

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Rhodes Bailey, Robert Wehrman, South Carolina Democratic Party, and
DCCC.....Plaintiffs-Petitioners

v.

South Carolina State Election Commission and Marci Andino as Executive Director of the State
Election CommissionDefendants-Respondents

PETITION FOR ORIGINAL JURISDICTION - EMERGENCY RELIEF REQUESTED

Petitioners Rhodes Bailey, Robert Wehrman, South Carolina Democratic Party, and DCCC submit this Petition for Original Jurisdiction pursuant to Article V, section 5, of the South Carolina Constitution, Section 14-3-310 of the South Carolina Code, and South Carolina Appellate Court Rule 245. A proposed Complaint is attached as Exhibit A and incorporated herein by reference, along with its 2 exhibits.

INTRODUCTION

As explained below and in the Complaint filed contemporaneously with this Petition, this controversy involves the unprecedented public health crisis posed by COVID-19 and its foreseeable impact on South Carolina’s elections. In light of (1) the highly communicable nature of COVID-19, (2) the risk of symptomless spread, (3) the fact that a substantial portion of the population is considered high risk, (4) the lack of a prospective curative medication or vaccine, and (5) the foreseeable and recognized risk of a COVID-19 resurgence, COVID-19 will force most South Carolina voters to choose between protecting their health and casting a ballot in person in South Carolina’s upcoming primary and general elections. Unless South Carolina’s 3.3 million

registered voters are given the ability to safely exercise their right to vote without having to make that choice, the upcoming elections will not be free and open and protected from tumult, in violation of the South Carolina Constitution.

Petitioners assert that this matter is appropriate for consideration in the Court's original jurisdiction and that this Court should grant the petition and entertain this controversy. This matter requires the Court to determine whether those who practice social distancing to avoid contracting or spreading COVID-19 qualify as "physically disabled person[s]" who are eligible to vote absentee pursuant to S.C. Code Ann. § 7-15-320(B)(1). If the answer is in the affirmative, all South Carolinians would be eligible to cast absentee ballots in the upcoming elections, which would help protect their right to "free and open" elections that are protected from the undue influence of tumult. S.C. Const. art. I, § 5, *id.* art. II, § 1. Petitioners submit that the statute's plain language requires this reading, and that only this reading will protect the rights of thousands, if not millions, of South Carolinians safely to exercise their right to vote.

This is a matter of serious public interest and concern. Petitioners raise a question of immense importance regarding the proper interpretation of the State's election laws. One of the State's largest newspapers recently ran an opinion piece calling for all voters to apply for absentee ballots in a manner that current election law does not permit. Compare Schuyler Kropf, Republicans and Democrats, stay healthy by requesting absentee ballot for June 9 primary, Post & Courier (Apr. 11, 2020), https://www.postandcourier.com/politics/republicans-and-democrats-stay-healthy-by-requesting-absentee-ballot-for-june-9-primary/article_ce59ae22-79d3-11ea-a378-37b0446c13c0.html (calling for voters to use the excuse of "vacation" to register for absentee ballots because of Governor McMaster's "Home or Work" order), with S.C. Code Ann. § 7-15-340 (making it a misdemeanor to apply for an absentee ballot with false information). Some

Charleston County voters have identified COVID-19 as the reason for their absentee ballot requests, but election officials will not provide absentee ballots for that reason. Lindsay Street, BIG STORY: Surge in absentee ballot requests, agency says, Statehouse Report (Apr. 17, 2020 10:34 AM), https://www.statehousereport.com/2020/04/17/voting-covid-kindness/?utm_source=wysija&utm_medium=email&utm_campaign=20_0417_issue.

Respondent Andino has acknowledged that prompt resolution of this matter is necessary to ensure that South Carolina is ready for this year's elections. Moreover, given that the primary elections are scheduled for June 9, 2020, this matter involves questions of utmost urgency, requiring this Court's attention without further delay and an expedited briefing and argument schedule. Petitioners assert that the facts are not materially in dispute and, thus, the Court's attention will not be required to resolve factual disputes but instead may be focused solely upon the interpretation of the statute that defines physically disabled person for the purposes of absentee voting, S.C. Code Ann. § 7-15-310(4).

SUPPORT FOR GRANTING PETITION

In support of this Petition, Petitioners would respectfully show as follows:

1. Petitioner Rhodes Bailey is a citizen of Richland County and a Democratic candidate for South Carolina House District 75. He is actively campaigning in the contested June 9, 2020 Democratic Party primary and hopes to progress to the November 3, 2020 general election as the Democratic candidate.

2. Petitioner Rob Wehrman is a citizen of Charleston County and a Democratic candidate for Charleston County Council. He is actively campaigning in the contested June 9, 2020 Democratic Party primary and hopes to progress to the November 3, 2020 general election as the Democratic candidate.

3. Petitioners Bailey and Wehrman (collectively, “the Candidate Petitioners”) each have a legal interest in ensuring that the elections in which they are candidates are carried out in a manner consistent with the South Carolina Constitution. The Candidate Petitioners, along with all other candidates running for public office in 2020 elections, will face irreparable harm but for adequate measures taken to ensure safe elections that comply with the South Carolina Constitution. The Candidate Petitioners have an interest in ensuring that every voter in their respective districts who is legally permitted to vote has an opportunity to safely cast a ballot. And as voters themselves, the Candidate Petitioners have an interest in ensuring that they have an opportunity to safely cast their own ballots in the upcoming elections.

4. Petitioner South Carolina Democratic Party (“SCDP”) brings this action on its own behalf and on behalf of its members. SCDP is a political party within the meaning of S.C. Code Ann. § 7-11-12 and is the South Carolina state party committee of the national Democratic Party. SCDP is certified by the South Carolina State Election Commission (“SEC”) to nominate candidates for offices to be voted on in a general or special election and nominates candidates on a regular basis by party primary. SCDP has an interest in ensuring that voters have an opportunity to express their will regarding Democratic Party candidates running for elections, as well as ballot measures and initiatives those individuals support. To accomplish its purpose, SCDP engages in vitally important activities, including supporting Democratic Party candidates in national, state, and local elections through a meaningful opportunity to cast ballots in South Carolina. SCDP has hundreds of thousands of members and constituents from across the State, including South Carolinians who regularly support candidates affiliated with the Democratic Party and Democratic Party candidates. SCDP works to accomplish its mission by, among other things, working closely with Democratic candidates and assisting county parties by making expenditures on candidates’

behalfes, providing get-out-the-vote (“GOTV”) assistance, and actively supporting the development of programs benefiting Democratic Party candidates. SCDP has previously engaged in, and plans to continue to engage in, expenditures on behalf of Democratic Party candidates, GOTV assistance, and the development of programs to elect Democratic Party candidates in South Carolina. An election held without accounting for the COVID-19 pandemic directly harms SCDP because it frustrates its mission and the effectiveness of its efforts to persuade and mobilize voters to vote for Democratic candidates and causes, and will require it to divert resources from other efforts in the State to attempt to help its voters overcome the barriers presented by the lack of safe means to cast their ballots. In addition, without a viable absentee voting option for most of its members, SCDP will be further directly injured by decreased turnout, which will undermine its fundamental right to choose its standard bearers through a vote that accurately reflects the preferences of its membership.

