

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

**JANET C. BAKER, SUSAN INMAN and
OLLY NEAL**

PLAINTIFFS

V.

**JOHN THURSTON, in his official capacity
as the Secretary of State of Arkansas**

DEFENDANT

**COMPLAINT FOR INJUNCTIVE RELIEF
AND DECLARATORY JUDGMENT**

COMES NOW Plaintiffs Janet C. Baker, Susan Inman, and Olly Neal, and for their Complaint for Injunctive Relief and Declaratory Judgment state as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Jan Baker is a citizen of the State of Arkansas with a primary residence located in Little Rock, Arkansas, in Pulaski County.
2. Plaintiff Susan Inman is a citizen of the State of Arkansas with a primary residence located in Little Rock, Arkansas, in Pulaski County.
3. Plaintiff Olly Neal is a citizen of the State of Arkansas with a primary residence located in Marianna, Arkansas, in Lee County.
4. Defendant John Thurston is the Secretary of State of the State of Arkansas and is sued in his official capacity. He is the chief election official of the State of Arkansas. He is charged with administering the challenged provision and doing so in compliance with the U.S.

Constitution, federal law, and the Arkansas constitution. Secretary Thurston also serves as the Chair of the State Board of Election Commissioners. Ark. Code Ann. § 7-4-101(b).

5. The Court has subject matter jurisdiction under Amendment 80 to the Constitution of Arkansas. This Court has personal jurisdiction over the Defendant under Ark. Code Ann. § 16-4-101(B). Venue is proper in Pulaski County under Ark. Code Ann. § 16-60-104(3)(A).

INTRODUCTION

6. The United States is under the grip of a deadly pandemic that shows no signs of abating.¹

7. Arkansas is increasingly becoming a COVID-19 hotspot, and conditions are only getting worse.²

8. As of June 22, 2020, the number of COVID-19 cases in Arkansas has increased by more than 187% in one month's time since May 22, 2020.³ As of June 22, 2020, there were over 16,083 confirmed cases in the state and more than 227 Arkansans have died because of the disease. Arkansas had its single worst day for new confirmed cases on June 12, 2020, with 731 confirmed cases that day, and on June 19, 2020, the state saw 703 new cases. On June 21, 2020, Arkansas saw its single worst day of hospitalizations at 244. The University of Arkansas for Medical Sciences recently released a model showing COVID cases in Arkansas may

¹ Ryan Best & Jay Boice, *Where the Latest COVID-19 Models Think We're Headed – and Why They Disagree*, FIVETHIRTYEIGHT (June 16, 2020, 11:00 A.M.), <https://projects.fivethirtyeight.com/covid-forecasts/>.

² Olivia Messer, “‘All of a Sudden It Blows Up’: Arkansas’ COVID Problem Is Just Getting Started,” *The Daily Beast*, June 15, 2020, <https://www.thedailybeast.com/arkansas-covid-problem-is-just-getting-started-all-of-a-sudden-it-blows-up>

³ Arkansas Covid, <https://arkansascovid.com/>

peak in September with 150,000 cases.⁴ The State of Kansas recognizes Arkansas as a COVID-19 hotspot and requires self-isolation for any travelers to Kansas from Arkansas.⁵ The curve is climbing.

9. 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-19.⁶

10. 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,”⁷ advice that has been echoed by numerous public health experts,⁸ and that has been followed by a number of states that have modified their eligibility requirements for voting by mail.⁹

11. COVID-19 is such a threat to Arkansans, that Governor Asa Hutchinson

⁴ “UAMS Model Shows COVID-19 Peak of 150,000 Cases in Arkansas Sept. 30,” KATV (June 17, 2020), <https://katv.com/news/local/uams-model-shows-covid-19-peak-of-150000-cases-in-arkansas-sept-30>

⁵ Kaitlin Barger, “Kansas Department of Health Lists Arkansas as COVID-19 Hotspot,” KATV (June 18, 2020), <https://katv.com/news/local/kansas-department-of-health-lists-arkansas-as-covid-19-hotspot>

⁶ 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 accessed June 16, 2020).

⁷ Ctrs. For Diseases Control & Prevention, *Recommendation for Election Polling Locations*, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last accessed June 16, 2020).

⁸ 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>.

