

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

CYNTHIA PARHAM, JED OPPENHEIM,
CHERYL GOGGIN, THE LEAGUE OF
WOMEN VOTERS MISSISSIPPI, and
MISSISSIPPI STATE CONFERENCE OF
THE NAACP,

Plaintiffs,

v.

MICHAEL D. WATSON, JR., in his official
capacity as Secretary of State of Mississippi,
and LYNN FITCH, in her official capacity as
Attorney General of the State of Mississippi,

Defendants.

Case No. 3:20-CV-572-DPJ-FKB

**MEMORANDUM OF LAW OF THE DISTRICT OF COLUMBIA AND
THE STATES OF CALIFORNIA, CONNECTICUT, DELAWARE,
HAWAII, ILLINOIS, MARYLAND, MASSACHUSETTS, MINNESOTA,
NEVADA, NEW MEXICO, NEW YORK, OREGON, RHODE ISLAND,
VERMONT, VIRGINIA, AND WASHINGTON AS *AMICI CURIAE* IN
SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION AND INTEREST OF *AMICI STATES*

The District of Columbia and the States of California, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington (collectively, the “*Amici States*”) submit this brief as *amici curiae* in support of plaintiffs’ motion to preliminarily enjoin Mississippi from enforcing three aspects of its vote-by-mail system. The challenged provisions make absentee voting impossible for most Mississippians, including those who, fearing exposure to the novel coronavirus, seek to limit their in-person contacts. Even Mississippi voters who are eligible to vote by mail must visit a notary, in person, *twice*. And, after all that, absentee voters risk having their ballots discarded without warning or opportunity to cure if their ballot signatures do not appear to match their absentee application.

In our federalist system, states play “a major role” “in structuring and monitoring the election process.” *Cal. Democratic Party v. Jones*, 530 U.S. 567, 572 (2000); *see* U.S. Const. art. I, § 4, cl. 1. In that role, “[a] State indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). But states cannot pursue that interest to the exclusion of all others, and must instead balance it against their serious and ongoing “responsibility of protecting the health, safety, and welfare of [their] citizens.” *United Haulers Ass’n v. Oneida-Herkimer Solid Waste Mgmt.*

Auth., 550 U.S. 330, 342 (2007). As the primary managers of the election process, states have an obligation to protect each citizen’s constitutional right to vote while ensuring that this right can be exercised safely. *Cf. Burdick v. Takushi*, 504 U.S. 428, 433 (1992).

To that end, states have a critical interest in making it possible for their citizens to cast their votes in the upcoming election in ways that safeguard both public health and the sanctity of the electoral process. The vast majority of states and the District of Columbia have done just that, demonstrating that the upcoming election can be conducted securely while preventing further spread of COVID-19. Specifically, most states have eliminated excuse requirements, permitting all voters to vote by mail during the pandemic. Many have sent absentee applications to all active registered voters, while others—including a handful that already conducted all-mail elections before the pandemic—have elected to send mail-in ballots to every qualified voter. Numerous others have modified their notarization and witness requirements for absentee ballots to reduce the need for in-person interactions. Although the *Amici* States have developed different approaches on how best to protect the franchise during the pandemic, they share a common interest in promoting civic participation while protecting public health by reducing the need for in-person interactions during the voting process.

Mississippi—which requires an excuse to vote by mail, forces absentee voters to have their submissions notarized twice, and discounts absentee ballots with non-matching signatures without giving the voter notice or an opportunity to cure the defect—is out of step with these important interests. Indeed, the data show that Mississippi is one of only six states that continue to restrict access to mail-in voting; it is one of only ten states that discount absentee ballots with non-matching signatures without giving voters notice or a chance to cure the defect; and it is the one and only state that requires absentee voters to visit a notary twice. In the *Amici* States’ experience, it is possible to implement practices that protect the integrity of the electoral process without resorting to techniques that force voters into an impossible choice between exercising their fundamental right to vote and protecting the health of themselves and their loved ones. The *Amici* States thus urge this Court to grant plaintiffs’ motion for a preliminary injunction.

ARGUMENT

I. States Have Adopted Reasonable Measures To Protect Both Voter Participation And Public Health During The COVID-19 Pandemic.