5. Petitioner DCCC is the national congressional committee of the Democratic Party as defined by 52 U.S.C. § 30101(14). DCCC’s mission is to elect Democratic candidates to the U.S. House of Representatives from across the United States, including from South Carolina’s seven congressional districts. DCCC works to accomplish its mission by, among other things, assisting state parties throughout the country, including in South Carolina. DCCC intends to again expend significant resources to support Democratic candidates in 2020, including specifically in South Carolina. In 2018, DCCC made millions of dollars in contributions and expenditures to persuade and mobilize voters to support congressional candidates who affiliate with the Democratic Party. For 2020, DCCC has identified districts in South Carolina as targeted races, in which it will expend significant resources to support the Democratic candidates. If elections are held without adjustments for COVID-19, DCCC will divert and expend additional funds and

resources to promote safe voter education and turnout efforts in South Carolina at the expense of other efforts in South Carolina and other states. An election held without adjustments for the COVID-19 pandemic directly harms DCCC because it frustrates its mission and efforts to register voters and persuade and mobilize those voters to elect Democratic candidates in South Carolina. An election held without adjustments for the COVID-19 pandemic also necessarily reduces the pool of eligible voters who can vote for Democratic Candidates for U.S. Congress. In addition, without a viable absentee voting option for most South Carolinians, DCCC will be further directly injured by decreased turnout, which will undermine its fundamental right to choose its standard bearers through a vote that accurately reflects the preferences of Democratic Party membership.

6. All Petitioners have a personal stake in the subject matter of this lawsuit.

7. Respondent South Carolina State Election Commission (“SEC”) is an agency of the government of the State of South Carolina and an entity charged with carrying out the authority conferred upon it by the South Carolina Election Law, S.C. Code Ann. § 7-1-10, et seq.

8. Respondent Andino is sued in her official capacity as Executive Director of the SEC. The Executive Director is the Chief Administrative Officer for the SEC and is required by law to supervise the County Boards of Voter Registration and Elections. S.C. Code Ann. § 7-3-20. In this role, she is tasked with ensuring that those County Boards comply with state and federal law in conduct of elections and voter registration. Id. at § 7-3-20(C).

I. South Carolina is in the throes of an unprecedented public health emergency.

9. COVID-19, a highly communicable respiratory disease caused by a novel coronavirus called SARS-CoV-2, has spread throughout the United States and infected thousands of South Carolinians. S.C. Dep’t. of Health and Environ. Control (“DHEC”), Coronavirus COVID-19 Cases in South Carolina, <https://scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/testing-sc-data-covid-19> (last updated Apr. 21, 2020).

10. COVID-19 spreads easily between people who either (1) are within six feet of an infected person who produce respiratory droplets by coughing, sneezing, or breathing, or (2) “touch[] a surface or object that has the virus on it and then touch[] their own mouth, nose, or possibly their eyes.” CDC, How COVID-19 Spreads, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Apr. 22, 2020). COVID-19 may also be spread by people without symptoms. Id.

11. According to the CDC, certain groups have a high risk for severe illness: (1) people 65 years and older; (2) people who live in a nursing home or long-term care facility; and (3) people of any age with underlying medical conditions including but not limited to chronic lung disease, asthma, heart conditions, diabetes, as well as immunocompromised people. CDC, Groups at Higher Risk for Severe Illness, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last visited Apr. 22, 2020).

12. People of color are also disproportionately affected by COVID-19. DHEC reports that 36% of the State’s confirmed infections and 57% of the reported deaths are African Americans, despite making up only 27 percent of the State’s population. DHEC, Coronavirus COVID-19 Cases in South Carolina, supra.

13. Because many scientists believe it will take at least a year to develop a vaccine for COVID-19 and provide it to the general public, Sarah LaFave, What Will It Take To Develop a Vaccine for COVID-19?, Johns Hopkins University - The Hub, (Mar. 26, 2020) <https://hub.jhu.edu/2020/03/26/covid-19-vaccine-development-ruth-karron/> (“Scientists estimate that it will take at least one year to make a COVID-19 vaccine available to the general public.”), the CDC recommends that people stay at home and avoid close contact with others to slow down

rapid spread of the diseases. CDC, What You Can Do, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/what-you-can-do.html> (last visited Apr. 22, 2020).

14. To that end, many public officials have issued stay at home orders or similar directives to encourage South Carolinians to limit their movements to slow the transmission of COVID-19.

15. And unless Americans continue to adhere to social distancing practices, a second wave of COVID-19 infections will occur in the summer or fall, with a possible “peak between October and November.” Elizabeth Weise, When will a second wave of the coronavirus hit and what will it look like?, USA TODAY (Apr. 19, 2020 10:30 AM) <https://www.usatoday.com/story/news/health/2020/04/19/coronavirus-herd-immunity-vaccines-determine-covid-second-wave/5151957002/>. Thus, with the likelihood of an impending second spike in infections and without a vaccine, COVID-19 will remain a public health risk at least for the remainder of 2020.

16. Due to COVID-19, the CDC has also issued guidance that encourages voters “to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations.” CDC, Recommendations for Election Polling Locations, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last visited Apr. 22, 2020) (encouraging mail-in voting and early voting, if permitted by the jurisdiction).

II. Because of this global pandemic, a ruling from this Court is necessary to enable State and local elections officials to safely administer the remaining 2020 elections.

17. South Carolina’s election law provides two ways for voters to cast their ballots: (1) in person on the day of the election, or (2) in person or by mail before election day through absentee voting. S.C. Code Ann § 7-13-710 et seq. (outlining process for voting in person); S.C. Code Ann.

§ 7-13-771 (permitting curbside voting for “handicapped or elderly voters who cannot enter the polling place or cannot stand in line to vote”); S.C. Code Ann. § 7-13-385 (providing absentee voter may return absentee ballot “by mail, by personal delivery, or by authorizing another person”).

18. Although in-person voting on election day is available to all South Carolina voters, only those voters who fall into defined categories may cast absentee ballots by mail or in person. S.C. Code Ann. § 7-15-320 (listing categories of voters eligible to cast absentee ballots).

19. Respondent Marci Andino, Executive Director of the SEC, has noted that “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.” Compl. Ex. 1, Letter from SEC to Governor McMaster, Senator Peeler, and Representative Lucas (hereinafter “Andino Letter”) at 2 . The South Carolina Association of Registration and Election Officials, Inc. (“SCARE”) raised similar concerns. Compl. Ex. 2, April 6, 2020 Letter from SCARE to Governor McMaster, Senate President Peeler, and House Speaker Lucas (hereinafter “SCARE Letter”) at 1-2.

