

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

CYNTHIA PARHAM, JED OPPENHEIM,  
CHERYL GOGGIN, THE LEAGUE OF  
WOMEN VOTERS MISSISSIPPI, and  
MISSISSIPPI STATE CONFERENCE OF  
THE NAACP,

Plaintiffs,

v.

MICHAEL D. WATSON, JR., in his official  
capacity as Secretary of State of Mississippi;  
and LYNN FITCH, in her official capacity as  
Attorney General of the State of Mississippi,

Defendants.

Civil Action No. 3:20-cv-572-DPJ-FKB

**MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65, and for the reasons stated in the accompanying memorandum, Plaintiffs Cynthia Parham, Jed Oppenheim, Cheryl Goggin, The League of Women Voters Mississippi, and Mississippi State Conference of the NAACP (collectively, “Plaintiffs”) respectfully move for the following preliminary injunctive relief:

Ordering Defendants to advise voters that the Excuse Requirement will be applied during the COVID-19 pandemic, and specifically in the November election, so as to allow voters to vote absentee if they reasonably believe that voting in person would risk their contracting coronavirus and exposure to COVID-19 or the health of others, or if they are quarantined pursuant to the advice of public health officials

Alternatively, ordering Defendants to apply the Excuse Requirement so as to allow voters to vote absentee if they reasonably believe that voting in person would risk their contracting coronavirus and exposure to COVID-19 or the health of others or if they are quarantined pursuant to the advice of public health officials;

Prohibiting Defendants from enforcing the Notarization Requirement for all voters during the COVID-19 pandemic in Mississippi;

Ordering Defendants to issue guidance instructing all local and county election officials to accept otherwise validly submitted absentee ballot applications and count otherwise validly cast absentee ballots that are missing notarization or the signature of an official authorized to administer oaths;

Ordering Defendants to issue guidance instructing all local and county election officials to accept otherwise validly submitted absentee ballot applications and count otherwise validly cast absentee ballots that are missing notarization or the signature of an official authorized to administer oaths during the COVID-19 pandemic in Mississippi, including the November election;

Ordering Defendants to issue guidance instructing all local and county election officials to provide adequate notice and an opportunity to cure rejections of absentee ballots on the basis of perceived signature mismatch;

Date: September 17, 2020

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

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## INTRODUCTION

Unlike any election in modern memory, the November 3, 2020 General Election will be held in the midst of an ongoing public health crisis that has already claimed the lives of more than 193,000 Americans and forced dramatic changes to everyday life across the United States—including in Mississippi. Plaintiffs Cynthia Parham, Jed Oppenheim, Cheryl Goggin (collectively the “Individual Plaintiffs”), and the League of Women Voters Mississippi (“LWVMS”) and Mississippi State Conference of the NAACP (“MS NAACP”) (collectively the “Organizational Plaintiffs,” and collectively with the Individual Plaintiffs, “Plaintiffs”) submit this memorandum of law in support of their motion for a preliminary injunction requiring Defendants to take all action necessary to ensure Plaintiffs and Plaintiffs’ members can exercise their fundamental right to vote without risking their health in the midst of the COVID-19 public health crisis.

First, Mississippi’s limitations on who may vote by absentee ballot (“Excuse Requirement”) unconstitutionally burdens the right to vote in the context of the COVID-19 pandemic because, under the Excuse Requirement, voters who reasonably fear voting in person will increase their risk of exposure to the coronavirus or the risk that they will expose others in their care or with whom they live to the virus are not permitted to vote by absentee ballot. These voters face the impossible choice between risking their or their loved ones’ health and exercising their fundamental right to vote.

Second, Mississippi’s requirement that both absentee ballot applications and absentee ballots be notarized (“Notarization Requirement”)—not once but twice—is an unconstitutional burden because compliance necessarily involves engaging in close person-to-person contact, increasing the risk of contracting the coronavirus.

Finally, Mississippi’s failure to provide voters notice of and the opportunity to cure alleged signature mismatches pursuant to the state’s error-prone signature matching procedure

(“Cure Prohibition”), deprives voters of their fundamental right to vote and their right to due process. During the COVID-19 pandemic, significantly more Mississippians are expected to vote absentee than typically have in past elections. Many will do so for the first time. As a result, the number of absentee ballots erroneously rejected *without recourse* will climb during the COVID-19 pandemic, including the November election.

Defendants’ actions and omissions violate Plaintiffs’ fundamental rights to vote and due process. Plaintiffs seek a preliminary injunction to prevent irreparable harm to Mississippi voters who must choose between casting their ballots and risking their and their loved ones’ lives, and an order from this Court<sup>1</sup> declaring that (1) Defendants’ application of the Excuse Requirement violates Plaintiffs’ fundamental right to vote when they are not allowed to vote absentee by mail during the COVID-19 pandemic if they reasonably fear voting in person will increase their risk of exposure to the coronavirus or the risk that they will expose others in their care or with whom they live to the virus; (2) Mississippi’s Notarization Requirement as applied during the COVID-19 pandemic unconstitutionally burdens Plaintiff Goggin’s and Organizational Plaintiffs’ members’ right to vote under the First and Fourteenth Amendments; and (3) Section 23-15-641(1) of the Mississippi Code is unconstitutional as applied because it fails to provide absentee voters with notice of, and an opportunity to cure, signature verification deficiencies, depriving absentee voters of their fundamental right to vote in violation of the First and Fourteenth Amendments and of procedural due process in violation of the Fourteenth Amendment to the United States Constitution.

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<sup>1</sup> In their Complaint, Plaintiffs also allege that Mississippi’s Excuse Requirement is unconstitutionally vague and requires relief from this Court. In light of the Hinds County Chancery Court’s recent decision interpreting the Excuse Requirement, Plaintiffs are not presently seeking a preliminary injunction on that claim. The case, *Oppenheim, et al. v. Watson*, Case No. 25CH1:20-CV-00961, is currently on appeal before the Mississippi Supreme Court.

## **FACTUAL BACKGROUND**

### **I. THE DANGERS OF COVID-19**

The novel coronavirus, SARS-CoV-2, is highly contagious. *See* Declaration of Arthur L. Reingold, attached Ex. 6, (“Reingold Dec.”) ¶ 7. Once contracted, it can have a range of effects, from no symptoms to a severe immune system response that lead to death. *Id.* ¶ 6. The disease poses a severe risk to all individuals, particularly those who are either elderly, or, regardless of age, are immunocompromised or have other underlying conditions like chronic lung disease, diabetes, obesity, or moderate to severe asthma.<sup>2</sup> *Id.* ¶ 6; 10. While older individuals and those with underlying medical conditions are at greatest risk, the coronavirus has caused the hospitalization and death of individuals of every age. *Id.*

COVID-19 is particularly dangerous because of its ease of transmission. *See Id.* ¶¶ 6-7. COVID-19 spreads through respiratory droplets and aerosols that are expelled when an infected individual speaks, coughs, or sneezes near an uninfected individual. *Id.* ¶¶ 7-8. It can also spread through the touching of contaminated surfaces, including for example, pens and voting machines. *See id.* While outwardly sick individuals have been advised to stay home to stop the spread of the disease, asymptomatic and pre-symptomatic individuals can infect others without being aware they themselves are infected. *Id.* ¶ 10.

The United States has more COVID-19 cases than any other country in the world. As of September 8, the number of confirmed cases in the United States has surpassed 6.6 million, and at least 196,277 people have died as a result of contracting the coronavirus.<sup>3</sup> The ease with which

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<sup>2</sup> CDC, *People with Certain Medical Conditions* (last updated July 30, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medicalconditions.html>.

<sup>3</sup> CDC, *Coronavirus Disease 2019 (COVID-19): Cases in the US* (last updated September 17, 2020), <https://rb.gy/bf6ojt>.

the coronavirus spreads will continue to cause “significant community transmission” of the coronavirus “throughout 2020 and into 2021 across the United States.” *See* Reingold Decl. ¶ 15. The current inability to contain the spread of the coronavirus has caused some public health experts to predict the doubling of the US death toll between now and the end of 2020.<sup>4</sup> Public health experts, including leading White House COVID-19 Task Force member Dr. Anthony Fauci, have also warned that a further resurgence of cases in the fall and/or winter is “inevitable.”<sup>5</sup>

There is no cure for the virus that causes COVID-19, and though treatments are under investigation and being used to respond to the crisis on an emergency basis, a vaccine will not be widely available before the November election. Reingold Dec. ¶ 13.

## **II. VOTING IN MISSISSIPPI DURING THE COVID-19 PANDEMIC**

Mississippi saw a surge in COVID-19 over the summer, and is currently confirming more than 200 new coronavirus cases each day.<sup>6</sup> To date, the coronavirus has infected more than 91,000 Mississippians and resulted in more than 2,750 deaths in the state.<sup>7</sup> The November election will take place in the midst of this continuing public health crisis.

Historically, most voters in Mississippi must vote in person on Election Day because the ability to vote by absentee ballot is limited to the narrow excuses in the statute. ECF No. 1 (“Complaint”) ¶ 71. This means physically appearing at a designated polling place, which is a prime area for increased transmission of the coronavirus based on: (1) the close proximity of a

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<sup>4</sup> Nurith Aizenman, *300,000 Deaths By December? 9 Takeaways From The Newest COVID-19 Projections*, NPR, (Aug. 6, 2020), <https://www.npr.org/sections/health-shots/2020/08/06/900000671/300-000-deaths-by-december-9-takeaways-of-the-newest-covid-19-projections>.

<sup>5</sup> Christina Maxouris, *US Could Be in for ‘a Bad Fall and a Bad Winter’ If It’s Unprepared for a Second Wave of Coronavirus, Fauci Warns*, CNN Health (Apr. 29, 2020), <https://rb.gy/xol1oc>.

<sup>6</sup> *See* Mississippi State Department of Health, *COVID-19 in Mississippi*, [https://msdh.ms.gov/msdhsite/\\_static/14,0,420.html#Mississippi](https://msdh.ms.gov/msdhsite/_static/14,0,420.html#Mississippi) (last updated September 17, 2020)

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

large number of voters, observers, and poll workers in a limited space; (2) the large number of common surfaces that multiple people touch; and (3) transmission of the virus via both droplet and aerosols and contaminated environmental surfaces. Reingold Decl. ¶ 7. Indeed, evidence of outbreaks of COVID-19 at polling places in elections held earlier this year is clear epidemiological evidence of the risk of transmission of coronavirus due to in-person voting. *Id.* ¶ 19.

**A. Mississippi’s Absentee Voting Excuse Requirements.**

Mississippi law only allows specific categories of voters with qualifying excuses<sup>8</sup> to vote by absentee ballot. Unless Mississippi voters satisfy one of the excuses, they must either vote in person on Election Day, or not vote at all. Recent amendments to Mississippi’s Excuse Requirement under HB 1521 provide that voters who are under “a physician-imposed quarantine due to COVID-19 during the year 2020” or “caring for a dependent who is under physician-imposed quarantine due to COVID-19” fall within the existing temporary or permanent physical disability excuse.

The current state of the Excuse Requirement<sup>9</sup> produces nonsensical and dangerous results: An individual with a condition that puts them at increased risk from COVID-19 is permitted to

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<sup>8</sup> The excuses permitted by law include: (1) the voter’s studies or employment at a school necessitates their absence from the county on Election Day; (2) the voter is an employee of a member of the Mississippi congressional delegation or a spouse or dependent of the employee residing with the absentee voter away from their county of residence; (3) the voter is outside of the county of residence on Election Day; (4) the voter has a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship to himself or others, or whose attendance at the voting place could reasonably cause danger to himself or others; (5) the voter is the parent, spouse, or dependent of a person with a temporary or permanent physical disability who is hospitalized outside the county of residence or more than fifty (50) miles away from his residence and the voter will be with such person on Election Day; (6) the voter is sixty-five (65) years of age or older; (7) the voter is a member of the Mississippi congressional delegation absent from Mississippi on Election Day, or the spouse or dependents of the member of the congressional delegation; or (8) the voter is required to be at work on Election Day during the times at which the polls will be open. Miss. Code Ann. § 23-15-713.

<sup>9</sup> On September 2, 2020, the Hinds County Chancery Court issued an order in *Oppenheim, et. al. v. Watson, et. al.*, Case No. 25CH1:20-cv-961, finding that voters with pre-existing conditions and therefore at higher risk of severe illness or death due to COVID-19 qualify as temporarily or permanently disabled,

vote by absentee ballot to protect themselves from the risks posed by in-person voting, but their dependent or caretaker—with whom that voter is inevitably in close contact—is not. Nor can other voters who reasonably fear contracting the coronavirus and are following public health guidance to avoid in-person interactions during the pandemic, even though any person can be at risk of severe complications from COVID-19. *See* Reingold Decl. ¶ 6.

### **B. Applying for and Casting an Absentee Ballot**

To vote by absentee ballot, a voter may make a request for an absentee application orally, in writing, or by calling the circuit clerk’s office. Miss. Code Ann. §§ 23-15-627, 23-15-657. Notably, the absentee ballot application includes a warning in boldface that making a “false statement” on an absentee ballot application and selling one’s vote is punishable with a fine of up to \$5,000 and a state prison sentence of up to five years. *Id.* § 23-15-627. All absentee ballot applicants, except those who are “temporarily or permanently disabled” must have their application “notarized or signed by an official authorized to administer oaths for absentee balloting” (the “Notarization Requirement”). *Id.* Both notarization and officials’ attestation are typically conducted in-person, requiring close contact between the individual receiving the notarization/attestation and the notary or attesting official. After receiving a properly completed and notarized absentee ballot application, “the registrar shall send to such absent voter a proper

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per Mississippi Code § 23-15-713(d), and are therefore permitted to vote absentee during the COVID-19 pandemic, “to the extent that such pre-existing ‘physical...condition impairs, interferes with, or limits a person’s ability to engage in certain tasks or actions or participate in typical daily activities and interactions’ or an ‘impaired function or ability’ that interferes thereof.” *Oppenheim*, Case No. 25CH1:20-cv-961, Order at 14. Their caretakers or dependents, however, are not. *Id.* The *Oppenheim* court also held that Mississippi voters (or the dependent of Mississippi voters) who have been instructed to avoid in-person interactions to because of the possibility of contracting COVID-19 due to the individual or their dependent’s physical disability satisfy the excuse requirement set forth in Mississippi Code § 23-15-713(d). *Id.* at 14-15. Finally, the *Oppenheim* court found that Mississippi Code § 23-15-713(d) does *not* permit Mississippi voters to vote absentee if they wish to avoid voting in-person interactions based on guidance from the Mississippi State Department of Health (MDH), Center for Disease Control (CDC), or other public health authorities to “avoid unnecessary gatherings during the COVID-19 pandemic.” *Id.*

absentee voter ballot within twenty-four (24) hours” of having received a notarized application, or “as soon thereafter as the ballots are available.” Miss. Code Ann. § 23-15-715(a)-(b). The voter must then find a “postmaster,” “postal supervisor,” or “other officer having authority to administer an oath” to act as a witness and watch them complete the ballot envelope. *Id.* § 23-15-631. Eligible absentee voters under the temporary or permanent physical disability excuse must have a witness eighteen years of age or older sign both their absentee ballot application and ballot envelope. *Id.*

**C. Mississippi Law Fails To Provide an Adequate System for Notice and Cure of Signature Defects of Absentee Ballots.**

**1. Mississippi Requires Signature Matching as a Prerequisite to Counting Absentee Ballots.**

Once the absentee ballot is received, election officials—who are not required to be trained in handwriting analysis—must then “compare[]” the signature on the absentee ballot application with the signature on the back of the absentee ballot envelope. Miss. Code Ann. § 23-15-639(b). If election officials determine that the signatures “correspond,” the absentee ballot will be counted. *Id.* §§ 23-15-639(b), (c). If, however, election officials find, for whatever reason, that the signatures do not match, the ballot is rejected. *Id.* § 23-15-641(1). There is no meaningful guidance on what it means to “compare[]” the signature or what it means for signatures to “correspond.” Mississippi law does not provide voters either *notice* of a signature mismatch nor an opportunity to cure the signature mismatch. To the contrary, Mississippi provides voters only “written information to inform the person how to ascertain” whether their ballot was counted or rejected, and if so, the reason for rejection. *See* Miss. Code Ann. § 23-15-641(5).

**2. Signature Matching on Absentee Ballot Applications and Absentee Ballots Is Inaccurate.**

Signature matching is a notoriously flawed practice. “Determining whether a signature is genuine is a difficult task for even a trained [Forensic Document Examiner],” and laypeople “had



significantly higher error rates than experts in determining signature authenticity.” Declaration of Linton A. Mohammed, attached Ex. 2, (“Mohammed Decl.”) ¶¶ 23; 51.

The risk of absentee ballot through a false signature-mismatch determination is especially high for elderly, disabled, ill, and non-native English signatories because those populations have higher signature variability, and natural variations in the voter’s signature may emerge or increase between the signature on the ballot application and the ballot envelope. *See id.* ¶¶ 24-25; 29; 32; 41. A person’s signature may vary between signings for any number of unintentional reasons, including factors like advancement in age, change in physical or mental condition, disability, stress, or even changes in the writing surface or implement the voter used. *See id.* ¶ 40.

The number of voters who will vote by absentee ballot for the November 2020 election will increase substantially due to the COVID-19 pandemic. *See* Declaration of Dr. Marc Meredith, attached Ex. 3, (“Meredith Decl.”) ¶ 2. As such, Mississippi voters, including Plaintiff Cheryl Goggin<sup>10</sup> and the Organizational Plaintiffs’ members face an increased rate of rejection of their absentee ballots.

## **LEGAL STANDARD**

### **A. Preliminary Injunction Standard**

To obtain a preliminary injunction, a plaintiff must establish: (a) a substantial likelihood of success on the merits; (b) a substantial threat of immediate and irreparable harm if the injunction is not issued; (c) that the threatened harm outweighs any harm that would come from the

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<sup>10</sup> Ms. Goggin is 72 years old and is therefore permitted to vote by absentee ballot under Mississippi’s Excuse Requirement. *See* Ex. 1, Declaration of Cheryl Goggin (“Goggin Dec.”) ¶ 3.

injunction, and (d) that the injunction will not undermine the public interest. *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011).

Movants bear the burden of demonstrating that preliminary injunctive relief is warranted, *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 441 (1974), but they are “not required to prove [their] case in full at a preliminary-injunction hearing.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Nor does a movant need to show it is certain to succeed in the action. *Janvey*, 647 F.3d at 596. “It will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation.” *Allied Home Mortg. Corp. v. Donovan*, 830 F.Supp.2d 223, 227 (S.D.Tex.2011) (quotation omitted).

## **ARGUMENT**

### **I. Plaintiffs Have Standing to Seek a Preliminary Injunction**

To satisfy the Article III standing requirement, a plaintiff must have “(1) suffered an injury in fact, (2), that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1547 (2016), citing *Lujan v. Defenders of Wildlife*, 504 U.S. 55, 56-61 (1992). The “presence of one party with standing is sufficient to satisfy Article III’s case or controversy requirement.” *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 53 (2006).

The Individual Plaintiffs have standing. Plaintiffs Parham is unsure whether she is eligible to vote absentee under the current application of the Excuse Requirement, as voting in person increases the risk of exposure to COVID-19 for herself and her husband. Due to various health conditions, both Ms. Parham and her husband are high risk for severe complications from COVID-19 and need to vote by absentee ballot during the COVID-19 pandemic. *See* Declaration of

Cynthia Parham, attached Ex. 5 (“Parham Dec.”) ¶¶ 6-7, 14, 17. Plaintiff Oppenheim is ineligible to vote absentee under the current application of the Excuse Requirement, though Plaintiff Oppenheim’s wife, pursuant to *Oppenheim, et al. v. Watson*, Case No. 25CH1:20-CV-00961, may be permitted to vote by absentee ballot given the risks in-person voting poses to her health, and therefore, must either choose to vote in-person, potentially exposing his high-risk family members to COVID-19, or forgo his right to vote entirely. *See* Accompanying Declaration of Jed Oppenheim Dec., attached Ex. 4 (“Oppenheim Dec.”) ¶¶ 6-8, 11, 14-16. Plaintiff Goggin is eligible to vote absentee by mail in Mississippi, making her absentee ballot application and ballot envelope subject to the Notarization Requirement and Cure Prohibition. Goggin Dec. ¶¶ 8-12, 14-18.

Plaintiffs MS NAACP and LWVMS also have standing to seek a preliminary injunction. An organization can demonstrate standing in two ways: *associational standing* and *organizational standing*. *See OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017). An organization has *associational* standing to bring suit on behalf of its members when “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members.” *Hunt v. Wash. State Apple Advertising Comm’n*, 432 U.S. 333, 343 (1977). An organization that establishes associational standing can bring suit on behalf of its members even in the absence of injury to itself. *Id.* at 342.

An organization can also establish *organizational* standing “it ‘meets the same standing test that applies to individuals.’” *OCA-Greater Houston*, 867 F.3d at 610 (*quoting Ass’n of Cmty. Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 356 (5th Cir. 1999)). If an organization diverted resources to respond to the allegedly unlawful action, or if the challenged action resulted in a tangible frustration of the organization’s mission, that organization has standing to bring suit. *See*

*Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). Organizational standing “does not depend on the standing of the organization’s members.” *OCA-Greater Houston*, 867 F.3d at 610.

As set forth more fully in the attached declarations, LWVMS and MS NAACP have standing to challenge the actions at issue both on behalf of its members and on their own behalf. Both organizations have members who: (1) reasonably fear exposure to COVID-19 and are uncertain as to whether they are eligible to vote absentee under the Excuse Requirement; (2) are eligible to vote absentee by mail and must comply with the Notarization Requirement; and (3) are eligible to vote absentee by mail, and thus are subject to the Cure Prohibition. *See* Accompanying Declaration of Christy Wheeler on Behalf of League of Women Voters of Mississippi, attached Ex. 7 (“LWVMS Dec.”), ¶¶ 16-18.; Declaration of Corey Wiggins on Behalf of Mississippi Conference of the NAACP, attached Ex. 8 (“MS NAACP Dec.”) ¶¶ 11-12. LWVMS and MS NAACP will also be forced to continue to divert resources from their 2020 initiatives if the Excuse Requirement is narrowly construed, which will irreparably reduce legally designated charitable funds and negatively impact their ability to conduct voter outreach. Among other initiatives, LWVMS has contacted ten circuit clerks to obtain information on the implementation of HB 1521, developed a voter guide on how Mississippi voters can protect their health during the pandemic, and begun recruiting poll workers. LWVMS Dec. ¶¶ 19-25. MS NAACP has engaged in voter education programming specifically on the Excuse Requirement and absentee voting during the COVID-19 pandemic and is preparing the statewide Election Protection program for an increase in calls and questions on how to vote absentee during the pandemic. MS NAACP Dec. ¶¶ 8-13.

**II. Plaintiffs Have a Strong Likelihood of Success on the Merits of Each of Their Claims.**

**A. Plaintiffs Are Likely To Succeed on Their Claim that the Excuse Requirement Unconstitutionally Burdens Voters' Fundamental Right To Vote During the COVID-19 Pandemic.**

The right to vote is “precious” and “fundamental.” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966). The Supreme Court has created a “balancing test” for evaluating challenges to voting restrictions under the First and Fourteenth Amendments fundamental right to vote doctrine: the *Anderson-Burdick* framework. *Voting For America, Inc. v. Steen*, 732 F.3d 382, 387 (5th Cir. 2013) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 786 n.7 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 189–91 (2008)). Under *Anderson-Burdick*, “[a] court considering a challenge to a state election law must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments against the precise interests put forward by the State as justifications for the burden imposed by its rule.” *Texas Indep. Party v. Kirk*, 84 F.3d 178, 182 (5th Cir. 1996).

“The level of scrutiny applied to the [s]tate's justification varies based on the severity of the restrictions imposed on the right to vote.” *Lewis v. Hughs*, No. 5:20-CV-00577-OLG, 2020 WL 4344432 at \*12 (W.D. Tex. July 28, 2020) (citing *Burdick*, 504 U.S. at 434). Under this flexible standard, “[i]f the burden is great, the State must provide a compelling state interest and narrow tailoring of its rule. If the burden is slight, legitimate state interests will be sufficient” to support the provision’s constitutionality. *Texas Indep. Party*, 84 F.3d at 184. “However slight th[e] burden may appear, . . . it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Crawford*, 553 U.S. at 191 (Stevens, J., controlling opinion) (internal quotation marks omitted).

After determining the severity of the burden imposed by the challenged restrictions, courts must “‘identify and evaluate the precise interest put forward by the State as justifications for the burden imposed by its rule,’” weighing “‘the character and magnitude’” of the harm to the plaintiff’s constitutionally protected rights with “‘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.’” *Voting For America, Inc.*, 732 F.3d at 387-88 (quoting *Burdick*, 504 U.S. at 434).

**1. Mississippi’s Excuse Requirement Substantially Burdens Plaintiffs’ Right To Vote.**

The burden imposed by the Excuse Requirement is substantial because it “forces voters to make the untenable. . . choice between exercising their right to vote and placing themselves at risk of contracting a potentially terminal disease.” *Thomas v. Andino*, No. 3:20-cv-01552-JMC, 2020 WL 2617329, at \*17 n.20 (D.S.C. May 25, 2020) (finding that absentee voting is constitutionally protected when it “impacts voters’ fundamental right to vote,” including “during [the COVID-19] pandemic”); *see also League of Women Voters of Va. v. Va. State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 2158249, at \*8 (W.D. Va. May 5, 2020) (“*LWVV*”).

The Excuse Requirement’s burdens during the COVID-19 pandemic are also substantial because they make it impractical for individuals to “maintain a minimum of six feet from those outside their household” when they vote at over-crowded polling sites on Election Day. *LWVV*, 2020 WL 2158249, at \*1; *Common Cause Rhode Island v. Gorbea*, No. 120CV00318MSMLDA, 2020 WL 4460914, at \*1 (D.R.I. July 30, 2020). In the context of the COVID-19 pandemic, the Excuse Requirement presents a structural barrier to accessing a right “of the most fundamental significance in our constitutional system.” *Texas Indep. Party*, 84 F.3d at 182; *see also Thomas*, 2020 WL 2617329, at \*17 n.20 (“[D]uring this pandemic, absentee voting is the safest tool [for]

voters . . . *to effectuate* their fundamental right to vote. To the extent access to that tool is unduly burdened, [it] effectively [denies] the franchise. . . .”). “Some Mississippi potential voters will only vote absentee by mail because they face high personal health risks if they become infected with COVID-19”—“but they are not currently eligible for an absentee by mail ballot” depending on the construction of the Excuse Requirement. Meredith Decl. ¶ 37.

The application of the Excuse Requirement forces Mr. Jed Oppenheim, whose wife and mother-in-law are at a high-risk for severe complications of COVID-19, to either vote in-person and risk exposing his wife and mother-in-law to a potentially deadly disease, or forego voting entirely to protect their health. *See* Oppenheim Decl. ¶¶ 14-16; *see also* Reingold Decl. ¶ 17 (explaining risk of transmission at polling places). And Plaintiff Parham, who is at risk of severe complications from COVID-19 (as is her husband) must as well. Organizational Plaintiffs MS NAACP and LWVMS have members who, at a high risk for severe complications (and potential death) from COVID-19 due to their age and race will be faced with the choice between exercising their right to vote or protecting their health. *See* MS NAACP Decl. ¶ 12; LWVMS Decl. ¶ 11. Thus, the burden imposed on Plaintiffs’ right to vote by the Excuse Requirement is substantial.

**2. Mississippi’s Interest in the Excuse Requirement Is Low and Does Not Justify the Burden on Plaintiffs’ Right To Vote.**

By compelling voters to either risk exposure to a potentially fatal illness or forego voting in the November election entirely, the Excuse Requirement creates a potentially life-or-death choice for Plaintiffs Parham, Oppenheim, and the members of Organizational Plaintiffs MS NAACP and LWVMS. This substantial burden outweighs any possible discernible state interest.

Any purported state interest in the Excuse Requirement cannot meet constitutional muster in the age of COVID-19. While in person voting may, during normal times, be preferable to voting via absentee ballot, there is no legitimate governmental interest weighty enough to mandate that

people vote in person when they fear contracting the coronavirus by doing so. Reingold Decl. ¶ 22. Further, there is no relationship between the Excuse Requirement and preventing voter fraud or protecting election integrity; there is minimal risk of voter fraud by adopting expanded absentee ballot access. *See* Meredith Decl. ¶ 59. Finally, Mississippi is one of just *six* states in the country that requires an excuse to vote during the pandemic and only one of *two* states that does not permit a reasonable fear of COVID-19 as an excuse to vote absentee,<sup>11</sup> demonstrating that free, fair, and safe elections can be had during the COVID-19 pandemic without such an onerous requirement. Accordingly, Mississippi’s Excuse Requirement fails under the *Anderson-Burdick* framework.

**B. Plaintiffs Are Likely To Succeed on Their Claim that the Notarization Requirement Unconstitutionally Burdens Voters’ Fundamental Right To Vote During the COVID-19 Pandemic.**

**1. The Notarization Requirement Impermissibly Burdens Plaintiffs’ Right To Vote.**

Mississippi’s Notarization Requirement places a substantial burden on the right to vote by forcing Plaintiff Goggin and the Organizational Plaintiffs’ members to enter businesses or public establishments and engage in face-to-face contact, putting them in danger of exposure to COVID-19. The Notarization Requirement also imposes substantial burdens on a broad cross-section of the public, including voters who have a heightened risk of suffering severe complications from COVID-19 like Plaintiff Goggin; voters who live with, care for, or work with individuals who have a heightened risk of suffering severe complications from COVID-19; voters who are asymptomatic or have a fear of contracting the coronavirus; and notaries and other officials authorized to administer oaths. “Mississippi is the only state that requires a voter to have two

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<sup>11</sup> *See* National Council of State Legislatures, *Absentee and Mail Voting Policies in Effect for the 2020 Election*, available at <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-mail-voting-policies-in-effect-for-the-2020-election.aspx> (September 14, 2020).



documents witnessed in-person in order to cast an absentee ballot.” Meredith Decl. ¶ 21. Just as the Excuse Requirement forces a voter to decide between exercising their fundamental right to vote and risk of contracting the coronavirus, *see* Section III.A *supra*, so does the Notarization Requirement. *See Harper*, 383 U.S. at 670.

**2. Mississippi’s Interest in the Notarization Requirement is Not Sufficient to Justify the Burden on Plaintiffs’ Right to Vote.**

Any state interest in the Notarization Requirement does not justify its corresponding burden on voters. Although notarization requirements are typically justified by an in protecting election integrity, there is no evidence that a notarization requirement applied to certain categories of absentee voters advances the state’s interest in protecting against voter fraud. *See Thomas*, 2020 WL 2617329, at \*20 (“While states certainly have an interest in protecting against voter fraud and ensuring voter integrity, the interest will not suffice absent ‘evidence that such an interest made it necessary to burden voters’ rights.’”) (quoting *Fish v. Schwab*, 957 F.3d 1105, 1133 (10th Cir. 2020)). Mississippi utilizes other mechanisms that prevent voter fraud, including requiring identifying information on the absentee ballot application, requiring voters to sign both their absentee ballot application and ballot envelope under penalty of perjury; and subjecting absentee ballots to challenge. Furthermore, notarization of other absentee by mail ballots is not necessary for verification purposes given that absentee voters eligible under the temporary or permanent physical disability excuse are not required to secure notarization. Further, “there is no evidence that voter fraud will increase in the 2020 presidential election if...the identities of absentee by mail voters are verified using a method that does not require a voter to have two in-person interactions.” Meredith Decl. ¶ 4.

