

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Mary T. Thomas, *et al.*,

Plaintiffs,

v.

Marci Andino, *et al.*,

Defendants.

No.: 3:20-cv-01552-JMC

**STATE ELECTION COMMISSION
DEFENDANTS' ANSWER TO
COMPLAINT**

John Wells, Clifford J. Edler and Scott Moseley (collectively “Commission”) and Andino (“Andino” or “Executive Director”) (collectively the Commission and Andino are referred to as the “Election Defendants”), all of whom have been sued in their official capacities with the State Election Commission, submit this answer to the Complaint:

PRELIMINARY STATEMENT

The Election Defendants deny that the Plaintiffs are entitled to any relief. Neither the facts nor the law supports their claims. The Plaintiffs challenge two of South Carolina’s long standing absentee-voting requirements—S.C. Code § 7-15-320 (“Qualification Requirement”) and S.C. Code §§ 7-15-220 and 7-15-380 (“Witness Requirement”)—based solely on the effect they allege COVID-19 will have on a qualified elector’s ability to vote absentee as opposed to in person.

Section 7-15-320 allows an otherwise qualified elector to qualify to vote absentee (by mail or in person at an approved site before Election Day) if the voter qualifies for one of the fifteen listed categories. The Plaintiffs allege, that in the face of COVID-19, S.C. Code § 3-15-320 “unreasonably burdens their fundamental

right to vote” when following Governor McMaster’s “home or work” order and practicing social distancing.

Sections 7-15-220 and 7-15-380 require a person voting by absentee mail in ballot to have his or her oath of office witnessed. Again, in light of COVID-19, the Plaintiffs allege that the Witness Requirement is a constitutionally unreasonable requirement and is a test or device that violates Sections (3)(b) and 201 of the Voting Rights Act.

It is only the advent of COVID-19 that has brought these legal challenges to the long held and, until now, unchallenged provisions of South Carolina law.

The Commission, as a state agency, and Andino, as its Executive Director, have only the statutory authority expressly conferred or necessarily implied for it to effectively fulfill the duties they have been given by the General Assembly. As an executive branch of state government, neither the Commission nor Andino have the authority to modify the plain meaning of statutes or to add to or otherwise modify statutes, particularly not on a temporary basis, as requested in this case.

FOR A FIRST DEFENSE

Each allegation not specifically admitted in this Answer is expressly denied. The headings in the First Defense are quotations from the Complaint and are included solely for ease of reference. To the extent any of these heading contain an allegation against these Election Defendants, the allegations are denied.

In response to the Paragraphs in the Complaint:

1. Paragraph 1 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 1 contains factual allegations against any the extent Paragraph 1 references, describes, or depends on the March 15, 2020 “Updates, Securing South Carolina Elections, SC votes.org” from the South Carolina Election Commission, the Election Defendants crave reference to the cited website and deny any inconsistent allegations or characterizations. To the extent Paragraph 1 relies on Governor McMaster’s “home or work” order, Governor McMaster lifted the “home and work” order effective May 4, 2020, and the Election Defendants crave reference to Governor McMaster’s Executive Order 2020-31 and deny any inconsistent allegations or characterizations. To the extent Paragraph 1 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

2. Paragraph 2 of the Complaint is denied.

3. Paragraph 3 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 3 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 3 relies on S.C. Code § 7-15-320, Election Defendants crave reference to section 7-15-320 and deny any inconsistent allegations or characterizations. To the extent Paragraph 3 contains factual

allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. The Election Defendants aver that the provision of S.C. Code § 7-15-320 set forth qualification requirements for a South Carolina elector to available himself or herself of the absentee ballot requirements of the State's Election Laws. As to the second sentence of Paragraph 3, the Election Defendants admit that if a duly registered voter does not qualify under one of the requirements listed in sections 7-15-110 or 7-15-320, the voter has to vote in person on Election Day.

4. Paragraph 4 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 4 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 4 relies on S.C. Code § 7-15-220, section 3(b) and 201 of the Voting Rights Act, the Election Defendants crave reference to section 7-15-220, section 3(b) and 201 of the Voting Rights Act and deny any inconsistent allegations or characterizations. To the extent Paragraph 4 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

5. Paragraph 5 of the Complaint is denied. To the extent Paragraph 5 of the Complaint relies on data from the U.S. Census Bureau, the Election

Defendants crave reference to the website cited in footnote 3 and deny any inconsistent allegations or characterizations.

6. Paragraph 6 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 6 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 6 relies on section 2 of the Voting Rights Act, the Election Defendants crave reference to section 2 of the Voting Rights Act and deny any inconsistent allegations or characterizations. To the extent Paragraph 6 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

7. Paragraph 7 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 7 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 7 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

8. Paragraph 8 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 8 contains factual allegations against

any of these Election Defendants to which a response is required, the allegations are denied. To the extent that Paragraph 8 relies on S.C. Code § 7-15-310, the Election Defendants crave reference to section 7-15-310 and deny any inconsistent allegations or characterizations. To the extent Paragraph 8 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 8 relies on actions by states other than the State of South Carolina, Election Defendants crave reference to the laws of the State of South Carolina. Only the Generally Assembly of South Carolina has the authority to “remedy” the laws of this State.