“States retain” both “the power to regulate their own elections,” *Burdick*, 504 U.S. at 433, and the profound responsibility to “protect the health and safety of their citizens,” *Hill v. Colorado*, 530 U.S. 703, 715 (2000) (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996)). These sovereign responsibilities are particularly critical this election cycle, as the country confronts the COVID-19 pandemic—a

public health emergency that continues to claim the lives of over 700 Americans per day. Johns Hopkins Univ. & Med. Coronavirus Res. Ctr., *United States: Past Week* (Oct. 2020).¹

Yet, despite the public health emergency, election experts project that voter turnout in the general election this November will be “exceptional, perhaps the highest in over a century.” William A. Galston, *Election 2020: A Once-in-a-Century, Massive Turnout?*, Brookings (Aug. 14, 2020) (internal quotation marks omitted).² “As much as 70% of the 240 [million]-strong electorate is expected to vote.” *Covid-19 and An Atmosphere of Distrust Pose Grave Risks to America’s Election*, *The Economist* (Sept. 3, 2020).³ At the same time, 49 percent of registered voters expect to face difficulties casting a ballot in light of the coronavirus outbreak. Pew Rsch. Ctr., *Election 2020: Voters Are Highly Engaged, but Nearly Half Expect to Have Difficulties Voting* (Aug. 13, 2020).⁴ That is likely because the traditional practice of voting in person, on the same day, and in designated locations is hard to reconcile with public health directives to practice social distancing and limit person-to-person contact to minimize the transmission of

¹ Available at <https://coronavirus.jhu.edu/region/united-states> (last visited Oct. 6, 2020) (dividing past week’s new deaths by seven to find daily average).

² Available at <https://brook.gs/3jAGF6a>.

³ Available at <https://econ.st/36BRdhC>.

⁴ Available at <https://pewrsr.ch/3jzTptz>.

COVID-19. See Ctr. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19): How to Protect Yourself & Others* (Sept. 11, 2020);⁵ Miss. State Dept. of Health, *COVID-19 Guidance and Prevention for Individuals and the Community* (Oct. 1, 2020);⁶ see also Myah Ward & Renuka Rayasam, *Is It Safe to Vote in Person?*, Politico (Sept. 30, 2020) (“The way our in-person voting works in most districts makes it hard to ensure good social distancing and minimize crowding.” (internal quotation marks omitted)).⁷ Confronted with these unprecedented challenges, states across the country have modified their procedures to preserve voter participation while protecting public health during this election cycle. These states’ practices highlight the degree to which Mississippi’s approach to mail-in voting is idiosyncratic and unnecessary.

A. States have adopted measures to make voting by mail more accessible amid the pandemic.

Many states have adopted voting procedures that minimize in-person interactions to preserve residents’ health and prevent the spread of COVID-19, which is highly contagious. In most cases, states have done so by expanding voters’ access to mail-in voting. For example, the West Virginia Secretary of State declared

⁵ Available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

⁶ Available at https://msdh.ms.gov/msdhsite/_static/14,21866,420.html#individuals.

⁷ Available at <https://politi.co/2Ss3VY2>.

that “voters should never have to choose between their health and their right to vote.” Press Release, W.V. Off. of the Sec’y of State, *Secretary of State Mac Warner Announces Voting Options for Voters to Continue Making Safe Decisions in 2020 General Election* (July 27, 2020) (internal quotation marks omitted).⁸ So, although West Virginia law requires voters to have one of several excuses to vote by mail, the Secretary announced that the statute’s allowance for “other medical reason,” W. Va. Code § 3-3-1(b)(1)(A), will permit “[a]ny voter concerned about their health and safety because of COVID-19 [to] have the option to vote by absentee ballot,” Press Release, W.V. Off. of the Sec’y of State, *supra*. The South Carolina legislature came to the same conclusion: “Due to the significant health threat and risks associated with [the] 2019 Novel Coronavirus,” any “qualified elector must be permitted to vote by absentee ballot in . . . the General Election to be held on November 3, 2020.” H. 5305, 123d Gen. Assemb. §§ 1-2 (S.C. 2020).

Like West Virginia and South Carolina, many other states—Alabama, Arkansas, Connecticut, Delaware, Kentucky, Massachusetts, New Hampshire, and New York—have temporarily waived their excuse requirements for absentee voting or authorized “fear of contracting COVID-19” as a valid excuse for voting by absentee ballot in the upcoming election. *See* Ala. Admin. Code. r. 820-2-3-.06-

⁸ Available at <https://sos.wv.gov/news/Pages/07-27-2020-A.aspx>.

