

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

MISSOURI STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; LEAGUE OF WOMEN VOTERS OF MISSOURI; and JAVIER A. DEL VILLAR; KAMISHA D. WEBB; CECIL E. WATTREE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

STATE OF MISSOURI; JOHN R. (JAY) ASHCROFT, in his official capacity as Missouri Secretary of State; JEAN PETERS BAKER, in her official capacity as the Jackson County Prosecutor and all others similarly situated; and KANSAS CITY BOARD OF ELECTION COMMISSIONERS; JACKSON COUNTY ELECTION BOARD; BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF ST. LOUIS, and all others similarly situated.

Defendants.

Case No. _____

Division: _____

CLASS ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs, Missouri State Conference of the National Association for the Advancement of Colored People, League of Women Voters of Missouri, Javier A. Del Villar, Kamisha D. Webb, and Cecil E. Wattree, upon knowledge with respect to their own acts and on information and belief as to other matters, hereby allege for this petition for injunctive and declaratory relief:

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. The global pandemic related to SARS-CoV-2, the virus that causes COVID-19 (also commonly referred to as the novel coronavirus), poses an existential threat to Missourian's ability to safely participate in their electoral democracy.

2. The United States is now the epicenter of the global pandemic and is leading the world in confirmed COVID-19 cases. There have been more than 660,000 reported COVID-19 cases and nearly 30,000 deaths, with thousands of new cases reported across the country each day.¹ In Missouri, the Department of Health and Senior Services reports that there are over 5,111 reported cases of COVID-19 cases and 152 deaths related to the virus in the state as of the date of this filing.² One week ago, there were just 3,539 reported cases and 77 deaths.

3. The virus that causes COVID-19 is highly contagious and spreads through a variety of ways, including respiratory droplets and contact between individuals. Everyone is susceptible. There is no vaccine, and there is no cure. Because of this, on the virtually unanimous recommendations of public health experts, government officials at every level have taken drastic actions to reduce transmission and "flatten the curve."

4. Governor Parson has put the state of Missouri under a state of emergency. Gatherings of more than 10 people are banned. Schools are closed for the rest of the year. State and local officials across the board have urged Missourians to stay and home whenever possible, leaving only if absolutely necessary and, even then, only for essential services like food and medical

¹ *Johns Hopkins COVID-19 Unites States Cases by County*, Johns Hopkins University, Coronavirus Resource Center, <https://coronavirus.jhu.edu/us-map> (last visited Apr. 16, 2020).

² *COVID-19 Outbreak*, Missouri Dep't of Health & Senior Servs., <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/results.php> (last visited Apr. 16, 2020).

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

needs, and to avoid being within 6 feet of others. Not following these directives risks everyone's health and safety.

5. The vast majority of Missourians have traditionally voted in person. But so long as the COVID-19 pandemic persists, voting cannot proceed as usual. While in-person voting remains critical to some voters, including voters who are housing insecure or visually impaired, thousands of eligible voters cannot be physically lining up with others at their traditional polling places, touch the same equipment, have face-to-face interactions with poll workers, and more without contravening the advice of public health experts and threatening public safety, elections workers, and the health of individual voters and their families.

6. Recognizing the substantial health risks posed by in-person voting at polling locations because of the COVID-19 pandemic, the Centers for Disease Control ("CDC") is encouraging mail-in voting as much as possible as an alternative to in-person voting. And elections officials across the country are not only encouraging voters to vote by mail rather than gathering at polling places but have also taken numerous affirmative steps to ensure access to mail in voting for their voters. In fact, at least 8 of the 16 states that do not already offer mail voting to all registered voters have done so for some if not all of the upcoming elections in 2020 because of the pandemic, including Alabama, Arkansas, Delaware, Indiana, Massachusetts, New Hampshire, New York, and West Virginia.

7. Missouri law allows for absentee voting, § 115.658, RSMo, which gives voters an opportunity to submit an absentee ballot by mail.

8. Although the opportunity to vote absentee in Missouri is limited by statute to registered voters who provide one of six reasons enumerated in § 115.277, RSMo, one of the allowable reasons to vote absentee in Missouri readily extends to cover all Missouri voters who

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

wish to confine themselves at home and vote absentee to avoid contracting or spreading the virus that causes COVID-19.

9. Specifically, while the COVID-19 public health crisis and pandemic is ongoing, all eligible Missouri voters should be able to vote absentee by invoking “[i]ncapacity or confinement due to illness or physical disability, including a person who is primarily responsible for the physical care of a person who is incapacitated or confined due to illness or disability.” § 115.277.1(2), RSMo.

10. While many absentee ballots that are cast by mail in Missouri must be notarized, absentee ballots cast pursuant to § 115.277.1(2), RSMo, are not required to have a notary seal. § 115.283.7, RSMo.

11. At least five of the states that also require an excuse for absentee voting or mail voting have interpreted a disability or illness excuse in their absentee ballot laws similar to § 115.277.1(2), RSMo, to cover all eligible voters for some or all upcoming elections in 2020 because of the pandemic.

12. Nevertheless, it remains unclear whether a person can vote absentee in Missouri under the “[i]ncapacity or confinement due to illness” allowance of § 115.277.1(2), RSMo, because they are confining themselves to vote from their home, rather than gathering in a polling place, to avoid contracting or spreading COVID-19.

13. Governor Parson has publicly stated his view that avoiding contracting or spreading of the virus that causes COVID-19 does not constitute a valid excuse to vote absentee under § 115.277.1(2), RSMo.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

14. Secretary Ashcroft, however, has no public position and has stated that local election authorities in Missouri must each interpret § 115.277.1(2), RSMo, leading to inconsistent interpretations and application of § 115.277.1(2) throughout the state.

15. Indeed, the two most populous counties in Missouri—Jackson and St. Louis—have indicated that they are taking opposite positions on whether confining oneself to vote from home to avoid contracting or spreading the virus that causes COVID-19 constitutes a valid excuse to vote absentee under § 115.277.1(2), RSMo.

16. This lack of clarity is no small matter: Making a false statement on the absentee ballot envelope is a Class One election offense, a felony connected with the right of suffrage. §§ 115.304, 115.631, RSMo.

