

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY
TWENTIETH JUDICIAL DISTRICT
THE STATE OF TENNESSEE**

BENJAMIN WILLIAM LAY, CAROLE
JOY GREENAWALT, and SOPHIA
LUANGRATH,

Plaintiffs,

v.

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

Defendants.

Case No.: _____

Judge _____

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

INTRODUCTION

1. On April 14, 2020, when State health officials had confirmed 5,823 cases of COVID-19 in Tennessee,¹ Linda Phillips, Shelby County’s Elections Administrator, assured Tennesseans, “there will be an election on August 6th, and it will be conducted in accordance with Tennessee law.”² In just a month, the number of COVID-19 cases in Tennessee has increased by more than 181%. As of May 13, 2020, there were 16,370 confirmed cases in the state and more

¹ Laken Bowles, *April 14 COVID-19 Update: 5,823 Cases, 124 Deaths in Tennessee*, NEWS CHANNEL 5 NASHVILLE (Apr. 14, 2020), <https://www.newschannel5.com/news/nashville-mayor-metro-health-officials-to-give-covid-19-update-at-9-30-a-m-april-14>.

² Mike Matthews, *Shelby County Election Commission Prepares for Elections Amid COVID-19 Pandemic*, LOCAL MEMPHIS (Apr. 14, 2020), <https://www.localmemphis.com/article/news/politics/coronavirus-covid-19-shelby-county-election-commission-elections/522-44a621c4-a42e-44e6-abcf-2b31b3ffec1>.

than 270 Tennesseans have lost their lives to this disease.³

2. Unfortunately, this deadly pandemic shows no signs of abating.⁴

3. Because there is no vaccine, social distancing measures, including maintaining at least six feet of space between people and not gathering in groups (as well as consistent hygiene practices and wearing a mask), are the only known measures for protecting against transmission of COVID-19.⁵

4. Among these social distancing measures, the United States Centers for Disease Control and Prevention (the “CDC”) recommends that election officials “[e]ncourage mail-in methods of voting,”⁶ advice that has been echoed by numerous public health experts,⁷ and that has been followed by a number of states that have modified their eligibility requirements for voting by

³ Tenn. Dep’t of Health, *Coronavirus Disease (COVID-19)*, <https://www.tn.gov/health/cedep/ncov.html> (last visited May 14, 2020).

⁴ Ryan Best & Jay Boice, *Where the Latest COVID-19 Models Think We’re Headed – and Why They Disagree*, FIVETHIRTYEIGHT (May 9, 2020, 9:08 A.M.), <https://projects.fivethirtyeight.com/covid-forecasts/>.

⁵ Lisa Lockerd Maragakis, *Coronavirus, Social and Physical Distancing and Self-Quarantine*, JOHN HOPKINS MEDICINE, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social-distancing-and-self-quarantine>; Ctrs. For Disease Control And Prevention, *How to Protect yourself and Others* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited May 9, 2020).

⁶ Ctrs. For Diseases Control & Prevention, *Recommendation for Election Polling Locations*, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last visited May 9, 2020).

⁷ Maggie Miller, *More than 800 public health experts call on Congress to fund mail-in voting*, THE HILL (May 5, 2020), <https://thehill.com/policy/cybersecurity/496257-over-800-public-health-experts-call-on-congress-to-fund-mail-in-voting>.

mail.⁸

5. Defendants, however, have chosen to ignore these recommendations, allowing only voters who meet a certain narrow set of criteria to “vote absentee by mail” (the “Excuse Requirement”). Tenn. Code Ann. § 2-6-201. A voter who does not fall within one of the specifically enumerated categories has to vote in person or not vote at all.

6. In particular, “fear of contracting the coronavirus doesn't meet the criteria to vote by mail due to illness in Tennessee.”⁹

7. This includes immunocompromised voters like Plaintiff Carole Joy Greenawalt who has Ulcerative Colitis and her husband, Benjamin William Lay, who is a two-time cancer survivor.

8. In short, voters like Plaintiffs are faced with a Hobson’s choice: (i) vote in person and risk your health and the health of those with whom you live or (ii) forgo your fundamental right to vote.

9. The Tennessee Constitution does not permit voters to be faced with such an untenable decision.

10. Plaintiffs therefore ask that the Court enjoin Tennessee’s limitations on eligibility to “vote absentee by mail” and declare those limitations unconstitutional for the duration of (i) the 2020 election calendar and (ii) until the State’s ongoing “state of emergency” is lifted and the CDC no longer recommends that individuals engage in social distancing measures.

⁸ Alabama, Arkansas, Delaware, Massachusetts, New Hampshire, Virginia, and West Virginia have all recognized the unique danger posed by COVID-19 and modified their procedures for voting by mail accordingly. *See infra* § 5.

⁹ Jonathan Mattise, *Tennessee official: Fear of virus not reason to vote by mail*, ASSOCIATED PRESS (May 12, 2020), <https://apnews.com/bdcf796cb3288d82c9a0026c12646f4f>.

PARTIES

11. Plaintiff Carole Joy Greenawalt is a twenty-nine year-old resident of Nashville, Tennessee. Ms. Greenawalt suffers from a rare autoimmune disease called Ulcerative Colitis—a chronic, inflammatory bowel disease that causes inflammation in the digestive tract and that significantly decreases her immune system’s ability to fight off viruses and infections. Ms. Greenawalt takes an immunosuppressive biologic drug called Humira. Thus, as a result of both her autoimmune disease and the immunosuppressive prescription that she takes as treatment, Ms. Greenawalt is at a higher risk for contracting COVID-19 and at a higher risk for complications should she contract COVID-19. Ms. Greenawalt has been self-quarantined at home with her husband, Plaintiff Benjamin William Lay, a two-time cancer survivor, and has been practicing the social distancing measures prescribed by the CDC. Ms. Greenawalt only leaves her apartment for the occasional drive, to visit a public park, or to take her dog out, all while maintaining proper social distancing per CDC guidelines. Ms. Greenawalt receives all of her groceries by delivery, which she disinfects upon receipt. She also uses hand sanitizer many times a day and disinfects surfaces and commonly touched objects often. Ms. Greenawalt would like to vote in Tennessee during the upcoming August 2020 election. But, due to her immunocompromised status, she cannot vote safely in person during the COVID-19 pandemic.

12. As currently construed, the Excuse Requirement prevents Ms. Greenawalt from “vot[ing] absentee by mail.” *See* Tenn. Code Ann. § 2-6-201. Ms. Greenawalt wishes to vote by mail because she does not feel that it would be safe to visit a crowded voting precinct in the midst of a global pandemic. Ms. Greenawalt does not want to be forced to endanger either her life or husband’s life by exercising her fundamental right to vote.