.04ER(1) (any voter may use the “illness” excuse); Ark. State Bd. of Election Comm’rs, Res. No. 4, at 2 (July 22, 2020) (any voter may use COVID-19 as an excuse); Conn. Gen. Stat. § 9-135(a)(7) (2020) (same); Del. Code tit. 15, § 5602(a) (2020) (no excuse required to vote by mail); Ky. Sec’y of State Michael Adams, *2020 General Updates* (2020) (“Kentuckians concerned with contracting or spreading COVID-19 can request a ballot by mail.”);⁹ 2020 Mass. Acts ch. 115, § 15 (any voter may use COVID-19 as an excuse); H.B. 1266, 2020 Leg., Reg. Sess. § 1 (N.H. 2020) (same); S.B. 8015D, 2019-2020 Leg. Sess. § 1.1(b) (N.Y. 2020) (any voter may use the “illness” excuse).

Still other states—including Connecticut, Delaware, Illinois, Iowa, Maryland, Massachusetts, Minnesota, Nebraska, Rhode Island, Wisconsin, and certain counties in New Mexico—have expanded voters’ access to absentee ballots by sending vote-by-mail applications to all qualified registered voters. *See* Conn. Off. of the Sec’y of the State, *Connecticut’s Absentee Ballot Process* (2020);¹⁰ Del. Code tit. 15, § 5603(a) (2020); 10 Ill. Comp. Stat. 5/2B-15(b) (2020); Stephen Gruber-Miller, *Iowa Secretary of State Will Mail Ballot Request Forms to All Voters Before Fall*

⁹ Available at <https://www.sos.ky.gov/elections/Pages/2020-General-Updates.aspx>.

¹⁰ Available at <https://portal.ct.gov/SOTS/Election-Services/Voter-Information/Absentee-Ballot-Process> (last visited Oct. 6, 2020).

Election, Des Moines Reg. (July 17, 2020);¹¹ Letter from Larry Hogan, Governor of Md., to Michael R. Cogan, Chairman, State Bd. of Elections (July 8, 2020);¹² 2020 Mass. Acts ch. 115, § 6(d)(1)-(2); Press Release, Off. of the Minn. Sec’y of State, *Secretary Simon Announces Statewide Mailing to Encourage Vote from Home* (Sept. 16, 2020);¹³ Martha Stoddard, *Nebraska Sending Mail-In Ballot Applications to All Registered Voters*, Omaha World-Herald (Aug. 19, 2020);¹⁴ Morgan Lee, *New Mexico Pushes Forward with Emergency Voting Reforms*, Associated Press (Aug. 18, 2020);¹⁵ Edward Fitzpatrick, *Rhode Island Will Send Mail Ballot Applications to All Voters for the Nov. 3 Election*, Boston Globe (Sept. 11, 2020);¹⁶

¹¹ Available at <https://www.desmoinesregister.com/story/news/politics/2020/07/17/iowa-secretary-state-paul-pate-mail-absentee-ballot-request-form-registered-voters-covid-19-pandemic/5458727002>.

¹² Available at https://governor.maryland.gov/wp-content/uploads/2020/07/Letter-to-SBE_November-Election.pdf.

¹³ Available at <https://www.sos.state.mn.us/about-the-office/newsroom/secretary-simon-announces-statewide-mailing-to-encourage-vote-from-home>.

¹⁴ Available at https://omaha.com/news/state-and-regional/govt-and-politics/nebraska-sending-mail-in-ballot-applications-to-all-registered-voters/article_98d340c7-b4d1-57a9-8f4e-7098ed2397bd.html.

¹⁵ Available at <https://apnews.com/article/virus-outbreak-election-2020-voting-state-elections-elections-998e5117d8eaabeb2b96e9d20b87fbfc>.

¹⁶ Available at <https://www.bostonglobe.com/2020/09/11/metro/rhode-island-will-send-mail-ballot-applications-all-voters-nov-3-election>.

