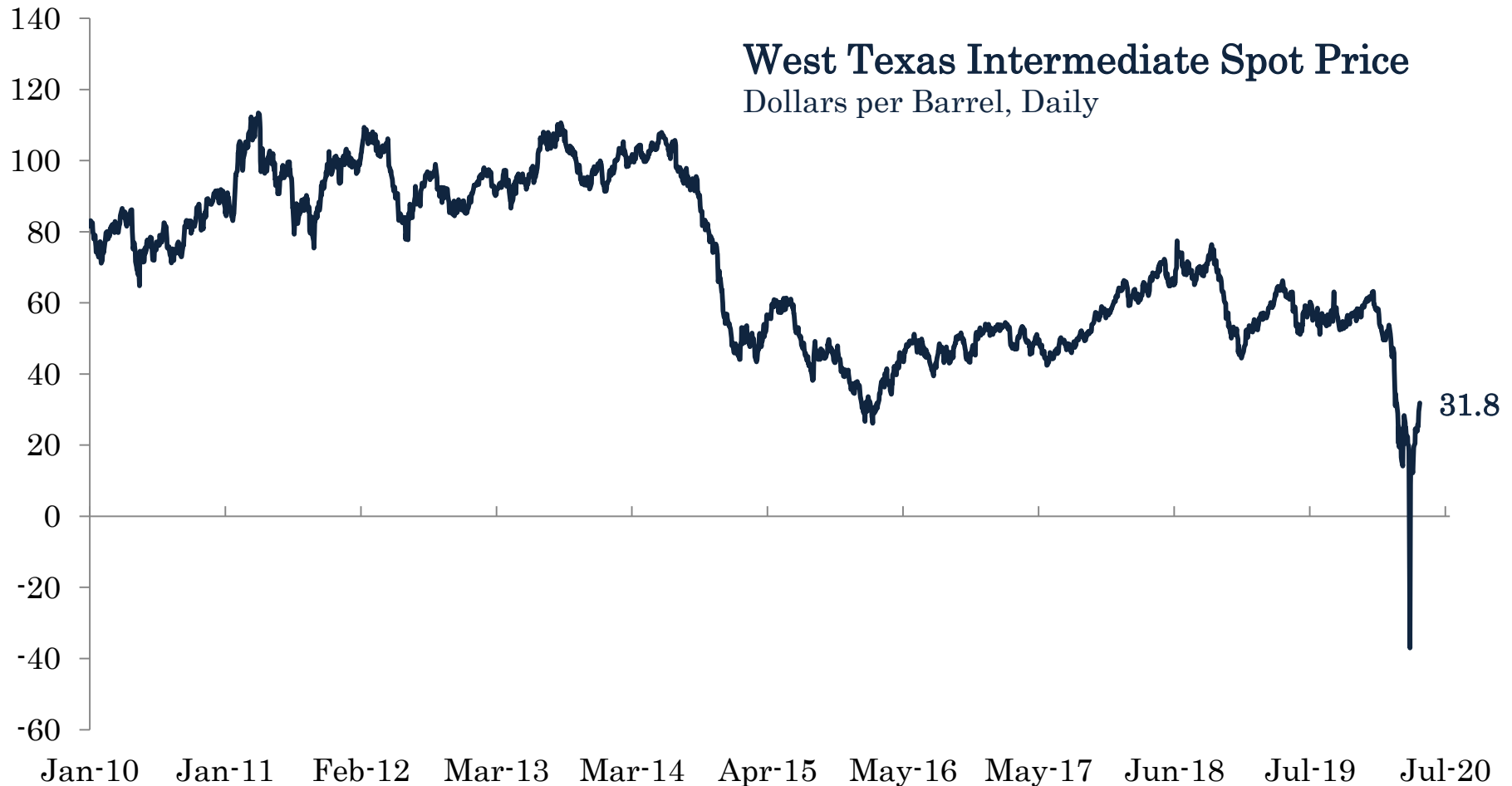


# Tennessee Mobility

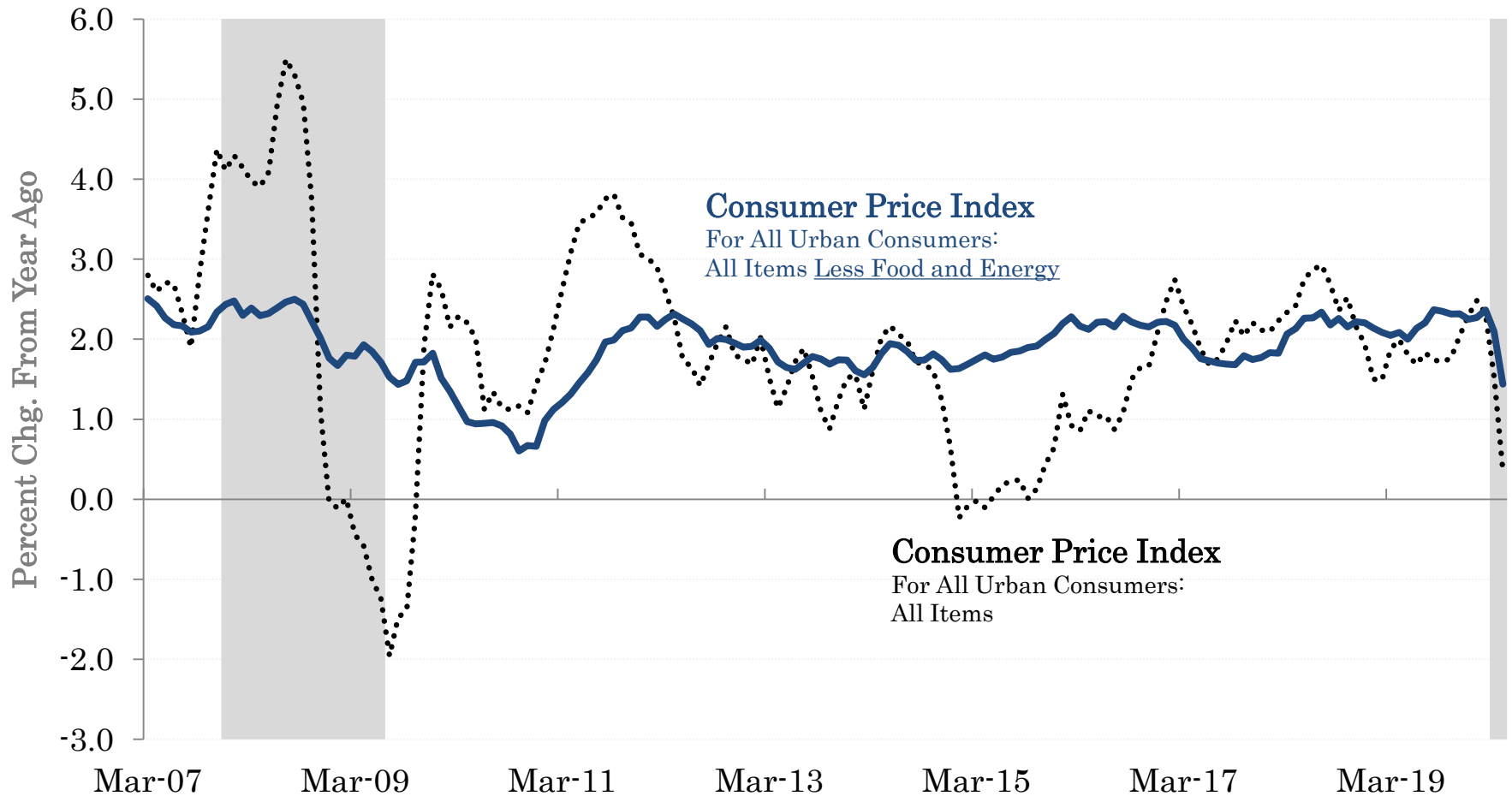
## Change in Routing Requests



# Crude Oil

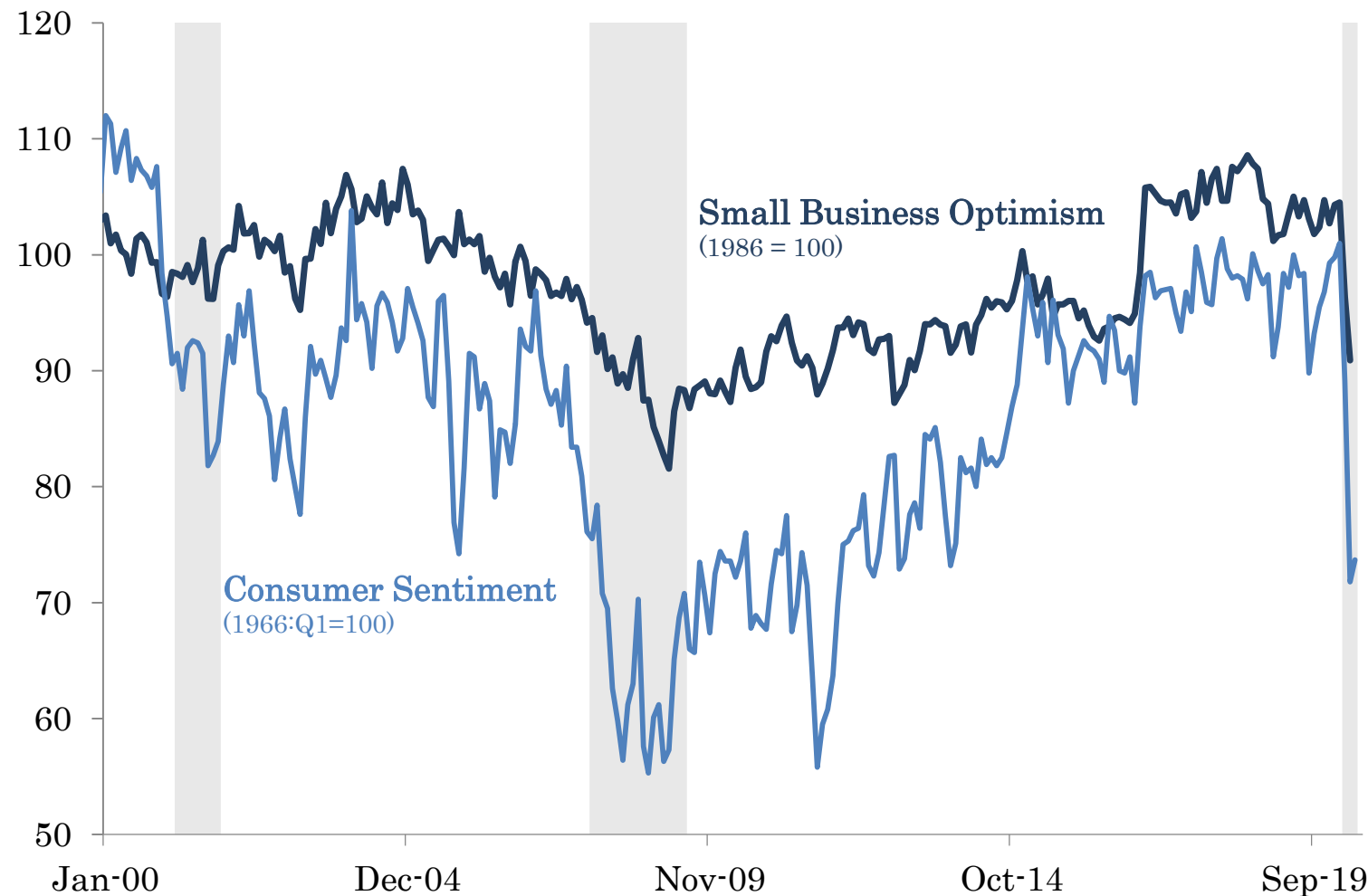


# Inflation





# Consumer Sentiment & Small Business Optimism