20. Voting in large numbers in person on election day under the current system would pose a significant health risk for South Carolinians. They would be required to violate social distancing requirements and touch surfaces and items shared by hundreds or thousands of people, subjecting themselves to potential COVID-19 infections or potentially spreading the virus to individuals in their communities.

21. In addition to voters, poll workers, the vast majority of whom are older and at a high risk of serious illness due to COVID-19, will also avoid risking their health and safety if mass in-person voting must occur on election day. See Compl. Ex. 1, Andino Letter at 2.

22. The risks that COVID-19 pose are already proving to put additional burdens on the volunteer pool. Over 140 individuals who regularly volunteer to work the polls have “already declined” to volunteer in the upcoming election. Brian Hicks, South Carolina must plan for safe elections in June, maybe even November, Post & Courier (Apr. 10, 2020), https://www.postandcourier.com/columnists/hicks-south-carolina-must-plan-for-safe-elections-in-june-maybe-even-november/article_2208f6ba-7a7c-11ea-980d-23992fcdc56f.html.

23. Respondent Andino also anticipates a shortage of polling locations, consolidated precincts, and even longer lines on election day. Compl. Ex. 1, Andino Letter at 2.

24. Some voters will undoubtedly have to vote in person in the upcoming elections, and the State must make that a safe option for those who need it. But forcing all who would normally vote in person—that is, when the State is not in the throes of a pandemic—to do so while the crisis persists, will overcrowd and put avoidable and overwhelming demands on overtaxed polling locations with reduced staffing, and needlessly exacerbate the risks to thousands of voters and countless elections officials. Those voters who are unable or unwilling to risk their safety and the safety of others by leaving their homes and waiting in line to cast their ballot on election day will be disenfranchised.

25. As a result, most South Carolinians who wish to vote in the remaining 2020 elections must make the untenable choice between (1) following the guidance of medical experts and the Governor’s Order and practicing social distancing to protect their health and those in their communities by avoiding the polls, or (2) exercising their constitutionally guaranteed right to vote with great risk to their health.

26. All of these factors make it all but certain that substantial portions of South Carolina’s electorate will be disenfranchised.

27. In this unprecedented situation, the requirement that most South Carolinians vote in person on election day has become hostile to their right to vote in free and open elections and to county election officials' ability to safely administer upcoming elections, as a direct result, millions of voters may be disenfranchised. SEC, South Carolina Voter Registration Demographics, <https://www.scvotes.org/cgi-bin/scsec/96vr?countykey=ALL&D1=ALL> (last visited Apr. 22, 2020) (reporting 3,328,188 registered voters).

28. As the June 9, 2020 primary election is fast approaching, swift action must be taken to ensure that South Carolina voters can safely exercise their right to vote.

III. Even during this public health crisis, the South Carolina Constitution guarantees voters the ability to participate in free and open elections.

29. COVID-19 threatens South Carolina's constitutional guarantee that "[a]ll elections shall be free and open." S.C. Const., art. I, § 5. This Court has interpreted this clause to mean that "no impediment or restraint of any character shall be imposed upon [eligible voters] either directly or indirectly whereby [they] shall be hindered or prevented from participation at the polls." Cothran v. W. Dunklin Pub. Sch. Dist. No. 1-C, 189 S.C. 85, 200 S.E. 95 (1938) (interpreting the same provision then-codified in Article 1, Section 10 of the Constitution). Under the Constitution, a free and open election must be "public and open to all qualified electors alike; . . . when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial." Id.

30. Courts in other jurisdictions with similar clauses have also held that the "plain and expansive sweep of the words" indicate "the framers' intent that all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of [the State], and, also, conducted in a manner which guarantees, to the greatest degree possible, a voter's right to equal participation in the electoral process." League of Women Voters v. Commonwealth, 645 Pa. 1,

100, 178 A.3d 737, 804 (2018) (interpreting Pennsylvania’s “free and equal” elections clause); see also Common Cause v Lewis, No. 18 CVS 014001, 2019 WL 4569584, at *110 (N.C. Super. Sep. 03, 2019) (“[T]he Court concludes that the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. This, the Court concludes, is a fundamental right of the citizens enshrined in our Constitution’s Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government.”). This Court too has stated that “[t]he purpose of an election is to express the will of the electorate.” Redfearn v. Bd. of State Canvassers of S.C., 234 S.C. 113, 120, 107 S.E.2d 10, 14 (1959).

31. If the majority of South Carolina voters are forced to choose between their safety and casting a ballot in the upcoming elections, they will be “hindered . . . from participation at the polls” and thus denied free and open elections in violation of the constitution. If the upcoming elections are not free and open, in violation of the constitution, they will be nullified. See, e.g., George v. Mun. Election Comm’n of City of Charleston, 516 S.E.2d 206, 212 (S.C. 1999) (nullifying election because voters were not provided with foldable ballots, in violation of the South Carolina Constitution’s guarantee of a secret ballot); see also Callison v. Peoples, 102 S.C. 256, 86 S.E. 635, 637 (1915) (“[T]he provisions of the Constitution [are] mandatory, and the failure of the managers to comply with it rendered the election void, because it was impracticable to purge the election, and the result was therefore left in doubt.”). And if multiple elections are nullified, chaos and confusion could ensue, as the identity of the proper occupants of federal, state, and local offices remains uncertain until elections can be safely administered. This result would irreparably harm Plaintiffs and diminish public confidence in the State’s election process.

32. A timely resolution of Petitioners' questions regarding interpretation of the election laws is critical to ensuring the validity of the upcoming elections, particularly the June primary elections.

33. Immediate action is required to ensure that State and county election officials are prepared to administer the upcoming elections and voters are informed of their options for participating.

34. Existing South Carolina law permits all voters who are limiting their movements and public interaction due to COVID-19 to cast absentee ballots.

35. As noted, to cast an absentee ballot, South Carolina voters must fall into one of the categories set forth in S.C. Code Ann. § 7-15-320. For past elections, this has meant that the overwhelming majority of South Carolina voters have cast their ballots in person on election day. But due to COVID-19, this Court should decide that all South Carolina voters now fall into a category that is eligible to cast absentee ballots: physically disabled persons, within the permissible interpretation of existing South Carolina election law.

36. Any "physically disabled person" who desires to cast an absentee ballot must be permitted to do so. S.C. Code Ann. § 7-15-320(B)(1). For the purposes of this statute, a physically disabled person is "a person who, because of injury or illness, cannot be present in person at his voting place on election day." *Id.* § 7-15-310(4) (emphasis added).

