

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

**Election Defendants’
Motion for Summary Judgment**

Defendants Marci Andino, John Wells, JoAnne Day, Clifford J. Edler, Linda McCall, and Scott Moseley, pursuant to Federal Rule of Civil Procedure 56, move for summary judgment on all six of the Plaintiffs’ claims.

The Plaintiffs challenge two provisions of South Carolina’s absentee voting laws: the Qualification Requirement and the Witness Requirement. First, they bring claims under the United States Constitution, Voting Rights Act (“VRA”), and Americans with Disabilities Act (“ADA”) seeking to enjoin the requirement that all South Carolinians must meet a statutory qualification to vote by absentee ballot. *See* S.C. Code § 7-15-320. Second, they bring those same three claims attempting to enjoin the requirement that a voter’s oath on an absentee mail ballot must be witnessed. *See* S.C. Code § 7-15-380.

The Plaintiffs do not even have standing to assert their challenges to the Qualification Requirement. On the merits, their challenges to both provisions lack merit.

This motion is supported by the attached memorandum and exhibits, pursuant to Local Civil Rule 7.04.

Respectfully Submitted,

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**Election Defendants’
Memorandum in Support of
Motion for Summary Judgment**

Defendants Marci Andino (“Andino” or “Executive Director”), John Wells, JoAnne Day, Clifford J. Edler, Linda McCall, and Scott Moseley (collectively, “Election Defendants”) submit this memorandum in support of their motion for summary judgment.

Introduction

A most basic principle of American jurisprudence is, as Justice Story admonished almost two centuries ago, that “ours is a government of laws, and not of men.” *United States v. Dickson*, 40 U.S. 141, 162 (1841). We abide by this principle. Always. Even in a pandemic. *See Tex. Democratic Party v. Abbott*, 961 F.3d 389, 413 (5th Cir. 2020) (Ho, J., concurring) (“We do not suspend the Constitution during a pandemic.”). To do otherwise would be to let “hard cases[] make bad law.” *N. Sec. Co. v. United States*, 193 U.S. 197, 364 (1904) (Holmes, J., dissenting).

Three important concepts follow from this principle. The first is separation of powers. It’s a principle at the heart of the U.S. Constitution, and it’s an explicit one in South Carolina’s Constitution. *See* S.C. Const. art. I, § 8 (“the legislative, executive, and judicial powers of the government shall be forever separate and

distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other”). In this State, the General Assembly—not the executive branch nor the judicial branch—has responsibility for establishing election procedures. *See id.* art. II, § 10. Yet none of the Plaintiffs thought about seeking recourse by petitioning their legislators. *See, e.g.,* Rutledge Dep. Tr. (Ex. 1) 55:16–25; Richard Dep. Tr. (Ex. 2) 46:12–25; NAACP Dep. Tr. (Ex. 3) 46:8–47:15. They should have. As the General Assembly demonstrated a mere three months ago, it knows how to change election procedures and can do so quickly, if it wishes. Instead of looking to the state legislature, the Plaintiffs ran to the federal judiciary. But courts cannot substitute their judgment for decisions committed to the legislature. *See Perry v. Perez*, 565 U.S. 388, 396 (2012) (applying this concept in a redistricting case); *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 51 (1936) (“The court does not sit as a board of revision to substitute its judgment for that of the Legislature or its agents as to matters within the province of either.”).

The second is the need for elections that people trust. As the Supreme Court succinctly put it, a “State indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). Integrity in elections (both actual integrity *and* the perception of it) preserves the rule of law because it ensures people trust the outcome and believe that the laws government adopts are legitimate. To promote election integrity, established rules must govern elections—rules by which everyone

has agreed to play ahead of time. *Cf. McNabb v. United States*, 318 U.S. 332, 347 (1943) (“The history of liberty has largely been the history of observance of procedural safeguards.”). Courts should therefore be wary of changing election procedures, which can undermine confidence in elections and thus in respect for the rule of law.

The third is that courts decide only “Cases” and “Controversies.” U.S. Const. art. III, § 2. As one district judge in this State recently put it, “[f]ederal courts resolve cases and controversies, not crusades.” *Timpson by & through Timpson v. McMaster*, 437 F. Supp. 3d 469, 472 (D.S.C. 2020). A court therefore must resolve only the dispute between the parties before it. This requires courts to analyze claims element-by-element. A plaintiff can survive summary judgment only if she produces evidence to create a genuine dispute of material fact on every element of a claim. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In other words, a plaintiff cannot argue a case in generalities or hypotheticals. That plaintiff must instead offer evidence specific to her claims from which a factfinder could reasonably conclude she wins. Otherwise, the defendant is entitled to summary judgment.

Here, the element-by-element analysis shows the Plaintiffs cannot prevail on their claims. COVID-19 is, to be sure, serious. But myopically focusing on the seriousness of this disease is no reason to overhaul the election procedures the South Carolina General Assembly has adopted. The Election Defendants are taking COVID-19 seriously, following the CDC’s recommendations and doing everything

possible to mitigate the risk of voters and poll workers contracting COVID-19 during the voting process. Taking all of the material facts into consideration and looking at them through the legal framework of each of the Plaintiffs' claims, one conclusion becomes clear: Those claims fail.

Background

The South Carolina Election Law

The General Assembly is charged with “provid[ing] for the administration of elections and for absentee voting.” S.C. Const. art. II, § 10. It has done so in the South Carolina Election Law. *See* S.C. Code § 7-1-10 *et seq.*

The General Assembly has given the State Election Commission the authority to implement this law and oversee elections in South Carolina. *Id.* § 7-15-10(d). The Commission consists of five members, appointed by the Governor. *Id.* § 7-3-10(a). The Commission acts independently of any political campaign. *Id.* § 7-3-10(e). The Commission, in turn, elects an executive director, who “shall be the chief administrative officer for the State Election Commission.” *Id.* § 7-3-20(A).

The Executive Director is responsible for myriad statutorily defined duties, including, but 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; and furnishing each County Board with a master list of all registered voters in the county at least ten days prior to each election. *Id.* § 7-3-20(B). She also serves as the chief state election official for implementing and coordinating the State’s responsibilities under the National

Voter Registration Act of 1993 and for the Uniformed and Overseas Citizens Absentee Voting Act. *Id.* § 7-3-20(C). Additional duties of the Executive Director are contained in S.C. Code §§ 7-3-25 and 7-3-30.

Anyone who is a citizen of South Carolina and the United States is (subject to exceptions for mental incapacity, imprisonment, or felony conviction) eligible to vote if she is at least eighteen years old, is not disabled from voting under the State Constitution, and lives in the county and polling precinct where she offers to vote. *Id.* § 7-5-120. A person must be registered to vote. *Id.* § 7-5-110.

Registered voters may vote either in person on election day, *id.* § 7-13-710 *et seq.*, or by absentee ballot, *id.* § 7-15-10 *et seq.* Any registered voter may vote in person on election day. *Id.* § 7-13-710(A). The General Assembly has also provided that certain qualified voters may also vote by absentee ballot. Only certain voters qualify to vote by absentee ballot. *Id.* § 7-15-320.

Absentee Voting in South Carolina

Section 7-15-320 allows numerous voters to qualify to vote by absentee ballot:

(A) Qualified electors in any of the following categories must be permitted to vote by absentee ballot in all elections when they are absent from their county of residence on election day during the hours the polls are open, to an extent that it prevents them from voting in person:

- (1) students, their spouses, and dependents residing with them;
- (2) persons serving with the American Red Cross or with the United Service Organizations (USO) who are attached to and serving with the Armed Forces of the United States, their spouses, and dependents residing with them;
- (3) governmental employees, their spouses, and dependents residing with them;

(4) persons on vacation (who by virtue of vacation plans will be absent from their county of residence on election day); or

(5) overseas citizens.

(B) Qualified electors in any of the following categories must be permitted to vote by absentee ballot in all elections, whether or not they are absent from their county of residence on election day:

(1) physically disabled persons;

(2) persons whose employment obligations require that they be at their place of employment during the hours that the polls are open and present written certification of that obligation to the county board of voter registration and elections;

(3) certified poll watchers, poll managers, county board of voter registration and elections members and staff, county and state election commission members and staff working on election day;

(4) persons attending sick or physically disabled persons;

(5) persons admitted to hospitals as emergency patients on the day of an election or within a four-day period before the election;

(6) persons with a death or funeral in the family within a three-day period before the election;

(7) persons who will be serving as jurors in a state or federal court on election day;

(8) persons sixty-five years of age or older;

(9) persons confined to a jail or pretrial facility pending disposition of arrest or trial; or

(10) members of the Armed Forces and Merchant Marines of the United States, their spouses, and dependents residing with them.

Id. § 7-15-320 (“Qualification Requirement”).

A voter seeking to vote by absentee ballot must submit an absentee ballot application request to her County Board, which can be done by mail, email, fax, or in person. *Id.* § 7-15-330. When submitting this application, a voter must swear that she is a qualified elector, entitled to vote in that election, and will not vote again in that election. *Id.* § 7-15-340. Violating that oath is a criminal offense. *Id.* The County Board then provides the voter with an absentee ballot. This absentee ballot may be cast in person or by mail. If a voter chooses by mail, the ballot is sent to her

along with instructions, a return-addressed envelope, and any additional necessary information. *Id.* § 7-15-370.

On the absentee ballot return-addressed envelope, the voter must make this oath:

I hereby swear (or affirm) that I am duly qualified to vote at this election according to the Constitution of the State of South Carolina, that I have not voted during this election, that the ballot or ballots contained in this envelope is my ballot and that I have received no assistance in voting my ballot that I would not have been entitled to receive had I voted in person at my voting precinct.

Id. § 7-15-380. This oath must be “witnessed by someone designated by the voter” (“Witness Requirement”). *Id.* The statute does not limit who this witness may be. If the ballot return-address envelope is not signed, not witnessed, or there is no witness address, the ballot cannot be counted. *Id.* § 7-15-420.

Absentee ballots are then returned to the County Board, which keeps a record of the returned absentee ballots and stores them in a locked box in its office. *Id.* § 7-15-385. Absentee ballots may be returned by mail, in person, or by an authorized returnee. *Id.* On the Monday prior to the election on Tuesday, the County Boards can may begin the process of examining the return-addressed envelopes to make certain that each oath has been signed and each envelope contains a witness signature and address. *See* 2020 S.C. Act No. 133, § 1 (B). Absentee ballots are then counted on election day. *Id.* § 7-15-420.

COVID-19

COVID-19 is a novel virus about which we are constantly learning more. At this point, the virus has been in the United States for about six months. We know

far more about the virus now than we did when this lawsuit was filed in April and when the Court entered a preliminary injunction regarding the June 2020 primaries.

COVID-19 is a coronavirus that spreads readily and can cause an infected person to have no symptoms or to have serious conditions requiring hospitalization that can even lead to death. *See Symptoms of Coronavirus*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited July 26, 2020). It is transmitted primarily by person-to-person contact, through respiratory droplets produced when someone talks, sneezes, or coughs. *See How to Protect Yourself & Others*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited July 26, 2020). Thus, people are encouraged (and in some places required) to social distance, wear face masks, and practice good hygiene. *See id.*

As of August 10, 2020, DHEC reports that 100,431 people in this State have been infected with COVID-19 and 1,966 people have died from it. *See SC Testing Data & Projections (COVID-19)*, SC DHEC, <https://scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/sc-testing-data-projections-covid-19> (last visited Aug. 10, 2020).

South Carolina's 2020 elections and the Plaintiffs' lawsuit

The general election is scheduled for November 3. It includes races for President, the U.S. Senate, the U.S. House of Representatives, and the General Assembly, in addition to other local races.

The Plaintiffs challenge two provisions of South Carolina’s absentee voting laws: the Qualification Requirement and the Witness Requirement. First, they bring claims under the United States Constitution, Voting Rights Act (“VRA”), and Americans with Disabilities Act (“ADA”) seeking to enjoin the requirement that all South Carolinians must meet a statutory qualification to vote by absentee ballot. Second, they bring those same three claims attempting to enjoin the requirement that a voter’s oath on an absentee mail ballot must be witnessed. The Plaintiffs’ challenges are all as-applied.

Legal Standard

Summary judgment should be granted whenever “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). To survive summary judgment, a plaintiff must set forth specific facts and cannot rely on allegations in the complaint. *See News & Observer Publ’g Co. v. Raleigh-Durham Airport Auth.*, 597 F.3d 570, 576 (4th Cir. 2010).

Argument

I. Requiring voters to be qualified to vote by absentee ballot does not violate the Constitution, the VRA, or the ADA.

The Plaintiffs challenge the fact that a voter must be qualified to vote by absentee ballot on three grounds: (1) as an undue burden on the right to vote, (2) as a violation of section 2 of the VRA, and (3) as a violation of Title II the ADA. None has merit.

But before even getting to why, the Plaintiffs have a threshold problem: None has standing to pursue these challenges to the Qualification Requirement.

A. The Plaintiffs lack standing.

It is axiomatic that “Article III standing is part and parcel of the constitutional mandate that the judicial power of the United States extend only to cases and controversies.” *Baehr v. Creig Northrop Team, P.C.*, 953 F.3d 244, 252 (4th Cir. 2020) (internal quotation marks omitted); *see also Raines v. Byrd*, 521 U.S. 811, 818 (1997) (standing goes to subject-matter jurisdiction). The “irreducible minimum” of standing is that a “plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

On the first element, “a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Id.* at 1548. On the second element, there must be a “causal connection” between the injury and the defendant’s conduct. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). And on the third element, “a plaintiff must show that it is likely, as opposed to merely speculative that the injury will be redressed by a favorable decision.” *Meyer v. McMaster*, 394 F. Supp. 3d 550, 558 (D.S.C. 2019) (Childs, J.) (internal quotation marks omitted) (quoting *Deal v. Mercer Cty. Bd. of Educ.*, 911 F.3d 183, 189 (4th Cir. 2018)).

The Plaintiffs do not meet these elements. As for the three individual Plaintiffs, Mary Thomas has no injury because she can already vote by absentee

ballot on account of her age and medical condition. *Compare* Thomas Dep. Tr. (Ex. 4) 15:10, *with* S.C. Code §§ 7-15-320(B)(1), (8). Jeremy Rutledge can already vote absentee because of his medical condition. *Compare* Rutledge Dep. Tr. 19:21–22, *with* S.C. Code § 7-15-320(B)(1). And Nea Richard testified that if she decides not to vote in person in November, she will “meet one of the criteria” for voting by absentee ballot. Richard Dep. Tr. 39:18–19. Because all three of these individuals can already vote by absentee ballot, they are not injured in any way by the Qualification Requirement, and no order from this Court could give them any sort of relief regarding absentee voting.

The same is true of the organizational Plaintiffs. Neither The Family Unit nor the NAACP identifies any member who wants to vote by absentee ballot but cannot on account of the Qualification Requirement. *See generally* Family Unit Dep. Tr. (Ex. 5); NAACP Dep. Tr. That means neither one has standing on account of their members. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000) (“An association has standing to bring suit on behalf of its members *when its members would otherwise have standing to sue in their own right*, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” (emphasis added)).

The organizational Plaintiffs fare no better by alleging any injury in their own right. The NAACP, for example, testified it couldn’t follow its usual get-out-the-vote plan because of the risks associated with giving people rides to their polling

places or assist with witness signatures during the pandemic. *See* NAACP Dep. Tr. 28:9–34:15. And The Family Unit says it has had to divert resources from its usual activities toward educating voters. *See* Family Unit Dep. Tr. 51:17–54:12. These changes aren’t traceable to the Defendants here. Rather, they are traceable to COVID-19. Many organizations have had to shift resources, alter operations, or change strategies during this pandemic. Such changes do not mean that organizations have standing to sue. Even the Court has had to change its operations, but that does not mean people have been deprived of due process or other constitutional rights.

B. Section 7-15-320 does not violate the Constitution.

Even if the Plaintiffs had standing, the result in this case would be the same: The Qualification Requirement remains in place (barring, of course, a change to it by the General Assembly). Their first claim is that this requirement imposes an undue burden on their right to vote. This claim fails.

1. *McDonald* controls this analysis, and rational basis applies.

When it comes to challenges to absentee-voting provisions, courts do not start on a blank slate. Instead, they must look to U.S. Supreme Court decisions that addressed attacks on absentee-voting provisions to determine the proper legal framework. These cases make clear that rational basis applies to this claim. *See Tex. Democratic Party*, 961 F.3d at 406.

In *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969), the Supreme Court reviewed a challenge by unsentenced inmates in Cook

County, who, although qualified voters, could not go to their polling places because they were incarcerated. Yet they could not obtain absentee ballots because they did not fall into one of the four categories of voters eligible to vote by absentee ballot under Illinois law. The Supreme Court expressly rejected the inmates' invitation to apply heightened scrutiny for two reasons. *First*, the state's "absentee provisions are not drawn on the basis of wealth or race." 394 U.S. at 807. *Second*, the state's absentee rules did not "impact [the inmates'] ability to exercise the fundamental right to vote," but rather only their "right to receive absentee ballots." *Id.* These same things are true of section 7-15-320. It is not based on wealth or race, and it applies only to the qualification to receive an absentee ballot, not the right to vote.

At the preliminary injunction stage, this Court held that *McDonald* did not apply. *See* Order 33–34 n.20, ECF No. 37. For multiple reasons, that conclusion does not control here. *See, e.g., Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 366 (4th Cir. 2004) ("Courts make factual findings in determining whether a preliminary injunction should issue, but those findings do not bind the jury adjudging the merits, and the jury's findings on the merits govern the judgment to be entered in the case.").

For one, that conclusion was based on the Court's finding at the preliminary injunction stage that in-person voting was an "untenable and illusory choice." *Id.* Now, with more time having passed to shed light on the status of COVID-19, its effects on people, how it spreads, the ability to mitigate risk of spread, the lack of evidence of COVID-19 outbreaks resulting from in-person primary voting, and a

fuller factual record, it is clear that in-person voting is not such a stark choice. In-person voting took place in the June primary, and the Plaintiffs have not identified a single case of COVID-19 attributed to the primary. *See* Thomas Dep. Tr. 17:2–5; Rutledge Dep. Tr. 40:11–19; Richard Dep. Tr. 22:2–9; Family Unit Dep. Tr. 59:24–60:5; Cotti Dep. Tr. (Ex. 6) 29:19–30:5; 39:19–40:3; 41:11–17; Reingold Dep. Tr. (Ex. 7) 44:13–21. Nor is the Commission aware of reports of such issues. *See* Whitmire Dep. Tr. (Ex. 8) 126:22–25, 129:12–17. Or its expert. *See* Salgado Dep. Tr. (Ex. 13) 66:21–67:2. This is despite the long lines and wait times that were reported at some polling places (the longest of these wait times were problems that have “plagued” Richland County “for years”). *See* Whitmire Dep. Tr. 79:20–81:20, 86:23–87:11.

For another, this Court pointed to *O’Brien v. Skinner*, 414 U.S. 524 (1974), to limit the scope of *McDonald*. *See* Order 33–34 n.20, ECF No. 37. The Court relied on *O’Brien*’s language of “trivial inconvenience” to describe the *McDonald* plaintiffs’ burden of voting by a method other than absentee. That interpretation of *McDonald*, however, comes from Justice Marshall’s concurring opinion. *See O’Brien*, 414 U.S. at 532 (Marshall, J., concurring). That is not the basis on which the majority based its decision. Rather, the majority (in an opinion by Chief Justice Burger) compared the situation in *O’Brien* to *Goosby v. Osser*, 409 U.S. 512, 530 (1973), another inmate-voting case, which involved an “absolute bar” to inmates voting unless they had access to absentee ballots, *O’Brien*, 414 U.S. at 530 (majority opinion). Moreover, that bar was one imposed “*by the State*,” not by a naturally

occurring event (even a pandemic). *Tex. Democratic Party*, 961 F.3d at 404 (quoting *McDonald*, 394 U.S. at 808 n.7).

To be sure, *McDonald* is good law. Although it predates *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992), the Supreme Court in *Burdick* cited *McDonald* approvingly in discussing the standard of review, *see id.* at 434. The Supreme Court’s later reliance on *McDonald* means that it is still binding. Plus (and as the Fifth Circuit noted), the Supreme Court “abrogates its cases with a bang, not a whimper, and it has never revisited *McDonald*.” *Tex. Democratic Party*, 961 F.3d at 405. Under *McDonald*, rational basis applies to this claim.

Under rational basis review, a law “comes to [court] bearing a strong presumption of validity.” *F.C.C. v. Beach Commc’ns, Inc.*, 508 U.S. 307, 314 (1993). Thus, plaintiffs “attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it,” and “it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.” *Id.* at 315.

Not allowing everyone to vote by absentee ballot easily clears this low bar. The most obvious reason is that absentee-voting fraud “is real.” *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 195 (2008); *see also Griffin v. Roupas*, 385 F.3d 1128, 1131 (7th Cir. 2004) (“absentee voting is to voting in person as a take-home exam is to a proctored one”). Such fraud has happened in South Carolina on a number of occasions. A state senator and others were convicted of federal crimes for

absentee-voting fraud. *See United States v. Carmichael*, 685 F.2d 903 (4th Cir. 1982). More recently, a mayor was convicted of wrongly obtaining absentee ballots and casting votes in other people’s names. *See South Carolina v. Campbell*, No. 2007-GS-47-01 (S.C. Gen. Sess. Feb. 29, 2008) (Ex. 9).¹

The State also has an interest in favoring in-person voting to promote and preserve democratic values. *See infra* Part I.A.2.b.

These interests more than suffice for section 7-15-320 to survive rational basis review.

2. Section 7-15-320 passes muster under *Anderson/Burdick*.

Even if *McDonald* does not apply, the Qualification Requirement is still constitutional because it does not impose an undue burden on the right to vote.

Analyzing election regulations is not a one-size-fits-all task. Courts “must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate,’” on the one hand, “against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights,’” on the other. *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789). Put differently, “the rigorousness of [the judicial] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.” *Id.* When a restriction is “severe,” it must be

¹ The Court may of course take judicial notice of records in other courts. *See United States v. Townsend*, 886 F.3d 441, 444 (4th Cir. 2018).

“narrowly drawn to advance a state interest of compelling importance.” *Id.* On the other hand, when it is a “reasonable, nondiscriminatory” restriction, “the State’s important regulatory interests are generally sufficient to justify” it. *Id.*

Given the burden here is not severe but instead is a “reasonable, nondiscriminatory” restriction, this lower level applies. Still, even if the burdens could be construed as severe, this requirement is constitutional.

i. The burden on voters is minimal.

For some Plaintiffs, there is no burden at all here. Mary Thomas is already qualified to vote by absentee ballot based on her age and her physical condition. *Compare* Thomas Dep. Tr. 15:10, *with* S.C. Code §§ 7-15-320(B)(1), (8).

Jeremy Rutledge says he doesn’t think he is physically disabled, *see* Rutledge Dep. Tr. 49:13–16, but the Election Defendants do because he is high risk for COVID-19, *see* Commission’s Return to Motion to Dismiss 6, *Bailey v. S.C Election Comm’n*, No. 2020-000642 (S.C. May 8, 2020) (Ex. 10); Andino Dep. Tr. (Ex. 11) 46:10–48:12. The Attorney General of South Carolina has offered a similar interpretation of section 7-15-320 and its application in the context of COVID-19. *See* Amicus Br. of Att’y Gen. 6–7, *Bailey v. S.C Election Comm’n*, No. 2020-000642 (S.C. May 7, 2020) (Ex. 12) (offering a similar interpretation of section 7-15-320(B)(1) and who is “physically disabled”).

Nea Richard expressed no concern about being able to meet one of the requirements in section 7-15-320 to vote absentee, if she decides not to vote in person in November. *See* Richard Dep. Tr. 39:10–17. Everything else she had to say

about the Qualification Requirement is hearsay, things she heard other people say about COVID-19. *See, e.g.*, Richard Dep. Tr. 25:13–26:15, 35:21–36:23. Of course, none of that is admissible. *See* Fed. R. Civ. P. 56(c); Fed. R. Evid. 802.

The Family Unit, Inc. does not identify a single member or another person who it claims to help who is unable to vote by absentee ballot. The Family Unit’s 30(b)(6) designee discussed how the organization encourages people to “vote early” (something South Carolina doesn’t actually have—the State has only in-person absentee voting) and how people “fear” COVID-19, but none of that actually means that anyone is not qualified to vote by absentee ballot. Family Unit Dep. Tr. 36:3, 15–18.

Likewise, the NAACP pointed to members who are over sixty-five, are college students, and have health conditions. *See* NAACP Dep. Tr. 34:20–24, 60:23–61:2, 64:5–66:1. But these people can already vote by absentee ballot. *See* S.C. Code §§ 7-15-320(A)(1), (B)(1), (B)(8). In other words, the NAACP identified no member who is not already qualified to vote by absentee ballot.

Looking at this question more generally than the Plaintiffs (though there really is no need for that—these Plaintiffs haven’t brought claims on behalf of hypothetical voters, only on behalf of themselves and their members), the Plaintiffs throughout this litigation have tried to frame the issue as “vote absentee (by mail without a witness) or contract COVID-19.” That presents a false dichotomy. Voting in person does not mean a person will necessarily contract COVID-19. The CDC has outlined specific guidelines for in-person voting. *See Considerations for Election*

Polling Locations & Voters, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last visited July 28, 2020).²

The Commission is implementing these recommendations, including providing personal protective equipment (such as masks and gloves) for poll workers, sneeze guards, hand sanitizer, Q-tips so people don't have to touch surfaces, alcohol wipes, disinfecting spray, signs promoting facemasks and social distancing, string and tape to mark six-foot spaces, as well as training poll workers.³ See Andino Dep. Tr. 142:17–143:17, 149:11–150:11; Whitmire Dep. Tr. 111:24–112:20, 128:23–129:11. With these recommendations in place, Dr. Cassandra Salgado—the division director for infectious disease at the Medical University of South Carolina who has been studying and treating COVID-19—explains that the risk of contracting COVID-19 while voting in person will be “low.” Salgado Expert Report (Ex. 14) 7. The Plaintiffs’ expert, Dr. Arthur Reingold, agreed that following these guidelines mitigated that risk. See Reingold Dep. Tr. 51:25–52:4. Of course the risk cannot be zero. See Salgado Dep. Tr. 55:14–56:19. Nothing in life is zero risk. But with such steps to mitigate the risk, “in-person voting is not foreclosed.” *Fisher v. Hargett*, __ S.W.3d __, 2020 WL 4515279, at *16 (Tenn. Aug. 5, 2020) (the burden of in-person voting is not severe).

² These CDC Guidelines were updated June 22, 2020. The Election Defendants followed the CDC Guidelines in effect during the June Primaries.

³ Many of these procedures are similar to what businesses—like grocery stores—are doing, with masks, plastic shields in front of cashiers, and arrows on the floor directing traffic. These procedures make being around other people safe enough that even the Plaintiffs’ own epidemiologist goes grocery shopping at a place that uses these procedures. See Reingold Dep. Tr. 21:12–23:3.

In addition, the Election Defendants are also educating the public about voting options and safe in-person voting. *See* Whitmire Dep. Tr. 114:7–24. They are also actively recruiting poll workers. *See* Whitmire Dep. Tr. 118:17–119:25.

Nor can the Plaintiffs rely on recent increases in the number of cases to support their claims. One issue is that the jump in cases from early to mid July no longer exists, and the daily number of reported cases isn't as high as it was. *See SC Testing Data & Projections (COVID-19)*, SC DHEC, <https://scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/sc-testing-data-projections-covid-19> (last visited Aug. 10, 2020). Another issue is that their own expert admitted that no one can predict what COVID-19 will look like in November, and everyone is “having to make educated guesses about what the future has in store.” Reingold Dep. Tr. 30:12–13; *see also* Salgado Dep. Tr. 58:18–24.

On this subject of in-person voting, it's worth noting again that not a single Plaintiff could identify someone who contracted COVID-19 by voting in the June 9 primary. *See* Thomas Dep. Tr. 17:2–5; Rutledge Dep. Tr. 40:11–19; Richard Dep. Tr. 22:2–9; Family Unit Dep. Tr. 59:24–60:5. In fact, the NAACP said some of its members voted in person in the primary, yet it never testified that any of them contracted COVID-19. *See* NAACP Dep. Tr. 54:9–21.

All of this makes voting in South Carolina a far cry from the Wisconsin primary that the Plaintiffs' expert Chad Cotti studied. He did not know what safety procedures (if any) Wisconsin used, nor was he familiar with South Carolina's safety procedures. *See* Cotti Dep. Tr. 29:7–30:5; 39:19–40:3; 41:11–17. And Dr.

Reingold, despite saying there were outbreaks of COVID-19 at polling places, admitted that he knew of none in South Carolina. *See* Reingold Dep. Tr. 67:7–13. Ultimately, the Plaintiffs’ inability to produce any evidence showing any cases of COVID-19 from the June primary is telling.

ii. The State’s interests are compelling.

The State has at least two interests in in-person voting. The first interest is promoting democracy and securing our shared commitment to civic engagement. From an early age, “majority wins” is ingrained in us. Children play tag instead of basketball at recess because that’s what more children voted to do. Teenagers get pizza instead of cheeseburgers for dinner because a majority chose pizza. And on United 93 on September 11, passengers—facing almost certain death on a hijacked airplane—attempted to retake the plane because that’s what a majority voted to do. *See Passengers Voted to Attack Hijackers*, CNN (Sept. 13, 2001 5:19 PM), <https://www.cnn.com/2001/US/09/12/plane.phone.call/>.

But we cannot take this democratic principle for granted. As Justice O’Connor has observed, “[t]he practice of democracy is not passed down through the gene pool. It must be taught and learned anew by each generation of citizens.” *Our Founder*, ICIVICS (quoting Justice O’Connor), <https://www.icivics.org/about> (last visited July 22, 2020). One way to teach democratic values is by voting.

To vote somehow is better than not to vote at all. Yet all forms of voting are not the same when it comes to instilling a collective sense of civic engagement and reinforcing our shared social mores. It’s one thing to put an envelope in the mail.

It's another to vote in-person. Those experiences are different. One is generally solitary (and without the Witness Requirement, potentially completely so). The other is communal. Going to a polling place, waiting with fellow citizens, casting a ballot, and then collectively watching the results while agreeing to abide by those results binds us together in a uniquely American way. *Cf.* Alexis de Tocqueville, I *Democracy in America* 407–08 (Francis Bowen ed., Henry Reeve trans. 1864) (1835) (describing Americans' ability to discuss issues related to their country and rights intelligently). The State therefore has a compelling interest in promoting in-person voting. *Cf. Fisher*, 2020 WL 4515279, at *18 (courts must respect a legislature's policy choice for in-person voting).

The second is election security. *See Libertarian Party of Va. v. Judd*, 718 F.3d 308, 317 (4th Cir. 2013). Once again, absentee-voting fraud “is real.” *Crawford*, 553 U.S. at 195. Although it may not be rampant in South Carolina, it has occurred. *See, e.g., Carmichael*, 685 F.2d at 906; *South Carolina v. Campbell*, No. 2007-GS-47-01 (S.C. Gen. Sess. Feb. 29, 2008); Whitmire Dep. Tr. 35:8–14 (absentee-voting fraud around 2000 in McCormick). And it's happened in other states too, including, for instance, in North Carolina in a congressional race just two years ago.⁴

Related is “protecting public confidence” in elections. *Crawford*, 553 U.S. at 197. Public confidence is what ensures that voters respect the outcome of an election

⁴ The General Assembly gave all voters the choice of voting by absentee ballot for the June primaries under the temporary state-of-emergency exception. That was a decision that belonged to the General Assembly. *See* S.C. Const. art. II, § 10. Just as any decision about the general election belongs to the General Assembly as well.

and the subsequent transfer of power, instead of rioting and causing civil unrest. In other words, it promotes preparing for the next election rather than plotting for a revolution.

C. Section 7-15-320 does not violate the VRA.

As part of the VRA, “[n]o voting . . . standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a).

The Plaintiffs’ claim here is not the common vote-dilution one, but rather a vote-denial one. That is, they claim that requiring voters to be qualified to vote by absentee ballot unlawfully burdens the rights of African American voters and makes it harder or impossible without substantial risk for them to participate in elections. The Fourth Circuit has identified two prongs in a vote-denial case:

First, the challenged standard, practice, or procedure must impose a discriminatory burden on members of a protected class, meaning that members of the protected class have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Second, that burden must in part be caused by or linked to social and historical conditions that have or currently produce discrimination against members of the protected class.

League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 240 (4th Cir. 2014) (internal quotation marks and citations omitted).

This first element “inquires about the nature of the burden imposed and whether it creates a disparate effect” on the protected class. *Veasey v. Abbott*, 830 F.3d 216, 244 (5th Cir. 2016); *see also Ohio Democratic Party v. Husted*, 834 F.3d

620, 637–38 (6th Cir. 2016) (“We therefore emphasize that the first element of the Section 2 claim requires proof that the challenged standard or practice causally contributes to the alleged discriminatory impact by affording protected group members less opportunity to participate in the political process.”).

The second looks for “the requisite causal link between the burden on voting rights and the fact that this burden affects minorities disparately because it interacts with social and historical conditions that have produced discrimination against minorities currently, in the past, or both.” *Veasey*, 830 F.3d at 245 (citing *Thornburg v. Gingles*, 478 U.S. 30 (1986)). This “second step asks not just whether social and historical conditions ‘result in’ a disparate impact, but whether the challenged *voting standard or practice* causes the discriminatory impact as *it* interacts with social and historical conditions.” *Husted*, 834 F.3d at 638.

To resolve the Plaintiffs’ challenge to the Qualification Requirement, the Court need go no further than the first element. Data on absentee voting show that African-American voters, in percentage terms, use absentee voting *more* than white voters. Therefore, the Qualification Requirement does not disproportionately keep African-American voters from participating in elections.

Here are the relevant data from the Commission:

	<u>2020</u> <u>Primary</u>	<u>2018</u> <u>General</u>	<u>2016</u> <u>Primary</u>	<u>2016</u> <u>General</u>
Total Registered Voters	3,312,774	3,148,919	3,023,087	3,157,564
Percentage of Black Registered Voters	26.17%	25.54%	27.84%	27.58%
Percentage of White Registered Voters	69.61%	69.89%	69.13%	69.19%

Total Absentee Ballot Requests	192,903	301,665	87,867	519,552
Percent of Requests from Black Voters	31.18%	33.53%	35.09%	32.01%
Percent of Requests from White Voters	67.08%	64.64%	63.51%	66.21%
Total Absentee Ballots Cast	174,435	293,944	51,745	506,049
Percent Cast by Black Voters	34.61%	34.46%	40.87%	32.82%
Percent Cast by White Voters	64.32%	63.99%	58.38%	65.69%

As this chart makes clear, African-American voters both request and cast absentee ballots at a higher percentage than their percentage as registered voters. This contrasts with white voters, who request and cast absentee ballots at a lower percentage than their percentage as registered voters. That is true historically and during this pandemic. In other words, having to be qualified to vote by absentee ballot has not kept African-American voters from using this method to vote.

The Plaintiffs’ section 2 claim should be rejected, just as the Fourth Circuit did with a section 2 claim in *Lee v. Virginia State Board of Elections*, 843 F.3d 592 (4th Cir. 2016). There, the plaintiffs challenged a voter-ID law. The court held that a “complex § 2 analysis is not necessary to resolve this issue because the plaintiffs have simply failed to provide evidence that members of the protected class have less of an opportunity than others to participate in the political process.” *Id.* at 600.

And so here. The Plaintiffs have not shown (indeed, based on the data, they cannot show) that the Qualification Requirement has a disparate effect on African-American voters and keeps African-American voters from participating in elections.

D. The Qualification Requirement does not violate the ADA.

Title II of the ADA provides, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. A Title II plaintiff must prove three things: “(1) she has a disability, (2) she is otherwise qualified to receive the benefits of a public service, program, or activity, and (3) she was excluded from participation in or denied the benefits of such service, program, or activity, or otherwise discriminated against, on the basis of her disability.” *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 498 (4th Cir. 2005).

1. The Plaintiffs are already eligible to vote by absentee ballot or are not disabled.

The Plaintiffs’ ADA challenge to the Qualification Requirement is inapposite for two of them because they are already qualified to vote by absentee ballot. *See supra* Part I.A.2.a. (discussing Plaintiffs Thomas and Rutledge).

Under the ADA, a person is disabled if she has “a physical or mental impairment that substantially limits one or more major life activities.” 42 U.S.C. § 12102(1)(A). For elections in South Carolina, anyone “who, because of injury or illness, cannot be present in person at his voting place on election day,” S.C. Code § 7-15-310(4), may vote by absentee ballot, *id.* § 7-15-320(B)(1). Though not perfectly coextensive, there is substantial overlap in these provisions.

While Thomas and Rutledge can already vote by absentee ballot, the Plaintiffs have not identified (and discovery has not uncovered) any Plaintiff or

other person who is disabled under the ADA but not qualified to vote by absentee ballot under section 7-15-320(B)(1). This is true not only for Thomas and Rutledge but also for The Family Unit and the NAACP, which never identified any members who wanted to vote by absentee ballot, were not already able to vote by absentee ballot, and were disabled under the ADA. This is a fatal flaw in the Plaintiffs' ADA claim.

And Nea Richard never claimed to have a disability. She therefore cannot have a successful ADA claim.

2. Not all ADA-disabled Plaintiffs are “otherwise qualified” to vote by absentee ballot.

To be sure, voting is one of the most important things we do. But it does not follow that a disabled person has a right to vote by any means. A viable ADA claim requires that a person be “otherwise qualified” to participate in a particular program or service. *See Nat’l Fed’n of the Blind v. Lamone*, 813 F.3d 494, 503 (4th Cir. 2016).

As already discussed, states are not required to allow voters to cast an absentee ballot. *See, e.g., Griffin*, 385 F.3d at 1130. In South Carolina, in-person voting is the norm and the preferred method. Our General Assembly has determined which voters should be qualified to vote by absentee ballot, in an effort to balance making voting easier for voters who might otherwise have trouble voting in person on election day with the need to ensure the integrity of elections. In striking that balance between convenience and integrity, the General Assembly has decided that not every South Carolina voter is “qualified” to vote by absentee ballot.

Rather, only some are: those who meet a statutorily adopted qualification. *See* S.C. Code § 7-15-320.

This limited scope of absentee voting distinguishes this case from *Lamone*, which addressed absentee voting in Maryland. There, the Fourth Circuit concluded that absentee voting (rather than voting generally) was the program at issue. In reaching this conclusion, the Court explained:

[S]ignificant for our analysis of the proper scope of review here is the fact that Maryland allows *any* voter to vote by absentee ballot. Absentee ballots are not just provided to a set of limited voters with a demonstrated need to vote absentee; they instead are provided to the entire Maryland electorate at the option of the individual voter. On the whole, then, we think it is far more natural to view absentee voting—rather than the entire voting program—as the appropriate object of scrutiny for compliance with the ADA

Lamone, 813 F.3d at 504 (internal citation omitted). This analysis is inapposite of absentee voting in South Carolina. South Carolina is instead like the contrast the Fourth Circuit drew in *Lamone*—a state in which absentee ballots are only “provided to a set of limited voters with a demonstrated need to vote absentee.” Unlike in Maryland, where everyone was “otherwise qualified” to cast an absentee ballot, everyone is not “qualified” to vote by absentee ballot in South Carolina.

This distinction in the scope of South Carolina’s absentee voting is important for another reason: Ruling for the Plaintiffs here would actually be inconsistent with the ADA. Just as a state may not deny a disabled person the opportunity to participate in a particular service for which that person is otherwise qualified, a state also may not “[a]fford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that

afforded others.” 28 C.F.R. § 35.130(b)(1)(ii). If all ADA-disabled voters were allowed to vote by absentee ballot, they would be allowed to participate in a program that other South Carolinians are not. That would go beyond the ADA’s purpose to prohibit discrimination against individuals with disabilities and be inconsistent with the text of the statute. *See* 42 U.S.C. §§ 12101(b)(1), 12132.

3. No Plaintiff has been denied the ability to vote by absentee ballot “on the basis of” a disability.

The last element of an ADA claim requires a plaintiff to prove that she wasn’t allowed to participate in a program “on the basis of” her disability. *Lamone*, 813 F.3d at 503. Under Title II, a plaintiff must show that a disability was a “motivating cause”⁵ of her exclusion from a program. *Wicomico Nursing Home v. Padilla*, 910 F.3d 739, 750 (4th Cir. 2018). No Plaintiff here can satisfy this element.