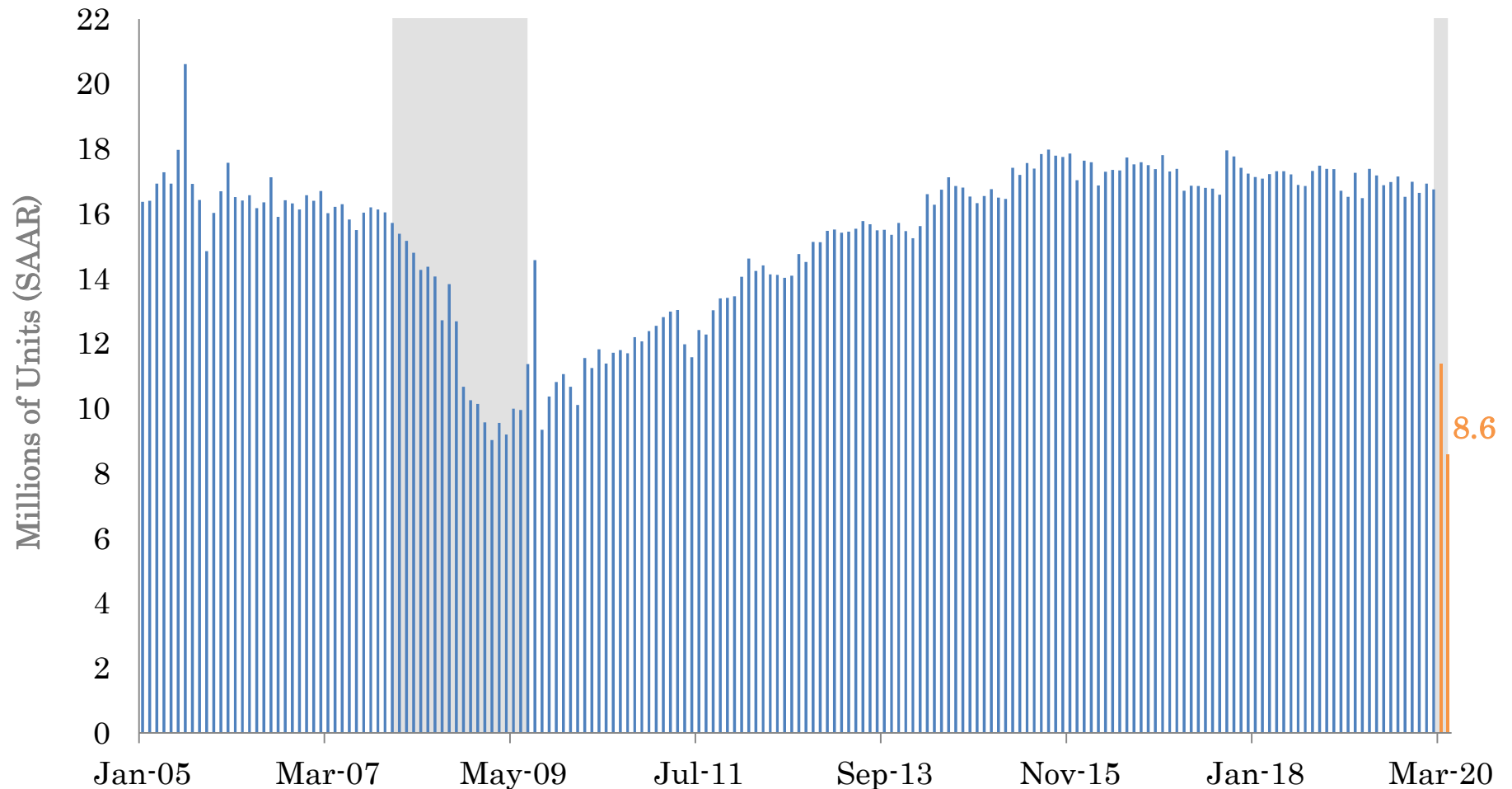
SBO Index: 13.6%  
two-month decline

Real sales 6-month  
expectations: lowest  
in the survey's 46-  
year history

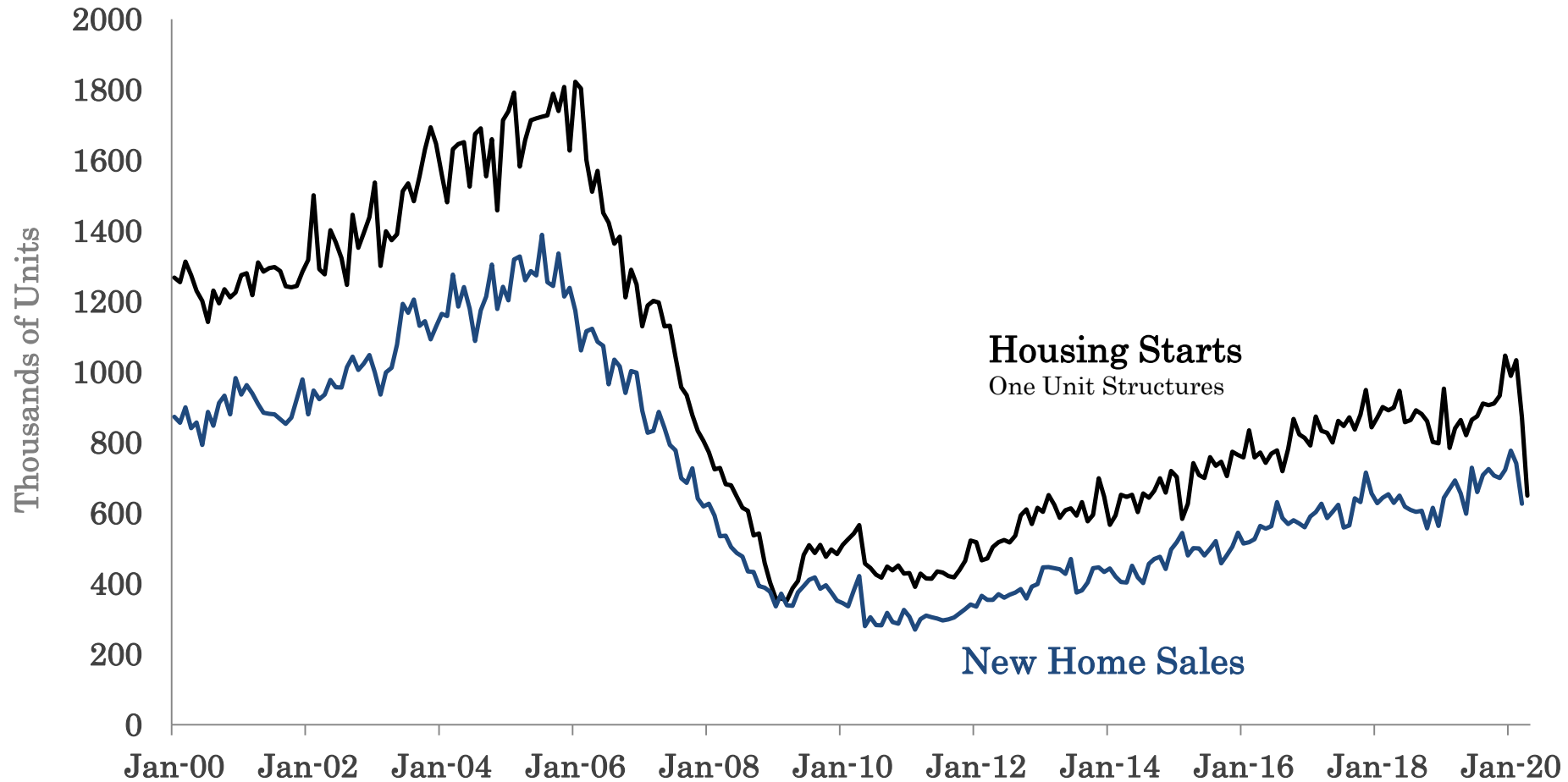
CS Index: 27% two-  
month decline;  
slight rebound in  
May

