

**IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT**

HARRIETT OPPENHEIM, DAVE
MILLER, JOY PARIKH, MARTIN
CLAPTON, MARY HARWELL,
MICHELLE COLON,

Plaintiffs,

v.

MICHAEL D. WATSON JR., in his
official capacity as the Mississippi
Secretary of State; ZACK WALLACE, in
his official capacity as the Hinds County
Circuit Clerk; BECKY BOYD, in her
official capacity as the Rankin County
Circuit Clerk,

Defendants.

Civil Action No. 25CH1:20-cv-00961

FIRST AMENDED COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF

INTRODUCTION

1. Mississippi Secretary of State Michael Watson said that he and his office “do not believe voters should have to choose between casting a ballot and risking their own health.”¹ Plaintiffs agree. But in the midst of the deadly COVID-19 pandemic and the dangers of transmission when people gather in indoor spaces, there is a potential for confusion about who can vote absentee in Mississippi in light of those dangers. The Plaintiffs bring this suit for a declaratory

¹ Press Release, Office of the Miss. Sec’y of State, *Op-Ed from Secretary Watson: Contingency Plan for November’s General Election* (May 18, 2020), <https://www.sos.ms.gov/About/Pages/Press-Release.aspx?pr=1106>.

judgment regarding the meaning of the absentee ballot provision in Mississippi law in the context of the unprecedented challenge posed by the COVID-19 pandemic.

2. In deciding whether to attend any public gathering, particularly a polling place on election day, voters are required to consider, and are permitted to follow, public health guidance. They have the right to follow that guidance without surrendering the right to vote. The Mississippi Department of Health (“MDH”) states that people “with a chronic illness such as heart disease, diabetes, or lung disease” and people who otherwise are “in poor health” should “stay home as much as possible.”² Moreover, MDH advises that all people, including those in good health, must “[a]void large social gatherings and community events” and “[f]ollow restrictions on indoor and outdoor gathering sizes.”³ These restrictions prevent attendance at indoor gatherings where more than ten people are present. Most polling places have more than ten people present during much of the day. Thus, both MDH and the U.S. Centers for Disease Control (CDC) have recognized that “[e]lections 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” and have recommended “alternatives to in-person voting.”⁴ As explained further in this complaint, the Mississippi statute regarding absentee voting, including the recent amendment to it and the legislative history surrounding that amendment, make it clear that (1) voters are allowed to make their own decisions about whether to vote absentee in light of public health guidance and (2) voters may choose to vote absentee based on legitimate fears of contracting COVID-19 if they go to the polls on election day.

² Miss. State Dep’t of Health, Prevention for Individuals, https://msdh.ms.gov/msdhsite/_static/14,21866,420.html#individuals (last visited Aug. 10, 2020).

³ *Id.*

⁴ Ctrs. for Disease Control & Prevention, *Considerations for Election Polling Locations: Interim Guidance to Prevent Spread of Coronavirus Disease 2019 (COVID-19)* (last updated June 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>; Miss. State Dep’t of Health, *Prevention in the Community* (last updated Aug. 7, 2020), https://msdh.ms.gov/msdhsite/_static/14,21866,420.html#gatherings (linking to CDC guidance).

3. The most relevant provision of Mississippi’s absentee ballot law is Section § 23-15-713(d), which lists the conditions under which voters are permitted to vote absentee. The first sentence of that provision has existed for many years and states that the following people are among the groups of those eligible to vote absentee: “Any person who 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.” If voters have an underlying physical condition that places them at a higher risk of severe illness from COVID-19, that condition would be a “physical disability” that “could reasonably cause danger to himself or others” by exposing the voter to COVID-19 through “attendance at the voting place.”

4. The second sentence of Section 23-15-713(d) was added this summer when the legislature expanded the section by passing House Bill 1521. It reads: “For purposes of this paragraph (d), ‘temporary physical disability’ shall include any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020 or is caring for a dependent who is under a physician-imposed quarantine due to COVID-19 beginning with the effective date of this act and the same being repealed on December 31, 2020.” The legislative history of this expansion makes it clear that a “physician-imposed quarantine” does not require a doctor’s guidance given individually to the voter, but would also include guidance from MDH, whose director is a physician, and other public health officials and experts who are physicians.

5. The definition of “quarantine” that most accurately reflects the context as used in the statute is “a restraint upon the activities or communication of persons or the transport of goods designed to prevent the spread of disease or pests.” *Quarantine*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/quarantine> (last visited Aug. 10, 2020). Thus,

guidance from the MDH and the CDC, both of which have directors who are physicians, and other physicians or public health authorities to avoid unnecessary public gatherings qualifies as a “physician-imposed quarantine” that a voter could invoke as a “temporary physical disability” in order to avoid the grave health risks posed by going to the polls and encountering groups of people during this pandemic. Moreover, the legislative history confirms that a voter must make his or her own judgment as to what is a “physician-imposed quarantine.” If a voter is following public health guidance, he or she is justified in choosing absentee voting.

6. Unfortunately, despite these statutory grounds for voting absentee, there is a potential for confusion regarding Section 713(d) that requires this Court to issue a declaratory judgment. There is no written definition of “physician-imposed quarantine.” There is likewise no written definition of who qualifies as a “dependent” under the Section. And in early June, even before passage of the amendment, Secretary of State Michael Watson said it would be up to each local circuit clerk to determine whether a voter could vote absentee under the temporary physical disability provision.⁵

7. These potential uncertainties regarding who can vote absentee and what standard will be imposed by different clerks require judicial clarification through a declaratory judgment. The Mississippi Constitution enshrines the right to vote. Miss. Const. art. XII, § 240. In complying with this constitutional mandate during this unprecedented pandemic, this Court should issue a declaratory judgment that (1) an underlying physical condition that places a voter at a higher risk of severe illness from COVID-19 is a “physical disability” that “could reasonably cause danger to [the voter] or others” and therefore a voter with such a condition is permitted to vote

⁵ Bobby Harrison, *Secretary of State Says Existing Law Allows Mail-In Voting Expansion during Coronavirus Pandemic. Is that Enough?*, Miss. Today (June 3, 2020), <https://mississippitoday.org/2020/06/03/secretary-of-state-says-existing-law-allows-mail-in-voting-expansion-during-coronavirus-pandemic-is-that-enough/>.

absentee, (2) guidance from the MDH, the CDC, or other physicians who are public health experts to avoid public gatherings qualifies as a “physician-imposed quarantine” and, if such guidance exists during the period for absentee voting, a voter following that guidance may choose to rely on it and vote absentee, and (3) anyone who is being cared for constitutes a “dependent,” and anyone providing care or support to someone under a “physician-imposed quarantine” may vote absentee.

PARTIES

8. Plaintiff Harriett Oppenheim is a 37-year-old woman and a resident of Hinds County, Mississippi, where she is a registered voter and has lived for 31 years. She has been a Mississippi registered voter since she was first eligible and has consistently voted in both state and federal elections. She intends to vote in the November 2020 general election.