9. Paragraph 9 of the Complaint, Election Defendants admit that “election integrity is a critical interest.” As to the remainder of the first sentence of Paragraph 9 and the remainder of the Paragraph, they consist of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 9 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 9 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 9 relies on actions by states other than the State of South Carolina, the Election Defendants crave reference to the laws of the State of South Carolina.

10. As to Paragraph 10, it consists of the Plaintiffs' legal conclusions, to which no response is required, and request for relief, which the Election Defendants assert should be denied.

PARTIES

11. As to Paragraph 11, the Election Defendants admit that Plaintiff Nea Richard is a registered voter in her hometown of Cross Hill, South Carolina. As to the remaining allegations of the Paragraph, the Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore, they are denied.

12. As to Paragraph 12, the Election Defendants admit that Plaintiff the Reverend Jeremy Rutledge is a registered voter in Charleston County. As to the remaining allegations of the Paragraph, the Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore, they are denied.

13. As to Paragraph 13, the Election Defendants admit that Plaintiff Mary Thomas is a registered South Carolina voter. As to the remaining allegations of the Paragraph, the Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore, they are denied.

14. As to Paragraph 14, the Election Defendants admit that Plaintiff Trena Walker is a registered South Carolina voter. As to the remaining allegations of the Paragraph, the Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore, they are denied.

15. As to Paragraph 15, the Election Defendants admit that Plaintiff Dr. Brenda Williams, MD is a registered voter in Sumter County. As to the remaining allegations of the Paragraph, the Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore, they are denied.

16. As to Paragraph 16, the Election Defendants admit that Plaintiff Family Unit, Inc. is an entity incorporated in South Carolina. As to the remaining allegations of the Paragraph, the Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore, they are denied.

17. As to Paragraph 17, the Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations and therefore, they are denied.

18. As to Paragraph 18, the Election Defendants admit Andino is the executive director of and the chief administrative officer for the State Election Commission and sued in her official capacity. As to Andino's duties and responsibilities Election Defendants crave reference to S.C. Code § 7-3-20(C), which proscribes the Executive Director's duties and responsibilities¹ and deny any

¹ The Executive Director's duties include, but are not limited to, supervising the conduct of the county boards of elections and voter registration (County Boards); maintaining a complete master list of qualified voters by county and precinct; furnish each County Board with a master list of all registered voters in the county at least ten days prior to each election; and serve as the chief state election official for implementing and coordinating the State's responsibilities

inconsistent allegations or characterizations. As a statutorily created position, the executive director possesses only those powers expressly conferred or necessarily implied for her effectively to fulfill the duties with which she is charged.

19. As to Paragraph 19, the Election Defendants admit that John Wells is the Chair of the South Carolina Election Commission and is sued in his official capacity. The Election Defendants admit that Clifford J. Edler and Scott Moseley are members of the South Carolina Election Commission and are sued in their official capacities. The Election Defendants aver that Governor McMaster appointed JoAnn Day and Linda McCall on April 28, 2020 to fill the two vacancies on the Commission. As to the remaining allegations of the Paragraph, the Election Defendants crave reference to S. C. Code § 7-3-20 and the website cited in footnote 7 of the Paragraph and deny any inconsistent allegations or characterizations. “As a creature of statute, a regulatory body is possessed of only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged.” *Captain’s Quarters Motor Inn, Inc. v. S.C. Coastal Council*, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991); *see also S.C. Coastal Conservation League v. S.C. Dep’t of Health & Envtl. Control*, 363 S.C. 67, 74, 610 S.E.2d 482, 485 (2005). The Commission has only that statutory authority granted to it by the General Assembly of South Carolina.

under the National Voter Registration Act of 1993 and for the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). S.C. Code § 7-3-20(C).

20. As to Paragraph 20, the Election Defendants admit that Henry D. McMaster is the Governor of South Carolina. To the extent that the remaining allegations of Paragraph 20 rely on Article IV, § 1 of the Constitution of South Carolina and S.C. Code § 1-3-430, the Election Defendants crave reference to Article IV, § 1 of the Constitution of South Carolina and S.C. Code § 1-3-430 and deny any inconsistent allegations or characterizations.

JURISDICTION AND VENUE

21. Paragraph 21 of the Complaint is a statement of the Plaintiffs' legal contentions to which no response is required. These Election Defendants do not contest whether this Court's subject matter jurisdiction is proper. The Election Defendants crave reference to 42 U.S.C. §§ 1983 and 1988 and 52 U.S.C. §§ 10301, 10302(b), and 10501.

22. Paragraph 22 of the Complaint is a statement of the Plaintiffs' legal contentions to which no response is required. These Election Defendants do not contest whether this Court has personal jurisdiction over the Election Defendants in their official capacities.

23. Paragraph 23 of the Complaint is a statement of the Plaintiffs' legal contentions to which no response is required. These Election Defendants do not contest whether declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, but deny that declaratory relief is proper in this case.