# Auto Sector

## U.S. Light Weight Vehicle Sales

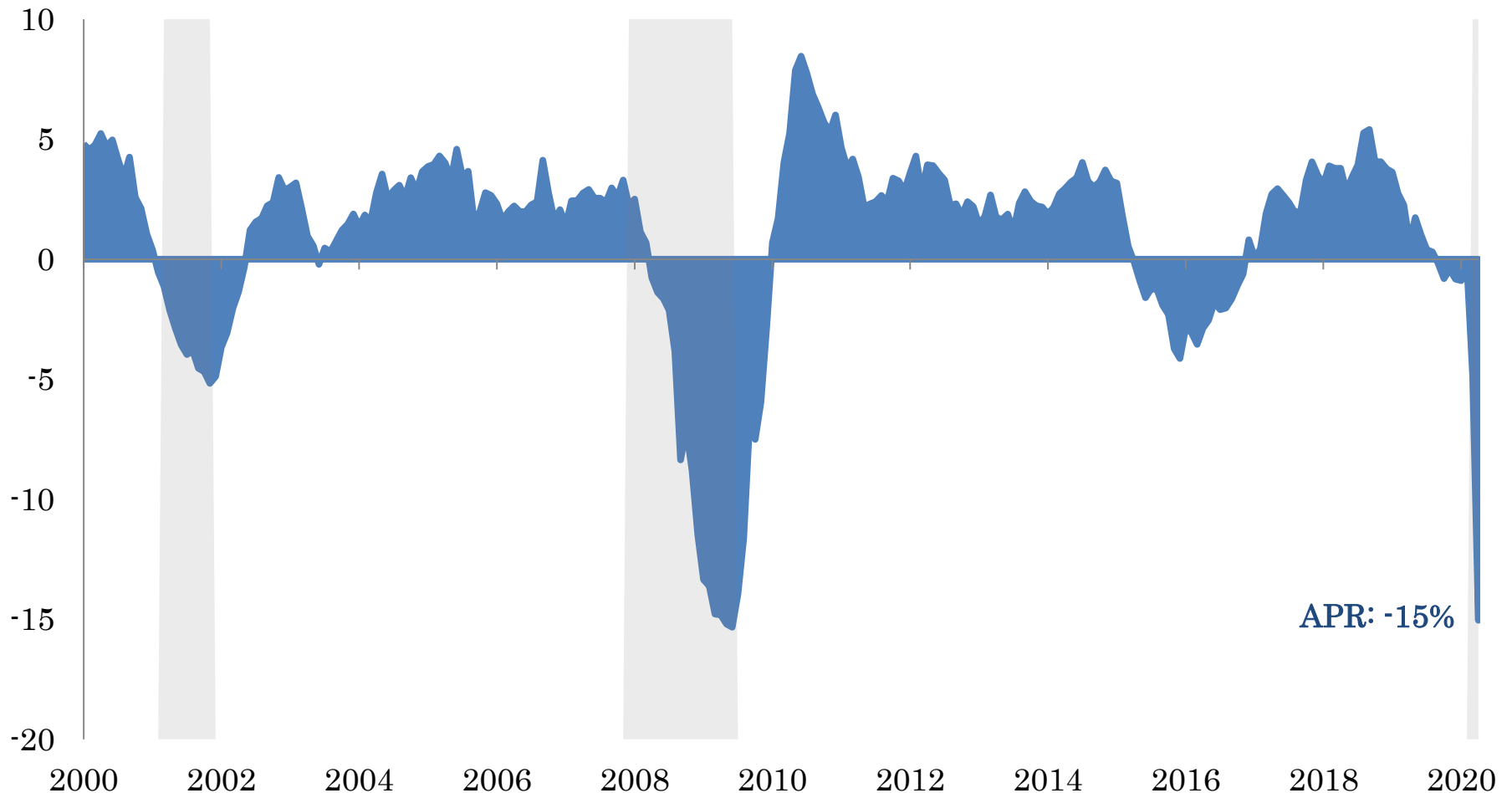


# Housing Sector



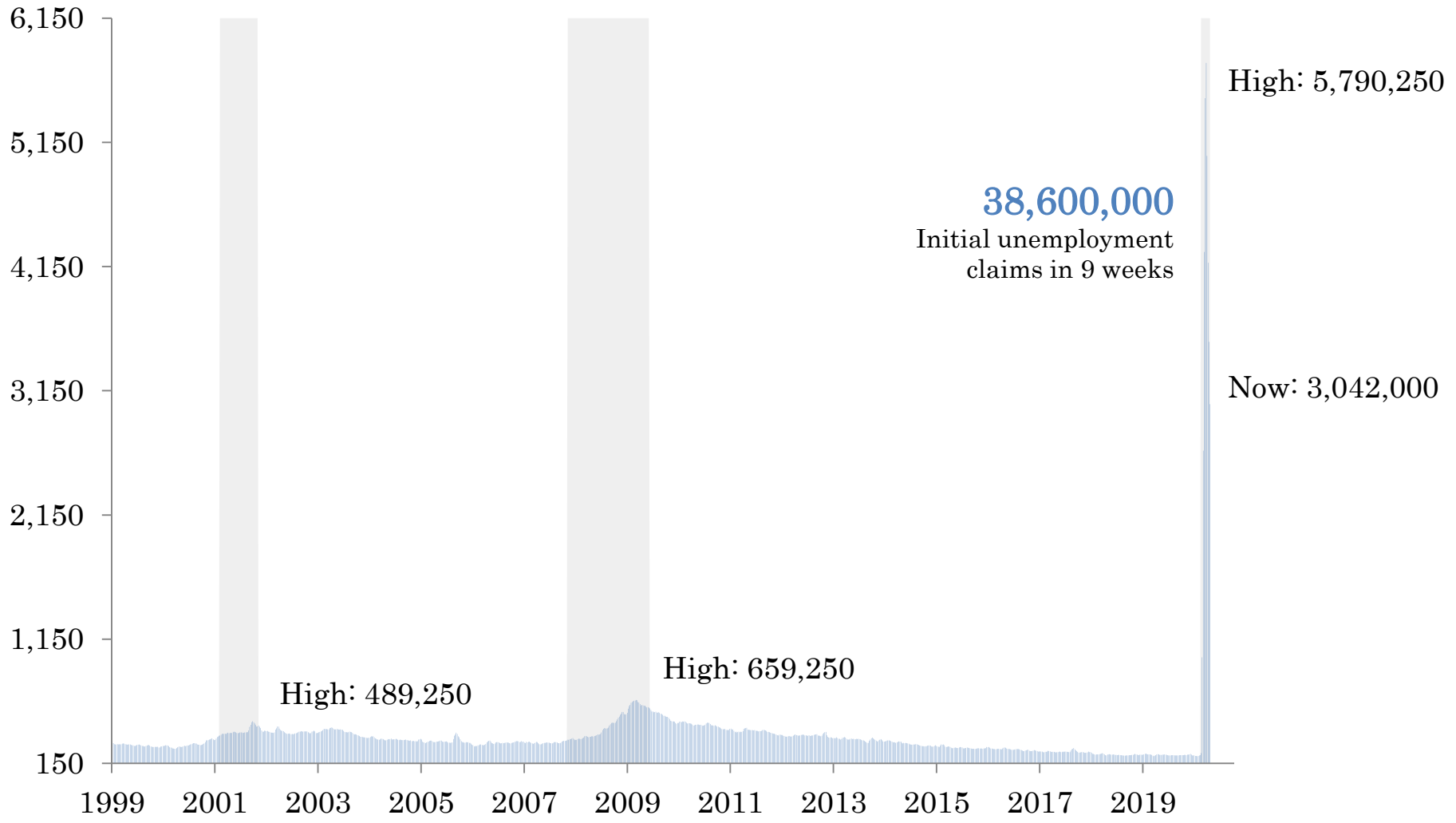
# Industrial Production

Year-over-year percentage change



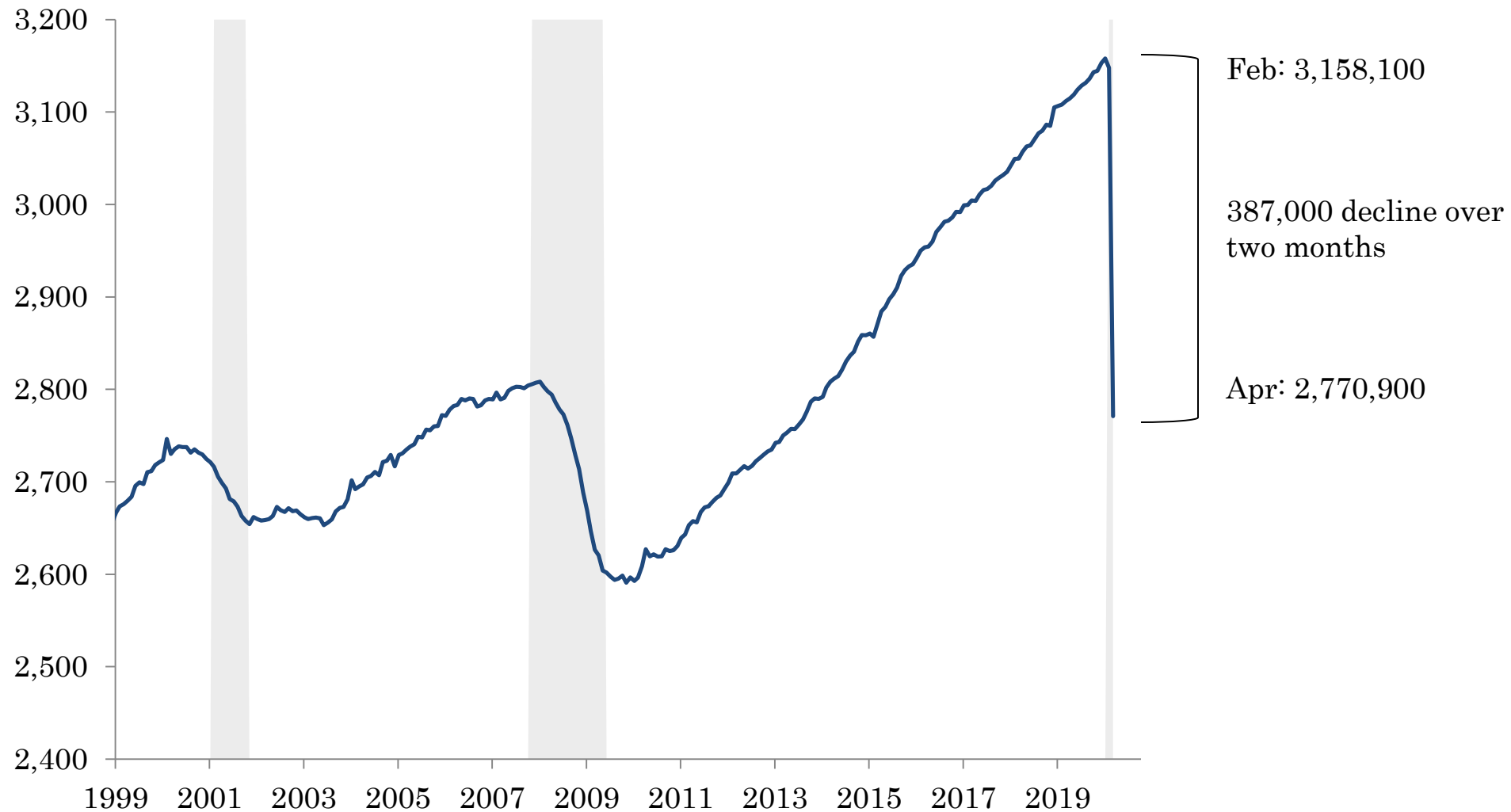
# US Initial Unemployment Claims

Four-week average, Thousands



# Tennessee Employment

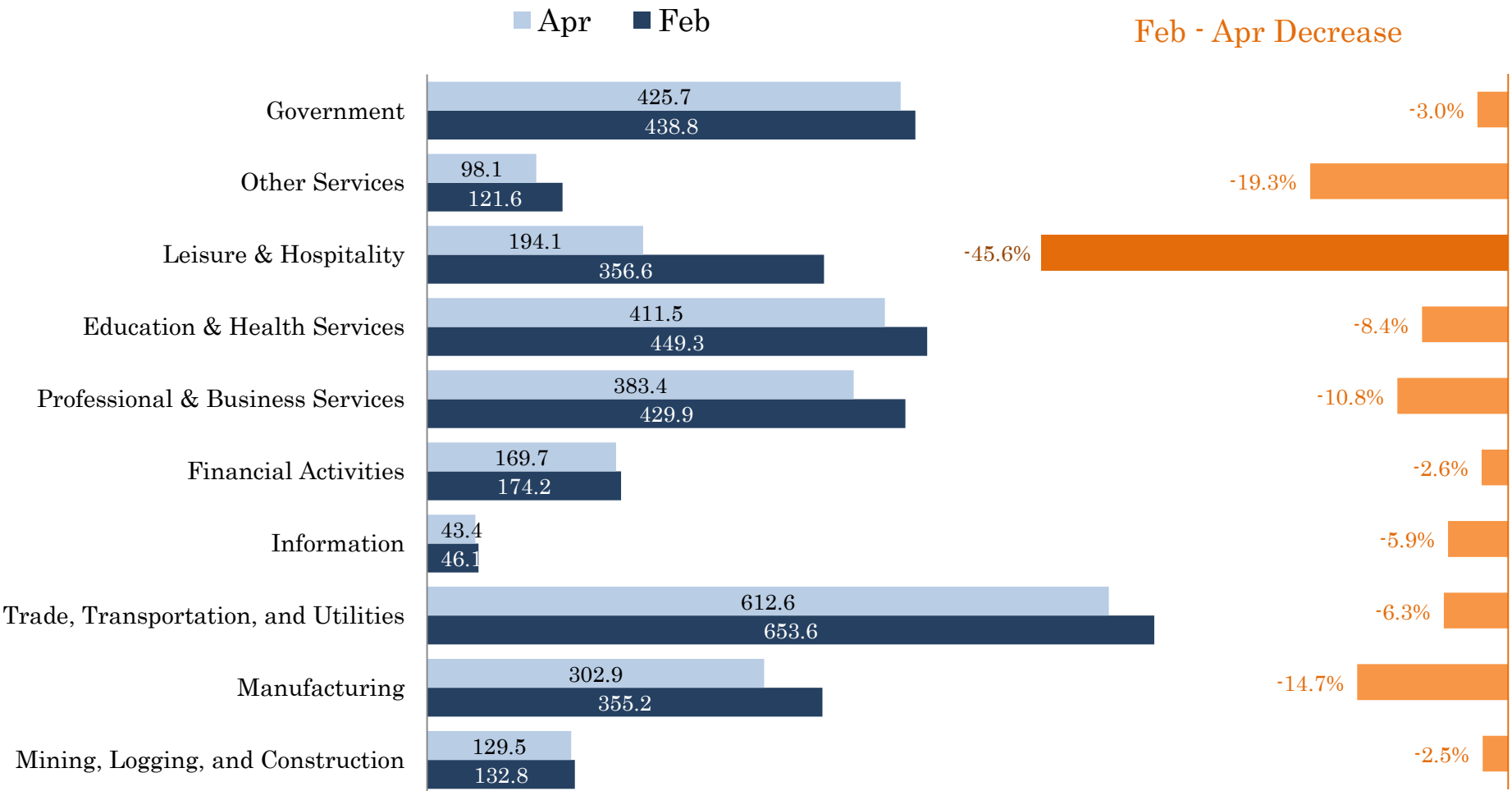
## Thousands, Monthly, SA



[Case 3:20-cv-00374 Document 46-6 Filed 06/26/20 Page 96 of 106 PageID #: 1958](#)

