

of Elections, and MICHAEL ADAMS, in :
his official capacity as the Kentucky
Secretary of State, and :
ANDREW BESHEAR, in his official
capacity as Governor of the :
Commonwealth of Kentucky :
:

Defendants

**VERIFIED CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiffs Hon. Jason Nemes, James “Rich” Howland, Ken Kearns, Aaron Gillum, Theodore J. Roberts, Tyson Hermes, and Erik Hermes, by and through their undersigned attorneys, bring this Complaint against the above-named Defendants; their respective agents, officers, employees, and successors; and all persons acting in concert with each or any of them. In support of this Complaint, Plaintiffs allege the following:

INTRODUCTION

1. The COVID-19 outbreak has caused significant challenges to Kentuckians’ ability to participate safely in their electoral democracy.
2. Because the highly contagious COVID-19 spreads through close contact between individuals, public health experts recommend that individuals protect themselves from the virus by staying home and maintaining at least six-feet of distance from people when outside of their household.¹

¹ CDC, *Coronavirus Disease 2019: Protect Yourself* (last updated Apr. 24, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fprevention.html.

3. Recognizing this threat, Kentucky officials took several steps in a purported attempt to protect Kentuckians' right to vote safely in the June 23 primary election, but those steps, as implemented by Defendants, actually will end up posing more harm and threat to the public health, and actually, as this lawsuit and the proof behind it demonstrates, will unconstitutionally suppress voters and votes.

4. Acting in accordance with the legislature's recent decision to give election officials the flexibility to change Kentucky's extremely restrictive voting laws, the Secretary of State, the Governor, and the Board of Elections used that power to create a new set of rules to conform to the unique circumstances of this pandemic.

5. However, notwithstanding the relief that Kentucky has afforded to voters in the upcoming primary elections insofar as mail-in ballots are concerned, at the same time, Defendants have severely burdened the right to vote for in-person voting.

6. Expert analysis indicates that while a significant percentage of voters will take advantage of mail-in and voting options ahead of the primary election day of June 23, a very significant percentage of voters will not do so and will attempt to vote in-person, if they vote at all. Given that in-person voting has been severely curtailed and constrained in Kentucky's largest counties, this same analysis reveals significant voter suppression will occur as a result.

7. In-person voters will have to wait in line with other individuals, sometimes for hours, before they can vote. At the polling place, they will have to use voting machines that may or may not be adequately sanitized between each use. And some polling places may be unable to accommodate necessary social distancing.

8. Specifically, in Kentucky's largest counties (and its smaller counties), including

Jefferson, Fayette, Kenton, Boone, and Campbell Counties, the Boards of Election have submitted plans to the State Board of Elections. These plans are required to be approved by the State Board of Elections, but there is no procedure or mechanism to revise plans in the event of such disapproval. Moreover, the State Board of Elections has indicated that it intends to approve these plans.

9. The County Plans for Jefferson, Fayette, Kenton, Boone, and Campbell Counties reveal that a single polling location will be used. That polling location will necessarily involve packing a significant number of voters into a single location – a location that is inconvenient and, in some cases inaccessible.

10. At the same time, notwithstanding the mail in voting options, disabled voters are unable to vote or find assistance to vote.

11. Collectively these requirements and the single polling location option unreasonably burdens the fundamental right to vote of Kentuckians.

12. Plaintiffs bring this action to vindicate their rights under the First and Fourteenth Amendments to the U.S. Constitution and prevent the needless deprivation of their fundamental right to vote. Kentucky's failure to expand in-person voting precincts to a reasonable number infringes on these rights, and violates federal statutory law.

13. Accordingly, the single polling location, along with its inaccessibility for the expected number of voters who will be packed into it, both from a facility standpoint and a location standpoint, will each, separately and jointly, unduly burden Kentuckians' right to vote in the primary election on June 23, 2020. Moreover, these actions will fall more heavily on certain categories of voters who have been disproportionately impacted by COVID-19,

including Black voters, elderly voters, voters with underlying health conditions, and voters with disabilities.

14. Plaintiffs' need for relief from this Court is urgent. The primary election is only weeks away.

JURISDICTION AND VENUE

15. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the First and Fourteenth Amendments to the U.S. Constitution.

16. 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. Plaintiffs bring this action to redress the deprivation, under color of state law, of rights, privileges, and immunities secured by the U.S. Constitution and federal law.

17. This Court has personal jurisdiction over Defendants, who are sued only in their official capacities as officers and officials of the Commonwealth of Kentucky. The violations complained of concern their conduct in such capacities.

18. Plaintiffs bring this action to secure equitable relief under federal law providing for the protection of voting rights, pursuant to 28 U.S.C. §§ 2201 and 2202.

19. 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.

20. Venue is proper in this Court under 28 U.S.C. § 1391(b). Several Plaintiffs

are located in Louisville, several Defendants are located in Louisville, and a substantial part of the events that gave rise to Plaintiffs' claims occurred in this judicial district.

PARTIES

I. Plaintiffs

21. Plaintiff Jason Nemes is the duly elected State Representative for Kentucky's 33rd State House District. Mr. Nemes' district covers northeast Louisville, and parts of Oldham County. His district includes one of the most diverse districts in the Commonwealth, with a cross section of voters that include Democrats and Republicans, and a substantial portion of minority voters. The voters of Mr. Nemes' district, including Mr. Nemes himself, is and will be disproportionately impacted by the challenged practices. Mr. Nemes is a U.S. citizen and a registered voter in the Commonwealth of Kentucky, and is a registered Republican, and voter within Jefferson County, Kentucky.

22. Plaintiff James "Rich" Howland is age 72. He is African American. Mr. Howland has COPD, and has knee and back problems that has resulted in his qualifying for handicapped license plate status. Mr. Howland's COPD is a co-morbidity condition for COVID-19. Mr. Howland has election security concerns with mail-in ballots, and desires to vote in person. He normally votes at an elementary school approximately ½ mile from his house on South First Street in Louisville, Jefferson County, Kentucky. Mr. Howland is a U.S. citizen and a registered voter in the Commonwealth of Kentucky, and is a registered Republican, and voter within Jefferson County, Kentucky. Mr. Howland is and will be disproportionately impacted by the challenged practices. He distrusts intends to vote in person for the 2020 primary election, in Jefferson County, Kentucky.

23. Plaintiff Ken Kearns is over the age of 60, and resides in Fayette County, Kentucky. Mr. Kearns is currently battling a severe form of cancer, which is a co-morbidity condition for COVID-19. Nevertheless, he distrusts mail-in voting and desires to vote in-person in Fayette County, Kentucky. He is a U.S. citizen who is also a lawfully registered Kentucky voter, a registered Republican, and a voter within Fayette County, Kentucky.

24. Plaintiff Aaron Gillum resides in Boone County, Kentucky. Mr. Gillum distrusts mail-in voting and desires to vote in-person in Boone County, Kentucky. He is a U.S. citizen who is also a lawfully registered Kentucky voter, a registered Republican, and a voter within Boone County, Kentucky.