If any Plaintiff is not allowed to vote by absentee ballot, it is not on account of a disability. It is because the Plaintiff does not qualify under section 7-15-320. That qualification requirement—not the disability—is the sole reason a Plaintiff cannot vote by absentee ballot. Thus, no one can satisfy the causal element of this claim.

II. The Witness Requirement is likewise legal.

These same three claims on the Witness Requirement also fail.

⁵ There is another line of Fourth Circuit cases holding that the disability must be the sole cause of the exclusion. *See Doe v. Univ. of Md. Med. Sys. Corp.*, 50 F.3d 1261, 1265 (4th Cir. 1995). The Election Defendants cite the “motivating factor” line of cases for purposes of summary judgment because, even under this standard, which is more favorable to the Plaintiffs, the Plaintiffs still lose.

A. The Witness Requirement is not an undue burden.

1. Getting a witness signature is a minimal burden.

Having a person sign an envelope is a minimal burden. So much so that even calling it a “burden” is misleading. All that is required is for one person to watch a voter sign the envelope and then for that person to sign the envelope herself and write her address. All told (and if the two people didn’t want to chat about anything else), this process should take less than sixty seconds. The statute does not limit who can be a witness. *See* S.C. Code § 7-15-385; *see also* Whitmire Dep. Tr. 32:24–33:3.

COVID-19 does not make this brief interaction a health risk. For people who live in the same household or regularly interact in enclosed spaces without masks, the Witness Requirement poses no additional risks. And even for people who live alone and have perfectly self-isolated,⁶ getting a witness signature does not create a meaningful health risk. As Dr. Salgado explains, studies show that brief interactions—especially when people use proper hygiene, social distance, and wear face masks—do not pose a significant risk. *See* Salgado Expert Report 6–7. Dr. Reingold (the Plaintiffs’ expert) agreed that mask wearing, hygiene, and social distancing were possible in this process. *See* Reingold Dep. Tr. 63:12–64:16. Both Dr. Salgado and Dr. Reingold agreed that the shorter the interaction, the lower the risk of virus infection. *See* Reingold Dep. Tr. 50:5–10; Salgado Expert Report 5.

⁶ It seems unlikely for anyone to have done so after all these months. Certainly no Plaintiff here has. And even if someone had, that still doesn’t mean that a person has no risk of getting COVID-19. *See* Salgado Dep. Tr. 67:4–16.

Specific to the Plaintiffs here, they face little burden. Mary Thomas is self-quarantining because of her medical condition, but even now, she has a housekeeper (Caroline Wallace) who comes once a week for about two-and-a-half hours to clean. *See* Thomas Dep. Tr. 13:19–14:17. All Thomas has to do is say, “Caroline, while you’re here, would you please witness my absentee ballot?” In other words, it’s a single question, hardly a burden and no different than any other voter has to do. As a second option, Thomas regularly visits with her friend, landlady, and lawyer in this case, Susan Dunn. *See* Thomas Dep. Tr. 6:6–10; 14:16–15:4; 17:16–19.⁷

For other Plaintiffs, the burden is similarly minimal. Jeremy Rutledge may be self-quarantining more strictly than most, but he currently lives with his wife, who can easily be his witness. *See* Rutledge Dep. Tr. 35:4–17. Even if in-person school starts back and results in his wife and son living somewhere else (something that for now is only hypothetical), he still plans to see them (socially distanced) at least once a week. *See* Rutledge Dep. Tr. 41:6–42:19. When they see each other,

⁷ In her deposition, Thomas testified that she had Susan Dunn witness her absentee ballot for the June 9, 2020 primary. *See* Thomas Dep. Tr. 20:21–21:12. Thomas was asked whether Dunn had actually witnessed her ballot for the February presidential preference primary, but Thomas insisted Dunn was a witness for the June primary. *See* Thomas Dep. Tr. 29:8–20. More than two weeks after the deposition and only two days before summary judgment was due, Thomas submitted a declaration saying Dunn witnessed her February ballot, not her June one. *See* Thomas Decl. (Ex. 15). A party cannot avoid summary judgment with a declaration that contradicts deposition testimony, particularly a declaration that, without explanation, says what amounts to “my testimony was wrong.” *See Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 806 (1999).

Rutledge can sign his absentee envelope, put it on a bench or a table, let his wife walk over, sign and add her address, and mail the envelope for him. *See* Rutledge Dep. Tr. 42:22–44:16. This process could also be used with any of the myriad other people (including his mother) Rutledge has seen at a social distance since March. *See* Rutledge Dep. Tr. 16:13–19:1, 24:6–28:22 (describing socially distanced interactions with family, neighbors, and church members).

Richard doesn't even have standing to assert this claim if she votes in person. If Richard votes in person, no ruling on the Witness Requirement would have any impact on her. *Cf. Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018) (“A plaintiff’s remedy must be tailored to redress the plaintiff’s particular injury.”). But assuming Richard were to vote absentee, she still has potential witnesses. She works in the same physical space as four other people, *see* Richard Dep. Tr. 11:22–12:13, although she claims not close enough to them for them to be a witness, *see* Richard Dep. Tr. 47:23–48:1. Even crediting that testimony at this stage, Richard still sees her family and friends. *See* Richard Dep. Tr. 16:4–17:4, 12:24–13:19. Thus, she has people who can be a witness for her.

The Family Unit says that some members have had absentee ballots rejected because of missing witness signatures. *See* Family Unit Dep. Tr. 48:4–50:20. Never did the Family Unit say that any of its members could not get a witness signature, just that on a few occasions, they had not (for unstated reasons).

The NAACP said some of its members either live alone or with someone who lacks the mental capacity to be a witness (although it could not offer any specificity

on how many members live alone). *See* NAACP Dep. Tr. 40:10–41:1, 35:7–14. But the NAACP offers nothing about any of these members not having any other person who could be a witness. As Mary Thomas proves, living alone does not mean that a person cannot comply with the Witness Requirement.

2. The State has a compelling law-enforcement interest in this requirement.

The Witness Requirement serves an important law-enforcement investigatory function. The Election Law defines certain conduct as criminal. *See* S.C. Code § 7-25-10 *et seq.* The State’s interest includes investigating and prosecuting election-law violations. Election officials have no role on those fronts. *See* Andino Dep. Tr. 79:13–23; Whitmire Dep. Tr. 78:6–25.

Lieutenant Pete Logan of the South Carolina Law Enforcement Division (“SLED”) has decades of experience, both with SLED and with the Federal Bureau of Investigation, and investigates voting fraud. *See* Logan Decl. (Ex. 16) ¶¶ 2–4. He has pending investigations of fraud in absentee voting. *See* Logan Decl. ¶ 5. He explains that the Witness Requirement “provides SLED, and all criminal investigators, with a significant investigative lead to pursue in these cases because it provides another potential witness to interview in every case.” Logan Decl. ¶ 6. Not having a witness would remove this investigative lead. *See* Logan Decl. ¶ 7.

This interest should come as no surprise. Witnesses are required for myriad documents. *See, e.g.,* S.C. Code §§ 30-7-20 (liens on real property); 62-2-502 (wills); 63-9-340 (consent or relinquishment for purpose of adoption).

To be sure, election officials use the Witness Requirement only to determine whether to open and count the absentee ballot, not to investigate fraud. *See Andino* Dep. Tr. 64:9–24. This acknowledgment is not material here because the State’s interest is broader than the actual conduct of elections overseen by the Election Defendants. The State must enforce the integrity of the elections and its laws.

B. The Witness Requirement does not violate the VRA.

Once again, the Court need address only the first element of the Plaintiffs’ section 2 claim because the challenged provision does not disproportionately affect African-American voters.

Here are the data from the Commission:⁸

	<u>2020 Primary</u>	<u>2018 General</u>	<u>2016 General</u>
<i>Total Absentee Ballots Cast</i>	174,435	293,944	506,049
<i>Percent Cast by Black Voters</i>	34.61%	34.46%	32.82%
<i>Percent Cast by White Voters</i>	64.32%	63.99%	65.69%
<i>Total Absentee Ballots Rejected based on Witness Requirement</i>	n/a	802	1,575
<i>Total African-American Absentee Votes Rejected based on Witness Requirement</i>	n/a	331	649
<i>Percentage of African-American Absentee Votes Rejected based on Witness Requirement</i>	n/a	0.33%	0.39%
<i>Total White Absentee Votes Rejected based on Witness Requirement</i>	n/a	451	899
<i>Percentage of White Absentee Votes Rejected based on Witness Requirement</i>	n/a	0.45%	0.54%

⁸ This chart does not include the 2016 primary because the Commission did not track this particular statistic until the 2016 general election.

As with the Qualification Requirement, African-American voters are not disproportionately affected by the Witness Requirement. In fact, in percentage terms, they comply with that requirement better than white voters do. Thus, the Plaintiffs do not have a viable section 2 claim.

C. The Witness Requirement does not violate the ADA.

As a starting point, only someone with a disability could possibly prevail on this claim. Nea Richard cannot prevail because she never even claimed to have a disability. Further, neither organizational Plaintiff identifies a member with a disability who couldn't get a witness. Thus, they also cannot prevail on this claim.

That leaves only Thomas and Rutledge with potentially viable ADA claims on the Witness Requirement. They are disabled, and they are eligible to vote by absentee ballot. But to prevail on the third element of an ADA claim, they must show that they were prevented from casting an absentee ballot "on the basis of" their disability. *Constantine*, 411 F.3d at 498. Neither Thomas nor Rutledge can meet this standard. Both have ready access to someone to witness an absentee ballot. They therefore have not been excluded from voting by absentee ballot because of their disabilities.

Conclusion

The motion for summary judgment should be granted.

Respectfully Submitted,

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Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 1
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

Deposition Excerpts of Jeremy Paul Rutledge

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

MARY T. THOMAS, NEA RICHARD,
JEREMY RUTLEDGE, TRENA WALKER,
THE FAMILY UNIT, INC., and the
SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP,

Plaintiffs,

v.

C/A No.: 3:20-cv-01552-JMC

MARCI ANDINO, in her official capacity as
Executive Director of the South Carolina
State Election Commission; JOHN WELLS,
in his official capacity as Chair of the
South Carolina State Election Commission;
JOANNE DAY, CLIFFORD J. ELDER, LINDA McCALL,
and SCOTT MOSELEY, in their official capacity
as Members of the South Carolina State Election
Commission; and HENRY D. McMASTER, in his official
capacity as Governor of South Carolina,

Defendants.

D E P O S I T I O N

WITNESS: JEREMY PAUL RUTLEDGE

DATE: Friday, July 24, 2020

TIME: 10:06 a.m.

LOCATION: 1406 Glencoe Drive
Mount Pleasant, South Carolina

TAKEN BY: Attorneys for the Defendants
SC State Election Commission officials

REPORTED BY: DEBORAH L. DUSSELJEE, RPR, CRC
Realtime Systems Administrator

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Jeremy Paul Rutledge 7/24/2020

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1 early.

2 And I went one other time, which I
3 approximate to be about three weeks later, to retrieve
4 a number of books and things from my office because I
5 knew I wouldn't be working from the church office. I
6 was working from home. And, again, I went early to
7 avoid any people.

8 Q. You live with your wife and son; is that
9 correct?

10 A. Yes.

11 Q. Does anyone else live in your house?

12 A. No.

13 Q. Has anyone else been to your house since
14 March 13th?

15 A. Yes.

16 Q. Who's been there?

17 A. I will do my best to recall this for you,
18 and it's also recorded in the document we provided.
19 My wife and I sat down and were very thorough, so I'm
20 working from memory at this moment.

21 Who has come to my house since March 13th?
22 My mother and her housemate, Barbara Cole, have come
23 to our house. Our administrative assistant, Kathryn
24 Cullinan, has come to our house. Actually last
25 evening, our choir director, Michael Laird, and his

Jeremy Paul Rutledge 7/24/2020

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1 wife Vanessa came to our house to pick up a computer.

2 All of these visits were outside at a
3 minimum of 15 feet with masks. In Michael and
4 Vanessa's case, we put the computer they were picking
5 up outside, and we did not come out of the house.

6 So in every case, we have kept a very strong
7 physical distance. There may be a visit that I'm not
8 recalling. I'm sort of straining to remember what we
9 put on that -- on the --

10 Q. And I'm not trying to test you right now as
11 compared to written responses, and we'll go through
12 those later, and I'll ask you who some of those people
13 are.

14 Where does your mother live?

15 A. My mother lives in a -- I mean, she lives in
16 Mount Pleasant.

17 Q. That's what I was asking, is she -- she
18 lives nearby.

19 A. Yes.

20 Q. How often have you seen her since
21 March 13th?

22 A. Oh, less than --

23 Q. Do you see her --

24 A. Go ahead.

25 Q. Do you see her once a week? Do you see her

Jeremy Paul Rutledge 7/24/2020

18

1 once a month? Have you seen her once in the last four
2 months?

3 A. I'm approximating. About three times a
4 month. Much less than we would like. Maybe --

5 Q. How often did you see her before March 13th?

6 A. Oh, several times a week, so...

7 I would -- let's just approximate twice a
8 week, and now it is more like twice a month.

9 Q. Got it. Speaking of people, there's a list
10 you gave us. This is, again, a response, the one you
11 were just talking about. One is a list of people who
12 may know something about this case, and the other one,
13 there is a list of people who you've seen.

14 And I just want to ask you who these people
15 are and when you saw them and just find out a little
16 bit about it. So obviously I know that Sara is your
17 wife. So that's easy on the first one.

18 Kathryn Cullinan, who is that?

19 A. She is the church administrator.

20 Q. Approximately how many times have you seen
21 her since March 13?

22 A. Only one that I can remember, so I would say
23 approximately two. I mean, it's possible. I work
24 with Kathryn very closely, but I only remember
25 physically seeing her once. Again, it was outside

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1 with face masks on at a distance.

2 Q. Barbara Cole is your mother, correct?

3 A. No. My mother is --

4 Q. No, I'm sorry. That's obviously not your
5 mother. Who is Barbara Cole again?

6 A. Barbara Cole is my mother's housemate. They
7 share a house together.

8 Q. Okay. Do you see her every time you see
9 your mother or just sometimes?

10 A. Just sometimes.

11 Q. Who is Dr. Brad Keith?

12 A. Dr. Brad Keith is one of -- I have three
13 doctors at MUSC, and he's one of my doctors.

14 Q. What is his specialty?

15 A. Internal medicine.

16 Q. Dr. Richard Silver, what is his specialty?

17 A. His specialty is rheumatology, and he is my
18 primary doctor. He's a specialist in my disease.

19 Q. Which -- since you mentioned it, what
20 condition do you have?

21 A. My disease is systemic scleroderma with
22 interstitial lung disease. And if Debbie needs me to
23 spell any of that, I would be happy to. It's
24 important, you know, that diagnosis.

25 Q. It is.

Jeremy Paul Rutledge 7/24/2020

24

1 Houston.

2 Q. What would they know about the case?

3 A. The same as our families, I think. They may
4 have even been included in that same e-mail, kind of a
5 newsy e-mail, what is happening with us, so...

6 Q. Now I am looking at the other list. This is
7 the people you've had some interaction with since
8 March. And some of this you mentioned, your mother
9 and her housemate.

10 And then there's Stephanie and Noel Hunt.
11 Who is that?

12 A. They are church members, and they are
13 neighbors.

14 Q. Approximately how close do they live to you?

15 A. Approximately one mile.

16 Q. Have you seen them more than just that one
17 time in April?

18 A. No.

19 Q. What do you remember about when you saw them
20 in April? Where was it? How long did it last?

21 A. It was at their house outside. We kept a
22 large physical distance. I would say 15 feet, and it
23 probably lasted 30 minutes at the longest. Perhaps it
24 was shorter than that.

25 I remember feeling a little nervous, you

Jeremy Paul Rutledge 7/24/2020

25

1 know, to be visiting, so maybe 20 to 30 minutes is my
2 estimate. Again, at a good social distance outdoors.

3 Q. Got it.

4 Lara D'Eugenio?

5 A. Yeah. Lara D'Eugenio, she's also a church
6 member and a friend. And we --

7 Q. Appro --

8 A. Go ahead.

9 Q. I was going to say, approximately where was
10 that and how long did it last?

11 A. That was at her house. I would approximate
12 that visit to be about 30 minutes. It was outside,
13 and I believe we wore masks as well. And that was
14 just one visit, so...

15 We kept --

16 Q. I don't want to cut you off. I'm sorry.

17 Who are Annie and Peter Steele?

18 A. They are also friends and church members.

19 We saw them once. It was here. It was outside at --

20 I would say, again, 15 feet. I'm pretty careful about
21 that distance and like to maintain that distance.

22 They had -- Annie had sewn us some new face masks, and
23 they were bringing them by to drop them off.

24 Q. Mike Fischer, who is he?

25 A. Mike -- Mike -- I'm sorry. I didn't mean to

Jeremy Paul Rutledge 7/24/2020

26

1 speak too soon.

2 Q. That's all right.

3 A. Mike Fisher is our neighbor. He lives
4 across the street and over one house.

5 Q. When you see him, is it just the comings and
6 goings of in and out of your house and his house?

7 A. Yes. He walks his dogs, and so we wave to
8 him probably once a day. They have concerns about
9 being high risk, so none of us get close to each
10 other. Often, we will wave to Mike from 50 feet or
11 more. So we keep a good distance from Mike, but we
12 see him -- see him every day.

13 Q. Treva Williams, Rose Stump, and is it
14 Raynique Syas?

15 A. Yes. Yes. They -- they came by once. And
16 I -- I'm sorry to say I can't estimate this very well.
17 I think it was probably two months ago.

18 Q. That's almost spot on to what you had
19 written down, so well done.

20 A. Okay. Days are a little fuzzy right now.
21 Time is better with time of day than how many days
22 have passed.

23 They came by once. I think they knew I was
24 feeling a little dejected by having stayed home so
25 long. And I work with them closely in the community,

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1 so they came by and brought like posters that said, We
2 love you Jeremy or whatever, and they were at the end
3 of my driveway.

4 So we were probably 15 feet away. Also, our
5 family had masks. And it was just that one visit.

6 Q. Who is Adam Parker?

7 A. Adam Parker is also a friend. He works for
8 "The Post and Courier" as well.

9 Q. Did you discuss this lawsuit with
10 Mr. Parker?

11 A. No.

12 Q. I see Barbara and Barry Sanders. I'm
13 guessing that's not the football player Barry Sanders.

14 A. No, no. They are church members, and we
15 visited them after a surgery one of them had. It was
16 a pastoral visit. We were going to visit them outside
17 their house, you know, 15 feet, face masks. That's
18 also how I visited with Adam, 15 feet and face masks.

19 When we went to see Barbara and Barry, it
20 was raining that day, so we actually were in our car,
21 and they were still in their house. So we called each
22 other and waved, so that was our way of keeping our
23 distance.

24 Q. Marcia and Tim West, who are they?

25 A. Marcia and Tim West are also friends from

Jeremy Paul Rutledge 7/24/2020

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1 church. And we went to their house on their
2 anniversary to wish them happy anniversary and met
3 them outside at a distance, again, I would say, of 15
4 feet, maybe a little more. They have a big yard. We
5 wore face masks and -- yeah.

6 Actually, to be honest, now I cannot
7 remember if it was an anniversary or a birthday
8 because I have a vague memory of my son singing Happy
9 Birthday, so...

10 But it was a happy occasion we went to.

11 Q. It was something exciting.

12 And then finally Ivy Wadsworth.

13 A. Ivy Wadsworth is a friend and a neighbor,
14 and they live two blocks away. And we saw her once on
15 a walk. She was outside of her house, and we spoke
16 with her briefly. Again, at about 15 feet.

17 We are always wearing face masks when we go
18 for a walk. And I believe that was just one time.
19 That was relatively recently. It was in the last two
20 weeks.

21 Q. Your thing says July 13th, so, again, spot
22 on.

23 A couple of -- you have a list of places
24 you've been, some -- like forests and the beach. You
25 have Marion Square on your list. When did you go to

Jeremy Paul Rutledge 7/24/2020

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1 A. Yes, generally.

2 Q. I want to talk a little bit about the
3 witness requirement first.

4 Could your wife be the witness for your
5 absentee ballot?

6 A. Could my wife be the witness for my absentee
7 ballot? The answer this morning is yes. If we were
8 voting this morning, she could be.

9 Q. You don't wear a face mask in your house, do
10 you?

11 A. No.

12 Q. Your wife lives there and doesn't wear a
13 face mask at home either.

14 A. That's correct.

15 Q. Right. You see your wife basically more
16 times a day than you can count, correct?

17 A. Yes.

18 Q. Good answer.

19 All right. So I want to talk about the
20 qualification requirement now. It's what your lawyers
21 have called the excuse requirement. I don't want to
22 get in a spitting contest over what we call it, but it
23 is the requirement that you must have a reason to vote
24 absentee because it's not open to just everyone.

25 I have the declaration that was filed with

Jeremy Paul Rutledge 7/24/2020

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1 A. Yeah, that's the only --

2 Q. Okay.

3 A. You have all that.

4 Q. We do. I just wanted to make sure you
5 weren't going to tell me what you told your lawyers
6 because that's privileged, and I don't want to ask
7 about that.

8 A. Yeah.

9 Q. And if you had started to, I don't know who
10 was going to stop you first, your lawyer or me.

11 All right. Do you know anyone who
12 contracted COVID-19 because they voted in the
13 June 9th, 2020 primary?

14 A. I do not know anyone that has told me that.
15 I'm not sure how I would know who contracted COVID and
16 how they got it. Or let me rephrase that. I'm not
17 sure I would know from someone with COVID where
18 exactly they contracted it, so I can't say -- can't
19 say with any certainty.

20 MR. LAMBERT: Those are the only questions I
21 have at this time.

22 As you probably realized, there are a lot of
23 other lawyers on this videoconference now. So
24 unfortunately, I have got to hand you off to them, and
25 you are not off the hot seat just yet. But

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1 Mr. Rutledge, I appreciate you taking time this
2 morning to answer my questions and talk to me.

3 THE WITNESS: Could I clarify one answer as
4 well?

5 MR. LAMBERT: Sure.

6 THE WITNESS: When you asked if Sara could
7 be a witness for me and I said today she could be,
8 that is because she has stayed at home with me since
9 the schools closed in March. So we've been in a
10 bubble, and that allows us to safely be together.

11 If that bubble is broken, then the answer
12 would be no. And as we approach the start to school,
13 that's why I said today the answer is yes. But I just
14 wanted to clarify that's only for today.

15 BY MR. LAMBERT:

16 Q. So what would happen if the bubble were
17 broken? Would you or she have to go live somewhere
18 else?

19 A. Yes, and, in fact, that is our plan. When
20 the bubble is broken, Sara and Ian will go to live in
21 another house, and we will live separately until
22 there's a vaccine because the risk, again, is just too
23 great. Nobody wants me to die, right? And so --

24 Q. No, certainly not.

25 A. I didn't mean to be flip. I just meant --

Jeremy Paul Rutledge 7/24/2020

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1 yeah, so our plan is, once the bubble is broken, we
2 will have to live separately.

3 Q. If you have to do that, do you have any
4 thoughts about how you will see them, whether it's
5 socially distanced outside with a mask on? Have you
6 thought about what that might look like?

7 A. Yes. The only thing we have discussed is
8 the possibility of, you know, trying to meet at the
9 end of a school week, perhaps in a park or someplace
10 we can identify outdoors with masks at a distance,
11 again, in order to -- at least to keep me in a kind of
12 bubble or to keep me safe from infection.

13 Q. You would assume you're going to try to do
14 something, whenever this bubble breaks, so that you
15 can actually see your wife and son in person and not
16 go necessarily 8, 10, 12 months without laying eyes on
17 them; is that fair?

18 A. Yes. We would like to find a way to lay
19 eyes on each other.

20 Q. As if I were in your shoes, I would too. I
21 couldn't imagine it being otherwise.

22 If you were to figure out a way to be able
23 to see them in a park or some sort of public space
24 outdoors with masks, would it be possible there for
25 you to bring an absentee ballot and an envelope and

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1 sign it and put it on a bench and then walk back and
2 your wife walk over and sign it and then leave it
3 there for you?

4 A. I think that is in the realm of possibility.
5 There's a little bit -- I've thought about this
6 question because I've wondered it myself.

7 It's a little speculative to me, speculative
8 because it would -- it would really require that we
9 find a park that works for us, that nobody is sick at
10 the time, that the weather is good, you know, from my
11 point of view that nobody else is around because I
12 would want my vote to be private. And so it requires
13 a lot of things to go right.

14 Q. It does. I think just today as you think
15 about it, your -- the ballot goes in the envelope, and
16 the envelope gets sealed, and the outside of the
17 envelope is what's signed.

18 So I think at least you don't have to worry
19 about the vote being private in the sense of someone
20 seeing your ballot. Your wife wouldn't even
21 necessarily see it and know who you voted for unless
22 you told her. So at least that's one piece of it you
23 could not have to worry about.

24 Unless you have anything else to clarify,
25 I'm going to pass you off now to -- I don't know who's

Jeremy Paul Rutledge 7/24/2020

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1 coming after me, but they can fight over who gets you
2 next.

3 MR. BURNS: Before we conclude, there wasn't
4 a pause before the end of your statement. I wanted to
5 object to the form of the last statement Mr. Lambert
6 made.

7 BY MR. LAMBERT:

8 Q. In that case, if I can do one thing, let me
9 ask a question then to follow up on that with the
10 objection to form.

11 Mr. Rutledge, are you aware that the ballot
12 goes in an envelope, which is sealed, and then that
13 envelope is which has the signatures on it for you and
14 for the witness?

15 A. Yes. I'm aware that the signatures can be
16 added to the sealed envelope.

17 MR. LAMBERT: Thank you very much. In that
18 case, I will now actually pass you off for real this
19 time.

20 THE WITNESS: Thank you.

21 MR. BURNS: If we could, I think now is a
22 good time for a brief five-minute break to give
23 Reverend Rutledge a chance to catch his breath. If
24 that's okay with everyone, we'll take a brief
25 five-minute break.

Jeremy Paul Rutledge 7/24/2020

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1 because she was still, you know, living in the bubble
2 with me, and we didn't want there to be any reason for
3 that ballot to get thrown out.

4 So since we were all still living in the
5 same house, it was an easy thing to do. We went ahead
6 and did that to ensure that the vote was counted.

7 Q. And Mr. Lambert asked you a couple of
8 questions or commented about your declaration. And I
9 think it said something about under your
10 interpretation of the excuse requirement, you don't
11 qualify to vote absentee.

12 Is that an accurate statement?

13 A. Yes, and that's still my interpretation. I
14 do not consider myself to be a disabled person, and I
15 think that there's some medical definitions about
16 being disabled that I don't believe I meet.

17 Q. Have you called anybody, like your -- I
18 guess you're in Charleston County, right, or are you
19 in Berkeley County?

20 A. I'm in Charleston County.

21 Q. Have you called your Charleston County
22 election commission to see if your interpretation is
23 accurate?

24 A. No. To see if my interpretation of my
25 medical condition is accurate?

Jeremy Paul Rutledge 7/24/2020

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1 share with them.

2 But does that answer your question? I'm not
3 sure I followed exactly what you were asking.

4 Q. Sure. And could you give me the names of
5 those folks that you referenced?

6 A. Yeah. Senator Kimpson, I see from time to
7 time. And then I'm trying to think of some of my
8 friends from the Furman program. Tom Davis, I believe
9 I have spoken with about different things. It's been
10 a while. Beth, and I'm blanking on her last name. I
11 can provide these for you.

12 Just friends that I've called about
13 different things or reached out to, especially
14 relating to the pandemic in our state and the spread
15 of the virus. But not about --

16 Q. But you don't recall -- just to be clear,
17 you don't recall ever contacting any house member or
18 senator requesting that they change the law related to
19 absentee ballots for the upcoming election.

20 A. No. I think my focus has not been on trying
21 to get the legislature to change the law this quickly.
22 It had been more about going to the Election
23 Commission, which seems like the way that something
24 could happen quickly during an election year. That's
25 been my understanding as a citizen.

Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 2
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

Deposition Excerpts of Nea Symone Richard

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

MARY T. THOMAS, NEA RICHARD,
JEREMY RUTLEDGE, TRENA WALKER,
THE FAMILY UNIT, INC., and the
SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP,

Plaintiffs,

v.

C/A No.: 3:20-cv-01552-JMC

MARCI ANDINO, in her official capacity as
Executive Director of the South Carolina
State Election Commission; JOHN WELLS,
in his official capacity as Chair of the
South Carolina State Election Commission;
JOANNE DAY, CLIFFORD J. ELDER, LINDA McCALL,
and SCOTT MOSELEY, in their official capacity
as Members of the South Carolina State Election
Commission; and HENRY D. McMASTER, in his official
capacity as Governor of South Carolina,

Defendants.

D E P O S I T I O N

WITNESS: NEA SYMONE RICHARD

DATE: Saturday, July 25, 2020

TIME: 11:02 a.m.

LOCATION: 525 Roper Pond Circle
Columbia, South Carolina

TAKEN BY: Attorneys for the Defendants
SC State Election Commission officials

REPORTED BY: DEBORAH L. DUSSELJEE, RPR, CRC
Realtime Systems Administrator

- - - - -

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Nea Richard 7/25/2020

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1 Q. When did you work at Belk's?

2 A. I worked at Belk's the -- from the end of
3 August to the beginning of November in 2019.

4 Q. And when did you start working at Red
5 Stripe?

6 A. May 11th, 2020.

7 Q. What do you do at Red Stripe -- well, first
8 let me ask you this. What is Red Stripe?

9 A. Red Stripe Management is an investment
10 company that looks out for nonprofits, small
11 nonprofits and churches, and tries to help them build
12 their business into organizational structures.

13 Q. And what do you do at Red Stripe?

14 A. I am a legal research analyst.

15 Q. What kind of things do you research?

16 A. I currently have been into trademarking and
17 copyrighting. The company is a family company, so
18 we're trying to make sure that all of our like bills
19 and whatnot are legal and work in the system. I also,
20 from time to time, review contracts. But that's what
21 I have been doing so far.

22 Q. In your response to the interrogatories, you
23 had identified certain folks that you actually work
24 with.

25 A. Yes.

Nea Richard 7/25/2020

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1 Q. You had identified Jerry Josey, Joseph
2 Douglas, Cassandra Harden, Shaquanna Tolen. Are those
3 your coworkers?

4 A. Yes.

5 Q. And your response also said they were
6 workers with whom you usually interact.

7 A. Right.

8 Q. Who else do you interact with?

9 A. At work?

10 Q. Yes, ma'am.

11 A. Physically, no one outside of those names.
12 Virtually, my boss, which is Bianca Rodriguez; my COO,
13 which is the D'Jaris Douglas.

14 Q. I'm sorry. What was her last name?

15 A. Douglas.

16 Q. Douglas.

17 Where is Red Stripe located?

18 A. In Irmo, South Carolina.

19 Q. What's the address?

20 A. 401 Western Lane, Irmo, South Carolina, and
21 I cannot remember the ZIP code. We have three
22 different locations, though, so that is the one where
23 I work at.

24 Q. Okay. Now, you said that on June the 20th,
25 you attended a birthday party in Spartanburg with four

Nea Richard 7/25/2020

13

1 friends.

2 A. Yes.

3 Q. Akeela Dendy, Naisha Goggans, Timya Burton,
4 and Hailey Gayle; is that right?

5 A. Yes.

6 Q. Where was the birthday party?

7 A. In Spartanburg, South Carolina, at an
8 Airbnb.

9 Q. Okay. What was the address of the Airbnb?

10 A. I do not recall.

11 Q. Can you tell me what part of Spartanburg it
12 was in?

13 A. I don't remember. I just followed.

14 Q. Okay. Was it a freestanding house?

15 A. Yes.

16 Q. Did y'all rent that house for the weekend?

17 A. Yes -- well, just for two days.

18 Q. Two days. Okay.

19 Saturday and Sunday?

20 A. Well, she rented it for Friday and Saturday.
21 I didn't show up until Saturday.

22 Q. Okay. Did you stay Sunday?

23 A. No.

24 Q. Okay. Did y'all go out anywhere when you
25 were in Spartanburg?

Nea Richard 7/25/2020

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1 about a month, though, but...

2 Q. Out on Forest Drive?

3 A. Forest -- yeah.

4 Q. That's the same one I go to.

5 March the 13th -- oh, do you have your hair
6 done?

7 A. I do my hair myself.

8 Q. Other than going to Walmart and going to
9 work and finishing up school at Claflin and the
10 birthday party, what have you done that involves going
11 out of your apartment?

12 A. I went home for a week.

13 Q. And that's in Cross Hill?

14 A. Yes.

15 Q. And did you stay with your family?

16 A. Yes.

17 Q. Who is physically located in your family
18 home?

19 A. Andrill Richard and Donnie Oneal Richard.

20 Q. Are those your parents?

21 A. Yes.

22 Q. What about your grandmother?

23 A. My grandmother, she stays in front of us.

24 Q. I'm sorry?

25 A. She stays in front of my Cross Hill

Nea Richard 7/25/2020

17

1 residence.

2 Q. So she is in a separate house, but just
3 right next to you.

4 A. Right.

5 Q. Okay. Have you done anything else going out
6 other than the things we've just talked about?

7 A. I've moved into a new apartment.

8 Q. Right.

9 A. I've typically switched to online shopping
10 at the grocery store.

11 Q. If you think of something else along the
12 way, don't hesitate to interrupt and let me know
13 because often if I quit thinking about something, it
14 pops up into my mind.

15 A. Got you.

16 Q. You -- when did you start voting in South
17 Carolina?

18 A. As early as possible. I can't remember if
19 there was an election the year I turned 18.

20 Q. What year did you turn 18?

21 A. I turned 18 exactly four years ago, so that
22 would be 2016.

23 Q. And that was a general election for -- a
24 presidential election year, correct?

25 A. Right.

Nea Richard 7/25/2020

22

1 Q. Poll manager. Okay.

2 Do you know of anyone who contracted
3 COVID-19 from voting in Cross Hill?

4 A. No, I do not know for sure.

5 Q. Have you had any conversations with your
6 grandmother about whether she knows anyone who
7 contracted COVID from voting in the primaries at Cross
8 Hill?

9 A. I have not.

10 Q. Okay. Do you know approximately how many
11 people voted at Cross Hill in person?

12 A. For the general election, no.

13 Q. No, no. I'm talking about the primaries.

14 A. No, I didn't check the numbers.

15 Q. Okay. And I assume the same is true about
16 absentee ballots. You don't know that either.

17 A. No.

18 Q. Okay. Why didn't you work as a poll worker
19 this year in the primaries?

20 A. Because I had just begun my job and didn't
21 want to take off.

22 Q. Okay. I got you.

23 Let me ask you some questions about your
24 declaration. I think you just said you had reviewed
25 it prior to the deposition, right?

Nea Richard 7/25/2020

25

1 or the June 23rd runoff because they had a fear of
2 COVID and catching COVID?

3 A. No, I have not asked.

4 Q. In your declaration, you made the following
5 statement: The challenged provisions do not allow all
6 voters with reasonable fear of contracting or
7 spreading COVID-19 to vote by mail and require voters
8 who do qualify to vote by mail to have a witness sign
9 their ballots -- the ballot envelope. These
10 requirements will lead to unnecessary encounters that
11 I fear will cause risk to both personal and public
12 health.

13 What is the basis of your fear of the risk
14 to both personal and public health?

15 A. So I know a lot of people personally from
16 home who take voting very seriously, but I also know
17 the same people, if they were contracting COVID
18 symptoms, would not be willing to put someone else's
19 health at risk in order to vote.

20 So I don't want someone's vote to have to be
21 suppressed or taken away because they fear infecting
22 others with the symptoms that has affected my hometown
23 dearly.

24 Q. Do you know this because of talking to these
25 folks?

Nea Richard 7/25/2020

26

1 A. Yes.

2 Q. Who have you talked to?

3 A. I have a cousin who has contracted COVID.

4 Her name is Ms. Beverly Jones. I have another aunt

5 who -- well, not aunt, but a close family friend who

6 has contracted COVID. Her name is Tammy. Just I know

7 for myself personally, and I know for my parents as

8 well, that they would not be willing to do such

9 things, as well as my close family members.

10 Q. How old are your parents?

11 A. My parents are 45 and 46.

12 Q. And your grandmother? I know you're not

13 supposed to ask a lady's age, but...

14 A. I know she is in her -- I can give you a

15 range, late sixties, early seventies.

16 Q. Have you had conversations with anyone else

17 regarding their fear of voting in person because of

18 COVID?

19 A. No.

20 Q. Have you had conversations with anyone about

21 their inability to vote absentee because they can't

22 get -- don't have a witness?

23 A. I haven't.

24 Q. In paragraph 8 of your declaration, you say

25 that poll workers at my polling site are

Nea Richard 7/25/2020

35

1 Ms. Crum's questions.

2 So I apologize if it seems scattered, but
3 I'm just working my way through that. Okay?

4 A. Okay.

5 Q. Ms. Crum was just asking you as she finished
6 about the Complaint. And this is the Amended
7 Complaint, and it was filed in July, on July the 13th.
8 And so I think Ms. Crum asked -- or have you read
9 these allegations that are in the Complaint?

10 A. The witness requirement as well as the
11 excuse requirement, yes.

12 Q. Okay. And so my question to you is, do you
13 know of any people who didn't get to vote in your town
14 either by absentee or in person?

15 A. Not in my town. I know a lot of people a
16 couple of towns over, but not in my town specifically.

17 Q. But in -- where are they? Where are those
18 people?

19 A. Saluda County.

20 Q. Saluda County.

21 What happened to them? Why didn't they get
22 to vote?

23 A. Well, my other grandma is completely
24 terrified of COVID, so she has been barricading
25 herself, outside of work, from all COVID interaction.

Nea Richard 7/25/2020

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1 Q. I'm sorry. You said she's terrified of
2 COVID, and then what did you say?

3 A. Outside of work, she has been barricading
4 herself in her home, so...

5 Q. So she didn't vote.

6 A. No.

7 Q. Okay. Could she have voted by absentee?

8 A. I don't know. I haven't asked her that. I
9 know she didn't vote though.

10 Q. Did you see her before the June election
11 any?

12 A. No.

13 Q. Does she -- is she married?

14 A. No.

15 Q. Does she have anybody that lives with her?

16 A. No.

17 Q. So your grandmama that doesn't live in front
18 of you, the one that lives in Saluda County, she
19 didn't get to vote.

20 Anybody else?

21 A. Not that I've asked.

22 Q. So you don't know of anybody else, then,
23 specifically.

24 A. I haven't asked anyone specifically.

25 Q. Okay. Let me make sure that I understood

Nea Richard 7/25/2020

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1 A. Physically, no, but in the same area, yes.

2 Q. Okay. And let me just ask, if you -- you
3 said you weren't sure how you -- whether you were
4 going to work as a poll manager in the general
5 election in November, right?

6 A. Correct.

7 Q. You said that was -- you just want to wait
8 and see how COVID works out.

9 A. Yes.

10 Q. But will you plan on going to vote in person
11 again in Cross Hill?

12 A. It just depends on how COVID moves. I can't
13 give you an answer for that right now.

14 Q. But let's say you can't go in person because
15 COVID is rampant and you're not going to go there.
16 Would you be able -- will you vote by absentee?

17 A. Yes.

18 Q. Okay. And so will you -- so you'll meet one
19 of the criteria for justification to voting for an
20 absentee ballot, right?

21 A. Right.

22 Q. Work presumably. Would that be the reason
23 why, potentially?

24 A. I wouldn't be able to say work potentially
25 because my company is looking forward to going --

Nea Richard 7/25/2020

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1 Q. Are you aware that the witness requirement
2 and the excuse requirement are statutory provisions?

3 A. No, I was not aware.

4 Q. Who are your representatives -- who is your
5 representative in the House of Representatives, the
6 South Carolina House of Representatives?

7 A. I -- I can't remember.

8 Q. Do you know who your state senator is?

9 A. Sorry. I'm completely combobbled right now.
10 I don't remember off the top of my head.

11 Q. That's fine.

12 Have you contacted any members of the South
13 Carolina General Assembly about any concerns related
14 to absentee voting or absentee ballots?

