



**HARPOOTLIAN**  
ATTORNEYS AT LAW

**RICHARD A. HARPOOTLIAN**  
RAH@HARPOOTLIANLAW.COM

**CHRISTOPHER P. KENNEY**  
CPK@HARPOOTLIANLAW.COM

**PHILLIP D. BARBER**  
PDB@HARPOOTLIANLAW.COM

**JAMIE L. HARPOOTLIAN\***  
OF COUNSEL

\*ADMITTED ONLY IN LOUISIANA

**OFFICE**

1410 LAUREL STREET  
COLUMBIA, SC  
29201

**MAILING ADDRESS**

POST OFFICE BOX 1090  
COLUMBIA, SC  
29202

**DIRECT CONTACT**

TELEPHONE (803) 252-4848  
FACSIMILE (803) 252-4810  
TOLL FREE (866) 706-3997

**ONLINE**

HARPOOTLIANLAW.COM

July 31, 2020  
***FILING VIA ONE DRIVE***

The Honorable Daniel E. Shearouse  
Supreme Court Building  
1231 Gervais Street  
Columbia, South Carolina 29201

In re: Duggins v. Lucas

Dear Mr. Shearouse,

Enclosed please find for filing a petition for original jurisdiction, expedited disposition, and emergency relief in the above-referenced matter and a Rule 245(c) Notice.

Thank you for your assistance in this matter.

With warm personal regards, I am

Sincerely,

Christopher P. Kenney

CPK/hm  
Enclosures

**THE STATE OF SOUTH CAROLINA  
In the Supreme Court**

---

In the Original Jurisdiction

---

Regina Duggins and Chaunta R. Hamilton .....Petitioners,

v.

Jay Lucas, in his capacity as Speaker of the House of Representatives and  
Harvey Peeler, in his capacity as President of the Senate.....Respondents,

and

South Carolina Election Commission.....Respondent/Nominal Defendant.

---

**PETITION FOR ORIGINAL JURISDICTION,  
EXPEDITED DISPOSITION, AND EMERGENCY RELIEF**

---

Christopher P. Kenney (SC Bar No. 100147)  
RICHARD A. HARPOOTLIAN, P.A.  
1410 Laurel Street (29201)  
Post Office Box 1090  
Columbia, South Carolina 29202  
(803) 252-4848  
(803) 252-4810 (facsimile)  
cpk@harpootlianlaw.com

Shaundra Young Scott (SC Bar No. 75374)  
SOUTH CAROLINA  
DEMOCRATIC PARTY  
1929 Gadsden Street  
Columbia, SC 29201  
(803) 799-7798  
shaundra@scdp.org

ATTORNEY FOR PETITIONERS  
REGINA DUGGINS AND  
CHAUNTA R. HAMILTON

July 31, 2020  
Columbia, South Carolina.

South Carolina election workers and voters are headed for calamity. The COVID-19 pandemic threatens the orderly conduct of the November general election by diminishing the number of election workers willing to expose themselves to certain harm and the number of available polling locations willing to welcome the public. According to the State’s elections chief, poll manager shortages, inexperienced poll managers, and a lack of polling places will lead to precinct consolidation, crowding, long lines, confusion, and errors such that “immediate action” is needed to ensure election officials are able to plan for and meet “the greatest challenge to our election system our state has ever seen.” Without action now, the rapidly approaching general election promises to be tumultuous and to place voters in certain high-risk cohorts—voters like Petitioners Regina Duggins and Chaunta R. Hamilton—in harm’s way when casting the only ballot they are presently allowed to under South Carolina law: an in-person ballot on election day.

The first principle of South Carolina government is that *all* political power is vested in and derived from the people and the people have the right to change their government at all times. See S.C. CONST. art. I, § 1. To that end, elections must be free and open such that every inhabitant of this State who is qualified to vote under the Constitution “*shall have* an equal right to elect officers and be elected to fill public office.” S.C. CONST. art. I, § 5 (emphasis added). “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 (emphasis added). Accordingly, the General Assembly is tasked with regulating the time, place, and manner of elections and enacting other provisions necessary to the fulfillment and integrity of the election. S.C. CONST. art. II, § 10. But the simple, uncontradicted fact is that the current method of regulating elections during the COVID-19 pandemic violates individual rights, particularly those of sick and vulnerable voters. Voters with compromised health

conditions, and those simply unsure whether they would suffer a severe case of the coronavirus, will be forced to choose between safeguarding their life and health and exercising the franchise. Placing Petitioners and those with compromised conditions, whether known or unknown, in such an untenable position violates the Constitution. This action seeks to remedy that profound injustice.

This original jurisdiction petition is submitted pursuant to article V, § 5 of the Constitution, South Carolina Code § 14-3-310, and Rule 245 of the South Carolina Appellate Court Rules. It respectfully seeks (1) leave to file Petitioner's proposed complaint; (2) (if necessary) expedited discovery; (3) an expedited hearing and decision declaring a clear and present danger to free and open elections fulfilled with provisions sufficient to guarantee their integrity and secure them from tumult; and (4) an injunction instructing Nominal Defendant South Carolina Election Commission to implement the procedures it has already identified as necessary to protect election workers and voters and conduct a successful election. Respectfully, time is of the essence.

### **FACTUAL BACKGROUND**

The relevant factual background is detailed in **Exhibit A**, Petitioners' proposed complaint.

### **STANDARD OF REVIEW**

When appropriate, the Court will consider matters in its original jurisdiction when they cannot be considered by a lower court first without material prejudice to the rights of the parties. Rule 245(a), SCACR. "Only when there is an extraordinary reason such as a question of significant public interest or an emergency will this Court exercise its original jurisdiction." Key v. Currie, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991).

### **GROUNDS FOR GRANTING THE PETITION**

This Court is the only venue where voters can obtain redress for the profound constitutional injury complained of here. This case turns on two obviously true propositions.

First, the unprecedented public health crisis caused by the COVID-19 coronavirus will disenfranchise a significant number of voters unless election procedures change. As Petitioners' epidemiologist explains, a significant cohort of South Carolina voters are at high risk for severe complications or death from COVID-19 and in-person voting is a "high-risk" activity for all people. See Ex. A at Ex. 3. Moreover, the risk associated with in-person voting—a risk particularly acute to those with compromised conditions—is guaranteed to be far greater than it need be due to too few election workers assisting too many voters at too few polling locations, resulting in longer lines. This is not a matter of conjecture: it is precisely what happened during the June statewide primary and the reason the State's elections chief has *twice* pled with lawmakers to act while there is still time. See Ex. A at Exs. 4 & 6.

Second, "the right to vote is a cornerstone of our constitutional republic." Bailey v. S.C. State Election Comm'n, No. 2020-000642, 2020 WL 2745565, at \*1 (S.C. May 27, 2020). Because all legitimate power of this government flows from the people's exercise of the franchise, the Court cannot abstain when the legislature fails to meet its constitutional responsibilities. Yes, the General Assembly is tasked by the Constitution with providing free and open procedures that secure the election from tumult. But, for whatever reason, current law fails to meet the moment with procedures that make voting safe to all eligible voters. That shortcoming undermines the rights of individuals and the people's very power to call the political branches to account. Accordingly, it is not a legitimate or lawful exercise of government power to sit idly on ones' hands and watch an election meltdown. It threatens constitutional republicanism itself.

The petition should be granted to address this once-in-a-generation emergency. Discovery (if necessary), briefing, and disposition should all be expedited to give election administrators what they need: time to prepare. Petitioners respectfully offer two further suggestions in support.

**I. Ensuring free and open elections secure from tumult is a matter of public interest that can only be resolved by the Court.**

The Court should conclude this matter warrants original jurisdiction for three reasons.

First, there is no reasonable debate about the threat posed by the coronavirus or that election procedures must be implemented now to allow officials sufficient time to prepare and avoid failed elections. This State remains in the midst of a crisis. The Governor has declared repeated states of emergency. See Ex. A ¶¶ 16–31. The Court has used emergency powers to prevent large gatherings of people both indoors and out. See id. ¶¶ 32–36. Two weeks ago, a member of the U.S. District Court aptly summarized the precarious nature of South Carolina’s situation in an order denying a federal inmate compassionate release:

COVID-19’s virulence to date has not only taken the lives of over 130,000 Americans and infected over 3 million more, but it has also wreaked havoc on all of society. Six months ago, the thought that an American citizen’s well-being would be threatened with such regularity was unfathomable. Three months ago, the notion that a person would be at a greater risk for exposure to COVID-19 in South Carolina than in a prison in New Jersey was posterous. Yet, here we are.

United States v. Morgan, No. 2:17-cr-00727-DCN, Dkt. No. 62 at 10–11 (D.S.C. July 17, 2020) (denying motion with leave to refile “[i]f conditions at FCI Fort Dix worsen or if the circumstances in South Carolina improves”). Here we are indeed. Notably, when the Court heard argument in Bailey, it was not disputed that the coronavirus pandemic was a sufficiently serious threat to warrant original jurisdiction and consider whether persons attempting to maintain physical distance were “physically disabled” within the meaning of South Carolina Code § 7-15-320. Since that case was decided, the threat to South Carolina voters has only grown (see Ex. A ¶¶ 9–15) while current election procedures afford *fewer* opportunities to vote in-person or mail absentee.

The highly communicable nature of the coronavirus and its capacity for symptomless spread threatens a substantial portion of the State’s 3.3 million registered voters who are ineligible

to cast an absentee ballot. Whether an activity is high or low risk for COVID-19 transmission turns on four factors: people, place, time, and space. Ex. A at Ex. 3 ¶ 21. Petitioner’s epidemiologist explains, “[i]n-person voting is a high-risk activity for all people because it necessarily gathers strangers together, indoors, and for potentially long stretches of time.” Id. ¶ 22. Thus, current election procedures “will increase the risk that poll workers and voters will contract COVID-19” (see id. ¶ 18), and that threatens the State’s very ability to conduct a successful election without substantial changes in existing law. Because many election workers also fall into high-risk categories (Ex. A at Ex. 6 p. 1), there will be a severe shortage of election workers that will force election administrators to consolidate precincts, which in turn will result in more voters in longer lines at fewer polling locations, making physical distancing impossible. On this point, State and local election officials and an independent watchdog all agree. See Ex. A at ¶¶ 57–79.

But there is no reason to accept this foreseeably horrible outcome as a *fait accompli*. The South Carolina Election Commission has offered nine specific procedures which, if ordered now to allow election officials time to implement them, would alleviate many of the risks associated with a high-turnout, in-person election. Specifically, this State’s top election official has proposed a plan that includes no-excuse absenteeism, online absentee applications, no witness requirement for absentee return envelopes, drop boxes for absentee returns, additional time for election officials to count absentee ballots, designated curbside voting locations, expanding electronic ballot delivery (already used for military voters) to disabled voters and first responders, early voting, and vote-by-mail. See Ex. A at Ex. 6 p. 3. Generally, these procedures all facilitate safe, free, and open access to the franchise by spreading voter participation across a greater number of days and balloting procedures to dilute the concentration of persons casting an in-person ballot on election day. These efforts—procedures that facilitate physical distance between voters and election

workers alike—comport with guidance from public health experts as the only sure way to stop the spread of this highly infectious disease. An association of local South Carolina election officials and an independent election watchdog group agree remedial procedures are necessary to make voting safe and that time is of the essence. See Ex. A at Exs. 7 & 8. For these reasons, the extraordinary and (quite literally) unprecedented circumstances here should weigh heavily in favor of granting original jurisdiction.

Second, waiting for this case to further ripen forecloses the prospect of granting any relief. As explained by the executive director of the State election commission, election officials need clarity *now* to ensure sufficient time to implement any changes to election law. The director has repeatedly pled with Defendants to act quickly (Ex. A at Exs. 4 & 6), but those pleas have fallen on deaf ears. While precedent allows the Court to cure a constitutional violation by ordering a new election, e.g., George v. Mun. Election Comm’n of City of Charleston, 335 S.C. 182, 516 S.E.2d 206 (1999) (nullifying election where procedure violated constitutional guarantee of secret ballot), that is not a workable remedy under these circumstances. For starters, there is no precedent for invalidating statewide elections. The few instances where it could not be avoided concerned county or municipal elections. Further, no one knows when the current pandemic will end, so any do-over would necessarily place voters right back in their present circumstance. Or, actually, far worse circumstances since a post-election dispute could delay timely certification of presidential contest results necessary to select electors to represent the State’s voters in the Electoral College. Post-election review also invites a parade of horrors that all good-faith actors should be eager to avoid.

As one election law commentator explains:

Allowing post-election review when pre-election review would have been relatively easy to request essentially gives a campaign the “option” whether to sue: The campaign identifying a potential election problem can sit on its hands until it sees the election results, and if it does not like the election results it can use the

problem as an excuse to get a more favorable outcome. It is far better to have a legal system that discourages such speculation and encourages preventing harm in elections that would prove difficult to undo after the fact.

Richard L. Hasan, “Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown,” 62 WASH. & LEE L. REV. 937, 994 (2005). Such a result is anathema to the notion that election integrity should be held “foundational”, see Anderson v. S.C. Election Comm’n, 397 S.C. 551, 556, 725 S.E.2d 704, 705 (2012), and the Court has power to prevent this self-inflicted catastrophe. Respectfully, it should.

Third, this is a matter of intense public interest arising from an unprecedented national emergency that implicates questions of constitutional power. It fits squarely within original jurisdiction jurisprudence. For example, original jurisdiction has been held to exist when necessary to clarify the effective date of a new constitutional amendment. See Davis v. Leatherman, 419 S.C. 44, 46, 796 S.E.2d 137, 138 (2017). It is often held to exist when necessary to resolve questions of government power, like whether a governor had power to make recess appointments, Senate v. McMaster, 425 S.C. 315, 821 S.E.2d 908 (2018), or remove a board member from a public utility. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). Likewise, with matters disputing whether legislative power was constitutionality exercised. S.C. Pub. Interest Found. v. Lucas, 416 S.C. 269, 271, 786 S.E.2d 124, 125 (2016) (challenging proviso under the one subject rule). The Court has frequently granted original jurisdiction to settle election disputes, like whether a procedure for the nomination of candidates in municipal election was lawful, Mitchell v. City of Greenville, 411 S.C. 632, 770 S.E.2d 391 (2015), whether state election officials were obligated to conduct a party primary election, S.C. Libertarian Party v. S.C. State Election Comm’n, 407 S.C. 612, 757 S.E.2d 707 (2014), and whether candidates were eligible for certification to appear on the ballot. Florence Cty. Democratic Party v. Florence Cty. Republican Party, 398 S.C. 124, 727 S.E.2d 418 (2012);

Anderson, supra. This petition implicates all the weighty concerns engendered in these precedents: constitutional duty, separation of powers, and lawful election procedures. However, unlike an intradepartmental squabble, this dispute implicates free exercise of the franchise—the right on which all legitimate government action must be founded.

Accordingly, this is a grave matter of public interest that only this Court can resolve.

**II. The Court should not abstain or show further comity to the legislature.**

The obvious impediment to relief here is the decision in Bailey v. South Carolina State Election Commission, No. 2020-000642, 2020 WL 2745565 (S.C. May 27, 2020), where the Court was asked whether South Carolina Code § 7-15-320(B)'s inclusion of “physically disabled person[s]” as a category of voters eligible to cast an absentee ballot was broad enough to include voters attempting to maintain physical distance during the pandemic. The Court (correctly) held the claim concerning the June statewide primary was mooted by legislative action, but then cited the political question doctrine in declining to rule on claims concerning the November general election. See Bailey, 2020 WL at \*2–3. Bailey poses no obstacle here for at least four reasons.

First, this case is just different from the statutory construction question presented in Bailey. Resolving statutory construction questions turns on discerning legislative intent. Fullbright v. Spinnaker Resorts, Inc., 420 S.C. 265, 272, 802 S.E.2d 794, 797 (2017) (collecting cases). If a statute is clear and constitutional, the Court will decline to wade into a policy dispute over its efficacy. See id. at 271–72, 281, 802 S.E.2d at 797, 802 (collecting cases, leaving policy concerns “for the legislature.”). The claim here sounds in the Constitution as Petitioners seek redress for an injury founded on the express guarantee of free and open elections secure from tumult. See S.C. CONST. art. I, § 5 & art. II, § 1. Construing the Constitution is a different task altogether. “When this Court is called to interpret our Constitution, it is guided by the principle that both the citizenry

and the General Assembly have worked to create the governing law.” State v. Long, 406 S.C. 511, 514, 753 S.E.2d 425, 426 (2014). So, while the Court applies rules of construction similar to those used to construe statutes (id.), legislative power is not plenary, and the Court has the responsibility to construe the Constitution and laws of the State “without concern for political or popular opinion.” Mims Amusement Co. v. S.C. Law Enf’t Div., 366 S.C. 141, 149, 621 S.E.2d 344, 348 (2005). For example, “[t]he Legislature may not abrogate the right to a jury trial simply by designating a proceeding as a civil action without a jury” (id.) because, unlike the code of laws, the Constitution provides a hard, non-negotiable floor for government action.

The provisions of the state constitution are not a grant but a limitation of legislative power, so that the Legislature may enact any law not expressly, or by clear implication, prohibited by the state or federal constitution.

Segars-Andrews v. Judicial Merit Selection Comm’n, 387 S.C. 109, 118, 691 S.E.2d 453, 458 (2010). So, while the Court was correctly concerned with legislative intent when it considered the statutory construction claim in Bailey, legislative intent only gets you so far here where the Court must consider the prerogative of a far greater power: the people’s exercise of the franchise. Here, current election procedures violate the Constitution during the COVID-19 pandemic.

Second, when the Court dismissed Bailey there was a reasonable expectation the pandemic might recede, or that the General Assembly would act to safeguard the November general election. *Neither* assumption has proven true. As Petitioners’ proposed complaint explains, the State remains in a state of emergency and the coronavirus continues to rage unimpeded across this State and much of the Nation. See Ex. A ¶¶ 9–38. Likewise, the window for meaningful legislative action has closed. On June 24, 2020, the House tabled two amendments that would have extended the same protections voters in the June statewide primary received to voters in November. Ex. A ¶¶ 84. House and Senate leadership claim they will not return until September (id. ¶¶ 85–87),

which will be too late. See id. at Ex. 6 p. 4 (urging “immediate action”). So, while the Court might have reasonably assumed when it decided Bailey on May 27, 2020 that judicial intervention was unnecessary because legislative action would soon follow, that did not and will not happen.