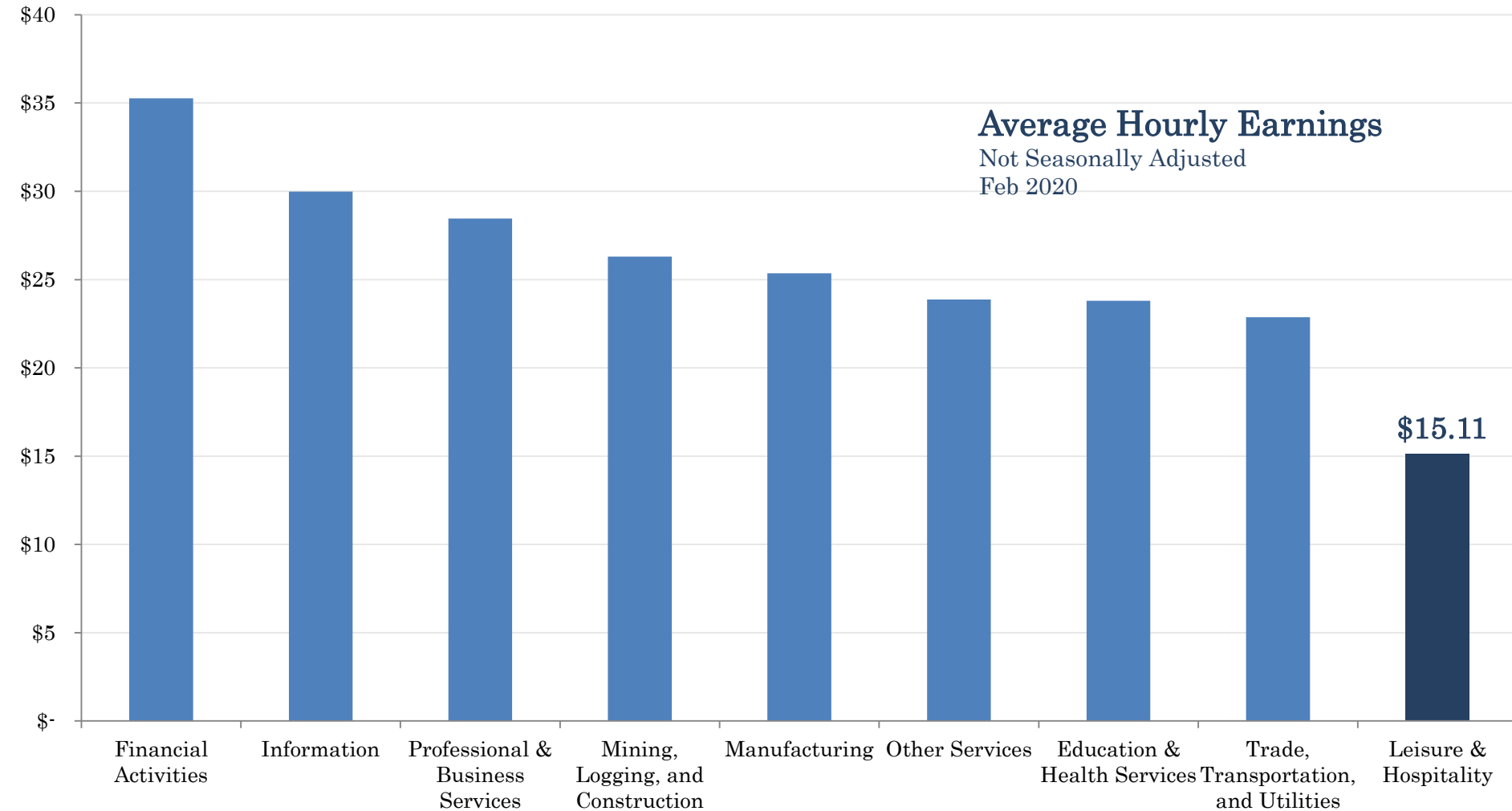
Sources: U.S. Bureau of Labor Statistics, retrieved from FRED, Federal Reserve Bank of St. Louis, May 25, 2020.

# Tennessee Employment





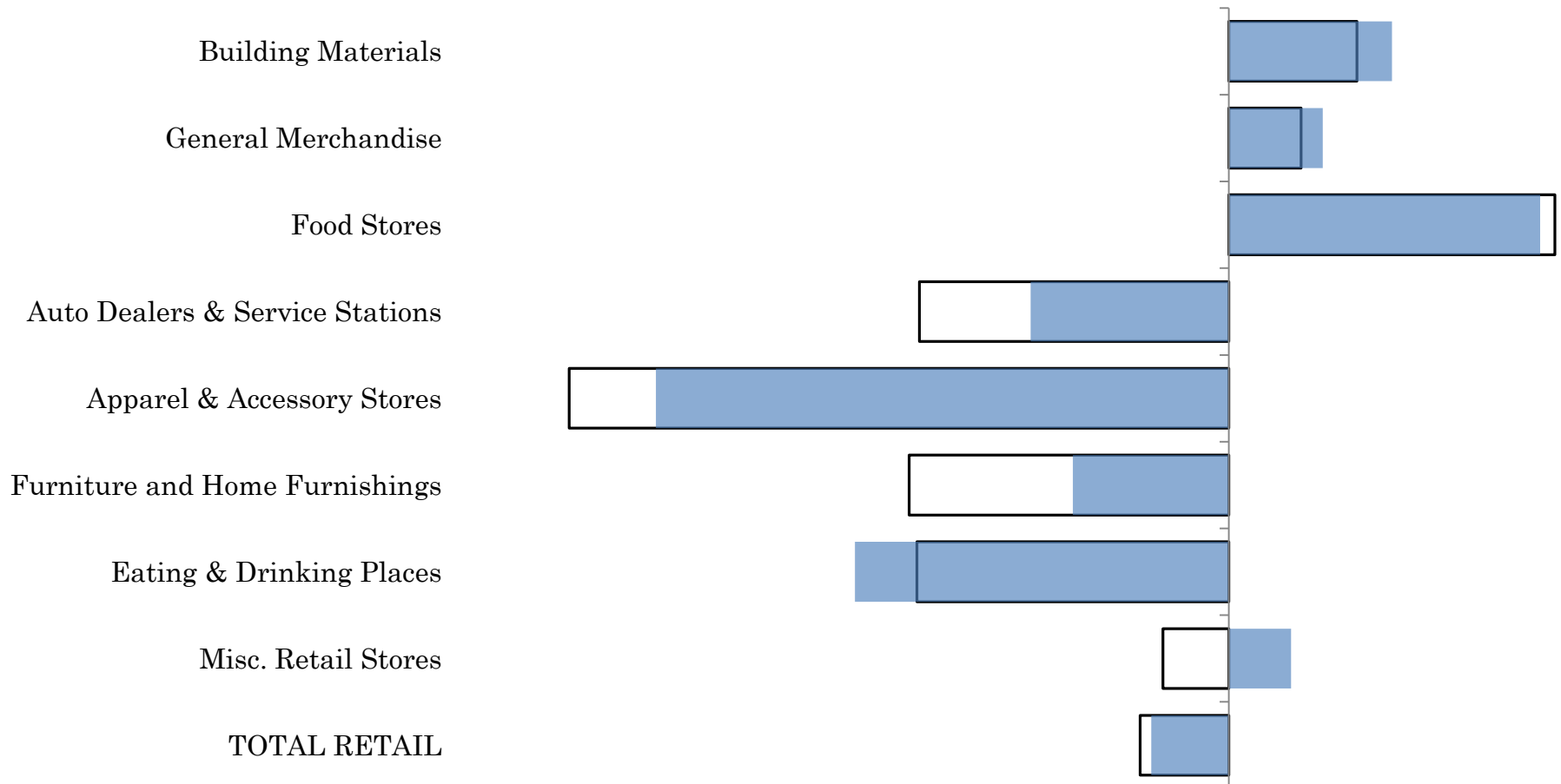
# Tennessee Employment



# Retail Sales & Tax Collections

□ March Retail Sales (Adv, Not Adj)

