

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

of public life across the United States. At the date of filing this Complaint, at least 79,206 people in Mississippi have contracted COVID-19 and 2,315 have died.

3. Unfortunately, the toll of COVID-19 is steadily increasing—both in cases and in deaths—and public health officials have been clear that the crisis will continue, if not worsen, into the fall and winter. Public health experts warn that the coronavirus will continue to pose a serious threat to public health and safety until a vaccine becomes available and have projected that it is highly unlikely that an FDA-approved vaccine will be mass-produced and widely available in time for the November election.

4. Because the coronavirus spreads through close contact between individuals, public health experts recommend that people protect themselves by staying home and maintaining at least six feet of distance from people outside of their household. Events that bring crowds of people together, particularly indoors, present high risk of

10. This result should be obvious from the plain language of the governing law that allows voters to vote absentee if they are “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.” Miss. Code Ann. § 23-15-713(d). The Mississippi Legislature also recently

13. If the Court does not agree this result is mandated by the language of the statute, then Plaintiffs ask the Court to find in the alternative that Mississippi's absentee ballot law

15. *Third*, Plaintiffs challenge the lack of notice and opportunity to cure ballots rejected based on faulty signature match procedures under Section 23-15-641(1) of the Mississippi Code (the “Cure Prohibition”), which stands to disenfranchise voters who cast their ballot by mail. Even if Mississippians are able to comply with each of these requirements, local election officials may still reject a voter’s ballot if the official believes the voter’s signature on the ballot envelope does not match the signature on the voter’s absentee ballot application. Signature match analysis is notoriously inaccurate, and voters must be given notice that their ballots have been rejected on that basis and an opportunity to cure the rejection. Mississippi law does not provide either notice or an opportunity to cure.

16. Because Section 23-15-641 fails to provide absentee voters with notice of and an opportunity to cure signature veri

polling place presents a severe risk to her and her husband's health and life. Ms. Parham understands that to vote absentee in Mississippi, she must qualify for an excuse. Although the law was changed to allow people with a "physician-imposed quarantine," or who are caring for a "dependent" under a "physician-imposed quarantine" to request an absentee ballot, Ms. Parham is unsure whether she qualifies to select that or any other existing excuse. If Ms. Parham cannot vote by absentee ballot, she will be forced to either vote in person—risking her health and her husband's health—or to not cast a ballot until the COVID-19 pandemic ends. Ms. Parham is a dedicated, regular voter; she even ran for local office in March of 2020. To not vote during the COVID-19 pandemic would be devastating to Ms. Parham.

23. Plaintiff JED OPPENHEIM is 40 years old, white, and a resident of Jackson, Mississippi. He is a U.S. citizen and a lawfully registered Mississippi voter. He lives at home with his wife, Harriett Oppenheim, who is 37 years old and a registered voter, and their one-year-old son. Mr. Oppenheim's wife has health conditions that put her at higher risk of contracting and 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 anyone in the household tests positive for COVID-19, it is likely that Harriett would need to go immediately to the hospital. Harriett's 69-year-old mother is also part of their family unit, although she does not physically live in the same house. Mr. Oppenheim visits his mother-in-law to bring her grocery items, take her mail, and drop off his son for childcare a few times a week. His mother-in-law has moderate asthma, which makes her higher risk for contracting and suffering severe complications and potentially dying from COVID-19. Because of the risk COVID-19 poses to his family's health, Mr. Oppenheim limits his outside activity and avoids contact with anyone outside his family unit. When he must leave the house for necessary errands

or appointments, he always wears a mask and gloves. Mr. Oppenheim is a lifelong, regular voter. He usually votes in-person on Election Day and prefers to do so. He plans to vote in all upcoming elections in Mississippi, including the November election, but because of the severe risk that voting in person poses to his wife's life and his mother-in-law's health, Mr. Oppenheim must vote by absentee ballot. Yet, Mr. Oppenheim understands that although there is a new law providing an excuse on the application for an absentee ballot relating to COVID-19 for the November election, it is not clear that he qualifies for that excuse. Mr. Oppenheim sought clarity from the Secretary of State regarding his eligibility to vote by absentee ballot but has not received a response. If Mr. Oppenheim is unable to vote by absentee ballot, he will have to decide whether to vote in person—risking the health of his family and possibly even the life of his wife—or not vote at all. If he is forced to vote in person, risking his wife's life and mother-in-law's health, he will need to take substantial safety measures to protect himself from contracting coronavirus at the polling location; these include wearing personal protective equipment, maintaining 6-foot

her at higher risk for contracting, suffering severe complications, and potentially dying from COVID-19. Because of her age and medical conditions, since around March 11, 2020, Ms. Goggin has been isolating herself as much as possible to prevent exposure to COVID-19. She stays at home except to run necessary errands and always co

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

26. The League is a grassroots organization, and most of the League's work is made possible by members and volunteers. 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). LWVMS has approximately 200 members, living in various communities across the state. The LWVMS is diverse, inclusive, and equitable. 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.

