

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

TELISA CLARK, LAKESHIA BARNETT,
MARTHA CHRISTIAN GREEN,
CRESCENT CITY MEDIA GROUP, and
LEAGUE OF WOMEN VOTERS
LOUISIANA,

Plaintiffs,

v.

JOHN BEL EDWARDS, in his official
capacity as Governor of Louisiana; KYLE

on

the primary and municipal elections,⁶ and later extended the state's stay-at-home order to May 15.⁷ Even with the stay-at-home order partially lifted as of May 15, Louisianans are still required to stay at home as much as possible; the types of businesses allowed to open may only do so with strict social distancing, required mask use for employees helping the public, and only at 25 percent total occupancy.⁸

6. On April 15, 2020, Defendant Secretary of State Ardoin proposed an emergency election plan that would have substantially reduced the risk of voters being exposed to COVID-19

Director of the National Institute of Allergy and Infectious Diseases, has said a second wave of infections in the United States is “inevitable.”¹³ Furthermore, experts from the Harvard T.H. Chan School of Public Health’s Center for Communicable Disease Dynamics warned that, to avoid exceeding hospital critical care capacities, prolonged or intermittent social distancing may be necessary into 2022.¹⁴

12. The Excuse Requirement, Witness Requirement, and Cure Prohibition (collectively, the “Challenged Provisions”) will unnecessarily deprive Louisiana voters of their right to vote in 2020 elections in light of COVID-19.

13. Both together and separately, the Excuse Requirement and the Witness Requirement needlessly burden Louisiana voters’ fundamental right to vote in the 2020 elections in light of COVID-19. The Excuse Requirement and the Witness Requirement directly contradict the specific guidance from the Centers for Disease Control and Prevention (“CDC”) concerning safe voting practices during the COVID-19 pandemic. Among other measures, the CDC recommends that states and jurisdictions “[e]ncourage voters to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations.”¹⁵

14. The Excuse Requirement and the Witness Requirement create significant risks to the health and lives of Plaintiffs, as well as the Organizational Plaintiffs’ members and thousands

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15. The risk of disenfranchisement from the Excuse Requirement and Witness Requirement fall more heavily on Black citizens in Louisiana, who are more likely than white Louisianans to live alone or with young children, more likely to have underlying health conditions that put them at severe risk from COVID-19, and who are afflicted by and die from COVID-19 at shockingly disproportionate rates. Black Louisianans comprise nearly 57% of COVID-19–related deaths despite making up just 33% of the state’s total population. Black Louisianans are also more likely to live alone, making the Witness Requirement more burdensome than for white Louisianans. Louisiana’s history of racial discrimination in various areas, such as voting, education, employment, and healthcare, interact with these provisions to hinder Black people’s ability to participate effectively in the political process in violation of Section 2 of the Voting Rights Act.

16.

and other serious heart conditions. Her husband is currently undergoing treatment for lung cancer and is at extremely high risk of severe complications from COVID-19. Ms. Clark's daughter Kevon Barnett is currently seven months pregnant and suffers from hypertension. And Ms. Clark's grandson Matthew, who is 18 and a registered voter, has severe asthma.

members in her home—including her parents—suffer from health conditions that put them at higher risk of contracting and suffering severe complications and dying from COVID-19. Ms. Clark has hypertension and other serious heart conditions. Mr. Clark is currently undergoing treatment for lung cancer and is at extremely high risk of severe complications from COVID-19. Ms. Barnett’s sister Kevon Barnett is currently seven months pregnant and suffers from hypertension. And Ms. Barnett’s nephew Matthew, who is 18 and a registered voter, has severe asthma. Because of the risk COVID-19 poses to their health, Ms. Barnett, her parents, sister, nephew, and other family members have been limiting their outside activity and avoiding person-to-person contact except when necessary. Ms. Barnett currently works two jobs. One employer, Target, recently reduced her hours to zero, and she has not worked there since late April. She also works at the U.S. Postal Service. At her job, Ms. Barnett rarely interacts with members of the public and always wears protective gear. Ms. Barnett relies on her job to pay her living expenses and for health insurance. At this job, she does not have the option to work from home or take time off because she is worried about infecting her family members who are at higher risk from COVID-19. If she took too much time off from work, she would lose her job. Ms. Barnett registered to vote when she turned 18 and has voted regularly since then. She intends to vote in each election in 2020. She prefers to vote in person, but because of the risks voting in person would pose to her family, Ms. Barnett needs to vote by absentee ballot in the July, August, November, and December elections. Ms. Barnett understands that she needs an excuse to qualify for an absentee ballot in Louisiana and that she does not qualify for any excuse under Louisiana law. Therefore, if Ms. Barnett wants to vote in any election in 2020, she understands that she would have to vote in person, which would require her to engage in the person-to-person contact she has been avoiding

to protect the health of her high-risk family members. If forced to vote in person, Ms. Barnett would have to choose between her vote and her family's health.