■ April Sales Tax Collections

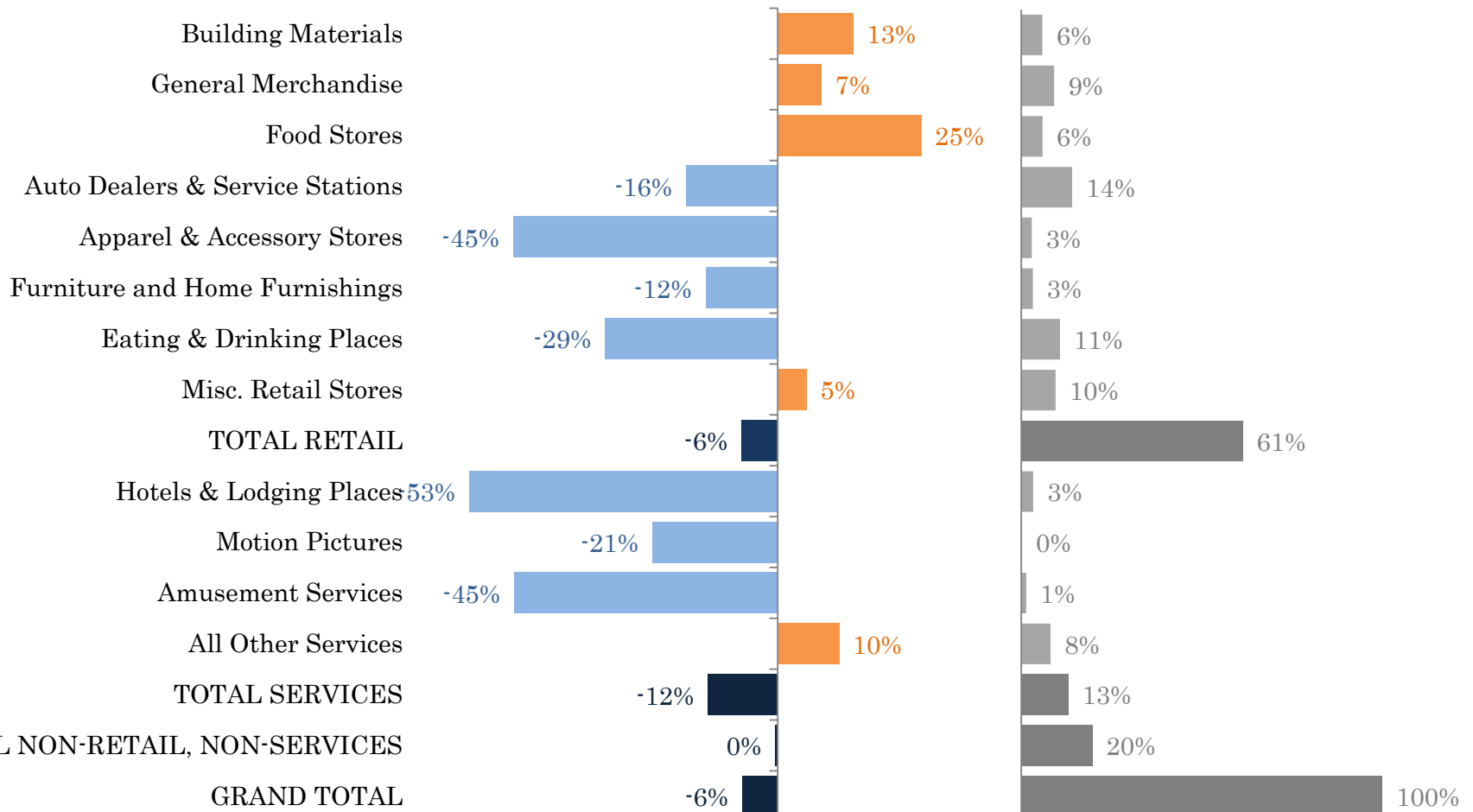


# Sales Tax Collections

## April 2020 vs. April 2019

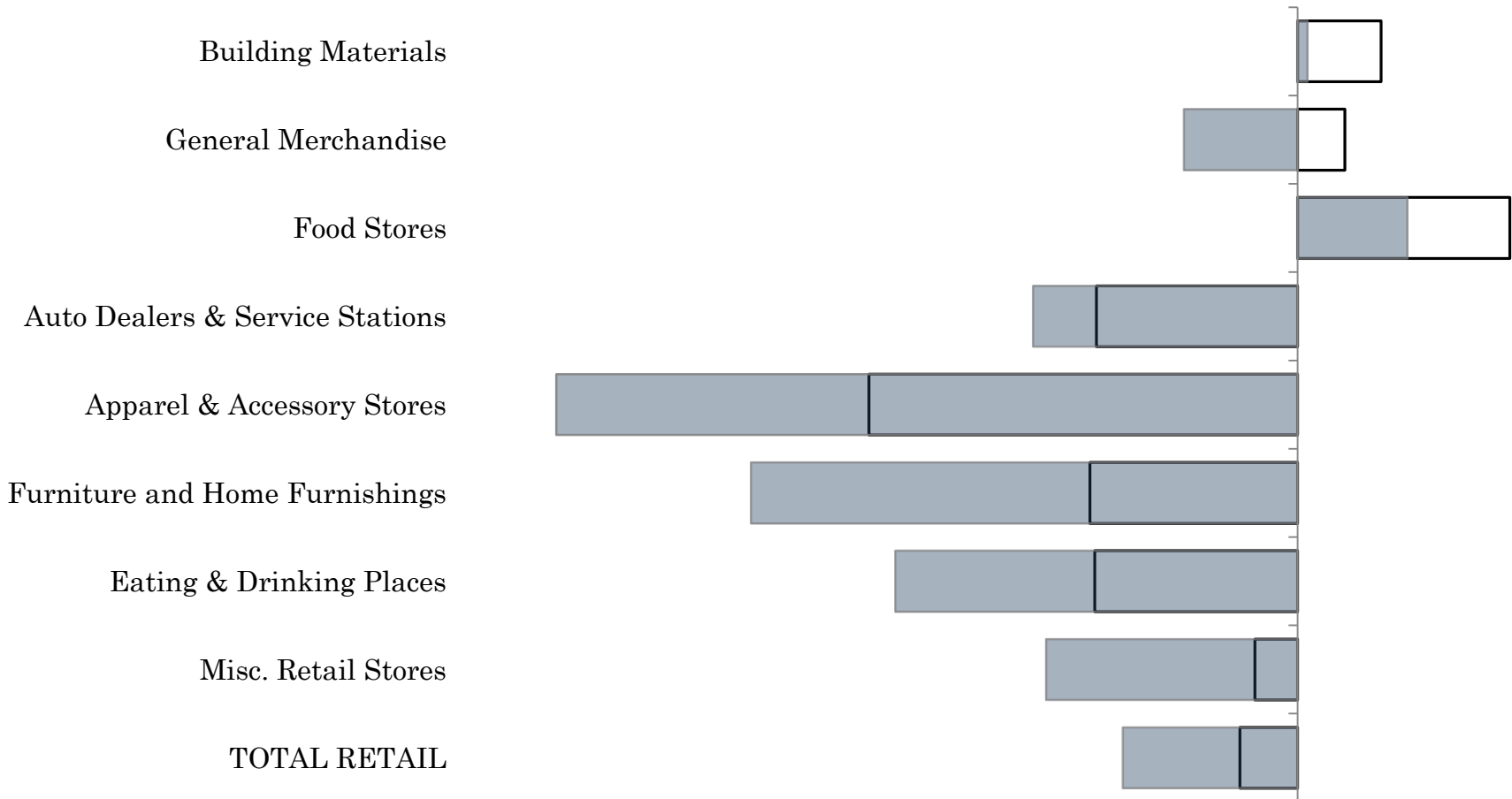
Sales Tax Growth Rates by Category  
April 2020 vs April 2019

Percentage Share of Total  
April 2019



# Retail Sales

□ March Retail Sales (Adv, Not Adj)    ■ April Retail Sales (Adv, Not Adj)



# Outlook Summary

- Gradual, phased-in reopening of the economy
- Continued constraints due to uncertainty, social distancing restrictions, long-lasting impacts of the economic shutdown
- Business closures, job losses, wage cuts, changes in business operations
- Subdued inflationary levels
- Isolated/localized outbreaks not resulting in widespread business closures
- 5%-6% real GDP decline in 2020; subsequent year GDP increases in the 3% to 5% annual range

# FY19-20 & FY20-21 Estimates

REVENUE SOURCE	FY18-19	FY19-20 FRC STAFF REVISED TAX ESTIMATE	FY19-20 GROWTH	FY20-21 FRC STAFF REVISED TAX ESTIMATE	FY20-21 GROWTH
Sales and Use Tax	\$9,337,817,700	\$9,454,571,900	1.25%	\$9,718,000,000	2.79%
Franchise & Excise Tax	\$2,752,023,800	\$2,527,585,300	-8.16%	\$2,350,000,000	-7.03%
Fuel Taxes	\$1,170,829,400	\$1,166,300,300	-0.39%	\$1,252,000,000	7.35%
All Other Taxes	\$2,007,251,900	\$2,017,044,200	0.49%	\$1,876,475,000	-6.97%
<b>TOTAL REVENUE</b>	<b>\$15,267,922,800</b>	<b>\$15,165,501,700</b>	<b>-0.67%</b>	<b>\$15,196,475,000</b>	<b>0.20%</b>
<i>General Fund</i>	<i>\$12,693,873,200</i>	<i>\$12,614,946,800</i>	<i>-0.62%</i>	<i>\$12,576,556,600</i>	<i>-0.30%</i>
<i>Other Funds</i>	<i>\$2,574,049,600</i>	<i>2,550,554,900</i>	<i>-0.91%</i>	<i>\$2,619,918,400</i>	<i>2.72%</i>

Sales and Use Tax has been reduced by \$106.2 million in FY18-19 and \$112.0 million in FY19-20 and FY20-21 for the earmarked portion of the tax. Privilege Tax has been reduced by \$58.0 million in FY18-19 and \$52.0 million in FY19-20 and FY20-21 for the earmarked portion of the tax.

# FY19-20 & FY20-21 Estimates

FUNDS	FY19-20 BUDGET	FY19-20 FRC STAFF REVISED TAX ESTIMATE	DIFFERENCE	FY20-21 BUDGET	FY20-21 FRC STAFF REVISED TAX ESTIMATE	DIFFERENCE	TOTAL DIFFERENCE
General Fund	\$13,013,950,000	\$12,614,946,800	-\$399,003,200	\$13,135,000,000	\$12,576,556,600	-\$558,443,400	-\$957,446,600
Other Funds	\$2,637,750,000	\$2,550,554,900	-\$87,195,100	\$2,644,900,000	\$2,619,918,400	-\$24,981,600	-\$112,176,700
<b>TOTAL</b>	<b>\$15,651,700,000</b>	<b>\$15,165,501,700</b>	<b>-\$486,198,300</b>	<b>\$15,779,900,000</b>	<b>\$15,196,475,000</b>	<b>-\$583,425,000</b>	<b>-\$1,069,623,300</b>

# Forecast Risks

- Downside:
  - Second wave of virus and shutdowns
  - Hesitancy
  - Long-term behavioral and business changes
- Upside:
  - Additional government stimulus
  - Strong pent-up demand; consumer & business confidence
  - Effective virus containment and treatment
- Tax deadline extensions
- Presidential and congressional elections





**Thank You**  
**Fiscal Review Committee Staff**

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, NASHVILLE

HUNTER DEMSTER, EARLE J. )  
FISHER, JULIA HILTONSMITH, )  
GINGER BULLARD, JEFF BULLARD, )  
ALLISON DONALD, and )  
#UPTHEVOTE901, )

Plaintiffs, )

v. )

Docket No. 20-0435-I(III)

TRE HARGETT, MARK GOINS, )  
WILLIAM LEE, and HERBERT )  
SLATERY III, each in his official capacity )  
For the State of Tennessee )

Defendants. )

BENJAMIN WILLIAM LAY, CAROLE JOY )  
GREENWALT and SOPHIA LUANGRATH, )

Plaintiffs, )

v. )

Docket No. 20-0453-IV(III)

MARK GOINS, in his official capacity as )  
Coordinator of Election for the State of )  
Tennessee, TRE HARGETT, in his official )  
Capacity as Secretary of State for the State of )  
Tennessee, and WILLIAM LEE, in his official )  
Capacity as Governor of the State of Tennessee,)

Defendants. )

---

**DECLARATION OF MICHAEL F. JAMESON**

---


I, Michael F. Jameson, do declare the following under penalty of perjury:

**EXHIBIT G**

1. I serve as the Director of Legislative Affairs in the Office of Mayor John Cooper, Mayor of the Metropolitan Government of Nashville and Davidson County.
2. The attached document labeled "*The Metropolitan Government of Nashville & Davidson County Recommended Operating Budget for Fiscal Year 2021*" was presented to the Metropolitan Council of Nashville and Davidson County on April 28, 2020 by Mayor John Cooper and accurately summarizes the revenues, expenses, and proposed operating budget for the Metropolitan Government of Nashville and Davidson County for Fiscal Year 2021.

I declare under penalty of perjury that the foregoing is true and correct.

MAY 29, 2020  
Date

  
Michael Jameson

THE METROPOLITAN GOVERNMENT OF  
NASHVILLE & DAVIDSON COUNTY

RECOMMENDED  
OPERATING BUDGET  
FOR FISCAL YEAR 2021



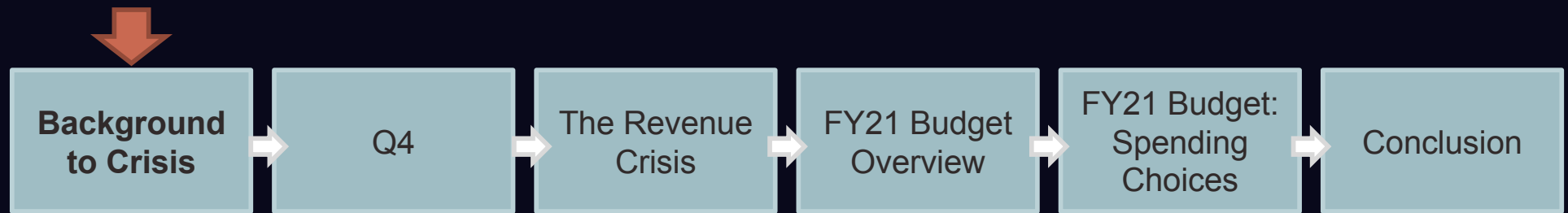
# STABILITY AMID CRISIS

- This is a difficult time for all Nashvillians. Thousands of residents have lost their jobs during the pandemic and that makes the decision to raise taxes all the more difficult
  - This budget will ensure the continuity of essential services so that Metro and MNPS can still meet the need for response and recovery
- Metro's front-line employees are putting themselves at risk every day to deliver the essential services that keep Nashville running
- Outlook in other cities:
  - Over 2,100 cities around the country are anticipating major budget shortfalls
  - Almost 600 cities are predicting layoffs
  - 1,100 cities are preparing to reduce services, with 1,000 cities contemplating an impact on public safety departments