⁹ Alabama, Arkansas, Delaware, Massachusetts, New Hampshire, Tennessee, Texas, Virginia, and West Virginia have all recognized the unique danger posed by COVID-19 and modified their procedures for voting by mail accordingly.

has taken extraordinary measures through at least twenty-seven (27) executive orders dealing with issues related to COVID-19, including Executive Orders to alter the state’s legal system and protect businesses from liability related to COVID-19¹⁰; to allow corporations and banks to hold shareholder meetings by remote communication¹¹; and to dispense with in-person witnessing and notarization of legal documents.¹²

12. On June 18, 2020, Governor Hutchinson renewed an executive order extending the public health emergency because of the spread of COVID-19 for an additional 60 days.¹³

13. Governor Hutchinson recognized the danger COVID-19 presents to in-person voting when he issued two Executive Orders to allow for no-excuse absentee ballot voting during special elections held on May 12, 2020.¹⁴

14. Governor Hutchinson’s executive orders allowing no-excuse absentee ballot voting for special elections in May specifically suspended provisions of Arkansas Code Annotated § 7-5-402 that require qualified electors to be “unavoidably absent or unable to attend an election due to illness or physical disability.” The Executive Orders allowed “all eligible qualified electors currently entitled to vote in the May 12, 2020, election [to] request the

¹⁰ Governor of Arkansas, Exec. Order No. 20-33, (June 15, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-33.pdf

¹¹ Governor of Arkansas, Exec. Order No. 20-15, (Apr. 10, 2020) https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-15_.pdf

¹² Governor of Arkansas, Exec. Order No. 20-14, (Apr. 9, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-14_.pdf

¹³ Governor of Arkansas, Exec. Order No. 20-37, (June 18, 2020) https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-37.pdf

¹⁴ Governor of Arkansas, Exec. Order No. 20-23, (Apr. 24, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-23_.pdf; Governor of Arkansas, Exec. Order No. 20-26, (May 7, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-26_.pdf

appropriate absentee ballots from their county of residence.”

15. It is apparent that the State believes the current law, Arkansas Code Annotated § 7-5-402 does not currently allow all eligible qualified electors to request an absentee ballot unless they are “unavoidably absent or unable to attend an election due to illness or physical disability,” therefore excluding voters like Plaintiffs, who include individuals who are immunocompromised people, elderly and high-risk people, people who are fearful of contracting COVID-19 at a polling site, and people who otherwise do not want to vote in person, among others.

16. On April 17, 2020, state Senators Joyce Elliot and Greg Leding requested from Attorney General Leslie Rutledge an opinion regarding the appropriateness of COVID-19 as an excuse for absentee voting. (EX-1). The Attorney General has not responded.

17. Scientists predict another wave of COVID-19 infections this Fall, “with new transmission peaking in November.”¹⁵

18. Governor Hutchinson has been non-committal about no-excuse absentee ballots this Fall and has failed to take action to prepare for such voting in November.¹⁶

19. To prepare for no-excuse absentee ballot voting, the State needs to act now to ensure sufficient resources to meet increased absentee voting by immediately making available absentee ballot request forms, to educate the public about the process of voting absentee, to ensure ~~the state and~~ counties have sufficient ~~paper ballots~~ card stock for printing ballots, ~~and~~ envelopes for mailing ballots, and the required forms to ensure sufficient time for

¹⁵ Len Strazewski, “Harvard epidemiologist: Beware COVID-19’s second wave this fall,” American Medical Association (May 8, 2020), <https://www.ama-assn.org/delivering-care/public-health/harvard-epidemiologist-beware-covid-19-s-second-wave-fall>

¹⁶ Andrew Epperson, “Governor expresses support for no-excuse absentee voting, doesn’t commit to November implementation,” KNWA (May 13, 2020), <https://www.nwahomepage.com/knwa/governor-expresses-support-for-no-excuse-absentee-voting-doesnt-commit-to-implementation-for-november-elections/>

mailing, canvassing, and counting absentee ballots, among other considerations.

20. If Defendant do not act now to allow no-excuse absentee ballot voting in November 2020 or to allow fear of contracting COVID-19 as an excuse for absentee ballot voting in November 2020, then it will be too late and Arkansas voters will be forced to choose between their health and their fundamental right to vote.

21. 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 for whom you care; or (ii) forgo your fundamental right to vote.

22. The Arkansas Constitution does not permit voters to be faced with such an untenable decision.

23. Plaintiffs therefore ask that the Court (1) issue a declaratory judgment finding that Arkansas law allows for any excuse as a valid excuse for voting absentee; (2) alternatively, issue a declaratory judgment finding that Arkansas law allows fear of contracting COVID-19 as a valid excuse for voting absentee; and/or (3) alternatively, enjoin Arkansas's limitations on eligibility to vote absentee in Ark. Code Ann. § 7-5-401, *et seq.* and declare those limitations unconstitutional.