26. Plaintiff MARTHA CHRISTIAN GREEN is a 52-year-old scholar and researcher working in the fields of law and religion. She is a U.S. citizen, has never lost her right to vote by reason of a felony conviction or court order, and is a registered voter in Louisiana. She is white, and lives in Lafayette, Louisiana. Ms. Green is also a member of the Lafayette chapter of the League of Women Voters and a Board member for the League of Women Voters of Louisiana. Ms. Green lives with and cares for her mother, Martha, who is 80 years old and suffers from several health conditions that make her higher risk for contracting and suffering severe complications—including death—from COVID-19. Ms. Green prefers not to reveal her mother's specific medical

qualify for any excuses, including the excuses provided under the Emergency Election Plan in place for the July and August elections. Although early voting has been extended in Louisiana for the July and August elections, early in-person voting is not a practical option for Ms. Green because Lafayette has limited early voting locations, and Ms. Green would have to engage in the person-to-person contact she has been avoiding to safeguard her mother's health. If she cannot vote by mail during the 2020 elections, Ms. Green will have to choose between her vote and endangering her mother's health.

27. Plaintiff CRESCENT CITY MEDIA GROUP ("CCMG") is a community engagement and media production agency based in New Orleans, Louisiana. CCMG was founded to address disparities in civic engagement and political education in communities of color in Louisiana. CCMG works on a wide range of projects including civic engagement trainings, voter registration campaigns, census education, mutual aid and direct service, and voter education.

28. CCMG leads the "Louisiana Counts 2020" complete count committee and began preparations for this public education campaign in 2018. CCMG prepared and disseminated media toolkits, organizer trainings, social media campaigns, factual reports, and other resources for community stakeholders across Louisiana to use in their census education work. CCMG also invested significant time and energy into developing their "Census and Redistricting Initiative," a community education initiative focused on preparing communities for the 2020 Census and 2021 redistricting cycle. The program would have taught Louisiana residents the basics of the redistricting process. In addition to its specific census and redistricting work, CCMG conducts

29. Much of CCMG’s planned work has been put on hold as it must now expend its limited resources to respond to the state’s Emergency Election Plan and preparing for the upcoming 2020 elections, in which thousands of voters of color will be forced to risk their health by voting in person at their polling place. CCMG is now using its limited resources to acquire and produce masks and other personal protective materials to provide to voters who will be forced to cast a ballot in person this year because they do not qualify for an absentee ballot under the Excuse Requirement. During early voting and on election day, CCMG will provide direct support at polling places by handing out hand sanitizer and information on social distancing. CCMG is also now educating voters about the Emergency Election Plan, explaining and training voters on the Excuse Requirement, including the COVID-19 emergency absentee ballot application. CCMG will be helping voters navigate the absentee ballot process, including the Witness Requirement for voters who live alone by doing radio and television public service announcements about what voters can do to protect themselves from COVID-19 infection while complying with the Witness Requirement. The resources and staff time spent on these activities would have been spent on CCMG’s community education activities relating to the Census, voter registration drives, and redistricting. But for the Challenged Provisions, CCMG would otherwise be spending these resources, time, and staff hours on its core mission activities.

30. Plaintiff LEAGUE OF WOMEN VOTERS LOUISIANA (“LWVLA”) is the Louisiana affiliate of the national League of Women Voters (the “LWVUS”). LWVLA is a nonpartisan, not-for-profit corporation organized under the laws of Louisiana. The mission of LWVLA is to be a recognized, trusted, and knowledgeable volunteer, grassroots community resource with the flexibility and sustainable capacity to ensure a strong, active, and participatory democracy for all persons. The LWVLA is dedicated to ensuring that all eligible voters—

particularly those from traditionally underrepresented or underserved communities, including first-time voters, non-college youth, new citizens, minorities, the elderly, and low-income Americans—have the opportunity and the information to exercise their right to vote. The local Leagues are active in voter registration, especially of new citizens and high school and college youths, while the state League works with the Secretary of State’s office to increase voter participation in elections.

