

On June 15, 2020, the Court scheduled a trial on the merits of the Plaintiffs’ challenge to the “witness requirement” to begin on Tuesday, September 22, 2020. Discovery is complete, dispositive motions in favor of the defense are fully briefed, and the parties argued those motions to the Court weeks ago. But instead of resolving those motions or allowing the case to proceed to trial as scheduled, the Court issued a preliminary injunction in the *Middleton* case—where hardly any discovery has taken place, no evidentiary hearing has been held, and no trial is scheduled until 2021—at 7:34 pm on Friday, September 19th. Eleven minutes later, it stayed the trial in this case on grounds that the *Middleton* injunction resolved the issues to be tried in this case. (Dkt. No. 178.)

The Court erred in short-circuiting the *Thomas* case—in which an actual evidentiary record would be created to demonstrate the illusory nature of the plaintiffs’ claims—and effectively granting judgment in the plaintiffs’ favor without them ever having to carry their burden of proving their case. To be sure, this case will have no practical effect in six weeks after the General Election, meaning that by virtue of the Court’s eve-of-trial (and eve-of-election) injunction in *Middleton*, the *Thomas* plaintiffs get all of the relief they wanted without having to ever prove anything at all while the State is deprived of its right to defend its duly enacted voting requirement. This is unjust and an abuse of discretion.

Make no mistake: this case offered little prospect for the plaintiffs to prevail because having someone sign the exterior envelope of an absentee ballot before a voter mails it in is not a burden at all, much less a “severe burden.” See *DNC v. Bostelmann*, Case No. 20-cv-249-wmc, 2020 WL 5627186, at *18–20 (W.D. Wis. Sept. 21, 2020) (rejecting a claim that Wisconsin’s “witness requirement” is an unconstitutional burden under the *Anderson-Burdick* framework). Even as late as Friday, Mr. Rutledge withdrew as a plaintiff in this matter, acknowledging that he would have no problem finding a witness if he votes absentee. (Dkt. No. 175.)

The remaining plaintiffs cannot prove that it is a “severe burden” for them to have someone witness an absentee ballot: Ms. Richards and the SC-NAACP’s representative testified that they actually voted in person during the June primaries, and all remaining plaintiffs are in face-to-face contact with others on a regular basis (including Ms. Thomas’s landlord, who is also her lawyer in this case). Simply put, the notion that it is burdensome for these plaintiffs to have someone witness an absentee ballot is flawed, nor is there admissible evidence to support this notion. This Court would have to overcome a significant hurdle to conclude that the “witness requirement” amounts to a “severe burden.”

The problem created by the absence of an evidentiary record is particularly acute with respect to the supposed burden here. The Court excused the *Thomas* plaintiffs from proving their case in deference to its preliminary determination in *Middleton* that the “witness requirement” was a “severe burden.” In *Middleton*, a single plaintiff alleged that the “witness requirement” arose to a “severe burden” of constitutional proportions. (See Am. Compl. ¶¶ 11–20 (identifying Ms. Moore as the sole plaintiff in that case challenging the “witness requirement”) (Dkt. No. 69 in *Middleton*).) But just yesterday, that same plaintiff did a media tour regarding this very litigation in which she sat unmasked, shoulder-to-shoulder on camera with her son:



Federal Judge Says You Won't Need a Witness Signature for Your Absentee Ballot this November, WIS-TV (Sept. 21, 2020), <https://www.wistv.com/2020/09/21/federal-judge-says-you-wont-need-witness-signature-your-absentee-ballot-this-november/>. Not only is *Middleton* an improper vehicle through which the Court should resolve the supposed constitutional issues here, it is questionable whether any *Middleton* plaintiff could show that getting a witness is burdensome.

Likewise, the State of South Carolina has an overwhelming interest in enforcing the “witness requirement.” As Lt. Logan has testified via a declaration, the “witness requirement” is the key tool that law enforcement uses to investigate claims of absentee voter fraud. (Dkt. No. 94-2, ¶¶ 3–7.) To date, the Court has appeared to give little weight, if any, to this critical state interest, despite the fact that courts agree that voting fraud “is a serious problem” that is “facilitated by absentee voting.” *Griffin v. Roupas*, 385 F.3d 1128, 1130–32 (7th Cir. 2004).

The Court’s Orders instead indicate that it is of the view that the State is required to prove the presence of pervasive voting fraud to demonstrate that it has any interest in the “witness requirement.” That is not the law. Putting aside burden-shifting concerns, courts around the country, including the Supreme Court itself, have recognized that election integrity is an important and compelling state interest, including the State’s interest in ensuring that the citizenry has confidence in the outcome of an election:

“A State indisputably has a compelling interest in preserving the integrity of its election process.” Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.