PARTIES

24. Plaintiff Janet C. Baker is a seventy-five year old resident of Little Rock, Arkansas, in Pulaski County. Ms. Baker has been diagnosed with the autoimmune disorder rheumatoid arthritis and takes 10mg of methotrexate weekly. Because of her age and diagnosis, Ms. Baker is at high risk if exposed to COVID-19, and she is fearful of contracting COVID-19 at a polling place. Ms. Baker has been practicing the social distancing measures prescribed by the CDC and only leaves her house to have groceries loaded in the trunk of her car and to have outside, socially-distanced visits outside of her son's house when all visitors were wearing

masks. Ms. Baker is extremely worried that due to the COVID-19 numbers continuing to rise in Arkansas that she will not feel safe voting in the November general election in person. Ms. Baker is unsure of what “excuses” are allowable for voting absentee in Arkansas. Ms. Baker desires to vote absentee with the certainty that her vote will count and not be challenged for lack of an appropriate excuse or because the “excuse” requirements have not been defined. Due to her diagnosis of rheumatoid arthritis, Ms. Baker cannot vote safely in person during the COVID-19 pandemic. If Ms. Baker cannot vote absentee in November, she will be unable to vote.

25. Plaintiff Olly Neal is a seventy-eight year old resident of Marianna, Arkansas, in Lee County. Mr. Neal is African-American, he has asthma with 55% lung capacity, and he has also been diagnosed with the autoimmune disorder rheumatoid arthritis. Mr. Neal takes medication for both the asthma and rheumatoid arthritis conditions, among others. Mr. Neal has been abiding by the social distance guidelines, remaining at home during the pandemic except for brief exercise outside early in the morning when few, if any people are around and when he can maintain a safe distance away from others. Mr. Neal is at high-risk if he were to be exposed to COVID-19 because of his age, Race, and medical conditions. Mr. Neal desires to vote by absentee ballot in the Fall of 2020 because he is fearful of being exposed to COVID-19 at a polling site. Mr. Neal is concerned about standing in line at a polling site with a large group of people. Mr. Neal also has osteoarthritis, which causes him pain while standing for long periods of time. Even though he is extremely concerned about standing in long lines at a polling site and fearful of being exposed to COVID-19 at a polling site, if Mr. Neal were not allowed to vote absentee, he would choose to risk his health, and potentially his life, and vote in person at a polling site to exercise his fundamental right to vote.

26. Plaintiff Susan Inman is a resident of Little Rock, Arkansas, in Pulaski

County. Ms. Inman desires to vote absentee because she fears contracting COVID-19 or any other virus or disease at a common polling place. Moreover, Ms. Inman is healthy and wants to stay healthy. Moreover, she believes that any excuse is a valid excuse for voting absentee and wishes to vote absentee in future elections when COVID-19 is not a concern or is not causing a state of emergency. She would like to vote absentee to have more time to consider the candidates and issues on the ballot.

27. Defendant John Thurston is the Secretary of State of the State of Arkansas and is sued in his official capacity. He is the chief election official of the State of Arkansas. He is charged with administering the challenged provision and doing so in compliance with the U.S. Constitution, federal law, and the Arkansas constitution. Secretary Thurston also serves as the Chair of the State Board of Election Commissioners. Ark. Code Ann. § 7-4-101(b).

FACTS

Transmission of COVID-19 and Public Health Guidelines

28. “These are not ordinary times.”¹⁷ 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.”¹⁸

29. According to the CDC, the novel coronavirus SARS-CoV-2, which causes COVID- 19, spreads aggressively.¹⁹ Critically, it can be unknowingly spread by asymptomatic

¹⁷ *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).

¹⁸ *Id.* at *10 (emphasis added).

¹⁹ Ctrs. For Disease Control & Prevention, *How COVID-19 Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid- spreads.html> (last accessed June 16, 2020).

carriers of the virus.²⁰ 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 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.²¹

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

31. Currently, the United States leads the world in the total number of COVID-19 cases, surpassing previous leaders China and Italy.²²

32. Members of all age groups have contracted and died from the illness.²³

33. The World Health Organization (“WHO”) estimates that approximately 20% of those who are infected by SARS-CoV-2 require hospitalization.²⁴ COVID-19 can severely damage lung tissue, cause a permanent loss of respiratory capacity, and also damage tissues in the kidney, heart, and liver.²⁵ 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”).²⁶

²⁰ *Id.*

²¹ 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>.

²² Ctr. For Systems Science and Engineering, *COVID-19 Dashboard*, JOHNS HOPKINS UNIVERSITY, <https://coronavirus.jhu.edu/map.html> (last accessed June 16, 2020).

²³ 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.

²⁴ 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 accessed June 16, 2020).

²⁵ 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 accessed June 16, 2020).

²⁶ 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)

34. COVID-19 is far deadlier than the seasonal flu, including in countries with advanced healthcare systems.²⁷

35. 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 ages of 65 and 84 and a 10-27% mortality rate for adults 85 years old or older.²⁸ 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.²⁹

36. 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.³⁰ 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

<https://time.com/5823983/coronavirus-ppe-shortage/>.