17. Without declaratory and injunctive relief from this Court, Missouri voters face the unconscionable choice between protecting their health and the health of their families and neighbors and forfeiting their right to vote or voting absentee at the risk of their ballots being discarded and potential criminal prosecution.

18. Without declaratory and injunctive relief from this Court, Missouri voters also face arbitrary and disparate access to absentee voting based on where they live.

19. With at least three elections in Missouri in the upcoming months, an authoritative determination that all eligible voters who wish to confine themselves to vote absentee to avoid contracting or spreading the virus that causes COVID-19 are eligible to vote absentee— pursuant to § 115.277.1(2), RSMo—without a notary seal, is necessary in order to prevent large-scale disenfranchisement and to secure public health.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

JURISDICTION AND VENUE

20. This Court maintains original subject-matter jurisdiction over this action under §§ 526.030 and 527.010 of the Missouri Revised Statutes and Missouri Rule of Civil Procedure 87.01.

21. Venue is proper in this Court because Secretary Ashcroft maintains an office in Cole County, Missouri.

PARTIES

A. Plaintiffs

22. Plaintiff Missouri State Conference of the National Association for the Advancement of Colored People (“Missouri NAACP”) is a membership organization whose members reside throughout Missouri. NAACP members who reside in Missouri are members of the Missouri NAACP.

23. The mission of the NAACP is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. Its objectives include seeking enactment and enforcement of law securing civil right as well as educating person as to their rights. Missouri NAACP is an affiliate of the NAACP. Missouri NAACP is a member of the Missouri Voter Protection Coalition, which works to secure the rights of voters in Missouri.

24. Members of Missouri NAACP include eligible voters in Missouri who wish to vote absentee by mail in upcoming elections in Missouri in 2020 because they fear contracting or spreading the COVID-19 virus, are unsure whether the law allows them to vote absentee under the illness or confinement exception, and do not otherwise meet one of the permissible reasons to request an absentee ballot.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

25. These Missouri NAACP members are concerned that their ballots will not be counted and/or that they could face criminal prosecution if they vote absentee but it later turns out that they were not eligible to do so.

26. The COVID-19 pandemic, which is disparately impacting people of color—particularly African Americans—in Missouri, has caused the Missouri NAACP to undertake increased activities to advocate for the rights of its members and the constituencies it serves, including efforts to ensure the right to vote.

27. Missouri NAACP has been and will be required to shift its resources to provide assistance and educate its members on which local election authorities will permit absentee voting because of a fear of contracting or spreading the virus that causes COVID-19 as well as what precautions to take if they choose to risk their health and the health of others and go to a polling place to cast a ballot.

28. Plaintiff League of Women Voters of Missouri (“Missouri LWV”) is a state affiliate of the League of Women Voters (“LWV”). The Missouri LWV works to ensure every citizen can exercise the right to vote. Missouri LWV is a membership organization with local chapters throughout the state. Its members reside throughout Missouri. LWV members who reside in Missouri are members of Missouri LWV.

29. Rooted in the suffrage movement that secured the right to vote for women, Missouri LWV has worked to foster civic engagement and enhance access to the vote since the organization was founded in 1920. Missouri LWV works to ensure every citizen has the opportunity and information to register and exercise their right to vote. Missouri LWV is dedicated to ensuring free, fair and accessible voting for all eligible citizens. Its goal is to

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

safeguard the rights of all qualified voters. Missouri LWV is a member of the Missouri Voter Protection Coalition, which works to secure the rights of voters in Missouri.

30. Missouri LWV has advocated for opportunities for all Missouri voters to cast absentee ballots due to the COVID-19 crisis. It has and will continue to be required to shift its resources to provide assistance and educate its members on which local election authorities will permit absentee voting because of a fear of contracting or spreading COVID-19 as well as what precautions to take if they choose to risk their health and the health of others and go to a polling place to cast a ballot.

31. Members of the Missouri LWV include registered voters in Missouri who wish to vote absentee by mail in upcoming elections in Missouri in 2020 due to fear of contracting or spreading the COVID-19 virus, are unsure whether the law allows them to vote absentee under the illness or confinement allowance, but do not otherwise meet one of the permissible reasons to request an absentee ballot.

32. Missouri LWV members are concerned that their ballots will not be counted and that they could face criminal prosecution if they vote absentee but it later turns out that they were not eligible to do so.

33. Plaintiff Kamisha D. Webb is a resident, taxpayer, and registered voter in the City of Kansas City, Jackson County, Missouri. She has been a registered voter in Missouri since 2008 and plans to vote in upcoming elections in 2020.

34. Ms. Webb was exposed to COVID-19 at her place of employment and tested negative for the virus in early April 2020.

35. Ms. Webb has asthma for which she has a nebulizer machine and is prescribed daily antihistamines to control her condition. Ms. Webb also has a condition called Hereditary

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

Angioedema, and because of this condition, contracting COVID-19 could trigger very serious anaphylactic reactions that could result in hospitalization. Ms. Webb tries to control her Hereditary Angioedema with abortive medications and bi-weekly injections.

36. Other than essential activities, per CDC recommendations and state and local orders, Ms. Webb confines herself at home to avoid contracting or spreading the virus that causes COVID-19.

37. Ms. Webb wants to vote absentee by mail to avoid contracting or spreading the COVID-19 virus by voting in person in the upcoming Missouri elections. However, she is unsure whether she is permitted to vote absentee under the illness or confinement allowance, but does not otherwise meet one of the permissible reasons to request an absentee ballot.

38. Ms. Webb is concerned that her ballot will not be counted and that she may face criminal prosecution if she votes absentee but it later turns out that she was not eligible to do so.

39. Plaintiff Cecil E. Wattree is a resident, taxpayer, and registered voter in the City of Kansas City, Jackson County, Missouri. He has been a registered voter in Missouri for approximately 10 years and plans to vote in the upcoming elections in 2020.

40. Mr. Wattree is an essential worker. He is a medical social worker who works at a primary care clinic with approximately 30 employees on site.