37. COVID-19 is an illness, and individuals who are practicing social distancing and minimizing movements to limit the risk of transmission and infection, and to observe governmental orders, cannot be present at their polling place on election day. Although a person who outwardly presents as able-bodied may not be physically disabled under the commonly accepted meaning of the word, that same person *is* physically disabled, as defined by the plain

language of S.C. Code Ann. § 7-15-310(4), if they cannot go to the polls on election day “because of illness,” id. (emphases added), that is, COVID-19.

38. But the SEC does not interpret “physically disabled” to include voters who cannot go to the polls on election day because they are participating in social distancing to prevent the spread of COVID-19, even though such persons clearly are staying home “because of illness.” See Compl. Ex. 1, Andino Letter at 2.

39. Accordingly, the Court should issue a declaratory judgment that every South Carolina voter who seeks to cast an absentee ballot to avoid the polling place in the upcoming elections is permitted to vote absentee by reason of physical disability. This would permit many South Carolina voters to benefit from the current absentee voting procedure and exercise their right to vote without endangering their health and safety and those around them, especially those seeking to participate in the fast-approaching June 2020 primary elections.

CONCLUSION

40. Petitioners respectfully assert that such important issues should be decided immediately by this State’s highest court. Delay in this Court’s adjudication of the issues could be detrimental to millions of South Carolinians’ ability to vote and the constitutionality of the upcoming elections.

41. Petitioners submit that this Petition, and the complaint and attachments submitted contemporaneously herewith pursuant to Rule 245(c), raise issues of significant public interest appropriate for adjudication by this Court in its original jurisdiction for the following reasons:

- a. Resolution of these issues in this Court will provide needed guidance not only to Petitioners and Respondents but to all South Carolina voters and election officials.

- b. Resolution of these issues also will ensure that upcoming elections are conducted safely and in a manner that protects South Carolina voters, poll workers, and the integrity of and public confidence in this State’s election process.
- c. The issues involve application of the State’s election laws and constitutional provisions to facts that Petitioners do not believe will be materially in dispute—whether all voters practicing social distancing to prevent the spread of COVID-19 qualify as “physically disabled persons” who may vote by absentee ballot.

WHEREFORE, having fully set forth their Petition, Petitioners respectfully request that this Court grant the within petition.

Dated: April 22, 2020

By: s/ Christopher J. Bryant

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Exhibit A to Petition for Original
Jurisdiction

Complaint for Declaratory Judgment

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Rhodes Bailey, Robert Wehrman, South Carolina Democratic Party, and
DCCC.....Plaintiffs-Petitioners

v.

South Carolina State Election Commission and Marci Andino as Executive Director of the State
Election CommissionDefendants-Respondents

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs Rhodes Bailey, Robert Wehrman, South Carolina Democratic Party (“SCDP”),
and DCCC would allege and show as follows:

NATURE OF THE CASE

1. The South Carolina State Election Commission’s (“SEC”) interpretation of current election law would require most South Carolina voters to abandon the social distancing practices that have been encouraged by medical professionals and ordered by public officials and cast their ballots in person on election day in the upcoming primary and general elections. This would force voters to choose to either safeguard their health and the health of their communities or exercise their constitutional right to vote. Such a choice threatens the constitutionally guaranteed right to free and open elections that are protected from undue influence and tumult. S.C. Const. art. I, § 5; id. art. II, § 1. Plaintiffs seek an order from this Court declaring that all South Carolina voters who wish to vote absentee in the remaining 2020 elections because of COVID-19 may do so.

2. To ensure that voters are not disenfranchised, the Court should interpret existing law in a manner that allows all voters to vote safely. The Court should issue a declaratory judgment

holding that, during and after this public health crisis, those who practice social distancing to avoid contracting or spreading COVID-19 qualify as a “physically disabled person” who cannot go to the polls “because of illness” under the current absentee voting scheme. S.C. Code § 7-15-310(4). Such a holding is compelled by the plain language of the law and will protect the right of South Carolina voters to “free and open” elections as required by the State Constitution.

3. The United States is in the midst of an unprecedented public health crisis. COVID-19 has spread throughout the country, including South Carolina which has reported over 4,600 infections and 130 deaths. Scientists and medical professionals have advised all residents to socially distance themselves from others for the foreseeable future to slow the spread of the highly communicable disease. Consistent with these recommendations, Governor Henry McMaster issued a “Home or Work” order on April 6, 2020 imposing social distancing requirements and a fine of \$100 or imprisonment up to 30 days for those who violate the order.

4. Under the SEC’s interpretation of the election law, large numbers of people—voters and poll workers—will be forced to congregate in one place because all voters must cast their ballots in person on election day, with the exception of voters who fall into certain enumerated categories—“none of which include self-isolating due to a pandemic.” Ex. 1, Letter from SEC to Governor McMaster, Senator Peeler, and Representative Lucas (hereinafter “Andino Letter”) at 2. Defendant Marci Andino, Executive Director of the SEC, took the proactive step of notifying Governor McMaster, Senator Harvey Peeler, Jr., President of the South Carolina Senate, and Representative Jay Lucas, Speaker of the South Carolina House of Representatives of the foreseeable problems in-person voting presents.

5. Forcing the vast majority of voters to cast their ballots in person during or following the COVID-19 pandemic is problematic for at least three reasons. First, making voters get in line

on election day when COVID-19 poses a foreseeable risk to public health and forces voters and poll workers to choose between their health and participating in the democratic process; voters must choose between exercising their constitutionally protected right to vote in free and open elections on the one hand and following the guidance of public officials and health professionals asking them to stay at home, socially distance themselves from others, and minimize contact and interaction with individuals unless absolutely necessary. See, e.g., Exec. Order 2020-21 (Governor McMaster’s “Stay at Home or Work Order,” requiring “any and all residents and visitors of the State of South Carolina . . . to limit social interaction, practice ‘social distancing’ in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and . . . limit their movements outside of their home” unless they are “engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations”).

6. Second, the SEC and various county boards of elections and registration fear that they will have difficulty fully staffing polling places. Many longtime poll workers have already informed elections officials that they will not be working elections this year due to COVID-19. E.g., Brian Hicks, South Carolina must plan for safe elections in June, maybe even November, Post & Courier (Apr. 10, 2020), https://www.postandcourier.com/columnists/hicks-south-carolina-must-plan-for-safe-elections-in-june-maybe-even-november/article_2208f6ba-7a7c-11ea-980d-23992fcdc56f.html (noting that 144 individuals who regularly volunteer as poll workers in Charleston County have “already declined” to volunteer in the upcoming election). In addition, “a large percentage of the state’s poll managers fall into high risk categories,” and the SEC is anticipating “a deficit in the number of managers needed to staff polling places. Ex. 1, Andino Letter at 2.

7. Third, it is likely that a large number of locations that have traditionally been used as polling places will be unavailable during the 2020 elections due to COVID-19. Ex. 1, Andino Letter at 2 (“[W]e anticipate county election officials will likely experience issues with the availability of polling places as well as securing alternative polling places.”).