Press Release, Wis. Elections Comm'n, *Wisconsin Voting Deadlines and Facts for November 2020*, at 2 (Aug. 20, 2020).¹⁷

And yet other jurisdictions, such as California, the District of Columbia, Nevada, New Jersey, and Vermont, have sent or plan to send mail-in ballots for the 2020 general election to all active registered voters. *See* Cal. Elec. Code § 3000.5 (2020); D.C. Bd. of Elections, *Vote Safe DC*;¹⁸ Nev. Rev. Stat. AB 4, § 15(1) (2020); N.J. Stat. § 19:63-1(a) (2020); Vt. Off. of the Sec'y of State, *First Statewide Elections Directive 4* (July 20, 2020).¹⁹ These states join the five others—Colorado, Hawaii, Oregon, Utah, and Washington—that already conducted all-mail elections before the pandemic. *See* Colo. Rev. Stat. § 1-5-401; Haw. Rev. Stat. § 11-101; Ore. Rev. Stat. § 254.465; Utah Code § 20A-3a-202; Wash. Rev. Code § 29A.40.010.

Regardless of how they have done so, 44 states and the District of Columbia have coalesced around the common purpose of helping voters avoid unnecessary exposure to the novel coronavirus by making absentee voting more accessible.

¹⁷ Available at <https://elections.wi.gov/sites/elections.wi.gov/files/2020-08/NR%20Elections%20-%20Absentee%20Voting%20Facts%20for%20November%202020%2008-20-20.pdf>.

¹⁸ Available at <https://www.dcboe.org> (last visited Oct. 6, 2020).

¹⁹ Available at <https://sos.vermont.gov/media/hxgjjdkb/secretary-of-state-s-first-2020-statewide-election-procedures-directive.pdf>.

B. States have modified their absentee ballot requirements to minimize in-person interactions.

Many states have further reckoned with the fact that their absentee ballot requirements can themselves force voters to interact person-to-person during the pandemic. Prior to the pandemic, 11 states required voters to have their absentee ballots notarized or signed by one or two adult witnesses. See Nat'l Conf. of State Legis., *Voting Outside the Polling Place: Table 14: How States Verify Voted Absentee Ballots* (Apr. 17, 2020).²⁰ North Carolina, Rhode Island, and Virginia have since agreed to modify their witness requirements for the November election, given that voters might struggle to find someone to witness and sign their absentee ballot while they are quarantining or self-isolating. See H.B. 1169, Gen. Assemb., 2019 Sess. § 1(a) (N.C. 2020) (reducing North Carolina's requirement from two witnesses to one for the 2020 elections); *Common Cause R.I. v. Gorbea*, No. 20-CV-318, 2020 WL 4460914, at *3 (D.R.I. July 30) (entering a consent decree suspending Rhode Island's enforcement of its witness requirement for the 2020 elections), *stay denied*, 970 F.3d 11 (1st Cir.), *stay denied sub nom. Republican Nat'l Comm. v. Common Cause R.I.*, No. 20A28, 2020 WL 4680151 (U.S. Aug. 13, 2020); *League of Women Voters of Va. v. Va. State Bd. of Elections*, No. 6:20-CV-24, 2020 WL 4927524, at *5 (W.D. Va. Aug. 21, 2020) (entering a consent decree suspending Virginia's

²⁰ Available at <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>.

enforcement of witness requirement for voters who believe that they cannot safely have witness present while completing mail-in ballot). Similarly, courts directed Alabama and Alaska to make modifications to their witness requirements. *See People First of Ala. v. Merrill*, No. 2:20-CV-619, 2020 WL 5814455, at *55 (N.D. Ala. Sept. 30, 2020) (enjoining Alabama’s witness requirement for absentee voters with underlying medical conditions that put them at heightened risk from COVID-19); *Arctic Vill. Council v. Meyer*, No. 3AN-20-7858, slip op. at 14 (Alaska Super. Ct. Oct. 5, 2020) (enjoining Alaska’s witness requirement for absentee voters during the pandemic). *But see Andino v. Middleton*, No. 20A55, 2020 WL 5887393, at *1 (U.S. Oct. 5, 2020) (staying preliminary injunction of South Carolina’s witness requirement pending disposition of appeal); *Democratic Nat’l Comm. v. Bostelmann*, No. 20-CV-249, 2020 WL 5627186, at *19 (W.D. Wis. Sept. 21, 2020) (declining to enjoin Wisconsin’s witness requirement, in part because State’s guidance on how to do so safely during the pandemic sufficed to overcome plaintiffs’ burdens).

Meanwhile, Mississippi is the only state that requires voters to have their absentee ballot *applications* notarized, and the only state to require both the application *and* the mail-in ballot to be notarized. *See* Nat’l Conf. of State Legis., *Table 14, supra*.

