

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA**

TELISA CLARK, et al.,

Plaintiffs,

v.

JOHN BEL EDWARDS, et al.,

Defendants.

**Civil Action: 3:20-cv-00308-SDD-RLB**

POWER COALITION FOR EQUITY AND  
JUSTICE, et al.

Plaintiffs,

v.

JOHN BEL EDWARDS, et al.,

Defendants.

**Civil Action: 3:20-cv-00283-SDD-RLB**

**PLAINTIFFS' JOINT MEMORANDUM IN OPPOSITION TO JURISDICTIONAL  
ARGUMENTS IN STATE'S AND PARISH REGISTRARS OF VOTERS' MOTIONS TO  
DISMISS**

Plaintiffs in these consolidated cases<sup>1</sup> hereby present their joint memorandum in opposition to jurisdictional arguments raised by the State of Louisiana's ("State") and Parish Registrars of Voters' (collectively, "Defendants") Motions to Dismiss, ECF Nos. 29, 31, as they pertain to the claims in Plaintiffs' pending motions for preliminary injunction.<sup>2</sup> Accordingly,

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<sup>1</sup> Plaintiffs in the *Clark v. Edwards* case are Telisa Clark, Lakeshia Barnett, Martha Christian Green, Crescent City Media Group ("CCMG"), and League of Women Voters Louisiana ("LWVLA") (collectively, "*Clark* Plaintiffs"). Plaintiffs in the *Power Coalition for Equity & Justice v. Edwards* case are Power Coalition for Equity and Justice ("PCEJ"), Louisiana State Conference of the NAACP ("Louisiana NAACP"), Jane Chandler, Jennifer Harding, Edith Gee Jones, and Jasmine Pogue (collectively "*Power Coalition* Plaintiffs").

<sup>2</sup> Plaintiffs will respond to the non-jurisdictional arguments raised in these motions in accord with the schedule set forth under the Local Rules.

Plaintiffs respond to Defendants' contentions that the Court lacks subject matter jurisdiction to adjudicate the pending motions for preliminary injunction because: (1) Plaintiffs lack standing due to a lack of (a) injury in fact, (b) traceability, and/or (c) redressability; and (2) that the case is barred by the Political Question Doctrine.

Plaintiffs also briefly address Defendants' arguments under *Purcell v. Gonzalez*, 549 U.S. 1 (2006), that Plaintiffs' requested relief would be too close to the July election for the Court to grant relief.

**I. Plaintiffs Have Standing.**

**A. Plaintiffs' Alleged Injuries Are Concrete, Not Speculative, and Strongly Supported by Record Evidence.**

Defendants' first jurisdictional argument is that Plaintiffs lack standing because their alleged injury is based on "their fears of hypothetical future harm that is not certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013). Defendants argue that Plaintiffs' claimed injuries are "too speculative for Article III purposes." *Id.* at 409 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 565, n.2 (1992) (emphasis in original)).

First, this dispute can only be resolved by reviewing the evidence the parties have introduced. Because the standing and merits issues are completely intertwined, the Court can and should resolve both the dispute over the Article III injury in fact and the preliminary injunction motions at the same time following a single evidentiary hearing. While it is true that Plaintiffs bear the burden of establishing their standing, *see, e.g., Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (per curiam) ("The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction."), in this case, the dispute over Plaintiffs' injury is inextricably enmeshed with the disputed merits of the claimed constitutional injuries. *Chatham Condo. Associations v. Century Vill., Inc.*, 597 F.2d 1002, 1011 (5th Cir. 1979) ("When

jurisdictional issues are intertwined with the merits, the adjudication of the jurisdictional issue in accordance with the procedure under a 12(b)(1) motion fails to offer the procedural safeguards attendant upon proceedings under a 12(b)(6) motion or a motion for summary judgment under Rule 56.”). Because the standing and merits are inextricably intertwined, Defendants’ bid to prematurely dismiss Plaintiffs’ claims should be rejected. In this Circuit, in *antitrust* cases, let alone cases involving fundamental rights such as the right to vote, it is a “well-established principle . . . that premature dismissals . . . for lack of subject matter jurisdiction are not favored ‘where the factual and jurisdictional issues are completely intermeshed . . . .’” *Id.* at 1011 (quoting *McBeath v. Inter-American Citizens for Decency Committee*, 374 F.2d 359, 363 (5th Cir.), *cert. denied*, 389 U.S. 896, 88 S. Ct. 216 (1967)). Plaintiffs submit that the nature of this case, where the existence of an injury turns on record evidence submitted in support of and in opposition to preliminary injunction motions, cries out for application of the same principle and for resolution of both the Rule 12(b)(1) and preliminary injunction motions following a single evidentiary hearing.

Second, Plaintiffs’ claims are not speculative.<sup>3</sup> The ongoing Covid-19 pandemic threatens the lives of at-risk voters like Plaintiffs, who are forced by Louisiana law to vote in specific ways that greatly increase the risk of their exposure to Covid-19, and compels the Organizational Plaintiffs to divert resources and time to combating these constitutional

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<sup>3</sup> The Power Coalition Plaintiffs contend that Plaintiffs have alleged an injury in fact because the challenged requirements, namely the Excuse and Witness requirements, force them to violate social distancing guidance or face disenfranchisement. Additionally, voters always have standing to challenge state laws that require them to take an affirmative act to vote (e.g., obtain a witness signature). *See Veasey v. Perry*, 29 F. Supp. 3d 896, 910 (S.D. Tex. 2014); *Common Cause v. Billups*, 554 F. 3d 1340, 1351-52 (11th Cir. 2009). Defendants’ claim that it is too “speculative” to know whether Plaintiffs will contract Covid-19 due to the challenged requirements, misunderstands the nature of Plaintiffs’ injury. The injury in fact is that Plaintiffs must take steps to satisfy the State’s requirements. The greater risk of getting Covid-19 due to the Challenged Provisions is relevant to the merits since it shows the severity of the burdens during the pandemic. But Plaintiffs’ Article III injury is being forced to comply with the challenged requirements, which they have standing to challenge even outside of a pandemic.

violations. Louisiana cannot preempt consideration of the merits by asserting that the Individual Plaintiffs are not certain to contract Covid-19 and die if they vote in person or interact with a witness to vote by mail. The notion that an Article III injury only arises once a voter contracts and suffers physical harm from Covid-19 is belied by the law and the facts.

The constitutional standards themselves for the undue burden and unconstitutional condition claims do not require Plaintiffs to establish an absolute certainty of contracting Covid-19 resulting in severe complications or death. An Article III injury in fact is necessarily defined by and pegged to the specific claims in a case, as standing “often turns on the nature and source of the claim asserted.” *Warth v. Seldin*, 422 U.S. 490, 500 (1975) (“Essentially, the standing question in such cases is whether the constitutional or statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff’s position a right to judicial relief.”). As for Plaintiffs’ undue burden claim, severe risk to physical health and life *is* a concrete and imminent injury to Plaintiffs. In *Thomas v. Andino*, the U.S. District Court for South Carolina recently issued a preliminary injunction against the state’s witness requirement for absentee voting, explaining:

Thomas/Middleton Plaintiffs are likely to prevail on their constitutional challenge to the Witness Requirement under the *Anderson-Burdick* balancing test because ***the character and magnitude of the burdens imposed on Thomas/Middleton Plaintiffs in having to place their health at risk during the COVID-19 pandemic*** likely outweigh the extent to which the Witness Requirement advances the state’s interests of voter fraud and integrity.

No. 3:20-CV-01552-JMC, --F.3d--, 2020 WL 2617329, at \*21 (D.S.C. May 25, 2020) (emphasis added); *see also id.* at \*19 (“[T]he Witness Requirement further burdens [Plaintiffs] from exercising their right to vote by absentee ballot by requiring them to expose themselves to other people in contravention of maintaining safe social distancing practices”); *id.* at \*21 (noting “the burdens placed upon them by the Witness Requirement”); *Democratic Exec. Comm. of Fla. v.*

*Lee*, 915 F.3d 1312, 1319 (11th Cir. 2019) (noting that “Florida’s signature-match scheme subjects vote-by-mail and provisional electors to *the risk of disenfranchisement*”) (emphasis added).

As these cases indicate, under *Anderson-Burdick*, voting rights plaintiffs have standing and state a claim when their voting rights are impaired. This is true even if they have not yet suffered physical harm or disenfranchisement, as long as they face a severe risk of such harms. The constitutional inquiry here necessarily focuses on the threat to the plaintiffs and the reasonableness of requiring the Plaintiffs to comply with certain legal requirements that increase the burden or danger.

As to the unconstitutional condition claim, this Court does not need to find that the condition *actually* caused voters to contract Covid-19, because it is the coercion itself to give up one constitutional right—the right to bodily integrity—in order to exercise another—the right to vote—that constitutes the injury and source of the constitutional violation. *See Saenz v. Roe*, 526 U.S. 489, 504 (1999); *Memorial Hosp. v. Maricopa Cty*, 415 U.S. 250, 258 (1974); *Dunn v. Blumstein*, 405 U.S. 330, 339–40 (1972). The Supreme Court explained in *Perry v. Sindermann* why the government cannot condition the receipt of a government-created benefit upon the forfeiture of a constitutionally protected right:

[The government] may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to ‘produce a result which (it) could not command directly.’ Such interference with constitutional rights is impermissible.

*Perry*, 408 U.S. at 597 (internal citation omitted). If a government cannot coerce someone to sacrifice a constitutionally-protected right in order to receive a statutory benefit, then it certainly

cannot condition the exercise of a constitutionally protected right—here, voting—on the forfeiture of another constitutional right, the right to bodily integrity.

It is not Plaintiffs’ burden to establish that they will certainly contract the virus or certainly develop severe complications or die from Covid-19. Defendants appear to argue that any amount of uncertainty defeats Plaintiffs’ claims and permits Defendants to enforce election laws that have become unreasonably and severely burdensome during this pandemic.

However, the standard for review is of course preponderance of the evidence, meaning Plaintiffs must establish that it is more likely than not that they will suffer a severe risk of contracting Covid-19 in the July, August, November, and December election periods, absent injunctive relief from this Court. *See Balfour Beatty Rail, Inc. v. Kansas City S. Ry. Co.*, 173 F. Supp. 3d 363, 384 n.9 (N.D. Tex. 2016) (“Proving a fact by a ‘preponderance of the evidence’ means showing that the existence of a fact is more likely than not. Thus, to prove a fact or claim by a preponderance of the evidence, a party must prove that it is more likely than not that its version of the facts is true.” (citing *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983))). The record evidence strongly supports that conclusion.

The record evidence also demonstrates that Plaintiffs’ claims are not speculative, but rather based on an immediate impairment of the right to vote in the context of the objective danger created by the pandemic. Covid-19 is a highly communicable and highly lethal disease that has killed upwards of 110,000 Americans and counting,<sup>4</sup> not a subjective fear based on a purely “conjectural or hypothetical” risk. *Lujan*, 504 U.S. at 560 (quotation marks and citations omitted). They are also supported by substantial record evidence. In its brief, the State calculates

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<sup>4</sup> Ctrs. for Disease Control & Prevention (CDC), Cases in the US, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

a risk of infection of less than one percent by dividing the total number of confirmed Covid-19 cases in Louisiana by total population. *See* Br. in Supp. of St.’s Mot. to Dismiss, ECF No. 29-1, at 9. The State’s flawed calculation overlooks what the Centers for Disease Control and Prevention (“CDC”), Dr. Megan Murray, an expert in infectious disease dynamics and epidemiology, Murray Decl. ¶¶ 1-2, and even the Emergency Election Plan acknowledge: that certain groups are at increased risk of contracting severe illness or dying from Covid-19—groups to which Plaintiffs Clark, Chandler, Harding, Jones, and Pogue, individual Plaintiffs’ family members, and some of the organizational Plaintiffs’ members belong. The Louisiana Health Department’s (“LHD”) statistics substantiate this fact. For example, as of June 9, LHD confirmed 43,612 total cases and 2,844 Covid-19-related deaths in the state.<sup>5</sup> Of those cases, 13,870—nearly a third—have been among people age 60 years or older.<sup>6</sup> People in this age group account for 86 percent of Covid-19-related deaths.<sup>7</sup> The statistics for other disproportionately-affected groups are equally grim. As of June 9, Black people accounted for over 53 percent of Covid-19-related deaths in Louisiana.<sup>8</sup> Individuals with hypertension, like Plaintiff Clark and Plaintiff Green’s mother, accounted for nearly 60 percent of Covid-19-related deaths, while over one in five deaths resulting from Covid-19 were among people with cardiac disease—a condition with which Plaintiff Clark also lives.<sup>9</sup> *See* Declaration of Telisa Clark ¶ 7, ECF No. 22-8; Declaration of Martha Christian Green ¶ 9, ECF No. 22-10.

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<sup>5</sup> *Louisiana Coronavirus COVID-19*, La. Dept. of Health, <http://ldh.la.gov/coronavirus/> (last updated Jun. 9, 2020).

<sup>6</sup> La. Dept. of Health, Cases/Deaths by Age Group, *Louisiana Coronavirus COVID-19*, <http://ldh.la.gov/coronavirus/> (last updated Jun. 9, 2020).

<sup>7</sup> *Id.*

<sup>88</sup> La. Dept. of Health, Additional Data on COVID-19 Deaths in Louisiana, *Louisiana Coronavirus COVID-19*, <http://ldh.la.gov/coronavirus/> (last updated Jun. 9, 2020).

<sup>9</sup> *Id.*

Accordingly, the Individual Plaintiffs or members of their households are at great risk of severe complications and death from Covid-19. According to Dr. Murray, voting in person at a polling place poses a risk to their health. *Id.* ¶ 11 (“To the extent that polling places are crowded, require people to wait in lines, involve interacting with polling staff or other voters at a close distance, move people through the process slowly, are poorly ventilated and/or involve people touching objects like pens, paper, or surfaces within the voting booth, they constitute a risk to voters.”). It is unreasonable for the state to require such individuals to vote in person, given there are safe and reasonable alternatives that do not undermine election integrity whatsoever. Similarly, there are safe and reasonable alternatives to the Witness Requirement that equally do not undermine election integrity, and it is therefore equally unreasonable to continue requiring voters, particularly at-risk voters, to secure a signed witness certification during a pandemic necessitating strict social distancing. Therefore, the Excuse and Witness Requirements impose an undue burden and an unconstitutional condition on the right to vote.

Defendants dispute the danger voters will face in the successive 2020 elections, but this dispute of course cannot be resolved without consideration of the epidemiological evidence Plaintiffs have introduced and Defendants have represented they plan to introduce. The Covid-19 pandemic is indeed expected to produce steady or increased transmission in the United States through the fall, as voters seek to cast their ballots on or before Election Day:

Epidemiologists have projected a number of future Covid-19 epidemic trajectories based on a range of different possible scenarios but all of these scenarios are similar in that they predict that it is highly likely that Covid-19 will continue to circulate at its current level or at an even higher level than currently in October and November of 2020.

Murray Decl. ¶ 33. Federal government officials concur. Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, has said a second wave of infections in the



United States is “inevitable,” and CDC Director Robert Redfield has said that wave may “be even more difficult than the one we just went through.”<sup>10</sup> Due to the corresponding increase in social contacts and seasonal changes, “it is reasonable to expect that, like other beta-coronaviruses, [Covid-19] may transmit somewhat more efficiently in winter than summer.” Murray Decl. ¶¶ 37-39. The projected persistent or increased risk of transmission in the fall and winter is, in part, due to seasonal factors, including “differences in the ways people congregate,” as “people tend to spend more time indoors with less ventilation and less personal space than they do in the summer.” *Id.* ¶ 39. Citing one study that “drew lessons from previous influenza pandemics to predict the future trajectory of Covid-19,” *id.* ¶ 40, Dr. Murray notes that the “most likely scenario” is that “the current first wave of Covid-19 will be followed by a larger wave in the fall or winter of 2020 and one or more smaller subsequent waves in 2021,” *id.* ¶ 41, and that “most epidemiologists expect that incidence will increase in the fall/winter months of 2020-2021.” *Id.* ¶ 42. “In the period prior to the widespread use of an effective vaccine, this spread will continue to lead to serious disease and death in at-risk groups.” *Id.* ¶ 44. Progress towards herd immunity and vaccine development and production are unlikely to advance sufficiently quickly to significantly alter the trajectory of the Covid-19 outbreak. *Id.* ¶¶ 50-53.

Furthermore, the relaxation of social distancing measures is already having a negative effect on the Covid-19 transmission and death rates. The rate of new Covid-19 cases has steadily increased since May 15, 2020, when Phase One of the State’s reopening commenced.<sup>11</sup> On May 14, Louisiana had confirmed a cumulative total of 33,555 cases. By June 5, the day that Phase

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<sup>10</sup> *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing*, White House, Mar. 25, 2020, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-11/>; Zack Budryk, *CDC director warns second wave of coronavirus might be ‘more difficult,’* The Hill, Apr. 21, 2020, <https://thehill.com/policy/healthcare/493973-cdc-director-warns-second-wave-of-coronavirus-might-be-more-difficult>.

<sup>11</sup> Proclamation No. 58 JBE 2020, § 6, <https://gov.louisiana.gov/assets/Proclamations/2020/58-JBE-2020.pdf>.

Two of reopening took effect,<sup>12</sup> that number had grown by 8,434 cases,<sup>13</sup> or an average of 383 new cases per day. By contrast, on April 23, Defendant Governor Edwards reported a total of 25,739 confirmed cases,<sup>14</sup> meaning that in the same period of time *prior* to Phase One, the state witnessed an increase of 7,816 confirmed cases, for an average increase of 355 new cases per day. In the days since Phase Two went into effect, total cumulative cases increased from 41,989<sup>15</sup> to 44,472,<sup>16</sup> for an average of 414 new cases per day. These data reflect a correlation between relaxed social distancing measures and an increase in confirmed infections, consistent with Dr. Murray’s predictions. *Id.* ¶ 10.

Therefore, the parties dispute the magnitude and certainty of these future risks and harms. But these arguments cannot be resolved without consideration of the record evidence. Intervenor-Defendant Louisiana prefers a “wait-and-see” approach, appearing to argue that this Court is prohibited from moving to safeguard voters’ rights during this ongoing pandemic until it sees what the Covid-19 situation in Louisiana is in mid-to-late October.

This argument of course is in direct contradiction to Louisiana’s *Purcell* arguments, *see infra* at Section III; apparently all voting rights claims during the Covid-19 pandemic are either too early or too late. By contrast, Plaintiffs argue that their epidemiological evidence establishes that there is already sufficient record evidence to conclude that it is far more likely than not that voters will face a severe risk of contracting Covid-19 and suffering severe consequences, if

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<sup>12</sup> Proclamation No. 74 JBE 2020, § 6, <https://gov.louisiana.gov/assets/Proclamations/2020/74-JBE-2020-State-of-Emergency-COVID-19-Resilient-Louisiana-Phase-2.pdf>.

<sup>13</sup> *Trends in Cumulative Number of COVID-19 Cases in Louisiana Reported to CDC*, Ctr. for Disease Control & Prevention, <https://www.cdc.gov/covid-data-tracker/> (last visited June 9, 2020).

<sup>14</sup> *Thursday, April 23, 2020: Governor’s Press Conference*, La. Dept. of Health 11 (Apr. 23, 2020), <http://ldh.la.gov/index.cfm/page/3919>.

<sup>15</sup> *Trends in Cumulative Number of COVID-19 Cases in Louisiana Reported to CDC*, *supra* note 13.

<sup>16</sup> *Louisiana Coronavirus (COVID-19) Information*, La. Dept. of Health, <http://ldh.la.gov/coronavirus/> (last updated June 11, 2020).

forced to vote in person or to engage a witness in person. Ultimately this dispute as to the Article III injury is coterminous with the merits of the constitutional claims and can only be resolved following an evidentiary hearing on all pending Rule 12(b)(1) and preliminary injunction motions.

**B. Plaintiffs' Injuries Are Traceable to Defendants' Actions.**

Louisiana next argues that the pandemic is to blame for any threat to Plaintiffs' health and lives, not state government action. DE 29-1 at 13 ("The Virus is not state action."). This argument fundamentally misunderstands Plaintiffs' claims. Plaintiffs argue that Louisiana laws, as enforced by Defendants, *interact with* the Covid-19 pandemic to threaten and infringe Plaintiffs' constitutional rights, including their rights to vote and to be free of unconstitutional conditions on their right to vote that threaten their right to bodily integrity. Leaving aside whether or not Defendants are responsible for any part of the Covid-19 pandemic's devastating effects on public health in Louisiana, they nevertheless cannot evade constitutional liability—for the enforcement of *their election laws*—simply because they have not caused the pandemic.

If this Court granted Plaintiffs their requested relief, this would by no means be the first time that a federal court has found an unconstitutional burden on the right to vote under the First and Fourteenth Amendments to the U.S. Constitution in the context of a natural disaster. When Hurricane Matthew struck Florida just weeks before the November 2016 general election, a federal court ordered an extension of the voter registration deadline by a week "to afford a full opportunity to register for those who may have been affected by Hurricane Matthew's destruction." *Fla. Democratic Party v. Scott*, No. 4:16-CV-626-MW/CAS, 2016 WL 6080225, at \*1 (N.D. Fla. Oct. 12, 2016). The first claim in Plaintiffs' Complaint was an *Anderson-Burdick* claim. *See* Ex. 1, Complaint, *Fla. Democratic Party v. Scott*, No. 4:16-CV-626-MW/CAS, at 13–16 (N.D. Fla. filed Oct. 9, 2016)

Similarly, in *Georgia Coalition for the Peoples' Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344, 1344–45 (S.D. Ga. 2016), the plaintiffs argued that the defendants' failure to extend the state's voter registration deadline in the wake of hurricane Matthew, which resulted in the closure of boards of elections and post offices and the suspension of mail, placed an unconstitutional burden on their fundamental right to vote under the *Anderson/Burdick* framework. See Ex. 2, Complaint, *Ga. Coalition for the Peoples' Agenda v. Deal*, Case 4:16-cv-00269-WTM-GRS, at 13–14 (S.D. Ga. filed Oct. 12, 2016). The Court granted Plaintiffs' request for relief pursuant to their *Anderson-Burdick* claim and extended the voter registration deadline for a week. *Id.* at 1345–46. While the Court acknowledged that the extension “would present some administrative difficulty,” it nevertheless ultimately concluded that

[T]hose administrative hurdles pale in comparison to the physical, emotional, and financial strain Chatham County residents faced in the aftermath of Hurricane Matthew. Extending a small degree of common courtesy by allowing impacted individuals a few extra days to register to vote seems like a rather small consolation on behalf of their government.

*Id.* The same reasoning holds true here where a lethal pandemic has forced voters in Louisiana to take unprecedented measures, including widespread social distancing, to avoid all unnecessary interactions or gatherings with people not in their households. Whether it is an evacuation or a quarantine is immaterial; federal courts have found an undue burden on the right to vote under the First and Fourteenth Amendments where, as here, a natural disaster not of the state's making interacts with a *preexisting* state law or policy to create a severe burden on the right to vote. Louisiana carefully omits citation to these precedents.

Defendants and Louisiana cannot deflect responsibility to Covid-19 itself. These government officials possess emergency powers and have already implemented *some* measures to modify the state's election laws, in clear acknowledgment of the responsibility they have for

the safety of voters as they seek to exercise their right to vote. Louisiana law anticipates such disasters and tasks state election officials with protecting voters' safety in the aftermath, indicating state law does not stand in the way of greater flexibility to preserve voters' rights here. The statute authorizing Defendant Secretary of State Ardoin to develop the Emergency Election Plan expressly grants the Secretary this power "to ensure maximum citizen participation in the electoral process and provide a safe and orderly procedure for persons seeking to qualify or exercise their right to vote, to minimize to whatever degree possible a person's exposure to danger during declared states of emergency, and to protect the integrity of the electoral process . . ." La. Rev. Stat. § 18:401.1(A); *id.* § 18:401.3(A). It further requires that "[i]f a polling place is destroyed, inaccessible, or unsafe, efforts should be made . . . to permit the orderly establishment of a new polling place." *Id.* § 18:401.1(D)(1). Louisiana's state action argument directly contradicts the text and purpose of these laws.

Reasonable modifications and relaxations of voting laws in the face of natural disasters are what typically keep these issues out of the courts. For instance, in 2012, when Hurricane Sandy struck just before the presidential election, New York's Governor issued executive orders permitting voters to cast provisional ballots without regard to restrictions in state law.<sup>17</sup> Here, by contrast, Louisiana is just one of four states that have refused to relax their excuse requirements so that all voters can vote absentee during this pandemic, and in one of these, Tennessee, a state court just enjoined that rule. *Lay v. Goins*, Memorandum and Order (Chancery Court for State of Tennessee, 20th Dist., Davidson Cty., Part II June 4, 2020), <https://www.aclu.org/legal-document/order-lay-v-goins>.

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<sup>17</sup> See State of New York Executive Chamber, Executive Order No. 62, Temporary Suspension of Provisions Relating to the Election Law (Nov. 5, 2012), <http://www.governor.ny.gov/executiveorder/62>.