8. Accordingly, Plaintiffs file this suit to obtain immediate relief that ensures the South Carolina voters are able to exercise their right to vote in free and open elections even during this pandemic, particularly the fast-approaching June 9, 2020 primary elections. Plaintiffs ask the Court for a declaratory judgment holding that current election law permits every South Carolina voter to cast an absentee ballot during and in the aftermath of the COVID-19 pandemic. Only with such a judgment can South Carolina voters have the opportunity to participate in the safe, free and open elections that the South Carolina Constitution guarantees during and after the COVID-19 pandemic.

PARTIES

9. Plaintiff Rhodes Bailey is a citizen of Richland County and a Democratic candidate for South Carolina House District 75. He is actively campaigning in the contested June 9, 2020 Democratic Party primary and hopes to progress to the November 3, 2020 general election as the Democratic candidate.

10. Plaintiff Rob Wehrman is a citizen of Charleston County and a Democratic candidate for Charleston County Council. He is actively campaigning in the contested June 9, 2020 Democratic Party primary and hopes to progress to the November 3, 2020 general election as the Democratic candidate.

11. Plaintiffs Bailey and Wehrman (collectively, “the Candidate Plaintiffs”) each have a legal interest in ensuring that the elections in which they are candidates are carried out in a

manner consistent with the South Carolina Constitution. The Candidate Plaintiffs, along with all other candidates running for public office in 2020 elections, will face irreparable harm but for adequate measures taken to ensure safe elections that comply with the South Carolina Constitution. The Candidate Plaintiffs have an interest in ensuring that every voter in their respective districts who is legally permitted to vote has an opportunity to safely cast a ballot. And as voters themselves, the Candidate Plaintiffs have an interest in ensuring that they have an opportunity to safely cast their own ballots in the upcoming elections.

12. Plaintiff South Carolina Democratic Party (“SCDP”) brings this action on its own behalf and on behalf of its members. SCDP is a political party within the meaning of S.C. Code Ann. § 7-11-12 and is the South Carolina state party committee of the national Democratic Party. SCDP is certified by the SEC to nominate candidates for offices to be voted on in a general or special election and nominates candidates on a regular basis by party primary. SCDP has an interest in ensuring that voters have an opportunity to express their will regarding Democratic Party candidates running for elections, as well as ballot measures and initiatives those individuals support. To accomplish its purpose, SCDP engages in vitally important activities, including supporting Democratic Party candidates in national, state, and local elections through a meaningful opportunity to cast ballots in South Carolina. SCDP has hundreds of thousands of members and constituents from across the State, including South Carolinians who regularly support candidates affiliated with the Democratic Party and Democratic Party candidates. SCDP works to accomplish its mission by, among other things, working closely with Democratic candidates and assisting county parties by making expenditures on candidates’ behalves, providing get-out-the-vote (“GOTV”) assistance, and actively supporting the development of programs benefiting Democratic Party candidates. SCDP has previously engaged in, and plans to continue to engage

in, expenditures on behalf of Democratic Party candidates, GOTV assistance, and the development of programs to elect Democratic Party candidates in South Carolina. An election held without adjustments for the COVID-19 pandemic directly harms SCDP because it frustrates its mission and the effectiveness of its efforts to persuade and mobilize voters to vote for Democratic candidates and causes, and will require it to divert resources from other efforts in the State to attempt to help its voters overcome the barriers presented by the lack of safe means to cast their ballots. In addition, without a viable absentee voting option for most of its members, SCDP will be further directly injured by decreased turnout, which will undermine its fundamental right to choose its standard bearers through a vote that accurately reflects the preferences of its membership.

13. Plaintiff DCCC is the national congressional committee of the Democratic Party as defined by 52 U.S.C. § 30101(14). DCCC's mission is to elect Democratic candidates to the U.S. House of Representatives from across the United States, including from South Carolina's seven congressional districts. DCCC works to accomplish its mission by, among other things, assisting state parties throughout the country, including in South Carolina. DCCC intends to again expend significant resources to support Democratic candidates in 2020, including specifically in South Carolina. In 2018, DCCC made millions of dollars in contributions and expenditures to persuade and mobilize voters to support congressional candidates who affiliate with the Democratic Party. For 2020, DCCC has identified districts in South Carolina as targeted races, in which it will expend significant resources to support the Democratic candidates. If elections are held without adjustments for COVID-19, DCCC will divert and expend additional funds and resources to promote safe voter education and turnout efforts in South Carolina at the expense of other efforts in South Carolina and other states. An election held without adjustments for the COVID-19

pandemic directly harms DCCC because it frustrates its mission and efforts to register voters and persuade and mobilize those voters to elect Democratic candidates in South Carolina. An election held without adjustments for the COVID-19 pandemic also necessarily reduces the pool of eligible voters who can vote for Democratic Candidates for U.S. Congress. In addition, without a viable absentee voting option for most South Carolinians, DCCC will be further directly injured by decreased turnout, which will undermine its fundamental right to choose its standard bearers through a vote that accurately reflects the preferences of Democratic Party membership.

14. All Plaintiffs have a personal stake in the subject matter of this lawsuit.

15. Defendant South Carolina State Election Commission (“SEC”) is an agency of the government of the State of South Carolina and an entity charged with carrying out the authority conferred upon it by the South Carolina Election Law, S.C. Code Ann. § 7-1-10, et seq.

16. Defendant Andino is sued in her official capacity as Executive Director of the SEC. The Executive Director is the Chief Administrative Officer for the SEC and is required by law to supervise the County Boards of Voter Registration and Elections. S.C. Code Ann. § 7-3-20. In this role, she is tasked with ensuring that those County Boards comply with state and federal law in conduct of elections and voter registration. Id. at § 7-3-20(C).

JURISDICTION AND VENUE

17. Jurisdiction and venue are proper in this Court. It is the duty of the South Carolina Supreme Court “to interpret and declare the meaning of the constitution.” Segars-Andrews v. Judicial Merit Selection Comm’n, 387 S.C. 109, 123, 691 S.E.2d 453, 461 (2010).

18. Plaintiffs also bring this matter pursuant to the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 et seq.

19. The Supreme Court may exercise original jurisdiction pursuant to Article V, section 5 of the South Carolina Constitution, S.C. Code Ann. § 14-3-310, and South Carolina Appellate Court Rule 245. “This is a matter of great public importance. Integrity in elections is foundational.” Anderson v. S.C. Election Comm’n, 397 S.C. 551, 556, 725 S.E.2d 704, 705 (2012).

STATEMENT OF FACTS AND LAW

I. South Carolina election law requires voters to cast their ballots in person on election day unless they fit within limited categories permitted to cast an absentee ballot.