9. Because of the COVID-19 outbreak for which there is no cure or vaccine, Ms. Oppenheim does not think it is safe for her to vote in person for the November general election. She wishes to vote absentee but understands that she only meets the statutory excuse for a disability in the context of the COVID-19 pandemic and does not meet any of the other statutory excuses. She has voted absentee once before when she was out of the county on Election Day. Ms. Oppenheim has Lupus, has had a kidney transplant, and has kidney disease. She is concerned that her preexisting health conditions may put her at a higher risk of severe illness or death if she contracts COVID-19. Ms. Oppenheim is following public health guidance to avoid unnecessary public gatherings. As a Black Mississippian, Ms. Oppenheim is also aware of the ongoing heightened risk to her and the Black community, which has had disproportionately high numbers of COVID-19 cases and deaths in Mississippi and the United States more broadly.

10. Plaintiff Dave Miller is a 34-year-old man and a resident of Rankin County, Mississippi, where he is a registered voter and has lived for over 2 years. He has been a Mississippi

registered voter since he was first eligible and has consistently voted in both state and federal elections. He intends to vote in the November 2020 general election.

11. Because of the COVID-19 outbreak for which there is no cure or vaccine, Mr. Miller does not think it is safe for him to vote in person for the November general election. He wishes to vote absentee but understands that he only meets the statutory excuse for disability in the context of the COVID-19 pandemic and does not meet any of the other statutory excuses. He has voted absentee once before when he was out of the county on Election Day. Mr. Miller previously had stage 3 malignant melanoma and had surgery to remove the tumor and 80 nodes. He more recently has had spots identified on his lungs, but they were biopsied and were not found to be cancerous. It is not known what the spots are. He is concerned that his previous bout of cancer, radiation treatments, and spots of unknown origin on his lungs may place him at a higher risk of severe illness or death if he contracts COVID-19. Mr. Miller is following public health guidance to avoid unnecessary public gatherings. He currently is working in his office two days a week but his office has strict guidelines in place so that only three people may be in the office at a time. Mr. Miller practices social distancing in his office and elsewhere.

12. Plaintiff Joy Parikh is a 44-year-old woman and resident of Hinds County, where she is a registered voter. She has been registered to vote for many years and has consistently voted in both state and federal elections. She intends to vote in the November 2020 general election.

13. Because of the COVID-19 outbreak for which there is no cure or vaccine, Ms. Parikh does not think it is safe for her to vote in person for the November general election. She wishes to vote absentee but understands that she only meets the statutory excuse for a disability in the context of the COVID-19 pandemic and does not meet any of the other statutory excuses. She has voted absentee twice before when she was out of the county on Election Day. Ms. Parikh

has severe asthma. She is concerned that her preexisting health condition may put her at a higher risk of severe illness or death if she contracts COVID-19. Ms. Parikh is following public health guidance to avoid unnecessary public gatherings.

14. Plaintiff Martin Clapton is a 46-year-old man and resident of Hinds County, where he is a registered voter. He has been registered to vote for many years and has consistently voted in both state and federal elections. He intends to vote in the November 2020 general election. Because of the COVID-19 outbreak for which there is no cure or vaccine, Mr. Clapton does not think it is safe for himself or his wife if he votes in person for the November general election. He wishes to vote absentee but understands that he only meets the statutory excuse for a disability in the context of the COVID-19 pandemic and does not meet any of the other statutory excuses. He has never voted absentee, and has voted via affidavit once before, because he was in the process of relocating to a different home. Mr. Clapton is a healthy adult and has been caring for his wife during the COVID-19 pandemic. Mr. Clapton's wife has partial kidney failure and must take medication that leaves her immune-compromised. She has also undergone two hip replacements due to the medication prescribed to her. Mr. Clapton is concerned that his wife's preexisting health conditions may put her at a higher risk of severe illness or death if she contracts COVID-19. Mr. Clapton is concerned that, should he vote in person in November, he may contract COVID-19 and, in turn, pass it to his wife. If he were to vote in person on election day, and therefore possibly exposing himself to COVID-19, Mr. Clapton would be unable to undergo the CDC recommended 14-day self-quarantine, because he must see to his wife's needs constantly. Mr. Clapton and his wife are isolating for the most part and following public health guidance to avoid unnecessary public gatherings.

15. Plaintiff Mary Harwell is a 45-year-old woman and resident of Hinds County, where she is a registered voter. She has been registered to vote for many years and has consistently voted in both state and federal elections. She intends to vote in the November 2020 general election.

16. Because of the COVID-19 outbreak for which there is no cure or vaccine, Ms. Harwell does not think it is safe for her to vote in person for the November general election. She wishes to vote absentee but understands that she only meets the statutory excuse for a disability in the context of the COVID-19 pandemic and does not meet any of the other statutory excuses. Ms. Harwell has Type 1 Diabetes. One of her children is autistic and has cerebral palsy and multiple auto-immune disorders. She and her husband and her two children share a house with her mother, who is 77 years old. She is concerned that her diabetes, her son's medical vulnerabilities, and her mother's age place them all at a higher risk of severe illness or death if any of them contracts COVID-19. She is concerned that if she contracts COVID-19, she will transmit it other members of her family. As her son's primary caregiver, she is further concerned about the toll it will take on him if she contracts COVID-19 and cannot take care of him for a significant period of time. Ms. Harwell is following public health guidance to avoid unnecessary public gatherings.

17. Plaintiff Michelle Colon is a 47-year-old woman and resident of Hinds County, where she is a registered voter. She has been registered to vote for many years and has consistently voted in both state and federal elections. She intends to vote in the November 2020 general election.

18. Because of the COVID-19 outbreak for which there is no cure or vaccine, Ms. Colon does not think it is safe for her to vote in person for the November general election. She

wishes to vote absentee but understands that she only meets the statutory excuse for a disability in the context of the COVID-19 pandemic and does not meet any of the other statutory excuses. Although Ms. Colon has no underlying conditions, she is concerned about the risk of contracting COVID-19 if she goes to a polling place on Election Day and the risk of unknowingly transmitting it to others if she already unknowingly contacted it. Ms. Colon is following public health guidance to avoid unnecessary public gatherings. As a Black Mississippian, Ms. Colon is also aware of the ongoing heightened risk to her and the Black community, which has had disproportionately high numbers of COVID-19 cases and deaths in Mississippi and the United States more broadly.

19. Defendant Michael D. Watson, Jr., is sued in his official capacity as the Mississippi Secretary of State (the “Secretary”). The Secretary has sworn under oath to uphold the Constitution of the State of Mississippi in carrying out his duties, which include serving as the chief election officer of the State and providing mandatory training to county election officials. Miss. Code §§ 23-15-211, 23-15-211.1. The Secretary also promulgates rules and regulations regarding various aspects of voting, including absentee voting, and frequently issues guidance to county elections officials regarding matters relating to voting and elections, including legal requirements.