15 A. No. I'll just kind of let this case do what
16 it does.

17 Q. Excuse me? I didn't hear that.

18 A. I just took my place in this case as me
19 taking my concerns forward.

20 Q. So you've not taken any action to try to
21 change the law through the legislative process.

22 A. No.

23 Q. Or to encourage members of the General
24 Assembly to do so.

25 A. No.

Nea Richard 7/25/2020

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1 MR. LIMEHOUSE: Okay. All right. I believe
2 that's all the questions I have. Thank you.

3 THE WITNESS: No problem.

4 MR. JASON: Can I just have five minutes
5 real quickly as I just collect my thoughts and --
6 yeah, and I'll be -- and maybe we could just return in
7 a couple or five?

8 MS. CRUM: What? I'm sorry. I didn't hear
9 the very last part of what you said.

10 MR. JASON: I'm sorry. I'm saying I just
11 need about five minutes to collect my thoughts really
12 quickly and to reconvene at 12:05.

13 (A brief recess transpired.)

14 EXAMINATION

15 BY MR. JASON:

16 Q. So I also -- I also only have a couple of
17 questions, and I may jump around a little bit.

18 So first, you were talking about working as
19 a poll worker in June. At the time, did you have the
20 accrued time to take the day off from work to
21 volunteer as a poll worker?

22 A. No.

23 Q. Okay. At work, do you ever get close enough
24 to people physically so, that way, a coworker would be
25 able to witness you signing a document?

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1 A. No.

2 Q. And I guess lastly, since June, what
3 measurements have you taken to better protect yourself
4 in regard to social distancing?

5 A. So I rarely go anywhere. I've been at work.
6 I've been at home. And then as I am around people,
7 it's the same amount of people -- same people that
8 I've been around since April, and that's on very short
9 occasions.

10 Q. And so does that mean you've essentially
11 only seen your coworkers and your boyfriend?

12 A. Yes, and my family as well.

13 Q. And have you seen anyone else besides those
14 few various people?

15 A. No.

16 Q. And your family?

17 A. No.

18 MR. JASON: Okay. That's it for plaintiffs.

19 RE-EXAMINATION

20 BY MS. CRUM:

21 Q. One very quick follow-up.

22 Ms. Richard, you had testified that you had
23 gone to the birthday party in Spartanburg. You recall
24 additional people there, correct?

25 A. Right, close family and friends.

Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 3
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

***30(b)(6) Deposition of the NAACP LEGAL DEFENSE
and EDUCATIONAL FUND, INC.***

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF SOUTH CAROLINA
3 COLUMBIA DIVISION

3 MARY T. THOMAS, NEA RICHARD,
4 JEREMY RUTLEDGE, TRENA WALKER,
5 THE FAMILY UNIT, INC., and the
6 SOUTH CAROLINA STATE CONFERENCE
7 OF THE NAACP,

8 Plaintiffs,

9 vs. Civil Action No.:
10 3:20-cv-01552-JMC

11 MARCI ANDINO, in her official capacity as
12 Executive Director of the South Carolina
13 State Election Commission; JOHN WELLS,
14 in his official capacity as Chair of the
15 South Carolina State Election Commission;
16 JOANNE DAY, CLIFFORD J. ELDER, LINDA McCALL,
17 and SCOTT MOSELEY, in their official capacity
18 as Members of the South Carolina State Election
19 Commission; and HENRY D. McMASTER, in his official
20 capacity as Governor of South Carolina,

21 Defendants.

22

23 30(b)(6) Deposition of the NAACP LEGAL
24 DEFENSE and EDUCATIONAL FUND, INC.,
25 by BRENDA C. MURPHY

DATE: July 27, 2020

TIME: 2:10 p.m.

LOCATION: 115 Saxonbury Drive
Columbia, South Carolina 29223

26

TAKEN BY: Attorney for Defendants
SC State Election Commission officials

REPORTED BY: Colette Cantoni,
Realtime Court Reporter

27

COMPUSCRIPTS, INC.
888.988.0086

Brenda Murphy 7/27/2020

2

1 APPEARANCES:

2 ATTORNEYS FOR PLAINTIFFS:

3 NAACP LEGAL DEFENSE
and EDUCATIONAL FUND, INC.

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25

Brenda Murphy 7/27/2020

3

1 APPEARANCES (Continued):

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3 her official capacity as Executive Director
4 of the South Carolina State Election
5 Commission; JOHN WELLS,
6 in his official capacity as Chair of the
7 South Carolina State Election Commission;
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(EVERYONE PARTICIPATING VIA A
VIDEOCONFERENCE, INCLUDING THE COURT
REPORTER)

(INDEX AT REAR OF TRANSCRIPT)

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1 MR. JASON: Plaintiff again would make
2 the usual stipulations. And we would also
3 like to read and sign.

4 MS. CRUM: Fine.

5 - - - - -

6 B R E N D A C. M U R P H Y

7 having been first duly sworn, was
8 examined and testified as follows:

9 EXAMINATION

10 BY MS. CRUM:

11 Q. Ms. Murphy --

12 A. Yes?

13 Q. -- I'm Liz Crum, and I am one of the
14 lawyers for Ms. Andino and the State Election
15 Commission. And I will be asking you some questions
16 today.

17 If you don't understand a question,
18 would you please, ma'am, ask me to rephrase it.

19 A. I will.

20 Q. Thank you, ma'am. And if you don't hear
21 a question, ask me to repeat it, if you would,
22 please.

23 A. I will.

24 Q. And if you do not ask me either to
25 rephrase or to repeat the question, I will assume

Brenda Murphy 7/27/2020

5

1 that you understood the question and heard the
2 question. Okay?

3 A. Okay.

4 Q. Since this deposition has started, you
5 cannot discuss the substance of your deposition with
6 anyone, including your attorney. And if we happen to
7 take a break, I can ask you when we come back whether
8 or not you discussed anything with your attorney.
9 Okay?

10 A. Okay. Yeah.

11 Q. And you must answer "yes," "no," or,
12 "okay," some verbal answer, because the court
13 reporter can't write down your response if you're
14 shaking your head, which I have a bad habit of doing.
15 So you have to actually verbalize your answer,
16 please, ma'am.

17 A. Okay.

18 Q. And if you would let me finish my
19 questions and I will let you finish your answers,
20 because we're both -- at least I tend to anticipate
21 sometimes and talk before I should. So if you could
22 do that, that would be greatly appreciated,
23 particularly by the court reporter, who has to write
24 down everything that we say. Okay?

25 A. Okay.

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1 Q. Now, you understand that you have been
2 designated as a 30(b)(6) deponent today, don't you?

3 A. Give me the definition, please.

4 Q. Yes, ma'am. What that means is you have
5 been designated as the witness to speak on behalf of
6 the NAACP. And as such, the answers that you give to
7 my questions will bind the NAACP as a plaintiff. Do
8 you understand that?

9 A. I do understand, but I'm here as a
10 representative of the South Carolina NAACP.

11 Q. Yes, ma'am. And I should have clarified
12 that.

13 Any time I'm talking about the NAACP,
14 I'm talking about the South Carolina NAACP, unless I
15 specifically clarify otherwise. Okay?

16 A. Okay.

17 Q. That's a whole mouthful if I have to add
18 the "South Carolina" in front of it every time.

19 A. I understand.

20 Q. And the topics that you have been
21 designated to answer questions are as follows: The
22 history and structure of the NAACP. The membership
23 of the NAACP. The NAACP's involvement in elections.
24 Specific activities of the organization for 2012,
25 2016, and 2018 elections. And the impact of COVID-19

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7

1 on the NAACP and its members.

2 Do you understand that those are the
3 topics I'll be asking you questions about?

4 A. I understand. But will you be asking
5 those questions one at a time?

6 Q. Oh, yes, ma'am.

7 A. Okay.

8 Q. I'll be asking a lot of questions one at
9 a time. And if I accidentally kind of wind some
10 together, tell me, I'll stop and rephrase everything.
11 Okay?

12 A. Thank you.

13 Q. Thank you. Now, if your attorney
14 objects, you have to answer the question, unless he
15 or she instructs you not to answer. Okay?

16 A. Okay.

17 Q. And let me know if at any time you need
18 a break. Because if you do, we will absolutely,
19 immediately take a break. Okay?

20 A. Okay.

21 Q. Okay. Thank you, ma'am. We're over the
22 general instructions now.

23 What did you do to prepare for your
24 deposition? And when I say "your deposition," I'm
25 talking about you as the 30(b)(6) deponent for the

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8

1 NAACP, not you individually. Okay?

2 A. Okay.

3 Q. Yes. So what did you do in preparation
4 for this deposition today?

5 A. Not much. The only thing that I did in
6 preparation for this deposition is I think on last
7 Thursday I spoke with the attorney. And that was
8 just in terms of letting me --

9 Q. Ms. Murphy, don't let me -- I don't want
10 to know anything your attorney told you. Okay?

11 A. No. I'm just -- I'm not going to tell
12 you what -- okay.

13 MR. JASON: Objection.

14 THE WITNESS: (Continuing) Just in terms
15 of to speak --

16 MR. JASON: Ms. Murphy? Ms. Murphy --

17 THE WITNESS: Yes?

18 MR. JASON: -- don't talk about anything
19 that you talked about with your attorneys,
20 please.

21 THE WITNESS: Oh, okay.

22 Nothing specific to today.

23 BY MS. CRUM:

24 Q. Did you read the Amended Complaint that
25 was filed in this case?

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9

1 A. I did.

2 Q. Did you read that recently in
3 preparation for your deposition?

4 A. You mean -- I need you to clarify that.
5 What do you mean?

6 Q. Okay. Well, you've read the Amended
7 Complaint --

8 A. Yes.

9 Q. -- that was filed? Okay.
10 Did you read it before today, to get
11 ready for your testimony today?

12 A. No.

13 Q. Okay. Have you reviewed any documents
14 in preparation for your testimony today?

15 A. Honestly, no. Not -- no. Not until --
16 I looked at what you asked me about just a few
17 minutes before I got online, today.

18 Q. All right. Thank you. Now, I know
19 you've done* this, but we always have to ask this
20 question: Could you state your full name for the
21 record, please, ma'am.

22 A. Brenda C. Murphy.

23 Q. I'm going to go through a series of
24 questions. And this is something I ask all of my
25 deponents, people who are being deposed. It is not

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1 at you. I don't want you to take any offense at it.

2 It's just general questions. Okay?

3 A. Okay.

4 Q. The first one. Are you on any
5 medication today that would affect your ability to
6 testify?

7 A. No.

8 Q. Have you had any alcohol today?

9 A. No.

10 Q. Have you ever been deposed before, had
11 your deposition taken like this?

12 A. Approximately maybe four years -- three
13 to four years ago.

14 Q. And what kind of case was that in?

15 A. That was a case in South Carolina. Do
16 you need to know the --

17 Q. No. I just need to know what it
18 involved.

19 A. It was a discrimination case.

20 Q. Was it in state or federal court?

21 A. It was in federal court.

22 Q. Do you remember the name of the case?

23 A. It was dealing with Myrtle Beach and the
24 Black bikers group. Discrimination case.

25 Q. Was it Myrtle Beach?

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11

1 A. Myrtle Beach.

2 Q. Okay. Thank you. And you said it was
3 three or four years ago?

4 A. Yeah.

5 Q. Were you a plaintiff in the case?

6 A. I gave a deposition. Yes.

7 Q. Was the deposition --

8 A. It was -- it was by the National office,
9 but I had to give a deposition.

10 Q. By "the National office," you mean by
11 the National office of the NAACP?

12 A. Correct.

13 Q. Okay. Have you ever been arrested?

14 A. No.

15 Q. What is your e-mail address?

16 A. Brenda, br- --

17 Q. And I'm sorry. May I stop you. Could
18 you give me the South Carolina NAACP e-mail address
19 instead of your personal address.

20 A. bbmurphy@scnaacp.com.

21 Q. And is there a telephone address for the
22 NAACP?

23 A. The telephone is 803-754-4584.

24 Q. Do you use your personal cell phone in
25 conjunction with NAACP business?

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12

1 A. Only in an emergency situation.

2 Q. Can you give me that telephone number,
3 please, ma'am.

4 A. 803-318-6188.

5 Q. And I hate to ask you this, but how old
6 are you?

7 A. Seventy-two.

8 Q. We're the same age.

9 A. Oh, okay.

10 Q. Do you have anyone living with you?

11 A. Yes. My husband.

12 Q. Does the NAACP have any social
13 networking media accounts, for example, Facebook,
14 Twitter, Instagram?

15 A. No.

16 Q. Do you have a web page?

17 A. Yes.

18 Q. What is the site for the web page?

19 A. scnaa- -- scnaacp.org.

20 Q. Is that the National site?

21 A. No. SC, South Carolina.

22 Q. Oh, SC. Gotcha. Thank you.

23 The National NAACP website has a
24 function, I guess, it says, "Tell Us Your Story."

25 Does the South Carolina website have

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13

1 that same sort of request, "Tell Us Your Story"?

2 A. No.

3 Q. How many counties in South Carolina does
4 the NAACP have branches in?

5 A. All counties.

6 Q. Did you vote in the 2020 primary? And
7 "you" is you individually.

8 A. Yes.

9 Q. Did you vote in person on
10 Election Day --

11 MR. JASON: Objection. Again, this is
12 -- these questions are going to her in her
13 personal capacity.

14 MS. CRUM: She is a member of the NAACP.
15 And one of the issues is how COVID affects the
16 NAACP. Therefore, as a member, I can ask her
17 that question.

18 THE WITNESS: Yes, I did vote. I voted
19 in person as a handicapped person, so I did
20 not have to enter the building.

21 BY MS. CRUM:

22 Q. At what precinct did you vote in,
23 Ms. Murphy?

24 A. Richland County.

25 Q. Yes, ma'am. What precinct?

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14

1 A. Richland County. I went to the actual
2 Richland County office to vote.

3 Q. I've got you. You went to 2020 Hampton
4 Street?

5 A. Yes.

6 Q. Okay. Thank you. Did they bring one of
7 the curbside voting machines out to you?

8 A. They did.

9 Q. What is your handicap?

10 MR. JASON: Objection.

11 Q. Ms. Murphy, do you consider yourself to
12 be disabled?

13 A. My doctor has given me orders for my
14 handicap sticker -- plate, placard, plaque.

15 Q. Okay. So am I correct then that at
16 least your doctor considers you to be disabled?

17 A. Well, I am. I'm not able -- I need it.

18 Q. Do you still teach as adjunct professor
19 at the University of South Carolina in the School of
20 Nursing?

21 A. That is South University, not -- at
22 South University.

23 Q. Okay. I apologize. I read that wrong.

24 A. Yes. Part time.

25 Q. Do you teach in person or do you teach

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15

1 virtually?

2 A. Last -- I teach in person.

3 Q. Where is South University located, the
4 campus?

5 A. It's out in the northeast area of
6 Columbia, off of Farrow Road and near Parklane.

7 Q. Ms. Murphy, when did you first join the
8 NAACP?

9 A. In the late eighties.

10 Q. '85, '6, '7; do you know?

11 A. It was somewhere '87/'88.

12 Q. Would you please, ma'am, give me your
13 educational history after high school.

14 A. I received my B- -- bachelor's of
15 nursing at the University of South Carolina, Columbia
16 campus. And I received my master's in nursing from
17 the University of South Carolina, Columbia campus.

18 Q. When did you graduate from
19 undergraduate?

20 A. 1975.

21 Q. What about your master's, when did you
22 get that?

23 A. 1981.

24 Q. And you said you joined the NAACP in
25 1987 or '88, thereabouts?

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16

1 A. That's correct. Wait a minute. Let
2 me -- let me think about this.

3 That's correct.

4 Q. Okay. Thank you, ma'am.

5 What roles have you played in the NAACP
6 South Carolina branch over the years? South Carolina
7 Chapter, I'm sorry.

8 A. State Conference. I have functioned --
9 it's State Conference -- I have functioned as the
10 Chair of the Health Committee, the advisor for the
11 Youth & College Division, and president.

12 Q. Could you give me the approximate dates
13 that you served in each of those roles?

14 A. Okay. Give me a minute. Let me think.

15 Approximately, Health Chair, '95 until
16 around '9- -- about 2000.

17 Youth & College, that was 2000 up
18 until -- and I'm giving you approximate dates
19 because, you know, I'm speaking off the top of my
20 head -- until 2017.

21 Q. When did you become president of the
22 South Carolina Conference?

23 A. January 2017.

24 Q. How long is your term?

25 A. Two years.

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1 Q. So have you rotated off as president
2 now?

3 A. No. Actually, I'm into my third year.
4 I think that's --

5 Q. Okay. How much longer, if you know,
6 will you --

7 A. May I make a correction.

8 Q. Yes, ma'am.

9 A. That Health Chair is 2018. Because I
10 became president January 2018, and currently still in
11 the role.

12 Q. Okay. Ms. Murphy, are you looking at
13 something when you're answering that?

14 A. I'm writing on a piece of paper, trying
15 to figure out these dates.

16 Q. I've got you. Okay. Thanks. So how
17 much longer, if you know, will you be president of
18 the South Carolina Conference?

19 A. We will have elections maybe -- I've
20 heard we may have elections in August. I haven't
21 heard anything -- I was just told that. I haven't
22 gotten anything in writing, but I know --

23 Q. Who told you that?

24 A. One of our board members, just in terms
25 of when the date will be.

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18

1 Q. Okay. Who are the board members for the
2 South Carolina Conference?

3 A. We don't have board members for the
4 South Carolina Conference. That was a National board
5 member.

6 Q. Okay. Who was the National board member
7 who told you?

8 A. Madie Robinson.

9 Q. Could you spell that, please, ma'am.

10 A. M-A-D-I-E R-O-B-I-N-S-O-N.

11 Q. Where is she located?

12 A. Florence.

13 Q. Have you consulted with Ms. Robinson
14 about this lawsuit?

15 A. No, I have not.

16 Q. When was the South Carolina Conference
17 formed?

18 A. 1939.

19 Q. When was the National NAACP formed?

20 A. 19- -- 1901, I think.

21 Q. Is the mission for the South Carolina
22 Conference and the National Conference the same?

23 A. They have a mission statement.

24 Our mission statement is related to the
25 National statement. And, yes, it follows under that.

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19

1 It's not -- what we do, we follow the mission of the
2 National. Yes.

3 Q. How many members does the South Carolina
4 Conference have?

5 A. Approximately 3,000-plus.

6 Q. How much, if anything, does it cost to
7 join the South Carolina Conference?

8 A. We don't have members -- member fees
9 per se. They join the National NAACP. So there's no
10 cost for --

11 Q. And if you --

12 A. There's no cost for State Conference.

13 Q. Okay. So if you're a member of the
14 National Conference, you're automatically a member of
15 the State Conference?

16 A. Yes.

17 Q. How much is the membership fee for the
18 National Conference?

19 A. Thirty dollars annually.

20 Q. How do you, in South Carolina,
21 communicate with the South Carolina Conference
22 members?

23 A. Since COVID-19, it's been by Zoom
24 meetings and conference calls.

25 Q. Do you send out e-mails?

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1 A. And e-mails, yes.

2 Q. Did you -- and by "you," again, I am
3 talking about the South Carolina Conference -- do you
4 use Twitter or Instagram to communicate with members?

5 A. No.

6 Q. How frequently -- oh, one other
7 question.

8 Do you from time to time post alerts on
9 the naacp.org website?

10 A. We -- yes.

11 Q. Is that another way of communicating
12 with the South Carolina Conference members?

13 A. Yes. The branches, yes.

14 Q. Yes, ma'am. Okay. Do you just
15 communicate with the branches and not the members?

16 A. I generally communicate with the
17 presidents and the secretaries.

18 Q. Of the branches?

19 A. Yes.

20 Q. And you generally communicate with them
21 by e-mail?

22 A. E-mail. Zoom meetings.

23 Q. What's your most frequent form of
24 communication with the branches?

25 A. E-mail.

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1 Q. Is your e-mail address posted on the
2 website?

3 A. I'm certain it is.

4 Q. What is the average age, if you know, of
5 the South Carolina Conference membership?

6 A. Fifty. That's a -- that's an average.

7 Q. Does the South Carolina Conference
8 conduct membership drives?

9 A. Yes.

10 Q. Where do you conduct them?

11 A. Well, we haven't been able to do any
12 recently because of the COVID-19 situation. So we
13 can only post it on the website for the individuals
14 to join.

15 Q. How did you conduct membership drives in
16 2012?

17 A. They were done -- now, most -- let me
18 clarify.

19 Membership drives are done by the
20 branches. The branches do them. There's a
21 face-to-face situation. They go to churches. They
22 go to, it may be stores. A number of situations
23 where they can meet and greet individuals to solicit
24 memberships. But it's face to face primarily, up
25 until COVID, the restrictions were put in place.

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1 Q. When were the restrictions put in place
2 this year?

3 A. March the 18th, I think. On or about
4 March 18th.

5 Q. Did it coincide generally with the
6 Governor's state of emergency declaration?

7 A. It did.

8 Q. Have any of the branches, to your
9 knowledge, held Zoom recruitment meetings with
10 colleges or universities or high schools or other
11 facilities?

12 A. Let me add that we do -- I mentioned
13 that I was an advisor for the state -- for the state
14 chapters and some of the universities. And we have
15 youth councils, also. They communicate by Zoom as
16 well. And if the branch needs to communicate with
17 them, it's by Zoom or conference call.

18 Q. All right. And do you know whether the
19 youth councils communicate by Zoom or Instagram or
20 Twitter?

21 A. I'm not certain. I know they do by
22 Zoom.

23 Q. Thank you, ma'am. Ms. Murphy, I want to
24 talk to you about the Amended Complaint and the NAACP
25 joining as a party.

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1 Do you remember approximately when you
2 were contacted about the NAACP joining as a party?

3 MR. JASON: Objection.

4 Q. You can answer.

5 MR. JASON: I'm objecting to the extent
6 that this calls for any discussion with any
7 attorney.

8 MS. CRUM: I didn't ask that. I only
9 asked when she was contacted. I did not ask
10 by whom or anything else. Simply, when.

11 THE WITNESS: I can only give you an
12 approximate date. In maybe May.

13 BY MS. CRUM:

14 Q. Were you contacted by someone other than
15 an attorney about participating in this lawsuit?

16 A. Yes.

17 MR. JASON: Objection.

18 Q. Who contacted you?

19 A. Another organization.

20 Q. What organization contacted you?

21 MR. JASON: Objection. I think there
22 might be some confusion. Again, I'm going to
23 instruct my client not to answer to the extent
24 that she's going to talk about communications
25 with any attorney.

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1 MS. CRUM: Yet again, I have not asked
2 for any communication from another attorney.
3 I asked whether she was contacted by someone
4 other than an attorney about participating in
5 this lawsuit. And then she answered that,
6 yes, she was contacted by someone other than
7 an attorney.

8 I am simply trying to find out who the
9 person other than an attorney was.

10 MR. JASON: I'm just saying that, from
11 my understanding of the situation, I think
12 she's confusing "organization" with an
13 attorney, and that the party that she is
14 thinking of may actually be an attorney.

15 MR. LIMEHOUSE: Liz, if I may. I'm
16 having a hard time determining if counsel is
17 testifying here or if the witness is.

18 I'd ask counsel to please refrain from
19 his continued speaking objections and either
20 object to form or object and instruct the
21 witness not to answer, but to omit the
22 commentary.

23 MR. JASON: Okay. Well, I'm instructing
24 my witness not to answer the question.

25 MR. LIMEHOUSE: We look forward to the

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1 protective order.

2 THE WITNESS: Well, I don't mind
3 answering, because I can't -- I can't give you
4 a specific name, because I don't remember. I
5 don't want to give a wrong person that I
6 talked with, because I really don't remember.

7 BY MS. CRUM:

8 Q. Ms. Murphy --

9 A. Yes?

10 I talk to a lot of people in a lot of
11 organizations. I really don't remember. I don't
12 want to give misinformation.

13 Q. And I'm certainly not asking you to do
14 that.

15 A. Okay.

16 Q. Let me just say one thing. If during
17 this deposition --

18 A. Um-hum.

19 Q. -- you quit thinking about this and you
20 suddenly remember -- because that happens to me all
21 the time, if I quit thinking about something, you
22 know, five minutes later it'll pop into my head -- if
23 you happen to remember something, then please stop me
24 and tell me, "I remembered something," and tell me
25 what it is. Okay?

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1 A. Okay.

2 Q. Now, I'm going to read something from
3 the Complaint -- the Amended Complaint, and I want
4 you to tell me if this is a correct assessment of the
5 fundamental mission of the South Carolina NAACP.

6 "The fundamental mission of the South
7 Carolina NAACP is the advancement and improvement of
8 the political, educational, social, and economic
9 status of minorities."

10 Is that correct?

11 A. Also, political representation.

12 Q. I was going to get there. I was just
13 trying not to read the whole thing all at once.

14 And the next segment -- as far as I
15 went, is that correct?

16 A. Yes.

17 Q. Okay. Then the next, it says,
18 "Elimination of racial prejudice." Is that correct?

19 A. Yes.

20 Q. "The publicizing of adverse effects of
21 racial discrimination." Is that correct?

22 A. Yes.

23 Q. "And the initiation of lawful action to
24 secure the elimination of racial bias." Is that
25 correct?

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1 A. Yes.

2 Q. Okay. Let me ask you, how do you define
3 "minority groups"? How does the NAACP define
4 "minority groups"?

5 A. People of color.

6 Q. Does that include Latinos?

7 A. People of color.

8 Q. Okay.

9 A. Yes.

10 Q. The Complaint says, "To further the
11 mission, the South Carolina NAACP advocates to ensure
12 that the interest of the Black community are
13 represented in local, state, and national legislative
14 bodies by representatives who share the community's
15 interest and who will be accountable to the
16 community."

17 Is that a correct statement?

18 A. Yes, it is.

19 Q. Okay. How many new voters has the South
20 Carolina Conference registered this year, to your
21 knowledge?

22 A. I don't have that information at hand.

23 Q. Can you give me an approximate number?
24 I'm not holding you to it exactly.

25 A. I can only say we -- before COVID-19,

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1 the pandemic, at the first of the year we did hold a
2 voter registration drive.

3 And they hold voter registration drives
4 throughout the state. I cannot give you an estimate.

5 Q. Okay. That's fair. If you can't, I'm
6 not trying to get you to make something up out of
7 whole cloth. Okay?

8 A. Okay.

9 Q. Again, I'm reading from the Complaint.
10 "Because of state and federal social distancing
11 guidelines and the challenge requirements, the South
12 Carolina NAACP has been forced to divert its
13 resources from its usual 'get out the vote' efforts."

14 Is that a correct statement?

15 A. That is a correct statement. Yes.

16 Q. What -- thank you, ma'am. As far as the
17 NAACP goes, what are the challenge requirements?

18 A. The challenge requirements are in
19 relationship to the standards that are established
20 for somebody that's wanting to do an absentee ballot,
21 it's not inclusive, therefore, it would significantly
22 limit the number of individuals that are not able to
23 vote due to COVID-19 and the restrictions that come
24 with it.

25 The second thing -- and I'm drawing a

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1 blank right now --

2 Q. You had mentioned the witness
3 requirement earlier.

4 A. Yes.

5 Q. Is that what you were talking about?

6 A. Yes. The witness requirement that's
7 there. There are individuals that live alone, do not
8 have anyone that can come in to witness the form for
9 them, the absentee ballot.

10 And that was the second.

11 Q. Is there a difference between the "get
12 out the vote" and the registration with regard to how
13 the NAACP approaches it?

14 A. Yes. The "get out the vote," what we
15 generally do, it's inclusive of voter registration,
16 encouraging individuals -- and this is like
17 face-to-face, knocking on doors, asking people to
18 vote, and then there's a component where we would
19 carry individuals in need of a ride to the voting
20 place.

21 Q. Does the "get out the vote" also include
22 assistance with voting, like what you just said, with
23 carrying people to the polls?

24 A. Yes.

25 Q. Does it also include assistance with

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1 getting witnesses available to assist people in
2 signing their -- getting the votes signed?

3 A. That, because of COVID-19, would be an
4 issue. Because we would asking individuals to go
5 into homes that we don't know, the person may not
6 know if they've been exposed to COVID-19. The
7 individuals -- you know, there are carriers, you
8 know, people that don't know that they are carriers.
9 So the potential for exposure is significantly
10 increased.

11 Q. Let me go back, because I was just
12 asking generally about the "get out of the vote."

13 As a general rule, before COVID-19 --

14 A. Yes.

15 Q. -- did the "get out the vote" include
16 assisting individuals obtaining witness signatures?

17 A. No.

18 Q. So it is the NAACP's testimony that --

19 A. Now, what you're saying, if somebody
20 wanted to vote, do absentee balloting?

21 Q. Yes, ma'am.

22 A. Well, yes, it would be inclusive,
23 because all they needed to do is make a phone call
24 for somebody to come and sign off.

25 Q. Again, I'm asking prior to --

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1 A. Yes. Yes.

2 Q. Yeah, okay. And up until the recent
3 pandemic, the NAACP would assist homebound voters who
4 live alone in getting a witness to actually sign
5 the --

6 A. Yes.

7 Q. -- witness requirement?

8 A. Yes.

9 Q. Okay. Does the NAACP have a hotline
10 that it publicizes so that members or constituents
11 can call to get assistance with either a ride to the
12 poll or a witness signature?

13 A. Yes. That's coordinated by the
14 branches. And we also have our lines -- had our
15 lines available at the state office for them to call
16 as well.

17 Q. Okay. Your Complaint -- the Complaint
18 also talks about, like, press strategies.

19 What are the press strategies?

20 A. Press releases to the branches, maybe to
21 the papers, to encourage people to vote or to make
22 branches aware of any situations that might need to
23 be shared with them.

24 Q. And that's --

25 A. That's done by e-mail.

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1 Q. Okay. As I understand the Complaint,
2 because of COVID you have had to divert your
3 resources from its usual "get out the vote" to
4 instead engage in new activities, like press
5 releases -- press strategies and host virtual
6 meetings; is that correct?

7 A. And we also use the VAN system, which
8 identifies individuals that need to register to vote.
9 That's a program, okay, that you can use to identify
10 those individuals that are not registered to vote,
11 those that are registered to vote. So we make
12 telephone calls to those individuals.

13 Q. The VAN, is that V-A-N?

14 A. V-A-N. It's a --

15 Q. Is that an acronym?

16 A. It's an automated system for identifying
17 voters in order for us to call them and encourage
18 them.

19 We have to depend on this now primarily
20 because we can't do face-to-face contact.

21 So we're using that system that provides
22 those names that I just mentioned, those categories
23 that I just mentioned, in order to be able to make
24 telephone calls.

25 Q. Can you tell me how the VAN system

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1 works?

2 A. Yes. It's a national system, database.
3 It will show individuals in the communities, so you
4 can target communities, and you'd know who your
5 voters are and who needs to register to vote.

6 Q. Is this a national database operated by
7 the NAACP?

8 A. It's a national database. But it's not
9 only operated by the NAACP. There are other
10 organizations as well. It's just that the NAACP uses
11 that system as well.

12 Q. Am I correct that it's a service that
13 you can actually purchase?

14 A. Well, I can say we didn't have to pay
15 for it. I don't know if National paid for it or not.

16 Q. Okay. Thank you. I'm again reading
17 from the Complaint, the Amended Complaint,
18 Ms. Murphy.

19 "If the challenge requirements remain in
20 effect, the South Carolina NAACP will be required to
21 provide additional rides to the polls."

22 Is that something you-all have the
23 ability to do?

24 A. It's going to be very difficult because
25 of the social distancing requirement -- regulation.

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1 Whereas in the past we may have been able to take a
2 church van with a number of individuals, that's not
3 possible now.

4 Q. Okay. Let me just read to you from the
5 Amended Complaint from the NAACP section.

6 "If the challenge requirements remain in
7 effect, the South Carolina NAACP will be required to
8 provide additional rides to the polls or assistance
9 to the voters in obtaining a witness signature, and
10 be required to answer additional questions regarding
11 how to vote from members and constituents who desire
12 to vote while attempting to comply with the social
13 distancing guidance."

14 Is that correct?

15 A. Yes. With -- yes.

16 Q. Do you know how many NAACP members of
17 your 3,000 members, 3,000 approximately, are
18 registered to vote?

19 A. All of them.

20 Q. Okay. Do you know how many are over 65?

21 A. At least 30 percent. Thirty to 40- --

22 Q. Is that -- I'm sorry. I thought you
23 were finished. Go ahead.

24 A. Thirty to 40 percent.

25 Q. Is that information that is obtainable

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1 from the VAN system?

2 A. Meaning -- I'm sorry.

3 Q. In other words, based on the data that
4 you get from the VAN system, does it tell you how old
5 registered voters are?

6 A. I can't answer that.

7 Q. Okay. Do you know what percentage of
8 the NAACP members live alone?

9 A. I can't give you an exact amount, no.
10 But I know that there are -- just to my knowledge, I
11 can't give you a number, but I know there are many
12 that live alone, because of the age. The average age
13 being 50. And we have quite a few members that are
14 over 65.

15 Q. I think you said 30 to 40 percent?

16 A. Yeah. And that's an approximate.

17 Q. Do you know how many of your members
18 have access to a vehicle?

19 A. No.

20 Q. Do you know how many of your members
21 have disabilities, so that they wouldn't have to vote
22 in person?

23 A. No.

24 Q. Does the South Carolina Chapter of the
25 NAACP have a definition of "disability" for purposes

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1 of the excuse requirement?

2 A. Different than what's stated by
3 voters -- voter registration, is that what you're
4 asking?

5 Q. I was asking what the NAACP's definition
6 of "disability" was, if you have one.

7 A. No, we don't. No.

8 Q. Okay. What does voter registration
9 state?

10 A. Age 65 --

11 MR. JASON: Objection.

12 THE WITNESS: All right.

13 BY MS. CRUM:

14 Q. You can still answer.

15 A. Age 65. And then the medical conditions
16 are listed.

17 Q. How many members of the NAACP have
18 served as poll managers?

19 A. I can't answer that.

20 Q. Is that something you encourage your
21 members to do?

22 A. Our goal is for members to be poll
23 monitors.

24 Q. Poll monitors as opposed to poll
25 workers; is that correct?

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1 A. That's correct. That's what's
2 encouraged.

3 Q. What is the process -- and I think
4 you've touched on this already -- but what is the
5 process that the NAACP has used to take voters to the
6 polls in 2012, 2016, and 2018?

7 A. Church buses, cars, vans.

8 Q. Did the NAACP take voters to the polls
9 in the primaries in 2020?

10 A. No.

11 Q. What about any of the branches?

12 A. No.

13 Q. Were they instructed not to take folks
14 to the polls because of COVID?

15 A. They were instructed, because of the
16 risk factors, that they should not take individuals
17 to the polls.

18 Q. Does the NAACP keep a file on its
19 members who have been denied an absentee ballot,
20 mail-in absentee ballot, based on his or her
21 disability claim?

22 A. No, we don't. What -- no. No, we
23 don't.

24 Q. Do you know anyone, based on your
25 capacity as an officer of the NAACP since I think

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1 2000, who has been denied an absentee ballot and his
2 or her claim of disability was denied?

3 A. I can only answer from when I was
4 president, because that was not something that I had
5 knowledge of.

6 Q. Okay. Well, what about since you've
7 been president?

8 A. No.

9 Q. Does the NAACP keep a file on its
10 members who have had their absentee ballots not
11 counted based on a lack of witness signature or
12 address?

13 A. No.

14 MR. JASON: Objection.

15 Q. Do you know, since you've been president
16 of the NAACP, of anyone who has not had their vote
17 counted because it didn't have a witness signature or
18 an address?

19 A. No.

20 Q. Does the NAACP, as part of its voter
21 outreach, emphasize to its members and constituents
22 the fact that an absentee ballot has to have a
23 witness, and the witness has to put an address on it?

24 A. Yes.

25 Q. What steps will the NAACP take to

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1 provide assistance to voters in the general elections
2 in obtaining a witness signature?

3 A. I can't answer that. It depends on the
4 pandemic, in November.

5 Q. Okay. What steps did the NAACP take to
6 assist members in getting witness signatures during
7 the primaries this year?

8 A. None.

9 MR. JASON: Objection.

10 Q. You can answer.

11 A. None.

12 Q. In your role -- no. I asked that
13 question. I'm sorry.

14 A. May I clarify something.

15 Q. Yes, ma'am.

16 A. You asked, what did we do to assist
17 during the primaries? Now --

18 Q. Obtaining witness signatures for
19 absentee ballots.

20 A. Okay. But the restriction was lifted
21 just for the primaries.

22 Q. It was my understanding that the witness
23 signature wasn't lifted. Only the age restriction.
24 Am I wrong on that?

25 MR. JASON: Objection.

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1 Q. Do you know, Ms. Murphy, whether or not
2 the legislature lifted both the age restriction and
3 the witness restriction for the primaries?

4 MR. JASON: Objection.

5 Q. You can answer.

6 A. No. It was the signature, witness
7 signature only.

8 Q. That was lifted?

9 A. Yes.

10 Q. In the Complaint it states that "the
11 NAACP has members who are citizens and registered
12 voters, and who will be directly impacted by the
13 challenge requirements that would effectively require
14 voters to expose themselves and others to the grave
15 effects of COVID-19, or else forego their right to
16 vote."

17 What is the basis for the NAACP's
18 allegation there?

19 A. We have members that are confined to
20 their home. Husband maybe is there, but husband has
21 dementia, so he would not be able to witness her
22 signature.

23 Q. Anything else?

24 A. And then we have members that live alone
25 that are over that 65-year-old age, that 65 or older,

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1 that would not have a witness in the home.

2 Q. Okay. The Complaint goes on to say,
3 "For example, one member who has been practicing
4 strict social distancing is over 80 years of age and
5 has limited mobility. She lives only with her
6 husband who has been diagnosed with dementia and is
7 therefore unable to witness an absentee ballot."

8 Is that what you were talking -- the
9 person you were talking about?

10 A. Yes. Yes.

11 Q. What is her name?

12 A. Generally -- well, we don't give
13 members' names, because --

14 Q. Ms. -- go ahead. I'm sorry. I didn't
15 mean to interrupt you.

16 A. -- the NAACP has a requirement that we
17 don't give out the names of the membership.

18 There was a lawsuit filed some years ago
19 where there were problems when names were provided or
20 shared, and there was some legal ramifications.

21 Q. Are you talking about the NAACP v.
22 Alabama? If you don't know, that's okay.

23 A. I don't know the specific [sic]. All I
24 know is we're not supposed to.

25 Q. Well, your lawyer did not object to your

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1 giving that name.

2 A. Yeah --

3 MR. JASON: No, no. I'm trying to clear
4 that up, Liz.

5 MS. CRUM: Yes.

6 MR. JASON: President Murphy, in this
7 specific situation you should feel comfortable
8 disclosing that name.

9 THE WITNESS: Okay.

10 Dorothy Cunningham.

11 BY MS. CRUM:

12 Q. And where does Ms. Cunningham live?

13 A. Columbia, South Carolina.

14 Q. Where in Columbia?

15 A. In the Greenview community.

16 Q. In the Complaint, you talked about, or
17 the NAACP talked about members who are citizens and
18 registered voters who will be directly impacted by
19 COVID.

20 Who, other than Ms. Cunningham,
21 specifically by name, were you referring to?

22 A. I don't have that information with me.
23 I did have some names I listed, but I don't have that
24 directly in front of me.

25 Q. Can you tell me approximately how many

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1 names you listed?

2 A. I think it was five or six.

3 Q. What part of the state do they live in?

4 A. Sumter and Columbia.

5 Q. Anybody in the Upstate?

6 A. No, I didn't have a name from the
7 Upstate.

8 Q. What about in the Lowcountry?

9 A. No, I didn't list anyone from the
10 Lowcountry.

11 Q. What about the PD?

12 A. No, I didn't list anyone.

13 Q. Do you know of anyone from any of those
14 areas?

15 A. Do I need to give names?

16 Q. Yes, ma'am.

17 A. I -- I can't -- really, I can't answer
18 that with certainty. Because you're asking about
19 individuals that would not be able to vote, is that
20 correct?

21 Q. Well, those are your allegations, not
22 mine.

23 A. No. No. You were asking me for names.
24 That's what I'm asking.

25 Q. Yes, ma'am. And I'm asking for the

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1 names that the NAACP alleged who are members, who are
2 citizens and registered voters who will be directly
3 impacted by the challenge requirements that
4 effectively [sic] require voters to expose themselves
5 and others to the grave effects of COVID-19, or else
6 forego their right to vote.