Many other states have already modified their substantive voting rules in response to Covid-19, not just the timing of their elections. Legislatures in several states have enacted legislation in response to Covid-19 to make it easier to vote during the pandemic, three months or less before their next scheduled elections. For example, on March 23, 2020, the Massachusetts Legislature enacted legislation permitting those municipalities with elections scheduled between the date of enactment and May 30 to postpone their elections,<sup>18</sup> and providing that “any eligible voter may vote early by mail for any annual or special municipal or state election held on or before June 30, 2020.”<sup>19</sup> In Missouri, on June 4, the Governor signed legislation into law that permits a voter to vote by mail in any 2020 election if the voter “has contracted or is in an at-risk category for contracting or transmitting severe acute respiratory syndrome coronavirus 2.” Mo. Rev. Stat. § 115.277.1.(7) (2020). The state’s next election is scheduled for August 4.<sup>20</sup> Legislation enacted by Ohio on March 27 postponed that state’s primary to April 28 and, for the first time, required an election to be conducted primarily by mail.<sup>21</sup> On April 22, Utah also eliminated in-person voting for its regular primary election, which is scheduled to take place on June 30.<sup>22</sup> South Carolina’s Governor signed into law legislation that allows voters whose residence or polling place is subject to a state of emergency to vote by mail if there are fewer than 46 days left before the next election.<sup>23</sup>

Executive officials have also altered the manner of their states’ elections due to Covid-19 in a short period of time. Pursuant to an executive order issued by the Governor of Kentucky, the

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<sup>18</sup> 2020 Mass. Legis. Serv. Ch. 45, § 1(a).

<sup>19</sup> *Id.* § 5(a).

<sup>20</sup> 2020 Missouri Election Calendar, Mo. Sec’y of State, <https://www.sos.mo.gov/elections/calendar/2020cal> (last visited June 9, 2020).

<sup>21</sup> See 2020 Ohio Laws File 30, Am. Sub. H.B. 197, § 32(C)(3).

<sup>22</sup> See 2020 Utah Laws 3rd Sp. Sess. H.B. 3006.

<sup>23</sup> 2020 South Carolina Laws Act 133, § 2.A.

Kentucky State Board of Elections issued 31 K.A.R. 4:190E on May 1, temporarily modifying the state’s absentee voting laws for the June 23 primary election so that any voter may vote by mail if the voter has a “reasonable fear of infection or transmission during a state of public health emergency declared by the Governor.”<sup>24</sup> Maryland’s Governor issued an executive order on March 17, requiring election officials to “utilize, as an alternative voting system, voting by mail” in the April 28 special election for the state’s Seventh Congressional District.<sup>25</sup> New Jersey, which has more than double the number of registered voters as Louisiana,<sup>26</sup> also required that all elections held on May 12 to be conducted “solely via vote-by-mail ballots, which will automatically be sent to all registered voters without the need for an application to receive a vote-by-mail ballot.”<sup>27</sup> And the Secretary of State for Alabama, a state that also employs excuse requirements, issued an emergency rule relaxing the state’s excuse requirement so that “any qualified voter who determines it is impossible or unreasonable to vote at their voting place . . . due to the declared states of emergency” may vote by absentee ballot in the Primary Runoff Election on July 14, 2020.<sup>28</sup>

### **C. Plaintiffs’ Injuries are Redressable by Defendants.<sup>29</sup>**

The State’s attempt to divert responsibility from the properly named Defendants to the local Parish Boards of Election Supervisors (“Parish Boards”) is a red herring that must be rejected. Plaintiffs have the burden of establishing that their injuries are “likely to be redressed

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<sup>24</sup> 31 K.A.R. 4:190E, § 2.

<sup>25</sup> *Renewal of Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19*, § II, Off. of Gov. Larry Hogan (Mar. 17, 2020), <https://governor.maryland.gov/wp-content/uploads/2020/03/Renewal-of-State-of-Emergency.pdf>.

<sup>26</sup> *Statewide Voter Registration Summary*, N.J. Dept. of Elections (Jun. 1, 2020), <https://www.state.nj.us/state/elections/assets/pdf/svrs-reports/2020/2020-06-voter-registration-by-county.pdf>.

<sup>27</sup> Exec. Order. No. 105, § 9 (Mar. 19, 2020), <https://nj.gov/infobank/eo/056murphy/pdf/EO-105.pdf>.

<sup>28</sup> 820-2-3-.06-.01ER(1) (Mar. 18, 2020), <https://www.sos.alabama.gov/sites/default/files/SOS%20Emergency%20Rule%20820-2-3-.06-.01ER.pdf>.

<sup>29</sup> The arguments set forth here are equally applicable to Plaintiffs’ arguments regarding the Defendants Registrars of Voters’ motion to dismiss for failure to join the necessary parties under FRCP 19. Fed. R. Civ. P. 12(b)(7).

by a favorable judicial opinion”<sup>30</sup> against the named Defendants. Such relief is available against all named Defendants. Contrary to the State’s suggestion, the Parish Boards are not necessary parties who must be added to this case for Plaintiffs in order to obtain relief that redresses their injuries.

**1. Defendants, Not the Parish Boards, Set the Criteria for Acceptable Absentee Ballots.**

a) Non-Emergency Authority

As an initial matter, state law, not the Parish Boards, establishes the Excuse Requirements,<sup>31</sup> the Witness Requirements,<sup>32</sup> and the rules regarding notice to voters if their ballots are rejected.<sup>33</sup> With respect to the Excuse Requirement, the categories that establish who is entitled to vote absentee are initially set by statute and can be modified by the named Defendants without any involvement by the Parish Boards.

There is no doubt that, under the Louisiana Constitution, the Attorney General “shall have authority . . . to institute, prosecute, or intervene in any civil action or proceeding” on behalf of the State as a whole. La. Const. art. IV, § 8; *see also* R.S. 49:257(C) (“[N]otwithstanding any other law to the contrary, the attorney general, at his discretion, shall represent or supervise the representation of the interests of the state in any action or proceeding in which the constitutionality of a state statute or of a resolution of the legislature is challenged or assailed.”).

Defendant Secretary of State Ardoin is the “the chief election officer of the state.” La. Rev. Stat. § 18:421. As set forth in the Registrars’ Motion to Dismiss, a voter can request an

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<sup>30</sup> *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)).

<sup>31</sup> La Rev. Stat. § 18:1307.

<sup>32</sup> *Id.*; La Rev. Stat. § 18:1306.

<sup>33</sup> La. Rev. Stat. §§ 18:1306; 18:1313.



absentee by mail ballot from the Registrar of Voters on a standard absentee by mail ballot application form prepared by the Secretary of State. The ballot application form may be obtained from the Registrar or online on the Louisiana Secretary of State's website. Requests for absentee by mail ballots may be submitted by mail, fax, hand-delivery, or electronic means. The application form may also be completed on the Secretary of State's website and conveyed electronically to the appropriate Registrar.<sup>34</sup>

Three application forms are available for the absentee ballot request—General Application Form, Disability Application Form, and Military Application Form.<sup>35</sup> These forms are generally used for all Louisiana elections. *See generally* La. Rev. Stat. § 18:1308. The absentee-by-mail ballot application forms prepared by the Secretary of State include checkboxes beside each reason for requesting an absentee ballot. Once established, it is the Registrars' responsibility to review the check boxes on an application form for an absentee by mail ballot and send ballots to those who check a box for one of the reasons that entitle the voter to an absentee ballot.

b) Emergency Authority

The State Defendants—the Governor, Secretary of State, and Attorney General—have authority to modify election law and procedures during an emergency. Parish officials are required to act accordingly and cannot deviate from state election laws or statewide emergency plans promulgated by Defendants. In extraordinary circumstances such as the one Louisiana now faces, it becomes necessary for the Secretary of State to prepare an “emergency plan for the holding of elections impaired as a result of such an emergency or disaster.” La. Rev. Stat. §

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<sup>34</sup> See <https://www.sos.la.gov/ElectionsAndVoting/Vote/VoteByMail/Pages/default.aspx>.

<sup>35</sup> <https://www.sos.la.gov/ElectionsAndVoting/Vote/VoteByMail/Pages/default.aspx>.

18:401.3. Once the Governor declares a state of emergency, it is the duty of the Secretary of State, if he finds that the emergency “impairs an election that may otherwise be held except for technical, mechanical, or logistical problems,” to certify such facts. *Id.* Once the Governor and relevant House and Senate committees agree, the Secretary of State is required to develop an emergency plan to address the issues preventing a normal electoral process. *Id.* Notably, once approved by the Legislature and the Governor, it is the responsibility of “all officials of the state and of any political subdivision thereof” to “cooperate with and provide assistance to the secretary of state as necessary to implement the plan.” *Id.*

The statutory framework makes it abundantly clear that throughout the entire process that the Secretary of State is responsible for determining when an emergency plan is necessary, developing that plan, and ultimately implementing and executing that plan. The statute also makes clear that other state entities are required to aid in the passage and implementation of any emergency plan. And, as noted, this framework identifies the Governor’s authority and responsibilities; the Governor is required to both declare a statewide emergency and approve the emergency election plan proposed by the Secretary of State and passed into law by the Legislature. *Id.*

Therefore, Plaintiffs’ request for relief “[p]reliminarily and permanently enjoin[ing] Defendants from enforcing the Excuse Requirement for all eligible voters during all elections taking place in Louisiana in 2020,” would appropriately redress Plaintiffs’ injuries related to the Excuse Requirement by either: (1) directing the Secretary of State to remove all checkboxes from the application form and requiring Registrars, who act at the direction of the Secretary of State *see* La. Rev. Stat. § 18:58,, to issue absentee ballots to any voter who requests one, or (2)

directing the Secretary of State to include a catch-all checkbox on the absentee ballot application form.

Similarly, as admitted by the Defendant Registrars of Voters, Registrars' Mot. to Dismiss, ECF No. 31-1, at 10, the Application Witness Requirement is set by statute. If the Application Witness Requirement is declared unenforceable and the Secretary of State is ordered to issue absentee ballots to voters who certify their application with a mark but do not include a witness signature, the Registrars would be required to send absentee ballots to any voters thus situated.

**2. The Parish Boards Have No Role in Setting Aside the Directives of the Defendants When Implementing the Rules Regarding Absentee Voting.**

The Parish Boards have a limited role in implementing the challenged provisions. They have no authority to set aside the rules governing absentee voting established by the State Defendants. The State's statement that Parish Boards are responsible for "determining who is eligible to vote by absentee ballot," Mot. at 17, is wrong. As previously explained, that authority is vested in the state Legislature, the Secretary of State, and the Governor *see, e.g.*, La. Rev. Stat. § 18:1303.

The Parish Boards have narrow duties related to implementing the policies set by Defendants.

Regarding the absentee ballot *applications*, the only power Parish Boards have in determining whether an absentee ballot should be issued entails adjudication of whether the applicant has applied for an absentee ballot under the disability excuse, La. Rev. Stat. § 18:303(I), based on false or fraudulent information. La. Rev. Stat. § 18:307(H). This case, however, does not challenge that authority. They are thus irrelevant to redressing Plaintiffs' constitutional challenges to state laws and policies or the absence thereof.

With respect to absentee ballots, the Parish Boards are responsible for “the counting and tabulation of all absentee by mail and early voting ballots in the parish.” La. Rev. Stat. § 18:1313. But they have no discretion in enforcing the challenged provisions.<sup>36</sup> And during a state of emergency, the determination of who is eligible for an absentee ballot falls to the Secretary of State as part of his proposals to resolve the problems presented by the underlying emergency. *See* La. Rev. Stat. § 18:401.3(B).

Like the Excuse Requirement, the Witness Requirement is neither established nor enforced by Parish Boards. Parish Boards adjudicate challenges to absentee ballots based on the grounds specified in statute, including a challenge based on the fact that the “applicant is not qualified to vote in the election.” La. Rev. Stat. § 18:565(A)(1); *id.* § 18:1315. This can include a challenge based on whether a witness signature is present or not. *See* La. Rev. Stat. §§ 18:565(A)(1), 18:1306, 18:1315.

Finally, it bears emphasis that the Parish Boards have no role in determining whether, when, and how Louisiana’s election code may be modified.<sup>37</sup> Indeed, the State Defendants in no way consulted or involved the Parish Boards in the creation or approval of the Emergency Plan<sup>38</sup>, which demonstrates yet again that Parish Boards have no role related to the modification Louisiana’s election code.

### **3. *Jacobson* Is Inapposite and Distinguishable.**

The State’s argument that Plaintiffs’ failure to join the Parish Boards means that they lack standing relies heavily on a recent decision from the U.S. Court of Appeals for the Eleventh

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<sup>36</sup> The fact that Plaintiffs’ requested relief included a request that the Court order Defendants to “issue guidance” to Parish Boards does not mean the Court cannot redress Plaintiffs’ injury without the addition of Parish Boards. As established above, to the extent Plaintiffs’ request relief requires action from third-parties, it is from the Registrars. Registrars Mot. to Dismiss, ECF No. 31-1, at 4, 17.

<sup>37</sup> *Id.* at 18-19.

<sup>38</sup> *Id.* at 8.

Circuit. In *Jacobson v. Florida Secretary of State*, 957 F.3d 1193 (11th Cir. 2020), the Court held that the plaintiffs lacked standing in a suit challenging a ballot-ordering statute. The appeal occurred following a bench trial. *Id.* at 1198. The statute at issue in *Jacobson* required the names of candidates from the political party that won Florida's most recent gubernatorial election to appear first on the general election ballot, with candidates from the second-place party in the most recent gubernatorial election appearing second. Florida law specifically vested the state's 67 county supervisors with the discretionary authority to determine ballot ordering.

The Eleventh Circuit determined that individual county supervisors were the proper defendants, not the Florida Secretary of State. *Id.* at 1209-10. The court's reasoning rested on two primary grounds: (1) Florida's county supervisors of elections were independent elected officials not accountable to the Secretary of State, and (2) a directive from the Secretary of State instructing the supervisors to alter the ballot ordering would not have redressed the plaintiffs' injuries because the supervisors were still bound to follow the letter of the statute. *Id.* at 1207-08.

*Jacobson* is distinguishable from this case. As described in Section I.C. above, the Parish Boards play no role in the establishment or modification of Louisiana's election laws, including the Excuse Requirement, Witness Requirement, and Cure Prohibition, which Plaintiffs are challenging as insufficient. Even as modified by the emergency plan, these laws were created and passed with the sole involvement of the Governor, the Secretary of State, and the Legislature.

Further, unlike the Florida county supervisors in *Jacobson*, who had been given the power to design ballots and set the order of candidates the authority to set rules regarding absentee ballot rests with the State Defendants.

Plaintiffs' case is more closely analogous to *Self Advocacy Sols. N.D. v. Jaeger*, No. 3:20-CV-00071, 2020 WL 2951012, at \*1 (D.N.D. June 3, 2020). In that case, plaintiffs challenged two North Dakota statutes that vest election officials with authority to reject mail-in ballots based on signature discrepancies. The court in *Self Advocacy* found that, unlike the Florida's county supervisors in *Jacobson*, North Dakota's county auditors, who were responsible for enforcing the signature requirements, lack independence given the fact that they are expressly "responsible to" the Secretary when carrying out election-related duties. *Self Advocacy Sols. N.D. v. Jaeger*, No. 3:20-CV-00071, 2020 WL 2951012, at \*7 (D.N.D. June 3, 2020). Based on this assessment, the court in *Self Advocacy* found that the inclusion of the Secretary of State in the lawsuit satisfied the redressability requirement for Article III standing, as construed by *Jacobson*. Suing the county auditors who must adhere to the directives of the Secretary of State, the state's chief election law enforcement official, was unnecessary.

**4. To the Degree the Parish Boards Implement the Rules and Criteria for Absentee Voting, They Act at the Direction of Defendants Within the Ambit of FRCP 65.**

"An injunction binds not only the parties subject thereto, but also non-parties who act with the enjoined party." *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir. 1995) (citing *Waffenschmidt v. MacKay*, 763 F.2d 711, 716 (5th Cir. 1985), cert. denied, 474 U.S. 1056, 106 S.Ct. 794 (1986)); *see also* Fed. R. Civ. P. 65(d)(2)(C) (an injunction binds both parties to a suit and "other persons who are in active concert or participation" with the parties). The relationship between the party and the nonparty must be "that of associate or confederate." *Chase Nat'l Bank v. City of Norwalk, Ohio*, 291 U.S. 431, 436–37 (1934); *see also* *Microsystems Software, Inc. v. Scandinavia Online AB*, 226 F.3d 35, 43 (1st Cir. 2000) ("[A]ctive concert" requires a "close alliance with the enjoined defendant"). This ensures that "[a] nonparty who has acted independently of the enjoined defendant will not be bound by the injunction[.]" *Id.*

In the context of absentee voting, Parish Boards act in concert with Louisiana and Secretary of State rather than acting on their own. The Secretary of State prepares all absentee mail in ballots. *See* La. Rev. Stat. § 18:1306(A)–(B). The Department of State is responsible for providing assistance to the individual registrars. *See* La. Rev. Stat. § 18:18(C). Further, during declared or even potential emergencies, the clerk of the court for each parish—a member of the parish board—“may bring to attention of the secretary of state any difficulties occurring in his parish” that might hinder an election and determines “*in conjunction with the secretary of state*” if a polling place must be relocated in such situations. *See* La. Rev. Stat. §§ 18:401.1(B); 18:401.2(A)–(B) (emphasis added).

**5. Although the Court Can Accord Complete Relief Among the Existing Parties, if Required, All Parish Boards Could Easily Be Added as Defendants If the Court Determines This Is Necessary.**

As shown above, this Court can redress Plaintiffs’ injuries by issuing orders directing the named Defendants to act. The Parish Boards are, therefore, not necessary parties to the cases before the Court under Fed. R. Civ. P. 19(a)(1)(A). Thus, Louisiana’s motion to dismiss the case for “failure to join a party under Rule 19” should be rejected. That said, if the Court believes the Parish Boards are necessary parties and orders it, Plaintiffs are prepared to amend the Complaints to name all 64 Parish Boards as defendants. *See, e.g.*, Exhibit 3. Given that the Attorney General is the statutorily appointed legal representative for the Parish Boards, La. Rev. Stat. § 18:423(G), service can easily be effectuated for all 64 Parish Boards.

**II. Defendants’ Political Question Defense Fails.**

Plaintiffs’ constitutional claims do not implicate political questions and are fully within the Court’s jurisdiction. The Fifth Circuit already considered this issue and squarely rejected the State of Louisiana’s parallel political question arguments in *Texas Democratic Party v. Abbott*, No. 20-50407, 2020 U.S. App. LEXIS 17564 (5th Cir. June 4, 2020). Specifically, as amicus

curiae in support of Texas state officials in a matter regarding absentee mail-in voting amid the Covid-19 pandemic, Louisiana similarly argued that the plaintiffs' claims constituted non-justiciable political questions, contending in part that no manageable standard existed by which to assess the relevant state action and that any decision by the court was impossible without first making a non-judicial policy determination. Brief for the States of Louisiana and Mississippi in Support of the State of Texas, *Tex. Democratic Party v. Abbott*, 2020 U.S. App. LEXIS 17564, at \*9-12. The Fifth Circuit rejected these political question contentions, stating that they were "unlikely to gain traction, and emphasizing that "[t]he standards for resolving such claims are familiar and manageable, and federal courts routinely entertain suits to vindicate voting rights." *Tex. Democratic Party v. Abbott*, 2020 U.S. App. LEXIS 17564, at \*12-13.

The State attempts to draw comparisons to *Coalition for Good Governance v. Raffensperger*, No. 1:20-cv-1677-TCB, 2020 U.S. Dist. LEXIS 86996 (N.D. Ga. May 14, 2020), to support its unsuccessful political question arguments. The facts here are distinguishable from *Coalition for Good Governance*. In that case, the plaintiffs sought an array of remedies distinct in both substance and scope, including the postponement of an election, an order requiring polling places to use paper ballots, and changes in the number of voting stations, among a number of other requests for relief. *Coalition for Good Governance*, 2020 U.S. Dist. LEXIS 86996, at \*2-4. The district court held that the plaintiffs' claims presented a non-justiciable political question insofar as it found that "[u]ltimately, ordering Defendants to adopt Plaintiffs' laundry list . . . would require the Court to micromanage the State's election process," and that the "relief Plaintiffs seek bears little resemblance to the type of relief plaintiffs typically seek in election cases aimed to redress state wrongs." *Id.* at \*9. In *Texas Democratic Party*, the Fifth Circuit rejected the State's reliance on the *Coalition for Good Governance* case, stating that it



was “different in kind [and] directed at the specific procedures Georgia planned to use to conduct the election, such as whether to use electronic voting machines or paper ballots.” That is, “the suit challenged the *wisdom* of Georgia’s policy choices,” as opposed to the straightforward question of whether the challenged election provisions ran “afoul of the Constitution.”<sup>39</sup> *Tex. Democratic Party*, 2020 U.S. App. LEXIS 17564, at \*12. Plaintiffs present straightforward constitutional claims here.

The State’s assertion that the court’s political question determination in *Texas Democratic Party* does not apply to Plaintiffs’ claims here because this case is similar to the suit in *Coalition for Good Governance* is plainly incorrect. Here, Plaintiffs challenge the constitutionality of Louisiana state laws and are not seeking a policy determination—it is well-established that such claims do not present non-justiciable political questions. *See Baker v. Carr*, 369 U.S. 186, 210 (1962) (“[I]t is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary’s relationship to the States, which gives rise to the ‘political question.’”). To maintain otherwise, as the State has repeatedly attempted to do, would improperly and unjustly insulate an array of state constitutional violations from judicial review.

Adjudicating Plaintiffs’ claims requires no policy determination by the Court and can be accomplished via judicially manageable standards that have been applied by several other federal courts in comparable contexts. *See, e.g., Thomas v. Andino*, No. 3:20-CV-01552-JMC, 2020 U.S. Dist. LEXIS 90812 (D.S.C. May 25, 2020) (enjoining enforcement of absentee ballot witness

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<sup>39</sup> The Fifth Circuit similarly rejected the State’s reliance on *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019) (concerning partisan gerrymandering) and *Jacobson v. Florida Secretary of State*, 957 F.3d 1193, 1212–23 (11th Cir. 2020) (W. Pryor, J., concurring) (concerning allocation of partisan candidates on the state’s paper ballots)—both of which the State also relies on here for its political question arguments—concluding the cases were “of no help” to defendants’ and *amici* Louisiana’s political question arguments. *Tex. Democratic Party*, 2020 U.S. App. LEXIS 17564, at \*12.

requirement under South Carolina law); *League of Women Voters of Va. v. Va. State Bd. Of Elec.*, No. 6:20-cv-0024, 2020 U.S. Dist. LEXIS 79439, at \*45 (W.D. Va. May 5, 2020) (approving consent decree enjoining absentee ballot witness requirement under Virginia law).

### **III. The *Purcell* Doctrine Does Not Bar Plaintiffs' Claims or Requested Relief.**

The State's reliance on the Supreme Court's decision in *Purcell v. Gonzalez*, 549 U.S. 1 (2006), is unpersuasive. The considerations outlined in *Purcell* are weighed along with the equitable factors for preliminary or permanent injunctive relief; they are irrelevant to this Court's subject matter jurisdiction.<sup>40</sup> Such argument is not properly raised in a motion to dismiss, and the Court need not address the issue.

*Purcell* does not create a per se rule mandating that courts reject any request for injunctive relief as to voting rules brought within a certain timeframe before an election. Rather, it instructs courts to consider alleged, potential inconveniences and burdens of ordering rule changes shortly before an election. 549 U.S. at 4-5. In a short per curiam order, the Supreme Court vacated an injunction barring the enforcement of Arizona's newly implemented voter identification and proof of citizenship laws. *Id.* at 4-6. The Court appeared to rely on the fact that Election Day was imminent and its belief that court orders affecting elections can cause voter confusion and turnout decline: "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Id.* at 4-5; *see id.* at 5 (referencing "the necessity for clear guidance" for election administrators).

This Court will review the equitable factors for issuance of a preliminary injunction announced in *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008), and election

related considerations referenced in *Purcell* must be analyzed under *Winter*'s balancing of equities and public interest factors. *See generally* Richard L. Hasen, *Reining in the Purcell Principle*, 43 Fla. St. U. L. Rev. 427, 429 (2016) (“[T]he *Purcell* principle should properly be understood not as a stand-alone rule but instead as relevant to one of the factors (the public interest) the Court usually considers.”). As dictated by *Purcell*, “considerations specific to election cases” must be weighed in conjunction with—not to the exclusion of—the other equitable factors for injunctive relief: “[T]he Court of Appeals was required to weigh, *in addition to the harms attendant upon issuance or nonissuance of an injunction*, considerations specific to election cases and its own institutional procedures.” 549 U.S. at 4 (emphasis added). Therefore *Purcell* does not speak to the court’s subject matter jurisdiction. *See id.*

### CONCLUSION

For the foregoing reasons, Plaintiffs have standing, this case does not present a non-justiciable political question, and *Purcell* does not affect this Court’s jurisdiction.