27. Additionally, many LWVMS members are registered voters age 55-64 who are high risk for contracting, suffering severe complications, 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. However, these members do not currently qualify for an absentee ballot under Mississippi law.

28. 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. Despite the person-to-person contact limitations posed by COVID-19, LWVMS continues to work to register and educate voters. LWVMS is 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. LWVMS promotes VOTE411 in Mississippi by providing digital resources on voter registration, voter ID, polling locations, and absentee voting. LWVMS

30. During the COVID-19 pandemic, however, LWVMS believes in-person voting is not an option for many, if not most, voters. Because Defendants have failed to ensure safe voting options during the COVID-19 pandemic and 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 their members and Mississippi voters navigate the burdensome process for absentee voting. LWVMS is working to help Mississippi voters, including their members, vote safely during the COVID-19 pandemic, including during the November general election.

31. For example, LWVMS is seeking and has sought guidance on the implementation of HB 1521, which defines absentee ballot eligibility. Because Defendant Watson 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 recently contacted ten Circuit Court Clerks to discuss the implementation of HB 1521. 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 HB 1521 and had not received any guidance from Defendant Watson on its implementation.

32. 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 COVID-19 pandemic. The guide will explain how to navigate the absentee voting process, including the excuse and notarization requirements. All five local leagues working with their local election officials to construct this pamphlet will be redirecting financial and other resources from their usual charitable purposes to support this initiative because of the Defendant Watson's failure to offer clear guidance on implementation of the new law.

38. As a result of Mississippi's failure to relieve its burdensome absentee voting procedures in the midst of the COVID-19 pandemic, the MS NAACP and its branches have been forced to divert resources, including staff and volunteer time and money, to educate voters about Mississippi's absentee ballot law and process by helping them (1) understand the meaning of the Excuse Requirement and its effect on voters' ability to vote absentee; (2) understand how to comply with the Notarization Requirement while protecting their own health during the COVID-19 pandemic so that their absentee ballot may be counted; and (3) 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.

39. To do so, the 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. Its branch leaders are also educating themselves about the Excuse Requirement to answer local members' questions about absentee voting during the COVID-19 pandemic.

40. 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 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-

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 explain the Excuse Requirement, as many of its members are uncertain as to whether they can vote absentee during the pandemic under this excuse.

43. 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.

Mississippi Code, the Secretary of State may prescribe forms and establish fees for services not otherwise provided by law. In addition, under section 25-33-1 of the Mississippi Code, the Secretary of State is responsible for issuing notary public commissions on behalf of the Governor to all qualified applicants. The Secretary of State has authority to promulgate regulations under the Mississippi Administrative Procedures Act. *Id.* § 25-43-1.101, *et. seq.* The Secretary of State’s Office also reviews the Mississippi Election Code to consider changes and updates to present to the State Legislature for consideration. Mississippi Secretary of State, “Election Code,” (last accessed August 12, 2020), <https://www.sos.ms.gov/Policy-Research/Pages/Election-Code.aspx>. The Governor of Mississippi can delegate their limited emergency powers to the Secretary of State for the specific purpose of safeguarding Mississippi voters and elections. Miss. Code Ann. § 33-15-11, *et seq.* Once the Governor delegates this power, the Mississippi Secretary of State has the power to expand absentee voting to safeguard Mississippi voters and elections. *See* Miss. Code Ann. § 23-15-713(d).

45. Defendant LYNN FITCH is the Attorney General of the State of Mississippi and is sued in her official capacity. In that capacity, she serves a 0 o

FACTUAL ALLEGATIONS

I. The COVID-19 Pandemic Poses a Serious Threat to Public Health and Safety in Mississippi.

A. Public Health Impact of COVID-19

46. The novel coronavirus, SARS-CoV-2, is highly contagious and spreads through a variety of means, including respiratory droplets and contact between individuals. Once contracted, it can have a range of effects on the diagnosed individual, from recovery without any symptoms at all, to flu-like symptoms, to a severe immune system response that can cause fluid to build in the person's lungs and lead to death. 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.

47. Because of the highly contagious and potentially deadly nature of the disease, on March 13, 2020, President Trump declared a national state of emergency given the widespread outbreak of COVID-19. Within a week, at least 48 states—including Mississippi—had declared local states of emergency.