41. Mr. Wattree's partner, with whom he lives, is also an essential worker.

42. Mr. Wattree also lives with his young daughter who is immune compromised.

43. Other than work and other essential activities, per CDC recommendations, Mr. Wattree confines himself at home to avoid contracting or spreading the virus that causes COVID-19.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

44. Mr. Wattree wants to vote absentee by mail to avoid contracting or spreading the COVID-19 virus by voting in person in the upcoming Missouri elections in 2020. However he is unsure whether this allows them to vote absentee under the illness or confinement allowance, but does not otherwise meet one of the permissible reasons to request an absentee ballot.

45. Mr. Wattree is concerned that his ballot will not be counted and that he may face criminal prosecution if he votes absentee but it later turns out that he was not eligible to do so.

46. Plaintiff Javier A. Del Villar is a resident, taxpayer, and registered voter in the City of Lee's Summit, Jackson County, Missouri.

47. Mr. Del Villar is an essential worker. He is a fulltime employee of United Parcel Service.

48. Mr. Del Villar is a package delivery driver and he often delivers to over 200 locations in single day.

49. Mr. Del Villar lives with his sister (who is 30 years old), his father (who is 65 years old), and his mother (who is 56 years old). Mr. Del Villar is currently the only person in his home who is an essential employee and therefore leaving for work.

50. Mr. Del Villar had flu-like symptoms in early March. He was not tested for COVID-19 because those tests were unavailable at the time.

51. Plaintiff Del Villar is an essential worker, which itself puts him at increased risk of being exposed to or spreading the virus, and he does not want to take any further risks that could expose himself, his family, or others to the virus.

52. Other than work and other essential activities, per CDC recommendations, Mr. Del Villar confines himself at home to avoid contracting or spreading the virus that causes COVID-19.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

53. Mr. Del Villar wants to vote absentee by mail to avoid contracting or spreading the COVID-19 virus by voting in person in upcoming Missouri elections in 2020. However, he is unsure whether this allows them to vote absentee under the illness or confinement allowance, but does not otherwise meet one of the permissible reasons to request an absentee ballot.

54. Mr. Del Villar is concerned that his ballot will not be counted and that he may face criminal prosecution if he votes absentee but it later turns out that he was not eligible to do so.

55. Plaintiffs Webb, Del Villar, and Wattree bring this action individually and on behalf of the similarly situated class of Missouri voters.

B. Defendants

56. Defendant State of Missouri is responsible for enforcement of all laws, including § 115.277, RSMo, and its restrictions on absentee voting.

57. Defendant John R. (Jay) Ashcroft is the Missouri Secretary of State, the state's chief elections official, who is responsible for implementation of all laws related to voting and providing guidance related to those laws to local election authorities, including § 115.277, RSMo.

58. Defendant Kansas City Board of Election Commissioners is the election authority for the voters of Kansas City within Jackson County. It is responsible for enforcing and implementing election laws, including § 115.277, RSMo, for upcoming elections in Kansas City, Jackson County, Missouri.

59. Defendant Jackson County Election Board is the election authority for the voters of Jackson County who do not live within the boundaries of Kansas City. It is responsible for enforcing and implementing election laws, including § 115.277, RSMo, for upcoming elections in Jackson County, Missouri

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

60. Defendant Board of Election Commissioners for the City of St. Louis is the election authority for the voters of the City of St. Louis. It is responsible for enforcing and implementing election laws, including § 115.277, RSMo, for upcoming elections in St. Louis, Missouri.

61. Defendants Kansas City Board of Election Commissioners, Jackson County Election Board, and the Board of Election Commissioners for the City of St. Louis are sued as local election authorities and as representatives of a defendant class of local election authorities who enforce and implement the voting laws of the state of Missouri. They are responsible for enforcing and implementing election laws, including § 115.277, RSMo, for upcoming elections in their respective election jurisdictions in Missouri.

62. Defendant Jean Peters Baker is the Jackson County Prosecuting Attorney. She is sued in her official capacity only and as representative of a defendant class of county prosecuting attorneys who enforce the criminal laws of the state of Missouri, including § 115.631, RSMo—the law making it a felony offense to illegally cast an absentee ballot.

63. Defendant Baker, Defendant Kansas City Board of Election Commissioners, Defendant Jackson County Election Board, Defendant Board of Election Commissioners for the City of St. Louis, and other members of the putative Defendant Classes have acted, and continue to act, under color of state law at all times relevant to this complaint.

GENERAL FACTUAL ALLEGATIONS

A. Transmission of virus that causes COVID-19 and Public Health Guidelines

64. “[O]ur nation faces a public health emergency caused by the exponential spread of COVID-19, the respiratory disease caused by the novel coronavirus SARS-CoV-2.” *In re Abbott*, No. 20-50264, 2020 WL 1685929, at *2 (5th Cir. Apr. 7, 2020).

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

65. While statistical models have improved to estimate fewer U.S. deaths than initially anticipated, leading models still project as many as 60,000 people in the United States may die from COVID-19—even assuming “full social distancing” measures are followed through at least May 2020.³

66. The virus that causes COVID-19 is spread through respiratory droplets and transmission generally occurs among close contact (within approximately 6 feet of an infected individual).

67. While less common, transmission can also occur through contact with a contaminated surface, like a doorknob, and research indicates that the virus may be viable for days on some surfaces.

68. COVID-19 can present with a range of symptoms, including fever, cough, and shortness of breath, that range from mild to severe, and can be fatal.

69. The World Health Organization (“WHO”) estimates that approximately 20 percent of those who infected with COVID-19 require hospitalization.⁴ COVID-19 can severely damage lung tissue, cause a permanent loss of respiratory capacity, and also damage tissues in the kidney, heart, and liver.⁵ “The surge of COVID-19 cases causes mounting strains on healthcare

³ Bill Chappell, *Fauci Says U.S. Coronavirus Deaths May Be ‘More Like 60,000’; Antibody Tests on Way*, S.C. Public Radio (Apr. 9, 2020), <https://www.npr.org/2020/04/09/830664814/fauci-says-u-s-coronavirus-deaths-may-be-more-like-60-000-antibody-tests-on-way>.

⁴ World Health Organization, Q&A on Coronaviruses (COVID-19), “Should I Worry About COVID-19?,” <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

⁵ Centers for Disease Control and Prevention, Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

systems, including critical shortages of doctors, nurses, hospital beds, medical equipment, and personal protective equipment (‘PPE’).” *In re Abbott*, 2020 WL 1685929, at *3.