24. Paragraph 24 of the Complaint is a statement of the Plaintiffs' legal contentions to which no response is required. These Election Defendants do not contest whether this Court's and venue is proper under 28 U.S.C. § 1391(b)(2).

STATEMENT OF FACTS

I. Transmission of COVID-19 and Public Health Guidelines

25. Paragraph 25 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 25 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 25 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 25 relies on information from the United States Centers for Disease Control and Prevention (CDC) cited in footnote 8 to Paragraph 25, the Election Defendants crave reverence to the cited website and deny any inconsistent allegations or characterizations.

26. Paragraph 26 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 26 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 26 contains factual allegations about another

person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

27. Paragraph 27 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 27 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 27 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 27 relies on information from the CDC cited in footnote 12 to Paragraph 27, the Election Defendants crave reverence to the cited website and deny any inconsistent allegations or characterizations.

28. Paragraph 28 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 28 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 28 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

29. Paragraph 29 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 29 contains factual allegations against

any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 29 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 29 relies on information from the CDC cited in footnotes 14 and 15 to Paragraph 29, the Election Defendants crave reverence to the cited websites and deny any inconsistent allegations or characterizations.

30. Paragraph 30 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 30 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 30 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

31. Paragraph 31 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. The Election Defendants admit that the CDC has issued guidance informing individuals to avoid public gatherings and crave reference to the CDC's public guidance and deny any inconsistent allegations or characterizations. To the extent Paragraph 31 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 31 contains factual allegations about another

person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

32. Paragraph 32 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 32 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 32 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 32 relies on the CDC guidelines referenced in footnote 21 of the Paragraph 32, the Election Defendants crave reference to the cited website and deny any inconsistent allegations or characterizations.

33. Paragraph 33 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 33 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 33 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 33 relies on the CDC guidelines referenced in footnote 22 of the Paragraph 33, the Election Defendants crave reference to the cited website and deny any inconsistent allegations or characterizations.

34. Paragraph 34 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 34 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 34 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

35. Paragraph 35 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 35 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 35 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

II. COVID-19 in South Carolina

36. Paragraph 36 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 36 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 36 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

37. Paragraph 37 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 37 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 37 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

38. Paragraph 38 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 38 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 38 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 38 relies on information from South Carolina Department of Health and Environmental Control (“DHEC”) cited in footnote 33 of Paragraph 38, the Election Defendants crave reference to the cited website and deny any inconsistent allegations or characterizations.

39. Paragraph 39 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 39 contains factual allegations against any of these Election Defendants to which a response is required, the allegations

are denied. To the extent Paragraph 39 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 39 relies on information from DHEC cited in footnote 34 of Paragraph 39, the Election Defendants crave reference to the cited website and deny any inconsistent allegations or characterizations.

40. Paragraph 40 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 40 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 40 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 40 relies on Governor McMaster's Executive Orders, the Election Defendants crave reference to the Executive Orders issued by Governor McMaster. To the extent Paragraph 40 relies on Executive Order 2020-11, the Election Defendants crave reference to the website cited in footnote 35 and deny any inconsistent allegations or characterizations. The Election Defendants aver that Governor McMaster lifted the "Home or Work" order in Executive Order 2020-31.

41. The Election Defendants admit that Governor McMaster issued Executive Order No. 2020-08 declaring a State of Emergency in South Carolina and crave reference to Executive Order No. 2020-08 and deny any inconsistent

allegations or characterizations. The Election Defendants admit that President Donald J. Trump proclaimed a National Emergency and crave reference to Proclamation No. 9994, 85 Fed. Reg. 15337 (2020), and deny any inconsistent allegations or characterizations.

42. The Election Defendants admit that Governor McMaster issued Executive Order No. 2020-9 directing the closure of public school in South Carolina and crave reference to Executive Order No. 2020-9 and the website cited in footnote 38 of Paragraph 42 and deny any inconsistent allegations or characterizations.

43. The Election Defendants admit that Governor McMaster issued Executive Order No. 2020-9 postponed or rescheduled certain elections scheduled to be held in the state on or before May 1, 2020 directed the State Election Commission to ensure that candidate filing periods and voter registration continue and crave reference to Executive Order No. 2020-9 and the website cited in footnotes 39 and 40 of Paragraph 43 and deny any inconsistent allegations or characterizations.

44. The Election Defendants admit that President Trump approved a major disaster declaration for South Carolina and crave reference to the website cited in footnote 41 of Paragraph 44 and deny any inconsistent allegations or characterizations.

45. The Election Defendants admit that Governor McMaster issued Executive Order No. 2020-15 and crave reference to Executive Order No. 2020-15

issued on March 28, 2020 and the website cited in footnote 42 of Paragraph 45 and deny any inconsistent allegations or characterizations.

46. The Election Defendants admit that Governor McMaster issued Executive Order No. 2020-17 on March 31, 2020 directing the closure of “non-essential” business, which “non-essential” business were enumerated by Executive Order No. 2020-18, issued on April 4, 2020 and crave reference to Executive Orders No. 2020-17 and 2020-18 and the website cited in footnotes 43 of Paragraph 46 and deny any inconsistent allegations or characterizations.