20. The Secretary acts on behalf of the State of Mississippi in exercising his duties regarding federal, state, county, and local elections, executing election laws within the State, and upholding the constitutionally protected right to vote.

21. Defendant Zack Wallace is the Circuit Clerk of Hinds County, Mississippi. Under Mississippi law, circuit clerks are also the county registrar unless it is determined that the circuit clerk cannot function as the registrar. Miss. Code § 23-15-223. As registrar, Clerk Wallace is responsible for voter registration, absentee balloting, and other matters related to elections in Hinds County. *E.g., id.* §§ 23-15-31, 23-15-35, 23-15-625 *et seq.*

22. Defendant Becky Boyd is the Circuit Clerk of Rankin County, Mississippi. Under Mississippi law, circuit clerks are also the county registrar unless it is determined that the circuit clerk cannot function as the registrar. *Id.* § 23-15-223. As registrar, Clerk Boyd is responsible for voter registration, absentee balloting, and other matters related to elections in Rankin County. *E.g., id.* §§ 23-15-31, 23-15-35, 23-15-625 *et seq.*

JURISDICTION AND VENUE

23. This Complaint raises claims under the laws of the State of Mississippi. The relief sought in this case are requests in equity. Therefore, subject-matter jurisdiction over this suit lies with the Chancery Court. Miss. Const. art. VI, § 159(a).

24. This Court is authorized to grant declaratory relief pursuant to Mississippi Rule of Civil Procedure 57(a). *See also Tellus Operating Grp., LLC v. Texas Petroleum Inv. Co.*, 105 So. 3d 274, 282 (Miss. 2012).

25. Venue is proper because a suit against the State must be brought in the county where the seat of government is located. Miss. Code § 11-45-1.

FACTS

26. As the Chief Justice of the United States has explained, COVID-19 has killed “more than 100,000 nationwide. At this time, there is no known cure, no effective treatment, and no vaccine. Because people may be infected but asymptomatic, they may unwittingly infect others.” *South Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring). The CDC and MDH have both urged people to avoid coming within six feet of

individuals with whom they do not reside, as a key to slowing the spread of the virus and keeping individuals healthy.⁶

27. As of July 8, 2020, Mississippi had the tenth highest rate of new coronavirus infections *in the world*.⁷ And as of July 9, Mississippi had the fifth highest per capita rate of COVID-19 cases of any state in the United States.⁸ Mississippi had a record number of 1,775 new cases on July 30,⁹ with hundreds of new cases still being reported each day, bringing the current state total to 67,173 cases and 1,896 deaths.¹⁰

28. Experts agree that the pandemic is likely to continue into the fall and winter. Mississippi's State Health Officer Dr. Thomas Dobbs said, "We're anticipating an absolute disaster coming into the fall because we're ramping up [virus transmission]."¹¹ And Dr. Robert Redfield, Director of the CDC, also warned of the dangers of the coronavirus in the coming months: "There's a possibility that the assault of the virus on our nation next winter will actually be even more difficult than the one we just went through."¹² Consequently, there are grave and

⁶ Miss. State Dep't of Health, *COVID-19 Guidance and Prevention for Individuals and the Community* (updated Aug. 7, 2020), https://msdh.ms.gov/msdhsite/_static/14,21866,420.html; Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19), Social Distancing*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>.

⁷ David Leonhardt, *Arizona is #1, Bahrain is #4*, N.Y. Times (July 8, 2020), <https://www.nytimes.com/2020/07/08/briefing/arizona-mary-trump-facebook-your-wednesday-briefing.html>.

⁸ Kaitlin Howell & Anna Farish, *State Health Officials: Mississippi Is 5th Highest State Per Capita for COVID-19 Cases*, WJTV 12 (last updated July 10, 2020), <https://www.wjtv.com/health/coronavirus/ummc-health-officials-to-discuss-covid-19-concerns/>.

⁹ Wilton Jackson, *COVID-19 in Mississippi: Record number of new cases, deaths reported Thursday*, Clarion Ledger (updated July 30, 2020, 1:32 pm), <https://www.clarionledger.com/story/news/2020/07/30/covid-mississippi-48-new-deaths-1-775-cases-reported-july-30/5543143002/>.

¹⁰ Miss. State Dep't of Health, *Coronavirus Disease 2019 (COVID-19)*, https://msdh.ms.gov/msdhsite/_static/14,0,420.html#Mississippi (last visited Aug. 8, 2020).

¹¹ Nick Judin, *State Health Officer Warns in Interview: Prepare for Overwhelmed Hospitals by Fall*, Jackson Free Press (June 23, 2020), <https://www.jacksonfreepress.com/news/2020/jun/23/state-health-officer-warns-prepare-overwhelmed-hos/>.

¹² Steve Gorman, *CDC Chief Warns Second COVID-19 Wave May be Worse, Arriving with Flu Season*, Reuters (Apr. 21, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-winter/cdc-chief-warns-2nd-covid-19-wave-may-be-worse-arriving-with-flu-season-idUSKCN2233E8>.

foreseeable health risks to Mississippians exercising their fundamental right to vote by voting in-person in the upcoming November election.

Transmission of COVID-19 and Public Health Guidelines

29. The novel coronavirus, SARS-CoV-2, is the virus that causes COVID-19, a deadly disease that is a global pandemic.¹³ The United States has the highest number of cases and deaths of COVID-19 worldwide.¹⁴

30. According to the CDC, this coronavirus spreads aggressively and asymptomatic people can spread it.¹⁵ COVID-19 is highly contagious and spreads person-to-person in many different ways, including through respiratory droplets and contact between individuals. While less common, transmission is also possible through contaminated surfaces, like doorknobs, on which the virus can stay viable for a period of days.

31. People of all age groups have contracted and died from the disease.¹⁶ There is no vaccine, herd immunity, or cure. Infected individuals can remain asymptomatic for up to two weeks.¹⁷

32. The death rate for COVID-19 is at a minimum five times higher than that for seasonal influenza.

¹³ Betsy McKay et al., *Coronavirus Declared Pandemic by World Health Organization*, WALL ST. J. (Mar. 11, 2020), <https://www.wsj.com/articles/u-s-coronavirus-cases-top-1-000-11583917794>.

¹⁴ Johns Hopkins University & Medicine, *COVID-19 Dashboard by the Center for Systems Science and Engineering*, <https://coronavirus.jhu.edu/map.html> (last visited Aug. 10, 2020) (5,085,821 confirmed cases and 163,370 COVID-19 deaths in the United States, compared to next highest of 3,057,470 cases and 101,752 deaths in Brazil).

¹⁵ Ctrs. for Disease Control & Prevention, *How Coronavirus Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited June 15, 2020).