Third, because elections are the vehicle through which the people call the political branches to account, the Court cannot ignore an existential threat to elections or free and open participation by individual voters in them. This distinction sets this claim apart from Bailey, where, for example, the Court could have simply (and reasonably) dispensed with the statutory construction claim by answering “no”—the disability exception does not include persons attempting to maintain physical distance during the pandemic—and left it to the legislature to decide what to do with that construction. But here the individual, constitutional right to free, open, and safe elections is what is at stake and current election procedures are at odds with that right. In Callison v. Peeples, 102 S.C. 256, 86 S.E. 635 (1915), the Court said requirements during elections must be “strictly followed” and rejected the contention that the General Assembly’s failure to make provisions for the disenfranchised electors relieved the Court from hearing the case:

The contention that the act of the General Assembly made no provision for electors situate as these were is not sufficient to warrant the court in dismissing their application for protection; for the General Assembly can no more deprive them of their constitutional rights than the proponents of the new county. It makes no difference how or why they were deprived of the right, unless, of course, they themselves were responsible for it. The fact that they were deprived of the right to vote goes to the legality of the election, and its validity depends upon the determination of what part of the electorate so deprived of the right would be necessary to render the election void.

Id. at 256, 86 S.E. at 637. Likewise, current law disenfranchises voters like Petitioners; whether the General Assembly intended that be the case is immaterial to the Court’s obligation to vindicate this most important individual right. Indeed, because the right to vote is so fundamental it cannot be left abridged without disrupting our system of ordered liberty. Recently, the Court dismissed

an original jurisdiction matter on standing grounds and encouraged the plaintiffs to seek relief through legislative and executive action and, if relief was not forthcoming, to seek it “at the ballot box.” Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n, 407 S.C. 67, 81, 753 S.E.2d 846, 853 (2014). But the distinction drawn here, where the risk to sick and vulnerable voters refuses them the ballot itself, threatens voters’ ability to obtain redress and call the political branches to account. These barriers to the franchise frustrate the practice of ordinary politics as an available means to settle disagreements and place this action outside the scope of many others, like Carnival Corp., where the Court might otherwise reasonably defer. Thus, the better view is that this action is simply different in kind from the statutory construction claim in Bailey.

Fourth, if necessary, the Court should conclude Bailey was wrongly decided when it said that “[a]s for elections after July 1, 2020, we hold that whether any change should be made to the law is a political question for the Legislature likewise to answer.” Bailey, 2020 WL at \*3. This conclusion misapprehends the political question doctrine. “[T]he action or inaction of the General Assembly does not determine whether a question is political, and therefore, nonjusticiable.” Bailey, 2020 WL at \*5 (Hearn, J, dissenting). A true “political question” is not one that touches on some aspect of politics or elections, but a dispute where the resolution is left to another branch of government. For example, whether to punish or expel a member of the legislature is a political question. See S.C. CONST. art. III, § 12 (“Each house shall choose...”). Whether the Judicial Merit Selection Commission properly evaluated a judicial candidate is a political question. S.C. Pub. Interest Found. v. Judicial Merit Selection Comm’n, 369 S.C. 139, 632 S.E.2d 277 (2006). Thus, properly understood, “[t]he nonjusticiability of a political question is primarily a function of the separation of powers.” S.C. Pub. Interest Found. v. Judicial Merit Selection Comm’n, 369 S.C. 139, 142, 632 S.E.2d 277, 278 (2006) (citing Baker v. Carr, 369 U.S. 186, 210–11 (1962)); Segars-

Andrews, 387 S.C. at 121, 691 S.E.2d at 460 (same). Applying this framework, the mere fact that legislative action has or could occur has no bearing on whether the Court should hear a case, nor does the fact that the underlying matter concerns politics or elections.

But that is precisely what the Court concluded in Bailey, which cannot be followed without causing irreparable harm to the Court's power to declare the law. The novel doctrine announced in that case will be an endless source of mischief and confusion leading to repeated claims that the pendency of this bill or that bill in the legislature is suddenly cause for the Court to cede its obligation to declare what the law presently requires. This is not to say the General Assembly cannot abrogate a decision of the Court with legislation (provided doing so does not offend the Constitution); certainly, it can. But a rule that requires abstention based solely on the possibility of legislative action is not only an unworkable standard to apply but one that diminishes the Court's power as a co-equal branch. Indeed, a better frame to explain the Court's decision in Bailey is not the political question doctrine, but the simple exercise of comity to a co-equal branch. The Court explained its decision not to construe the absentee statute by stating:

Statutory interpretation is certainly a judicial question, but when the Legislature considers the very same question—knowing it is doing so at the very same time the Court considers the question—and answers the question with clarity, we cannot give a different answer through the judicial act of statutory interpretation. We may do so only by the political act of simply disagreeing. This Court will not do it.

Bailey, 2020 WL at \*3. This reasoning is correct to the extent it sought to afford the legislature the first opportunity to act. But comity is a matter of discretion, not jurisdiction. This claim seeks free and open elections secure from tumult as guaranteed under the Constitution. The Court is the ultimate guardian of that individual constitutional right. The political question doctrine is intended to preserve the separation of powers, not disrupt them. If the Court finds Bailey unavoidable here, it should not be followed as precedent.

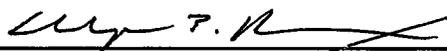
## CONCLUSION

Current election procedures will disenfranchise Petitioners alongside tens of thousands of other sick and vulnerable voters who are only eligible to cast an in-person ballot on election day in November. This will put tremendous, possibly insurmountable strain on an election system with too few workers and polls and inadequate procedures. No voter—sick or otherwise—should be forced to weigh their personal health and safety against exercise of the franchise. Nor should we accept the chaos that will ensue from the tragic maladministration caused by an overwhelmed election system unable to perform under the stresses and strains of the COVID-19 pandemic. Fortunately, there is still time to act and a clear roadmap for solving this problem that relies on the expertise of election officials.

This petition for original jurisdiction should be granted along with leave to Petitioners to file their proposed complaint. The Court should shorten Defendants' time to respond and expedite discovery (if necessary), briefing, and a decision. Declaratory and injunctive relief is warranted. The Court should hold current election procedures violate article I, § 5 and article II, § 1 of the South Carolina Constitution and then order the South Carolina Election Commission to pursue the nine remedial actions outlined in the executive director's correspondence to Defendants (Ex. A at Ex. 6) along with any such further election procedures as are feasible, necessary, just, and proper to conduct a free, and open election secure from tumult.

[signature page follows]

Respectfully submitted by,



Christopher P. Kenney (SC Bar No. 100147)  
RICHARD A. HARPOOTLIAN, P.A.  
1410 Laurel Street (29201)  
Post Office Box 1090  
Columbia, SC 29202  
(803) 252-4848  
(803) 252-4810 (facsimile)  
cpk@harpootlianlaw.com

Shaundra Young Scott (SC Bar No. 75374)  
SOUTH CAROLINA DEMOCRATIC PARTY  
1929 Gadsden Street  
Columbia, SC 29201  
(803) 799-7798  
shaundra@scdp.org

ATTORNEYS FOR PETITIONERS  
REGINA DUGGINS AND  
CHAUNTA R. HAMILTON

July 31, 2020  
Columbia, South Carolina.

Duggins v. Lucas, No. 20-\_\_\_\_ (S.C.)  
Petitioners' proposed complaint

# **Exhibit A**

(Petitioners' proposed complaint)

**IN THE ORIGINAL JURISDICTION  
OF THE SOUTH CAROLINA SUPREME COURT**

Regina Duggins and Chaunta R. Hamilton,

Plaintiffs,

v.

Jay Lucas, in his capacity as Speaker of the  
House of Representatives and Harvey Peeler,  
in his capacity as President of the Senate,

Defendants,

And

South Carolina Election Commission,

Nominal Defendant.

No. \_\_\_\_\_

**[PROPOSED]  
COMPLAINT**

Plaintiffs Regina Duggins and Chaunta R. Hamilton are citizens and voters of this State with underlying health conditions that cause them to suffer a higher risk of catching a severe case of COVID-19. They are afraid to vote during the rapidly approaching general election based on existing election procedures. They bring this action under the South Carolina Constitution for a declaration that election procedures for the general election set for Tuesday, November 3, 2020, will disenfranchise them and deny them participation in a free and open election with provisions sufficient to ensure its integrity and to secure it from the tumult caused by the raging coronavirus pandemic that threatens both the conduct of the election and individual voters forced to choose between their personal health and safety and exercise of the franchise.

Repeated warnings from election officials like Nominal Defendant South Carolina Election Commission have gone unheeded and any further delay in resolving this matter will all but ensure elections fail come November. Time is of the essence.

The first principle of this government is that *all* political power is vested in and derived from the people and the people have the right to change their government at all times. See S.C. CONST. art. I, § 1. As set forth more fully below, current election procedures threaten the very integrity of the November general election and promises that those procedures *might* change as a result of legislative action in September will be too little too late. Without intervention by the Court now there will be shortages of election workers unwilling to expose themselves to the coronavirus. Those shortages will cause election officials to consolidate precincts, thus forcing more voters into fewer polling locations, resulting in longer lines, and placing Plaintiffs and a large number of other South Carolina voters at even greater personal risk. Simply put, current law will not provide for a free and open election secure from tumult as guaranteed article I, § 5 and article II, § 1 of the South Carolina Constitution and the Court should enjoin current procedures and order a remedy to protect Petitioners' rights. Plaintiffs would respectfully show this Honorable Court as follows:

### **JURISDICTION**

1. The Court has subject matter jurisdiction under article V, § 5 of the South Carolina Constitution and personal jurisdiction over all Defendants.

### **PARTIES**

2. Plaintiff Regina Duggins is a citizen of the State of South Carolina, a resident of Charleston County, and a registered voter. See Duggins Aff. ¶¶ 2, 5 (**Exhibit 1**). Duggins was diagnosed with asthma as a child. Id. ¶ 6. In 2018, she was hospitalized for Aspirin Exacerbated Respiratory Disease (AERD), which she treats with three different inhalers to aid her breathing. Id. Her weight also puts her at a higher risk to suffer from severe complications were she to contract COVID-19. Id. ¶ 6. She is just 43 years old and takes extraordinary daily measures to ensure she

does not contract the virus. See id. ¶¶ 3, 7. She is fearful about participating in the November general election. Id. ¶ 9.

3. Plaintiff Chaunta R. Hamilton is a citizen of the State of South Carolina, a resident of Berkeley County, and a registered voter. See Hamilton Aff. ¶¶ 2, 5 (**Exhibit 2**). Hamilton has been diagnosed with End-Stage Renal Disease, which requires her to undergo dialysis treatment three times per week until she receives a kidney transplant. Id. ¶ 6. Accordingly, she has taken extraordinary precautions to avoid contracting COVID-19. See id. ¶ 7. Without expanded ballot access for the November general election, she will be unable to vote for fear of contracting COVID-19. See id. ¶ 9.

4. Defendant Jay Lucas is the Speaker of the House of Representatives.

5. Defendant Harvey Peeler is the President of the Senate.

6. Nominal Defendant South Carolina Election Commission (Election Commission) is an agency of the State of South Carolina responsible for planning and executing elections and assisting local election commissions in doing the same. The Election Commission has consistently and repeatedly warned of the need to act to protect election workers and voters and ensure the successful conduct of the general election during the COVID-19 pandemic. It is joined here as a party necessary to grant complete relief.

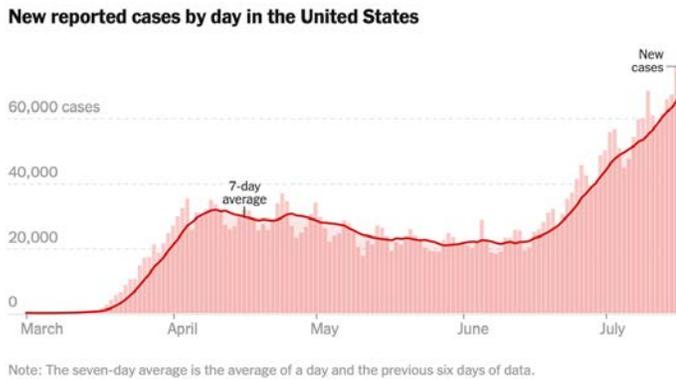
## **FACTS**

7. Generally speaking, South Carolina voters are required to cast a ballot at the polls on election day unless they are absent from their county of residence or present but meet the criteria in an enumerated list of categories. See S.C. Code Ann. § 7-15-320. Absentee voting procedures permit either an early in-person ballot or a mail ballot. See id. § 7-15-330.

8. South Carolina remains in a state of emergency because of the COVID-19 pandemic. Without relief here, it is certain to have a deleterious effect on the free, open, and safe conduct of the November general election free of tumult by disrupting the State’s ability to conduct a successful election and discouraging participation by voters concerned about lines and crowds.

**The State of South Carolina and her citizens are in an escalating state of emergency due to the COVID-19 pandemic**

9. COVID-19 is a highly communicable respiratory disease caused by a novel coronavirus called SARS-CoV-2 that has spread across the world, including in the United States and South Carolina.



10. With few notable exceptions, the virus has spread unimpeded across the United States. For example, on July 17, 2020, the United States recorded a daily record of more than 75,000 new cases.

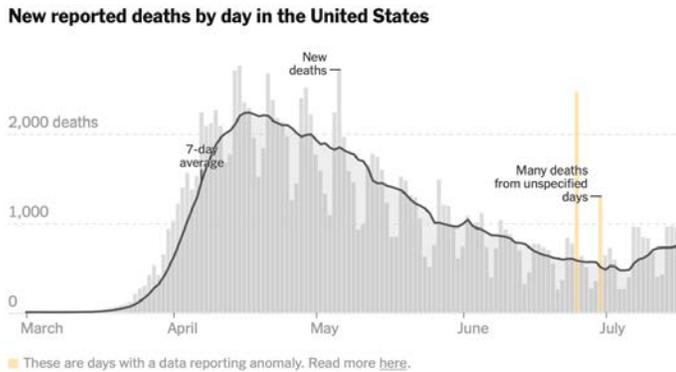


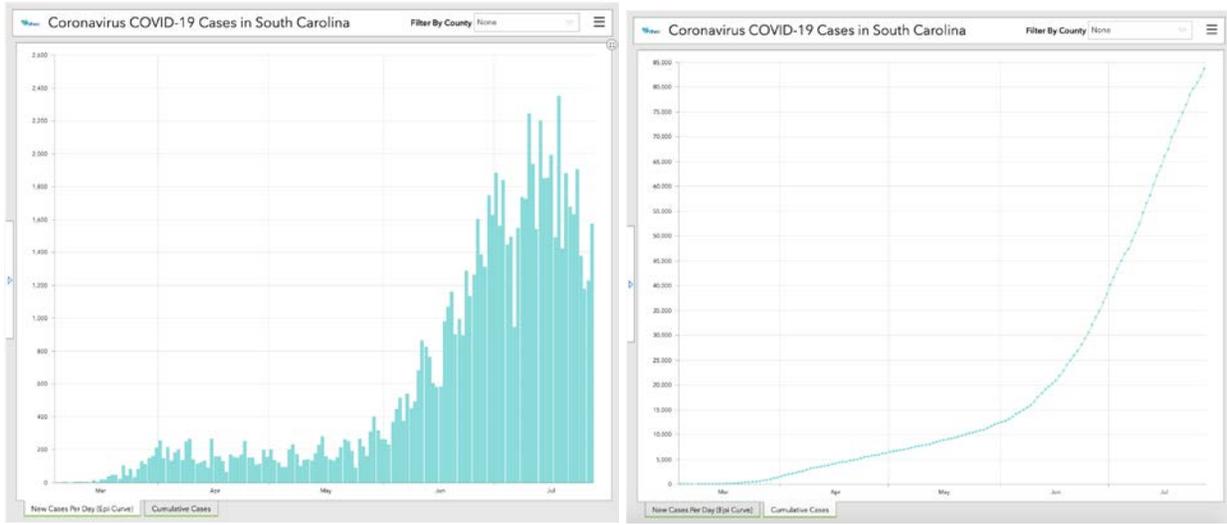
Figure 1 - “Coronavirus Live Updates: U.S. Shatters Single-Day Caseload,” N.Y. TIMES website (July 17, 2020).