47. The Election Defendants admit Governor McMaster issued Executive Order No. 2020-21 mandating that “[a]ll South Carolinians remain at home or work unless visiting family, exercising or obtaining goods or services” on April 6, 2020 (“Home or Work Order” or “Executive Order No. 2020-21”) and crave reference to Executive Orders No. 2020-21 and the website cited in footnotes 44 and 45 of Paragraph 47 and deny any inconsistent allegations or characterizations.

48. Paragraph 48 of the Complaint consists of conclusions, editorial comments, and generalizations about Governor McMaster’s Home and Work Order rather than allegations of fact. To the extent Paragraph 48 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 48 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 48 relies on Governor McMaster’s Home or

Work Order, the Election Defendants crave reference to Executive Order 2020-21
crave reference to the website cited in footnotes 46 and 47 in Paragraph 48 and
deny any inconsistent allegations or characterizations.

49. Paragraph 49 of the Complaint consists of conclusions, editorial
comments, and generalizations about Governor McMaster's Home and Work Order
rather than allegations of fact. To the extent Paragraph 49 contains factual
allegations against any of these Election Defendants to which a response is
required, the allegations are denied. To the extent Paragraph 49 contains factual
allegations about another person or entity, these Election Defendants lack
knowledge or information sufficient to form a belief as to the truth of the
allegations. To the extent Paragraph 49 relies on Governor McMaster's Home or
Work Order, the Election Defendants crave reference to Executive Order 2020-21
crave reference to the website cited in footnote 48 in Paragraph 49 and deny any
inconsistent allegations or characterizations.

50. Paragraph 50 of the Complaint consists of conclusions, editorial
comments, and generalizations about actions taken by this Court rather than
allegations of fact. To the extent Paragraph relies on the Court's orders, the
Election Defendants crave reference to the Court's orders cited in footnotes 49 and
50 in Paragraph 50 and deny any inconsistent allegations or characterizations.

51. The Election Defendants admit that Governor McMaster sent a letter
to the leadership of the General Assembly of South Carolina on May 14, 2020, and

crave reference to the Plaintiffs' Exhibit 1 and deny any inconsistent allegations or characterizations.

52. The Election Defendants admit that Election Defendants McMaster issued Executive Order No. 2020-28 on April 20, 2020 modifying and amending his Home or Work Order and crave reference to Executive Order No. 2020-28, cited in footnotes 51 of Paragraph 52 and deny any inconsistent allegations or characterizations.

III. COVID-19's Impact on African-American South Carolinians in Light of Ongoing and Historical Discrimination

53. Paragraph 53 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 53 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 53 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 53 relies on information from the CDC cited in footnote 54 of Paragraph 53, the Election Defendants crave reference to the cited website and deny any inconsistent allegations or characterizations.

54. Paragraph 54 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 54 contains factual allegations against any of these Election Defendants to which a response is required, the allegations

are denied. To the extent Paragraph 54 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

55. Paragraph 55 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 55 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 55 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 55 relies on information from the DHEC and the CDC cited in footnotes 57 and 58 respectively of Paragraph 55, the Election Defendants crave reference to the cited websites and deny any inconsistent allegations or characterizations.

56. Paragraph 56 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 56 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 56 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

IV. The COVID-19 Crisis and 2020 Elections in South Carolina

57. The Election Defendants admit that elections are scheduled to take place in South Carolina between May and the end of the calendar year. To the extent Paragraph 57 relies on information from SCvotes cited in footnote 65 of Paragraph 57, the Election Defendants crave reference to the cited website and deny any inconsistent allegations or characterizations.

58. The Election Defendants admit that Andino wrote a letter to Governor McMaster, Senator Peeler, and Speaker Lucas (collectively McMaster, Peeler, and Lucas are referred to as “State Leaders”) on March 30, 2020 (“Andino Letter”). The Election Defendants aver that the Andino Letter was sent by Andino in her capacity as the Executive Director of the State agency responsible for overseeing elections and not as letter from Commission members of the Commission. Andino wrote the Andino Letter in concert with her statutory duties pursuant to S.C. Code § 7-3-20(C). To the extent that Paragraph 58 relies on the Andino Letter, the Election Defendants crave reference to the Andino Letter (Plaintiffs’ Exhibit. 2) and deny any inconsistent allegations or characterizations.

59. Paragraph 59 relies in whole on the content of the Andino Letter and the Election Defendants crave reference to the Andino Letter and deny any inconsistent allegations or characterizations.

60. Paragraph 60 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 60 contains factual allegations against

any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 60 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 60 relies on information from the Andino Letter, the Election Defendants crave reference to the Andino Letter and deny any inconsistent allegations or characterizations. The Election Defendants deny that the Andino Letter made recommendations to the State Leaders to amend any existing South Carolina Election Laws.

61. Paragraph 61 is admitted. The Election Defendants aver they do not have the statutory authority to adopt or implement any of the options referenced in the Andino Letter and that authority rests solely with the General Assembly of the State of South Carolina under the Constitution of South Carolina.

V. South Carolina Absentee Voting Process

62. As to Paragraph 63, the Paragraph paraphrase the provision of S.C. Code § 7-15-320. The Election Defendants crave reference to S.C. Code § 7-15-320 and deny any inconsistent allegations or characterizations.