13. Plaintiff Benjamin William Lay is a thirty-one year-old resident of Nashville, Tennessee. Mr. Lay was diagnosed with Ewing Sarcoma in 2006 at the age of sixteen. Mr. Lay was given a ninety percent mortality rate. After nine months of aggressive chemotherapy and six weeks of daily radiation, his cancer was put in remission. Two years later, however, Mr. Lay was diagnosed with a recurrence of the same cancer. His only chance of survival was an experimental surgery that removed the entire right half of his sacrum where the tumor resided coupled with twelve months of aggressive chemotherapy. The surgery saved Mr. Lay's life, but as a result, he now suffers from the permanent paralysis of his right leg and foot. Mr. Lay relies on a wheelchair or crutches for mobility. Mr. Lay's disability, in addition to the compromised state of his organs due to the vast amount of chemotherapy he has received, has compromised his immune system. It is especially risky for Mr. Lay to be in public in areas where large groups of people are gathered, such as a crowded voting precinct, during this ongoing pandemic. Mr. Lay lives with his wife, Plaintiff Carole Joy Greenawalt, who is also immunocompromised. Mr. Lay has been self-quarantining at home with his wife and has been practicing the social distancing measures prescribed by the CDC. Mr. Lay does not leave the house except for the occasional walk or drive where he can ensure that he can practice proper social distancing per CDC guidelines. Mr. Lay receives all groceries by delivery and disinfects every package upon receipt. In fact, if Mr. Lay steps out of his house to collect the mail or to pick up a package, he leaves his shoes at the door and immediately washes his hands according to CDC guidelines and instructions. Mr. Lay is registered to vote in Tennessee and has previously voted in elections in Tennessee. Due to his wife's immunocompromised status and his cancer history, he cannot vote safely in person during the COVID-19 pandemic. Mr. Lay wishes to vote by mail because he does not feel that it would be safe to visit a crowded voting precinct in the midst of a global pandemic. Mr. Lay does not

want to be forced to endanger either his life or his wife’s life by exercising his fundamental right to vote.

14. Plaintiff Sophia Luangrath is a twenty-one year-old-resident of Rutherford County, Tennessee. She has been self-quarantining at home and has been practicing the social distancing measures prescribed by the CDC. She voted in the 2018 Midterm Election. Because COVID-19 can be unknowingly spread by asymptomatic carriers, Ms. Luangrath cannot vote safely during the COVID-19 pandemic. As currently construed, the Excuse Requirement prevents Ms. Luangrath from “vot[ing] absentee by mail.” *See* Tenn. Code Ann. § 2-6-201.

15. Defendant Mark Goins is the Coordinator of Elections for the State of Tennessee and is sued in his official capacity. As the “the chief administrative election officer of the state,” Tenn. Code Ann. § 2-11-201(b), Defendant Goins is charged with a number of election responsibilities, including but not limited to:

- “[S]upervis[ing] all elections,” *id.* § 2-11-202(a)(1);
- “[O]btain[ing] and maintain[ing] uniformity in the application, operation and interpretation of the election code,” *id.* § 2-11-201(b);
- “Authoritatively interpret[ing] the election laws for all persons administering them,” *id.* § 2-11-202(a)(4);
- “Furnish[ing] instructions for elections officials . . . and [furnishing] copies of election laws manuals,” *id.* § 2-11-202(a)(8);
- “[U]pdating materials to the election commissions, primary boards, and administrators,” *id.*;
- “Advis[ing] election commissions, primary boards, and administrators of elections as to the proper methods of performing their duties,” *id.* § 2-11-202(a)(3);
- “Publish[ing] [and] keep[ing] up to date an elections manual . . . and prepar[ing] condensed materials for use of election officials,” *id.* § 2-11-202(a)(7);
- “[S]upply[ing] to a county election commission the forms for applications for [absentee] ballots or approv[ing] the usage of a county’s forms,” *id.* § 2-6-

202(c)(1);

- “[A]dopting uniform forms for each county election commission for an application for early voting and absentee voting,” *id.* § 2-6-308; and
- “[D]etermining distinguishable colors to be used in the printing of the ballot envelopes for early voting and absentee voting,” *id.* § 2-6-309.

16. Defendant Goins has stated that “the fear of getting ill [from COVID-19] does not fall under the definition of ‘ill’” for purposes of fulfilling the Excuse Requirement.¹⁰

17. Defendant Tre Hargett is the Secretary of State of State of Tennessee and is sued in his official capacity. The Secretary of State appoints the Coordinator of Elections who then serves “at the pleasure of the secretary of state.” Tenn. Code Ann. § 2-11-201(a). Any “rules” or “regulations” that the Coordinator of Elections devises “to carry out the provisions of the election code” are “subject to the concurrence of the [S]ecretary of [S]tate.” *Id.* § 2-11-201(c).

18. Defendant Bill Lee is the Governor of Tennessee. The Tennessee Constitution vests in him the “supreme executive power” of the State. Tenn. Const. Art. III, § 1. Further, he has the power to “declare a state of emergency,” Tenn. Code Ann. § 58-2-107(a)(2)(b)(1), “is responsible for addressing the dangers presented to [the] state and its people by emergencies,” *id.* § 58-2-107(a)(1), and can “[s]uspend any law, order, rule or regulation prescribing the procedures for conduct of state business or the orders or rules or regulations of any state agency, if strict compliance with any such law, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency,” *id.* § 58-2-107(e)(1).

19. Defendant Lee “swiftly backed” Defendant Goins’ interpretation of the Excuse Requirement.¹¹

¹⁰ Mattise, *supra* note 9.

¹¹ *Id.*

JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction over this action pursuant to Tenn. Code Ann. §§16-11-101, 16-11-102, 16-11-103, 1-3-121, 29-1-101, and 29-14-102.

21. This Court has personal jurisdiction over Defendants pursuant to Tenn. Code Ann. §§20-2-222 and 20-2-223 on the grounds that their principal place of business is in Tennessee and that the wrongful conduct and resulting injuries alleged herein substantially occurred in Tennessee.

22. Venue is proper in this judicial district pursuant to Tenn. Code Ann. §20-4-101 because the causes of action arose in Davidson County.

STATEMENT OF FACTS

I. Transmission of COVID-19 and Public Health Guidelines

23. “These are not ordinary times.”¹² We are currently amidst “the worst pandemic this state, country, and planet ha[ve] seen in over a century [with] public health implications [that] have been vast and unprecedented in the modern era, with *no one* left untouched by the risk of transmission.”¹³

24. According to the CDC, the novel coronavirus SARS-CoV-2, which causes COVID-19, spreads aggressively.¹⁴ Critically, it can be unknowingly spread by asymptomatic carriers of the virus.¹⁵ As a recent editorial in *The New England Journal of Medicine* explained:

Asymptomatic transmission of SARS-CoV-2 is the Achilles’ heel of Covid-19 pandemic

¹² *League of Women Voters of Virginia, et al., v. Virginia State Board of Elections, et al.*, No. 6:20-CV-00024, 2020 WL 2158249, at *8 (W.D. Va. May 5, 2020).