¹⁶ Robert Verity, Ph.D., et al., *Estimates of the Severity of Coronavirus Disease 2019: A Model-Based Analysis*, *The Lancet: Infectious Diseases* at 6 (Mar. 30, 2020), available at [https://www.thelancet.com/pdfs/journals/laninf/PIIS1473-3099\(20\)30243-7.pdf](https://www.thelancet.com/pdfs/journals/laninf/PIIS1473-3099(20)30243-7.pdf).

¹⁷ 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 updated June 30, 2020).

33. Even for those who do not die from COVID-19, many have persistent debilitating symptoms that have lasted for months and still have not fully recovered.¹⁸ COVID-19 has dramatically upended their lives, causing them, for example, heart or serious organ problems or harming their lung capacity such that it is difficult for them even to walk short distances.

34. As of early April and continuing through today, the United States has led the world in the total number of COVID-19 cases, surpassing China and Italy before spread of the virus has even peaked in this country. Between 175,000 and 190,000 people in the United States are likely to die from COVID-19 by August 29, 2020 alone, even accounting for existing governmental and public health interventions.¹⁹

35. Dr. Deborah Birx, White House Coronavirus Response Coordinator, said on August 2, 2020, that COVID-19 is currently “extraordinarily widespread” in the United States—more significantly than it was in March and April, and in rural areas as much as urban areas.²⁰ Dr. Birx stated that asymptomatic carriers in particular are causing “widespread community spread” across the country.²¹

36. The World Health Organization (“WHO”) estimates that approximately 20 percent of those infected by SARS-CoV-2 require hospitalization.²² This is because COVID-19 can

¹⁸ See, e.g., Angelo Carfi et al., *Persistent Symptoms in Patients After Acute COVID-19*, J. of Am. Med. Ass’n, (July 9, 2020) <https://jamanetwork.com/journals/jama/fullarticle/2768351>; Yochai Re’em, *My Covid-19 Symptoms Have Lasted More Than 100 Days, and I’m Not Alone. Will They Ever End?*, Stat News (July 8, 2020) <https://www.statnews.com/2020/07/08/my-covid-19-symptoms-lasting-100-plus-days/>.

¹⁹ Ctrs for Disease Control & Prevention, *Forecasts of COVID-19 Deaths* (last updated Aug. 6, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/forecasting-us.html>.

²⁰ CNN, *Birx: Virus is Now ‘Extraordinarily Widespread,’* (Aug. 4, 2020) <https://www.cnn.com/videos/politics/2020/08/02/sotu-birx-full.cnn>.

²¹ *Id.*

²² World Health Organization, *Q&A on Coronaviruses (COVID-19), “Should I Worry About COVID-19?”* (Apr. 17, 2020), <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

severely damage lung tissue, cause a permanent loss of respiratory capacity, and also damage tissues in the kidney, heart, and liver.²³

37. While people of all ages have contracted and died from COVID-19, it is particularly fatal for older individuals. Preliminary reports based on WHO data show a 3.6% mortality rate for individuals between 60–69 years old, an 8% mortality rate for those 70–79 years old, and a 14.8% mortality rate for those who are 80 years old or older.²⁴ COVID-19 also poses greater risks of severe illness and death for people who live in nursing homes or long-term care facilities or people of all ages with underlying medical conditions, including: chronic kidney disease, chronic obstructive pulmonary disease, immunocompromised state, obesity, heart conditions, smoking, sickle cell disease, diabetes, asthma, cerebrovascular disease, cystic fibrosis, hypertension or high blood pressure, neurologic conditions, liver disease, pregnancy, pulmonary fibrosis, and thalassemia.²⁵

38. In 2018, more than 37 percent of adult Mississippians were obese, the second-highest rate in the nation.²⁶ In 2016, nearly 14 percent of all adult Mississippians had diabetes, the

²³ 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 Apr. 15, 2020).

²⁴ *Id.*

²⁵ Ctrs. for Disease Control & Prevention, *People With Certain Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last visited Aug. 10, 2020).

²⁶ Miss. State Dep't of Health, *Mississippi Obesity Action Plan*, 5 (Feb. 2018), https://msdh.ms.gov/msdhsite/_static/resources/6164.pdf.

highest rate in the nation.²⁷ As of 2018, nearly 10 percent of all adult Mississippians had asthma.²⁸ And it is estimated that just under half of American adults suffer from hypertension alone.²⁹

39. The CDC has also found that “some people with disabilities might be at a higher risk of infection or severe illness because of their underlying medical conditions.”³⁰

40. The effects of the pandemic on social and civic life will last throughout 2020, if not even longer. Experts have indicated that seasonal changes are “unlikely to stop transmission” and, if anything, COVID-19 “will face less immunity and thus transmit more readily even outside of the winter season.”³¹ 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 about whether those who contract COVID-19 become immune and, if so, how long immunity to the virus lasts.³²

41. Because there is no vaccine, cure, or herd immunity, and because none are expected until 2021 at the earliest, the only known effective measures for protecting against transmission of COVID-19 are self-isolation, social distancing measures, including maintaining at least six feet of

²⁷ Miss. State Dep’t of Health, *Diabetes Prevention & Control*, https://msdh.ms.gov/msdhsite/_static/43,0,296.html (last visited June 25, 2020).

²⁸ Ctrs. for Disease Control & Prevention, *Most Recent Asthma State or Territory Data*, https://www.cdc.gov/asthma/most_recent_data_states.htm (last visited June 25, 2020).

²⁹ Ctrs. for Disease Control & Prevention, *Facts About Hypertension*, (last updated Feb. 25, 2020) <https://www.cdc.gov/bloodpressure/facts.htm>.

³⁰ Ctrs. for Disease Control & Prevention, *People Who Need Extra Precautions: People with Disabilities* (updated Apr. 7, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html>.

³¹ Marc Lipsitch, *Seasonality of SARS-CoV-2: Will COVID-19 Go Away on Its Own in Warmer Weather?*, Center for Communicable Disease Dynamics, Harvard T.H. Chan School of Public Health, <https://ccdd.hsph.harvard.edu/will-covid-19-go-away-on-its-own-in-warmer-weather/> (last visited Aug. 10, 2020).

³² Ctrs. for Disease Control & Prevention, *Considerations for Wearing Masks*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html> (last visited Aug. 10, 2020); Apoorva Mandavilli and Katie Thomas, *Will an Antibody Test Allow Us to Go Back to School or Work?*, N.Y. Times (Apr. 10, 2020), <https://www.nytimes.com/2020/04/10/health/coronavirus-antibody-test.html>.

space between people, consistent hygiene practices, and wearing face coverings or masks.³³ Public health experts, including physicians, have urged individuals across the United States and the globe to engage in social distancing and stay at home as much as possible to avoid contracting or spreading COVID-19.

42. Because COVID-19 is highly contagious and passed through person-to-person contact, people who live with those who are at-risk for severe illness or death from COVID-19 must also minimize risk and take as many precautions as possible to avoid infecting their at-risk roommates or loved ones.