25. Plaintiff Theodore J. Roberts resides in Boone County, Kentucky. Mr. Roberts distrusts mail-in voting and desires to vote in-person in Boone County, Kentucky. He is a U.S. citizen who is also a lawfully registered Kentucky voter, a registered Republican, and a voter within Boone County, Kentucky.

26. Plaintiff Tyson Hermes resides in Kenton County, Kentucky and is the former Mayor of Erlanger, Kentucky, and a current city councilmember in the City of Erlanger. Mr. Tyson Hermes desires to, and intends, to vote in-person in Kenton County, Kentucky. He is a U.S. citizen who is also a lawfully registered Kentucky voter, a registered Republican, and a voter within Kenton County, Kentucky.

27. Plaintiff Erik Hermes resides in Campbell County, Kentucky. Mr. Erik Hermes desires to, and intends, to vote in-person in Kenton County, Kentucky. He is a U.S. citizen who is also a lawfully registered Kentucky voter, a registered Republican, and a voter within Campbell County, Kentucky.

II. Defendants

28. Defendants Carl Bensigner, John Aubrey, Linda Huber, and Bobbie Holsclaw are the members of the Jefferson County Board of Elections; Defendant Holsclaw is the Jefferson County Clerk; collectively, they are empowered to, and actually do, enforce and administer the Commonwealth's voting laws, including the challenged single precinct polling location, within Jefferson County, Kentucky.

29. Defendants Don Blevins, Kathy Witt, Marilyn Dishman, and Daniel Miller are the members of the Fayette County Board of Elections; Defendant Blevins is the Fayette County Clerk; collectively, they are empowered to, and actually do, enforce and administer the Commonwealth's voting laws, including the challenged single precinct polling location, within Fayette County, Kentucky.

30. Defendants Gabrielle Summe, Chuck Korzenborn, Richard Scott Kimmich, and Sarah Rogers are the members of the Kenton County Board of Elections; Defendant Summe is the Kenton County Clerk; collectively, they are empowered to, and actually do, enforce and administer the Commonwealth's voting laws, including the challenged single precinct polling location, within Kenton County, Kentucky.

31. Defendants Justin Crigler, Michael Helmig, Emily Shelton, and Michael Howard are the members of the Boone County Board of Elections; Defendant Crigler is the Boone County Clerk; collectively, they are empowered to, and actually do, enforce and administer the Commonwealth's voting laws, including the challenged single precinct polling location, within Boone County, Kentucky.

32. Defendants Jim Leursen, Mike Jansen, James Shroer, and Jack Snodgrass are

the members of the Campbell County Board of Elections; Defendant Leursen is the Campbell County Clerk; collectively, they are empowered to, and actually do, enforce and administer the Commonwealth's voting laws, including the challenged single precinct polling location, within Campbell County, Kentucky.

33. Defendant Albert Benjamin Chandler, III is the current Chairman of the Kentucky Board of Elections, and Defendants Sherry Whitehouse, George Russell, Katrina Fitzgerald, Deanna Brangers, Cory Skolnick, Dwight Sears, and James Lewis are members of the Kentucky Board of Elections. They are all sued in their official capacities only. Pursuant to Ky. Rev. Stat. § 117.015, the Kentucky Board of Elections has the authority to “promulgate administrative regulations as necessary” to “administer the election laws of the state.”

34. Defendant Michael Adams is the Secretary of State of Kentucky and is sued in his official capacity only. The Secretary is the Commonwealth's Chief Election Official. The Secretary of State also serves as an *ex officio*, nonvoting member of the Kentucky Board of Elections, an independent agency that administers the Commonwealth's election laws and promulgates administrative regulations necessary to properly carry out its duties.² The Secretary of State also serves as an *ex officio*, nonvoting member of the Kentucky Board of Elections, an independent agency that administers the Commonwealth's election laws and promulgates administrative regulations necessary to properly carry out its duties under K.R.S. 117.015(3).³

² <https://www.sos.ky.gov/elections/Pages/default.aspx> (last visited June 1, 2020)

³ *Plaintiffs note that Defendants Governor Beshear and Secretary Adams have both expressed significant concern and disagreement with the Board of Elections and county Board of Elections single precinct options, particularly in Louisville, but have publicly stated that they are unable to do anything about it. In the event that either of these Defendants would desire*

35. Defendant Andrew Beshear is the Governor of the Commonwealth of Kentucky and is sued in his official capacity only.

36. Pursuant to recently enacted H.B. 351, once the Governor declares a state of emergency and issues an executive order altering the time, place, or manner of an election, the Kentucky Board of Elections is responsible for establishing procedures for election officials to follow to accommodate the alteration. H.B. 351 then mandates that before the procedures can take effect, the Secretary of State and the Governor must approve them.

FACTS FOR ALL CLAIMS

37. COVID-19 is an infectious disease caused by a novel coronavirus that has spread throughout the world at a rapid pace.⁴ The virus “can infect organs throughout the body, including lungs, throat, heart, liver, brain, kidneys and the intestines,” and contracting the virus can ultimately result in death, blood clots, and/or severe and lasting damage to various organs.⁵

38. Virtually all aspects of life in the United States have been affected by the global COVID-19 pandemic. According to the Centers for Disease Control and Prevention (“CDC”), COVID-19 spreads aggressively, and even asymptomatic and pre-symptomatic

to shift their alignment to Plaintiffs in this matter, the Plaintiffs consent to this realignment.
<https://www.courier-journal.com/story/news/politics/elections/kentucky/2020/05/14/kentucky-primary-expo-center-jefferson-county-polling-location/5192246002/> (last visited 6/2/2020).

⁴ CDC, *What You Should Know about COVID-19 to Protect Yourself and Others* (Apr. 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>.

⁵ Maggie Fox, *Covid-19 Infects Intestines, Kidneys and Other Organs, Studies Find*, CNN Health (May 13, 2020), <https://www.cnn.com/2020/05/13/health/wellness-covid-attacks-organs-kidney/index.html>

individuals can potentially infect others with whom they come into contact.⁶ Americans of all ages and from all walks of life have contracted the virus.⁷

39. Although COVID-19 has affected Americans of every age, public health experts have warned that it can be particularly dangerous for certain demographics. The CDC has observed that current data on the COVID-19 pandemic “suggest a disproportionate burden of illness and death among racial and ethnic minority groups,”⁸ and it has concluded that older persons and individuals with underlying medical conditions are at risk for severe illness or death if they contract COVID-19.⁹

40. “Social distancing” measures and guidance imposed by federal, state, and local governments have been key to preventing even wider infection and death.