70. Estimates from early March 2020 put the fatality rate for people infected with COVID-19 at approximately ten times higher than even a severe flu season, including in countries with advanced health care systems.⁶

71. According to the CDC, the virus that causes COVID-19 may be detectable in a person’s upper and lower respiratory tract for weeks after illness onset.

72. There are also asymptomatic COVID-19 infections, *i.e.*, detection of the virus in an individual without any symptoms, as well as pre-symptomatic infections, *i.e.*, detection of the virus in an individual before the development of any noticeable symptoms.

73. According to the CDC, this coronavirus spreads aggressively and asymptomatic people can spread it.⁷

74. Based on existing information, the time from exposure to the virus to the development of COVID-19 symptoms ranges from two to fourteen days.

75. The CDC has also reported that: “Different parts of the country are seeing different levels of COVID-19 activity. The United States nationally is in the acceleration phase of the

⁶ Betsy McKay, *Coronavirus vs. Flu Which Virus is Deadlier*, Wall St. J. (Mar. 10, 2020, 12:49 PM), <https://www.wsj.com/articles/coronavirus-vs-flu-which-virus-is-deadlier-11583856879>; *see also Castillo v. Barr*, No. 20-00605, 2020 WL 1502864, at *2 (C.D. Cal. Mar. 27, 2020) (“COVID-19 is highly contagious and has a mortality rate ten times higher than influenza.”).

⁷ Centers for Disease Control and Prevention, *How Coronavirus Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

pandemic. The duration and severity of each pandemic phase can vary depending on the characteristics of the virus and the public health response.”⁸

76. There is no vaccine, cure, or herd immunity. Upon information and belief, a vaccine will not be available for 12-18 months.

77. Everyone is susceptible to COVID-19, and all age groups have contracted the disease.⁹

78. Although some groups of people are more vulnerable than others to complications from COVID-19 and are therefore at a higher risk for severe illness or death, anyone could develop serious symptoms and anyone can transmit the disease.

79. Groups that are particularly vulnerable to severe symptoms include: people 65 years and older, people who live in a nursing home or long-term care facility, and people (of all ages) with an underlying medical condition. Some of the identified underlying medical conditions that can lead to severe illness from COVID-19 are: chronic lung disease, moderate to severe asthma, heart conditions, being immunocompromised (e.g., cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, prolonged use of corticosteroids and other immune weakening medications), severe obesity, diabetes, chronic kidney disease/dialysis, liver disease.¹⁰

⁸ See Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), Situation Summary, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html> (last updated April 7, 2020).

⁹ Robert Verity, PhD., et al., Estimates of the Severity of Coronavirus Disease 2019: A Model-Based Analysis, *Lancet Infect Dis* (March 30, 2020), 6.

¹⁰ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), Information for People who are at Higher Risk for Severe Illness, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

80. The COVID-19 pandemic has had a particularly devastating effect on African-American communities. An analysis by the Associated Press—one of the first attempts to examine the racial disparities of COVID-19 cases and deaths nationwide—found that, in areas where the demographic data has been publicly shared by government officials, African-Americans have made up 42% of people who have died from COVID-19, despite accounting for roughly only 21% of the total population in these areas.¹¹ And a CDC report published April 8, 2020, which included data from 1,482 patients hospitalized across 14 states, found that African American patients made up 33% of those for whom race or ethnicity information was available, despite representing only 18% of the states’ populations.¹²

81. Based on virtually unanimous recommendations from public health experts, government agencies and officials at all levels are imposing social and physical distancing measures in order to “flatten the curve” of the COVID-19 outbreak. These measures are meant to slow the spread of the virus, but they will not end the pandemic.

82. Without a vaccine, treatment, or herd immunity, the virus that causes COVID-19 will remain in circulation and individuals will remain at risk of infection, particularly in large or small public gathering.

83. Without widespread testing, people, including asymptomatic individuals, will continue to spread the disease unless they practice social distancing.

¹¹ https://apnews.com/71d952faad4a2a5d14441534f7230c7c?fbclid=IwAR1plunY_qfeA2KrSU-PA1TuJobAwQh53a_Qlkf5dw0dWjz-iz85GA1FOt4.

¹² CDC Morbidity and Mortality Weekly Report, Hospitalization Rates and Characteristics of Patients Hospitalized with Laboratory-Confirmed Coronavirus Disease 2019—COVID-NET, 14 States, March 1-30, 2020 (Apr. 8, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6915e3-H.pdf>.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

84. While there is some reason to believe that transmission may taper somewhat in the summer months, experts have indicated that COVID-19 “will face less immunity and thus transmit more readily even outside of the winter season,” and that season changes are “unlikely to stop transmission.”¹³ Further, even those who develop an immune response to the virus after an infection are not necessarily safe from reinfection, as we do not yet have sufficient data about how long immunity to the virus will last.¹⁴ Dr. Anthony Fauci, head of the National Institute of Allergy and Infectious Diseases, recently said that he “can’t guarantee” in-person voting will be safe even in November, because of a potential resurgence of COVID-19 in the fall.¹⁵

85. Because of the seriousness of COVID-19 and the rate at which the virus that causes it is spreading through the population, and because asymptomatic individuals can transmit the virus to others, the CDC has issued specific guidelines concerning voting during the COVID-19 pandemic. Like other locations and events where many people may congregate in confined spaces, polling places are a particularly ripe environment for infection. Thus, among other things, the CDC recommends that states “[e]ncourage voters to use voting methods that

¹³ Marc Lipsitch, DPhil, Professor of Epidemiology and Director, Center for Communicable Disease Dynamics, Harvard T.H. Chan School of Public Health, *Seasonality of SARS-CoV-2: Will COVID-19 go away on its own in warmer weather?* <https://ccdd.hsph.harvard.edu/will-covid-19-go-away-on-its-own-in-warmer-weather/>.

¹⁴ Apoorva Mandavilli and Katie Thomas, New York Times (Apr. 11, 2020), *Will an Antibody Test Allow Us to Go Back to School or Work?*, available at <https://www.nytimes.com/2020/04/10/health/coronavirus-antibody-test.html>.