²⁷ Betsy McKay, *Coronavirus vs. Flu Which Virus is Deadlier*, WALL ST. J. L. (Mar. 10, 2020, 12:49PM), <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.”).

²⁸ 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 accessed June 16, 2020).

²⁹ 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 accessed June 16, 2020).

³⁰ 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/>.

something that would be a bit of a bridge too far.”³¹

37. 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 immunity to the virus will last.³² 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.³³

38. 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.³⁴ 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

³¹ 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/>.

³² 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>.

³³ 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>.

³⁴ 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”).³⁵ 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.”³⁶

39. 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.”³⁷

40. 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.”³⁸

41. 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.³⁹ And on 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,

³⁵ Ctrs. for Disease Control & Prevention, *supra* note 5.

³⁶ *Id.*

³⁷ Ctrs. for Disease Control & Prevention, *supra* note 6.

³⁸ 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).

³⁹ Anthony Man, *Two Broward poll workers, including one who handled voters’ driver licenses, test positive for coronavirus*, S. FLA. SUN SENTINEL (Mar. 26, 2020), <https://www.sun-sentinel.com/coronavirus/flnebrowardelectionspollworkerscoronavirus20200326wmgy775dvjc5jis2oagxlpmlule-story.html>

field investigators, and cartage companies who were present at the same polling site.⁴⁰

42. Elections held on April 7 in Wisconsin saw multi-hour waits and lines stretching blocks upon blocks in places like Milwaukee and Green Bay.⁴¹ 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.”⁴² 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.”⁴³ On May 5, the Milwaukee County COVID-19 Epidemiology Intel Team issued a report stating 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.”⁴⁴ And of those individuals, 29 “did not have any other known potential exposures to COVID-19.”⁴⁵ The report also cautioned that “[d]ue to limitations in

⁴⁰ 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/>.

⁴¹ 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>.

⁴² 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-hurteffort-flatten-curve/2961718001/> (quoting Wisconsin Department of Health Services Secretary Andrea Palm).

⁴³ 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>.

⁴⁴ 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>.

⁴⁵ *Id.* at 5.

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.”⁴⁶

COVID-19 in Arkansas: An Escalating State of Emergency

43. The COVID-19 pandemic has deeply affected the Natural State. As of June 22, 2020, the State had 16,083 confirmed cases in the state and more than 227 Arkansans have died because of the disease.

44. On March 11, 2020, Governor Hutchinson issued an Executive Order under Arkansas Code Annotated § 12-75-114 and § 20-7-110 declaring an emergency and ordering the Arkansas Department of Health to take action to prevent the spread of COVID-19. This executive order noted that COVID-19 “threaten[s] the public safety of the citizens of Arkansas.”⁴⁷

45. On May 5, 2020, Governor Hutchinson issued Executive Order 20-25 extending the state of emergency declared in Executive Order 20-03 another 45 days, among other directives.⁴⁸

46. On June 18, 2020, Governor Hutchinson issued Executive Order 20-37 extending the state of emergency declared in Executive Order 20-03 another 60 days, among other directives.⁴⁹

47. The State of Arkansas maintains a website providing “COVID-19

⁴⁶ *Id.* at 4.

⁴⁷ Governor of Arkansas, Exec. Order No. 20-03, (Mar. 11, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-03._.1.pdf

⁴⁸ Governor of Arkansas, Exec. Order No. 20-25, (May 5, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-25._.pdf

⁴⁹ Governor of Arkansas, Exec. Order No. 20-37, (June 18, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-37.pdf

Information” which “urge[s]” people to use “social distancing, good hand hygiene, covering coughs and staying home if you are sick.”⁵⁰

48. COVID-19 is such a threat to Arkansans, that Governor Hutchinson has taken extraordinary measures through at least twenty-seven (27) executive orders dealing with issues related to COVID-19, including Executive Orders to alter the state’s legal system and protect businesses from liability related to COVID-19⁵¹; to allow corporations and banks to hold shareholder meetings by remote communication⁵²; and to dispense with in-person witnessing and notarization of legal documents, among other orders.⁵³

49. Governor Hutchinson recognized the danger COVID-19 presents to in-person voting when he issued two Executive Orders to allow for no-excuse absentee ballot voting during special elections held on May 12, 2020.⁵⁴

50. Governor Hutchinson’s executive orders allowing no-excuse absentee ballot voting for special elections in May specifically suspended provisions of Arkansas Code Annotated § 7-5-402 that require qualified electors to be “unavoidably absent or unable to attend an election due to illness or physical disability.” The Executive Orders allowed “all eligible qualified electors currently entitled to vote in the May 12, 2020, election [to] request the

⁵⁰ COVID-19 Information, Ark. Gov’t., https://govstatus.egov.com/ar-covid-19?_ga=2.178257703.349491746.1592254455-932252297.1580878946 (last accessed June 16, 2020).