# LEADERSHIP RESPONSE TO CHALLENGE

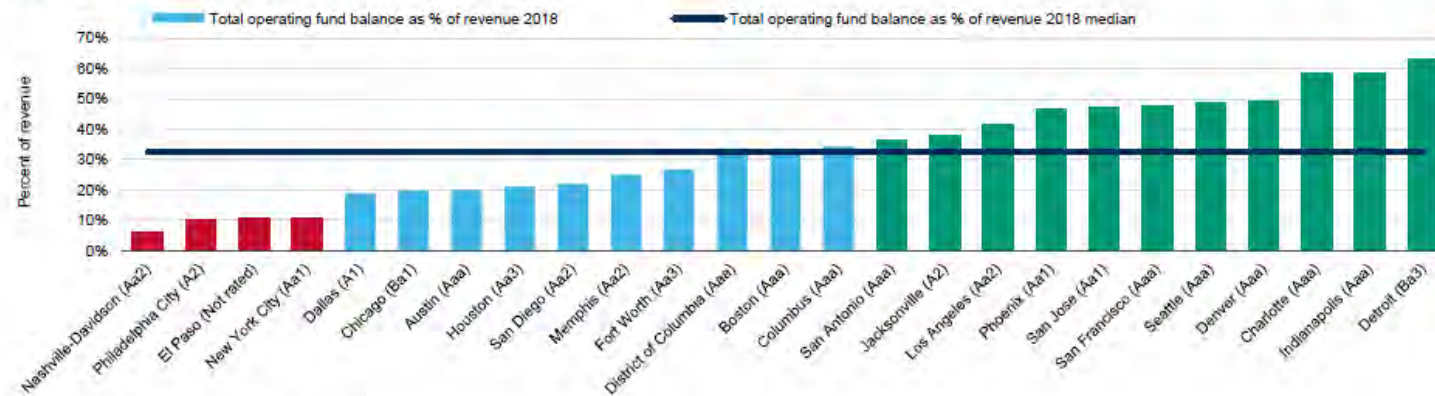
- We already had a \$70M non-recurring and reserve depletion problem
- Disaster quarter will leave Metro with fund balances of only \$12 million at end of 4<sup>th</sup> quarter
- We are projected to lose over \$470 million in revenue over a 16-month time frame. Net revenue loss of \$216M next in FY21
- Management actions produce over \$234M in savings, reductions or deferrals
- The budget includes a property tax increase of \$1.00 to cover a \$332M shortfall – to replenish \$100M in cash, \$216M in net revenue losses in FY21 and \$16M in net operating needs for a “continuation of effort” budget
  - The property tax rate will be \$4.155, up from \$3.155, still the lowest of peer cities
- This is a crisis budget, not a discretionary budget
  - We have struck a balance between departmental cuts and new taxes. This budget allows us to continue delivering Metro services and be ready for recovery
  - No pay raises, but due to management savings, new revenue, and a tax increase, we are avoiding layoffs or pay cuts
- While this budget does not include the many new investments we had hoped to make in employee pay, affordable housing, transportation, social-emotional learning, and much more, this budget will provide needed financial stability

# HOW WE GET THROUGH THE CRISIS BUDGET



# PRE-CRISIS NASHVILLE FUND BALANCE WAS ALREADY LOWEST AMONG PEER CITIES; NO RAINY DAY FUND

Most cities have healthy reserves as of fiscal 2018  
Operating fund balance as a percent of revenue



Sources: Moody's Investors Service, audited financial statements



# METRO ALREADY HAD A VERY DIFFICULT FINANCIAL SITUATION

1

## Fiscal FY20 Unbalanced FY20 Budget

- Operating reserves < 5%
- Other funds (e.g., Injury-on-Duty) depleted
- No “rainy day fund” or ability to absorb emergencies
- State Comptroller did not approve original Budget

ACTIONS TAKEN (\$M)

• Department budgeted target savings	\$12
• December Corrective Action Plan	42
• Delayed and Reduced Capital Spending	

# EF-3 TORNADO IMPACT FURTHER DEPLETED CASH

1

## Fiscal FY20 Unbalanced FY20 Budget

- Operating reserves < 5%
- Other funds (e.g., Injury-on-Duty) depleted
- No “rainy day fund” or ability to absorb emergencies
- State Comptroller did not approve original Budget

2

## EF-3 Tornado

- March 3<sup>rd</sup> tornado response and recovery further depleted cash
  - Estimated total cost \$40M
- Strong insurance policy and FEMA will support recovery, but will take time to attain most reimbursement

ACTIONS TAKEN (\$M)

• Department budgeted target savings	\$12
• December Corrective Action Plan	42
• Delayed and Reduced Capital Spending	

• Insurance Anticipated (\$6M advance; reimbursement)	\$20
• FEMA/TEMA Anticipated	15
• Convention Center Authority MOU increase	5

# COVID-19 BRINGS WORST FINANCIAL SITUATION IN METRO'S HISTORY

1

## Fiscal FY20 Unbalanced FY20 Budget

- Operating reserves < 5%
- Other funds (e.g., Injury-on-Duty) depleted
- No “rainy day fund” or ability to absorb emergencies
- State Comptroller did not approve original Budget

2

## EF-3 Tornado

- March 3<sup>rd</sup> tornado response and recovery further depleted cash
  - Estimated total cost \$40M
- Strong insurance policy and FEMA will support recovery, but will take time to attain most reimbursement

3

## COVID-19

- Unprecedented global pandemic response underway
- Significant and sharp Metro revenue losses
  - \$192M estimated Q4 loss attributable to COVID
- Federal CARES Act will not directly cover revenue losses

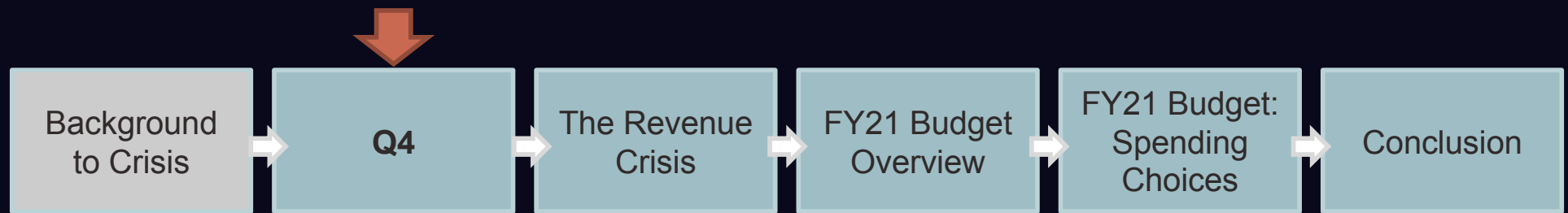
ACTIONS TAKEN (\$M)

• Department budgeted target savings	\$12
• December Corrective Action Plan	42
• Delayed and Reduced Capital Spending	

• Insurance Anticipated (\$6M advance; reimbursement)	\$20
• FEMA/TEMA Anticipated	15
• Convention Center Authority MOU increase	5

• Metro hiring & travel freeze, spending reductions	\$13
• MNPS hiring freeze, savings from school closure	35+
• Capital Spending Ramp-Down / Pause	

# HOW WE GET THROUGH THE CRISIS BUDGET



Q4

# HOW ARE WE GETTING THROUGH Q4? \$216M Q4 REVENUE SHORTFALL

1

REVENUES	
All Funds	\$M
FY20 Budgeted Revenue	\$2,331
Q4 Impact of Tornado & COVID-19	- 192
Other revenue adjustment *	- 24
<b>FY20 Re-forecasted Revenue</b>	<b>2,116</b>


= \$216M Q4 revenue loss

\* Other Revenue Adjustment includes: removing \$41.5M of DES and Parking one-time revenues, adding in \$22.6M PILOT revenues, and \$4.5M of other net revenue adjustments Projections as of 4/28/2020; Revenue numbers do not total due to rounding

Q4

# HOW ARE WE GETTING THROUGH Q4? MANAGEMENT RESPONSE HAS SAVED \$124M

1 REVENUES		2 OPERATING EXPENSES	
All Funds	\$M	All Funds	\$M
FY20 Budgeted Revenue	\$2,331	FY20 Budgeted Operating Expenses	\$2,331
Q4 Impact of Tornado & COVID-19	- 192	Reductions/Savings	- 124
Other revenue adjustment *	- 24	<b>FY20 Re-forecasted Operating Expenses</b>	<b>2,207</b>
<b>FY20 Re-forecasted Revenue</b>	<b>2,116</b>		

To respond to the revenue decrease of \$216 million, we reduced expenses... 

\* Other Revenue Adjustment includes: removing \$41.5M of DES and Parking one-time revenues, adding in \$22.6M PILOT revenues, and \$4.5M of other net revenue adjustments Projections as of 4/28/2020; Revenue numbers do not total due to rounding

Q4

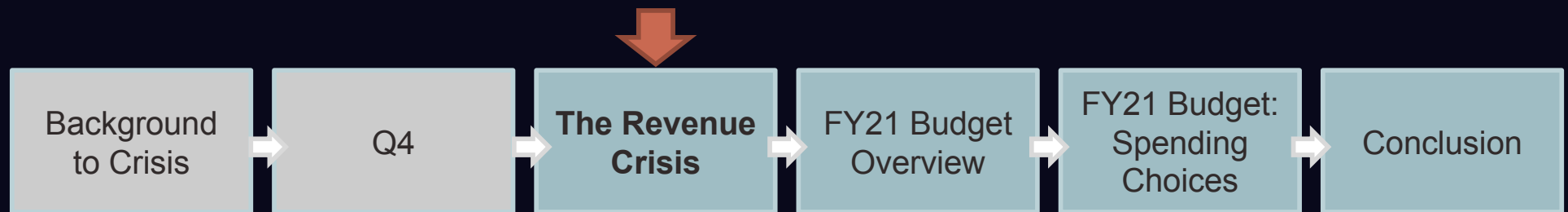
# HOW ARE WE GETTING THROUGH Q4? THE HIT TO CASH IS \$92M. BY END OF Q4, METRO WILL HAVE \$12M FUND BALANCE

1 REVENUES		2 OPERATING EXPENSES		3 FUND BALANCES			
All Funds	\$M	All Funds	\$M	All Funds	\$M	Metro Fund Balance %	MNPS Fund Balance %
FY20 Budgeted Revenue	\$2,331	FY20 Budgeted Operating Expenses	\$2,331	FY20 Budgeted Closing Fund Balance as of 6/30/20	\$104	5%	3.5%
Q4 Impact of Tornado & COVID-19	- 192	Reductions/Savings	- 124	Fund Balance Spent	- 92		
Other revenue adjustment *	- 24	<b>FY20 Re-forecasted Operating Expenses</b>	<b>2,207</b>	FY20 Re-Forecasted Closing Fund Balance as of 6/30/20	<b>12</b>	<b>0.1%</b>	<b>0.9%</b>
<b>FY20 Re-forecasted Revenue</b>	<b>2,116</b>						

To respond to the revenue decrease of \$216 million, we reduced expenses... → Spending reductions filled more than half of the gap, but fund balance was needed to make up the \$92M difference... →

\* Other Revenue Adjustment includes: removing \$41.5M of DES and Parking one-time revenues, adding in \$22.6M PILOT revenues, and \$4.5M of other net revenue adjustments Projections as of 4/28/2020; Revenue numbers do not total due to rounding

# HOW WE GET THROUGH THE CRISIS BUDGET





# WITH ONLY \$12M IN RESERVES, METRO REVENUES ARE OFF \$472M (BETWEEN Q4 AND FY21)

\$M @ current Property Tax Rate of \$3.15 per 100	Path Pre-COVID-19		Path Post-COVID-19	
	FY20 Budget	FY21 Baseline	FY20 Re-Forecasted	FY21 Tornado & COVID-19 Impacted
Property Taxes	\$1,065	\$1,088	\$1,079	\$1,084
Local Option Sales Tax	479	514	384	352
Grants & Contributions	427	405	416	383
All Other Revenues	311	327	230	233
One-Time Asset Sales & Fund Balance	49		7	0
<b>Total</b>	<b>2,332</b>	<b>2,333</b>	<b>2,116</b>	<b>2,052</b>

			<b>TOTAL</b>	<b>Tornado &amp; COVID-19 Revenue Impacts Relative to FY20 Budget (\$M)</b>
	<b>\$192</b>	<b>+</b>	<b>280</b>	

Normal year: FY21 Baseline assumes growth in tax base, removes one-time asset sales and fund balance from FY20