63. As to Paragraph 63, the Paragraph paraphrase the provision of S.C. Code §§ 7-15-320 and 7-15-310. The Election Defendants crave reference to S.C. Code §§ 7-15-320 and 7-15-310(4) and deny any inconsistent allegations or characterizations.

64. As to Paragraph 64, the Paragraph paraphrase the provision of S.C. Code §§ 7-15-330 and 7-15-340. The Election Defendants crave reference to S.C. Code §§ 7-15-330 and 7-15-340 and deny any inconsistent allegations or characterizations.

65. As to Paragraph 65, the Paragraph paraphrase the provision of S.C. Code § 7-15-340 and references S.C. Code § 7-25-20. The Election Defendants crave reference to S.C. Code §§ 7-15-340 and 7-25-20 and deny any inconsistent allegations or characterizations.

66. As to Paragraph 66, the Paragraph appears to be paraphrasing the provisions of S.C. Code § 7-15-370, although the statute is not cited. The Election Defendants crave reference to S.C. Code § 7-15-370 and deny any inconsistent allegations or characterizations. To the extent that Paragraph 66 is not relying on section 7-15-370, the allegations are denied.

67. As to Paragraph 67, the Paragraph paraphrase the provision of S.C. Code §§ 7-15-220 and 7-15-380. The Election Defendants crave reference to S.C. Code §§ 7-15-220 and 7-15-380 and deny any inconsistent allegations or characterizations.

68. As to Paragraph 68, the Paragraph paraphrase the provision of S.C. Code § 7-15-385. The Election Defendants crave reference to S.C. Code § 7-15-385 and deny any inconsistent allegations or characterizations.

69. As to Paragraph 69, the Paragraph paraphrase the provision of S.C. Code § 7-15-420. The Election Defendants crave reference to S.C. Code § 7-15-420 and deny any inconsistent allegations or characterizations.

70. As to Paragraph 70, the Paragraph paraphrase the provision of S.C. Code § 7-15-420. The Election Defendants crave reference to S.C. Code § 7-15-420 and deny any inconsistent allegations or characterizations.

71. As to Paragraph 71, the Election Defendants aver that the South Carolina Election Law does not authorize county boards to provide notice to voters who return their absentee ballot envelopes with no witness signature and does not authorize county boards to allow a voter to correct his failure to follow the instructions accompanying the absentee ballots. *See* S.C. Code § 7-15-370. The Election Defendants crave reference to S.C. Code § 7-15-385 and deny any inconsistent allegations or characterizations.

VI. The Challenged Requirements Unduly and Unreasonably Burdens the Voting Rights of South Carolinians.

A. The Excuse Requirement deprives many South Carolina voters, including Plaintiffs, of their fundamental right to vote.

72. Paragraph 72 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 72 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 72 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

73. Paragraph 73 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 73 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 73 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 73 relies on the CDC guidelines cited in footnote 21 of Paragraph 32, the Election Defendants crave reference to the website cited in footnote 21 or Paragraph 32 and deny any inconsistent allegations or characterizations.

74. Paragraph 74 of the Complaint consists of conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 74 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 74 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

75. Paragraph 75 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 75 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 75 contains factual allegations about another

person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 75 relies on S. C. Code § 7-15-320, Election Defendants crave reference to the S.C. Code § 7-15-320 and deny any inconsistent allegations or characterizations.

76. Paragraph 76 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 76 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 76 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 76 relies on the Andino Letter, the Election Defendants crave reference to the Andino Letter and deny any inconsistent allegations or characterizations. The Election Defendants deny that there is a “mandatory” order in place for all South Carolinians to remain “at home or work” and which requires rigid adherence to social distancing at all times.

77. Paragraph 77 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 77 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 77 contains factual allegations about another

person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

78. The allegations of Paragraph 78 of the Complaint are denied.

79. The allegations of Paragraph 79 of the Complaint are denied.

80. The allegations of Paragraph 80 of the Complaint are denied.

81. The allegations of Paragraph 81 of the Complaint are denied. The Election Defendants aver that S.C. Code § 7-15-310(4) requires that the voter personally be injured or disabled to meet the Qualification Requirement of S.C. Code § 7-15-310(4).

82. The Election Defendants deny that the interpretation by other states under those state laws is relevant to and have no relevance to the legal issues regarding S.C. Code §§ 7-15-320, 7-15-220, and 7-15-380 as raised in the Complaint.