Purcell v. Gonzalez, 549 U.S. 1, 4 (2006) (quoting *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989)). Removing one of the State’s only tools for ensuring election integrity harms, not helps, the voting process in South Carolina.

Accordingly, if the Plaintiffs' claims survive summary judgment—they shouldn't—the Defendants and Intervenor-Defendants are prepared to fully discuss and illustrate at trial the important role the "witness requirement" plays in ensuring the integrity of South Carolina's elections. The attached proffer of Lt. Logan's testimony demonstrates how essential this part of South Carolina's absentee voting law is for the State to effectively deter election fraud, identify and investigate election fraud, reject unfounded allegations from sore losers, and promote confidence in election results. Likewise, the attached proffer of Dr. Salgado counters the plaintiffs' suggestion that having someone stand six feet away from a voter while signing the exterior envelope of an absentee ballot somehow creates a "severe" risk of the voter contracting Covid-19.

But through its injunction in *Middleton* and companion stay order in this case, both filed on the eve of trial, the Court has not only relieved the *Middleton* and *Thomas* plaintiffs from carrying their burden of proving a constitutional violation, it has also deprived the State of a chance to make an actual evidentiary record on its interest in enforcing the "witness requirement."

In so doing, the Court has discarded the near-unanimous voice of South Carolina's elected representatives when it comes to establishing the State's election laws in the face of Covid-19.¹ It has also unilaterally eliminated the State's primary tool for investigating (and either prosecuting or exonerating) claims of election fraud and ensuring integrity of the State's elections. Second-guessing a policy decision made by the people's representatives in the State House is not the role of the federal judiciary.

The Court's current scheduling of this case and the *Middleton* matter will do nothing but invite absentee voter fraud that will be nearly impossible to detect, investigate, or prosecute. It will

¹ R.149 passed unanimously in the South Carolina Senate, with a single dissenting vote in the South Carolina House, and was signed into law by the Governor. *See generally* H.5305 History, S.C. Legislature, <https://www.scstatehouse.gov/billsearch.php>.

undermine confidence in the results of South Carolina’s upcoming elections.² And if left unaltered, the plaintiffs will get the very relief they wanted without ever having to actually present admissible evidence to carry their burden of proof.

This is not how “cases and controversies” are to be resolved. The Court should reconsider its stay order and either grant the pending dispositive motions or give the State its day in court and hold the plaintiffs to their high burden a proof—a burden they assuredly will be unable to meet.

Signature Pages Attached

² The Court’s order in *Middleton* also risks creating significant voter confusion. By ordering immediate publication of the Court’s injunction of the “witness requirement,” the Court risks contradictory messages being published on the eve of the election, if the Fourth Circuit or Supreme Court stays the *Middleton* injunction. Assuming that were to happen, the Election Commission would have to withdraw the notices and publish new ones. Pursuant to R.149, absentee voting begins in earnest on October 5th.

Respectfully submitted,

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September 22, 2020
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Mary T. Thomas, Nea Richard, Jeremy
Rutledge, The Family Unit, Inc., and the
South Carolina State Conference of the
NAACP

Plaintiffs,

vs.

Marci Andino, as Executive Director of the
State Election Commission, John Wells in
his official capacity as Chair of SC State
Election Commission, and Clifford J. Edler,
Scott Moseley, JoAnne Day, and Linda
McCall in their official capacities as
Members of the South Carolina State
Election Commission,

Defendants,

and

South Carolina Republican Party, James H.
Lucas, in his official capacity as Speaker of
the South Carolina House of
Representatives, and Harvey Peeler, in his
official capacity as President of the South
Carolina Senate,

Intervenor-Defendants.

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

AFFIDAVIT AND PROFFER OF
EVIDENCE

The undersigned, first been duly sworn, states under the penalty of perjury as follows:

1. I am Lt. Pete Logan, and I have personal knowledge of the facts set forth in this
Affidavit and Proffer of Evidence.

2. I work as an agent for the South Carolina Law Enforcement Division (“SLED”). I
have lived in South Carolina since 1965, and I currently reside in Irmo, South Carolina.

3. I have worked as an agent for SLED for over 30 years. Prior to joining SLED, I worked as an agent with the Federal Bureau of Investigation (“FBI”) for approximately 28 years.