¹⁵ Jason Silverstein, CBSNews.com, *Fauci says he “can’t guarantee” in-person voting in November will be safe* (Apr. 13, 2020), <https://www.cbsnews.com/news/coronavirus-fauci-says-he-cant-guarantee-in-person-voting-in-november-will-be-safe/?ftag=CNM-00-10aac3a>.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

minimize direct contact with other people and reduce crowd size at polling stations” including “mail-in methods of voting if allowed in the jurisdiction.”¹⁶

86. While the CDC has many recommendations related to safety at polling places, the only recommendation related to mail-in ballots is for workers handling those ballots to practice hand hygiene frequently.¹⁷

87. These are essential recommendations given the relatively minimal risks of voting by mail compared to voting in person during the pandemic. There is no evidence that the virus that causes COVID-19 can be spread through the mail, and the U.S. Postal Service has further changed their policies to “eliminate the requirement that customers sign our Mobile Delivery Devices for delivery” and now require the customer “to step back a safe distance or close the screen door/door so that they may leave the item in the mail receptacle or appropriate location by the customer door.”¹⁸

88. In contrast, the risks of interpersonal interaction while voting are already evident. During Florida’s recent primary, two Broward County poll workers tested positive for COVID-19, one of whom was handling driver’s licenses as part of the identification verification

¹⁶ Centers for Disease Control & Prevention, *Recommendations for Election Polling Locations: Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19)* (updated March 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

¹⁷ *Id.*

¹⁸ United States Postal Service. *USPS Statement on Coronavirus* (April 2, 2020), <https://about.usps.com/newsroom/statements/usps-statement-on-coronavirus.htm> (citing guidance from World Health Organization, CDC, and Surgeon General).

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

process.¹⁹ And on April 13, Chicago officials reported that a poll worker for the city's March 17 election died of COVID-19, prompting officials to send letters notifying voters, poll workers, field investigators, and cartage companies who were present at the same polling site.²⁰

89. Elections held on April 7 in Wisconsin saw multi-hour waits and long lines of many voters stretching blocks upon blocks in places like Milwaukee and Green Bay, in part, because government officials there were unable to create a viable vote-by-mail process for all voters. These crowded lines are ideal places for person-to-person contagion, and Wisconsin health officials expect that large numbers of in-person voting on April 7 will result in “an increase in the number of cases in Wisconsin [and] more deaths.”²¹

B. COVID-19 in Missouri

90. In Missouri, the Department of Health and Senior Services reports that there are over 5,111 reported cases of COVID-19 cases and 152 deaths related to the virus in the state as of the

¹⁹ Man, A. S. Fla. Sun Sentinel (Mar. 26, 2020), *Two Broward poll workers, including one who handled voters' driver licenses, test positive for coronavirus*. 2020, available at <https://www.sun-sentinel.com/coronavirus/fl-ne-broward-elections-poll-workers-coronavirus-20200326-wmgy775dvjc5jis2oagxlpmlule-story.html>.

²⁰ See Mary Ann Ahern, *Poll Worker at Chicago Voting Site Dies of Coronavirus, Election Officials Say*, 5 Chicago (Apr. 13, 2020), <https://www.nbcchicago.com/news/local/chicago-politics/poll-worker-at-chicago-voting-site-dies-of-coronavirus-election-officials-say/2255072/>.

²¹ Devi Shastri, *In-person voting was likely a 'disaster' for Wisconsin's efforts to flatten coronavirus curve, national experts say*, Milwaukee J. Sentinel (Apr. 8, 2020) (quoting Wisconsin Department of Health Services Secretary Andrea Palm), <https://www.jsonline.com/story/news/politics/elections/2020/04/08/coronavirus-wisconsin-election-likely-hurt-effort-flatten-curve/2961718001/>.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

date of this filing.²² One week ago, there were just 3,539 reported cases and 77 deaths. As of the date of this filing, there are at least 651 confirmed COVID-19 patients hospitalized.²³

91. African Americans account for 28 percent of COVID-19 cases for which demographic data was reported and 34 percent of COVID-19 related deaths according to the Missouri Department of Health and Human Services.²⁴ Yet, African Americans comprise just 12% of the population in Missouri.

92. To combat viral spread, Governor Parson has taken a series of increasingly aggressive steps since mid-March, including issuing various executive orders.

93. On March 13, 2020, Governor Parson declared a state of emergency in Missouri, stating that “COVID-19 poses a serious health risk for Missouri residents.” The order indicates that the state of emergency will not terminate until at least May 15, 2020. Executive Order 20-02 is attached hereto as Exhibit 1.

94. On March 18, 2020, following the Governor’s declared state of emergency and a request from Secretary Ashcroft, Governor Parson, stating that the “Centers for Disease Control and Prevention recommends cancellation or suspension of gatherings and limiting close contacts via social distancing to limit the spread of the Coronavirus,” signed Executive Order 20-03

²² *COVID-19 Outbreak*, Missouri Dep’t of Health & Senior Servs., <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/results.php> (last visited Apr. 16, 2020).

²³ Missouri Hospital Ass’n, COVID-19 Situational Awareness Update, April 16, 2020, <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/pdf/gov-dashboard.pdf>

²⁴ *COVID-19 Outbreak*, Missouri Dep’t of Health & Senior Servs., <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/results.php> (last visited Apr. 16, 2020).

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

ordering all Missouri municipal elections previously scheduled for April 7, 2020, to be postponed to June 2, 2020. Executive Order 20-03 is attached hereto as Exhibit 2.

95. In a press release regarding Executive Order 20-03, Governor Parson stated: “Given the growing concern surrounding COVID-19 and the large number of people elections attract, postponing Missouri’s municipal elections is a necessary step to help combat the spread of the virus and protect the health and safety of Missouri voters.”

96. In response to Executive Order 20-03, Secretary Ashcroft responded: “I deeply appreciate Governor Parson’s quick approval and am thankful to the local election authorities – your county clerks and boards of election – who have worked through developing health concerns to find a unified and secure means of implementing our next election[.]”