DATED this 10th day of June, 2020.

/s/ Ronald L. Wilson  
Ronald L. Wilson, (LSBN 13575)  
701 Poydras Street, Suite 4100  
New Orleans, LA 70139  
Tel.: (504) 525-4361  
cabral2@aol.com

/s/ John Z. Morris  
John Z. Morris  
NAACP Legal Defense &  
Educational Fund, Inc.  
40 Rector Street, 5th Floor  
New York, NY 10006  
Tel.: (212) 965-2200  
zmorris@naacpldf.org

/s/ Catherine Meza  
Catherine Meza  
NAACP Legal Defense &  
Educational Fund, Inc.  
700 14th Street, NW, Suite 600  
Washington, D.C. 20005  
Tel.: (202) 682-1300  
cmeza@naacpldf.org

/s/ Robert D. Fram  
Robert D. Fram\*  
Morgan Lewis\*  
Joshua González\*  
Covington & Burling LLP  
One Front Street  
San Francisco, CA 94111-5356  
Tel: (415) 591-6000  
rfram@cov.com  
MELewis@cov.com  
jgonzalez@cov.com  
John Fraser\*\*  
Covington & Burling LLP  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018-1405  
Tel: (212) 841-1000  
JFraser@cov.com

**Attorneys for Power Coalition Plaintiffs**

Respectfully submitted,

/s/ Caren E. Short  
Caren E. Short\*  
Nancy G. Abudu\*  
SOUTHERN POVERTY LAW CENTER  
P.O. Box 1287  
Decatur, GA 30031  
P: (404) 521-6700  
F: (404) 221-5857  
caren.short@splcenter.org  
nancy.abudu@splcenter.org

Danielle E. Davis, La. Bar No. 37995  
SOUTHERN POVERTY LAW CENTER  
P.O. Box 57089  
New Orleans, LA 70157  
T: (504) 486-8982  
C: (504) 376-7085  
F: (504) 486-8947  
danielle.davis@splcenter.org

Jon Sherman\* (D.C. Bar No. 998271)  
Michelle Kanter Cohen\* (D.C. Bar No.  
989164)  
Cecilia Aguilera\* (D.C. Bar No. 1617884)  
Fair Elections Center  
1825 K St. NW, Ste. 450  
Washington, D.C. 20006  
P: (202) 331-0114  
jsherman@fairelectionscenter.org  
mkantercohen@fairelectionscenter.org  
caguilera@fairelectionscenter.org

John A. Freedman\*  
ARNOLD & PORTER  
KAYE SCHOLER LLP  
601 Massachusetts Avenue, N.W.  
Washington, D.C. 20001  
P: (202) 942-5000  
John.Freedman@arnoldporter.com

\*Admitted *pro hac vice*  
\*\**Pro hac vice* motion forthcoming

**Attorneys for Clark Plaintiffs**

**CERTIFICATE OF SERVICE**

I hereby certify that on June 11, 2020, I electronically filed the foregoing motion with the Court's CM/ECF system, which will send notice of electronic filing to counsel of record who are registered participants of the Court's CM/ECF system. I further certify that I sent the foregoing document by electronic mail to counsel of record who are not CM/ECF participants.

/s/ Caren E. Short

*Counsel for Clark Plaintiffs*

# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA**

FLORIDA DEMOCRATIC PARTY,

Plaintiff,

v.

RICHARD SCOTT, in his official  
capacity as Governor of the State of  
Florida, and KEN DETZNER, in his  
official capacity as Secretary of State of  
the State of Florida,

Defendants.

CASE NO. 4:16-cv-626

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**COMPLAINT FOR EMERGENCY INJUNCTIVE AND  
DECLARATORY RELIEF**

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Plaintiff, the FLORIDA DEMOCRATIC PARTY, by and through the undersigned attorneys, files this COMPLAINT FOR EMERGENCY INJUNCTIVE AND DECLARATORY RELIEF against Defendant RICHARD SCOTT, in his official capacity as Governor of the State of Florida, and Defendant KEN DETZNER, in his official capacity as Secretary of State of the State of Florida, (collectively, “Defendants”), and alleges upon information and belief as follows:

## NATURE OF THE CASE

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

2. Under state law, the voter registration deadline for Florida voters is Tuesday, October 11, 2016. Eligible United States citizens who fail to register by October 11 will be unable to register thereafter in time to cast a ballot in the upcoming 2016 general election scheduled to occur on November 8, 2016.

3. Florida voters, however, face a daunting and, indeed, life-threatening obstacle to registering to vote in the form of Hurricane Matthew, a massive and dangerous weather event that has threatened Florida with substantial damage and loss of life.

4. On Thursday, October 6, Defendant Scott unambiguously ordered Florida citizens to “evacuate, evacuate, evacuate” the areas in Hurricane Matthew’s path. “There are no excuses. You need to leave,” he told Floridians. “This storm will kill you. Time is running out.” Arek Sarkissian & Doug Stanglin, *Hurricane Matthew: Florida Governor Says ‘Evacuate, Evacuate, Evacuate,’* USA Today (Oct. 6, 2016), <http://www.usatoday.com/story/news/nation/2016/10/06/hurricane-matthew-batters-bahamas-set-strengthen-florida->



approach/91652096/ (last visited Oct. 8, 2016); Camila Domonoske, *Millions of Coastal Residents Warned to Flee Inland as Hurricane Nears Florida*, NPR (Oct. 6, 2016), <http://www.npr.org/sections/thetwo-way/2016/10/06/496836153/millions-of-coastal-residents-warned-to-flee-inland-as-hurricane-nears-florida> (last visited Oct. 8, 2016).

5. That very same day, Defendant Scott refused to extend the voter registration deadline for the very citizens heeding his orders to evacuate—forcing voters to choose between their safety and the safety of their families, on one hand, and their fundamental right to vote, on the other hand.

6. Many elected officials, citizens, and organizations, including Plaintiff, have called upon Defendant Scott to extend Florida’s voter registration deadline so that Florida voters need not choose between safety and the fundamental right to vote. Defendant Scott has thus far refused to extend the deadline.

7. Plaintiff brings this lawsuit because Defendants have refused to take any action to protect the voting rights of Florida citizens who, due to Hurricane Matthew, cannot register to vote by the upcoming October 11 registration deadline.

## JURISDICTION AND VENUE

8. Plaintiff brings this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the United States Constitution.

9. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States, because Plaintiff brings this action to redress the deprivation, under color of State law, of rights, privileges, and immunities secured by the Constitution of the United States and federal law, and because Plaintiff brings this action to secure equitable relief under federal law providing for the protection of voting rights.

10. This Court has personal jurisdiction over Defendants, who are sued in their official capacity only.

11. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events that gave rise to Plaintiff's claims occurred in this judicial district.

12. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

## PARTIES

13. Plaintiff FLORIDA DEMOCRATIC PARTY (“FDP”) is a political party recognized by Florida law. *See* Fla. Stat. § 103.091. FDP is the statewide organization representing Democratic candidates and voters throughout the State of Florida within the meaning of Florida Statute § 103.121 and all other applicable provisions of the election laws. FDP’s purpose is to elect Democratic Party candidates to public office throughout Florida. To accomplish its purpose, FDP engages in vitally important activities, including supporting Democratic Party candidates in national, state, and local elections through fundraising and organizing efforts; protecting the legal rights of voters; and ensuring that all voters have a meaningful ability to cast ballots in Florida. FDP has millions of members and constituents across Florida and in storm-affected areas, including millions of Floridians who are registered with the Florida Department of State’s Division of Elections as Democrats, and many other Floridians who regularly support and vote for candidates affiliated with the Democratic Party.

14. Defendants’ refusal to extend the voter registration deadline in the face of a catastrophic emergency that has made it impossible for many Floridians to register by the October 11 deadline directly harms FDP, its members, and constituents. It is likely that citizens who would otherwise register as Democrats prior to the registration deadline—or who have already

registered as Democrats with a third-party voter registration agency that is being prevented, by Hurricane Matthew, from turning in that voter's registration paperwork—will not be able to do so, thereby decreasing the overall likelihood that FDP will be successful in its efforts to help elect Democratic candidates to public office.

15. Defendant RICHARD SCOTT is sued in his official capacity as Governor of the State of Florida. Defendant Scott is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law. As Governor of Florida, Defendant Scott is the state's chief executive officer and is responsible for the administration of all state laws, including those pertaining to voter registration.

16. Defendant KEN DETZNER is sued in his official capacity as Secretary of State of the State of Florida. Defendant Detzner is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law. Pursuant to Florida Statute § 97.012, the Secretary of State is the chief elections officer of the State and is responsible for the administration of state laws affecting voting, including those pertaining to voter registration. As Secretary of State, Defendant Detzner's duties consist, among other things, of "[o]btain[ing] and maintain[ing] uniformity in the interpretation and implementation of the election laws." *Id.* at § 97.012(1).

## STATEMENT OF FACTS AND LAW

17. Unlike many other states, Florida does not permit residents to register to vote online. *See* Fla. Stat. § 97.053. Nor does it offer same-day registration on election day. Rather, Floridians must complete a paper Florida Voter Registration Application and deliver it, either in person or by mail, to the office of the County Supervisor of Elections, the Florida Division of Elections, or a third-party voter registration agency. *Id.*

18. Tuesday, October 11 is the voter registration deadline for the upcoming general election on November 8, 2016. *See* Fla. Stat. §§ 97.053, 97.055, 97.0555. *See also* Fla. Dep't of St., Div. of Elections, 2016 Florida Voter Registration and Voting Guide, *available at* <http://dos.myflorida.com/media/693760/voter-registration-guide.pdf>.

19. October 9 is the deadline for county election officials to submit early voting plans, including identification of all early voting sites and the hours of operation for such sites. *See* Fla. Stat. § 101.657(1)(b).

20. After claiming nearly 900 lives in Haiti and the Caribbean, Hurricane Matthew hit Florida on the afternoon of Thursday, October 6, 2016, just five days before the October 11 voter registration deadline. The largest storm to hit the eastern seaboard in a decade, Hurricane Matthew tore through Florida with 130-mile-per-hour winds, destroying roads and bridges and killing

at least four people. President Barack Obama declared a state of emergency in more than two dozen Florida counties. Defendant Scott deployed 3,500 National Guard troops and insisted that 1.5 million Florida residents evacuate their homes and relocate inland. By Friday evening, more than 1 million residents had lost power, more than 500,000 residents were still in evacuation zones, and thousands of residents were in shelters. *See* Arek Sarkissian & Doug Stanglin, *Hurricane Matthew: Florida Governor Says 'Evacuate, Evacuate, Evacuate,'* USA Today (Oct. 6, 2016), <http://www.usatoday.com/story/news/nation/2016/10/06/hurricane-matthew-batters-bahamas-set-strengthen-florida-approach/91652096/> (last visited Oct. 8, 2016); J.J. Gallagher, Morgan Winsor, Emily Shapiro, & Julia Jacobo, *Hurricane Matthew Batters Florida Coast; 4 Dead, Over 1 Million Lose Power,* ABC News (Oct. 8, 2016), <http://abcnews.go.com/US/hurricane-matthew-batters-florida-coast-dead-million-lose/story?id=42608853> (last visited Oct. 8, 2016).

21. On Thursday, October 6, the campaign manager of Democratic presidential nominee Hillary Clinton and several Florida lawmakers, including Senator Bill Nelsen and Representative Debbie Wasserman Schultz, asked Defendant Scott to extend the voter registration deadline. *See* Eli Yokley, *Florida Democrats Call on Rick Scott to Extend Voter Registration Deadline,* Morning Consult (Oct. 7, 2016), <https://morningconsult.com/alert/florida->

democrats-call-scott-extend-voter-registration-deadline/ (last visited Oct. 8, 2016); Gabriel Debenedetti, *Clinton Campaign Chief to Florida: Extend Voter Registration Because of Storm*, Politico (Oct. 6, 2016), <http://www.politico.com/story/2016/10/clinton-campaign-florida-voter-registration-hurricane-229249> (last visited Oct. 8, 2016).

22. While acknowledging that he has “never seen anything like [Hurricane Matthew] before,” Defendant Scott nevertheless refused to extend the voter registration deadline to give Floridians additional time to register. See Reena Flores, *Rick Scott Won’t Extend Florida Voter Registration Because of Hurricane*, CBS News (Oct. 7, 2016), <http://www.cbsnews.com/news/rick-scott-wont-extend-florida-voter-registration-because-of-hurricane/> (last visited Oct. 8, 2016); *Gov. Scott Says No to Extending Florida Voter-Registration Deadline*, Miami Herald, (Oct. 6, 2016), <http://miamiherald.typepad.com/nakedpolitics/2016/10/gov-scott-says-no-to-extending-florida-voter-registration-deadline.html> (last visited Oct. 8, 2016).

23. During a press conference on Thursday, October 6, Defendant Scott chose to blame his constituents for failing to register before Hurricane Matthew hit Florida. He stated, “everybody’s had a lot of time to register. On top of that, we have lots of opportunities to vote: early voting, absentee voting, Election Day. So I don’t intend to make any changes.” Reena Flores, *Rick Scott Won’t*

*Extend Florida Voter Registration Because of Hurricane*, CBS News (Oct. 7, 2016), <http://www.cbsnews.com/news/rick-scott-wont-extend-florida-voter-registration-because-of-hurricane/> (last visited Oct. 8, 2016).

24. Defendant Scott dismissed the ramifications of his refusal to extend the deadline, stating, “Look, this is, this is politics.” *Id.*

25. Defendant Scott is a member of the Republican Party of Florida, a staunch supporter of Republican presidential nominee Donald Trump, and Chair of Rebuilding America Now, a pro-Trump super PAC. *See* Marc Caputo, *Scott to Chair Pro-Trump Super PAC*, Politico (July 27, 2016), <http://www.politico.com/states/florida/story/2016/07/rick-scott-to-chair-pro-trump-super-pac-104308>.

26. Defendants’ refusal to extend the registration deadline will prevent thousands of Florida residents in the areas affected by Hurricane Matthew from registering and voting in the upcoming general election. In the nine days in October prior to the voter registration deadline preceding the 2012 election, for example, roughly *181,000* Floridians registered to vote. *See* Fla. Dep’t of St., Div. of Elections, *Voter Registration Monthly Report October 2012*, *available at* <http://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/voter-registration-monthly-reports/> (Archived Monthly Reports, 2012, October, *MonthlyReport2.pdf*).



27. Even if would-be voters choose to disregard the commands of Defendant Scott and the Federal Emergency Management Agency and venture out to attempt to register amid the chaos caused by Hurricane Matthew, it is unlikely that any office permitted to accept voter registration applications will be open. All Board of County Commissioners offices were closed late last week. Bridges are closed. Many roads that have not been destroyed are flooded or otherwise impassable. And registering by mail is not an option: the U.S. Postal Service has suspended operations in most (if not all) areas affected by Hurricane Matthew. *See Postal Service Prepping for Hurricane Matthew*, WJHG (Oct. 6, 2016), <http://www.wjhg.com/content/news/Postal-service-prepping-for-Hurricane-Matthew-396212161.html> (last visited Oct. 8, 2016); *Closings, Cancellations Due to Hurricane Matthew*, WTSP (Oct. 6, 2016), <http://www.wtsp.com/news/local/florida/closings-due-to-hurricane-matthew/329299515> (last visited Oct. 8, 2016).

28. Defendants' refusal to extend the voter registration deadline will have a substantial effect on the upcoming general election and will unfairly and arbitrarily favor some Florida voters over others. Unlucky Floridians who happen to live in the counties stricken by Hurricane Matthew who have not yet registered will be unable to register by the October 11 deadline and will therefore not be permitted to vote in the upcoming general election. Meanwhile,

their neighbors to the west, who by happy geographic accident will not have to contend with the devastation of Hurricane Matthew, will have no difficulty registering by the October 11 deadline and casting their vote in the general election.

29. Moreover, Defendants' refusal to extend the voter registration deadline will have a decidedly partisan effect because Democratic-leaning communities, including minority voters and young voters, register at higher percentages shortly before the registration deadline. *See* Matt Dixon & Marc Caputo, *Scott Won't Extend Voter Registration Deadline as Hurricane Matthew Threatens State*, Politico (Oct. 6, 2016), <http://www.politico.com/states/florida/story/2016/10/scott-wont-extend-voter-registration-deadline-as-hurricane-matthew-approaches-106172#ixzz4MWytl0yG> (last visited Oct. 8, 2016).

30. On information and belief, because of Hurricane Matthew, some county election officials were unable to timely submit early voting plans and/or verify that identified early voting sites remain viable in light of potential storm damage. Those officials will need extra time to submit their early voting plans and/or notify affected residents of those changes.

31. Meanwhile, other states directly impacted by Hurricane Matthew have taken action to protect voters. South Carolina extended its mail-in voter registration deadline, and Georgia is encouraging voters to take advantage of

online registration—an option not available to Floridians. *See How to Register to Vote in South Carolina*, Heavy (Oct. 7, 2016), <http://heavy.com/news/2016/10/how-can-i-register-to-vote-in-south-carolina-online-person-by-mail-hurricane-matthew-when-is-deadline/> (last visited Oct. 8, 2016); Kristina Torres, *More Than Half a Million People Have Registered to Vote in Georgia*, The Atlantic Journal-Constitution (Oct. 7, 2016), <http://www.ajc.com/news/state--regional-govt--politics/more-than-half-million-people-have-registered-vote-georgia/sOD9NTX3YzrUNZUjBEUVVK/> (last visited Oct. 8, 2016).

## CLAIMS FOR RELIEF

### COUNT I

#### **Undue Burden on the Right to Vote in Violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment**

32. Plaintiff realleges and incorporates by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

33. Under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment, a court considering a challenge to a state election law must carefully balance the character and magnitude of the injury to First and Fourteenth Amendment rights that the plaintiff seeks to vindicate against the justifications put forward by the state for the burdens imposed by the rule. *See*

*Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

34. The court “must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789).

35. Unless Plaintiff is granted the relief requested, there is a strong likelihood that the right to vote of thousands of Floridians, including Plaintiff’s members and constituents, will be severely burdened (if not eliminated entirely) in the 2016 general election.

36. Because of Hurricane Matthew, many Floridians who would have registered to vote prior to the October 11 registration deadline have been displaced or otherwise prevented from registering, and thus cannot register to vote by the October 11 deadline. Moreover, many offices at which voters could register in person and U.S. Postal Offices where voters could submit registration applications have been closed, preventing Floridians in areas impacted by Hurricane Matthew from timely submitting registration materials.

37. As a result, enforcing the October 11 voter registration deadline unfairly, severely, and disproportionately burdens the voting rights of Floridians in storm-affected areas.

38. The burdens imposed by the October 11 voter registration deadline are especially severe for certain voter populations, including minority voters and poor voters. The burdens imposed by the October 11 voter registration deadline, individually and collectively, outweigh any conceivable benefits of that deadline.

39. The State has not provided any colorable justification for its refusal to extend the voter registration deadline notwithstanding the consequences of Hurricane Matthew. In Florida, elections supervisors usually see a surge in voter registration shortly before the registration deadline. In the last presidential election year, roughly 181,000 people registered during the nine days before the registration deadline. Nonetheless, the Governor has refused to extend the voter registration deadline, stating simply that “[e]verybody has had a lot of time to register.”

40. Hurricane Matthew has prevented local election officials from meeting the October 9 deadline for submission of early voting plans that, among other things, must identify viable early voting sites.

41. That it is possible for Florida to extend the registration deadline cannot be disputed. Other states impacted by Hurricane Matthew, including South Carolina, have extended voter registration deadlines to mitigate the consequences of the hurricane and afford voters a viable opportunity to register.

**COUNT II**  
**Disparate Treatment in Violation of the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983**

42. Plaintiff realleges and incorporates by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

43. The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution guarantees qualified voters a substantive right to participate equally with other qualified voters in the electoral process. Further, the equal right to vote that is protected by the Equal Protection Clause is protected in more than the initial allocation of the franchise; equal protection applies to the manner of its exercise as well. *See Bush v. Gore*, 531 U.S. 98, 104 (2000). Thus, a state may not arbitrarily impose disparate treatment on similarly situated voters.

44. As set forth above, the effect of the State's refusal to extend the voter registration deadline is to treat similarly situated Floridians differently.

45. Specifically, Floridians in inland areas not affected by Hurricane Matthew may register to vote until the October 11 deadline without impediment,

because (among other reasons) they have not been ordered to evacuate and they reside in areas where local government services remain available. In contrast, many Floridians in storm-affected areas are either displaced or otherwise prevented from registering to vote as a result of Hurricane Matthew. And, even if they attempted to register notwithstanding those barriers, the local government offices that they would need to access are closed as a result of the hurricane. Likewise, Hurricane Matthew has prevented local election officials from meeting the October 9 deadline for submission of early voting plans that, among other things, must identify viable early voting sites.

46. There is no rational basis for favoring voters in inland areas over voters in storm-affected areas with respect to the right to cast a ballot in the upcoming general election. This disparate treatment of Florida residents based solely upon the area in which they live is unfair and arbitrary, and the State has not and cannot set forth any valid justification for its disparate treatment of members of the electorate.

47. Based on the foregoing, Defendants, acting under color of state law, have deprived and will continue to deprive Plaintiff and Florida voters of equal protection under the law secured to them by the Fourteenth Amendment to the United States Constitution and protected by 42 U.S.C. § 1983.

**COUNT III**  
**Violation of Section 2 of the Voting Rights Act**

48. Plaintiff realleges and incorporates by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

49. Section 2 of the Voting Rights Act of 1965 provides in relevant part that “[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State . . . in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a).

50. The State’s refusal to extend the voter registration deadline and/or the deadline for local election officials to submit early voting plans notwithstanding the effects of Hurricane Matthew has abridged and/or denied, and will continue to abridge and/or deny, the voting rights of minority voters in Florida on account of race.

51. The areas affected by Hurricane Matthew include substantial populations of minority voters, including African Americans and Latinos. Minorities in storm-affected areas are disproportionately likely to register to vote in the days immediately preceding the registration deadline. As a result,



the effective elimination of the final days preceding the registration deadline will have a disparate impact on minority voters.

52. Minority voters in Florida, including African Americans and Latinos, have suffered from, and continue to suffer from, discrimination on the basis of race, including discrimination touching on the rights to register, to vote, or to otherwise participate in the democratic process.

53. The ongoing effects of this discrimination include significant and continuing disparities between minorities and other members of the electorate, including disparities in socioeconomic conditions, employment and health, education, access to transportation, and access to government services.

54. Those disparities, in turn, mean that minority voters in storm-affected areas will have more difficulty overcoming the barriers to voter registration caused by Hurricane Matthew than other members of the electorate in the storm-affected areas.

55. As a result, the challenged voter registration deadline will impose a disproportionate burden on the voting rights of minority voters in the storm-affected areas. That disproportionate burden will be caused by and is linked to the social and historical conditions that have produced discrimination against minorities, and the State's insistence that it will not modestly extend the voter

registration deadline has, at best, a tenuous connection to any legitimate government policy underlying the registration deadline.

56. The voter registration deadline challenged under Section 2 has had and, if not declared illegal and enjoined, will continue to have a disparate adverse impact on minority voters in Florida, including African Americans and/or Latinos.

57. Under the totality of the circumstances, the voter registration deadline has resulted and will result in less opportunity for minorities than for other members of the electorate in Florida to participate in the political process and to elect candidates of their choice, and therefore violates Section 2 of the Voting Rights Act.

**DECLARATORY AND INJUNCTIVE RELIEF**  
**28 U.S.C. §§ 2201 and 2202, Fed. R. Civ. P. 57 and 65**

58. Plaintiff realleges and incorporates by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

59. This case presents an actual controversy because Defendants' present and ongoing refusal to allow Floridians an opportunity to register to vote in the general election subjects Plaintiff and its members and constituents to

serious and immediate harms, warranting the issuance of a declaratory judgment.

60. Plaintiff seeks preliminary and/or permanent injunctive relief to protect its statutory and constitutional rights and avoid the injuries described above. A favorable decision enjoining Defendants from enforcing the October 11 voter registration deadline, and requiring Defendants to extend the period for submitting early voting plans, would redress and prevent the irreparable injuries to Plaintiff and its members and constituents identified herein, for which Plaintiff has no adequate remedy at law or in equity.

61. The Defendants will incur little to no burden in if the relief sought here is granted. Any minor administrative burden imposed on Defendants pales in comparison to the fundamental constitutional injury of denial of the right to vote that Plaintiff and its members and constituents will suffer in the absence of the relief requested.

62. The public interest weighs strongly in favor of extending the October 11 voter registration deadline and extending the deadline for submission of early voting plans to permit every lawful, eligible citizen who wishes to vote to vote in the upcoming general election. The balance of hardships thus tips strongly in favor of Plaintiff.

63. Concurrently with this Complaint, Plaintiff has filed an emergency motion for temporary restraining order in accord with Local Rule 7.1(L).

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment:

A. Ordering Defendants to extend Florida's voter registration deadline by at least one week (from October 11, 2016 up to and including October 18, 2016).