Mississippi, therefore, cannot identify any interest weighty enough to justify the significant burden imposed on absentee voters by the Notarization Requirement. Accordingly, Mississippi's Notarization Requirement fails under the *Anderson-Burdick* framework.

**C. Mississippi's Error Prone Cure Prohibition Violates Plaintiffs' Fundamental Right To Vote.**

**1. Mississippi's Error-Prone Cure Prohibition Procedure Significantly Burdens Plaintiffs' Right to Vote.**

Mississippi's error-prone Cure Prohibition completely disenfranchises voters whose absentee ballots are erroneously rejected because of signature mismatches because they are not provided with notice of or an opportunity to cure any mismatch before their vote is discarded. This is a substantial burden. See *Democratic Exec. Comm. of Fla. v. Detzner*, 347 F. Supp. 3d 1017, 1030 (N.D. Fla. 2018), *appeal dismissed as moot sub nom. Democratic Exec. Comm. of Fla. v. Nat'l Republican Senatorial Comm.*, 950 F.3d 790 (11th Cir. 2020) (finding that signature match procedure without opportunity to cure violated the *Anderson-Burdick* test). Even if the Cure Prohibition procedures mean "a comparatively small number of voters are likely to be disenfranchised based on a signature mismatch each election cycle," courts have found that they violate the right to vote. See *Frederick v. Lawson*, No. 119-CV-01959, 2020 WL 4882696, at \*16 (S.D. Ind. Aug. 20, 2020).

The risk of erroneous deprivation caused by the unreliability of signature matching and election officials' discretion to reject ballots is high. Laypersons—like the election officials responsible for signature evaluation—"are more than 3 ½ times more likely to declare an authentic signature non-genuine—which, in the case of signatures on mail-in ballots and ballot applications, would mean that election officials would reject more than 3 ½ times the number of ballots and applications than [Forensic Document Examiner]s." Mohammed Dec. ¶ 34. Laypersons had a 19.3% rate for signature matching, and it "can safely be assumed that the error rate will rise when

inadequate comparison samples and time are available to the screener.” *Id.* ¶ 36. Likewise, for older members of the Organizational Plaintiffs, or those with underlying health conditions, it is basically impossible to produce a consistent signature, meaning the risk of deprivation is only multiplied. *See id.* ¶ 41. This risk is heightened for the November election, where COVID-19 will lead more voters to vote absentee by mail than ever before because of a reasonable fear that contact with others on Election Day may increase their risk of contracting the coronavirus.

The inherently problematic practice of signature matching cannot be applied without the opportunity to cure. *Detzner*, 347 F. Supp. 3d at 1030–31 (“Vote-by-mail voters, in this election, were not notified of a signature mismatch problem until it was too late to cure... Without this Court’s intervention, these potential voters have no remedy. Rather, they are simply out of luck and deprived of the right to vote.). Mississippi law, however, provides voters with neither notice of a signature mismatch nor the opportunity to cure the mismatch. *See* Miss. Code Ann. § 23-15-641(5). This satisfies the need to establish a substantial burden on Plaintiffs’ fundamental right to vote under *Anderson-Burdick*.

## **2. Mississippi Has No Legitimate Interest in Depriving Voters of Their Franchise Without Notice and an Opportunity To Cure.**

Mississippi’s flawed Cure Prohibition does not serve any plausible state interest in election integrity, nor does it outweigh the burden placed on Plaintiffs and their members by failing to institute notice and cure procedures that safeguard the right to vote. First, the existing signature verification process is not needed to address theoretical voter confusion or fraud. For example, Virginia held an election in May that required a witness signature on absentee ballots, while the June election did not. And yet “[e]very indication before the Court is that the June primary was conducted without the witness signature requirement and without any corresponding increase in voter confusion or election fraud—the [intervenor] has not provided any evidence to the contrary

and no state official or entity has come forth to intervene or file an amicus brief expressing otherwise.” *League of Women Voters of Va. v. Va. State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 4927524, at \*14 (W.D. Va. Aug. 21, 2020).

Likewise, Defendants’ failure to provide voters with an opportunity to cure any perceived signature mismatch demonstrates that the current system is not sufficiently weighty to justify the state’s interest. In fact, signature *validation* would advance the state’s goals and affirm public confidence in the election. See *Frederick*, 2020 WL 4882696, at \*15; *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 220 (D.N.H. 2018); *Fla. Democratic Party v. Detzner*, No. 4:16CV607-MW/CAS2016, 2016 WL 6090943, at \*7 (N.D. Fla. Oct. 16, 2016) (“[L]etting mismatched-signature voters cure their vote by proving their identity further prevents voter fraud—it allows supervisors of elections to confirm the identity of that voter before their vote is counted.”). Mississippi’s inherently unreliable system, on the other hand, directly undermines public faith in elections. See *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1324 (11th Cir. 2019) (“[V]ote-by-mail voters who followed the ostensible deadline for their ballots only to discover that their votes would not be counted and that they would have no recourse were the ones to experience a clash with their expectations and fundamental fairness . . .”). Mississippi’s interests in the Cure Prohibition do not outweigh the burden placed on the fundamental right to vote, and Mississippi’s scheme therefore fails under *Anderson-Burdick*.

**D. Mississippi’s Error-Prone Cure Prohibition Deprives Absentee Voters’ Right to Procedural Due Process**

**1. Legal Standard.**

In determining whether a challenged state action violates due process, courts engage in a “two step inquiry,” inquiring (1) whether the plaintiff has protected liberty or property interest with which the state has interfered, i.e., whether due process applies, and (2) whether the

procedures related to the deprivation were constitutionally sufficient, i.e., what process is due. *O'Donnell v. Harris Cty.*, 892 F.3d 147, 157 (5th Cir. 2018). To make the latter determination, courts apply the three-factor test announced by the United States Supreme Court in *Mathews v. Eldridge*, balancing: “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.” *Johnson v. Morales*, 946 F.3d 911, 922 (6th Cir. 2020) (quoting *Mathews*, 424 U.S. 319, 335 (1976)).

**2. Plaintiffs Have a Constitutionally Protected Interest in the Right to Vote.**

The right to vote in Mississippi is protected by the doctrine of procedural due process, as all voters have a liberty interest stemming from both the United States Constitution, the Mississippi Constitution, and state law. *See Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) (“A liberty interest may arise from the Constitution itself . . . or it may arise from an expectation or interest created by state laws or policies.”); *see also Lewis*, 2020 WL 4344432, at \*15 (finding a protected liberty interest in the right to vote and holding that “Plaintiffs have adequately alleged a due process claim against the Signature Match Requirement”); *Democracy N. Carolina*, No. 1:20-CV-457, 2020 WL 4484063, at \*53 (M.D.N.C. Aug. 4, 2020) (“The right to vote is a constitutionally protected liberty interest”).

To effectuate the fundamental right to vote, Mississippi permits eligible voters a statutory right to vote by mail if the voter meets one of the eligibility requirements under Section 23-15-713 of the Mississippi Code. In doing so, Mississippi has provided its eligible citizens with a protected liberty interest which cannot be deprived without due process. *Lewis*, 2020 WL 4344432, at \*15.

But even without such legislative authority, the United States and Mississippi Constitutions<sup>12</sup> grant the fundamental right to vote as well, establishing a liberty interest. *See Democracy N. Carolina*, 2020 WL 4484063, at \*53. An eligible voter’s interest in casting an absentee ballot by mail extends to having it counted on equal terms with other voters. *See League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 477 (6th Circ. 2008); *see also Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) (“The right to vote includes the right to have the ballot counted.”).

**3. Due Process Requires Mississippi To Provide Voters with Pre-deprivation Notice and an Opportunity to Cure Ballot Signature Impairments.**

Mississippi may not arbitrarily disenfranchise citizens who avail themselves of its absentee voting system. *See Saucedo*, 335 F. Supp. 3d at 217 (“Having induced voters to vote by absentee ballot, the State must provide adequate process to ensure that voters’ ballots are fairly considered and, if eligible, counted.”). Rather, the rule is that due process “requires some kind of a hearing before the State deprives a person of liberty or property,” and the balancing test set forth in *Eldridge* shapes that inquiry. *See Johnson*, 946 F.3d at 922 (citing *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (collecting cases)).

The first *Eldridge* factor weighs heavily in Plaintiffs’ favor. Courts hearing similar challenges to procedurally deficient signature-matching regimes have found that the first *Eldridge* factor strongly favors the Plaintiffs because of the foundational importance of voting rights. *See, e.g., Self Advocacy Sols. N.D.*, No. 3:20-CV-00071, 2020 WL 2951012, at \*9 (D.N.D. June 3, 2020) (“North Dakota’s decision to allow voting via absentee ballot requires the state to administer the system constitutionally”) (internal quotation marks and citations omitted); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1338 (N.D. Ga. 2018) (finding that “the private interest at issue implicates

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<sup>12</sup> The right to vote is codified in Section 241 of the Constitution of the State of Mississippi. .

the individual's fundamental right to vote and is therefore entitled to substantial weight"); *Saucedo*, 335 F. Supp. 3d at 217 (accord[ing] the private interest factor "significant weight" given the constitutional significance of voting rights). Indeed, here, the weight of this interest is amplified because mail-in voting will be functionally the *only* means available to many voters to safely exercise their constitutional right to vote. *See supra* Factual Background; *cf. O'Brien v. Skinner*, 414 U.S. 524, 530 (1974).

The second *Eldridge* factor—the probable value of additional process in reducing the risk of erroneous deprivations—also favors Plaintiffs. As discussed herein, laypersons are notoriously poor at accurately matching signatures compared to expert. *See* Mohammed Decl. ¶ 23; 52. Election officials "lack the tools and training to properly account for signature variation, which leads to erroneous mismatch determinations that are particularly pronounced in populations with greater signature variability, such as the elderly, disabled, individuals suffering from poor health, young voters (18-21), and non-native English speakers." *Id.* ¶ 25.

Nevertheless, Mississippi voters will have their valid ballots erroneously rejected based on the untrained determination of election officials, regardless of whether a mismatch is real or perceived. *See* Miss. Code Ann. § 23-15-641(1); *Fla. Democratic Party*, 2016 WL 6090943, at \*6 (stating "[i]f disenfranchising thousands of eligible voters does not amount to a severe burden on the right to vote, then this Court is at a loss as to what does"). Then, voters are denied the opportunity to cure the perceived deficiency with their signature and have their vote counted.

Pre-deprivation notice and an opportunity to cure perceived mail-in ballot deficiencies are necessary to lower the risk of erroneous disenfranchisement. *See Martin*, 341 F. Supp. 3d at 1339 (holding that "permitting an absentee voter to resolve an alleged signature discrepancy . . . has the very tangible benefit of avoiding disenfranchisement"); *Saucedo*, 335 F. Supp. 3d at 219; *Self*

*Advocacy Sols.*, 2020 WL 2951012 at \*9 (finding that “[b]ecause there is no possibility of meaningful post-deprivation process when a voter’s ballot is rejected (there is no way to vote after an election is over, after all), sufficient pre-deprivation process is the constitutional imperative”). Given the high risk of erroneous deprivations and the indisputable effectiveness of the simple notice-and-cure procedure Plaintiffs seek, the second *Eldridge* factor favors granting relief.

The third *Eldridge* factor also favors Plaintiffs. Defendants have no interest in depriving any eligible voter of the fundamental right to have their vote counted. Mississippi law already provides for formal notice procedures when a voter submits two ballots in the same envelope, and notice and an opportunity to cure affidavit ballots cast when a voter does not provide proper photo identification at a polling place. *See* Miss. Code Ann. § 23-15-641(2); Mississippi Code § 23-15-573. These procedures provide a blueprint for Cure Provision, such that the state can adopt procedures to ensure that voters can cure ballots rejected because of signature discrepancies.

The failure to provide pre-deprivation notice and opportunity to cure is inconsistent with any proffered interest in preventing voter fraud. *See Democratic Exec. Comm. of Fla.*, 915 F.3d at 1327; *see also Richardson, v. Texas Sec. of State*, No. SA-19-CV-00963-OLG, 2020 WL 5367216, at \*29 (W.D. Tex. Sept. 8, 2020) (“In sum, it is clear that the Secretary's legitimate interest in preventing voter fraud actually weighs *in favor* of the implementation of additional procedural safeguards.”). Procedural due process requires that Defendants, with respect to the Cure Prohibition, (1) adopt uniform standards, training, and education for elections officials around signature matching and (2) require that voters receive the opportunity to cure before elections administrators reject their ballots. *See Saucedo*, 335 F. Supp. 3d at 220; *see also Self Advocacy Sols.*, 2020 WL 2951012 at \*10 (noting that “allowing voters to verify the validity of their ballots



demonstrable advances—rather than hinders—these goals [of preventing voter fraud and upholding the integrity of elections”).

### **III. PLAINTIFFS ARE AT IMMINENT RISK OF IRREPARABLE HARM**

#### **A. The Excuse Requirement, Notarization Requirement, and Cure Prohibition Will Cause Irreparable Harm Because They Deny or Abridge Plaintiffs’ and Their Members’ Fundamental Right to Vote**

The violation of a citizen’s right to vote is the quintessential irreparable injury justifying a preliminary injunction. *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986); *OCA Greater Houston v. Texas*, No. 15-679, 2016 WL 4597636, at \*4 (W.D. Tex. Sept. 2, 2016) (finding the loss of the right to vote “cannot be undone with monetary relief”).

Here, if the Excuse Requirement is not construed to include reasonable fear of contracting the coronavirus, it would force “unnecessary exposure to COVID-19” and therefore “provides a basis to find that [Plaintiffs] will suffer irreparable injury” by forcing voters to choose between the right to vote and their health. *Perez-Perez v. Adducci*, No. 20-10833, 2020 WL 2305276, at \*8 (E.D. Mich. May 9, 2020). Regardless of any safety measures, in-person voting will force Plaintiffs to put themselves and their families at risk of potentially deadly infection to vote. *See* Reingold Dec. ¶ 18; 20. Further, with respect to the Organizational Plaintiffs, their members will also have to risk their health or the health of their loved ones and communities to cast a ballot on Election Day. Indeed, “[a]ll people are susceptible to and capable of getting COVID-19 because of the ease with which it spreads.” Reingold Dec. ¶ 7. Mississippi’s Notarization Requirement likewise forces voters, such as Plaintiff Goggin and Organizational Plaintiffs’ members who are permitted to vote by absentee ballot, to leave their homes *twice* to engage in close face-to-face contact to obtain proper signatures under the Notarization Requirement, or forgo their right to vote.

Finally, Mississippi’s Cure Prohibition of absentee ballots will lead to irreparable harm. As explained above, absent injunctive relief Individual Plaintiffs, members of Organizational

Plaintiffs, and other eligible Mississippi voters face total disenfranchisement because they will not have the ability to cure an erroneous signature mismatch on their absentee ballot.

**B. The Cure Prohibition Will Cause Irreparable Harm Because It Violates Plaintiffs and Their Members' Procedural Due Process Rights**

For the reasons explained above, Individual Plaintiffs and Organizational Plaintiffs' members are likely to suffer irreparable harm to their constitutional rights if Mississippi's Cure Prohibition, absent notice of the opportunity to cure any alleged mismatch, remains in place during the COVID-19 pandemic, because Plaintiffs risk total deprivation of their right to vote. *See Richardson*, 2020 WL 5367216, \*36.

**IV. A PRELIMINARY INJUNCTION WILL SERVE THE PUBLIC INTEREST**

An injunction would ensure that all Mississippi voters have the ability to exercise their fundamental right to vote in the midst of an unprecedented public health crisis and prevent disenfranchisement of properly cast ballots. "The fundamental right to vote is one of the cornerstones of our democratic society . . . [t]he threatened deprivation of this fundamental right can never be tolerated." *Murphree v. Winter*, 589 F. Supp. 374, 382 (S.D. Miss. 1984) (finding that granting a preliminary injunction requiring access to absentee ballot would "clearly . . . not disserve the public interest."); Further, the public interest also "lies with safeguarding public health." *Pashby v. Delia*, 709 F.3d 307, 331 (4th Cir. 2013).

**V. THE BALANCE OF EQUITIES FAVORS GRANTING A PRELIMINARY INJUNCTION**

The balance of equities weighs heavily in favor of an injunction. Plaintiffs seek injunctive relief approximately two months in advance of the November election, giving Defendants time to address administrative issues (if any) and communicate to citizens and election officials.

Defendants will face little if any harm from construing the Excuse Requirement to include those voters who reasonably fear that voting in person will increase their risk of exposure to

COVID-19. On the other hand, if the Excuse Requirement is not construed so as to permit individuals who reasonably fear that voting in person will increase their risk of exposure to COVID-19 to vote by absentee ballot, voters will be forced to choose between voting in person on Election Day and risking their health, or not voting at all. The equities favor Plaintiffs.

With respect to the Notarization Requirement, is no evidence that it will advance the State's interest in protecting against fraud. *See Thomas*, 2020 WL 2617329, at \*21; *see also Meredith Decl.* ¶ 59.

Finally, with respect to the Cure Prohibition, implementation of procedures to provide absentee voters with notice and an opportunity to cure for signature-related errors would impose only a minimal burden on the state. On the other hand, Plaintiffs and Plaintiffs' members otherwise face the prospect of deprivation of their right to vote and due process.

### **CONCLUSION**

For the reasons stated herein, the Court should grant Plaintiffs' Motion for a Preliminary Injunction.

/s/ Jade Morgan

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**Attorneys for Plaintiffs**

**CERTIFICATE OF SERVICE**

I hereby certify on this 17th day of September, 2020, a true and correct copy of the foregoing was filed electronically and is available for viewing and downloading from the Court's ECF System. Notice of this filing will be sent to all counsel of record by operation of the ECF System.

/s/ Jade Morgan  
Jade Morgan, Esq.

Dated: September 17, 2020

**EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

PLAINTIFFS, et al.,

Case No. 3:20-cv-572-DPJ-FKB

Plaintiffs,

v.

MICHAEL WATSON, et al.,

Defendants.

**DECLARATION OF CHERYL GOGGIN**

Pursuant to 28 U.S.C. § 1746, I, Cheryl Goggin, declare as follows:

1. I am over the age of eighteen, and I am competent to make this declaration. I provide this declaration based upon my personal knowledge. I would testify to the facts in this declaration under oath if called upon to do so.
2. I am a Plaintiff in the case *Plaintiffs v. Watson*.
3. I am 72 years old and a resident of Hattiesburg, Mississippi. I am a U.S. citizen and have never lost my right to vote due to felony conviction or court order.
4. I am a white woman. I live alone in my home. I do not have any family who live nearby.
5. I am registered to vote in Hattiesburg, Mississippi.
6. I am a member of the Pine Belt chapter of the League of Women Voters of Mississippi.
7. I am a retired art history professor. I taught at the University of Southern Mississippi for 25 years prior to my retirement. Though I am retired from teaching, I still conduct academic research. I am currently working on a book about a twelfth-century author of an illuminated manuscript.

8. I currently have hypertension and coronary artery disease, both of which put me at higher risk for contracting, suffering severe complications, and dying from COVID-19.

9. Because of my age and medical conditions, I am taking efforts to physically isolate myself to prevent contracting COVID-19.

10. Since on or around March 11, I have been staying home except for necessary errands. When I must go out, I wear a mask and avoid direct contact with other people by using curbside pickup of medications and library books as well as curbside service for my hearing aids. I only grocery shop in the early morning during hours dedicated for those who are at-risk for COVID-19, and I use the self-checkout kiosks. I protect myself by wearing long-sleeved shirts, long pants, a mask, and gloves. I do not allow friends to visit me at my home, and I have not participated in any in-person social activities or gatherings since February.

11. I typically prefer to vote in-person at my local polling place. I voted in-person during Mississippi's 2020 primary election on March 10. I would prefer to vote in person for upcoming elections, but because of my increased risk of contracting, having severe complications, and dying from COVID-19, I am unable to vote in person without severe risks to my health and life.

12. Because in-person voting poses a severe risk to my health and life during the COVID-19 pandemic, I intend to vote by absentee ballot in all upcoming elections, including the November 2020 general election.

13. I understand that I qualify to vote by absentee ballot in Mississippi because I am over the age of 65.

14. I also understand that to apply for an absentee ballot I must have my absentee ballot application notarized or signed by an official authorized to administer oaths for absentee balloting. In order to have my application notarized or signed, I would have to leave my home



and engage in the person-to-person contact that I have been avoiding to protect my health. This is a risk I do not want to take given my elevated risk of contracting and suffering severe illness from COVID-19.

15. I also understand that for my absentee ballot to be counted, I must have it signed by a qualified attesting witness such as a notary public, a United States postmaster, an assistant United States postmaster, or other qualified official. This will require me to again leave my home and engage in the person-to-person contact that I have been avoiding.

16. The only place I know to seek the services of a notary is at my local bank. While I have used the drive-up teller at this bank twice during this pandemic, I did not have any human contact on either occasion. I would not be comfortable going inside the bank to have my absentee ballot application or the ballot itself notarized. This would require the very person-to-person contact that I have been avoiding to protect myself from COVID-19 infection.

17. I would like to vote during the pandemic, including in November 2020, without putting my health and safety at risk.

18. If the notarization requirement is not waived for absentee ballot applications and absentee ballots in Mississippi while the pandemic is a threat to my health, including in the November 2020 elections, I will be forced to choose between casting a ballot and protecting my health and life.

19. Voting has always been important to me. I believe it is my civic duty to exercise my fundamental right to vote and to protect that right for myself and my fellow citizens.

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

Executed this 10<sup>th</sup> day of August 2020.

DocuSigned by:  
*Cheryl Goggin*  
8A847E857C83450...

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Cheryl Goggin

# **EXHIBIT 2**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

CYNTHIA PARHAM, JED OPPENHEIM,  
CHERYL GOGGIN, LEAGUE OF WOMEN  
VOTERS MISSISSIPPI, and MISSISSIPPI STATE  
CONFERENCE OF THE NAACP,

Plaintiffs,

v.

MICHAEL D. WATSON, JR., in his official  
capacity as Secretary of State of Mississippi; and  
LYNN FITCH, in her official capacity as Attorney  
General of the State of Mississippi,

Defendants.

Civil Case No. 3:20-cv-572-DPJ-FKB

**DECLARATION OF DR. LINTON A. MOHAMMED**

LINTON A. MOHAMMED, acting in accordance with 28 U.S.C. § 1746, Federal Rule of Civil Procedure 26(a)(2)(B), and Federal Rules of Evidence 702 and 703, does hereby declare and say:

1. I am a Forensic Document Examiner (“FDE”), certified by the American Board of Forensic Document Examiners. I have been engaged in this matter on behalf of Plaintiffs, Cynthia Parham, Jed Oppenheim, Cheryl Goggin, League of Women Voters Mississippi, and Mississippi State Conference of the NAACP, to opine on the reliability of the procedures and techniques of the Mississippi signature verification process for mail-in ballot applications and mail-in ballot return envelopes as set forth in Mississippi elections laws and guidance.

**I. QUALIFICATIONS**

2. I am a U.S.-certified and internationally recognized FDE, and the focus of my research and professional experience is on handwriting and signature identification and the scientific approach to analyzing questioned signatures. I am, and since 1998 continuously have been,

certified by the American Board of Forensic Document Examiners (ABFDE), a certifying board for FDEs in North America. I am also certified in document examination by the Chartered Society of Forensic Sciences (United Kingdom). I specialize in the forensic science of analyzing genuine, disguised, and simulated signatures.

3. I co-founded and I am currently the principal at Forensic Science Consultants, Inc., where I conduct forensic document examination casework and research on handwriting and signature examination as well as other forensic document examination (e.g., document alterations, obliterations, indented impressions, or pages added or removed). I am also an adjunct professor at Oklahoma State University, where I teach graduate courses on the scientific examination of questioned documents.

4. During and prior to my time with Forensic Science Consultants, Inc., and for nearly fourteen years, I worked as Forensic Document Examiner and Senior Document Examiner for the San Diego Sherriff's Department Regional Crime Laboratory. There, I conducted examinations of signatures and handwriting for cases investigated by San Diego County agencies as well as by local police, state, and federal agencies. I also served as Technical Lead of the Questioned Documents Section of the Regional Crime Laboratory, trained investigators and attorneys, provided expert testimony, conducted research, and produced the Questioned Documents Section Quality Manuals. Prior to that, I worked internationally as an FDE at the Laboratory of the Government Chemist (England), the Caribbean Institute of Forensic Investigations Ltd. (West Indies), and the Trinidad and Tobago Forensic Science Center (West Indies). In those roles, I conducted forensic document examinations and testified in criminal and civil cases for multiple police forces and other government agencies.

5. I am a Fellow of the Questioned Documents Section of the American Academy of Forensic Sciences (AAFS), a Fellow and diplomate of the Chartered Society of Forensic Sciences, and a member of the Canadian Society of Forensic Science. I served as the Chair of the AAFS Questioned Documents Section from 2016 to 2018. I am an appointed member and Vice Chair of the Academy Standards Board, which was formed by the AAFS to develop documentary standards for the forensic sciences. I served as a member of the National Institute of Standards and Technology's Expert Working Group on Human Factors in Handwriting Examination, the National Institute of Standards and Technology Organization of Scientific Area Committees' Physics/Pattern Interpretation Scientific Area Committee, and the Scientific Working Group on Documents. I have previously served as President, Vice President, Treasurer, and Director of the American Society of Questioned Document Examiners (ASQDE).

6. I am the editor of the Journal of the American Society of Questioned Document Examiners. I am an editorial review board member of Forensic Science and Technology and I served on the editorial review board of the Journal of Forensic Sciences from 2005-2020. I am also a guest reviewer for the following journals: Forensic Science International, Science & Justice, Australian Journal of Forensic Science, Egyptian Journal of Forensic Sciences, and IEEE Transactions on Cybernetics.

7. I have published sixteen articles on signature and handwriting examination, and forensic document examination. Many of my articles focus on the analysis of genuine and forged signatures and handwriting examination. I have also given numerous presentations and workshops on signature and document examination worldwide, including the United States, Australia, Brazil, Canada, China, Latvia, Poland, Portugal, Saudi Arabia, Scotland, and Turkey.

8. In 2019, I authored a book titled, *Forensic Examination of Signatures* which describes and discusses state of the art techniques and research in signature examination.<sup>1</sup> I co-authored a book in 2012 titled *The Neuroscience of Handwriting: Applications for Forensic Document Examination*, which integrates research in the fields of motor control, neuroscience, kinematics, and robotics to evaluate questioned signatures and handwriting.<sup>2</sup> The book sets forth, among other things, the scientific fundamentals of motor control as relevant to handwriting; the impact of age, disease, and medication on handwriting; and a quantitative approach to signature authentication, including kinematic and laboratory analyses of genuine versus disguised versus forged signatures.

9. In 2012, I received the American Board of Forensic Document Examiners' New Horizon Award "In Recognition of His Exceptional Contributions in Scientific Research for the Advancement of Forensic Document Examination." In 2019, I received the American Academy of Forensic Sciences Questioned Documents Section Ordway Hilton Award "In Recognition of Outstanding Contributions to Forensic Document Examination."

10. I have testified as an expert witness in court and depositions more than 150 times on issues of signature, handwriting, and document examination in both civil and criminal cases, including cases in the United States, England, Trinidad & Tobago, and St. Vincent. I have provided trial and deposition testimony in voter signature matching cases in New Hampshire, Texas, Iowa, and Missouri.

11. I received a Ph.D. from La Trobe University in Melbourne, Australia in human biosciences, where I wrote my thesis on signature examination: "*Elucidating static and dynamic features to discriminate between signature disguise and signature forgery behavior.*" Prior to that,

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<sup>1</sup> Mohammed, L. (2019). *Forensic Examination of Signatures*. San Diego: Elsevier.

<sup>2</sup> Caligiuri, M.P., & Mohammed, L.A. (2012). *The Neuroscience of Handwriting: Applications for Forensic Document Examination*. Boca Raton: CRC Press/Taylor & Francis Group.

I received my undergraduate degree in science at the University of West Indies; underwent a two-year training program in document examination at the Trinidad and Tobago Forensic Science Center; and received a master's degree in forensic sciences at National University in San Diego, California.

12. My *curriculum vitae* is attached as Exhibit A, and a Testimony Listing for the past five years is attached as Exhibit B. I am being compensated at a rate of \$400.00 per hour. My compensation in this matter is not in any way contingent on the content of my opinion or the outcome of this matter.

## II. BACKGROUND

13. For this Declaration, I reviewed the Plaintiff's Complaint filed in this matter; Miss. Code Ann. § 23-15-639, Miss. Code Ann. § 23-15-641, County Elections Handbook, and relevant academic literature.

14. Based on my review of the Complaint in this lawsuit, the laws challenged therein, Miss. Code Ann. § 23-15-639, Miss. Code Ann. § 23-15-641, and the County Elections Handbook, I understand election officials are required to compare the signatures on mail-in ballot applications and mail-in ballot return envelopes.

15. According to Miss. Code Ann. § 23-15-639(b), "The signature on the application shall then be compared with the signature on the back of the envelope. If it corresponds and the affidavit, if one is required, is sufficient and the resolution board find that the applicant is a registered and qualified voter or otherwise qualified to vote, the envelope shall then be opened and the ballot removed from the envelope, without its being unfolded, or permitted to be unfolded or examined."

16. No guidance is given as to what the term "corresponds" means.



17. According to Miss. Code Ann. § 23-15-641, “(1) For all absentee votes received by mail, ..., or if it is found that the signatures do not correspond, ...the previously cast vote shall not be allowed. Without opening the voter's envelope the resolution board shall mark across its face “REJECTED”, with the reason therefor.”

18. Neither the statutes governing the signature matching process, nor the County Elections Handbook provide any guidance to elections officials on how to compare signatures.

19. Based on my understanding, Mississippi election officials are lay individuals, meaning they are not required to have any training, certification, or experience in document examination or signature comparison.

20. Based on my understanding, there are no further written statewide standards or procedures for election officials to evaluate whether a signature on a mail-in ballot application or ballot return envelope match each other, or match a signature in the qualified voter file or on the voter registration card.

### **III. SUMMARY OF CONCLUSIONS**

21. The Mississippi signature match procedures do not set forth sufficient standards for determining whether a signature on a mail-in ballot application or return envelope match each other or match a voter signature displayed in the qualified voter file or on the voter's registration card, which results in error-prone determinations. Based on my review of the election statutes and the County Elections Handbook, Mississippi also does not require election officials to have any training in signature examination and does not require that election officials be provided examination equipment, such as proper light sources and microscopes.