83. Paragraph 83 consists of legal conclusions, editorial comments, and generalizations regarding the state of West Virginia's election laws and West Virginia's interpretation of those laws, which have no relevance to the legal issues regarding S.C. Code §§ 7-15-320, 7-15-220, and 7-15-380 as raised in the Complaint. To the extent Paragraph 83 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 83 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

84. Paragraph 84 consists of legal conclusions, editorial comments, and generalizations regarding the state of Alabama's election laws and Alabama's interpretation of its laws and the state of Arkansas and Arkansas's interpretation of its laws, neither of which have no relevance to the legal issues regarding S.C. Code §§ 7-15-320, 7-15-220, and 7-15-380 as raised in the Complaint. To the extent Paragraph 84 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 84 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

85. Paragraph 85 consists of legal conclusions, editorial comments, and generalizations regarding the states of Virginia, Delaware and Massachusetts and the states clarification of their respective election laws, none of which have no relevance to the legal issues regarding S.C. Code §§ 7-15-320, 7-15-220, and 7-15-380 as raised in the Complaint. To the extent Paragraph 85 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 85 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

B. South Carolina's Witness Requirement will deny large numbers of eligible voters the right to vote yet provides only marginal benefits to the State.

86. Paragraph 86 relies on S. C. Code § 7-15-420, and the Election Defendants crave reference to S.C. Code § 7-15-420 and deny any inconsistent allegations or characterizations.

87. Paragraph 87 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 87 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 87 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

88. Paragraph 88 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 88 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 88 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

89. Paragraph 89 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 89 contains factual allegations against

any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 89 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

90. In answer to Paragraph 90 of the Complaint, the Election Defendants crave reference the website cited in footnote 73 of Paragraph 90 and deny any inconsistent allegations or characterizations

91. Paragraph 91 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 90 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 90 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 91 relies on data from the U.S. Census Bureau, the Election Defendants crave reference to the website cited in footnotes 76 and 77 of Paragraph 91 and deny any inconsistent allegations or characterizations.

92. Paragraph 92 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 92 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 92 contains factual allegations about another

person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 91 relies on data from the U.S. Census Bureau, the Election Defendants crave reference to the website cited in footnotes 78 and 79 of Paragraph 92 and deny any inconsistent allegations or characterizations.

93. Paragraph 93 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 93 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 93 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 93 relies on data from the CDC, the Election Defendants crave reference to the website cited in footnote 80 Paragraph 91 and deny any inconsistent allegations or characterizations.

94. Paragraph 94 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 94 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 94 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

95. Paragraph 95 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 95 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 95 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

96. Paragraph 96 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. To the extent Paragraph 96 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 96 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

97. Paragraph 97 of the Complaint consists of legal conclusions, editorial comments, and generalizations about complex, nonjusticiable issues, rather than allegations of fact. The Election Defendants admit that protecting election integrity and preventing improper use of absentee ballots are valid governmental interest and aver that they are essential for South Carolina elections. To the extent Paragraph 97 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 97 contains factual allegations about another person or entity,

these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 97 relies on the Andino Letter, the Election Defendants crave reference to the Andino Letter and deny any inconsistent allegations or characterizations.

98. The allegations of Paragraph 98 are denied.

99. Paragraph 99 of the Complaint consists of legal conclusions, editorial comments, and generalizations, rather than allegations of fact. To the extent Paragraph 99 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 99 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

100. Paragraph 100 consists of legal conclusions, to which no response is required.

101. As to Paragraph 101 the Paragraph paraphrases the provisions of S.C. Code §§ 7-15-330, 7-15-370, and 7-15-385. The Election Defendants crave reference to S.C. Code §§ 7-15-330, 7-15-370, and 7-15-385 and deny any inconsistent allegations or characterizations.

102. As to Paragraph 102 the Paragraph paraphrases the provisions of S.C. Code §§ 7-15-385 and 7-15-410. The Election Defendants crave reference to S.C. Code §§ 7-15-385 and 7-15-410 and deny any inconsistent allegations or characterizations.

103. As to Paragraph 103 the Paragraph paraphrases the provisions of S.C. Code §§ 7-15-810 and 7-15-410. The Election Defendants crave reference to S.C. Code §§ 7-15-810 and 7-15-410 and deny any inconsistent allegations or characterizations.

104. As to Paragraph 104 the Paragraph paraphrases the provisions of S.C. Code §§ 7-15-340 and 7-15-380. The Election Defendants crave reference to S.C. Code §§ 7-15-340 and 7-15-380 and deny any inconsistent allegations or characterizations.

105. As to Paragraph 105 the Paragraph paraphrases the provisions of S.C. Code §§ 7-15-340 and 7-25-20. The Election Defendants crave reference to S.C. Code §§ 7-15-340 and 7-25-20 and deny any inconsistent allegations or characterizations.

106. As to Paragraph 106 the Paragraph paraphrases the provisions of S.C. Code §§ 7-25-120 and 7-25-150. The Election Defendants crave reference to S.C. Code §§ 7-25-120 and 7-25-150 and deny any inconsistent allegations or characterizations.

107. Paragraph 107 of the Complaint consists of legal conclusions, editorial comments, and generalizations, rather than allegations of fact. To the extent Paragraph 107 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 107 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief

as to the truth of the allegations. To the extent Paragraph 107 relies on S.C. § 7-15-380, the Election Defendants crave reference to S.C. § 7-15-380 and deny any inconsistent allegations or characterizations.

108. Paragraph 108 of the Complaint consists of legal conclusions, editorial comments, and generalizations, rather than allegations of fact. To the extent Paragraph 108 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 108 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations. To the extent Paragraph 108 relies on the Andino Letter, the Election Defendants crave reference to the Andino Letter and deny any inconsistent allegations or characterizations.