¹³ *Id.* at *10 (emphasis added).

¹⁴ Ctrs. for Disease Control & Prevention, *How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited May 9, 2020).

¹⁵ *Id.*

control through the public health strategies we have currently deployed. Symptom-based screening has utility, but epidemiologic evaluations of Covid-19 outbreaks within skilled nursing facilities . . . strongly demonstrate that our current approaches are inadequate.¹⁶

25. The United States is the epicenter of the global COVID-19 pandemic.

26. Currently, the United States leads the world in the total number of COVID-19 cases, surpassing previous leaders China and Italy.¹⁷ Statistical models predict that as “social contacts increase,” “new COVID-19 cases and deaths will rebound in late May” nationally.¹⁸ One model predicts that there is a “69% chance that the [United States] surpasses 100,000 deaths by June 1, with May 27 being the most likely date.”¹⁹

27. Members of all age groups have contracted and died from the illness.²⁰

28. The World Health Organization (“WHO”) estimates that approximately 20% of

¹⁶ Monica Gandhi, M.D., M.P.H., et. al. *Asymptomatic Transmission, the Achilles’ Heel of Current Strategies to Control COVID-19*, NEW ENGLAND JOURNAL OF MEDICINE (Apr. 24, 2020) <https://www.nejm.org/doi/full/10.1056/NEJMe2009758>.

¹⁷ Ctr. For Systems Science and Engineering, *COVID-19 Dashboard*, JOHNS HOPKINS UNIVERSITY, <https://coronavirus.jhu.edu/map.html> (last visited May 9, 2020).

¹⁸ *Projections Suggest Late May COVID-19 Rebound*, COLUMBIA U. MAILMAN SCH. OF PUB. HEALTH, (May 7, 2020) <https://www.mailman.columbia.edu/public-health-now/news/projections-suggest-potential-late-may-covid-19-rebound>.

¹⁹ Quentin Fottrell, *New Estimates on Coronavirus Fatalities Make for Chilling Reading as U.S. States Ease Restrictions on Social Distancing*, MARKETWATCH (May 9, 2020, 9:31 AM), <https://www.marketwatch.com/story/will-some-people-be-affected-badly-yes-trump-says-us-must-reopen-coronavirus-deaths-projected-to-hit-100000-in-weeks-2020-05-06>.

²⁰ Robert Verity, PhD. et al., *Estimates of the Severity of Coronavirus Disease 2019: A Model-Based Analysis*, THE LANCET INFECTIOUS DISEASES (March 30, 2020), 6.

those who are infected by SARS-CoV-2 require hospitalization.²¹ COVID-19 can severely damage lung tissue, cause a permanent loss of respiratory capacity, and also damage tissues in the kidney, heart, and liver.²² The surge of COVID-19 cases has caused mounting strains on healthcare systems, including critical shortages of doctors, nurses, hospital beds, medical equipment, and personal protective equipment (“PPE”).²³

29. COVID-19 is far deadlier than the seasonal flu, including in countries with advanced healthcare systems.²⁴

30. COVID-19 poses heightened risks for the elderly and for those with certain preexisting medical conditions. The CDC estimates a 4-11% mortality rate for adults between the

²¹ World Health Organization, Q&A on Coronaviruses (COVID-19), “Should I Worry About COVID-19?,” <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last visited May 9, 2020).

²² Ctrs. for Disease Control & Prevention, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (last visited May 9, 2020).

²³ See, e.g., Zoë Schlanger, *Begging for Thermometers, Body Bags, and Gowns: U.S. Health Care Workers Are Dangerously Ill-Equipped to Fight COVID-19*, TIME MAGAZINE (April 20, 2020) <https://time.com/5823983/coronavirus-ppe-shortage/>.

²⁴ Betsy McKay, *Coronavirus vs. Flu Which Virus is Deadlier*, WALL ST. J. L. (Mar. 10, 2020, 12:49 PM), <https://www.wsj.com/articles/coronavirus-vs-flu-which-virus-is-deadlier-11583856879>; see Christina Prignano, *Five Things to Tell Someone Who Insists Coronavirus is Just a Bad Flu*, BOS. GLOBE (May 5, 2020) <https://www.bostonglobe.com/2020/05/05/nation/five-things-tell-someone-who-insists-coronavirus-is-just-bad-flu/>; see also *Castillo v. Barr*, No. 20-00605, 2020 WL 1502864, at *2 (C.D. Cal. Mar. 27, 2020) (“COVID-19 is highly contagious and has a mortality rate ten times higher than influenza.”).

ages of 65 and 84 and a 10-27% mortality rate for adults 85 years old or older.²⁵ COVID-19 also poses greater risks for people with preexisting heart and respiratory conditions, diabetes, individuals with compromised immune systems, and those with many other conditions.²⁶

31. The effects of this COVID-19 pandemic on social life will last well into the summer of 2020, if not much longer, as experts have indicated that seasonal changes are “unlikely to stop transmission” and that “a year to 18 months is [a] very optimistic” timeline for the availability of a safe vaccine.²⁷ Indeed, in testimony before the United States Senate Committee on Health, Education, Labor, and Pensions, Dr. Fauci stated, “[t]he idea of having treatments available or a vaccine to facilitate reentry of students into fall term would be something that would be a bit of a bridge too far.”²⁸

32. Further, even those who develop an immune response to the virus after an infection are not necessarily safe from reinfection, as we do not yet have sufficient data regarding how long

²⁵ Ctrs. for Disease Control & Prevention, *People Who Are at Higher Risk: Older People*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (last visited May 9, 2020).

²⁶ Ctrs. for Disease Control & Prevention, *Groups at Higher Risk of Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last visited May 9, 2020).

²⁷ Marc Lipsitch, *Seasonality of SARS-CoV-2: Will COVID-19 go away on its own in warmer weather?*, CENTER FOR COMMUNICABLE DISEASE DYNAMICS <https://ccdd.hsph.harvard.edu/will-covid-19-go-away-on-its-own-in-warmer-weather/>; Patrick Ercolano, *A Coronavirus Vaccine Is In The Works—But It Won’t Emerge Overnight*, JOHNS HOPKINS UNIVERSITY (APRIL 16, 2020) <https://hub.jhu.edu/2020/04/16/coronavirus-vaccine-timeline/>.