COVID-19 in Mississippi

43. COVID-19 is sharply on the rise in Mississippi. In late May, State Health Officer Dobbs described the precarious position in which Mississippi stood, warning that “every community is one wild weekend from falling off the cliff.”³⁴ The situation has worsened since then as new daily case number records were set throughout June and July with a record high 1,775 new cases on July 30, with the state totals now at 67,173 cases and 1,896 deaths.³⁵

44. Since early March, Governor Reeves has taken a series of actions in response to the growing threat posed by the virus, including an emergency declaration and numerous executive orders.

³³ Johns Hopkins Univ., *Coronavirus, Social and Physical Distancing and Self-Quarantine*, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social-distancing-and-self-quarantine> (last visited Apr. 15, 2020); Declaration of Dr. Jonathan Louis Golob at ¶ 8, ECF No. 5, *Dawson v. Asher*, 2:20-cv-00409-JLRMAT (W.D. Wash. Mar. 16, 2020).

³⁴ Angela Williams, ‘*Every Community Is One Wild Weekend Away from Falling Off the Cliff*’, *Dobbs Says*, WAPT 16 (May 28, 2020, 3:58 PM), <https://www.wapt.com/article/every-community-is-one-wild-weekend-away-from-falling-off-the-cliff-dobbs-says/32702823#>.

³⁵ Jackson, *supra* note 9; Miss. State Dep’t of Health, *Coronavirus Disease 2019 (COVID-19)*, https://msdh.ms.gov/msdhsite/_static/14,0,420.html#Mississippi (last visited Aug. 8, 2020).

45. Notably, on March 14, 2020, Governor Reeves declared a State of Emergency for Mississippi as the “risk of spread of COVID-19 within Mississippi constitutes a public health emergency that may result in substantial injury or harm to life, health, and property in Mississippi.”³⁶

46. On April 14, 2020, he closed all Mississippi K-12 schools for the remainder of the academic year in order to curb the spread of COVID-19.³⁷

47. On April 1, 2020, Governor Reeves issued Executive Order 1466, instituting a Shelter in Place policy. The order held that violations of the order are subject to Miss. Code. § 33-15-43 (fines of up to \$500, up to 6 months in prison, or both).³⁸

48. Mississippi received a Major Disaster Declaration from the federal government on April 5, 2020.³⁹

49. In late May 2020, as part of the Governor’s Safe Return order, he called on “vulnerable individuals” to still “stay at home as much as possible,” continued to limit the size of both indoor and outdoor gatherings, and placed limitations on businesses to curb the spread of COVID-19.⁴⁰

50. Faced with the increasing spike in cases and recognizing, as he put it, “Mississippi is in a fight for our lives,” Governor Reeves issued new restrictions on July 10, including mandates

³⁶ Miss. Proclamation (Mar. 14, 2020), https://www.sos.ms.gov/Content/documents/about_us/WhatsNew/GovernorProclamationPublicHealth.pdf.

³⁷ Miss. Dep’t of Ed., *Updates and Information in Response to COVID-19 (Coronavirus)*, <https://www.mdek12.org/COVID19> (last visited Aug. 10, 2020).

³⁸ Miss. Exec. Order No. 1466 (Apr. 1, 2020), <https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1466.pdf>.

³⁹ FEMA, *Mississippi Covid-19 Pandemic (DR-4528)*, <https://www.fema.gov/disaster/4528> (last visited June 16, 2020); Office of Miss. Sec’y of State, *President Trump Approves Major Disaster Declaration for Mississippi* (Apr. 6, 2020), <https://www.sos.ms.gov/Pages/President-Trump-Approves-Major-Disaster-Declaration-for-Mississippi.aspx>.

⁴⁰ Miss. Exec. Order No. 1492 (May 28, 2020), <https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1492.pdf>.

to wear face coverings, in thirteen counties where there has been an outpaced increase in COVID-19, including, Hinds, Desoto, Madison, Harrison, Rankin, Jackson, Washington, Sunflower, Grenada, Claiborne, Jefferson, Wayne, and Quitman.⁴¹ On July 19, 2020, Governor Reeves implemented more restrictions in these counties and further expanded the restrictions to ten additional counties.⁴²

51. As of July 9, 2020, State Health Officer Dr. Thomas Dobbs reported that several hospitals are down to zero intensive care beds. Dr. Dobbs stressed that “[n]ot only is [the virus] here, but it’s going to get worse,” and that “5 of [the] biggest hospitals in the state had 0 ICU beds, 0. An additional 4 had 5% or less and an addition[al] 3 had less than 10%.”⁴³ As noted previously, Dr. Dobbs also said, “We’re anticipating an absolute disaster coming into the fall because we’re ramping up [virus transmission].”⁴⁴

52. On August 4, 2020, Governor Reeves issued an executive order instituting a statewide mask mandate for all Mississippians in public spaces.⁴⁵ In the order, Governor Reeves cited the “extreme risk of person-to-person transmission [of COVID-19] throughout the United States and Mississippi,” and the recent increases in cases, hospitalizations, deaths, and test positivity rate.⁴⁶

⁴¹ Kaitlin Howell, *Mississippi Governor Announces COVID-19 Restrictions for 13 Counties*, News Channel 3 (last updated July 10, 2020), <https://wreg.com/news/mississippi-governor-announces-covid-19-restrictions-for-13-counties/>; Miss. Exec. Order No. 1507 (July 10, 2020), <https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1507.pdf>.

⁴² Miss. Exec. Order No. 1509 (July 19, 2020), <https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1509.pdf>.

⁴³ Howell & Farish, *supra* note 8.

⁴⁴ Judin, *supra* note 11.

⁴⁵ Miss. Exec. Order No. 1516 (Aug. 4, 2020), <https://www.sos.ms.gov/content/executiveorders/ExecutiveOrders/1516.pdf>.

⁴⁶ *Id.*

53. As of August 10, 2020, Mississippi had a test positivity rate of nearly 20 percent, the second highest rate in the country.⁴⁷

COVID-19's Disproportionate Impact on African American Mississippians

54. Nationally, the COVID-19 epidemic has had a particularly devastating effect in Black communities. The COVID Racial Data Tracker, a database that collects racial data related to COVID-19 cases and deaths, has determined that Black people nationally have accounted for 22 percent of COVID-19 deaths where the race of the person was known, despite comprising just 13 percent of the national population.⁴⁸

55. A study co-led by Dr. Leandro Mena of the University of Mississippi Medical Center demonstrated that more than half of COVID-19 cases and deaths nationwide came from counties that are disproportionately Black, and that the lack of health care and testing access likely is masking the scope of the disproportionate impact.⁴⁹

56. 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.”⁵⁰ 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.

⁴⁷ Johns Hopkins Univ. & Medicine, *Percent of New Tests that Are Positive*, <https://coronavirus.jhu.edu/testing/tracker/map/percent-positive> (last visited Aug. 10, 2020).