CLAIM FOR RELIEF

COUNT ONE

Violation of the Fundamental Right to Vote 42 U.S.C. § 1983, First and Fourteenth Amendments to the U.S. Constitution

109. As to Paragraph 108, the Election Defendants reallege and reincorporate by reference all prior responses to the Paragraphs of this Complaint.

110. The Election Defendants admit that duly qualified South Carolina electors have a fundamental right to vote under the First and Fourteenth Amendments of the U.S. Constitution. The remainder of Paragraph 110 is a legal conclusion to which no response is required.

111. Paragraph 111 of the Complaint consists of legal conclusions, editorial comments, and generalizations, rather than allegations of fact. To the extent Paragraph 111 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 111 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

112. The Election Defendants deny the allegations of Paragraph 112.

COUNT TWO

Violations of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301

113. As to Paragraph 113, the Election Defendants reallege and reincorporate by reference all prior responses to the Paragraphs of this Complaint.

114. As to Paragraph 114, the Paragraph paraphrases the provisions of Section of the Voting Rights Act, 52 U.S.C. § 10301(a). The Election Defendants crave reference to Section 2 of the Voting Rights Act and deny any inconsistent allegations or characterizations.

115. As to Paragraph 115, the Paragraph quotes from the *League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 224, 238–39 (4th Cir. 2014), discussing the provisions of section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a). The Election Defendants crave reference to that case and deny any inconsistent allegations or characterizations.

116. The Election Defendants deny the allegations of Paragraph 116.

117. The Election Defendants deny the allegations of Paragraph 117.

118. Paragraph 118 of the Complaint consists of legal conclusions, editorial comments, and generalizations, rather than allegations of fact. To the extent Paragraph 118 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 118 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

119. Paragraph 119 of the Complaint consists of legal conclusions, editorial comments, and generalizations, rather than allegations of fact. To the extent Paragraph 119 contains factual allegations against any of these Election Defendants to which a response is required, the allegations are denied. To the extent Paragraph 119 contains factual allegations about another person or entity, these Election Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

120. The Election Defendants deny the allegations of Paragraph 120.

COUNT THREE

Violations of Sections 3 and 201 of the Voting Rights Act, 52 U.S.C. §§ 10302, 10501

121. As to Paragraph 121, the Election Defendants reallege and reincorporate by reference all prior responses to the Paragraphs of this Complaint.

122. As to Paragraph 122, the Paragraph quotes from the provisions of section 201 of the Voting Rights Act, 52 U.S.C. §§ 10501(a) and 10501(b)(4). The

Election Defendants crave reference to Section 201 of the Voting Rights Act and deny any inconsistent allegations or characterizations.

123. As to Paragraph 123, the Paragraph quotes from *United States v. Board of Commissioner of Sheffield*, 435 U.S. 110, 120–21 (1978). The Election Defendants crave reference to *Sheffield* and deny any inconsistent allegations or characterizations. To the extent Paragraph 123 relies on the Letter from the Acting Assistant Attorney General cited in footnote 83 to of Paragraph 123, the Election Defendants crave reference to the website cited in footnote 83 and deny any inconsistent allegations or characterizations.

124. Paragraph 124 of the Complaint consists of legal conclusions, editorial comments, and generalizations, rather than allegations of fact. Paragraph 124 quotes from *Northwest Austin Municipal Utility District No. One v. Holder*, 557 U.S. 193, 198 (2009), and *Reno v. Bossier Parish School Board*, 528 U.S. 320, 338 n.6 (2002). The Election Defendants crave reference to these two cases and deny any inconsistent allegations or characterizations.

125. The Election Defendants deny the allegations of Paragraph 125.

126. The Election Defendants admit the allegations of Paragraph 126 and crave reference to *Gregory v. S.C. Democratic Executive Committee*, 247 S.E.2d 439 (S.C. 2978).

127. The Election Defendants deny the allegations of Paragraph 127.

128. The Election Defendants deny the allegations of Paragraph 128.

FOR A SECOND DEFENSE

The Andino Letter addressed the current South Carolina Election Law enacted by the General Assembly that the Executive Director is charges by law with implementing and enforcing. *See* S.C. Code § 7-3-20(C)(1) (supervise the conduct of the County Boards with regard to the conduct of elections or the voter registration process). No state law authorizes either the Executive Director or the Commission to amend or modify the Election Law during an emergency.

The Andino Letter did not recommend that the State Leaders take specific action on the Election Law. Rather the Andino Letter requested that the State Leaders give consideration to making emergency changes to the Election Law and provided the State Leaders with options for such potential changes to existing laws. Only the General Assembly can amend or modify the Election Law.

There are bills pending in the South Carolina General Assembly that address modifications or amendments to existing South Carolina Election Laws. There bills are: S141 (allows counties to begin opening absentee ballots the day before the election); S142 (early voting without excuse); S331 (creates penalty for collecting/returning absentee ballots by person not authorized to do so); S628 (absentee voting in Presidential Preference Primary); S867 (challenges to an in-person absentee ballot made at the time the ballot is cast and allows counties to begin opening absentee ballots the day before the election); and H4215 (companion bill to S628).