COVID-19 in Kentucky

41. Kentucky is no exception to COVID-19 case. As of the date of filing this complaint, the virus has already infected 8,951 Kentuckians.¹⁰

42. On March 22, 2020, Governor Beshear issued a state-wide “healthy-at- home”

⁶ CDC, *Coronavirus Disease 2019 (COVID-19): How It Spreads* (last updated May 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

⁷ Robert Verity, PhD. et al., *Estimates of the Severity of Coronavirus Disease 2019: A Model-Based Analysis* at 6, *Lancet Infectious Diseases* (Mar. 30, 2020), [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(20\)30243-7/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30243-7/fulltext)

⁸ CDC, *Coronavirus Disease 2019 (COVID-19): Racial and Ethnic Minority Groups* (last updated Apr. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>

⁹ CDC, *Coronavirus Disease 2019 (COVID-19): Clinical Care Guidance* (last visited Apr. 6, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>; CDC, *Coronavirus Disease 2019 (COVID-19): At Risk for Severe Illness* (May 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>

¹⁰ Ky. Dep’t of Pub. Health, *Kentucky Coronavirus Monitoring* (last updated May 26, 2020 at 5:00 P.M. E.T.), <https://govstatus.egov.com/kycovid19>

order in response to the crisis and urged residents to maintain social distancing in order to combat the virus's spread.¹¹ Governor Beshear also ordered that all non-life-sustaining businesses had to cease in-person services by March 23, 2020, and he advised that Kentucky's schools should remain closed for the rest of the 2019–2020 school year.¹² The Governor also deployed the National Guard and additional law enforcement personnel to assist at hospitals and medical facilities. *Id.*

43. At the same time, Kentucky's legislature passed emergency legislation granting new powers to the Governor, the Secretary of State, and the Board of Elections to modify Kentucky's existing voting procedures during a state of emergency. See H.B. 351 § 74(1)(l). The Governor vetoed portions of the legislation, but the legislature overrode that line-item veto.

44. On April 4, 2020, Governor Beshear and the Kentucky Department of Public Health recommended that people wear cloth masks and observe social distancing practices in public to slow the spread of the virus. The mask guidance was followed by Executive Order 2020-275 on April 8, 2020, which limited the number of people inside essential businesses that remain open by restricting shopping trips to one adult per household at a time. In a move to prevent crowds from congregating, Governor Beshear also announced the closure of several state parks.

¹¹ Ky. Office of the Governor, *State of Emergency*, Exec. Order No. 2020-257 (Mar. 25, 2020), https://governor.ky.gov/attachments/20200325_Executive-Order_2020-257_Healthy-at-Home.pdf

¹² Ky. Office of the Governor, *Kentucky's Response to COVID-19* (May 17, 2020), <https://governor.ky.gov/covid19>; Commonwealth of Kentucky, *Gov. Beshear Advises Schools to Remain Closed to In-Person Instruction* (Apr. 20, 2020), <https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prId=135>.

45. On April 21, the Governor announced the “Healthy at Work” initiative, which hopes to help Kentucky businesses reopen safely. The Healthy at Work plan established that the economy will not reopen until the Governor determines that Kentucky has met the following benchmarks: 14 days of decreasing cases, increased testing capacity and contact tracing, PPE availability, ability to protect at-risk populations, ability to social distance and follow the CDC’s guidelines on large gatherings, preparedness for possible future spike, and status of vaccine and treatment.

46. On April 23, the Secretary of State issued recommendations for how elections held in June should be conducted due to the pandemic.¹³ On April 24, the Governor issued an Executive Order, pursuant to KRS Chapter 39A, directing the Kentucky Board of Elections to promulgate regulations to change the procedures for the June elections to minimize the spread of COVID-19.¹⁴ The Board of Elections subsequently issued emergency regulations which provided some COVID-19 related relief, but also required the submission of a county-by-county plan to the board concerning the conduct of in-person elections.¹⁵

47. Governor Beshear announced that on April 27, 2020, the state would begin a “gradual restart and reopening of our Phase 1 health care services and facilities, although even then they will operate vastly differently than they did before the outbreak of the novel

¹³ Letter from Sec’y of State Adams to Governor Beshear (Apr. 23, 2020), https://governor.ky.gov/attachments/20200423_Ltr-from-Sec-of-State-Adams.pdf.

¹⁴ Ky. Office of the Governor, *State of Emergency Relating to Kentucky Elections*, Exec. Order 2020-296 (Apr. 24, 2020), <https://elect.ky.gov/SiteAssets/Pages/default/EO%202020-296.pdf>

¹⁵ Ky. Bd. of Elections, *Procedures for June 23, 2020 Election*, 31 Ky. Admin. Regs. 4:190E (2020), <https://elect.ky.gov/SiteAssets/Pages/default/SBE%20Covid19%20Emergency%20Regulation.pdf>

coronavirus 2019 (COVID-19).”¹⁶ The Commonwealth is still taking intense precautions in long-term care facilities and nursing homes, including “encouraging all residents to wear masks, cancelling communal dining and social activities, minimizing entry into resident rooms, restricting non-essential personnel from entering the building, daily temperature checks and adopting a low threshold to transfer ill residents to a higher level of care.” *Id.* Phase 2 of the health care reopening process began on May 6, 2020, at which point outpatient and ambulatory surgery and invasive procedures resumed. *Id.* And Phase 3 began on May 13, 2020, when the Governor announced that hospitals and care facilities could begin performing non-emergency surgeries and procedures at 50% of their patient volume before the pandemic. *Id.*

48. On May 4, 2020, Governor Beshear announced that certain businesses could reopen on May 11, 2020, including manufacturing, distribution, and supply chain businesses; construction; vehicle or vessel dealerships; office-based businesses (at 50% pre-pandemic capacity); horse racing (without fans in attendance); pet care, grooming, and boarding; and photography. On May 7, 2020, Governor Beshear announced a tentative schedule for reopening other Kentucky businesses, under which restaurants could reopen on May 22 (with limited 33% capacity and outdoor seating), movie theaters and fitness centers could reopen on June 1, public and private campgrounds could reopen on June 11, and childcare could reopen on June 15 (with reduced capacity; and potentially low-touch and outdoor youth sports). And on May 15, Governor Beshear announced that state parks would reopen on June 1.

¹⁶ Ky. Office of the Governor, *Kentucky’s Response to COVID-19* (May 17, 2020), <https://governor.ky.gov/covid19>

49. Although the Governor provided guidance permitting Kentucky government offices to begin reopening on May 18,¹⁷ several government offices—including ones that are critical to Kentucky elections—citing safety reasons have declined to reopen.¹⁸ As Fayette County Clerk Don Blevins, Jr. has explained, “Most County Clerk offices will need to remain closed to the public until after the Primary election in late June,” because they “simply cannot risk a member of staff contracting the virus and forcing a quarantine of all or part of an office,” which would “jeopardize [their] ability to support and conduct the election.”

In-Person Voting During a Pandemic

50. The recent primary election in Wisconsin particularly highlights the issues of voting in-person during the pandemic. In the days leading up to the election, Wisconsin election officials faced a huge backlog of requests for absentee ballots and questions about voting absentee, including how to satisfy the state’s registration requirements, how to properly request an absentee ballot, and how to return it in time to be considered.¹⁹ Indeed, the likely consequences were readily apparent, including “a dramatic shortfall in the number of voters on election day as compared to recent primaries” and “a dramatic increase in the risk of cross-contamination of the coronavirus among in-person voters, poll workers and, ultimately, the general population in the State.” *Id.*

¹⁷ Phil Pendleton, *Kentucky Government Offices Allowed to Reopen Monday*, WKYT (May 18, 2020), <https://www.wkyt.com/content/news/Kentucky-government-offices-allowed-to-reopen-Monday-570560991.html>

¹⁸ Steve Rogers, *Fayette Circuit Clerk, Others to Remain Closed*, WTVQ (May 18, 2020), <https://www.wtvq.com/2020/05/18/fayette-circuit-clerk-others-remain-closed/>.