C. States have implemented policies to make signature matching fair and transparent.

Finally, with the increase in absentee voting, voters and states alike have thought more carefully about states' processes for verifying absentee ballots. While more than 30 states rely on signature matching to verify absentee ballots, at least 21 of them provide voters notice and some opportunity to cure if the signature on the ballot does not match what the state has on file. *See* Nat'l Conf. of State Legis., *Voting Outside the Polling Place: Table 15: States That Permit Voters to Correct Signature Discrepancies* (Sept. 21, 2020) (Arizona, California, Colorado, Florida, Georgia, Hawaii, Illinois, Iowa, Massachusetts, Minnesota, Montana, Nevada, New Jersey, Ohio, Oregon, Rhode Island, Utah, and Washington);²¹ Me. Sec'y of State's Off., *Instructions to Municipal Election Officials Providing an Opportunity to Cure Defects on Absentee Ballot Envelopes before Rejection* (Sept. 18, 2020) (Maine);²² Press Release, Mich. Sec'y of State's Off., *New Processing AVs in the Precinct Training Module and Signature Verification and Voter Notification Resource* (Feb. 27, 2020) (Michigan);²³ *League of Women Voters v. Kosinski*, No. 1:20-CV-05238,

²¹ Available at <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-15-states-that-permit-voters-to-correct-signature-discrepancies.aspx>.

²² Available at <https://www.democracymodel.com/wp-content/uploads/sites/45/2020/07/Maine-New-Cure-Guidance.pdf>.

²³ Available at <https://content.govdelivery.com/accounts/MISOS/bulletins/27e341c>.

2020 WL 5608635 (S.D.N.Y. Sept. 17, 2020) (New York). Additionally, a federal court enjoined a twenty-second state—Indiana—to change its matching system, holding that “Indiana’s signature verification requirement is unconstitutional . . . insofar as it fails to provide any notice or cure procedures before rejecting mail-in absentee ballots for signature mismatch.” *Frederick v. Lawson*, No. 1:19-CV-01959, 2020 WL 4882696, at *15 (S.D. Ind. Aug. 20, 2020). And a full 19 states and the District of Columbia have adopted alternative ways of verifying absentee ballots without comparing signatures. *See, e.g.*, Alaska Stat. § 15.20.203(b) (requiring execution of a certificate declaring that the voter is qualified to vote and provided accurate identifying details); Conn. Gen. Stat. § 9-150a(d) (requiring the voter to sign the ballot envelope); Idaho Code § 34-1008 (requiring officials to confirm that the voter is registered and has not already voted); Md. Code Regs. 33.11.05.03 (requiring a signed oath, certain personal identifying information, and a sealed ballot envelope); 25 Pa. Cons. Stat. § 3146.8(g)(3)-(4) (requiring officials to compare personal information between ballot and registration file).²⁴

²⁴ *See also* Ala. Code § 17-11-10(b); Del. Code tit. 15, § 5514(a); Neb. Rev. Stat. §§ 32-949 to -951; N.H. Rev. Stat. § 659:27-a(II); N.M. Stat. § 1-6-14(C); N.C. Gen. Stat. § 163-258.17(b); Okla. Stat. tit. 26, § 14-123(B); Mo. Rev. Stat. §§ 115.293 to .303; S.C. Code § 7-15-230; Vt. Stat. tit. 17, § 2546(a); 1 Va. Admin. Code § 20-70-20(B); Wis. Stat. § 6.88(3)(a)-(b); Wyo. Stat. §§ 22-9-111, -121.

* * *

Altogether, these measures reflect the considered judgment of roughly 90 percent of states that the risks to public health during this pandemic require accommodations to make distanced voting more accessible and safer. Indeed, jurisdictions across the political spectrum have adopted such policies, underscoring the reasonableness of facilitating mail-in voting during this public health crisis. *See* May Wong, *New Research on Voting by Mail Shows Neutral Partisan Effects*, Stan. Inst. for Econ. Pol’y Res. (Apr. 16, 2020).²⁵ Comparatively, Mississippi is an outlier on all fronts. It is one of only six states that still restrict access to mail-in voting; it is one of only ten that do not afford voters notice or a chance to cure signature-matching defects; and it is the *only* state that requires absentee voters to visit a notary *twice*, despite the ongoing pandemic.