48. Since then, the coronavirus has continued to spread throughout the United States, resulting in a higher number of COVID-19 cases than any other country. At the time of filing of this Complaint, the confirmed number of infections in the United States has surpassed 5.7 million, and over 173,000 people have lost their lives nationwide. *See* Johns Hopkins University & Medicine, *Coronavirus Resource Center*, <https://coronavirus.jhu.edu/data/new-cases> (last updated August 26, 2020). The number of confirmed cases and deaths is likely to be significantly lower than the actual total.

49. COVID-19 spreads aggressively, in part because asymptomatic and pre-symptomatic individuals can infect

they themselves are infected. See Furukawa, Brooks & Sobel, *Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic*, *Emerg. Infect. Dis.* Vol. 26, No. 7 (May 4, 2020). Evidence from recent studies indicates that between 30% and 40% of infected individuals never develop symptoms but can carry as much of

health experts predict the US death toll will double between now and the end of 2020, in part due to an increased rate of transmission during the fall. Nurith Aizenman, *300,000 Deaths By December? 9 Takeaways From The Newest COVID-19 Projections*, NPR, August 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>.

being of all Mississippians must and always will be our top priority. We are closer to the beginning than the end of this outbreak and conducting an election at this time would unnecessarily put our poll workers and voters at risk. We must protect our rights as Americans to a free and fair election, but not at the expense of the health and safety of our people. Stay home, stay healthy.” *Id.*

57. On April 3, 2020, Governor Reeves issued a

individuals (age 65 or older) and individuals “with serious underlying health conditions, including high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune systems are compromised as such by chemotherapy for cancer or any other condition requiring such therapy.” State of Mississippi, Office of the Governor, Executive Order No. 1492, <https://www.sos.ms.gov/Education-Publications/Pages/Executive-Orders.aspx>.

59. Although Governor Reeves provided guidance permitting Mississippi businesses to begin reopening on April 24, 2020, government offices—including the Office of the Secretary of State—remained closed to the public for safety reasons. The Secretary of State’s office

Executive Order Nos. 1516, 1518. Executive Order 1518 notes that the “key to reducing the community transmission of COVID-19” and keeping Mississippi schools open is to “consistently wear a face covering while in public spaces, to practice social distancing from persons not in the same household and to maintain good hand hygiene.” State of Mississippi, Office of the Governor, Executive Order No. 1518, <https://www.sos.ms.gov/content/execut>

II. Mississippi's Absentee Voting Procedures Significantly Burden the Fundamental Right to Vote and Deny Voters' Due Process Rights.

A. Mississippi's Absentee Ballot Requirements

62. Mississippi is an excuse-required absentee voting state. Mississippi law only allows specific categories of voters with qualifying excuses to vote by absentee ballot. Unless Mississippi voters satisfy one of the enumerated excuses, they must either vote in person in the upcoming elections, or not vote at all.

63. 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 for any reason; (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.

64. Governor Reeves recently signed into law amendments to Mississippi's Excuse Requirement under HB 1521, which explicitly defined an existing excuse to include voters 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” within the existing temporary or permanent physical disability excuse. The terms “physician-imposed quarantine”, “caring for”, and “dependent” are not defined.

65. 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.

supervisor,” or “other officer having authority to administer an oath” to act as a witness and watch them complete the ballot envelope. Miss. Code Ann. § 23-15-631.

70. Eligible absentee voters under the temporary or permanent physical disability must have a witness eighteen (18) years of age or older sign both their absentee ballot application and ballot envelope. Miss. Code Ann. §§ 23-15-627, 23-15-631(1).

B. Voting in Person Imposes a Significant Burden on Mississippi Voters During the COVID-19 Pandemic.

71. 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. For most voters, this means physically appearing at a designated polling place where they must not only be in close contact with other voters, observers, and poll workers, but must also repeatedly touch equipment and materials such as voting machines, paper ballots, and shared writing instruments. At present, public health officials consider all these activities as risking exposure to the transmission of COVID-19. Ctrs. for Disease Control and Prevention, *Considerations for Election Polling Locations* (June 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>. The ongoing health risks posed by COVID-19 necessitate expanded absentee ballot access that would prevent thousands of individuals from lining up with other voters at polling places (sometimes for hours), touching the same equipment, having face-to-face interactions with poll workers, and threatening their own health and the health of others.

72. Meaningful opportunities to vote in person are still necessary for many Mississippi voters, including those who lack access to reliable mail service or need the kinds of accommodations that are only available at in-person sites, such as persons with disabilities and people with limited literacy.