11. South Carolina is likewise posting record numbers of new cases.

12. According to the South Carolina Department of Health and Environmental Control (DHEC), 82,071 South Carolinians have been infected with the virus and 1,452 have died as of July 28, 2020. See “SC Testing Data and Projections” SCDHEC website (July 28, 2020).<sup>1</sup>

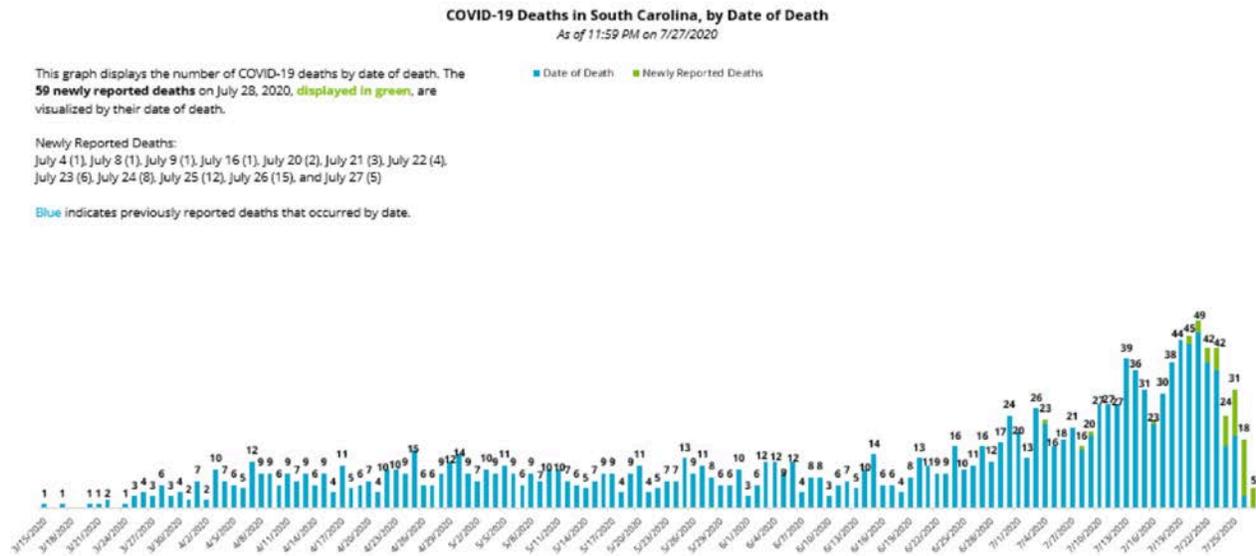
<sup>1</sup> Available at: <https://scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/sc-testing-data-projections-covid-19>

13. South Carolina’s daily and cumulative case load is growing largely unimpeded.



“SC Testing Data & Projections (COVID-19),” DHEC website (last accessed July 28, 2020).<sup>2</sup>

14. South Carolina deaths from COVID-19 have also sharply risen in recent weeks:

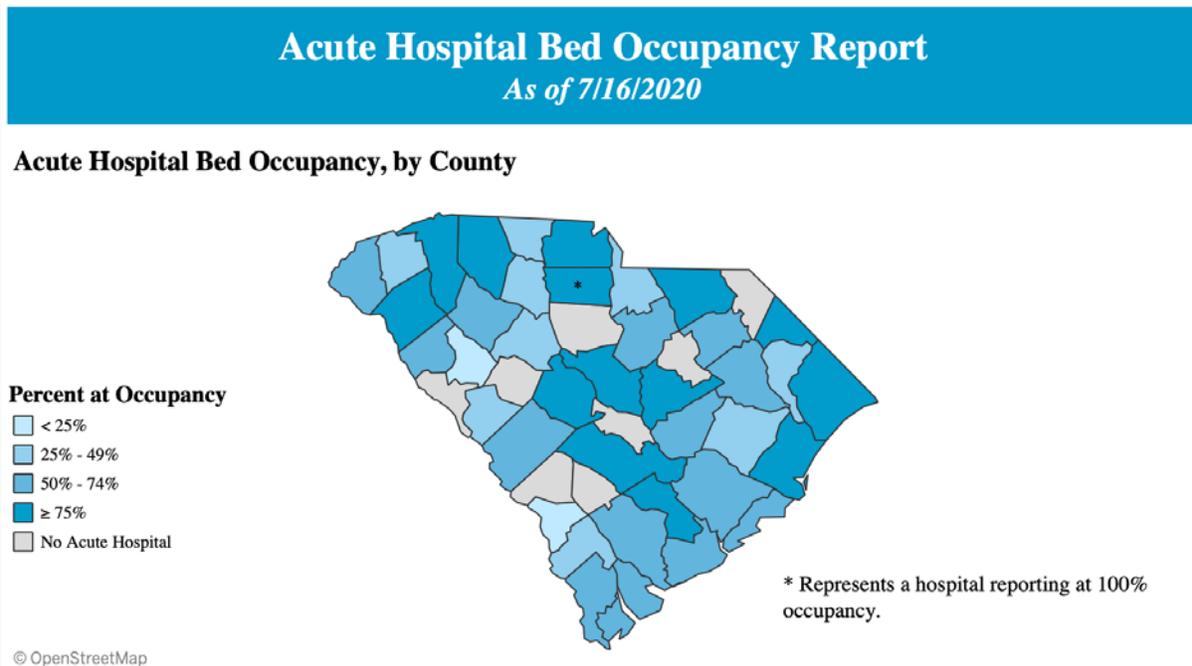


“COVID-19 Deaths in South Carolina by Date,” DHEC website (last accessed July 28, 2020).<sup>3</sup>

<sup>2</sup> Available at: <https://scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/sc-testing-data-projections-covid-19>

<sup>3</sup> Available at: <https://scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/sc-testing-data-projections-covid-19>

15. Also concerning is the occupancy of South Carolina hospitals which, once overrun by coronavirus cases, will be unable to provide life-saving care to all patients in need, leading to increased death among citizens that might otherwise be saved through medical intervention. While DHEC’s current hospital occupancy report suggests an improved landscape, disclaimers on the recent July 25, 2020 report indicate the agency’s reporting capacity is still “transitioning” to a new federal system. The last available public report not subject to these accuracy disclaimers indicates highly populated counties with caseloads already exceeding 75% of available capacity:



“Total Hospital Bed Occupancy (COVID-19),” DHEC website (accessed July 17, 2020).<sup>4</sup>

**The Executive and Judicial branches of State government have exercised emergency powers to marshal a response to the COVID-19 pandemic**

16. Beginning on March 13, 2020 and continuing uninterrupted through the present, Governor Henry McMaster has issued 31 executive orders, including nine emergency declarations

<sup>4</sup> Available at: <https://scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/hospital-bed-capacity-covid-19>

citing an “imminent” threat to public health or other risks posted by COVID-19 and marshaling a response using the State’s Public Health Plan Emergency Committee and South Carolina Emergency Operations Plan.

17. For example, the March 13, 2020 executive order (Ex. Order 2020-08):
  - a. Ordered DHEC to restrict visitation to nursing homes and assisted living facilities;
  - b. Closed all public schools in Kershaw and Lancaster counties;
  - c. Authorized jails and prisons to suspend visitation;
  - d. Activated the South Carolina National Guard;
  - e. Prohibited price gouging; and
  - f. And suspended certain regulations for security contractors and commercial vehicle operators.

See Ex. Order 2020-08 (citing S.C. Code Ann. §§ 1-3-420; 25-1-440; 44-4-130 & -500).

18. On March 15, 2020, the Governor issued an executive order closing all public schools for 14 days and postponing all March and April municipal elections. Ex. Order 2020-09.

19. On March 17, 2020, the Governor issued an executive order directing DHEC to use its powers under the Emergency Health Powers Act—a law that grants the department power to (1) close and decontaminate any facility deemed to pose a risk to public health; (2) ration and manage services by any health care facility; (3) test, treat, vaccinate, isolate, or quarantine individuals or groups; and (4) commandeer the assistance of in-state health care workers, among other emergency powers—to prevent transmission of the COVID-19 virus. Ex. Order 2020-10, § 2. The executive order also suspended on-premises restaurant service and prohibited public gatherings of more than 50 persons. Id. §§ 4–5.

20. March 19, 2020, the Governor issued an executive order directing non-essential State employees and staff to stay home and instructing the Department of Employment and Workforce (DEW) to prepare for and respond to the economic impact of the pandemic, among other measures. See Ex. Order 2020-11, §§ 1–2.

21. On March 27, 2020, the Governor ordered that individuals entering South Carolina from high risk areas quarantine for 14 days. See Ex. Order 2020-14, § 1.

22. On March 28, 2020, the Governor issued another emergency declaration that closed schools through April, among other directives. See Ex. Order 2020-15, § 2.

23. On March 30, 2020, the Governor used executive power to close beaches and waterways to recreation. See Ex. Order 2020-16.

24. On March 31 and April 3, 2020, the Governor issued orders closing non-essential businesses. See Ex. Order 2020-17 & -18; see also Ex. Order 2020-19 (April 3, 2020) (prohibiting lodging rentals to persons from CDC hot zones).

25. On April 6, 2020, the Governor ordered South Carolinians to restrict movement to home or work, “limit social interaction”, and “practice ‘social distancing’ in accordance with CDC guidance[.]” See Ex. Order 2020-21; see also Ex. Order 2020-22 (April 7, 2020) (instructing DEW to prepare to administer unemployment insurance program to address economic impact).

26. On April 16 and 20, 2020, the Governor modified restrictions on use of public water to facilitate outdoor recreation and exercise, while reaffirming the mandate to maintain social distance and continuing the ban on groups of three or more people. See Ex. Order 2020-25; Ex. Order 2020-28.

27. On May 3 and 8, 2020, the Governor modified the work-or-home order, rescheduled the postponed municipal elections, and lifted some of the restrictions on indoor restaurant service and boating. See Ex. Order 2020-31; Ex. Order 2020-33; Ex. Order 2020-34.

28. On May 12, 2020, the Governor issued a fifth emergency declaration and extended the closure of public schools. See Ex. Order 2020-35.

29. On May 15 and 21, 2020, the Governor lifted the close order on gyms, spas, salons, barber shops and entertainment venues while certain restrictions. See Ex. Order 2020-36; Ex. Order 2020-37.

30. On July 11, 2020, the Governor restricted the on-premises consumption of alcohol in bars and restaurants after 11:00 p.m. See Ex. Order 2020-45.

31. Starting on June 11, 2020 and again every two weeks thereafter, the Governor has issued new emergency declarations. See Ex. Order 2020-40 (sixth); Ex. Order 2020-42 (June 26, 2020) (seventh); Ex. Order 2020-44 (July 11, 2020) (eighth); Ex. Order 2020-48 (July 26, 2020) (ninth). There is no expectation the state of emergency will end anytime soon.

32. Likewise, the Judicial branch has used emergency powers to protect public health, issuing no less than 33 orders and memoranda since March 4, 2020 addressing various aspects of court operations during the pandemic. Many of these measures are specifically designed to limit the number of people gathering together indoors and out.

33. For example, on April 30, 2020, the Court lifted the moratorium on evictions and foreclosures but ordered that any in-person hearings “be staggered as not to create large gatherings of people.” In re Statewide Evictions and Foreclosures (Beatty, CJ). The Court also required “at least 30 minutes between the ending of a hearing and the beginning of another” in order to “reduce

the number of people at the court and allow any necessary cleaning of the facility.” Id. (advising, “In-person hearings are the exception not the rule.”).

34. Likewise, jury trials remain continued until further notice while circuit judges are directed to conduct virtual hearing whenever possible. See In re Operation of the Trial Courts During the Coronavirus Emergency, No 2020-000447 (amended Apr. 22, 2020); Court Operations During the Six Week Period, May 4 – June 12, 2020 (mem), (Apr. 24, 2020) (Beatty, CJ).

35. The appellate courts remain under an Order authorizing virtual oral argument, restricting the handling of paper document, and extending deadlines. See Am. Order, No. 2020-000447 (May 29, 2020).

36. On July 2, 2020, the Court issued an Order implementing mitigation measures for the South Carolina Bar Examination. Those mitigation measures, developed in consultation with DHEC, endeavor to make the indoor examination safer by (1) dramatically expanding the square footage of the facilities to ensure test takers are at least six feet apart; (2) separating test takers into four groups and staggering start and stop times; (3) ordering test takers to minimize contact and avoid public gatherings in the 14 days prior to the exam; (4) ordering test takers to wear a mask and social distance when in public; (5) ordering test takers traveling to South Carolina via plane, bus, or train to do so 14 days prior to the exam; (6) ordering test takers to wear a mask while taking the test or in common areas of the testing center; and ordering test takers to maintain social distance. In re COVID-19 Mitigation Measures for the July 2020 South Carolina Bar Examination.

37. The United States District Court for the District of South Carolina is under its third emergency order postponing jury trials, grand juries, and roster meetings. See Third Am. Standing Order, No. 3:20-mc-00326-RBH (D.S.C. July 24, 2020).

38. South Carolina's trajectory with COVID-19 is unlikely to materially change for the better in time for the November general election and could, in fact, be considerably worse.

**The pandemic threatens the health and safety  
of a large number of South Carolina voters**

39. The COVID-19 coronavirus affects public health in ways that directly impact the State's ability to conduct a safe, free, and open election and the risk of harm to individual voters.

40. COVID-19 is a respiratory infection that is caused by a new coronavirus called SARS-CoV-2. Aff. E. Smith ¶ 4 (**Exhibit 3**). Symptoms range from mild to severe. Id. ¶ 6. The majority of people infected only experience a mild or moderate case, while an estimated one in five patients endure a severe case that may require hospitalization. Id.

41. The largest study to date of COVID-19 patients with severe cases admitted to an intensive care unit (ICU) in a United States hospital found that 39.5% of those patients died. Id. ¶ 7. Current estimates expect between 500–780 people per 100,000 to die from COVID-19 infections (compared to between 1 and 10 deaths per 100,000 seasonal flu infections). Id. ¶ 5.

42. Everyone is at risk of getting COVID-19, but certain people are at higher risk of severe complications if infected. Id. ¶ 8. Older adults face increased risk of severe complications, as do people with underlying medical conditions, including (1) Type 2 diabetes mellitus; (2) obesity (body mass index [BMI] of 30 or higher); (3) chronic kidney disease; (4) chronic obstructive pulmonary disease (COPD); (5) immunocompromised state (weakened immune system) from solid organ transplant; (6) serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies; and (7) sickle cell disease. Id.

43. CDC recommends special precautions for other populations including people who are pregnant, disabled, and belong to racial and ethnic minority groups. Id. ¶ 9.

44. A significant portion of the population in South Carolina is at elevated risk for severe complications from COVID-19. Id. ¶ 10. According to 2017 data from DHEC, South Carolina has the fifth-highest prevalence of diabetes in the United States with more than 500,000 or 13.4% of the adult population afflicted. Id. ¶ 11. Of these, an estimated 127,000 people have diabetes but do not yet know it. Id.

45. According to CDC, more than one in three South Carolinians are obese. Id. ¶ 12.

46. According to recent data from the March of Dimes, nearly 1 million women of childbearing age (ages 15–44) live in South Carolina, and there are more than 57,000 births in the state each year. Id. ¶ 13.

47. COVID-19 is spread from persons to person in three ways: (1) droplet transmission, (2) aerosol transmission, and (3) fomite transmission. Id. ¶ 14.

48. Droplet transmission occurs when a sick person coughs or sneezes invisible, virus-filled droplets into the air and someone else inhales them. Id.

49. Aerosol transmission is virus spread through the air via saliva and mucus released during speech, coughing, or sneezing. Id. While droplets fall to the ground quickly, aerosol particles can travel farther in a room than larger droplets can and can float longer in the air. Id. A five-micron particle will travel more than 30 feet at typical indoor air velocity. Id.

50. Finally, fomite transmission occurs when droplets land on a surface and are transferred by touch to another person who then touches their mouth, nose, or eye, resulting in infection. Id. The virus can last from four to 24 hours on cardboard and up to three days on plastic and stainless-steel surfaces. Id.

51. There is clear evidence that persons infected with COVID-19 can spread the virus prior to showing symptoms—a phenomenon called pre-symptomatic transmission. Id. ¶ 15. Other

infected persons spread the disease without ever showing symptoms—a phenomenon called asymptomatic transmission. Id. ¶ 16. Pre- and asymptomatic transmission by unwitting persons makes it difficult to stop the spread of COVID-19. Id. ¶ 17.

52. According to Emily Smith, SCD MPH—an epidemiologist, Assistant Professor at the George Washington University Milken Institute of Public Health, and researcher at the Harvard T.H. Chan School of Public Health—in-person voting “will increase the risk that poll workers and voters will contract COVID-19.” Id. ¶ 18.

53. As recent CDC guidance acknowledges, “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.” Id. ¶ 19. Accordingly, CDC recommends reducing direct contact, minimizing the number of people at polling locations, and considering alternatives to in-person voting. Id.

54. Other prophylaxes (like masks) are secondary to strategies that allow voters to maintain physical distance from one another. As Dr. Smith explains,

COVID-19 mainly spreads from person to person, and in the ways described above. So, although well-documented precautions—such as wearing face coverings, social distancing, disinfecting surfaces, and washing hands thoroughly and often—are crucial, those precautions are secondary to avoiding crowds and unnecessary contact with others.

Id. ¶ 20.

55. Whether an activity is high or low risk for COVID-19 transmission turns on four factors: people, place, time, and space. Id. ¶ 21. Dr. Smith explains, “[i]n-person voting is a high-risk activity for all people because it necessarily gathers strangers together, indoors, and for potentially long stretches of time.” Id. ¶ 22.

56. There is no short-term prospect for a vaccine that would inoculate the majority of the population or a therapy that reliably combats the virus.

### **The pandemic threatens free and open elections secure from tumult**

57. State election officials are alarmed by the prospect that the COVID-19 pandemic will have a severe adverse impact on the November general election and warn that unless remedial action is taken now there will be insufficient time to implement those changes for November.

58. On March 30, 2020, the Executive Director of the South Carolina Election Commission (Election Commission), Marci Andino, sent correspondence to Governor McMaster, President Peeler, and Speaker Lucas urging the General Assembly to act in response to the rapidly approaching June statewide primary elections. See Ltr. Andino to McMaster et al. (**Exhibit 4**). Director Andino warned that as the coronavirus continued to spread, the Commission was “concerned about the safe conduct of the June Primaries, November General Election and all other elections scheduled for 2020.”

59. Director Andino warned that current election laws required large numbers of people to congregate at polling locations and a “large percentage” of the state’s poll managers fall into high-risk categories, such that there was likely to be a deficit in the number managers needed to staff polling locations. Id. at 1–2.

60. Director Andino asked state leaders to implement emergency changes to election procedures and offered a menu of options designed to facilitate physical distancing. See id. at 2–4 (“These potential solutions to conducting safe and secure elections in the midst of a pandemic are put forth in the spirit of identifying solutions that will enable the voters of South Carolina to continue to express their will through elections.”).

61. On April 6, 2020, the South Carolina Association of Registration and Election Officials, Inc. (SCARE) wrote the Governor and legislative leadership urging adoption of vote-by-mail procedures as the best method given the threat posed by COVID-19, the need to protect

voters and election workers, and the unavailability of sufficient polling locations and workers. See Ltr. K. Smith to H. McMaster et al. (**Exhibit 5**).