7 A. I did not give you -- I gave you the
8 names. I did not know it was necessary to list
9 people throughout the state. So I listed individuals
10 that I know of specifically.

11 Q. And do you know of anyone else
12 specifically throughout the state?

13 And remember, you're answering on behalf
14 of the NAACP South Carolina Conference.

15 A. I know I am.

16 I would have to say -- well, I'll say, I
17 don't know anybody's specific medical condition, so I
18 cannot say affirmatively that any others other than
19 the ones that I personally have listed.

20 Q. Okay. And I'm sorry, I did not get the
21 names of those you personally listed, other than
22 Ms. Cunningham.

23 A. One was Liz Kilgore. Amelia Glisson.

24 Q. Could you spell that, please, ma'am.

25 A. A-M-E-L-I-A G-L-I-S-S-O-N.

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1 Q. Is she from Sumter?

2 A. No.

3 Liz Kilgore -- Elizabeth Kilgore is from
4 Sumter.

5 Amelia Glisson is from Columbia.

6 Priscilla --

7 Q. And who else? I'm sorry.

8 A. Priscilla Smith. Sharon Bell.

9 Q. Bell?

10 A. B-E-L-L.

11 Q. Yes, I didn't hear it well. Thank you.

12 And you had said, I think, five or six.

13 A. How many is that?

14 Q. Well, if you count Ms. Cunningham,
15 that's five.

16 A. Okay. You've got Priscilla Smith.
17 Sharon Bell. I can't --

18 Q. Amelia Glisson. Liz Kilgore. And
19 Dorothy Cunningham.

20 A. LaTosha, LaTosha Wilson.

21 Q. And where is she from?

22 A. Columbia.

23 Q. Ms. Murphy --

24 A. Yes?

25 Q. -- the Complaint also goes on to say,

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1 "Many other members of the South Carolina NAACP will
2 also be impacted by the documented disproportionate
3 harm that COVID-19 is causing Black people."

4 What is the basis of that allegation?

5 A. DHEC information, Department of Health.

6 Q. Okay. And I'm just about finished.

7 A. Okay.

8 Q. What election reforms has the NAACP
9 suggested to the legislature in this legislative
10 session beginning January 2019?

11 MR. JASON: Objection.

12 Q. You can answer that, Ms. Murphy.

13 A. The State Conference has not made any
14 recommendation to the Assembly, General Assembly.

15 Q. What about in the January 2017, for that
16 session 2018 through '19?

17 MR. JASON: Objection.

18 Q. You can answer.

19 A. You were asking legislative changes
20 that --

21 Q. Yes, ma'am.

22 A. I can't think of any.

23 Q. Do you have any recollection as to
24 whether the NAACP actually suggested that the
25 legislature allow anyone who wanted to vote by

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1 absentee ballot to vote by absentee ballot regardless
2 of age?

3 A. The reason -- I'm sorry. I'm thinking,
4 because I have to think about committee activities as
5 well, so...

6 I can't think of anything specifically.

7 Q. What about with regard to the witness
8 requirement, anything you can think of, from a
9 legislative standpoint?

10 MR. JASON: Objection.

11 THE WITNESS: I'm not sure. I don't
12 want to say no. And I'm not sure. I'm really
13 not.

14 I can only say I have not sent a
15 document on behalf of the State Conference.

16 BY MS. CRUM:

17 Q. Have you authorized anyone to send a
18 document on behalf of the State Conference?

19 A. No.

20 MS. CRUM: Ms. Murphy, thank you very
21 much for your time. I don't have any
22 additional questions. Some of the other
23 lawyers for other parties may have some
24 questions.

25 Do you need to take a break?

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1 THE WITNESS: I'm good.

2 MS. CRUM: Okay. Thank you.

3 THE WITNESS: You're welcome.

4 EXAMINATION

5 BY MR. TYSON:

6 Q. Hey, Ms. Murphy. I'm Rob Tyson. Do you
7 see me?

8 A. Yes, I can.

9 Q. Hey, how are you doing? I'm an attorney
10 for the State Republican Party. I've just got a
11 handful of questions I'd like to ask you.

12 I think I heard Liz -- I was trying to
13 figure out how to do that. She asked if you wanted
14 to take a few-minute break. But, are you okay?

15 A. I'm okay. I'm good.

16 Q. Okay. Very good. I'm just going to
17 kind of follow up going down the Complaint that
18 Ms. Crum asked you some questions about. I've just
19 got a couple of follow-ups to ask about that. Okay?

20 Ms. Murphy, in the Complaint, one of the
21 first allegations, it says you've got members who are
22 citizens and registered voters.

23 And that's right, that's accurate, isn't
24 it?

25 A. Yes.

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1 Q. Okay. And it says, (Reading) the
2 challenge requirements will effectively require
3 voters to expose themselves and others to the grave
4 effects of COVID, or forego their right to vote.

5 That's your allegation, right?

6 A. Yes. Yes.

7 Q. And is that allegation -- I'm sorry?

8 A. I said, yes.

9 Q. And that allegation, would that not
10 affect other groups, also?

11 A. Yes, it would affect other people, other
12 groups.

13 Q. And then your next comment is the
14 reference about Ms. Cunningham, who is an 80-year-old
15 lady and who lives with her husband.

16 That could be anybody, right, any
17 80-year-old, and not just a member of the NAACP,
18 correct?

19 A. Correct.

20 Q. For example, it could be someone not of
21 color, that was white, correct?

22 A. Yes.

23 MR. JASON: Objection.

24 Q. Further on in the paragraph it says,
25 "The NAACP has members who are unable to cast an

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1 absentee ballot because of the excuse requirements,
2 but who have disabilities."

3 Do you remember that paragraph?

4 A. Yes. I think I just -- yes.

5 Q. And you know one of the reasons that you
6 can vote absentee ballot is if you're physically
7 disabled, right?

8 A. They may not -- well, yes.

9 Q. At the top of the next page it says that
10 "South Carolina NAACP encourages and facilitates
11 nonpartisan voter registration drives by its chapters
12 to promote civic participation."

13 And that's correct, isn't it?

14 A. That's true. Yes.

15 Q. And it says, "The current health crisis
16 has largely disrupted the organization's efforts to
17 meet and organize members and voters in person,"
18 right?

19 A. Yes.

20 Q. Well, that's true for a lot of other
21 groups, too, right?

22 A. Yes.

23 Q. That would be the same for the ACLU
24 members, if that was the --

25 MR. JASON: Objection.

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1 THE COURT REPORTER: I have to
2 interrupt. I did not hear the last part of
3 the question.

4 BY MR. TYSON:

5 Q. I'm sorry. My question was, the Senate
6 said that the health crisis has largely disrupted the
7 organization's efforts to meet and organize members
8 and voters in person.

9 And, Ms. Murphy, you said that's also a
10 problem for other organizations, correct?

11 A. Yes. But African-Americans are
12 disproportionately affected, according to DHEC
13 statistics.

14 Q. Yes, ma'am. But it says it's disrupted
15 the organization's efforts to meet and organize
16 members and voters in person.

17 That would affect probably the League of
18 Women Voters, too, right?

19 MR. JASON: Objection.

20 THE WITNESS: I can't say, because I
21 don't know how they conduct their meetings.

22 BY MR. TYSON:

23 Q. But let me just ask it again. Do you
24 think there are other organizations that try to meet
25 and help with voters in person?

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1 A. Yes.

2 Q. And your next sentence says that "the
3 NAACP has been forced to divert its resources from
4 its usual 'get out the vote' efforts."

5 The same question goes there, too. A
6 lot of other organizations do that, also, right?

7 MR. JASON: Objection.

8 THE WITNESS: I cannot speak for other
9 organizations.

10 BY MR. TYSON:

11 Q. Do you know whether the State Republican
12 Party has "get out the vote" efforts?

13 A. No.

14 Q. How about, do you know whether the State
15 Democratic Party has "get out the vote" efforts?

16 A. When you use the terminology "get out to
17 vote," what do you mean?

18 Q. I'm just -- in other words, "get out the
19 vote" efforts. I'm just regurgitating the language
20 that's in your Complaint, your allegation.

21 A. "Get out to vote"?

22 Q. No. "Get out the vote".

23 A. "Get out the vote"? Now --

24 Q. Yes, ma'am.

25 A. Okay.

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1 Q. Other organizations do that, right?

2 A. I think that's the terminology used by
3 the NAACP.

4 Q. Okay. And then the sentence further
5 states that you've had to engage in new activities,
6 like press strategies and host virtual meetings for
7 its members.

8 Other organizations have to do the
9 exact, same thing, don't they?

10 MR. JASON: Objection.

11 THE WITNESS: I can't answer for other
12 organizations.

13 BY MR. TYSON:

14 Q. Do you belong to a church, ma'am?

15 MR. JASON: Objection.

16 Q. Go ahead and answer.

17 A. Yes, I do.

18 Q. Okay. And so have you had any virtual
19 meetings through your church?

20 A. Yes.

21 Q. Okay. Are you active in your
22 neighborhood association?

23 A. I'm active in my neighborhood
24 association. But what does that mean? What are you
25 asking?

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1 Q. Well, have you had any other
2 organizations that you have participated in in
3 virtual meetings?

4 A. Not in a community meeting, no.

5 Q. Let me make sure I understand. I think,
6 Ms. Crum asked you a question, and you answered that
7 you voted in person in the June primaries, right?

8 A. Yes.

9 Q. And do you know of members of the NAACP
10 that voted in the June primary?

11 A. In the NAACP --

12 Q. Yes, ma'am.

13 A. -- during the primary?

14 Q. Yes, ma'am.

15 A. Yes. Yes.

16 Q. Did they vote in person? Did some of
17 those members vote in person?

18 A. Some of them did.

19 Q. Did some of them vote by absentee
20 ballot?

21 A. Yes.

22 Q. There's a general election coming up in
23 November. And will the NAACP have members that will
24 vote in the general election?

25 A. I'm certain, yes.

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1 Q. Will the NAACP have members that will
2 have the opportunity to vote in the November general
3 election?

4 A. Yes.

5 MR. JASON: Objection.

6 A. I don't -- what are you asking?

7 Q. Can you state your answer again. I'm
8 sorry.

9 A. What are you asking? Ask the
10 question -- clarify what you're asking.

11 Q. Let's just make sure that you said
12 "yes," was the answer, and then I'll ask it again.

13 A. Yeah.

14 Q. For the general election this November,
15 you've got -- the NAACP has members that will have
16 the opportunity to vote, correct?

17 A. Yes.

18 Q. And they will take advantage of that,
19 and some of the NAACP's members in the November
20 election will vote in person, correct?

21 MR. JASON: Objection.

22 THE WITNESS: Yes. Using social
23 distancing, if the pandemic is still here.

24 BY MR. TYSON:

25 Q. Yes, ma'am. So, Ms. Crum represents the

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1 State Election Commission, and they will follow the
2 CDC guidelines. And your members will come to vote
3 at those polls, presumably pursuant to whatever the
4 guidelines are in place at that point in time, right?

5 MR. JASON: Object.

6 THE WITNESS: I answered yes.

7 BY MR. TYSON:

8 Q. So let me make sure I'm clear. So your
9 members of the NAACP will vote this fall in the
10 general election by absentee, correct?

11 MR. JASON: Objection.

12 Q. And your answer?

13 A. My answer is yes, but they are putting
14 their life in jeopardy because of the risk factors of
15 COVID-19.

16 Q. If they vote --

17 A. They are being placed in a position to
18 make a choice of whether to expose themselves
19 potentially to COVID-19 or to vote, because they
20 think that it's important, they need to.

21 Q. Well, hold on. Let me back up then,
22 Ms. Murphy. Let's be clear. So you'll have -- I
23 think you've said you've got thousands of members,
24 roughly 3,000 individual members. Some of those
25 members will vote in this November election, correct?

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1 A. Correct.

2 Q. And some of them will vote by absentee,
3 correct?

4 A. Yes.

5 Q. And some of them will vote in person,
6 too, correct?

7 A. Correct. But my answer is still the
8 same. They are placing themselves at grave risk
9 because of COVID-19 and not knowing, because not
10 everyone is complying to the CDC requirements.

11 Q. Ms. Crum asked you a handful of
12 questions about the excuse provisions in the absentee
13 ballot. Do you remember those questions, that line
14 of questions?

15 A. Yes.

16 Q. Okay. And you know there's a number of
17 them, right, probably about a dozen or so?

18 A. Yes. We went over those.

19 Q. Okay. And would you agree with me that
20 those provisions are not race related?

21 A. Yes.

22 Q. Let me go through just a couple of them.
23 Well, let me ask it differently.

24 Do you have members of the NAACP here in
25 South Carolina that are members of the American Red

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1 Cross?

2 A. I can't answer that question.

3 Q. Do you have members of the NAACP here in
4 South Carolina that are government employees?

5 A. I can't answer that question, with
6 certainty.

7 Q. You don't know?

8 A. We don't ask where someone works.

9 Q. Okay. What about people on vacation?
10 Will there be members posting an absentee ballot this
11 fall because they're on vacation?

12 A. I can't answer that question.

13 Q. How about, are there members of the
14 NAACP that work as certified poll watchers, or poll
15 managers?

16 A. I can't answer that question.

17 Q. Let me make sure -- Ms. Crum asked you
18 some questions, so I'm understanding. The system
19 that you used was called the VAN system?

20 A. Yes.

21 Q. Could you tell me what VAN stands for.

22 A. It's Voter- -- it's an automated system
23 where, as I shared with her, it shares the names of
24 registered voters, nonregistered voters, and it's a
25 national system that can be accessed to get names of

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1 individuals in specific communities.

2 Q. Is it still working today?

3 A. Yes.

4 Q. All right. So it hadn't slowed down due
5 to COVID then, right?

6 A. It hadn't slowed down -- what are you --

7 Q. Let me ask -- that was a poor question.
8 I'm sorry.

9 It hadn't been affected by COVID then,
10 has it?

11 MR. JASON: Objection.

12 Q. Go ahead and answer the question,
13 Ms. Murphy.

14 A. I can't -- I can't answer that.

15 Q. Well, you're still using it today,
16 right?

17 A. Yeah. We're able to pull the data, yes.

18 Q. So the NAACP is still meeting some of
19 its core functions, correct?

20 A. Just some of them, yes. Yes.

21 MR. TYSON: Thank you, Ms. Murphy. I
22 appreciate your answering my questions.

23 THE WITNESS: Okay. You're welcome.

24 MR. TYSON: Okay.

25 MR. LIMEHOUSE: Ms. Murphy, my name's

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1 Thomas Limehouse, I represent
2 Governor McMaster, he's a defendant in this
3 matter, as you know, in his official capacity
4 as governor of the State of South Carolina. I
5 don't have any questions, but I just want to
6 thank you for your time today.

7 THE WITNESS: You're welcome.

8 MR. JASON: I think I'd like to just
9 take five minutes again. Yes. I think five
10 minutes is all I need. So either at 3:45 or
11 thereabouts we will go back on the record.

12 (Recess from 3:41 p.m. to 3:48 p.m.)

13 EXAMINATION

14 BY MR. JASON:

15 Q. Good afternoon, President Murphy. I'm
16 just going to ask you a handful of questions.

17 First, earlier you were talking about
18 the witness requirement with Ms. Crum back in the
19 June primary.

20 Are you aware of the Court Order which
21 lifted the witness requirement from the June primary?

22 A. Yes.

23 Q. Does the NAACP have any younger members
24 who might want to vote absentee in order to avoid
25 going into any crowded places?

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1 A. Our college chapters, if they are in
2 school.

3 Q. And can you predict what's going to
4 happen this November?

5 A. No.

6 Q. To your knowledge, has COVID
7 disproportionately impacted Black people?

8 A. It has disproportionately impacted
9 individuals of color, yes.

10 Q. And does that include African-Americans?

11 A. Yes.

12 Q. And would it also include Latinx or
13 Latino people of color?

14 A. Yes.

15 Q. What is the racial makeup of the South
16 Carolina NAACP?

17 A. Probably 98 percent African-American,
18 maybe 2 percent Caucasian.

19 Q. And does that makeup influence your view
20 that the South Carolina NAACP members will be
21 disproportionately affected by the challenge
22 requirements?

23 A. No.

24 Q. Do you believe that the NAACP South
25 Carolina members will be disproportionately affected

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1 by the challenge requirements?

2 A. Yes.

3 Q. Do you believe that they'll be
4 disproportionately affected by COVID?

5 A. They are, based on DHEC, yes.

6 Q. And by "DHEC," do you mean their racial
7 demographics?

8 A. Yes. The South Carolina Department of
9 Health, they give statistics daily.

10 Q. And just to be specific, in your view,
11 do those statistics show a greater intensity of COVID
12 on the demographics that correspond with your
13 membership?

14 A. Yes.

15 MR. JASON: Okay. That's it for
16 plaintiffs.

17 MS. CRUM: This is Liz Crum.

18 THE WITNESS: Yes.

19 MS. CRUM: I have just one question.

20 EXAMINATION

21 BY MS. CRUM:

22 Q. The answers you just gave to Mr. Jason,
23 based on the disproportionate impact on
24 African-Americans, did that come from your reading of
25 the DHEC website and other information published by

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1 DHEC?

2 A. Yes.

3 MS. CRUM: Thank you, ma'am.

4 THE WITNESS: You're welcome.

5 MR. TYSON: Ms. Murphy, I've just got
6 one follow-up question, too.

7 EXAMINATION

8 BY MR. TYSON:

9 Q. Your attorney asked you a question about
10 the age of your membership. And then you answered
11 that, yes -- I think you said that there are a number
12 of college chapters that it would affect. Do you
13 remember that?

14 A. In terms of doing -- I thought the
15 question was related to absentee balloting.

16 Q. Yes, ma'am. And so I just wanted to
17 make sure that you know that there was a -- that if a
18 college kid -- if one is a student, that is a reason
19 that you can vote absentee ballot?

20 A. Right. I do know.

21 MR. TYSON: Okay. Thank you.

22 THE WITNESS: Um-hum. You're welcome.

23 MR. JASON: Mr. Limehouse, do you have
24 any questions?

25 MR. LIMEHOUSE: I do not. Thanks.

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1 MR. JASON: Okay. I have a follow-up
2 question.

3 EXAMINATION

4 BY MR. JASON:

5 Q. President Murphy, earlier I had asked
6 about people under the age of 65 who might be
7 affected by the absentee requirements, and you
8 answered regarding college campuses.

9 Are there any other individuals under
10 the age of 65 who may want to avoid crowded polling
11 sites or locations -- who may want to avoid crowded
12 polling sites or locations --

13 A. Yes.

14 Q. -- and who may want to vote absentee?

15 A. Yes.

16 Q. Okay. I'm sorry, I should -- my
17 apologies. I just want to make sure that was clear
18 for the record. So I am just going to ask one more
19 time since I essentially did.

20 Essentially, are there any individuals
21 under the age of 65 who would benefit from voting
22 absentee because they do not want to go into a
23 crowding polling site?

24 A. Yes.

25 Q. And are any of these individuals members

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1 of the NAACP?

2 A. Yes.

3 MR. JASON: Okay. Thank you.

4 MS. CRUM: Ms. Murphy, I hate to do
5 this, but I wasn't going to ask any more until
6 Mr. Jason followed up.

7 EXAMINATION

8 BY MS. CRUM:

9 Q. Can you give me names of any of the
10 individuals that you were referring to in answer to
11 his questions?

12 A. And I need to clarify at this point,
13 because I think when I gave that second listing of
14 individuals, those were individuals under that 65
15 that, you know, had conditions -- they're not, quote,
16 disabled, but they have some health conditions that
17 -- actually, one has a condition where she works, she
18 works full time, but in terms of getting -- being in
19 a crowd, because of some of her health -- and they're
20 not major health things, but could be a major issue
21 for her if she did get the virus. And so she did not
22 vote because of that. Not even in the primary.

23 Q. All right. And when you were just
24 responding to Mr. Jason's questions, were those the
25 individuals you were thinking about?

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1 A. Yes.

2 MS. CRUM: Thank you, ma'am. I promise,
3 I don't have any more questions.

4 THE WITNESS: Okay.

5 MR. JASON: No more questions for
6 plaintiffs.

7 MR. TYSON: Colette, are we good?

8 THE COURT REPORTER: Yes.

9 The same transcript orders as stated
10 earlier?

11 MS. CRUM: We're doing the same on each
12 of our depositions.

13 MR. JASON: The same for us as earlier.

14 MR. TYSON: The same.

15 (Deposition concluded at 3:57 p.m.)
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1 SIGNATURE OF DEPONENT

2 I, the undersigned, BRENDA C. MURPHY, do
 3 hereby certify that I have read the foregoing
 4 deposition transcript and find it to be a true and
 5 accurate transcription of my testimony, with the
 6 following corrections, if any:

7

8	PAGE	LINE	CHANGE
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23 _____

24 DATE BRENDA C. MURPHY

25

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CERTIFICATE OF REPORTER

I, Colette Cantoni, a Certified Realtime Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on Page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 28th day of July 2020, at Greenville, Greenville County, South Carolina.

Colette Cantoni
Certified Realtime Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
October 15, 2025

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Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 4
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

Deposition Excerpts of Mary Louise Thomas

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

MARY T. THOMAS, NEA RICHARD,
JEREMY RUTLEDGE, TRENA WALKER,
THE FAMILY UNIT, INC., and the
SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP,

Plaintiffs,

v.

C/A No.: 3:20-cv-01552-JMC

MARCI ANDINO, in her official capacity as
Executive Director of the South Carolina
State Election Commission; JOHN WELLS,
in his official capacity as Chair of the
South Carolina State Election Commission;
JOANNE DAY, CLIFFORD J. ELDER, LINDA McCALL,
and SCOTT MOSELEY, in their official capacity
as Members of the South Carolina State Election
Commission; and HENRY D. McMASTER, in his official
capacity as Governor of South Carolina,

Defendants.

D E P O S I T I O N

WITNESS: MARY LOUISE THOMAS

DATE: Thursday, July 23, 2020

TIME: 10:08 a.m.

LOCATION: 34 Charlotte Street, Apartment C
Charleston, South Carolina

TAKEN BY: Attorneys for the Defendants
SC State Election Commission officials

REPORTED BY: DEBORAH L. DUSSELJEE, RPR, CRC
Realtime Systems Administrator

- - - - -

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1 is going to work, let me know. Otherwise, we'll dive
2 right in.

3 A. No questions.

4 Q. All right. How did you first get involved
5 in this lawsuit?

6 A. I was asked by my friend.

7 Q. Who is your friend?

8 A. Susan.

9 Q. Susan Dunn?

10 A. Yes.

11 Q. All right. What have you done to prepare
12 for your deposition today?

13 MS. SYED: Counsel, objection. This is
14 getting into privilege.

15 MR. LAMBERT: That she spoke with someone
16 is --

17 THE WITNESS: Nothing.

18 BY MR. LAMBERT:

19 Q. I don't want to know any more about what,
20 Ms. Thomas, you and Ms. Susan talked about.

21 Did you talk with anyone before your
22 deposition today?

23 A. No.

24 Q. Would you please tell us your full name for
25 the record.

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13

1 come?

2 A. Sometimes she changes, but usually it's
3 Monday or Wednesday.

4 Q. Approximately how long is she there when she
5 comes?

6 A. About two and a half hours.

7 Q. What does she do when she's there?

8 A. She dusts. She mops. She sometimes --
9 well, she doesn't have to cook anything, but she
10 cleans. And this is a good-sized apartment, so it
11 takes a lot. Sometimes she waters plants.

12 Q. How long has she been coming to your
13 apartment to clean?

14 A. About two years.

15 Q. In the responses to some of our written
16 questions your lawyer sent us, you said you had gone
17 out one day in May to run some errands to a couple of
18 different places, and I think they were -- let me get
19 the list here -- Walmart, Marvin's fish mart, and Food
20 Lion.

21 A. Yes.

22 Q. Do you recall that trip?

23 A. I do.

24 Q. Is that the only time you've left your
25 apartment other than for medical reasons since March?

Mary Thomas 7/23/2020

14

1 A. Right.

2 Q. What made you take a trip out that day in
3 May?

4 A. Because I needed to pick up my eyeglasses
5 that were being tinted.

6 Q. Are those the glasses you're wearing now?

7 A. One pair. There's another pair. There were
8 two pair.

9 Q. Do you ever have any visitors other than
10 Mr. Morrison and your housekeeper? Was it
11 Ms. Wallace?

12 A. Right. No.

13 Q. Do you know anyone else in your building
14 other than Mr. Morrison?

15 A. Susan Dunn.

16 Q. Have you seen Susan in person since March?

17 A. Yes.

18 Q. Where have you seen Susan?

19 A. Usually in my home.

20 Q. She comes to visit you in your apartment?

21 A. Yes, she comes to visit me in my apartment.

22 Q. Approximately how often does she come to
23 visit?

24 A. Well, she's my landlady, and sometimes she
25 comes a couple times a week. If I need help with

Mary Thomas 7/23/2020

15

1 something, she'll come, if I ask her to.

2 Q. Do you have Susan's telephone number if you
3 ever need to call her?

4 A. Yes, I do.

5 Q. Have you ever voted by absentee ballot
6 before?

7 A. Yes.

8 Q. What reason do you usually have for voting
9 by absentee ballot?

10 A. Person over 65 and physical disability.

11 Q. I don't have a whole lot of questions,
12 Ms. Thomas, but I want to make sure I get all the ones
13 I've got --

14 A. Okay.

15 Q. You said the physical disability is one of
16 the things you checked. I don't want you to get too
17 far into the weeds of your medical condition, but can
18 you describe for me at a high level, for someone who
19 doesn't have a medical degree, generally what your
20 medical conditions are and what you do to treat them?

21 A. Okay. Well, my medical conditions are --
22 I'll start with the heart. Aortic insufficiency,
23 that's one. Hypertension. Osteo --

24 Q. Yes, ma'am.

25 A. Osteoarthritis. Glaucoma, both eyes.

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17

1 A. You're welcome.

2 Q. Do you know of any person who contracted
3 COVID-19 as a result of voting in the June 2020
4 primary?

5 A. No.

6 Q. When you had seen Mr. Morrison, Ms. Wallace,
7 and Ms. Dunn, did they wear a face mask, or did you
8 wear a face mask during those interactions?

9 A. The physician says I should not wear a face
10 mask. Everyone who enters this building or this
11 apartment has to wear a face mask if they are going to
12 come in here, the entire time.

13 Q. And your physician says don't wear one
14 because of your own medical conditions?

15 A. I don't wear one, right.

16 Q. When Susan's visited you, approximately how
17 long does she stay?

18 A. Oh, I don't know. Sometimes maybe 15, 20
19 minutes, maybe 30 minutes.

20 MR. LAMBERT: Ms. Thomas, I told you this
21 would be short today, and I'm going to keep to my
22 word. You have answered all of the questions that I
23 have. There are a whole bunch of other lawyers on
24 this video conference, so now I've got to let them
25 have their chance to ask questions if they want. But

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20

1 A. 2018?

2 Q. Yes, ma'am.

3 A. Yes, I think so. I don't remember -- I
4 don't remember 2018.

5 Q. That would have been for a congressman down
6 in your district, and then we would have had -- South
7 Carolina had a governor. Do you remember --

8 A. Oh, yes, yes, I did, because they had to run
9 it off. Yeah, I remember.

10 Q. Yes, ma'am.

11 Do you remember whether you went to the poll
12 in that one, or did you vote absentee?

13 A. I voted absentee.

14 Q. Okay. And did you have somebody sign as a
15 witness at that point in time too?

16 A. Yes.

17 Q. Okay. Were you able to go out and have
18 somebody do it, or did somebody come into your
19 apartment?

20 A. Somebody -- somebody was here with me.

21 Q. Okay. And then Mr. Lambert asked you about
22 the primary that was back in June.

23 A. Uh-huh.

24 Q. You said you voted then, right?

25 A. I did.

Mary Thomas 7/23/2020

21

1 Q. Okay. And I'm assuming you voted by
2 absentee, right?

3 A. I did.

4 Q. And you had somebody witness your absentee
5 ballot voting then, right?

6 A. Yes, I did.

7 Q. Who was that?

8 A. It was Susan Dunn.

9 Q. Okay. Did you call her and ask her to do
10 that, or did she come by just as one of her visits?

11 A. I called her and asked her to come by and do
12 that.

13 Q. Okay. And so I'm just guessing -- I think
14 the complaint says when -- in November, you're
15 planning on voting, right?

16 A. Yes, I do.

17 Q. And you're probably not going to the poll.
18 You're going to vote absentee again, right?

19 A. Yes, I am.

20 Q. And so will Susan -- will you call Susan
21 again to come be your witness?

22 A. I'm not going to call anybody because I'm
23 hoping that nobody will have to ever witness it again.

24 Q. Okay.

25 A. I hope that that was the last time that it

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29

1 Q. And you mentioned that you sometimes call
2 Susan over to help you in your apartment when you need
3 her for -- to help you with things.

4 A. Yes.

5 Q. Do you ever call her over, since COVID
6 began, for social visits?

7 A. No. We don't visit socially.

8 Q. Okay. And Ms. Thomas, I think there was a
9 little bit of confusion because there have been a
10 number of elections already in 2020.

11 Do you recall voting in the election -- the
12 primary election in February before COVID began?

13 A. I think I did. Maybe I don't remember it,
14 but usually if there's any voting, I'm in on it as a
15 rule.

16 Q. Okay. And Ms. Thomas, do you remember you
17 thought for the June primary this year there was no
18 witness requirement?

19 A. No, there was. There was. For the June
20 9th, yes, there was a witness requirement.

21 Q. Okay. So Ms. Thomas, are you totally sure
22 that you had someone witness your ballot for June 9th,
23 or do you think that you meant the February primary
24 was when Susan witnessed your ballot?

25 MR. LIMEHOUSE: Object to the form.

Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 5
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

Brenda Chapman Williams, MD
The Family Unit 30(b)(6) Representative

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

MARY T. THOMAS, NEA RICHARD,
JEREMY RUTLEDGE, TRENA WALKER,
THE FAMILY UNIT, INC., and the
SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP,

Plaintiffs,

v.

C/A No.: 3:20-cv-01552-JMC

MARCI ANDINO, in her official capacity as
Executive Director of the South Carolina
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in his official capacity as Chair of the
South Carolina State Election Commission;
JOANNE DAY, CLIFFORD J. ELDER, LINDA McCALL,
and SCOTT MOSELEY, in their official capacity
as Members of the South Carolina State Election
Commission; and HENRY D. McMASTER, in his official
capacity as Governor of South Carolina,
Defendants.

D E P O S I T I O N

WITNESS: BRENDA CHAPMAN WILLIAMS, M.D.
The Family Unit 30(b)(6) Representative

DATE: Friday, July 24, 2020

TIME: 3:12 p.m.

LOCATION: 2 Aubrey Circle
Sumter, South Carolina

TAKEN BY: Attorneys for the Defendants
SC State Election Commission officials

REPORTED BY: DEBORAH L. DUSSELJEE, RPR, CRC
Realtime Systems Administrator

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Brenda Chapman Williams, MD 7/24/2020

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Brenda Chapman Williams, MD 7/24/2020

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(EVERYONE IS PARTICIPATING VIA
WEB CONFERENCING, INCLUDING THE COURT REPORTER)

(INDEX AT REAR OF TRANSCRIPT)

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1 BREND A CHAPMAN WILLIAMS, M.D.,
2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MS. CRUM:

5 Q. Okay. Dr. Williams, I am Liz Crum. I am
6 with the law firm of Burr Forman McNair in Columbia,
7 and we represent the defendants Andino and the State
8 Election Commission.

9 Let me just give you a few kind of general
10 rules of depositions so that we're all on the same
11 page. Okay?

12 A. Yes.

13 Q. Dr. Williams, if you don't understand a
14 question that I ask -- and while I may think I'm the
15 model of clarity, sometimes I'm not. So I would
16 appreciate your asking me to rephrase so that we know
17 we are on the same page. Okay?

18 A. Thank you. Yes.

19 Q. Thank you.

20 And if you don't hear a question, ask me to
21 repeat it, please, ma'am.

22 A. Yes. Thank you.

23 Q. And if you don't ask me to repeat it, I'll
24 assume that you understand the question. Okay?

25 A. Yes.

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5

1 MS. CRUM: All right. And if y'all hold on
2 a second, I've got Dave here.

3 (Off-the-record discussion.)

4 BY MS. CRUM:

5 Q. Dr. Williams, let me go back to where I was.
6 You must answer yes or no so the court reporter can
7 write down your answer. I know I always -- I often
8 nod my head, but she can't see us nodding our heads
9 and taking -- taking notes. So if you could please
10 say yes and no, we would really appreciate that.

11 A. Thank you.

12 Q. And then since we're on Zoom, I will try to
13 speak slowly and finish my question, and then if you
14 let me finish my question, I promise I will let you
15 finish your answer because it will be impossible for
16 our court reporter to be able to take down both of us
17 talking at once. Okay?

18 A. Okay.

19 Q. And at any time, if you need a break, please
20 let me know, and we will be glad to take a break. And
21 I'm sure that you understand that during the break,
22 you shouldn't talk to your attorneys about answers.
23 And if you do, then when we come back, I get to ask
24 you whether or not you have talked to your attorneys
25 during the break.

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1 Do you understand that?

2 A. Yes.

3 Q. Thank you. Okay. Ms. Williams --

4 Dr. Williams, I'm sorry.

5 You did that to me, Debbie.

6 Let's see. This is a -- you understand that
7 this is a 30(b)(6) deposition for The Family Unit. Do
8 you --

9 A. Yes.

10 Q. Do you want me to go over for you what a
11 30(b)(6) deposition is?

12 A. Yes.

13 Q. Okay. What that means is, you are giving
14 responses for The Family Unit. In this case, The
15 Family Unit is one of the named plaintiffs.

16 Therefore, you have been designated by The Family Unit
17 to give responses to our questions, and the answers
18 that you give will bind The Family Unit.

19 Do you understand that?

20 A. Yes.

21 Q. Thank you, ma'am.

22 Now, what did you do to prepare for the
23 deposition of The Family Unit today?

24 A. In preparation for this deposition, I
25 reviewed many correspondences that I have had with the

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1 South Carolina Election Commission, which spanned over
2 several years in reference to the absentee ballot
3 requirement of the witness signature. Also, I spoke
4 with my attorneys.

5 Q. Okay. Did you do anything else?

6 A. No, ma'am.

7 Q. Can you tell me the time frame that your
8 correspondence with the SEC regarding absentee ballots
9 spans?

10 A. The time frame spanned over four years.

11 Q. Would that be basically from 19 -- 2016 to
12 date?

13 A. Yes.

14 Q. Of the correspondence that you reviewed, are
15 those the e-mails that were produced by one of the
16 expert witnesses?

17 A. One of the --

18 MR. ROSS: Objection. Which expert are you
19 talking about?

20 MS. CRUM: I don't know the name.

21 Q. Dr. Williams, did you give your e-mails to
22 someone?

23 A. Only to my attorneys.

24 Q. Okay. We'll get to your interrogatories,
25 and I think you may have referenced those in responses

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1 to either the interrogatories or the requests to
2 produce, so we'll talk about that when we get there.
3 Okay?

4 A. Yes.

5 Q. Other than your attorneys -- because I don't
6 want to know what you said with your attorneys. Other
7 than your attorneys, did you talk to anyone about this
8 deposition?

9 A. No.

10 Q. Okay. Now I'm going to ask you a series of
11 questions, and I ask these of everyone I depose. So
12 please don't take any of these as personal; they're
13 not. It's just a general cover-the-base. Okay?

14 A. Yes.

15 Q. Would you please state your full name for
16 the record. I know that's stupid because you've
17 already given it to us, but if you could do that,
18 please.

19 A. My full name is Brenda -- that's
20 B-R-E-N-D-A -- Chapman -- that's C-H-A, P as in Paul,
21 M-A-N -- Williams, W-I-L-L-I-A-M-S.

22 Q. Thank you, ma'am.

23 Are you on any medication today that would
24 affect your ability to testify?

25 A. No.

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9

1 Q. Have you had any alcohol today?

2 A. No.

3 Q. Have you ever been deposed before, had your
4 deposition taken?

5 A. Yes.

6 Q. When?

7 A. In 2012, I was a part of the lawsuit South
8 Carolina versus Holder. In 2013, I was part of the
9 lawsuit Shelby versus Holder in 2013.

10 Q. Are those the only two depositions that you
11 can recollect?

12 A. Yes.

13 Q. And what was the lawsuit SC versus Holder
14 about?

15 A. That was about the voter I.D. law that South
16 Carolina wanted to put into effect, and...

17 Q. And what was Shelby versus Holder?

18 A. Shelby versus Holder was also in reference
19 to the voter I.D. issue and the Voting Rights Act.

20 Q. This is a -- did this arise from South
21 Carolina?

22 A. It arose from several states.

23 Q. Is this the Shelby versus Holder that went
24 to the United States Supreme Court regarding Article 5
25 of the -- I'm sorry, Section 5 of the Voting Rights

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10

1 Act?

2 A. Yes.

3 Q. What's your address?

4 A. My address is 2 Aubrey -- that's A-U, B as
5 in boy, R-E-Y -- Circle, Sumter, South Carolina,
6 29153.

7 Q. And who lives at that address with you?

8 A. My husband.

9 Q. And what is your husband's name?

10 A. His name is Joseph -- that's J-O-S-E-P-H --
11 Cecil, C-E-C-I-L, Williams, W-I-L-L-I-A-M-S.

12 Q. And is your husband also a physician?

13 A. Yes.

14 Q. What type medicine does he practice?

15 A. He specializes in internal medicine,
16 geriatric medicine, and medical directorship.

17 Q. And what is medical directorship?

18 A. Medical directorship is a specialty in
19 internal medicine that deals with the care of elderly
20 citizens who are in nursing homes and long-term care
21 facilities.

22 Q. Okay. Is -- let's see. Since it's two
23 Dr. Williams, is Dr. Joseph Williams involved in The
24 Family Unit operations?

25 A. Yes.

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1 Q. Do you have any children?

2 A. Yes.

3 Q. How many?

4 A. Three children.

5 Q. Do they live at home with you?

6 A. No.

7 Q. Do they live in South Carolina?

8 A. One of our children lives in South Carolina.

9 Q. Have you ever been arrested?

10 A. Yes.

11 Q. What were you arrested for?

12 A. I was trying to tour a school here in Sumter
13 County that had no heating or air conditioning for
14 five long years. And because the district didn't want
15 me to tour that school, I was arrested.

16 Q. Was the charge trespassing?

17 A. Yes.

18 Q. What was the result of the charge?

19 A. There will be a jury hearing, a jury trial
20 that is upcoming.

21 Q. Do you know when that will be?

22 A. No.

23 Q. When was the charge made? When were you
24 charged?

25 A. February 19th, 2020.

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1 Q. Do you know whether or not the case will be
2 heard in Circuit Court or Magistrate's Court?

3 A. I do not know.

4 Q. What is your e-mail address?

5 A. My e-mail address is
6 familyunitinc@gmail.com. That's
7 F-A-M-I-L-Y-U-N-I-T-I-N-C at Gmail.com.

8 Q. And what is The Family Unit telephone
9 number?

10 A. The Family Unit's telephone number is
11 803-968-3375.

12 Q. Do you have any social networking or media
13 -- when I say "you," Dr. Williams, I really mean
14 Family Unit. Okay?

15 A. Yes.

16 Q. Okay. And do you have -- other than The
17 Family Unit Facebook account, do you have any other
18 networking or social media accounts?

19 A. Yes.

20 Q. What are those?

21 A. The Family Unit, Inc., has an Instagram
22 account, and The Family Unit has a Twitter account.
23 And --

24 Q. And -- I'm sorry. Go ahead.

25 A. There's a Facebook account also.

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1 Q. Who maintains those accounts?

2 A. I do.

3 Q. What is the -- do I call it hashtag for the
4 Twitter?

5 A. I would suspect the hashtag is
6 familyunitinc.

7 Q. Would that be the same for Instagram?

8 A. Yes.

9 Q. Okay. What is your educational history?

10 A. I attended school in Savannah, Georgia,
11 where I was born: Elementary school, middle school,
12 high school, and Savannah State University, as well as
13 the Medical College of Georgia.