31. Because of the restrictions on absentee ballots under Louisiana law during the COVID-19 pandemic, LWVLA has been forced to divert time and resources away from its regular activities. Specifically, LWVLA will be conducting public education on the passage of the Emergency Election Plan with its complicated and vague Excuse Requirement, the current absentee ballot laws—including the Witness Requirement—and how voters can stay safe while complying with the law and voting. LWVLA member volunteers will be sending newsletters, writing letters to the editor, engaging in voter outreach, responding to voter contacts, and conducting voter education events to ensure that members and the Louisiana electorate are educated on how they can vote during the 2020 elections without endangering their health or the health of their loved ones or the community. Because the LWVLA has limited financial and human resources, the resources and member time they will have to spend on these efforts would have been spent on the following LWVLA efforts: voter registration efforts, education around the 2020 Census and redistricting, and “Get Out the Vote” efforts during the 2020 election cycle.

32. The LWVLA has six local Leagues across the state and 287 members and members-at-large. Many of the members of the LWVLA are over the age of 60. Some of its members live in senior living facilities. Many members include registered voters age 60-65 who are at higher risk for contracting and suffering severe complications or dying from COVID-19. Voting in person

would therefore put the health of these voters at significant risk because of the person-to-person contact at the polling place. But these members do not currently qualify for an absentee ballot under Louisiana law or the Emergency Election Plan.

33. LWVLA members include registered voters who live with, care for, or come into regular contact with loved ones who are at higher risk of contracting and suffering severe complications—including death—from COVID-19; yet, these members do not currently qualify for an absentee ballot under Louisiana law or the Emergency Election Plan. These members must choose between their vote and risking the health of their loved one by voting in-person at their polling place.

34. Defendant John Bel Edwards is the Governor of Louisiana and is being sued in his official capacity. Under the Louisiana Constitution, he is “the chief executive officer of the state,” and must “faithfully support the constitution and laws of the state and of the United States,” as well as ensure that “the laws are faithfully executed.” La. Const. art. IV, § 5(A). Defendant Governor Edwards is required to uphold the U.S. Constitution, including the First and Fourteenth Amendments, as part of the execution of his gubernatorial duties and responsibilities. 4 U.S.C. § 101. In his capacity as “chief executive officer of the state,” Defendant Governor Edwards is empowered to suspend or delay “any qualifying of candidates, early voting, or elections” “upon issuance of an executive order declaring a state of emergency or impending emergency.” *Id.* §

Lafayette Parish, and is charged with processing requests for absentee ballots, receiving absentee ballots from voters, and tabulating and counting absentee by-mail ballots. La. Rev. Stat. § 18:1313.

38. Defendant Rhonda R. Rogers is the Registrar of Voters for Terrebonne Parish and a member of the Terrebonne Parish Board of Election Supervisors and is being sued in her official capacity. As registrar and a member of the parish board of election supervisors, Defendant Rogers has the duty to supervise the preparation for and the conduct of all elections held in Terrebonne Parish, and is charged with processing requests for absentee ballots, receiving absentee ballots from voters, and tabulating and counting absentee by-mail ballots. La. Rev. Stat. § 18:1313.

IV. STATEMENT OF FACTS

A. Transmission of COVID-19 and Public Health Guidelines

39. In December 2019, a novel coronavirus was detected, now named SARS-CoV-2, and the disease it causes became known as COVID-19; it has now spread throughout the world, including to every state in the United States.

40. On January 30, 2020, the World Health Organization (WHO) declared COVID-19 to be a Public Health Emergency of International Concern. On March 11, 2020, the WHO declared that it had become a pandemic. On March 13, 2020, President Donald Trump proclaimed a National Emergency concerning COVID-19.

41. On March 11, 2020, Defendant Governor Edwards declared a state of emergency,¹⁶ and issued a stay at home order¹⁷ on March 22, which was revised on May 15.¹⁸ He has also twice

¹⁶ Proclamation No. 25 JBE 2020, § 1.

¹⁷ Proclamation No. 33 JBE 2020, § 3.

¹⁸ Proclamation No. 58 JBE 2020, § 15 (May 14, 2020) § 2A, 2C, 2D, <https://gov.louisiana.gov/assets/Proclamations/2020/58-JBE-2020.pdf>.

syndrome, requiring hospitalization; in critical cases, some patients need to be intubated and put on a ventilator.