²⁸ John Wagner, Mike DeBonis, Yasmeen Abutaleb and, Laurie McGinley, *Fauci warns Senate that reopening U.S. too quickly could lead to avoidable ‘suffering and death’*, WASH. POST (May 12, 2020), <https://www.washingtonpost.com/politics/2020/05/12/fauci-testimony-senate-coronavirus/>.

immunity to the virus will last.²⁹ Dr. Anthony Fauci, head of the National Institute of Allergy and Infectious Diseases, has said that he “can’t guarantee” that in-person voting will be safe in November, because of a potential resurgence of COVID-19 in the fall.³⁰

33. With no known effective treatment, and vaccines likely at least a year away, public health officials have been left to urge the public to: (i) practice “social distancing,” (ii) engage in frequent (and thorough) hand washing, (iii) wear masks, and (iv) avoid close contact with others.³¹

Specifically, the CDC has advised that people should:

- Stay at least 6 feet (about 2 arms’ length from other people);
- [N]ot gather in groups;
- Stay out of crowded places; and
- [A]void mass gatherings

²⁹ Apoorva Mandavilli & Katie Thomas, *Will an Antibody Test Allow Us to Go Back to School or Work?*, N.Y. TIMES (Apr. 10, 2020), <https://www.nytimes.com/2020/04/10/health/coronavirus-antibody-test.html>.

³⁰ Jason Silverstein, *Fauci says he “can’t guarantee” in-person voting in November will be safe*, CBS NEWS (Apr. 13, 2020), <https://www.cbsnews.com/news/coronavirus-fauci-says-he-cant-guarantee-in-person-voting-in-november-will-be-safe/?ftag=CNM-00-10aac3a>; see David Greene, *Former CDC Official Warns of 2nd COVID-19 Wave: Most Americans Are Still Susceptible*, NPR (May 6, 2020 7:17 AM) <https://www.npr.org/sections/coronavirus-live-updates/2020/05/06/851190730/a-majority-of-americans-are-still-susceptible-to-coronavirus-khan-says>.

³¹ See, e.g., Lisa Lockerd Maragakis, *Coronavirus, Social and Physical Distancing and Self-Quarantine*, JOHN HOPKINS MEDICINE, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social-distancing-and-self-quarantine>; see also Ctrs. For Diseases Control & Prevention, *Use of Cloth Face Coverings to Help Slow the Spread of COVID-19*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html> (last visited May 10, 2020).

(collectively, “Social Distancing Measures”).³² The CDC has further cautioned that “keeping distance from others is especially important for people who are at a higher risk of getting very sick.”³³

34. The CDC has also issued specific guidelines concerning voting during the COVID-19 pandemic. Among other guidance, the CDC 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 if allowed in the jurisdiction.”³⁴

35. These are essential recommendations given the relatively minimal risks of voting by mail during the pandemic. There is no evidence that SARS-CoV-2 can be spread through the mail, and the U.S. Postal Service has both changed their policies to “eliminate the requirement that customers sign . . . Mobile Delivery Devices for delivery” and asked that customers “step back a safe distance or close the screen door/door so that [postal workers] may leave the item in the mail receptacle or appropriate location by the customer[’s] door.”³⁵

36. By contrast, the risks posed by in-person voting are already evident. During Florida’s recent primary, two Broward County poll workers tested positive for COVID-19, one of whom was handling driver’s licenses as part of the identification verification process.³⁶ And on

³² Ctrs. for Disease Control & Prevention, *supra* note 5.

³³ *Id.*

³⁴ Ctrs. for Disease Control & Prevention, *supra* note 6.

³⁵ United States Postal Service, *USPS Statement on Coronavirus* (April 30, 2020), <https://about.usps.com/newsroom/statements/usps-statement-on-coronavirus.htm> (citing guidance from World Health Organization, CDC, and Surgeon General).

³⁶ Anthony Man, *Two Broward poll workers, including one who handled voters’ driver licenses, test positive for coronavirus*, S. FLA. SUN SENTINEL (Mar. 26, 2020),

April 13, Chicago officials reported that a poll worker for the city’s March 17 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.³⁷

37. Elections held on April 7 in Wisconsin saw multi-hour waits and lines stretching blocks upon blocks in places like Milwaukee and Green Bay.³⁸ These crowded lines created the ideal conditions for person-to-person contagion and led Wisconsin health officials to anticipate that the large numbers of in-person voting on April 7 would result in “an increase in the number of cases in Wisconsin [and] more deaths.”³⁹ By April 29, health officials in Wisconsin had identified more than 52 people “who voted in person or worked the polls during the state’s presidential primary” who “tested positive [for COVID-19] in the two weeks after the election.”⁴⁰ On May 5, the Milwaukee County COVID-19 Epidemiology Intel Team issued a report stating

<https://www.sun-sentinel.com/coronavirus/fl-ne-browardelections-poll-workers-coronavirus-20200326-wmgy775dvjc5jis2oagxlpmlule-story.html>.

³⁷ See Mary Ann Ahern, *Poll Worker at Chicago Voting Site Dies of Coronavirus, Election Officials Say*, NBC CHICAGO (Apr. 13, 2020), <https://www.nbcchicago.com/news/local/chicago-politics/poll-worker-at-chicago-voting-site-dies-of-coronavirus-election-officials-say/2255072/>.

³⁸ See, e.g., Kati Anderson, *Green Bay Voters wait in line past midnight to cast ballot in primary election*, WBAY-TV (Apr. 7, 2020), <https://www.wbay.com/content/news/Long-lines-cause-hours-long-wait-to-cast-ballots-in-Green-Bay-569461981.html>.

³⁹ Devi Shastri, *In-person voting was likely a ‘disaster’ for Wisconsin’s efforts to flatten coronavirus curve, national experts say*, MILWAUKEE J. SENTINEL (Apr. 8, 2020), <https://www.jsonline.com/story/news/politics/elections/2020/04/08/coronavirus-wisconsin-election-likely-hurt-effort-flatten-curve/2961718001/> (quoting Wisconsin Department of Health Services Secretary Andrea Palm).

⁴⁰ Scott Bauer, *52 Who Worked or Voted in Wisconsin Election Have COVID-19*, WUWM (Apr. 29, 2020), <https://www.wuwm.com/post/52-who-worked-or-voted-wisconsin-election-have-covid-19>.

they were able to identify 54 county residents who had voted curbside, voted in-person, or who had worked at a polling site during the April 7 primary election who “ha[d] symptom onset or lab report confirmation dates indicating that they could have been infectious or infected at the time of voting.”⁴¹ And of those individuals, 29 “did not have any other known potential exposures to COVID-19.”⁴² The report also cautioned that “[d]ue to limitations in testing and asymptomatic cases, it is likely that there are individuals with COVID-19 who participated in the election and are not reflected in the numbers presented here.”⁴³ The report also found that 59.3% of those who had voted curbside, voted in-person, or who had worked at a polling site and who “ha[d] symptom onset or lab report confirmation dates indicating that they could have been infectious or infected at the time of voting” were black or African-American.⁴⁴

II. COVID-19 in Tennessee: A Continuing State of Emergency

38. The COVID-19 pandemic has deeply affected the Volunteer State. As of May 13, 2020, the State had 16,370 confirmed cases.⁴⁵ And over 270 Tennesseans have died from the disease.⁴⁶

⁴¹ Milwaukee County COVID-19 Epidemiology Intel Team, *Descriptive Analysis of COVID-19 Infections in Milwaukee County after the Wisconsin Election and Easter/Passover Holidays*, 4 (May 5, 2020), <https://localtvwiti.files.wordpress.com/2020/05/milwaukee-county-covid-19-election-report-final-v3.pdf>.