73. To reduce the risk that individuals who need to vote in person will be exposed to COVID-19, the CDC’s *Considerations for Election Polling Locations* report provides specific guidelines for voting during the COVID-19 pandemic, which recommends that states “[e]ncourage voters to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations,” including “mail-in methods of voting” like absentee voting. Ctrs. for Disease Control & Prevention, *Considerations for Election Polling Locations* (updated June 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>. These are essential recommendations, especially because the risks of voting absentee are minimal.

74. Most states have already entirely eliminated any excuse requirement to vote absentee, even when their voters are not threatened by a public health crisis.¹ Kate Rabinowitz and Brittany Renee Mayes, Washington Post, *At Least 76% of American Voters Can Cast Ballots by Mail in the Fall* (August 13, 2020), <https://www.washingtonpost.com/graphics/2020/politics/vote-by-mail-states/>. Other states, that in normal circumstances maintain similarly limited eligibility requirements for voting absentee, have recognized that the extraordinary circumstances caused by the COVID-19 pandemic require loosening such requirements. Alabama, Arkansas, Delaware, Massachusetts, New Hampshire, and West Virginia have all agreed to permit any voter to use COVID-19 as a valid excuse for requesting to vote absentee at least through the November general election.²

¹ National Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options* (July 10, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (34 states and Washington, D.C., offer “no-excuse” absentee/mailed ballot voting).

² See Ala. Sec’y of State, *Absentee Voting During State of Emergency* (July 17, 2020), <https://www.sos.alabama.gov/sites/default/files/proposedRules/820-2-3-.06-.04ER.pdf>; Ark. Executive Dep’t., *Executive Order 20-44* (Aug. 7, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-44.pdf; Del. Office of the Governor, *Sixth Modification to State of Emergency* (Mar. 24, 2020),

75. Over the past three months, COVID-19 has

coronavirus/. Chicago election officials reported that a poll worker for the city’s March 17, 2020 election died of COVID-19, prompting officials to send letters notifying voters, poll workers, field investigators, and cartage companies who were present at the same polling site. Mary Ann Ahern, *Poll Worker at Chicago Voting Site Dies of Coronavirus, Election Officials Say*, 5 Chicago, Apr. 13, 2020, <https://www.nbcchicago.com/news/local/chicago-politics/poll-worker-at-chicago-voting-site-dies-of-coronavirus-election-officials-say/2255072/>. Wisconsin officials reported 71 voters contracted COVID-19 after voting in person in their April 7, 2020 election. Poll workers have tested positive after elections in other states including Alabama, Texas, and Pennsylvania.³

78. CDC guidance on safe voting practices advises that “[t]he more an individual interacts with others, and the longer that interaction, the higher the risk of COVID-19 spread” and “elections with only in-person voting on a single day are higher risk for COVID-19 spread because there will be larger crowds and longer wait times.” Ctrs. for Disease Control & Prevention, *Considerations for Election Polling Locations: Interim Guidance to Prevent Spread of Coronavirus Disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last updated June 22, 2020). Accordingly, the CDC recommends “lower risk” election polling settings, including “a wide variety of voting options”; “longer voting periods (more days and/or more hours)”; and “any other feasible options for reducing the number of voters who congregate indoors in polling locations at the same time.” *Id.*

³ See Eddie Burkhalter, *Piedmont Poll Worker in Tuesday’s Runoff Tests Positive for COVID-19, Hospitalized*, Alabama Political Reporter (July 20, 2020); Tommy Witherspoon, *Election Workers Come Down With COVID-19 as Numbers Continue to Rise*, Waco Tribune-Herald (July 20, 2020); Katie Meyer & Emily Previti, *A Philly Poll Watcher Got COVID-19, But The City Isn’t Notifying Voters*, WHYY (June 24, 2020).

1. Voters with Underlying Medical Conditions & Their Loved Ones

79. The CDC has warned that “people of any age who have certain underlying medical conditions are at increased risk for severe illness from COVID-19” and has identified certain conditions that are likely to exacerbate the impact of COVID-19, including asthma, chronic lung disease, diabetes, serious heart conditions, chronic kidney disease being treated with dialysis, severe obesity, liver disease, immune deficiencies, and a myriad of other conditions that compromise an individual’s immune system. Ctrs. for Disease Control and Prevention,

82. *First*, Black voters face a greater risk of contracting coronavirus on their way to the polls due to increased reliance on public transportation. Black Americans are less likely to own cars than any other demographic of Americans, and they “represent about one-quarter of all public transit users.” Rashawn Ray, *Why Are Blacks Dying at Higher Rates from COVID-19?*, Brookings, Apr. 9, 2020, <https://www.brookings.edu/blog/fixgov/2020/04/09/why-are-blacks-dying-at-higher-rates-from-covid-19>. Black voters without access to private transportation face additional risks of contact with exposed individuals in close quarters on public transportation en route to their polling places.