14 Q. By whatever name it is now known?

15 A. I don't know. They've changed the name most
16 recently, so I don't know the --

17 Q. That's what I mean. I can't keep up with
18 it.

19 But the Medical College of Georgia, when did
20 you graduate?

21 A. I graduated from the Medical College of
22 Georgia in 1978.

23 Q. What area did you specialize in?

24 A. I finished an internship in pediatrics.

25 Q. Where did you do your internship?

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14

1 A. I did my internship at the Medical College
2 of Georgia, Augusta, Georgia, Department of
3 Pediatrics.

4 Q. Have you had any additional training?

5 A. Yes. For a few years, I worked at the Lower
6 Richland health center as a part of the National
7 Healthcare Corporation. I've also worked at the
8 Crafts-Farrow State Hospital. In --

9 Q. And -- I'm sorry. Go ahead.

10 A. Yeah. In addition to that, I did some
11 emergency room work at Tuomey Hospital.

12 Q. With regard to the Lower Richland, was that
13 here in Richland County?

14 A. Yes.

15 Q. Is that a -- what kind of entity is that?

16 A. It's a rural health care center.

17 Q. Okay. What did you do there?

18 A. I practiced general medicine.

19 Q. Okay. And then Crafts-Farrow, is that part
20 of the South Carolina Department of Mental Health
21 system?

22 A. Yes, it is.

23 Q. What did you do at Crafts-Farrow?

24 A. I practiced general medicine.

25 Q. Okay. Have you taken any additional

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1 training after you did your pediatric internship?

2 A. No.

3 Q. Okay. With regard to your medical practice,
4 after you got out -- after you completed your
5 internship, did you go straight to the Lower Richland
6 health care center?

7 A. Yes.

8 Q. And then you went from there to
9 Crafts-Farrow; is that correct?

10 A. Yes.

11 Q. And from there, you worked in the emergency
12 department of Tuomey.

13 A. Yes.

14 Q. And other than The Family Unit, have you
15 practiced medicine anywhere else?

16 A. Yes.

17 Q. Where?

18 A. My husband and I practiced the private
19 practice of medicine at the Excelsior -- that's E, X
20 like in xylophone, C-E-L-S-I-O-R -- the Excelsior
21 Medical Clinic.

22 I, along with my husband, practiced there
23 for 32 and one half years. We ended that practice,
24 closed that practice, November of 2014.

25 Q. And where was the Excelsior Medical Clinic

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1 located?

2 A. The Excelsior Medical Clinic was located at
3 448 North Main Street, M-A-I-N, North Main Street,
4 Sumter, South Carolina 29150.

5 Q. When did you and your husband start the
6 Excelsior Medical Clinic? What year?

7 A. We started the Excelsior Medical Clinic
8 June 1st, 1982.

9 Q. Did you vote in the 2020 primary?

10 A. Yes, I did.

11 Q. What about in the 2018 general election?

12 A. Yes, I did.

13 Q. The 2016 general election?

14 A. Yes.

15 Q. And the 2016 primary elections?

16 A. Yes.

17 Q. And did you vote in the presidential
18 preference primary in 2020?

19 A. Yes.

20 Q. And in the presidential preference primary
21 in 2016?

22 MR. ROSS: I'm going to object to the line
23 of questioning about her as an individual since this
24 is a 30(b)(6) deposition about The Family Unit, not
25 about Dr. Williams as an individual.

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1 MS. CRUM: You're absolutely right.

2 Q. Let's go to the organizational information.

3 Dr. Williams, what is your role in The Family Unit?

4 A. I am the chief executive officer of The
5 Family Unit and its founder.

6 Q. When was it founded?

7 A. The Family Unit was founded in 2009.

8 Q. Where was it founded?

9 A. It was founded in Sumter, South Carolina.

10 Q. How many employees does The Family Unit
11 have?

12 A. We have no paid employees. Volunteers only.

13 Q. How many volunteers?

14 A. Eight.

15 Q. What do those volunteers do?

16 A. Number one, I'm the CEO, and I do a number
17 of things.

18 Q. What do you do?

19 A. I go into the community and speak on voting
20 issues, housing issues, issues in reference to
21 elevating the status of indigent, disenfranchised
22 people in our community, and help with senior
23 citizens' issues, such as helping those without birth
24 certificates who were delivered by midwives decades
25 ago and have no formal stamped birth certificate.

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1 We also -- I also help to identify families
2 who are homeless and have no shelter, children who are
3 homeless and have no identifiable school to attend.
4 And I, on behalf of The Family Unit, advocate for
5 these families.

6 Q. Advocate what? I'm sorry, I didn't hear
7 you.

8 A. Advocate for the rights of these families to
9 have adequate housing, adequate medical care, adequate
10 treatment in schools, voting rights. And I help with
11 senior citizens to acquire and obtain state-issued
12 I.D.s so that they will be able to vote and enjoy
13 other privileges of citizens with such identification.

14 Q. And that's -- Dr. Williams, do you also
15 provide medical services to the members of The Family
16 Unit?

17 A. Yes. My husband and I have established this
18 year a free medical clinic under the name of our
19 organization, The Family Unit Inc.'s Free Medical
20 Clinic, which provides medical services to all
21 individuals in Sumter County who have no medical
22 insurance at all and who are between the ages of 18
23 years old and 64 years old.

24 Q. And Dr. Williams, when you say "no medical
25 insurance," would that include no Medicaid?

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1 A. Yes.

2 Q. Or Medicare?

3 A. Yes.

4 Q. Okay. Do you help individuals who may
5 qualify for Medicaid or Medicare to get qualified?

6 A. Yes.

7 Q. Okay. You just -- you've listed everything
8 that you do. What do your volunteers do?

9 A. My volunteers go into the community to help
10 register people who are unregistered.

11 Q. When you say "register," you are talking
12 about register to vote?

13 A. Yes.

14 Q. What are the names of your volunteers?

15 A. My volunteers are Joseph Cecil Williams;
16 Aisha -- that's A-I-S-H-A -- Ngosi -- that's
17 N-G-O-S-I -- Williams; Mr. Harmon, H-A-R-M-O-N,
18 Sumter, S-U-M-T-E-R; Mrs. Jacqueline,
19 J-A-C-Q-U-E-L-I-N-E, Glisson, G-L-I-S-S-O-N;
20 Mrs. Lottie -- that's L-O-T-T-I-E -- Spencer,
21 S-P-E-N-C-E-R; Mr. Harmon, H-A-R-M-O-N, Sumter;
22 Professor Willie -- that's W-I-L-L-I-E -- Mack,
23 M-A-C-K, Thompson, T-H-O-M-P-S-O-N; and of course,
24 myself, Brenda Chapman Williams.

25 Q. That's actually seven because you listed

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1 Mr. Sumter twice.

2 A. Did I? Okay.

3 Q. Yes, ma'am.

4 A. It's --

5 Q. Is there someone else?

6 A. Myself. That's Brenda Williams.

7 Q. Yes, ma'am.

8 A. Cecil Williams, Aisha Williams, Lottie
9 Spencer, Jacqueline Glisson, Mr. -- oh, yeah. I
10 didn't mention Mr. Ted James Wilson.

11 Q. Okay. And Dr. Williams, are Joseph Cecil
12 Williams and Aisha Ngosi Williams related to you?

13 A. Yes.

14 Q. Is Dr. -- well, Joseph Cecil Williams is
15 your husband, Dr. Williams?

16 A. Yes.

17 Q. And Aisha, is that your daughter?

18 A. Yes.

19 Q. Where does she live?

20 A. Aisha lives in Charlotte, North Carolina.

21 Q. The other -- excluding, of course,
22 Dr. Joseph Williams, do the other volunteers live in
23 Sumter?

24 A. Yes.

25 Q. Okay. And Professor Willie Mack Thompson,

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21

1 where does he teach?

2 A. Now he is a professor emeritus in
3 California. He's in retirement now, and he gets
4 people registered actually in California. He's --

5 Q. So he -- I'm sorry. Go ahead.

6 A. Sorry. He's in San Francisco, California.

7 Q. So his volunteer work includes getting folks
8 in California registered to vote?

9 A. Yes.

10 Q. Does he have anything to do with getting
11 folks registered to vote in South Carolina?

12 A. No.

13 Q. I noticed on the website -- I'm sorry, the
14 Facebook site -- you refer to the folks that you deal
15 with, The Family Unit deals with, as members.

16 How many members do you have?

17 A. I have 60 members --

18 (Telephone ringing.)

19 THE WITNESS: I'm turning off my phone.

20 I have approximately 60 members that I
21 actually actively work with and deal with on a pretty
22 regular basis.

23 BY MS. CRUM:

24 Q. I'm not asking for their names. Okay?

25 A. Yes.

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22

1 Q. But what kind of work do you do with the 60
2 members on a regular basis?

3 A. The Family Unit has provided homes. We have
4 donated six homes to indigent, hardworking families
5 over the past ten years. I have identified, on behalf
6 of The Family Unit, abandoned homes in our city that
7 have been left for no good. And The Family Unit has
8 obtained these homes, renovated these homes, and to
9 the families that abide by our strict set of rules and
10 regulations, we have donated these homes.

11 Q. Are your rules and regulations posted on
12 your website -- on the Facebook site?

13 A. Yes.

14 Q. So what else do you do for the approximately
15 60 members?

16 A. Well, The Family Unit doesn't leave it
17 there. We set out those rules and regulations and
18 challenge individuals who work to send their children
19 to school. And I regularly, on behalf of The Family
20 Unit, visit these families, inspecting the homes,
21 making sure they're clean, inspecting the yards,
22 inspecting the community to make sure that they are
23 free of litter, trash, and debris.

24 I also have for years with family members
25 gone to the Sumter School District for them in

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23

1 reference to advocating for these children to be able
2 to get the training and schooling and fostering that
3 they need in order for them to go higher in education.

4 Q. Okay. How do you define "member" when
5 you're talking about -- when The Family Unit is
6 talking about what a member is?

7 A. Members are those individuals who have come,
8 who have petitioned The Family Unit for help, help
9 with social needs, help with paying utility bills to
10 keep utilities on and not cut off, families who are
11 threatened with being evicted -- The Family Unit has
12 stepped in and helped several families to prevent
13 eviction -- those individuals who have come to us
14 asking for advice in reference to their problems,
15 social problems that they have had.

16 There are many who have come to The Family
17 Unit or petitioned to our organization to help them
18 understand what voting is about, to explain to them
19 what general elections are, to explain to them what
20 primaries are about, to explain to them what parties
21 are about, to explain to them that they have the right
22 to vote under constitutional law, South Carolina
23 constitutional law as well as federal constitutional
24 law.

25 Q. Dr. Williams, I went online before we began

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1 today and looked at The Family Unit Facebook page.

2 And one of the Facebook pages says, Appointment

3 availability. For example, on July the 28th, you have

4 appointments available from 9 -- or posted from 9

5 until 12:30.

6 What kind of appointments are those?

7 A. Those are appointments for The Family Unit

8 Inc.'s Free Medical Clinic.

9 Q. Okay. Does The Family Unit use telemedicine
10 when it sees its patients?

11 A. No.

12 Q. So when a patient comes in, they actually
13 physically come into the office.

14 A. Yes.

15 Q. Okay. Do you have any medical staff that
16 assists you with that, like nurses or nurses' techs,
17 LPNs?

18 A. No.

19 Q. How many -- strike that.

20 As opposed to members, would these be
21 patients?

22 A. Some of them are. Most of the members of
23 The Family Unit are not patients of myself nor my
24 husband.

25 Q. I'm sorry. Let me clarify. I was talking

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25

1 about the appointment availability. When they come in
2 to see you for medical reasons, those would be
3 patients; would they?

4 A. They become patients once they visit our
5 office. The only thing that we know about those
6 individuals who make appointments are two main things.
7 If they have no medical insurance, they are eligible
8 for our free clinic. If they are between the ages of
9 18 years old and 64 years of age, they are eligible.
10 They become patients once they formally come to our
11 office, register in, and are examined.

12 Q. Am I correct in assuming that the reason the
13 upper age limit is 64 is that at 65 folks become
14 eligible for Medicare?

15 A. Yes.

16 Q. Okay. Again, on your Facebook -- on Family
17 Unit's Facebook page, it talks about past events. One
18 of them was The Family Unit's monthly meeting. What
19 is The Family Unit's monthly meeting?

20 A. We have had meetings in my medical office,
21 in the medical office that my husband and I retired in
22 November 2014. We held our meetings there. Since our
23 retirement, I have met at the Sumter County public
24 library. And now since we have our free clinic
25 office, we meet there.

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1 Q. Okay. What happens at the meetings?

2 A. We discuss issues that are relevant to
3 what's going on in the community. We talk about the
4 importance of voting. We help in educating our
5 patients on why it's important to vote.

6 We have other issues that people in the
7 community have called me -- called The Family Unit
8 about. Some school issues, parents who have special
9 education children and the parents are concerned that
10 they have not been adequately responded to by the
11 Sumter School District, and they have reached out to
12 The Family Unit in reference to helping them have a
13 voice in the Sumter School District.

14 Q. Dr. Williams, when was the last meeting that
15 The Family Unit held at the Family meeting offices,
16 monthly meeting?

17 A. January 2020.

18 Q. On behalf of The Family Unit, Dr. Williams,
19 other than -- strike that.

20 On behalf of The Family Unit, have you
21 contacted elected officials in Sumter County?

22 A. Yes, I have.

23 Q. On what issues?

24 A. I've contacted elected officials in Sumter,
25 particularly the Sumter County legislative delegation,

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1 the Sumter County Council, the Sumter City Council,
2 and that's it.

3 Q. And since January 2020, what have you
4 contacted the Sumter County legislative delegation
5 about?

6 A. I've contacted the Sumter County legislative
7 delegation in 2020 -- I'm thinking actually the last
8 time that I contacted the legislative delegation might
9 have been in 2019. And it was about -- well, you
10 asked about 2020. I didn't contact them in 2020, no.

11 Q. Okay. What about the Sumter County Council
12 in 2020; what have you contacted them about?

13 A. I contacted the Sumter County Council in
14 2020 in reference to the payment of poll workers that
15 will be working in the polls this year.

16 I had -- on behalf of my organization, The
17 Family Unit was and still is concerned about the fact
18 that the poll workers will need extra, specialized
19 training in dealing with the COVID-19 infection, and
20 my letter to the county council was in reference to
21 making sure that the poll workers get adequate
22 treatment and are paid more since their
23 responsibilities would be increased substantially in
24 reference to COVID-19.

25 Q. Dr. Williams, do you remember about when you

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1 sent that letter to the legislative -- I mean to the
2 county council?

3 A. Yes. As a matter of fact, it must have been
4 shortly after the COVID infection really blew up and
5 took a rise in Sumter. So chances are, it's between
6 April 2020 and June 2020.

7 Q. Do you know whether or not the poll workers
8 received any training regarding the CDC guidelines for
9 voting?

10 A. Yes. As a matter of fact, that same letter
11 that I addressed to the Sumter County Council, council
12 administrator, and to all of its members, that same
13 letter was sent to the director of the Sumter County
14 Voter Registration and Elections Office and to the
15 Sumter County voter registration and elections
16 commission.

17 I was in receipt of a letter from the Sumter
18 County Voter Registration and Elections Office
19 director, which specified the fact that the poll
20 workers will get adequate training in an effort to
21 help them deal with the COVID-19.

22 And in addition to that, adequate funding
23 had been received -- well, I will say funding had been
24 received; I don't know if it's adequate -- from the
25 State of South Carolina in helping those poll workers

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1 to be paid sufficiently for the great work that they
2 do.

3 Q. Dr. Williams, I would appreciate it if you
4 would give a copy of the letter that you wrote to the
5 county council and copied the election folks on and
6 the one you received back to your lawyer so they can
7 send it to us. Okay?

8 A. Okay. I certainly will.

9 Q. Thank you, ma'am.

10 Are any of the members of Family Unit --
11 have they served as poll workers? Did they serve as
12 poll workers either in the presidential preference
13 primary or in the primaries this year?

14 A. No.

15 Q. Okay. Have any of your volunteers served as
16 poll workers in 2020?

17 A. No.

18 Q. I'm assuming it does not cost anything to be
19 a member of Family Unit; is that correct?

20 A. Yes.

21 Q. I think you also said that you had contacted
22 city council on behalf of Family Unit. Have you
23 contacted them in 2020 on behalf of Family Unit?

24 A. I believe that they received, the city
25 council -- no, actually it was county council,

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1 basically because I understand that the county is
2 responsible for issuing out the payments to the poll
3 workers.

4 Q. Yes, ma'am. But I thought you -- and maybe
5 I misunderstood it. I thought that you said that you
6 had contacted city council on behalf of The Family
7 Unit.

8 A. I did, and I was incorrect. I believe that
9 it was only the Sumter County Council, as well as the
10 voter registration office and the voter registration
11 commission here in Sumter, but not the city council.
12 I stand corrected.

13 Q. Thank you, ma'am.

14 Does The Family Unit hold voter registration
15 drives?

16 A. Yes.

17 Q. When is the last one you held?

18 A. The last voter registration drive had to be
19 in the year 2018, and let me say that we always -- we
20 never stop registering people to vote. There is not a
21 start and cutoff date for voter registration. It goes
22 on indefinitely.

23 Q. Okay. But I'm -- I understand what you've
24 testified to with that, but I'm talking about specific
25 days when you advertise we're going to have a voter

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1 registration drive here, please come, vote -- register
2 to vote.

3 Is the last one of those you held in --
4 "you" being Family Unit -- in 2018?

5 A. Actually in 2020, when I met with a group of
6 school workers who came to me under the auspices of
7 The Family Unit and we met in my office in 2020,
8 January. I never lose the opportunity to register
9 people to vote. Those individuals came to our office,
10 which serves, also, as a free clinic, during a day
11 that we didn't hold clinic hours.

12 And those individuals -- it was about
13 twenty-some-odd, 22 individuals that came for another
14 issue related to the school district. And while they
15 were there, before they left, I pulled out the voter
16 registration sheets and said, While you guys and
17 ladies are here, are you registered to vote? When was
18 the last time you voted? Do you know why voting is
19 important? And I signed up some people then.

20 It might have been three persons in the
21 group who had not voted in the past couple of -- three
22 years.

23 Q. Dr. Williams, when is the last time that you
24 on behalf of The Family Unit actually registered a
25 potential voter in South Carolina to vote?

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1 A. That had to be in January of 2020.

2 Q. Okay. So is it your testimony that since
3 January 2020, The Family Unit has not registered
4 additional voters?

5 A. Yes.

6 Q. Why did you -- did The Family Unit stop
7 attempting to register voters?

8 A. Well, the corona 19 virus came to town in a
9 big way. As a matter of fact, I had plans on behalf
10 of The Family Unit to get back out into the community,
11 in February actually, to start voter registration
12 again.

13 And then my husband became infected with the
14 corona 19 virus, and shortly after he became infected,
15 so was I. And we were both on quarantine for several
16 weeks before we were tested negative.

17 Q. Well, I am glad to see that you are doing
18 much better now.

19 A. Thank you.

20 Q. Dr. Williams, let's see here. I'm getting
21 pretty close to the end here.

22 How long have you been registered -- "you"
23 being, again, The Family Unit -- have y'all been
24 registering voters in Sumter County and/or California?

25 A. As The Family Unit, The Family Unit became a

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1 501(c)(3) nonprofit charitable organization approved
2 through the State of South Carolina December of 2009.
3 And that was our formal introduction into the
4 community.

5 Q. Is that when The Family Unit began
6 registering folks to vote?

7 A. Yes, ma'am. Well, actually -- actually The
8 Family Unit formally became The Family Unit in 2009.
9 However, we were registering people shortly before
10 2009. It might have been a couple of weeks. I had to
11 go through a lot of paperwork to get approved as a
12 501(c)(3).

13 So once we became a 501(c)(3), from December
14 2009 and on, is when The Family Unit took its -- came
15 to the forefront.

16 Q. Yes, ma'am.

17 A. I'll have to say 2009 December. Before
18 that, registering people as Brenda Williams.

19 Q. Approximately how many voters has The Family
20 Unit registered since -- from December 2009 to date?

21 A. We have registered approximately 7,000.

22 Q. How many of those are from Sumter?

23 A. At least 98.9 percent.

24 Q. Other than California, does The Family Unit
25 attempt to register citizens to vote in other South

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1 Carolina counties?

2 A. No. Well, we don't register people in
3 California, now. Our member, Professor Thompson,
4 registers Californians to vote.

5 Q. Right.

6 A. Okay. Now, he's a member of our board, but
7 he doesn't go outside California. The Family Unit
8 primarily registers persons who live in Sumter County.
9 We have -- because we register pretrial inmates at the
10 Sumter-Lee Regional Detention Center, we've registered
11 inmates who reside in other states, but that number is
12 very small.

13 Q. Who all is on the board of The Family Unit?

14 A. The board of The Family Unit consists of
15 myself, Brenda Chapman Williams, CEO; Joseph Cecil
16 Williams; Aisha Williams; Mr. Sumter, Mr. Harmon
17 Sumter; Mrs. Jacqueline Glisson; Mrs. Lottie Spencer;
18 Mr. Ted Wilson; and Professor Willie Mack Thompson.

19 Q. So the board members are the same as the
20 volunteers; is that correct?

21 A. Yes. They are among the volunteers.

22 Q. Are there other volunteers, because I
23 thought you said there were only eight volunteers?

24 A. There -- those are the board members, yes.
25 And they actually are the official volunteers.

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1 Q. How much contact, other than what you've
2 discussed with the January meeting, have you or the
3 volunteers had on behalf of The Family Unit with
4 voters about voter registration?

5 A. Repeat that question, please.

6 Q. Yes, ma'am. That was very inartful. Let me
7 try that again.

8 You and the volunteers have contacted folks
9 about registering to vote this year, correct?

10 A. Yes.

11 Q. Other than the January meeting, how much
12 contact have you had with folks about voting,
13 registering to vote?

14 A. Since the January meeting, my contact has
15 been through the Facebook, The Family Unit Facebook.

16 Q. With the Facebook, have you told members how
17 to go online and pull down the voter registration
18 application, for example?

19 A. Yes.

20 Q. What else have you posted on Facebook?

21 A. I've posted for the voters of Sumter County
22 and surrounding areas information about the importance
23 of having their votes counted and about voting during
24 the time that is allotted for voting.

25 For instance, absentee voting in South

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1 Carolina starts 30 days before the election date. I
2 remind the audience to be cognizant of the fact that
3 they could vote early.

4 I remind them that voting early helps you to
5 not have to stand in a long line and not have to be
6 among a crowd of people, and that, in particular, is
7 important in view of the COVID-19 infection. My
8 husband and I have gone on together, on Facebook,
9 informing the community to get tested for COVID and to
10 vote.

11 Q. What concerns have your members or the folks
12 who become your patients -- what concerns have they
13 expressed to you with regard either about their
14 ability to get registered or their ability to vote?

15 A. Members of my organization, The Family Unit,
16 Incorporated, have contacted me in reference to their
17 fear of going into crowds of people, exposing
18 themselves to contracting COVID-19.

19 They have expressed the fact that they would
20 need help in voting primarily because the State of
21 South Carolina has now enacted a new way of voting in
22 that the voting is no longer on computer, as it had
23 been at the polls, but at the polls, even in South
24 Carolina, there are paper backs never used ever in
25 South Carolina.

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1 So I've had members of The Family Unit and
2 other members who are not members of The Family Unit
3 but who are cognizant of the fact that The Family Unit
4 helps voters to call me, to text, to send me messages
5 on Facebook asking how should they go about voting,
6 especially in view of the COVID-19 pandemic.

7 Q. Dr. Williams, I just want to make sure I
8 understand. When you talked about -- talked about the
9 help in voting since the State wasn't using computers,
10 are you talking about the new voting system which
11 is --

12 A. Yes.

13 Q. -- computerized and also has the paper
14 trail?

15 A. Yes.

16 Q. Approximately how many people that you're
17 aware of have contacted The Family Unit with these
18 fears?

19 A. At least -- I can say at least 10 to 12.

20 Q. Let me look through my papers. I think I'm
21 just about finished. I don't think that -- I don't
22 have but a couple things more.

23 A. Thank you.

24 Q. Dr. Williams, you said that The Family Unit
25 is a 501(c)(3).

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1 A. Yes.

2 Q. Okay. How are the proceeds of the donations
3 you get used?

4 A. The donations that we get are used in
5 several ways. Number one, I mentioned that we have
6 renovated abandoned homes. A good portion of The
7 Family Unit's money goes towards the renovation of
8 those homes.

9 We also assist persons in our free clinic
10 with getting medication. We have to buy supplies for
11 our medical clinic. We help people pay utility bills
12 when their water and lights have been cut off. We
13 help people buy groceries. We help people buy
14 medication.

15 We advocate for people learning the rules
16 and regulations of voting. So we purchase, from time
17 to time, copies of the United States Constitution and
18 Declaration of Independence. Those booklets cost
19 \$2.99 apiece. And periodically, we purchase those
20 books and distribute them to the jail, to the
21 correctional officers, to churches, and in the
22 community.

23 Q. Dr. Williams, approximately -- of everything
24 you've listed that y'all use your donations for, what
25 percentage of the total donations does that cover?

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1 Like is that 90 percent or 10 percent or what?

2 A. 100 percent.

3 Q. Okay. Let's see here. Dr. Williams, have
4 you -- you've answered that one.

5 Every time I flip a page, that's a good
6 thing. It means you've already answered the question.

7 A. Great.

8 Q. Has The Family Unit held any events since
9 March the 13th of this year?

10 A. No.

11 Q. Dr. Williams, in the Plaintiffs' Responses
12 and Objections to Defendant Marci Andino's First Set
13 of Requests for Production, one of the requests, the
14 answer states that The Family Unit refers defendants
15 to expert disclosures made by plaintiffs in this case
16 and states there are no other responsive documents.

17 I'll tell you what, let's just strike that.

18 Have you personally, on behalf of The Family
19 Unit, provided documents to anyone other than your
20 attorneys in this case with regards to this lawsuit?

21 A. No.

22 Q. What are the -- your clinic, The Family
23 Unit's clinic -- ordinary operating hours?

24 A. We operate every other Tuesday and Thursday
25 from 9 a.m. until 1 p.m.

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1 Q. Are y'all still doing that?

2 A. Yes.

3 Q. Have you had any individuals at The Family
4 Unit building for any purpose other than the treatment
5 of patients since March 2000 -- March 2020?

6 A. No.

7 MS. CRUM: Okay. Dr. Williams, I certainly
8 appreciate your time very much.

9 We've got a couple of other lawyers on the
10 phone that may want to ask questions, but I really do
11 appreciate your time. Thank you.

12 THE WITNESS: Thank you very kindly.

13 MR. TYSON: This is Rob Tyson. Why don't we
14 take -- or do you mind if we take about a five-minute
15 break, and then I have got just a handful of
16 questions.

17 THE WITNESS: That's fine.

18 MR. TYSON: We will be back in five minutes
19 then. How about at 4:30 we start up again?

20 THE WITNESS: Okay. I will still be on.
21 Thank you.

22 (A brief recess transpired.)

23 EXAMINATION

24 BY MR. TYSON:

25 Q. Hey, Dr. Williams. I'm Rob Tyson. I'm the

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1 guy over here. It's nice to see you. I'm a lawyer
2 that represents the South Carolina Republican Party,
3 and I just have a handful of questions to ask you.
4 I'm sure you want to be someplace besides here late on
5 a Friday afternoon, so hopefully I won't be too long.

6 If you'll just work with me for a second,
7 I've just got the Complaint, and I'm just going to ask
8 a couple of questions off the Complaint, and then I
9 will follow up with you on some of your answers to
10 Ms. Crum.

11 A. Okay.

12 Q. I'm still kind of confused, or I -- can you
13 help me understand a little bit better about how one
14 becomes a member of The Family Unit?

15 I heard you say people come ask for help,
16 but I didn't quite understand what happens then, if
17 that made them a member. Can you walk me through that
18 process, please?

19 A. Yes. The Family Unit, Incorporated,
20 considers anyone who comes to us, particularly for our
21 help, as a member. It's just as simple as that.

22 Q. Got you.

23 So for the services that you provide,
24 whether it was helping with housing or school issues
25 or voting issues, anybody that asks those questions,

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1 that asks for assistance, you just classify them as a
2 member.

3 A. Yes.

4 Q. Okay. Great. Thank you.

5 In your Complaint, you -- or the way that
6 it's worded in several places, it's -- it talks about
7 The Family Unit members and constituents.

8 Is there a difference in who your
9 constituents are from who your members are?

10 A. No. The members are my constituents.

11 Q. So they are one and the same then
12 essentially, right?

13 A. Yes.

14 Q. Okay. Let me make sure, if I understood
15 again, that -- Ms. Crum asked you and you answered
16 that you are a 501(c)(3) nonpartisan, charitable
17 nonprofit organization, right?

18 A. Yes.

19 Q. And then you talked about this medical
20 clinic where you provide free medical assistance.

21 Does that fall under the umbrella of The
22 Family Unit, Inc., or is that something separate?

23 A. That falls under the umbrella of The Family
24 Unit, Inc., yes.

25 (Court reporter clarification.)

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1 MR. TYSON: Debbie, if my questions aren't
2 clear, you just let me know.

3 Q. Or, Dr. Williams, more importantly, if my
4 questions aren't clear, you definitely let me know.
5 Okay?

6 A. Yes.

7 Q. You recognize The Family Unit as a plaintiff
8 in this lawsuit, right?

9 A. The last part of your question was blanked
10 out. I didn't hear that half.

11 Q. In this lawsuit that we are here today, The
12 Family Unit is a plaintiff, right?

13 A. Yes.

14 Q. Okay. How did you become -- how did The
15 Family Unit come to be a plaintiff in this lawsuit?

16 MR. ROSS: Objection.

17 I will instruct the witness not to answer to
18 the extent that it involved any conversations with
19 your attorneys.

20 BY MR. TYSON:

21 Q. Dr. Williams, you heard your lawyer say that
22 he's instructed you not to answer or to talk about any
23 conversations with your attorneys.

24 What I'm asking is, how did you become a
25 plaintiff in this lawsuit? Did you find out about it,

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1 you went out and told somebody; or did somebody ask
2 you about it? How did that happen?

3 MR. ROSS: Same objection.

4 BY MR. TYSON:

5 Q. Go ahead, Dr. Williams.

6 A. I'll have to follow the instructions of my
7 attorney.

8 MR. TYSON: Let me make sure that I'm clear.
9 You're instructing her not to answer about any
10 conversations with a lawyer, but what I'm asking her
11 is how did she become a plaintiff in this lawsuit. I
12 don't -- am I missing something?

13 MR. ROSS: Well, I guess I'm missing
14 something. I don't understand how, you know -- you
15 become a plaintiff in this lawsuit by talking to your
16 lawyer, so I don't know what it is you want her to
17 answer. You know, can you be a little more specific
18 about what it is you're trying to get at or what you
19 want her to talk about that doesn't involve
20 conversations with her attorney?

21 BY MR. TYSON:

22 Q. Let's be clear, Dr. Williams. I don't want
23 to go into anywhere where it's close to any
24 conversations that you've had with an attorney. I'm
25 just trying to find out, did somebody call you and ask

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1 you whether you wanted to be a plaintiff in this
2 lawsuit, or did you call somebody and ask them that
3 you wanted to be a plaintiff in the lawsuit?

4 MR. ROSS: That is a conversation --
5 fundamentally you are asking did she call an attorney
6 and ask an attorney about representing her or did an
7 attorney call her. That's all within the privilege.

8 I don't understand what it is you are trying
9 to get at except trying to get at privileged
10 information.

11 MR. TYSON: I'm not trying to get any
12 privileged information. I just want to figure out how
13 she became a plaintiff. You have got -- in this
14 lawsuit there are one, two, three, four, five -- seven
15 different separate entities. I'm just trying to
16 figure out how The Family Unit came to be a plaintiff
17 in this lawsuit.

18 MR. ROSS: I'm going to instruct her not to
19 answer. I don't understand the question outside of
20 attorney/client privilege, and you haven't provided
21 any clarity, so I'm sorry.

22 BY MR. TYSON:

23 Q. Dr. Williams...

24 A. Yes.

25 Q. The Family Unit is a plaintiff in this

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1 lawsuit, correct?

2 A. Yes.

3 Q. Have you received all of the filings in this
4 lawsuit?

5 A. Yes.

6 Q. In the Complaint, it says that The Family
7 Unit educates and registers voters.

8 Is that solely done on those -- in the voter
9 registration drives that Ms. Crum was asking you about
10 and in that manner you described where you were at a
11 county event and you then started signing people up,
12 or are there other ways where you register voters, I
13 guess is my question?

14 A. Would you repeat that? Part of what you
15 said wasn't clear. Could you clarify what you just
16 said?

17 Q. How do you register voters?

18 A. I register voters by going into the
19 community. I preface my voter registration drives by
20 going into the lower-income housing projects and into
21 the lower-income mobile home areas and into our local
22 jail and actually into the Sumter community of
23 lower-income individuals.

24 Q. When you said earlier that you had helped
25 people register to vote that were -- I think you said

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1 they were detained in jails, and you said some of them
2 weren't from Sumter County.

3 Were they from South Carolina, or were you
4 registering them in other states? That wasn't clear.

5 A. The Sumter-Lee Regional Detention Center is
6 a regional center. It houses individuals who are
7 incarcerated mostly from Sumter County. However,
8 there are individuals from Lee County, from Clarendon
9 County, from Darlington.

10 And oftentimes there are individuals,
11 pretrial individuals -- all of these individuals are
12 pretrial -- that come from other states who are
13 transferred to the Sumter County regional detention
14 center, such as the state of -- I have seen folks from
15 New Jersey and other areas who temporarily are housed
16 at our local facility.

17 Q. And so my question was, are you registering
18 them in Sumter County then?

19 A. No. I'm registering them from the state and
20 counties where they live.

21 Q. Okay. So if somebody was from New Jersey
22 that you've just mentioned and he was detained and he
23 was there at the Sumter regional correctional
24 facility, you're not registering that person to vote
25 in Sumter County. You're just saying you're helping

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1 that person register to vote in wherever their home
2 state is; is that right?

3 A. That's right.

4 Q. Okay. You further say in the Complaint, In
5 recent years, The Family Unit members and constituents
6 have had absentee ballots rejected because of the
7 witness requirement.

8 How many times would you say that your
9 members and your constituents have had their absentee
10 ballots rejected because of the witness requirement?

11 A. There have been at least eight individuals
12 that have had their absentee ballots rejected on the
13 basis of the witness requirement.

14 Q. And why were they rejected?

15 A. Those absentee ballots were rejected because
16 of the absence of a witness signature.

17 Q. I got you.

18 A. And one ballot was rejected because the
19 address of the witness was not put on the voter's
20 envelope. The signature was there, but the witness
21 forgot to put her address, and subsequently, the
22 voter's ballot was discarded.

23 Q. Who does that? Who's rejecting the ballot?
24 That's the county election commission?

25 A. Yes.

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1 Q. So they are looking outside of that ballot
2 to determine whether the law has been followed and
3 whether the witness has signed it and then if it's
4 got -- or she has got an address on it. Is that what
5 you are saying?

6 A. Some of your voice is fading in and out.

7 Q. I'm sorry, Dr. Williams.

8 MR. ROSS: I'm sorry. Liz, do you mind
9 muting yourself? I think that's part of what the
10 issue is. When you crumple papers and things, I'm
11 hearing that.

12 MS. CRUM: I'm not moving any papers, but I
13 will mute.

14 BY MR. TYSON:

15 Q. Dr. Williams I'm pretty confident if there's
16 any problems, it's going to be on my end, working the
17 computer and making too much noise. Let me try this
18 again.

19 If I heard you, you just testified that
20 these eight ballots that were rejected over a period
21 of years were done so by the county election
22 commission, right?

23 A. Yes.

24 Q. Okay. And you said that they were rejected
25 because either they didn't have the witness signature

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1 on there -- right?

2 A. Yes.

3 Q. So the -- so somebody at the county election
4 commission was following that, to see whether the
5 ballot was properly witnessed, correct?

6 A. Say that again, please.

7 Q. So somebody at the county election
8 commission was looking -- reviewing the absentee
9 ballot to see whether it was properly signed, correct?

10 A. Yes.

11 Q. Okay. And then you also said that there
12 were some ballots that were rejected because they
13 didn't have the address on it, right?

14 A. One of those absentee ballots was rejected
15 because the witness forgot to put the home address, at
16 least to put that. That ballot was discarded and not
17 counted.

18 Q. And the county election commission did that,
19 right?

20 A. Yes.

21 Q. Dr. Williams, the Complaint goes on further,
22 and it says some of your members and constituents are
23 people with disabilities, right?

24 A. Yes.

25 Q. And so you know if they want to vote by

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1 absentee ballot. Are they able to vote as -- or do
2 they qualify for being physically disabled?

3 MR. ROSS: Objection.

4 BY MR. TYSON:

5 Q. Go ahead, Dr. Williams, and answer the
6 question.

7 A. Those individuals who are disabled have been
8 formally designated by their medical physician as
9 having a medical disability.

10 Q. And Dr. Williams, you've been so active in
11 this voter registration and this voter education, you
12 know that physically disabled is a reason that one
13 could use to vote by absentee ballot, right?

14 A. Yes.

15 MR. ROSS: Objection.

16 BY MR. TYSON:

17 Q. Dr. Williams, in the Complaint it says -- a
18 little bit further, it says, As a result -- a direct
19 result of the challenged requirements, The Family Unit
20 has been forced to divert its limited resources and
21 time away from its core activities to new activities.

22 Can you help explain to me how your
23 members -- or what that means? Let me just stop.
24 What does that mean?

25 A. It means that our usual activity of

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1 renovating abandoned homes for indigent families has
2 been interfered with. It means that the voter
3 registration activity, mostly performed by myself, has
4 been significantly interfered with in that I, over
5 decades, have gone into the community in areas where
6 lower-income families live, housing projects,
7 lower-income communities, our jail -- all of those
8 activities have been put aside in view of the fact
9 that we are cognizant of the elections that are coming
10 forth in 2020, and we know that things have changed
11 significantly for voters.

12 The COVID-19 virus has taken the forefront,
13 and that has really changed things. The state of
14 South Carolina's Governor, McMaster, has declared an
15 emergency situation in the state of South Carolina
16 wherein certain things, such as social distancing and
17 stay-in-place, stay-at-home orders, are in effect
18 actually since March of this year.

19 So the time, the effort, the ability for The
20 Family Unit to advocate for voters, to go into the
21 hinterlands, into the lower-income, disenfranchised
22 communities and do the work that we have done for over
23 a decade consistently has been hampered.

24 And so the effort, then, is focused on the
25 problems, what form of disenfranchisement has come

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1 about as a result of COVID-19, the restrictions of the
2 State, very necessary restrictions of distancing and
3 mask wearing, those things.

4 And so instead of being able to delve into
5 the community as we have so fervently done, we have
6 had to focus on informing the community of the fact
7 that more and more of the residents of Sumter County
8 will have the opportunity to vote by way of the
9 absentee ballot.

10 And being cognizant of the fact that the
11 absentee ballot requires a witness signature, it's
12 going to be most difficult for the voters who are
13 accustomed to getting help to actually get the help
14 that they so desperately need in order to vote and to
15 exercise their constitutional right to the ballot.

16 Q. Dr. Williams, back to my question. When it
17 says, As a direct result of the challenged
18 requirement, you have been forced to divert your
19 resources, if I heard you, you're saying you are not
20 able to do those things like education and housing or
21 whatever as much as you normally do because you've got
22 to go over here and work with voting, election issues;
23 is that what you're saying?

24 A. Yeah. When you say you have to go over
25 here, quote, unquote, I'm not physically going outside

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1 my home.

2 Q. Yes, ma'am.

3 A. I am diverting very necessary energies
4 toward making sure that I identify any voter, any
5 registered eligible voter of Sumter County and other
6 states, to make sure that those individuals are
7 informed voters; that they know about voter
8 suppression, which is real, not only in South Carolina
9 but nationally; that the voters in Sumter County know
10 that there are stumbling blocks that are associated
11 with the act of casting the ballot. And one stumbling
12 block would be the witness signature requirement.

13 Q. Somewhere in the response to one of
14 Ms. Crum's questions, I heard you say that you've
15 helped -- I think this is right, and let me make sure
16 I'm getting this right -- that you've helped register
17 7,000 voters.