45. Younger people have also contracted severe cases of COVID-19 and been hospitalized; many of them have died. In Louisiana, patients under the age of 50 have accounted for about six percent of COVID-19 related deaths in the state,

47. Louisiana has been especially hard-hit by COVID-19, experiencing the fastest two-week spread of COVID-19 compared to other U.S. states and other countries.²⁸ As of May 18, 2020, Louisiana reported 34,498 COVID-19 cases and 2,491 deaths.²⁹ Louisiana ranks ninth in the nation in the number of deaths, and it has lost more residents to COVID-19 than more populous states like Texas, Florida, Georgia, Washington, and Maryland.³⁰

B. Louisiana’s Elections During the COVID-19 Pandemic

48. COVID-19 will have an unprecedented impact on the nation’s upcoming elections. Before the COVID-19 pandemic, the Brookings Institution predicted that “turnout in 2020 could

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49. On April 15, 2020, Defendant Secretary of State Ardoin proposed an emergency election plan that would have expanded access to absentee ballots during the July primary and August municipal elections, pursuant to La. Rev. Stat. § 18:401.3. Specifically, the first emergency plan expanded the reasons to request an absentee ballot to registered voters who are:

- Sixty years of age or older;
- At higher risk of severe illness from COVID-19 due to serious underlying medical conditions (such as chronic lung disease, moderate to severe asthma, hypertension and other serious heart conditions, diabetes, undergoing chemotherapy, immunodeficiencies, severe obesity, chronic kidney disease and undergoing dialysis, and liver disease);
- Subject to a stay-at-home, quarantine, or isolation order;
- Advised by a health care provider or governmental authority to self-quarantine due to COVID-19 concerns;
- Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- Unable to appear in public due to concern of exposure to or transmission of COVID-19;
- Caring for an individual who is subject to a stay-at-home, quarantine, or isolation order or who has been advised by a health care provider or governmental authority to self-

blocked, Defendant Governor Edwards stated that “nobody should have to choose between exercising their right to vote and potentially endangering themselves or others.”³⁷ To the senators’ concerns about Louisiana voters using the COVID-19 crisis to engage in fraudulent behavior, Defendant Secretary of State Ardoin stated: “I think some of their concerns are not steeped in all the facts that were presented to them today. I’m hoping over time there can be some clarity.”³⁸

52. On April 20, Defendant Secretary of State Ardoin presented a substantially revised emergency election plan. Unlike the initial proposal, the revised Emergency Election Plan included far fewer categories of voters eligible to cast absentee ballots and failed to waive the Witness Requirement for absentee ballots during the July and August elections. The Emergency Election Plan forces voters to choose between exercising their right to vote and potentially endangering themselves or others.

53. The Emergency Election Plan was approved, ironically, by the Louisiana legislature *mailing* in their votes.³⁹

54. Defendant Secretary of State Ardoin is now implementing the Emergency Election Plan. There is no emergency election plan in place for the November or December elections.

55. Even with the Emergency Election Plan in place, several provisions of Louisiana law, as well as the Emergency Election Plan itself, now pose direct and severe obstacles to voting in Louisiana’s 2020 elections and having one’s vote counted. These provisions are: (1) the Excuse Requirement: the requirement to satisfy a specific excuse on the COVID-19 emergency application for absentee ballots, provided in the Emergency Election Plan passed pursuant to La. Rev. Stat. § 18:401.3 and the requirement to satisfy a specific excuse to vote by absentee ballot, as provided in

³⁷ *Id.*

³⁸ *Id.*

³⁹ Tierney Sneed, *The Irony: LA Legislature Votes By Mail To Approve Plan Limiting Vote-By-Mail*, TPM, Mar 02, 2020, <https://www.washingtonpost.com/news/energy-environment/wp/2020/03/02/la-legislature-votes-by-mail-to-approve-plan-limiting-vote-by-mail/>

La. Rev. Stat. § 18:1303(B); (2) the Witness Requirement: the requirement that voters obtain a witness signature on their mail-in absentee ballot, pursuant to La. Stat. Rev. § 18:1306(E)(2)(a); and (3) the Cure Prohibition: the failure to provide absentee voters

- The Secretary of State and his or her employees; and
- People employed by a registrar of voters outside of their parish of registration.

See La. Rev. Stat. § 18:1303.