83. *Second*, Black voters are disproportionately burdened by long lines at the polls. Maintaining the Excuse Requirement may result in closed polling places because of poll worker shortages which will result in longer lines with an inability to practice adequate social distancing. For Black voters, these problems are exacerbated by existing racial disparities in wait times: a recent study based on data from millions of smartphone users during the 2016 presidential election found that residents of entirely-Black neighborhoods waited 29% longer to vote and were 74% more likely to spend more than 30 minutes at their polling place than residents of all-white neighborhoods.⁴ And Black voters can least afford unnecessarily long wait times as the price to pay for voting because Black people are “more likely to be working in jobs without flexibility or paid sick leave,” which means any delays at the polls disproportionately threaten their job security.⁵

⁴ M. Keith Chen, et al., *Racial Disparities in Voting Wait Times: Evidence from Smartphone Data* (Nov. 14, 2019), https://www.kareemhaggag.com/f/Racial_Disparities_in_Voting_Wait_Times.pdf.

⁵ Demos, *How to Build a Racially Inclusive Democracy During COVID-19 and Beyond* (Apr. 28, 2020), <https://www.demos.org/policy-briefs/how-build-racially-inclusive-democracy-during-covid-19-and-beyond>.

84. *Third*, if Black voters contract coronavirus while voting in person or while obtaining a notary or authorized official's attestation, they are more likely to suffer serious and even deadly consequences because they disproportionately suffer from the underlying medical conditions that exacerbate COVID-19. Decades of research, statements from public health experts, and data from the U.S. Department of Health and Human Services all reflect that Black Americans have disproportionately high rates of asthma, diabetes, high blood pressure, and obesity. The CDC and other reports have cited racial disparities in these underlying medical conditions as a factor that influences the disproportionate impact of COVID-19 on the Black community.

85. *Fourth*, if Black voters contract coronavirus while voting in person or obtaining notarization or attestation for absentee voting, they are also more likely to suffer serious consequences because of inequalities in our health care system. Studies conducted by the American Journal of Public Health, The Agency for Healthcare Research and Quality, and other organizations over the past few decades indicate that Black people are less likely to have insurance and access to affordable medical testing. *See also* Karen Bascom, University of Mississippi Medical Center, *COVID-19 Impacts Black Communities More Heavily, Study Shows* (May 7, 2020), https://www.umc.edu/news/News_Articles/2020/05/COVID-19-impacts-black-communities-more-heavily.html. The CDC has cited "barriers to getting health care," including lack of health insurance coverage, as one factor that "might make members of many racial and ethnic minority groups especially vulnerable in public health emergencies like outbreaks of COVID-19." Additionally, according to a U.S. News & World Report article, "African Americans are more likely than whites to rely on hospital emergency rooms for primary care – departments that soon may be overwhelmed with anticipated surges of COVID-19 patients." Joseph P. Williams, *Rumor, Dispers to-2112 Tc. &neCmndig*

COVID-19, U.S. News and World Report, Mar. 25, 2020, <https://www.usnews.com/news/healthiest-communities/articles/2020-03-25/why-black-americans-face-an-uphill-battle-against-the-coronavirus>. Some studies have shown that, even when Black people can obtain health care, it is of disparate quality compared to non-Black people.

86. *Fifth*, if Black voters contract coronavirus while voting in person or obtaining notarization or attestation for an absentee ballot, they also face increased risks of spreading coronavirus to their loved ones and community. *See* Karen Bascom, University of Mississippi Medical Center, *COVID-19 Impacts Black Communities More Heavily, Study Shows* (May 7, 2020), https://www.umc.edu/news/News_Articles/2020/05/COVID-19-impacts-black-communities-more-heavily.html. As discussed above, Black voters are more likely to rely on public transportation, and Black voters are more like

population. Although only 37.8% of the Mississippi population is Black, the Mississippi State Department of Health reports that 49.5% of Mississippians who have died from COVID-19 have been Black. Out of the total persons infected with COVID-19 in Mississippi, 51.8% are Black. Mississippi State Department of Health, COVID-19 Deaths by Race/Ethnicity through August 23, 2020, Mississippi (last updated August 23, 2020), https://msdh.ms.gov/msdhsite/_static/14,21995,420,873.html.

88. These risks, both individually and collectively, demonstrate that in-person voting and the requirement of obtaining a witness attestation or notary for an absentee ballot imposes an especially significant and life-threatening burden

92. COVID-19 is already having a devastating impact on elderly individuals in Mississippi. More than 37% of Mississippians who have contracted COVID-19 are ages 50 and older, and that same age group represents over 93% of Mississippi's confirmed deaths. Mississippi Department of Health, COVID-19 Cases and Deaths by Age Group, https://msdh.ms.gov/msdhsite/_static/14,0,420.html#map (last updated 7/20/20).