⁴⁸ *The COVID Racial Data Tracker*, COVID Tracking Project, <https://covidtracking.com/race> (last visited Aug. 10, 2020).

⁴⁹ Karen Bascom, *COVID-19 Impacts Black Communities More Heavily, Study Shows*, Univ. of Miss. Medical Ctr. (May 7, 2020), https://www.umc.edu/news/News_Articles/2020/05/COVID-19-impacts-black-communities-more-heavily.html.

⁵⁰ Kat Stafford et al., *Outcry Over Racial Data Grows as Virus Slams Black Americans*, Associated Press (Apr. 8, 2020), <https://www.usnews.com/news/us/articles/2020-04-08/outcry-over-racial-data-grows-as-virus-slams-black-americans>.

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.⁵¹

57. In April, the Mississippi State Health Officer recognized the disproportionate impact on Black Mississippians, in both confirmed cases and deaths from COVID-19, characterizing the numbers in the Black community as “unacceptably high.”⁵²

58. As of August 10, 2020, Black Mississippians accounted for 52.7% of cases and 50.5% of deaths, compared to white Mississippians who made up 38.9% of cases and 43.7% of deaths,⁵³ while the population of Mississippi is 38.9% Black and 59.5% white.⁵⁴

59. Governor Reeves also has acknowledged the disproportionate impact on Black Mississippians.⁵⁵

Risks of In-Person Voting During This Pandemic

60. In April, Dr. Anthony Fauci, head of the National Institute of Allergy and Infectious Diseases, said that he “can’t guarantee” in-person voting will be safe in November, in particular because community spread might become even worse in the fall.⁵⁶ For this reason, the Mississippi Department of Health reiterates the CDC guidelines concerning voting during the COVID-19

⁵¹ *Id.*

⁵² Nick Judin, *Q&A with Dr. Thomas Dobbs on Racial Inequity of COVID-19 in Mississippi*, Jackson Free Press (Apr. 22, 2020), <https://www.jacksonfreepress.com/news/2020/apr/22/q-dr-thomas-dobbs-racial-inequity-covid-19-mississ/>.

⁵³ Miss. State Dep’t of Health, *Interactive Charts: COVID-19 Epidemiological Charts and Trends* (last visited Aug. 10, 2020), https://msdh.ms.gov/msdhsite/_static/14,21995,420,873.html.

⁵⁴ U.S. Census Bureau, *2018 ACS Demographic & Housing Estimates*, <https://data.census.gov/cedsci/table?q=Population%20Total&g=0400000US28&hidePreview=true&t=Population%20Total&tid=ACSDP1Y2018.DP05&vintage=2018> (last visited Aug. 10, 2020).

⁵⁵ Nick Judin, *Black Mississippians Suffered 72% of Covid-19 Deaths; Many Tests Don’t Track Race*, Jackson Free Press (Apr. 8, 2020), <https://www.jacksonfreepress.com/news/2020/apr/08/black-mississippians-suffered-72-covid-19-deaths-m/>.

⁵⁶ Jason Silverstein, *Fauci Says He “Can’t Guarantee” In-person voting in November Will Be Safe*, CBS News (last updated 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>.

pandemic, recognizing that “[t]he more an individual interacts with others, and the longer that interaction, the higher the risk of COVID-19 spread.”⁵⁷ MDH states that people “with a chronic illness such as heart disease, diabetes, or lung disease” and people who otherwise are “in poor health” should “stay home as much as possible.”⁵⁸ Moreover, MDH advises that all people, including those in good health, must “[a]void large social gatherings and community events” and “[f]ollow restrictions on indoor and outdoor gathering sizes.”⁵⁹ These restrictions prevent attendance at indoor gatherings where more than ten people are present. Most polling places have more than ten people present during much of the day. Thus, both MDH and the CDC have recognized that “[e]lections 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.”⁶⁰ They recommend that states “offer alternative voting methods that minimize direct contact and reduce crowd size at polling stations,” including “alternatives to in-person voting.”⁶¹

61. These recommendations make sense, given the relative risks of voting in person during the pandemic versus absentee voting. There is no evidence that SARS-CoV-2 can be spread through the mail, and the U.S. Postal Service has further changed their policies to “eliminate the requirement that customers sign our Mobile Delivery Devices for delivery” and now require the

⁵⁷ Ctrs. for Disease Control & Prevention, *Considerations for Election Polling Locations: Interim Guidance to Prevent Spread of Coronavirus Disease 2019 (COVID-19)* (last updated June 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>; Miss. State Dep’t of Health, *Prevention in the Community* (last updated Aug. 7, 2020), https://msdh.ms.gov/msdhsite/_static/14,21866,420.html#gatherings (linking to CDC guidance).

⁵⁸ Miss. State Dep’t of Health, *Prevention for Individuals*, https://msdh.ms.gov/msdhsite/_static/14,21866,420.html#individuals (last visited Aug. 10, 2020).

⁵⁹ *Id.*

⁶⁰ Ctrs. for Disease Control & Prevention, *Considerations for Election Polling Locations: Interim Guidance to Prevent Spread of Coronavirus Disease 2019 (COVID-19)* (last updated June 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>; Miss. State Dep’t of Health, *Prevention in the Community* (last updated Aug. 7, 2020), https://msdh.ms.gov/msdhsite/_static/14,21866,420.html#gatherings (linking to CDC guidance).

⁶¹ *Id.*

customer “to step back a safe distance or close the screen door/door so that they may leave the item in the mail receptacle or appropriate location by the customer door.”⁶²

62. In contrast, large numbers of voters, observers, and poll workers gather on Election Day at voting places, which are typically indoor spaces with low ventilation, where the virus can spread particularly effectively. Mississippi voters have faced long lines at voting places in recent off-year elections,⁶³ a problem that will likely be worse in the upcoming November election given that presidential elections typically draw higher voter turnout. Longer wait times further exacerbate the health risks facing voters, as congregations of people remain together for longer periods of time. States who have had primaries since the impact of the COVID-19 pandemic began to hit the United States had notably long lines at polling locations.⁶⁴

63. Defendant Watson has acknowledged that the COVID-19 pandemic will make it more difficult for counties to find sufficient poll workers, particularly as more poll workers than usual will be needed in order to meet additional staffing needs to “to keep equipment clean, ensure people social distance, and to assist voters who may request curbside voting.”⁶⁵

⁶² Press Release, U.S. Postal Serv., Media Statement – Covid-19 (Apr. 30, 2020), <https://about.usps.com/newsroom/statements/usps-statement-on-coronavirus.htm> (citing guidance from WHO, CDC, and Surgeon Gen.).

⁶³ See, e.g., Scott Simmons, *Some Problems at Polls Reported during Mississippi General Election*, WAPT (Nov. 5, 2019), <https://www.wapt.com/article/some-problems-at-polls-reported-during-mississippi-general-election/29702437>.