II. Making Voting More Accessible Does Not Lead To Widespread Fraud.

Voting by mail “is not a newfangled idea; it was already deeply embedded in the American electoral system before the coronavirus hit.” Wendy R. Weiser & Harold Ekeh, *The False Narrative of Vote-by-Mail Fraud*, Brennan Ctr. for Just. (Apr. 10, 2020).²⁶ Since 2000, over 250 million people in all 50 states voted using

²⁵ Available at <https://siepr.stanford.edu/news/new-research-voting-mail-shows-neutral-partisan-effects>.

²⁶ Available at <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>.

mail-in ballots. *Id.* And in the 2018 midterms alone, over 31 million Americans—or about 25.8 percent of voters—cast their ballots by mail. *Id.* Notably, even as states have expanded access to mail-in voting, *see id.*, “voter fraud rates have remained infinitesimally small,” *Cook Cnty. Republican Party v. Pritzker*, No. 20-CV-4676, 2020 WL 5573059, at *3 (N.D. Ill. Sept. 17, 2020) (internal quotation marks omitted). Indeed, “[f]or years, military personnel stationed abroad have voted by absentee ballot with virtually no claims of election fraud.” Darrell M. West, *How Does Vote-By-Mail Work and Does It Increase Election Fraud?*, Brookings (June 22, 2020).²⁷ There is simply no evidence that voting by mail threatens the integrity of elections. Accordingly, the unsubstantiated specter of fraud cannot justify Mississippi’s restrictions on mail-in voting.

A. States that previously provided mail-in ballots to every voter have not experienced widespread voter fraud.

Five states, as noted, already have all-mail voting systems, in which “every registered voter receives a ballot in the mail.” Nat’l Conf. of State Legis., *Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options* (Sept. 24, 2020).²⁸ None of these states has encountered widespread voter fraud since shifting to mail-in ballots. Weiser & Ekeh, *supra*.

²⁷ Available at <https://brook.gs/3jM64K0>.

²⁸ Available at <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

Oregon, the first state to adopt all-mail voting, “has sent out more than 100 million mail-in ballots since 2000, and has documented only about a dozen cases of proven fraud.” Ed. Bd., *The 2020 Election Won’t Look Like Any We’ve Seen Before*, N.Y. Times (Mar. 21, 2020).²⁹ Similarly, Washington State announced that, out of 3.1 million votes cast in 2018, it had referred 142 cases, or 0.004 percent, to local election officials on suspicion of improper voting. Elise Viebeck, *Miniscule Number of Potentially Fraudulent Ballots in States with Universal Mail Voting Undercuts Trump Claims About Election Risks*, Wash. Post (June 8, 2020).³⁰ A Washington Post analysis of data collected by Colorado, Oregon, and Washington identified only 372 “possible cases of double voting or voting on behalf of deceased people out of about 14.6 million votes cast by mail in the 2016 and 2018 general elections.” *Id.* That amounts to a rate of just 0.0025 percent. *Id.* Data collected by the Heritage Foundation from the five states with universal mail-in voting also found very few cases of fraud: only 29 cases of fraudulent votes attempted by mail and 24 cases of duplicative voting or absentee ballot fraud out of nearly 50 million general election votes cast between 1982 and 2019. Elaine Kamarck & Christine Stenglein, *Low Rates of Fraud in Vote-by-Mail States Show the Benefits Outweigh the Risks*, Brookings (June 2, 2020) (reproducing data from the Heritage Foundation’s

²⁹ Available at <https://nyti.ms/2GCCus2>.

³⁰ Available at <https://wapo.st/3ixefbJ>.

database).³¹ This evidence illustrates that, contrary to Mississippi’s fears, fraud in expanded vote-by-mail systems is essentially nonexistent.

Building upon this record, election and security experts have time and again voiced confidence in voting by mail. The commissioner of the Federal Election Commission recently said that there is “simply no basis” for the “theory that voting by mail causes fraud.” *US Election: Do Postal Ballots Lead to Voting Fraud?*, BBC News (Sept. 25, 2020) (internal quotation marks omitted).³² Senior intelligence officials “who have been consulting with election workers across all 50 states,” similarly stated that they found no “evidence of a coordinated effort to commit mail-in voting fraud.” Alfred Ng, *Election Security Officials Find No Evidence of Coordinated Fraud With Mail-In Ballots*, CNET (Aug. 26, 2020).³³ Moreover, the Presidential Advisory Commission on Election Integrity, established by President Trump following the 2016 election, “uncovered no evidence to support claims of

³¹ Available at <https://brook.gs/2F4NM7X>. The Heritage Foundation caveats that its database is not “exhaustive or comprehensive.” Heritage Found., *A Sampling of Recent Election Fraud Cases from Across the United States*, <https://www.heritage.org/voterfraud/#choose-a-state> (last visited Oct. 6, 2020).