93. If older voters contract the coronavirus while visiting a person or while obtaining a notary or oath attestation for absentee voting, they also face increased risks of spreading the coronavirus to their loved ones and community, because they are more likely to require in-person care or assistance. The CDC has warned that the “concentration of nursing homes and long-term care facilities, and the population served (generally older adults often with underlying medical conditions), put those living in nursing homes at high risk of infection and severe illness from COVID-19.” The impact of COVID-19 in Mississippi nursing homes serves as a stark example: to date, there are 173 active outbreaks in Mississippi long-term care facilities, where one or more resident or staff member has been infected. Mississippi Department of Health, LTCF Cases and Deaths Among Residents by County, https://msdh.ms.gov/msdhsite/_static/14,0,420.html#map.

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People Account for Large Shares of Poll Workers and Voters in U.S. General Elections (April 6, 2020), <https://www.pewresearch.org/fact-tank/2020/04/06/older-people-account-for-large-shares-of-poll-workers-and-voters-in-u-s-general-elections/>.

4. Voters with Disabilities

95. Mississippi’s current Excuse Requirement will disproportionately burden voters with certain disabilities, especially those who need to vote in person during the COVID-19 pandemic.

96. Voters with certain disabilities face a significant risk of contracting coronavirus and exposing themselves to COVID-19 at the polls or on their way to polling locations. According to the CDC and Pew Trusts, “[m]any people with disabilities cannot mark paper ballots without assistance, so they rely on special voting machines” with features like touch screens, other manual input devices, and earphones to vote, any of which could carry the coronavirus from previous users and poll workers. Additionally, social distancing practices are more difficult for voters with certain disabilities—for example, voters who are blind or have

people whose disabilities serve as comorbidities for COVID-19, people whose disabilities make social distancing more difficult, and people whose physical disabilities make them unable to stand in long lines at the polls.

99. The state has already determined that some voters can vote absentee and has explicitly defined an existing excuse to include some voters impacted by COVID-19, conceding that current pandemic conditions require a modification of existing restrictions on absentee by mail voting. Mississippi law provides many safeguards that protect the integrity of the absentee ballot process—voters must sign their absentee ballot application under penalty of perjury and include either the last four digits of their social secu

102. In June 28, 2020 floor testimony before the Mississippi House of Representatives in connection with the passage of HB 1521, Mississippi legislators indicated that if a voter “ha[s] symptoms [of COVID-19] but you have not been to a doctor, currently the department of Health and physicians are telling you to stay home and self-quarantine, that would count,” and that the standard would be applied across the state. This position is in accord with the “temporary disability” provision of the Excuse Requirement found in section 23-15-713(d) of the Mississippi Code.

103. HB 1521, which explicitly allows people to vote absentee if they or those they are caring for are under “physician-imposed quarantine,” provides no definition for “physician-imposed quarantine,” “caring for,” or “dependent” in the temporary or permanent physical disability excuse under Mississippi law. Without clarification, the application of this excuse in conjunction with existing Mississippi absentee ballot law leaves voters uncertain of their ability to vote absentee. Defendant Watson has requested an official opinion from Defendant Fitch regarding the definition of “physician-imposed quarantine,” and whether the qualifying language in Section 23-15-713(d) eliminates circuit clerks’ ability to determine what is a “temporary disability” under Mississippi law. Bobby Harrison, *Watson Asking Attorney General Whether Mississippi Legislature Made it Harder to Vote in Pandemic*, Mississippi Today, July 20, 2020, <https://mississippitoday.org/2020/07/20/watson-asking-attorney-general-whether-mississippi-legislature-made-it-harder-to-vote-in-pandemic/>.

104. Despite the existing “temporary disability” excuse and the explicit “physician-ordered quarantine” excuse, Governor Reeves stated in an August 16, 2020 interview that Mississippi would not allow “someone who’s afraid of their health, someone with asthma,

111. To use remote notarization for the absentee ballot application, a voter must have access to video-call technology. This requires sufficiently high-speed internet access and a device with videoconference capabilities, to which many voters may not have access. Further, Mississippi has one of highest rates of households without internet access in the United States, and as of 2017, 26.2% of Mississippians do not have access to the internet at home. Even if voters have access to the technology to use remote notarization, they must then obtain postage and envelopes and mail the absentee application to the notary public for their official stamp and seal before mailing it back to the registrar. Worse yet, the Governor's prior Executive Order permitted notaries to charge up to \$30.00 for performing remote notarization. Given the lack of guidance regarding the actual cost of remote notarization, voters may be dissuaded from absentee voting due to uncertain costs and economic constraints caused by the COVID-19 pandemic.