FOR A THIRD DEFENSE

Andino, on April 13, 2020, sent a request to Attorney General Alan Wilson for a formal opinion regarding his interpretation of section 7-15-310(4)'s "physically disabled persons" and whether, "consistent with the mandate of § 7-15-20[,] . . . voters staying home due to the pandemic qualify for absentee voting under this reason."

This case was filed on April 22, 2020, and the Election Defendants were not served with the Complaint almost a week later. Consistent with the policy of the Attorney General's Office, the Attorney General declined to give an opinion on a pending legal action.

FOR A FOURTH DEFENSE

The Plaintiffs' Complaint alleges no acts by any of these Election Defendants other than ministerial functions they are required by law to perform.

FOR A FIFTH DEFENSE

On May 1, 2020 Governor McMaster announced, effective May 4, 2020 he was lifting the Home or Work Order. Executive Order No. 2020-31 was issued May 3, 2020. Executive Order No. 2020-31 deleted Section 1(B) and inserted the following:

B. I hereby urge any and all residents and visitors of the State of South Carolina to limit social interaction, practice "social distancing" in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and further encourage residents and visitors of the State of South Carolina to limit their movements outside of their home, place of residence, or current place of abode (collectively, "Residence"), except as specified by this Order, for purposes of engaging in Essential Business, *Essential Activities*, or Critical Infrastructure Operations, as set forth below and as such terms are further defined herein.

Ex. 1, Exec. Order No. 2020-31, p. 4 § 1.A. (emphasis added) There is no mandatory Home or Work Order in effect in South Carolina.

Unless Governor McMaster declares a new emergency on or before May 12, 2020 and readopts this Executive Order, Executive Order No. 2020-31 expires as a matter of law. *See* S.C. Code § 25-1-440(a)(2).

This Executive Order “is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of South Carolina, its agencies, departments, political subdivision, or other entities, or any officers, employees or agents thereof, or any other person.” Executive Order 2020-31, § 3(A).

FOR A SIXTH DEFENSE

S.C. Code §§ 7-15-310(4) and 7-15-320 have been in State law since 1975. The legal efficacy of this provision has not been challenged until this lawsuit. A witness requirement has been in State law since 1953 and in its current form since 1982. It also has not been challenged until this lawsuit. The Plaintiffs’ claims are barred by the doctrine of laches.

FOR A SEVENTH DEFENSE

The Plaintiffs’ Complaint presents nonjusticiable, political questions. The relief sought by the Plaintiffs asks this Court only for relief “while the risk of COVID-19 transmission in South Carolina remains”. Compl. Prayer for Relief ¶¶ A and B. The Plaintiffs ask this Court to make a judicial determination as to the length of the risk of COVID-19 transmission by serving as “super legislature” or a “super

executive.” It is unclear from the Complaint whether the Plaintiffs are requesting this Court retain jurisdiction to determine when the risk of COVID-19 is sufficiently diminished to lift the injunction.

Further, the Complaint seeks preliminary and permanent injunction against the enforcement of S.C. Code §§ 7-15-320, 7-15-310, and 7-15-220, “at least while emergency orders concerning COVID-19 are in place and/or while public health officials continue to recommend social distancing practices due to the risk of community transmission of COVID-19.” Compl. Prayer for Relief ¶ C.1 and 2. It is unclear from the Complaint whether the Plaintiffs are requesting this Court retain jurisdiction to determine when the public health officials cease recommending social-distancing practices to lift the injunction.

The determination as to the length of COVID-19 and its effects of the public health is a non-justiciable, political question.

FOR AN EIGHTH DEFENSE

Andino, through monies from the federal government, is taking aggressive measures to ensure the safety of voters, poll workers and election, officials alike.

These measures include, but are not limited to:

- Holding weekly conference calls with county directors to educate them on Covid-19 and our activities;
- Developing a Covid-19 specific training for counties and poll workers;
- Ordering personal protective equipment for poll managers and county election officials, including, but not limited to, masks, glover, face shields, hand sanitizers;
- Ordering sneeze guards for polling places and county offices;

- Ordering signs for polling places to stress wearing masks and social distancing;
- Ordering tape so poll managers can mark six-foot distances, including providing string for easy measuring;
- Providing safety guidelines (based on CDC guidelines) in press releases and social media messaging that will be released closer to Election Day;
- Included safety guidelines (based on the CDC guidelines) in training for poll managers, clerks and polling place technician; and
- Encouraging voters in high-risk groups (based on the CDC guidelines) to vote absentee by mail or early.
 - Requesting ballot early;
 - If voting absentee in person, voting early;
 - Asking counties to open absentee precincts May 1 or 4 (earlier than normal) to allow voters to avoid crowds;
 - Asking counties to relocate absentee precinct if office does not permit social distancing due to size.

WHEREFORE, the Election Defendants respectfully request that the Court deny the Plaintiffs' requested relief and award the Commission and Andino any relief the Court deems just.

Respectfully Submitted,

s/ Mary Elizabeth Crum
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Dated: May 11, 2020
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