4. During my career with the FBI, I worked on many different types of investigations in many different states.

5. As part of my job at SLED, I am assigned to the state grand jury, and I am the SLED lieutenant responsible for supervising state grand jury agents. In my role, I and the agents I supervise conduct investigations into various criminal matters, including cases involving allegations of voter or election fraud in South Carolina.

6. From my experience investigating allegations of absentee voter fraud and because I have voted absentee myself, I am familiar with the mechanics of absentee voting in South Carolina from a voter’s perspective.

7. Qualified absentee voters in South Carolina receive from their County Board of Voter Registration an envelope containing, among other things, instructions for absentee voting, an absentee ballot, a “BALLOTS HEREIN” envelope (sample attached as **Exhibit A**) and a return-mail envelope (sample attached as **Exhibit B**).

8. After voting their ballot, the absentee voter places the completed ballot(s) in the “BALLOTS HEREIN” envelope which is then placed inside the return-mail envelope which is sent to the applicable County Board of Voter Registration.

9. The back of the return-mail envelope includes a block for the absentee voter’s name and address, the Voters Oath, a signature/date block for the voter, and a signature/address block for the Witness. The Voters Oath reads as follows:

Voters 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; and that the ballot or ballots with which this oath is enclosed 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.

10. Elections are sometimes hotly contested, and tensions can run high between candidates and their supporters. A disappointing outcome on election night can lead to allegations of misconduct or fraud that may or may not prove to be true. Often, the public is left to wonder whether such allegations are credible or whether they are nothing more than retaliation from a sore loser.

11. An important goal of any criminal investigation is to determine the facts and evaluate whether a crime has been committed. However, finding the truth, not an indictment or a conviction, is the ultimate goal of any investigation. Some investigations of alleged absentee vote fraud reveal evidence that leads to criminal prosecutions and/or convictions. When a case is prosecuted and a conviction is secured, the public is able to evaluate the facts presented at trial and, to the extent they agree with the jury's conclusion, the conviction serves to deter others from similar misconduct. The conviction also gives voters confidence in the fairness and integrity of the election process.

12. It is important to note that, even when a criminal investigation of vote fraud allegations does not lead to prosecution or a conviction, an important law enforcement interest nevertheless is served. A decision not to bring charges in response to fraud allegations informs the public that law enforcement could not substantiate the allegations sufficiently to justify prosecution. Such a conclusion, to the extent the public agrees with it, promotes confidence in the integrity of the election out of which the fraud allegations arose.

13. Similarly, when a defendant is acquitted of vote fraud allegations, his/her exoneration also promotes confidence in the integrity of the election process, because, to the

extent the public is aware of the evidence presented and concurs in the jury's verdict, confidence in the integrity of the election process is encouraged. Thus, regardless of the outcome of an investigation into vote fraud allegations, the investigatory process helps establish the truth and, in so doing, promotes voter confidence in the integrity and reliability of elections.

14. In the course of my law enforcement career, I have investigated several cases involving allegations of vote fraud in South Carolina, including allegations of absentee voting fraud. Vote fraud allegations come in various forms, and, in my experience, fraud allegations arising out of absentee voting are by far the most prevalent type of vote fraud allegations SLED is asked to investigate.

15. In the last five to ten years, I have been involved in the investigation of 10 – 15 cases involving vote fraud allegations, almost all of which have arisen out of absentee voting. It is my understanding that SLED has investigated numerous others over the year.

16. In fact, I am currently conducting and/or supervising three (3) ongoing SLED investigations into allegations of fraudulent absentee voting arising out of the June 2020 South Carolina primary.

17. I have provided below a summary of several illustrative South Carolina absentee vote fraud cases investigated by the FBI, SLED and local authorities in the course of my career.

- *United States v. Carmichael*, 685 F.2d 903 (4th Cir. 1982); *United States v. Mason*, 673 F.2d 737 (4th Cir. 1982). SLED and the FBI jointly investigated allegations of absentee vote fraud in Dillon County. State Senator Albert Eugene Carmichael, Sheriff Roy Lee, and five other persons—Joe Grady Flowers, Mazel J. Arnette, Alan Schafer, Luther Nance, and Booker T. Mason—were convicted of vote buying in connection with the 1980 Democratic primary election in Dillon County. This case led to new, stricter witness requirements for absentee voting in South Carolina.
- Judgment, *United States v. Wiggleton*, No. 8:99-cr-00882 (D.S.C. Aug. 1, 2000). Georgetta M. Wiggleton, the Clerk of the McCormick County Board of Voter Registration, was convicted of absentee vote fraud in connection with the November 1994 general election.