112. Remote notarization does not resolve the problems created by the notarization requirement. The voter must physically sign their absentee ballot envelope in front of a notary, who must also sign the absentee ballot envelope. Because the absentee ballot envelope must be present for notarization, the voter must also be present, defeating the benefit of remote notarization for absentee voters.

113. Additionally, the United States Postal Service announced on August 18, 2020 that postal employees are prohibited from serving as witnesses on voters' absentee ballots while on duty. James Brooks, *In Rule Change, Postal Service Forbids Employees from Signing Absentee Ballots as Witnesses*, Anchorage Daily News, Aug. 18, 2020, <https://www.adn.com/politics/2020/08/18/in-rule-change-postal-service-forbids-employees-from-signing-absentee-ballots-as-witnesses/>. This restriction limits voters' ability to comply with the Notarization Requirement.

114. Thus, in the middle of a pandemic, voters must choose between entering public establishments and coming into face-to-face contact with notaries or authorized officials to obtain signatures at least twice and losing the “precious” and “fundamental” right to vote. *Harper v. Va.*

118. Mississippi utilizes other mechanisms that preclude claims that this requirement prevents voter fraud or safeguards voter confidence. Voters must include identifying information such as the last four digits of their social security number or their driver's license number on their absentee ballot application. Voters must also sign both their absentee ballot application and ballot envelope under penalty of perjury, and their ballots are subject to challenge as with in-person voting. Furthermore, the absentee voting structure indicates that notarization of absentee ballots is not necessary for verification purposes, as absentee voters eligible under the temporary or permanent physical disability excuse are simply required to have an adult eighteen (18) years or older witness their application and ballot.

E. The Cure Prohibition Significantly Burdens Mississippi Voters Without Meaningfully Advancing Any Valid State Interest and Violates Voters' Due Process Rights.

119. In addition, Mississippi statute requires signature matching between the signatures on a voter's absentee application and the signature on the voter's absentee ballot envelope for absentee by mail ballots. Specifically, Mississippi statute requires that: "The signature on the application . . . be compared with the signature on the back of the envelope." Miss. Code Ann. § 23-15-639. If the signatures are found not to match, Mississippi election officials are required to reject the ballot outright. Miss. Code Ann. § 23-15-641. There is no provision of Mississippi law that provide for notice of or any opportunity to cure signature deficiencies prior to rejection of the ballot.

120. Signature matching is a notoriously inaccurate method of verifying an individual's identity. Handwriting analysis requires controlled conditions and significant, rigorous training to be performed without excessive error. Election officials are not trained forensic scientists, and

research suggests that election officials are prone to deciding in error that authentic voter signatures do not match signatures on file with local election boards.

121. As part of this signature-comparison process, Mississippi gives broad authority to election officials to challenge absentee ballots because of a mismatched signature but prescribes no process for doing so. Neither the Mississippi Code, nor the County Election Manual specifies the number of poll managers who must or may review any given ballot. This lack of uniform process means that a Mississippi voter might be disenfranchised based on a handwriting analysis performed by a single precinct official, decided according to that official's subjective opinion, and given no further review. Mississippi law also provides no meaningful guidance on what it means for an official to "compare" the signatures on a ballot envelope and absentee ballot application. Mississippi Secretary of State, 2019 County Elections Handbook at 42 (revised Oct. 2019), https://www.sos.ms.gov/Documents/ElectionsDocuments/County%20Election%20Handbook_10%202019.pdf. It provides no meaningful guidance on what it means for those signatures to "correspond." Miss. Code Ann. § 23-15-641(1). Furthermore, the statute does not define a "signature." No Mississippi statute, regulation, or Secretary of State directive specifies how election officials should compare voters' signatures on their ballot envelopes to the signatures on absentee ballot application forms. Upon information and belief, the Secretary of State does not regularly conduct or organize training for election officials in handwriting analysis or signature matching. Similarly, no Mississippi law requires that election officials receive any such training.

122. The risk of disenfranchisement 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 Mississippi's system requires election officials to compare the signature on a voter's absentee ballot envelope to the signature on the voter's

absentee ballot application form on file with the county board of elections. Mississippi Secretary of State, 2019 County Elections Handbook at 42 (revised Oct. 2019),

CLAIMS FOR RELIEF

Count 1: During the COVID-19 Crisis, Defendants' Failure To Advise the Public that Mississippi's Excuse Requirement Allows Plaintiffs and Other Voters Reasonably in Fear of COVID-19 To Vote by Absent

140. Under Mississippi's Excuse Requirement, voters may select temporary or permanent physical disability based on a "physician-imposed quarantine" as an excuse for absentee voting in 2020 elections. Mississippi is expected to see a historic number of voters choose, for the first time, to vote absentee by mail to further limit exposure to the coronavirus.