B. Preliminarily and permanently enjoining Defendants from enforcing the current October 11, 2016 voter registration deadline.

C. Ordering Defendants to extend the deadline for counties to submit or amend early voting plans until at least October 16, 2016, to the extent that any counties have been unable to submit their early voting plans (and/or verify that identified early voting sites remain viable post-hurricane) by October 9, 2016.

D. Awarding Plaintiff its costs, expenses, and reasonable attorneys' fees pursuant to, *inter alia*, 42 U.S.C. § 1988 and other applicable laws; and

E. Granting such other relief as the Court deems just and proper.

Dated: October 9, 2016

Respectfully submitted,

/s/ Mark Herron

Mark Herron

Fl. Bar. No. 199737

[mherron@lawfla.com](mailto:mherron@lawfla.com)

Robert J. Telfer III

Fl. Bar No. 0168694

[rtelfer@lawfla.com](mailto:rtelfer@lawfla.com)

**MESSER CAPARELLO**

2618 Centennial Place

Tallahassee, FL 32308

Telephone: (850) 222-0720

Facsimile: (850) 558-0659

and

Marc E. Elias

D.C. Bar No. 44207

(Admitted *Pro Hac Vice*)

[MElias@perkinscoie.com](mailto:MElias@perkinscoie.com)

Kevin J. Hamilton

Wash. Bar No. 15648

(*Pro Hac Vice* Application Pending)

[KHamilton@perkinscoie.com](mailto:KHamilton@perkinscoie.com)

**PERKINS COIE LLP**

700 Thirteenth Street, N.W., Suite 600

Washington, D.C. 20005-3960

Telephone: (202) 654-6200

Facsimile: (202) 654-6211

*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following parties via electronic mail; Adam S. Tanenbaum, General Counsel for The Secretary of State, [adam.tanenbaum@dos.myflorida.com](mailto:adam.tanenbaum@dos.myflorida.com), William Spicola, General Counsel for Governor, Rick Scott, [william.spicola@eog.myflorida.com](mailto:william.spicola@eog.myflorida.com)

/s/

\_\_\_\_\_  
**Mark Herron**

# **EXHIBIT 2**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION**

GEORGIA COALITION FOR THE PEOPLES’  
AGENDA, INC., as an organization;  
GEORGIA STATE CONFERENCE OF THE  
NAACP, as an organization; and THIRD  
SECTOR DEVELOPMENT, INC., as an  
organization;

Plaintiffs,

v.

JOHN NATHAN DEAL, in his official capacity  
as Governor of Georgia, and BRIAN P. KEMP,  
in his official capacity as Secretary of State for  
the State of Georgia,

Defendants.

Civil Action

Case No. \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF**

**National Voter Registration Act of  
1993, First and Fourteenth  
Amendments to the United States  
Constitution**

**INTRODUCTION**

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

2. This lawsuit seeks to prevent the disenfranchisement of eligible prospective voters in Chatham County, whose right to vote has been impeded by the effects of Hurricane Matthew and the refusal of defendants to remedy the situation.

3. Under state law, the voter registration deadline for Georgia voters was Tuesday,



October 11, 2016. Eligible citizens who failed to register by then cannot cast a ballot that will count in the upcoming November 2016 general election.

4. Chatham County government offices, which opened today, were last open on Wednesday, October 5. Many prospective voters thus lost the ability to register for the last six days of the voter registration period. For much of the interim period, the county was under a state of emergency and an evacuation order due to Hurricane Matthew. Matthew hit Chatham County as a Category 2 hurricane on Friday, October 7, and caused massive damage, substantial flooding, and a loss of power to more than a hundred thousand county residents.

5. Despite declaring a state of emergency and issuing a mandatory evacuation order, Defendant Deal refused to extend the voter registration deadline for the citizens heeding his orders to evacuate in Chatham County and elsewhere in Georgia.

6. Many states, including Florida and South Carolina, which were similarly impacted by Matthew, are providing citizens with an extended registration period. Meanwhile, elected officials, citizens, and organizations, including Plaintiffs, have called upon Defendant Deal to extend Georgia's voter registration deadline so that voters in Chatham County and elsewhere do not lose the ability to exercise their fundamental right to vote. Defendant Deal refused to take any action to protect citizens' voting rights and extend the deadline, which has passed.

7. Without relief, many eligible prospective voters who were forced to choose between their safety and the fundamental right to vote and suffered hardship as a result of Hurricane Matthew will be disenfranchised in the November 8, 2016 election.

## **JURISDICTION AND VENUE**

8. This Court has jurisdiction of this action pursuant to (1) 28 U.S.C. § 1343(a), because this action seeks to redress the deprivation, under color of state law, of rights, privileges and immunities secured by the National Voter Registration Act of 1993 and the United States Constitution; and (2) 28 U.S.C. § 1331, because this action arises under the laws of the United States.

9. This Court has jurisdiction to grant both declaratory and injunctive relief, pursuant to 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claims occurred in this district.

## **THE PARTIES**

11. Plaintiff THE GEORGIA COALITION FOR THE PEOPLES' AGENDA, INC. ("GCPA") is a Georgia nonprofit corporation with its principal place of business located in Atlanta, Georgia. The GCPA is a coalition of more than 30 organizations, which collectively have more than 5,000 individual members. The organization encourages voter registration and participation, particularly among minority and low-income citizens. The GCPA's support of voting rights is central to its mission. The organization has committed, and continues to commit, time and resources to conducting voter registration drives, voter education, voter ID assistance, Souls to the Polls, and other GOTV efforts in Georgia that seek to encourage turnout.

12. The GCPA regularly conducts voter registration drives in Chatham County, and was planning on making a final effort to register voters in the county between October 7 and 11, 2016. The GCPA was forced to suspend voter registration activities in Chatham County between

October 7 and 9, 2016, due to the mandatory evacuation order issued by Governor Deal. GCPA further determined that door to door canvassing in Chatham County was infeasible on October 10 or 11, 2016, because power was still out in many parts of the county, a number of roads were impassible, electrical wires were down, and local officials asked that people remain home and off the roads. If the voter registration deadline is not extended, the GCPA will be prevented from carrying out its core activity of registering voters to vote during the busiest registration days in four years in Chatham County.

13. Plaintiff GEORGIA STATE CONFERENCE OF THE NAACP (“Georgia NAACP”) is a non-partisan, interracial, nonprofit membership organization that was founded in 1941. Its mission is to eliminate racial discrimination through democratic processes and ensure the equal political, educational, social, and economic rights of all persons, in particular African-Americans. It is headquartered in Atlanta and currently has approximately 10,000 members. The Georgia NAACP works to protect voting rights through litigation, advocacy, legislation, communication, and outreach, including work to promote voter registration, voter education, get out the vote efforts, election protection, and census participation.

14. The Georgia NAACP has submitted many voter registration applications to elections officials in Chatham County. The Georgia NAACP maintains a branch office in Chatham County, which engages in significant voter registration efforts in presidential election cycles. The Savannah branch office, however, was closed between October 7 and 10, 2016, due to Governor Deal’s evacuation order and could not conduct voter registration activity during that period. The Georgia NAACP was forced to cancel voter registration events scheduled for October 8 at a Sam’s Club and for October 9 following church services. The organization also

cancelled door to door voter registration canvassing scheduled for the period between October 7 and 11, 2016. If the voter registration deadline is not extended, the Georgia NAACP will be prevented from carrying out its core activity of registering voters to vote during the busiest registration days in four years in Chatham County.

15. Plaintiff THIRD SECTOR DEVELOPMENT, INC. (“Third Sector”), is a Georgia not for profit corporation. It is a 501(c)(3) organization founded in 1998. The New Georgia Project (“NGP”) is a non-partisan, nonprofit program of Third Sector that was launched in 2013. NGP’s mission is to civically engage Georgians in underrepresented communities. The organization engages in voter registration, voter education, and get out the vote efforts throughout the State of Georgia, including in Chatham County.

16. NGP regularly conducts voter registration drives throughout Georgia, including in Chatham County. The organization has collected more than 11,000 voter registration applications from Chatham County residents in 2016 alone. NGP was planning on putting together a phone bank to contact prospective voters throughout Georgia, including in Chatham County, in the days leading up to the close of registration. These efforts were to include contacting applicants who submitted registration forms but are not registered for the purpose of assisting them with clearing up any problems with their applications with the Chatham County registrar. Due to Hurricane Matthew, the evacuation order, the loss of power and the closure of the Chatham County Board of Elections office between October 6 and October 11, 2016, NGP determined that it would not be feasible to continue voter applicant outreach efforts in Chatham County because it was impossible for NGP to connect applicants with elections officials.

17. Defendant JOHN NATHAN DEAL is being sued in his official capacity as Governor of Georgia. Governor Deal is granted broad emergency powers under Georgia state law. GA. CODE ANN. § 38-3-51. Those powers include the ability to extend the voter registration deadline for the entire State of Georgia, or one or more of its counties. Exhibit B, Email from Ryan Germany to Kristen Clarke, Oct. 12, 2016.

18. Defendant BRIAN P. KEMP is being sued in his official capacity as Georgia Secretary of State. Secretary Kemp's responsibilities include maintaining the state's official list of registered voters and preparing and furnishing information for citizens pertaining to voter registration and voting. GA. CODE ANN. §§ 21-2-50(a), 21-2-211. Defendant also serves as the Chairperson of Georgia's State Election Board, which promulgates and enforces rules and regulations to obtain uniformity in the practices and proceedings of election officials and promotes the fair, legal, and orderly conduct of all primaries and elections in the state. *Id.* §§ 21-2-30(d), 21-2-31, 21-2-33.1. Finally, Defendant is the chief election official responsible for the coordination of Georgia's list maintenance responsibilities under the National Voter Registration Act of 1993 (NVRA) and the Help America Vote Act of 2002 (HAVA). *Id.* §§ 21-2-210, 21-2-50.2.

#### STATEMENT OF FACTS AND LAW

19. The National Voter Registration Act of 1993 requires states to ensure “that any eligible applicant is registered to vote” if they submit their registration form as close to Election Day as the state will provide—and that in any event the state cannot require voters to register more than 30 days prior to an election. 52 U.S.C. § 20507(a)(1).

20. Georgia state law requires that the main elections office in each county “remain open for business during regular office hours on each business day, except Saturday” and “be open at such designated times other than the normal business hours as shall reasonably be necessary to facilitate registration and at such other hours as will suit the convenience of the public.” GA. CODE ANN. § 21-2-215(c).

21. The voter registration deadline in Georgia was Tuesday, October 11. *See* GA. CODE ANN. § 21-2-224(a).

22. Georgia state law provides that “[a]ny person desiring to register as an elector shall apply to do so by making application to a registrar or deputy registrar of such person's county of residence in person, by submission of the federal post card application form as authorized under Code Section 21-2-219, by making application through the Department of Driver Services as provided in Code Section 21-2-221, by making application through the Department of Natural Resources as provided in Code Section 21-2-221.1, by making application through designated offices as provided in Code Section 21-2-222, or by making application by mail as provided in Code Section 21-2-223.” GA. CODE ANN. § 21-2-220(a). Applicants with access to a computer and a current Georgia driver’s license or state identification card may register to vote online. GA. CODE ANN. § 21-2-221.2.

23. Georgia residents are barred from voting a ballot that will be counted if they do not meet the registration deadline because Georgia does not permit eligible citizens to register during the in-person early voting period or on Election Day.

24. A significant number of Georgia residents, including those in Chatham County, register to vote in the days leading up to the registration deadline. For example, a voter

registration event held between 9 am and 3 pm on Tuesday, September 27, 2016, at the Chatham County Voter Registration office in Savannah drew more than 100 people. Kelly Quimby, *State, local officials make final push to register voters*, SAVANNAH MORNING NEWS, Sept. 27, 2016, available at <http://savannahnow.com/politics-news/2016-09-27/state-local-officials-make-final-push-register-voters>. Additionally, voter registration groups were planning on conducting voter registration and other outreach efforts in Chatham County during the last week of the voter registration period.

25. Governor Deal declared a state of emergency for thirteen counties, including Chatham County, on Tuesday, October 4, 2016. *Gov. Nathan Deal declares state of emergency ahead of Hurricane Matthew*, WTOC, Oct. 4, 2016, available at <http://www.wtoc.com/story/33315568/gov-nathan-deal-declares-state-of-emergency-ahead-of-hurricane-matthew>.

26. The Chatham County Commission called for a voluntary evacuation of roughly eleven percent of the county's population on Wednesday, October 5, 2016. *The Latest: Georgia coast placed under hurricane watch*, WRDW, Oct. 5, 2016, available at <http://www.wrdw.com/content/news/Gov-Deal-declares-state-of-emergency-ahead-of-Hurricane-Matthew-395861441.html>.

27. The City of Tybee Island, which is located in Chatham County, issued a mandatory evacuation order that began at 3 pm on Wednesday, October 5, 2016. *Id.*

28. The United States Postal Service suspended operations in Chatham County.

29. Governor Deal issued a mandatory evacuation order for six counties, including Chatham County, on Thursday, October 6, 2016. Press release, Deal orders mandatory

evacuation east of Interstate 95 for six coastal counties, Oct. 6, 2016, *available at* <https://gov.georgia.gov/press-releases/2016-10-06/deal-orders-mandatory-evacuation-east-interstate-95-six-coastal-counties>.

30. Hurricane Matthew hit Chatham County as a Category 2 hurricane on Friday, October 7. Nicole Carr, Ross Cavitt, & Richard Elliott, *Deaths, floods as Hurricane Matthew hits South Carolina*, WSB-TV, Oct. 9, 2016, *available at* <http://www.wsbtv.com/news/local/atlanta/south-georgia-getting-pounded-by-hurricane-matthew/454816981>; Governor Nathan Deal press release, GEMHSA: Georgia mobilizes recovery plan in Matthew's wake, *available at* <https://gov.georgia.gov/press-releases/2016-10-08/gemhsa-georgia-mobilizes-recovery-plan-matthew%E2%80%99s-wake-1>.

31. The hurricane caused massive destruction in Chatham County, which experienced high winds, heavy rain and flooding. In Savannah, many trees were down and, and street lights and buildings were damaged. The hurricane devastated the barrier islands, particularly Tybee Island. Approximately 116,000 Chatham County residents lost power.

32. Some residents were evacuated by bus to Augusta. Some began to return on Monday, October 10, and were taken to a local shelter if they were unable to safely go home. *The Latest: Savannah's signature tree canopy gets bushwacked by Matthew*, WRDW, Oct. 11, 2016, *available at* <http://www.wrdw.com/content/news/The-Latest-Hurricane-closes-parts-of-I-95-on-Georgia-coast-396395301.html>.

33. Governor Deal lifted the mandatory evacuation order for the mainland portion of Chatham County at 5 pm on Sunday, October 9. Scott Trubey & Dan Chapman, *Gov. Deal lifts hurricane evacuation orders; islands still closed*, THE ATLANTA JOURNAL CONSTITUTION, Oct. 9,



2016, *available at* <http://www.ajc.com/news/local/gov-deal-lifts-hurricane-evacuation-orders-islands-still-closed/kJZwRm9Kj1UwYxOtH200CN/>.

34. Chatham County government offices, including the Chatham County Board of Elections, were closed beginning Thursday, October 6, through Tuesday, October 11. *See* Exhibit A, Email from Ryan Germany to Kristen Clarke.

35. The Chatham County Board of Elections office reopened on Wednesday, October 12.

36. Most post offices in Chatham County reopened on Tuesday, October 11.

37. Columbus Day, which was Monday, October 10, was not observed by the Chatham County government this year. 2016 Holiday Schedule, Chatham County, Georgia, *available at* <http://www.chathamcounty.org/Home/Holiday-Schedule>. The Chatham County Board of Elections office would therefore have been open on October 10 if it were not for Hurricane Matthew.

38. Although applicants who already have a Georgia driver's license or state ID card may register to vote online, this technology was not readily available to many residents of Chatham County, most of whom had evacuated the county. Moreover, electricity and cable were out in much of the county.

39. Online registration was also not available to applicants who lack a Georgia driver's license or state ID card, including persons who have recently moved to Georgia, senior citizens, students and others.

40. The Georgia online voter registration database experienced glitches and problems on Monday, October 10, and Tuesday, October 11. These problems prevented some applicants

from successfully completing online voter registration applications. *As online voter registration closes, mixed success in Georgia*, 11ALIVE, Oct. 11, 2016, available at <http://www.11alive.com/news/local/as-online-voter-registration-closes-mixed-success-in-georgia/333992259>.

41. The Chatham County Board of Elections office was closed for the last six days, and the last four weekdays, of the voter registration period prior to the November 2016 election.

42. Hurricane Matthew and its aftermath effectively prevented Chatham County residents from registering to vote up to 30 days before the election, during what is typically the busiest period of voter registration every four years. Governor Deal's evacuation order and the closure of Chatham County government offices until today, while necessary for public safety, prevented county residents from registering to vote in person. And, due to widespread and ongoing power outages, prospective voters may not have been able to access, download, and print registration forms to be mailed, or to register to vote online.

43. For all practical purposes, voter registration opportunities were unavailable to many residents of Chatham County after Wednesday, October 5.

44. A significant number of prospective minority voters were affected by the loss of voter registration opportunities due to Hurricane Matthew. According to the 2011-2014 American Community Survey, approximately 78,713 (38.7%) of Chatham County's 203,629 citizens of voting age are Black, while 6,040 (3.0%) are Latino.

45. The Lawyers' Committee for Civil Rights Under Law sent a letter to Georgia Attorney General Sam Olens and General Counsel for the Georgia Secretary of State C. Ryan Germany on Tuesday, October 11. Exhibit A, Letter from Kristen Clarke to Attorney General

Olens and Mr. Germany. The letter noted the closures in Chatham County and asked that the voter registration deadline be extended in the county to permit county residents an equal opportunity to participate in the electoral process.

46. Mr. Germany responded on Wednesday, October 12. His email stated that the Georgia Secretary of State declined to ask the Governor to extend the voter registration deadline in Chatham County or anywhere else in the state. In particular, he claimed that extending the deadline was “not appropriate or prudent given that opportunities to register remained available and that counties, including counties affected by the storm, need to continue to prepare for early voting beginning on Monday.” Ex. B.

47. Governor Deal has refused to extend the voter registration deadline despite acknowledging the severe impact of the storm. *See, e.g.*, Governor Nathan Deal press release, Hurricane Matthew recovery update, *available at* <https://gov.georgia.gov/press-releases/2016-10-08/hurricane-matthew-recovery-update-0>.

48. Defendants’ refusal to extend the voter registration deadline in Chatham County will disenfranchise a significant number of eligible prospective voters. People who were unable to register by yesterday’s deadline cannot vote in the November 2016 election.

49. Georgia stands alone in its refusal to protect its voters. For example, South Carolina voluntarily extended its voter registration deadline, while Florida has been ordered to do so as a result of litigation. Order Granting Preliminary Injunction, ECF No. 29, *Fla. Dem. Party v. Scott*, No. 4:16-cv-626-MW/CAS (N.D. Fla. Oct. 12, 2016); *S.C. extends voter registration deadline in anticipation of Hurricane Matthew*, THE HERALD, Oct. 6, 2016, *available at* <http://www.heraldonline.com/news/local/article106494827.html>.

**COUNT ONE:  
VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS**

50. Plaintiffs repeat and re-allege each and every allegation contained in Paragraphs 1 to 49 above, as if fully set forth herein.

51. The First and Fourteenth Amendments of the United States Constitution protect the right to vote as a fundamental right. The First Amendment's guarantees of freedom of speech and association protect the right to vote and to participate in the political process. The right to vote is a fundamental constitutional right also protected by both the due process and equal protection clauses of the Fourteenth Amendment. *See, e.g., Bush v. Gore*, 531 U.S. 98, 104-05 (2000); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966) (Virginia's poll tax violates the Equal Protection Clause); *Anderson v. Celebrezze*, 460 U.S. 780, 786-87 (1983) (the right to vote is incorporated into the Due Process Clause).

52. By preventing prospective voters from registering during the last six days of the voter registration period, including the last four business days, the refusal to extend the voter registration deadline in Chatham County imposes a severe burden on the fundamental right to vote by depriving citizens of that right altogether.

53. While the burdens imposed by the Governor's refusal to extend the voter registration deadline are undeniably severe, his failure to take action under these circumstances cannot pass muster even under rational basis review.

54. The decision not to extend the deadline is not narrowly drawn to advance any state interest sufficiently compelling to justify the imposition of such severe burdens.

55. The State has no justification for the burden imposed by its decision not to extend the deadline making it necessary to burden Plaintiffs' rights.

56. There is no sufficient state interest justifying the refusal to extend the voter registration deadline that was not already adequately protected by preexisting election procedures.

57. Plaintiffs therefore seek a declaratory judgment that, by refusing to extend the voter registration deadline in Chatham County, the Governor and Secretary of State, acting under color of state law, are depriving Plaintiffs of the rights, privileges, and immunities secured to them by the First and Fourteenth Amendments to the United States Constitution and protected under 42 U.S.C. § 1983.

58. Further, Plaintiffs are without an adequate remedy at law. Unless the Court orders the Governor and Secretary of State to extend the voter registration deadline in Chatham County, Plaintiffs will continue to suffer the immediate and irreparable harm described herein.

**COUNT TWO:  
VIOLATION OF SECTION 8 OF THE NATIONAL VOTER REGISTRATION ACT OF  
1993**

59. Plaintiffs repeat and re-allege each and every allegation contained in Paragraphs 1 to 58 above, as if fully set forth herein.

60. Section 8 of the NVRA requires states to process any voter registration form received or postmarked no later than 30 days of an election. 52 U.S.C. § 20507(a)(1).

61. Section 8 requires each state to:

(1) ensure that any eligible applicant is registered to vote in an election –

A. in the case of registration with a motor vehicle . . . if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

B. in the case of registration by mail . . . if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

C. in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

D. in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election[.]

52 U.S.C. § 20507(a)(1).

62. These provisions are intended to ensure that eligible United States citizens have sufficient time to register to vote and thus, are not forced to register to vote more than thirty days in advance of a federal election.

63. These provisions must be interpreted in the context of the primary purpose of the statute as a whole. Congress’s purpose in passing the NVRA was to “increase the number of eligible citizens who register to vote in elections” and “enhance[] the participation of eligible citizens as voters,” and to protect the active role that community-based voter registration groups play in the registration process. 52 U.S.C. § 20501.

64. The NVRA was intended to “ensure that no American is denied the ability to participate in Federal elections because of real or artificial barriers . . . [and] to make voter registration an inclusive, rather than an exclusive opportunity in the United States.” 139 Cong. Rec. H495-04 (1993) (statement of Rep. Martin Frost).

65. Toward that end, the NVRA “provides that the registration cutoff may be no more than 30 days before election or such lesser period as State may provide.” H.R. Rep. No. 103-66, at 20 (1993) (Conf. Rep.).

66. The NVRA also focused on increasing voting access to traditionally disenfranchised communities. It did so by increasing the places open for in-person voter registration. For example, the conference report expressed concern that, unless the bill provided that unemployment offices and other agencies could provide voter registration, “it will exclude a segment of its population from those for whom registration will be convenient and readily available – the poor and persons with disabilities . . . . It is important that no State be permitted to so restrict its agency registration program.” H.R. Rep. No. 103-66 (1993) (Conf. Rep.).

67. Hurricane Matthew effectively foreclosed the ability to register to vote for six days, including a full weekend. Two of the days the Chatham County Board of Elections office would have otherwise been open, October 10 and 11, fall within the period that the NVRA requires states to provide for voter registration in advance of a federal election. The state’s refusal to extend the voter registration deadline in the face of this natural disaster is the type of artificial barrier that the NVRA was designed to protect against.

68. Hurricane Matthew effectively prevented a substantial number of Chatham County residents from registering to vote by the October 11, 2016, deadline. Unless Plaintiffs are granted the relief requested, the right to vote will be denied to significant numbers of eligible county residents.

69. Since this violation of the NVRA occurred within thirty days of an election for federal office, Plaintiffs are not obligated to provide advance notice to Secretary Kemp before bringing a civil action. 52 U.S.C. § 20510(b)(3).

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs respectfully pray that the Court:

1. Enter judgment in favor of Plaintiffs and against Defendants on the claims for relief as alleged in this Complaint;
2. Enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that the refusal to extend the voter registration deadline (a) violates the fundamental right to vote under the First and Fourteenth Amendments; and (b) violates Section 8 of the National Voter Registration Act of 1993, 52 U.S.C. § 20507.
3. Grant Plaintiffs preliminary or permanent injunctive relief by ordering that Defendants:
  - (a) discontinue enforcement of the current voter registration deadline for Chatham County; and
  - (b) extend Chatham County's voter registration deadline to account for the lost days and weekend of voter registration up to and including October 18, 2016; or, in the alternative,
  - (c) discontinue enforcement of the current voter registration deadline and extend the voter registration for the entire State of Georgia to October 18, 2016;
4. Award Plaintiffs their reasonable attorneys' fees and costs pursuant to statute; and
5. Grant Plaintiffs such other and further relief as may be just and equitable.