¹⁹ *Democratic Nat’l Comm. v. Bostelmann*, No. 20-CV-249-WMC, 2020 WL 1638374, at *1 (W.D. Wis. Apr. 2, 2020)

51. When Wisconsin proceeded to hold its election without sufficiently addressing these apparent issues, widespread disenfranchisement and electoral chaos predictably ensued.²⁰ Cities in Wisconsin were forced to close polling locations, and these closures impacted voters unequally. The city of Madison had over 60 open polling sites, while in Milwaukee—a city more than twice Madison’s size, with a population of roughly 600,000—only 18,803 voters cast their ballots in person, because all but five of the city’s 180 polling locations had closed.²¹

52. The result in Milwaukee was large crowds, long lines, and excessive wait times—all in the middle of a global pandemic. As shown in the image below, these conditions made social distancing almost impossible:²²



²⁰ Astead W. Herndon and Jim Rutenberg, *Wisconsin Election Fight Heralds a National Battle Over Virus-Era Voting*, N.Y. Times (Apr. 6, 2020),

<https://www.nytimes.com/2020/04/06/us/politics/wisconsin-primary-voting-coronavirus.html>

²¹ Jason Calvi, ‘2Different Cities:’ Milwaukee Had 5 Polling Sites During COVID-19 Election; Madison Had 60+, Fox 6 Now (Apr. 8, 2020), <https://fox6now.com/2020/04/08/2-different-cities-milwaukee-had-5-polling-sites-during-covid-19-election-madison-had-60/>

²² David Bowen, *Wisconsin’s Primary Subjected People of Color to Yet Another Covid-19 Disadvantage*, The Guardian (Apr. 8, 2020), <https://www.theguardian.com/us-news/2020/apr/08/wisconsin-coronavirus-black-communities-inequality>

53. Milwaukee was far from alone. For example, “[t]here were also long lines in Green Bay, where the usual 31 polling sites were consolidated to just two.”²³ Some Green Bay voters waited in line for four hours, and some were unable to cast a vote until after midnight. *Id.*

54. A contact-tracing analysis conducted by the Wisconsin Department of Health found that 52 persons who voted under these conditions tested positive for COVID-19, and economists have found a “statistically and epidemiologically significant association between in-person voting and the spread of COVID-19 two to three weeks after the election.”²⁴

55. The health risks of in-person voting are especially severe for certain categories of voters: voters with underlying medical conditions, Black voters, older voters, and voters with disabilities.

Black Voters

56. The current plans for a single polling location in Kentucky’s most highly populated counties will disproportionately burden Black voters, who face heightened risks from contracting COVID-19 because of disparities in health and health care that raise the stakes for them at every step of the process.

²³ Jason Calvi, ‘2 Different Cities:’ Milwaukee Had 5 Polling Sites During COVID-19 Election; Madison Had 60+, Fox 6 Now (Apr. 8, 2020), <https://fox6now.com/2020/04/08/2-different-cities-milwaukee-had-5-polling-sites-during-covid-19-election-madison-had-60/>

²⁴ Chad D. Cotti et al., *The Relationship Between In-Person Voting, Consolidated Polling Locations, and Absentee Voting on COVID-19: Evidence from the Wisconsin Primary* at 1–2, National Bureau of Econ. Research (May 2020), <https://www.nber.org/papers/w27187.pdf>.

57. *First*, Black voters face a greater risk of contracting the virus on their way to the polls. Black Americans are less likely to own cars than any other demographic of Americans,²⁵ and they “represent about one-quarter of all public transit users.”²⁶ Additionally, Black people with low income more often face “driver’s license suspensions because they cannot pay fines and fees charged for minor violations such as traffic and parking tickets,” which similarly leaves them “dependent on friends or public transportation, unable to practice the social distancing recommended by the CDC and every Kentuckian has a family member, friend or coworker that has been affected by chronic disease.”²⁷ Often, without access to private transportation, Black voters face additional risks of contact with exposed individuals in close quarters on public transportation when *en route* to their polling places
58. *Second*, Black voters are disproportionately burdened by long lines at the polls. For Black voters, these problems are exacerbated by existing racial disparities in wait times: a recent study based on data from millions of smartphone users during the 2016 presidential election found that residents of entirely-Black neighborhoods waited 29% longer to vote and were 74% more likely to spend more than 30

²⁵ 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>; National Equity Atlas, Car Equity (2015), https://nationalequityatlas.org/indicators/Car_access

²⁶ Rashawn Ray, Why Are Blacks Dying at Higher Rates from COVID-19?, Brookings (Apr. 9, 2020), <https://www.brookings.edu/blog/fixgov/2020/04/09/why-are-blacks-dying-at-higher-rates-from-covid-19/>

²⁷ ReNika Moore, *If COVID-19 Doesn’t Discriminate, Then Why Are Black People Dying at Higher Rates?*, ACLU (Apr 8, 2020), <https://www.aclu.org/news/racialjustice/if-covid-19-doesnt-discriminate-then-why-are-black-people-dying-at-higherrates/>

minutes at their polling place than residents of all-white neighborhoods.²⁸ And Black voters can least afford unnecessarily long wait times as the price to pay for “more likely to be working in jobs without flexibility or paid sick leave,” which means any delays at the polls disproportionately threaten their job security.²⁹

59. *Third*, 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.³⁰ Decades of research, statements from public health experts, and data from the U.S. Department of Health and Human Services all reflect that Black Americans have disproportionately high rates of asthma, diabetes, high blood pressure, and obesity.³¹

²⁸ M. Keith Chen et al., *Racial Disparities in Voting Wait Times: Evidence from Smartphone Data* (Nov. 14, 2019), https://www.kareemhaggag.com/f/Racial_Disparities_in_Voting_Wait_Times.pdf

²⁹ Laura Williamson, How to Build a Racially Inclusive Democracy During COVID-19 and Beyond, Demos (Apr. 28, 2020), <https://www.demos.org/policy-briefs/how-build-racially-inclusive-democracy-during-covid-19-and-beyond> ; Lonnie Golden, Limited Access: Disparities in Flexible Work Schedules and Work-at-Home, 29 J. Family & Econ. Issues 86–109 (2008)

³⁰ 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> (describing studies explaining how historic and present-day factors—such as “environmental inequality” and “the physiological ramifications of an atmosphere of bias and discrimination”—have led to higher rates of poor health outcomes for Black Americans)

³¹ Office of Minority Health, Profile: Black/African Americans, U.S. Dep’t of Health & Hum. Servs. (Aug. 22, 2019), <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlID=61> ; see also Joseph P. Williams, Rumor, Disparity and Distrust: Why Black Americans Face an Uphill Battle Against COVID-19, U.S. News & 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> ; Lisa B. Signorello et al., Comparing Diabetes Prevalence Between African Americans and Whites of Similar Socioeconomic Status, 97(12) Am. J. Pub Health 2260–2267 (Dec. 2007) (“Prevailing statistics suggest that African American adults are 50% to 100% more likely to have diabetes than are Whites.”)