⁴² *Id.* at 5.

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 4-5.

⁴⁵ Tenn. Dep’t of Health, *Coronavirus Disease (COVID-19)*, <https://www.tn.gov/health/cedep/ncov.html> (last visited May 14, 2020).

⁴⁶ *Id.*

39. As has been the case nationally, Tennesseans of all ages have tested positive for COVID-19. As of May 13, 2020, at least 389 Tennesseans ten years old and younger had tested positive, at least 1,048 Tennesseans between the ages of 11 and 20 had tested positive, at least 3,205 Tennesseans between the ages of 21 and 30 had tested positive, at least 3,165 Tennesseans between the ages of 31 and 40 had tested positive, at least 2,871 Tennesseans between the ages of 41 and 50 had tested positive, at least 2,525 Tennesseans between the ages of 51 and 60 had tested positive, at least 1,522 Tennesseans between the ages of 61 and 70 had tested positive, at least 737 Tennesseans between the ages of 71 and 80 had tested positive, and at least 470 Tennesseans over the age of 80 had tested positive.⁴⁷

40. On March 12, Defendant Lee declared a “state of emergency . . . to facilitate the response to COVID-19.”⁴⁸ Pursuant to this declaration and Tenn. Ann. Code § 58-2-107(e), Defendant Lee suspended numerous state laws and regulations.⁴⁹

41. On March 19, the Tennessee General Assembly adjourned.⁵⁰

42. On March 30, Defendant Lee recognized the “continuing state of emergency.” In

⁴⁷ Tenn. Dep’t of Health, *Downloadable Datasets: Age*, <https://www.tn.gov/health/cedep/ncov/data/downloadable-datasets.html> (last visited May 14, 2020).

⁴⁸ Tenn. Exec. Order No. 14 (Mar. 12, 2020) <http://publications.tnsosfiles.com/pub/execorders/exec-orders-lee14.pdf>.

⁴⁹ *Id.*

⁵⁰ Joel Ebert, *Tennessee Legislature Temporarily Recesses After 14-Hour Day Filled with Rarities Amid Coronavirus Pandemic*, TENNESSEAN (last updated Mar. 21, 2020), <https://www.tennessean.com/story/news/politics/2020/03/19/tennessee-legislature-recesses-2020-session-amid-coronavirus/2880882001>. The Tennessee General Assembly will remain in adjournment until June 1. *The 111th General Assembly*, TENNESSEE GENERAL ASSEMBLY, <http://www.capitol.tn.gov>.

light of the “continuing state of emergency” and pursuant to, among other things, Tenn. Ann. Code § 58-2-107(e), Defendant Lee issued a mandatory statewide “Safer at Home” order urging all persons in Tennessee “to stay at home, except for when engaging in Essential Activity or Essential Services.”⁵¹ The order instructed residents of the State to “use thoughtful planning, careful coordination, and consideration of others when engaging in Essential Activity or Essential Services in order to minimize the need and frequency for leaving their place of residence or property.”⁵²

43. On April 28, Defendant Lee declared “a continuing state of emergency.” Pursuant to that declaration and, among other things, to Tenn. Ann. Code § 58-2-107(e), Defendant Lee issued an executive order permitting certain persons to return to work, provided that they follow “to the greatest extent practicable” the following “Health Guidelines:”

- Maintaining at least six (6) feet of distance from other persons;
- Practicing good personal hygiene and observing other CDC recommendations;
- Remaining at home if [they] feel sick;
- Working from home whenever possible;
- Avoiding discretionary travel and social gatherings; and
- Avoiding visitation or close contact with vulnerable persons or those who are sick.⁵³

44. Defendant Lee’s April 28th executive order further prohibited social gatherings of

⁵¹ Tenn. Exec. Order No. 22 (Mar. 30, 2020), <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee22.pdf>.

⁵² *Id.*

⁵³ Tenn. Exec. Order No. 30 (Apr. 28, 2020), <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee30.pdf>.

10 or more people.⁵⁴

45. On May 6, Defendant Lee once again declared a “continuing state of emergency.” Pursuant to that declaration and, among other things, to Tenn. Code Ann. § 58-2-107(e), Defendant Lee issued an executive order permitting governing bodies to continue to “meet electronically” until June 30, 2020.⁵⁵

46. On May 12, Defendant Lee again declared a “state of emergency” and a “continuing state of emergency.”⁵⁶

47. Defendant Hargett’s customer counter in Tennessee Tower remains closed.⁵⁷

III. COVID-19’s Disproportionate Impact on African-Americans

48. Nationally, the COVID-19 pandemic has had a particularly devastating effect on

⁵⁴ *Id.* Through subsequent executive orders but only after declaring a “state of emergency” in each order, Defendant Lee has permitted the opening of “close contact businesses,” Tenn. Exec. Order No. 33 (May 5, 2020) <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee33.pdf>, and of “small group, non-contact entertainment and recreational venues,” Tenn. Exec. Order No. 35 (May 7, 2020) <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee35.pdf>, provided that those entertainment and recreational venues ensure that: “(1) all persons are in groups of less than ten (10) people; and (2) Such persons and groups maintain at least six (6) feet of separation from, and avoid physical contact with, other persons of groups of less than ten (10) persons outside of their group,” *id.*

⁵⁵ Tenn. Exec. Order No. 34 (May 6, 2020), <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee34.pdf>.

⁵⁶ Tenn. Exec. Order No. 36 (May 12, 2020), <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee36.pdf>; Tenn. Exec. Order No. 37 (May 12, 2020), <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee37.pdf>.

⁵⁷ TENNESSEE SECRETARY OF STATE, <https://sos.tn.gov> (last visited May 14, 2020).

African-American communities.⁵⁸ An analysis by the Associated Press—one of the first attempts to examine the racial disparities of COVID-19 cases and deaths nationwide—found that, in areas where the demographic data has been publicly shared by government officials, African-Americans have made up 42% of people who have died from COVID-19, despite accounting for roughly only 21% of the total population in those areas.⁵⁹ And a CDC report published April 8, 2020, which included data from 1,482 patients hospitalized across 14 states, found that African-American patients made up 33% of those for whom race or ethnicity information was available, despite representing only 18% of the states’ populations.⁶⁰ This “suggest[ed] that black populations might be disproportionately affected by COVID-19.”⁶¹

49. An April 29, 2020 CDC report likewise found that “[i]n a cohort of 305 hospitalized adults with COVID-19 in Georgia (primarily metropolitan Atlanta), black patients were overrepresented[.]”⁶²

⁵⁸ See, e.g., Shelby Lin Erdman, *Black Communities Account for Disproportionate Number of COVID-19 Deaths in the US, Study Finds*, CNN (May 6, 2020 10:32 AM) <https://www.cnn.com/2020/05/05/health/coronavirus-african-americans-study/index.html>.