⁶⁴ See, e.g., Elise Viebeck et al., *Long Lines, Anger and Fear of Infection: Wisconsin Proceeds with Elections under Court Order*, Wash. Post (Apr. 7, 2020), https://www.washingtonpost.com/politics/long-lines-form-in-milwaukee-as-wisconsin-proceeds-with-elections-under-court-order/2020/04/07/93727b34-78c7-11ea-b6ff-597f170df8f8_story.html; Rick Massimo, *DC Primaries: Long Lines and 2 New Council Members*, WTOP News (June 3, 2020), <https://wtop.com/dc/2020/06/dc-primaries-long-lines-and-2-new-council-members/>; Mark Niese & Nick Thieme, *Extreme Voting Lines Expose Where Georgia Primary Failed*, Atlanta J. Const. (July 28, 2020), <https://www.ajc.com/politics/extreme-voting-lines-expose-where-georgia-primary-failed/YQUMSTEBVFAY7CR7UQQEHSVLI/>.

⁶⁵ Luke Ramseth, *Many States Are Allowing Anyone to Vote by Mail During the Pandemic. Not Mississippi.*, Miss. Clarion Ledger (last updated July 19, 2020), <https://www.clarionledger.com/story/news/politics/2020/07/17/heres-how-mississippi-plans-run-its-election-during-pandemic/5358060002/>.

64. Mississippi voters and poll workers, the latter of whom are disproportionately older Americans, face significant risk of contracting or spreading COVID-19 at polling places through respiratory droplets, and because doors, poll books, pens, ballots, voting machines, and other surfaces can easily become contaminated and function as vectors for the virus.

65. Because poll workers must interact with many individuals during long shifts at indoor polling places, those workers and those individuals are all at a heightened risk of contracting and spreading COVID-19 to each other on Election Day.

Mississippi Absentee Voting

66. Mississippi statutes permit absentee voting by “any duly qualified elector” who meets one of eight statutory excuses. Miss. Code § 23-15-713.

67. Voters who meet any of the statutory excuses may request an absentee ballot application either in writing or orally from the registrar. *Id.* § 23-15-627.

68. Voters who request an absentee ballot due to permanent or temporary physical disability may do so by mail. *Id.* § 23-15-715(b).

69. Absentee ballots may be requested beginning 45 days before the election. *Id.* § 23-15-715. An absentee ballot application for a voter with a permanent or temporary disability must be witnessed by someone 18 years of age or older. *Id.* § 23-15-715(b).

70. Upon receipt of an absentee ballot application, the registrar “shall mail the absent voter an absentee ballot within one (1) business day, or as soon as the absentee ballot is prepared and available,” and may deliver the ballot “by mail or to the applicant in the registrar’s office.” *Id.* § 23-15-719(1).

71. Swearing falsely on an absentee ballot is a criminal offense under Mississippi law, punishable by five years in prison or a fine of up to \$5,000, or both. *Id.* § 23-15-753(1).

72. Registered voters may apply to receive absentee ballots for the November general election beginning on September 19, 2020, 45 days before the election. *Id.* § 23-15-715.

73. The statute listing the grounds for absentee voting includes a provision for those with a “temporary or permanent disability.” The first sentence of the provision permits absentee voting by “[a]ny person who has a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship to himself, herself, or others, or whose attendance at the voting place could reasonably cause danger to himself, herself, or others.” *Id.* § 23-15-713(d).

74. This summer, the Mississippi Legislature passed H.B. 1521 that added a second sentence to Section 713(d). It reads: “For purposes of this paragraph (d), ‘temporary physical disability’ shall include any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020 or is caring for a dependent who is under a physician-imposed quarantine due to COVID-19 beginning with the effective date of this act and the same being repealed on December 31, 2020.”

75. Different bills were passed in the Mississippi House and Senate regarding this provision, and the disagreements were resolved in conference. The Conference Report was passed by both houses and constituted the final version of H.B. 1521. The bill did not include a definition of “physician-imposed quarantine.” However, the meaning of that phrase is clarified by the legislative history. In reporting the Conference Report on the bill to the rest of the House, Representative Jansen Owen indicated that “the voter will have to make that judgement whether or not they think it’s a physician-imposed quarantine.” When asked if a voter would “have to have an actual order from a physician,” Rep. Owen responded “No.” He added that if the “Department of Health and physicians are telling you to stay home and self-quarantine, that would count” under

the terms of the newly enacted excuse. Representative Owen was asked if that is “going to count across the state,” and he replied “Yes Sir.”⁶⁶ Representative Owen also made it clear that a person “caring for” someone under a “physician-imposed quarantine” can vote absentee.⁶⁷

76. H.B. 1521 also amended Miss. Code § 23-15-627, which sets out the form of the absentee ballot application including the list of boxes from which the voter must check at least one in order to vote absentee. With respect to the “temporary or permanent disability” excuse, H.B. 1521 added the following underlined language to the box: “I have a temporary or permanent physical disability, which may include, but is not limited to, a physician-imposed quarantine due to COVID-19 during the year 2020. Or, I am caring for a dependent that is under a physician-imposed quarantine due to COVID-19 beginning with the effective date of this act and the same being repealed on December 31, 2020.” H.B. 1521 § 5, 2020 Leg., Reg. Sess. (Miss. 2020).

77. Unfortunately, despite these statutory grounds for voting absentee, there is a potential for widespread confusion regarding Section 713(d) that requires this Court to issue a declaratory judgment. There is no written definition of “physician-imposed quarantine.” There is, likewise, no written definition of “dependent.” And in early June, even before passage of the amendment, Secretary of State Michael Watson said it would be up to each local circuit clerk to determine whether a voter could vote absentee under the temporary physical disability provision.⁶⁸ This lack of clarity leaves eligible voters at risk of disenfranchisement and even criminal liability through a cramped interpretation of the existing statutory excuses, made all the more concerning through the risk of disparate application from county to county.

⁶⁶ Miss. Legis., *MS House Floor*, YouTube (June 28, 2020), https://www.youtube.com/watch?v=JFwOL8_eSC8 (exchange between Representative Jansen Owen and Representative Jarvis Dortch beginning at 42:48).

⁶⁷ *Id.*

⁶⁸ Harrison, *supra* note 5.

CLAIMS FOR RELIEF

78. These uncertainties regarding who can vote absentee and what standard will be imposed by different clerks require judicial clarification through a declaratory judgment. In interpreting the statute, the Court should be guided by the fact that the Mississippi Constitution enshrines the right to vote. Miss. Const. § 240.

CLAIM I

Declaratory Judgment as to the Application of Mississippi Code § 23-15-713(d) to Individuals with an Underlying Physical Condition that Places them at Higher Risk of Severe Illness from COVID-19

79. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

80. The first sentence of Miss. Code § 23-15-713(d) expressly permits absentee voting by “[a]ny person who has a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship to himself, herself, or others, or whose attendance at the voting place could reasonably cause danger to himself, herself, or others.”