Dated: October 12, 2016

Respectfully submitted,

By: /s/ William V. Custer  
William V. Custer  
Georgia Bar No. 202910  
Jennifer B. Dempsey  
Georgia Bar No. 217536  
Bryan Cave LLP  
One Atlantic Center  
Fourteenth Floor  
1201 West Peachtree Street, NW  
Atlanta, Georgia 30309-3488  
Phone: (404) 572-6600  
Fax: (404) 572-6999  
bill.custer@bryancave.com  
jennifer.dempsey@bryancave.com

Ezra D. Rosenberg (*pro hac vice – to be filed*)  
Julie Houk (*pro hac vice – to be filed*)  
John Powers (*pro hac vice – to be filed*)  
Lawyers' Committee for Civil Rights Under Law  
1401 New York Avenue NW, Suite 400  
Washington, D.C. 20005  
Telephone: (202) 662-8600  
Facsimile: (202) 783-0857  
erosenberg@lawyerscommittee.org  
jhouk@lawyerscommittee.org  
jpowers@lawyerscommittee.org

*Counsel for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION**

GEORGIA COALITION FOR THE PEOPLES'  
AGENDA, INC., as an organization;  
GEORGIA STATE CONFERENCE OF THE  
NAACP, as an organization; and THIRD  
SECTOR DEVELOPMENT, INC., as an  
organization;

Plaintiffs,

v.

JOHN NATHAN DEAL, in his official capacity  
as Governor of Georgia, and BRIAN P. KEMP,  
in his official capacity as Secretary of State for  
the State of Georgia,

Defendants.

Civil Action

Case No. \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** to be electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record.

This 12th day of October, 2016.

By: /s/ William V. Custer  
William V. Custer  
Georgia Bar No. 202910  
Bryan Cave LLP  
One Atlantic Center  
Fourteenth Floor

1201 West Peachtree Street, NW  
Atlanta, Georgia 30309-3488  
Phone: (404) 572-6600  
Fax: (404) 572-6999  
bill.custer@bryancave.com

# **EXHIBIT 3**

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA**

TELISA CLARK, et al.,

Plaintiffs,

v.

JOHN BEL EDWARDS, et al.,

Defendants.

Case No.: 3:20-00308-SDD-RLB

POWER COALITION FOR EQUITY AND  
JUSTICE, et al.,

Plaintiffs,

v.

JOHN BEL EDWARDS, et al.,

Defendants.

Case No.: 3:20-cv-00283-SDD-RLB

**AMENDED COMPLAINT**

Plaintiffs Power Coalition for Equity and Justice (“PCEJ”); Louisiana State Conference of the NAACP (“Louisiana NAACP”); Jane Chandler, Jennifer Harding, Edith Gee Jones, and Jasmine Pogue (collectively “Plaintiffs”) by and through their undersigned attorneys, bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following:

## PRELIMINARY STATEMENT

1. On March 11, 2020, the World Health Organization (“WHO”) declared a global pandemic due to COVID-19.<sup>1</sup> That same day, the Governor of Louisiana, John Bel Edwards, declared a statewide emergency.<sup>2</sup> On March 22, 2020, Governor Edwards enacted a stay-at-home order.<sup>3</sup>

2. As of April 2020, Louisiana’s death rate from the virus was, per capita, the second highest in the country.<sup>4</sup> St. John the Baptist Parish had the highest death rate of any parish or county in the country.<sup>5</sup> Four out of six of the parishes/counties in the United States with the highest COVID-19-related death rates are in Louisiana.<sup>6</sup>

3. Public health experts have projected that “controlling this pandemic will depend on a safe and efficacious vaccine,” however “[t]he estimated timeline for availability of an initial vaccine is between early and mid-2021.”<sup>7</sup>

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<sup>1</sup> See World Health Org. (WHO) (@WHO), Twitter (Mar. 11, 2020), <https://twitter.com/WHO/status/1237777021742338049> (“We have therefore made the assessment that #COVID19 can be characterized as a pandemic.”); WHO Director-General’s opening remarks at the media briefing on COVID-19, WHO (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

<sup>2</sup> Press Release, Office of the Governor, *Gov. Edwards Declaration of Public Health Emergency in Response to COVID-19*, (Mar. 11, 2020), <https://gov.louisiana.gov/index.cfm/newsroom/detail/2400>.

<sup>3</sup> La. Exec. Dep’t Proclamation No. 33 JBE 2020 (Mar. 22, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/JBE-33-2020.pdf>.

<sup>4</sup> Johnston von Springer, “Louisiana ranks second per capita in COVID-19 deaths,” WBRZ 2 (Apr. 2, 2020), <https://www.wbrz.com/news/louisiana-ranks-second-per-capita-in-covid-19-deaths/>.

<sup>5</sup> Ashley Killough and Ed Lavandera, “This small Louisiana parish has the highest death rate per capita for coronavirus in the country,” CNN (April 16, 2020), <https://www.cnn.com/2020/04/15/us/louisiana-st-john-the-baptist-coronavirus/index.html>.

<sup>6</sup> WWL Staff, “4 of top 6 parishes or counties in deaths per capita from COVID-19 are in Louisiana,” 4WWL, (Apr. 1, 2020), <https://www.wvlw.com/article/news/health/coronavirus/4-of-top-6-parishes-or-counties-in-deaths-per-capita-are-in-louisiana/289-1ab60d0c-1298-4c44-8940-b3890aef37c6>.

<sup>7</sup> Saad B. Omer et al., *The COVID-19 Pandemic in the US: A Clinical Update*, J. Am. Med. Assoc. Net. (Apr. 6, 2020), <https://jamanetwork.com/journals/jama/article-abstract/2764366>; see also Hailey Waller et al., *Bill Gates’*

4. In this unprecedented context of the COVID-19 pandemic, multiple provisions of Louisiana law, policies, and procedures that establish requirements for voting absentee by mail and voting early pose undue burdens on the right to vote, including (1) the requirement that eligible voters are required to identify one of a limited number of excuses to be eligible to vote absentee by mail (the “Excuse Requirement”); (2) the requirement that a voter voting absentee by mail obtain a witness signature (the “Ballot Witness Requirement”); (3) the requirement that a voter who uses a mark to certify their application for an absentee by mail ballot obtain two witness signatures on the application (the “Application Witness Requirement,” and together with the “Ballot Witness Requirement,” collectively “the Witness Requirements”); and (4) the failure to extend the early voting period to fourteen days for all elections in Louisiana in 2020 (collectively, the “Challenged Provisions”).

5. *First*, Plaintiffs challenge the limited list of excuses allowing individuals to vote by absentee ballot set forth in La. R.S. 18:1303. A voter who does not qualify under any of the listed categories has to vote in person or not at all.

6. In the context of the COVID-19 pandemic, the Excuse Requirement violates the fundamental right to vote as protected by the First and Fourteenth Amendments. Voters who do not have a qualifying excuse are compelled to endure unacceptable health risks (and to increase the health risk to the community) in order to exercise their right to vote. The burdens imposed by the Excuse Requirement will fall with particular severity on voters with underlying medical conditions and disabilities, older voters, and Black voters.

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*coronavirus vaccine could be manufacturing at scale in a year*, Fortune (Apr. 26, 2020), <https://fortune.com/2020/04/26/bill-gates-coronavirus-vaccine-covid-19/> (Bill Gates, who is funding production of vaccine development, has projected that, “[i]f everything went perfectly, we’d be in scale manufacturing within a year . . . . It could be as long as two years.”).

7. Nor does the Secretary of State’s Emergency Election Plan (the “Emergency Plan”)<sup>8</sup>—which was approved by the Louisiana Legislature on April 27, 2020, and allows voters to vote by absentee ballot due to five limited COVID-19-specific excuses—remedy this constitutional defect. As an initial matter, the Emergency Plan only applies to the July 11, 2020 (Presidential Preference Primary/Municipal Primary Election, hereinafter the “July Election”) and the August 15, 2020 (Municipal General Election, hereinafter the “August Election”) elections; it does not address the health risks entailed by in-person voting in the November 3, 2020 election (Presidential General and Open Congressional Primary Elections, hereinafter the “November Election”) and/or the December 5, 2020 election (Congressional and Open General Election, hereinafter the “December Election”).

8. Even as to the July and August Elections, the Emergency Plan does not adequately protect the right to vote. The COVID-19 related excuses in the Emergency Plan are unduly restrictive. The first COVID-19 related excuse applies to voters who are “[a]t higher risk of severe illness from COVID-19 due to serious underlying medical conditions,” but limits the conditions to ones identified by the Centers for Disease Control and Prevention (“CDC”) and provides an exclusive list of conditions. The next excuse applies to voters who are “[s]ubject to a medically necessary quarantine or isolation order as a result of COVID-19,” but fails to define *medically necessary*. The third excuse applies to voters who have been “[a]dvised by a health care provider to self-quarantine due to COVID-19 concerns,” but is vague with respect to what advisement by a health care provider means. Similarly, the fourth COVID-19 related excuse applies to voters

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<sup>8</sup> Secretary of State Emergency Election Plan for the July 11, 2020 Presidential Preference Primary and August 15, 2020 Municipal General Elections in the State of Louisiana (Apr. 20, 2020), <https://www.sos.la.gov/OurOffice/PublishedDocuments/Revised%20Emergency%20Election%20Plan%20for%20PP%20and%20Mun%20General%20Rev.%204-20.pdf>.



[e]xperiencing symptoms of COVID-19 and seeking medical diagnosis,” but does not provide guidance about whether this excuse, for instance, applies to a voter who saw a doctor and was tested (but has not received a test result) or who may have seen a health care provider but was not tested. The fifth excuse applies to a voter who is “[c]aring for an identified individual who is subject to medically necessary quarantine or isolation order as a result of COVID-19 or who has been advised by a health care provider to self-quarantine due to COVID-19 concerns,” but also does not define *medically necessary* and requires the voter to identify the individual for whom they are caring by name.<sup>9</sup> Notably, none of the COVID-19 excuses in the Emergency Plan apply to the many thousands of voters who reasonably fear that voting in person may result in their contracting or unintentionally contributing to the spread of COVID-19. Defendants have forced Louisiana voters to make an untenable decision between risking their health and the health of their families and communities or giving up their fundamental right to vote.

9. For example, Plaintiff Jasmine Pogue suffers from environmentally induced asthma and a history of upper respiratory infections. When experiencing an asthma attack, she has severe trouble breathing and requires an inhaler. Due to her breathing troubles, Ms. Pogue fears that if she contracted COVID-19 she could suffer fatal consequences. Accordingly, she has been practicing strict social distancing with her husband and son since the virus reached Louisiana. Because Ms. Pogue does not require asthma medication on a regular basis, her condition does not qualify as “moderate or severe” and is not listed among the accepted virus-related excuses on the absentee ballot application under the Emergency Plan. Ms. Pogue’s only option to vote requires risking virus exposure—and perhaps her life—at an in-person voting site.

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<sup>9</sup> *Id.*

10. *Second*, Plaintiffs challenge Louisiana's requirement pursuant to La. R.S. 18:1306E(2)(a) that all absentee by mail ballot envelopes be signed by a witness in addition to the voter. In the context of the COVID-19 pandemic, the Ballot Witness Requirement imposes an undue burden on many Louisiana voters who live alone or who do not live in a household with another adult who can act as a witness, and must choose between risking contact with a third party or foregoing their right to vote.

11. The Ballot Witness Requirement will impose an undue burden on voters such as Plaintiff Jane Chandler, a 76-year-old breast cancer survivor who lives alone in Baton Rouge, Louisiana. Ms. Chandler suffers from idiopathic pulmonary fibrosis, a progressive condition that compromises her lung capacity and is likely the result of late onset side effects of her cancer treatment. There is no treatment and no cure. She also has osteoporosis and moderate allergies, which she regulates with medication. Ms. Chandler has taken extreme precautions to avoid in-person contacts since COVID-19 reached Louisiana because infection would pose a grave risk to her health. Ms. Chandler qualifies to vote absentee because she is over 65 years of age. However, because she lives alone and fears welcoming guests into her home during the pandemic, Ms. Chandler would have difficulty obtaining a witness signature without compromising her social distancing practices and her safety.

12. *Third*, Plaintiffs challenge Louisiana's Application Witness Requirement, La. R.S. 18:1307, that requires individuals who are unable to sign their name and use a mark instead to obtain the signature of two third-party witnesses in order to apply for an absentee ballot. Although the Emergency Plan reduces the number of required witness signatures from two to one for the July and August Elections, it does not address the barrier that the Application Witness Requirement

presents to voters who wish to apply for an absentee ballot but who cannot obtain a witness signature without violating social distancing recommendations or medical advice.

13. *Fourth*, Plaintiffs challenge the constitutionality of the State's early voting practices to the extent that they only allow for early voting for seven days prior to the November and December Elections. Under La. R.S. 18:1309, early voting may take place up to fourteen days prior to a scheduled election. While the Emergency Plan extends early voting to 13 days for the July and August Elections, it does not extend early voting for the November and December Elections.

14. Plaintiffs seek relief enjoining the State from limiting early voting to seven days insofar as it unreasonably burdens their fundamental right to vote by exposing them to intensified health risks by requiring a larger number of voters to vote in person during a constrained schedule. For those voters who wish to vote in person, such as Plaintiff Edith Gee Jones, early voting reduces the health risks of doing so by reducing the number of voters at the polling places at any given time, making social distancing more achievable.

15. The burdens imposed by the Challenged Provisions will disproportionately impact Black voters in Louisiana, who are more likely to live alone, more likely to have a disability compared to white Louisiana residents, and who are disproportionately subject to infection and death from COVID-19. Black people currently comprise over 58% of Louisiana's reported COVID-19 deaths while they only comprise 32% of Louisiana's population.<sup>10</sup> Louisiana's history of discrimination in voting, and ongoing and current racial disparities in education, employment,

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<sup>10</sup> See La. Dep't of Pub. Health, *Coronavirus (COVID-19)*, <http://ldh.la.gov/Coronavirus/> (last visited May 6, 2020); U.S. Census Bureau, QuickFacts Louisiana, [https://www.census.gov/quickfacts/fact/table/LA.US/PST045219? \(last visited May 6 2020\)](https://www.census.gov/quickfacts/fact/table/LA.US/PST045219?lastvisitedMay62020).

and health interact with the Challenged Provisions to hinder Black people's opportunity to participate equally in the political process.

16. The Challenged Provisions, individually and collectively, will materially and unduly burden the right to vote of Louisiana's voters in the context of the COVID-19 pandemic. Accordingly, Plaintiffs respectfully request that the Court declare that the Challenged Provisions are unconstitutional and violate the Voting Rights Act, and further, enjoin Defendants from enforcing the Challenged Provisions for all elections in Louisiana in 2020.

### **JURISDICTION AND VENUE**

17. This action arises under the First and Fourteenth Amendments to the U.S. Constitution and the Voting Rights Act, and is brought under 42 U.S.C. §§ 1983 and 1988 and 52 U.S.C. § 10301 to seek injunctive and declaratory relief for violations of constitutional rights under color of state law. This Court therefore has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

18. This Court has personal jurisdiction over Defendants, who are sued in their official capacities as state officials. The violations complained of concern their conduct in such capacities.

19. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

20. Venue is proper under 28 U.S.C. § 1391(b)(2) because Defendants reside in this judicial district, and under 28 U.S.C. § 1391(b)(2) because a substantial part of the events that gave rise to Plaintiffs' claims occurred there.

### **PARTIES**

21. Plaintiff the Power Coalition for Equity and Justice ("PCEJ") is a nonpartisan, nonprofit statewide civic engagement table in Louisiana that works to build grassroots power, advocate for community-centered policies, and increase voter participation. PCEJ's mission is to support community-driven activism and grassroots leadership development to empower citizens

to address classism, racism, and other marginalization in their own lives and communities. PCEJ advances its mission with the support of full-time staff, community volunteers, and a team of nonprofit and advocacy organizations united around an integrated civic engagement strategy to educate and empower voters across Louisiana. In 2019, PCEJ engaged with 465,406 infrequent and semi-frequent voters of color through hundreds of thousands of doors knocked, phone calls, and text messages totaling over 1.2 million contact attempts. PCEJ also routinely provides rides to the polls and rapid response voter support on Election Days. Since the COVID-19 pandemic began, PCEJ has been forced to shift to virtual engagement models, including tele-town halls, video meetings, and multilayer press strategies to communicate information to its membership and target constituencies. PCEJ has been required to dedicate staff time and resources to monitoring and responding to each iteration of Louisiana's Emergency Plan, including attending the April 15 and April 22 Senate and House committee meetings at risk to personal health. If the Challenged Provisions remain in effect, PCEJ anticipates diverting resources to train volunteers and educate voters on the limitations of these measures. PCEJ expects to receive an influx of requests for rides to the polls or assistance obtaining a witness signature in advance of Election Day, and recurring questions about how to adhere to social distancing guidance while attempting to vote in person or in the presence of a signatory.

22. Plaintiff Louisiana State Conference of the National Association for the Advancement of Colored People (the "Louisiana NAACP") is a state subsidiary of the National Association for the Advancement of Colored People, Inc. For decades, the Louisiana NAACP has worked to ensure the economic, educational, political, and social equity of Black people and of all Americans. Its membership includes Black voters residing throughout Louisiana. The Louisiana NAACP's mission includes eliminating racial discrimination in the democratic process and

ensuring the protection of voting rights and equitable political representation. Its work includes efforts to register, educate, and advocate on behalf of Black voters throughout Louisiana. As a direct result of the Challenged Provisions, the Louisiana NAACP has diverted its limited resources to monitor and investigate the impact of the Challenged Provisions on its members, and has advocated for a modified Emergency Plan that considers the significant impact of the COVID-19 pandemic on Black Louisianans and that will not disproportionately burden Black voters.

23. Plaintiff Jane Chandler is 76 years old and lives alone in Baton Rouge, Louisiana. She is a U.S. citizen and lawfully registered voter. Ms. Chandler is self-quarantining due to a lung condition that is a comorbidity of COVID-19. Since COVID-19 reached Louisiana, she has only left her home for limited purposes, such as a doctor's appointment, and has maintained social distancing best practices while out. To reduce unnecessary interactions, Ms. Chandler has arranged to have her groceries and other necessities dropped off and has completely sanitized all items delivered to her home. While Ms. Chandler has been eligible to vote by absentee ballot for over ten years, she prefers to vote in person and has consistently voted at her polling site on Election Day. This year, however, she intends to request an absentee ballot for all elections due to her fear of exposure to COVID-19. Because Ms. Chandler lives alone and is abstaining from avoidable in-person contact, she does not know how she will be able to safely and efficiently obtain a witness signature for her ballot envelope without defying the predominant health guidance to maintain isolation.

24. Plaintiff Jennifer Harding is a 42-year-old community organizer from Baton Rouge, Louisiana. She is a U.S. citizen and lawfully registered Louisiana voter. Ms. Harding lives with her husband and their son, who is in the fourth grade. Her nuclear family has been strictly socially distancing since schools closed in Louisiana in order to protect their own health and the health of

others. In her current stage of life, Ms. Harding has both child and parental care responsibilities. Her 72-year-old father, 71-year-old mother, and 93-year-old grandmother live together close by and require various levels of assistance. Her father has Parkinson's disease, her mother has limited mobility due to post-polio syndrome, and her grandmother has been diagnosed with dementia. Ms. Harding is responsible for completing tasks that they cannot easily perform, including taking out the trash, but does not serve in a fulltime or live-in caretaking role. During visits to their home, she has taken extreme precautions to maintain distance and use sanitary practices. She is aware of the potential of undetected and asymptomatic infection and has reasonable fear that she could expose her at-risk family to COVID-19 if she does not continue to maintain extreme social distancing. Ms. Harding has not left her house for any other purpose than to visit her parents' and grandmother's home or to take a walk in her immediate neighborhood. If able, she would vote by absentee ballot in order to decrease her risk of virus exposure at her polling location. However, she does not believe the Emergency Plan absentee ballot application permits her, or others similarly situated in part-time eldercare roles, to request a ballot without exposure to the risk of criminal penalty. As a result, her only option to vote in this year's elections requires jeopardizing her health and the health of her family and community by voting in person.

25. Plaintiff Edith Gee Jones is over 65 years old and resides in New Orleans with her husband. Mrs. Jones is Black. She is a U.S. citizen and lawfully registered Louisiana voter. Mrs. Jones routinely votes in Louisiana elections, and has done so for decades. Historically, Mrs. Jones has voted in person. She takes advantage of the opportunity to engage in early voting, preferring to vote in person when her polling site has typically been less crowded than on election days. Mrs. Jones would like the option to continue her tradition of voting in person in 2020 but recognizes that she is at higher risk of experiencing COVID-19-related complications because of her age. She

is also aware of the heightened risk that Black Louisianans face with regard to COVID-19. Given her preference for in-person voting, Mrs. Jones would like to have the opportunity to safely participate in early voting in each of Louisiana's upcoming elections.

26. Plaintiff Jasmine Pogue is a 33-year-old Black woman who was recently diagnosed with asthma. She is a U.S. citizen and lawfully registered Louisiana voter. She lives with her husband and 6-year-old daughter in Baton Rouge, Louisiana. Ms. Pogue's asthma is environmentally induced, triggered by allergens and other pollutants. She also has a history of upper respiratory infections, and last contracted one in mid-March. Ms. Pogue and her family have been engaging in strict social distancing to avoid all unnecessary risk of exposure to COVID-19. Ms. Pogue has severe difficulty breathing and requires an inhaler when experiencing an asthma attack. However, because Ms. Pogue does not require her inhaler on a frequent, standard basis, she does not believe her asthma qualifies as "moderate or severe." Because her diagnosis is not among the "serious underlying medical conditions" listed on the COVID-19 emergency absentee ballot application or identified by the CDC as a comorbidity of COVID-19, she does not believe she qualifies to apply for an absentee ballot. Ms. Pogue is aware of the disproportionate rates of infection and death among Black Louisianans and especially individuals with respiratory concerns. She reasonably fears that voting in person—her only option to participate in this year's elections if the Challenged Provisions remain in effect—would pose severe and potentially fatal risk to her health.

27. Defendant John Bel Edwards is the Governor of Louisiana and is being sued in his official capacity. Under the Louisiana Constitution, he is "the chief executive officer of the state," and must "faithfully support the constitution and laws of the state and of the United States," as well as ensure that "the laws are faithfully executed." La. Const. art. IV, § 5(A). Like other



executive officers of the State, Defendant Edwards is required to uphold the U.S. Constitution, including the Fourteenth and Fifteenth Amendments to it, as part of the execution of his gubernatorial duties and responsibilities. 4 U.S.C. § 101. His authority to protect public health during the pandemic in connection with elections was exercised by his order postponing the primary elections.<sup>11</sup>

28. Defendant Robert Kyle Ardoin is the Louisiana Secretary of State and is being sued in his official capacity. The Secretary of State is the “chief election officer of the state.” La. Const. art. IV, § 7; La. R.S. 18:421. Defendant Ardoin is responsible for, among other things, preparing and certifying the ballots for all Louisiana elections, promulgating all election returns, and promulgating and publishing all laws enacted by the legislature. La. Const. art. IV, § 7; La. R.S. 18:18; 18:421.

29. Defendant Steve Raborn is the Registrar of Voters for East Baton Rouge Parish and a member of the East Baton Rouge Parish Board of Election Supervisors and is being sued in his official capacity. As registrar and a member of the parish board of election supervisors Defendant Raborn has the duty to supervise the preparation for and the conduct of all elections held in the East Baton Rouge Parish, and is charged with processing requests for absentee ballots, receiving absentee ballots from voters, and tabulating and counting absentee by-mail ballots and early voting ballots.

30. Defendant Sandra L. Wilson is the Registrar of Voters for Orleans Parish and a member of the Orleans Parish Board of Election Supervisors and is being sued in her official capacity. As registrar and a member of the parish board of election supervisors Defendant Wilson

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<sup>11</sup> La. Exec. Dep’t Proclamation No. 28 JBE 2020 (Mar. 13, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/modified/28-JBE-2020-Special-Elections-COVID19-Postponement.pdf>.

has the duty to supervise the preparation for and the conduct of all elections held in the Orleans Parish, and is charged with processing requests for absentee ballots, receiving absentee ballots from voters, and tabulating and counting absentee by-mail ballots and early voting ballots.

31. The Defendant Parish Boards of Election Supervisors (the “Parish Boards”) include the Parish Boards of the following counties: Acadia Parish, Allen Parish, Ascension Parish, Assumption Parish, Avoyelles Parish, Beauregard Parish, Bienville Parish, Bossier Parish, Caddo Parish, Calcasieu Parish, Caldwell Parish, Cameron Parish, Catahoula Parish, Claiborne Parish, Concordia Parish, De Soto Parish, East Baton Rouge Parish, East Carroll Parish, East Feliciana Parish, Evangeline Parish, Franklin Parish, Grant Parish, Iberia Parish, Iberville Parish, Jackson Parish, Jefferson Parish, Jefferson Davis Parish, Lafayette Parish, Lafourche Parish, Lasalle Parish, Lincoln Parish, Livingston Parish, Madison Parish, Morehouse Parish, Natchitoches Parish, Orleans Parish, Ouachita Parish, Plaquemines Parish, Pointe Coupee Parish, Rapides Parish, Red River Parish, Richland Parish, Sabine Parish, St. Bernard Parish, St. Charles Parish, St. Helena Parish, St. James Parish, St. John The Baptist Parish, St. Landry Parish, St. Martin Parish, St. Mary Parish, St. Tammany Parish, Tangipahoa Parish, Tensas Parish, Terrebonne Parish, Union Parish, Vermilion Parish, Vernon Parish, Washington Parish, Webster Parish, West Baton Rouge Parish, West Carroll Parish, West Feliciana Parish, and Winn Parish.