- *State v. Chris Campbell*. Eastover Mayor Chris Campbell was convicted in 2008 of election related forgery and misconduct in office after being accused of forging absentee ballots and requiring others to sign as witnesses for absentee ballots they did not see filled out. (<https://www.wltx.com/article/news/the-verdict-is-in-for-eastover-fraud-trial/101-381459579>)
- *Lancaster City Council Election (2016)*. Incumbent City Council member Jackie Harris accused opponent Linda Blackmon of election fraud including, among other allegations, absentee ballot fraud. This case received significant media attention. No charges were filed. (<https://www.thelancasternews.com/content/harris-appeals-vote-fraud-ruling>)

18. In nearly every absentee vote fraud case SLED has investigated during my career (including the three (3) ongoing investigations mentioned above), the witness requirement for absentee ballots has provided SLED with an investigative lead because it identifies a potential witness to pursue and interview. The goal of every investigation is to determine the truth, and witness testimony is crucial in virtually every criminal investigation.

19. Persons witnessing an absentee voter marking his/her ballot can and often do provide critical information such as who voted, when they voted, where they voted, who else was present (if anyone), and whether coercion, undue influence or bribery was involved, etc.

20. The absence of the witness requirement for absentee voting would eliminate even the possibility of identifying and interviewing a witness with first-hand knowledge of the circumstances surrounding a particular ballot, thus making absentee vote fraud easier to carry out and harder to detect.

21. In addition to hindering law enforcement's legitimate interest in detecting vote fraud, the absence of the witness requirement would make it easier for an unscrupulous person to cast or assist someone in casting an unlawful absentee ballot, coerce an absentee voter, bribe an absentee voter, or otherwise violate South Carolina's election laws.

22. The witness requirement has the potential to deter fraud and other misconduct because it forces a potential bad actor (voter or witness or third party) to think twice before committing absentee ballot fraud because he/she must consider the possibility that their misconduct will be revealed by the another person present at or near the time the ballot is voted. Even if a supposed voter and a supposed witness have conspired to commit absentee voting fraud, each knows in advance that there is a potential witness who can turn on them and implicate them in a crime. Thus, the witness requirement serves as a deterrent to absentee voting fraud.

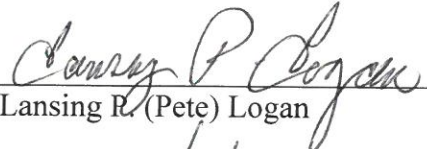
23. There is no requirement in South Carolina that a person witnessing the absentee vote be related to or even know the absentee voter. Even when the witness does not know the absentee voter, however, the witness is still able to provide critical information to law enforcement about the voter such as his/her physical description, the place in which the voter marked the ballot, who else was present (if anyone), whether campaign-affiliated personnel was present, what was said by those present, and other circumstances surrounding the vote.

24. In some situations, a witness signing an absentee ballot return-mail envelope may intentionally or accidentally include an incorrect address. In this situation, the witness requirement provides a critical investigative tool for law enforcement because investigators can interview individuals associated with or living near the incorrect/false address to try to locate the witness and interview him/her. So, even a “bad address” submitted by the witness is an important lead in some cases.

25. The fact that there is no requirement in South Carolina that election officials verify an absentee witness’s signature by comparing it to voter registration signatures in no way diminishes the importance of the witness’s signature as an investigative tool for law

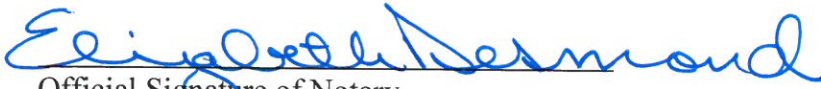
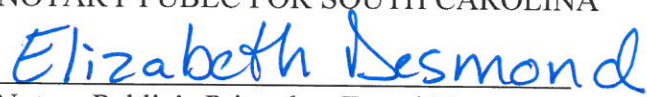
enforcement. Law enforcement's task of investigating allegations of vote fraud is wholly separate from the ballot-counting activities that election officials are tasked with doing. Simply put, even if election officials do not rely on a witness's signature when doing their job of counting votes, this does not undercut the vital role that the witness's signature plays when law enforcement does its job with respect to protecting the integrity of the electoral process.

FURTHER AFFIANT SAYETH NOT.