62. On May 12, 2020, the General Assembly passed Senate Bill 635, which extended no-excuse absentee voting to all South Carolina voters and provided funding to underwrite costs for protection of the health and safety of voters, poll workers, and county election officials. The legislature did not enact any remedy for the November general election.

63. The next day, the Governor signed the bill into law (Act 133) and statewide primary elections proceeded accordingly.

64. Meanwhile, two weeks prior to the June primaries, the United States District Court for the District of South Carolina suspended the witness requirement for mail-in absentee ballots for the primary and runoffs.

65. Together, these developments afforded all primary election voters the opportunity to cast a ballot while in self-isolation and quarantine.

66. On Tuesday, June 9, 2020, the State held the statewide primary election. Out of 3,329,755 registered voters, 767,187 voters cast primary ballots—a participation rate of 23 percent.

67. The election occurred in spite of an acute shortage of poll workers due principally to the fact that most poll workers are in an age or disease cohort most seriously at risk for a severe or fatal outcome were they to contract COVID-19 and were understandably unwilling willing to risk the exposure.

68. On July 17, 2020, Director Andino sent correspondence to President Peeler and Speaker Lucas again imploring action and “underscore[ing] serious concerns related to the safe and efficient conduct of the November General Election.” See Ltr. Andino to Peeler & Lucas (**Exhibit 6**).

69. After reiterating her concerns that current election procedure require large numbers of people to congregate and that many poll managers in high-risk categories may decline to serve, Director Andino explained that county election officials are also struggling to find a sufficient number of available polling locations as owners and managers decline to open their facilities to the public due to concerns over the virus. Id. at 1.

70. The Election Commission has also identified other challenges to conducting the November general election that were either not present or not present to the same degree during the June statewide primary elections. For example, voter turnout and absentee voting during a general election are significantly higher than during a primary election. Director Andino explained, “[t]urnout in non-gubernatorial statewide primaries averages 18%, while turnout in presidential elections averages 71%.” Id. at 2. For a rough comparison, absentee voting in the June primaries increased 213% compared to the 2016 primaries (61,000 to 191,000), and absentee ballots cast by mail increased 370% (27,000 to 127,000). Id. “Prior to the pandemic, 27% of absentee voters voted by mail. In the 2020 Statewide Primaries, 66% voted by mail.” Id. Applying these numbers to the November general election would mean more than 1.6 million absentee ballots are likely to be cast in November with more than 1 million of these ballots cast by mail. Id.

71. Without changes now, this volume of mail-in ballots will overwhelm the State’s election infrastructure and cripple its ability to count votes within the statutory deadline to complete the count.

72. Based on these observations, the Election Commission raised the following concerns over the conduct of the November general election:

- The absentee-by-mail process will be overwhelmed and overrun if we have in place only the same rules and provisions in place in June. The opening and counting of absentee-by-mail ballots will require substantially more time to complete, and election results will be significantly delayed.

- With significantly more voters at the polls in November, social distancing at polling places will become far more difficult, and in some places, will be impossible.
- Poll manager shortages are expected to be more extreme. More managers will be needed than in June, and with the spread of COVID-19, more managers will be unavailable to serve.
- Polling place availability may also be impacted due to the spread of COVID-19.
- The resulting polling place consolidations will have a far greater impact on voter wait times with the increase in turnout.
- Increased wait times and fear of COVID-19 will cause unqualified voters to flood the curbside voting process at polling places interfering with its intended purpose of helping voters with disabilities.

Ex. 6 at 2–3. In short, “Poll manager shortages, inexperienced poll managers and lack of polling places leads to consolidation, crowding, long lines, confusion and errors on election day.” Id. at 1.

73. As she did in March, Director Andino offered a menu of procedures that could be implemented to ensure a safe and secure election. These proposals included (1) no-excuse absenteeism, (2) allowing absentee applications to be submitted online, (3) removing the witness requirement for absentee return envelopes, (4) permitting absentee return drop boxes, (5) granting additional time to count absentee ballots, (6) designating curbside voting locations, (7) expanding electronic ballot delivery (already used for military voters) to disabled voters and first responders, (8) enacting early voting, and (9) adopting vote-by-mail. See Ex. 6 at 3.

74. The director’s letter requested “immediate action” to ensure election officials have as much time as possible “to ensure we can rise to the greatest challenge to our election system our state has ever seen.” Id. at 4.

75. To facilitate expanded absentee balloting, the Election Commission has already committed to prepay postage for absentee ballot return envelopes.

76. But other work must happen quickly if it is going to prove efficacious, like training of poll workers, identifying new polling locations, and public education to inform the public of any changes to voting procedure.

77. On or about July 28, 2020, SCARE sent letter correspondence to the Governor, Defendant Peeler, and Defendant Lucas on behalf of local election directors and officials in South Carolina with an “imperative” message urging that these officials “cannot overstate the devastating consequences if the state of South Carolina does not plan now for the November election. Ltr. Smith & Cramer to McMaster, et al. (undated) (**Exhibit 7**). Specifically, SCARE urged implementation of (1) no-excuse absentee voting, (2) removing the witness signature requirement, (3) allowing counties to begin processing absentee ballots the Friday before the election, and (4) use of absentee drop boxes. Id.

78. An independent election watchdog agrees with the recommendations of State and local election administrators. In April, the National Task Force on Election Crises issued an election guide with the goal of maximizing participation, safeguarding election integrity, and upholding public confidence in the November election. See “COVID-19 Election Guide,” National Task Force on Election Crises, p. 2, electiontaskforce.org (Apr. 17, 2020) (**Exhibit 8**). The task force recommended easing access to absentee ballots, implementing COVID-excuse absentee voting, recruiting additional temporary personnel, improving absentee ballot processing, extending deadlines to return absentee ballots, recruiting additional poll workers, expanding early voting, maximizing safe poll access, and other safe voting precautions. See id. at 4–9. These measures largely comport with the procedures requested by State and local election officials.

**If the legislature acts act all, it will be too late**

79. The legislative record indicates the General Assembly will not act in time to allow election officials to implement changes sufficient to make voting safe and the administration of the election successful.

80. On April 22, 2020, an action styled Bailey v. South Carolina Election Commission, No. 2020-000642, was filed in the original jurisdiction urging the South Carolina Supreme Court to construe the right of persons with a “disability” to cast an absentee ballot under South Carolina Code § 7-15-320(B) to include voters attempting to maintain physical distance during the coronavirus pandemic.

81. On May 12, 2020, the same day the Court heard argument in Bailey, the legislature met and passed legislation extending absentee voting to all voters. See Bailey, 2020 WL 2745565 at \*2 (S.C. May 27, 2020); see also Act No. 133, § 2A, 2020 S.C. Acts \_\_\_. The General Assembly declined to extend those same protections to voters in November.

82. The Governor signed the bill the next day.

83. In late June, the General Assembly convened a brief session to pass a continuing resolution and appropriate coronavirus relief aid.

84. On June 24, 2020, the House of Representatives voted down two amendments that would extend the same protections afforded to voters during the June statewide primary to voters in the November general election. See S.C. House Journal (123<sup>rd</sup> Sess.) (June 24, 2020). Amendment No. 2A to H. 5202 proposed to permit a qualified elector to vote by absentee mail ballot without a witness during the 2020 general election. Amendment No. 6A proposed to allow any qualified elector to cast an absentee ballot, in person or by mail, during the 2020 general election. Both amendments were tabled.

85. At the time of the vote, a member of the South Carolina press corps reported that House leaders claimed they would consider the measures in September.

86. Similarly, on July 27, 2020, the leader of the minority party in the Senate sent correspondence to President Peeler urging him to call the Senate back in response to Director Andino's most recent letter.

87. On July 28, 2020, a member of the South Carolina press corps reported President Peeler was "sticking by" the plan to return in September.

88. This action followed.

**FOR A FIRST CAUSE OF ACTION  
(Declaratory Relief)**

89. Each of the paragraphs above is incorporated here verbatim.

90. "All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in th[e] Constitution shall have an equal right to elect officers and be elected to fill public office." S.C. CONST. art. I, § 5.

91. Article II of the South Carolina Constitution guarantees South Carolina citizens of majority age the right of suffrage.

92. "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 (emphasis added).

93. Accordingly, the Constitution tasks the General Assembly with regulating the time, place, and manner of elections and enacting other provisions necessary to the fulfillment and integrity of the election process. S.C. CONST. art. II, § 10.

94. Nevertheless, current election procedures are insufficient to secure the election from the tumult caused by the coronavirus pandemic or grant free and open access to the ballot to individual voters at the greatest risk of a severe case of COVID-19.

95. Moreover, if sick and vulnerable persons like Plaintiffs are to be granted safe, free, and open access to the ballot through the implementation of remedial election procedures, those procedures must be ordered now to ensure election officials to have sufficient time to implement them in order to conduct a successful election.

96. The Constitution does not permit the State to simply allow elections to fail.

97. Pursuant to article V, § 5 of the Constitution and the Uniform Declaratory Judgment Act, S.C. Code Ann. §§ 15-53-10 et seq., the Court should declare:

- a. Current election procedures are insufficient to provide for a safe, free, and open general election free of tumult;
- b. Defendants have not implemented such procedures and will not do so in time to conduct a successful election in November;
- c. Any further inaction will foreclose the possibility of any remedy by denying election officials an opportunity to plan and execute;
- d. Plaintiffs and other sick and vulnerable voters will suffer a real, cognizable, and irreparable constitutional harm if forced to choose between their personal health and safety and the right to vote; and
- e. Time is of the essence.

98. The Court should enter a final judgment declaring these rights in favor of Plaintiffs and against Defendants.

**FOR A SECOND CAUSE OF ACTION  
(Injunctive Relief)**

99. Each of the paragraphs above is incorporated here verbatim.

100. This Court is a co-equal branch of the South Carolina government charged with protecting the individual rights of the People.

101. The right of suffrage is paramount and because “[a]ll political power is vested in and derived from the people only, therefore, they have the right at all times to modify their form of government.” S.C. CONST. art. I, § 1.

102. Accordingly, the Court should exercise its power under article V, § 5 of the Constitution and South Carolina Code § 15-53-120, and order election procedures that guarantee a free and open election secure from the tumult being caused by the pandemic.

103. Specifically, the Court should order the plan outlined by the South Carolina Election Commission (see Ex. 6) and order it to implement and execute the following procedures: (1) no-excuse absenteeism, (2) online absentee applications, (3) eliminating the absentee witness requirement for return envelopes, (4) drop box absentee returns, (5) additional time for election officials to count absentee ballots, (6) designated curbside voting polling locations, (7) electronic ballot delivery (like the one used for military voters) to disabled voters and first responders, (8) early voting, and (9) vote-by-mail.

104. The Court should also order any such further procedures as the South Carolina Election Commission may recommend as feasible to implement and necessary to safeguard election workers and voters and conduct an orderly general election in November.

### **PRAYER**

105. Wherefore, after an expedited hearing, the Court should grant declaratory and injunctive relief as set forth above, retain jurisdiction to ensure its orders are followed, and grant such further relief as the Court deems just and proper.

[signature page follows]

Respectfully submitted by,

---

Christopher P. Kenney (SC Bar No. 100147)  
RICHARD A. HARPOOTLIAN, P.A.  
1410 Laurel Street (29201)  
Post Office Box 1090  
Columbia, SC 29202  
(803) 252-4848  
(803) 252-4810 (facsimile)  
cpk@harpootlianlaw.com

Shaundra Young Scott (SC Bar No. 75374)  
SOUTH CAROLINA DEMOCRATIC PARTY  
1929 Gadsden Street  
Columbia, SC 29201  
(803) 799-7798  
shaundra@scdp.org

ATTORNEYS FOR PLAINTIFFS  
REGINA DUGGINS AND  
CHAUNTA R. HAMILTON

\_\_\_\_\_, 2020  
Columbia, South Carolina.

Duggins v. Lucas, No. 20-\_\_\_\_ (S.C.)  
Petitioners' proposed complaint

# **Exhibit 1**

(Affidavit of Regina Duggins)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

**AFFIDAVIT OF  
REGINA DUGGINS**

I, Regina Duggins, hereby declare, aver, and affirm.

1. I am over the age of 18, of sound mind, have personal knowledge of the facts below, and can competently testify to their truth.
2. I currently reside at 3 Poplar Street Apt B Charleston, SC 29403 in Charleston. I have lived here since 2010.
3. I am 43. My birthday is April 30, 1977.
4. I am employed as a Reading Intervention teacher at Charleston Military Magnet School . I am currently working from home due to Covid-19.
5. I am registered to vote in Charleston County, South Carolina.
6. I have been diagnosed with asthma since I was a young child. On December 30, 2018 I was hospitalized for 5 days and diagnosed with AERD- Aspirin Exacerbated Respiratory Disease in which I was treated with steroids during that time. I am currently using 3 different inhalers to assist with my breathing. My weight also puts me at higher risk to suffer from severe complications if I contract Covid-19.
7. This condition has affected my life during Covid-19 pandemic in many ways. I have had to limit my access to outdoor activities, which affects my ability to complete tasks such as grocery shopping for my family and attending doctor's appointments. I am my family's only driver. I am responsible for their daily needs and appointments. I have had to change their appointments to later dates unless it's a severe situation. I have also chosen to pay my bills online versus in person. I am unable to visit close family members and friends due to the Covid-19

which has drastically changed my social interactions with people. Since the numbers have increased continuously in the last two weeks, my outings to restaurants, stores, and other engagements have become less or not occurring because I have to put my safety and as well as my 76 year old mother's health first.

8. I was able to vote during the June 9th Primary. I sent in an application to vote absentee by mail. I was unclear on when I would receive my ballot in the mail. Because of my unfamiliarity with the new statewide excuse absentee ballot process, I was nervous that I would not be able to receive my ballot and return it in time. I did not want to miss my opportunity to exercise my right to vote in the June 9, 2020 statewide primary election. Therefore, I voted in-person absentee. While I had to leave home, I was fortunate that I was able to qualify to vote in-person absentee under the statewide emergency absentee ballot expansion legislation that was passed.

9. I fear our current voting process for the November 2020 General Election. I don't feel comfortable going into buildings. I fear there will be long lines, people not adhering to the social distancing 6ft mandates, or properly wearing masks.

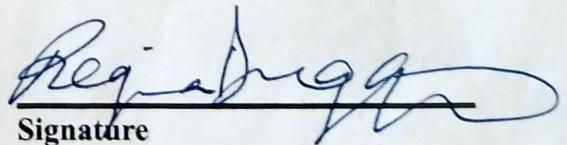
I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt. I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 30, 2020.

30<sup>th</sup> July 2020

LM Yeaton

My commission expires: July 15<sup>-2-</sup>, 2025

  
Signature

Duggins v. Lucas, No. 20-\_\_\_\_ (S.C.)  
Petitioners' proposed complaint

# **Exhibit 2**

(Affidavit of Chaunta R. Hamilton)

STATE OF SOUTH CAROLINA            )  
  )  
COUNTY OF BERKELEY                )

**AFFIDAVIT OF  
CHAUNTA R. HAMILTON**

I, Chaunta R. Hamilton, hereby declare, aver, and affirm.

1. I am over the age of 18, of sound mind, have personal knowledge of the facts below, and can competently testify to their truth.
2. I currently reside at 102 Musket Lane Summerville, SC 29486 in Berkeley County. I have lived here since March 26, 2020.
3. I am 39. My birthday is December 23, 1980.
4. I am currently unemployed.
5. I am registered to vote in Berkeley County, South Carolina.
6. I have been diagnosed with End-Stage Renal Disease. I undergo dialysis treatments three times per week. I will have to continue these treatments until such time I can receive a kidney transplant.
7. This condition has affected my life during Covid-19 pandemic in many ways. As a dialysis patient, I have had to take extreme precautions during times I am required to leave the house. When I do have to leave the house, I have to be accompanied by someone else to help ensure that I remain safe. I can no longer allow friends or family members over to my home. My family and I also take our temperatures upon entering our home in an effort to protect me from contracting Covid-19.
8. I was not able to vote during the June 9th Primary. I had to undergo a dialysis treatment on the day of the election. It was my intention to vote in-person after my treatment. However, I

was extremely ill and exhausted from the treatment. I was not aware of the absentee ballot expansion and that I qualified to vote absentee for the June 9, 2020 statewide general election.

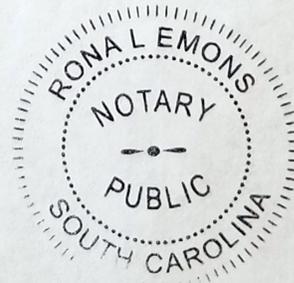
9. The numbers of people infected and dying with Covid-19 in South Carolina are rising. I am concerned that the numbers will continue to rise and I will be unable to vote. I understand now that the absentee expansion expired on July 1, 2020 and has not been extended to voters for the General Election as of now. If the statewide emergency expansion is extended to the General Election in November, I will be able to vote without fear of contracting Covid-19. I have to do everything I can to protect my health as I continue to wait for a kidney donor.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt. I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 30, 2020.

Chaunta R. Hamilton  
Signature

Notary  
Rona L Emons  
E x R 3-4-23



# **Exhibit 3**

(Affidavit of Emily R. Smith, SCD MPH)

**IN THE ORIGINAL JURISDICTION  
OF THE SOUTH CAROLINA SUPREME COURT**

Regina Duggins and Chaunta R. Hamilton,

Plaintiffs,

v.

Jay Lucas, in his capacity of Speaker of the  
House of Representatives and Harvey Peeler,  
in his capacity as President of the Senate,

Defendants,

And

South Carolina Election Commission,

Nominal-Defendant.