18 A. Yes.

19 Q. And was that over a period of time, over the
20 last -- I think I've got ten years --

21 A. Yes.

22 Q. -- since The Family Unit has been created.
23 Is that --

24 A. Yes.

25 Q. And most of those are in Sumter County.

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1 A. Yes. Most of those, the vast majority of
2 those 7,000, were pretrial inmates who were housed at
3 the Sumter-Lee Regional Detention Center.

4 Q. So it's pretty clear that's part of your
5 mission, to help -- The Family Unit's mission is to
6 help people become registered to vote.

7 And now, has The Family Unit helped members
8 turn in their absentee ballots?

9 A. Yes. I personally deliver those ballots to
10 the courthouse, and those ballots that belong to the
11 voters who are out of state, I personally, on behalf
12 of The Family Unit, take those ballots to the local
13 post office, pay for the postage, and mail those
14 ballots.

15 Q. And I think I heard you say earlier that you
16 know that there's a 30-day window from which to vote
17 by absentee, right?

18 A. Right.

19 Q. So when you go take those, you made them
20 early enough to make sure that they get there, right?

21 A. Yes.

22 Q. Because you know that they've got to be
23 received by 7:00 on voting day, right?

24 A. Yes.

25 Q. So you take all the efforts to make sure

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1 that the postage and that the ballots are received by
2 the election commission, correct?

3 A. Yes. As a matter of fact, in Sumter County,
4 I personally drive to the voter registration office in
5 Sumter County and turn those ballots in myself.

6 Q. And so -- can I just kind of go off kilter
7 here?

8 Thank you for doing that because what we
9 hear frequently is that -- well, I won't say that
10 anymore. I'll just say thank you for helping make
11 sure that people's votes are actually received in a
12 proper time. So thank you.

13 A. (Nodding head.)

14 Q. Do you help campaigns collect their absentee
15 ballots and turn them back in?

16 A. No.

17 Q. Have you ever done that before?

18 A. Never.

19 Q. So what you're doing, going out and helping
20 people on the absentee ballots, is done all on behalf
21 of The Family Unit, Inc.

22 A. Yes. We are a nonpartisan organization.

23 Q. Have you -- Ms. Crum asked you a question,
24 and you talked about your -- some of your members had
25 expressed fears about voting, and then you described

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1 the concerns over the new voting machines.

2 Can you describe a little bit more about
3 your members' fears of going in and voting in person
4 on these new machines?

5 A. Yes. Primarily, the new thing to do is
6 accept it cautiously, and that is a need-be kind of
7 thing. Anything new is approached with apprehension
8 on the part of many voters.

9 So I personally -- as soon as those new
10 machines were brought into effect, I personally went
11 to the Sumter County Voter Registration and Elections
12 Office and practiced on the machines myself.

13 As a matter of fact, I have it on my
14 Facebook page, The Family Unit's Facebook page,
15 showing the voters this is the machine, this is how it
16 works. I challenged and encouraged the voters to go
17 and practice on the machine themselves.

18 Q. I think you said in response to one of
19 Ms. Crum's questions that you help your members get
20 over their fears about those voting machines, and then
21 I think you added nonmembers.

22 That sounded like to me you're just willing
23 to make sure any and all voters are able to get out
24 and vote. Is that fair?

25 A. Yes. And I'd have to add the emergence of

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1 the COVID-19 pandemic, which is and has been and
2 continues to be a very urgent topic when voting comes,
3 basically because those members that I spoke of have
4 spoken of their fear of standing in crowds of people.

5 Being well aware of the fact that the
6 elections this year primarily are primaries and the
7 general election, which is scheduled for November 3rd,
8 there will be a substantial number of people who are
9 going to vote or who want to vote, and that increases
10 one's chance of contracting the highly infectious
11 COVID-19 disease.

12 And so the voters that have contacted me
13 have voiced their fears and anxieties and reservations
14 about going into crowds. And they want to, and
15 rightly so, adhere and abide by the mandates set in
16 place by Governor McMaster in reference to social
17 distancing and the stay-home-for-work order.

18 Q. You mentioned earlier that you've got --
19 that you have 60 members of The Family Unit. What
20 would you say is the approximate age of those 60
21 members, if you could group them into something?

22 A. The approximate age would be 45. All right.

23 MR. ROSS: Are you asking -- I guess I was
24 confused. What was -- your question was the average
25 age; is that what you meant?

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1 MR. TYSON: Yep. And she answered 45, so I
2 was looking at my notes for the next question.

3 Q. Dr. Williams, do you know of anyone who
4 voted in person that has contracted the virus?

5 A. I know of -- and I want to interject here.
6 We have in the membership -- actually, the average age
7 of my board is 64 at least, the average age of my
8 board. I wanted to clarify that. And we see people
9 in the houses that we've given away, that their
10 average age is -- runs like 45 years old to 60 years
11 old. I wanted to clarify that point. Our board
12 consists mostly of senior citizens on our board.

13 Now to your other question, sir, can you
14 please repeat it? I wanted to point out that
15 correction and clarification.

16 Q. So most of your board is over 65; is that
17 fair to say?

18 A. Yes.

19 Q. And so they can vote by absentee ballot,
20 right?

21 A. They can vote by absentee ballot, but not at
22 the polls.

23 Q. That's right.

24 And then my next question was, do you know
25 of anybody yourself that has contracted the

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1 coronavirus due to their going to vote on June the
2 9th?

3 A. I don't know if anyone who contracted
4 coronavirus was as a result of voting on the primary
5 June 9th.

6 MR. TYSON: Thank you, Dr. Williams. I
7 appreciate you answering all my questions. Have a
8 great day.

9 THE WITNESS: Thank you.

10 MR. ROSS: Is that it for the defendants?
11 Do you know if the Governor's Office is here or wants
12 to ask questions?

13 MR. TYSON: Debbie, is Mr. Limehouse still
14 on the line?

15 MS. CRUM: This is Liz. I'm sorry, I had it
16 on mute, and I had to remember how to unmute it. He
17 had to get off the phone. So I'm assuming he has not
18 gotten back on yet.

19 Is that correct, Debbie?

20 COURT REPORTER: Yes, that is correct.

21 MR. TYSON: Liz, I just finished my
22 questions, and I didn't know whether counsel for
23 Dr. Williams was going to ask any questions before you
24 had the follow-up, so that's where we were.

25 MR. ROSS: I'm confused. Liz, are you going

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1 to ask additional questions, or are we --

2 MS. CRUM: I was waiting to see if you had
3 any questions.

4 MR. TYSON: Yeah. We were waiting to see
5 whether you --

6 MR. ROSS: I'm sorry. I thought you were
7 saying -- I thought you said Liz may have some
8 additional questions. No, I think we are set. Thank
9 you.

10 So with that, are we done then?

11 MS. CRUM: I was just going to say I don't
12 have any follow-up questions.

13 And Dr. Williams, thank you very much for
14 your time on this, at least in Columbia, very hot
15 Friday afternoon.

16 THE WITNESS: Thank you very kindly. I
17 appreciate your time and effort.

18 MR. TYSON: Thank you, Dr. Williams. Have a
19 great weekend.

20 THE WITNESS: Thank you.

21 MS. CRUM: Thank you. Remember, y'all, we
22 are on for tomorrow morning at 11:00.

23 (The deposition concluded at 5:04 p.m.)

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CERTIFICATE OF REPORTER

I, Deborah L. Dusseljee, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the reading and signing of the foregoing deposition by the witness has not been requested.

That the foregoing deposition was taken before me on the date and at the time and location stated on the title page of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the deposition were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 27th day of July, 2020, at Columbia, Richland County, South Carolina.



Deborah L. Dusseljee, RPR, CRC
Notary Public
State of South Carolina at Large
My Commission expires:
June 12, 2027

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I N D E X

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EXAMINATION

4

By Ms. Crum

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By Mr. Tyson

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CERTIFICATE OF REPORTER

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E X H I B I T S

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(None was proffered.)

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Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 6
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

Deposition Excerpts of Chad Dario Cotti, Ph.D.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

MARY T. THOMAS, NEA RICHARD,
JEREMY RUTLEDGE, TRENA WALKER,
THE FAMILY UNIT, INC., and the
SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP,

Plaintiffs,

v.

C/A No.: 3:20-cv-01552-JMC

MARCI ANDINO, in her official capacity as
Executive Director of the South Carolina
State Election Commission; JOHN WELLS,
in his official capacity as Chair of the
South Carolina State Election Commission;
JOANNE DAY, CLIFFORD J. ELDER, LINDA McCALL,
and SCOTT MOSELEY, in their official capacity
as Members of the South Carolina Election
Commission; and HENRY D. McMASTER, in his official
capacity as Governor of South Carolina,

Defendants.

D E P O S I T I O N

WITNESS: CHAD DARIO COTTI, Ph.D.

DATE: Thursday, July 30, 2020

TIME: 1:08 p.m. CT

LOCATION: 6 Timberline Court
Appleton, Wisconsin

TAKEN BY: Attorneys for the Defendants
SC Election Commission officials

REPORTED BY: DEBORAH L. DUSSELJEE, RPR, CRC
Realtime Systems Administrator

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Chad Dario Cotti, Ph.D. 7/30/2020

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1 Q. Have you read that?

2 A. I have. I can't tell you that I could
3 recall many of the details at this moment, but I know
4 I have looked at it. I think -- it does say -- it's
5 like a bullet-pointed thing, if you're referencing the
6 same thing, with like little paragraphs.

7 Q. Were those CDC guidelines at all part of the
8 study you did?

9 A. No. I didn't -- it was more recently that I
10 read them. I don't know if they even existed at the
11 time.

12 Q. Do you know if the State of Wisconsin
13 implemented those guidelines for the primary?

14 A. I don't -- I don't know that those
15 guidelines were out at the time of the primary, so I
16 couldn't say.

17 Q. Your report, you looked only at Wisconsin?

18 A. That's correct.

19 Q. Have you studied South Carolina's primary on
20 June 9th?

21 A. No.

22 Q. Are you aware of anyone -- or any cases of
23 COVID-19 that are attributed to voting in South
24 Carolina's June 9th primary?

25 A. I haven't studied the primary.

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1 Q. So that would be a no?

2 A. I wouldn't know either way.

3 Q. Are you aware of any cases of COVID
4 attributed to the primary?

5 A. No. I haven't looked.

6 Q. Are you familiar with South Carolina's
7 election law generally?

8 A. Only to the extent that I voted when I was a
9 resident of South Carolina, so I only know it from
10 participating.

11 Q. Have you looked at it since you left South
12 Carolina in 2009?

13 A. No.

14 Q. Have you ever studied voting in any other
15 states?

16 A. No. I've never studied voting besides this
17 paper, and this paper is not about voting.

18 MR. LAMBERT: Fair enough.

19 Well, Dr. Cotti, those are the only
20 questions I have. Some of the other lawyers on the
21 line may have questions for you as well. I really
22 appreciate your time and being willing to answer our
23 questions this afternoon.

24 THE WITNESS: I do too.

25 MR. LAMBERT: Thomas or Rob?

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1 Once you account for the differences, does
2 the difference in the in-person voting density, does
3 that variation across places correspond to the
4 variation across places in COVID-19 spread or
5 transmission?

6 So it doesn't really matter if it was high
7 or low as much as does the difference -- were the
8 places higher, the places that had more in-person
9 voting per location; were the places lower that --
10 where the places had less in-person voting per --
11 yeah, per location.

12 What we found was that as that variation
13 went up, statistically there is a relationship between
14 transmission also going up, unfortunately.

15 Q. And I think Mr. Lambert asked you this, but
16 you haven't done any analysis on the June primary in
17 South Carolina, correct?

18 A. No, sir.

19 Q. So your analysis, your estimates of this in
20 Wisconsin, might have some relevance to South
21 Carolina, but you don't know that, right?

22 A. Well, I would say that it has relevance to
23 an election, but how much it would is up for debate.

24 Q. But there's nothing in your report that asks
25 anything that would give any kind of conclusion about

Chad Dario Cotti, Ph.D. 7/30/2020

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1 the South Carolina primary in June, right?

2 A. We don't study anything about the South
3 Carolina primary in June.

4 Q. Nor do you make any kind of conclusion or
5 guesstimate about the November election in South
6 Carolina, correct?

7 A. Well, we aren't doing -- the conclusion that
8 we draw is -- so the election in Wisconsin took place
9 during the Wisconsin shelter-in-place, work-from-home
10 law.

11 And so it provides you kind of a good
12 laboratory for looking at the effects of voting
13 because nothing else was going on at the same time
14 that you have to also account for, in terms of you
15 don't have baseball games and parades and other things
16 happening simultaneously to confound your estimation.

17 And so it actually gives you a pretty good
18 read on if people show up at the polls, how much
19 density makes a difference in terms of transmission.

20 And the other thing I should point out is
21 that -- and this is something to your point,
22 Mr. Tyson, about applicability -- if the spread of the
23 virus is -- was pretty low at the time in Wisconsin
24 because of the shelter-in-place law, et cetera, if the
25 election was to have taken place in a larger-spread

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1 environment, because you have more connection points,
2 people who are -- there are more people sick who could
3 potentially show up and run into each other, the
4 amplification effect of the election could have been a
5 lot higher.

6 We were fortunate that the election took
7 place when there were very few cases in Wisconsin
8 relative to what we see, say, now in Arizona or
9 something and Oregon and Wisconsin. And as a result,
10 the effect was probably muted.

11 Q. Let me make sure that I'm clear. There is
12 nothing in your report that would describe what you
13 believe the potential effects of this analysis and all
14 these factors that you just laid out -- there is
15 nothing in your report about -- or any conclusion
16 about the November election in South Carolina, right?

17 A. Not about South Carolina specifically.

18 MR. TYSON: Thank you, sir. I appreciate
19 your time. No further questions.

20 THE WITNESS: You are very welcome.

21 EXAMINATION

22 BY MR. LIMEHOUSE:

23 Q. Mr. Cotti, how are you doing?

24 A. I'm good.

25 Q. My name's Thomas Limehouse. I represent the

Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 7
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

Deposition Excerpts of Arthur Lawrence Reingold, M.D.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

MARY T. THOMAS, NEA RICHARD,
JEREMY RUTLEDGE, TRENA WALKER,
THE FAMILY UNIT, INC., and the
SOUTH CAROLINA STATE CONFERENCE
OF THE NAACP,

Plaintiffs,

v.

C/A No.: 3:20-cv-01552-JMC

MARCI ANDINO, in her official capacity as
Executive Director of the South Carolina
State Election Commission; JOHN WELLS,
in his official capacity as Chair of the
South Carolina State Election Commission;
JOANNE DAY, CLIFFORD J. ELDER, LINDA McCALL,
and SCOTT MOSELEY, in their official capacity
as Members of the South Carolina Election
Commission; and HENRY D. McMASTER, in his official
capacity as Governor of South Carolina,

Defendants.

D E P O S I T I O N

WITNESS: ARTHUR LAWRENCE REINGOLD, M.D.

DATE: Thursday, July 30, 2020

TIME: 7:05 a.m. PT

LOCATION: 5800 Mendocino Avenue
Oakland, California

TAKEN BY: Attorneys for the Defendants
SC Election Commission Officials

REPORTED BY: DEBORAH L. DUSSELJEE, RPR, CRC
Realtime Systems Administrator

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Arthur Lawrence Reingold, MD 7/30/2020

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1 returning students in the fall is fluid?

2 A. I think that's a fair statement, yes.

3 Q. Have you been in isolation since the
4 outbreak of COVID?

5 A. Well, I have not been back on the campus
6 since the end of March with one exception where I
7 needed some papers, and I needed to get special
8 permission to be allowed into the building and into my
9 office by someone designated to do that. So I have
10 not been on the campus for the last, what is that,
11 four months. But that's correct.

12 Q. What do you do in terms of grocery shopping?

13 A. I do go grocery shopping. I do all the
14 cooking and the shopping in my household, and the
15 grocery store I shop at, like all stores in
16 Berkeley -- well, the grocery store I shop at, first
17 of all, has special hours for old people.

18 So I go to the old people shopping, number
19 one. Number two, they let only a limited number of
20 people into the store at any one time, and they don't
21 let more people in until people have left.

22 Everyone is required to wear a mask. Gloves
23 are offered but not required. And of course there are
24 things marked on the floors to keep people from
25 bunching up at the checkout counter. There are

Arthur Lawrence Reingold, MD 7/30/2020

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1 Plexiglas shields between the checkers and the people
2 buying the groceries, things like that.

3 So quite a few things in place to try and
4 protect people, but I do need to buy food.

5 Q. Yes, sir.

6 And I laughed when you said the old people
7 shopping because I graduated in 1970 also, so I think
8 we are the same age, and I tried the old people
9 shopping one time, and I figured it was safer when
10 there were young people around because they didn't run
11 me over with carts trying to get things. But that's
12 just my personal experience here.

13 In your experience, when you are grocery
14 shopping, for example, do the folks tend to abide by
15 wearing masks, standing in line, going the one
16 direction down the aisle, and the other precautions
17 that are put in place by stores?

18 A. So where I shop, a place called the Berkeley
19 Bowl, which is famous here in Berkeley, the answer is
20 yes. By my observation, I have not seen anyone not
21 wearing a mask inside the store, and certainly people
22 have been physically distancing when they check out.

23 In the aisles themselves, of course, things
24 are a little more fluid, but I would say people
25 generally try and give other people distance within

Arthur Lawrence Reingold, MD 7/30/2020

23

1 that framework, and having relatively few people in
2 the store makes that a little easier in terms of not
3 bunching up.

4 Q. Okay. What did you do to prepare for your
5 deposition today?

6 A. Well, I reviewed the most recent information
7 about South Carolina in The New York Times and on the
8 South Carolina website with regard to COVID-19 cases
9 and deaths.

10 I think I saw a story in the newspaper from
11 yesterday about the Governor adding to some of the
12 restrictions in response to COVID-19. I've reviewed
13 the CDC guidelines with regard to voting and safe
14 voting.

15 So I would say generally I tried to make
16 sure I was relatively current with regard to those
17 things. But I also generally am aware of what's
18 happening nationally on a daily basis.

19 Q. Let me ask you -- you said you reviewed the
20 South Carolina website. We've got a bunch of
21 websites. Which one did you review?

22 A. Well, this is the one that primarily looks
23 at what percentage of tests are coming back positive
24 and the number of -- it's the --

25 Q. Is it the South Carolina Department of

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30

1 And then we had quite an extensive back-and-forth with
2 the 500 or so people in the audience.

3 Q. Dr. Reingold, you said what was known about
4 COVID on February 6th, 2020. Is what is known about
5 COVID also fluid and rapidly changing?

6 A. Yes, ma'am.

7 Q. Okay. And what is -- would it be true to
8 say that what is the case with COVID today may not be
9 the case with COVID in October or November?

10 A. You know, Yogi Berra once said it's hard to
11 make predictions, especially about the future. So we
12 are all having to make educated guesses about what the
13 future has in store.

14 Q. But you would be pretty certain that it
15 wouldn't be the same on November the 3rd as it is
16 today in terms of the number of deaths, the number of
17 cases, the amount of testing.

18 A. I have no way to predict what the situation
19 will be with regard to any of those things in
20 November.

21 Q. I'm going to ask you a couple of questions
22 about phrases or words you used in your declaration.

23 What is a vaccine preventable disease?

24 A. Well, it's pretty much what it says. It's
25 a -- so far, at least, this refers to only infectious

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1 Q. Okay. So the plasma, then, is just a
2 treatment. It is not intended to be a prophylactic.

3 A. Correct.

4 Q. Dr. Reingold, I think you said that you read
5 the CDC considerations for election polling locations
6 in preparation for this deposition.

7 A. Yes.

8 Q. Okay. Do you know whether or not the State
9 of South Carolina implemented the then in effect CDC
10 guidelines for election polling locations in the June
11 primaries?

12 A. I do not know.

13 Q. Do you know whether or not there were any
14 outbreaks in South Carolina attributable to the June
15 primary on June the 9th?

16 A. I do not know.

17 Q. Do you know whether or not there are any --
18 there were any outbreaks attributable -- of COVID
19 attributable to the June 23rd primaries in South
20 Carolina?

21 A. No.

22 Q. Do you know what, if any, mitigation steps
23 South Carolina is planning to take for the November
24 general election?

25 A. I would only be assuming that they are

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1 and somebody with COVID-19 walks past me ten feet
2 away. That -- I suppose you could argue I was exposed
3 to that individual, but I would consider that a
4 low-risk exposure.

5 On the other hand, if I were in a room with
6 that person for a protracted period of time, that
7 would be a high-risk exposure. If I was in a room
8 with that person for a shorter period of time or with
9 more ventilation in the room, that might be a
10 medium-risk exposure.

11 Does that help?

12 Q. What if you were in a room with someone for
13 10 minutes, 15 minutes, you both had on masks, and you
14 were socially distancing? What risk -- would that be
15 a low risk of exposure?

16 A. It would probably be classified as -- these
17 are arbitrary terms and definitions, so it's not that
18 anybody -- you know, these didn't appear in the Ten
19 Commandments anywhere. But that would probably be
20 considered somewhere between low and medium risk,
21 depending on who you talk to.

22 Q. Does the link -- time you're with a person
23 change the level of risk, assuming you're indoors and
24 you have masks on?

25 In other words, is it, in your opinion, the

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1 longer -- is it true that the longer you're with
2 someone in a room, the greater the risk of exposure or
3 the greater the risk of contracting coronavirus?

4 A. Yes. We think the level of risk depends in
5 part on proximity, on length of exposure, on the size
6 of the room, on the amount of ventilation. So there
7 are a number of variables that go into that, but yes.

8 Q. In your opinion, would the risk in a
9 classroom, just a common high school classroom, be
10 higher than the risk in a high school gym, just given
11 the size of the room?

12 A. Well, if you are only talking about the size
13 of the room, then I think the answer to that is yes.
14 But it also would depend on how many people are in the
15 room and how hard they are breathing or coughing or
16 sneezing or what activities they are engaged in, so...

17 Q. Would it also depend on whether they wear
18 masks and whether they are social distancing?

19 A. We like to think so, yes.

20 Q. Is that a yes, because "we like to think so"
21 is kind of qualifying?

22 A. All the evidence we have suggests that the
23 answer is yes, that these measures have some impact,
24 yes.

25 Q. Dr. Reingold, would you agree or not that if

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1 the Election Commission uses the CDC voting guidelines
2 in November, we could mitigate the effect of COVID on
3 voters and poll workers?

4 A. Compared to not using the guidelines, yes.

5 Q. On page 16 of your declaration, you're
6 talking about mitigation, and it says, Other than
7 those included in the state plan.

8 What state plan are you talking about?

9 A. I'm sorry. Could you read me the whole
10 sentence?

11 Q. Yeah. Let me get you the whole sentence
12 here. I'm a little slow. I had cataract surgery on
13 Tuesday, and I'm still a bit fuzzy.

14 Here's the sentence. It's in paragraph 24,
15 and it's about two thirds of the way down. And it
16 reads, "In the instant case, there are public health
17 interventions other than those included in the state
18 plan that are available to minimize the risk of
19 transmission of SARS-CoV-2".

20 So what state plan are you --

21 A. So my understanding at the time that I said
22 that was that the State would be doing things such as
23 requiring masks and social distancing, wiping down of
24 surfaces, and things that are similar to what are
25 described in the CDC guidelines.

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1 signs the ballot, right, or then he votes and then
2 he -- do you know the process after that?

3 A. I don't know the process after signing it.

4 Q. Right.

5 A. My understanding was that it needs to be
6 witnessed by someone.

7 Q. That's right.

8 So the voter signs the ballot, he puts it in
9 an envelope, and the voter signs it, and then there is
10 a witness that signs it, on the back of it, correct?

11 A. That's how it works in California.

12 Q. And the -- if the witness needs to observe
13 the voter's signature, would you agree with me that
14 that observation and signature of the witness can be
15 done in complete accord with the CDC guidelines for
16 the prevention of the spread of COVID?

17 A. So you mean -- I just want to make sure I
18 understand your question. So you mean that I can --
19 if I wear a mask and I use hand hygiene and the like,
20 that by being in the same room with you to witness it,
21 that I can reduce the risk of transmission through
22 those various steps. Is that what you mean?

23 Q. That's right.

24 A. Yes. So those steps are intended to reduce
25 the risk of transmission if one of those individuals

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1 is infected. That's correct.

2 Q. That's right.

3 So if I'm the voter and I sign it and you
4 are going to witness it, if we are following CDC
5 guidelines, you could witness it by standing more than
6 6 feet away, right?

7 A. Unless you're nearsighted, I presume you
8 could.

9 Q. That's right.

10 And you could wear a mask, and you could do
11 the other things like you said, but you wouldn't have
12 the -- you could take precautions to prevent the
13 spread of COVID, correct?

14 A. You could take precautions to reduce the
15 risk of the spread, yeah.

16 Q. Yes. Yes, sir.

17 I've just got a handful of questions on your
18 Rule 26(a) disclosure, and I believe this was the June
19 filing. Yes, it was June the 26th.

20 Do you have it there?

21 A. I don't have it in front of me. I could get
22 it if you want me to.

23 Q. I have got just a couple of general
24 questions on it that I think you'll understand where
25 I'm coming from.

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1 that we just had.

2 And did you know that they've testified that
3 there weren't any health issues related to them after
4 they voted in person?

5 A. I didn't know that, but I will take your
6 word.

7 Q. Going down to Paragraph 22, you talk
8 about -- this is how it starts off: Evidence of
9 outbreaks of COVID-19 at polling locations is clear
10 epidemiologic evidence of the risks. And it goes on.

11 And my question is, do you have any specific
12 evidence related to South Carolina?

13 A. No.

14 Q. Okay. Paragraph 23 starts off, Widespread
15 vote by mail, however, for individuals without another
16 person able to -- the requirement that someone else
17 witness the absentee ballot puts them at an increased
18 risk of exposure to and/or transmission of COVID.

19 (Court reporter clarification.)

20 BY MR. TYSON:

21 Q. Dr. Reingold, I'm just refreshing your
22 memory from your statement -- or Paragraph 23 of your
23 declaration. And it just makes -- this is what it
24 says. With widespread vote by mail for individuals
25 without another person able to witness in their

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C/A No.: 3:20-cv-01552-JMC

Exhibit 8
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

Deposition Excerpts of Christopher Whitmire

1
2 UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF SOUTH CAROLINA.
4 COLUMBIA DIVISION

5 -----x

6 MARY T. THOMAS, et al.,

7 Plaintiffs,

Case No.

8 -against-

3:20-cv-01552-JMC

9 MARCI ANDINO, et al.,

10 Defendants.

11 -----x

12 July 31, 2020

1:50 a.m.

13
14
15
16
17 Videotaped Remote Deposition of CHRISTOPHER
18 WHITMIRE, taken by All Parties, pursuant to
19 Notice, at 1221 Main Street, Columbia, South
20 Carolina, before William Visconti, a Shorthand
21 Reporter and Notary Public within and for the
22 State of New York.
23
24
25

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2 know.

3 But if the witness -- if the
4 voter's signature was not there or it was not
5 witnessed, they would place it in the attention
6 envelope and that designates that that ballot
7 is not counted because it is not -- it did not
8 have the witness signature or voter's
9 signature.

10 Assuming it did have both of
11 those items, then the election official would
12 log that into the statewide voter registration
13 system. They would pull the voter's record and
14 record that absentee ballot for a particular
15 election had been received on a certain date.
16 Once it is logged in they would put it into an
17 absentee ballot box for processing at the
18 appropriate time.

19 Q. So you mentioned witnesses, let's
20 focus on just as you have been answering -- as
21 you answered your last question. Assuming --
22 pre the June election and how ballots are
23 counted.

24 What qualifies a person to be a
25 witness on a ballot? Are there any

1 CHRISTOPHER WHITMIRE

2 qualifications that a person has to meet?

3 A. I know of no qualifications.

4 Q. Could a child be a witness?

5 A. I believe they could.

6 Q. Could someone who doesn't know the
7 voter be a witness?

8 A. Yes.

9 Q. Could someone who doesn't live in
10 South Carolina be a witness?

11 A. Yes.

12 Q. What if anything is done to verify
13 whether the witness is in fact the person he
14 says he is?

15 A. There is nothing that election
16 officials do to verify that information.

17 Q. What if anything is done to verify
18 that the witness did in fact observe the
19 absentee voter as the voter signed the ballot?

20 A. Nothing.

21 Q. Is there anything done to verify
22 that the witness is a real person?

23 A. No.

24 Q. So as I think you know, in your
25 capacity as a 30(b)(6) witness someone that is

1 CHRISTOPHER WHITMIRE

2 case in Eastover, South Carolina, I think that
3 was 2008 which I believe resulted in a
4 conviction and had something to do -- I don't
5 know the details of case, but it had something
6 to do with absentee by mail ballots in the Town
7 of Eastover election.

8 Going back to prior to my time,
9 sort of the election law of South Carolina I'm
10 aware of an instance in McCormick, I believe
11 that was around the year 2000 where, again,
12 involving an absentee by mail ballots. And
13 again, I believe that resulted in I believe a
14 conviction there.

15 Those are the two instances that
16 come to mind of by mail voter fraud.

17 Q. You're not aware of any others as
18 you sit here today besides the two that you
19 just recounted?

20 A. Correct.

21 Q. So that sounds like you go back
22 about 20 years to 2000, that's in the McCormick
23 instance; is that right?

24 A. Yes.

25 Q. You said election law, I want to

1 CHRISTOPHER WHITMIRE

2 anything like a prosecutor's, I don't know.

3 But what I can tell you about from an election
4 official's perspective it does nothing for us.

5 So, yes, I agree with that idea, yes.

6 Q. It provides no safeguard that
7 you're aware of?

8 A. Correct.

9 MS. CRUM: Objection to the form of
10 the question.

11 MR. LIEB: I didn't hear you.

12 MS. CRUM: I said I object to the
13 form of the question. He can still answer,
14 but I objected to the form.

15 A. And if I can clarify. I'm drawing
16 a line with their saying no safeguard. I'm not
17 making a determination about that because I
18 really don't know how -- we are not a law
19 enforcement or an investigatory agency and what
20 value it might have to them. I'm not
21 commenting on that. So I was clarifying that
22 point. You're asking me if I agree with that
23 statement, I'm just pointing that part of it
24 out. The overall feeling behind it, yes, yes,
25 I agree with it.

1 CHRISTOPHER WHITMIRE

2 Q. Let me ask the question in a
3 slightly different way. Does the witness
4 signature requirement provide a safeguard that
5 benefits election officials, that you're aware
6 of?

7 A. No.

8 Q. The document goes on to read
9 "Moreover, many voters are struggling to cope
10 with the idea that they must find someone else
11 to signed their ballot while sticking to social
12 distancing requirements." Do you agree with
13 that sentence?

14 A. Yes.

15 Q. Let's focus on in-person voting
16 during the June 9th primaries. Were there any
17 unusual difficulties that were encountered in
18 the June 9th primaries?

19 A. Yes.

20 Q. What were some of the difficulties
21 that were encountered?

22 A. There were a number of counties
23 where polling place consolidation occurred due
24 to either the lack of poll managers or lack of
25 facilities. I'm particularly aware of Richland

1 CHRISTOPHER WHITMIRE

2 County because I live here in Columbia and
3 that's usually in the forefront of my mind. So
4 I know of the struggles they had where they
5 consolidated polling places resulting in long
6 lines at polling places. And with the long
7 lines and crowds social distancing problems
8 occur where it is harder to do that or doesn't
9 happen at all.

10 Poll managers, they had a poll
11 manager shortage in Richland which resulted not
12 only in some consolidations, but they scrambled
13 to get new poll managers and so you either have
14 totally new poll managers, new poll managers
15 working in a precinct they've never worked in
16 before or a poll manager serving as a clerk
17 which is the head poll manager who has never
18 done it before and I observed and heard about
19 confusion at polling places on election day due
20 to that as well.

21 But I believe that played out to
22 some extent in various counties throughout the
23 state.

24 Q. You mentioned Richland County.
25 Were there long lines in Charleston?

1 CHRISTOPHER WHITMIRE

2 A. I believe I did hear about some
3 lines in Charleston.

4 Q. How about Greenville?

5 A. I believe I did hear about some
6 lines in Greenville. I will make this point
7 about that, is that certainly from my
8 perspective the extent of it in Richland was
9 more severe than in Charleston or Greenville,
10 but I certainly heard about lines there to.

11 Q. Do you know were there other parts
12 of the state where there were long lines to
13 vote?

14 A. My feeling is that with 2300
15 polling places out there that that is likely,
16 but an example is not coming to mind.

17 Q. So you believe there were more but
18 you don't have a specific recollection of any.
19 Is that a fair statement?

20 A. Correct.

21 Q. Are there any health dangers that
22 arise from having longer lines at polling
23 stations in this pandemic?

24 MS. CRUM: Objection to the form of
25 the question.

1 CHRISTOPHER WHITMIRE

2 Q. So in this instance where the
3 voter didn't vote until after midnight, that
4 voter must have waited at least five hours, is
5 that fair?

6 A. That's fair.

7 Q. I would like to ask you to pick up
8 a document entitled "South Carolina Election
9 Officials Intervene in Richland County After
10 Long Lines Ballot Problems." It's dated June
11 10th. Can you get a copy of that document and
12 I would ask the reporter to mark this as
13 Exhibit 11.

14 (Whitmire Exhibit 11 for
15 identification, Document entitled South
16 Carolina Election Officials Intervene in
17 Richland County After Long Lines Ballot
18 Problems dated June 10th, 2020.)

19 A. I got it.

20 Q. Have you seen this document
21 before?

22 A. Yes.

23 Q. Looking at the bottom of the first
24 page, the language reads, "In a statement
25 Wednesday, State Election Commission spokesman

1 CHRISTOPHER WHITMIRE

2 Chris Whitmire bemoaned that in the state's
3 second most populous county which has been
4 plagued by election mishaps for years, 'Yet
5 again, voters were unnecessarily subjected to
6 extreme wait times and confusion at polling
7 places'." Mr. Whitmire is that a statement
8 that you made?

9 A. Again I have no reason to believe
10 it is not and it looks like it's a statement
11 that I made, yes.

12 Q. Your recollection is that these
13 voters were subjected to extreme wait times and
14 confusion at polling places in Richland County;
15 is that correct?

16 A. Yes, in some polling places, other
17 polling places no. But they certainly had some
18 extreme issues in some polling places.

19 Q. You can turn to page 3, two-thirds
20 of way down. It is not highlighted. Do you
21 see the paragraph that reads, "A shortage of
22 poll workers willing to volunteer amid fears
23 contracting Covid 19 led to long lines at a
24 number of combined precincts with voters still
25 waiting to cast their vote five hours after

1 CHRISTOPHER WHITMIRE

2 question. I didn't ask him about that
3 paragraph.

4 A. You want me to go ahead and
5 answer?

6 Q. Yes.

7 A. Yes, I would say the lack of
8 leadership in Richland and -- I'm sorry, I'm
9 getting tired, can you repeat the question.

10 Q. My question was that this article
11 specifically address -- those two shaded
12 paragraphs on the second page specifically
13 addressed leadership and systemic issues at the
14 Election Commission of Richland County not
15 Covid-related issues, right?

16 A. Yes.

17 Q. Now just to my questions, there
18 aren't that many. As we went through this, the
19 State Election Commission has taken a number of
20 actions to ensure in-person voting in South
21 Carolina this fall is going to be safe;
22 correct?

23 A. Yes.

24 Q. Do you want to just give some of
25 specific actions that the Commission took in

1 CHRISTOPHER WHITMIRE

2 June and/or will take again or in addition in
3 November for in-person voting ensure voters are
4 safe?

5 A. So part of our approach is to take
6 steps to make polling places as safe as
7 possible for poll managers and voters and some
8 of those steps include providing personal
9 protective equipment to poll managers. Sneeze
10 guards for check in stations. Social
11 distancing tools so they can apply social
12 distancing at the polling place and hand
13 sanitizers for voters and poll managers,
14 special coronavirus training for poll managers
15 that they are required to take before the
16 election. Cotton swaps to reduce the amount of
17 touching of the touch screens on the voting
18 equipment. Cleaning supplies for poll managers
19 to clean surfaces and the training to go along
20 with that. I think I covered it.

21 Q. One of the questions that I had is
22 that you were asked about whether you had --
23 what are concerns about the November elections
24 and you expressed a number of those concerns.
25 I want to make sure that we heard the follow up

1 CHRISTOPHER WHITMIRE

2 they are going to vote in person absentee or in
3 person at polling place on election day to
4 understand what we are doing to -- what steps
5 we're talking to make those polling places as
6 safe as we can for poll managers and voters.

7 And then to talk to the voters
8 what they can do, what they can do to help
9 which includes recommending wearing a mask,
10 bringing your own pen so they don't have to
11 touch the pen in the polling place, to
12 encourage them to be prepared to practice
13 social distancing and generally be ready to
14 vote which is one of our standard messages
15 before any statewide election so that you're
16 familiar with your sample ballots. That you're
17 ready to vote. You viewed a demonstration on
18 how to use the voting equipment so you know how
19 to do that. You're familiar with any
20 questions, referendum questions that might be
21 on the ballot so you're not standing in the
22 booth reading long referendum questions. Bring
23 you phot ID. All the things that we do to say,
24 hey, be ready to vote.

25 Q. Other than that, I'm assuming in

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works is that basically we created this link that can be shared by our partners, the parties, all the voter advocacy groups, anybody that we are working with, hey, try to help share our message throughout the state. You can share this link, you go there, basically fill out an online application to be a poll manager and it automatically sends an e-mail to the county voter registration elections office and county that the applicant selected.

Q. I'm told that persons have tried that but they have not heard back from their counties. Have you heard any similar type of complaint?

A. Yes.

Q. What is the Election Commission doing to ensure that people that are interested in signing up to be poll workers actually do get signed up or at least get filtered or reviewed?

A. So, very early on when we did this one of the points that we talked to county directors about was to say, hey, not every county in the state was in dire need of poll

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managers but some were. And we were putting out statewide messages saying, hey, South Carolina needs poll managers. So we wanted to make a point to the, especially those counties where they might not need anybody, to say, hey, you're going to have people apply. You need to respond to these applicants, tell them something, you might tell them, hey, we might need you, we'll let you know. We don't need you. We may need you in November. We are going to add you to our list, but to acknowledge that the manger applied and give them some feedback on what your needs are in your counties. And also encourage them if they didn't need additional poll managers to share it with neighboring counties that may need that.

As we moved forward we get reports of a poll manager who was not contacted after a reasonable amount of time. We'll send that to the county to which they applied and say we heard from a poll manager here that said they applied and never heard anything, can you please reach out to them.

1 CHRISTOPHER WHITMIRE

2 about Covid as it relates to the June 9th
3 primary. Do you know of any evidence of any
4 new Covid cases directly attributable to
5 in-person voting at the June 9th primary?

6 A. I do not.

7 Q. How about at the June 23rd
8 runoffs?

9 A. I do not.

10 Q. So you have no information or any
11 evidence beyond the story that was in the
12 newspaper about Colleton County or about what
13 you reported about Colleton County, anything
14 else?

15 A. Well, you were asking me about
16 cases where Covid had been spread due to the
17 primaries or runoffs and I wouldn't put the
18 Colleton -- what I knew about Colleton County
19 as that. I don't know that Covid was spread in
20 that case either. So maybe I don't understand
21 fully understand your question.

22 Q. No information or evidence about
23 any in-person voting about any Covid-related
24 claim due to in-person voting; is that right?

25 A. Correct.

1 CHRISTOPHER WHITMIRE
2 consider additional restrictions on citizens
3 and enforcing wearing masks; isn't that right?

4 A. Yes, I did hear that.

5 MR. TYSON: Thank you for taking
6 the time to answer my questions, it has
7 been a long day so I appreciate you hanging
8 in there, thank you.

9 THE WITNESS: You're welcome.

10 MR. LIMEHOUSE: Mr. Whitmire, this
11 is Thomas Limehouse, I represent Governor
12 McManus in this action I do not have any
13 questions, but want to thank you for your
14 time on a Friday afternoon.

15 THE WITNESS: You're welcome
16 Mr. Limehouse.

17 MR. LIEB: I do have a couple of
18 redirect.

19 MS. CRUM: This is Liz, I have a
20 couple of questions.

21 MR. LIEB: Sorry.

22 EXAMINATION BY MS. CRUM:

23 Q. Mr. Whitmire you were asked a
24 series of questions about the preventive
25 measures that the SEC is putting in place for

1 CHRISTOPHER WHITMIRE

2 the November general election.