60. The CDC has cited racial disparities in these underlying medical conditions as a factor that influences the disproportionate impact of COVID-19 on the Black community.³²
61. Dr. Georges E. Benjamin, executive director of the American Public Health Association and emergency medicine physician, has explained that these disparities gave public health leaders concern about the impact on Black communities from the time of the earliest reports of the virus: “You had early evidence from Asia that showed that older folks, older than 60 or 65, with chronic disease would do worse when they got the infection. So when you put that together with the understanding that in this country you already have a [Black] population disproportionately affected by disparities in things like diabetes, heart disease and asthma, we understood that if those populations got infected they would be more at risk.”³³
62. Dr. Fauci spoke about these health disparities during a White House Coronavirus

³² CDC, Coronavirus Disease 2019 (COVID-19): Racial and Ethnic Minority Groups (last updated Apr. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> (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); T.J. Cunningham et al., Vital Signs: Racial Disparities in Age-Specific Mortality Among Blacks or African Americans—United States, 1999–2015, 66(17) Morbidity and Mortality Weekly Report 444 (2017)); see also 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.”))

³³ Elizabeth Thomas & Dr. Nancy A. Anoruo, Coronavirus is Disproportionately Killing the Black Community. Here’s What Experts Say Can Be Done About It, ABC News (Apr. 9, 2020), <https://abcnews.go.com/Politics/coronavirus-disproportionately-killing-black-community-experts/story?id=70011986>

Task Force briefing,³⁴ explaining that Black Americans’ increased likelihood of underlying medical conditions “wind them up in the ICU and ultimately give them a higher death rate.”³⁵ This risk has already manifested in Kentucky, where “Black patients in Fayette County have a higher rate of hospitalization than white patients.”³⁶

63. *Fourth*, if Black voters contract the virus while voting in-person, they are also more likely to suffer serious consequences because of inequalities in our health care system. Numerous studies conducted by the American Journal of Public Health, the Agency for Healthcare Research and Quality, and other organizations over the past few decades indicate that Black people are less likely to have insurance and access to affordable medical testing.³⁷ The CDC has cited “barriers

³⁴ Rashawn Ray, *Why Are Blacks Dying at Higher Rates from COVID-19?*, Brookings (Apr. 9, 2020), <https://www.brookings.edu/blog/fixgov/2020/04/09/why-are-blacks-dying-at-higher-rates-from-covid-19/> (“Health disparities have always existed for the African American community,” Fauci stated, and COVID-19 is “shining a bright light on how unacceptable that is because, yet again, when you have a situation like the coronavirus, they are suffering disproportionately.”)

³⁵ Elizabeth Thomas & Dr. Nancy A. Anoruo, *Coronavirus is Disproportionately Killing the Black Community. Here’s What Experts Say Can Be Done About It*, ABC News (Apr. 9, 2020), <https://abcnews.go.com/Politics/coronavirus-disproportionately-killing-black-community-experts/story?id=70011986>

³⁶ Beth Musgrave, *Black Fayette County Patients More Likely to Be Hospitalized from Coronavirus*, Lexington Herald Leader (Apr. 7, 2020), <https://www.kentucky.com/news/coronavirus/article241833116.html> (“Approximately 30 percent of all blacks testing positive have had to be hospitalized with only 12 percent of whites who have tested positive have needed inpatient treatment, the data shows. Of the 31 patients hospitalized, more than half are black.”)

³⁷ Elizabeth Thomas & Dr. Nancy A. Anoruo, *Coronavirus is Disproportionately Killing the Black Community. Here’s What Experts Say Can Be Done About It*, ABC News (Apr. 9, 2020), <https://abcnews.go.com/Politics/coronavirus-disproportionately-killingblack-community-experts/story?id=70011986>; Kenya Evelyn, *‘It’s a Racial Justice Issue’: Black Americans Are Dying in Greater Numbers from Covid-19*, The Guardian

to getting health care, “including lack of health insurance coverage”, as one factor that “might make members of many racial and ethnic minority groups especially vulnerable in public health emergencies like outbreaks of COVID-19.”³⁸

Additionally, “[r]esearch indicates African Americans are more likely than whites to rely on hospital emergency rooms for primary care.”³⁹ And some studies have shown that, even when Black people can obtain healthcare, they receive unequal quality of care.⁴⁰

(Apr 8, 2020) <https://www.theguardian.com/world/2020/apr/08/its-a-racial-justiceissue-black-americans-are-dying-in-greater-numbers-from-covid-19> (“African Americans are twice as likely to lack health insurance compared with their white counterparts, and more likely to live in medically underserved areas, where primary care is sparse or expensive.”).

³⁸ CDC, *Coronavirus Disease 2019 (COVID-19): Racial and Ethnic Minority Groups* (last updated Apr. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extraprecautions/racial-ethnic-minorities.html>

³⁹ Joseph P. Williams, *Rumor, Disparity and Distrust: Why Black Americans Face an Uphill Battle Against COVID-19*, U.S. News & World Report (Mar. 25, 2020), <https://www.usnews.com/news/healthiest-communities/articles/2020-03-25/whyblack-americans-face-an-uphill-battle-against-the-coronavirus> (citing Dr. Lisa Cooper, internist and social epidemiologist with Johns Hopkins Bloomberg School of Public Health).

⁴⁰ 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> (“In 2003, the National Academy of Sciences documented the effects of bias in the medical system in a report that laid out the facts in damning detail. “Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care” examined 480 previous studies and found that in every medical intervention, black people and other people of color received poorer-quality care than white people, even when income and insurance were equal. This unequal treatment in the health care system persists today in numerous studies . . .”); Elizabeth Thomas & Dr. Nancy A. Anoruo, *Coronavirus is Disproportionately Killing the Black Community. Here’s What Experts Say Can Be Done About It*, ABC News (Apr. 9, 2020), <https://abcnews.go.com/Politics/coronavirus-disproportionately-killing-blackcommunity-experts/story?id=70011986> (“Studies looking at manifestations of racial bias within the health care system have found black patients are sometimes treated differently than whites, leading to things such as undertreatment of pain and racial differences in what treatment is offered for a heart attack.”); Kenya Evelyn, ‘It’s a Racial Justice Issue’: *Black Americans Are Dying in Greater Numbers from Covid-19*, The Guardian (Apr 8, 2020)