141. The "temporary disability" requirement under the Excuse Requirement should be construed as allowing voters who reasonably fear that voting in person will subject them or others to increased risk of contracting coronavirus and exposure to COVID-19.

142. Mississippi law does not define "physician-imposed quarantine." Upon information and belief, Defendants have not provided the floor testimony from Mississippi legislators regarding the meaning and application of the phrase as official guidance to county registrars and th6 Ti7-for1to CO(e)3.D2h1HTJ310 TD-.0003 Tc.5301(y)19.7(fro)10.8(250.also d6.6(6(Tw01(M

155. 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. For example, Mississippi law already provides a notice mechanism for other types of absentee ballot issues, such as when voters include more than one ballot in the ballot envelope, if the affidavit is insufficient, or if the voter is disqualified. Miss. Code. Ann. §§ 23-15-641 (2), (3).

156. Voters in Mississippi will continue to face a substantial risk of being deprived of their fundamental right to vote without due process absent relief granted by the Court.

**Count 6: Mississippi’s Cure Prohibition Burdens the Fundamental Right to Vote in
Violation of the First and Fourteenth Amendments
(42 U.S.C. § 1983)
(Plaintiffs Goggin, MS NAACP, and LWVMS)
(All Defendants)**

157. Plaintiffs reallege and reincorporate by reference the allegations in the preceding paragraphs as though fully set forth herein.

158. This fall, Mississippi is expected to see a historic number of voters choose, for the first time, to vote absentee by mail. This includes voters who meet the challenged Excuse Requirement, whose ballots—among other absentee by mail voters—are subject to state signature match requirements.

159. Mississippi law does not provide voters with notice of benign or technical signature-related errors, including election officials subjectively believing—without any statutory or regulatory

signature-related errors are effectively disenfranchised. There is no remedy to rehabilitate infringement on the right to vote once the voter is disenfranchised.

161. Such a system imposes a significant burden on absentee voters' fundamental right to vote. The state has no legitimate and relevant state interest sufficiently weighty to justify such a burden. Rejections will occur without any reliable indication that the rejected ballots were fraudulent or improper.

PRAYER FOR RELIEF

Plaintiffs respectfully pray that the Court:

- a. Assume jurisdiction over this action;
- b. Declare that the failure of Defendants to advise voters that they are eligible to vote absentee if they reasonably believe that voting in person would risk their contracting the coronavirus and exposure to COVID-19, or risk the health of others, violates the fundamental right to vote under First and Fourteenth Amendments to the U.S. Constitution;
 - i. Alternatively, declare that the Excuse Requirement, if construed to *not* allow voters to vote absentee if they reasonably believe that voting in person would risk their contracting the coronavirus and exposure to COVID-19, or the health of others, violates the First and Fourteenth Amendments to the U.S. Constitution;
 - ii. Alternatively, declare that the Excuse Requirement is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment and should be construed to allow voters to vote absentee if they reasonably believe that voting in-person would risk their contracting the coronavirus and exposure to COVID-19 or the health of others, or if they are quarantined pursuant to the advice of public health officials;

c. Declare that the Notarization Requirement violates the fundamental right to vote under First and Fourteenth Amendments to the U.S. Constitution while the risk of community transmission of COVID-19 continues to threaten the health and safety of Mississippi voters;

d. Declare that Defendants' failure to provide adequate notice and an opportunity to cure the rejection of absentee ballots on the basis of signature mismatch violates the right to vote under the First and Fourteenth Amendments to the U.S. Constitution, and the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;

e. Issue preliminary and permanent injunctions that order relief including:

- i. 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;
- ii. 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;
- iii. Prohibiting Defendants from enforcing the Notarization Requirement for all voters during the COVID-19 pandemic in Mississippi;
- iv. Ordering Defendants to issue guidance instructing all local and county election officials to count otherwise validly submitted absentee ballot applications and validly cast absentee ballots that are missing notarization or the signature of an official authorized to administer oaths;

- v. Ordering Defendants to issue guidance instructing all local and county election officials to count otherwise validly submitted absentee ballot applications and 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;
- vi. 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;
- vii. Retain jurisdiction to render any and all further orders that this Court may deem necessary;
- viii. Award Plaintiffs their reasonable attorneys' fees and costs pursuant to statute; and
- ix. Grant Plaintiffs such other and furthe

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**Pro hac vice motion forthcoming*

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