3 Does the SEC intend to follow the
4 then current guidelines established by the CDC
5 in the November elections?

6 A. Yes.

7 Q. Are the preventive measures that
8 you talked about that were put in place for the
9 primary and runoff derived from the then
10 current CDC voting guidelines?

11 A. Yes, they were.

12 Q. Has the State Election Commission
13 been informed by any county board of elections
14 and voter registration that the particular
15 board knows of any Covid cases that allegedly
16 resulted from the primary or the runoff?

17 A. None that I'm aware of..

18 Q. Is the presidential election
19 always held during a general election?

20 A. Yes.

21 MS. CRUM: Thank you, Mr. Whitmire
22 I don't have anymore questions.

23 MR. LIEB: I think it is my turn.

24 I have just a handful.

25 EXAMINATION CONTINUED BY MR. LIEB:

Mary T. Thomas, et al. v. Marci Andino, et al.

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Exhibit 9
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

*South Carolina v. Campbell, No. 2007-GS-47-01 (S.C.
Gen. Sess. Feb. 29, 2008)*

FILED

JUN 12 2007

STATE GRAND JURY OF SOUTH CAROLINA

**JAMES R. PARKS
CLERK, STATE GRAND JURY**

STATE OF SOUTH CAROLINA	)	CASE NO. <u>2007-GS-47-01</u>
	)	
VS.	)	SUPERSEDING INDICTMENT FOR
	)	ELECTION FRAUD
CHRISTOPHER CAMPBELL,	)	
TIMOTHY FORD,	)	General Conspiracy
	)	S.C. Code Ann. §16-17-0410
DEFENDANTS.	)	
	)	Illegal Conduct at Elections
	)	S.C. Code Ann. § 07-25-0190
	)	
	)	Forgery
	)	S.C. Code Ann. §16-13-0010
	)	
	)	Intimidation of a Witness
	)	S.C. Code Ann. §16-09-0340
	)	
	)	Common Law Obstruction of Justice
	)	S.C. Code Ann. § 17-25-0030
	)	
	)	Common Law Misconduct in Office
	)	S.C. Code Ann. § 17-25-0030
	)	
	)	Fraudulent Registration or Voting
	)	S.C. Code Ann. §07-25-0020

At a session of the State Grand Jury of South Carolina, convened in Columbia,
South Carolina, on June 12, 2007, the State Grand Jurors present upon their oath:

**COUNT I
CONSPIRACY
S.C. Code Ann. § 16-17-410
CDR Code 0049**

That CHRISTOPHER CAMPBELL, TIMOTHY FORD and/or other
persons whose names are both known and unknown to the State Grand Jury, did in
Richland County of South Carolina, during the period of time extending from on or about
January 1, 2006 to June 12, 2007, conspire to accomplish an unlawful object, to wit: Defendants

committed illegal conduct in regards to a city election, and/or committed acts which prevented, obstructed, impeded, or hindered the administration of justice, and/or by threat or force intimidate or impede a witness or potential witness in an ongoing criminal investigation and/or dishonestly, and with bad faith and corrupt intent, engage in acts and omissions of misconduct in office, in the form of malfeasance, misfeasance and nonfeasance, in violation of thier duties of good faith, honesty and accountability in their roles as Mayor and/or Chief of Police of the Town of Eastover, while in a position of public trust and, in which, said defendants owed a duty to the public, exercised supervision of others, exercised broad discretion in their duties which were of public concern, and involved the exercise of sovereign power and was subject to limited supervision, and such activity involves the election laws including, but not limited to, those named offenses as specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws.

COUNT II
ILLEGAL CONDUCT AT ELECTIONS
S.C. Code Ann. § 7-25-190
CDR Code 0354

That CHRISTOPHER CAMPBELL did, in Richland County of South Carolina, on or about January 1, 2006 through April 13, 2006, in connection with a general, special or primary election, by force, intimidation, deception, fraud, bribery, or undue influence obtain, procure, or control the vote of registered voters to be cast for a candidate or measure other than as intended or desired by such voter, or violated any of the provisions

of this title; to wit: Defendant fraudulently obtained absentee ballot applications and absentee ballots for members of the Eastover community and cast votes in the names of others to influence the outcome of April 11, 2006 Eastover Town Council Election, in violation of South Carolina Code Ann. § 7-25-190 (1976) as amended and such activity involves the election laws including, but not limited to, those named offenses as specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws.

COUNT III
FORGERY
S.C. Code Ann. § 16-13-10
CDR Code 0488

That CHRISTOPHER CAMPBELL did, in Richland County of South Carolina, on or about January 1, 2006 through April 13, 2006, with the intent to defraud, falsely make, forge, counterfeit, cause or procure to be falsely made, forged, or counterfeited, utter and publish as true, or willfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing, to-wit: instructing several individuals to sign as witnesses on several voter oath envelopes when the individual did not witness said voter sign the oath, such conduct not having been authorized by law under South Carolina Code Ann. § 16-13-10 (1976) as amended, and such activity involves the election laws including, but not limited to, those named offenses as specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any

attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws.

COUNT IV
INTIMIDATION OF A WITNESS
S.C. Code Ann. § 16-09-0340
CDR Code 2451

That CHRISTOPHER CAMPBELL did, in Richland County of South Carolina, on or about January 1, 2006 to June 12, 2007, by threat or force intimidate or impede a witness or potential witness in an ongoing criminal investigation, to wit: threatened and/or used force to intimidate Tommie Lee Gilmore, such conduct not having been authorized by law under South Carolina Code Ann. § 16-9-340 (A)(1) (1976) as amended, and such activity involves the election laws including, but not limited to, those named offenses as specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws.

COUNT V
COMMON LAW OBSTRUCTION OF JUSTICE
S.C. Code Ann. § 17-25-0030
CDR Code 0819

That CHRISTOPHER CAMPBELL did, in Richland County, between the dates of January 1, 2006 to June 12, 2007, commit acts which prevented, obstructed, impeded, or hindered the administration of justice, all in violation of the Common Law of South Carolina, and such activity involves the election laws including, but not limited to, those named offenses as specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws,

or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws.

**COUNT VI
COMMON LAW MISCONDUCT IN OFFICE
S.C. Code Ann. § 17-25-0030
CDR Code 0819**

That CHRISTOPHER CAMPBELL did, in Richland County, between the dates of January 1, 2006 to June 12, 2007, dishonestly, and with bad faith and corrupt intent, engage in acts and omissions of misconduct in office, in the form of malfeasance, misfeasance and nonfeasance, in violation of his duties of good faith, honesty and accountability in his role as Mayor of the Town of Eastover, while in a position of public trust and, in which, said defendant owed a duty to the public, exercised supervision of others, exercised broad discretion in his duties which were of public concern, and involved the exercise of sovereign power and was subject to limited supervision, all in violation of the Common Law of South Carolina, and such activity involves the election laws including, but not limited to, those named offenses as specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws.

**COUNT VII
FRAUDULENT REGISTRATION OR VOTING
S.C. Code Ann. § 7-25-20
CDR Code 0353**

That TIMOTHY FORD did in Richland County of South Carolina, on or about March 9, 2006 through April 11, 2006, offer or attempt to vote in violation of this title or under any false pretense as to circumstances affecting his qualifications to vote, to wit:

Count VII NOLLE PROSSED
at the request of Jennifer Evans,
Chief of Prosecution,
State Grand Jury,
this 8th day of May, 2008.

Margaret J. Saff
Deputy Clerk for State Grand Jury

the Court's decision in *United States v. [REDACTED]*, 2019 WL 1111111 (S.D. [REDACTED], 2019).

Very truly yours,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Enclosed for the Court are two copies of the [REDACTED] and [REDACTED].

I declare under penalty of perjury that the foregoing is true and correct.

Executed on [REDACTED] at [REDACTED], [REDACTED].

[REDACTED]

Very truly yours,

[REDACTED]

Enclosed for the Court are two copies of the [REDACTED] and [REDACTED].

I declare under penalty of perjury that the foregoing is true and correct.

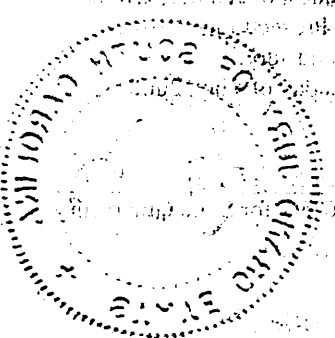
Executed on [REDACTED] at [REDACTED], [REDACTED].

[REDACTED]

Very truly yours,

[REDACTED]

RECEIVED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
JUL 10 2020



Very truly yours,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Enclosed for the Court are two copies of the [REDACTED] and [REDACTED].

I declare under penalty of perjury that the foregoing is true and correct.

Executed on [REDACTED] at [REDACTED], [REDACTED].

Defendant fraudulently represented that he was a resident of Eastover, South Carolina, allowing him to vote in the April 11, 2006 Eastover Town Council Election; such conduct not having been authorized by law under South Carolina Code Ann. § 7-25-20 (1976) as amended, such activity involves the election laws including, but not limited to, those named offenses as specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws and/or public corruption.

COUNT VIII
INTIMIDATION OF A WITNESS
S.C. Code Ann. § 16-09-0340
CDR Code 2451

That TIMOTHY FORD did, in Richland County of South Carolina, on or about January 1, 2006 to June 12, 2007, by threat or force intimidate or impede a witness or potential witness in an ongoing criminal investigation, to wit: threatened and/or used force to intimidate Tommie Lee Gilmore, such conduct not having been authorized by law under South Carolina Code Ann. § 16-9-340 (A)(1) (1976) as amended, and such activity involves the election laws including, but not limited to, those named offenses as specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws and/or public corruption.

COUNT IX
COMMON LAW OBSTRUCTION OF JUSTICE
S.C. Code Ann. § 17-25-0030
CDR Code 0819

That TIMOTHY FORD did, in Richland County, between the dates of January 1, 2006 to June 12, 2007, commit acts which prevented, obstructed, impeded, or hindered the administration of justice, all in violation of the Common Law of South Carolina, and such activity involves the election laws including, but not limited to, those named offenses as specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws and/or public corruption.

COUNT X
COMMON LAW MISCONDUCT IN OFFICE
S.C. Code Ann. § 17-25-0030
CDR Code 0819

That TIMOTHY FORD did, in Richland County, between the dates of January 1, 2006 to June 12, 2007, dishonestly, and with bad faith and corrupt intent, engage in acts and omissions of misconduct in office, in the form of malfeasance, misfeasance and nonfeasance, in violation of his duties of good faith, honesty and accountability in his role as Chief of the Eastover Police Department, while in a position of public trust and, in which, said defendant owed a duty to the public, exercised supervision of others, exercised broad discretion in his duties which were of public concern, and involved the exercise of sovereign power and was subject to limited supervision, all in violation of the Common Law of South Carolina, and such activity involves the election laws including, but not limited to, those named offenses as specified in Title 7, or a common law crime

involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws and/or public corruption.

Against the peace and dignity of the State and contrary to the statute in such case made and provided.

A True Bill

Lance C. Parker
FOREMAN

Henry McMaster
HENRY McMASTER (sop)
ATTORNEY GENERAL

FILED

FEB 29 2008

STATE OF SOUTH CAROLINA

JAMES R. PARKS
CLERK, STATE GRAND JURY
IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.
Christopher Campbell
AKA:
Race: B Sex: M Age: 41
DOB: 12-25-66 SS#: 248-19-4214
Address: 313 Henry St
City, State, Zip: Eastover, SC 29044
DL# _____ SID# _____

INDICTMENT/CASE#: 2007 -GS- 47 - 01 Count VI
A/W#: DI
Date of Offense: 1/1/2006 - 6/12/2007
S.C. Code §: 17-25-30
CDR Code #: 0 / 8 / 1 / 9
☐ CASE RESTORED
SENTENCE
☐ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Miscconduct in Office (CL)in violation of § 17-25-30 of the S.C. Code of Laws, bearing CDR Code # 0 / 8 / 1 / 9☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

James O. Pate
SolicitorChristopher Campbell
DefendantJohn Delgado
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 18 days/months/years and/or paymentof \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Feb 29, 2008☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$ 35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 125.00Margaret J. Sell
Clerk of Court/ Deputy ClerkCourt Reporter: Daphne Helms

PTUP

300 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: terminate upon compliance☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE Michael P. HuttoJudge Code: 2 1 1 4 1 0Sentence Date: February 29, 2008

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FILED

FEB 29 2008

STATE OF SOUTH CAROLINA

JAMES R. PARKS IN THE COURT OF GENERAL SESSIONS
CLERK, STATE GRAND JURY

COUNTY OF Richland
STATE VS.
Christopher Campbell
AKA:
Race: B Sex: M Age: 41
DOB: 12-25-66 SS#: 248-19-4214
Address: 313 Henry Street
City, State, Zip: Eastover, SC 29044
DL# _____ SID# _____

INDICTMENT/CASE#:

2007 -GS- 47 - 01 Court II
A/W#: DI
Date of Offense: 1/1/2006 - 4/13/2006
S.C. Code §: 7-25-190
CDR Code #: 0 / 3 / 5 / 4
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Illegal Conduct at Elections 0-5in violation of 7-25-190 of the S.C. Code of Laws, bearing CDR Code # 0 / 3 / 5 / 4
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 18 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: At 29, 2008☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$ 35.13 (Public Def/Prob) \$500 \$ _____

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\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 125.00

PTUP

1 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: terminate upon compliance
☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2 1 1 1 4 1 0Sentence Date: February 29, 2008Court Reporter: Daphne Helms

Clerk of Court/ Deputy Clerk

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FEB 29 2008

STATE OF SOUTH CAROLINA

JAMES R. PARKS IN THE COURT OF GENERAL SESSIONS
CLERK, STATE GRAND JURY

COUNTY OF Richland
 STATE VS. Christopher Campbell
 AKA: _____
 Race: B Sex: M Age: 41
 DOB: 12-25-66 SS#: 248-19-4214
 Address: 313 Henry Street
 City, State, Zip: Eastover, SC 29044
 DL# _____ SID# _____

INDICTMENT/CASE#: 2007 -GS- 47 - 01 Court III
 A/W#: DI
 Date of Offense: 11/1/2006 - 4/13/2006
 S.C. Code §: 16-13-10
 CDR Code #: 0 / 4 / 8 / 8
☐ CASE RESTORED
☐ SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: FORGERY 0-3in violation of 16-13-10 of the S.C. Code of Laws, bearing CDR Code # 0 / 4 / 8 / 8
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

James J. Pata
 Solicitor

Christopher Campbell
 Defendant

John Delgado
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of 18 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Feb 29, 2008☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.**SPECIAL CONDITIONS:**☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: _____

*Fine: \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 125.00

Margaret J. Self
 Clerk of Court/ Deputy Clerk

Court Reporter: Daphne Helms

PTWP _____
 _____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: terminate upon compliance
☐ Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2 1 1 4 10Sentence Date: February 29, 2008

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Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 10
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

***Bailey v. S.C Election Comm'n, No. 2020-000642 (S.C.
May 8, 2020)***

THE STATE OF SOUTH CAROLINA
In the Supreme Court
In its Original Jurisdiction

Appellate Case No. 2020-00642

Rhodes Bailey, Robert Werhman, South Carolina
Democratic Party, and DCCC,.....Plaintiffs-Petitioners,

v.

South Carolina Election Commission and Marci
Andino as Executive Director of the State Election
Commission, Defendants-Respondents.

RETURN TO INTERVENOR’S MOTION TO DISMISS

M. Elizabeth Crum
Wm. Grayson Lambert
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P.O. Box 11390
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Robert Bolchoz
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Karl Smith Bowers, Jr.
BOWERS LAW OFFICE
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Columbia, SC 29250
(803) 753-1099

Counsel for Defendants-Respondents
South Carolina Election Commission and Marci Andino as Executive
Director of the State Election Commission

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INTRODUCTION

Justice Holmes was right: “Great cases, like hard cases, make bad law.” *N. Sec. Co. v. United States*, 193 U.S. 197, 364 (1904) (Holmes, J., dissenting). That is “because some accident of immediate overwhelming interest” acts as “a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend.” *Id.*

Here, that “accident” is COVID-19. (*See* Compl. ¶ 50 (referring to “this unprecedented situation”).) To be sure, COVID-19 is serious. Governments have rightly taken measures to protect citizens from the spread of the disease.

But whatever measures government takes must be lawful. As Justice Story admonished almost two centuries ago, “ours is a government of laws, and not of men.” *United States v. Dickson*, 40 U.S. 141, 162 (1841). That is still true today. It is why the State Election Commission (“SEC”) and Marci Andino, as the SEC’s executive director, may exercise only that authority granted to them by the General Assembly. *See Bazzle v. Huff*, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995). Therefore, the SEC and Andino are authorized to allow certain, statutorily qualified people to vote by absentee ballot. *See* S.C. Code § 7-15-320.

At its core, this case is really a simple one of statutory interpretation. The Petitioners invite the Court to adopt a novel interpretation of the South Carolina Election Law and hold that, because of the possibility of being infected by COVID-19, all South Carolina voters are “physically disabled” and are thus qualified to vote by absentee ballot in the primary and general elections in 2020. That interpretation is

inconsistent with the plain language and history of sections 7-15-310(4) and 7-15-320(B)(1). The Court should therefore reject the Petitioners' invitation to rewrite these statutes, which would violate well-established legal rules and take the Court beyond the scope of its constitutional role.¹

ARGUMENT

I. The SEC, acting through its executive director, is charged with implementing and overseeing South Carolina's statutorily established election procedures.

In our State, “[a]ll elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office.” S.C. Const. art. I, § 5. The procedures for elections must be established by the General Assembly. *See id.* art. II, § 10. The General Assembly has fulfilled this constitutional obligation. *See* S.C. Code § 7-1-10 *et seq.* (“Election Law”).

The General Assembly has given the SEC the authority to implement and oversee the Election Law. *Id.* § 7-3-10(d). The SEC consists of five members, appointed by the Governor. *Id.* § 7-3-10(a). The SEC acts independent of any political campaign. *Id.* § 7-3-10(e). The SEC, in turn, elects an executive director, who “shall be the chief administrative officer for the [SEC].” *Id.* § 7-3-20(A). The executive

¹ The SEC and Andino believe the Court should answer the legal question raised by the Petitioners, regardless of whether it is on a motion to dismiss or a motion for summary judgment. That answer should come as quickly as possible, given that absentee voting is already underway.

director is responsible for myriad statutorily defined duties, including the conducting of registration and elections. *See id.* § 7-3-20(C).

II. State law provides a limited and clear definition of who is physically disabled and thus qualifies to vote by absentee ballot.

As part of the statutory procedure for elections established by the General Assembly, voters can vote either in person on election day, *see id.* § 7-13-710 *et seq.*, or by absentee ballot, *see id.* § 7-15-10 *et seq.* Any registered voter may vote in person. *See id.* § 7-13-710(A). But only certain voters qualify to vote by absentee ballot. *See id.* § 7-15-320. Under this statute, certain voters are *qualified* to vote by absentee ballot, as opposed to being exempt or excused from voting in person.

Among the people qualified to vote by absentee ballot are “physically disabled persons.” *Id.* § 7-15-320(B)(1). The Election Law defines a “physically disabled person” as someone “who, because of injury or illness, cannot be present in person at his voting place on election day.” *Id.* § 7-15-310(4). The interpretation of a “physically disabled person” is at issue here.

A. The plain language of section 7-15-310(4) belies the Petitioners’ position.

To answer this question, the starting point must be the General Assembly’s intent. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (calling this intent the “cardinal rule of statutory construction”). And to determine legislative intent, this Court looks first to the words that the General Assembly used. *Smith v. Tiffany*, 419 S.C. 548, 555, 799 S.E.2d 479, 483 (2017) (“It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question.”).

Those words must be read in context so that all parts of the statute are given effect and work harmoniously together. *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

The Petitioners call COVID-19 an illness. (Compl. ¶ 59.) On that point, they are correct. An “illness” is a “[b]ad or unhealthy condition of the body” or a “disease.” I *Compact Edition of the Oxford English Dictionary* 1374–75 (1971); *see also S.C. Dep’t of Soc. Servs. v. Michelle G.*, 407 S.C. 499, 509, 757 S.E.2d 388, 394 (2014) (looking to a dictionary for the plain meaning of words).

But it does not follow that every South Carolina voter is statutorily defined as “physically disabled” because COVID-19 is an illness. (See Compl., Prayer (A).) For one, that conclusion belies the common use of the words in section 7-15-310(4). *See Olds v. City of Goose Creek*, 424 S.C. 240, 249, 818 S.E.2d 5, 10 (2018) (“In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.”). A simple example shows how. If someone says, “I am not going because of the flu,” the listener would understand that that person has the flu. In other words, he is sick. On the other hand, to convey that this person did not want to go somewhere because of “fear of contracting” (to use the Petitioners’ phrase (Compl. ¶ 50)) the flu, that person would say, “I am not going because I don’t want to catch the flu.”

For another, their argument wrongly reads “because of . . . illness” in isolation. *See Senate by & through Leatherman v. McMaster*, 425 S.C. 315, 322, 821 S.E.2d 908, 912 (2018) (“We . . . should not concentrate on isolated phrases within the statute.”).

In addition to a “physically disabled person” being qualified to vote by absentee ballot, a voter “attending sick or physically disabled persons” is also qualified to vote by absentee ballot. S.C. Code § 7-15-320(B)(4). The only way to harmonize these two qualifications and give meaning to both is to interpret a “physically disabled person” as a person with an illness and to interpret a person “attending” the physically disabled person as someone giving care to a person with an illness. After all, a person with only the fear of contracting an illness does not need a caregiver, so this qualification for absentee voting would be superfluous. *See Senate by & through Leatherman*, 425 S.C. at 322, 821 S.E.2d at 912 (2018) (“we must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous” (internal quotation mark omitted)). Thus, a “physically disabled person” must actually have an illness, not just be fearful of contracting one.

Granted, section 7-15-310(4) must “be liberally construed in order to effectuate” its purpose. S.C. Code § 7-15-20. That is why, for example, the SEC has never strictly read “cannot” in section 7-15-310(4) to require a voter literally to be unable to appear in person to qualify as “physically disabled.” Nevertheless, liberally construing the statute is not a license to ignore the words themselves or the context in which they appear. *See Gregory v. S.C. Democratic Exec. Comm.*, 271 S.C. 364, 374–75, 247 S.E.2d 439, 444 (1978) (“While we agree with Petitioner that our absentee voting statutes should be given a liberal construction, we cannot extend statutes to accommodate errors if such interpretation would be contrary to clear mandatory language by the Legislature.”). The words here require a voter to have an

illness to qualify to vote by absentee ballot, not simply have the fear of contracting an illness.

It is worth noting the many categories of voters already covered by the statute. Among the people at heightened risk with COVID-19 include those who are sixty-five years of age and older; live in a nursing home or assisted-living facility; are immunocompromised; or have conditions like asthma, severe obesity, chronic lung disease, diabetes, serious heart conditions, kidney disease requiring dialysis, and liver disease. *See* Ctrs. for Disease Control & Prevention, Groups at Higher Risk for Severe Illness (Apr. 17, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>. Assuming that someone living in a assisted-living facility is either over sixty-five or has some serious health condition (a seemingly safe assumption), all of these people are already qualified to vote by absentee ballot. *See* S.C. Code §§ 7-15-320(B)(1) (“physically disabled persons”); 7-15-320(B)(8) (“persons sixty-five years of age or older”). So are people caring for these people. *See id.* § 7-15-320(B)(4). Thus, South Carolina’s absentee-voting rules already protect many of those most at risk due to COVID-19.

B. The history of sections 7-15-310(4) and 7-15-320(B)(1) is inconsistent with the Petitioners’ interpretation.

If the statutory language leaves any doubt, the history of these statutes removes it. *See In re Hosp. Pricing Litig., King v. AnMed Health*, 377 S.C. 48, 54, 659 S.E.2d 131, 134 (2008) (“The history of the period in which the statute was passed may be considered in interpreting the statute.”).

The General Assembly established in 1972 the right to vote by absentee ballot if a voter was “physically unable to present himself” at the polls. 1972 S.C. Acts No. 1574, § 2 (“Any qualified elector who will be physically unable to present himself at his precinct on election day shall be permitted to vote by absentee ballot.”). When five Richland County voters sought to use this provision to vote by absentee ballot because they would be out of town on election day, the Attorney General sought a declaration from this Court on whether this statute “extends the right of absentee voting only to those qualified electors who are unable to present themselves at their voting precinct by reason of illness, injury or other physical infirmity.” *State ex rel. McLeod v. Ellisor*, 259 S.C. 364, 368, 192 S.E.2d 188, 188–89 (1972) (per curiam).

In examining the language of Act 1574, this Court recognized that the “ordinary signification of the words ‘physically unable’ is bodily incapacity or physical infirmity.” *Id.* at 368–69, 192 S.E.2d at 189. This Court looked to the dictionary for definitions for “unable” and “physically” and concluded that “[t]o interpret these words to mean something other than inability by reason of illness, injury or other bodily infirmity is to place a strained and unnatural construction on them in violation of the South Carolina rule that the words are to be taken in their ordinary and literal meaning.” *Id.* at 369, 192 S.E.2d at 189. This Court bolstered its conclusion by comparing Act 1574 with other provisions on absentee voting and recognizing that, if it interpreted Act 1574 to mean any voter who was absent on election day regardless of illness or injury, that would implicitly repeal the other absentee-voting provisions (something, of course, the law disfavors). *See id.* at 369–70, 192 S.E.2d at 189–90.

Less than three years later, the General Assembly amended the provisions for absentee voting. In Act 301 of 1975, the General Assembly defined a “physically disabled person” as “a person who, because of injury or illness, cannot be present in person at his voting place on Election Day.” 1975 S.C. Acts No. 301, § 1 (codified at S.C. Code § 23-441(4) (1962)). The General Assembly allowed a physically disabled person to vote by absentee ballot, whether or not that person would be absent from her county of residence on election day. *Id.* (codified at S.C. Code § 23-442(5) (1962)). This provisions have not substantively changed since 1975. *See* 2015 S.C. Acts No. 79, § 4; 2014 S.C. Acts No. 289, § 6;² 2000 S.C. Acts No. 392, § 10; 1997 S.C. Acts No. 25, § 1; 1996 S.C. Acts No. 434, § 19; 1994 S.C. Acts No. 365, § 3; 1989 S.C. Acts No. 193, § 2; 1984 S.C. Acts No. 266, § 7; 1982 S.C. Acts No. 280, § 1.³

When Act 301 is considered in light of *Ellisor*, it is apparent that the General Assembly was codifying this Court’s holding. *See State v. McKnight*, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003) (“There is a presumption that the legislature has knowledge of previous legislation as well as judicial decisions construing that legislation when later statutes are enacted on related subjects.”). The General Assembly used the same words (“injury” and “illness”) to define “physically disabled person” that this Court used in analyzing Act 1574. And the General Assembly gave the same people (that is, those unable to vote in person because of injury or illness)

² This act restructured the subsections of 7-15-320 and moved “physically disabled persons” to its current location in section 7-15-320(B)(1).

³ This act moved these provisions to their current sections of 7-15-310 and 7-15-320.

the right to vote by absentee ballot that had that right under the Court's interpretation of Act 1574.

C. The other authorities on which the Petitioners rely are unavailing.

1. Sections 7-15-310(4) and 7-15-320(B)(1) do not violate the South Carolina Constitution.

The Petitioners insist that not interpreting “physically disabled person” as they do violates our State Constitution. (*See* Compl, p. 11 (Part III).) They are wrong.

The Free and Open Elections Clause requires what its name suggests: that “elections . . . be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution . . . have an equal right to elect officers.” S.C. Const. art. I, § 5.

The Petitioners' reliance on the Free and Open Elections Clause is misplaced, as they stretch the clause beyond both its plain language and what this Court has said about it. *First*, as for the language of the clause, it is satisfied here. Every registered voter is free to cast a ballot (whether in person or by absentee ballot), and every vote counts the same.

Second, the Petitioners' position ignores what this Court has said about the Free and Open Elections Clause. The types of “impediment or restraint” which keep an election from being free and open are legal ones, which restrict the right of voters to participate in an election. For instance, in *Cothran v. West Dunklin Public School District No. 1-C*, 189 S.C. 85, 200 S.E. 95 (1938), the election at issue was about school bonds. That election was open to all voters, not just those who had real or personal

property subject to taxation, as Act 102 of 1933 required. *Id.*, 200 S.E. at 95. The election was challenged based on that act. This Court held that that act limiting who could vote was unconstitutional, so the election was valid. *Id.*, 200 S.E. at 97.

State v. Huntley, 167 S.C. 476, 166 S.E. 637 (1932), reinforces this interpretation of the Free and Open Elections Clause. The election in that case was for school trustees in Chesterfield County. *Id.*, 166 S.E. at 638. A state statute provided that the election was to be conducted according to the rules governing primary elections. *Id.* Primary elections allowed someone to vote if (and only if) that person's name was on the party rolls. *Id.*, 166 S.E. at 639–40. By contrast, in general elections, the Constitution established who was a qualified elector. *Id.*, 166 S.E. at 639. Because qualified electors were excluded from the election for school trustees, that election violated the Free and Open Elections Clause. *Id.*, 166 S.E. at 640. Once again, the impediment at issue was a legal one, restricting some people's right to vote.

Both *Cothran* and *Huntley* show that the Free and Open Elections Clause protects voters from legal restrictions on their right to vote, not from natural events that affect all voters. The Petitioners have thus put more weight on the Free and Elections Clause than it can bear. (*See* Compl. ¶ 26.)

The Petitioners, in passing, also reference Article II, § 1, which provides, “The right of suffrage, as regulated in this Constitution, shall be protected by laws regulating elections and prohibiting, under adequate penalties, all undue influence from power, bribery, tumult, or improper conduct.” S.C. Const. art. II, § 1; (*see* Compl. ¶ 29). Their reliance here (unclear as it is) is also misplaced, this time for three

reasons. In the first place, they cite no cases suggesting that this provision could apply to a natural event like COVID-19.

In the second, they do not read “tumult” in context. That word means “[c]ommotion for a multitude, usually with confused speech or uproar; public disturbance; [or a] disorderly or riotous proceeding.” II *Compact Edition of the Oxford English Dictionary* 3431. Given the other words in Article II, § 1, it is clear that the prohibition on “tumult” during elections is to ensure voters may cast their ballots in peace, without disruption or any improper influence. See *Eagle Container Co. v. Cty. of Newberry*, 379 S.C. 564, 570, 666 S.E.2d 892, 895–96 (2008) (“Words in a statute must be construed in context, and the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute.” (internal alteration and quotation marks omitted)).

And in the third, they ignore why this provision exists. “Polling places on Election Day, unlike today’s typical experience of waiting quietly in line, often were scenes of battle, murder, and sudden death. In addition to real violence, sham battles were staged to frighten away elderly and timid voters.” *George v. Mun. Election Comm’n of City of Charleston*, 335 S.C. 182, 188–89, 516 S.E.2d 206, 209 (1999). Article II, § 1 seeks to keep this history repeating itself.

2. None of the other cases the Petitioners cite support the relief they seek.

At various points, the Petitioners cite cases that do not shed any light on how sections 7-15-310(4) and 7-15-320(B)(1) should be interpreted. For example, they cite *Anderson v. South Carolina Election Commission*, 397 S.C. 551, 556, 725 S.E.2d 704,

706 (2012), for the proposition that election cases are important and that “[i]ntegrity in elections is foundational.” (Compl. ¶ 19.) No one disputes those points. But that case was about what forms candidates for office had to file. *See Anderson*, 397 S.C. at 558, 725 S.E.2d at 708 (holding that candidates had to file a statement of economic interest at the same time as their statement of intention of candidacy). It is irrelevant here.

Likewise, the Petitioners rely on *Redfearn v. Board of State Canvassers of South Carolina*, 234 S.C. 113, 120, 107 S.E.2d 10, 14 (1959), for the assertion that the “purpose of an election is to express the will of the electorate.” (Compl. ¶ 28.) Of course that is the purpose of an election. The challenge to a particular disputed election in *Redfearn*, however, does not help answer the question presented here of how to interpret “physically disabled person.”

As a third example, *George* has no significance in this case. That case held that an election was invalid when voting booths and foldable ballots were not used, issues that do not arise here. (Pet. ¶ 31.)

Finally, the cases from other jurisdictions either interpret law from other states in other contexts (like the Pennsylvania case, which addressed redistricting) or state basic principles that do not provide any guidance in determining what section 7-15-310(4) means (like the North Carolina case). (Compl. ¶ 28.)

Other cases that the Petitioners cite are not only not helpful, but they actually undermine the Petitioners’ argument. Take, for example, *Callison v. Peebles*, 102 S.C. 256, 86 S.E. 635 (1915). *Callison* was about whether certain people were qualified

voters in an election to decide whether to create a new county out of part of Greenwood County. In deciding the case, the Court observed that “the provisions of the Constitution were mandatory.” *Id.*, 86 S.E. at 637. Just as that is true of constitutional provisions regarding elections, it is true of constitutional provisions about separation of powers. *See infra* Part III.

III. The Petitioners’ arguments are addressed to the wrong branch of government.

An essential feature of our government is the separation of powers. *See* S.C. Const. art. I, § 8 (“the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other”). When all of the clamor about the “accident” (as Justice Holmes put it) giving rise to this case is calmed, the separation-of-powers issue in this case become apparent.

The “legislative power” is vested in the General Assembly. S.C. Const. art. III, § 1. This includes the specific power and responsibility to “provide for the administration of elections and for absentee voting.” S.C. Const. art. II, § 10. The General Assembly has exercised that power and fulfilled its constitutional obligation to establish procedures for elections in this State. *See* S.C. Code § 7-1-10 *et seq.*

The “judicial power” to interpret the Election Law is vested in this Court. S.C. Const. art. V, § 1. That power does not include the power to rewrite statutes. As this Court has observed, even if it is “troubled by th[e] result” in a case, it is “not at liberty to rewrite the statutes, and any amendment must come from the Legislature.” *Capco*

of *Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 144, 628 S.E.2d 38, 42 (2006); see also *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass’n*, 424 S.C. 542, 553, 819 S.E.2d 124, 130 (2018) (Few, J., concurring) (“If it were true courts have the authority to interpret statutes according to a sense of justice and right, then courts would have the power to rewrite statutes to suit their own personal preferences, regardless of legislative intent. Courts do not have that power.”).

In fact, the Court has said as much in the context of election laws. *Gregory v. South Carolina Democratic Executive Committee* involved a disputed primary election, including some absentee ballots. In taking up the issue of those ballots, this Court explained that although “our absentee voting statutes should be given a liberal construction, we cannot extend statutes to accommodate errors if such interpretation would be contrary to clear mandatory language by the Legislature.” 271 S.C. at 374–75, 247 S.E.2d at 444. In other words, the Court cannot rewrite statutes governing absentee ballots because that is not its constitutionally assigned role.

But these are not issues with which the Petitioners wrestle. Instead, they jump straight to their policy concerns, insisting that social distancing is not possible with in-person voting. (Compl. ¶ 46.) As a factual matter, the Petitioners are not necessarily correct, as they themselves acknowledge. (Compl. ¶ 46.) Social distancing can still be observed with in-person voting. Lines would stretch out as people left space before the next person, and machines could be wiped between voters by a poll worker with gloves and a mask. In fact, the SEC has taken steps to keep in-person voting safe. For example, the SEC has provided special COVID-19 training to poll

managers on social distancing and sanitation, so that check-in stations are properly spaced, voters leave six feet between them in line, and voting equipment is cleaned between voters. The SEC has also ordered personal protective equipment (like masks and gloves), cleaning supplies, sneeze guards for check-in stations, and cotton swabs for voters to use instead of fingers. *See also* Ctrs. for Disease Control & Prevention, Recommendations for Election Polling Locations: Interim Guidance to Prevent Spread of Coronavirus Disease 2019 (COVID-19) (Mar. 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (providing guidance for safer in-person voting).

More fundamentally, the Petitioners make this argument to the wrong branch of government. The Petitioners may have valid policy arguments. Or they may not. It does not matter in this forum. What matters is our constitutional structure and the role that each branch of government plays. The SEC and its executive director have only the power to enforce the Election Law as the General Assembly adopted it. Nothing more. *See Hampton v. Haley*, 403 S.C. 395, 403, 743 S.E.2d 258, 262 (2013) (“the executive department carries the laws into effect”); *see also Captain’s Quarters Motor Inn, Inc. v. S.C. Coastal Council*, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991) (“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”).⁴

⁴ Even the Governor’s emergency powers do not extend to changing the Election Law. *See* S.C. Code § 25-1-440 (providing the Governor’s additional powers during a declared emergency); *see also* S.C. Const. art. I, § 7 (“The power to suspend the laws shall be exercised only by the General Assembly or by its authority in particular cases expressly provided for by it.”).

This Court has only the power to interpret the Election Law. Nothing more. *See Hampton*, 403 S.C. at 403, 743 S.E.2d at 262 (“the judicial department interprets and declares the laws”). The General Assembly has the power to change the Election Law. *See id.* (“the legislative department makes the laws” (alteration omitted)). That is therefore the branch of government to which the Petitioners should be making their policy arguments.

CONCLUSION

The Court should deny the Petitioners’ requested relief.

Respectfully Submitted,

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THE STATE OF SOUTH CAROLINA
In the Supreme Court
In its Original Jurisdiction

Appellate Case No. 2020-00642

Rhodes Bailey, Robert Werhman, South Carolina
Democratic Party, and DCCC,.....Plaintiffs-Petitioners,

v.

South Carolina Election Commission and Marci
Andino as Executive Director of the State Election
Commission, Defendants-Respondents.

CERTIFICATE OF SERVICE

I certify that this RETURN TO INTERVENOR’S MOTION TO DISMISS was served on all counsel of record via electronic mail, pursuant to Supreme Court Order 2020-03-20-01, § (g)(3), on May 8, 2020, and a copy of that electronic mail is attached to this certificate:

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s/ Wm. Grayson Lambert

Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 11
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

Deposition Excerpts of Marci Andino

1
2 UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF SOUTH CAROLINA
4 COLUMBIA DIVISION

5 -----x

6 MARY T. THOMAS, et al.,

7 Plaintiffs,

Case No.

8 -against-

3:20-cv-01552-JMC

9 MARCI ANDINO, et al.,

10 Defendants.

11 -----x

12 July 31, 2020

9:36 a.m.

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17 Videotaped Remote Deposition of MARCI
18 ANDINO taken by All Parties, pursuant to
19 Notice, at 1221 Main Street, Columbia, South
Carolina, before William Visconti, a Shorthand
Reporter and Notary Public within and for the
State of New York.

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MARCI ANDINO

are signing, they're taking an oath, they will receive an absentee ballot.

Q. It would probably be fraud, I agree, but they could still do it, right?

A. Yes.

MS. CRUM: Objection to the form.

You can answer.

A. Yes.

Q. Miss Andino, is it your understanding that certain health conditions put people at increased risk of complications from the coronavirus?

A. Yes.

Q. So let's take diabetes, do you understand that to be one of the conditions that I just described?

A. Yes.

Q. Miss Andino, would someone who has diabetes but usually votes in person on election day qualify as physically disabled to qualify for an absentee ballot in November?

A. If they check yes or they check that option, yes.

Q. Even if their diabetes is not

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MARCI ANDINO

preventing them from being in person on
electric day?

A. If they check the box, yes.

Q. How about someone with an
autoimmune disease who commonly leads a very
active lifestyle?

A. If they check the box, yes.

Q. I was reading the other day, Miss
Andino, Drew Brees, the quarterback for The
Saints has celiac disease. Celiac is an
autoimmune disorder, could Drew Brees vote
absentee as physically disabled in November if
he were a South Carolina registered voter?

A. If he checked the box, yes.

Q. Miss Andino, would someone who
lives in a nursing home but is under the age of
65 and has no illnesses or injuries, would they
be able to request an absentee ballot?

A. I'm not sure that I understand
your question. You said they live in a nursing
home but they don't have any illnesses?

Q. Correct. And provided they are
under the age of 65, would they have any excuse
to use the vote by absentee ballot?

1 MARCI ANDINO

2 A. I don't know.

3 Q. That's fine. Miss Andino, we just
4 walked through several illnesses and your
5 answer was so long as the voter checks the box
6 they would be entitled to vote by absentee
7 ballot.

8 Has that fact that those voters I
9 described qualifies physically disabled to vote
10 absentee, has that been made public in the
11 Commission's public facing documents?