22. Based on my experience and my review of the academic literature, it is my opinion that in these circumstances, Mississippi election officials are likely to make erroneous signature comparison determinations.

23. Determining whether a signature is genuine is a difficult task for even a trained FDE, as signatures are written in different styles with varying levels of readability and variability. Laypersons, such as Mississippi election officials, have a significantly higher rate of error in determining whether signatures are genuine. Laypersons are also more likely to wrongly determine that authentic signatures are *not* genuine than to make the opposite error. In other words, Mississippi election officials are significantly more likely than trained examiners to make an incorrect signature-comparison determination and are particularly likely to incorrectly decide that the signatures are not signed by the same person.

24. The high rate of error among laypersons generally results from the inability to distinguish between normal “variations” in one individual’s signatures as opposed to “differences” resulting from multiple signers. An individual’s signatures may vary for myriad reasons, including age, health, native language, and writing conditions.

25. Laypersons lack the tools and training to properly account for signature variation, which leads to erroneous mismatch determinations that are particularly pronounced in populations with greater signature variability, such as the elderly, disabled, individuals suffering from poor health, young voters (18-21), and non-native English speakers.

26. These signature-determination errors are further compounded for Mississippi election officials with diminished eyesight or “form blindness” (a type of impairment in visual perception defined below)—both of which impact an individual’s ability to make accurate handwriting authenticity determinations. While FDEs are screened for these traits, Mississippi law and

guidance regarding signature comparison do not require election officials to undergo such screening.

27. The elections officials compare the signature on the ballot application with the signature on the ballot envelope.

28. It must be noted that these signatures can only be “wet ink.”

29. At a minimum, ten signature samples are usually required for an accurate signature determination to account for an individual’s signature variability, given proper examination conditions.<sup>3</sup> However, this minimum amount can increase exponentially in cases where the writer is ill, disabled, elderly, or has other handwriting issues.

30. Further, if election officials have insufficient time to compare signatures, that would likely lead to additional erroneous determinations. A signature comparison may normally take a minimum of two hours.

31. In sum, it is my opinion that Mississippi’s current signature matching rules and procedures, which allow individuals without adequate training—and without guidance—to reject mail-in ballots and ballot applications for signatures they deem to be non-matching, will result in a significant number of erroneous rejections.

#### IV. ANALYSIS AND OPINIONS

##### **A. Mississippi Election Officials are likely to make erroneous signature Comparison Determinations.**

32. Individuals untrained in signature examination, like Mississippi election officials, are very likely to make mistakes when comparing signatures and are particularly likely to reject signatures erroneously as inauthentic or non-matching when they are in fact written by the same

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<sup>3</sup> Hilton, O. (1965). A further look at writing standards. *The Journal of Criminal Law, Criminology and Police Science*, Vol. 56, No. 3, p. 383.

individual. These rejections are considered “Type II”<sup>4</sup> errors, and laypersons are more likely than FDEs to make such errors for several reasons. First, untrained election officials cannot reliably determine whether signatures are written by different individuals or whether the signatures are written by one person but exhibit natural variations. Second, untrained reviewers do not account for the many reasons for naturally varying signatures, causing them to erroneously reject authentic signatures. This is particularly true for writers who are poorly educated, learned English as a second language, elderly, disabled, young, or have health conditions. Third, untrained elections officials also fail to account for the different signature styles and features, leading to erroneous rejections. Lastly, Mississippi election officials are not tested for form blindness like FDEs, a condition that impacts their ability to accurately review signatures.

**i. Untrained laypersons are more likely than FDEs to erroneously determine authentic signatures are inauthentic.**

33. There are two types of errors in signature examination. Type I errors occur when a non-genuine signature is deemed to be genuine, and a Type II error occurs when a genuine signature is concluded to be non-genuine. Type II errors are considered to more egregious than Type I, as in criminal cases an innocent writer may be charged based on an FDEs Type II error.

34. Compared to FDEs, laypersons have higher so-called Type II error rates. In a 2001 study reviewing the error rates of FDEs and laypersons in comparing six genuine signatures with six non-genuine signatures, laypersons made Type II errors in 26.1% of cases while trained signature FDEs made such errors in 7.05% of cases.<sup>5</sup> That means that laypersons are more than 3 ½ times more likely to declare an authentic signature non-genuine—which, in the case of

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<sup>4</sup> *Infra* paragraph 33.

<sup>5</sup> Kam M., Gummadidala K., Fielding G., Conn R. (2001). Signature Authentication by Forensic Document Examiners. *Journal of Forensic Science*, 46(4):884-888.

signatures on mail-in ballots and ballot applications, would mean that election officials would reject more than 3 ½ times the number of ballots and applications than FDEs. It should be noted that for this study, six specimen signatures were used. If, as in Mississippi elections, only one genuine signature is used for comparison, it is highly likely that the error rate for both experts and laypersons would increase significantly.

35. This study also found that laypersons are much more likely to make Type II errors than Type I errors, although laypersons are still substantially more likely to make Type I errors than trained FDEs (laypersons made Type I errors in 6.47% of cases while trained FDEs made such errors in 0.49% of cases).<sup>6</sup> A Type II error is considered among FDEs as being more egregious than a Type I error for signature verification.

36. Similarly, a study conducted in Australia found that FDEs were statistically better than laypersons in determining genuineness or non-genuineness. The FDE group had a 3.4% error rate while the laypersons had a 19.3% error rate.<sup>7</sup> It must be noted that these error rates occurred when adequate signature samples and examination time were available. It can safely be assumed that the error rate will rise when inadequate comparison samples and time are available to the screener.

**ii. Mississippi election officials cannot reliably determine whether signatures are written by different individuals or by one individual and exhibit natural variations.**

37. Determining whether signatures are made by the same or different individuals requires a reviewer to discern whether a feature or combination of features in signatures are “differences” or “variations.” Variations are deviations among repetitions of the same handwriting characteristic(s) that are normally demonstrated in the habits of each writer. A significant

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<sup>6</sup> *Id.*

<sup>7</sup> Sita, J., Found, B., & Rogers, D. (2002). *Forensic handwriting examiners expertise for signature comparison*. *J. Forensic Sci.* 47(5).

difference is an individualizing characteristic that is structurally divergent between handwritten items, that is outside the range of variation of the writer, and that cannot be reasonably explained.<sup>8</sup>

38. In the field of signature examination, unexplainable “*differences*” between signatures suggest that different individuals wrote the signatures, whereas “*variations*” between signatures mean that one individual wrote the signatures. Determining whether signature features are “*differences*” or “*variations*” is one of the most difficult determinations in signature examinations, even for experienced FDEs.

39. To make such a judgment reliably requires, at a minimum:

- Extensive training with different types of signatures: Becoming an FDE requires at least two, and typically three, years of full-time training with an experienced examiner, with at least eighteen months of training in the examination of signatures and handwriting. FDEs learn the science of signature examination, gain experience in casework, and are tested for proficiency.
- Adequate magnification and lighting equipment.
- Excellent eyesight.
- Adequate time: Insufficient time examining signatures is conducive to making errors. For example, one study found that FDEs spent more time looking at the questioned and known signatures than laypersons, and their evaluations were more accurate.<sup>9</sup>

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<sup>8</sup> Scientific Working Group for Documents Standard for the Examination of Handwritten Items ([www.swgdoc.org](http://www.swgdoc.org)).

<sup>9</sup> Merlino, M., Freeman, T., Dahis, V., Springer, V., et al. (Jan. 2015). *Validity, Reliability, Accuracy, and Bias in Forensic Signature Identification*. Department of Justice Grant 2010-DN-BX-K271, Document 248565, <https://www.ncjrs.gov/pdffiles1/nij/grants/248565.pdf>.

Without these elements, Mississippi election officials are likely to misconstrue legitimate and expected “variations” between one individual’s signatures for “differences” in signatures between two individuals, and conclude incorrectly that someone other than the registered voter signed the mail-in ballot or ballot application.

40. Further, an individual’s signatures may vary for myriad reasons, and to properly determine whether signatures are written by the same individual, one must consider the various reasons why features of the same individual’s signatures may visually appear different. In one of the leading textbooks on handwriting examination, authors Roy Huber & A.M. Headrick identified twenty common reasons why individuals’ signatures may appear to show variations:

- Adequacy of standards (or samples)—inadequate standards in terms of quantity and contemporaneousness will not be representative of the writer’s range of variation. Variations may therefore be interpreted as differences.
- Accidental occurrences—i.e., these are one-off variations that will not appear in the specimen signatures.<sup>10</sup> Misinterpretation may lead to a decision of difference versus variation.
- Alternative styles—i.e., some writers have alternate signature styles. This may not be represented in the specimens.
- Ambidexterity.
- Carelessness or negligence.
- Changes in the health condition of writer.

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<sup>10</sup> A specimen signature is a signature that is known to have been written by a person. It is not disputed. Typical specimens are Driver’s Licenses and Identification Cards.

- Changes in the physical condition of writer—e.g., fractures, fatigue, or weakness may alter features of an individual’s signature.
- Changes in the mental condition or state of the writer.
- Concentration on the act of writing.
- Disguise or deliberate change.
- Drugs or alcohol.
- Influence of medications.
- Intentional change for later denial.
- Nervous tension.
- Natural variations—i.e., inherent variation as a result of differences in neuro-muscular coordination.
- Writing conditions—e.g., the individual’s place or circumstances, such as in a moving vehicle or at a stationary table.
- Writing instrument—e.g., a pen versus a stylus.
- Writing position—e.g., the individual’s stance.
- Writing surface—e.g., paper versus electronic screen.
- Writing under stress.

Examiners must consider each of these reasons in determining whether a feature is a “difference” created by different writers or whether the feature is simply a “variation” from the same writer. It is very unlikely that a Mississippi election official will have the knowledge, training, and experience to properly account for these factors.



41. Laypersons are significantly more likely than FDEs to incorrectly reject authentic signatures of illiterate writers<sup>11</sup>, writers for whom English is a second language, elderly writers, disabled writers, and writers with health conditions<sup>12,13</sup> to be non-genuine. Studies have shown that these types of writers tend to have less pen control than most other writers, and therefore would have a greater range of variation in their signatures. And the increased variation in the signatures of these groups only compounds laypersons' tendencies to err on the side of incorrectly finding authentic signatures to be non-genuine.

42. Since signatures are developed as a motor program in the brain<sup>14</sup>, the signatures of writers for whom English is a second language are more likely to exhibit wide ranges of variation, as these writers will have to discard their former learned motor program and develop a new one for their new signature style. For instance, a writer who first learned to write in a non-Latin-based script, such as Chinese, will naturally show more variation when signing a document in English than a native writer. Likewise, where the writer's native language is written right to left, such as Urdu, the writer's signature may also be more likely to show variations in letter slanting. Qualified, experienced experts in the area of signature verification would know and account for these factors in evaluating signatures; Mississippi election officials, even if put through a short training session, are unlikely to be able to accurately account for these differences, particularly in an expedient time frame or when only one or a few specimen signatures are available for comparison.

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<sup>11</sup> Hilton, O. (1965). A further look at writing standards. *Journal of Criminal Law, Criminology, and Police Science*, Vol. 56, No. 3, pp.383.

<sup>12</sup> Hilton, O. (1956). Influence of serious illness on handwriting identification. *Postgraduate Medicine*, Vol. 19, No. 2.

<sup>13</sup> Hilton, O. (1969). Consideration of the writer's health in identifying signatures and detecting forgery. *Journal of Forensic Sciences*, Vol. 14, No. 2, pp. 157-166.

<sup>14</sup> Mohammed, L. (2019). *Forensic Examination of Signatures*. Elsevier: San Diego, pp. 5-16.

43. Furthermore, young voters (ages 18 to 25) are not likely to have fully developed signatures. According to Huber & Headrick (1999), “the development and progress of one’s handwriting passes through four stages in the course of a lifetime: (1) the formative stage, (2) the impressionable or adolescent stage, (3) the mature stage, and (4) the stage of degeneration.”<sup>15</sup> The signatures of young voters will fall between stages 2 and 3. The U.S. Postal Service has reported that “writer[s] achieve graphic maturity by the 20<sup>th</sup> birthday.”<sup>16</sup> Handwriting was developed as a means of communication<sup>17</sup>, whereas signatures are developed as a means of identification<sup>18</sup>. Signatures tend to be more personalized and can therefore be considered as an over-developed form of handwriting. It follows that young writers today will not have developed signatures until later in life. This is exacerbated as young writers will presumably need to sign less often due to the increased use of personal identification numbers (“PINs”) and other non-handwritten forms of identification. Their signature development can reasonably be expected to take longer than for previous generations. This will lead to an increased range of variation in a young writer’s signature. The handwriting of adolescents can cause difficulties even for trained FDEs. Comparisons by

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<sup>15</sup> Huber, R.A. & Headrick, A.M. (1999). *Handwriting Identification: Facts and Fundamentals*. Boca Raton, FL: CRC Press.

<sup>16</sup> Bureau of the Chief Postal Inspector (1966), *20<sup>th</sup> Century Handwriting Systems and Their Importance to the Document Analyst*.

<sup>17</sup> Plamondon, R., Srihari, S. (2000). Online and off-line handwriting recognition: a comprehensive survey. *IEEE Transactions on Pattern Analysis and Machine Intelligence*, Volume: 22, Issue:1, Jan.

<sup>18</sup> Srihari S.N., Srinivasan H., Chen S., Beal M.J. (2008). Machine Learning for Signature Verification. In: Marinai S., Fujisawa H. (eds) *Machine Learning in Document Analysis and Recognition. Studies in Computational Intelligence*, Vol 90. Springer, Berlin, Heidelberg, p. 389.

untrained individuals of young voters' signatures on mail-in ballot applications and return envelopes will exacerbate the potential for error in rejecting their ballots.<sup>19</sup>

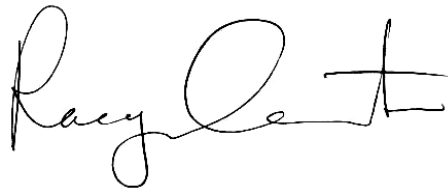
**iv. Mississippi elections officials also fail to account for the different signature styles and features, leading to erroneous rejections.**

44. One of the reasons that accurate signature comparison determinations prove difficult, even for a trained FDE, is that signatures are written in three different styles<sup>20</sup>:

- Text-based: Nearly all the letters can be interpreted.

A handwritten signature in a cursive, text-based style. The name 'Lator Mohammed' is clearly legible, with each letter being distinct and connected in a way that allows for easy interpretation.

- Mixed: More than two, but not all, letters can be interpreted.

A handwritten signature in a mixed style. The name 'Ray' is partially legible, with some letters being more distinct than others, making it difficult to interpret fully.

- Stylized: No letters can be interpreted.

A handwritten signature in a highly stylized, illegible style. The letters are heavily distorted and intertwined, making them completely unrecognizable.

These signature styles exhibit significantly different characteristics that impact the signature-matching analysis, and by extension, the determination of whether signatures are genuine. For example, kinematic features of signatures, such as size, velocity, changes of acceleration, and pen pressure are important in determining whether a signature is genuine. Yet these kinematic features

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<sup>19</sup> Cusack, C.T & Hargett, J.W. (1989). A Comparison Study of the Handwriting of Adolescents. *Forensic Science International*, 42(3):239-248.

<sup>20</sup> Mohammed, L., Found, B., Rogers, D. (2008). Frequency of signature styles in San Diego County. *Journal of the American Society of Questioned Document Examiners*, Vol. 11, No. 1.

vary between the same individual's signatures, with the degree of variations often dependent on the signature style. The kinematic features of stylized signatures, for example, vary more significantly than the kinematic features of text-based signatures. And the less legible a signature becomes, the more the election official depends on their pattern recognition ability. Thus, signature styles can have an impact on the determination of genuineness or non-genuineness. Unfamiliarity with the different signature styles may impact a reviewer's ability to determine whether two signatures come from the same person, and would likely cause a lay person to decide that the compared signatures exhibit "differences" when the changes in features are simply "variations."

45. To determine whether signatures are made by the same individual, a reviewer should focus on holistic features of signatures, such as alignment, slant, pen lifts, rhythm, the size of writing, the slope or slant of the letters, or other characteristics that are diagnostic of the process used to create signatures. These features are subtle, and a writer is usually unaware of the features, as they are excited by the writer's subconscious motor program. These subtle features provide significant evidence of genuineness because they occur in natural handwriting. Lay persons, however, often focus instead on more eye-catching features in evaluating signatures. For example, an eye-tracking study on signature examination found that "lay participants focused to a greater extent on individual features such as arches, eyelets, hooks, shoulders, connections, troughs, or other individual features" that catch the eye, and "appear[ed] less likely to use holistic features."<sup>21</sup> But focusing on these eye-catching features is problematic because these are the types of features that a simulator will try to capture. Properly utilizing the subtle, holistic features of signatures to determine genuineness, however, requires both training and adequate time for review.

**v. Mississippi election officials are not tested for form blindness, increasing the risk of erroneous signature match determinations.**

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<sup>21</sup> Merlino, *supra* note 9.

46. A laypersons' ability to make consistently correct determinations as to the genuineness of a signature may also be impacted by a condition known as "form blindness," which impairs "the ability to see minute differences in angles, forms, and sizes."<sup>22</sup> Most ophthalmologists agree that form perception is not an eye problem but rather a translational problem. That is, "it is a perceptual inability to distinguish the small differences between shapes, colors, and patterns."<sup>23</sup> Therefore, in most cases, form blindness goes undetected, but diminishes a reviewer's ability to make accurate determinations of a signature's genuineness.<sup>24</sup> And while FDEs must pass a form blindness test<sup>25</sup> before being trained in handwriting identification, Mississippi requires no such test for election officials. Thus, there is a risk that some election officials have form blindness and are particularly prone to making erroneous signature determinations.

**B. Even trained FDEs are likely to make erroneous signature comparison determinations under Mississippi's signature matching procedures.**

47. Even for trained FDEs, Mississippi's signature matching process would be prone to erroneous determinations due to the limited number of comparison signatures and the lack of proper equipment.

48. Normally, FDEs require multiple specimen signatures for comparison with a questioned signature, and often more if issues such as age or illness are involved. These specimens

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<sup>22</sup> Bertram, D. (2009). Univ. of S. Miss. *Form Blindness Testing: Assessing the Ability to Perform Latent Print Examination by Traditional Versus Nontraditional Students* Dissertations. 996, p. 33; Byrd, J. & Bertram, D. (2003). Form-Blindness. *Journal of Forensic Identification*, 53(3):315-341.

<sup>23</sup> Moody, Meredith G., "Form-Blindness and Its Implications: A Verification Study" (2016); Honors Theses; Paper 388.

<sup>24</sup> *Id.*, p. 32.

<sup>25</sup> Osborn, A.S.(1946). *Questioned Document Problems* 2<sup>nd</sup>. Ed., Boyd Printing Company, pp. 231-250.

are required to adequately determine the range of variation of the writer and properly account for the reasons for variation within an individual's signatures discussed above. Indeed, no two complex, skillfully written, genuine signatures of one writer have ever been found to be exactly alike, but such a statement should be understood to be true speaking microscopically, and not as the carpenter measures<sup>26</sup>. This is so because signatures are the product of a motor program developed in the brain after practice and then executed with neuro-muscular coordination, and many factors can influence an individual's motor program and neuro-muscular coordination, including the factors discussed above. Inadequate standards, or failure to use adequate specimens fully representing the range of variation in a writer's signature, is well-known source of error.<sup>27</sup>

49. Features observed in the questioned signature(s) may not be observed in the inadequate specimens. This may lead to an erroneous interpretation of a feature as a difference (two writers) or variation (one writer). Because Mississippi election officials are only required to compare the signature on the mail-in ballot application with the ballot return envelope as a reference signature, they cannot distinguish accurately between features, variations, or differences.

50. Finally, as discussed above, Mississippi does not require election officials to use or be provided with proper equipment, such as magnification and lighting equipment. “[T]he microscope is the instrument which makes it possible to see physical evidence directly that otherwise may be invisible. . . .”<sup>28</sup> Without this type of equipment, even a well-trained eye may make errors in a signature authenticity determination.

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<sup>26</sup> Osborn, A. (1910). *Questioned Documents*. The Lawyers' Publishing Co.,: Rochester, NY, p. 281.

<sup>27</sup> Huber, R.A. & Headrick, A.M. (1999). *Handwriting Identification: Facts and Fundamentals*. Boca Raton, FL: CRC Press.

<sup>28</sup> Osborn, A. S. (1929). *Questioned Documents. 2nd. Ed.* Boyd Printing Company, Albany, N.Y., USA.

## V. CONCLUSION


51. Based on the studies cited above<sup>29</sup> laypersons had significantly higher error rates than experts in determining signature authenticity. These tests were conducted under conditions where the participants had adequate specimens, lighting, time, and examination equipment. For the reasons stated herein, it is my professional opinion that there is a high likelihood that Mississippi election officials will make erroneous signature match determinations given the limited specimens, time, and equipment that they will have to conduct the signature verifications.

52. In particular, Mississippi election officials are significantly more likely to erroneously conclude that authentic signatures are *not* genuine than they are to make the opposite error—to accept inauthentic signatures as genuine. These erroneous determinations result from the inherent difficulty in making reliable signature authenticity determinations, particularly where, as here, the reviewer lacks training, is provided with an insufficient number of comparison signatures, and does not have access to proper equipment. The use of digitized signatures as a reference sample for comparison with an original “wet-ink” signature will most likely exacerbate the error rate. In this context, Mississippi’s signature matching procedures are all but guaranteed to result in the erroneous rejection of mail-in ballots.

\* \* \*

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

Dated: September 16, 2020 at San Bruno, CA.

  
Linton Mohammed, Ph.D., D-ABFDE

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<sup>29</sup> *Supra* notes 4, 5, 6, 8.

# **EXHIBIT 3**



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

CYNTHIA PARHAM, JED OPPENHEIM,  
CHERYL GOGGIN, LEAGUE OF WOMEN  
VOTERS MISSISSIPPI, and MISSISSIPPI STATE  
CONFERENCE OF THE NAACP,

Plaintiffs,

v.

MICHAEL D. WATSON, JR., in his official  
capacity as Secretary of State of Mississippi; and  
LYNN FITCH, in her official capacity as Attorney  
General of the State of Mississippi,

Defendants.

Civil Case No. 3:20-cv-572-DPJ-FKB

**DECLARATION OF DR. MARC MEREDITH**

**I. Executive Summary**

1. Plaintiffs in this case asked me to investigate how Mississippi's absentee ballot laws are likely to affect the number of ballots cast while the COVID-19 pandemic is ongoing. Mississippi's absentee ballot laws make it difficult for someone who is practicing vigilant social distancing because of COVID-19 to cast a ballot because:

- a. Many registrants under the age of 65 are ineligible to cast an absentee ballot by mail;
- b. Most registrants voting absentee by mail will be required to have two in-person interactions in order to cast an absentee ballot that counts;

2. I conclude that the COVID-19 pandemic will:

- a. Increase the number of potential voters in Mississippi, including those under the age of 65, who will request to vote absentee by mail in the 2020 presidential election if eligible to do so;
- b. Increase the number of potential voters in Mississippi who will choose to abstain from voting instead of voting in-person in the 2020 presidential election if they believe that they are ineligible to vote absentee by mail, particularly among the subset of the population that faces the greatest health risks if they contract COVID-19;
- c. Increase the number of registered voters in Mississippi who will choose to abstain from voting in the 2020 presidential election if voting absentee by mail requires an in-person interaction.

3. I also conclude that two elements of Mississippi's law will increase the number of potential voters who do not vote during the COVID-19 pandemic because of these reasons.

- a. Registrants are going to be unsure what is meant by the phrase "physician-imposed quarantine", "caring", or "dependent" when reading the following passage defining who is eligible to request an absentee ballot because of a disability:

I have a temporary or permanent physical disability, which may include, but is not limited to, a physician-imposed quarantine due to COVID-19 during the year 2020. Or, I am caring for a dependent that is under a physician-imposed quarantine due to COVID-19 beginning with the effective date of this act and the same being repealed on December 31, 2020.<sup>1</sup>

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<sup>1</sup> Mississippi Code § 23-15-627.

- b. Registrants who do not claim a temporary or permanent physical disability will be required to have two in-person interactions with a notary or other official who can authorize oaths.

4. Finally, I also conclude there is no evidence that voter fraud will increase in the 2020 presidential election if absentee ballots are made available to all Mississippi registrants or the identities of absentee by mail voters are verified using a method that does not require a voter to have two in-person interactions.

5. I reach these conclusions based on my application of political science research on the calculus of voting, historical data on absentee-ballot usage and rejection, and public opinion data on the COVID-19 pandemic. My report proceeds as follows. Section II highlights my background and qualifications. Section III documents my sources of information. Section IV presents the calculus of voting, a widely applied framework within political science to understand why someone chooses to vote or abstain from voting. Section V applies the calculus of voting to show that COVID-19 is increasing the cost of in-person voting for some registered voters in Mississippi, so that they will abstain from voting in the 2020 presidential election if an absentee ballot is not an option. Section VI extends the logic of Section V to explain why COVID-19 makes it so that some Mississippi registrants who want to vote by mail will choose to abstain if an in-person interaction is required to cast an absentee ballot. Section VII shows that more ballots will count if a voter is given the opportunity to cure a rejected absentee ballot. Section VIII documents the lack of evidence that increasing access to absentee ballots increases election fraud. Section IX details the works that I referenced when preparing this report. Section X contains my current curriculum vitae.

## **II. Background and Qualifications**

### *A. Credentials*

6. I am a tenured associate professor in the Department of Political Science at the University of Pennsylvania. I also hold a courtesy appointment in the Business Economics group at the Wharton School of Business at the University of Pennsylvania. Prior to starting my position at the University of Pennsylvania in 2009, I was a visiting lecturer at the Massachusetts Institute of Technology Department of Political Science.

7. I have extensive training in economics, political science, and statistics. I received a B.A. in Economics and Mathematical Methods in the Social Sciences from Northwestern University in 2002, an M.A. in Economics from Northwestern University in 2002, an M.A. in Political Science from Stanford University in 2006, and a Ph.D. in Business Administration from the Political Economics group in the Stanford Graduate School of Business in 2008. My coursework in these degree programs trained me in how to apply economic and statistical modeling to understand the behavior of voters and politicians.

8. At both the Massachusetts Institute of Technology and the University of Pennsylvania, I have taught a number of different courses in statistical theory and statistical programming to both undergraduates and Ph.D. students. At the University of Pennsylvania, I also frequently teach a large survey course on American Politics to undergraduates and courses on the public policy process to both undergraduate and master's in public administration students. I received the Henry Teune Award for outstanding teaching in the undergraduate political science program in 2014 and the Fels Institute Teaching Award for outstanding teaching in the master's in public administration program in 2017.

B. *Publications*

6. Since receiving my Ph.D., I have continued to expand my expertise in American elections and statistics through my work on numerous research projects. I am an author on twenty peer-reviewed journal articles, and I am currently working on many additional projects that I anticipate will generate numerous additional peer-reviewed articles. Much of my peer-reviewed work is published in the leading journals for scholars of American Politics or interdisciplinary science journals, including *American Political Science Review*, *American Journal of Political Science*, the *Journal of Politics*, and the *Proceedings of the National Academy of Science*. One of these articles received the Best Paper on Public Policy award from the American Political Science Association in 2014.<sup>2</sup> One strand of my research that is particularly relevant for this case uses information contained in voter registration databases to understand the range of determinants of voter turnout. One of my most-cited articles examines the reinforcing nature of voter turnout.<sup>3</sup> Using data on turnout contained in state voter registration databases, I establish that voting in one election increases the chance that someone votes again in future elections. I also authored a number of additional studies that examine the administration and consequences of criminal disenfranchisement laws.<sup>4</sup> By merging voter registration and criminal justice databases, I generated widely cited estimates of ex-felon turnout and showed how ex-felon turnout is affected by state policy. Some of my other published work within this strand of

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<sup>2</sup> Alan S. Gerber, Gregory A. Huber, Marc Meredith, Daniel R. Biggers & David J. Hendry, *Can Incarcerated Felons Be (Re)integrated into the Political System? Results from a Field Experiment*, 59 Am. J. Pol. Sci. 912 (2015).

<sup>3</sup> Marc Meredith, *Persistence in Political Participation*, 4 Q. J. Pol. Sci. 187 (2009).

<sup>4</sup> Marc Meredith & Michael Morse, *The Politics of the Restoration of Ex-Felon Voting Rights: The Case of Iowa*, 10 Q.J. Pol. Sci. 41 (2015); Alan S. Gerber, Gregory A. Huber, Marc Meredith, Daniel R. Biggers & David J. Hendry, *Does Incarceration Reduce Voting? Evidence about the Political Consequences of Spending Time in Prison*, 79 J. Po. 1130 (2017).

research examines how specific election administration processes, like mail-in balloting and voter identification requirements, affect voter turnout.<sup>5</sup>

C. *Professional Recognition*

7. My expertise on American politics is frequently recognized within the academy. While a professor at the University of Pennsylvania, I have received highly competitive visiting scholar appointments at the Institute for Advanced Study in Toulouse, Nuffield College at Oxford University, and the Center for the Study of Democratic Politics at Princeton University. Many top universities, including the University of California-Berkeley, Columbia University, Harvard University, Princeton University, and Yale University, have invited me to present in their colloquia. I also recently presented my research on voter identification laws before the Michigan Advisory Committee to the U.S. Commission on Civil Rights. My expertise is also frequently drawn upon to evaluate conference submissions, peer-review submissions, and candidates for tenure. Since the start of 2017, I have reviewed 65 journal articles and 7 external promotion cases. I served as the co-chair of the host committee for the 2019 Election Science, Reform, and Administration Conference at the University of Pennsylvania.

8. Journalists also frequently cite my expertise on American elections. In the last year, numerous leading outlets including *The New York Times*, *Newsweek*, *The Wall Street Journal*, and *The Washington Post* have quoted me when talking about criminal disenfranchisement laws. In addition, the NPR program “This American Life” did a

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<sup>5</sup> Marc Meredith & Neil Malhotra, *Convenience Voting Can Affect Election Outcomes*, 10 Election L. J. 227 (2011); Daniel J. Hopkins, Marc Meredith, Michael Morse, Sarah Smith & Jesse Yoder, *Voting but for the Law: Evidence from Virginia on Photo Identification Requirements*, 14 J. Empirical Legal Stud. 79 (2017); Justin Grimmer, Eitan Hirsch, Marc Meredith, Jonathan Mummolo & Clayton Nall, *Obstacles to Estimating Voter ID Laws’ Effect on Turnout*, 80 J. Pol. 1045 (2018).

segment on my research on voter fraud as part of an episode entitled “Things I Mean To Know,” while *Slate* and *Vox* published articles that I have written summarizing my academic research on voter fraud and criminal disenfranchisement, respectively, to a broader audience. I also consult for the NBC News Decision Desk, where, as a senior analyst, I help generate statistical models and apply them with a team to determine NBC’s projections of election winners on election nights.