⁵⁹ Kat Stafford et al., *Outcry over racial data grows as virus slams black Americans*, ASSOCIATED PRESS (Apr. 8, 2020), https://apnews.com/71d952faad4a2a5d14441534f7230c7c?fbclid=IwAR1plunY_qfeA2KrSUPA1TuJobAwQh53a_Qlhf5dw0dWjz-iz85GA1FOt4.

⁶⁰ Shikha Garg, M.D. et. al., *Hospitalization Rates and Characteristics of Patients Hospitalized with Laboratory-Confirmed Coronavirus Disease 2019—COVID-NET, 14 States, March 1-30, 2020*, Vol. 69 No. 15 MORBIDITY AND MORTALITY WEEKLY REPORT, 458, 459 (Apr. 17, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6915e3-H.pdf>.

⁶¹ *Id.*

⁶² Jeremy A.W. Gold, MD, et. al, *Characteristics and Clinical Outcomes of Adult Patients Hospitalized with COVID-19—Georgia, March 2020*, Vol. 69 No. 18 MORBIDITY AND

50. Courtney Cogburn, an associate professor at the Columbia University School of Social Work, noted that “[t]here are patterns at this intersection of race and socioeconomic status that make it very clear this is just not a story about poverty.” That is, racial disparities in serious illness and death due to COVID-19 are inextricably linked to a long history and ongoing patterns of racial discrimination against African Americans:

A history of systemic racism and inequity in access to health care and economic opportunity has made many African Americans far more vulnerable to the virus. Black adults suffer from higher rates of obesity, diabetes and asthma, which make them more susceptible, and also are more likely to be uninsured. They also often report that medical professionals take their ailments less seriously when they seek treatment.⁶³

51. In Tennessee, there are well-documented and alarming racially disparate patterns of serious illness and mortality due to COVID-19. As of May 12, 2020 African-Americans in Tennessee represented 21% of reported COVID-19 cases and a staggering 31% of related deaths⁶⁴ despite making up just 17.1% of the State’s population.⁶⁵

52. Tennessee has long experienced patterns of racial discrimination in health and socioeconomic life patterns that render African-American Tennesseans at greater risk of severe health complications from COVID-19. For example, because of longstanding racial biases in

MORTALITY WEEKLY REPORT, 545, (May 8, 2020)
https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e1.htm?s_cid=mm6918e1_w.

⁶³ Kat Stafford et al., *Outcry over racial data grows as virus slams black Americans*, ASSOCIATED PRESS (Apr. 8, 2020), https://apnews.com/71d952faad4a2a5d14441534f7230c7c?fbclid=IwAR1plunY_qfeA2KrSU-PA1TuJobAwQh53a_Qlkf5dw0dWjz-iz85GA1FOt4.

⁶⁴ Tenn. Dep’t. of Health, *Cases by County (COVID-19)*, <https://www.tn.gov/content/tn/health/cedep/ncov/data.html> (last visited May 13, 2020).

⁶⁵ U.S. Census Bureau, *QuickFacts Tennessee*, <https://www.census.gov/quickfacts/fact/table/TN/PST045219> (last visited May 10, 2020).

medical care,⁶⁶ African-Americans with symptoms like cough and fever are less likely than other patients to be given a COVID-19 test.⁶⁷ In other words, persistent structural inequalities mean that African-Americans have less access to healthcare, health insurance, and emergency medical help.

IV. Voting By Mail Absentee in Tennessee

53. Multiple elections are still scheduled to take place in Tennessee between May and the end of the calendar year, including major statewide elections on August 6 and November 3.⁶⁸

54. Voters who wish to “vote by mail absentee” during one of these elections must “request an absentee ballot not more than ninety (90) and not later than seven (7) days before the election.”⁶⁹ Accordingly, for the August 6 elections, eligible voters have until July 30 to request their absentee ballots. And eligible voters can request their absentee ballots for the November 3 elections between August 5 and October 27.

55. But not all voters who wish to “vote by mail absentee” are permitted to do so.

56. Instead, Tennessee has restricted “vot[ing] by mail absentee” to a small subset of voters who fall into one of the following statutorily defined categories:

⁶⁶ See, e.g., Michael O. Schroeder, *Racial Bias in Medicine Leads to Worse Care for Minorities*, U.S. NEWS (Feb. 11, 2016), <https://health.usnews.com/health-news/patient-advice/articles/2016-02-11/racial-bias-in-medicine-leads-to-worse-care-for-minorities>.

⁶⁷ See Rubix Life Sciences, *Health Data in the COVID-19 Crisis: How Racial Equity is Widening for Patients to Gain Access to Treatment* (Mar. 20, 2020), <https://rubixls.com/wp-content/uploads/2020/04/COVID-19-Minority-Health-Access-7-1.pdf>; see also Blake Farmer, *The Coronavirus Doesn't Discriminate, But U.S. Health Care Showing Familiar Biases*, NPR (Apr. 2, 2020), <https://www.npr.org/sections/health-shots/2020/04/02/825730141/the-coronavirus-doesnt-discriminate-but-u-s-health-care-showing-familiar-biases>.

⁶⁸ See Tennessee Secretary of State, *2020 Election Calendar*, <https://sos.tn.gov/products/elections/2020-election-calendar>.

⁶⁹ Tenn. Code Ann. § 2-6-202(a)(1).

- Persons Outside the County: [T]he voter will be outside the county where the voter is registered during the early voting period and on election day during all the hours the polls are open for any reason other than the fact that the voter will be imprisoned;
- Students and Spouses Outside of the County: [The] voter is enrolled as a full-time student in an accredited college, university or similar accredited institution of learning in th[e] state which is outside the county where the voter is registered [or is] the spouse of [such a] student who resides with the student;
- Permanent Absentee Voting Register: [A voter] who because of sickness, hospitalization or physical disability [is] unable to appear at either the commission office or at the person’s polling place for the purpose of voting [provided that the] voter . . . [(i)] file[s] a statement by the [voter’s] licensed physician with the county election commission stating, under the penalty of perjury, that in the physician’s professional medical judgment, the patient (voter) is medically unable to appear at the polling place to vote and is medically unable to go to the commission office for the purpose of early voting [and (ii)] file[s] the physician’s statement and the application not less than seven (7) days before the election;
- Residents of Certain Institutions: [Voters] who are full-time residents of any licensed nursing home, home for the aged or similar licensed institution providing relatively permanent domiciliary care, other than a penal institution, outside the voter’s county of residence [provided that they] substantially follow the [process for voters who qualify for the Permanent Absentee Voting Register] or the [procedures] for [Persons Outside the County];
- Jurors: [Voters who] expect[] to be unable to appear during the early voting period or at the polling place on election day because the person is serving as a juror for a federal or state court;
- Persons Over 60: [A voter who is] sixty (60) years of age or older [provided that] the person requests to vote absentee;
- Persons with a Disability: [A] voter with a disability⁷⁰ . . . and the voter’s polling place is inaccessible;
- Persons Hospitalized, Ill, or Physically Disabled: [A voter] who is hospitalized, ill, or physically disabled, and because of such condition . . . is unable to appear at [their] polling place on election day [or is] a caretaker of a hospitalized, ill, or disabled person;

⁷⁰ Tenn. Code Ann. § 2-3-109 defines a “voter with a disability” as a person “whose disability meets the definition of disability as defined by the Americans with Disabilities Act.”