64. *Fifth*, if Black voters contract the virus while voting in-person, they also face increased risks of spreading the virus to their loved ones and community. As discussed above, Black voters are more likely to rely on public transportation, and Black voters are more likely to live in “subpar neighborhoods [that] are rooted in the historical legacy of redlining” and in “densely populated areas, further heightening their potential contact with other people.”⁴¹ Dr. Sarah Moyer, Louisville’s public health strategist, has echoed these concerns for Black Kentuckians, explaining that “[p]eople of color are more likely than white counterparts to live in densely populated settings” and “rely on public transportation,” which “makes it easier for COVID to spread.”⁴²
65. These statistics are even more outsized in some counties—data from the Lexington-Fayette County Health Department demonstrates that, as of early April, Black people comprised roughly 30% of the county’s more than 188 coronavirus

<https://www.theguardian.com/world/2020/apr/08/its-aracial-justice-issue-black-americans-are-dying-in-greater-numbers-from-covid-19>

(“Unconscious racial bias can also contribute to unequal health outcomes, especially when health professionals are inexperienced with the culture of the community they serve, according to the Journal of General Internal Medicine. The Century Foundation found that healthcare providers located within majority African American or Latinx neighborhoods tend to provide lower-quality care.”); Michael O. Schroeder, *Racial Bias in Medicine Leads to Worse Care for Minorities*, U.S. News & World Report (Feb. 11, 2016), <https://health.usnews.com/health-news/patient-advice/articles/2016-02-11/racial-bias-in-medicine-leads-to-worse-care-for-minorities>.

⁴¹ Rashawn Ray, *Why Are Blacks Dying at Higher Rates from COVID-19?*, Brookings (Apr. 9, 2020), <https://www.brookings.edu/blog/fixgov/2020/04/09/why-are-blacks-dying-at-higher-rates-from-covid-19/>

⁴² Jon Hale, *Kentucky Forms Regional Partnership, African American COVID-19 Deaths Rise in Louisville*, Louisville Courier Journal (Apr. 15, 2020), <https://www.courier-journal.com/story/news/2020/04/15/coronavirus-kentuckypolitics-heats-up-despite-beshears-stance/5136206002/>.

patients, though only 15% of the county’s population is Black.⁴³ Lexington and Fayette County do not stand alone—data from cities within this District, including Louisville, demonstrate a disproportionate impact on Black residents as well. “Black people made up 23.5% of [Louisville]’s population in 2019, according to U.S. Census data,” but constituted 42 percent of the deaths from the virus, “doubling their share of the populations of the states the analysis included.”⁴⁴

Older Voters

66. Coronavirus also disproportionately affects older voters. If older voters contract the virus while voting in-person, they are more likely to suffer serious and even deadly consequences. The CDC has warned that “[p]eople aged 65 years and older” 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.” Thus, “the older you are, the higher your risk of serious disease.”⁴⁵
67. Studies reveal that the death rate associated with the virus increases significantly with age: a large study of COVID-19 patients in China showed that the virus killed

⁴³ Beth Musgrave, *COVID-19 Has Hit Kentucky, Lexington’s Black Population Especially Hard. Why?*, Lexington Herald Leader (Apr 9, 2020), <https://www.kentucky.com/news/local/counties/fayettecounty/article241884161.html>

⁴⁴ Jon Hale, *Kentucky Forms Regional Partnership, African American COVID-19 Deaths Rise in Louisville*, Louisville Courier Journal (Apr. 15, 2020), <https://www.courier-journal.com/story/news/2020/04/15/coronavirus-kentuckypolitics-heats-up-despite-beshears-stance/5136206002/>

⁴⁵ CDC, *Coronavirus Disease 2019 (COVID-19): At Risk for Severe Illness* (May 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>

1.3% of patients between the ages of 50 and 59, 3.6% of patients between the ages of 60 and 69, 8% of patients between the ages of 70 and 79, and 15% of patients ages 80 and older.⁴⁶

68. Maintaining a single polling location will result in long lines and an inability to practice adequate social distancing. These conditions, taken together, will subject older voters and poll workers to a serious risk of infection at their polling places—and, with it, a greater risk of illness.

Voters with Disabilities

69. The single polling location in Jefferson, Fayette, Kenton, Boone, Campbell and other counties will disproportionately burden voters with certain disabilities, especially those who need to vote in-person during the pandemic.
70. Voters with certain disabilities face an unreasonable risk of contracting COVID-19 at the polls or on their way to polling locations. Many voters with disabilities are unable to drive to the polls and will therefore need to share transportation to the polls with other drivers or passengers, which increases their risk of exposure to COVID-19. “Many people with disabilities cannot mark paper ballots without assistance, so they rely on special voting machines” with features like touch screens, other manual input devices, and earphones to vote, any of which could carry the COVID-19 virus from previous users and poll workers.⁴⁷ Additionally,

⁴⁶ Roni Caryn Rabin, *Coronavirus Threatens Americans With Underlying Conditions*, N.Y. Times (Mar. 14, 2020),

<https://www.nytimes.com/2020/03/12/health/coronavirus-midlife-conditions.html>

⁴⁷ CDC, *Coronavirus Disease 2019 (COVID-19): How It Spreads*,

social distancing practices are more difficult for voters with certain disabilities—for example, voters who are blind or have limited vision cannot see visual markers on the ground instructing voters to line up six feet apart from each other. Voters such as Mr. Howland have difficulty standing in line for hours at a time, such as will be the case in Jefferson County.

71. These difficulties are compounded by the fact that an inability to use paper ballots without assistance forecloses many voters with disabilities from voting by mail.⁴⁸ Because many voters with disabilities are unable to submit mail-in absentee ballots without assistance or accommodations, they will continue to need to vote in-person during the pandemic, despite the risks posed by in-person voting, which can't be eliminated, only minimized.
72. As a result, the use of a single polling location will unnecessarily pack tens of thousands of voters at a single polling location, needlessly increasing the risk of transmission: larger crowds will result in exposure to more people, and longer lines will result in prolonged exposure, both of which place voters with certain disabilities at increased risk of contracting the virus.

General Burdens

73. To reduce the risk that individuals who need to vote in-person will be exposed to

<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covidspreads.html>

(noting that while the virus spreads most easily from person-to-person, it “may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes”) (last visited May 21, 2020).

⁴⁸ Matt Vasilogambros, *How Voters With Disabilities Are Blocked From the Ballot Box*, Pew Research Center (Feb. 21, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/02/01/how-voters-with-disabilities-are-blocked-from-the-ballot-box>

COVID-19, the CDC has issued specific guidelines for voting during the pandemic, which recommend that states “[e]ncourage voters to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations.”⁴⁹

74. While Kentucky officials have implemented many of these measures, the congregation of tens of thousands or hundreds of thousands of voters at a single polling location in Jefferson, Fayette, Kenton, Boone, Campbell, and other counties makes it difficult, if not impossible, to facilitate these measures.
75. Notwithstanding efforts in other states, including Indiana in its recent primary, to encourage absentee or advance voting from home, substantial voter turnout, in person, on election day, has been the norm rather than the exception.⁵⁰
76. Collectively, in light of COVID-19, the single polling location in Jefferson, Fayette, Kenton, Boone, Campbell, and other counties burdens the fundamental right to vote.
77. Historical voting registration and turnout statistics in these most populated counties is the baseline of expert analysis that demonstrates severe voter suppression, particularly among minority, elderly, and economically disadvantaged persons.⁵¹

⁴⁹ CDC, *Coronavirus Disease 2019 (COVID-19): Recommendations for Election Polling Locations* (Mar. 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

⁵⁰ <https://www.courier-journal.com/story/news/local/2020/06/02/indiana-primaries-see-turnout-clark-floyd-despite-covid-19/5310210002/> (last visited 6/3/2020).