**AFFIDAVIT OF  
EMILY R. SMITH, SCD MPH**

1. My name is Emily R. Smith, and I am an epidemiologist and Assistant Professor at The George Washington University Milken Institute of Public Health. I also hold a research appointment at the Harvard T.H. Chan School of Public Health. I completed my undergraduate studies at Northwestern University and received a Master of Public Health from the Emory University Rollins School of Public Health. I earned my doctorate from the Department of Global Health and Population at the Harvard T.H. Chan School of Public Health, where I studied population health, epidemiologic methods, and infectious disease epidemiology.
2. I am the founder and Editor-in-Chief of COVID-101.org, a consortium of scientists and doctors focused on translating the science related to COVID-19 for the public.
3. I am over the age of 18, and I am competent and qualified to testify as follows.
4. COVID-19 is a respiratory infection that is caused by a new coronavirus. That novel coronavirus is called SARS-CoV-2.
5. According to current estimates, somewhere between 500-780 people per 100,000 COVID-19 infections will die of the disease (Source: [Meyerowitz-Katz 2020](#)). By comparison, between 1 and 10 people die for every 100,000 seasonal flu infections (Source: [Wong 2013](#)).
6. Symptoms of COVID-19 can range from mild to severe. The majority of people who are infected with the disease will experience a mild or moderate case, but an estimated one in

five patients will endure a severe case of COVID-19. Severe cases may require hospitalization.

7. The largest study to date of COVID-19 patients with severe cases—and who were admitted to an intensive care unit (“ICU”) in a United States hospital—found that 39.5% of those patients died. The mortality rates ranged from 15% of ICU-admitted younger people to 63% of ICU-admitted older people (Source: [Gupta 2020](#)).
8. Everyone is at risk of getting COVID-19. But certain people are at higher risk of experiencing severe complications if they are infected. Most notably, older adults face an increased risk of severe complications, as do people with underlying medical conditions, including:
  - Type 2 diabetes mellitus;
  - Obesity (body mass index [BMI] of 30 or higher);
  - Chronic kidney disease;
  - Chronic obstructive pulmonary disease (“COPD”);
  - Immunocompromised state (weakened immune system) from solid organ transplant;
  - Serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies; and
  - Sickle cell disease.
9. The Centers for Disease Control and Prevention (“CDC”) also recommends that certain other populations take special precautions. These populations include pregnant people, people with disabilities, and people belonging to racial and ethnic minority groups (Source: [CDC<sup>1</sup>](#)).
10. A significant portion of the population in South Carolina is at elevated risk for severe complications from COVID-19.
11. According to 2017 data from the South Carolina Department of Health and Environmental Control, the state has the fifth-highest prevalence of diabetes in the United States. More than 500,000 people in South Carolina—13.4% of the adult population—have diabetes (Source: [SCDEHC](#)). Of these, an estimated 127,000 people have diabetes but don’t yet know it. (Source: [American Diabetes Association](#)).
12. According to the CDC, more than one in three South Carolinians are obese (Source: Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Population Health. BRFSS Prevalence & Trends Data [online]. 2015. [accessed Jul 16, 2020]. URL: <https://www.cdc.gov/brfss/brfssprevalence/>.)

13. According to the most recent data from the March of Dimes, nearly 1 million women of childbearing age (ages 15-44) live in South Carolina, and there are more than 57,000 births in the state each year (Source: [March of Dimes 2016](#)).
14. Infectious diseases spread from person-to-person; they are the illnesses that you can “catch” from others. The novel coronavirus that causes COVID-19 (SARS-CoV-2) is thought to spread in three ways:
  - a. Droplet transmission: Droplet transmission occurs when a sick person coughs or sneezes invisible, virus-filled droplets into the air and someone else inhales them. Droplet transmission is defined by the larger particles that are expelled when you cough or sneeze. These larger particles don’t travel very far, and they fall from the air more quickly than smaller particles.
  - b. Aerosol transmission: Like droplet transmission, aerosol transmission means that the virus is spread through the air via saliva and mucus that is released when you speak, cough, or sneeze. Aerosol transmission is defined by particles smaller than five microns in diameter—one micron is one millionth of a meter. These smaller particles can travel farther in a room than larger droplets can, and they float in the air for longer. A five-micron particle will travel more than 30 feet at typical indoor air velocity (Source: [Morawska and Milton 2020](#) ).
  - c. Fomite transmission: When a sick person expels virus-filled droplets, they might land on a nearby surface. If another person touches this surface and then touches their mouth, nose, or eye, they could become sick with COVID-19. This virus (SARS-CoV-2) can last from four to twenty-four hours on cardboard and live for up to three days on plastic and stainless-steel surfaces (Source: [Van Doremalen 2020](#)).
15. We now have clear and consistent evidence that people spread COVID-19 before they even have symptoms. This is called pre-symptomatic transmission.
16. We also know that some people are infected and can spread the disease, but never show symptoms themselves. This is called asymptomatic transmission.
17. Pre-symptomatic and asymptomatic transmission are two big reasons why COVID-19 is so difficult to control. An infected person can pass the virus to their colleagues or the cashier at the store before they even know that they’re sick.
18. In-person voting will increase the risk that poll workers and voters will contract COVID-19. Recent CDC guidance specifically notes that: “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.”

19. As a result, CDC also notes that efforts to reduce direct contact and minimize the number of people at polling locations are critical to maintaining healthy election operations. The guidance specifically advises: “Consider offering alternatives to in-person voting if allowed in the jurisdiction.”
20. COVID-19 mainly spreads from person to person, and in the ways described above. So, although well-documented precautions—such as wearing face coverings, social distancing, disinfecting surfaces, and washing hands thoroughly and often—are crucial, those precautions are secondary to avoiding crowds and unnecessary contact with others.
21. When considering whether a specific activity is higher or lower risk for COVID-19 transmission, scientists commonly consider these four factors: a) people; b) place; c) time; and d) space.
  - a. People: Gathering with people outside of your household is riskier than avoiding contact with those people. And as more people gather together, the risk of COVID-19 transmission increases.
  - b. Place: Gathering indoors is riskier than gathering outdoors because the air indoors tends to be far more stagnant than outside. So, the virus lingers in the air for longer indoors.
  - c. Time: The more time people spend together, the higher their risk of transmission. The CDC considers a person to be “exposed” to COVID-19 when they spend a “prolonged period of time” with someone who has it. Although there is limited data as to the best definition of “prolonged exposure,” the CDC considers 15 minutes enough time for a person to be at increased risk for contracting COVID-19. This is true whether people are wearing face masks or not. (Source: [CDC](#)<sup>2</sup>)
  - d. Space: When people stand or sit closer together, the risk of COVID-19 transmission increases. Increasing the space between people reduces the risk of passing COVID-19 from one person to another. (Source: [Chu 2020](#))
22. In-person voting is a high-risk activity for all people because it necessarily gathers strangers together, indoors, and for potentially long stretches of time. Depending on specific polling locations’ size, layout, and voter turnout, social distancing might be difficult or impossible to achieve. So, in-person voting is high-risk across the metrics of people, place, and time, and almost certainly space, too.

[signature page follows]

**AFFIANT FURTHER SAYITH NOT.**

*Emily R. Smith*

**EMILY R. SMITH, SCD MPH**

**SWORN TO BEFORE ME**

This 30<sup>th</sup> day of July, 2020.

*Cori Tindle*

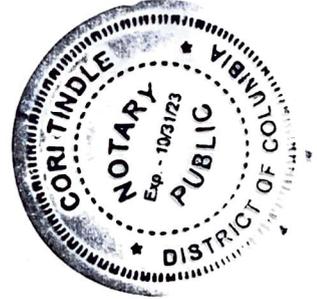
(signature)

*Cori Tindle*

(print name)

Notary Public for District of Columbia

My Commission Expires: 10/31/2023



## REFERENCES

Chu DK, Akl EA, Duda S, Solo K, Yaacoub S, Schünemann HJ, El-harakeh A, Bognanni A, Lotfi T, Loeb M, Hajizadeh A. Physical distancing, face masks, and eye protection to prevent person-to-person transmission of SARS-CoV-2 and COVID-19: a systematic review and meta-analysis. *The Lancet*. 2020 Jun 1.

CDC<sup>1</sup> Voting Considerations

<https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

CDC<sup>2</sup> Public Health Guidance for Community-Related Exposure

<https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

Gupta S, Hayek SS, Wang W, et al. Factors Associated With Death in Critically Ill Patients With Coronavirus Disease 2019 in the US. *JAMA Intern Med*. Published online July 15, 2020

Meyerowitz-Katz G, Merone L. A systematic review and meta-analysis of published research data on COVID-19 infection-fatality rates. medRxiv. 2020 Jan 1.

Morawska L, Milton DK. It is time to address airborne transmission of covid-19. *Clinical Infectious Diseases*. 2020 Jul 6.

Van Doremalen N, Bushmaker T, Morris DH, Holbrook MG, Gamble A, Williamson BN, Tamin A, Harcourt JL, Thornburg NJ, Gerber SI, Lloyd-Smith JO. [Aerosol and surface stability of SARS-CoV-2 as compared with SARS-CoV-1](#). *New England Journal of Medicine*. 2020 Apr 16;382(16):1564-7.

Wong JY, Heath Kelly DK, Wu JT, Leung GM, Cowling BJ. Case fatality risk of influenza A (H1N1pdm09): a systematic review. *Epidemiology (Cambridge, Mass.)*. 2013 Nov;24(6).

Yang W, Kandula S, Huynh M, Greene SK, Van Wye G, Li W, Chan HT, McGibbon E, Yeung A, Olson D, Fine A. Estimating the infection fatality risk of COVID-19 in New York City, March 1-May 16, 2020. medRxiv. 2020 Jan 1.

# **Exhibit 4**

(Ltr. Andino to McMaster et al. (March 30, 2020))

March 30, 2020

Honorable Henry D. McMaster  
Governor  
State of South Carolina  
State House  
1100 Gervais Street  
Columbia, SC 29201

Honorable Harvey Peeler, Jr.  
President of the Senate  
S.C. Senate  
POB 142  
Columbia, SC 29202

**COMMISSIONERS**

JOHN WELLS  
Chairperson

CLIFFORD J. EDLER

SCOTT MOSELEY

VACANT

VACANT

---

MARCI ANDINO  
Executive Director

---

1122 Lady Street  
Suite 500  
Columbia, SC 29201

P.O. Box 5987  
Columbia, SC 29250

803.734.9060  
Fax: 803.734.9366  
[www.sevotes.org](http://www.sevotes.org)

Honorable Jay Lucas  
Speaker of the House  
S.C. House of Representatives  
POB 11867  
Columbia, SC 29202

Dear Governor McMaster, Senator Peeler and Speaker Lucas:

As the state's chief election agency, the State Election Commission (SEC) is charged by law with supervising the conduct of voter registration and elections throughout the State. This includes ensuring county boards of voter registration and elections comply with federal law, state law, and SEC policies and procedures with regards to voter registration and elections. The SEC also maintains the statewide voter registration system, approves and supports the statewide voting system, conducts a training and certification program for local election officials, conducts candidate filing, and provides a candidate tracking system. However, no provision of state law provides the SEC with emergency powers with regards to the conduct of elections.

As the coronavirus continues to spread across South Carolina and the country, we are concerned about the safe conduct of the June Primaries, November General Election and all other elections scheduled for 2020. The main issue is that our elections, as currently prescribed by law, require large numbers of people to congregate in one place – something that everyone is currently being asked not to do by public safety and health officials. Compounding the issue is the fact that a large percentage of the state's poll managers fall into high risk categories, which

would likely lead to a deficit in the number of managers needed to staff polling places. Furthermore, we anticipate county election officials will likely experience issues with the availability of polling places as well as securing alternative polling places. It is likely that a number of facilities (schools, churches, etc.) will decline to continue being used as a polling place.

As currently defined by state law, voters have two options for casting a ballot: 1) in person at their polling place on election day, or 2) in person or by mail absentee voting. Election day voters at the polls present their identification, sign the poll list, and cast their ballot. To cast an absentee ballot, a voter with a qualifying reason must first request, complete, and return an application for an absentee ballot. The voter will then either vote in person or receive an absentee ballot by mail.

In order to safely and securely conduct elections during and following the coronavirus pandemic, we respectfully ask that sincere consideration be given to making emergency changes to our election process. There is no single or easy solution to protecting more than three million voters and election workers during or following a pandemic. The options outlined below represent proven methods used in other states to conduct elections. Some of the options would require careful planning and implementation, while others are easier to implement in a short timeframe.

- Absentee voting
  - Allow no excuse absentee voting
  - Allow applications for absentee ballots to be submitted electronically
  - Remove the witness requirement on ballot return envelopes
  - Allow voters with disabilities to use our existing electronic ballot delivery tool
  - Allow first responders and medical personnel to use our existing electronic ballot delivery tool
- Early voting and vote centers
- Vote by mail

### **Absentee Voting**

As voters look for ways to safely cast a ballot, we expect voters will likely avoid polling places and seek to vote absentee by mail. To qualify to vote absentee, the voter must fall into one of 18 categories, none of which include self-isolating due to a pandemic. Removing the requirement that a voter must fall into one of these

categories, i.e. “no excuse” absentee voting, would open the absentee process to all South Carolinians.

To vote absentee, a voter must first request an application. Usually, the application is mailed to the voter, the voter then completes it and returns it to election officials. This process is time consuming and is not designed to accommodate large numbers of voters. Allowing voters to submit absentee ballots requests online would streamline the absentee voting process for voters and election officials. Voters would simply apply online and receive their ballot in the mail.

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 election officials as they have no ability to verify the witness signature. Removing the requirement for a witness signature would remove a barrier many voters would likely encounter while in self-isolation.

Under current law, military and overseas citizens can access their ballot online through the SEC’s ballot delivery tool, mark it, print it and return it to election officials by mail, email or fax. Voters in these categories do not have to wait for their ballot to be sent to them and have additional options in returning their ballots. Like military and overseas citizens, first responders, medical personnel and voters with disabilities face unique barriers to accessing traditional voting methods. Expanding electronic ballot delivery and return to include these groups would help ensure they have access to the voting process.

### **Early Voting and Vote Centers**

Early voting is the process by which any voter can vote during a defined period prior to election day. Early voting can take place in designated early vote centers. The goal of early voting is to relieve congestion at polling places on election day by spreading out the voting process and to increase participation by providing voters with additional voting options. Early voting is currently used in 40 states.

### **Vote by Mail**

In most states that have enacted vote by mail, all registered voters are mailed a ballot prior to every election. The voter then mails the ballot back to election officials or drops the ballot off at a designated drop-off site. Some in-person voting locations would likely still be needed, particularly for voters who need the accessibility features of the ballot-marking devices.

Even before the coronavirus pandemic, elections officials were challenged with a significant increase in the number of absentee ballots. To reduce the burden, a bill (S867) was introduced to allow county election officials to begin the lengthy process of opening absentee ballots the day before the election. The bill also requires challenges of in-person absentee voters be made at the time the voter casts their ballot. These changes are designed to ensure election officials have the requisite time to process absentee ballots and deliver results on election night as voters expect. Facing an even larger increases in absentee voting due to coronavirus, the changes in this bill are now even more relevant and desperately needed. In fact, when the bill was written, the coronavirus was not a consideration, and the extra 24 hours provided to process ballots will now likely be insufficient. The bill has passed the Senate and resides in the House Election Laws Subcommittee. We ask the General Assembly to at least pass the current bill and to consider amending the bill to allow election officials to begin processing ballots even earlier.

These potential solutions to conducting safe and secure elections in the midst of a pandemic are put forth in the spirit of identifying solutions that will enable the voters of South Carolina to continue to express their will through elections. Allowing no-excuse absentee voting and online absentee requests are relatively simple changes, while implementation of early voting or vote by mail options are significantly more complicated and will require more time to implement. With that in mind, we respectfully ask that any actions under consideration be made as soon as possible so election officials have to as much time as possible to ensure South Carolina is ready for this year's elections.

Sincerely,



Marci Andino

/mba

Cc: Senator Hugh Leatherman, President Pro Tempore Emeritus  
Senator A. Shane Massey, Senate Majority Leader  
Senator Nikki G. Setzler, Senate Minority Leader  
Senator Luke Rankin, Chairman, Senate Judiciary  
Representative Thomas E. Pope, House Speaker Pro Tempore  
Representative J. Gary Simrill, House Majority Leader  
Representative J. Todd Rutherford, House Minority Leader  
Representative Peter McCoy, Chairman, House Judiciary  
Representative G. Murrell Smith, Jr., Chairman House Ways and Means

# **Exhibit 5**

(Ltr. Smith to McMaster et al. (April 6, 2020))



## South Carolina Association of Registration and Election Officials, Inc.

---

**KATY SMITH, CERA  
PRESIDENT  
EXECUTIVE COMMITTEE**

April 6, 2020

Honorable Henry D. McMaster  
Governor  
State of South Carolina  
State House  
1100 Gervais Street  
Columbia, SC 29201

Honorable Harvey Peeler, Jr.  
President of the Senate S.C.  
Senate  
POB 142  
Columbia, SC 29202

Honorable Jay Lucas  
Speaker of the House  
S.C. House of Representatives  
POB 11867  
Columbia, SC 29202

DELIVERY VIA EMAIL

Dear Governor McMaster, Senator Peeler and Speaker Lucas:

The South Carolina Association of Registration and Election Officials, Inc. (SCARE) Executive Committee has reviewed and discussed the recent letter sent by Marci Andino, Executive Director of the State Election Commission asking consideration "to making emergency changes to our election process" that included outlined methods used in other states to conduct elections. The committee believes that we should hold to our purpose "to review and promote legislation which will endorse the efficiency of the registration and election process in South Carolina" The committee feels that our weighing in by clearly voicing a position of support of the "voting by mail method" is the best voting method under the current health threats in our state; however, understanding that some components of the other proposed options are viable solutions that may be incorporated to help compose a complete workable plan and solution when conducting elections during and after a pandemic.

We have elections that have been postponed and other elections upon us that need our collective ideas, experiences, analysis, and consideration on how to conduct them efficiently under current and unknown threats. It is important that we are able to collectively come together to affect change in a timely manner in order to conduct elections in South Carolina that are not only open, transparent and fair, but also conducted in a way that minimizes risk of exposure to such threats as the current COVID-19 virus.



# South Carolina Association of Registration and Election Officials, Inc.

---

**KATY SMITH, CERA  
PRESIDENT  
EXECUTIVE COMMITTEE**

Governor McMaster, Senator Peeler and Speaker Lucas  
Page 2

We the executive committee have a moral obligation to make known our concerns regarding our elections process. We need a plan in place that protects our voters, staff, facility owners, communities, and poll managers in the midst and following a pandemic. Delaying or postponing elections should only be done to allow time for current conditions to improve, to provide time for proper planning, preparation, and ensure funding, but should not be considered the solution or that delaying addresses the concerns of public protection of health and safety when casting a ballot.