20. South Carolina’s election law provides two ways for voters to cast their ballots: (1) in person on the day of the election, or (2) in person or by mail before election day through absentee voting. S.C. Code Ann § 7-13-710 et seq. (outlining process for voting in person); S.C. Code Ann. § 7-13-771 (permitting curbside voting for “handicapped or elderly voters who cannot enter the polling place or cannot stand in line to vote”); S.C. Code Ann. § 7-13-385 (absentee voter may return absentee ballot “by mail, by personal delivery, or by authorizing another person”).

21. Although in-person voting on election day is available to all South Carolina voters, only those voters who fall into defined categories may cast absentee ballots by mail or in person. S.C. Code Ann. § 7-15-320 (listing categories of voters eligible to cast absentee ballots).

22. “[P]hysically disabled persons” is one category that must be permitted to vote by absentee ballot. S.C. Code Ann. § 7-15-320(B)(1).

23. Under South Carolina’s absentee ballot voting laws a “physically disabled person” is statutorily defined as “a person who, because of injury or illness, cannot be present in person at his voting place on election day.” Id. § 7-15-310(4) (emphasis added).

24. Despite the fact that COVID-19 is an illness and those voters who practice social distancing cannot be present in person at their voting places on election day, Defendant Andino has articulated an interpretation of election law that such voters are not physically disabled within

the meaning of South Carolina election law. Ex. 1, Andino Letter at 2 (“To qualify to vote absentee, the voter must fall into one of 18 categories, none of which include self-isolating due to a pandemic.”).

II. The South Carolina Constitution guarantees free and open elections.

25. South Carolina’s constitution provides several guarantees regarding elections. Paramount among these is the guarantee that “[a]ll elections shall be free and open.” S.C. Const., art. I, § 5.

26. This Court has interpreted this clause to mean that “no impediment or restraint of any character shall be imposed upon [eligible voters] either directly or indirectly whereby [they] shall be hindered or prevented from participation at the polls.” Cothran v. W. Dunklin Pub. Sch. Dist. No. 1-C, 189 S.C. 85, 200 S.E. 95 (1938) (interpreting the same provision then-codified in Article 1, Section 10 of the Constitution). Under the Constitution, a free and open election must be “public and open to all qualified electors alike; . . . when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial.” Id.

27. Courts in other jurisdictions with similar clauses have held that the “plain and expansive sweep of the words” indicate

the framers’ intent that all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of [the state], and, also, conducted in a manner which guarantees, to the greatest degree possible, a voter’s right to equal participation in the electoral process for the selection of his or her representatives in government.

League of Women Voters v. Commonwealth, 645 Pa. 1, 100, 178 A.3d 737, 804 (2018) (interpreting Pennsylvania’s “free and equal” elections clause); see also Common Cause v Lewis, No. 18 CVS 014001, 2019 WL 4569584, at *110 (N.C. Super. Sep. 03, 2019) (“[T]he Court

concludes that the meaning of the Free Elections Clause is that elections must be conducted freely and honestly to ascertain, fairly and truthfully, the will of the people. This, the Court concludes, is a fundamental right of the citizens enshrined in our Constitution's Declaration of Rights, a compelling governmental interest, and a cornerstone of our democratic form of government.”).

28. The South Carolina Supreme Court’s prior decisions regarding elections have articulated a similar view: “The purpose of an election is to express the will of the electorate.” Redfearn v. Bd. of State Canvassers of S.C., 234 S.C. 113, 120, 107 S.E.2d 10, 14 (1959).

29. Further, South Carolinians have a constitutional right to express their will in free and open elections that are free from the influence of “tumult.” S.C. Const. art. II, § 1 (providing that the right of suffrage “shall be protected by laws regulating elections and prohibiting . . . all undue influence from . . . tumult”).

30. If voters are forced to choose between their safety and casting a ballot, there will be a restraint that will hinder or prevent the electorate from participation at the polls, and the election will not reflect the will of the people. Accordingly, South Carolina’s constitutional guarantee of free and open elections is effectuated only if South Carolinians who are eligible to vote have a safe and equitable opportunity to express their will through casting a ballot without fear.

31. Provisions of the South Carolina Constitution are “expressions of the sovereign will [of the people of South Carolina] in the most solemn form such expression ever puts on, and [everyone] engaged in the administration of the Government is under the highest possible obligation to maintain them.” Wood v. Wood, 48 S.C.L. 148, 150–51 (S.C. Ct. App. 1867).

III. COVID-19 threatens to deprive South Carolinians of their constitutional guarantee of free and open elections that are protected from tumult.

32. COVID-19 presents an unprecedented global health crisis, impacting tens of thousands of residents throughout the United States, including South Carolina. This respiratory disease—caused by a novel coronavirus called SARS-CoV-2—is highly communicable. CDC, Coronavirus Disease 2019 (COVID-2019), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html> (last visited April 22, 2020).

33. COVID-19 spreads between people who are in close contact with one another through respiratory droplets produced when someone with the illness “coughs, sneezes or talks.” CDC, How COVID-19 Spreads, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Apr. 22, 2020). COVID-19 may also spread when people “touch[] a surface or object that has the virus on it and then touch[] their own mouth, nose, or possibly their eyes.” Id. “The virus that causes COVID-19 is spreading very easily and sustainably between people.” Id. COVID-19 may also be spread by people without symptoms. Id.

34. This disease has spread through communities all over the State. As of April 21, 2020, over 4,600 people in South Carolina have been infected and 130 people have died as a result of COVID-19. S.C. Dep’t. of Health and Environ. Control (“DHEC”), Coronavirus COVID-19 Cases in South Carolina, <https://scdhec.gov/infectious-diseases/viruses/coronavirus-disease-2019-covid-19/testing-sc-data-covid-19> (last updated Apr. 21, 2020). The number of infections has grown exponentially in the month since the State’s first reported case on March 7, and is likely much higher than the official counts above due to undiagnosed cases. Josh Bell, A brief timeline of the COVID-19 coronavirus outbreak in South Carolina, *The State*, Apr. 2, 2020, <https://www.thestate.com/news/coronavirus/article241708466.html>

35. According to the CDC, COVID-19 poses a high risk for severe illness to (1) people 65 years and older; (2) people who live in a nursing home or long-term care facility; and (3) people with underlying medical conditions including but not limited to chronic lung disease, asthma, heart conditions, diabetes, as well as immunocompromised people. CDC, Groups at Higher Risk for Severe Illness, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last visited Apr. 22, 2020), DHEC reports that most confirmed cases are among South Carolina residents over the age of 50, and most of the reported deaths are among those over 70 years old. DHEC, Coronavirus COVID-19 Cases in South Carolina, *supra* ¶ 34.

36. Nevertheless, DHEC has reported that younger residents, particularly those who are 30 to 50 years old, are also at risk of contracting and even dying from COVID-19. *Id.* People of any age who have serious underlying medical conditions are at a higher risk of becoming severely ill from COVID-19. CDC, Groups at Higher Risk for Severe Illness, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last visited Apr. 22, 2020).