⁵¹ See <https://elect.ky.gov/statistics/Pages/turnoutstatistics.aspx>

a. Jefferson County

	#Voters Registered	#Voters Voted	Turnout %
Primary 2018	591443	104924	17.7%
Primary 2016	569338	138619	24.3%
Primary 2014	547076	109960	19.6%
Primary 2012	511740	80419	15.7%
Primary 2010	488523	135631	27.7%

b. Fayette County

	#Voters Registered	#Voters Voted	Turnout %
Primary 2018	230668	58249	25.3%
Primary 2016	217669	49861	22.9%
Primary 2014	205448	46295	22.5%
Primary 2012	190643	22844	11.9%
Primary 2010	179942	49934	27.7%

c. Kenton County

	#Voters Registered	#Voters Voted	Turnout %
Primary 2018	131985	13935	10.6%
Primary 2016	125105	17870	14.3%
Primary 2014	119354	21479	18.0%
Primary 2012	112604	14848	13.1%

Primary 2010	106857	19854	18.5%
-----------------	--------	-------	-------

d. Boone County

	#Voters Registered	#Voters Voted	Turnout %
Primary 2018	102020	15737	15.4%
Primary 2016	95555	11961	12.5%
Primary 2014	91478	15641	17.1%
Primary 2012	84971	10817	12.7%
Primary 2010	78885	16525	20.9%

e. Campbell County

	#Voters Registered	#Voters Voted	Turnout %
Primary 2018	73955	10410	14.1%
Primary 2016	69999	9969	14.2%
Primary 2014	66485	13430	20.2%
Primary 2012	62339	7974	12.7%
Primary 2010	59200	13796	23.3%

78. Current registered voters for Jefferson, Fayette, Kenton, Boone, and Campbell Counties, along with the number of precincts usually in service, are as follows:⁵²

⁵² <https://elect.ky.gov/Resources/Documens/voterstatscounty-20200515-084530.pdf>

County	Number of registered voters	Number of precincts
Jefferson	615511	623
Fayette	243008	286
Kenton	137830	106
Boone	108279	63
Campbell	77902	67

79. On June 3, 2020, the Kentucky Board of Elections conducted a meeting to discuss and/or approve the plans for the 2020 elections.
80. At that meeting, Clerk Blevins for Fayette County indicated that he did not wish to open more polling locations because if he did “people would use them,” admitting his knowledge that expanded in-person voting would increase voter participation. Mr. Blevins also indicated that they were planning for 100,000 to 120,000 voters, but had only received 46,000 requests for absentee ballots to date.⁵³
81. At that meeting, Clerk Holsclaw for Jefferson County, indicated that she did not wish to open more polling locations because she did not think more locations would be as administratively easy to conduct the election from; she also anticipated more than 130,000 voters, but likewise had only received 47,000 requests for absentee ballots to date. She acknowledged that there would be long lines. *Id.*
82. At that meeting, Clerk Summe indicated that she did not wish to open more polling locations because she thought that everyone who voted from home was their own

⁵³ https://www.youtube.com/watch?v=mwE74EqN9_w (last visited 6/5/2020).

precinct and that was sufficient; she also anticipated more than 60,000 voters, but likewise had only received 10,000 requests for absentee ballots to date. *Id.*

83. The County Board of Elections Defendants repeatedly cited poll worker shortages for the single polling location in Kentucky's largest counties; nevertheless, Plaintiffs have obtained declarations from individuals, and anecdotal accounts from yet other individuals, who volunteered to serve as poll workers in Jefferson, Fayette, Boone, Kenton, and Campbell counties, in particular, but were told they were not needed.
84. Furthermore, Defendants deliberately avoided seeking volunteers to fill poll worker positions. Nevertheless, it is not too late to do so.
85. In other words, notwithstanding that the purported poll worker shortage that was the public justification for the single poll option, in actuality, Defendants put administrative convenience over the exercise of fundamental rights, and at the expense of a severe burden on the fundamental right to vote.
86. In the end, the Kentucky Board of Elections approved the use of a single precinct in these counties.
87. Plaintiffs have obtained expert testimony that reveals that, among other things, if voting precincts in these counties are reduced to a single voting precinct, even with other voting options such as mail in, and appointment only voting, that: (i) lines and queues will be unreasonably long causing voters not to wait and to be disenfranchised; (ii) due to transportation options, or specifically the lack thereof, minority, indigent, and elderly voters will not vote, causing them to be

disenfranchised. Reduction of the number of voting precincts in Kentucky's largest counties will result in voter disenfranchisement and constitutes a severe burden on the right to vote.

88. Furthermore, for voters that have requested absentee mail in ballots, County Clerks have been unable to fully process and keep up with these requests; it appears that a substantial number of voters will not receive their ballots in time for it to be completed and returned in a timely manner. The sole safety valve for this problem is in person voting. Again, the single polling precinct will disenfranchise these voters.

Class Allegations

89. Plaintiffs reincorporate the preceding Paragraphs as if fully written herein.
90. The actions and violations herein complained of affect hundreds of thousands of Kentuckians.
91. Pursuant to FRCP 23(a), (i) the class is so numerous that joinder of all members is impracticable (with millions of potential Plaintiffs); (ii) there are questions of law or fact common to the class; (iii) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (iv) the representative parties will fairly and adequately protect the interests of the class.
92. Pursuant to FRCP 23(b): (i) prosecuting separate actions by or against individual class members would create a risk of: (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; (B) adjudications with respect to individual class members that,

as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests; and (ii) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

93. Plaintiffs seek a Plaintiff class, consisting of those persons who (i) desire to vote in person in the primary or are forced to do so if mail in ballots are not received in time and (ii) who live in Jefferson, Fayette, Campbell, Boone, Kenton Counties, or any other county, which is using only one polling location for in person voting for the June 23, 2020 primary election, and whose population exceeds .
94. Plaintiffs further seek a Defendant class, for the County Board of Elections to represent all other County Boards where only one polling location is used for in person voting for the June 23, 2020 primary election, and where the number of registered voters of Democrats and Republicans exceeds 35,000 voters.⁵⁴

COUNT I – Violation of the First and Fourteenth Amendment’s fundamental right to vote (42 USC 1983)

95. Plaintiffs reincorporate the foregoing paragraphs as if fully written herein.
96. Defendants, using their respective offices and acting under color of state law, violated and are violating Plaintiffs’ First Amendment Rights, which have deprived, are depriving, and will deprive them of their rights to Free Speech, Expression, and Association guaranteed to them under the First Amendment of the U.S. Constitution, which rights are