57. The Emergency Election Plan extends the ability to vote by mail to voters:

- At higher risk of severe illness from COVID-19 due to serious underlying medical conditions as identified by the Centers for Disease Control and Prevention (including chronic lung disease, moderate to severe asthma, serious heart conditions, diabetes, severe obesity (BMI of 40 or higher), chronic kidney disease and undergoing dialysis, liver disease, pregnancy, or immunocompromised due to cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications);
- Subject to a medically necessary quarantine or isolation order as a result of COVID-19;
- Advised by a health care provider to self-quarantine due to COVID-19 concerns;
- Experiencing symptoms of COVID-19 and seeking a medical diagnosis; or
- Caring for an identified individual

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C. The Impact of COVID-19 on Black Louisianans given Past and Present Discrimination

60. COVID-19 has devastated Black communities across the country. A recent study showed that counties with disproportionate numbers of Black residents account for more than half of COVID-19 diagnoses and nearly 60 percent of COVID-19 deaths nationally.⁴² Socioeconomic factors such as access to health care and employment status, as well as disproportionate rates of underlying health conditions, contribute to the disproportionate impact of COVID-19 on the Black community.⁴³

61. In Louisiana, Black residents have been especially hard-hit by the COVID-19 pandemic. On April 6, Louisiana released racial impact data for COVID-19 deaths: while making up only 33% of the state's population, Black residents accounted for 70% of COVID-19 deaths.⁴⁴ And by mid-May, nearly 57% of people who had died from COVID-19 in Louisiana were Black.⁴⁵ Put differently, Black Louisianans are dying at a rate 2.65 times higher than other races in the state.⁴⁶

62. The disparate impact of COVID-19 on Black Louisianans reflects systemic inequality and discrimination in healthcare, education, housing, employment, access to

⁴² Laura Barron-Lopez, *A new study shows just how badly black Americans have been hit by Covid-19*, Politico, May 5, 2020, <https://www.politico.com/news/2020/05/05/black-counties-disproportionately-hit-by-coronavirus->

transportation, and other socioeconomic factors.⁴⁷ Black people are less likely to have health insurance⁴⁸ and are disproportionately medically underserved.⁴⁹

63. Black residents are more likely to suffer and die from the underlying health conditions that make COVID-19 infection more likely and more deadly. On April 8, a CDC study suggested that about 90 percent of the most serious COVID-19 cases involve underlying health conditions that are more common and more deadly in Black Americans and strike at younger ages, including hypertension and cardiovascular disease, obesity, diabetes, and chronic lung disease.⁵⁰ According to the CDC, the rate of diabetes is 66 percent higher in Black Americans than in white Americans and the rate of hypertension is 49 percent higher.⁵¹

64. The combined effects of discrimination in healthcare, employment, education, housing, and other areas of life create a perfect storm that puts Black Louisianans at disproportionate risk of contracting and dying from COVID-19. Black Americans are, for example, more likely to be part

production, transportation, or material moving occupations.⁵³ By contrast, 39.3% of white people versus only 24.7% of Black people in Louisiana hold management or professional occupations—*i.e.*, “white collar” jobs that are much more likely to allow employees to continue to work safely at home.⁵⁴ Further, because 15.8% of Black households and only 4.7% of white households lack a vehicle,⁵⁵ Black Louisianans are at higher risk of exposure to COVID-19 both at their job and getting to their job using public transit.

65. The CDC has acknowledged that racial and ethnic minorities are disproportionately impacted by COVID-19 due to economic and social conditions caused by institutional racism and systemic inequalities in healthcare, among other factors.⁵⁶ According to the ACS, in Louisiana, 7.9% of Black people and 6.2% of white people lack health insurance; 39.6% of Black people and 37.8% of white people over age 65 have a disability; 16.0% of Black people and 12.5% of white people age 18 to 64 have a disability; 19% of Black people and only 10.8% of white people lack a high school degree; 9.9% of Black people and 4.5% of white people over age 16 are unemployed; 25.2% of Black households and 8.1% of white households in general live below the poverty line; 22.9% of Black people over 65 versus 8.7% of white people over 65 also live in poverty; 31% of Black households and just 17.9% of white households lack broadband internet; 28.1% of Black households and 8.7% of white households use SNAP/food stamps; and Black median family income (\$37,048) is half that of white families (\$76,800).⁵⁷

⁵³ *Id.*

⁵⁴ *See id.*

⁵⁵ *Id.*

⁵⁶ Centers for Disease Control & Prevention, COVID-19 in Racial and Ethnic Minority Groups, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> (last visited May 8, 2020).

⁵⁷ U.S. Census Bureau, 2018: ACS 1-Year Estimates Selected Population Profiles, Table S0201, <https://tinyurl.com/yb3dxcm3>.

66. And given underlying inequalities, Black people in Louisiana are more likely to have the underlying health conditions that put them at increased risk for contracting and dying from COVID-19. The Louisiana Department of Health reports that Black Louisianans have higher rates of death from diabetes, heart disease, and cancer than white residents.⁵⁸ Black adults in Louisiana also report higher rates of asthma than white adults.⁵⁹

D. The Challenged Provisions Unreasonably Burden the Voting Rights of Louisiana Voters and Impose an Unconstitutional Condition on the Right to Vote.