32. The Parish Boards “supervise the preparation for and the conduct of all elections held in the parish.” LA Rev Stat § 18:423. In so doing they follow the rules and requirements established by the Legislature and the Secretary of State, including any requirements established in any Emergency Plan. The Parish Boards are bodies corporate located in the State of Louisiana, with the capacity to sue and be sued.

## STATEMENT OF FACTS

### I. The COVID-19 Pandemic

#### A. COVID-19's Impact

33. The rapid spread of COVID-19 has triggered a global health crisis of unprecedented consequence. By April 2020, the United States became the epicenter of the pandemic, surpassing other nations in both instance and concentration of infection.<sup>12</sup> By the end of that month, over 1 million cases were recorded nationwide.<sup>13</sup> Yet according to experts, this figure is a drastic undercount of the virus' actual reach.<sup>14</sup>

34. As of May 6, 2020, over 70,000 people have died from COVID-19 in the United States.<sup>15</sup> Even with appropriate preventive measures, COVID-19-related fatalities are expected to continue through the summer months.<sup>16</sup> Projections forecast higher rates of fatality if health guidance is ignored.<sup>17</sup> The leading public model of the disease recently doubled the predicted number of deaths in order to reflect "the easing of social distancing measures expected in 31 states

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<sup>12</sup> David Smith, *US Surpasses China for Highest Number of Confirmed COVID-19 Cases in the World*, The Guardian (Mar.27, 2020), <https://www.theguardian.com/world/2020/mar/26/coronavirus-outbreak-us-latest-trump>.

<sup>13</sup> Daniel Wood, *Tracking The Pandemic: How Quickly Is The Coronavirus Spreading State By State?*, NPR (May 1, 2020), <https://www.npr.org/sections/health-shots/2020/03/16/816707182/map-tracking-the-spread-of-the-coronavirus-in-the-u-s>.

<sup>14</sup> Emma Brown et al., *U.S. deaths soared in early weeks of pandemic, far exceeding number attributed to covid-19*, Washington Post (Apr. 27, 2020), <https://www.washingtonpost.com/investigations/2020/04/27/covid-19-death-toll-undercounted/?arc404=true>.

<sup>15</sup> Ctrs. for Disease Control & Prevention (CDC), *Cases in the US*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited May 7, 2020).

<sup>16</sup> Laura Castañón and Khalida Sarwari, *Northeastern Models are Helping Shape US COVID-19 Policy*, Northeastern University (Apr. 1, 2020), <https://news.northeastern.edu/2020/04/01/northeastern-models-are-helping-shape-us-covid-19-policy/>.

<sup>17</sup> Isaac Sher, *Without any interventions like social distancing, one model predicts the coronavirus could have killed 40 million people this year*, Bus. Insider (Mar. 27, 2020) <https://www.businessinsider.com/covid19-model-predicts-40-million-people-could-die-without-interventions-2020-3>.

by May 11, indicating that growing contacts among people will promote transmission of the coronavirus.”<sup>18</sup>

35. COVID-19 is the respiratory infection caused by the novel coronavirus SARS-CoV-2. It transmits through respiratory droplets, which are spread primarily through close in-person contacts.<sup>19</sup> People with both detected and undetected infection are capable of transmitting the virus, even when showing no symptoms.<sup>20</sup>

36. The novel coronavirus can severely damage lung tissue, cause permanent loss of respiratory capacity, and damage tissues in the kidney, heart, and liver.<sup>21</sup> It may trigger strokes and seizures, leading to serious brain impairments.<sup>22</sup> It is lethal at its worst.

37. The health effects of COVID-19 vary by patient and demographic subgroup. While older age groups face heightened risks of death, people of all ages have been infected and killed by COVID-19. Preliminary reports show mortality rates of 3.6% among individuals between 60–69 years old, 8.0% for those 70–79 years old, and 14.8% among people who are 80 years of age

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<sup>18</sup> Press Release, IHME, *New IHME Forecast Projects Nearly 135,000 COVID-19 Deaths in US* (May 4, 2020), <http://www.healthdata.org/news-release/new-ihme-forecast-projects-nearly-135000-covid-19-deaths-us> (“Increases in testing and contact tracing, along with warming seasonal temperatures – factors that could help slow transmission – do not offset rising mobility, thereby fueling a significant increase in projected deaths.”).

<sup>19</sup> CDC, Coronavirus Disease 2019 (COVID-19): *How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited May 1, 2020).

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

<sup>21</sup> CDC, Coronavirus Disease 2019 (COVID-19): *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (last visited May 6, 2020).

<sup>22</sup> See Roni Caryn Rabin, *Some Coronavirus Patients Show Signs of Brain Ailments*, N.Y. Times (Apr. 1, 2020), <https://www.nytimes.com/2020/04/01/health/coronavirus-stroke-seizures-confusion.html>.

and older.<sup>23</sup> These rates are significantly higher than the mortality rate of seasonal influenza.<sup>24</sup> People across all ages with certain preexisting medical issues, such as heart and respiratory conditions, compromised immune systems, and many other conditions also face heightened risks.<sup>25</sup>

38. The sweeping health consequences of COVID-19 have had a ripple effect across the entire healthcare system. WHO estimates that approximately 20% of individuals infected with COVID-19 require hospitalization.<sup>26</sup> This surge of COVID-19 patients has triggered shortages in healthcare staff, hospital beds, medical equipment, and personal protective equipment (“PPE”).<sup>27</sup>

39. Government leaders from the federal to local level have released emergency declarations, halting or limiting both public and private operations for weeks on end and, at times, indefinitely.<sup>28</sup> Over 30 million people have filed for unemployment insurance since the crisis hit.<sup>29</sup>

40. The effects of the virus’s first wave will last well into the summer of 2020, and the virus is projected to resurge in the later months of the year, and beyond. Indeed, the “flattening of

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<sup>23</sup> CDC, Coronavirus Disease 2019 (COVID-19): *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, *supra* n.21.

<sup>24</sup> See Darren Thackeray, *How COVID-19 compares to seasonal flu, and why you should take it seriously*, World Economic Forum (Apr. 1, 2020), <https://www.weforum.org/agenda/2020/04/coronavirus-covid-19-flu-influenza/>.

<sup>25</sup> CDC, Coronavirus Disease 2019 (COVID-19): *Groups at Higher Risk of Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last visited May 6, 2020).

<sup>26</sup> WHO, Q&A on coronaviruses (COVID-19), <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last visited May 6, 2020).

<sup>27</sup> See Christi A. Grimm, Principal Deputy Inspector General, *Hospital Experiences Responding to the COVID-19 Pandemic: Results of the National Pulse Survey March 23–27, 2020*, U.S. Dept. of Health & Human Servs., Office of Inspector General (Apr. 2020), <https://oig.hhs.gov/oei/reports/oei-06-20-00300.pdf>.

<sup>28</sup> Michelle Stoddart, Mark Osborne, Abby Cruz, *When each state’s stay-at-home order lifts*, ABC (May 1, 2020), <https://abcnews.go.com/US/list-states-stay-home-order-lifts/story?id=70317035>.

<sup>29</sup> Christopher Rugaber, *30 million have sought US unemployment aid since virus hit*, Assoc. Press (Apr. 30, 2020), <https://apnews.com/7f38d7fa2982dc53572232c9d2049dca>.

the curve” is designed to extend the duration of the virus.<sup>30</sup> Experts suggest that COVID-19 “will face less immunity and thus transmit more readily even outside of the winter season,” and that seasonal changes are “unlikely to stop transmission.”<sup>31</sup> Even if infections subside in the summer, a second wave of COVID-19 infections appears inevitable.<sup>32</sup>

41. Dr. David Nabarro, a WHO Special Envoy on COVID-19, has warned that the virus will continue to pose a serious threat to Americans until a vaccine is developed, stating: “We think it’s going to be a virus that stalks the human race for quite a long time to come until we can all have a vaccine that will protect us and that there will be small outbreaks that will emerge sporadically and they will break through our defenses.”<sup>33</sup> Accordingly, Dr. Anthony Fauci recently said that he “can’t guarantee” in-person voting will be safe in November, because of the potential resurgence of COVID-19 in the fall.<sup>34</sup>

42. To date, there is no vaccine for COVID-19 and no known or widely effective treatment. Further, there is “no evidence” that those who develop an immune response to the

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<sup>30</sup> See generally Neil M. Ferguson et al., *Report 9: Impact of non-pharmaceutical interventions (NPIs) to reduce COVID-19 mortality and healthcare demand*, Imperial College COVID-19 Response Team (Mar. 16, 2020), <https://www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-NPI-modelling-16-03-2020.pdf>.

<sup>31</sup> Marc Lipsitch, DPhil, Professor of Epidemiology and Director, Center for Communicable Disease Dynamics, Harvard T.H. Chan School of Public Health, *Seasonality of SARS-CoV-2: Will COVID-19 go away on its own in warmer weather?*, Center for Communicable Disease Dynamics, <https://ccdd.hsph.harvard.edu/will-covid-19-go-away-on-its-own-in-warmer-weather/>.

<sup>32</sup> Matthew Impelli, *What Experts Have Said About a Second Wave of Coronavirus in the U.S.*, Newsweek (Apr. 22, 2020), <https://www.newsweek.com/what-experts-have-said-about-second-wave-coronavirus-us-1499501>; see also New IHME Forecast Projects Nearly 135,000 COVID-19 Deaths in US, *supra* n.18.

<sup>33</sup> Devan Cole, *Fauci admits earlier Covid-19 mitigation efforts would have saved more American lives*, CNN (Apr. 12, 2020), <https://www.cnn.com/2020/04/12/politics/anthony-fauci-pushback-coronavirus-measures-cnntv/index.html>.

<sup>34</sup> Jason Silverstein, *Fauci says he “can’t guarantee” in-person voting in November will be safe*, CBS News (Apr. 13, 2020), <https://www.cbsnews.com/news/coronavirus-fauci-says-he-cant-guarantee-in-person-voting-in-november-will-be-safe/>.

virus—known as antibodies—after an infection are safe from reinfection, nor is there sufficient data about how long immunity to the virus would last.<sup>35</sup> Despite the absence of a cure, experts have identified techniques that are effective in decreasing the transmission rate of COVID-19. Officials have encouraged the practice of social distancing through avoiding close in-person contacts, as well as frequent and thorough hand-washing.<sup>36</sup>

## **B. The COVID-19 Pandemic in Louisiana**

43. Louisiana is among the states hit hardest by the COVID-19 pandemic.<sup>37</sup> As of May 6, 2020, over 2,000 Louisianans had died from COVID-19.<sup>38</sup> Approximately 30,000 cases were reported by the State, which excludes individuals who were never tested.<sup>39</sup> These tallies only grow each day.

44. Since early March, state and local leaders in Louisiana have taken various measures to reduce the spread of the deadly virus. Local leaders in the state's largest cities, including Mayor LaToya Cantrell of New Orleans and Mayor-President Sharon Weston Broome of Baton Rouge, have issued multiple stay-at-home orders, limiting all non-essential operations through at least

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<sup>35</sup> Stephanie Nebehay, “No evidence” that recovered COVID-19 patients cannot be reinfected: WHO, Reuters (Apr. 25, 2020), <https://www.reuters.com/article/us-health-coronavirus-who/no-evidence-that-recovered-covid-19-patients-cannot-be-reinfected-who-idUSKCN2270FB>; see also, Apoorva Mandavilli and Katie Thomas, *Will an Antibody Test Allow Us to Go Back to School or Work?*, N.Y. Times (Apr. 10, 2020), <https://www.nytimes.com/2020/04/10/health/coronavirus-antibody-test.html>.

<sup>36</sup> Lisa Lockerd Maragakis, M.D., M.P.H., *Coronavirus, Social and Physical Distancing and Self-Quarantine*, Johns Hopkins Medicine, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social-distancing-and-self-quarantine> (last visited May 6, 2020).

<sup>37</sup> Aila Slisco, *Louisiana Becomes Fourth U.S. State to Reach 1,000 Coronavirus Deaths*, Newsweek (Apr. 15, 2020), <https://www.newsweek.com/louisiana-becomes-fourth-us-state-reach-1000-coronavirus-deaths-1497930>.

<sup>38</sup> La. Dep’t of Pub. Health, *Coronavirus (COVID-19)*, *supra* n.10.

<sup>39</sup> *Id.*

May 15, 2020.<sup>40</sup> At the statewide level, Governor Edwards has issued a series of incremental proclamations closing down most “non-essential” businesses and encouraging Louisianans to shelter in place.

45. On March 11, Governor Edwards issued Proclamation No. 25 JBE 2020, declaring a State of Emergency for Louisiana.<sup>41</sup> Two days later President Donald Trump proclaimed a National Emergency concerning COVID-19.<sup>42</sup>

46. On March 12, Governor Edwards issued Proclamation No. JBE 2020-27, which, among other things, banned public gatherings of more than 250 people and closed all K-12 public schools statewide until at least April 13, 2020.<sup>43</sup>

47. On March 13, upon the recommendation of Secretary of State Ardoin, Governor Edwards issued Proclamation No. 28 JBE 2020, which rescheduled the April 4, 2020 presidential preference primary election to June 20, 2020 and the May 9, 2020 municipal general election to July 25, 2020.<sup>44</sup> It delegated responsibility to the Secretary of State, Commissioner of Elections, Parish Boards of Election Supervisors, Clerks of Court, Registrars of Voters, and any others

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<sup>40</sup> Press Release, City of New Orleans, Mayor LaToya Cantrell, *Mayor Cantrell Issues Stay Home Mandate in Response to COVID-19* (March 20, 2020), <https://nola.gov/mayor/news/march-2020/mayor-cantrell-issues-stay-home-mandate-in-response-to-covid-19/>; Terry L. Jones, Stay-at-Home Order to Remain in Place in East Baton Rouge Despite Other Parishes’ Defiance, *The Advocate* (Apr. 30, 2020), [https://www.theadvocate.com/baton\\_rouge/news/coronavirus/article\\_482ea0ee-8af1-11ea-900d-bb852bbc325c.html](https://www.theadvocate.com/baton_rouge/news/coronavirus/article_482ea0ee-8af1-11ea-900d-bb852bbc325c.html).

<sup>41</sup> La. Exec. Dep’t Proclamation No. 25 JBE 2020 (Mar. 11, 2020), <https://gov.louisiana.gov/assets/ExecutiveOrders/25-JBE-2020-COVID-19.pdf>.

<sup>42</sup> Proclamation 9994, 85 Fed. Reg. 15337 (Mar. 18, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

<sup>43</sup> La. Exec. Dep’t Proclamation No. JBE 2020-27 (Mar. 13, 2020), <https://gov.louisiana.gov/assets/ExecutiveOrders/27-JBE-2020-COVID-19.pdf>.

<sup>44</sup> La. Exec. Dep’t Proclamation No. 28 JBE 2020, *supra* n.11.



charged with conducting elections in Louisiana to “do every act necessary to conduct the elections.”<sup>45</sup>

48. On March 13, 2020, this Court responded to the pandemic by, among other things, postponing civil trials and suspending in-person filing through April 30.<sup>46</sup> This Court has also authorized the use of video conferencing and other technology for criminal-related appearances.<sup>47</sup> This Court subsequently extended postponement of civil and criminal trials, suspension of in-person filing, and other preventive measures through June 30.<sup>48</sup>

49. On March 16, Governor Edwards issued Proclamation No. JBE 2020-30, which, among other measures, banned public gatherings of more than 50 people, closed or limited the operations of certain, “non-essential” businesses (e.g., casinos, bars, restaurants, gyms, etc.) statewide until at least April 13, 2020.<sup>49</sup>

50. On March 22, Governor Edwards issued Proclamation No. 33 JBE 2020, a statewide Stay-at-Home order requiring “all individuals within the state of Louisiana . . . to stay home unless performing an essential activity,” cancelling public gatherings of more than 10 people, and expanding the definition of “non-essential” businesses.<sup>50</sup> It directed individuals in

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<sup>45</sup> *Id.*

<sup>46</sup> See United States District Court, Middle District of Louisiana, Administrative Order No. 2020-1 (Mar. 13, 2020) <https://www.lamd.uscourts.gov/sites/default/files/pdf/AO%202020-1.pdf>; see also Administrative Order No. 2020-5 (Apr. 8, 2020) [http://www.lamd.uscourts.gov/orders/public\\_orders/AO%202020-5.pdf](http://www.lamd.uscourts.gov/orders/public_orders/AO%202020-5.pdf).

<sup>47</sup> See *id.*

<sup>48</sup> See United States District Court, Middle District of Louisiana, Administrative Order No. 2020-7 (May 1, 2020) [http://www.lamd.uscourts.gov/orders/public\\_orders/AO%202020%207-4.30.2020.pdf](http://www.lamd.uscourts.gov/orders/public_orders/AO%202020%207-4.30.2020.pdf).

<sup>49</sup> La. Exec. Dep’t Proclamation No. JBE 2020-30 (Mar. 16, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/modified/30-JBE-2020-Public-Health-Emergency-COVID-19.pdf>.

<sup>50</sup> La. Exec. Dep’t Proclamation No. JBE 33 2020 (Mar. 22, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/JBE-33-2020.pdf>.

Louisiana to “maintain a distance of six feet from one another and abide by the 10-person limitation on gathering size.”<sup>51</sup> It ordered residents to limit movement outside the home, until at least April 13, 2020, except for the purpose of visiting essential businesses, obtaining non-elective medical care, performing their job at an essential business, visiting family, exercising, and going to a place of worship.<sup>52</sup>

51. In issuing the Stay-at-Home order, Governor Edwards explained that despite having taken “aggressive measures to mitigate the spread of COVID-19 and flatten the curve,” the measures already taken had not been enough.<sup>53</sup>

52. On March 24, President Trump approved a major disaster declaration for Louisiana, which made federal emergency aid available for recovery efforts due to COVID-19.<sup>54</sup>

53. On April 14, upon the recommendation of Secretary of State Ardoin, Governor Edwards issued Proclamation No. 46 JBE 2020, further postponing or rescheduling all elections scheduled to be held in the State. The June 20, 2020 presidential preference primary election in Louisiana was rescheduled for July 11, 2020. The July 25, 2020 municipal election was rescheduled for August 15, 2020.<sup>55</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Press Release, Office of the Governor, *Gov. Edwards Issues Statewide Stay at Home Order to Further Fight the Spread of COVID-19 in Louisiana* (Mar. 22, 2020), <https://gov.louisiana.gov/order/>.

<sup>54</sup> See FEMA, *President Donald J. Trump Approves Major Disaster Declaration for Louisiana* (Mar. 24, 2020), <https://www.fema.gov/news-release/2020/03/24/president-donald-j-trump-approves-major-disaster-declaration-louisiana>.

<sup>55</sup> La. Exec Dep’t Proclamation No. 46 JBE 2020 (Apr. 14, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/46-JBE-2020-Elections-Rescheduled.pdf>.

54. On April 27, Governor Edwards announced that Louisiana's Stay-at-Home order would be extended until at least May 15 in order to continue to slow the spread of the disease,<sup>56</sup> officially implementing the extension on April 30.<sup>57</sup> Governor Edwards intends to make his next announcement on whether the Stay-at-Home order will be modified on or by May 11.<sup>58</sup>

### C. COVID-19's Disproportionate Impact on Black People in Louisiana

55. As the COVID-19 pandemic has spread across the country, it has taken a devastating toll on Black people, who make up a disproportionate number of confirmed cases and deaths resulting from the virus.<sup>59</sup> Preliminary nationwide data released by the CDC on April 25, which included race data for 42.1% of the 671,485 cases analyzed, found that Black people make up 30% of reported COVID-19 cases although they only make up 13% of the total U.S. population.<sup>60</sup>

56. In Louisiana, racial disparities in infections and deaths resulting from the coronavirus have been particularly acute. On April 6, Governor Edwards announced that initial data categorizing deaths resulting from COVID-19 by race showed that Black people comprised

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<sup>56</sup> Press Release, Office of the Governor, *Gov. Edwards Will Extend Stay at Home Order Until May 15 to Continue Flattening the Curve and Slowing the Spread of COVID-19* (Apr. 27, 2020), <https://gov.louisiana.gov/home-order-extended-may15/>.

<sup>57</sup> La. Exec. Dep't Proclamation No. 52 JBE 2020 (Apr. 30, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/52-JBE-2020-Stay-at-Home-Order.pdf>.

<sup>58</sup> *Id.*

<sup>59</sup> Reis Thebault, et al., *The coronavirus is infecting and killing black Americans at an alarmingly high rate*, Washington Post (Apr. 7, 2020), [https://www.washingtonpost.com/nation/2020/04/07/coronavirus-is-infecting-killing-black-americans-an-alarmingly-high-rate-post-analysis-shows/?arc404=true&itid=lk\\_inline\\_manual\\_3](https://www.washingtonpost.com/nation/2020/04/07/coronavirus-is-infecting-killing-black-americans-an-alarmingly-high-rate-post-analysis-shows/?arc404=true&itid=lk_inline_manual_3)

<sup>60</sup> CDC, *Coronavirus Disease 2019 (COVID-19): Cases, Data, & Surveillance, Demographic characteristics of COVID-19 cases in the U.S.* (May 5, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

70% of deaths, despite making up only 32% of Louisiana’s population.<sup>61</sup> The Governor called this alarming statistic “a disturbing trend and one that deserves our attention,” and announced the creation of the Louisiana COVID-19 Health Equity Task Force to explore “how health inequities are affecting communities that are most impacted by the coronavirus.”<sup>62</sup>

57. As of May 4, data updated weekly by the Louisiana Department of Health indicates that the COVID-19 death rate remains disproportionately high for Black people at over 57%. Further, recently released Louisiana Department of Health data reporting COVID-19 cases by U.S. census tract shows high rates of infection in Louisiana’s predominantly Black areas.<sup>63</sup> For example, in Orleans Parish, where Black people make up 60% of the population, the census tract data indicate that neighborhoods with high concentrations of Black residents have higher numbers of reported cases.<sup>64</sup> While the State’s data does not report rates of COVID-19 infection by race, the census tract data reflect a disparate impact on Louisiana’s Black communities as opposed to predominately white communities. These figures mirror developing trends in other states, such as Maryland and North Carolina, which have both released data showing that Black people face higher rates of both infection and death from COVID-19 than the population as a whole.<sup>65</sup>

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<sup>61</sup> Gordon Russell & Sam Karlin, *Coronavirus disparity in Louisiana: About 70% of victims are black, but why?*, nola.com (Apr. 6, 2020), [https://www.nola.com/news/coronavirus/article\\_d804d410-7852-11ea-ac6d-470ebb61c694.html](https://www.nola.com/news/coronavirus/article_d804d410-7852-11ea-ac6d-470ebb61c694.html).

<sup>62</sup> Press Release, Office of the Governor, *Gov. Edwards Announces Creation of COVID-19 Health Equity Taskforce* (Apr. 10, 2020), <https://gov.louisiana.gov/index.cfm/newsroom/detail/2457>.

<sup>63</sup> Jeff Adelson, ‘*G glaring’ racial disparities found in coronavirus infection rates in these New Orleans neighborhoods*, nola.com (Apr. 20, 2020), [https://www.nola.com/news/coronavirus/article\\_0ea8b004-8357-11ea-81e3-ff26d085e141.html](https://www.nola.com/news/coronavirus/article_0ea8b004-8357-11ea-81e3-ff26d085e141.html).

<sup>64</sup> Linda Villarosa, ‘*A Terrible Price*’: *The Deadly Racial Disparities of Covid-19 in America*, N.Y. Times (Apr. 29, 2020), <https://www.nytimes.com/2020/04/29/magazine/racial-disparities-covid-19.html>.