As a proactive approach the executive committee discussed the various options being proposed to conduct elections in the safest way possible. The determination was made that vote by mail is the best option considering this pandemic, but again, with the understanding that some components of the other proposed options are viable solutions that may be incorporated to help compose a complete workable plan and solution when conducting elections by mail.

Below are the reasons vote by mail is considered the best option:

- Health and safety of voter and poll managers.
- Unavailability of locations and poll managers.
- Vote by mail limits person to person contact while still allowing elections to continue uninterrupted.

According to the 2020 Care Act on page 250, it allows funding for states who have procedures and plans in place for vote by mail. It is important we move quickly to ensure that our counties have the time, resources, and funding to conduct the elections.

While we are still under a cloud of uncertainty regarding the COVID-19 pandemic what is known is that as Election Officials we are tasked with conducting elections, but with that responsibility lies an even higher responsibility of ensuring the safety and health of everyone participating in the election process in South Carolina.

---

**KATY SMITH, CERA  
PRESIDENT**

**MARIE S. SMALLS, CERA  
FIRST  
VICE PRESIDENT**

**TODD BILLMAN  
SECOND  
VICE PRESIDENT**

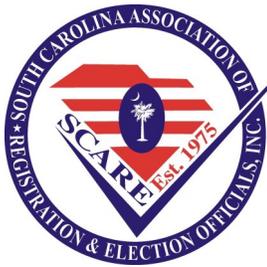
**JOE DEBNEY  
TREASURER**

**SHAYLA JENKINS  
SECRETARY**

**LYNNE WEST  
HISTORIAN**

**DAVID ALFORD  
IMMEDIATE  
PAST PRESIDENT**

---



## South Carolina Association of Registration and Election Officials, Inc.

---

**KATY SMITH, CERA  
PRESIDENT  
EXECUTIVE COMMITTEE**

Governor McMaster, Senator Peeler and Speaker Lucas  
Page 3

The Executive Committee takes a position of support of voting by mail in South Carolina in respect to any consideration to making emergency changes to our election process. Any thoughts, concerns, and comments may be emailed to the President of SCARE, Katy Smith at [ksmith@andersoncountysc.org](mailto:ksmith@andersoncountysc.org). All emails will then be forwarded to the Executive Committee members.

This position is put forth with great respect, as a solution is considered on how to conduct safe and secure elections in the midst of a pandemic. It is our hope that any actions under consideration be made as soon as possible to allow as much time as possible to ensure South Carolina is ready for this year's elections . Thank you in advance for your time and understanding.

---

**KATY SMITH, CERA  
PRESIDENT**

**MARIE S. SMALLS, CERA  
FIRST  
VICE PRESIDENT**

**TODD BILLMAN  
SECOND  
VICE PRESIDENT**

**JOE DEBNEY  
TREASURER**

**SHAYLA JENKINS  
SECRETARY**

**LYNNE WEST  
HISTORIAN**

**DAVID ALFORD  
IMMEDIATE  
PAST PRESIDENT**

---

Sincerely,

Katy Smith, CERA  
President

# **Exhibit 6**

(Ltr. Andino to Peeler & Lucas (July 17, 2020))

July 17, 2020

Honorable Harvey Peeler, Jr.  
President of the Senate  
S.C. Senate  
POB 142  
Columbia, SC 29202

Honorable Jay Lucas  
Speaker of the House  
S.C. House of Representatives  
POB 11867  
Columbia, SC 29202

**COMMISSIONERS**

JOHN WELLS  
Chairperson

JOANNE DAY

CLIFFORD J. EDLER

LINDA MCCALL

SCOTT MOSELEY

Dear Senator Peeler and Speaker Lucas:

On March 30<sup>th</sup>, I sent a letter expressing concerns about the pandemic and its impact on the conduct of all elections scheduled for 2020. I am writing today to update you on our experience conducting the June Primaries and to underscore serious concerns related to the safe and efficient conduct of the November General Election.

As you know, conducting elections as currently prescribed by law requires large numbers of voters to congregate in one place – something public safety and health officials ask everyone to avoid in a pandemic. Compounding the issue, many poll managers fall into high-risk health categories and decline to serve. While new poll managers can be recruited, it is difficult to replace the years of experience that senior managers possess. County election officials also struggle with the availability of polling places as facility owners and managers decline to make places available in the pandemic. Poll manager shortages, inexperienced poll managers and lack of polling places leads to consolidation, crowding, long lines, confusion and errors on election day.

Prior to the June Primaries, changes to absentee voting laws and protective measures were implemented. In May, the General Assembly passed legislation allowing all qualified electors to vote absentee (for June elections only), the opening of absentee ballot return envelopes the day before the election, and in-person absentee voters to scan their ballots. Funding was also provided to underwrite costs for protection of the health and safety of voters, poll workers, and county election officials. Two weeks prior to the primaries, a federal court suspended the witness requirement for mail-in absentee ballots for the primary and runoffs only. This action gave voters the opportunity to cast their ballot in self-isolation and quarantine.

---

MARCI ANDINO  
Executive Director

1122 Lady Street  
Suite 500  
Columbia, SC 29201

P.O. Box 5987  
Columbia, SC 29250

803.734.9060  
Fax: 803.734.9366  
[www.sevotes.gov](http://www.sevotes.gov)

Extraordinary efforts by voters, poll managers and election officials led to successful primaries. While there were isolated issues, the primaries were successful overall as voters were able to vote in a timely and efficient manner, and election officials were able to count those votes and report totals on election night.

However, success in June does not necessarily translate to success in November. Voter turnout and absentee voting in a General Election are significantly higher than in primaries. Even under normal circumstances, presidential elections are the ultimate test of any state's election process. With the unique and unprecedented challenges of the pandemic, additional actions are necessary to ensure a safe and efficient election process in November.

Turnout in non-gubernatorial statewide primaries averages 18%, while turnout in presidential elections averages 71%. While direct comparisons are not particularly useful, it is instructive to examine the changes to the statewide voting dynamic in June and project those numbers to November.

Absentee voting in the June Primaries increased by 213% compared to the 2016 Statewide Primaries (61,000 to 191,000). Absentee ballots cast by mail increased 370% (27,000 to 127,000) as the preferred method of absentee voting shifted from absentee in person to absentee by mail. Prior to the pandemic, 27% of absentee voters voted by mail. In the 2020 Statewide Primaries, 66% voted by mail.

Applying the overall increases in absentee voting and absentee by mail to the General Election produce a dramatic increase in absentee voting and a shift in the way absentee ballots are cast. If absentee voting increases by 213% over the 2016 General Election, more than 1.6 million absentee ballots will be cast in November. If voters choose by mail at the same rate as June, more than 1 million of those ballots will be cast by mail.

Based on the experiences of state and county election officials conducting the June primaries and the projections for the General Election, we have the following concerns:

- The absentee-by-mail process will be overwhelmed and overrun if we have in place only the same rules and provisions in place in June. The opening and counting of absentee-by-mail ballots will require substantially more time to complete, and election results will be significantly delayed.
- With significantly more voters at the polls in November, social distancing at polling places will become far more difficult, and in some places, will be impossible.
- Poll manager shortages are expected to be more extreme. More managers will be needed than in June, and with the spread of COVID-19, more managers will be unavailable to serve.

- Polling place availability may also be impacted due to the spread of COVID-19.
- The resulting polling place consolidations will have a far greater impact on voter wait times with the increase in turnout.
- Increased wait times and fear of COVID-19 will cause unqualified voters to flood the curbside voting process at polling places interfering with its intended purpose of helping voters with disabilities.

Based on our experiences conducting the June primaries, we respectfully recommend the following emergency changes to our election process be made in order to safely and securely conduct the 2020 General Election during the COVID-19 pandemic:

- Reinstate the “state of emergency” reason allowing every voter the option to vote absentee.
- Allow voters to apply for an absentee ballot online.
- Remove the witness requirement for absentee return envelopes.
- Allow use of drop boxes for return of absentee ballots.
- Provide election officials with more time to process absentee-by-mail ballots or extend the date in which counties must certify the results of the election.
- Allow curbside voting to take place at designated locations instead of every at polling place.

The General Assembly could consider additional solutions that have proven to be successful in many other states:

- Allow voters with disabilities, first responders and medical personnel to use the existing electronic ballot delivery tool currently used by military and overseas citizens.
- Early voting would provide voters with an additional option, relieve congestion at polling places, reduce wait times, and relieve stress on the absentee-by-mail process.
- Vote-by-mail programs are becoming more popular as an alternative to voting in person, although there may not be enough time to implement this prior to November.

The six recommendations listed above for conducting safe and secure elections in the midst of a pandemic are put forth in the spirit of implementing solutions that will enable the voters of South Carolina to continue to express their will through elections despite

Senator Peeler and Speaker Lucas  
Page 4

the overwhelming challenges. With that in mind, we respectfully ask that immediate action be taken so election officials have as much time as possible to ensure we can rise to the greatest challenge to our election system our state has even seen.

Sincerely,



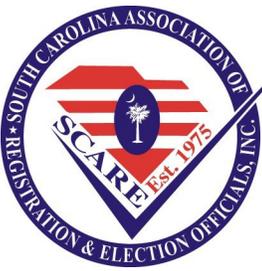
Marci Andino

/mba

Cc: Governor Henry D. McMaster  
Senator Hugh Leatherman, President Pro Tempore Emeritus  
Senator A. Shane Massey, Senate Majority Leader  
Senator Nikki G. Setzler, Senate Minority Leader  
Senator Luke Rankin, Chairman, Senate Judiciary  
Representative Thomas E. Pope, House Speaker Pro Tempore  
Representative J. Gary Simrill, House Majority Leader  
Representative J. Todd Rutherford, House Minority Leader  
Representative Mandy Powers Norrell, First Vice Chair, House Judiciary  
Representative G. Murrell Smith, Jr., Chairman House Ways and Means  
John Wells, Chairman, State Election Commission

# **Exhibit 7**

(Ltr. Smith & Cramer to McMaster et al. (undated))



# South Carolina Association of Registration and Election Officials, Inc.

---

ISAAC CRAMER  
CHAIRMAN  
LEGISLATIVE COMMITTEE

Dear Governor McMaster, Senator Peeler, and Speaker Lucas:

On behalf of local election directors and officials in South Carolina, we are writing to communicate what we believe is imperative for all future elections.

**Specifically, we cannot overstate the devastating consequences if the state of South Carolina does not plan now for the November election.**

The following items are what we recommend for the conduct of elections in November:

- 1) No Excuse Absentee Voting
- 2) Remove the witness signature requirement
- 3) Allow counties to process ballots beginning the Friday before the election
- 4) Allow for the use of absentee ballot drop boxes

---

KATY SMITH, CERA  
PRESIDENT

MARIE S. SMALLS, CERA  
FIRST  
VICE PRESIDENT

TODD BILLMAN  
SECOND  
VICE PRESIDENT

JOE DEBNEY  
TREASURER

SHAYLA JENKINS  
SECRETARY

LYNNE WEST  
HISTORIAN

DAVID ALFORD  
IMMEDIATE  
PAST PRESIDENT

---

## No Excuse Absentee Voting

Due to the current pandemic, No Excuse Absentee voting is more important than ever. In the recent June Primary, the legislature expanded absentee voting for all voters—creating an unprecedented number of absentee ballots. Based on our success and experience during the Primary Election, all voters should have the option to vote absentee by mail for the General Election. Addressing this decision now ensures that voters will have ample time to request and receive absentee ballots in a timely manner.

After conducting the 2020 Primary Elections, the resounding sentiment from election officials was that we need ample time to adjust and implement changes because of COVID-19. Usually by mail absentee voting accounts for 30% of the overall absentee vote. But this year we saw a 370 % increase—66% of ballots were cast by mail in the June Primary. This development required us to be prepared for a level of mail never seen in South Carolina.

Across South Carolina, numerous counties faced presidential election-like numbers in a compressed timeline, frustrating voters and making it increasingly difficult to mail and process applications in a timely manner. Advising the public that No Excuse Absentee Voting is available would allow voters to feel safer during this hectic time, as well as giving county officials time to prepare for the increase of absentee applications and ballots.

Furthermore, many voters are now confused about absentee voting because they were allowed to vote without an excuse in June. Almost daily, we receive absentee voting applications which have “Due to the Coronavirus” written by the voter as an excuse. We strongly advocate for eliminating the 17 reasons to vote absentee and giving ALL voters the ability to vote absentee. At the very least, we are in favor of adding a reason to vote absentee due to the “state of emergency.” Expanding the option to vote absentee to all will ensure our voters stay safe during any pandemic or natural disaster.

### **Remove the witness signature requirement**

Removing the witness signature requirement has been a priority of SCARE's. Regardless of voting in a pandemic or not, the witness requirement provides no safeguard other than punishing voters who are otherwise eligible to vote. While we can validate a voter's signature in the voter registration database, there is no way to validate a witness signature. Moreover, many voters are struggling to cope with the idea that they must find someone else to sign their ballot while sticking to social distancing requirements. A large portion of our voters are older than 65, and they are at high risk for COVID-19. There should be no barriers to voting, but the witness signature requirement forces voters to risk their health to participate in an election.

We advise not waiting for a judge to make a determination days before the election. When Judge Michelle Childs made her ruling on May 26<sup>th</sup>, counties across South Carolina had to scramble to reprint materials to notify voters that witness signatures were no longer required.

### **Allow Counties to Process Ballots Beginning the Friday before the election**

We cannot thank the legislature and governor enough for allowing counties to open outer envelopes the day before the election. However, based on our experience in June, there is still not enough time. Counties can only open the outer envelope (25% of the actual process) the day before the election, leaving them to open the "ballot here in" envelope, unfold the ballot, tear each stub from the ballot, and begin to flatten the ballots on Election Day. And even after all the ballots are opened and flattened, high-speed scanners can only scan roughly 50 ballots per minute.

In one example from June 8<sup>th</sup>, the day before the Primary, removing the outer envelope of approximately 3,000 ballots took six hours. On Tuesday morning it took 7 ½ hours for the election workers to complete the process of opening the "ballot here-in," removing the ballot, tearing the stub, flattening the ballot, and reading them into the scanner for tabulating. Based on the numbers from June, we expect the number of absentee ballots to either double or triple in November. In the 2016 General Election this county had over 14,000 absentee ballots. For 2020, simply doubling the number of absentee ballots would severely delay elections results.

We believe election officials need more time to start the processing of absentee ballots. While it was a needed change, the current law has only increased our efficiency by 25%. Therefore, we propose allowing each county to begin opening the outer envelope on Friday, and then allowing them to begin processing absentee ballots on Monday. All results would be given at 7 p.m., Tuesday, when polls close.

### **Allow for the use of ballot drop boxes**

As the increase in absentee by mail voting occurs, voters need a secure method to return ballots without entering congregated areas. Contactless delivery of ballots can be accomplished by providing secure drop boxes, as used statewide in Utah, Arizona, and other states. Owned by the county office, these boxes would act as a safe receptacle for ballots. Statistics show that as the number of ballot drop boxes in a county increases, the number of ballots returned in drop boxes also increases. Additionally, drop boxes would reduce the traditional reliance on USPS couriers—removing the "middle man" between the voter and the county.

There are proper procedures and laws to govern drop boxes. Language of the bill could be as follows:

*The local county elections office must prevent overflow of each ballot drop box to allow a voter to deposit his or her ballot securely. Ballots must be removed from a ballot drop box by at least two people, with a record kept of the date and time ballots were removed, and the names of people removing them. Ballots from drop boxes must be returned to the counting center in secured transport containers. A copy of the record must be placed in the container, and one copy must be transported with the ballots to the counting center, where the seal number must be verified by the county auditor or a designated representative. All ballot drop boxes must be secured at 7:00 p.m. on the day of the primary, special election, or general election.*

### Final Thoughts

Protecting our voters is our goal. While this idea means conducting open and fair elections, it also extends to the health of our community. Following our four recommendations would protect the public by minimizing crowds and long lines during in-person voting. By allowing no excuse absentee voting and removing the witness signature, South Carolina can display its leadership across this nation through protecting the public health of its citizens. Our election officials need adequate time to implement the policies, processes, and procedures for the November 3, 2020 presidential election. It is critical that the legislature act quickly in regards to the conduct of the election so we may focus our resources effectively and plan for our future successfully.

Respectfully,



KATY SMITH, CERA  
PRESIDENT  
EXECUTIVE COMMITTEE



ISAAC CRAMER  
CHAIRMAN  
LEGISLATIVE COMMITTEE

Cc: Senator Hugh Leatherman, President Pro Tempore Emeritus  
Senator A. Shane Massey, Senate Majority Leader  
Senator Nikki G. Setzler, Senate Minority Leader  
Senator Luke Rankin, Chairman, Senate Judiciary  
Representative Thomas E. Pope, House Speaker Pro Tempore  
Representative J. Gary Simrill, House Majority Leader  
Representative J. Todd Rutherford, House Minority Leader  
Representative Mandy Powers Norrell, First Vice Chair, House Judiciary  
Representative G. Murrell Smith, Jr., Chairman House Ways and Means

# **Exhibit 8**

(“COVID-19 Election Guide,” National Task Force  
on Election Crises, (Apr. 17, 2020))



## COVID-19 ELECTION GUIDE – EXECUTIVE SUMMARY

---

Free and fair elections are the cornerstone of our democracy. No citizen should have to choose between exercising their right to vote and protecting their health. Yet the COVID-19 pandemic has the potential to force exactly that choice in November if we do not plan ahead to mitigate the potential for a crisis.

The National Task Force on Election Crises is a diverse, cross-partisan group of experts formed to ensure a free and fair 2020 presidential election. In light of the challenges already posed by COVID-19, the Task Force has issued this [policy guide](#) to address how state and local officials can use both ordinary and emergency election laws to ensure that eligible voters are able to participate in the general election without undue risk to their own health or to the broader community. We also recommend that states consider emergency legislation where necessary.