⁵¹ Governor of Arkansas, Exec. Order No. 20-33, (June 15, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-33.pdf

⁵² Governor of Arkansas, Exec. Order No. 20-15, (Apr. 4, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-15_.pdf

⁵³ Governor of Arkansas, Exec. Order No. 20-14, (Apr. 9, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-14_.pdf

⁵⁴ Governor of Arkansas, Exec. Order No. 20-23, (Apr. 24, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-23_.pdf; Governor of Arkansas, Exec. Order No. 20-26, (May 7, 2020), https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-26_.pdf

appropriate absentee ballots from their county of residence.”

51. Since Governor Hutchinson’s early Executive Orders declaring a state of emergency and implementing social distancing and limited group gatherings, among other directives, COVID-19 cases in Arkansas have skyrocketed.

52. Scientists and Doctors are declaring that “We’re about to see hospital systems in states like Arkansas. . . . begin to experience what we did in New York, with facilities being overwhelmed by this epidemic” and “stating that Arkansas is in a “serious public health emergency” due to “significant’ increase in community spreading of the virus.”⁵⁵

53. On June 10, 2020, the Chief Operating Officer of the Washington Regional Medical System, Birch G. Wright, issued a letter noting that the hospital has “seen the number of hospitalizations double every week” since May 12.⁵⁶

54. The Secretary of State of Arkansas has received at least \$4,703,886 in CARES act relief for use for the 2020 Federal Election Cycle from the U.S. Election Assistance Commission under the Grant Award Agreement Number AR20101CARES.⁵⁷ The cost of mailing and return mail for absentee ballots would be an appropriate use of this money.

⁵⁵ Olivia Messer, “‘All of a Sudden It Blows Up’: Arkansas’ COVID Problem Is Just Getting Started,” The Daily Beast, June 15, 2020, <https://www.thedailybeast.com/arkansas-covid-problem-is-just-getting-started-all-of-a-sudden-it-blows-up>

⁵⁶ Wright, Birch G., MPA, COO, Washington Reg’l Med’l System, Letter and Statement, June 10, 2020, *available at* https://wehco.media.clients.ellingtoncms.com/news/documents/2020/06/10/Statement_from_Birch_Wright_6.10.20.pdf, (last accessed June 16, 2020).

⁵⁷ John Thurston, Letter U.S. Election Assistance Commission, April 7, 2020, *available at* https://www.eac.gov/sites/default/files/paymentgrants/cares/AR_CARES_Disbursement_RequestLetter.pdf; Michael Wickline, *Counties to Get Help for Election 2020*, Ark. Dem. Gaz. (April 30, 2020), <https://www.arkansasonline.com/news/2020/apr/30/counties-to-get-help-for-election-20200/?news-arkansas>

Absentee Ballot Voting in Arkansas

55. The general election is set to take place in Arkansas on November 3, 2020.

56. Voters who wish to vote absentee during the November election must request an absentee ballot from the office of the county clerk of the county of residence of the voter. Ark. Code Ann. § 7-5-404. To request an absentee ballot, voters must complete a statutorily prescribed application form requesting an absentee ballot, *see* Ark. Code Ann. § 7-5-405, or she may make an application for an absentee ballot by (i) submitting a letter to the office of the county clerk with sufficient information allowing the county board of election commissioners to accept the letter in lieu of the application form; or (ii) transmitting a written request by electronic means that shall contain the voter's signature and other information sufficient for acceptance in lieu of the application form. Ark. Code Ann. § 7-5-404.

57. But not all voters who wish to vote absentee are permitted to do so.

58. Instead, Arkansas has restricted absentee voting to a subset of voters who fall into one of the following statutorily defined categories:

- “Any person who will be unavoidably absent from his or her voting place on the day of the election;” Ark. Code Ann. § 7-5-402(1).
- “Any person who will be unable to attend the polls on election day because of illness or physical disability.” Ark. Code Ann. § 7-5-402(2).
- “You are a member of the Uniformed Services, merchant marines or the spouse or a dependent family member and are away from your polling location due to the member's active duty status,”⁵⁸ *see* Ark. Code Ann. § 7-5-406.
- “A U.S. citizen whose residence is in Arkansas but is temporarily living outside the territorial limits of the United States.”⁵⁹ *See* Ark. Code Ann. § 7-5-406.

⁵⁸ Ark. Sec. of State, “Absentee Voting,” <https://www.sos.arkansas.gov/elections/voter-information/absentee-voting>, (last accessed June 16, 2020).

⁵⁹ *Id.*

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

60. “Applications for absentee ballots may be made on a form or forms prescribed by the Secretary of State and furnished by the county clerk at least sixty (60) days before the election.” Ark. Code Ann. § 7-5-405.