Projections as of 4/28/2020  
 FY20 Re-forecasted includes \$24M of revenue adjustments unrelated to Tornado or COVID listed on slide 9

# THE \$540M CHALLENGE: FY20 REVENUE REPLACEMENTS + TORNADO & COVID IMPACT TO FY20 Q4 + FY21 REVENUE IMPACT

FY20 Revenue Replacements	\$M
Replacement of Parking & DES revenue	42
Replacement of "final year" of CCA MOU	10
Fund balance use	7
Arena Revenue Fund – Excess Fund Balance Transfer	6
Hall Income Tax phase out	3
State Sales tax – Bridgestone Arena	2
E-Bid Excess Fund Balance Transfer	1
<b>TOTAL</b>	<b>\$70</b>

+

Tornado & COVID-19 Revenue Impacts Relative to FY20 Budget (\$M)		
FY20 Re-forecasted	FY21 Forecast	TOTAL
\$192	280	<b>472</b>

=

**\$540M+ Revenue Crisis**

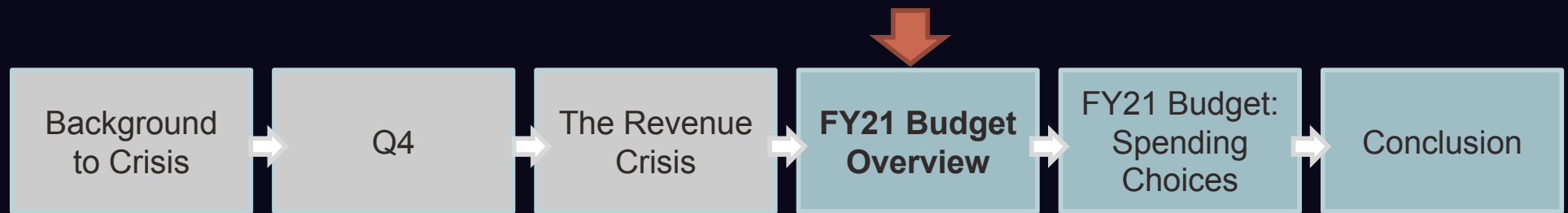
Not included: other funds not replenished in FY20 such as injury-on-duty, legal reserves

*Numbers do not total due to rounding*

# FEDERAL FUNDING WILL NOT MAKE UP FOR OUR REVENUE LOSS

- Metro is directly allocated \$122M in CARES Act State & Local Funding
  - Additional agencies such as MTA, MDHA and Education are also receiving funds through FTA, HUD and Department of Education, respectively
  - Additional funds are also available via the State of TN and Federal agencies (e.g., national grant competitions)
- The CARES Act provides that payments from the State & Local Fund may only be used to cover costs that—
  1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
  2. were not accounted for in the budget most recently approved as of March 27, 2020; and
  3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020
- The majority of CARES Act funding provides for new, one time, out of pocket expenses related to COVID-19 response
  - It does not provide for revenue replacement or compensation and benefits of employees working on COVID-19 response that were already accounted for in FY 20 budget

# HOW WE GET THROUGH THE CRISIS BUDGET



# FY21 IS A CRISIS BUDGET

## GUIDING PRINCIPLES

- **Emergency response is our highest priority**
- **Replenishing critical cash – if we don't, we risk our ability to serve the public**
- **We will use every resource we can – particularly maximizing Federal and State assistance**
- **We will maintain continuity of effort for our services to ensure Nashville emerges from this crisis stronger – managing budget cuts in balance with a sharp tax increase**

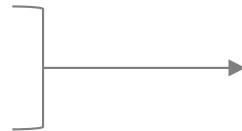
# FEDERAL FUNDS MAY BE USED TO IMPROVE OUR RESPONSE, NOT TO CLOSE BUDGET GAP

	SOURCES	CURRENT IDENTIFIED USES	NEXT STEPS
<b>COVID Direct Response</b>	<ul style="list-style-type: none"> <li>Federal CARES State &amp; Local</li> <li>BJA, CDC</li> </ul>	<ul style="list-style-type: none"> <li>Testing, contact tracing</li> <li>Supplies, equipment</li> <li>Repurposed staff</li> <li>Sick leave</li> <li>Homeless shelters</li> </ul>	<ul style="list-style-type: none"> <li>Ensure public health / safety needs met</li> <li>Implement hazard pay policy with Civil Service Commission</li> <li>Review further guidance on additional uses</li> </ul>
<b>MTA / RTA</b>	<ul style="list-style-type: none"> <li>FTA</li> </ul>	<ul style="list-style-type: none"> <li>Ensure continuity of service</li> <li>Supplement Metro subsidy</li> </ul>	<ul style="list-style-type: none"> <li>Underway working with MTA / RTA</li> </ul>
<b>Food &amp; Shelter Non-profits</b>	<ul style="list-style-type: none"> <li>Federal CARES State &amp; Local</li> <li>HUD</li> </ul>	<ul style="list-style-type: none"> <li>Shift Food, Shelter and Safety services to Federal funding sources; expand where need dictates</li> <li>Services to homeless population</li> </ul>	<ul style="list-style-type: none"> <li>Communications underway with non-profits</li> <li>Application period to be announced</li> </ul>
<b>MAC – NCAC Workforce Development</b>	<ul style="list-style-type: none"> <li>Federal CARES</li> <li>CSBG</li> </ul>	<ul style="list-style-type: none"> <li>Leverage expanding Federal programs for opportunities incl youth</li> <li>Streamline operations = merge NCAC into MAC; staff impacts anticipated</li> </ul>	<ul style="list-style-type: none"> <li>Redesign programs</li> <li>Over time, move redesigned programs to sustained federal workforce funding</li> <li>Administer MAC's incorporation of NCAC</li> </ul>
<b>MNPS Education</b>	<ul style="list-style-type: none"> <li>Education Stabilization Funds</li> </ul>	<ul style="list-style-type: none"> <li>Distance learning tools and resources</li> <li>Ensuring student health &amp; safety</li> <li>Investing in technology</li> <li>Training &amp; long-term planning</li> </ul>	<ul style="list-style-type: none"> <li>Working with MNPS</li> </ul>

# FY21 REVENUES: REDUCING THE \$280M REVENUE LOSS TO \$216M WITH \$64M IN NEW REVENUES

## Relative to FY20 Budget

FY21 REVENUES	
All Funds	\$M
Losses Due to Tornado & COVID-19	280
Less New Revenues	-64
<b>Total Revenue Losses</b>	<b>216</b>



New Revenues \$M	
Conv Center Authority MOU	\$35
Conv Center Authority PILOT	13
Water PILOT	10
Sheriff Federal inmates (gross revenues)	2
Fire Fee Increases	1
Parks Fee Increases	1
Codes Fee Increases	1
<b>TOTAL</b>	<b>64</b>

*Numbers do not total due to rounding*

Projections as of 4/28/2020

# IN FY21 BUDGET, CASH & FUND BALANCE REPLENISHMENT WILL COST \$100M

FY21 CASH REPLENISHMENT	
All Funds	\$M
Bring General Fund up to 5%	56
Bring MNPS to 3.5% *	26
All Other Fund Balances	11
<b>Fund Balance Restored to FY20 levels</b>	<b>92</b>
Bring MNPS to 4% (move closer to existing 5% policy) *	3
<b>Total Fund Balance Replenishment</b>	<b>95</b>
Establish Modest Rainy Day Fund	5
<b>TOTAL</b>	<b>100</b>

\* MNPS replenishment funded by General Fund



# OPERATING BUDGET NEED FOR “CONTINUITY OF EFFORT” FY21 IS \$16M

*Relative to FY20 Budget*

FY21 OPERATING NEED	
All Funds	\$M
Public Safety & Health	17
Pay (Required Classification Adjustment Only), Benefits/Healthcare & Injury on Duty	19
All Other Metro Departments	21
MNPS	<1
<b>Total Continuity of Service Needs</b>	<b>57</b>
Debt Service	6
Less Savings / Reductions	- 48
<b>Net Operating Need</b>	<b>16</b>

*Operating Needs don't total due to rounding*

**\$216M NET REVENUE LOST + \$100M CASH REPLENISHMENT +  
\$16M OPERATING NEED = \$332M BUDGET GAP**

*Relative to FY20 Budget*

FY21 REVENUES	
All Funds	\$M
Losses Due to Tornado & COVID-19	280
Less New Revenues	- 64
<b>Total Revenue Losses</b>	<b>216</b>

+

FY21 CASH REPLENISHMENT	
All Funds	\$M
Fund Balance Replenishment	95
Establish Modest Rainy Day Fund	5
<b>Total Cash Replenishment</b>	<b>100</b>

+

FY21 OPERATING NEED	
All Funds	\$M
Continuity of Service Needs	57
Debt Service	6
Less Reductions / Savings	- 48
<b>Total Operating Need</b>	<b>16</b>

=

GAP		\$M
Total Revenue Losses		216
Total Cash Replenishment		100
Net Operating Need		16
<b>TOTAL GAP</b>		<b>\$332M</b>

**A \$1.00 increase to the property tax rate will generate \$332 million in new revenue**

*Operating Needs don't total due to rounding*

# WHAT IS THE BUDGET PRESSURE FROM DIFFERENT COVID SCENARIOS? IT CAN BE WORSE

## Current Revenue Assumptions:

Sales tax and other impacted activity taxes (e.g., alcohol/beverage) at 10-40% of YTD FY20 average monthly revenue through end of June. Then they begin to grow by 10% through first half of FY21, at which point they plateau at 80% of the pre-COVID FY20 monthly average

Slower than  
expected recovery  
period

- Recovery phases take longer than four weeks
- More sustained reduction in special events, slower tourism recovery

=

**-\$20-40M**  
Additional Impact to FY21  
Revenue Forecast

Late fall  
"Secondary Spike"  
(onset of flu  
season)

- Requires Safer@Home for November & December
- Begin recovery process again in January

=

**-\$110M**  
Additional Impact to FY21  
Revenue Forecast

*Note: Scenarios are not independent; if combined; impacts should not be added together*

# HOW WE GET THROUGH THE CRISIS BUDGET



## FY21 OPERATING EXPENSES: CONTINUITY OF SERVICE NEEDS = \$57M

	Policies	Highlights of Investments over FY20	\$M
Public Safety / Health	<ul style="list-style-type: none"> <li>Ensure COVID-19 Response                             <ul style="list-style-type: none"> <li>Maximize Federal Funding (outside of budget)</li> <li>Maintain a Public Safety &amp; Health contingency</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Fully funding graduating Police recruits</li> <li>Logistics staffing and safety for Fire</li> <li>New jail costs &amp; US Marshals program</li> <li>Contracts / statutory increases</li> <li>Contingency</li> </ul>	\$17
Pay (Required Only), Benefits & Injury-on-Duty	<ul style="list-style-type: none"> <li>Minimize pay increases during crisis</li> <li>Implement hazard pay via Federal Funding (outside of budget)</li> </ul>	<ul style="list-style-type: none"> <li>Implement only required classification adjustments</li> <li>Fulfill Benefits &amp; Injury-on-Duty obligations</li> </ul>	19
All Other Metro Departments	<ul style="list-style-type: none"> <li>Continuity of Service                             <ul style="list-style-type: none"> <li>Fulfill all Charter or essential services</li> <li>Reduce all other spending</li> </ul> </li> <li>Maximize Federal Funding if possible</li> </ul>	<ul style="list-style-type: none"> <li>Fund obligated increases, e.g, contractual, water rates</li> <li>Add back DES at significantly lower subsidy (\$0.6M)</li> <li>Minimal investments: e.g., Elections, Reappraisal, Census redistricting, burials</li> </ul>	22
MNPS	<ul style="list-style-type: none"> <li>Maintenance of Effort budget</li> <li>Maximize Federal Funding \$26M via Dept of Ed (outside of budget)</li> </ul>	<ul style="list-style-type: none"> <li>Fund MNPS to legal requirement</li> </ul> <p><i>Note: MNPS Fund balance replenishment \$29M is also from General Fund</i></p>	<1
<b>Total</b>			<b>57</b>