 Lansing R. (Pete) Logan
 Date: 9/22/20

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND

I certify that the following person personally appeared before me this 22nd day of September, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:


 Official Signature of Notary
 NOTARY PUBLIC FOR SOUTH CAROLINA

 Notary Public's Printed or Typed Name
 My commission expires: 2/24/2030

BALLOTS HEREIN



NAME

ADDRESS

Voters 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; and that the ballot or ballots with which this oath is enclosed 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.

Signature of Voter

Dated this day of 20.....

Signature of Witness

Address of Witness

EXHIBIT

B

THE 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

**Offer of Proof–Declaration
Cassandra D. Salgado, M.D., M.S.**

1. I am Cassandra D. Salgado, M.D., M.S. I live in Charleston, South Carolina and have lived here since July 2004 when I joined the faculty at the Medical University of South Carolina and began seeing patients at the MUSC Hospital (collectively “MUSC”).

2. MUSC is an academic medical center and operates hospitals in Charleston, Chester, Florence, Lancaster, and Marion counties (“Health System”).

3. I received my undergraduate degree in chemistry (cum laude) from West Virginia University, my medical degree from West Virginia University, and my M.S. in Health Evaluation Sciences and epidemiology from the University of Virginia.

4. My residencies and postdoctoral training include: a) West Virginia University Hospital (Internal Medicine and Pediatrics and Chief Resident, Internal Medicine); and b) University of Virginia Health System (Fellowship, Infectious Diseases).

5. My Specialty/Board Certifications include: a) Pediatrics, b) Internal Medicine, and c) Infectious Disease.

6. I am a licensed physician in South Carolina (license # 27310) and have practiced in South Carolina, treating the State’s patients since September 2004. I am a practicing infectious disease doctor and see patients for general infectious disease needs both in the hospital and in the outpatient clinic. I have hospital privileges at MUSC and the Ralph H. Johnson Veteran’s Administration Hospital.

7. I am a member of numerous national and state medically related societies, including, but not limited to the: Infectious Disease Society of America, Fellow; Society for Healthcare Epidemiology of America, Fellow; Association of Specialty Professors; and the South Carolina Infectious Disease Society.

8. I serve as an *ad hoc* reviewer for a number of medical journals, including but not limited to: the *New England Journal of Medicine*, *Journal of Infectious Diseases*, *Infection Control Hospital epidemiology*, *The Lancet*, and *International Journal of Infectious Disease*.

9. I came to MUSC as an Assistant Professor of Medicine in the Department of Internal Medicine (2004-2008). I became an Associate Professor (2008-20013) and was awarded tenure and full faculty member status at the MUSC College of Graduate Studies in 2012.

10. In 2013 I became a Professor of Medicine in the Department of Medicine. In 2015, I became a Professor of Medicine in the Department of Public Health Sciences.

11. I have held or hold the following MUSC administrative appointments:

- a. Program Director, Internal Medicine/Pediatrics Residency (2006-2009);
- b. Program Director, Infectious Diseases Fellowship (2008-2019);
- c. Department of Medicine Mentoring Program Champion Infections Disease (2012-2013);
- d. Vice Chair for Quality Improvement (2012-2016);
- e. Interim Division Director, Infectious Disease (2015-2016); and
- f. Division Director, Infectious Diseases (2016-present).

12. I was appointed Medical Director of Infection Control, Hospital Epidemiologist, Pitt County Memorial Hospital, East Carolina University and served from 2003-2004. I was appointed Medical Director of Infection Control, Hospital Epidemiologist at MUSC in 2004 and continue to serve as such.

13. As the Division Director for Infectious Diseases, my duties include the day to day running of the division operations, recruitment of infectious disease doctors, and ensuring appropriate infectious diseases care for patients in the hospital and in the ambulatory setting. In my hospital leadership position, I am the Hospital Epidemiologist and Medical Director for Infection Prevention at MUSC.

14. SARS-CoV-2, commonly referred to as COVID-19, is an infectious disease and one that I, as the Hospital Epidemiologist and Medical Director for Infection Prevention, am charged with preventing transmission, both for patients and health care staff, in the Hospital and the Hospital System. If asked to describe my job as the Hospital Epidemiologist and Medical Director for Infection Prevention, simply put, I would testify that it is to ensure safety from infections for patients and the care team members that care for them.

15. My research focuses on epidemiology in the health care setting. In order to understand the transmission (spread) of COVID-19 or other infectious diseases in the Hospital, it is imperative that I understand how it is spread in the community so, among other things, I can understand how the virus enters the hospital in the first place.