61. The Application forms or other requests for absentee ballots “shall contain,” among other information, “A statement in which the voter must indicate that he or she is requesting an absentee ballot because he or she will be (i) Unavoidably absent from the polling site on election day; (ii) Unable to attend the polls on election day because of illness or physical disability; or (iii) Unable to attend the polls on election day because of residence in a long-term care or residential facility licensed by the state.” Ark. Code Ann. § 7-5-405.

62. The Application form or other request for absentee ballots “shall contain . . . The following statement: “IF YOU PROVIDE FALSE INFORMATION ON THIS FORM, YOU MAY BE GUILTY OF PERJURY AND SUBJECT TO A FINE OF UP TO \$10,000 OR IMPRISONMENT FOR UP TO 10 YEARS.” Ark. Code Ann. § 7-5-405.

63. 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. Baker and Mr. Neal, 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 absentee ballot. Instead, to exercise their right to vote, they must risk their health and the health of those with whom they live and vote in person.

64. No later than seventy-five (75) days before the general election, or August 20, 2020, for this year’s general election, the Secretary of State, county clerks, and municipal

clerks shall provide a full list of all candidates and issues to the County Board of Election Commissioners. Ark. Code § 7-5-203(b)(1); Ark. Code § 7-5-203(a)(1); Ark. Code § 14-47-110(a)(3)(D)(i); § 14-42-206(b)(2)(B)(ii).

65. No later than sixty (60) days before the general election, or September 4, 2020, for this year's general election, County Clerks are required to make available absentee ballot application forms. Ark. Code Ann. § 7-5-405(a)(1).

66. The county board of election commissioners shall prepare and deliver absentee ballots to the county clerk no later than forty-seven (47) days, or September 17, 2020, before this year's general election. Ark. Code Ann. § 7-5-407.

67. "Upon receiving the blank absentee ballot, voter statement, and envelopes, whether in the office of the county clerk or elsewhere, the voter shall mark the absentee ballot and place the absentee ballot in the provided envelope. He or she shall then seal the envelope containing the absentee ballot and place it in the other provided outer envelope" Ark. Code §7-5-412.

68. The outer envelopes provided by the offices of the county clerks in Arkansas state that paid postage in the form of three (3) first-class stamps is required for a voter to send the outer envelope and its contents, including the voter's ballot and required materials, via mail to the office of the county clerk for the canvassing and counting of the ballot.

***Arkansas's Excuse Requirements Unduly and Unreasonably Burden
the Voting Rights of Arkansans***

69. Historically, most voters in Arkansas vote in person. For most voters, that means physically appearing at a designated polling site 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-19.⁶⁰

70. Meaningful opportunities to vote in person are still necessary to many Arkansas voters. To prevent viral spread at needed in-person sites, the CDC instructs that Arkansas 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.⁶¹

71. Given that “a year to 18 months is [a] very optimistic” timeline for the availability of a safe vaccine for the illness,⁶² 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.

72. But, as currently construed, the Arkansas excuse requirements do not recognize practicing Social Distancing Measures and/or self-quarantining as a valid reason for voting by absentee ballot.

73. Accordingly, the absentee ballot excuse requirements severely burden 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.

74. In other words, as currently construed, the absentee ballot excuse requirements will likely disenfranchise tens or hundreds of thousands of Arkansans.

75. Because Arkansas already affords an excuse to eligible voters who

⁶⁰ See, e.g., Miller, *supra* note 8.

⁶¹ Ctrs. for Disease Control & Prevention, *supra* note 7.

⁶² Ercolano, *supra* note 30.

“will be unavoidably absent from his or her voting place on the day of the election;” and “who will be unable to attend the polls on election day because of illness or physical disability,” Ark. Code Ann. § 7-5-402, Defendant could reasonably interpret the statute to include all voters.

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

77. 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] 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- 53-2–153-53-3.⁶³ 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.

78. 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

⁶³ 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>.

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.”⁶⁴

79. 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.⁶⁵ 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.”⁶⁶

80. In Tennessee, a state court Judge held that Tennessee officials must expand access to voting by mail in Tennessee during the pandemic and that the evidence did not support the State’s claims that it was impossible for it to provide expanded access to voting by mail. The court concluded “that the State’s restrictive interpretation and application of

⁶⁴ 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).

⁶⁵ *See Absentee Voting*, Va. Dep’t of Elections, <https://www.elections.virginia.gov/casting-a-ballot/absentee-voting/> (last accessed June 16, 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).

⁶⁶ 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>.