12 A. I believe so.

13 Q. Do you know off the top of your
14 head like where those public education
15 documents might be? Maybe on your website?

16 A. Yes, they are on our website and
17 we did add clarification that physical
18 disability includes illness.

19 Q. That includes any illness, is that
20 clear in your materials?

21 A. That would be up to the voter to
22 decide. I think it is. We think it is. We
23 try to put out clear information.

24 Q. Thank you, Miss Andino. I would
25 like to go back to Exhibit 3, the March 30th

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MARCI ANDINO

having a witness on those ballots?

A. I haven't seen any evidence to the contrary.

Q. Do you know off the top of your head how many states do have a witness requirement for absentee ballot?

A. I do not.

Q. So, looking at page 3 of the March 30th letter, the third paragraph from the top. It is the second full paragraph. It reads, "Absentee voting also requires voters to have another person witness their signature when returning their ballot. While election officials check the voter's signature, the witness signature offers no benefit to the election officials as they have no ability to verify the witness signature." It ends "Removing the requirement for a witness signature would remove a barrier many voters would likely encounter while in self-isolation." Did I read that right, Miss Andino?

A. Yes, you did.

Q. When you say the witness

1 MARCI ANDINO

2 signature in the June primaries?

3 A. I do not.

4 Q. Would that information be captured
5 in any of the Commission's data?

6 A. I don't believe so, unless we have
7 asked counties specifically to provide that and
8 I don't know that for sure.

9 Q. You don't know whether you have
10 asked counties to provide that data
11 specifically?

12 A. I do not.

13 Q. Miss Andino, are you aware of any
14 instances of voter fraud involving absentee
15 ballots during the June primaries?

16 A. I am not.

17 Q. Are you aware of instances of
18 fraud of any kind in the South Carolina June
19 primaries?

20 A. There may have been some alleged
21 fraud, but we don't investigate. We would turn
22 that over to law enforcement. So I don't have
23 any information about that.

24 Q. But if there were any instances of
25 fraud, you would know about them, right or any

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MARCI ANDINO

These are recommendations that you're putting on the table for the legislature to consider when it comes back; correct?

A. Correct.

Q. So the legislature might take some of these and they might not?

A. That's right.

Q. Just as they did in the other one. Let me ask you, given the pandemic right now, the primaries were all conducted under CDC guidelines, correct?

A. Yes.

Q. And presumably the November election will be done the same way, right?

A. Yes.

Q. What other steps is the State Election Commission taking to ensure persons who vote in person can vote in a safe manner?

A. We are providing PPE for every county and every polling place in the state and that includes masks and gloves and face shields for poll managers. We are also providing sneeze guards to put a little distance between poll managers and voters. We are providing

MARCI ANDINO

hand sanitizer. We are providing Q-Tips so voters don't have to touch the voting machines. We are providing alcohol wipes so that poll managers can clean the voting machines and we are providing disinfecting spray so they can wipe down other hard surfaces within the polling place.

We have signage that reminds voters to wear a mask and in our communications to voters we ask that they also bring their own pen so they won't have to touch a pen that was touched by other voters.

We sent out rolls of tape as well as string cut into six foot sections so that poll managers can put tape down on the floor to aid in social distancing. We have purchased additional scanners for precincts and we have also scanners or also tabulators, they read the ballot and count the votes. We also purchased large high speed scanners so that counties can process the number of absentee ballots that they are receiving by mail.

Q. You have taken a lot of steps to ensure that persons, voters who want to vote in

1 MARCI ANDINO

2 THE WITNESS: You're welcome.

3 MS. CRUM: This is Liz, I have a
4 couple of questions and I'm trying to
5 figure out how to do them and I guess I
6 will just bend over like this and ask and
7 then move out of the way and let Miss
8 Andino answer. Does that work for
9 everybody?

10 EXAMINATION BY MS. CRUM:

11 Q. Mr. Tyson asked you whether or not
12 the June primaries were conducted using the CDC
13 guidelines and I believe you answered yes.

14 A. Yes.

15 Q. Would you please explain what the
16 agency did to train the county poll workers,
17 poll managers with regard to the CDC
18 guidelines?

19 A. The first thing that we did is
20 post a copy the CDC guidelines on our intranet
21 site so county election officials would be
22 aware. We also created a PowerPoint
23 presentation specifically for Covid 19 and it
24 included CDC guidelines and we incorporated
25 that into our poll manager training for the

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MARCI ANDINO

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primaries.

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We do not conduct the training ourselves, but we provide the training materials to all counties so that they can conduct training. And then we also have an online training prepared following CDC guidelines and made it mandatory for poll managers to take the training prior to working the polls. And we paid them out of CAREs funding to do that extra training.

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Q. Could the poll manager serve as a poll manager if they had not completed the CDC training?

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A. We made the training mandatory. However, there were people who were not called to work as poll managers until the day before the election and they may have not completed the training.

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Q. You have talked about certain I guess PPE paraphernalia that was given to the poll managers and one of them was a squeeze guard. What is a sneeze guard?

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A. A sneeze guard is a large clear plastic shield that sits in front of the poll

Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 12
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

*Amicus Br. of Att'y Gen. 6–7, Bailey v. S.C Election
Comm'n, No. 2020-000642 (S.C. May 7, 2020)*

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Appellate Case No. 2020-00642

Rhodes Bailey, Robert Wehrman, South Carolina Democratic Party,
and DCCC.....Plaintiffs - Petitioners,

v.

South Carolina State Election Commission and Marci Andino as Executive Director of the State
Election Commission.....Defendants-Respondents.

MEMORANDUM OF AMICUS CURIAE
ATTORNEY GENERAL

Attorney General Alan Wilson, as Amicus Curiae, submits the following Memorandum.

This case is of paramount importance to the citizens of South Carolina. In the face of a pandemic of historic magnitude, as well as a fast-approaching June primary, this Court is called upon to address the novel question of the pandemic’s effect, if any, upon the absentee ballot statutes. Does Art. I, § 5 of the South Carolina Constitution, guaranteeing a “free and open” election, require, as Plaintiffs-Petitioners contend, that all eligible voters are “physically disabled persons” and are thus entitled to vote absentee because of the pandemic? See § 7-15-320(B)(1) and § 7-15-310(4). Or, instead, does the Court possess sufficient interpretive flexibility to construe the phrase “physically disabled person” so that certain additional voters may vote absentee as a result of COVID-19 without a wholesale rewriting of the statute? We believe that the Plaintiffs-Petitioners’ interpretation would unhinge the statute altogether and that a more

reasonable interpretation is that, applying CDC guidelines, together with a liberal interpretation of the statutes, the Court possesses the required flexibility to read the statute with common sense and reasonable latitude in the wake of the pandemic.

Plaintiffs-Petitioners urge the Court that Art. I, § 5 [and Art. II, § 1] of the State Constitution, guaranteeing “free and open” elections, mandate that, in the wake of the pandemic, all eligible voters be allowed to vote by absentee ballot in the upcoming primary and general election. In their words, “[u]nless South Carolina’s 3.3 million registered voters are given the ability to exercise their right to vote without having to make that choice [between voting and protecting their health], the upcoming elections will not be free and open and protected from tumult in violation of the South Carolina Constitution.” Petition at pgs. 1-2.

Courts have rejected such reasoning that the constitutional requirement of a “free and open” election mandates absentee balloting upon demand. In *Franks v. Hubbard*, 498 S.W.3d 862, 872 (Mo. 2019), the Missouri Court emphasized that absentee voting was conferred by the Legislature, not by the federal or state Constitutions. Missouri possesses a constitutional provision similar to our own Art. I, § 5 [Missouri Constitution Art. I, § 25 guarantees that all elections shall be “free and open” and that no power, “civil or military,” shall interfere or prevent the free exercise of the right of suffrage]. In *Franks*, that Court construed this provision of the state Constitution, as well as the federal Constitution and its effect upon absentee voting, as follows:

[s]imilarly, the U.S. Constitution and Missouri Constitution grant qualified voters a constitutional right to vote. Here, no person’s constitutional right is being infringed upon. Under the Missouri Constitution, the right to vote by absentee ballot is “clearly a privilege and not a right.” *Barks [v. Turnbeau]*, 573 S.W.2d 677 (Mo. App. E.D. (1978) at 681) (emphasis added). Under the U.S. Constitution, the “fundamental right to vote” is different from a “claimed right to receive [an] absentee ballot [].” *McDonald v. Board of Election Comm’rs of Chicago*, 394 U.S. 802, 807, 89 S.Ct. 1404, 22 L.Ed. 739 (1969);

see also *Griffin v. Roupas*, 385 F.3d 1128, 1130 (7th Cir. 2004) [stating that the U.S. Constitution does not require states to allow voters to vote by absentee ballot and it gives broad authority to regulate the conduct of elections].

As the Court emphasized in *Roupas*, “[s]o at bottom the plaintiffs are arguing that the Constitution requires all states to allow unlimited absentee voting and the argument ignores a host of serious objections to judicially legislating so radical a reform in the name of the Constitution Voting Fraud is a serious problem in U.S. elections generally and one with a particular gamey history in Illinois . . . and it is facilitated by absentee voting.” 385 F.3d at 1130-31 (citing authorities). See also *State ex rel. Dunn v. Coburn*, 168 S.W. 956, 958 (Mo. 1914) [holding that Constitution requiring “all elections shall be ‘free and open’ does not mean that there cannot be reasonable regulation of elections in the interest of good citizenship and honest government.”].

We also note that this Court, in *Cothran v. West Dunklin Pub. Schools*, 189 S.C. 85, 200 S.E. 95, 97 (1938), commented upon the meaning of what is now Art. I, § 5. There, the Court stated:

[u]nder such a guaranty, the right to vote, as the words expressly state, must be maintained absolutely free and the vote of every elector must be granted equal influence with that of every other elector. To be free means that the voter shall be left in the untrammelled exercise, whether by civil or military authority, of the right or privilege, that is to say, no impediment or restraint of any character shall be imposed upon him either directly or indirectly whereby he shall be hindered or prevented from participation at the polls. As otherwise expressed, an election is free and equal within the meaning of the Constitution when it is public and open to all qualified electors alike, when every voter has the same right as any other voter; when each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial; and when no constitutional right of the qualified voter is subverted or denied him.

(quoting R.C.L., § 8, p. 984).

While admittedly the language quoted in *Cothran* is quite broad, it is important to note that the case turns upon the validity of a statute which disqualified certain voters and that only those “who return real or personal property for taxation in the school district” could vote. The Court declared that such a statute violated what is now Art. I, § 5. Here, by comparison, while the act of voting will undoubtedly be difficult, and subject to risk, it is not infringed by “civil or military authority.” In short, the Constitution, guaranteeing a “free and open election” protects against infringement by civil or military authority, or mankind’s acts, not by the forces of nature.

We turn now to the absentee ballot statutes themselves. Section 7-15-320(B)(1) allows a “physically disabled person” to vote absentee. Moreover, subsection (B)(4) of § 7-15-320 permits “persons attending sick or physically disabled persons” to obtain an absentee ballot. Pursuant to § 7-15-310(4), the term “physically disabled person” is defined as a “person, who because of injury or illness cannot be present in person at his voting place on election day.” Plaintiff-Petitioners would read this definition so broadly that the “illness” referred to essentially prevents all voters from being “present in person at his voting place on election day.” This interpretation would allow every registered voter to be a “physically disabled person” because of the presence of the coronavirus in the community even if a voter does not know that he or she is infected or otherwise ill.

We believe that this interpretation stretches the provision beyond any limits. Surely, the provision refers to the particular voter’s “illness” not illness which is currently prevalent in the form of a pandemic. As this Court explained in *Gregory v. S.C. Dem. Pty. Ex. Comm.*, 271 S.C. 364, 374-75, 247 S.E.2d 439, 444 (1978), while “. . . our absentee voting statutes should be given a liberal construction, we cannot extend statutes . . . if such construction would be contrary to clear mandatory language by the Legislature.” Section 7-5-20 requires a liberal construction of

the absentee voters statutes “in order to effectuate their purpose.” See also *Knight v. State Bd. of Canvassers*, 297 S.C. 55, 57, 374 S.E.2d 685, 686 (1988) [rejecting a strict scrutiny standard to interpret absentee registration and voting statutes].

In *State ex rel. McLeod v. Ellisor*, 259 S.C. 364, 369, 192 S.E.2d 188, 189 (1972), the Court held that Act No. 1574 of 1972 – the predecessor to the current § 7-15-320 – applied only to those electors who are unable to present themselves at their voting precinct because of a “physical incapacity.” Section 2 of the Act stated that “[a]ny qualified voter who will be physically unable to present himself at his precinct on election day shall be permitted to vote by absentee ballot.” 259 S.C. at 368, 192 S.E.2d at 189 (emphasis added). The Court explained that this statute did not apply to an elector absent from his voting precinct for reasons unrelated to their health or physical condition. According to the Court, “[t]o interpret these words to mean something other than inability by reason of illness, injury or other bodily infirmity is to place a strained and unnatural construction upon them in violation of the South Carolina rule that the words are to be taken in their ordinary and literal meaning.” 259 S.C. at 369, 192 S.E.2d at 189.

Subsequently, the General Assembly deleted Act No. 1574 of 1972 and instead opted for the language in *McLeod v. Ellisor*. See 1975 Act No. 301. In view of the closeness of *McLeod*’s view of “physically disabled person” and the language contained in Act 301 of 1975, it is reasonable to glean the legislative intent of the present Act. In other words, an elector may qualify for absentee voting as a “physically disabled person” only when he or she possesses a physical condition which impacts his or her ability to be present at that person’s voting place. Such intent is, of course, dramatically inconsistent with Plaintiffs-Petitioners’ interpretation whereby everyone – all registered voters – are “physically disabled.”

. This Court is not a “super legislature” and cannot rewrite the present statute into oblivion. As the Court emphasized in *Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000), “[w]hen the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislative language.” Here, the General Assembly did not specify that every elector could request an absentee ballot based upon an infectious pandemic, or that the forces of nature, make it hazardous to go to the polls, thus necessitating voting only by absentee ballot. This Court should not create such exception. To do so would create a dangerous precedent for the future. Ordinary seasonal flu? As discussed, the legislative intent of the Act was that a person’s individual physical condition impacts that person’s ability to go to the polls.

Such does not mean that this Court may not construe the words “physically disabled person” broadly and in conformity with the Legislature’s direction that the statute be liberally construed. A worldwide pandemic is certainly an event the General Assembly did not anticipate when drafting the current Act. Moreover, it should be noted that the statute also addresses “persons attending sick or physically disabled persons” as being entitled to seek an absentee ballot. § 7-15-320(B)(4). Therefore, based upon the statute’s plain meaning and its legislative history, it is reasonable for the Court to construe the term “physically disabled person” as it applies to COVID-19 so as to include: persons diagnosed with COVID-19; persons awaiting test results for COVID-19; persons having one of the conditions which the Center for Disease Control identified as placing a person at higher risk for severe illness from COVID-19 (People Who Need Extra Precautions CDC.gov.<https://www.cdc.gov/coronavirus/2019-ncov/need-extraprecautions/index.html> (last updated April 28, 2020)). Further, those persons providing care for such individuals may also qualify to vote absentee as “persons attending sick or physically

disabled persons.” § 7-15-320(B)(4). Certainly, first responders and hospital workers are on the front lines of fighting the pandemic.

There is precedent for our suggested construction. We would refer the Court to decisions such as *School Bd. of Nassau County, Fla. v. Arline*, 480 U.S. 273 (1987); *Bradgon v. Abbott*, 524 U.S. 624 (1998); *Grey v. Avondale Serv. Foundry*, 305 So.2d 639 (La. 1975). In *Arline*, a school teacher was fired because of susceptibility to tuberculosis. The Court held that the teacher was a “handicapped person” for purposes of the Rehabilitation Act. Even though the disease had gone into remission for more than twenty years, the teacher upon testing positive on several occasions – indicating the disease was back in his system – was then suspended and later terminated because of the “continued recurrence of tuberculosis.” *Id.* at 276. According to the Court, notwithstanding these unusual circumstances, including the fact that the disease had remained dormant for so long, the teacher qualified as a “handicapped person” for purposes of federal law.

Likewise, in *Bradgon*, the Court held that HIV is a “disability” under the Americans With Disabilities Act even when the infection has not progressed to the so-called symptomatic phase. Finally, in *Avondale*, the Court concluded that “silicosis was an underlying condition making the person more apt to contract tuberculosis.” 305 So.2d at 641. The Court noted that there is a “sufficient relationship between plaintiff’s silicosis, a listed occupational disease, and his ultimate disability [tuberculosis] to entitled him to [Workers Compensation] benefits.” In short, the identifiable underlying condition would more likely lead to the “ultimate disability” – tuberculosis.

We certainly recognize that these cases are not on “all fours” with the current situation. But they are useful guidance for this Court. They suggest that certain underlying conditions

which can be recognized as a “disability” and would render contracting of COVID-19 more likely or more severe.

Thus, we believe it would be reasonable for the Court to interpret the term “physically disabled person” to include the categories of persons, set forth above, as entitled to vote absentee. We emphasize, however, that the interpretation proposed by Plaintiffs-Petitioners is inconsistent with the intent of the General Assembly, in enacting the absentee ballot statute and would render those statutes meaningless – even in the current crisis we face.

Respectfully submitted,

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May 7, 2020

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Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 13
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

Deposition Excerpts of Cassandra D. Salgado, MD, MS

1
2 UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF SOUTH CAROLINA
4 COLUMBIA DIVISION

5 ----- x
6 MARY T. THOMAS, et al.,

7 Plaintiffs,

Case No.

8 -versus-

3:20-cv-01552-JMC

9 MARCI ANDINO, et al.,

10 Defendants.

11 ----- x

12
13 August 3, 2020

3:05 p.m.

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15 ZOOM VIDEO DEPOSITION of DR. CASSANDRA
16 SALGADO, taken pursuant to Notice, held before
17 Fran Insley, a Notary Public of the States of
18 New York and New Jersey.
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1 C. Salgado

2 Q. Is that partially reliant upon the
3 fact that any of these interventions require
4 compliance by large numbers of the population?

5 A. That's right.

6 Q. And so guaranteed that no one would
7 have to be within 6 feet of each other within a
8 polling location that would require perfect
9 compliance from everyone that entered the
10 polling location; is that correct?

11 MS. CRUM: Object to the form of the
12 question.

13 A. That would certainly help.

14 Q. So you say that the perfect
15 compliance would certainly help. So is there
16 some reason that you think perfect compliance
17 by everyone who enters into the polling
18 location with 6 feet social distancing is
19 insufficient, that there needs to be something
20 additional to insure that 6 feet?

21 A. If I'm understanding currently what
22 you're asking me, I don't think that there is
23 any zero risk activity. I think that the more
24 that people could appropriately social
25 distance, wear masks and perform hand hygiene

1 C. Salgado

2 and disinfect surfaces that would mitigate, you
3 know, to a lower risk situation.

4 Q. So we've touched on social
5 distancing, but can officials guarantee that
6 everyone will properly wear a mask in polling
7 locations?

8 MS. CRUM: Object to the form of the
9 question.

10 A. Again, I think it would be hard to
11 guarantee that everyone would comply a hundred
12 percent with all measures.

13 Q. And so even if everyone complied
14 with social distancing, mask wearing, hand
15 hygiene, there would still be some risk. I'm
16 not asking you to quantify the risk, I
17 understand that, but there would still be some
18 risk of transmission of COVID-19?

19 A. There would be some risk.

20 Q. Are you aware of any portion of the
21 voting process taking place outdoors in South
22 Carolina?

23 MS. CRUM: Objection.

24 A. I don't know.

25 Q. Have you ever had part of your

1 C. Salgado

2 A. Yes.

3 Q. Will some portion of individuals who
4 contract COVID-19, but who do not die, continue
5 to have serious health effects?

6 A. Yes.

7 Q. Can anyone guarantee that no
8 individuals will contract COVID-19 by having
9 someone witness their absentee ballot?

10 A. You cannot guarantee that.

11 Q. What do you think an acceptable
12 death rate for people exercising their right to
13 vote would be?

14 MS. CRUM: Object to the form of the
15 question.

16 A. Of course I don't think anyone
17 should die exercising their right to vote.

18 Q. Is there any scientific basis to
19 believe that COVID-19 will not be transmitting
20 in South Carolina in November?

21 A. Obviously I can't predict the
22 future, but I would imagine that there would
23 still be risk of COVID transmission until we
24 get an acceptable vaccine.

25 Q. Once we have that acceptable

1 C. Salgado

2 system would go up into Florence, Marion,
3 Lancaster.

4 Q. Does that also include Chester?

5 A. Yes.

6 Q. That catchment area, is it
7 statewide?

8 A. It's not statewide, although we do
9 care for patients obviously from all over the
10 state.

11 Q. Do you actively -- strike that.
12 What kind of patients do you care
13 for in your clinics?

14 A. I have a mixture of a type of
15 patients that I see in the ambulatory setting.
16 I see patients with HIV. I see patients with
17 general infections, bone and joint infections,
18 fever of unknown origin. Those types of
19 patients.

20 Q. Based on the -- strike that.

21 Do you have any knowledge of any
22 COVID-19 breakouts or hot spots as a result of
23 the June 9th primary?

24 A. I'm not aware of any.

25 Q. The same question about the

1 C. Salgado

2 June 23rd primary?

3 A. I'm not aware of any.

4 Q. Dr. Salgado, can you guarantee that
5 any person who is self isolating won't get
6 COVID-19?

7 A. I couldn't guarantee that.

8 Q. Why?

9 A. If someone were self isolating,
10 there would still be the potential -- this is
11 depending they are not leaving their house and
12 not being exposed to anyone in their house who
13 would be exiting the home, there would still be
14 the low risk of a potentially contaminated cell
15 mite such as a piece of mail, an ordered item,
16 grocery item.

17 Q. With the exception of -- let me
18 strike that. I'm talking about your expert
19 report now, Dr. Salgado.

20 A. Okay.

21 Q. With the exception of your opinion
22 on testing based on your review of Dr.
23 Reingold's April declaration, his expert report
24 in June, his rebuttal report in July and his
25 deposition, do you still stand by the opinions

1 C. Salgado

2 you've given in your report?

3 A. Yes. The only thing I would change
4 would be the discussions that we had regarding
5 testing.

6 MS. CRUM: Thank you, Dr. Salgado.
7 I don't have any additional information --
8 questions.

9 MS. LEE: I have.

10 CONTINUED EXAMINATION

11 BY MS. LEE:

12 Q. This is Theresa Lee. I have just a
13 couple of follow-ups based on the questions
14 Ms. Crum just asked you.

15 Ms. Crum just asked you about folks
16 still coming into the MUSC system for checkups.
17 Do you recall that?

18 A. Yes.

19 Q. Is this the case that today people
20 can choose to have a telemedicine appointment
21 with their MUSC provider?

22 A. That's correct.

23 Q. Is the .92 effective reproductive
24 number in your report at page 3 from the
25 COVID-19 projections website?

Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 14
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

Expert Report of Cassandra D. Salgado, MD, MS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

MARY T. THOMAS, et al.,

Plaintiffs,

v.

MARCI ANDINO, in her official capacity as
Executive Director of the South Carolina
State Election Commission; et al.

Defendants.

C/A No.: 3:20-cv-01552-JMC

EXPERT REPORT OF CASSANDRA D. SALGADO, MD, MS

Expert Report of Dr. Cassandra D. Salgado

I am a tenured Professor of Medicine and Public Health, Division Director of Infectious Diseases, Hospital Epidemiologist and Medical Director for Infection Prevention and Control at the Medical University of South Carolina (MUSC). I have been in clinical practice for 17 years and have specialized in infectious disease outbreak investigation and mitigation of such outbreaks throughout my academic career. I am an elected fellow of the Infectious Diseases Society of America and the Society for Healthcare Epidemiology of America and have served on numerous committees within each society. Additionally, I was a founding member of the South Carolina Healthcare Infections Disclosure Act Advisory Board, recognized as a highly cited researcher from the Web of Science Group and the recipient of the Lewis W. Blackman Patient Safety Champion Award. I serve as an ad hoc reviewer for numerous high impact scientific medical journals and have edited two text books in clinical infectious disease syndromes and healthcare acquired infections.

I received my B.A. in Chemistry in 1990 and my M.D. in 1995 from West Virginia University (WVU). I completed a residency in Internal Medicine and Pediatrics at WVU in 1999, where I served as the Chief Resident for Medicine from 1999-2000. I completed a research oriented Infectious Diseases fellowship, focusing on surveillance, epidemiology, prevention, and control of healthcare associated infections at the University of Virginia (UVA) Health System in 2003. While in fellowship training I also earned my M.S. in Health Evaluation Science (Epidemiology Track) from UVA in 2002.

My career in infectious diseases has focused on clinical care of patients and institutional leadership in healthcare epidemiology and infection prevention. I joined the faculty at MUSC in 2004 and have served in numerous roles including Program Director for Internal Medicine and Pediatrics, Program Director for Infectious Diseases, and Vice Chair of Medicine for Quality Improvement. I was named Division Director for Infectious Diseases in 2016 and continue in this role at present. In addition to my long-standing appointment as Hospital Epidemiologist and Medical Director for Infection Prevention and Control, I have a lengthy and productive record of hospital and university committee service focusing on patient and staff safety, education, and quality improvement. I have led infection prevention efforts at my institution during the 2009 H1N1 Influenza pandemic, the emergence of Zika virus into North America, and the Ebola outbreak in 2014.

My research focuses on the epidemiology and prevention and control of healthcare associated infections. This includes detailed investigations of outbreaks of infectious diseases, documentation and interpretation of epidemiology, development of mitigation steps, and measurements of their efficacy.

Attached and incorporated by reference to this expert report is a copy of my curriculum vitae.

I am currently collaborating on research regarding the epidemiology of SARS-CoV-2 in the state of South Carolina and in the referral area of MUSC Health. I have particular interests in describing risks for positivity among symptomatic people in the community presenting for PCR testing, risks for hospitalization and death among patients diagnosed with COVID-19, contact tracing for care team members, and the epidemiology of persistent shedding of SARS-CoV-2

among positive individuals. My background, experience, and long-standing work in my community make me uniquely qualified to comment on risks for COVID-19 among residents in the state of South Carolina.

I have reviewed the Declaration of Dr. Arthur L. Reingold, filed on 4/28/2020. I agree on many opinions expressed in the document; however, there are points to bring forward for additional discussion based on new scientific research on the prevention of transmission of SARS-CoV-2 and updated public health guidance [<https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>].

In section 8, pages 3 and 4 of Dr. Reingold's declaration, transmission dynamics are discussed and the statement, "Each infected individual is estimated to infect two to eight others." is made. This is presumably referring to the R_0 , or the average number of new infections that an infectious person can generate in a population that was not previously exposed to the virus. The R_0 estimates, however, change throughout the different phases of an epidemic and can vary depending on numerous biologic, social behavioral, and environmental factors, and must be interpreted with caution. There are several R_0 estimations publically available for the state of South Carolina, most recently with reported values of 0.92 and 1.2. This means that recent estimates, taken at the time of this expert report, suggest that each infected individual is estimated to infect 0.92 to 1.2 persons, not the two to eight individuals reported in Dr. Reingold's declaration [<https://covid19-projections.com/infections-tracker/>] [<https://web.stanford.edu/~chadj/Covid/SC-ExtendedResults2.pdf>].

In section 9, page 4 of Dr. Reingold's declaration, diagnostic testing is discussed and the following conclusions were made about testing capabilities in the United States and South Carolina, "There has not been sufficiently wide-spread and easily accessible testing throughout the United States, including in South Carolina. Serologic tests, which can detect antibodies to the virus and thus indicate whether someone has already been exposed to it, are being developed but have not yet been validated at scale." While testing data is dynamic (subject to change) and critical supply issues arise on occasion, recent data available from the SC Department of Health and Environmental Control would suggest that testing capacity across the State of South Carolina is adequate [<https://www.scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/sc-testing-data-projections-covid-19>] and our epidemiology experts at MUSC have characterized availability of diagnostic testing and speed of diagnostic testing in return of results as fully meeting the needs for people with COVID-19 symptoms and for contact tracing practices [<https://web.musc.edu/coronavirus-updates/epidemiology-project>]. Additionally, in order to reach under-represented populations, there have been numerous community outreach testing events conducted over the course of the past several months. Just in the month of July, MUSC has hosted testing events in Edisto, Florence, Lancaster, Heath Springs, Ridgeway, Rock Hill, Spartanburg, Aiken, North Charleston, Conway, Hampton, Kershaw, Kingstree, Orangeburg, Sumter, Rembert, and Dalzell. Also, several commercially available serologic tests have been validated and are readily available for use [<https://www.fda.gov/medical-devices/emergency-situations-medical-devices/eua-authorized-serology-test-performance>]. Lab testing data should be reviewed regularly to ensure the most up to date information is available to stakeholders.

In section 10, page 4 of Dr. Reingold's declaration, the following statement is made, "the only ways to limit its spread are self-isolation, social distancing, frequent handwashing, and disinfecting surfaces." This statement appears to leave out the use of face coverings/face masks and their added value to limit spread. A recent review of the literature assessing the effectiveness of physical distancing, face masks, and eye protection to prevent person-to-person transmission of SARS-CoV-2 and COVID-19 was recently published [<https://www.thelancet.com/action/showPdf?pii=S0140-6736%2820%2931142-9>]. The results offer helpful perspective on the use of these preventive measures for viruses. Transmission of viruses was lowered by 82% with physical distancing of 1 meter or more (pooled adjusted odds ratio of 0.18, 95% confidence interval 0.09 to 0.38), and face mask use resulted in an 85% estimated reduction of risk of infection (adjusted odds ratio of 0.15, 95% confidence interval 0.07 to 0.34). Presumably, using the two measures together would result in even lower risk of transmission.

In section 17, page 7 of Dr. Reingold's declaration, there is lengthy discussion regarding the risks for transmission of SARS-CoV-2 at polling locations. While these risks cannot be discounted under normal polling circumstances (large numbers of people together for long periods of time without face coverings or social distancing), there has been public health guidance from the Centers for Disease Control and Prevention (CDC) released since the filing of Dr. Reingold's declaration (June 22, 2020) that would significantly mitigate risk during voting at polling stations if followed prescriptively by those developing policy for polling sites across the state. This guidance is summarized below and of note should be regularly reviewed for updates as the COVID-19 pandemic evolves in South Carolina [<https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>].

The guiding principles of the CDC guidance include "that the more an individual interacts with others, and the longer that interaction, the higher the risk of COVID-19 spread. Elections with only in-person voting on a single day are higher risk for COVID-19 spread because there will be larger crowds and longer wait times. Lower risk election polling settings include those with a wide variety of voting options, longer voting periods (more days and/or more hours), and any other feasible options for reducing the number of voters who congregate indoors in polling locations at the same time." Eliminating known or potential sources of infection is a cornerstone of prevention.

SARS-CoV-2, the virus that causes COVID-19, is mostly spread by respiratory droplets released when people talk, cough, or sneeze and to a lesser extent by touching a surface or object that has the virus on it and then touching one's mouth, nose, or eyes. Given this, there are routine hygienic procedures such as handwashing, staying home if sick, and environmental surface cleaning and disinfection which have been recommended as important actions election officials, poll workers, and voters can take to help lower the risk of COVID-19 spread.

Specifically, the most notable CDC recommendations, with some of my additional expert opinion (in *italicized* font), are summarized below. The full guideline can be found here, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

- Promote behaviors that reduce spread such as adequately staffing poll locations to ensure coverage for ill workers, educating poll workers about staying home if ill and developing

return to work guidance in accordance with established public health recommendations for those who are ill from COVID-19, have tested positive for COVID-19, and for those who have been exposed to COVID-19. *Officials should consider developing a symptom screening survey for poll workers to complete when they arrive for work each day. This could be utilized in combination with temperature checks, as fever is a common symptom of COVID-19. Workers with symptoms or elevated temperatures should not be permitted to work and if anyone develops symptoms after they have started their workday, they should inform their supervisor and leave immediately.*

- Promote hand hygiene and respiratory etiquette by providing alcohol-based hand sanitizer for use at each step in the voting process where voters interact with poll workers, after using the voting machine, and as the final step in the voting process. *Compliance could be increased by actually placing workers at key areas along the way to place sanitizer into the hands of voters.* Encourage poll workers to wash their hands frequently and ask all workers and voters to cover their cough or sneeze with a tissue (immediately disposed of followed by hand hygiene) or to use the inside of their elbow. *Placement of respiratory etiquette stations (with hand sanitizer, tissues, no touch trash cans and masks) could be placed in highly visible areas of polling stations to aid compliance.*
- **Decrease risk of transmission by requiring cloth face coverings for all voters and poll workers unless there is a documented medical or age-related reason a person cannot comply. This is particularly important for polling sites that are indoors and when social distancing is difficult. Polling sites should be prepared to offer face coverings to those individuals who do not have one available. Face coverings may need to be briefly removed for identification purposes; however, asking voters to perform hand hygiene after touching their face covering would significantly reduce any risk of self-contamination. To reduce the amount of time a voter needs to spend at check-in, ample public education regarding readiness (having documents ready, forms completed, and having necessary face coverings available) for voting should be considered in advance of the event.**
- **Decrease risk of transmission by promoting social distancing to the greatest extent possible.** Encourage voters to stay at least 6 feet apart by applying floor markings and signage. Maintain social distancing in all areas by clearly marking entry and exit points, encouraging one-way traffic, and managing lines to avoid crowding and physical contact between voters. Ensure that the ventilation of the polling place is adequate and increase circulation of outdoor air whenever possible. *If lines and check in activities can be conducted outdoors, this will further reduce risk.*
- Decrease risk of transmission by disinfecting surfaces that are frequently touched by multiple people, such as door handles, registration tables, pens, and clipboards, using products with an EPA approved emerging viral pathogens claim and following manufacturer's instructions for cleaning. Additionally, voting-associated equipment (voting machines, laptops, tablets, keyboards) should be frequently disinfected per manufacturer's instructions. Reduce or eliminate the use of shared objects whenever possible such as pens. Voters should be encouraged to use their own pens. If shared

objects need to be used (headphones for example) they should be thoroughly disinfected between uses. *Voters could also place documents into small clear plastic baggies which could be wiped down with disinfectant if touched by another individual.*

- **Encourage compliance with all measures by ensuring adequate supplies and by providing education in the form of signage in visible locations that promotes protective measures (i.e., hand hygiene, face coverings, social distancing, and surface cleaning). Many free resources are available on the CDC print and digital resource page [communications resources main page](#).** Communication to voters regarding the safety requirements should be done as far ahead of time as possible.
- **Since social distancing is considered one of the most important mitigating practices to reduce risk of transmission, polling sites should** consider increasing the number of polling locations available for early voting, extending the hours of operation, as well as extending voting periods. *There should also be clear limits on the number of voters who will be allowed in the indoor polling space at any given time, ensuring six feet of space between people can be maintained as much as possible.* Staggered entry may be effective to limit crowding indoors *as would scheduled voting times (asking those who could, to come at certain times).* Voting machines should be appropriately spaced to promote social distancing. If there are areas within the polling space where social distancing is challenging, physical barriers should be considered. Nonessential visitors or accompanying persons should be discouraged.
- **Alternative voting options for voters with symptoms should be arranged as those who are sick with COVID-19 are at high risk for transmitting illness to others. Off-site voting should be conducted if at all possible and if not possible, separate areas should be designated, preferably outside, or curbside (without the individual leaving their vehicle). Sick voters should be prohibited from entering the polling location whenever possible. Sick voters should have face coverings and poll workers who interact with them should wear personal protective equipment (PPE) including N95 respirator masks, face shields, gowns and gloves. Workers will need education regarding the proper donning and doffing techniques of PPE.**
- **Alternative voting methods that minimize direct contact and reduce crowd size at polling locations should be utilized, particularly for people who are at risk for severe illness from COVID-19 infection.** One such alternative method is mail-in-ballots. Election officials should ensure that accessible voting options are available and that these options are consistent with the recommendations for slowing the spread of COVID-19.

There is concern regarding the requirement that vote by mail is to be witnessed by another person. This witness can be an individual who lives in the same home as the voter (and thus poses no additional risk); however, there will be individuals who do not have such a representative. Section 18, page 7 of Dr. Reingold's declaration states, "the requirement that they have someone witness their absentee ballot would place them at increased risk of exposure to and/or transmission of COVID-19." I would like to provide some perspective regarding this risk. SARS-CoV-2 is mainly spread via droplets and close contact with symptomatic cases. Studies

conducted in China of household clusters suggest that transmission occurs during close and prolonged contact (presumably without the use of protective measures such as hand hygiene and face coverings) [<https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>]. Outside of the household setting, those who had close physical contact or were in enclosed spaces for approximately one hour or more with symptomatic cases were also at increased risk for infection [<https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>]. This suggests that brief encounters with symptomatic individuals do not pose a substantial risk for transmission to a susceptible host. Further, this low risk could be further reduced by having all persons wear a face covering, practice hand hygiene, social distance, and never sharing common objects (like pens). It is unlikely that under these circumstance having someone briefly witnessing a signature would pose a significant increased risk for the voter.

In summary, while there is no public event or activity during this COVID-19 pandemic that is associated with zero risk, particularly during times of high community transmission rates of illness, it is my expert opinion that with careful planning and due diligence to comply with all steps summarized above and outlined in the CDC Guidance, “Considerations for Election Polling Locations and Voters, Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19)”, risk for transmission of SARS-CoV-2 can be mitigated to low levels for voters desiring to exercise in-person voting. [<https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>].

I have not testified in another case as an expert witness, either at trial or in a deposition, in the previous four years. The State Election Commission, its Executive Director and Commissioners, are not compensating me for my time on this report or any testimony I may provide in this case.

Pursuant to 28 U.S. Code section 1746, I declare under penalty of perjury that the foregoing is true and correct.



Cassandra D. Salgado, M.D., M.S.
7/24/2020

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing **Expert Report of Dr. Cassandra D. Salgado** was served via email on all counsel of record this 24 day of July, 2020:

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Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 15
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

Second Declaration of Mary T. Thomas

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

MARY T. THOMAS, et al.,

Plaintiffs,

v.

MARCI ANDINO, et al.,

Defendants.

Case No.: 3:20-cv-01552

SECOND DECLARATION OF MARY T. THOMAS

MARY T. THOMAS declares, pursuant to U.S.C. § 1746, as follows:

1. I am 87 years old and competent to make this declaration.
2. On July 23, 2020, I sat for a deposition in this case.
3. During that deposition, I tried my best to recall the information I was asked about and I testified to the best of my knowledge and recollection.
4. However, during my deposition, I was asked whether someone witnessed my absentee ballot for South Carolina's June primary. I responded that Susan Dunn witnessed my ballot, which was incorrect.
5. Susan Dunn witnessed my ballot when I voted in South Carolina's February 2020 presidential preference primary. She did not witness my ballot in the June statewide primary elections. While I voted absentee again in June elections, I did not have anyone witness my ballot, nor did I understand I needed a witness to vote in those elections.
6. I hope I will not have to ask Susan, nor anyone, to come near me to witness my ballot for the November election.

7. I declare under penalty of perjury that the foregoing is true and correct.

Executed: August 7, 2020

Mary T. TH

Mary T. Thomas

Mary T. Thomas, et al. v. Marci Andino, et al.

C/A No.: 3:20-cv-01552-JMC

Exhibit 16
*to Defendants' Memorandum in Support of Motion for
Summary Judgment*

Declaration of Pete Logan

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

Declaration of Pete Logan

I, Pete Logan, hereby declare:

1. I am Lt. Pete Logan and have worked as an agent at the South Carolina Law Enforcement Division (“SLED”) for over 30 years.
2. Prior to joining SLED, I worked as an agent with the Federal Bureau of Investigation for 28 years.
3. As part of my job at SLED, I conduct and supervise investigations into various criminal matters, including cases that involved allegations of voter fraud in South Carolina.
4. I have investigated numerous cases involving allegations of voter fraud, including various allegations of absentee-voting fraud.
5. In fact, I currently have an ongoing investigation into allegations of fraudulent absentee voting in South Carolina.
6. The witness requirement for absentee ballots provides SLED, and all criminal investigators, with a significant investigate lead to pursue in these cases because it provides another potential witness to interview on these cases.
7. The absence of the witness requirement would remove even the possibility of this investigative lead on these cases.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Lt. Pete Logan
SLED

Columbia, South Carolina
August 4, 2020