- Candidates for Office: [T]he voter is a candidate for office in the election for which the voter seeks to cast an absentee ballot;
- Election Officials – Election Commission Members or Employees: [The voter] is an election official or a member or employee of the election commission on election day;
- Observance of a Religious Holiday: [T]he voter cannot appear during the early voting period or at the polling place because of observance of a religious holiday;
- Persons Possessing a Valid Commercial Driver License or Transportation Worker Identification Credential: A voter who possesses a valid commercial driver license or a valid transportation worker identification credential [provided that the voter, among other requirements, certifies] that the voter [(i)] will be working outside of the county or state where the voter is registered during the early voting period and on election day during all the hours the polls are open; [(ii)] and [h]as no specific out-of-county or out-of-state location to which mail may be sent or received during such time [or is] the spouse of the person who possesses the commercial driver license.

Tenn. Code Ann. § 2-6-201.

57. A voter who does not fall into one of these enumerated categories is not permitted to “vote by mail absentee” and must instead cast their ballot in person.

58. According to Defendants Goins and Lee, an individual who reasonably fears contracting COVID-19 while voting in-person is not be eligible to “vote by mail absentee.”⁷¹

59. In other words, even voters who are at a higher risk of contracting COVID-19 and at a higher risk of severe complications should they contract the illness, like Ms. Greenawalt and Mr. Lay, and voters who live with individuals who have pre-existing medical conditions that place them at higher risk for severe complications should they contract COVID-19 cannot “vote by mail absentee.” Instead, to exercise their right to vote, they must risk their health and the health of those with whom the live and vote in person.

⁷¹ Mattise, *supra* note 9.

V. As Currently Construed, the Excuse Requirement Unduly and Unreasonably Burdens the Voting Rights of Tennesseans

60. Historically, most voters in Tennessee vote in person.⁷² For most voters, that means physically appearing at a designated polling place where they must not only come into close contact with other voters, observers, and poll workers in violation of Social Distancing Measures, but they must also repeatedly touch equipment and materials such as voting machines, paper ballots, and shared writing instruments. At present, public health officials consider all of these activities as risking exposure to and/or transmission of COVID-19.⁷³

61. Meaningful opportunities to vote in person are still necessary to many Tennessee voters. To prevent viral spread at needed in-person sites, the CDC instructs that Tennessee encourage as many voters as possible “to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations,” such as mail in methods of voting.⁷⁴

62. Given that “a year to 18 months is [a] very optimistic” timeline for the availability of a safe vaccine for the illness,⁷⁵ voters will reasonably decide that practicing Social Distancing Measures and/or are self-quarantining is their only option for protecting their health and the health of those with whom they live.

63. But, as currently construed, the Excuse Requirement does not recognize practicing

⁷² See, e.g., U.S. Election Assistance Comm’n, *Election Administration and Voting Survey 2018 Comprehensive Report* 30 (2018) https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf, (of the over 2.2 million ballots that were cast in Tennessee during the 2018 midterm elections, only 39,712 were cast via mail-in ballot).

⁷³ See, e.g., Miller, *supra* note 7.

⁷⁴ Ctrs. for Disease Control & Prevention, *supra* note 6.

⁷⁵ Ercolano, *supra* note 55.

Social Distancing Measures and/or self-quarantining as a valid reason for “vot[ing] by mail absentee.” Tenn. Code. Ann. § 2-6-201.⁷⁶

64. Accordingly, the Excuse Requirement severely burdens the fundamental right to vote of all eligible voters who are practicing Social Distancing Measures and/or are self-quarantining due to the COVID-19 pandemic.

65. In other words, as currently construed, the Excuse Requirement will likely disenfranchise tens of thousands of Tennesseans.

66. Furthermore, since African-Americans in Tennessee have been disproportionately affected by COVID-19, the Excuse Requirement as currently construed denies African-Americans in Tennessee an equal opportunity to exercise their right to vote.

67. The current construction of the Excuse Requirement is also plainly unreasonable. Because Tennessee already affords an excuse to eligible voters who are “hospitalized, ill or physically disabled, and because of such condition, [are] unable to appear at [their] polling place[s] on election day,” Tenn. Code. Ann. § 2-6-201, Defendants could reasonably interpret the statute to: (i) include all voters, (ii) for the 2020 election calendar, and (iii) until the State’s ongoing “state of emergency” is lifted and the CDC no longer advises individuals to engage in any of its recommended Social Distancing Measures.

68. Several of the remaining minority of states that, under normal circumstances, require an excuse to vote by mail have interpreted their disability or illness basis for absentee eligibility in precisely this fashion during the ongoing COVID-19 pandemic.

69. For example, West Virginia now permits all registered voters to vote absentee in forthcoming elections due to “[i]llness, injury or other medical reason which keeps [the voter]

⁷⁶ Mattise, *supra* note 9.

confined,” defining “other medical reason” as “any threat to a person’s health posed by an epidemic, pandemic, outbreak, disease, virus, or other emergency, which creates potential harm to the public interest, peace, health, safety, or welfare of citizens or voters.” W. Va. Code R. §§ 153-53-2–153-53-3.⁷⁷ Further, West Virginia construes “confined” as being “restricted to a specific location for reasons beyond that person’s control, including a recommendation by state or federal authorities for the person to self-quarantine, avoid public places or close contact with other persons.” W. Va. Code R. § 153-53-2. Per issued rules, West Virginia’s action “cannot violate or alter clear statutory requirements” but rather, simply construes existing state law “in favor of enfranchisement, not disenfranchisement.” W. Va. Code R. § 153-53-1.

70. Similarly, Alabama has allowed “any qualified voter who determines it is impossible or unreasonable to vote at their voting place” as a result of COVID-19 to vote by mail in primary runoff elections being held in July by reason that “a physical illness or infirmity [] prevents [the voter’s] attendance at the polls.”⁷⁸

71. And, because of COVID-19, Arkansas has determined that Ark. Code Ann. §§ 7-5-402, which only allows absentee voting for people who are “absent or unable to attend an election due to illness or physical disability,” should be read “so that all eligible qualified electors currently

⁷⁷ W. Va. Sec’y of State Mac Warner, Admin. Law Div., Notice Of An Emergency Rule (Mar. 20, 2020), <http://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=53039&Format=PDF>.