This guide is grounded in important shared principles:

- ✓ *Government Actions Should Be Grounded in Law*
- ✓ *Emergency Measures Should Be Justified by Facts*
- ✓ *Transparency and Communication Are Critical*
- ✓ *Emergency Efforts Should Be Bipartisan*

The recommendations included in the guide generally fall into three categories:

**Preparing to conduct wide-scale voting by mail.** Depending on the state, this may include proactively mailing absentee ballot request or application forms to all voters; ensuring that the pandemic qualifies as an “excuse” for absentee voting where necessary; extending the deadlines for requesting and returning absentee ballots; waiving witness and notary requirements; and planning ahead to secure adequate supplies and other resources.

**Ensuring that in-person voting is as safe and accessible as possible.** This includes maximizing early voting days and hours; increasing access to alternatives like curbside voting; reconsidering the number and location of polling places; sanitizing polling places and enforcing social distancing; and recruiting more poll workers.

**Communicating proactively and transparently with voters.** This includes publicizing (and explaining) any changes to election rules or processes early and often; making information available in multiple languages and on multiple platforms; and preparing the public for likely delays in reporting election results.

With advance planning, it is possible to ensure a free and fair general election despite the unprecedented challenges we now face as a country. In fact, our democracy depends on it.

## COVID-19 ELECTION GUIDE<sup>1</sup>

---

The novel coronavirus (COVID-19) is a global public health crisis. The United States has undertaken unprecedented “social distancing” measures in response, moving colleges and university classes online, closing public K-12 schools, cancelling sporting events, prohibiting people from eating in restaurants and bars, and even shutting down iconic American landmarks from the Las Vegas Strip to Disney World. Many states and localities have also issued “shelter-in-place” orders, significantly limiting the extent to which residents may leave their homes. The virus has also impacted the 2020 primary elections, causing several to be postponed. Understandably, many Americans are already looking ahead to the general election.

This Task Force initially formed last year to be prepared to respond to a wide range of potential threats to a free and fair general presidential election in a cross-partisan, multidisciplinary fashion. The coronavirus now presents one such threat. While we cannot say with absolute certainty what will happen over the next several months as we approach the general election, there is significant reason to be concerned and an imperative to prepare for the worst.<sup>2</sup>

Our overarching goals are to promote safe and secure participation in the 2020 general election, and to ensure its legitimacy. We offer this guide to help state and local policy makers and election officials maximize the opportunity for all eligible voters to cast their votes without undue risk to their own health or to the broader community, and, of course, to have those votes counted. State and local officials must begin planning now if they have not already—it will take months to prepare to mitigate the effects that COVID-19 may have on the general election.<sup>3</sup>

---

<sup>1</sup> This guide may be amended or supplemented as circumstances evolve.

<sup>2</sup> We recognize that implementing many of these recommendations will be a significant undertaking for election officials. For more guidance on implementation, *see, e.g.*, the following: Center for Civic Design, [A Tool Kit of Resources for Scaling Up Vote by Mail](#) (Apr. 13, 2020); Verified Voting, [COVID-19 and Trustworthy Elections](#) (Apr. 10, 2020); U.S. Election Assistance Commission, [Voting by Mail/Absentee Voting](#) (including links to a number of separate FAQs); National Vote at Home Institute, [Vote at Home Scale Plan](#) (Mar. 2020); Center for Tech and Civic Live, [Free Vote at Home Webinars for Election Officials](#) (Jan. 6, 2020).

<sup>3</sup> The U.S. Election Assistance Commission recently issued a [Vote by Mail Project Timeline](#) that reinforces the need to begin preparing now.

---

## **Our approach—**

This guide offers recommendations to help policy makers and election officials conduct a successful 2020 general election despite the many challenges that the coronavirus is likely to pose. This includes:

- Conducting the 2020 general election as scheduled;
- Maximizing voter participation;
- Creating and maintaining strong protections that ensure that each ballot cast by an eligible voter is counted, including protections against mistakes and irregularities; and
- Preserving public confidence in the integrity of the electoral process and the legitimacy of the outcome of the election.

## **General principles—**

Any actions taken by state and local governments in response to a public health emergency, including the coronavirus, should be guided by the following basic principles to ensure a free and fair election consistent with preserving public health and to maximize public confidence in the results.

*Government Actions Should Be Grounded in Law.* State and local responses to the emergency should be grounded in existing law to the greatest extent possible, including powers available to officials during bona fide emergencies, and should be conducted in a nondiscriminatory manner. Any new laws or regulations enacted to address the emergency must be consistent with state and federal constitutions.

*Emergency Measures Should Be Justified by Facts.* In an emergency there is a greater than usual risk of misinformation confusing the public and seeding both chaos and distrust. That is all the more reason for state and local government officials to take extra care that the emergency measures they undertake are justified by facts, including, importantly in the case of a public health emergency, sound science.

*Transparency and Communication Are Critical.* Election officials must be proactive about educating the public as to how they will conduct the election, including any modifications they will make in response to the coronavirus and the factual and legal basis for doing so. That will require frequent communication that is up to date, accurate, and consistent—and available in multiple languages. If it appears that emergency circumstances will require a departure from ordinary election rules, those decisions should be announced as early as possible. Last-minute changes increase the likelihood of mistakes, contribute to voter confusion, and may undermine public confidence in the outcome of the election. In most cases, a state's chief election official (or otherwise the governor) should be primarily responsible for communicating information about election-related modifications to the general public and providing guidance to county and

local officials to ensure they do not inadvertently provide incorrect information. County and local officials should not unilaterally make announcements or take actions concerning the election without confirming their accuracy and validity with appropriate state officials.

*Emergency Efforts Should Be Bipartisan.* Emergency response efforts can and should be bipartisan in nature. A bipartisan effort to address the challenges posed by the coronavirus is most likely to be perceived as credible and thus inspire confidence in the changes implemented and the legitimacy of the election. A public health emergency should not be used as an excuse to promote a partisan agenda or to affect in any way the outcome of the election. Any indication of opportunism will only serve to undermine the goal of promoting confidence in the election.

### **RECOMMENDATIONS<sup>4</sup>**

It is useful to think of every state's elections laws as being divided into two sets of authorities: ordinary provisions that typically govern the conduct of elections, and emergency provisions that modify those rules when emergencies occur. Elections should always be conducted according to ordinary, generally applicable provisions to the greatest extent possible. When emergencies require departures from those rules, they should only go as far as needed to protect the priorities outlined above and should remain in effect no longer than necessary.

States should make all plans necessary to complete the presidential election by November 3rd, in accordance with federal law. Importantly, election officials must begin planning now to ensure they are in a position to not only exercise their generally applicable authority and discretion as effectively as possible to respond to the coronavirus, but also to invoke emergency powers if the situation warrants.

To the extent that a state's ordinary and emergency election laws are insufficient to allow election officials to respond effectively to the coronavirus or to implement these recommendations in connection with the general election, the state legislature should amend them well in advance of the election to minimize potential legal and constitutional problems. In addition, Congress should make substantial federal funding available to states and localities as soon as possible.

---

<sup>4</sup> Additional recommendations, including for more comprehensive or longer-term reform, can be found here: Unite America Institute, [Voting at Home: How Democracy Survives a Pandemic](#) (Mar. 2020); Nathaniel Persily & Charles Stewart, III, [Ten Recommendations to Ensure a Healthy and Trustworthy 2020 Election](#), Lawfare (Mar. 19, 2020); Brennan Center for Justice, [Responding to the Coronavirus](#); Bipartisan Policy Center, [Logical Election Policy](#) (Jan. 2020); American Law Institute, *Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes* (2019).

## Ordinary Election Powers

Although state and local law varies by jurisdiction, election officials typically have many alternatives available to them under their ordinary election powers to facilitate voting despite the threat posed by the coronavirus.

### Absentee or Vote-by-Mail Voting<sup>5</sup>

Even in the best case scenario, absentee voting is likely to increase substantially during this general election. In fact, to relieve pressure on in-person voting resources and to make it safer, anyone who can vote by mail should do so. In the worst case scenario in which in-person voting is extremely difficult because of the public health risks (or legal restrictions like shelter-in-place orders), voting by mail may be the only option for the vast majority of voters. Either way, election officials should begin preparing now to meet these demands.

#### ✓ *Make it easier to obtain absentee ballots—*

- In jurisdictions where election officials are required to receive a request or application from a voter before sending an absentee ballot, election officials should proactively mail request/application forms to all voters within the jurisdiction. The forms should be mailed to the address at which each voter is registered either 45 days prior to Election Day or at the earliest subsequent date permitted by law.
- Election officials should also ensure that downloadable PDF versions of absentee ballot request/application forms are available on their websites, and should also send them to any voter who requests one by telephone or email.
- In addition, where permitted by law and with appropriate procedures in place, election officials should allow voters to submit requests/applications for absentee ballots either in person, by mail, over the phone, or by email or other electronic means (including online where possible).
- Where they have discretion, officials should permit voters to request absentee ballots as close to Election Day as is practicably possible—so long as there is still time for voters to return the ballots by the applicable deadline.

---

<sup>5</sup> Though many jurisdictions distinguish between “absentee” and “vote-by-mail” ballots, in this guide we generally use the term “absentee ballot” to refer to both types of ballots.

- Finally, some states also either permit or require officials to proactively send actual ballots to all registered voters in a jurisdiction.<sup>6</sup>

✓ *Qualify COVID-19 for excuse-based absentee voting*—In each jurisdiction with excuse-based absentee voting, if permitted by law, the chief election official should make a public declaration as early as possible specifying that the threat of the coronavirus is deemed a legally sufficient “excuse” to enable absentee voting by all eligible voters within the state, without any requirement of an individualized demonstration of symptoms or risk factors. Alternatively, the chief election official or other appropriate official should consider seeking an opinion from the state attorney general or an advisory opinion from the state supreme court (where available) confirming that the risks posed by the coronavirus qualify as an excuse.

✓ *Secure sufficient absentee ballot supplies and equipment*—Election officials should anticipate that a substantial percentage of votes cast in the 2020 general election will be absentee or vote-by-mail ballots.

- Accordingly, election officials should order sufficient quantities of paper ballots to conduct a 100% mail-based election, if necessary.
- In ordering ballots, election officials must pay specific attention to ensure that sufficient quantities of materials are available for voters with limited English proficiency, particularly when required by federal or state law.
- Election officials also will have to allocate more resources toward ballot processing and tallying, including purchasing additional equipment if funding is available, as existing resources may be insufficient to handle such a tremendous influx of additional ballots.

✓ *Recruit additional temporary personnel*—Election officials should make a special effort to recruit additional temporary workers to assist with processing absentee ballots, especially from groups that do not face a heightened risk from the coronavirus (e.g., students) and/or who may not be available during typical elections (e.g., teachers or workers who have been laid off). Election officials should reach out through a wide range of channels, including social media, to reach these new potential pools of election workers. Because the effects of the virus cannot be known with certainty and may lead to higher falloff of election personnel, election officials should also recruit many more temporary workers than they think they will need. In particular, areas that already struggle to meet recruitment needs must develop robust plans to recruit poll workers and other personnel beginning immediately.

---

<sup>6</sup> The Task Force takes no position on whether proactively sending ballots to all registered voters should be further authorized or undertaken in connection with the 2020 general election.

✓ *Improve the processing of absentee ballots—*

- County and local election officials should make sure they are in a position to confirm the validity of absentee ballots and to process those ballots (which may include scanning the ballots) as early as possible prior to Election Day, in order to avoid longer than needed delays in handling unusually large quantities of absentee ballots after the election.
- Election officials also should ensure that anyone processing ballots is aware of and trained to implement the jurisdiction’s signature verification rules, including rules related to curing.<sup>7</sup>

✓ *Extend the deadline for returning absentee ballots—*To the extent state law grants the chief election official or other state election authority discretion concerning the deadline for receiving absentee ballots, they should interpret the deadline as requiring that absentee ballots be mailed, rather than actually received by election officials, by Election Day (which can be verified by postmarks or alternate forms of tracking).

### In-Person Voting

When it is possible to do so safely—or at least at a risk level comparable to allowing people to shop in grocery stores or attend medical appointments—in-person voting should remain available in accordance with these recommendations. Eliminating in-person voting options would harm eligible voters who cannot easily utilize other methods of voting and may lead to disproportionate burdens on certain historically disenfranchised communities, including Native American voters who lack reliable postal services, some voters with disabilities, and voters with language access needs (for example, Spanish speakers with limited English proficiency).

✓ *Recruit additional poll workers—*Additional poll workers will be needed to assist with in-person voting as well as ballot processing. As noted above, election officials should develop robust recruitment plans immediately, placing particular emphasis on groups that do not face heightened risks from the coronavirus. Election officials should also be prepared for higher-than-usual falloff rates if poll workers become ill or decide at the last minute that the risks of serving on Election Day are too great.

✓ *Maximize early voting—*To the extent state law grants election officials discretion over the number of days during which to hold early voting, they should choose to provide as many opportunities as possible, spreading it out over as many days as permitted, including weekends. By maximizing the number of days on which early voting is available, election officials can reduce the number of people in a polling place at any one time, thereby reducing the likelihood of coronavirus transmission.

---

<sup>7</sup>The Task Force takes no position on the appropriate scope of signature verification rules or policies, or whether changes thereto are appropriate.

✓ *Keep polling places open as long as possible*—To the extent state law grants election officials discretion over the opening and closing times of polls, either during early voting or on Election Day, they should allow polling places to remain open for as long as possible. Again, by maximizing the amount of time available to vote, election officials can reduce the number of people at a polling place at any one time, thereby reducing the likelihood of coronavirus transmission.

✓ *Locate polling places safely*—

- Polling places should not be located in areas within the jurisdiction, if any, in which unusually or disproportionately high numbers of coronavirus infections have been reported.
- Nor should they be located in high-risk facilities, such as senior care or retirement facilities.
- In addition, the laws of many states allow polling places to be relocated if they become inaccessible. The chief election official for each state should exercise his or her discretion to declare that an unusually high prevalence of coronavirus infections within an area or other risk factors render polling places located there “inaccessible.” In order to do this effectively, the chief election official should remain in close contact with the director of the state health department to receive updated information concerning the location of coronavirus infections within the state, and notify county or municipal election officials for any such areas.
- As part of planning the location of polling places, officials should seek input from affected communities, such as African American, Latino, Asian, and Native American voters, language minority voters, voters with disabilities, and students.

✓ *Maximize the number of polling places*—If possible, county and local election officials should exercise their discretion to maximize the number of polling places within their respective jurisdictions. The coronavirus poses the greatest risk of contagion in crowds. A greater number of polling places means fewer voters are assigned to each polling place, reducing the likely size of any crowds or number of people standing in line. Among other ways, election officials might achieve this goal by declining to consolidate polling places that received low numbers of in-person votes in previous elections, dispersing polling places to the greatest extent possible, or assigning the smallest legally permissible number of voters or precincts to each polling place.

✓ *Consider utilizing other voting locations*—Whether to use voting “supercenters” or other non-precinct voting locations will depend not only on state law, but on whether available facilities can be used safely, including to allow for more distance between voting machines/booths, poll workers, voters, etc. (e.g., because of the size and set-up of the facility). Larger facilities may offer a good addition or alternative to smaller polling places.

✓ *Take necessary public health measures*—If permitted by state and federal law (including privacy laws), and consistent with anti-discrimination and equal protection principles, the chief election official for each state should ask the director of the state health department to prohibit any person known to be infected with the coronavirus from entering a polling place. Depending on state law, any such person should immediately be provided with either the appropriate absentee ballot or an absentee ballot request form/application.

✓ *Sanitize polling places*—Election officials should ensure that each polling place is well-stocked with antibacterial, antimicrobial cleaning supplies, which should be used, among other things, to disinfect voting machines and voting equipment (including pens and touchpads) between each and every use. Each poll worker should be provided with sufficient personal protective equipment (consistent with public health guidance at the time). Hand sanitizer should also be made available—and voters should be encouraged to use it—upon entering and exiting the polling place. For more information, the CDC has issued [Recommendations for Election Polling Locations](#), and the U.S. Election Assistance Commission has [Coronavirus \(COVID-19\) Resources](#) available.

✓ *Limit voter proximity in polling places*—Polling place officials should promote social distancing by limiting voters' proximity to each other and to other people, including poll workers.

- For example, polling place officials might place a piece of masking tape on the ground approximately six feet from each polling place official's desk to indicate where voters should stand when checking in and interacting with them. They should also place additional pieces of tape at approximately six-foot intervals to mark where voters should wait in line.
- Voters should be encouraged to line up outside of the polling place, if possible, rather than congregating within indoor locations.
- Close interactions between voters and poll workers should be avoided or limited to the greatest extent possible.

✓ *Establish voluntary high-risk zones*—When the size and set-up of polling places allow, officials should consider creating “high-risk” zones for voters who self-identify as immune-compromised or having other risk factors to line up, check in, and vote at a distance from other voters.

✓ *Expand curbside or drive-up voting*—In states that allow elderly voters, voters with disabilities, or other voters to take advantage of curbside or drive-up voting, election officials should provide these opportunities to the greatest extent possible. If necessary, and if permitted by state law, the governor or chief election official should declare—or seek a legal opinion from the state attorney general or an advisory opinion from the state supreme court (where

available)—that legal provisions allowing for curbside voting apply to all elderly voters due to the heightened risks they face as a result of the coronavirus.

### Other Opportunities to Vote

✓ *Accommodate medically confined voters*—In many jurisdictions, state law establishes special voting opportunities for people who are confined to hospitals, assisted living facilities, nursing homes, or other such places for the elderly or infirm. To the extent resources allow, county and local election officials should proactively contact each such facility within their respective jurisdictions to inform facility administrators of the special voting alternatives permitted by state law and proactively provide opportunities to schedule them. In many jurisdictions, this may entail election officials traveling to the facilities to bring ballots to the confined voters and physically assisting them in completing the ballots (while taking necessary precautions), if they are unable to do so on their own due to age, illness, or disability.