*D. Previous work and compensation*

9. I was previously accepted and testified as an expert witness in *Common Cause v. Brehm* (Case No. 1:17-cv-06770-AJN) (S.D.N.Y.), *DCCC v. Ziriak* (Case No: 20-CV-211-JED-JFJ) (N.D. Okla.), and *NAACP Pennsylvania State Conference v. Boockvar et al.* (Case No. 364 M.D. 2020) (Pa. Commw. Ct.). I also prepared a declaration in *Crossey v. Boockvar* (Case No. 266 M.D. 2020) (Pa. Commw. Ct.), *Common Cause Indiana v. Lawson* (Case No. 1:20-cv-1825), and *Middleton v. Andino* (Case No. 3:20-cv-01730-JMC). Plaintiff’s counsel is compensating me at the rate of \$350/hour for my work in this case. This compensation is in no way dependent on the conclusions that I reach. A complete version of my curriculum vitae is presented in Section IX.

**III. Sources of Information**

10. This declaration is informed by my scholarly expertise and experience with election administration, as well as a number of academic, governmental, legal, and media sources (such as press accounts of specific issues that have arisen in recent Mississippi elections). This includes state- and county-level data from the 2018 Election Administration and Voting Survey (EAVS) conducted by the U.S. Election Assistance

Commission.<sup>6</sup> I also rely on individual-level data from the Understanding America Survey conducted by USC Dornsife Center for Economic and Social Research.<sup>7</sup> The Understanding America Survey interviewed more than 40,000 respondents from a probability-based internet panel on their beliefs and attitudes toward COVID-19 between March 10, 2020 and July 6, 2020. These data include weightings that are assigned to correct for the unequal sampling of different panel members and to align certain demographic characteristics of the sampled population with the demographics of the U.S. adult population. These weightings are used in all of my analyses using these data. All of these sources, and the methodologies that I use to analyze them, are standard within political science. A complete listing of the works that I relied upon is included in Section VIII of this declaration.

#### **IV. The Calculus of Voting**

11. Political scientists have long understood that a potential voter's decision about whether to vote or abstain from voting in an election is determined by the potential voter's evaluation of whether the benefits from voting are greater than the costs. This is referred to as the calculus of voting.<sup>8</sup> This section highlights three key points about voting costs that are established by political science research. These include:

- a. Voting costs are not limited to monetary costs, but more frequently refer to the opportunity costs of the time that potential voters spend registering to

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<sup>6</sup> United States Election Assistance Commission, *2018 Election Administration and Voting Survey*, available at [https://www.eac.gov/sites/default/files/Research/EAVS\\_2018\\_for\\_Public\\_Release\\_Updates3.dta.zip](https://www.eac.gov/sites/default/files/Research/EAVS_2018_for_Public_Release_Updates3.dta.zip) (last accessed on Aug. 2, 2020).

<sup>7</sup> *Understanding America Study Understanding Coronavirus in America*, USC Dornsife Ctr. for Econ. & Soc. Res., <https://uasdata.usc.edu/index.php> (data downloaded on July 17, 2020) (log-in required).

<sup>8</sup> Anthony Downs, *An Economic Theory of Political Action in a Democracy*, 65 J. Pol. Econ. 135 (1957); William Riker & Peter Ordeshook, *A Theory of the Calculus of Voting*, 62 Am. Pol. Sci. Rev. 25 (1968).



vote, acquiring information and documentation that is needed to vote, and finally, actually voting (see Section IV.A).

- b. Voting costs also affect the method people use to vote (see Section IV.B).
- c. The use of absentee ballots is generally low in Mississippi because the cost of casting an absentee ballot in Mississippi is higher than the cost of casting an absentee ballot in almost any other state (see Section IV.C).

A. *What are voting costs*

12. Potential voters incur many costs in order to cast a ballot. Many of these costs depend on potential voters' life circumstances, such as whether they are forgoing wages in order to vote or have conflicting obligations on their time.<sup>9</sup> Other costs relate to the ease of getting to the polls, such as access to public transit or the effects of inclement weather.<sup>10</sup> Political scientists have also documented how the decision to vote or abstain is affected by the specific processes voters must navigate in order to cast a ballot.

13. To illustrate how costs on a potential voter's time and resources can affect their calculus of voting, consider the costs imposed by the process of returning a mail-in ballot. The National Conference of State Legislatures currently identifies sixteen states that require local election officials to affix mail-in ballot envelopes with pre-paid postage.<sup>11</sup> Research shows that affixing postage to mail-in ballot envelopes can cause some potential voters to vote who would abstain from voting if they had to affix postage to their mail-in

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<sup>9</sup> Sidney Verba, Kay Schlozman, and Henry E. Brady, *VOICE AND EQUALITY: CIVIC VOLUNTARISM IN AMERICAN POLITICS*, Harvard University Press: Cambridge (1995); Ariel White, *Family Matters? Voting Behavior in Households with Criminal Justice Contact*, 113 *Am. Pol. Sci. Rev.* 607 (2019).

<sup>10</sup> Brad T. Gomez, Thomas G. Hansford & George A. Krause, *The Republicans Should Pray for Rain: Whether, Turnout, and Voting in U.S. Presidential Elections*, 69 *J. Pol.* 649 (2007).

<sup>11</sup> The National Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail, and Other Voting at Home Options*, Table 12 (2020), available at <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (last accessed on Apr. 30, 2020).

ballot envelope themselves.<sup>12</sup> Affixing postage to mail-in ballots in advance reduces the monetary cost someone incurs to return a mail-in ballot. But arguably more consequential is the potential reduction in transaction costs associated with affixing a stamp.<sup>13</sup> For those who already possess stamps, these transaction costs are negligible. In contrast, the transaction costs may be substantial for individuals who rarely send mail or have difficulty gaining access to stamps, which may be particularly challenging for people with limited mobility.<sup>14</sup> Election officials also express specific concerns about whether young people, who as a group are less likely to mail things, will have access to the necessary postage to affix to absentee ballots.<sup>15</sup> The broad lessons illustrated by this example are that the costs imposed by the same process can vary substantially among individuals, and that a cost that is negligible for one voter may be significant enough to prevent others from casting a ballot.

14. Actions by local election officials can also increase the cost of voting. For example, it is well documented that the seemingly small costs imposed by the geographic accessibility of polling places can be consequential to turnout.<sup>16</sup> These studies show there

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<sup>12</sup> Mark Schelker and Marco Schneider, *The Elasticity of Voter Turnout: Investing 85 Cents per Voter to Increase Voter Turnout by 4 percent*, 49 *Electoral Stud.* 65 (2017).

<sup>13</sup> U.S. Election Assistance Commission, *Free or Reduced Postage for the Return of Voted Absentee Ballots*, at 26-27 (2008), available at [https://www.eac.gov/sites/default/files/document\\_library/files/free\\_absentee\\_ballot\\_postage\\_study\\_public\\_meeting\\_february\\_7\\_2008\\_1.pdf](https://www.eac.gov/sites/default/files/document_library/files/free_absentee_ballot_postage_study_public_meeting_february_7_2008_1.pdf) (last accessed on Apr. 30, 2020).

<sup>14</sup> *Ibid.* at 3.

<sup>15</sup> Ashley Collman, *College Students Say They Can't Send In Their Absentee Ballots Because They Don't Know Where to Buy Stamps*, *Business Insider* (Sept. 19, 2018), available at <https://www.businessinsider.com/young-voters-dont-know-where-to-buy-stamps-for-absentee-ballots-2018-9>.

<sup>16</sup> Henry Brady & John McNulty, *Turning out to Vote: The Costs of Finding and Getting to the Polling Place*, 105 *Am. Pol. Sci. Rev. Review* 115 (2011); Joshua D. Clinton, Nick Eubank, Adriane Fresh, & Michael E. Shepherd, *Polling Place Changes and Political Participation: Evidence from North Carolina Presidential Elections, 2008-2016*, Working paper, available at [https://www.dropbox.com/s/gh8uk6rv95kincu/PPChange\\_ClintonEubankFreshShepherd.pdf?dl=0](https://www.dropbox.com/s/gh8uk6rv95kincu/PPChange_ClintonEubankFreshShepherd.pdf?dl=0) (last accessed on Apr. 27, 2020); John McNulty, Conor Dowling, & Margaret Ariotti, *Driving Saints to Sin: How Increasing the Difficulty of Voting Dissuades Even the Most Motivated Voters*, 17 *Pol. Analysis* 435 (2009).

are costs associated with identifying where a polling place is located and traveling to that polling place on Election Day. Turnout goes down when potential voters must travel farther to get to their polling place, because travel costs increase. These additional travel costs may be particularly burdensome on potential voters who walk to the polls, particularly if they are of limited mobility. Turnout also goes down when potential voters' polling locations change, because people's search costs increase. These search costs may be particularly burdensome on potential voters who were not aware of their polling location's change prior to Election Day. Studies from outside the United States also highlight how the cost of voting increases when polling places are open for fewer hours.<sup>17</sup> The broad lesson from these studies is that changes in the cost of voting can have important consequences on voters' ability to successfully cast a ballot.

15. Research shows that the consolidation of polling locations can cause a substantial decline in turnout. Many states that have held elections since the onset of COVID-19 have opened substantially fewer polling locations than typical, because buildings are unavailable, poll worker shortages, and other staffing issues.<sup>18</sup> Consolidation is particularly problematic because it imposes search costs on potential voters who are

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<sup>17</sup> Sebastian Garmann, *The Effect of a Reduction in the Opening Hours of Polling Stations on Turnout*, 171 *Pub. Choice* 99 (2017); Niklas Potrafke & Felix Roesel, *Opening Hours of Polling Stations and Voter Turnout: Evidence from a Natural Experiment*, 15 *Rev. Int'l.* 133 (2020).

<sup>18</sup> Jonathan Lai, *Philly Will Have Way Fewer Polling Places for Next Month's Primary Because of Coronavirus. Find Yours Here*, *Philadelphia Inquirer* (May 12, 2020), <https://www.inquirer.com/politics/election/philadelphia-new-polling-places-2020-primary-20200512.html> (last accessed on Jul. 30, 2020); PublicSource Staff, *Allegheny County Voters Identify 5 Issues to Address Before November Presidential Election*, *Public Source* (Jun. 4, 2020), <https://www.publicsource.org/allegheny-county-voters-identify-5-issues-to-address-before-november-presidential-election/> (last accessed on Jul. 30, 2020); Gilad Edelman, *Georgia's Failure Shows How Not to Run an Election in the Pandemic*, *Wired* (June 10, 2020), <https://www.wired.com/story/georgia-failure-how-not-to-run-election-pandemic/>; Michelle Ye Hee Lee, *Kentucky Braces for Possible Voting Problems in Tuesday's Primary Amid Signs of High Turnout* (June 19, 2020), [https://www.washingtonpost.com/politics/kentucky-braces-for-possible-voting-problems-in-tuesdays-primary-amid-signs-of-high-turnout/2020/06/19/b7b960ce-b199-11ea-8f56-63f38c990077\\_story.html](https://www.washingtonpost.com/politics/kentucky-braces-for-possible-voting-problems-in-tuesdays-primary-amid-signs-of-high-turnout/2020/06/19/b7b960ce-b199-11ea-8f56-63f38c990077_story.html).

moved to a new polling location, travel costs of potential voters who are moved to a new polling location further from their residence, and increases wait times if lines increase when more people are voting at the same polling location. Political science research establishes that increased wait times impose costs that can cause potential voters to leave the line before successfully casting a ballot.<sup>19</sup> Political science research also demonstrates that all of these increases in voting costs when polling locations consolidate can cause a substantial decline in turnout.<sup>20</sup>

*B. Voting Costs Affect Methods of Voting*

16. Voting costs affect not only the decision to vote or abstain, but also which method voters use. When the cost of voting in person at a polling place on Election Day increases, people are more likely to use in-person absentee or absentee by mail voting, which are frequently referred to as early voting and mail voting, respectively, outside of Mississippi. One study shows, for example, that people are more likely to switch to early voting or mail voting when their polling place location changes, especially when it moves substantially farther away.<sup>21</sup> Research also shows the cost of using a new vote method

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<sup>19</sup> Douglas M. Spencer & Zachary S. Markovits, *Long Lines at Polling Stations? Observations from an Election Day Field Study*, 9 Election L. J. 3 (2010); Robert M. Stein et al., *Waiting to Vote in the 2016 Presidential Election: Evidence from a Multi-County Study*, 73 Pol. Res. Q. 439 (2020).

<sup>20</sup> Brian Amos, Daniel A. Smith & Casey Ste. Claire, *Reprecincting and Voting Behavior*, 39 Pol. Behav. 133 (2017).

<sup>21</sup> Joshua D. Clinton, Nick Eubank, Adriane Fresh, & Michael E. Shepherd, *Polling Place Changes and Political Participation: Evidence from North Carolina Presidential Elections, 2008-2016*, Working paper, available at [https://www.dropbox.com/s/gh8uk6rv95kinu/PPChange\\_ClintonEubankFreshShepherd.pdf?dl=0](https://www.dropbox.com/s/gh8uk6rv95kinu/PPChange_ClintonEubankFreshShepherd.pdf?dl=0) (last accessed on Apr. 27, 2020).

decreases as people gain experience with it. Voters, for example, are more likely to cast an absentee ballot if they have used one before.<sup>22</sup>

17. Furthermore, there are some registrants for whom polling place voting is not a viable substitute for an absentee ballot. For example, people with certain disabilities may find it substantially more, or even prohibitively, costly to vote in a polling place rather than an absentee ballot.<sup>23</sup> Consequentially, many states make it easier for disabled registrants to access and cast absentee ballots than other registrants. Research shows that accessible mail-ballot policies particularly increase absentee ballot usage among citizens with disabilities, demonstrating that cost reductions are important to facilitate turnout among those with certain disabilities.<sup>24</sup>

*C. It is More Costly to Cast an Absentee Ballot in Mississippi Than in Most Other States*

18. This subsection establishes that cost of voting absentee by mail in Mississippi is higher than the cost of voting absentee by mail in almost any other state. This is largely because of the costs associated with getting the absentee-ballot application and elector's certificate on the mail-ballot envelope witnessed. The cost of requesting and returning an absentee ballot in Mississippi depends on the reason that a registrant cites for being eligible for an absentee by mail ballot. There are four types of potential voters who are eligible to vote absentee by mail in Mississippi:

- A. Potential voters who have a temporary or permanent physical disability;

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<sup>22</sup>Marc Meredith & Zac Endter, Aging into Absentee Voting: Evidence from Texas, Working paper available at <https://www.sas.upenn.edu/~marcmere/workingpapers/AgingIntoAbsentee.pdf> (last accessed on Apr. 27, 2020).

<sup>23</sup> Daniel P. Tokaji & Ruth Colker, *Absentee Voting by People with Disabilities: Promoting Access and Integrity*, 39 McGeorge L. Rev. 1015 (2006).

<sup>24</sup> Peter Miller & Sierra Powell, *Overcoming Voting Obstacles: The Use of Convenience Voting by Voters with Disabilities*, 44 Am. Pol. Res. 28 (2015).

B. Potential voters who are the parent, spouse, or dependent of a person with a temporary or permanent physical disability, who is hospitalized outside of his or her county of residence more than fifty (50) miles from his or her residence; if the parent, spouse or dependent will be with such person on election day;

C. Potential voters temporarily residing outside the county;

D. Potential voters who are at least sixty-five (65) years old on Election Day.

19. Potential voters submit an absentee-ballot application to request to vote absentee by mail.<sup>25</sup> To do this, a potential voter must first request an absentee-ballot application. This request must be made by the registrant via an oral or written request to the county registrar, unless the registrant has properly authorized an eligible agent to do this for her. The county registrar then mails the registrant an absentee-ballot application, which the registrant fills out in the presence of a notary or another official authorized to witness absentee ballots and mails back to the county registrar. When the potential voter is requesting to vote absentee by mail because of a temporary or permanent physical disability, the signing witness can be anyone age eighteen years or older. When county registrars receive these applications, they verify that it originated at their office and then send the registrant an absentee ballot.

20. Absentee by mail voters are also required to get the elector's certificate on their absentee ballot-envelope signed by an attesting witness when returning their ballot in order for it to count. The attesting witness for the elector's certificate on the absentee-ballot

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<sup>25</sup> Potential voters with a permanent disability documented by a doctor or nurse practitioner can request to be put on a list so that they are mailed an absentee by mail ballot without needing to submit an absentee-ballot application in future elections.

envelope must be a notary public, United States postmaster, assistant United States postmaster, United States postal supervisor, clerk in charge of a contract postal station, or any officer having authority to administer an oath unless the potential voter is requesting to vote absentee by mail because of a disability. This witness can be anyone eighteen or older when the potential voter is requesting to vote absentee by mail because of a temporary or permanent physical disability.

21. Mississippi is the only state that requires a voter to have two documents witnessed in-person in order to cast an absentee ballot. Only ten other states require the mail-ballot envelope to be witnessed in any form, with only Missouri and Oklahoma requiring this witness to be someone required to authorize oaths.<sup>26</sup> And no other state requires an in-person witness to an absentee-ballot application.<sup>27</sup> Mississippi is also one of two states that is not making absentee-ballot applications available online for the 2020 presidential election.<sup>28</sup>

22. The cost of voting absentee by mail in Mississippi is higher than the cost of voting absentee by mail in most other states because of the need to get two documents witnessed in-person and the lack of online access to an absentee-ballot application. As Section IV.A established, costs in this context not only are monetary costs, but also the costs of the time and effort that are expended obtaining the absentee-ballot application,

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<sup>26</sup> The National Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail, and other Voting at Home Options*, tbl. 14, The NCSL Podcast (July 10, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

<sup>27</sup> The National Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail, and other Voting at Home Options*, tbl. 8, The NCSL Podcast (July 10, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

<sup>28</sup> Based on a Google search for “request absentee ballot STATE” for each state (e.g., “request absentee ballot Mississippi”) made on Aug. 12, 2020. Kentucky and Mississippi were the only two states that I could not download, or otherwise access, an absentee-ballot application that is not already sending all registered voters a mail ballot (e.g., Oregon).

returning the absentee-ballot application, and returning an absentee ballot by mail. Successfully casting an absentee ballot by mail in Mississippi requires a potential voter to expend the time to write or call their county registrar and get two documents witnessed in person. There are at least three factors that affect how costly a potential voter finds this. First, potential voters who are less physically able will find it more costly to be witnessed by someone who can authorize oaths, on average, than potential voters who are more physically able. Mississippi recognizes this by allowing anyone eighteen or older to witness potential voters with a physical disability. But I assess that there are likely potential voters who would not consider themselves to have a physical disability, yet at the same time would find it unduly burdensome to travel to a notary or other official authorized to administer oaths. Second, potential voters who interact with a valid in-person witnesses as part of their everyday life will find it less costly to cast their absentee ballot by mail than potential voters who do not. Third, I assess that it is more costly to get a document witnessed when it must be done quickly, because a potential voter is less likely to encounter a witness as part of his or her everyday interactions and has less flexibility to schedule his or her trip to a witness at a convenient time.

23. I conclude that these high costs have caused potential voters in Mississippi to vote absentee by mail at low rates prior to the COVID-19 pandemic. Data from the 2018 EAVS show that only 17,979, or about 1.9 percent, of the 961,025 voted counted in the 2018 general election in Mississippi were cast by mail.<sup>29</sup> This meant that Mississippi ranked 46 out of 50 states in the percent of votes cast by mail in the 2018 midterm election.

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<sup>29</sup> Election Administration and Voting Survey, 2018 (accessed from [https://www.eac.gov/sites/default/files/eac\\_assets/1/6/2018\\_EAVS\\_Report.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf) on June 1, 2020), tbl. 2. Note that I only analyze the 2018 EAVS because it is the only EAVS that disaggregates early in-person absentee votes and absentee mail ballots for most states.



Because the share of absentee by mail ballots is going to reflect a combination of the number of registrants who are eligible to request an absentee mail ballot and how costly it is for those registrants to cast an absentee ballot by mail, Table 1 specifically compares the use of absentee by mail ballots in Mississippi to the five other states that only have no-excuse mail voting for people over the age of 65.<sup>30</sup> Table 1 shows that the use of mail ballots in the 2018 midterm election was lower in Mississippi than in any of these states except for Kentucky. As I noted in footnote 25, Kentucky was the other state that I could not download, or otherwise access, an absentee-ballot application online. This further supports my conclusion that use of mail ballots is lower when the cost of using them are high.

**Table 1: Percent of Votes Cast by Mail in States with No-Excuse Mail Ballots for Registrants over the Age of 65**

| State          | Mail Votes | Total Votes | % Mail |
|----------------|------------|-------------|--------|
| Texas          | 527,787    | 7,976,548   | 6.6%   |
| Indiana        | 134,323    | 2,933,234   | 4.6%   |
| South Carolina | 70,558     | 1,739,705   | 4.1%   |
| Louisiana      | 41,363     | 1,519,552   | 2.7%   |
| Mississippi    | 17,979     | 961,025     | 1.9%   |
| Kentucky       | 23,971     | 1,619,587   | 1.5%   |

Note: Data come from 2018 EAVS. Because Indiana does not appear to break out mail votes, I estimate it by taking the difference between the total absentee votes and the number of in-person early votes.

**V. Mississippi’s Absentee Mail-Ballot Eligibility Laws Will Disenfranchise Some Potential Voters in the 2020 Presidential Election**

<sup>30</sup> The National Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail, and other Voting at Home Options*, tbl. 2, The NCSL Podcast (July 10, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

24. I conclude that Mississippi's current law governing absentee by mail ballot eligibility will prevent some potential voters from casting a ballot in the 2020 presidential election. I reach this conclusion by applying the calculus of voting and establishing that:

- A. During the COVID-19 pandemic, the cost of in-person voting relative to absentee by mail voting increases for some potential voters (Section V.A).
  - B. During the COVID-19 pandemic, in-person voting is prohibitively costly for potential voters (Section V.B).
  - C. During the COVID-19 pandemic, in-person voting is prohibitively costly for potential African-American voters (Section V.C).
  - D. Some of the potential voters who find in-person voting prohibitively costly because of COVID-19 are not currently eligible to request an absentee by mail ballot in Mississippi (Section V.D).
- A. *During the COVID-19 Pandemic, The Cost of In-Person Voting Increases Relative to Absentee by Mail Voting for Some Potential Voters*

25. The risk of getting infected, or infecting others, with COVID-19 increases the costs of in-person voting relative to mail voting. Potential voters who perceive higher risks associated with in-person voting and who possess less tolerance for these risks are experiencing a greater increase in the cost of in-person voting relative to potential voters who perceive lower risks associated with in-person voting and who possess greater tolerance for these risks.

26. An individual's perception of the risks associated with in-person voting will depend on both their perceptions of the general risk of getting infected, or infecting others, with COVID-19 and their perceptions that in-person voting is a potential vector for infection. Public opinion polls show that people report vastly different views of their

likelihood of contracting COVID-19. One recent nationally representative poll asked respondents about their assessment of their probability of contracting COVID-19 in the next three months, and found that 27 percent of people assessed that they had less than a one percent chance and 19 percent of people assessed that they had a greater than 50 percent chance.<sup>31</sup> People also are likely to be divided in how risky they perceive in-person voting. Numerous news reports have highlighted poll workers and voters who tested positive for COVID-19 after being present in a polling place.<sup>32</sup> Given that it remains unclear how many of these cases of COVID-19 were caused by being present at a polling place, I conclude that some people will perceive in-person voting as being very risky, while others will perceive little risk when voting in-person.

27. Public opinion polls show that people's perceptions of COVID-19 risk are somewhat responsive to objective indicators of their risk.<sup>33</sup> The Understanding America Survey polled a probability-based Internet panel of over 40,000 people on their beliefs and attitudes toward COVID-19 between March 10 and July 6. Over this time period, New Jersey and New York were the two states that have experienced the most COVID-19

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<sup>31</sup> USC Dornsife Center for Economic and Social Research Press Release, *Study: What do Americans Think of Their Chances of Being Infected with Coronavirus?* (Mar. 18, 2020), available at <https://uasdata.usc.edu/index.php?r=eNpLtDKyqi62MrFSKkhMT1WyLrYyNAeyS5NyMpP1UhJLEvUSU1Ly80ASQDWJKZkpIKaxlZKRgbmSdS1cMGz4Et4> (last accessed on May 28, 2020).

<sup>32</sup> John Keilman, *After Chicago Poll Worker Dies from COVID-19 and Others Test Positive, City Warns Voters They Might Have Been Exposed to Virus at Polling Places*, Chi. Tri. (Apr. 13, 2020), <https://www.chicagotribune.com/coronavirus/ct-chicago-poll-worker-dies-covid-cornavirus-20200413-rz55vqpo6jfbxn7e4i6vjkj6n2y-story.html>; Nolan D. Mccaskill, *Wisconsin Health Department: 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>; David Smiley & Bianca Padro Ocasio, *Florida Held Its Primary Despite Coronavirus. Two Broward Poll Workers Tested Positive*, Bradenton Herald (Mar. 27, 2020), <https://www.bradenton.com/news/coronavirus/article241539451.html#storylink=cpy>.

<sup>33</sup> Results in this paragraph relies on my analysis of data from survey(s) administered by the Understanding America Study, which is maintained by the Center for Economic and Social Research (CESR) at University of Southern California. Data downloaded from <https://uasdata.usc.edu/index.php> on July. 17, 2020 (log-in required).

infections per capita.<sup>34</sup> When asked about their probability of contracting COVID-19 in the next three months on the Understanding America Survey, the average probability reported by a respondent from one of those two states was 26 percent. As a point of comparison, the average probability reported by a respondent from any other state was 23 percent. Respondents from groups who have suffered the worst outcomes often report a higher probability of dying if they get COVID-19 than others. It has been well established that becoming infected with COVID-19 is more deadly for older people than younger people.<sup>35</sup> Consistent with this, the average probability of death reported by respondents age 60 and older on the Understanding America Survey was 27 percent, while respondents age 18 to 39 and age 40 to 59 reported an average probability of death of 14 and 20 percent, respectively. However, perceptions of risk do not always line up with reality. For example, the average probability of death reported by female respondents on the Understanding America Survey was higher than the average probability of death reported by male respondents, even though objective data shows that the opposite is true.<sup>36</sup>

28. The increased cost of in-person voting caused by COVID-19 has caused voters nationwide to cast mail ballots at record rates in elections that have taken place since April 2020. Figure 1 compares mail-ballot usage in the 2016 and 2020 presidential primaries for

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<sup>34</sup> CDC COVID Data Tracker, <https://web.archive.org/web/20200706074212/https://www.cdc.gov/covid-data-tracker/#cases>.

<sup>35</sup> Justin Fox, *Coronavirus Deaths by Age: How It's Like (and Not Like) Other Disease*, Bloomberg Opinion (May 7, 2020), <https://www.bloomberg.com/opinion/articles/2020-05-07/comparing-coronavirus-deaths-by-age-with-flu-driving-fatalities>.

<sup>36</sup> Richard V. Reeves & Tiffany Ford, *COVID-19 Much More Fatal for Men, Especially Taking Age into Account*, Brookings Institute (May 15, 2020) (Middle Class Memo Series), <https://www.brookings.edu/blog/up-front/2020/05/15/covid-19-much-more-fatal-for-men-especially-taking-age-into-account/>.

which there is data available on the number of votes cast by mail in both elections.<sup>37</sup> It shows that many states went from having fewer than 10 percent of ballots cast by mail in 2016 to more than fifty percent of ballots cast by mail in 2020. Wisconsin had 964,443 mail-ballots counted in its April 7 election, which constituted about 62 percent of the total ballots cast. As a point of comparison, fewer than 200,000 mail ballots were counted in the 2016 general election, which constituted about 5 percent of the total ballots cast.<sup>38</sup> Similarly, about 1.5 million mail ballots were cast in Pennsylvania's primary on June 2, despite it being the first even-year election in which no-excuse mail-ballots were available in Pennsylvania.<sup>39</sup> This was a 17-fold increase over in the number of mail ballots than were cast in the 2016 primary. In Georgia's primary on June 9, mail ballots comprised more than half of the ballots cast, up from about 6 percent of the ballots cast in the 2018 midterm election.<sup>40</sup> Moreover, research shows that the share of the ballots cast by mail in a Georgia county was significantly related to share of the population that had died from COVID-19 in the county.<sup>41</sup>

**Figure 1: Share of Ballots Cast by Mail in 2016 and 2020 Presidential Primaries<sup>42</sup>**

<sup>37</sup> Charles Stewart III, Mail Ballot Watch, Election Updates Blog (July 6, 2020), <https://electionupdates.caltech.edu/2020/07/06/mail-ballot-watch/> (figure downloaded on July 9, 2020).

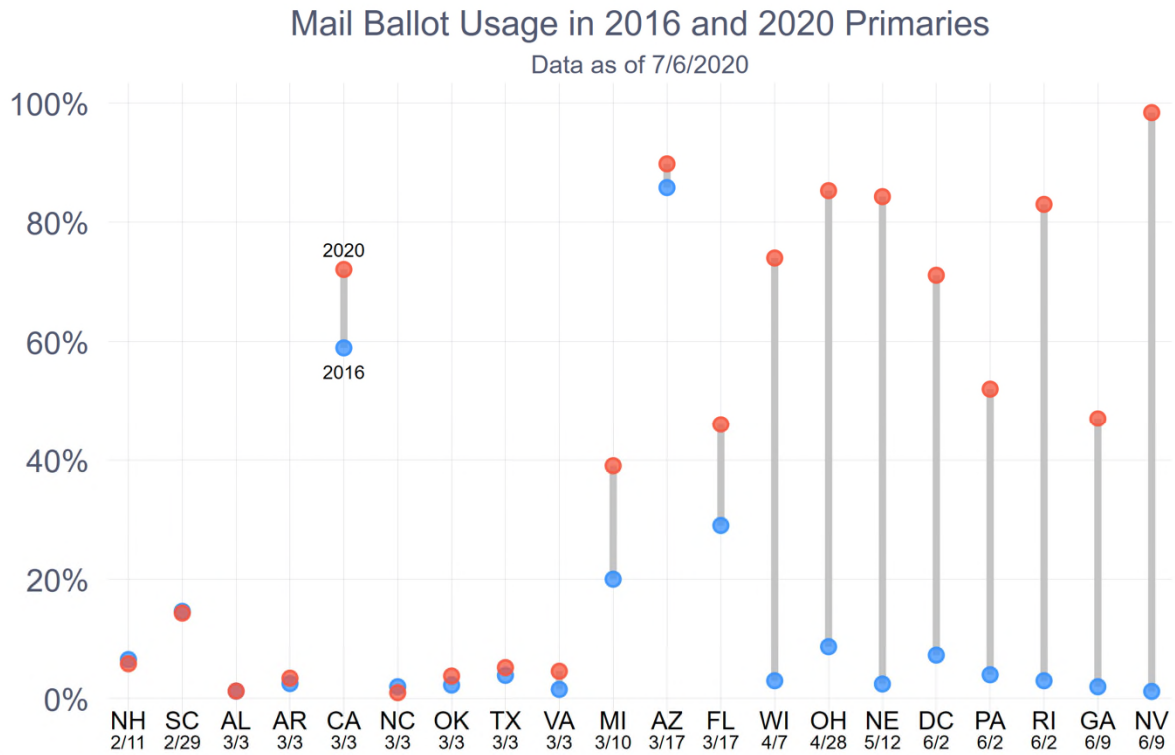
<sup>38</sup> April 7, 2020 Absentee Voting Report 7, Wis. Elections Comm'n, <https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/April%202020%20Absentee%20Voting%20Report.pdf>.