³² Available at <https://bbc.in/2GJvUQA>.

³³ Available at <https://cnet.co/3nnmYRu>.

widespread voter fraud.” Marina Villeneuve, *Report: Trump Commission Did Not Find Widespread Voter Fraud*, Associated Press (Aug. 3, 2018).³⁴

B. States have myriad ways to protect the integrity of their elections without restricting access to mail-in voting or unduly excluding ballots.

To be sure, “[t]here is no denying the abstract importance, the compelling nature, of combating voter fraud.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 225 (2008). The *Amici* States are deeply committed to protecting the integrity of their elections and have thus deployed an array of safeguards to ensure the security of their absentee voting systems. But states can and should implement these safeguards without making it onerous or impossible for people to vote by mail.

Many states require that ballots be “printed on the proper type of paper” and “include specific technical markings” in order to be counted. Andy Sullivan, *Explainer: Fraud Is Rare in U.S. Mail-In Voting. Here Are the Methods That Prevent It*, Reuters (July 7, 2020).³⁵ Most states now print unique bar codes on mail-in ballot envelopes, which enable election officials to track ballot processing and to “identify and eliminate duplicate ballots.” Weiser & Ekeh, *supra*. Once a voter returns his ballot and the bar code is scanned, “no other ballot can be cast by that

³⁴ Available at <https://apnews.com/article/f5f6a73b2af546ee97816bb35e82c18d>.

³⁵ Available at <https://reut.rs/33zi7oE>.

voter for that election.” Viebeck, *supra*.³⁶ And most states—including Mississippi—require voters to include personal identifying information. Viebeck, *supra*.; see 1 Miss. Admin. Code Pt. 10, R. 5.3 (requiring that voters provide their complete name, current residence, mailing address, telephone number, date of birth, and last four digits of their social security number or driver’s license number with their absentee ballot).

Signature matching can also be an “effective deterrent for fraud” if “[d]one correctly—with signature matching software, bipartisan review by officials trained in signature verification, and outreach to flagged voters.” Weiser & Ekeh, *supra*. “When done incorrectly,” however, “it can disenfranchise eligible voters.” *Id*.

Moreover, criminal and civil penalties “provide a strong deterrent to voter fraud.” *Id*. An individual convicted of voter fraud in a federal election is subject to a \$10,000 fine and/or a five-year term of imprisonment per violation. 52 U.S.C. §§ 10307, 20511. Many states—including Mississippi—also punish voter fraud with hefty fines and potential jail time. See Miss. Code Ann. § 23-15-753 (punishing “vote fraud” with a maximum penalty of a \$5,000 fine and a one-year term of imprisonment); see also, e.g., Colo. Rev. Stat. § 1-13-710(1) (punishing double

³⁶ Mississippi, for its part, appears to deploy barcode technology for in-person ballots, which it could carry over to absentee ballots. See 1 Miss. Admin. Code Pt. 10, R. 9.3.

voting with a maximum penalty of a \$5,000 fine and an 18-month term of imprisonment); Haw. Rev. Stat § 19-4 (punishing election fraud with a maximum penalty of a \$5,000 fine and a two-year term of imprisonment); Ore. Rev. Stat. § 260.993(2); *see id.* §§ 161.605(3), 161.625(1)(d) (classifying election fraud as a felony with a maximum penalty of a \$125,000 fine and a five-year term of imprisonment); Utah Code § 20A-1-603(2); *see id.* §§ 76-3-204(1), 76-3-301(1)(c) (punishing voter fraud with a maximum penalty of a \$2,500 fine or a 364-day term of imprisonment); Wash. Rev. Code § 29A.84.650(1); *see id.* § 9A.20.021(c) (classifying double voting as a felony with a maximum penalty of a \$10,000 fine or a five-year term of imprisonment).

* * *

The practices of states across the nation demonstrate that Mississippi's onerous restrictions on absentee voting and its flawed processes for verifying such ballots are not necessary to further any legitimate purpose. On the contrary, those measures impermissibly force voters to choose between their health and their franchise during a global pandemic.

CONCLUSION

The Court should grant the plaintiffs' motion for a preliminary injunction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2020, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

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