✓ *Allow varied means of returning ballots*—To the extent permitted by law, election officials should exercise discretion to allow voters to return absentee ballots in multiple ways, including to drop boxes and designated vote centers. In addition, in many places, state law allows other members of a voter’s household to return the voter’s ballot.<sup>8</sup>

✓ *Accommodate emergency personnel*—Many states also have special voting-related provisions for law enforcement, medical, military, or other personnel responding to declared emergencies. County and local election officials should be aware of these statutes and designate particular workers to be responsible for facilitating voting by members of these emergency response groups.

✓ *Prepare for increased provisional voting*—It is likely that polling places will be asked to accept more provisional ballots than is typical, whether due to voter confusion over polling locations or other reasons. Accordingly, election officials should ensure that poll workers are sufficiently well trained in applicable rules and procedures, and have the supplies needed.

### **Emergency Election Powers**

Most states have laws in place that specifically address election-related emergencies and the authorities available to state officials. It may become necessary for state officials to invoke those authorities. However, any departure from the ordinary rules governing the electoral process must be made only pursuant to clear legal authority and for nonpartisan reasons. To minimize either the occurrence or appearance of partisan manipulation, state emergency contingency plans should provide objective criteria to guide officials’ exercise of discretion. Any decision to

---

<sup>8</sup> The Task Force takes no position on whether broader ballot collection efforts should be authorized or undertaken in connection with the 2020 general election.

invoke emergency authorities must be based on the best information available at the time and grounded in scientifically valid principles concerning the nature of the threat.

✓ *Provide advance guidance on emergency authorities*—Well in advance of the election, the chief election official in each state should disseminate guidance to county and local election officials to clarify:

- i) who has authority to approve modifications to, or deviations from, standard election rules, requirements, and procedures;
- ii) what types of deviations may be authorized;
- iii) when such deviations may occur; and
- iv) what types of election modifications or deviations are prohibited.

✓ *Develop contingency plans*—Every state and county should establish and publicize a contingency plan addressing the various steps that will be taken in response to emergencies that impact an impending or ongoing election, including the coronavirus, based on the authorities state law grants them under such circumstances. Election officials at all levels should ensure they have the resources and personnel necessary to implement such emergency plans, if required.

✓ *Do not allow internet voting*—Unless expressly authorized by state law, election officials should not allow Internet- or fax-based voting for domestic voters (i.e., people not covered by the Uniformed and Overseas Citizen Absentee Voting Act) as a response to an election emergency. Specifically, election officials should neither email blank absentee ballots to voters, nor allow voters to submit completed absentee ballots by email or fax. However, to the extent allowed by law, election officials should consider allowing requests/applications for absentee ballots to be made by phone, email, and other electronic means (with appropriate procedures in place).

✓ *Waive notary and witness requirements*—To the extent election emergency statutes allow, election officials should exercise their discretion to waive any requirements that either absentee request/application forms or absentee ballots themselves be notarized or witnessed.

✓ *Relocate polling places*—Even if polling places have not been sited as recommended above, officials in many states have the authority to order relocation during emergencies.

✓ *Extend canvassing and certification deadlines*—To the extent they have discretion under emergency laws, chief election officials or other state election authorities should also consider extending canvassing and certification deadlines to account for the additional time it will take to

process and count mail ballots, while still ensuring that these steps (and any subsequent steps or processes) are completed within the timeframe required by federal law.

*For more information on election-related emergency authorities, see resources available from the [National Association of Secretaries of State](#) and the [National Conference of State Legislatures](#).*

### **Broader Gubernatorial Emergency Powers**

In addition to election-specific emergency powers, many state governors have general (and sometimes quite broad) emergency powers available during a declared public health emergency—including, in some cases, the ability to waive, change, or suspend state laws and regulations. See, e.g., Gregory Sunshine et al., [An Assessment of State Laws Providing Gubernatorial Authority to Remove Legal Barriers to Emergency Response](#), Health Security (Nov. 2, 2019); Michael T. Morley, [Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks](#), 67 Emory L.J. 545, 609–10 & n.423–24 (2018). Most governors' emergency powers also include the authority to activate state emergency response plans, reallocate funds to facilitate emergency response, and streamline state administrative procedures, including procurement requirements.

Governors may use these sweeping authorities to ensure that the 2020 general election occurs as scheduled and that voters have a full and adequate opportunity to participate. They must nevertheless be cautious in how they exercise this discretion. Among other things, where permissible, governors should consider using these powers to allow the state to take any of the steps recommended above that are not otherwise permitted by state law. Governors should not attempt to authorize ad hoc methods of Internet- or fax-based voting beyond the limits of state law; eliminate important protections for the integrity of the electoral process; or change mandates concerning the composition of local election boards or polling place teams that ensure partisan balance.

### **Voter Registration**

Increases in voting by mail make it all the more important that voter registration data be kept up to date. In addition, options like same-day voter registration may become ineffective if in-person voting is not safe or reasonably available. Accordingly, state and local officials should consider options for expanding voter registration opportunities.

### **Public Communications**

Communication with voters and the general public is a critical element of navigating any form of election emergency.

✓ *Keep voters informed*—Officials should make sure that voters are informed of any changes to their rights or to election procedures or processes as early as possible, as frequently as possible, and in as many forms as possible (e.g., newspapers, television news, social media, government websites, etc.). Information should also be made available in multiple languages. Among other things:

- Voters should be encouraged to verify and/or update their registration information.
- Voters need to know when and where early voting is available. And voters should be encouraged to vote on days or at times that are typically less busy in order to avoid crowds.
- Voters should be encouraged to submit absentee ballot request/application forms where necessary. They should also be informed of any deadlines or other time constraints that may apply to both requesting and returning absentee ballots.
- Voters should be informed when rules related to things like notary and witness requirements are waived.
- Voters should know their options for returning absentee ballots. Election officials should publicize these alternatives on their websites and in public communications concerning the election—particularly in the week before Election Day when it may be too late to have a blank absentee ballot mailed to a voter and then completed and returned by the voter on time.
- Polling place locations should be decided and publicized early, with as much notice to voters as possible, including in an individualized manner (i.e., with notice tailored to registered voters by precinct). When emergency relocations are necessary, voters should be informed as soon as possible.

✓ *Manage expectations*—To help ensure public confidence in electoral outcomes, states must communicate clearly—well in advance of the November election—that potentially days-long delays in reporting vote totals should be expected given the processing time associated with the higher volume of absentee voting. And officials should take special care in reporting results on and after Election Day. As results from localities are reported after the polls close, in addition to publicizing information about vote tallies and the percentage of precincts reporting, election officials should also repeatedly emphasize—particularly to the news media—the number of absentee and provisional ballots they have received, and the number of absentee ballots yet to be processed and/or counted.

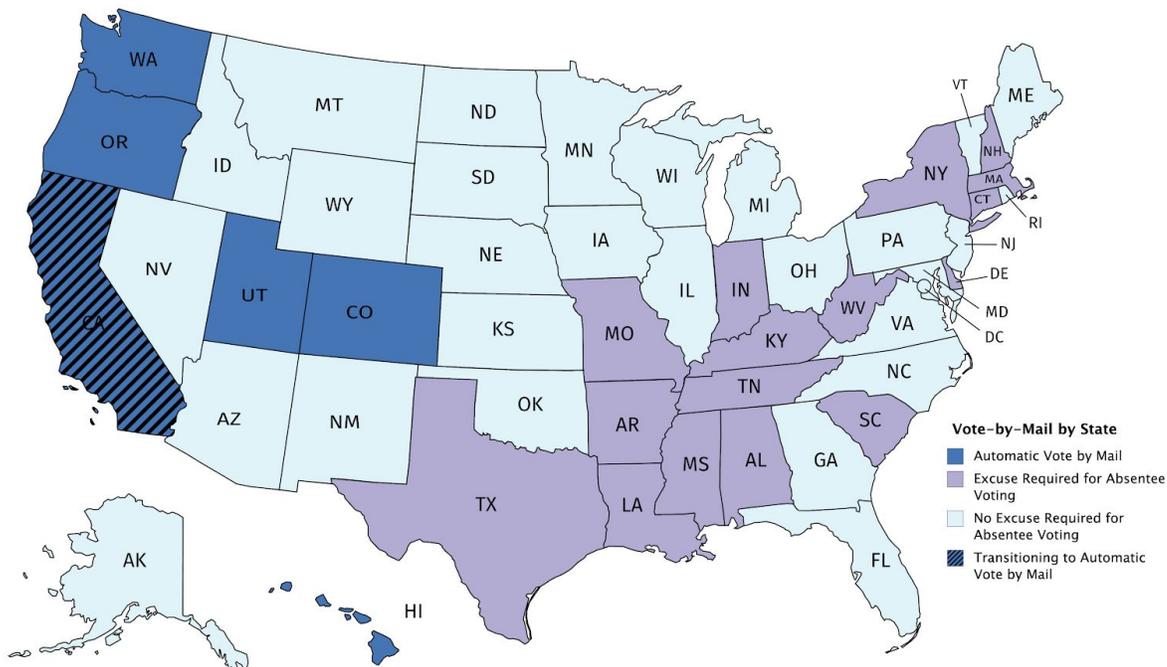
\*\*\*\*\*

### ***About the National Task Force on Election Crises***

*The National Task Force on Election Crises is a diverse, cross-partisan group of more than 40 experts in election law, election administration, national security, cybersecurity, voting rights, civil rights, technology, media, public health, and emergency response. The mission of the nonpartisan National Task Force on Election Crises is to ensure a free and fair 2020 presidential election by recommending responses to a range of potential election crises. The Task Force does not advocate for any electoral outcome except an election that is free and fair. The recommendations of the Task Force are the result of thoughtful consideration and input from all of the members and therefore do not fully reflect any individual Task Force member's point of view—they are collective recommendations for action. More information about the Task Force, including its members, is available at <https://www.electiontaskforce.org/>.*

## APPENDIX A: VOTE-BY-MAIL BY STATE

There are different levels of vote-by-mail systems currently in place in states across the country.



### General Vote-by-Mail Systems:

- **A small number of states provide for vote-by-mail automatically by sending ballots to all registered voters:**
  - States in this category: CO, HI, OR, UT, WA
  - California allows individual counties to choose automatic vote-by-mail, and is gradually transitioning to statewide vote-by-mail.
- **Most states allow for absentee voting by mail by any registered voter who requests a ballot for a particular election (meaning no excuse is required):**
  - States in this category: AK, AZ, FL, GA, ID, IL, IA, KS, ME, MD, MI, MN, MT, NE, NV, NJ, NM, NC, ND, OH, OK, PA, RI, SD, VA, VT, WI, WY, and the District of Columbia
- **Several states allow for absentee voting by mail only by registered voters who request a ballot for a particular election and have an “excuse” under state law:**
  - States in this category: AL, AR, CT, DE, IN, KY, LA, MA, MS, MO, NH, NY, SC, TN, TX, WV

- *States in the category that provide an age exemption for older voters: IN, KY, LA, MS, SC, TN, TX*

**Additional Requirements for Absentee Voting:<sup>9</sup>**

- **A number of states impose witness and/or notary requirements:**
  - *States in this category: AK, AL, LA, MS, MO, NC, OK, RI, SC, VA, WI*
  - *States in this category that require that absentee ballot applications and/or absentee ballot envelopes to be notarized: MS, MO, OK*
- **A few states require that a copy of a photo ID be included with absentee ballot applications or absentee ballots:**
  - *States in this category: AL, AR, WI*
  - *South Dakota requires that absentee ballot applications either be notarized or accompanied by a copy of photo ID*

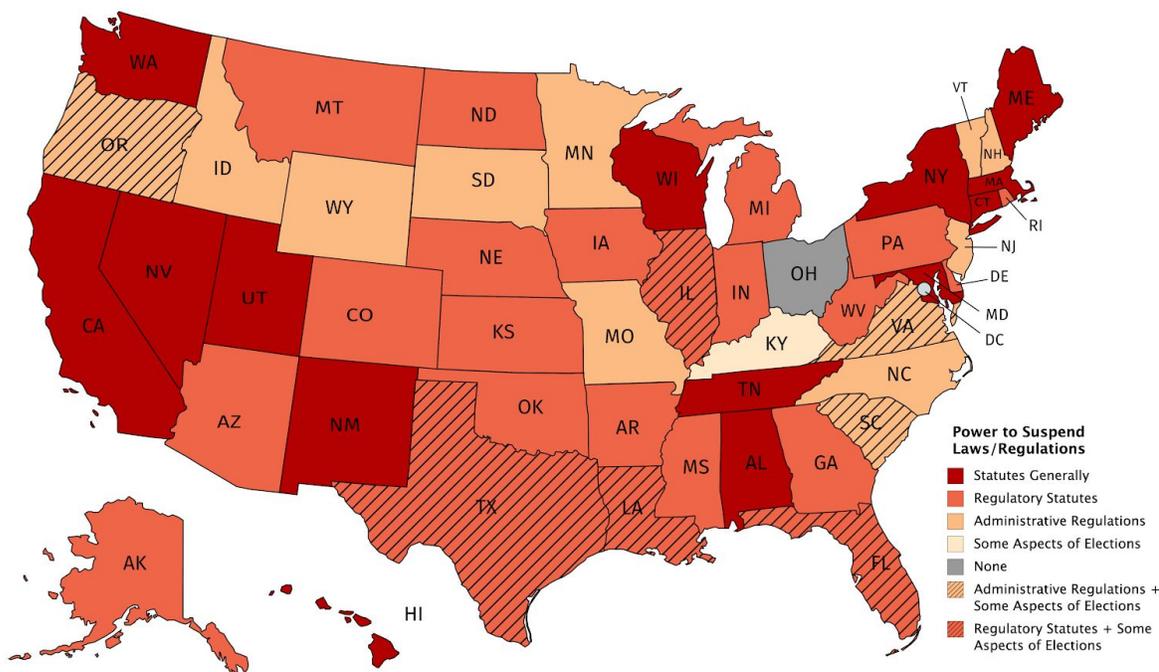
**Temporary Changes Due to COVID-19:** See [We Can Vote](#) by the Center for Secure and Modern Elections for frequently updated state-by-state voting information, including temporary changes as a result of the coronavirus.

---

<sup>9</sup> For more detailed information, see National Conference of State Legislatures, [Verification of Absentee Ballots](#) (Jan. 21, 2020).

## APPENDIX B: GOVERNORS' EMERGENCY POWERS BY STATE

The extent of governors' emergency powers during an election (and generally) varies considerably from state to state.



According to the [National Conference of State Legislatures](#):

- In at least 14 states (Alabama, California, Connecticut, Hawaii, Maine, Maryland, Massachusetts, Nevada<sup>10</sup>, New Mexico, New York, Tennessee, Utah, Washington<sup>11</sup>, Wisconsin<sup>12</sup>) the legislature has granted the governor power to suspend statutes.

<sup>10</sup> During a state of emergency, Nevada law gives the governor the power “[t]o perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population.” Nev. Rev. Stat. Ann. § 414.070(7). Although this section does not explicitly grant the governor authority to suspend a statute, it is possible the governor could do so if the safety of the civilian population depends on suspending a statute.

<sup>11</sup> In a state of emergency, the governor can issue orders suspending statutes relating to certain categories of regulations, but none pertaining to elections.

<sup>12</sup> The Wisconsin Supreme Court’s recent decision in *Wisconsin Legislature v. Evers*, No. 2020AP608-OA (Apr. 6, 2020), calls this conclusion into question. NCSL’s analysis is based on Wis. Stat. § 323.14(4), which addresses the powers of “local units of government” in an emergency, but does not explicitly give the governor the power to suspend statutes. In the *Evers*

- In 22 more states (Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Montana, Nebraska, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Texas, West Virginia) the governor may suspend regulatory statutes, which may include statutes related to elections.
- In 12 states (Idaho, Minnesota, Missouri, New Hampshire, New Jersey<sup>13</sup>, North Carolina, Oregon, South Carolina, South Dakota, Vermont, Virginia, Wyoming) the governor can suspend regulations created by administrative agencies.
- Kentucky has granted its governor emergency power over some aspect of an election. Seven other states (Florida, Illinois, Louisiana, Oregon, South Carolina, Texas, Virginia) have granted their governor emergency power over some aspect of an election but also fall into other categories.
- Ohio is the only state that does not grant its governor emergency power that could fall into one of the categories above. However, the governor is required to work with the state emergency management agency to control an emergency. ORC Ann. 5502.22.

---

case, the court specifically found that another related part of Wisconsin law, Wis. Stat. § 323.12, does *not* give the governor the power to suspend statutes and overturned an executive order postponing the state’s primary election on that basis. The court did not analyze Wis. Stat. § 323.14, but also did not recognize it as a potential source of gubernatorial authority.

<sup>13</sup> In a state of emergency, the governor may assume control of emergency management operations if the emergency is beyond the capabilities of local authorities. N.J. Stat. § App.A:9-51(a). This statute does not fall perfectly in the category allowing for a governor to suspend regulations, but local emergency responses—which the governor can assume control over—are likely governed by regulation.

**THE STATE OF SOUTH CAROLINA  
In the Supreme Court**

---

In the Original Jurisdiction

---

Regina Duggins and Chaunta R. Hamilton .....Petitioners,

v.

Jay Lucas, in his capacity as Speaker of the House of Representatives and  
Harvey Peeler, in his capacity as President of the Senate.....Respondents,

and

South Carolina Election Commission.....Respondent/Nominal Defendant.

---

**RULE 245(c) NOTICE**

---

**TAKE NOTICE**, pursuant to Rule 245(c) of the South Carolina Appellate Court Rules, that you are required to file a return to this Petitioners petition for original jurisdiction within 20 days from the date of service. Failure of a party to timely file a return may be deemed a consent by that party to the matter being heard in the original jurisdiction.

Respectfully submitted by,

  
Christopher P. Kenney (SC Bar No. 100147)  
RICHARD A. HARPOOTLIAN, P.A.  
1410 Laurel Street (29201)  
Post Office Box 1090  
Columbia, SC 29202  
(803) 252-4848  
(803) 252-4810 (facsimile)  
cpk@harpootlianlaw.com