<sup>39</sup> Kathy Boockvar, *Historic Primary Paves Way for Successful General Election in Pennsylvania*, Brookings Institute (June, 22, 2020) (Fixgov Blog), <https://www.brookings.edu/blog/fixgov/2020/06/22/historic-primary-paves-way-for-successful-general-election-in-pennsylvania/>.

<sup>40</sup> Mark Niesse, *Absentee Voting Program Embraced by Georgia Voters, Then Abandoned*, Atlanta J. Const. (Jun. 29, 2020), <https://www.ajc.com/news/state--regional-govt--politics/absentee-voting-program-embraced-georgia-voters-then-abandoned/hkNttNsgXlaYZXjUatnvjK/>.

<sup>41</sup> M.V. (Trey) Hood III and Audrey Haynes. 2020, *Mail it in: An Analysis of the Peach State's Response to the Coronavirus Pandemic*, Paper presented at the Annual Meeting of the Election Science, Reform, and Administration Conference. Gainesville, FL, available at <https://www.dropbox.com/s/swr1clzifamrsri/ESRA%202020%20%28Haynes%20%26%20Hood%29.pdf?dl=0> (last accessed on July 1, 2020).

<sup>42</sup> Figure downloaded from Charles Stewart III, *Mail Ballot Watch*, Election Updates Blog (July 6, 2020), <https://electionupdates.caltech.edu/2020/07/06/mail-ballot-watch/> (figure downloaded on July 9, 2020).



Data graphed are the percentages of ballots cast by mail in the 2016 and 2020 primaries. Only states with primaries both years included. Data are incomplete and still being gathered.

Graph source: MIT Election Data and Science Lab

29. I conclude that many potential voters in Mississippi, including some under the age of 65, will find that the cost of in-person voting is sufficiently high in the 2020 general election that they will choose to vote absentee by mail, if eligible do so. The number of potential voters in Mississippi who would prefer to vote absentee by mail will depend, in part, on how the perceived risk of in-person voting evolves between now and then. Perceptions of the risk of in-person voting will be affected, but not completely determined, by changes in the prevalence of COVID-19 between now and November 3. But some people will continue to perceive a high risk of catching or spreading COVID-19 when voting in-person, even if the prevalence of COVID-19 diminishes between now and then. Studies of vaccination decisions, for example, show that people perceive and act upon

perceptions of risk that do not always align with the objective risk.<sup>43</sup> Psychological research also shows that people often overestimate the likelihood that low probability lethal events will occur.<sup>44</sup> Thus, COVID-19 will continue to increase the cost of in-person voting for some potential voters if there is any chance that in-person voting could cause them to get infected, or infect others, with COVID-19.

*B. During the COVID-19 Pandemic, In-Person Voting is Prohibitively Costly*

30. Section IV.C established that most voters in Mississippi typically vote in-person on Election Day because of limits on who is allowed to request an absentee ballot and the high costs of casting an absentee ballot that count. However, in-person voting will be prohibitively costly for some potential voters during the COVID-19 pandemic, as some potential voters will assess that in-person voting is inconsistent with their preferred amount of social distancing. While many Americans are beginning to relax their social distancing, there remains a sizable minority of Americans who are avoiding almost all activities that could cause them to get infected, or infect others, with COVID-19. A recent nationally representative public opinion poll asked respondents about the likelihood that they would engage in different forms of social distancing over the next three months.<sup>45</sup> When asked whether they would attend a gathering of family or friends with more than 10 people, 25 percent of respondents said it was “not at all likely” and 17 percent of respondents said it was “not too likely”. When asked whether they would go to a doctor, dentist, or other

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<sup>43</sup> Brendan Nyhan & Jason Reifler, *Does Correcting Myths About the Flu Vaccine Work? An Experimental Evaluation of the Effects of Corrective Information*, 33 *Vaccine* 459 (2015).

<sup>44</sup> Sarah Lichtenstein, Paul Slovic, Baruch Fischhoff, Mark Layman, & Barbara Combs, *Judged Frequency of Lethal Events*, 4 *J. Experimental Psychol.: Human Learning & Memory* 551 (1978); Baruch Fischhoff, Andrew M. Parker, Wändi Bruine de Bruin, Julie Downs, Claire Palmgren, Robyn Dawes and Charles F. Manski, *Teen Expectations for Significant Life Events*, 64 *Public Opinion Q.* 189 (2000).

<sup>45</sup> *Topline: KFF Health Tracking Poll – May 2020*, Henry J. Kaiser Family Found., <http://files.kff.org/attachment/Topline-KFF-Health-Tracking-Poll-May-2020.pdf>.

medical appointment in-person, 9 percent of respondents said it was “not at all likely” and 8 percent of respondents said it was “not too likely.” Likewise, 11 percent of respondents on a nationally representative survey cast between June 8 and June 14 said they had not left the house in the past week to shop for food, medicine, or essential household items.<sup>46</sup>

31. Increases in the cost of in-person voting will make it so that some people who normally vote in-person will abstain instead of voting in-person. The people responding “not at all likely” to the questions about social distancing in the previous paragraph, and particularly to the medical question, are who I expect would be more likely to find in-person voting prohibitively costly because of COVID-19.

32. Access to mail balloting prevents the disenfranchisement of people who would vote in-person if the cost of in-person voting were not abnormally high because of COVID-19. The April 7 election in Wisconsin demonstrates the disenfranchisement that results when potential voters who wish to cast a mail ballot are unable to do so. Media reports highlighted the considerations being made by potential voters who did not receive their requested mail ballot by Election Day, and thus had to choose between voting in-person or abstaining.<sup>47</sup> People who reported abstaining rather than voting in-person in these reports included a medical director of a psychiatric hospital who decided not to vote at the polls

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<sup>46</sup> *Topline: KFF Health Tracking Poll – June 2020*, Henry J. Kaiser Family Found., <http://files.kff.org/attachment/Topline-KFF-Health-Tracking-Poll-June-2020.pdf>.

<sup>47</sup> Daphne Chen, Marica Robiou, Elizabeth Mulvey, Kacey Cherry & June Cross, *Voter Suppression at its Finest: Wisconsin Citizens Say Missing Ballots Kept Them from Being Counted in Election*, Milwaukee J. Sentinel (Apr. 12, 2020), <https://www.jsonline.com/story/news/politics/elections/2020/04/13/wisconsin-election-missing-ballots-long-lines-kept-many-voting/2979975001/>; *Wisconsin Primary Recap: Voters Forced to Choose Between Their Health and Their Civic Duty*, N.Y. Times (Apr. 7, 2020), <https://www.nytimes.com/2020/04/07/us/politics/wisconsin-primary-election.html>; Adam Rogan, *I Want This Fixed: Voters Who Requested Absentee Ballots That Never Arrived Share Their Stories*, The Journal Times (Apr. 7, 2020), [https://journaltimes.com/news/local/i-want-this-fixed-voters-who-requested-absentee-ballots-that-never-arrived-share-their-stories/article\\_9df2c3e6-95bf-5fb1-a2f3-570cbf4930a0.html](https://journaltimes.com/news/local/i-want-this-fixed-voters-who-requested-absentee-ballots-that-never-arrived-share-their-stories/article_9df2c3e6-95bf-5fb1-a2f3-570cbf4930a0.html).



after failing to receive his mail ballot “out of concern for his family, his patients, and his fellow staff members,” a health care worker who had tested positive for COVID-19, and multiple people who were immunocompromised.

*C. During the COVID-19 Pandemic, In-Person Voting is Prohibitively Costly for Potential African American Voters*

33. Racial and ethnic minorities have been disproportionately affected by COVID-19. Figure 2 presents a chart created by the CDC that shows that Native Americans, African Americans, and Hispanics were hospitalized for COVID-19 more than Asians and non-Hispanic Whites through June 13. Relative to non-Hispanic Whites, Native Americans were more than five times more likely to be hospitalized and African Americans and Hispanics were more than four times more likely to be hospitalized.<sup>48</sup> The disproportionate burden of COVID-19 affects racial and ethnic minorities under the age of 65, in addition to those above 65. Among Americans between the age of 55 and 64, for example, COVID-19 death rates for African Americans and Hispanics are six and five times higher than the death rates of Whites.<sup>49</sup> The death rate for African Americans and Hispanics between the age of 55 and 64 is higher than the death rate for Whites between the age of 65 and 74.

**Figure 2: Racial and Ethnic Minorities are More Likely to be Hospitalized from COVID-19<sup>50</sup>**

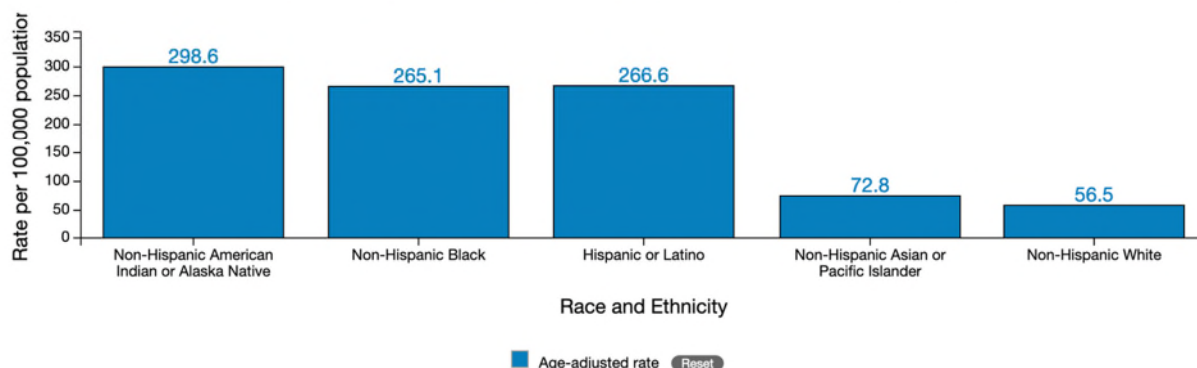
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<sup>48</sup> Centers for Disease Control and Prevention, *COVID-19 in Racial and Ethnic Minority Groups*, (June 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

<sup>49</sup> Tiffany Ford, Sarah Reber, and Richard V. Reeves, *Race Gaps in COVID-19 Deaths are Even Bigger Than They Appear*, Brookings Institute (June 16, 2020) (Upfront Blog), <https://www.brookings.edu/blog/up-front/2020/06/16/race-gaps-in-covid-19-deaths-are-even-bigger-than-they-appear/>.

<sup>50</sup> Centers for Disease Control and Prevention, *COVIDView: A Weekly Surveillance Summary of U.S. COVID-19 Activity*, (July 31, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html> (figure downloaded on Aug. 3, 2020).

### Age-adjusted COVID-19-associated hospitalization rates by race and ethnicity, COVID-NET, March 1 – July 25, 2020



34. African Americans are particularly pessimistic about their chances of dying if they contract COVID-19. When asked on the Understanding America Survey about their likelihood of dying if they contract COVID-19, there is a statistically significant difference in the average probability reported by African American and White respondents. The average response from an African American respondent is 22 percent chance, while the average White respondent reports 20 percent.<sup>51</sup> But this comparison of averages understates why access to mail ballots is more important for African Americans than Whites. Access to mail ballots is particularly important for potential voters with extremely pessimistic views about what would happen if they get COVID-19. Thus, I examine whether there are racial differences in the share of respondents' reporting that they have at least a 50 percent chance of dying if they contract COVID-19. I find that 25 percent of African American respondents' report having more than a 50 percent chance of dying, while only 21 percent of White respondents' report the same. Native Americans and

<sup>51</sup> Results in this paragraph relies on my analysis of data from survey(s) administered by the Understanding America Study, which is maintained by the Center for Economic and Social Research (CESR) at University of Southern California. Data downloaded from <https://uasdata.usc.edu/index.php> on July 17, 2020 (log-in required).

Hispanics also report a higher chance of dying if they contract COVID-19, although the differences are smaller and not always statistically significant.

35. I conclude that greater fear of the consequences of becoming infected with COVID-19 make it so potential voters who are racial and ethnic minorities are more likely to find in-person voting prohibitively costly than White potential voters. This is particularly true for African Americans who not only are objectively experiencing worse outcomes when they are infected with COVID-19 than Whites, but also are more likely to perceive that they will die if they contract COVID-19 than Whites.

*D. Some Potential Voters Who Find In-Person Voting Prohibitively Costly Because of COVID-19 Are Ineligible for an Absentee Ballot by Mail in Mississippi*

36. I conclude that there are potential voters in Mississippi who will abstain from voting in the 2020 presidential election if they are not allowed to vote absentee by mail. Under the current law, most potential voters in Mississippi under the age of 65 who do not have a physical disability and will be present in their county of residence on November 3 must vote in-person on Election Day.<sup>52</sup> This means that there are potential voters in Mississippi who are not eligible to vote absentee by mail, even when they face similar circumstances to the previously described Wisconsinites who chose to abstain when they did not receive their requested mail ballots by Election Day. There are three general reasons why a voter would abstain from voting during the COVID-19 pandemic if they are not allowed to vote absentee by mail under Mississippi law. First, not having a physical disability, under the age of 65, and present in a county of residence does not necessarily mean that someone faces a low personal risk from COVID-19 infection. Second, some

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<sup>52</sup> There are some additional Mississippi registrants under the age of 65 who are not physically disabled are able to cast an in-person absentee vote.

people hold more pessimistic beliefs than others about the consequences of in-person voting on their personal health. Finally, some people find in-person voting prohibitively costly primarily because they are concerned that in-person voting could cause them to infect others with COVID-19.

37. Some Mississippi potential voters will only vote absentee by mail because they face high personal health risks if they become infected with COVID-19, but they are not currently eligible for an absentee by mail ballot. There is clear evidence that someone's risk of death from COVID-19 increases as they age, making it so that people 65 and over face greater risk from COVID-19 than people under the age of 65.<sup>53</sup> However, media reports highlight that "[COVID-19] remains a highly infectious disease that for everybody over about 40 is significantly deadlier than anything else they're likely to encounter during the course of a normal year."<sup>54</sup> Media reports also highlight that age alone does not capture someone's risk of death from COVID-19. George Kuchel, a geriatrician and gerontologist from the University of Connecticut is quoted as saying: "Having multiple chronic diseases and frailty is in many ways as or more important than chronological age. An 80-year-old who is otherwise healthy and not frail might be more resilient in fighting off infection than a 60-year-old with many chronic conditions."<sup>55</sup> African Americans under the age of 65 are disproportionately likely to suffer from a number of the chronic conditions that elevates someone likelihood of suffering particularly negative outcomes if they become infected

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<sup>53</sup>The National Center for Health Statistics, *Provisional Death Counts for Coronavirus*, tbl. 1, [https://www.cdc.gov/nchs/nvss/vsrr/covid\\_weekly/index.htm](https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm) (last accessed on May 29, 2020).

<sup>54</sup> Justin Fox, *Coronavirus Deaths by Age: How It's Like (and Not Like) Other Disease*, Bloomberg Opinion (May 7, 2020), <https://www.bloomberg.com/opinion/articles/2020-05-07/comparing-coronavirus-deaths-by-age-with-flu-driving-fatalities>.

<sup>55</sup> Sharon Begley, *What Explains Covid-19's Lethality for the Elderly? Scientists Look to 'Twilight' of the Immune System*, Stat (Mar. 30, 2020), <https://www.statnews.com/2020/03/30/what-explains-coronavirus-lethality-for-elderly/>.

with COVID-19.<sup>56</sup> Consequentially, some registrants under the age of 65 in Mississippi who read media reports like this, and disproportionately those who are African American, will conclude that they face high personal health risks from COVID-19 infection and will abstain from activities, like in-person voting, that they perceive increase their risk of infection.

38. Other potential voters in Mississippi will only vote absentee by mail because they hold pessimistic beliefs about the consequences of in-person voting on their personal health, but they are not currently eligible to vote absentee by mail. People under the age of 40 are at an objectively lower risk of death from contacting COVID-19 than people age 40 and above.<sup>57</sup> Consistent with this, respondents between the age of 18 and 39 on the Understanding America Survey assessed a significantly lower probability of death if they contracted COVID-19 than respondents age 40 and above.<sup>58</sup> Yet the average response by respondents age 18 to 39 was that they had a 14 percent chance of dying, with about 15 percent of these respondents reporting at least a 50 percent chance of dying if they contracted COVID-19. Thus, even within groups of people who generally face lower personal health risks from COVID-19 infection, there are likely to be some individuals who will abstain from activities, like in-person voting, that they perceive increase their risk of infection.

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<sup>56</sup> Dan Witters and Jade Wood, *U.S. Blacks Suffer Disproportionately From Chronic Conditions*, Gallup (Dec. 26, 2014), <https://news.gallup.com/poll/180329/blacks-suffer-disproportionately-chronic-conditions.aspx>.

<sup>57</sup> Erin K. Stokes, Laura D. Zambrano, Kayla N. Anderson, Ellyn P. Marder, Kala M. Raz, Suad El Burai Felix, Yungeng Tie, & Kathleen E. Fullerton, Coronavirus Disease 2019 Case Surveillance — United States, January 22–May 30, 2020, 69 *MMWR Morb Mortal Wkly Rep* 343 (2020).

<sup>58</sup> My analysis of data from survey(s) administered by the Understanding America Study, which is maintained by the Center for Economic and Social Research (CESR) at University of Southern California. Data downloaded from <https://uasdata.usc.edu/index.php> on July 17, 2020 (log-in required).

39. Finally, there are potential voters in Mississippi who will only vote absentee by mail because they are worried that in-person voting could result in them exposing others to COVID-19, but they are not currently eligible to vote absentee by mail. This concern is likely to be particularly salient among potential voters who are quarantining because of a positive COVID-19 test, because they are awaiting the results of a COVID-19 test, or because of a known COVID-19 exposure. For example, the *New York Times* profiled Hannah Glesson, who could not vote in-person when her mail ballot failed to arrive prior to Wisconsin's April 7 election because she recently had tested positive for COVID-19.<sup>59</sup>

40. Many of the people described in the previous three paragraphs who will only vote absentee by mail will not perceive they are eligible to claim that they have a temporary disability. MS House Bill 1521 changed the language about who is eligible to claim that they have a temporary or permanent physical disability. Specifically, it reads:

A temporary or permanent physical disability, which may include, but is not limited to, a physician-imposed quarantine due to COVID-19 during the year 2020. Or, I am caring for a dependent that is under a physician-imposed quarantine due to COVID-19.<sup>60</sup>

I conclude that potential voters reading this passage will reach different conclusions about whether the same circumstances make them eligible to claim they have a temporary or permanent physical disability. Some potential voters are practicing vigilant social distancing because a doctor has informed them that they have risk factors associated with greater personal-health risks from COVID-19. Only some of these potential voters will perceive themselves as being under a physician-imposed quarantine. Likewise, only some potential voters will perceive themselves as caring for a dependent that is under a

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<sup>59</sup> Nick Corasanti, *Some People Got to Vote Today*, N.Y. Times (Apr. 7, 2020), <https://www.nytimes.com/2020/04/07/us/politics/wisconsin-absentee-ballots.html>.

<sup>60</sup> Mississippi Code § 23-15-627.

physician-imposed quarantine if they live in the same household with someone practicing vigilant social distancing because a doctor has informed them that they have risk factors associated with greater personal-health risks from COVID-19. Other potential voters will be quarantining because of recent potential COVID-19 exposure, but without speaking to a doctor. Again, only some of these potential voters will perceive themselves as being under a physician-imposed quarantine. Moreover, if these potential voters wait to see if they develop symptoms or test positive for COVID-19 it risks making them unable to postmark an absentee by mail ballot by Election Day. Those potential voters who learn about a positive COVID-19 test within two weeks of Election Day are at a particularly high risk of being disenfranchised when they cannot postmark their absentee by mail ballot by Election Day, because they are subject to fine or imprisonment if they leave their residence.<sup>61</sup> Given that many of the potential voters who will only vote in the 2020 presidential election will not perceive that they are under a physician-imposed quarantine, I conclude that Mississippi's current mail-ballot eligibility law disenfranchises many of the potential voters identified in this section who will only vote in the 2020 presidential election if it can be done by an absentee mail ballot.

41. Uncertainty about which potential voters are eligible to claim a temporary physical disability is particularly likely to be disenfranchising in this context because a potential voter requesting to vote absentee by mail must sign an affidavit that reads:

I realize that I can be fined up to Five Thousand Dollars (\$5,000.00) and sentenced up to five (5) years in the Penitentiary for making a false statement in this application and for selling my vote and violating the Mississippi Absentee Voter Law.<sup>62</sup>

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<sup>61</sup> Mississippi State Department of Health, COVID-19 Isolation Order (Aug. 4, 2020), [https://msdh.ms.gov/msdhsite/\\_static/resources/10134.pdf](https://msdh.ms.gov/msdhsite/_static/resources/10134.pdf).

<sup>62</sup> Mississippi Code § 23-15-627.

Given that a potential voter is risking a substantial fine and incarceration if they request an absentee by mail ballot that they may not be eligible for, I conclude that many potential voters will be unwilling to claim a temporary physical disability unless they are completely certain they are eligible to do so.

**VI. Mississippi Laws Requiring Absentee-Ballot Applications and Mail Ballots to be Notarized or Attested to In Person Will Disenfranchise Some Potential Voters in the 2020 Presidential Election**

42. Mississippi law currently requires a potential voter to have an in-person notarization or attestation by an official authorized to administer oaths for both an absentee-ballot application and ballot envelope. A registrant who does not have a temporary or permanent physical disability must have their absentee-ballot application and ballot envelope notarized or signed by an official authorized to administer oaths for absentee balloting.<sup>63</sup> Similarly, their absentee ballot must be witnessed by “any notary public, United States postmaster, assistant United States postmaster, United States postal supervisor, clerk in charge of a contract postal station, or other officer having authority to administer an oath or take an acknowledgment.”<sup>64</sup> For a registrant who has a temporary or permanent physical disability, both the absentee-ballot application and the ballot envelope can be witnessed by anyone eighteen or older. I conclude that COVID-19 will cause these notarization/attestation and witness requirements to disenfranchise some potential voters in the 2020 presidential election. I reach this conclusion by establishing that:

- A. Mississippi’s requirement that both absentee-ballot applications and ballot envelopes be witnessed in person was already burdensome prior to COVID-19 (Section VI.A).

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<sup>63</sup> Mississippi Code § 23-15-627.

<sup>64</sup> Mississippi Code § 23-15-631(1)(c).



B. COVID-19 exacerbates the burdens that Mississippi's requirement that both absentee-ballot applications and ballot envelopes be witnessed in person place on registrants who do not have a temporary or permanent physical disability who do not interact with someone who can administer oaths as part of their everyday interactions (Section VI.B).

A. *Mississippi's Notarization Requirements on Absentee-Ballot Applications and Ballot Envelopes Were Burdensome Before COVID-19*

43. Mississippi is the only state that requires both an absentee-ballot application and elector's certificate on their ballot envelope to be witnessed in-person and one of three states that requires most potential voters to have their mail-ballot envelope notarized or witnessed by someone authorized to administer oaths for absentee balloting in order for it to count.<sup>65</sup> When assessing the costs these requirements impose on potential voters, it is necessary to consider the costs that a potential voter reasonably believes are necessary to cast an absentee by mail ballot that counts. As Section IV.A established, costs in this context not only are monetary costs, but also the costs of the time and effort that are expended getting documents witnessed quickly enough so that the absentee ballot is received in time to count.

44. I conclude that the time and effort costs associated with notarization can make it prohibitively costly for some potential voters to vote absentee by mail. I focus on notarization because neither the absentee-ballot application nor the elector's certificate references any official authorized to administer oaths besides a notary. Thus, I conclude

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<sup>65</sup>The National Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail, and other Voting at Home Options*, tbl. 14, The NCSL Podcast (July 10, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

that some potential voters will perceive that these forms must be witnessed by a notary.<sup>66</sup> Moreover, while the law is explicit that at least the elector's certificate on the mail-ballot envelope can be witnessed by a United States postmaster, assistant United States postmaster, United States postal supervisor, clerk in charge of a contract postal station can witness the elector's certificate on their mail ballot-envelope, the U.S. Postal Service has issued a new rule that forbids United States Postal Service employees from witnessing absentee ballots while on duty.<sup>67</sup> Thus, notaries are the most clearly identified officials authorized to administer oaths and who are able to do so.

45. I conclude there are at least three primary factors that affect the costs of notarization. First, potential voters who are less physically able will find it more costly to get their affidavit notarized, on average, than potential voters who are more physically able. Mississippi recognizes this by giving mail-ballot voters who are "physically incapacitated" an alternative method to notarization for verifying their identity (i.e., requiring ballots to be witnessed by someone eighteen years of age or older). But I find that there are likely potential voters who would not consider themselves to be physically incapacitated, yet at the same time would find it unduly burdensome to travel to a notary. Second, potential voters who must spend more time traveling to a notary will find it more costly to have their affidavit notarized than potential voters who are near a notary as part of their everyday interactions. I assess that not being near a notary may be particularly challenging for people who lack access to a motor vehicle and who live in rural and other remote areas. Third, I

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<sup>66</sup> Secretary of State of Mississippi, *Absentee Ballot Processing Practical*, available at <https://www.sos.ms.gov/Elections-Voting/Documents/Absentee%20Ballot%20Processing%20Practical17.pdf> (last accessed on Aug. 23, 2020).

<sup>67</sup> James Brooks. *In Rule Change, Postal Service Forbids Employees from Signing Absentee Ballots as Witnesses*, *Anchorage Daily News* (Aug. 19, 2020), <https://www.adn.com/politics/2020/08/18/in-rule-change-postal-service-forbids-employees-from-signing-absentee-ballots-as-witnesses/>.

find it is more costly to obtain an affidavit when it must be done quickly. This is because a potential voter is less likely to encounter a notary as part of his or her everyday interactions, and when notarization must be done quickly, a potential voter has less flexibility to schedule his or her trip to the notary at a convenient time.

46. Some potential voters also may be affected by their perceptions of the monetary costs of getting an absentee-ballot application notarized. Since 2017, a notary may waive a potential voter a fee for notarizing absentee-ballot application or an elector's certificate on a mail-ballot envelope.<sup>68</sup> Because the statutory language that is to be included on the absentee-ballot application provides no language about whether a potential voter will be charged a fee for notarizing the absentee-ballot application, I conclude that not all potential voters will be aware of this.<sup>69</sup> Thus, some potential voters will believe that they will incur a monetary cost when they get their mail-ballot application notarized. Moreover, potential voters who are getting their absentee-ballot application notarized outside of Mississippi may have to incur a monetary cost to get their absentee-ballot application notarized.

47. Potential voters with temporary or permanent physical disabilities can have their absentee-ballot application witnessed by anyone eighteen or older. For most potential voters, it is much less costly to get an absentee-ballot application witnessed by someone eighteen or older than by a notary.

48. Many of the same potential voters who find it costly to get their absentee-ballot application attested to will also find it costly to get the elector's certificate on their mail ballot-envelope signed by a valid witness. Some potential voters will find it more costly to

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<sup>68</sup> Mississippi Secretary of State Rule 5.10.

<sup>69</sup> Mississippi Code §23-15-627.

get their elector's certificate witnessed than their absentee-ballot application because they will face time pressure to get the mail-ballot envelope postmarked by Election Day in order for it to potentially count.

49. I conclude that the time and monetary costs of getting absentee-ballot applications and the elector's certificate on the mail ballot-envelope prevents potential voters from voting absentee by mail in Mississippi. I conclude that the most common way this will happen is that potential voters who would otherwise submit an absentee ballot application in Mississippi absent the notarization requirement will not submit an absentee ballot application because of these costs. Most of the potential voters who would be disenfranchised by the witness requirement on the elector's certificate on the mail-ballot envelope will not submit a valid absentee-ballot application because of the challenges presented in obtaining proper signatures under this requirement. The most common exception is potential voters who are disenfranchised because they find it too costly to get the elector's certificate witnessed in time to get the mail-ballot envelope postmarked by Election Day.

50. I use data from the 2018 EAVS to document cases in which a potential voter cast a mail ballot that was rejected because of a problem with the attesting witness's signature. The best way to document potential voters who are disenfranchised by Mississippi's notarization requirement is to show potential voters who request, but do not submit, absentee-ballot applications. However, Mississippi does not produce any data that I have access to on the number of absentee-ballot applications that are distributed and the number that get returned. While voters with ballots rejected because of a problem with the attesting witness's signature represent only a small fraction of those potential voters who

are disenfranchised by the notarization requirement, it highlights how even voters who successfully get their absentee-ballot application attested to can fail to get the elector's certificate properly witnessed.

51. The 2018 EAVS show that at least 482, or about 2.6 percent, of the absentee by mail ballots submitted in Mississippi in 2018 midterm election were rejected. At least 73, or about 0.4 percent, of the absentee by mail ballots submitted in Mississippi in 2018 midterm election that were rejected because they were improperly attested to. This represents about 22 percent of the rejected absentee by mail ballots for which a reason was given for rejection. These numbers understate the total number of absentee by mail ballots that were rejected, and the number of absentee by mail ballots that were rejected because of the notarization requirement, in Mississippi in the 2018 midterm election. First, the number of counties reporting that they rejected zero absentee by mail ballots is too high. I conclude some of the 38 counties that reported rejecting 0 mail ballots, especially those that also reported counting hundreds of mail ballots, failed to report the absentee by mail ballots that were rejected. Second, 18 counties did not specify the reason why they rejected the ballots that were rejected. If all counties had reported, I conclude that we would observe more absentee by mail ballots rejected because they were improperly attested to if all counties reported their rejected absentee by mail ballots and broke them out by category.

*B. Mississippi's Notarization Requirements are Especially Burdensome During the COVID-19 Pandemic*

52. The costs associated with getting an absentee-ballot application and elector's certificate on an absentee by mail ballot-envelope attested to in person under Mississippi law are increased during the COVID-19 pandemic, particularly for people who practicing vigilant social distancing. As Section V.B established, many of the people who are voting

by mail instead of in-person are doing so either because they do not want to risk exposing themselves to COVID-19 or risk exposing others to COVID-19. Yet, Section IV.C highlights that Mississippi's notarization requirements are unique in requiring that most potential voters have two in person encounters in order to vote by mail.