16. On a daily basis, I study the COVID-19 data provided by the South Carolina Department of Health and Environmental Control (DHEC) and data collected by MUSC from its Health System. This data includes information on patient tracing, testing, infection rate trending, underlying medical conditions and patient age, among other things. I use this data to present almost daily reports to MUSC administration in order for it better to position the Health System to manage COVID-19 and to assist the State of South Carolina in conducting COVID-19 testing.

17. The State has provided MUSC with CARES funding and tasked it with testing people for COVID-19 infection. Overall, MUSC is currently conducting approximately thirty four percent (34%) more testing compared to DHEC, and at least 25% of all of the testing done in South Carolina.

18. Currently, MUSC is one of the hospitals participating in the Astra Zeneca COVID-19 Phase III vaccine trials. I am one of many MUSC physicians participating in the Phase III vaccine trial.

19. The proportion of the South Carolina population who identify as African American is approximately 30%. Based upon the DHEC data, as of September 18, 2020, 26.3% of South Carolinians who have been confirmed positive for COVID-19 identify as African American. Based on DHEC data as of September 18, 2020, 47.3% of South Carolinians who are hospitalized for COVID-19, identify as African Americans. Based on DHEC data as of September 18, 2020, 35 % of South Carolinians who have died from COVID-19, identified as African American. In my medical opinion and to a reasonable degree of medical certainty, African Americans have a higher incidences of uncontrolled comorbid conditions (such as diabetes and cardiovascular disease) that place them at a higher risk for poor outcomes if they contract COVID-19. These disparities may be the reason we are seeing the disproportionate number of African Americans affected by this epidemic.

20. Underlying medical conditions that increase the risk of a poor outcome for a COVID-19 positive patient include hypertension, diabetes, and cardiovascular disease. Persons over 65 (“elderly age group”) and African Americans are also at a higher risk of having a poor outcome if they contract COVID-19.

21. If asked whether in my medical opinion and to a reasonable degree of medical certainty, I believe the presence of underlying medical conditions and being in the elderly age group or African American increases the risk of a person with COVID-19 having a poor outcome, I would answer that, “in my medical opinion and to a

reasonable degree of medical certainty, I believe the presence of underlying conditions and/or being in the elderly group or African American increases the risk for a poor outcome for a person with COVID-19.

22. To the contrary, if asked whether in my medical opinion and to a reasonable degree of medical certainty, I believe the presence of underlying medical conditions and/or being in the elderly age group or African American increases the risk of a person acquiring COVID-19, I would answer that, “in my medical opinion and to a reasonable degree of medical certainty, I believe the presence of underlying conditions and/or being in the elderly age group or African American does not increase the risk of a person acquiring COVID-19”.

23. In my medical opinion and to a reasonable degree of medical certainty, the length of time a person is exposed to a person infected with COVID is critical in determining the risk of transmission. The shorter the exposure the less the risk. The recent COVID-19 research data supports my medical opinion to a reasonable degree of medical certainty.

24. A recent study published in *The Lancet* (www.thelancet.com/microbe Vol 1 May 2020) inoculated a known amount of the virus onto different surfaces and found that “no infectious virus could be recovered from printing or tissue paper after a 3 hour incubation”. It is unclear whether or not they mean that the virus could be detected on paper for up to three hours or if they meant they allowed the cultures to incubate on the paper for three hours and could not find any recoverable virus on the paper. I have read expert opinions that support either of these statements. Under either interpretation of the study, the study suggests that the COVID-19 virus does not survive on paper longer than three (3) hours.

25. Following the CDC guidelines mitigates the risk of transmission and of an individual becoming infected. These CDC guidelines are:

1. Wash your hands often
 - a. Wash your hands often with soap and water for at least 20 seconds especially after you have been in a public place, or after blowing your nose, coughing, or sneezing.
 - b. It's especially important to wash:
 - i. Before eating or preparing food
 - ii. Before touching your face
 - iii. After using the restroom
 - iv. After leaving a public place
 - v. After blowing your nose, coughing, or sneezing
 - vi. After handling your mask
 - vii. After changing a diaper
 - viii. After caring for someone sick
 - ix. After touching animals or pets