97. On April 3, 2020, Governor Parson issued a stay-at-home order in Missouri. The order was initially set to expire on April 24, 2020, but has been extended to May 3, 2020. Missouri’s stay-at-home order and the subsequent order extending it are attached hereto as Exhibit 3 and Exhibit 4.

98. Pursuant to Missouri’s order, residents are ordered to avoid leaving their homes, and practice social distancing when leaving for necessities (food, healthcare, etc.) and outdoor activity. Individuals must also avoid social gatherings of ten or more people. *See Ex. 3*.

99. Additionally, entities that perform essential retail functions must adhere to occupancy limitations. Entities smaller than ten thousand square feet may have no more than 25% of their fire code occupancy, and entities ten thousand square feet or larger may have no more than 10% of their fire code occupancy. All businesses (including essential businesses) must adhere to social distancing by requiring all individuals, including customers) to maintain 6 feet in between one another. *See Ex. 3*.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

100. On April 9, 2020, Governor Parson ordered schools to remain closed for the remainder of the academic year, stating that: “I want Missourians to know that our aggressive efforts to combat COVID-19 are working. Based on traffic data across the state, we know people are following the Stay Home Missouri Order, and we are very appreciative of that. Missouri is in a good place right now, but we must keep up these efforts.”

101. In addition to the statewide order, multiple counties and municipalities throughout Missouri have also issued stay-at-home orders and mandated closure of all but essential businesses. St. Louis City and St. Louis County stay-at-home orders have been extended “indefinitely.”

102. Testing for COVID-19 is not widely available throughout the state of Missouri.

103. Moreover, testing is not available to any person who wants a test.

104. Instead, a person must almost always first be deemed eligible to receive a test by either a doctor or an evaluation of symptoms.²⁵

105. Kansas City currently has just six hospitals where testing is offered at an alternate location (without being admitted to the hospital for in-patient treatment), St. Louis currently has just nine locations performing alternate-site testing, and many cities in the state have no locations performing this type of testing.²⁶

106. A person who is asymptomatic would likely not be eligible to receive one of the limited COVID-19 tests in Missouri.

²⁵ Missouri Dep’t of Health & Senior Servs., Missouri Testing Sites, <https://health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/mobile-testing.php>.

²⁶ *Id.*

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

107. Even people who do exhibit symptoms may not be eligible to receive one of the limited COVID-19 tests in Missouri, depending on the circumstances and severity of symptoms.

108. Thus, many Missourians will never be able to confirm whether they have contracted COVID-19.

109. There is evidence of community spread of COVID-19 in Missouri. This means that the virus is spreading and the source of the infection is unknown.

110. In the absence of widespread testing, even asymptomatic persons are presumed to be carriers of the virus.

C. Missouri's Absentee Voting Process

111. While thirty-four states plus the District of Columbia permit all eligible voters to cast an absentee ballot by mail, Missouri is among the minority states that requires voters to provide a qualifying reason in order to cast an absentee ballot.

112. The Missouri legislature has authorized absentee voting, but allows it only for voters who have one of the following excuses for not voting in person on Election Day: (1) Absence on election day from the jurisdiction of the election authority in which such voter is registered to vote; (2) Incapacity or confinement due to illness or physical disability, including a person who is primarily responsible for the physical care of a person who is incapacitated or confined due to illness or disability; (3) Religious belief or practice; (4) Employment as an election authority, as a member of an election authority, or by an election authority at a location other than such voter's polling place; (5) Incarceration, provided all qualifications for voting are retained; (6) Certified participation in the address confidentiality program established under sections 589.660 to 589.681 because of safety concerns. § 115.277.1, RSMo.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

113. Missouri law requires many absentee voters to have their absentee ballots notarized, but exempts from the notary requirement those on the permanent absentee list under § 115.284, RSMo. because of incapacity or confinement; those casting an absentee ballot because of illness or disability under § 115.277.1(2), RSMo; and covered military or overseas voters. *See* §§ 115.291.1, 115.283.7, RSMo.

114. Missouri elections officials have failed to provide clear and consistent guidance as to how or when the confinement-due-to-illness category for absentee voting found in § 115.277(2), RSMo, applies in the context of COVID-19. The interpretations and determinations that do exist differ and are contradictory.

115. Secretary Ashcroft has indicated that he will not provide guidance to local election authorities on whether confining oneself at home to avoid contracting or spreading the COVID-19 virus constitutes a valid excuse to cast an absentee ballot by mail under § 115.277.1(2), RSMo.

116. In the absence of authoritative determination, interpretation, and application of § 115.277.1(2), RSMo, each of Missouri's 116 local election authorities is left to decide whether § 115.277.1(2), RSMo, permits voters to cast an absentee ballot by mail so that they may confine themselves to avoid contracting or spreading the COVID-19 virus at their polling place.

117. There is no agreement or consensus amongst Missouri's 116 local election authorities as to whether a person can cast an absentee ballot under § 115.277.1(2) because they want to avoid contracting or spreading the COVID-19 virus. Thus, the application of § 115.277.1(2), RSMo, varies from one election jurisdiction to another.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

118. The director of the Jackson County Election Board has stated that “fear of contracting or spreading the COVID-19 virus is not a legal reason to vote absentee in Missouri.”²⁷

119. By contrast, the director of the St. Louis County Board of Election Commissioners has indicated that “[i]f a voter expects to be prevented from going to polls because of this virus then that probably qualifies them for absentee voting” § 115.277.1(2), RSMo.²⁸

120. The clerk in Lawrence County said that only voters who are in the category of individuals identified by the CDC who are at a high-risk of serious symptoms from COVID-19 are able to vote absentee under § 115.277.1(2), RSMo.²⁹

121. And the Director of the St. Charles County Board of Elections said that COVID-19 is a valid excuse for the upcoming June municipal elections, but “the August election will depend on what standards the CDC and county health department have in place at that time.”³⁰

122. Making a false statement on the absentee ballot envelope is a Class One election offense, a felony connected with the right of suffrage, with penalties including fine, potential jail time, and permanent loss of the right to vote. *See* §§ 115.304, 115.631 RSMo.