53. The costs of requiring a notary or other official authorized to administer oaths for absentee balloting to witness an absentee-ballot application or elector's certificate on their absentee mail ballot-envelope under Mississippi law are particularly increased during the COVID-19 pandemic. Seeing a notary in person requires an interaction in which potential voters end up in the proximity of a notary for a number of minutes. Moreover, a notary located in a place of business that is open to the general public may be interacting with many people daily, particularly if he or she is notarizing many affidavits right before the election. I assess that this is likely to make the cost of notarization particularly high among people who are otherwise engaging in vigilant social distancing.

54. During the COVID-19 pandemic, the cost of notarization under Mississippi law is also increased because it is less likely that people will come into contact with a notary. The cost of getting an absentee ballot notarized is lower for a potential voter who regularly comes into contact with a notary than for people who have to travel out of their way to see one. Financial institutions are one place where a number of people come into contact with a notary in their everyday life. Potential voters are less likely to interact with these notaries prior to the 2020 presidential election because fewer people are conducting in-person banking during the COVID-19 pandemic.<sup>70</sup> Moreover, many banks in

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<sup>70</sup>Orla McCaffrey, *People Aren't Visiting Branches. Banks Are Wondering How Many They Actually Need*, Wall Street J. (June 7, 2020) <https://www.wsj.com/articles/people-arent-visiting-branches-banks-are-wondering-how-many-they-actually-need-11591531200>.

Mississippi are requiring appointment in order to access to in-person banking.<sup>71</sup> Some potential voters who usually encounter a notary at their place of business also will not prior to the 2020 presidential election, either because they are working from home or not currently working during the COVID-19 pandemic.<sup>72</sup> This is happening at the same time that the U.S. Postal Service has issued a new rule that forbids United States Postal Service employees from witnessing absentee ballots while on duty, making it harder for a potential voter to get their ballot witnessed by someone other than a notary.<sup>73</sup>

## **VII. Mississippi's Lack of a Cure Provision Will Disenfranchise Some Potential Voters in the 2020 Presidential Election**

55. Mississippi law permits that an absentee ballot be rejected when an election manager concludes that there is a discrepancy between the signature on the absentee-ballot application and the signature on the absentee ballot. There is no process that allows a potential voter to cure this discrepancy after Election Day. Nor is there a process that allows a potential voter to cure a ballot that is rejected because it does not satisfy the notarization requirement. I conclude that the lack of such a cure provision will disenfranchise some potential voters in the 2020 presidential election. I reach this conclusion by establishing that:

- A. Absentee by mail ballots get rejected in Mississippi because of issues with the signature on the ballot (Section VII.A).

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<sup>71</sup> Mary Perez, *2 Branches of a Coast Bank Have Closed Temporarily after COVID Exposure*, SunHerald (July 31, 2020), <https://www.sunherald.com/news/coronavirus/article244628317.html>.

<sup>72</sup> Emily Akins, *League of Women Voters Volunteer to Help People with Absentee Ballots*, News 4 (KFOR) (June 29, 2020), <https://kfor.com/your-local-election-hq/league-of-women-voters-volunteers-to-help-people-with-absentee-ballots/>.

<sup>73</sup> James Brooks, *In Rule Change, Postal Service Forbids Employees from Signing Absentee Ballots as Witnesses*, Anchorage Daily News (Aug. 19, 2020), <https://www.adn.com/politics/2020/08/18/in-rule-change-postal-service-forbids-employees-from-signing-absentee-ballots-as-witnesses/>.

B. Some of the absentee by mail ballots that get rejected in Mississippi because of issues with the signature on the ballot or how the ballot was witnessed would be counted if there was a cure provision in which the person who casted the rejected ballot was notified and allowed to correct the error (Section VII.B).

A. *Issues with Ballot Signatures Cause Absentee by Mail Ballots to be Rejected in Mississippi*

56. Election managers in Mississippi are instructed to confirm that the voter's signature on the absentee-ballot envelope matches the voter's signature on the absentee-ballot application when determining whether to count an absentee ballot.<sup>74</sup> An absentee ballot can be rejected when an election manager determines that the two signatures do not correspond to one another.

57. I use data from the 2018 EAVS to document cases in which a potential voter cast an absentee by mail ballot that was rejected because of a problem with the voter's signature on the ballot. The EAVS documents 53 absentee by mail ballots, or about 0.3 percent of the absentee by mail ballots cast, that were rejected because of a problem with the voter's signature. This represents about 16 percent of the rejected absentee by mail ballots for which a reason was given for rejection. As highlighted in Section VI.A, there were more absentee by mail ballots that were rejected in 2018 in Mississippi that are not included in this count because a number of counties did not report the ballots that they rejected and other counties did not provide reasons why they rejected ballots.

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<sup>74</sup> Mississippi Secretary of State's Office Elections Division, *Poll Managers Election Day Activities: 2020 County Party Executive Committee Training*, [https://www.sos.ms.gov/content/documents/elections/2020/2020%20PEC%20Poll%20Managers%20Election%20Day%20Activities%20\(Full%20Page%20Slides\).pdf](https://www.sos.ms.gov/content/documents/elections/2020/2020%20PEC%20Poll%20Managers%20Election%20Day%20Activities%20(Full%20Page%20Slides).pdf).



*B. Some Additional Ballots Would be Counted if Mississippi Allowed a Voter to Cure Rejected Absentee by Mail Ballots*

58. A voter in Mississippi has no recourse to get their absentee by mail ballot counted if it is rejected because of a problem with the voter's signature or the notarization requirement on the elector's certificate. This stands in contrast with at least 19 states that provide voters with an opportunity to cure a mail ballot that was rejected because of clerical or signature-related errors on the mail ballot or mail ballot envelope.<sup>75</sup> Providing voters with the opportunity to cure the clerical or signature-related errors that caused mail ballot can increase the number of valid votes cast in an election. The experience of Nevada in their 2020 primary illustrate how a cure provision can increase the number of ballots counted in an election. Nevada can reject a mail ballot if the signature on the mail-ballot envelope does not match the signature of a voter registration, but it gives a voter up to seven days to cure the reason why the ballot was rejected.<sup>76</sup> While about 2.5 percent of the mail ballots submitted in Nevada's June primary were initially rejected because of a signature issue, almost half of these ballots ultimately were counted after election officials contacted voters and confirmed their ballots.<sup>77</sup>

**VIII. Allowing Registrants to Submit Unwitnessed Absentee-Ballot Applications, Unwitnessed Elector's Certificate on an Absentee by Mail Ballot Envelope, and Cure Their Rejected Mail Ballot in the 2020 Presidential Election Will Not Increase the Risk of Voter Fraud**

59. A concern that is frequently expressed about expanding access to mail balloting is that it could increase the incidence of voter fraud. I conclude that there is

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<sup>75</sup> The National Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail, and other Voting at Home Options*, tbl. 14, The NCSL Podcast (July 10, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

<sup>76</sup> Nevada Revised Statute 293.333.

<sup>77</sup> Associated Press, *About 6,700 Nevada Primary Ballots Rejected Over Signatures*, (June 26, 2020), <https://apnews.com/a9c95d374f922747b1e6d03b5cc39f41>.

minimal risk of increased voter fraud from adopting the absentee by mail policies that Plaintiffs are asking for in this case. Many states use the mail-ballot policies that Plaintiffs are advocating for in this case. I reach this conclusion by establishing that:

A. Voter fraud using a mail ballot, just like in-person voter fraud, has been exceedingly rare in recent federal elections (Section VII.A).

B. States that do not require mail ballots to be witnessed in-person do not experience an increase in voter fraud compared to states that do require in-person witnessed (Section VII.B).

A. *Almost No Voter Fraud is Committed Using Mail Ballots*

60. Voter fraud occurs when a voter tries to cast a ballot that he or she is not legally permitted to cast. Some forms of voter fraud include a vote cast by a non-citizen, a vote cast by someone who is criminally disenfranchised, a vote cast using a registration with an address that is where the voter does not live, a vote cast using someone else's registration record, or the same person casting two votes in the same election. Voter fraud is a form of election fraud, which refers to the act of breaking laws that govern the process of an election.

61. Studies that try to accumulate knowledge of all of the cases of voter fraud establish that voter fraud is an incredibly rare event. A study conducted by *News21* attempted to document cases of voter fraud that occurred between the years 2000 and 2012:<sup>78</sup>

In an exhaustive public records search, News21 reporters sent thousands of requests to elections officers in all 50 states, asking for every case of fraudulent activity including registration fraud, absentee ballot fraud, vote buying, false

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<sup>78</sup> *Election Fraud in America*, News21 (Aug. 12, 2012) <https://votingrights.news21.com/interactive/election-fraud-database/>.

election counts, campaign fraud, casting an ineligible vote, voting twice, voter impersonation fraud and intimidation.

This study uncovered evidence of 2,068 *alleged* election fraud cases in the United States over 12 years in 50 states. It is estimated that more than one billion ballots were cast during the time period over which *News21* searched for election fraud.<sup>79</sup> Thus, the rate of alleged case of fraud per ballot cast was no higher than 0.00021 percent. Of these alleged cases, only 491 involved mail ballots. The 491 cases included both cases in which an individual was accused of committing voter fraud and cases in which a candidate or campaign official used mail ballots as part of concentrated effort to affect the outcome of an election. And this overstates the number of documented cases of voter fraud, because many of these cases did not lead to a criminal conviction. In about 35 percent of the cases the accused was ultimately not charged, had the charges dismissed, or was acquitted. The *News21* study uncovered five cases of absentee-ballot fraud in Mississippi, four of which resulted in a plea or a conviction. There was one additional case of absentee-ballot fraud in Mississippi contained in a Heritage Foundation study documenting election fraud cases through 2017.<sup>80</sup>

62. Many of the cases of absentee-ballot fraud identified in the *News21* report, both in Mississippi and nationwide, involved a local candidate or campaign engaging in election fraud with the goal of influencing a local race. For example, two of the five convictions for absentee-ballot fraud in Mississippi contained in both the *News21* or

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<sup>79</sup>Rick Hasen, *Trump is Wrong About the Dangers of Absentee Ballots*, Wash. Post (Apr. 9, 2020), <https://www.washingtonpost.com/opinions/2020/04/09/trump-is-wrong-about-dangers-absentee-ballots/>.

<sup>80</sup>*A Sampling of Election Fraud Cases from Across the Country*, The Heritage Foundation, [https://www.heritage.org/sites/default/files/voterfraud\\_download/VoterFraudCases\\_5.pdf](https://www.heritage.org/sites/default/files/voterfraud_download/VoterFraudCases_5.pdf) (accessed on June 3, 2020).

Heritage Foundation study were Martha Garner<sup>81</sup>, who was convicted of engaging in absentee-ballot fraud in the 2005 Democratic primary for the mayor of Houston, and Jerry Kennamore<sup>82</sup>, who was convicted of engaging in absentee-ballot fraud while running in the 2005 Democratic primary for mayor of New Albany. I conclude there is substantially less risk of this form of election fraud in a presidential election in which turnout is higher and margins of victory generally are larger. A third conviction was of Ike Brown, who was found to have improperly obtained and counted absentee ballots in his role as Superintendent of Democratic Primary Elections in Noxubee County.<sup>83</sup> Thus, only two of the five cases were of voters engaging in mail-ballot fraud. And the case of Terrance Watts, a person convicted of a felony casting an absentee ballot without having his voting rights restored, would have been unlikely to have been prevented if he voted in person instead.<sup>84</sup> Thus, Lessadolla Sowers is the only voter referenced in these documents who may have been prevented from committing voter fraud if mail ballots were not available.<sup>85</sup>

63. A study I recently published in the *American Political Science Review*, a leading political science journal, rejects the contention that studies like *News21* miss a lot

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<sup>81</sup> *A Sampling of Election Fraud Cases from Across the Country*, The Heritage Foundation, [https://www.heritage.org/sites/default/files/voterfraud\\_download/VoterFraudCases\\_5.pdf](https://www.heritage.org/sites/default/files/voterfraud_download/VoterFraudCases_5.pdf) (accessed on June 3, 2020), p. 227.

<sup>82</sup> Chris Elkins, *Circuit Judge Gives Kennamore 5 Years Probation*, *New Albany Gazette* (Aug. 13, 2009), [https://www.djournal.com/new-albany/news/circuit-judge-gives-kennamore-5-years-probation/article\\_9203f2dc-91ca-5d00-a74a-d51086832db4.html](https://www.djournal.com/new-albany/news/circuit-judge-gives-kennamore-5-years-probation/article_9203f2dc-91ca-5d00-a74a-d51086832db4.html).

<sup>83</sup> *A Sampling of Election Fraud Cases from Across the Country*, The Heritage Foundation, [https://www.heritage.org/sites/default/files/voterfraud\\_download/VoterFraudCases\\_5.pdf](https://www.heritage.org/sites/default/files/voterfraud_download/VoterFraudCases_5.pdf) (accessed on June 3, 2020), p. 226.

<sup>84</sup> *A Sampling of Election Fraud Cases from Across the Country*, The Heritage Foundation, [https://www.heritage.org/sites/default/files/voterfraud\\_download/VoterFraudCases\\_5.pdf](https://www.heritage.org/sites/default/files/voterfraud_download/VoterFraudCases_5.pdf) (accessed on June 3, 2020), p. 226.

<sup>85</sup> *A Sampling of Election Fraud Cases from Across the Country*, The Heritage Foundation, [https://www.heritage.org/sites/default/files/voterfraud\\_download/VoterFraudCases\\_5.pdf](https://www.heritage.org/sites/default/files/voterfraud_download/VoterFraudCases_5.pdf) (accessed on June 3, 2020), p. 222.

of the voter fraud that occurs.<sup>86</sup> This study focused on the case of double voting, in which the same individual casts multiple ballots using different registrations. Some contend that a rise in mail balloting will increase the amount of double voting because it makes it easier for some voters to cast more than one ballot in the same election. In reality, no more than 1 person in every 4,000 voters cast multiple ballots. Many of the cases that appear to be the same individual voting twice are actually a result of errors in official records documenting who votes. To illustrate why this happens, consider that case of Charles R. Jeter, Jr., a North Carolina state representative, who was accused of voting twice in the 2004 presidential election, once in North Carolina, where he was living at the time, and once in South Carolina, where he was raised. Jeter's mother had voted in South Carolina in 2004 and signed next to her son's outdated registration instead of her own, on the line below. A poll manager had made a mistake, creating an illusory double vote.<sup>87</sup> Cases like this mean that the actual number of votes who cast multiple ballots is much less than 1 in every 4,000 voters, even after accounting for cases that go undetected.

64. Ultimately, I conclude that the evidence shows that almost no voter fraud is committed using mail ballots. Finding only 491 cases of alleged election fraud using mail ballots over 12 years in 50 states suggests that a few more of the ballots cast by mail were fraudulent than the ballots cast in person over the period studied by *News21* given that more ballots were cast in-person than by mail during this period.<sup>88</sup> But the difference is

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<sup>86</sup>Sharad Goel, Marc Meredith, Michael Morse, David Rothschild & Houshmand Shirani-Mehr, *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections*, 114 *Am. Pol. Sci. Rev.* 456 (2020).

<sup>87</sup>Nick Ochsner, *Records Show Charles Jeter 2004 'Vote' Marked in Error*, WBTW3 (July 27, 2016), <https://www.wbtv.com/story/32555349/records-show-charles-jeter-2004-vote-marked-in-error/?clienttype=generic>.

<sup>88</sup>U.S. Election Assistance Commission, *EAVS Deep Dive: Early, Absentee, and Mail Voting*, (Oct. 17, 2017) available at <https://www.eac.gov/documents/2017/10/17/eavs-deep-dive-early-absentee-and-mail-voting-data-statutory-overview>.

incredibly slight, and largely an artifact of in-person voter fraud being essentially non-existent. Hundreds of millions of these ballots were cast by mail, and some states almost exclusively relied on mail balloting. Accordingly, voter fraud is exceedingly rare in the United States.

B. *States Without In-Person Witness Requirements and Cure Provisions Do Not Experience Higher Rates of Mail-Ballot Fraud*

65. Most states do not require an in-person witness to a mail ballot, and no other state requires an in-person witness to an absentee-ballot application.<sup>89</sup> Of states with an in-person witness requirement, Mississippi is one of three states that restricts the in-person witness to be a notary or other official authorized to administer oaths. I find that there is no evidence that voter fraud is any less exceedingly rare in places that verify the identity of mail-ballot voters without using an in-person witness or who allow a broader set of people to act as an in-person witness. At least 19 states provide voters with an opportunity to cure a mail ballot that was rejected because of clerical or signature-related error on the mail ballot or mail ballot envelope.<sup>90</sup> I also find that there is no evidence that voter fraud is any less exceedingly rare in places that allow a voter to cure a rejected mail ballot. Thus, I conclude that Mississippi would not experience an increase in fraud using absentee by mail ballots in the 2020 presidential election if the witness requirement on the absentee-ballot application and elector's certificate on the mail-ballot envelope was optional, anyone eighteen and older was eligible to witness these documents even if the person casting the

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<sup>89</sup> The National Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail, and other Voting at Home Options*, tbl. 14, The NCSL Podcast (July 10, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

<sup>90</sup> The National Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail, and other Voting at Home Options*, tbl. 14, The NCSL Podcast (July 10, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

ballot was not claiming to be disabled, or a voter was given the opportunity to cure a rejected absentee by mail ballot.

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64. *Topline: KFF Health Tracking Poll – June 2020*, Henry J. Kaiser Family Found., <http://files.kff.org/attachment/Topline-KFF-Health-Tracking-Poll-June-2020.pdf>.
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Marc Meredith, Ph.D.

Dated: 9/11/2020



## **X. Current Curriculum Vitae**

Updated: 9/7/2020

### **Marc Meredith**

University of Pennsylvania  
Department of Political Science  
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#### **Education**

Ph.D. in Political Economics, Stanford Graduate School of Business, June 2008  
Dissertation Committee: Daniel Kessler, B. Douglas Bernheim, Keith Krehbiel  
M.A. in Political Science, Stanford University, June 2006  
M.A. in Economics, Northwestern University, June 2002  
B.A. in Economics and Mathematical Methods in Social Science (w/ honors),  
Northwestern University, June 2002

#### **Employment**

##### **University of Pennsylvania**

Associate Professor (with tenure) of Political Science and (secondary appointment) Business Economics and Public Policy, 7/2014 –

Undergraduate Chair of Political Science, 7/2015 – 6/2018

Faculty Director of Undergraduate Research for Center for Undergraduate Research,  
1/2020 -

Assistant Professor of Political Science and (secondary appointment) Business Economics and Public Policy, 7/2009 – 6/2014

##### **NBC Decision Desk**

Election Analyst, 10/2014 –

##### **Massachusetts Institute of Technology**

Visiting Lecturer of Political Science, 7/2008 – 6/2009

##### **Stanford University**

Lecturer of Economics, 4/2006 – 6/2006

##### **Federal Reserve Bank of San Francisco**

Research Associate, 6/2002 – 8/2003

#### **Visiting Appointments**

##### **Oxford University**

Visiting Scholar, Nuffield College, 3/2019 – 5/2019

##### **Institute for Advanced Study in Toulouse**

Visiting Scholar, 1/2019 – 3/2019

##### **Princeton University**

Visiting Scholar, *Center for the Study of Democratic Politics*, 9/2012 – 6/2013



**Peer Reviewed Journal Articles**

- Gillion, Daniel Q., Jonathan M. Ladd, and **Marc Meredith**. 2020. "Party Polarization, Ideological Sorting and the Emergence of the Partisan Gender Gap." *British Journal of Political Science* 50(4): 1217-1243.
- Goel, Sharad, **Marc Meredith**, Michael Morse, David Rothschild, and Houshmand Shirani-Mehr. 2020. "One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections." *American Political Science Review* 114(2): 456-469.
- Bartanen, Brendan, Jason A. Grissom, Ela Joshi, and **Marc Meredith**. 2018. "Mapping Inequity in Local Political Representation: Evidence from Ohio School Boards." *AERA Open* 4(4): 1-19.
- Grimmer, Justin, Eitan Hirsch, **Marc Meredith**, Jonathan Mummolo, and Clayton Nall. 2018. "Obstacles to Estimating Voter ID Laws' Effect on Turnout." *Journal of Politics* 80(3): 1045-1051
- Meredith, Marc** and Michael Morse. 2017. "Discretionary Disenfranchisement: The Case of Legal Financial Obligations." *Journal of Legal Studies* 46(2): 309-338.
- Gerber, Alan S., Gregory A. Huber, **Marc Meredith**, Daniel R. Biggers, and David J. Hendry. 2017. "Does Incarceration Reduce Voting? Evidence about the Political Consequences of Spending Time in Prison." *Journal of Politics* 79(4): 1130-1146.
- Hopkins, Daniel J, **Marc Meredith**, Michael Morse, Sarah Smith, and Jesse Yoder. 2017. "Voting but for the Law: Evidence from Virginia on Photo Identification Requirements." *Journal of Empirical Legal Studies* 14(1): 79-128.
- Gerber, Alan S., Gregory A. Huber, **Marc Meredith**, Daniel R. Biggers, and David J. Hendry. 2015. "Felony Status, Participation, and Political Reintegration: Results from a Field Experiment." *American Journal of Political Science* 59(4): 912-926.
- Meredith, Marc** and Michael Morse. 2015. "The Politics of the Restoration of Ex-Felon Voting Rights: The Case of Iowa." *Quarterly Journal of Political Science* 10(1): 41-100.
- Ansolahehere, Stephen, **Marc Meredith**, and Erik Snowberg. 2014. "Macro-Economic Voting: Local Information and Micro-Perceptions of the Macro-Economy." *Economics and Politics* 26(3): 380-410.
- Meredith, Marc**. 2013. "Exploiting Friends-and-Neighbors to Estimate Coattail Effects." *American Political Science Review* 107(4): 743-765.
- Ansolahehere, Stephen, **Marc Meredith**, and Erik Snowberg. 2013. "Asking About Numbers: Why and How." *Political Analysis* 21(1): 48-69.
- Meredith, Marc** and Yuval Salant. 2013. "On the Causes and Consequences of Ballot-Order Effects." *Political Behavior* 31(1): 175-197.
- Previous version published as SIEPR Discussion Paper No. 06-29

Gerber, Alan S., Daniel P. Kessler, and **Marc Meredith**. 2011. "The Persuasive Effects of Direct Mail: A Regression Discontinuity Approach." *Journal of Politics* 73(1): 140-155.

Previous version published as NBER Working Paper 14206

**Meredith, Marc** and Neil Malhotra. 2011. "Convenience Voting Can Affect Election Outcomes." *Election Law Journal* 10(3): 227-253.

Previous version published as Stanford GSB Research Paper No. 2002

**Meredith, Marc**. 2009. "Persistence in Political Participation." *Quarterly Journal of Political Science* 4(3): 186-208.

Elis, Roy, Neil Malhotra, and **Marc Meredith**. 2009. "Apportionment Cycles as Natural Experiments." *Political Analysis* 17(4): 358-376.

**Meredith, Marc**. 2009. "The Strategic Timing of Direct Democracy." *Economics and Politics* 21(1): 159-177.

Berger, Jonah, **Marc Meredith**, and S. Christian Wheeler. 2008. "Contextual Priming: Where People Vote Affects How They Vote." *Proceedings of the National Academy of Sciences* 105(26): 8846-8849.

Previous version published as Stanford GSB Research Paper No. 1926

**Meredith, Marc**. 2004. "Why Do Universities Compete in the Rankings Game? An Empirical Analysis of the Effects of the US News and World Report College Rankings." *Research in Higher Education* 45(5): 443-461.

### **Invited Journal Articles**

Greenberg, Claire, **Marc Meredith**, Michael Morse. 2016. "The Growing and Broad Nature of Legal Financial Obligations: Evidence from Alabama Court Records." *Connecticut Law Review* 48(4): 1079-1120.

**Meredith, Marc** and Michael Morse. 2014. "Do Voting Rights Notification Laws Increase Turnout?" *The ANNALS of the American Academy of Political and Social Science* 651: 220-249.

### **Peer Reviewed Book Chapters**

Ansolabehere, Stephen, **Marc Meredith**, and Erik Snowberg. 2011. "Sociotropic Voting and the Media." In John Aldrich and Kathleen McGraw (Eds.), Improving Public Opinion Surveys: Interdisciplinary Innovation and the American National Election Studies. Princeton University Press: 175-192.

### **Invited Book Chapters**

**Meredith, Marc** and Evan Perkowski. 2015. "Regression Discontinuity Design." In Robert Scott and Stephen Kosslyn (Eds.), Emerging Trends in the Social and Behavioral Sciences. John Wiley & Sons, Inc.: 1-16.

### **Invited Book Reviews**

**Meredith, Marc**. 2015. "The Punishment Imperative: The Rise and Failure of Mass Incarceration in America by Todd R. Clear and Natasha A. Frost." *Political Science Quarterly* 130(1): 166-167.



**Working Papers**

Abernathy, Claire, Jason A. Grissom, **Marc Meredith**, James Sadler. “Holding Local Officials Accountable: School District Performance and School Board Turnover.”

Grossman, Guy, Dorothy Kronick, Matthew Levendusky, **Marc Meredith**. “Let the Majority Rule.”

Henninger, Phoebe, **Marc Meredith**, and Michael Morse. “Who Votes Without Identification? Using Affidavits from Michigan to Learn About the Potential Impact of Strict Photo Voter Identification Laws.”

Huber, Gregory, **Marc Meredith**, Michael Morse, Katie Steele. “Voter List Maintenance Errors and Their Racial Burden: Evidence from Wisconsin's Supplemental Movers Poll Books.”

**Meredith, Marc**. “A Discouraging Note on the Use of Encouragement Designs to Study Sequential Decision-Making.”

**Meredith, Marc**. “Heterogeneous Friends-and-Neighbors Voting.”

**Meredith, Marc** and Zac Endter. “Aging into Absentee Voting: Evidence from Texas.”

**Meredith, Marc** and Jason Grissom. “The Value of Partisan Cues in Local Elections: Regression Discontinuity Estimates from Unconventional School Board Races.”

**Expert Witness Work (\* indicated testified under oath)**

Common Cause v. Brehm (Case No. 1:17-cv-06770-AJN)\*

Common Cause Indiana v. Lawson (Case No. 1:20-cv-1825)

Crossey v. Boockvar (Case No. 266 M.D. 2020) (Pa. Commw. Ct.)

DCCC v. Zirix (Case No: 20-CV-211-JED-JFJ)\*

Middleton v. Andino (Case No. 3:20-cv-01730-JMC)

NAACP Pennsylvania State Conference v. Boockvar et al. (Case No. 364 M.D. 2020) (Pa. Commw. Ct.)\*

**Invited and Conference Presentations (Political Science Unless Otherwise Noted)**

2004 – 2005: Midwest Political Science Association Conference (MPSA)

2006 – 2007: MPSA

2007 – 2008: Georgetown, Yale, Emory, Harvard, Princeton, Chicago (Harris), American Political Science Association (APSA), MPSA

2008 – 2009: Berkeley (Haas), Columbia, MIT, Penn (Wharton), Penn, Wisconsin, Yale, MIT American Politics Conference, Yale CSAP Conference, APSA, MPSA

2009 – 2010: Stockholm (IIES), Caltech, APSA, MPSA, State Politics and Policy Conference (SPPC)

2010 – 2011: Cornell, Harvard/MIT (Positive Political Economy), Chicago (Harris), Temple, Columbia, Analyst Institute, APSA, MPSA, Society for Political Methodology Conference

2011 – 2012: NYU, Analyst Institute, Yale CSAP Conference, Stanford Strategy and the Business Environment (Discussant), MPSA, SPPC

2012 – 2013: Penn (Economics), Harvard/MIT (Positive Political Economy), Wisconsin, Princeton, Emory, Yale Detaining Democracy Conference, Princeton Political

- Impact of Media Conference (Discussant), Law and Society Conference, Yale CSAP Conference (Discussant)
- 2013 – 2014: Vanderbilt, Wisconsin, Pittsburgh, Virginia (Batten), Texas (McCombs), Yale, Rochester, APSA, Empirical Legal Studies Conference, Columbia Political Economy Conference (Discussant), MPSA (Section Chair), SPPC, Yale CSAP Conference (Discussant)
- 2014 – 2015: Princeton, Berkeley, Penn (Wharton), MPSA
- 2015 – 2016: UConn (Law), Dartmouth, Azavea, APSA, MPSA, European Political Science Association Conference (EPSA)
- 2016 – 2017: Yale (Behavioral Science), Harvard, Vanderbilt Urban Political Economy Conference, Princeton Rethinking Voter Turnout Workshop, MPSA (Section Chair)
- 2017 – 2018: Columbia Political Economy Conference (Discussant), Election Sciences, Reform, & Administration Conference (ESRA)
- 2018 – 2019: Institute for Advanced Study in Toulouse, American Sociological Society Computational Pre-Conference, APSA (Discussant), Microsoft Research Digital Economic Conference, ESRA (Host Committee)
- 2019 – 2020: APSA (Discussant), ESRA (Discussant)

### **Teaching Experience**

- Election Law (undergraduate): Spring 2014
- Government and Legal Environment of Business (MBA): Spring 2011, Spring 2012
- Introduction to American Politics (undergraduate): Fall 2011, Fall 2015, Fall 2017, Fall 2018
- Policy Making and Public Institutions (MPA): Spring 2016, Spring 2018
- Policy Making and Public Institutions (undergraduate): Spring 2017, Spring 2020
- Political Economics (undergraduate): Spring 2007
- Quantitative Research Methods (undergraduate): Fall 2010, Fall 2011, Fall 2013, Spring 2015, Spring 2016, Spring 2018, Fall 2018, Fall 2020
- Quantitative Research Methods I (graduate): Fall 2008, Fall 2010
- Quantitative Research Methods II (graduate): Spring 2010, Spring 2012, Spring 2015, Spring 2020
- Quantitative Research Methods III (graduate): Spring 2009, Spring 2014
- State and Local Politics (undergraduate): Fall 2009

### **Departmental Service**

- American Politics Workshop Co-organizer: 2011-2012, 2014-2015, 2015-2016, 2016-2017
- Comprehensive Exam Committee: American Politics (2011, 2013 (chair), 2014, 2017), Methods (2012), Political Communication (2010)
- Committee on Associated Faculty: 2009-2010
- Dissertation Committee: Joshua Darr (2015 PhD, placed at LSU), Ellen Donnelly (2015 PhD, placed at the University of Delaware), Alex Garlick (2016 PhD (chair), placed at College of New Jersey), Eunji Kim (2019 PhD, placed at Vanderbilt), Patricia Posey (2019 PhD, placed at University of Chicago), Laura Silver (2016 PhD, placed at US State Department), Ashley Tallevi (2017 PhD (co-chair), placed at Facebook), Emily Thorson (2013 PhD, placed at George Washington University, now at Syracuse)

Promotion Committee: 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020

Search Committee: Political Identity (2014)

Senior Thesis Advisor: Maryam Alireza (2013), Richard Diurba (2018), August Gebhard-Koenigstein (2019), Yoni Gruskin (2011), Ketaki Gujar (2020), Phoebe Henninger (2018), Urja Mittal (2014), Riley Morrison (2020), Michael Morse (2013), James Sadler (2013), Joseph Sachi (2019), Joseph Sageman (2017), Lucas Salzman (2014), Eric Selzer (2019), Mark Steiner (2020), Jack Weisman (2019), Max Wheeling (2011), Kevin Yang (2020) Jesse Yoder (2016)

Undergraduate Chair: 2015-2018

Undergraduate Executive Committee: 2010-2012, 2013-2015, 2015-2018 (chair)

### **School and University Service**

Penn Undergraduate Research Mentor: 2011, 2013

SAS Committee on Undergraduate Academic Standing: 2014-2016

SAS Learning, Culture, and Social Change Strategic Planning Committee: 2013-2014

SAS Quantitative Exploration of Evolving Systems Strategic Planning Committee: 2014-2015

SAS Teaching Awards Committee: 2017-2018, 2019-2020 (chair)

SAS Undergraduate Pre-Major Advisor: 2010-2012, 2014-2016, 2016-2018

Search Committee for Executive Director of the Center for Undergraduate Research and Fellowship: 2018

Senior Thesis Advisor: Claire Greenberg (2017, PPE), Rebecca Molinoff (2020, PPE), Amelia Storck (2016, Visual Studies)

University Faculty Review Committee for Undergraduate Research: 2016-2017, 2017-2018, 2018-2019, 2019-2020 (chair)

University Scholars Faculty Council: 2019-2020

Vice Provost for Education Fellowship Selection Committee: 2018-2019, 2019-2020

### **Disciplinary Service**

Book Conference Participant: “Primaries and Candidate Quality” by Shigeo Hirano and James M. Snyder Jr., “Southern Slavery and its Political Legacy” by Avidit Acharya, Matthew Blackwell, and Maya Sen, “Who Wants to Run?” by Andrew Hall

Book Reviewer: Columbia University Press, CQ Press, University of Chicago Press

Editorial Board Member: American Politics Research (2017-), Journal of Politics (2019-)

External Promotion Reviewer: American Bar Foundation, Columbia University (X2), Massachusetts Institute of Technology, Microsoft Research, University of California Berkeley, University of California Los Angeles (X2), University of California Riverside, University of California San Diego, University of Chicago (X3)

Grant Reviewer: National Science Foundation, Research Council of Canada, Belgium FNRS

Journal Reviewer: American Economic Review, American Journal of Political Science (X19), American Law and Economics Review, American Politics Research (X11), American Political Science Review (X16), B.E. Journal of Economic Analysis & Policy, British Journal of Political Science (X9), Comparative Political Studies (X2), Congress and the Presidency (X2), Criminology, Criminal Justice, Law & Society,

Criminal Justice Studies, East European Politics and Societies and Cultures, Econometrica, Economics and Politics (X6), Education Policy, Election Law Journal (X5), Electoral Studies (X6), Empirical Economics, European Journal of Political Economy, European Journal of Political Research (X2), International Journal of Health Care Economics and Finance, International Journal of Public Opinion Research, International Political Science Review, Journal of Economic Behavior and Organization, Journal of Elections, Public Opinion, and Parties (X4), Journal of Experimental Political Science (X5), Journal of Empirical Legal Studies (X2), Journal of Political Economy, Journal of Politics (X29), Journal of Public Administration Research and Theory, Journal of Public Economics (X3), Journal of Public Policy, Journal of Theoretical Politics, Legislative Studies Quarterly (X3), Nature (X2), Quarterly Journal of Economics, Quarterly Journal of Political Science (X10), PLOS ONE, Political Analysis, Political Behavior (X10), Political Communication, Political Psychology (X2), Political Research Quarterly (X7), Political Science Research and Methods (X4), Politics and Governance, Politics, Groups, and Identities, Polity, PS, Proceedings of the National Academy of Sciences (X5), Public Choice (X7), Public Opinion Quarterly (X8), Research and Politics, Review of Economics and Statistics, Science Advances, Social Problems (X2), State Politics and Policy Quarterly (X4), Statistics, Politics and Policy, Time-sharing Experiments for the Social Sciences, Yale Law Journal

**EXHIBIT 4**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

PLAINTIFFS, et al.,

Plaintiffs,

v.