2. If soap and water are not readily available, use a hand sanitizer that contains at least 60% alcohol. Cover all surfaces of your hands and rub them together until they feel dry.
3. Avoid touching your eyes, nose, and mouth with unwashed hands.
4. Avoid close contact
 - a. Inside your home: Avoid close contact with people who are sick. °If possible, maintain 6 feet between the person who is sick and other household members.
 - b. Outside your home: Put 6 feet of distance between yourself and people who don't live in your household. °Remember that some people without symptoms may be able to spread virus.
 - c. Stay at least 6 feet (about 2 arms' length) from other people.
 - d. Keeping distance from others is especially important for people who are at higher risk of getting very sick.
5. Cover your mouth and nose with a mask when around others
 - a. You could spread COVID-19 to others even if you do not feel sick.
 - b. The mask is meant to protect other people in case you are infected.
 - c. Everyone should wear a mask in public settings and when around people who don't live in your household, especially when other social distancing measures are difficult to maintain.
 - i. Masks should not be placed on young children under age 2, anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance.
 - d. Do NOT use a mask meant for a healthcare worker. Currently, surgical masks and N95 respirators are critical supplies that should be reserved for healthcare workers and other first responders.
 - e. Continue to keep about 6 feet between yourself and others. The mask is not a substitute for social distancing.
5. Cover coughs and sneezes
 - a. Always cover your mouth and nose with a tissue when you cough or sneeze or use the inside of your elbow and do not spit.
 - b. Throw used tissues in the trash.

- c. Immediately wash your hands with soap and water for at least 20 seconds. If soap and water are not readily available, clean your hands with a hand sanitizer that contains at least 60% alcohol.
- 6. Clean and disinfect
 - a. Clean AND disinfect frequently touched surfaces daily. This includes tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, and sinks.
 - b. If surfaces are dirty, clean them. Use detergent or soap and water prior to disinfection.
 - c. Then, use a household disinfectant. Most common EPA-registered household disinfectants will work.
- 7. Monitor Your Health Daily
 - a. Be alert for symptoms. Watch for fever, cough, shortness of breath, or other symptoms of COVID-19.
 - b. Especially important if you are running essential errands, going into the office or workplace, and in settings where it may be difficult to keep a physical distance of 6 feet.
 - c. Take your temperature if symptoms develop. Don't take your temperature within 30 minutes of exercising or after taking medications that could lower your temperature, like acetaminophen.
 - d. Follow CDC guidance if symptoms develop.

<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

26. I understand that in order for a South Carolina voter to vote by absentee mail, the voter has to obtain an absentee ballot, which she can either fill out or return in person or mail back to her County Board of Registration and Elections. In order to mail her ballot back to the County Board, the voter has to fill out the absentee ballot return envelope received from the County Board. The ballot return envelope requires the voter to sign the voter oath in front of a witness. The witness must then sign her signature and fill in her address on the envelope. I understand that unless the witness signs and provides her address, the vote will not be counted.

27. The oath of office on the ballot return envelope reads:

The oath shall be in the following form:

"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 with which this oath is enclosed 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."

Signature of Voter

Dated on this _____ day of _____ 20 ____

Signature of Witness

Address of Witness

28. Having reviewed the above statutory voter oath and witness signature form that is printed on the outside of the ballot return envelope, the entire voter oath execution and witness signature process can easily be completed in less than two (2) minutes and, in all probability, in less than one (1) minute, even employing the CDC guidelines.

29. In my medical opinion and to a reasonable degree of medical certainty, exposure to an individual who is not routinely around for the length of time necessary to execute the voter oath and witness signature, when practicing the CDC guidelines, is such a short length of time that it does not pose a greater risk of COVID-19 transmission than the voter's normal daily activities, such as receiving groceries or having mail or medicine delivered.

30. Regarding a voter who lives alone and is thus not with someone she is regularly exposed to who can witness her absentee ballot envelope, the voter can take the following steps, consistent with the current recommended CDC guidelines, and obtain a ballot envelope witness signature without undue risk of COVID-19 infection. In my medical opinion and to a reasonable degree of medical certainty, the following are reasonable measures that are completely consistent with the CDC guidelines a voter can take, without adding another burden, to obtain a witness signature with a minimal risk to COVID-19 exposure.

- a. The person comes to the home to witness the voter signing the return ballot envelope. The lowest risk of exposure would be if there is a barrier between the voter and the witness (like a glass door or a window) or if the witness and the voter are outside when the transaction occurs. In both circumstances, the voter and witness use the CDC guidelines as outlined in b through d below.
- b. However, if this (use of a barrier) is not possible, the voter can ask the witness if she has any of the symptoms of COVID-19 and not let them in if they do. The witness and voter should be wearing masks/coverings and should social distance—staying at least six (6) feet apart risk at all times during the minute to two minutes the witness is in the home.