⁷⁸ Ala. Leg. Servs. Agency, Absentee Voting During State of Emergency, 17-11-3(e) (Mar. 18, 2020), <https://www.sos.alabama.gov/sites/default/files/SOS%20Emergency%20Rule%20820-2-3-.06-.01ER.pdf>; *see also* Press Release, Alabama Secretary of State, 100 Days Left to Apply for Absentee Ballot for the Primary Runoff Election (Mar. 31, 2020), <https://www.sos.alabama.gov/newsroom/100-days-left-apply-absentee-ballot-primary-runoff-election>; *see also* Ala. Code § 17-11-3(a)(2).

entitled to vote in the March 31, 2020 election may request the appropriate absentee ballots from their county of residence.”⁷⁹

72. Virginia, Delaware, and Massachusetts have likewise clarified that all registered voters in their respective states can use existing reasons related to illness and physical disability to vote by mail in the upcoming elections.⁸⁰ And New Hampshire has interpreted its “physical disability” provision to “appl[y] equally to voters who are experiencing symptoms of COVID-19 . . . and those who are self-quarantining as a preventative measure.”⁸¹

⁷⁹ Governor of Arkansas, Exec. Order No. 20-08, (Mar. 20, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-08._.pdf

⁸⁰ See *Absentee Voting*, Va. Dep’t of Elections, <https://www.elections.virginia.gov/casting-a-ballot/absentee-voting/> (last visited May 10, 2020) (Virginia Department of Elections statement clarifying that “[v]oters may choose reason ‘2A My disability or illness’” to vote absentee in upcoming elections due to COVID-19); Governor of Delaware, Exec. Dep’t, *Sixth Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat* (Mar. 24, 2020), <https://governor.delaware.gov/wp-content/uploads/sites/24/2020/03/Sixth-Modification-to-State-of-Emergency-03242020.pdf> (Delaware executive order providing that for upcoming primary and special elections “the qualification of ‘sick or physically disabled’ [in Delaware vote-by-mail provisions] shall apply to and include any such voter who is asymptomatic of COVID-19 . . . and who herself or himself freely chooses to use such qualification to vote by absentee ballot.); An Act Granting Authority to Postpone 2020 Municipal Elections in the Commonwealth and Increase Voting Option in Response to the Declaration of Emergency to Respond to COVID-19, ch. 45 (2020), <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter45> (new Massachusetts law clarifying that “any person taking precaution related to COVID-19 in response to a declared state of emergency or from guidance from a medical professional, local or state health official, or any civil authority shall be deemed to be unable by reason of physical disability to cast their vote in person,” which is one of the reasons set forth in the state constitution that permits a Massachusetts voter to vote by mail).

⁸¹ Memorandum from the Sec’y of State and Att’y General to New Hampshire Election Officials re: Elections Operations During the State of Emergency 2 (Apr. 10, 2020), <https://www.governor.nh.gov/news-media/press-2020/documents/20200410-absentee-voting.pdf>.

CLAIM FOR RELIEF

**Violation of the Fundamental Right to Vote
Article IV, Section 1 of the Tennessee Constitution**

73. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

74. Article IV, section 1 of the Tennessee Constitution provides: “Every person, being eighteen years of age, being a citizen of the United States, being a resident of the state for a period of time as prescribed by the General Assembly, and being duly registered in the county of residence for a period of time prior to the day of any election as prescribed by the General Assembly, shall be entitled to vote in all federal, state, and local elections held in the county or district in which such person resides. All such requirements shall be equal and uniform across the state, and there shall be no other qualification attached to the right of suffrage.”

75. In light of the COVID-19 pandemic, the current construction and enforcement of Tennessee’s Excuse Requirement severely and unreasonably burdens the fundamental right to vote of Tennessee voters. The Excuse Requirement, as currently construed and enforced, will likely prevent tens of thousands of eligible voters from casting ballots, with particularly heavy burdens on African-American voters. Under these circumstances, the Excuse Requirement, as currently construed and enforced, will thus deny the fundamental right to vote guaranteed by the Tennessee Constitution.

76. Therefore, Defendants, acting under color of state law, have and will continue to deprive Plaintiffs of rights secured to them by Article IV, section 1 of the Tennessee Constitution.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request this Court to:

A. Declare that Defendants’ construction and enforcement of the Excuse Requirement

(as stated in Tenn. Code Ann. § 2-6-201) (i) for the 2020 election calendar, (ii) while the State’s ongoing “state of emergency” is in effect, or (iii) while the CDC is advising individuals to engage in any of its recommended Social Distancing Measures violates the fundamental right to vote under Article IV, section 1 of the Tennessee Constitution;

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

1. Prohibiting Defendants from enforcing the Excuse Requirement (as stated in Tenn. Code Ann. § 2-6-201) to prevent

- any eligible voter, regardless of age and physical condition;
- any eligible voter who lives with an individual who is at a higher risk of complications should they contract COVID-19; and/or
- any eligible voter who is at a higher risk of complications should they contract COVID-19

to request, receive, and have counted an absentee ballot by mail at least for the 2020 election calendar and until the State’s ongoing “state of emergency” is lifted and the CDC no longer advises individuals to engage in any of its recommended Social Distancing Measures;

2. Ordering Defendants to modify election materials, including absentee ballots, to reflect the elimination and/or modification of the Excuse Requirement;

3. Ordering Defendants to conduct a public information campaign informing Tennessee voters about the elimination and/or modification of the Excuse Requirement, in coordination with city and county officials before and during the absentee balloting period; and

4. Ordering Defendants to issue appropriate guidance to city and county election officials.

C. Award Plaintiffs attorneys’ fees in this action;

- D. Award Plaintiffs their costs of bringing suit; and
- E. Grant such other and further relief as this Court deems just and proper in the circumstances.

Dated: May 15, 2020

Respectfully submitted,

/s/ Thomas H. Castelli

Thomas H. Castelli (BPR No. 024849)
ACLU Foundation of Tennessee
P.O. Box 120160
Nashville, TN 37212
Phone: (615)-320-7142
tcastelli@aclu-tn.org

Dale E. Ho*
Sophia Lin Lakin*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Phone: (212) 549-2500
dho@aclu.org
slakin@aclu.org

Neil A. Steiner*
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036-6797
Phone: (212) 698-3500
neil.steiner@dechert.com

Angela M. Liu*
Dechert LLP
35 West Wacker Drive
Suite 3400
Chicago, IL 60601-1608
Phone: (312) 646-5800
angela.liu@dechert.com

Tharuni A. Jayaraman*
Dechert LLP
1900 K Street NW
Washington, DC 20006
Phone (202) 261-3330
tharuni.jayaraman@dechert.com

Attorneys for Plaintiffs

*Motion for admission *Pro Hac Vice*
forthcoming