MICHAEL WATSON, et al.,

Defendants.

**Case No. -cv-**

**DECLARATION OF JED OPPENHEIM**

Pursuant to 28 U.S.C. § 1746, I, Jed Oppenheim, declare as follows:

1. I am over the age of eighteen, and I am competent to make this declaration. I provide this declaration based upon my personal knowledge. I would testify to the facts in this declaration under oath if called upon to do so.
2. I am a Plaintiff in the case *Plaintiffs v. Watson*.
3. I am 40 years old and live in Jackson, Mississippi. I am a U.S. citizen and eligible to register to vote in Mississippi. I have never lost my right to vote due to felony conviction or court order.
4. I am a white man. I am registered to vote in Jackson, Mississippi.
5. I live at home with my wife, Harriett Oppenheim, who is 37 years old and a registered voter. We live with our one-year-old son.
6. My wife has health conditions that put her at higher risk of contracting, suffering severe complications, and potentially dying from COVID-19. She has lupus, meaning she is immunocompromised; high blood pressure; and is a kidney transplant recipient after renal

failure. If any of us were to test positive for COVID-19, it is likely that Harriett would need to go immediately to the hospital.

7. Harriett's 69-year-old mother is part of our family unit, although she lives separately from us. I visit my mother-in-law at her home several times per week to bring her grocery items, to take her mail, and to drop off our son for childcare. She visits our home once or twice a month. My mother-in-law has moderate asthma, which makes her higher risk for contracting and suffering severe complications from COVID-19. Because of her health condition, I run essential and emergency errands for my mother-in-law as well as those for my wife, my son, and myself.

8. Because of the risk COVID-19 poses to my wife's and my mother-in-law's health, I have been limiting my outside activity and avoiding contact with anyone outside our family unit. I do not leave my neighborhood or my mother-in-law's neighborhood except to attend medical appointments, to pick up Harriett's medication from the pharmacy, and to fill the gas tank of our car or my mother-in-law's car. When I must leave the house for these errands, I always wear a mask and gloves.

9. My wife and I get our food delivered and do not go to the grocery store. We wipe and spray all deliveries to our home, including packages and mail. My mother-in-law follows the same strict health protocols that we do.

10. I am a lifelong, regular voter. I usually vote in person on election day and prefer to do so. I love the process of in person voting. I voted in person in the March 2020 primary in Mississippi.

11. I plan to vote in the November elections in Mississippi. Because of the severe risk that voting in person at my polling place poses to my wife's and my mother-in-law's health, I need to vote by absentee ballot.

12. I understand that to vote by absentee ballot in Mississippi, I must qualify for an excuse. I understand that for the November election, I do not qualify for any of the excuses to request an absentee ballot.

13. Although there is a new excuse on the application for an absentee ballot relating to COVID-19 for the November 3, 2020 election, it is not clear to me that I qualify for that excuse. I have asked the Secretary of State for clarity but have not received a response.

14. If I am unable to vote by absentee ballot, I will have to decide whether to vote in person—risking the health of my family—or not vote at all. I feel that voting is a key part of being engaged in the democratic process and one of the most important ways to make my voice heard.

15. If I am forced to choose between voting in person and risking my wife's and my mother-in-law's health, I will need to take substantial safety measures. During voting, I will have to take all necessary measures to protect myself from contracting coronavirus, including wearing personal protective equipment, maintaining 6-foot distance, and sanitizing my hands after touching any surfaces. Immediately after voting, I will need to self-isolate away from my child and wife, potentially at a costly hotel or motel, until I have tested negative for COVID-19. I would not feel comfortable returning to my home until I have received a negative COVID-19 test. Depending on the speed of my COVID-19 test and results, this may take weeks. During this time, I will not be able to care for and run essential and emergency errands for my family, including my mother-in-law, as I normally do. This will be a huge disruption to our lives.

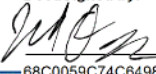
16. I should not be put in the position of having to choose between my fundamental right to vote and the lives of my loved ones. Black citizens of Mississippi, such as my wife, and their ancestors fought for centuries to secure the vote. Mississippians should not have to give this right



up because of our leaders' unwillingness to have flexible absentee measures in a deadly pandemic.

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

Executed this 13<sup>th</sup> day of August 2020.

DocuSigned by:  
  
68C0059C74C6498...  
Jed Oppenheim

# **EXHIBIT 5**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**  
**NORTHERN DIVISION**

CYNTHIA PARHAM, JED OPPENHEIM,  
CHERYL GOGGIN, LEAGUE OF WOMEN  
VOTERS MISSISSIPPI, and MISSISSIPPI  
STATE CONFERENCE OF THE NAACP,

Plaintiffs,

v.

MICHAEL D. WATSON, JR., in his official  
capacity as Secretary of State of Mississippi;  
and LYNN FITCH, in her official capacity as  
Attorney General of the State of Mississippi,

Defendants.

Civil Action No. 3:20-cv-572-DPJ-  
FKB

**DECLARATION OF CYNTHIA PARHAM**

Pursuant to 28 U.S.C. § 1746, I, Cynthia Parham, declare as follows:

1. I am over the age of eighteen, and I am competent to make this declaration. I provide this declaration based upon my personal knowledge. I would testify to the facts in this declaration under oath if called upon to do so.
2. I am a Plaintiff in the above-captioned case.
3. I am 61 years old and a resident of Oxford, Mississippi. I am a U.S. citizen and have never lost my right to vote due to felony conviction or court order.
4. I am an African-American woman. I live with my 62-year-old husband in our home in Oxford, Mississippi. We do not live with anyone else.
5. I am registered to vote in Oxford, Mississippi.

6. I currently suffer from heart disease, diabetes, and kidney disease. I have had five heart bypass surgeries and two stents put into my heart. My husband suffers from pulmonary disease. These health conditions put us at higher risk of contracting, suffering severe complications, and potentially dying from COVID-19.

7. Because of my health conditions and my husband's health condition, I have been taking precautions to reduce my risk of contracting COVID-19. I have been limiting my in-person interaction with individuals outside my family, avoiding contact with large groups, and using personal protective equipment when I must go out. I do not leave my home except to go to work, to doctor's appointments, to go grocery shopping, and to occasionally visit my church.

8. I am an insurance agent and own my own business in Oxford. I am one of only a few Black business owners in Oxford. At work, I interact in person with only one employee and a small number of clients, less than ten per week. Since the COVID-19 pandemic began, most of my client interactions take place over the phone. When interacting with my employee and in-person clients, we strictly maintain a six-foot distance. Everyone is required to wear a mask. I wear either a mask or face shield. After every client visit, my employee sprays and wipes down the client's chair and doorknobs with disinfectant.

9. I attend church services virtually and only go to my church in person once a month to pay tithes. When I go to church to pay tithes, I usually stay in my car and hand in my donation through the window to a deacon or trustee. Less frequently, I go inside the church to the fellowship hall table to pay my tithes. On these occasions, I pass only a few people and we all stay socially distanced and wear masks. I sanitize my hands afterwards. Once every few months, I go inside my church to sing for the virtual service. When I sing at my church, I am one of less than ten people

present in the sanctuary. We wear masks and keep at least six feet away from one another the whole time. I remove my mask to sing but otherwise I keep my mask on.

10. I shop for groceries two or three times a week. I try to go as infrequently as possible. When I go shopping, I always wear a mask and stay six feet away from other people. I wash my hands or use hand sanitizer after shopping trips. I do my other non-essential shopping online.

11. The only visitors I have had to my home since the pandemic began are family members and my one insurance business employee.

12. I voted in person in the March 2020 primary election in Mississippi. I ran for County Supervisor during this election as well, although my run was not successful. My uncle inspired me to run for office. He was the first African-American from Oxford to become a medical physician, to my knowledge. He always told me, "Equality is not something you just talk about. It's something you do. If things aren't right, you have to change them."

13. I have been a regular voter since the age of 18. I typically prefer to vote in-person at my local polling place.

14. I plan to vote in the November 2020 elections in Mississippi. I would prefer to vote in person in November. However, because of the severe risk that voting in person at my polling place poses to my health and my husband's health, I need to vote by absentee ballot.

15. I understand that to vote by absentee ballot in Mississippi, I must qualify for an excuse. I understand that for the November election, I do not qualify for any existing excuses to request an absentee ballot.

16. Although there is a new excuse on the application for an absentee ballot relating to COVID-19 for the November 3, 2020 election, it is not clear to me that I qualify for that excuse.

17. If I cannot vote by absentee ballot, I will have to decide whether to vote in person – risking my health and my husband’s health – or not at all. To not vote would be devastating to me. I want and need to vote. I am pushing everyone to vote. I just do not know if I would put my life on the line for it.

18. Voting is extremely important to me. I know that people have died for me to have the right to vote. People have suffered to give me the right to vote. And I want to be able to show my children how important it is to cast a vote. I want them to know that it counts.

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

Executed this 17<sup>th</sup> day of August 2020.

DocuSigned by:  
*Cynthia Parham*  
95CCC403A3BA48E...

Cynthia Parham



# **EXHIBIT 6**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

CYNTHIA PARHAM, JED OPPENHEIM,  
CHERYL GOGGIN, LEAGUE OF WOMEN  
VOTERS MISSISSIPPI, and MISSISSIPPI  
STATE CONFERENCE OF THE NAACP,

Plaintiffs,

v.

MICHAEL D. WATSON, JR., in his official  
capacity as Secretary of State of Mississippi; and  
LYNN FITCH, in her official capacity as  
Attorney General of the State of Mississippi,

Defendants.

Civil Action No. 3:20-cv-572-DPJ-  
FKB

**DECLARATION OF DR. ARTHUR L. REINGOLD**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the Division Head of Epidemiology and Biostatistics at the University of California, Berkeley, School of Public Health. I have worked on the prevention and control of infectious diseases in both the United States, including eight years at the US Centers for Disease Control and Prevention (“CDC”), and with numerous developing countries around the world for over forty years. Since its inception in 1994, I have directed or co-directed the CDC-funded California Emerging Infections Program. I am a member of the Society for Epidemiologic Research and the American Epidemiological Society; an elected Fellow of the Infectious Disease Society of America and of the American Association for the Advancement of Science; and an

elected member of the Institute of Medicine of the National Academy of Sciences. I was previously the President of both the Society for Epidemiologic Research and the American Epidemiological Society. I have served on the editorial boards of the journals: American Journal of Epidemiology, Epidemiology, and Global Public Health.

2. I received my A.B. in biology from the University of Chicago in 1970, and my M.D. from the University of Chicago in 1976. Among other things, I completed a residency in internal medicine and a preventative medicine residency with the CDC.

3. My career in public health has been in the area of infectious diseases and epidemiology. Following my positions at the CDC (1979–87), I joined the faculty of the School of Public Health at Berkeley as a Professor of Epidemiology (1987–present), the faculty of the Department of Epidemiology and Biostatistics at the University of California, San Francisco (“UCSF”) (1989–present), and as a Clinical Professor in the Department of Medicine at UCSF (1991–present). From 1990–94, I was the Head of the Epidemiology Program, Department of Biomedical and Environmental Health Sciences, University of California, Berkeley; from 1994–2000, I was the Head of the Division of Public Health Biology and Epidemiology, University of California, Berkeley; from 2000–18, I was the Head of the Division of Epidemiology, School of Public Health, University of California, Berkeley; from 2018 continuing through the present, I am the Head of the Division of Epidemiology and Biostatistics, School of Public Health University of California, Berkeley.

4. My research focuses on emerging and re-emerging infections in the United States and in developing countries; vaccine-preventable diseases in the United States and in developing countries; and disease surveillance, outbreak detection, and outbreak response.

Attached and incorporated by reference to this declaration is a copy of my curriculum vitae

(Attached as Exhibit A).

5. I am currently collaborating on research concerning SARS-CoV-2 and its incidence and serving on SARS-CoV-2 advisory groups for multiple organizations, including UC Berkeley, the University of California system, and the City and County of San Francisco, among others.

6. SARS-CoV-2 is a novel coronavirus that causes Coronavirus Disease 2019 (COVID-19). The virus is a respiratory virus with patients typically presenting with acute respiratory signs and symptoms, which can escalate in some patients to respiratory failure and other serious, life-threatening complications. The most common symptoms are fever, cough, and shortness of breath. Other identified symptoms include muscle aches, headaches, chest pain, diarrhea, coughing up blood, sputum production, runny nose, nausea, vomiting, sore throat, confusion, lack of senses of taste and smell, and anorexia. Due to the respiratory impacts of the disease, individuals may need to be put on oxygen, and in severe cases, patients may need to be intubated and put on a ventilator. People of every age can and have contracted COVID-19, and can be at risk of severe complications (or even death) from the disease. Geriatric patients, however are at the greatest risk of severe cases, long-term impairment, and death. Likewise, those with immunologic conditions and with other pre-existing conditions, such as hypertension, certain heart conditions, lung diseases (e.g., asthma, COPD), diabetes mellitus, obesity, and chronic kidney disease, are at high risk of a life-threatening COVID-19 illness and to die of COVID-19.<sup>1</sup>

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<sup>1</sup> Dorn AV, Cooney RE, Sabin ML (April 2020). *COVID-19 exacerbating inequalities in the US*, *Lancet*. 395 (10232): 1243–1244. doi:10.1016/S0140-6736(20)30893-X; Adams ML, Katz DL, Grandpre J (April 2020). *Population-Based Estimates of Chronic Conditions Affecting Risk for Complications from Coronavirus Disease, United States, Emerging Infectious Diseases*. 26 (8). doi:10.3201/eid2608.200679; Price-Haywood E, Jeffrey Burton J, Fort D, Seoane L, *Hospitalization and Mortality among Black Patients and White Patients with Covid-19*, *N Engl J Med* 2020; 382:2534-2543, DOI: 10.1056/NEJMsa2011686; Williams DR, Cooper LA. *COVID-19 and Health Equity—A New Kind of “Herd Immunity”*. *JAMA*. 2020;323(24):2478–2480. doi:10.1001/jama.2020.8051; *see also* Artiga S & Orgera K, *COVID-19 Presents Significant Risks for American Indian and Alaska Native People*, Kaiser Family Foundation, Washington, DC. May 2020, <https://www.kff.org/coronavirus-covid-19/issue-brief/covid-19-presents-significant->

7. Information available to date shows that, not only do racial and ethnic minority communities tend to experience higher infection rates than white communities, but also, if infected with the SARS-CoV-2 virus, racial and ethnic minority populations, especially African Americans, are at a substantially elevated risk of developing life-threatening COVID-19 illnesses and to die of COVID-19.<sup>2</sup> The reasons for such disparities are complex and interrelated, but include, among other things, (1) high rates of other medical problems such as diabetes, heart disease, lung disease, and liver disease among racial and ethnic minority communities; (2) densely populated neighborhoods, living quarters, and multigenerational households; (3) limited access to quality medical care and SARS-CoV-2 testing; and (4) predominance of employment in “essential” positions that involve high levels of public interaction.<sup>3</sup>

8. SARS-CoV-2 is readily spread through respiratory transmission. All people are susceptible to and capable of getting COVID-19 because of the ease with which it spreads. The virus is spread through droplet transmission; that is, when an infected individual speaks, coughs, sneezes, and the like, they expel droplets which can transmit the virus to others in their proximity. SARS-CoV-2 is also aerosolized, such that tiny droplets containing the virus remain in the air and can be inhaled by others who come into contact with that air and SARS-CoV-2 can also be transmitted in that fashion.<sup>4</sup> The virus is also thought to be spread through the

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risks-for-american-indian-and-alaska-native-people/; Laurencin CT, McClinton A (April 2020), *The COVID-19 Pandemic: a Call to Action to Identify and Address Racial and Ethnic Disparities*, *Journal of Racial and Ethnic Disparities*. 7(3):398-402. doi:10.1007/s40615-020-00756-0.

<sup>2</sup> See *supra* note 1.

<sup>3</sup> See *supra* note 1; see also Rho HJ, Brown H & Fremstad S, *A Basic Demographic Profile of Workers in Frontline Industries*, Ctr. for Econ. & Pol’y Res. (2020), <https://cepr.net/wp-content/uploads/2020/04/2020-04-Frontline-Workers.pdf>.

<sup>4</sup> See, e.g., Fears SC, Klimstra WB, Duprex P, Hartman A, Weaver SC, Plante KS, *et al.* Persistence of severe acute respiratory syndrome coronavirus 2 in aerosol suspensions. *Emerg Infect Dis*. 2020 Sept. <https://doi.org/10.3201/eid2609.201806>; Lea Hamner *et al.*, High SARS-CoV-2 Attack Rate Following Exposure at a Choir Practice — Skagit County, Washington, March 2020, *Morbidity and Mortality Weekly Report Early Release* (May 12, 2020), *available at* <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e6.htm>; Jianyun Lu *et al.*, COVID-19 outbreak associated with air conditioning in restaurant, Guangzhou, China, 2020, *Emerg. Infect. Dis.* (July 2020, Early Release), [https://wwwnc.cdc.gov/eid/article/26/7/20-0764\\_article](https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article); see also Stadnytskyi V, Bax CE, Bax A,

touching of contaminated surfaces, for example when an infected person touches a surface with a hand they have coughed into and then another person touches that same surface before it has been disinfected and then touches their face. Each infected individual is estimated to infect two to three others. In addition, some people are so-called “superspreaders,” who cause widespread infections.

9. Diagnostic testing for the virus is currently most often done through use of a reverse-transcriptase polymerase chain reaction (RT-PCR) test. While testing is becoming more widely available, there has not been sufficiently wide-spread and easily accessible testing throughout the United States, including in Mississippi, to accurately detect the number of new cases. Point of care diagnostic tests, which have begun to be developed, thus far have relatively low sensitivity, meaning they miss many positives. Serologic tests, which detect antibodies to the virus and thus indicate whether someone has already been exposed to it, are being developed but have not yet been validated.<sup>5</sup> Furthermore, it is not yet known whether a positive result on such serologic tests is indicative of immunity against re-infection with SARS-CoV-2.

10. There is not yet any FDA-approved vaccine against SARS-CoV-2 that could be used to immunize the population to the virus. As a result, the only ways to limit its spread are self-isolation, social distancing, frequent handwashing, mask or face covering wearing, and disinfecting surfaces. Self-isolation involves not physically interacting with those outside one’s

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Anfinrud P (June 2020). The airborne lifetime of small speech droplets and their potential importance in SARS-CoV-2 transmission, *Proceedings of the National Academy of Sciences of the United States of America*. 117 (22): 11875–11877. doi:10.1073/pnas.2006874117 (concluding among other things that “normal speech generates airborne droplets that can remain suspended for tens of minutes or longer and are eminently capable of transmitting disease in confined spaces”).

<sup>5</sup> Gronvall G *et al.*, Developing a National Strategy for Serology (Antibody Testing) in the United States, [https://www.centerforhealthsecurity.org/our-work/pubs\\_archive/pubs-pdfs/2020/200422-national-serology.pdf](https://www.centerforhealthsecurity.org/our-work/pubs_archive/pubs-pdfs/2020/200422-national-serology.pdf); Johns Hopkins Bloomberg School of Public Health, Serology-based tests for COVID-19, <https://www.centerforhealthsecurity.org/resources/COVID-19/serology/Serology-based-tests-for-COVID-19.html> (last visited June 25, 2020); Abbasi J, The Promise and Peril of Antibody Testing for COVID-19, *JAMA*. 2020;323(19):1881–1883, doi:10.1001/jama.2020.6170.

household. Social or physical distancing is maintaining at least six feet of distance between individuals, which can also be implemented within one's household. Each of these interventions is aimed at keeping infected individuals far enough apart from other individuals so that they do not transmit the virus. Similarly, wearing a mask or face covering is meant to prevent an infected individual from spreading droplets of the virus which could infect others. Frequent handwashing and regular disinfecting of surfaces can help curb spread via contaminated surfaces.

11. Transmission of SARS-CoV-2 can occur in any location where there is close proximity (less than six feet) between individuals, particularly indoors. And because transmission of the virus can occur via environmental surfaces, there is also risk of spread of the virus at any location where multiple individuals touch surfaces. Some individuals who are infected with the virus do not have any symptoms but can transmit the virus and/or are infectious before they develop any symptoms. This means that isolating only persons known to be infected or exhibiting symptoms of infection will not stop the spread of infection. Rather, to prevent increasing the scope of the outbreak of COVID-19, we must assume that anyone could be infected and transmit infection to others.

12. Due to the lack of adequate testing, the time lag in getting results back from laboratories, lengthy incubation time, and varied start and end points of stay at home requirements, we may never definitively determine the full effects of stay-at-home orders and social distancing. But social distancing has worked to slow the spread of respiratory viruses generally and in places that are ahead of Mississippi and the United States in the current pandemic.

13. There is evidence that cities and states that have implemented stay-at-home orders and kept them in place until transmission was under control have experienced reduced transmission. There is also evidence beginning to suggest that the ending of stay-at-home orders

and other mitigation measures is leading to increased transmission. Transmission of the virus will continue through the population until the development and widespread use of a vaccine and/or herd immunity develops. In other countries, once restrictions have been lifted or eased, new clusters of COVID-19 cases have been identified. In these countries, however, there are very aggressive containment measures, supported by substantial funding, that have likely prevented full-blown second waves. There have not been plans to implement such measures in the United States nor have sufficient resources been allocated to support them.

14. There is not yet any FDA-approved vaccine against SARS-CoV-2 that could be used to immunize the population against the virus. Most experts do not expect widespread availability of a COVID-19 vaccine until 2021, at the earliest. Dr. Fauci of the NIH has recently stated that it is possible a vaccine may be ready as early as the end of 2020. However, it would take significantly more time due to the number of steps in the process of developing, trial and error, scaling to clinical trials, assessing side effects, assessing efficacy across the population at large, and producing substantial numbers of doses of the vaccine in order to be readily available and delivered to the public at large.<sup>6</sup> In no currently foreseeable circumstances is an effective vaccine anticipated to be broadly distributed by the time of the November 2020 election.

15. Herd immunity occurs when a high percentage of the population becomes immune to an infectious disease, such that the spread is dramatically slowed, as infected persons become dead-ends for the virus, so to speak, because they are not interacting with anyone to whom they can transmit the virus. Approximately 40-95% of a population must be immune in order to achieve

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<sup>6</sup>Can a Vaccine for Covid-19 Be Developed in Record Time?, N.Y. Times Magazine (June 9, 2020), <https://www.nytimes.com/interactive/2020/06/09/magazine/covid-vaccine.html>; Mullard A. COVID-19 vaccine development pipeline gears up. The Lancet. 395 (10239): 1751-1752 (June 6, 2020). [https://doi.org/10.1016/S0140-6736\(20\)31252-6](https://doi.org/10.1016/S0140-6736(20)31252-6).



herd immunity, depending on the infectiousness of the agent. In this context, an individual's immunity can come from either a vaccine or from previous infection. Herd immunity can protect those in a population who cannot be vaccinated and for whom infection can be particularly serious. Without herd immunity, we can expect that SARS-CoV-2 will continue to be transmitted widely.

16. Because SARS-CoV-2 is a new virus, also referred to as a novel virus, only those who have been infected and recovered are possibly immune; no one in the population has pre-existing immunity to the virus. Anyone who has not yet been infected is susceptible to infection. Also, due to the virus's novelty, we do not know whether any immunity generated by previous infection lasts permanently, for a specified period of time, or whether re-infection is possible. As a result, herd immunity is unlikely unless and until the development and widespread use of an effective vaccine or a sufficiently high proportion of the population has been infected. Only once serologic (i.e., antibody) testing with a high degree of reliability is widely available and the results have been shown to correlate with protection against re-infection will we be able to determine who in the population may not be susceptible to either re-infection or transmission based on their immunity due to a prior infection. As a result, even if transmission slows due to behavioral interventions, such as social distancing and stay-at-home orders, we can expect resurgences of COVID-19, including significant community transmission, throughout 2020 and into 2021 across the United States, until the development and widespread use of a vaccine. Such resurgence is particularly likely in locations where these behavioral modifications are lifted when community transmission is still continuing, as evidenced by increasing numbers of cases in states that have ended or eased stay-at-home requirements while community transmission is continuing.

17. As SARS-CoV-2 is novel, we also cannot say definitively whether its incidence and prevalence will rise and fall based on weather / ambient temperature and humidity /

season. Virus transmission and prevalence do not appear to have declined over the summer months, but regardless, it remains likely that they will resurge in the fall and winter. Indeed, certain other coronaviruses—such as SARS and MERS-CoV—do not appear to demonstrate seasonality of infection. And the current virus has circulated widely in countries currently in their hot seasons and increased rapidly right now in states with warmer climates such as Florida, Texas, Arizona, and Mississippi. These two points suggest that the effect of weather on transmission of and infection with SARS-CoV-2 cannot be predicted reliably.

18. Due to the ease of transmission, the high risk to certain segments of the population, and the fact that the virus will continue to surge unless and until wide-spread vaccination and/or herd immunity is achieved, individuals will need to continue to take steps to prevent infection. Polling locations are a prime area for increased transmission of SARS-CoV-2, due to the close proximity of a large number of individuals—voters, observers, poll workers—in a limited space. This close proximity allows for the transmission of the virus via droplets and aerosols between various individuals. A polling location also has a large number of common surfaces that multiple people touch: the doors, the poll books to sign in, pens, voting booths, and voting machines. While surface transmission is not the main way that SARS-CoV-2 is spread, it remains the case that available evidence suggests the virus can be transmitted in that way. Nor is touching surfaces the only potential source of exposure to the virus in a polling location. Rather, it is mixing with other people in a public space—in this context, the polling location—such that the virus spreads via aerosols and droplets. The risk of transmission is a function of the number of people to whom one is exposed and the circumstances of each exposure. Due to the transmission of the virus via both droplet and aerosols and contaminated environmental surfaces, polling locations are highly likely to cause increased SARS-Co-V-2 infection.

19. The virus is readily spread through droplet and aerosol transmission, so in public spaces, particularly indoor spaces, the density and proximity of the number of people present are the critical factors in assessing likelihood of transmission. If a polling place has higher density of and proximity between individuals than another public space, then regardless of mitigation measures, the polling place is not safer in terms of transmission of SARS-CoV-2 than another public space that has lesser density and proximity to people. Even if a polling place has lower density of and proximity between people than other congregate spaces, because a polling location is a place where people congregate, including large numbers of individuals who may not otherwise interact in the ordinary course, it necessarily has a much higher risk of transmission than a person isolating in their own home. While efforts at environmental decontamination are important public health interventions, the most effective measure to curb transmission of the virus is to reduce exposure to strangers, which necessarily occurs in polling places.