123. Specifically, § 115.631(1), RSMo, states that “[w]illfully and falsely making any certificate, affidavit, or statement required to be made pursuant to any provision of sections

²⁷ *See* Jason Hancock, *Will coronavirus outbreak mean more Missourians can cast absentee ballots?*, Kansas City Star (Mar. 17, 2020), <https://www.kansascity.com/news/politics-government/article241275436.html>.

²⁸ *Id.*

²⁹ *See* Jason Hancock, *Does COVID-19 mean more Missourians should vote absentee? Gov. Parson says no*, Kansas City Star (Apr. 15, 2020), <https://www.kansascity.com/news/politics-government/article242023221.html>.

³⁰ *Id.*

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

115.001 to 115.641[,]” including § 115.277 related to casting an absentee ballot and the reason stated for casting such a ballot made to an election authority or election official, constitutes a Class One election offense. More specifically, violation of § 115.631, RSMo, is a felony punishable “by imprisonment of not more than five years or by a fine of not less than two thousand five hundred dollars but not more than ten thousand dollars or by both such imprisonment and fine[.]”

124. Section 115.631(23), RSMo, specifically states that “[v]iolation of any of the provisions of sections 115.275 to 115.303, or of any provision of law pertaining to absentee voting[,]” is a felony offense.

125. Because of the global pandemic related to COVID-19, all general municipal elections in Missouri, will now take place on June 2, 2020, instead of the previously scheduled election date of April 7, 2020, pursuant to Executive Order 20-03. *See* Ex. 2.

126. The deadline to apply for an absentee ballot for the June 2, 2020 municipal elections is May 20, 2020.

127. The deadline by which absentee ballots must be received by a local election authority for the June 2, 2020 municipal elections is 7:00 p.m. on June 2, 2020.

128. The City of St. Louis will hold special elections to fill the 4th and 12th Ward aldermanic vacancies on May 19, 2020.

129. Absentee voting for the City of St. Louis special election on May 19, 2020, begins on April 21, 2020, and the last day to request an absentee ballot is May 6, 2020.

130. The primary election is August 4, 2020. The last day to request an absentee ballot is July 22, 2020.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

131. The general election is November 3, 2020. The last day to request an absentee ballot is October 21, 2020.

PLAINTIFF CLASS ALLEGATIONS

132. This case is appropriate for resolution with a Plaintiff class of Missouri voters because the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class and adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

133. Questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

134. Plaintiffs' claims are typical of the claims of the class.

135. Plaintiffs will fairly and adequately protect the interests of the class.

DEFENDANT CLASS ALLEGATIONS

136. Defendant Jean Peters Baker, in her role as the Jackson County Prosecutor, is a member of a class of prosecuting attorneys in Missouri.

137. Defendant Baker and all prosecuting attorneys throughout this State have the authority to enforce the statutory provisions and prosecute any alleged offenders.

138. There are 114 counties in Missouri and 115 Prosecuting Attorney Offices, including the Prosecuting Attorney for the City of St. Louis (a city not within a county), which makes the

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

members of the prospective Defendant Class so numerous that joinder of all members of the class would be impracticable.

139. Defendants Kansas City Board of Election Commissioners, Jackson County Election Board, and the Board of Election Commissioners for the City of St. Louis are member of a class of local election authorities in Missouri.

140. There are 116 local election authorities in Missouri.

141. Defendants Kansas City Board of Election Commissioners, Jackson County Election Board, and the Board of Election Commissioners for the City of St. Louis, and all other local election authorities throughout this State enforce statutory provisions related to voting, including those related to absentee voting.

142. The voting statutes at issue require the Defendant Classes to engage in conduct implicating the constitutional rights of Plaintiffs such that there is a common nucleus of operative facts and law.

143. Any defenses that could be raised by Defendant Baker or Defendant Kansas City Board of Election Commissioners, Defendant Jackson County Election Board, or Defendant Board of Election Commissioners for the City of St. Louis would have the same essential characteristics of the defenses of the Defendant Class at large.

144. Defendant Baker, Defendant Kansas City Board of Election Commissioners, Defendant Jackson County Election Board, and Defendant Board of Election Commissioners for the City of St. Louis will fairly and adequately protect the interests of Missouri prosecutors and local election authorities.

145. Defendant Baker, Defendant Kansas City Board of Election Commissioners, Defendant Jackson County Election Board, and Defendant Board of Election Commissioners for

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

the City of St. Louis and other members of the putative defendant classes have the authority and responsibility to enforce the statutes related to absentee voting within their respective jurisdictions and, in doing so, will be acting under color of law.

146. Defendant Classes have acted or refused to act on grounds generally applicable to the respective class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

147. Questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

148. Defendants' defenses are typical of the defenses of the classes.

149. Defendants will fairly and adequately protect the interests of the classes.

COUNT I

Section 115.277.1(2), RSMo, permits a registered voter who is afraid of contracting or spreading COVID-19, to vote absentee in Missouri without a notary seal required.

150. Plaintiffs incorporate by reference all preceding allegations.

151. The COVID-19 global pandemic poses an existential threat to Missourians' ability to safely participate in their electoral democracy.

152. Requiring voters to appear in person at their polling locations while the COVID-19 public health crisis is ongoing imposes a significant threat to the health of the voter and their families.

153. State and local stay at home orders in Missouri mandate suspension of large gatherings (with some orders defining this as more than 10 people), and instruct people to stay home and leave only for essential services such as food and medical needs, and to practice social distancing to prevent the spread of the coronavirus and to protect their health.

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

154. CDC guidelines advise suspension of large gatherings (with many orders defining this as more than 10 people), , advise people to stay home and leave only for essential services such as food and medical needs, and advise people to practice social distancing to prevent the spread of the coronavirus and to protect their health.

155. Section 115.277.1(2), RSMo, provides that a registered voter may vote absentee due to, “[i]ncapacity or confinement due to illness or physical disability, including a person who is primarily responsible for the physical care of a person who is incapacitated or confined due to illness or disability.”

156. Absentee ballots cast pursuant to § 115.277.1(2), RSMo, are exempt from requiring a notary seal. § 115.283.7, RSMo.

157. Plaintiffs have taken steps to confine themselves at home as much as possible to avoid contracting or spreading the virus that causes COVID-19.