Tennessee's voting by mail law . . . during the unique circumstances of the pandemic, constitutes an unreasonable burden on the fundamental right to vote guaranteed by the Tennessee Constitution."⁶⁷

COUNT I: DECLARATORY JUDGMENT
UNDER ARK. CODE ANN § 16-111-101, ET SEQ

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

82. Plaintiffs' rights, status, and other legal relations are affected by a question of construction under Ark. Code Ann. § 7-5-402 and the Arkansas Constitution, and Plaintiffs hereby seek a declaration of rights thereunder.

83. Arkansas Code Annotated section 7-5-402 states: "The following persons, if possessing the qualifications of electors, may cast an absentee ballot in any election: (1) Any person who will be unavoidably absent from his or her voting place on the day of the election; and (2) Any person who will be unable to attend the polls on election day because of illness or physical disability."

84. Further, the Arkansas Constitution states that "Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted whereby such right shall be impaired or forfeited, except for the commission of a felony, upon lawful conviction thereof." AR Const., art. 3, sec. 2.

85. The excuse requirements and penalty of perjury in Ark. Code Ann. § 7-5-402 and Ark. Code Ann. § 7-5-405 are unconstitutional burdens on voters' fundamental rights to suffrage under Article 3, Section 2 of the Arkansas Constitution, on their face and as applied to

⁶⁷ Hunter v. Goins, Davidson Co. Chancery Ct., Case No. 20-0435-I(III), June 4, 2020, *available at* <https://www.aclu.org/legal-document/order-lay-v-goins>

plaintiffs, because the excuse and penalty requirements interfere with voters' free exercise of the right of suffrage and they impair and threaten forfeiture of voters' fundamental rights to suffrage.

86. In *Forrest v. Baker*, 287 Ark. 239 (1985), the Arkansas Supreme Court held that voters are not required to explain in detail or provide any certain information as a "reason" to vote by absentee ballot. The Court stated: "We do not believe the legislature meant for an absentee voter to explain in detail the 'reason' for being absent on election day. If a real and convincing 'reason' should be required, then it follows that someone would have to judge the sufficiency of that reason. Such a procedure could easily result in an elector being compelled to divulge personal secrets in order to exercise his constitutional right to suffrage." *Forrest*, 287 Ark. 239, 242.

87. The Court in *Forrest* upheld absentee ballots when the voters stated they were "unable to get to poll" in the application for the absentee ballot, when voters stated that "work" was the reason for being unavoidably absent, when a voter stated "My age, I cannot get there" as his reason for applying for an absentee ballot, and when a voter stated "sickness in the family" as the reason for being unavoidably absent.

88. The Arkansas Supreme Court held in *Forrest* that any and all reasons or excuses are valid, legitimate excuses for an Arkansas Citizen to be unavoidably absent to vote absentee.

89. Plaintiffs request the Court to issue a declaratory judgment finding that Arkansas law, as interpreted by the Supreme Court of Arkansas, allows voters to use any and all reasons or excuses to receive and vote by absentee ballot.

90. Alternatively, plaintiffs request the Court to issue a declaratory judgment finding that under Arkansas law, as interpreted by the Supreme Court of Arkansas, fear of

contracting COVID-19 by itself is a valid excuse for receiving an absentee ballot and voting absentee.

91. Alternatively, Plaintiffs request the Court to issue a declaratory judgment finding that Arkansas Code Annotated sections 7-5-402 and -405 violate Arkansans' fundamental right to suffrage in Article 3, Section 2 of the Arkansas Constitution and, therefore, issue a declaratory judgment that the State of Arkansas shall not require any excuse or reason for a qualified elector to vote absentee.

**COUNT II. VIOLATION OF THE FUNDAMENTAL RIGHT TO VOTE
AND TO FREE AND EQUAL ELECTIONS UNDER
ARTICLE 3, SECTION 2 OF THE ARKANSAS CONSTITUTION**

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

93. Further, the Arkansas Constitution states that "Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted whereby such right shall be impaired or forfeited, except for the commission of a felony, upon lawful conviction thereof." AR Const., art. 3, sec. 2.

94. The excuse requirements and penalty of perjury in Ark. Code Ann. § 7-5-401, *et seq.* are unconstitutional burdens on voters' fundamental rights to suffrage under Article 3, Section 2 of the Arkansas Constitution, on their face and as applied to plaintiffs, because the excuse and penalty requirements interfere with voters' free exercise of the right of suffrage and they impair and threaten forfeiture of voters' fundamental rights to suffrage.

95. Arkansas Code Annotated section 7-5-401, *et seq.*, as currently construed and enforced by State Officials, will likely prevent tens or hundreds of thousands of eligible voters from casting ballots. Under these circumstances, the excuse requirements for absentee

ballot voting under the Arkansas code, as currently construed and enforced, will thus deny the fundamental right to vote guaranteed by the Arkansas Constitution.