20. My opinion has been further confirmed by reports like those from the Wisconsin Department of Health Services, which has identified 71 confirmed cases of COVID-19 in people who voted in-person in the primary election held on April 7, 2020.<sup>7</sup> This is one example of the risks of transmission I have described. The connection between transmission of COVID-19 via in-person voting illustrated by the test and trace efforts in Wisconsin has been further demonstrated in a study that showed that, controlling for other differences, counties in Wisconsin that had more in-person voting per voting location had a higher rate of positive COVID-19 tests than counties with relatively fewer in-person voters.<sup>8</sup> Widespread vote-by-mail, absentee balloting,

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<sup>7</sup> Dee J. Hall, *Study: Poll closings, COVID-19 fears, kept many Milwaukee voters away*, Wisconsin Watch (June 24, 2020), <https://www.wisconsinwatch.org/2020/06/study-poll-closings-covid-19-fears-kept-many-milwaukee-voters-away/>; Associated Press, *The Latest: 52 positive cases tied to Wisconsin election* (Apr. 28, 2020), <https://apnews.com/b1503b5591c682530d1005e58ec8c267>.

<sup>8</sup> 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*, NBER Working Paper Series, Working Paper

or methods other than in-person voting would be much safer options for public health, in light of COVID-19, as such methods would vastly decrease the number of individuals needing to vote in person and thus substantially decrease the number of people coming into proximity at polling locations and the spread of SARS-CoV-2 via droplets, aerosols, and environmental surfaces.

21. Evidence of outbreaks of COVID-19 at polling locations is clear epidemiologic evidence of the risks of the transmission of the SARS-CoV-2 virus related to in-person voting. This evidence demonstrates that, as expected, making people come together at a polling location can cause an outbreak of this particular disease. This is unsurprising because the virus can be readily spread when people are in proximity to one another, particularly indoors. The appropriate comparison is not between polling locations and other congregate settings, but the avoidable risk involved in bringing people together in congregate settings, including polling locations, compared to not bringing them together.

22. With regard to voting by mail, however, for individuals who are not in regular contact with a notary public, the requirement that absentee ballot applications and absentee ballots be notarized or signed by an authorized official would place them at increased risk of exposure to and/or transmission of COVID-19. Requiring individuals to have someone they are not otherwise being exposed to come into close enough proximity to notarize or attest to their ballot would place them at increased risk of infection. This would be particularly risky for those who are at a greater risk of complications and death from COVID-19.


23. My opinion that voting by mail is a demonstrably safer option for voters than voting at a polling place in light of the SARS-CoV-2 virus pandemic is not based upon people's generalized fear of infection. It is based on what we know about how this virus

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27187 (revised June 2020), available at <https://www.nber.org/papers/w27187>.

is transmitted. The same is true for not requiring individuals to come into contact with individuals outside their home to comply with witness or notarization requirements on vote by mail applications and ballots. The goal is to minimize people's contact with other people who might be infected with the virus. When dealing with infectious diseases that are transmitted via aerosols and/or droplets, the public health response is not to simply assert that other interventions are sufficient. It is to isolate or quarantine those who may be infectious to others. In the ordinary course, the public health approach is to maximize protection and minimize risk. In the instant case, there are public health interventions that are available to minimize the risk of transmission of SARS-CoV-2, namely, to allow people to vote by absentee ballot without needing to expose themselves to individuals outside their home due to a notarization requirement and not place themselves in the congregate setting of a polling location.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 17, 2020.

  
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Dr. Arthur L. Reingold ·

Arthur Lawrence Reingold

**EXHIBIT A**

September, 2020

CURRICULUM VITA

**Arthur Lawrence Reingold**

**PRESENT POSITION:** Professor of Epidemiology Head, Division of Epidemiology and Biostatistics School of Public Health  
University of California, Berkeley 2121 Berkeley Way, #5302  
Berkeley, California 94720-7360

Phone: (510) 642-0327  
Fax: (510) 643-5056  
E-mail: Reingold@berkeley.edu

**DATE OF BIRTH:** October 31, 1948

**PLACE OF BIRTH:** Chicago, Illinois

**MARITAL STATUS:** Married

**EDUCATION:** 1966 - 70 A.B. University of Chicago  
1970 - 76 M.D. University of Chicago

**POSTGRADUATE TRAINING:** 1976 - 78 Internal Medicine Resident, Mount Auburn Hospital  
Cambridge, Massachusetts

1980 - 82 Preventive Medicine Resident, Centers for Disease Control (CDC) - Atlanta, Georgia

**POSITIONS HELD:** 1979 - 80 Epidemic Intelligence Service Officer,  
State of Connecticut - Department of Health Services  
Hartford, Connecticut

1980 - 81 Epidemic Intelligence Service Officer,  
Special Pathogens Branch - Bacterial Diseases Division  
Centers for Disease Control (CDC) - Atlanta, Georgia

1981 - 85 Assistant Chief, Respiratory & Special Pathogens  
Epidemiology Branch, Center for Infectious Diseases  
Centers for Disease Control (CDC) - Atlanta, Georgia

1985 - 87 CDC Liaison Officer, Office of the Director  
Centers for Disease Control - Atlanta, Georgia

**FACULTY APPOINTMENTS:** 1979 - 80 Instructor, Department of Medicine (Epidemiology)  
University of Connecticut - Hartford, Connecticut

1985 - 87 Visiting Lecturer, Department of Biomedical and  
Environmental Health Sciences (Epidemiology)  
University of California, Berkeley

**Arthur Lawrence Reingold**

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|--|-------------|--|
|  | 1987 -      | Professor of Epidemiology, School of Public Health, University of California, Berkeley                                     |
|  | 1989 -      | Professor, Department of Epidemiology and Biostatistics - University of California, San Francisco                          |
| <b>FACULTY APPOINTMENTS (CONTINUED):</b> | 1990 - 94   | Head, Epidemiology Program, Department of Biomedical and Environmental Health Sciences, University of California, Berkeley |
|  | 1991 -      | Clinical Professor, Department of Medicine<br>University of California, San Francisco                                      |
|  | 1994 - 2000 | Head, Division of Public Health Biology and Epidemiology<br>University of California, Berkeley                             |
|  | 2000 - 2018 | Head, Division of Epidemiology, School of Public Health, University of California, Berkeley                                |
|  | 2018 -      | Head, Division of Epidemiology and Biostatistics, School of Public Health<br>University of California, Berkeley            |
|  | 2008 - 2014 | Associate Dean for Research, School of Public Health, University of California, Berkeley                                   |
|  | 2009 - 2014 | Edward Penhoet Distinguished Chair for Global Health and Infectious Disease<br>California                                  |
| <b>MEDICAL LICENSURE:</b>                |             |  |
| <b>BOARD CERTIFICATION:</b>              | 1980        | American Board of Internal Medicine  |
| <b>AWARDS:</b>                           | 1970 - 74   | Medical Scientist Training Program   |
|  | 1985        | Commendation Medal, U.S. Public Health Service   |
|  | 1986        | Charles Shepard Award, Centers for Disease Control (CDC)   |
| <b>MEMBERSHIPS:</b>                      | 1970        | Sigma Xi   |
|  | 1978        | American College of Physicians   |
|  | 1983        | American Society for Microbiology  |
|  | 1984        | Society for Epidemiologic Research   |
|  | 1986        | Infectious Disease Society of America (Fellow)   |
|  | 1988        | American Epidemiological Society   |
|  | 1991        | American College of Epidemiology (Fellow)  |
|  | 1994        | AAAS (Fellow)  |
|  | 2003        | Institute of Medicine, National Academy of Medicine (Member)   |

**PROFESSIONAL ACTIVITIES**

|                       |      |  |
|-----------------------|------|--|
| <b>CONSULTATIONS:</b> | 1981 | Institute of Medicine: Toxic-shock syndrome        |
|                       | 1981 | Food and Drug Administration: Toxic-shock syndrome |

**Arthur Lawrence Reingold**

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|  | 1982        | United States Agency for International Development: Control of meningococcal meningitis in West Africa                       |
|  | 1983        | World Health Organization (WHO): Control of meningococcal meningitis in Nepal  |
|  | 1983        | East-West Center, University of Hawaii: Role of indoor air pollution in acute respiratory infections in developing countries |
|  | 1984        | Institute of Medicine: Meningococcal vaccines  |
| <b>CONSULTATIONS<br/>(CONTINUED):</b>      | 1986        | World Health Organization (WHO):   |
|  |             | Control of meningococcal meningitis in South Asia  |
|  | 1987 - 1993 | Center for Child Survival, University of Indonesia: Control of Acute Respiratory Infections                                  |
|  | 1988        | Evaluation of the Combating Communicable Childhood Disease Program, Ivory Coast  |
|  | 1994        | Evaluation of National Epidemiology Board Program, Rockefeller Foundation  |
|  | 1995        | Planning of a School-based Acute Rheumatic Fever Prevention Project - New Zealand Heart Foundation                           |
|  | 1995        | Vaccines Advisory Committee, Food & Drug Administration Approval of acellular pertussis vaccine                              |
|  | 1996        | External Reviewer, NIAID Group B Streptococcus Research<br>Contract with Harvard University                                  |
|  | 1996 - 2000 | U.S. Food and Drug Administration; Consultant to the Vaccines Advisory Committee   |
|  | 1996        | World Health Organization, Consultation on Control of Meningococcal Meningitis in Africa                                     |
|  | 1998 – 2002 | Advisor to the INCLLEN "Indiaclen" project   |
|  | 2002 – 2003 | Evaluation of a School-based Acute Rheumatic Fever Prevention Project – New Zealand Heart Association                        |
| <b>ADVISORY<br/>BOARDS<br/>AND PANELS:</b> | 1988 - 1989 | Member, Advisory Committee on Ground Water and Reproductive Outcomes, State of California Department of Health Services      |
|  | 1989 - 1990 | AIDS Advisory Committee, Alameda County Board of Supervisors   |
|  | 1989 - 1993 | Advisory Committee, Birth Defects Monitoring Program,  |



**Arthur Lawrence Reingold**

|                                       |             |  |
|---------------------------------------|-------------|--|
|                                       |             | State of California<br>Department of Health Services   |
|                                       | 1993 - 1995 | Centers for Disease Control (CDC): Public Health Service Advisory Panel on the Case Definition for Lyme Disease                              |
|                                       | 1992 - 1994 | World Health Organization (WHO): Task Force on Strengthening Epidemiologic Capacity;<br>Epidemiologic Capacity; Childhood Vaccine Initiative |
|                                       | 1996 - 2000 | Armed Forces Epidemiological Board   |
|                                       | 1997 - 2012 | University of California, San Francisco AIDS Research Institute Steering Committee   |
|                                       | 1998 - 2003 | Emerging Infections Committee of the Infectious Diseases Society of America  |
|                                       | 1998 – 2000 | Panelist, Howard Hughes Medical Institute Predoctoral Fellowship   |
|                                       | 2001 - 2006 | Technical expert, Sub-Committee on the Protection of Public Health; California<br>State Strategic Committee on Terrorism                     |
| <b>ADVISORY<br/>BOARDS<br/>PANELS</b> | 2003 - 2008 | Advisory Board, Chinese University of Hong Kong – Centre for Emerging <b>AND</b> Infectious Diseases   |
|                                       | 2004 -      | Advisory Board, University of California, Berkeley Clinical Research Center  |
|                                       | 2004 - 2008 | Advisory Board, New York University School of Medicine Fellowship in<br>Medicine and Public Health Research                                  |
|                                       | 2004 - 2005 | Institute of Medicine Committee on Measures to Enhance the Effectiveness of CDC Quarantine Station Plan for U.S. Ports of Entry              |
|                                       | 2005 - 2012 | Strategic Advisory Group of Experts (SAGE) for Vaccine Policy, World Health Organization (WHO) (Deputy Chairman, 2010-2012)                  |
|                                       | 2005 -      | Data and Safety Monitoring Committee; F.I. Proctor Foundation, University of California, San Francisco (UCSF)                                |
|                                       | 2007 - 2012 | NIH Fogarty International Center External Advisory Board   |
|                                       | 2007 - 2009 | Chair, Working Group on Pneumococcal Vaccine, Strategic Advisory Group of Experts (SAGE), World Health Organization (WHO)                    |
|                                       | 2008 - 2012 | Working Group on H5N1 Influenza Vaccines, Strategic Advisory Group of<br>Experts (SAGE), World Health Organization (WHO)                     |

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|             |  |
|-------------|--|
| 2008 - 2011 | Chair, Leptospirosis Burden Epidemiology Reference Group, World Health Organization (WHO)  |
| 2008 - 2012 | National Biosurveillance Advisory Subcommittee of the Advisory Committee to The Director, Centers for Disease Control and Prevention (CDC) |
| 2008 - 2009 | Institute of Medicine Committee on the Review of Priorities in the National Vaccine Plan   |
| 2009 - 2012 | Chair, Working Group on Hepatitis A Vaccine, Strategic Advisory Group of Experts (SAGE), World Health Organization (WHO)                   |
| 2011 - 2013 | Member, Institute of Medicine Committee on Vaccine Priorities  |
| 2011 - 2014 | Member, Working Group on Vaccine Hesitancy, Strategic Advisory Group of Experts (SAGE), World Health Organization (WHO)                    |
| 2012 - 2014 | Chair, Review of the Heterologous Effects of Childhood Vaccines, World Health Organization (WHO)   |
| 2012 - 2014 | Chair, External Review of the Measles Rubella Initiative (of WHO, CDC, UNICEF, American Red Cross, and United Nations Foundation)          |
| 2013 - 2018 | Advisory Committee on Immunization Practices (ACIP), U.S. Department of Health and Human Services  |
| 2016-2017   | Member, Institute of Medicine Committee on a National Strategy for the Elimination of Hepatitis B and C                                    |
| 2018 -      | Member, Independent Review Committee, Global Alliance for Vaccines and Immunizations (GAVI)  |
| 2018 -      | Member, Strategic Advisory Group, Partnership for Influenza Vaccination Introduction   |

**LEADERSHIP**

|                   |             |   |
|-------------------|-------------|---|
| <b>POSITIONS:</b> | 1997 – 2012 | Secretary-Treasurer, American Epidemiological Society |
|                   | 2009 - 2010 | President, Society for Epidemiologic Research         |
|                   | 2015 – 2016 | President, American Epidemiological Society (AES)     |

**EDITORIAL  
BOARDS:**

|             |  |
|-------------|--|
| 1995 - 2000 | Board of Editors, American Journal of Epidemiology         |
| 2001 - 2005 | Board of Editors, Epidemiology                             |
| 2005 -      | Editorial Advisory Board, Global Public Health             |
| 2009 - 2010 | Editorial Advisory Board, American Journal of Epidemiology |

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**ASSOCIATE EDITORSHIPS:**

2017 - 2019

Current Epidemiology Reports

2018 -

Vaccine

**PUBLICATIONS:**

1. Hayes RV, Pottenger LA, Reingold AL, Getz GS, Wissler RW. Degradation of I<sup>125</sup> - labeled serum low density lipoprotein in normal and estrogen-treated male rats. *Biochem Biophys Res Comm* 1971;44:1471- 1477.
2. Reingold AL, Kane MA, Murphy BL, Checko P, Francis DP, Maynard JE. Transmission of hepatitis B by an oral surgeon. *J Infect Dis* 1982;145:262-268.
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4. Bartlett P, Reingold AL, Graham DR, et al. Toxic-shock syndrome associated with surgical wound infections. *JAMA* 1982;247:1448-1450.
5. Reingold AL, Hargrett NT, Shands KN, et al. Toxic-shock syndrome surveillance in the United States, 1980-1981. *Ann Intern Med* 1982;96:875-880.
6. Reingold AL, Hargrett NT, Dan BB, Shands KN, Strickland BY, Broome CV. Nonmenstrual toxic-shock syndrome: a review of 130 cases. *Ann Intern Med* 1982;6:871-874.
7. Broome CV, Hayes PS, Ajello GW, Feeley JC, Gibson RJ, Graves LM, Hancock GA, Anderson RJ, Highsmith AK, Mackel DC, Hargrett NT, Reingold AL. In-vitro studies of interactions between tampons and *Staphylococcus aureus*. *Ann Intern Med* 1982;96:959-962.
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16. Reingold AL. Meningococcal meningitis. *Nepal Paed Soc J* 1983; 2:144-148.
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**EXHIBIT 7**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**  
**NORTHERN DIVISION**

CYNTHIA PARHAM, JED OPPENHEIM,  
CHERYL GOGGIN, LEAGUE OF WOMEN  
VOTERS MISSISSIPPI, and MISSISSIPPI  
STATE CONFERENCE OF THE NAACP,

Plaintiffs,

v.

MICHAEL D. WATSON, JR., in his official  
capacity as Secretary of State of Mississippi;  
and LYNN FITCH, in her official capacity as  
Attorney General of the State of Mississippi,

Defendants.

Civil Action No. 3:20-cv-572-DPJ-  
FKB

**DECLARATION OF COREY WIGGINS ON BEHALF OF MISSISSIPPI STATE**  
**CONFERENCE OF THE NAACP**

Pursuant to 28 U.S.C. § 1746, I, Corey Wiggins, declare as follows:

1. I am over the age of eighteen, and I am competent to make this declaration. I provide this declaration based upon my personal knowledge. I would testify to the facts in this declaration under oath if called upon to do so.
2. The Mississippi State Conference of the National Association for the Advancement of Colored People (“MS NAACP”) is a plaintiff in the case. I am the Executive Director of the MS NAACP.
3. The MS NAACP is a plaintiff in this action and is a non-partisan, interracial, nonprofit membership organization.

4. The mission of the MS NAACP 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.

5. The MS NAACP is headquartered in Jackson, Mississippi and currently consists of 112 units, which include branches, college chapters, and youth councils with a revolving membership of over 11,000 members across the state and at least one (1) member in 74 of the 82 counties in Mississippi.

6. The MS NAACP works to protect voting rights through litigation, advocacy, legislation, communication, and outreach. A considerable amount of our work and resources are devoted to promoting voter registration, voter education, get-out-the-vote efforts, election protection, and Census participation.

7. The MS NAACP, along with its branches, regularly conducts voter registration drives and other activities to help Mississippians vote absentee or in person throughout Mississippi. As a result of this work, the MS NAACP and its branches have helped numerous eligible citizens, including its members and non-members, to register to vote and request absentee ballots.

8. Mississippi absentee balloting procedures pose serious burdens to MS NAACP's members and other Mississippians wishing to vote absentee. As a result, the MS NAACP and its branches are forced to divert resources, including staff and volunteer time and money, to educate prospective voters about Mississippi's absentee ballot laws and procedures by helping them (1) understand the eligibility requirements to vote absentee in Mississippi, and more specifically, the changes to the temporary or permanent physical disability excuse due to COVID-19 (the "Excuse Requirement"); (2) understand how to comply with the requirement to have both the absentee

ballot application and the absentee ballot notarized or signed by a qualified witness (the “Notarization Requirement”) while protecting their health during the COVID-19 pandemic so that their absentee ballot may be counted; (3) understand the signature-match provision and lack of opportunity to cure mismatched signatures; and (4) decide whether and how to vote in person during the COVID-19 pandemic if they do not qualify for an absentee ballot. MS NAACP members and the public often turn to the MS NAACP’s branches and leadership to provide voter information given that voter education is part of the mission of the organization.

9. MS NAACP has spent considerable time and staff resources to educate its own leadership, branch leaders, members, and the general public about Mississippi’s absentee voting laws and how to comply during the COVID-19 pandemic. Branch leaders are also educating themselves on the Excuse Requirement to answer local members’ questions about absentee voting during the COVID-19 pandemic.

10. Voter registration and education campaigns are the hallmark of MS NAACP’s programmatic work. MS NAACP has not been able to devote nearly as much time as it typically does on its statewide voter campaigns and issue-based voter education campaigns because it has had to shift its traditional voter education work to focusing largely on absentee voting under the Excuse Requirement. Due to the COVID-19 pandemic, the MS NAACP has spent additional staff time and resources toward informing its members about how to vote during the pandemic—including casting an absentee ballot under the Excuse Requirement—which has taken away staff and volunteer time from its COVID-19 programming. This programming provides support to its members and the public facing the socioeconomic impact of the COVID-19 pandemic with information related to healthcare, housing, education, and other aspects of daily life outside of

voting affected by the pandemic. The COVID-19 absentee voting education is of particular importance to MS NAACP as absentee ballot applications became available on September 4, 2020.

11. MS NAACP also coordinates with partner advocacy organizations to run the statewide voter protection hotline, which typically becomes more active leading up to an election once absentee ballot applications become available. Based on the amount of questions MS NAACP currently receives from community members and its own members about the Excuse Requirement and the current confusion, it anticipates a significant increase in questions on how to cast an absentee ballot during the COVID-19 pandemic. MS NAACP and its partners are devoting staff time to build out the hotline infrastructure, recruiting more volunteers for the hotline, and taking additional necessary steps to prepare for the increased volume in absentee voting calls.

12. Since the enactment of HB 1521, MS NAACP has held two virtual community education conversations for the public and two virtual branch meetings discussing absentee voting procedures, the Excuse Requirement, and HB 1521. The most recent public education program was on August 21, 2020. While some MS NAACP members have voted by absentee ballot in past elections and most likely will vote by absentee ballot in future elections, many of them will be voting absentee for the first time because of the COVID-19 pandemic. Additionally, many MS NAACP members are registered voters age 55-64 who are high risk of contracting, suffering severe complications from, and potentially dying from COVID-19. Voting in person would therefore put the health of these voters at significant risk because of the person-to-person contact at their polling place. But these members do not currently qualify for an absentee ballot under Mississippi law. Members and the public at large have turned to MS NAACP and its branch leaders with questions on the Excuse Requirement because voter education is at the forefront of its work. MS NAACP is

developing fact sheets and materials to more clearly the Excuse Requirement, as many of its members are uncertain as to whether they can vote absentee during the pandemic under this excuse.

13. MS NAACP plans to continue its COVID-19 absentee voter education work as long as Defendants fail to ensure safe voting for Mississippi voters during the pandemic. The absentee voting process in Mississippi is lengthy, complicated, and unfamiliar to most Mississippi voters. Defendants have not done enough to help voters determine whether they qualify to vote absentee or to help voters navigate the absentee voting process safely during the COVID-19 pandemic. Defendant Watson has failed to waive onerous requirements, issue adequate guidance to county election officials regarding absentee ballot eligibility and other requirements, conduct any significant voter education campaigns to assist voters in navigating the absentee ballot process, or educate voters on how to vote safely during the COVID-19 pandemic.

14. I expect that the MS NAACP and our branches will continue to experience similar negative impacts on our work under the current absentee voting scheme, and we will continue to suffer the diversion of our limited resources unless the Court grants the motion for preliminary injunction and remedial relief sought by Plaintiffs. Our members and other Mississippi voters will have to make the untenable choice between voting in-person during the pandemic or not voting at all.

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

Executed this 16 day of September 2020.



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Corey Wiggins, Executive Director  
Mississippi State Conference of the NAACP



**EXHIBIT 8**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**  
**NORTHERN DIVISION**

CYNTHIA PARHAM, JED OPPENHEIM,  
CHERYL GOGGIN, LEAGUE OF WOMEN  
VOTERS MISSISSIPPI, and MISSISSIPPI  
STATE CONFERENCE OF THE NAACP,

Plaintiffs,

v.

MICHAEL D. WATSON, JR., in his official  
capacity as Secretary of State of Mississippi;  
and LYNN FITCH, in her official capacity as  
Attorney General of the State of Mississippi,

Defendants.

Civil Action No. 3:20-cv-572-DPJ-  
FKB

**DECLARATION OF CHRISTY WHEELER ON BEHALF OF LEAGUE OF WOMEN**  
**VOTERS OF MISSISSIPPI**

Pursuant to 28 U.S.C. § 1746, I, Christy Wheeler, declare as follows:

1. I am over the age of eighteen, and I am competent to make this declaration. I provide this declaration based upon my personal knowledge. I would testify to the facts in this declaration under oath if called upon to do so.
2. The League of Women Voters of Mississippi (“LWVMS”) is a plaintiff in the above-captioned case.
3. I am the co-president of the LWVMS. In my capacity as co-president of LWVMS, I am familiar with—and receive frequent updates and proposals for—the activities of LWVMS.
4. LWVMS is the Mississippi affiliate of the national League of Women Voters (the “LWVUS”). LWVMS is a nonprofit 501(c)(4) membership organization, which relies on non-

deductible dues to fund its action and advocacy efforts. The LWVMS also works with and through the LWVUS's Voters Education Fund, which is a 501(c)(3) organization, for which donations are tax-deductible. LWVUS's Voters Education Fund conducts voter service and education activities.

5. The LWVMS is a nonpartisan civic organization that neither supports nor opposes any political party or candidate.

6. The mission of LWVMS is to improve governance in Mississippi by engaging all Mississippians in the decisions that impact their lives. LWVMS seeks to bring citizens into the civic process through community outreach and capacity building, voter registration and education, and community-oriented policy advocacy. LWVMS believes that hands on work to safeguard democracy leads to civic improvement.

7. The League is a grassroots organization, and most of the League's work is made possible by members and volunteers.

8. LWVMS has five local Leagues: East-Central Mississippi (serving Meridian and Lauderdale County), Jackson-Area (serving Hinds, Madison, and Rankin Counties), Mississippi Gulf Coast (serving Hancock, Harrison, and Jackson Counties), Oxford-North Mississippi (serving Marshall, Union, Pontotoc, Calhoun, Yalobusha, Panola, Tate, Benton, Lee, and Desoto Counties), and Pine Belt (serving Hattiesburg and the surrounding area, Forrest and Lamar Counties).

9. LWVMS has approximately 200 members, living in various communities across the state. The LWVMS is diverse, inclusive, and equitable.

10. The majority of LWVMS members are 55 years of age or older. The largest local league is the Oxford-North Mississippi League with 75 members; 54 of its 75 members are over 60 years old, and the oldest Oxford-North League member is 102 years old.

11. Additionally, many LWVMS members are registered voters age 55-64 who are at high risk of contracting, suffering severe complications from, and dying from COVID-19. Voting in person would therefore put the health of these voters at significant risk because of the person-to-person contact at the polling place. But these members do not currently qualify for an absentee ballot under Mississippi law.

12. LWVMS regularly conducts voter service projects, including voter registration drives and other events. Local leagues lead much of the LWVMS's voter services work and local league members are essential to accomplishing voter services project goals.

13. Prior to the COVID-19 pandemic, local chapters of LWVMS conducted voter registration drives at schools, grocery stores, farmers markets, and other large events such as seasonal festivals. Because of the person-to-person interaction required to conduct face-to-face voter registration, the risk of exposure to COVID-19 has severely limited such activities.

14. Despite the person-to-person contact limitations posed by COVID-19, LWVMS continues to work to register and educate voters. We are promoting VOTE411, a national initiative of the LWVUS's Voter Education Fund. VOTE411 ensures all voters have the information they need to successfully participate in every election (local, state, and federal) because the League believes every election is important to guarantee that laws and policies reflect the values of the community. VOTE411 offers a Ballot Lookup Tool for voters to enter their addresses to find their local polling place and create a personalized voter guide to take with them on election day for in-person voting.

15. LWVMS promotes VOTE411 in Mississippi by providing digital resources on voter registration, voter ID, polling locations, and absentee voting. LWVMS also compiles voter guides for local races and offers this information to Mississippians by sending questionnaires to candidates, making telephone calls, and conducting research through electronic platforms.

16. Because many LWVMS members are at serious risk of severe complications or even death if they were to contract COVID-19, LWVMS has been and will continue to help our members and Mississippi voters navigate the process for absentee voting in response to the state's failure to offer safe voting options.

17. LWVMS has historically encouraged in-person voting on election day because absentee ballot rules in Mississippi are complicated and burdensome. LWVMS believes that absentee ballot utilization is low in Mississippi because of these onerous requirements, including the requirement that voters have an excuse to vote by absentee ballot (the "Excuse Requirement") and the requirement to have both the absentee ballot application and the absentee ballot notarized or signed by a qualified witness (the "Notarization Requirement").

18. Many members of LWVMS are uncertain as to whether they can vote absentee during the pandemic under the Excuse Requirement. Likewise, many members are eligible to vote by mail, and therefore are subject to the Notarization Requirement and the signature match requirement.

19. LWVMS is working to help Mississippi voters, including our members, navigate this burdensome process, so they may vote safely during the COVID-19 pandemic, including during the November 2020 general election.

20. For example, LWVMS is seeking and has sought guidance on the implementation of HB1521, which affects absentee ballot eligibility. Because the state has not issued clear guidance to the public, LWVMS has had to expend its resources to ascertain how the new law will be implemented across the state and to educate voters about these new rules. LWVMS Gulf Coast has already contacted ten Circuit Court Clerks to discuss the implementation of HB1521. Of the ten Circuit Court Clerks called, only five answered the telephone. Four of the Circuit Court Clerks

that the LWVMS spoke to were unaware of the passage of HB1521 and could offer no guidance on its implementation.

21. The LWVMS, led by the Oxford-North local league, will also create a detailed voter guide to educate Mississippi voters on how to protect their health while voting during the pandemic. The guide will explain how to navigate the absentee voting process, including the excuse and notarization requirements. All five local leagues will work with their local election officials to construct this pamphlet and are redirecting financial and other resources to support the new initiative.

22. The LWVMS plans to continue this new voter education work as long as state election officials fail to ensure safe voting for Mississippi voters during the COVID-19 pandemic. The absentee voting process in Mississippi is lengthy, complicated, and unfamiliar to most Mississippi voters. The State has not done enough to help voters determine whether they qualify to vote absentee or to help voters navigate the absentee voting process safely during the coronavirus pandemic. The state has failed to waive onerous requirements, issue adequate guidance to county election officials regarding absentee ballot eligibility and other requirements, or conduct any significant voter education campaign to assist voters in navigating the absentee ballot process or to educate voters on how to vote safely during the pandemic.

23. Many veteran poll workers are senior citizens who will be unable to staff in-person polling places for the November 2020 election without severe risk to their health and life. To help address this poll worker shortage, the LWVMS is launching a program to recruit new poll workers from demographic groups at comparatively lower risk of serious illness from the coronavirus pandemic.

24. This program was conceived to address the state's failure to adequately recruit, train, and support poll workers and its failure to ensure that voters who want to vote absentee can do so to

reduce stress on polling places and poll workers. Without sufficient poll workers, LWVMS understands that election officials may close polling sites. The LWVMS believes polling place closures would lead to dangerous over-crowding and lines at the polls in November and beyond.

25. The Mississippi Gulf Coast local league has already begun a pilot program to recruit new poll workers through peer-to-peer outreach and education. As this program develops, the Gulf Coast league will train other local leagues on how to implement similar programs in their regions. The LWVMS will need to divert resources from their usual voter registration work and other efforts to dedicate member time, volunteer time, and other resources to this project.

26. The LWVMS is a party in this lawsuit because it is our mission to create an informed and engaged Mississippi electorate. Current Mississippi law will disenfranchise thousands of voters—including many of our LWVMS members—if it is not modified to allow citizens to vote safely by absentee ballot during the COVID-19 pandemic. We have already diverted resources from our normal program of voter services to address the State's failure to ensure voters can safely cast a ballot during the COVID-19 pandemic, and we will continue to do so until the law is modified to ensure Mississippians can vote safely. We believe that no voter should be put in the position of choosing between voting and protecting their health, the health of a loved one, or the health of their community.

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

Executed this 10<sup>th</sup> day of August 2020.

DocuSigned by:

*Christy Wheeler*

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Christy Wheeler