- c. The voter signs below the oath on the ballot return envelope, performing hand hygiene (washing or using hand sanitizer on ones hands) prior to signing the envelope. Voter signs the envelope with her pen (not sharing it with the witness) and places envelope on counter (or table or other surface) and moves away from the counter or table so the witness can move forward to sign the envelope after the voter has moved at least six (6) feet away.
- d. The witness should perform hand hygiene prior to signing and use her own pen to sign and add her address to the ballot return envelope and place it back on counter, table etc. The witness should perform hand hygiene once again and leave the home immediately following this step.
- e. The voter retrieves and mails the ballot return envelope. The voter either should not handle the envelope for three hours (based on the up to three hour life of the virus on paper) or pick up the envelope and mail it and then again performing hand hygiene immediately afterwards. Certainly, the voter could also ask the witness to take the envelope and drop it in the mail. I understand that no postage is required to return the ballot envelope by mail. Cleaning and disinfection of the counter (or other surface) should occur after mailing of the envelope.

31. I understand that Ms. Mary Thomas, a plaintiff in this case, is an 87 year old African American with underling medical conditions, including cardiovascular disease. Ms. Thomas lives alone and has been self-isolating since the out-break of COVID-19 in South Carolina. Ms. Thomas intends to vote absentee by mail.

32. Ms. Thomas testified in her deposition that she has a housekeeper, Ms. Wallace, that comes to her apartment once a week and sometimes twice a week and is there for approximately two (2) and one-half hours, and has continued to do so during Ms. Thomas' quarantine. Ms. Wallace wears a mask the entire time she is in Ms. Thomas' apartment. I understand that Ms. Thomas stays in a different part of her apartment when Ms. Wallace is cleaning, so that she and Ms. Wallace are not in the room at the same time.

33. Ms. Thomas also has groceries delivered to her house and has a neighbor in her apartment building, Mr. Morrison, who helps water her plants when she asks. Ms. Thomas' landlady is Susan Dunn, who, during Ms. Thomas quarantine, has periodically visited Ms. Thomas in her home. According to Ms. Thomas' deposition, Ms. Dunn is in Ms. Thomas' apartment 15 minutes or more when she visits. Ms. Thomas has Ms. Dunn's telephone number and can call her if she needs anything.

34. Ms. Thomas has not been out of her apartment once since the pandemic began, except for medical appointments, when she went to three separate establishments.

35. Ms. Thomas does not wear a mask based on her doctor's advice.

36. Ms. Thomas is already at risk of contracting COVID-19 through her weekly contact with Ms. Wallace, her contact with Mr. Morrison and Ms. Dunn and her shopping trip. In my medical opinion with a reasonably degree of certainty, Ms. Thomas can ask Ms. Wallace, Mr. Morrison, or Ms. Dunn to witness her absentee voting ballot oath envelope without increasing the risk of infection from COVID-19 which she is already exposed.

37. It is my medical opinion and to a reasonable degree of medical certainty that Ms. Thomas can have her absentee ballot envelope witnessed without increasing the risk of exposure she already has assumed and that risk does not create a substantial burden on Ms. Thomas beyond what she is already doing on a daily basis.

38. I understand that Nea Richard is a 22 year old African American who lives with her boyfriend and works in an office area with four (4) other individuals. She sees her family in Cross Hill, South Carolina and has been to a weekend party with four (4) girlfriends, where they stayed at an Air BNB. Ms. Richard wants to vote absentee to avoid exposure to COVID-19.

39. It is my medical opinion and to a reasonable degree of medical certainty that Ms. Thomas can have her absentee ballot return envelope witnessed without increasing the risk of exposure she already has from her current daily activities.

40. Ms. Richard is regularly exposed to her boyfriend with whom she is living and can simply ask him to be her witness without incurring an additional risk of exposure to COVID-19 infection.

41. Ms. Richard could also ask one of her co-workers or one of her friends to witness her signature and follow the CDC guidelines and those procedures outlined in paragraph 27 above.

42. Currently, I routinely treat patients that are infected with COVID-19. In doing so, I wear a full panoply of personal protective equipment ("PPE"). I keep the time I spend with each patient as short as possible and still perform the necessary medical services necessary. I am not in a higher risk category for a poor outcome; however, my risk of being infected with COVID-19 is significantly greater than that of Ms. Thomas or Ms. Richard in obtaining a witness for their respective absentee ballot envelope oaths.

I declare under penalty that the foregoing is true and correct.

Executed on September 21, 2020

A handwritten signature in black ink, appearing to read "C. Salgado", is enclosed within a light gray rectangular box.

Cassandra D. Salgado, M.D.