158. Plaintiffs wish to vote absentee because they reasonably fear that they may contract or spread COVID-19 if they vote in person at their local polling location.

159. Properly construed, § 115.277.1(2), RSMo, permits Plaintiffs and those similarly situated to vote by absentee ballot.

WHEREFORE Plaintiffs pray this Court:

- A. Enter declaratory judgment that confining oneself to vote from home to avoid contracting or spreading COVID-19 is a valid justification to vote absentee under § 115.277.1(2), RSMo, without the requirement of a notary seal;
- B. Issue preliminary permanent injunctions prohibiting Defendants and anyone acting in concert with them from enforcing § 115.277.1(2), RSMo, to the extent it would prohibit, punish, or discourage a person who is confining oneself to vote from home so as to avoid

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

contracting or spreading COVID-19 from casting an absentee ballot without a notary seal and enjoining all Missouri local election authorities from refusing accept absentee ballots cast pursuant to this provision without a notary seal;

C. Allowing such other and further relief as is proper under the circumstances.

COUNT II

Treating voters differently depending on where they live is a violation of the Equal Protection Clause of the Missouri Constitution

160. Plaintiffs incorporate by reference all preceding allegations.

161. Article I, § 25 of the Missouri Constitution provides: “That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

162. Article I, § 2 of the Missouri Constitution, the equal protection clause, provides “that all persons are created equal and are entitled to equal rights and opportunity under the law.” MO. CONST. art. I, sec. 2.

163. Voters are treated differently based upon the election jurisdiction in which they are registered because the local election authorities in Missouri have not consistently interpreted whether confining oneself to vote from home to avoid contracting or spreading COVID-19 is a valid reason to vote absentee pursuant to § 115.277.1(2), RSMo, and Secretary Ashcroft has refused to provide any guidance, issue any directives to local election authorities, or take an official position on the proper construction of the statute, leading to inconsistent and arbitrary application from one election jurisdiction to the next.

WHEREFORE Plaintiffs pray this Court:

A. Enter declaratory judgment that the inconsistent interpretation and of application of § 115.277.1(2), RSMo, to voters who wish to vote absentee by mail because they are

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

confining themselves to avoid contracting or spreading the virus that causes COVID-19 violates Article I, § 2 of the Missouri Constitution;

- B. Issue preliminary and permanent injunctions prohibiting Defendants and anyone acting in concert with them from interpreting, applying, or enforcing § 115.277.1(2), RSMo, in a manner that deprives any voter of the opportunity to vote absentee by mail where they would be permitted to vote absentee by mail if they resided elsewhere in the state;
- C. Allowing such other and further relief as is proper under the circumstances.

COUNT III

Refusing to allow voters to cast an absentee ballot by mail is a violation of the Right to Vote under the Missouri Constitution

164. Plaintiffs incorporate by reference all preceding allegations.

165. Article I, § 25 of the Missouri Constitution provides: “That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

166. Section 115.277, RSMo, permits some voters, but not others, to vote absentee by mail.

167. Voters who are not entitled to cast an absentee ballot pursuant to § 115.277, RSMo, must appear in person at a specified polling place during specific hours on Election Day in order to cast a ballot.

168. Voting on Election Day can generate crowds and long lines at the polls and can often require waiting for poll workers and a voting booth to become available.

169. Missouri has no adequate justification to permit some voters, but not others, to vote absentee by mail.

WHEREFORE Plaintiffs pray this Court:

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

- A. Enter declaratory judgment that § 115.277, RSMo's, limitations on which voters may vote absentee by mail violates Article I, § 25 of the Missouri Constitution;
- B. Issue preliminary and permanent injunctions prohibiting Defendants and anyone acting in concert with them from limiting the availability of absentee voting;
- C. Allowing such other and further relief as is proper under the circumstances.

COUNT IV

Refusing to allow voters to cast an absentee ballot by mail without a notary seal is a violation of the Right to Vote under the Missouri Constitution

170. Plaintiffs incorporate by reference all preceding allegations.

171. Article I, § 25 of the Missouri Constitution provides: "That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

172. Section 115.277, RSMo, permits some voters, but not others, to vote absentee by mail without a notary seal. *See also* §§ 115.283, 115.291.1, RSMo.

173. Voters who are not entitled to cast an absentee ballot without a notary seal pursuant to § 115.277.1(2), RSMo, covered voters defined in § 115.902, RSMo, or persons who have declared themselves permanently disabled pursuant to § 115.284, RSMo, must obtain a notary seal on their absentee ballot envelopes. §§ 115.283.6, 115.283.7 115.291.1, RSMo.

174. Obtaining a notary seal imposes costs on the voter, including time and transportation, and requires voters to leave their homes in conflict with social distancing guidelines during the COVID-19 pandemic.

175. Missouri has no adequate justification to permit some voters, but not others, to vote absentee by mail.

WHEREFORE Plaintiffs pray this Court:

CLASS-ACTION PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

- A. Enter declaratory judgment that § 115.283, RSMo’s limitations on which voters may vote absentee by mail without a notary seal violates Article I, § 25 of the Missouri Constitution;
- B. Issue preliminary and permanent injunctions prohibiting Defendants and anyone acting in concert with them from limiting the availability of absentee voting without a notary seal;
- C. Allowing such other and further relief as is proper under the circumstances.

Respectfully submitted,

/s/ Anthony E. Rothert

ANTHONY E. ROTHERT, #44827
JESSIE STEFFAN, #64861
KAYLA DELOACH, #72424
ACLU OF MISSOURI FOUNDATION
906 Olive Street, Suite 1130
St. Louis, Missouri 63101
Phone: (314) 652-3114

GILLIAN R. WILCOX, #61278
ACLU OF MISSOURI FOUNDATION
406 West 34th Street, Ste. 420
Kansas City, MO 64111

SOPHIA LIN LAKIN³¹
BRIAN HAUSS³²
DALE E. HO³³
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
Phone: (212) 519-7836

DENISE D. LIEBERMAN, #47013
MISSOURI VOTER PROTECTION
COALITION
6047 Waterman Blvd
St. Louis, MO 63112
(314) 780-1833

³¹ Motion to appeal pro hac vice forthcoming

³² *Of counsel*

³³ *Of counsel*