96. Therefore, Defendant, acting under color of state law, have and will continue to deprive Plaintiffs of rights secured to them by Article 3, Section 2 of the Arkansas Constitution.

COUNT III: INJUNCTIVE RELIEF

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

98. Plaintiffs seek a preliminary injunction and a permanent injunction because absent same, Plaintiffs will suffer irreparable harm and Plaintiffs lack an adequate remedy at law to compensate Plaintiffs for Defendant's conduct and actions.

99. Plaintiffs request the Court to enjoin Defendant from enforcing any requirement that a voter wishing to vote absentee provide a reason or excuse under Arkansas law, including but not limited to Arkansas Code Annotated sections 7-5-402 and -405.

100. Alternatively, Plaintiffs request the Court to enjoin Defendant from enforcing the excuse and penalty of perjury requirements in Ark. Code Ann. § 7-5-401, *et seq.* to prevent from absentee ballot voting 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; any eligible voter who is at a higher risk of complications should they contract COVID-19; any eligible voter who is fearful of contracting COVID-19; and/or any eligible voter who provides any excuse or reason whatsoever for desiring to vote absentee.

101. Plaintiffs request the Court order Defendant to pay for postage to mail and to return ballots from the COVID relief money granted to Defendant and/or to provide the

availability of drop boxes across the state where eligible voters who desire to vote absentee may deliver their ballots.

102. Plaintiffs will suffer irreparable harm by Defendant's interpretation and enforcement of Ark. Code Ann. § 7-5-401, *et seq.* because Defendant's will exclude Plaintiffs from voting absentee under the excuse requirements of the statutes and force Plaintiffs to either forgo their fundamental right to vote or to risk their physical and mental wellbeing, lives or the lives of loved ones by voting in person at a polling site where they are at risk of contracting COVID-19.

103. Defendant bear no corresponding risk. Defendant already permit certain people to vote absentee and preventing Plaintiffs and/or all registered voters, regardless of age and physical condition, from voting absentee is unreasonable. Such enforcement of the statute is especially unreasonable during a global pandemic. Defendant have ample time and resources to allow voters, including Plaintiffs, to vote absentee regardless of age, physical condition, or any "reason" or "excuse." Defendant have received resources and funding from the Federal government that they can and should use for these purposes, to prepare for increased demand of absentee ballots. Any increased burdens on Defendant pale in comparison to the fundamental right of suffrage of Arkansas voters and Plaintiffs.

104. Plaintiffs have demonstrated a likelihood of success on the merits as discussed above because the Arkansas Supreme Court has interpreted the excuse requirements in Arkansas Code Annotated Section 7-5-401, *et seq.* to allow for any and all "reasons," because the Arkansas Supreme Court has ruled that Article 3, Section 2 of the Arkansas Constitution prohibits the State from requiring any reason for receiving an absentee ballot, and because Defendant enforcement of the excuse requirements in Ark. Code. Ann. § 7-5-401, *et seq.*, as

interpreted by Defendant, would interfere, impede, and/or require the forfeiture of Arkansans' fundamental right to suffrage in violation of Article 3, Section 2 of the Arkansas Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the Court to:

A. Declare that Arkansas law allows voters to use any and all reasons or excuses to receive and vote by absentee ballot.

B. Alternatively, declare that fear of contracting COVID-19 by itself is a valid excuse for receiving an absentee ballot and voting absentee under Arkansas law.

C. Alternatively, declare that Defendant's construction and enforcement of the excuse requirements in Arkansas Code Annotated section 7-5-401, *et seq.* (as stated in Ark. Code Ann. §§ 7-5-402 and -405) for the 2020 election calendar or for all elections violates the fundamental right to vote under the Arkansas Constitution, Article 3, Section 2.

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

1. Prohibiting Defendant from enforcing the excuse and penalty of perjury requirements (as stated in Ark. Code Ann. §§ 7-5-402, -405) and thus prohibiting Defendant from preventing

- 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; and/or
- any eligible voter who is fearful of contracting COVID-19

to request, receive, and have counted an absentee ballot by mail at least for the 2020 election

calendar;

2. Ordering Defendant to modify election materials, including absentee applications to reflect the elimination and/or modification of the excuse requirements;

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

4. Ordering Defendant to mail absentee ballot request applications to all eligible, registered voters in Arkansas.

5. Ordering Defendant to pay from COVID-19 relief money for the mailing of absentee ballots from county clerks to voters and to pay for the return mail of the absentee ballots from voters to the clerks.

6. Ordering Defendant to issue appropriate guidance to city and county election officials.

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

F. Plaintiffs do not seek monetary damages for any of its claims. Plaintiffs seek only equitable relief, including, but not limited to, declaratory judgment, as well as any other appropriate and just relief.

Respectfully submitted,

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