1. Louisiana’s Excuse Requirement will force thousands of voters to risk exposure to COVID-19 by voting in person during 2020 elections.

67. Plaintiffs challenge Louisiana’s requirement to have an excuse to vote by mail in upcoming 2020 elections during the COVID-19 pandemic. Even though the emergency plan adds five additional excuses on the COVID-19 emergency application for absentee ballot (“emergency application”) foro Cero Cete by mtio

68. By requiring every voter who wishes to safeguard their health—or the health of a spouse, child, or near relative—to have an excuse to vote by mail, Louisiana imposes an undue burden on their fundamental right to vote.

69. The burden of the Excuse Requirement will fall more heavily on Black voters in Louisiana, who—due to longstanding socioeconomic discrimination and inequity—are more likely to contract and die from COVID-19 than voters of other races.

stay safe while voting for those voters who are ineligible for an absentee ballot but need to take specific precautions while voting in person to protect their health or the health of a loved one. Plaintiff CCMG will also spend staff time at selected polling locations to provide hand sanitizer and information on best practices on social distancing to voters who are forced to vote in person but need to stay safe while doing so. These resources are diverted away from Plaintiff LWVLA's and Plaintiff CCMG's regular activities which, for both organizations, include engaging with Louisiana residents on voter registration, the 2020s ,budeflation, they,(r)3(a3)]TJ -0.004 Tc 0.054 Tw [(h)(a)4

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and Plaintiff CCMG's regular activities which, for both organizations, include engaging with Louisiana residents on voter registration, the 2020 Census, and the 2020 redistricting cycle.

68. On May 1, 2020, Louisiana had over 2.9 million registered voters.⁶⁴ In the November 2019 general election, over 1.5 million Louisianans voted.⁶⁵ And in the 2016 presidential election, over 2 million Louisiana voters cast ballots.⁶⁶

69. According to the ACS, 14.9% of Louisiana adults live alone.⁶⁷ If the November 2020 election has similar voter turnout to November 2016, nearly 300,000 Louisiana voters (*i.e.*, 14.9% of 2 million voters) could be forced to choose between risking their health by voting in-person, leaving their homes and violating social distancing directives to find witnesses for their absentee ballots, or not voting at all.

31.30% contain people who live alone.⁷¹ And 14.9% of all Black households in Louisiana are headed by women who live alone with their children under 18 (*i.e.*, people who are not legally competent witnesses) versus just 4.9% of similar white households.⁷²

72. The Witness Requirement imposes a severe burden on many voters and is not narrowly tailored to the

78. First, Plaintiffs Barnett and Green do not qualify to vote by mail under La. Rev. Stat. § 18:1303 or the Emergency Election Plan, which requires an excuse to vote by mail. But because they live with family members who are at increased risk for contracting and suffering severe complications or dying from COVID-19, they cannot vote in person in the July, August, November, or December elections without endangering the health of their loved ones. And Plaintiff Clark, although she qualifies for an absentee ballot under the Emergency Election Plan for the July and August elections, she does not qualify to vote by mail under La. Rev. Stat § 18:1303 for the November or December elections. Because Plaintiff Clark is at increased risk of severe illness or death from COVID-19, she cannot vote in person without endangering her health. The Excuse Requirement imposes a severe burden on many voters, including Plaintiffs Barnett, Green, and Clark, which are not sufficiently tailored to the state's interest, and, as such, these laws unduly burden Plaintiffs' right to vote.

79. Second, even though many voters qualify to vote by mail in upcoming elections, the fact that they live alone means that they will have to interact with someone from outside their household to satisfy the Witness Requirement. Otherwise, their only option is to vote in person. Due to their age and preexisting health conditions, such contact could result in severe illness or even death. The Witness Requirement is unreasonably dangerous for absentee voters and imposes a severe burden on many such voters, including but not limited to those who live alone and/or who have an underlying health condition that puts them at heightened risk. The burdens of the Witness Requirement are not sufficiently tailored to the state's anti-fraud interest, and, as such, these laws unduly burden Plaintiffs' right to vote. The Witness Requirement unduly burdens their right to vote in the July, August, November and/or December elections. Both Plaintiff LWVLA and Plaintiff CCMG are injured by the Witness Requirement, in that they will divert resources and

time to educating voters on how to comply safely with the Witness Requirement during the COVID-19 pandemic.