<sup>65</sup> N.C. Dep’t of Health & Human Servs., *COVID-19 North Carolina Dashboard*, <https://www.ncdhhs.gov/divisions/public-health/covid19/covid-19-nc-case-count#by-race-ethnicity> (last updated May 6, 2020); Fenit Nirappil et al., *Record set for single-day covid-19 deaths in D.C., Maryland and Virginia at 53*;

58. The stark racial disparities reflected in COVID-19's effects on Louisiana's residents are a manifestation of longstanding discrimination and socioeconomic inequities in the State. According to 2018 American Community Survey 1-Year estimates, in Louisiana, 30% of all Black residents compared to 12% of all white residents live in poverty; the unemployment rate is 9.9% for Black residents compared to 4.5% for white residents; per capita income for Black residents is \$17,491, compared to \$33,856 for white residents; only 19% of Black residents have finished high school compared to 10.8% of white residents; 7.8% of Black residents had no health insurance compared to 6.2% of white residents; and 15.8% of Black residents lacked a vehicle compared to 4.7% white residents.<sup>66</sup>

59. Together with race and class biases that impact access to healthcare, these racially disparate socioeconomic conditions contribute to adverse health conditions and outcomes that predispose Black people to contracting COVID-19. According to statistics from the Louisiana State Health Department, the number of deaths from asthma, heart disease, diabetes, and severe obesity are higher for Black people than for whites.<sup>67</sup> The CDC has cited racial disparities in these

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*black residents hit hardest*, Washington Post (Apr. 9, 2020), [https://www.washingtonpost.com/local/covid-19-deaths-hit-new-high-in-dc-maryland-and-virginia-at-53-black-residents-hit-hardest/2020/04/09/cc85cd14-77b3-11ea-b6ff-597f170df8f8\\_story.html](https://www.washingtonpost.com/local/covid-19-deaths-hit-new-high-in-dc-maryland-and-virginia-at-53-black-residents-hit-hardest/2020/04/09/cc85cd14-77b3-11ea-b6ff-597f170df8f8_story.html).

<sup>66</sup> U.S. Census Bureau, 2010-2018 American Community Survey 1-Year Estimates: *Selected Social Characteristics of the United States: Louisiana* (2018), <https://data.census.gov/cedsci/table?q=s0201&tid=ACSSPPIY2018.S0201&y=2018&t=400%20-%20Hispanic%20or%20Latino%20%28of%20any%20race%29%20%28200-299%29%3A451%20-%20White%20alone,%20not%20Hispanic%20or%20Latino%3A453%20-%20Black%20or%20African%20American%20alone,%20not%20Hispanic%20or%20Latino%3ARace%20and%20Ethnicity&hidePreview=true&moe=false&g=0400000US22>.

<sup>67</sup> La. Dep't of Pub. Health, Community Partnerships & Health Equity, *Minority Health Indicators*, <http://ldh.la.gov/index.cfm/page/672>

underlying medical conditions as a factor that influences the disproportionate impact of COVID-19 on the Black population.<sup>68</sup>

60. Racial disparities in employment and access to transportation also make it more difficult for Black people to take measures that mitigate the risks posed by COVID-19, including engaging in social isolation or working from home. In Louisiana, 29.9% of African Americans 16 years and over who are employed work in service industry occupations compared to only 14.8% of whites, and only 24.7% are in management and business positions, positions more likely to facilitate remote work, as compared to 39.3% of whites; thus, African Americans face a higher degree of exposure to COVID-19 both at their workplace and in transit.<sup>69</sup>

61. The COVID-19 pandemic has both exposed and exacerbated deep-rooted and systemic inequalities faced by Black people throughout the country, and in Louisiana in particular. Indeed recognizing that “[h]ealth differences between racial and ethnic groups are often due to economic and social conditions that are more common among some racial and ethnic minorities

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<sup>68</sup> *Id.* (citing A.P. Bartel et al., *Racial and ethnic disparities in access to and use of paid family and medical leave: evidence from four nationally representative datasets*, U.S. Bureau of Labor Statistics (Jan. 2019), <https://doi.org/10.21916/mlr.2019.2>; T.J. Cunningham et al., *Vital signs: racial disparities in age-specific mortality among blacks or African Americans—United States, 1999–2015*, 66(17) CDC Morbidity and Mortality Weekly Report 444 (2017)); *see also* Joseph P. Williams, *Rumor, Disparity and Distrust: Why Black Americans Face an Uphill Battle Against COVID-19*, U.S. News and World Report (Mar. 25, 2020), <https://www.usnews.com/news/healthiest-communities/articles/2020-03-25/why-black-americans-face-an-uphill-battle-against-the-coronavirus> (citing Dr. Lisa Cooper, internist and social epidemiologist with Johns Hopkins Bloomberg School of Public Health: “The concern that black communities presently hampered by health inequities could be devastated by the coronavirus is rooted in decades of research as well as the nation’s checkered racial history.”); Ibram X. Kendi, *Stop Blaming Black People for Dying of the Coronavirus*, The Atlantic (Apr. 14, 2020), <https://www.theatlantic.com/ideas/archive/2020/04/race-and-blame/609946/> (“Without question, African Americans suffer disproportionately from chronic diseases such as hypertension, cardiovascular disease, diabetes, lung disease, obesity, and asthma, which make it harder for them to survive COVID-19.”).

<sup>69</sup> U.S. Census Bureau, 2010-2018 American Community Survey 1-Year Estimates: Selected Social Characteristics of the United States: Louisiana (2018), *supra* n.66.

than whites,” the CDC has identified racial and ethnic minority groups among “people who need to take extra precautions to protect themselves from COVID-19.”<sup>70</sup>

#### **D. The COVID-19 Pandemic and Voting**

62. The CDC has issued specific guidance concerning safe voting practices during the COVID-19 pandemic to prevent spread of the coronavirus. In particular, the CDC has warned of the high potential of COVID-19 transmission at polling sites, and instructs election officials to “[e]ncourage voters to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations.”<sup>71</sup> The guidance advises officials to encourage mail-in methods of voting, early voting, and drive up voting, among other recommendations.<sup>72</sup>

63. The CDC lists “mail-in methods of voting” first among its recommendations to reduce person-to-person contacts and congestion at polling sites.<sup>73</sup> While COVID-19 spreads rapidly in crowds, like those at congested polling sites, there is no evidence that it spreads through the mail.<sup>74</sup> In the interest of extreme caution, the U.S. Postal Service has also implemented policies

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<sup>70</sup> CDC Coronavirus Disease 2019 (COVID-19): *People Who Need Extra Precautions, Others at Risk, Racial and Ethnic Minority Groups*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> (last updated Apr. 20, 2020).

<sup>71</sup> CDC, Coronavirus Disease 2019 (COVID-19): *Recommendations for Election Polling Locations: Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last updated Mar. 27, 2020).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> CDC, Coronavirus Disease 2019 (COVID-19): *Frequently Asked Questions*, <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (last updated Apr. 28, 2020).

to reduce contacts between mail carriers and members of the businesses and households they serve.<sup>75</sup>

64. Across the country, voters and election workers have already fallen victim to COVID-19 through contacts made at in-person polling sites. After Florida's March 17 primary, two Broward County poll workers tested positive for COVID-19, one of whom was handling driver's licenses as part of the identification verification process.<sup>76</sup> Chicago officials later reported that a poll worker died of COVID-19 after working at the polls on March 17, with officials identifying individuals with confirmed coronavirus cases at additional polling locations.<sup>77</sup> Just weeks later, in-person voting proceeded in Wisconsin, where voters in Milwaukee and Green Bay waited in multi-hour lines.<sup>78</sup> Following that election, health officials identified at least 52 individuals who tested positive for COVID-19 after either voting in person or working at a polling site.<sup>79</sup>

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<sup>75</sup> Press Release, United States Postal Service, *Media Statement – COVID-19* (Apr. 2, 2020), <https://about.usps.com/newsroom/statements/usps-statement-on-coronavirus.htm> (citing guidance from World Health Organization, CDC, and Surgeon General).

<sup>76</sup> Anthony Man, *Two Broward poll workers, including one who handled voters' driver licenses, test positive for coronavirus*, S. Fla. Sun Sentinel (Mar. 26, 2020), <https://www.sun-sentinel.com/coronavirus/fl-ne-broward-elections-poll-workers-coronavirus-20200326-wmgv775dvjc5jis2oagxlpmlule-story.html>.

<sup>77</sup> See Mary Ann Ahern, *Poll Worker at Chicago Voting Site Dies of Coronavirus, Election Officials Say*, NBC Chicago (Apr. 13, 2020), <https://www.nbcchicago.com/news/local/chicago-politics/poll-worker-at-chicago-voting-site-dies-of-coronavirus-election-officials-say/2255072/>.

<sup>78</sup> Devi Shastri, *In-person voting was likely a 'disaster' for Wisconsin's efforts to flatten coronavirus curve, national experts say*, Milwaukee J. Sentinel (Apr. 8, 2020) (quoting Wisconsin Department of Health Services Secretary Andrea Palm), <https://www.jsonline.com/story/news/politics/elections/2020/04/08/coronavirus-wisconsin-election-likely-hurt-effort-flatten-curve/2961718001/>.

<sup>79</sup> Nolan D. McCaskill, *Wisconsin Health Dept.: 36 People Positive for Coronavirus After Primary Vote*, Politico (Apr. 27, 2020), <https://www.politico.com/news/2020/04/27/wisconsin-tested-positive-coronavirus-election-211495>; *The Latest: 52 positive cases tied to Wisconsin election*, The Associated Press (Apr. 28, 2020), <https://apnews.com/b1503b5591c682530d1005e58ec8c267>.



65. Expanded access to voting by mail for all voters also helps reduce lines and crowds at polling sites by allowing some people who would otherwise vote in person to vote by mail. Many other voters, including but not limited to people who are homeless, visually impaired, have limited English proficiency, or are illiterate and need accessible voting machines and personal assistance, will continue to rely on in-person voting to participate in the democratic process. The CDC recommendations also address best practices for in-person voting during the COVID-19 pandemic, including sanitizing surfaces and maintaining 6 feet of distance between individuals.<sup>80</sup> As noted, however, the CDC recommends that election officials “[e]ncourage voters to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations,” including mail-in methods of voting and drive up voting.<sup>81</sup> Maximizing options for voters ensures less congestion at polling sites, while maintaining inclusive access to the franchise.

66. The majority of states, that is, 34 and the District of Columbia, already offer all eligible voters a vote-by-mail ballot option.<sup>82</sup> Of the 16 states that require an excuse to vote absentee by mail, several have expanded the scope of absentee eligibility in recognition of the extensively documented threat that the pandemic continues to pose to the public and in response to the well-founded health and safety concerns of qualified voters.

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<sup>80</sup> CDC, Coronavirus Disease 2019 (COVID-19): *Recommendations for Election Polling Locations: Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last updated Mar. 27, 2020).

<sup>81</sup> *Id.*

<sup>82</sup> The Brennan Center for Justice, Research & Reports: Preparing Your State for an Election Under Pandemic Conditions, <https://www.brennancenter.org/our-work/research-reports/preparing-your-state-election-under-pandemic-conditions> (last updated Apr. 27, 2020).

67. For example, Arkansas,<sup>83</sup> Alabama,<sup>84</sup> Delaware,<sup>85</sup> Massachusetts,<sup>86</sup> New Hampshire,<sup>87</sup> Virginia,<sup>88</sup> and West Virginia<sup>89</sup> have, via varying interpretations, expanded the scope of existing state election laws establishing absentee ballot eligibility for illness, injury, or disability to now include all qualified voters concerned about or taking preventative measures because of the COVID-19 pandemic. Courts have similarly removed the burdens of witness and notary requirements for absentee ballots within the context of the pandemic.<sup>90</sup>

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<sup>83</sup> Governor of Arkansas, Exec. Order No. 20-08, (Mar. 20, 2020), [https://governor.arkansas.gov/images/uploads/executiveOrders/EO\\_20-08\\_.pdf](https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-08_.pdf).

<sup>84</sup> Ala. Legis. Servs. Agency, *Absentee Voting During State of Emergency, 17-11-3(e)* (Mar. 18, 2020), <https://www.sos.alabama.gov/sites/default/files/SOS%20Emergency%20Rule%20820-2-3-.06-.01ER.pdf>; see also Press Release, *Alabama Secretary of State, 100 Days Left to Apply for Absentee Ballot for the Primary Runoff Election* (Mar. 31, 2020), <https://www.sos.alabama.gov/newsroom/100-days-left-apply-absentee-ballot-primary-runoff-election>; see also Ala. Code § 17-11-3(a)(2).

<sup>85</sup> See Governor of Delaware, Exec. Dep't, Sixth Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat (Mar. 24, 2020), <https://governor.delaware.gov/wp-content/uploads/sites/24/2020/03/Sixth-Modification-to-State-of-Emergency-03242020.pdf> (Delaware executive order providing that for upcoming primary and special elections “the qualification of ‘sick or physically disabled’ [in Delaware vote-by-mail provisions] shall apply to and include any such voter who is asymptomatic of COVID-19 . . . and who herself or himself freely chooses to use such qualification to vote by absentee ballot.”).

<sup>86</sup> An Act Granting Authority to Postpone 2020 Municipal Elections in the Commonwealth and Increase Voting Option in Response to the Declaration of Emergency to Respond to COVID-19, 191st General Court of the Commonwealth of Mass., ch. 45 (2020), <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter45> (new Massachusetts law clarifying that “any person taking precaution related to COVID-19 in response to a declared state of emergency or from guidance from a medical professional, local or state health official, or any civil authority shall be deemed to be unable by reason of physical disability to cast their vote in person,” which is one of the reasons set forth in the state constitution that permits a Massachusetts voter to vote by mail).

<sup>87</sup> Memorandum from the Sec’y of State and Att’y General to New Hampshire Election Officials re: Elections Operations During the State of Emergency at 2 (Apr. 10, 2020), <https://www.governor.nh.gov/news-media/press-2020/documents/20200410-absentee-voting.pdf>.

<sup>88</sup> Absentee Voting, Va. Dep’t of Elections, <https://www.elections.virginia.gov/casting-a-ballot/absentee-voting/> (last visited May 6, 2020) (Virginia Department of Elections statement clarifying that “[v]oters may choose reason ‘2A My disability or illness’” to vote absentee in upcoming elections due to COVID-19).

<sup>89</sup> W. Va. Sec’y of State Mac Warner, Admin. Law Div., Notice Of An Emergency Rule (Mar. 20, 2020), <http://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=53039&Format=PDF>.

<sup>90</sup> See *League of Women Voters of Va. v. Va. State Bd. of Elections*, F. Supp. 3d, No. 6:20-cv-00024, 2020 WL 2158249, at \*8 (E.D. Va. May 5, 2020) (approving order enjoining enforcement of absentee ballot witness

## II. Louisiana's Absentee and Early Voting Process

68. At least four major elections are scheduled to take place in Louisiana between May and the end of the calendar year, including major statewide and federal elections. The elections are currently scheduled to take place on July 11, 2020 (Presidential Preference Primary/Municipal Primary Election), August 15, 2020 (Municipal General Election), November 3, 2020 (Presidential General and Open Congressional Primary Election), and December 5, 2020 (Congressional and Open General Election).<sup>91</sup>

69. Louisiana's state election code enumerates specific categories of eligible voters who may request and vote by mail-in ballot, a process described in Louisiana's election code as "absentee voting by mail." La. R.S. 18:1308. The categories include voters who expect to be out of the parish in which they would be qualified to vote in person on Election Day, such as service members, students, clergy members, and overseas citizens. La. R.S. 18:1303(B). Voters who are not necessarily absent from the parish but will remain incarcerated pre-trial or sequestered as a jury member during the election may also request and vote by absentee ballot. La. R.S. 18:1303(C)-(G). Eligible voters who submit certain identification or documentation of a qualifying disability may vote absentee. La. R.S. 18:1303(I). Voters who are 65 years-of-age and older also qualify for this accommodation. La. R.S. 18:1303(J). Finally, qualified voters who

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requirement, noting "[n]otwithstanding the proffered steps which could be taken to mitigate the risks to health in having somebody witness one's absentee ballot, many would be dissuaded from exercising their vote both on account of the remaining health risks and required steps to mitigate them"); *League of Women Voters of Okla. v. Ziriak*, No. 118765, 2020 WL 2111348, at \*1 (Okla. May 4, 2020) (barring use of notary requirement for absentee ballots).

<sup>91</sup> See 2020 Elections Calendar, La. Sec. State, <https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ElectionsCalendar2020.pdf> (last visited Apr. 27, 2020).

were unable to participate in early voting and will be unable to vote on election day due to hospitalization may vote by absentee ballot. La. R.S. 18:1303(D).

70. All requests to vote absentee by mail must specify the reason for the request. La. R.S. 18:1307. Applications can be sent to the registrar of voters by mail, fax, hand delivery, or electronically through the Secretary of State's website at [GeauxVote.com](http://GeauxVote.com). La. R.S. 18:1307.

71. When applying for an absentee ballot, the applicant must provide the reason for their request to vote absentee by mail and attach any documents in support thereof. La. R.S. 18:1307(A)(2). If the registrar of voters has reason to believe that the eligibility of a voter to vote absentee by mail pursuant to La. R.S. 18:1303 is based upon false or fraudulent information, they "shall immediately notify the parish board of election supervisors." La. R.S. 18:1307(I). And, if "after appropriate hearing and opportunity for the voter to be heard, the parish board of election supervisors finds that the voter's eligibility to vote absentee by mail was based upon false or fraudulent information, the board shall inform the appropriate district attorney and the registrar of voters who shall not allow the voter to vote absentee by mail." La. R.S. 18:1307(I).

72. The Secretary of State is responsible for preparing absentee ballots. La. R.S. 18:1306(A). Every ballot is mailed in an envelope with the following on its face in red bold face type: "VIOLATION OF ABSENTEE BY MAIL OR EARLY VOTING LAWS VOIDS BALLOT AND MAY RESULT IN CRIMINAL PENALTIES" and "VOTING AT POLLS AFTER VOTING ABSENTEE BY MAIL OR DURING EARLY VOTING IS PROHIBITED AND MAY RESULT IN CRIMINAL PENALTIES." La. R.S. 18:1306(D). The envelope also includes a "Certificate" to be signed by the voter, certifying that they "applied for the ballot, marked the enclosed ballot(s) himself or that they were marked for him according to his instructions and in his

presence;” that the voter is entitled to vote at the precinct they name; and that the parish board of election supervisors is authorized to open the envelope and count their ballot. La. R.S. 18:1306(E).

73. The “Certificate,” which is on the envelope, includes “an affidavit followed by a line for the handwritten signature or mark of the voter, certifying that the statements made . . . are true and correct and that the voter is aware of the penalties for knowingly making a false statement therein, which penalties shall be stated on the certificate.” La. R.S. 18:1306(E)(1)(f).

74. Finally, the voter must sign the certificate in the presence of one witness, who must also sign the envelope. The voter’s certificate “shall be made under penalty of perjury for providing false or fraudulent information.” La. R.S. 18:1306(E)(2)(a).

75. Once completed, the ballot must be returned to the registrar by the U.S. Postal Service, a commercial courier, or by hand delivery. La. R.S. 18:1308(B). If delivered by someone other than the voter, a commercial courier, or the U.S. Postal Service, the registrar must require that the person making such delivery sign a statement, prepared by the Secretary of State, certifying that they have the authorization and consent of the voter to hand deliver the marked ballot. La. R.S. 18:1308(B). No person except the immediate family of the voter may hand deliver more than one marked ballot to the registrar. La. R.S. 18:1308(B). Under most circumstances, ballots must be received by 4:30 p.m. on the day before Election Day in order to be counted. La. R.S. 18:1308(C).

76. The parish board of election supervisors conducts the counting and tabulation of all absentee by mail and early voting ballots in the parish. La. R.S. 18:1313(A). Absentee by mail and early voting ballots are counted at a public facility within the parish no later than 8:00 p.m. on Election Day. La. R.S. 18:1313(B). Several steps must be taken to validate each ballot before it may be counted: (1) a member of the board must compare the name on the certificate or on the

flap of the envelope containing the absentee by mail ballot with the names on the absentee by mail voter report; (2) the board will consider any properly filed challenges to the ballot, following procedures delineated elsewhere in the statutes; (3) if a majority of the members of the board determine that an absentee by mail ballot is invalid, the members must leave the flap on the envelope containing the absentee by mail ballot, leave the envelope sealed, and a board member must write the word “rejected,” together with the reasons for rejecting the ballot, and their initials. La. R.S. 18:1313(F). The rejected absentee by mail ballots and certificates must be replaced in the special absentee by mail and early voting ballot envelope or container. La. R.S. 18:1313(F).

77. No rejected absentee by mail ballot is counted. La. R.S. 18:1313(F)(5).

78. If the board determines that an absentee by mail ballot is valid, the ballot certificate must be signed by two board members. La. R.S. 18:1313(F)(6).

79. Any person who knowingly, willfully, or intentionally votes or attempts to vote more than once in an election, or otherwise votes in a false, fictitious, or fraudulent way shall be fined up to \$2,000 dollars, be imprisoned for up to two years, or both, for the first offense. La. R.S. 18:1461.2(B). These penalties are listed **boldly** on all absentee ballot applications.<sup>92</sup>

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<sup>92</sup>See General Application for Absentee By Mail Ballot, La. Sec. State, <https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/GeneralApplicationForAbsenteeByMailBallot.pdf> (last visited May 6, 2020); Disabled Application for Absentee By Mail Ballot, La. Sec. State, <https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/DisabledApplicationForAbsenteeByMailBallot.pdf> (last visited May 6, 2020); Military Overseas Application for Absentee By Mail Ballot, La. Sec. State, <https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/MilitaryOverseasApplicationForAbsenteeByMailBallot.pdf> (last visited May 6, 2020).

80. La. R.S. 18:1309 allows for early voting from seven to fourteen days prior to any scheduled election. In practice, over at least the past four years, Louisiana has only allowed for seven days of early voting in primary and general elections.<sup>93</sup>

81. All registered voters may vote early.<sup>94</sup>

### **III. The Emergency Election Plan**

82. Louisiana election procedures are governed by the Louisiana Election Code. Pursuant to La. R.S. 18:401.3, if the Governor declares a statewide emergency, the Secretary of State may certify that the emergency will impair an upcoming election. The Secretary of State sends the certification with the underlying facts and reasons detailing the election impairment to the Governor, the Senate Committee on Senate and Governmental Affairs, and the House Committee on House and Governmental Affairs.

83. If the Governor and the majority of each of the two committees agree that an emergency election plan is necessary, the Secretary of State shall develop a plan to address any impairments the emergency presents to the holding of the election. The Secretary of State may, if deemed necessary, include in the emergency plan a proposal to conduct early voting in certain parishes to enable displaced voters to vote. The written emergency plan must then be submitted by the Secretary of State to the two aforementioned committees and the Governor.

84. The majority of the two committees must approve of the plan, after which it will be submitted to the members of each house of the legislature for approval by the majority of each

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<sup>93</sup>See Search Election Dates, La. Sec. State, <https://www.sos.la.gov/ElectionsAndVoting/GetElectionInformation/SearchElectionDates/Pages/default.aspx> (last visited May 6, 2020).

<sup>94</sup>See, Elections and Voting, La. Sec. State, <https://www.sos.la.gov/ElectionsAndVoting/Vote/VoteEarly/Pages/default.aspx> (last visited May 6, 2020).

house. Upon approval by a majority of the members of the House and the Senate and by the Governor, the Secretary of State must then take steps necessary to implement the plan.

85. On March 13, 2020, Secretary of State Ardoin certified to the Governor that a state of emergency exists that would affect the electoral process, and certified the same one month later on April 13, 2020.<sup>95</sup> On April 14, 2020, Secretary Ardoin presented his first emergency plan to the Governor, the Senate Committee on Senate and Governmental Affairs, and the House Committee on House and Governmental Affairs (“the First Emergency Plan”).

86. The First Emergency Plan recognized the serious threat COVID-19 poses to Louisianans. The First Emergency Plan explained that:

COVID-19 poses unknown and unprecedented logistical problems regarding the availability of polling places, commissioners, election officials, and sanitation and safety products (like clothing, protective eyewear, masks, sanitizing products, and sterilizing services to clean facilities prior to and following the election) with respect to conducting in-person voting for the July 11, 2020 and August 15, 2020 elections.<sup>96</sup>

87. Secretary Ardoin then described the steps he believed were necessary to ensure a safe and fair election. These included (1) expanding early voting from seven to thirteen days before election day; (2) expanding the reasons to request an absentee by mail ballot to registered voters who are affected by COVID-19 and included voters:

- Sixty years of age or older;
- At higher risk of severe illness from COVID-19 due to serious underlying medical conditions (such as chronic lung disease, moderate to severe asthma, hypertension and other serious heart conditions, diabetes, undergoing chemotherapy,

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<sup>95</sup> See State of Louisiana Executive Department: Proclamation No. 46JBE 2020 (Apr. 14, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/modified/46-JBE-2020-Elections.pdf>.