⁵⁴ This includes Boone, Boyd, Bullitt, Campbell, Christian, Daviess, Fayette, Franklin, Hardin, Jefferson, Jessamine, Kenton, Laurel, McCracken, Madison, Oldham, Pike, Pulaski, Scott, and Warren Counties.

clearly established; as well as their rights to Equal Protection of Law under the Fourteenth Amendment to the U.S. Constitution. Defendants thereby subjected themselves under 42 U.S.C. § 1983, to prospective injunctive relief and declaratory relief under 28 U.S.C. §§ 2201, *et seq.*

97. The First Amendment of the U.S. Constitution has been incorporated against the states. *Gitlow v. New York*, 268 U.S. 652 (1925).
98. Defendants abused the authority of their respective offices and, while acting under color of law and with knowledge of Plaintiffs' established rights, used their offices to violate their First and Fourteenth Amendment rights.
99. In cases where the fundamental right to vote is burdened, the court first determines the severity of the burden on the right to vote by evaluating the character and magnitude of the asserted injury. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780 (1983).
100. If the restriction on the right to vote is a severe burden, then it is subject to strict scrutiny. *Id.* at 434. Strict scrutiny requires the restriction to be "narrowly drawn to advance a state interest of compelling importance." *Burdick*, 504 U.S. at 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992))
101. Furthermore, strict scrutiny is triggered by discriminatory requirements that fall unequally on certain groups of Plaintiffs. *Williams v. Rhodes*, 393 U.S. 23, 30 (1968); *Anderson v. Celebrezze*, 460 U.S. 790, 793-794 (1983); *Reform Party of Allegheny County v. Allegheny County Department of Elections*, 174 F.3d 305, 315 (3d Cir. 1999); *Fulani v. Krivanek*, 973 F.2d 1539 (11th Cir. 1992); *Green Party of Tenn. v. Hargett*, 791 F.3d 684 (6th Cir. 2015).

102. In the alternative, if the Court finds that the single polling location being offered does not constitute a severe burden on the rights of the Plaintiffs, then they constitute more than a minimal burden, and do not pass muster under the flexible analysis that weighs the burdens on Plaintiffs against the Commonwealth's asserted interest and chosen means of asserting it, under the prevailing U.S. Supreme Court cases of *Anderson v. Celebrezze*, 460 U.S. 760 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992).
103. Case law from the United States Court of Appeals from the Sixth Circuit notes that these circumstances, i.e. causing long lines to vote, and the associated voter disenfranchisement therefrom, is unconstitutional. *Mich. State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656 (6th Cir. 2016). *Johnson* resolved the issue not in terms of single polling precinct in large counties, but instead on a more general (and less severe) longer line problem associated with the removal of straight-ticket voting in Michigan, finding that the state's interests were not sufficient to warrant the burden on the right to vote.

COUNT II – Violation of Section 2 of the Voting Rights Act (52 USC 10301)⁵⁵

104. Section 2 of the Voting Rights Act of 1965, 52 U.S.C. 10301, provides, in relevant part:
- (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision 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, or in contravention of the guarantees set forth in section 4(f)(2) [52 USCS § 10303(f)(2)], as provided in subsection (b).
105. African American citizens of Kentucky, as a group, have historically used in person voting as their primary means of voting.

⁵⁵ This count is brought solely in relation to the single precinct in Fayette and Jefferson counties.

106. Approximately 60% of African American Kentuckians reside in two counties: Jefferson and Fayette counties.⁵⁶
107. African American voters in Kentucky have suffered discrimination in housing, employment, income, and education, and most of them have a high school education or less. *Id.*
108. Long wait times, queuing, and disenfranchisement will severely disproportionately impact the African American communities in Louisville and Lexington. Given literacy and educational achievements of African Americans compared to other demographics, assistance is more likely to be required by these voters as a group, resulting in more of this demographic needing to participate in in-person voting; at the same time, public transportation needs and distance from polling locations is likely to more heavily impact these voters.
109. Single polling locations in Fayette and Jefferson counties will have the effect of suppressing African American voters in violation of Section 2 of the Voting Rights Act of 1965 (52 U.S.C. 10301).
110. The single polling location in Fayette and Jefferson counties will result in the denial or abridgement of the right to vote of individual Plaintiffs and others on account of their race or color in violation of Section 2 of the Voting Rights Act of 1965 (52 U.S.C. 10301).
111. The single polling location in Fayette and Jefferson counties will interact with social or historical conditions – which themselves are largely due to discrimination

⁵⁶ <https://kchr.ky.gov/reports/Documents/Reports/AAStatus2010.pdf> (last visited 6/3/2020)
<https://kchr.ky.gov/reports/Documents/Reports/WhitePaperRevised.pdf> (last visited 6/3/2020)

– in areas of employment, housing, health services, and voting to cause an inequality in the opportunities enjoyed by African Americans to elect their preferred representatives.

112. Under the total of circumstances, the single polling location in Fayette and Jefferson counties will result in dilution of African American voting strength and the denial of African Americans’ right to vote in violation of Section 2 of the Voting Rights Act of 1965 (52 U.S.C. 10301).

Conclusion

113. Plaintiffs seek declaratory relief, and prospective injunctive relief under 42 U.S.C. § 1983 52 U.S.C. 10301, and 28 U.S.C. §§ 2201 and 2202, declaring the challenged single polling precinct unconstitutional, at least in Kentucky’s most populous counties, in contravention of the First and Fourteenth Amendments of the United States Constitution. Plaintiffs further seek their costs, expert fees, and reasonable attorney fees under 42 U.S.C. § 1988 and 52 U.S.C. 10310(e).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants as prayed for, including:

- A. That this Court issue a declaration that the single polling location in Jefferson, Fayette, Kenton, Boone, and Campbell Counties (in addition to other large Kentucky counties) are unconstitutional, in contravention of the First and Fourteenth Amendments of the United States.

- B. That this Court enter permanent and preliminary injunctive relief to prohibit the use of a single polling location in Jefferson, Fayette, Kenton, Boone, and Campbell Counties (in addition to other large Kentucky counties) in the 2020 primary election.
- C. That Plaintiffs be awarded their costs in this action, including reasonable attorney fees under 42 U.S.C. § 1988; and
- D. Such other relief as this Court shall deem just and proper.

Respectfully submitted,

/s/ Christopher Wiest

Christopher Wiest (KBA 90725)
Chris Wiest, Atty at Law, PLLC
25 Town Center Blvd, Suite 104
Crestview Hills, KY 41017
859/486-6850 (v)
513/257-1895 (c)
859/495-0803 (f)
chris@cwiestlaw.com

/s/Thomas Bruns

Thomas Bruns (KBA 84985)
4750 Ashwood Drive, STE 200
Cincinnati, OH 45241
tbruns@bcvalaw.com
513-312-9890

Attorneys for Plaintiffs

VERIFICATION

I, Jason Nemes, pursuant to 28 U.S.C. 1746, declare under penalty of perjury that I have reviewed the foregoing Complaint, that I am competent to testify in this matter, that the facts contained therein are true and correct, and are based information personally known and observed by me.

Executed on June 8, 2020.



Jason Nemes