SECOND CLAIM FOR RELIEF
(Plaintiffs Clark and LWVLA)

Unconstitutional Condition on Right to Vote Compelling Forfeiture of Right to Bodily Integrity

42 U.S.C. § 1983, Fourteenth Amendment to the U.S. Constitution

80. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

81. Voting is protected by the First Amendment as a means of political association and political expression. *Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000); *Norman v. Reed*, 502 U.S. 279, 288–90 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 787–89, 806 (1983); *Kusper v. Pontikes*, 414 U.S. 51, 56–58 (1973); *Williams v. Rhodes*, 393 U.S. 23, 30–31 (1968).

82. Under the unconstitutional condition doctrine, the government may not require an individual to forfeit one constitutional right in order to exercise another. *See Lefkowitz v. Cunningham*, 431 U.S. 801 (1977); *Simmons v. United States*, 390 U.S. 377, 394 (1968); *Howard v. Walker*, 406 F.3d 114, 129 (2d Cir. 2005); *Bourgeois v. Peters*, 387 F.3d 1303, 1324 (11th Cir. 2004); *Green v. Brigano*, 123 F.3d 917, 921 (6th Cir. 1997).

83. When the government places a condition on the exercise of a right or receipt of a government-created benefit that interferes with a constitutional right, courts will apply the same level of scrutiny to the condition as it would to a law that directly regulates the constitutional right. *See Memorial Hosp. v. Maricopa Cty.*, 415 U.S. 250, 261–62 (1974); *Dunn v. Blumstein*, 405 U.S. 330, 335 (1972); *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969). Government actions that threaten the right to bodily integrity will survive only if they are narrowly tailored to achieve a

compelling state interest. *See Washington v. Glucksberg*, 521 U.S. 702, 721 (1997); *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1064 (6th Cir. 1998).

84. The Supreme Court has invalidated voting requirements or conditions that require the forfeiture of another fundamental right. *See Blumstein*, 405 U.S. at 346, 353 (1972) (finding that durational residency requirement for voter registration placed unconstitutional condition on fundamental right to interstate travel).

85. There is a constitutionally recognized fundamental right to bodily integrity. *See Washington v. Glucksberg*, 521 U.S. 702, 777–78 (1997); *Alton v. Tex. A & M Univ.*, 168 F.3d 196, 199 (5th Cir. 1999). “[I]ndividuals possess a constitutional right to be free from forcible intrusions on their bodies against their will, absent a compelling state interest.” *Guertin v. State*, 912 F.3d 907, 919 (6th Cir. 2019) (quoting *Planned Parenthood Sw. Ohio Reg. v. DeWine*, 696 F.3d 490 (6th Cir. 2012)). This right is violated if government officials are deliberately indifferent to the violation of the plaintiff’s bodily integrity. *See M.D. by Strukenberg v. Abbot*, 907 F.3d 237, 248 (5th Cir. 2018); *Guertin*, 912 F.3d at 919. “To act with deliberate indifference, a state actor must consciously disregard a known and excessive risk to the victim’s health and safety.” *M.D. by Stukenberg*, 907 F.3d at 252 (quoting *Hernandez ex rel. Hernandez v. Tex. Dept. of Prot. & Regulatory Servs.*, 380 F.3d 872, 880 (5th Cir. 2004)). The state “must be both aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and [it] must also draw that inference.” *Id.* (quoting *Hernandez*, 380 F.3d 872, at 881) (alteration in original). “Involuntarily subjecting nonconsenting individuals to foreign substances with no known therapeutic value . . . is a classic example of invading the core of the bodily integrity protection.” *Guertin*, 912 F.3d at 921–22.

86. By requiring Plaintiffs to vote in person or obtain a witness signature, both of which cannot be safely and reasonably accomplished throughout 2020 and during the COVID-19 emergency in Louisiana, Defendants force Plaintiffs to forfeit their right to bodily integrity in order to exercise their right to vote. Should Plaintiffs exercise their right to vote under these circumstances, Defendants will have knowingly and unreasonably subjected Plaintiffs to significant risk of exposure to a highly contagious and highly lethal pathogen, the novel coronavirus that causes COVID-19, without a therapeutic basis or Plaintiffs' consent. As reflected by Defendant Governor Edwards' stay-at-home order, the Emergency Election Plan, and Defendant Secretary of State Ardoin's failed attempts to waive the Witness Requirement for the July and August elections, Defendants are aware of the dangers posed by COVID-19 to voters generally and specifically if voters are forced to comply with the Excuse and Witness Requirements and risk contracting or causing illness, death, and lasting injury.