81. In light of the COVID-19 global pandemic, individuals with an underlying condition that places them at a higher risk of severe illness or death from COVID-19 “could reasonably cause danger to himself, herself, or others” at a voting precinct. Thus, these conditions constitute a disability that allows a person to vote absentee under Section 713(d). Because COVID-19 is a highly communicable disease that spreads due to physical proximity, and because those with underlying conditions are at significant risk for severe illness or death, such disabilities are exactly the sort contemplated by Section 713(d).

82. Defendant Watson has previously stated, before a legislative committee in early June, that some people will be able rely on an existing section of the law to avoid COVID-19 exposure at the polls. He was referring to the first sentence of Section 713(d).⁶⁹

83. The meaning of “disability” is “a physical . . . condition that impairs, interferes with, or limits a person’s ability to engage in certain tasks or actions or participate in typical daily activities and interactions.” *Disability*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/disability> (last visited Aug. 10, 2020). Mississippians who suffer from the underlying conditions that place them at heightened risk for severe illness or death from COVID-19 are all dealing with physical conditions that impair their ability to engage in certain tasks or actions.

84. Attendance at a voting location by a person with underlying conditions could reasonably cause a danger to that voter, to others at the polling place, and to the voter’s family, loved ones, housemates, roommates, caretakers, and neighbors.

85. Therefore, the Court should declare that any elector who has an underlying physical condition that places them at a higher risk for severe illness or death from COVID-19 has a physical disability under the terms of the statute and may vote by absentee ballot under Mississippi Code § 23-15-713(d).

CLAIM II

Declaratory Judgment as to the Meaning of “Physician-Imposed Quarantine” Under Mississippi Code § 23-15-713(d)

86. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

⁶⁹ *Id.*

87. Under the newly passed amendment to this statute, which adds a second sentence to Section 713(d), a “temporary or permanent disability” includes, but is not limited to, “any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020 or is caring for a dependent who is under a physician-imposed quarantine due to COVID-19.”

88. The statute does not define the contours of a “physician-imposed quarantine,” but the legislative history confirms that this is to be determined by the voter, that it reaches the scenario contemplated by the phrase “self-quarantine,” which has entered common speech during this COVID-19 pandemic, that it does not require direct guidance from a voter’s own doctor, and that it includes guidance from the MDH, the CDC, and other physicians and public health authorities.

89. The definition of the noun “quarantine” that most accurately reflects the factual context as used in the statute is “a restraint upon the activities or communication of persons or the transport of goods designed to prevent the spread of disease or pests.” *Quarantine*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/quarantine> (last visited Aug. 10, 2020). While the statute uses “quarantine” as a noun, the dictionary definition of the transitive verb quarantine also supports the interpretation of the statute that electors may vote by absentee ballot under this excuse if they are following public health guidance to avoid congregate settings. The definition is “to isolate from normal relations or communication.” *Id.*

90. A “physician-imposed quarantine” includes, due to physician-directed public health guidance, “isolat[ing]” oneself from “normal relations” or “restrain[ing]” one’s own activities in order “to prevent the spread of disease.” *Id.*

91. Thus, guidance from the MDH, CDC, or other physician to avoid unnecessary public gatherings or other congregate settings qualifies as a “physician-imposed quarantine” that

a voter could invoke as a “temporary physical disability” in order to avoid the grave health risks posed by going to the polls and encountering groups of people during this pandemic. Moreover, as the legislative history confirms a voter must make his or her own judgment as to what is a “physician-imposed quarantine,” and voters have the right to follow public health guidance in determining whether to vote absentee. If a voter is following public health guidance, he or she is justified in choosing absentee voting.

92. Therefore, this Court should issue a declaratory judgment that a voter may vote absentee if he or she wishes to avoid voting in-person at a polling place due to guidance from the MDH, the CDC, and other physicians or public health authorities to avoid unnecessary public gatherings during the COVID-19 pandemic.

CLAIM III

Declaratory Judgment as to the Meaning of “Dependent” Under Mississippi Code § 23-15-713(d)

93. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

94. Under the newly passed amendment to this statute, which adds a second sentence to Section 713(d), a “temporary or permanent disability” includes, but is not limited to, “any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020 or is caring for a dependent who is under a physician-imposed quarantine due to COVID-19.”

95. The statute does not define who constitutes a “dependent” under the its terms. The legislative history confirms that the statute is meant to reach anyone who is caring for someone who is under a “physician-imposed quarantine.”

96. The definition of the noun “dependent” is “one that is dependent especially: one who relies on another for support.” *Dependent*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/dependent> (last visited Aug. 10, 2020).

97. Therefore, this Court should issue a declaratory judgment that a voter may vote absentee if he or she provides care or support to any other individual who is avoiding unnecessary public gatherings during the COVID-19 pandemic.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully requests that this Court:

- A. Declare that Mississippi Code § 23-15-713(d) permits any voter with pre-existing conditions that cause COVID-19 to present a greater risk of severe illness or death to vote by absentee ballot during the COVID-19 pandemic;
- B. Declare that Mississippi Code § 23-15-713(d) permits any voter to vote absentee if he or she wishes to avoid voting in-person at a polling place due to guidance from the MDH, the CDC, or other physicians or public health authorities to avoid unnecessary public gatherings during the COVID-19 pandemic or if he or she is caring for or supporting such a voter.
- C. Issue a preliminary and permanent injunction that orders Defendant Secretary of State to instruct county elections officials about the application of Mississippi Code § 23-15-713(d) as declared by this Court and orders Defendants to take steps to educate the public about their right to vote by absentee ballot under Mississippi Code § 23-15-713(d) as declared by this Court during the COVID-19 pandemic;
- D. Award Plaintiffs attorneys’ fees in this action;
- E. Award Plaintiffs their costs of suit; and

F. Grant such other and further relief as this Court deems just and proper in the circumstances.

Dated: August 26, 2020

Respectfully submitted,

/s/ Joshua Tom

Joshua Tom, MSB 105392

Landon Thames, MSB 105127

American Civil Liberties Union of Mississippi

223 East Capitol Street

Jackson, MS 39201

Tel.: (601) 354-3408

jtom@aclu-ms.org

lthames@aclu-ms.org

Robert B. McDuff, MSB 2532

Mississippi Center for Justice

767 North Congress Street

Jackson, MS 39202

(601) 969-0802

rbm@mcdufflaw.com

Reilly Morse, MSB 3505

Mississippi Center for Justice

963 Division Street

Biloxi, MS 39530

(228) 435-7284

rmorse@mscenterforjustice.org

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Joshua Tom, hereby certify that I electronically filed the foregoing with the Clerk of the Court using the MEC system which sent notification of such filing to all counsel of record.

This the 26th day of August, 2020.

/s/: Joshua Tom
Joshua Tom, MS Bar No. 105392
Attorney for Plaintiffs
ACLU of Mississippi
233 E Capitol St.
Jackson, MS 39201
T: (601) 354-3408
jtom@aclu-ms.org