<sup>96</sup> See Secretary of State Emergency Election Plan for the July 11, 2020 Presidential Preference Primary and August 15, 2020 Municipal General Elections in the State of Louisiana, at 2 (Apr. 14, 2020), [https://house.louisiana.gov/Agendas\\_2020/Apr\\_2020/Emergency%20Election%20Plan%20for%20PPP%20and%20Mun%20General%20Rev.%204-13.pdf](https://house.louisiana.gov/Agendas_2020/Apr_2020/Emergency%20Election%20Plan%20for%20PPP%20and%20Mun%20General%20Rev.%204-13.pdf).



immunodeficiencies, severe obesity, chronic kidney disease and undergoing dialysis, and liver disease);

- Subject to a stay at home, quarantine, or isolation order;
- Advised by a health care provider or governmental authority to self-quarantine due to COVID-19 concerns;
- Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- Unable to appear in public due to concern of exposure to or transmission of COVID-19;
- Caring for an individual who is subject to a stay at home, quarantine, or isolation order or who has been advised by a health care provider or governmental authority to self-quarantine due to COVID-19 concerns; or
- Caring for a child or grandchild if the child's school or daycare is closed, or the child care provider is unavailable, due to precautions taken because of COVID-19 concerns;

(3) reducing the number of witness signatures required on an absentee ballot application where the applicant is unable to sign their own name from two witnesses to one witness; and (4) providing polling locations and election workers with supplies to prevent against the spread of the virus.<sup>97</sup>

88. On April 15, 2020, the Senate and Governmental Affairs Committee blocked the First Emergency Plan in committee on a party-line vote, citing concerns that making absentee voting available to anyone concerned about exposure to COVID-19 would enable voter fraud, despite statistics and evidence to the contrary.<sup>98</sup> Blocking the First Emergency Plan in committee ensured that the full Louisiana legislature would not be able to approve of the plan.<sup>99</sup>

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<sup>97</sup> *See id.*

<sup>98</sup> *See* Sam Karlin, *Louisiana Republicans Block Emergency Coronavirus Election Plan; Future of Election Unclear*, *The Advocate* (Apr. 15, 2020), [https://www.theadvocate.com/baton\\_rouge/news/coronavirus/article\\_4dfccfd6-7f44-11ea-b67e-73d2172ba20b.html](https://www.theadvocate.com/baton_rouge/news/coronavirus/article_4dfccfd6-7f44-11ea-b67e-73d2172ba20b.html); *see also* Melinda Deslatte, *Louisiana Lawmakers Approve Emergency Summer Elections Plan*, *U.S. News* (Apr. 28, 2020), <https://www.usnews.com/news/best-states/louisiana/articles/2020-04-28/louisiana-lawmakers-approve-emergency-summer-elections-plan>.

<sup>99</sup> *See id.*

89. On April 20, 2020, less than a week after the First Emergency Plan was blocked, Secretary Ardoin presented his new emergency plan (the “Emergency Plan”).<sup>100</sup> The new Emergency Plan would no longer allow voters with a “concern of exposure” to COVID-19 to request an absentee-by-mail ballot.<sup>101</sup> The Emergency Plan would no longer extend access to absentee ballots to voters over the age of 60 or those caring for a child or grandchild whose school or daycare is closed and/or where alternative childcare is not available due to COVID-19 concerns.<sup>102</sup> And, the revised Emergency Plan would cover only the July Election and the August Election—it would not provide for expanded access to absentee ballots for either the November Election or December Election.<sup>103</sup>

90. Two days later, on April 22, 2020, both the Senate and Governmental Affairs Committee and House Committee on House and Governmental Affairs approved the revised Emergency Plan. On April 27, 2020, the Emergency Plan was approved by the full Louisiana State House (passing 62–39) and State Senate (passing 31–8).

91. Contrary to recommendations from federal health experts at the CDC, the Emergency Plan only allows voters to seek absentee ballots if they attest on an application that they (i) are “[a]t a higher risk of severe illness from COVID-19 due to serious underlying medical conditions as identified by the CDC (including chronic lung disease, moderate to severe asthma, hypertension and other serious heart conditions, diabetes, undergoing chemotherapy, severe obesity (BMI of 40 or higher), chronic kidney disease and undergoing dialysis, liver disease,

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<sup>100</sup> See Secretary of State Emergency Election Plan for the July 11, 2020 Presidential Preference Primary and August 15, 2020 Municipal General Elections in the State of Louisiana (Apr. 20, 2020), *supra* n.8.

<sup>101</sup> *See id.*

<sup>102</sup> *See id.*

<sup>103</sup> *See id.*

pregnancy, or immunocompromised due to cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications”); (ii) are “[s]ubject to a medically necessary quarantine or isolation order as a result of COVID-19”; (iii) are “[a]dvised by a health provider to self-quarantine due to COVID-19 concerns”; (iv) are “[e]xperiencing symptoms of COVID-19 and seeking medical diagnosis”; or (v) are “[c]aring for an identified individual who is subject to medically necessary quarantine or isolation order as a result of COVID-19 or who has been advised by a health care provider to self-quarantine due to COVID-19 concerns.”<sup>104</sup>

92. The Emergency Plan does not define or explain qualifying terms included in the list of COVID-19 specific excuses, including the terms “medically necessary,” and “moderate or severe,” nor does the Emergency Plan provide guidance on what qualifies as being “advised by a health provider” or “seeking medical diagnosis.”<sup>105</sup> Given that the State’s medical infrastructure is overwhelmed and hospitals are advising all but the most severely ill patients not to go to a hospital, most voters quarantining due to COVID-19 symptoms will be unable to obtain the medical advice or documentation of such advice that may be required under the Emergency Plan.<sup>106</sup>

93. The State’s COVID-19 Emergency Absentee Ballot Application expressly states and requires a voter requesting an absentee mail in ballot based on one of the COVID-19-related

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<sup>104</sup> Secretary of State Emergency Election Plan for the July 11, 2020 Presidential Preference Primary and August 15, 2020 Municipal General Elections in the State of Louisiana (Apr. 20, 2020), *supra* note 8; Exhibit A, Emergency Ballot Application.

<sup>105</sup> *See id.*

<sup>106</sup> *See Healthcare Facility Notice/Order: Notice #2020-COVID19-All-010*, L.A. Dept. of Health (Apr. 20, 2020) <http://ldh.la.gov/assets/oph/Coronavirus/resources/providers/LDH-MEMO-UPDATE-RESTORE-MED-SURG-Procedures.pdf>, (requiring all non-essential healthcare services to be done via telehealth due to ongoing pandemic).

excuses to acknowledge that “[p]roviding a false statement to an election official is a felony offense,” and that doing so will subject the voter to a fine or imprisonment.<sup>107</sup>

## ARGUMENT

### **I. Louisiana’s Restrictions on Absentee Mail-In Voting and Early Voting Will Place Undue Burdens on the Right to Vote in Light of the COVID-19 Pandemic**

#### **A. The Excuse Requirement Will Severely Burden the Right to Vote**

94. Louisiana’s Excuse Requirement will severely burden the right to vote because it will require many thousands of Louisiana’s voters to choose between exposing themselves and others to the risk of illness from COVID-19 to vote in person or foregoing their right to vote.

95. The ongoing health risks posed by COVID-19 necessitate that Defendants provide all eligible voters the opportunity to cast an absentee by mail ballot without any excuse so that they can avoid the significant risks posed by voting in person. Moreover, all voters who are forced by Defendants to take on the risks of voting during the pandemic will necessarily bring those risks home with them, potentially spreading COVID-19 to their families and community members, vulnerable and healthy alike.

96. Voting in person requires individuals to leave the safety of their homes; to commute to and from the polls, potentially via public transportation; to line up at polling places (potentially for hours); and to congregate with unknown individuals including other voters, poll workers, and poll monitors. Making one’s way to cast a vote in person will also require voters to touch shared surfaces, which may include voting machines, shared writing instruments, doorknobs, elevator buttons, and parking meters. Public health officials have unequivocally warned of the risks of engaging in these activities in public during the COVID-19 pandemic.

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<sup>107</sup> See Exhibit A, Emergency Ballot Application.

97. None of the statutory excuses nor the COVID-19-related excuses created by the Emergency Plan include self-isolating due to a pandemic. The existence of the Emergency Plan reflects Defendants’ recognition that the risks of the COVID-19 pandemic will still loom large over the State’s upcoming elections. Yet, Defendants fail to provide any protection or accommodation for many thousands of voters—including many who are at heightened risk of complications from COVID-19 and/or live with individuals who are at increased risk—to vote absentee by mail-in ballot and thereby continue taking protective steps of remaining at home and observing strict social distancing, as current orders from the State instruct them to do.

98. A failure to provide for a no-excuses regime during the COVID-19 pandemic will likely impose particularly severe burdens on the rights of certain categories of vulnerable individuals, including older voters, voters with underlying medical conditions and disabilities, and Black voters.

99. Louisiana’s current Excuse Requirement will disproportionately burden older voters, who face heightened risks from contracting COVID-19. The CDC has warned that older individuals are at higher risk for severe illness and death from COVID-19, because “[t]he immune systems of older adults weaken with age, making it harder to fight off infections,” and “older adults commonly have chronic diseases that can increase the risk of severe illness from COVID-19.”<sup>108</sup> Thus, “the older you are, the higher your risk of serious disease.”<sup>109</sup>

100. The virus is already having a devastating impact on older individuals in Louisiana. Almost one-fifth of all COVID-19 cases reported in Louisiana (approximately 19%) involve

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<sup>108</sup> CDC, *Groups at Higher Risk for Severe Illness* (webpage last updated Apr. 17, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>.

<sup>109</sup> *Id.*

individuals aged 50–59, with another 17% involving individuals aged 60–69.<sup>110</sup> Currently, only senior citizens over the age of 65 may request an absentee ballot based on age.<sup>111</sup>

101. Louisiana’s Excuse Requirement will also disproportionately burden voters with pre-existing health conditions, who face heightened risks from contracting COVID-19. The CDC has warned that “people of any age who have serious underlying medical conditions might be at higher risk for severe illness from COVID-19.”<sup>112</sup> Louisiana ranks in the bottom five among states for both adult obesity,<sup>113</sup> and cardiovascular deaths,<sup>114</sup> two indicators of chronic health conditions.

102. While one of the COVID-19-related excuses accounts for some immunocompromised voters, the plan only applies to the upcoming July and August elections; thus, these vulnerable voters will be at heightened risk during the November and December elections. Due to their medical condition, immunocompromised individuals face a greater risk of contracting the virus on the way to the polls. If immunocompromised individuals contract the virus while voting in person, they are more likely to suffer serious and even deadly consequences.

103. Louisiana’s Excuse Requirement will also disproportionately burden Black voters, who face heightened risks from contracting COVID-19 because of social and economic disparities,

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<sup>110</sup> See La. Dep’t of Pub. Health, Coronavirus (COVID-19) *supra* note 38.

<sup>111</sup> La. R.S. 18:1303(J).

<sup>112</sup> Ctrs. for Disease Control & Prevention (CDC), People Who Are at Higher Risk for Severe Illness, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last visited May 7, 2020).

<sup>113</sup> America Health Rankings, Obesity, <https://www.americashealthrankings.org/explore/annual/measure/Obesity/state/LA> (last visited May 7, 2020).

<sup>114</sup> America Health Rankings, CVD Deaths, <https://www.americashealthrankings.org/explore/annual/measure/CVDDeaths/state/LA> (last visited May 7, 2020).

as well as disparities in health and healthcare that raise the stakes for them at every step of the process.

104. Black voters also face a greater risk of contracting the virus on their way to the polls. Black Americans are “least likely to own a car,”<sup>115</sup> and therefore more likely to have to rely on public or shared transportation to go to the polls. In Louisiana, about one in six (15.8%) Black households lack access to a vehicle, compared to 4.7% white households.<sup>116</sup>

105. If Black voters contract the virus while voting in person, they are more likely to suffer serious and even deadly consequences, because they disproportionately suffer from the underlying medical conditions that exacerbate the virus and because they are also more likely to be subject to inequalities in the health care system.

106. These heightened risks, both individually and collectively, demonstrate that the Excuse Requirement imposes an especially severe burden on Black voters. Racial disparities in serious illness and death due to COVID-19 are inextricably linked to a long history and ongoing patterns of racial discrimination against Black people in voting and ongoing and current racial disparities in education, employment, and health.

107. Louisiana’s failure to allow all eligible voters to vote by mail in the upcoming elections will also impose a heightened risk of contracting COVID-19 on voters who live with, care for, or work with individuals who have a heightened risk of contracting COVID-19; and all poll workers. As the health data from states that have held in-person primaries indicate, requiring

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<sup>115</sup> Jamelle Bouie, *Why Coronavirus Is Killing African-Americans More Than Others*, N.Y. Times (Apr. 14, 2020), <https://www.nytimes.com/2020/04/14/opinion/sunday/coronavirus-racism-african-americans.html>.

<sup>116</sup> U.S. Census Bureau, 2010-2018 American Community Survey 1-Year Estimates: Selected Social Characteristics of the United States: Louisiana (2018), *supra* n.66.

in-person voting during the pandemic is not a mere inconvenience: failing to treat the pandemic as an excuse, even after complete shelter-in-place policies have been lifted, can cost lives.

108. Louisiana's current excuse-required regime is unduly burdensome because the refusal to allow all Louisianans to vote absentee by mail in response to the pandemic cannot be justified by any legitimate state interest. Voters should not have to make the untenable decision between risking their health and giving up their right to vote.

**B. The Witness Requirements Will Severely Burden the Right to Vote**

109. The requirements that an absentee mail-in ballot and an absentee ballot application certified by a mark (as opposed to a signature) include witness signatures (the "Witness Requirements") present significant health risks during the COVID-19 pandemic and will severely burden voters who live alone and have no access to a witness who can sign their absentee ballot request application or their ballot.

110. In line with the guidance provided by the CDC and public health and medical experts to reduce the spread of the novel coronavirus, Louisiana's current Stay-at-Home order instructs all Louisiana residents to shelter at home and limits movement outside of their homes beyond essential needs. The Governor's order further instructs that residents should maintain at least 6 feet of distance from others when outside their homes. If required to secure a witness signature, the Witness Requirements will force voters who live alone or do not live with another adult who can witness their ballot to not only violate the Stay-at-Home order, but also risk their health and safety.

111. Given that approximately 15% (or 532,678 individuals) of the 3,560,000 Louisiana residents of voting age live alone, and that individuals of any age are susceptible to COVID-19



infection, the Witness Requirements will pose a serious risk to and material burden on a significant number of the State's voters.<sup>117</sup>

112. Indeed, there will also be voters for whom the burden of the Witness Requirements will be amplified given that they already face a disproportionate risk of infection and death from COVID-19, including voters with underlying medical conditions and disabilities, older voters, and Black voters. For Louisiana residents of voting age living alone, 27.5% are disabled, and for those who are 65 years old and older living alone, 44% are disabled.<sup>118</sup> The Witness Requirements put older voters at particular risk. As explained above, older individuals face heightened risks from contracting COVID-19, and they are more likely to suffer serious and even deadly consequences. Of those Louisiana residents who live alone, 35.8% are over 65 years-of-age.

113. In addition to the devastating and disproportionate impact that COVID-19 has had on Black people in Louisiana, *see supra* ¶¶ 55–61, they face several compounding factors that heightens the burden of the Witness Requirement. According to the 2018 ACS 1-Year Estimates, Black people make up 32% of Louisiana's population, yet at the same time, 18.1% of Black people of voting age in Louisiana live alone, compared to 14.9% of whites of voting age, and 29.8% of Black people who are 65 and older live alone, compared to 27.1% of whites who are 65 and older.<sup>119</sup>

114. The Witness Requirements, which the Emergency Plan preserve, will therefore likely prevent many Louisianans who might otherwise cast absentee ballots from doing so this year. In effect, the Witness Requirements defeat the purpose of the expanded COVID-19-related

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<sup>117</sup> U.S. Census Bureau, 2010-2018 American Community Survey 1-Year Estimates: *Selected Social Characteristics of the United States: Louisiana* (2018), *supra* n.66.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

excuses included in the Emergency Plan. Even if the Emergency Plan excuses expand eligibility to vote by absentee ballot to some additional categories of voters, maintaining the requirement that those voters must obtain a witness signature in order to vote by absentee ballot will still potentially expose them to the risks posed by COVID-19.

**C. The Failure to Expand Early Voting for the General and Runoff Elections Unreasonably Increases the Risks of COVID-19 Infection and Severely Burdens the Right to Vote**

115. In light of public health officials' assurances that the United States will likely have a second wave of the coronavirus in the fall even if the pandemic subsides this summer, Louisiana's failure to expand the early voting period for the November and December elections will severely burden the fundamental right of all eligible voters.

116. Medical experts, including Dr. Fauci, have stated that is likely that the COVID-19 pandemic will continue into the fall,<sup>120</sup> requiring social distancing guidelines to remain in effect.<sup>121</sup> For in-person voters, early voting can help make social distancing effective and reduce the risk of crowds gathering at polling places.

117. Defendants recognized as much by extending early voting for the July Primary and August Municipal elections in the Emergency Plan. Their failure to do so for the November General and December Runoff elections is an unreasonable burden on Louisiana voters.

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<sup>120</sup> Jason Silverstein, *Fauci says he "can't guarantee" in-person voting in November will be safe*, CBS News (Apr. 13, 2020), *supra* n.34.

<sup>121</sup> CDC, *Coronavirus Disease 2019 (COVID-19): How Coronavirus Spreads*, *supra* n. 19.

**COUNT I**

**Violations of the Fundamental Right to Vote  
under the First and Fourteenth Amendments to the U.S. Constitution (42 U.S.C. §  
1983)**

118. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint and the paragraphs in the Counts below as though fully set forth herein.

119. The First and Fourteenth Amendments of the U.S. Constitution protect the fundamental right to vote. Under the *Anderson-Burdick* doctrine, a court considering a challenge to a state election law must weigh the character and magnitude of the asserted injury to the First and Fourteenth Amendment rights that the plaintiff seeks to vindicate against the precise interests put forward by the State as justification for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

120. Under the circumstances brought about by COVID-19, Defendants' enforcement of the Excuse Requirement will impose a severe and undue burden on the fundamental right to vote of Louisiana voters. This requirement limits eligibility for absentee voting to a narrow category of voters and will likely prevent many thousands of otherwise eligible voters from casting effective ballots, placing a disproportionate burden on voters with underlying medical conditions and disabilities, older voters, and Black voters.

121. Despite Louisiana's adoption of the Emergency Plan, the burden imposed by the Excuse Requirement persists for a significant number of voters in the July Primary and August Municipal elections, and for all voters in the November and December elections. Even under the

Emergency Plan many voters will be forced to choose between risking their lives and the lives of others or not exercising their right to vote at all.

122. Under the circumstances brought about by COVID-19, Defendants' enforcement of the Witness Requirements will impose a severe and undue burden the fundamental right to vote of Louisiana voters. These requirements force voters to subject themselves to significant health risks and will likely prevent many thousands of eligible voters from casting effective ballots, placing disproportionate burdens on voters with underlying medical conditions and disabilities, older voters, and Black voters.

123. Despite Louisiana's adoption of the Emergency Plan, the Ballot Witness Requirement will persist for all voters casting an absentee ballot in the July Primary and August Municipal elections, and for all voters in the November and December elections. The Application Witness Requirement persists for all voters who must mark (as oppose to sign) their request to vote by absentee ballot in all upcoming elections in Louisiana. By failing to waive these requirements Louisiana is forcing voters to choose between breaking social distancing rules and risking their lives and the lives of others, or not voting at all.

124. Under the circumstances brought about by COVID-19, Defendants' failure to extend early voting for the November General and December Runoff elections will impose a severe and undue burden on the fundamental right to vote of Louisiana voters. The lack of additional days of early voting forces voters to subject themselves to significant health risks and will likely prevent many thousands of eligible voters from casting effective ballots, placing disproportionate burdens on voters with underlying medical conditions and disabilities, older voters, and Black voters.

125. Defendants’ stated interest in protecting the integrity of elections is a valid governmental interest, but it is not advanced by the Excuse Requirement, the Witness Requirements, or the failure to expand early voting, nor does the interest outweigh or justify the undue burdens imposed on the fundamental right to vote, especially in the context of the global COVID-19 pandemic.

## COUNT II

### **Violations of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301**

126. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint and the paragraphs in the Count below as though fully set forth herein.

127. Section 2 of the Voting Rights Act prohibits Defendants from imposing, applying, or maintaining any “qualification or prerequisite to voting or standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a).

128. “The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and [nonblack] voters to elect their preferred representatives.” *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).

129. Section 2 vote-denial claims have two elements. First, “[t]he challenged standard, practice, or procedure must impose a discriminatory burden on members of a protected class, meaning that members of the protected class have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” Second, “[t]hat burden must in part be caused by or linked to social and historical conditions that

have or currently produce discrimination against members of the protected class.” *Veasey v Abbott*, 830 F.3d 216, 244 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 612 (2017).

130. The Witness Requirement, the Excuse Requirement, and the failure to expand the early voting period for the November and December 2020 elections (collectively “the Challenged Provisions”), will result in the denial or abridgment of the right to vote for Black voters in Louisiana.

131. The Challenged Provisions, if not enjoined, will independently and collectively, impose a discriminatory burden on Black voters in Louisiana.

132. Because Black people in Louisiana continue to bear the effects of discrimination in areas such as education, employment, and health status, they are particularly at risk of infection from COVID-19 if forced to vote in person, and thus, disproportionately burdened by the Excuse Requirement.

133. Because Black people in Louisiana continue to bear the effects of discrimination in areas such as education, employment, and health status, they are particularly at risk of infection from COVID-19 if required to obtain a witness signature on an absentee ballot, and thus, disproportionately burdened by the Witness Requirements.

134. Because Black people in Louisiana continue to bear the effects of discrimination in areas such as education, employment, and health status, they are particularly at risk of infection from COVID-19 if they vote in person, and thus, disproportionately burdened by the failure to expand the early voting period for the November and December 2020 elections.

135. The discriminatory burdens imposed by the Challenged Provisions affect Black voters disparately because they interact with social and historical conditions that have produced or

currently produce discrimination against Black people in Louisiana causing an inequality in the opportunities to elect their preferred representatives.

136. Under the totality of the circumstances, the Challenged Provisions deny or abridge the rights of Black voters in Louisiana because the State has an established and judicially recognized history of official voting-related discrimination; Louisiana also has an extensive and judicially recognized history of racially polarized voting; and Black people in Louisiana continue to bear the effects of discrimination in areas such as education, employment, and health status, which hinder their ability to participate effectively in the political process.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare that Defendants' enforcement of the Excuse Requirement for all elections taking place for the duration of the COVID-19 pandemic in Louisiana violates the First and Fourteenth Amendments of the U.S. Constitution and the Voting Rights Act;
- B. Declare that Defendants' enforcement of the Witness Requirements for all elections taking place for the duration of COVID-19 pandemic in Louisiana violates the First and Fourteenth Amendments of the U.S. Constitution and the Voting Rights Act;
- C. Declare that Defendants' failure to extend the early voting period during all elections taking place in Louisiana for the duration of the COVID-19 pandemic violates the First and Fourteenth Amendments of the U.S. Constitution and the Voting Rights Act;
- D. Preliminarily and permanently enjoin Defendants from enforcing the Excuse Requirement for all eligible voters during all elections taking place in Louisiana in 2020;
- E. Preliminarily and permanently enjoin Defendants from enforcing the Witness Requirements for all voters during all elections taking place in Louisiana in 2020;

- F. Preliminarily and permanently order Defendants to extend the early voting period to fourteen days during all elections taking place in Louisiana in November and December 2020;
- G. Preliminarily and permanently order Defendants to issue guidance instructing all local parish election officials, including registrars of voters, clerks of court, parish boards of election supervisors, and parish governing officials who perform election-related duties to issue absentee mail-in ballots to any eligible voter who requests one without requiring an excuse for all Louisiana elections in 2020;
- H. Preliminarily and permanently order Defendants to issue guidance instructing all local parish election officials, including registrars of voters, clerks of court, parish boards of election supervisors, and parish governing officials who perform election-related duties to count otherwise validly cast absentee ballots that are missing a witness signature for all Louisiana elections in 2020;
- I. Preliminarily and permanently order Defendants to issue guidance instructing all local parish election officials, including registrars of voters, clerks of court, parish boards of election supervisors, and parish governing officials who perform election-related duties to accept otherwise valid applications for an absentee by mail ballots that are missing a witness signature for all Louisiana elections in 2020;
- J. Award Plaintiffs their costs, expenses, and reasonable attorneys' fees; and
- K. Grant such other and further relief as this Court deems just and proper in the circumstances.



DATED this 11th day of June 2020.

Respectfully submitted,

John Z. Morris  
NAACP Legal Defense &  
Educational Fund, Inc.  
40 Rector Street, 5th Floor  
New York, NY 10006  
Tel.: (212) 965-2200  
zmorris@naacpldf.org

Catherine Meza  
NAACP Legal Defense &  
Educational Fund, Inc.  
700 14th Street, NW, Suite 600  
Washington, D.C. 20005  
Tel.: (202) 682-1300  
cmeza@naacpldf.org

/s/ Ronald L. Wilson  
Ronald L. Wilson, (LSBN 13575)  
701 Poydras Street, Suite 4100  
New Orleans, LA 70139  
Tel.: (504) 525-4361  
cabral2@aol.com

Robert D. Fram  
Morgan Lewis  
Joshua González  
John Fraser\*  
Covington & Burling LLP  
One Front Street  
San Francisco, CA 94111-5356  
Tel: (415) 591-6000  
rfram@cov.com  
MELewis@cov.com  
jgonzalez@cov.com  
JFraser@cov.com

\* *Pro Hac Vice* Motion forthcoming

*Attorneys for Plaintiffs*