# FY21 OPERATING EXPENSES: DEBT SERVICE INCREASE LIMITED TO COSTS INCURRED IN MANAGING FY20 CASH SHORTAGE = \$6M

## Debt Service

Policies	
<b>Debt Service</b>	<ul style="list-style-type: none"> <li>Meet all obligations</li> <li>Managed to delay a \$39M increase in debt service cost by delaying a bond issuance due to slowed capital spending</li> </ul>

\$M	FY20	FY21
GSD	208	207
USD	19	20
Schools	111	116
<b>Total</b>	<b>337</b>	<b>343</b>



- \$1.7M USD payment and \$5.3M MNPS payment are carry overs from FY20 cash shortage that will be funded by FEMA Tax Anticipation Notes. The FY21 budget repays this borrowing

**Total Increase Over FY20 due to Debt Service = \$6M**

## FY21 SAVINGS: SUPPLEMENTAL FEDERAL ASSISTANCE TO COVID RESPONSE = \$27M SAVINGS

Savings		\$M
MTA / RTA Annual Subsidy	<ul style="list-style-type: none"> <li>Reduce subsidy by shifting reimbursable cost to CARES Act Federal Funding for FTA for Continuity of Service</li> </ul>	22.3
Food / Shelter / Safety Non-profits + Community Funds - Federal Funding	<ul style="list-style-type: none"> <li>Work with non-profits currently funded by Metro to provide food, shelter and safety to redesign programs (may be already) to serve COVID response. These funds will qualify for Federal CARES Act funding.</li> </ul>	2.8
Opportunity Now / Career Readiness / NCAC @ 50% - Federal Funding & Streamline	<ul style="list-style-type: none"> <li>Change to direct services programs to support expansion of federal funding (e.g., CARES CSBG funding) and prioritize zip code 37208 and other targeted communities over the 200% poverty threshold</li> <li>Streamline operations: there will be staff impacts</li> </ul>	2.0
<b>TOTAL</b>		<b>\$27</b>

*Numbers do not total due to rounding*

## FY21 REDUCTIONS: HARD CHOICES HAD TO BE MADE ON DISCRETIONARY SPENDING = \$21M SAVINGS

Reductions	\$M
TIF Refinancing: MDHA refinancing of Tax Increment Financing obligations in FY20	9.3
<b><i>Discretionary Spending Reductions:</i></b>	
Longevity Pay: Pause longevity pay program for fiscal year	3.9
Department cuts above baseline implementation of Target Savings (travel freeze, eliminate consulting studies, no body-worn cameras expansion phases)	2.8
Economic Development Grants @ 50%: 6 companies historical incentives reduced	1.2
Arts Grants @ 50%: reduction in number/amount of grants	1.2
All Remaining Non-Profit / Chambers Grants @ 50%: 4 Chambers + 15 non-profits impacted	0.9
Nashville GRAD @ 50%: redesign program with Nashville State Community College	0.5
Eliminate Community Education Commission: Department elimination	0.5
Housing Incentive Program \$100K reduction: surplus funding not currently going to rent	0.1
<b>TOTAL</b>	<b>\$21</b>

On top of these cuts: we are fully implementing \$12.1M department historical target savings as direct cuts to department budgets

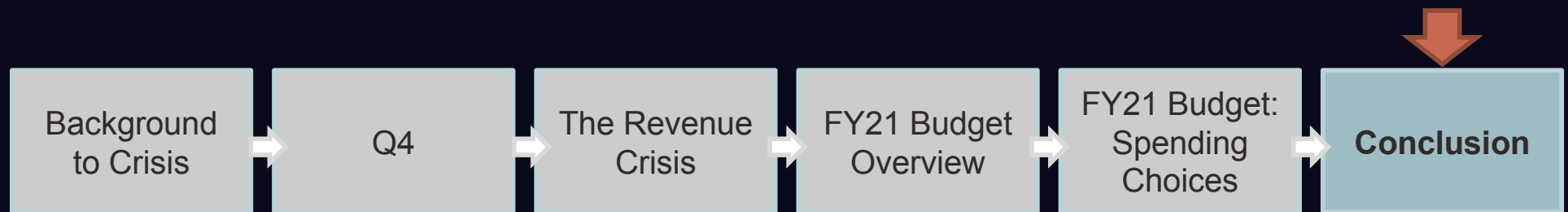
*Numbers do not total due to rounding*



## FY21 COST AVOIDANCE: COSTS NOT INCLUDED IN BUDGET SUCH AS FURTHER EMPLOYEE PAY, FURTHER DEBT SERVICE AND NEGOTIATED SAVINGS

Costs Avoided Include:	
Pay Plan	<ul style="list-style-type: none"> <li>• \$25M pre-crisis plan to fund 2% COLA and merit (via open range and steps) for employees not funded; only \$2.2M required classification adjustments have been funded               <ul style="list-style-type: none"> <li>– Cost for merit for Metro would be \$4.2M steps plus \$4.6M @ 2% increase - \$6.9M @ 3% increase for open range. To include MNPS would be another \$8.4M for steps. Total cost could be as much as \$17-19M</li> </ul> </li> <li>• This Administration has also invested in studying teacher pay and hopes to return to bringing MNPS to best in class pay after the crisis</li> </ul>
Further Debt Service Increase	<ul style="list-style-type: none"> <li>• \$39M Bond deferral via slowed capital spending</li> </ul>
Negotiations of Contractual Increases (e.g., software license cost increases, rent)	<ul style="list-style-type: none"> <li>• ~\$1.1M savings on DES annual subsidy reduced from historical (FY16-19) \$1.7M to \$0.6M</li> <li>• ~\$1.4M in contract renegotiation savings (ITS reductions and deferrals, Public Property rent)</li> </ul>

# HOW WE GET THROUGH THE CRISIS BUDGET



**MANAGEMENT ACTIONS (MINIMUM \$234M TARGET) TO REDUCE THE NEED FOR FY21 PROPERTY TAX INCREASE (INCLUDES ONE-TIME DUE TO Q4 CLOSURES, COST AVOIDANCE WITH CONTRACTUAL)**

<b>Management Actions To-Date</b>		<b>\$M</b>
FY20	December Corrective Action Plan	42
	Convention Center FY20 MOU Increase	5
	Metro hiring freeze, travel freeze, spending reductions	13
	MNPS hiring freeze, savings harvested from school closure	35+
FY21	FY20-21 Capital spending reduced / delayed, then ramp-down / pause slows cash burn in FY20 and allows for deferral of FY21 debt payment	39+
	New Revenue Sources (increase in Conv Center Authority MOU, PILOTs, fees)	64
	Operating Savings & Reductions	48
	Implementing Historical Budgeted Target Savings as a Baseline Department Cut	12
	Cost Avoidance with Contractual Increases	3

## GENERALIZED LOOK AT SOURCES AND USES OF CRISIS BUDGET FY20 + FY21

Sources & Uses		\$M
<b>Uses</b>	<b>FY20 Adjustments</b>	
	• Revenue replacements (e.g., One time sales, Fund balance)	\$70
	• Missing Q4 revenue	192
	<b>FY21 Effect</b>	
	• Missing FY21 Revenue	280
	• Net cost of "Continuity of Service" budget	16
	• Additional Cash Reserves (including Rainy Day Fund)	8
	<b>Total</b>	<b>566</b>
<b>Sources</b>	Management Actions	234
	Tax Increase	332
	<b>Total</b>	<b>566</b>

Conclusion

# FY21 UNBALANCED: \$332M GAP ACCUMULATED BETWEEN REVENUE LOST AND CASH & OPERATING NEEDS

*Relative to FY20 Budget*

FY21 REVENUES	
All Funds	\$M
Losses Due to Tornado & COVID-19	280
Less New Revenues	- 64
<b>Total Revenue Losses</b>	<b>216</b>

+

FY21 CASH REPLENISHMENT	
All Funds	\$M
Fund Balance Replenishment	95
Establish Modest Rainy Day Fund	5
<b>Total Cash Replenishment</b>	<b>100</b>

+

FY21 OPERATING NEED	
All Funds	\$M
Continuity of Service Needs	57
Debt Service	6
Less Reductions / Savings	- 48
<b>Total Operating Need</b>	<b>16</b>

=

GAP	\$M
Total Revenue Losses	216
Total Cash Replenishment	100
Net Operating Need	16
<b>TOTAL GAP</b>	<b>\$332M</b>

**A \$1.00 increase to the property tax rate will generate \$332 million in new revenue**

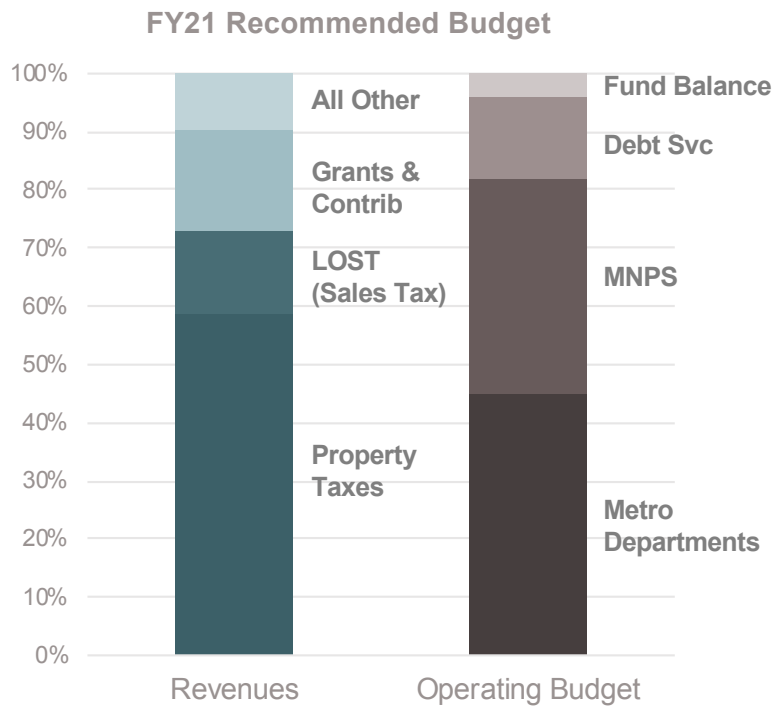
*Operating Needs don't total due to rounding*

## \$1.00 TAX INCREASE = RATE OF \$4.15

- Significant shock of acute revenue reductions from tornado and COVID - **\$472M revenue losses in 16 months** - with no recovery options and an extremely low fund balance, on top of **\$70M of FY20 revenue challenges** creating a **\$540M+ revenue crisis**
- **Management actions of over \$234M** to reduce crisis
- FY21 funding needs are almost entirely cash to ensure we can maintain services and restore our fund balances to the mandated thresholds
- Balancing our revenue and operating needs requires a **\$1.00 property tax increase**
  - At \$4.15, Nashville/Davidson County will still be the lowest of the big 4 TN cities (Chattanooga/Hamilton, Knoxville/Knox, Memphis/Shelby)
  - Translates into an increase of \$750 for a home of \$300,000 (\$3,116 bill instead of \$2,366)
  - Over the past 25 years, Metro's combined GSD/USD property tax rate has averaged \$4.30
  - In the 5 years prior to the historically low rate that began in FY2018, the combined rate averaged \$4.545

Conclusion

# FY21 RECOMMENDED BUDGET: \$2,447,489,500



- FY21 Budget isn't the budget we wanted, but it's the budget we need
- Ensures our ability to respond to tornado recovery and pandemic crisis, given uncertainties on further impact, recoveries and timing
- The tornado recovery and pandemic crisis have demonstrated the importance of appropriate fund balance levels
  - First budget since FY13 that does not propose a depletion of fund balances

THANK YOU