37. People of color are also disproportionately affected by COVID-19. DHEC reports that 36% of the State's confirmed infections and 57% of the reported deaths are African Americans, despite making up only 27 percent of the state's population. Coronavirus COVID-19 Cases in South Carolina, *supra* ¶ 34. Indeed, African-American residents in Richland County are especially at risk. As of April 21, 2020, DHEC reported 689 confirmed cases—the highest number of infections of in the State. Coronavirus COVID-19 Cases in South Carolina, *supra* ¶ 34. Because over 48% of the county population is African American, Richland County residents are more likely to come into contact with, contract, and potentially die from COVID-19. U.S. Census Bureau, QuickFacts Richland County, South Carolina,

<https://www.census.gov/quickfacts/richlandcountysouthcarolina> (population estimates as of July 1, 2019).

38. National trends from the CDC show that the curve is climbing rapidly nationally. CDC, COVID-19 Cases in the United States by Date of Illness Onset, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited Apr. 22, 2020). Indeed, in South Carolina, the number of new confirmed cases more than quadrupled at the end of March. DHEC, Coronavirus COVID-19 Cases in South Carolina, *supra* ¶ 34 (showing 4 new cases during the week of March 22 to 25 new cases the week of March 29). Although one model suggests cases are not now rising as rapidly in S.C. as last month, national and State health officials have cautioned that the public health threat posed by COVID-19 is far from over. *E.g.*, Lena H. Sun, CDC director warns second wave of coronavirus is likely to be even more devastating, *Washington Post* (Apr. 21, 2020), <https://www.washingtonpost.com/health/2020/04/21/coronavirus-secondwave-cdcdirector/>; Isabella Cueto, Virus cases to keep rising until May, despite models showing SC past peak, DHEC says, *The State* (Apr. 20, 2020), <https://www.thestate.com/news/coronavirus/article242150831.html>.

39. Many scientists believe it will take at least a year to develop a vaccine for COVID-19 and provide it to the general public, but the precise timing is unknown. Sarah LaFave, What Will It Take To Develop a Vaccine for COVID-19?, Johns Hopkins University - The Hub, (Mar. 26, 2020) <https://hub.jhu.edu/2020/03/26/covid-19-vaccine-development-ruth-karron/> (“Scientists estimate that it will take at least one year to make a COVID-19 vaccine available to the general public.”).

40. And scientists predict that cases of COVID-19 in the United States will not wane as the weather warms over the next few months through August. Marc Lipsitch, Seasonality of SARS-CoV-2: Will COVID-19 go away on its own in warmer weather?, Center for Communicable Disease Dynamics, <https://ccdd.hsph.harvard.edu/will-covid-19-go-away-on-its-own-in-warmer-weather> (“[W]hile we may expect modest declines in the contagiousness of SARS-CoV-2 in warmer, wetter weather . . . , it is not reasonable to expect these declines alone to slow transmission enough to make a big dent.”).

41. Because COVID-19 is highly communicable and there is no vaccine and no specific antiviral medicine to prevent or treat it, the CDC and DHEC recommends that people stay at home and avoid close contact with others to prevent the spread of the disease. CDC, What You Can Do, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/what-you-can-do.html> (last visited Apr. 22, 2020); DHEC, Protect Yourself & Those Around You (COVID-19), <https://scdhec.gov/protect-yourself-those-around-you-covid-19> (last visited Apr. 22, 2020).

42. Many public officials have issued stay at home orders or similar orders to encourage South Carolinians to limit their movements and the transmission of COVID-19. Recognizing that COVID-19 poses “an actual, ongoing, and evolving public health threat to the State of South Carolina,” Governor McMaster declared a state of emergency and issued several executive orders closing schools, beaches, bars, restaurants, and other business, prohibiting gatherings of 10 or more people, and requiring residents to engage in social distancing and “remain[] at home whenever possible.” Exec. Order 2020-21 (Apr. 6, 2020); see also Exec. Order 2020-08 (Mar. 13, 2020); Exec. Order 2020-09 (Mar. 15, 2020); Exec. Order 2020-15 (Mar. 28, 2020); Exec. Order 2020-16 (Mar. 30, 2020).

43. And unless Americans continue to adhere to social distancing practices, a second wave of COVID-19 infections will occur in the summer or fall, with a possible “peak between October and November.” Elizabeth Weise, When will a second wave of the coronavirus hit and what will it look like?, USA TODAY (Apr. 19, 2020 10:30 AM) <https://www.usatoday.com/story/news/health/2020/04/19/coronavirus-herd-immunity-vaccines-determine-covid-second-wave/5151957002/>. Thus, COVID-19 will remain a public health risk at least for the remainder of 2020.

44. Against this backdrop, elections administrators have laudably begun to sound the alarm regarding voting in 2020.

45. Because the SEC’s interpretation of South Carolina election law requires the overwhelming majority of South Carolinians to vote in person on election day, elections officials have expressed concerns about safe procedures for administering the June 9, 2020 primary election and other elections in 2020. For example, Defendant Marci Andino, Executive Director of the SEC, specifically noted that “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.” Ex. 1, at 2 (Andino Letter). The South Carolina Association of Registration and Election Officials, Inc. (“SCARE”) raised similar concerns. Ex. 2, April 6, 2020 Letter from SCARE to Governor McMaster, Senator Peeler, and Representative Lucas at 1-2.

46. Voting in person on election day under the current system would require voters to violate social distancing requirements and touch surfaces shared by hundreds or thousands of people, subjecting voters to potential COVID-19 infections. In the midst of continued community spread of COVID-19, requiring millions of voters to encounter such dangerous conditions is unconscionable. Even if county election officials are able effectively to implement social

distancing requirements and sanitizing and disinfecting measures requiring the overwhelming majority of South Carolina voters to cast their ballots in person on election day would only lead to longer lines, longer wait times, and greater exposure to a potentially deadly illness. These factors work, both independently and together, to disenfranchise South Carolina voters.

47. As a result, most South Carolinians who wish to vote in the 2020 elections must make the choice between (1) following the guidance of medical experts and practicing social distancing to protect their health and those in their communities by avoiding the polls, or (2) exercising their constitutionally guaranteed right to vote with great risk to their health. Those voters who are unable or unwilling to risk their safety and the safety of others by leaving their homes and waiting in line to cast their ballot on election day face disenfranchisement.

48. As noted above, COVID-19 disproportionately affects the elderly and can cause serious illness and even death, and at least 144 individuals who normally work the Charleston County polls have already said that they will not work at the June 9 primary. “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.” Ex. 1, Andino Letter at 2.