87. Defendants, acting under color of state law, have deprived and will continue to

90. Section 2 of the VRA

discrimination in healthcare, housing, education, employment, and other socioeconomic areas, Black voters are at higher risk of contracting COVID-19, suffering serious complications and dying than white voters if required to vote in person. Accordingly, Black voters are disproportionately burdened by the Excuse Requirement.

96. The Witness Requirement, if not enjoined, will severely burden the right to vote and will disproportionately impact Black voters in Louisiana. Black voters are more likely to live alone than white voters in Louisiana. And because of longstanding and pervasive discrimination in healthcare, housing, education, employment, and other socioeconomic areas, Black voters are at higher risk of contracting COVID-19, suffering serious complications and dying than white voters if required to break self-quarantine to find a witness signature on their absentee ballot. Accordingly, Black voters are disproportionately burdened by the Witness Requirement.

97. The discriminatory results of the Excuse Requirement and the Witness Requirement are directly linked to social and historical conditions. Louisiana has a long history of voting-related discrimination, including recent polling place closures, discriminatory lack of early voting sites and days, and at-large election systems. From 1965 to 2013, Louisiana was covered by the preclearance provisions of the VRA. During that time, the U.S. Department of Justice objected to dozens of Louisiana's proposed voting changes because of their potentially discriminatory purpose or effect.

98. Black Louisianans continue to face discrimination in other areas of life, including healthcare, health, education, employment, and housing, which hinders their ability to participate effectively in the political process. Such discrimination results in Black Louisianans suffering disproportionately from health conditions that put them at higher-risk of serious complications and death from COVID-19. *See supra* ¶¶ 60-66. This heightened and disproportionate risk from

COVID-19 exacerbates the difficulties Louisiana's Black voters face in participating effectively in the political process and electing representatives of their choice.

99. Under the totality of the circumstances, the Excuse Requirement and the Witness Requirement interact with social and historical conditions to deny and abridge the right to vote of Black people in Louisiana. Because of the Excuse Requirement and the Witness Requirement,

their objections.” *Triplett v. Dep’t of Soc. Servs.*, 26 F.3d 1119 (5th Cir. 1994) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)) (internal quotation marks omitted).

104. Under *Mathews*, the determination of what process is due rests on the balance between (1) the interest affected; (2) the risk of erroneous deprivation under the current procedures, and the “probable value, if any, of additional or substitute procedural safeguards”; and (3) the state’s interest, including the “fiscal and administrative burdens” additional procedures would entail. 424 U.S. at 335.

105. Absent exigent circumstances, due process requires pre-deprivation procedures. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (“We have described ‘the root requirement’ of the Due Process Clause as being ‘that an individual be given an opportunity for a hearing before he is deprived of any significant property interest.’” (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379 (1971) (emphasis in original))); *Sciolino*, 480 F.3d at 653 (“An opportunity to clear your name after it has been ruined by dissemination of false, stigmatizing charges is not ‘meaningful.’”).

106. Louisiana law gives registered Louisiana voters who meet certain criteria statutory rights to request and cast a mail-in absentee ballot that will be processed and counted, thereby vesting them with liberty interests. Eligible, registered voters enjoy an “individual and personal” right to vote under Louisiana law. *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964)).

107. Yet Defendants do not afford mail-in absentee voters any notice of or opportunities to cure material defects in their absentee ballot requests and their absentee ballots that will result in rejection, thereby depriving Plaintiff Clark and other registered Louisiana voters eligible to vote

113. Defendants have deprived and will continue to

2. Prohibiting Defendants from enforcing the Witness Requirement for all voters during, at least, all elections in Louisiana in 2020;⁷⁷
3. Ordering Defendants to issue guidance instructing all local, city, and parish election officials to modify election materials, including absentee ballots, envelopes, instructions, and other materials, to reflect the enjoining of the Challenged Provisions, and conduct a public information campaign informing Louisiana voters about the enjoining of the Excuse Requirement, the Witness Requirement, and the Cure Prohibition, in coordination with parish and local officials before and during the absentee balloting period;
4. Ordering Defendants to issue guidance instructing all parish and local election officials to process all valid absentee ballot applications, regardless of whether the applicant has provided an excuse, for all

least, all elections in Louisiana in 2020 that do not require the voter to appear anywhere in person;

- e. Award Plaintiffs attorneys' fees in this action;
- f. Award Plaintiffs their costs of suit;
- g. Order such other relief as the Court deems just and appropriate; and
- h. Retain jurisdiction to enforce the Judgment.

DATED this 19