49. There will also be a shortage of polling locations, potentially leading to consolidated precincts and even longer lines. Indeed, the SEC “anticipate[s] 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.” *Id.* For example, during Wisconsin’s April 2020 primary election, Milwaukee voters had only 5 precincts instead of the usual 180 precincts to cast their ballots on election day, due both to poll workers declining to work for fear of contracting the virus, and facilities declining to permit the State to conduct elections there. Laurel White, ‘It’s

Madness.’ Wisconsin’s Election Amid Coronavirus Sparks Anger, NPR, Apr. 6, 2020, <https://www.npr.org/2020/04/06/827122852/it-s-madness-wisconsin-s-election-amid-coronavirus-sparks-anger>.

50. In this unprecedented situation, the requirement that most South Carolinians vote in person on election day has become hostile to their right to vote in free and open elections and, as a direct result, millions of voters may be disenfranchised. SEC, South Carolina Voter Registration Demographics, <https://www.scvotes.org/cgi-bin/scsec/96vr?countykey=ALL&D1=ALL> (last visited Apr. 22, 2020) (reporting 3,328,188 registered voters). Clearly, a large number of South Carolinians will be forced to stay away “because of illness,” that is, fear of contracting the Coronavirus.

51. To ensure that voters are not disenfranchised, the Court should interpret existing law in a manner that allows all voters to vote safely. The Court should issue a declaratory judgment holding that, during and after this public health crisis, those who practice social distancing to avoid contracting or spreading COVID-19 qualify as a “physically disabled person” who cannot go to the polls “because of illness” under the current absentee voting scheme. S.C. Code § 7-15-310(4). Such a holding is compelled by the plain language of the law.

52. As noted, to qualify to vote absentee, a physically disabled person is one “who, because of injury or illness, cannot be present in person at his voting place on election day” S.C. Code § 7-15-310(4) (emphasis added). COVID-19 is an illness, and individuals who are practicing social distancing and remaining in their homes to limit the risk of transmission and infection cannot be present at their polling place on election day.

53. But the SEC does not interpret “physically disabled” to include voters who cannot vote in person on election day because they are practicing social distancing to avoid getting ill and prevent the spread of COVID-19. See Compl. Ex. 1, Andino Letter at 2.

54. Accordingly, declaring that every South Carolina voter who seeks to cast an absentee ballot to avoid the polling place in the upcoming elections is permitted to vote absentee by reason of physical disability would permit many South Carolina voters to benefit from the current absentee voting procedure and exercise their right to vote without endangering their health and safety, especially those seeking to participate in the fast-approaching June 2020 primary elections.

55. If South Carolina’s electorate does not have an opportunity to safely cast ballots in the upcoming primary and general elections (such as those outlined by the SEC), those elections will be held in violation of the constitutional guarantee to free and open elections. Eligible voters will be disenfranchised, and election results will not reflect the unencumbered will of the people.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment - Statutory Interpretation)
S.C. Code Ann. § 7-15-310(4)

56. Plaintiffs reallege and incorporate the allegations in the preceding paragraphs as if fully repeated herein.

57. South Carolina law provides that absentee ballot statutes including those statutes that define who is eligible to vote absentee “shall be liberally construed in order to effectuate their purposes.” S.C. Code Ann. § 7-15-20.

58. South Carolina law permits a physically disabled person—that is, “a person who, because of injury or illness, cannot be present in person at his voting place on election day,” S.C.

Code Ann. § 7-15-310(4) (emphasis added)—to cast an absentee ballot. S.C. Code Ann. § 7-15-320(B)(1).

59. COVID-19 is an illness. In light of the highly communicable nature of COVID-19, the risk of symptomless spread, the fact that a substantial portion of the population is considered high risk, the lack of curative medication or a vaccine, and the foreseeable and recognized risk of a COVID-19 resurgence when social distancing restrictions are lifted, COVID-19 will keep eligible South Carolina voters away from crowded polling places on election day.

60. Due to the highly communicable nature of COVID-19, those who elect to stay at home on election day and participate in social distancing to prevent the spread of the illness, and thus “cannot be present in person at his voting place on election day,” should be qualified to vote by absentee ballot.

61. These matters present a real and justiciable issue which is presently ripe for decision. Therefore, Plaintiffs respectfully request a declaratory judgment that in the context of the COVID-19 health emergency and the risks posed by the disease, all South Carolina voters are physically disabled persons within the meaning of S.C. Code Ann. § 7-15-310(4) and are eligible to vote absentee if they do not wish to vote in person on election day because of COVID-19.

WHEREFORE, Plaintiffs respectfully request the entry of an Order that provides for the following relief:

- A. Declaring that in the context of the COVID-19 health emergency and the risks posed by the disease, all South Carolina voters are physically disabled persons within the meaning of S.C. Code Ann. § 7-15-310(4) and are eligible to vote absentee if they do not wish to vote in person on election day because of COVID-19;

- B. Awarding Plaintiffs the costs of this action, including reasonable attorneys' fees and costs under South Carolina Code § 15-77-300 should this Court deem such an award just and proper; and
- C. Providing such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: April 22, 2020

By: s/ Christopher J. Bryant

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Exhibit 1 to Complaint for Declaratory
Relief

Letter from Marci Andino to Governor
McMaster, Senator Peeler, and
Representative Lucas

March 30, 2020

Honorable Henry D. McMaster
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State House
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Honorable Harvey Peeler, Jr.
President of the Senate
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Honorable Jay Lucas
Speaker of the House
S.C. House of Representatives
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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 2 to Complaint for Declaratory
Relief

Letter from South Carolina Association of
Registration and Election Officials, Inc.
("SCARE") to Governor McMaster, Senator
Peeler, and Representative Lucas



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

**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**

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
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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**

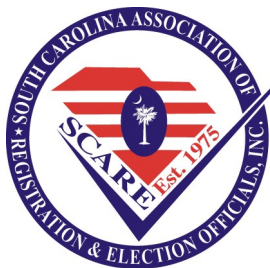
**TODD BILLMAN
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South Carolina Association of Registration and Election Officials, Inc.

**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. 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
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**LYNNE WEST
HISTORIAN**

**DAVID ALFORD
IMMEDIATE
PAST PRESIDENT**

Sincerely,

Katy Smith, CERA
President

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Rhodes Bailey, Robert Wehrman, South Carolina Democratic Party, and
DCCC.....Plaintiffs-Petitioners

v.

South Carolina State Election Commission and Marci Andino as Executive Director of the State
Election Commission.....Defendants-Respondents

NOTICE ADVISING RESPONDENTS OF TWENTY DAYS TO FILE A RETURN

Please take notice that, pursuant to Rule 245(c), SCACR, Defendants-Respondents have
twenty days from the date of service hereof to file an original and six copies of its return with the
Clerk of the Supreme Court and on all parties a copy of the return. 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.

Dated: April 22, 2020

By: s/Christopher J. Bryant

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* Pro Hac Vice Application Forthcoming