

[EXTERNAL] FW: Bader FOIA: Gonzalez responsive documents (Part 3 of 3)

From David Ganz
To hfb138@yahoo.com
Cc Tilghman, Michael (USADC)
Recipients hfb138@yahoo.com; MTilghman@usa.doj.gov

From: David Ganz **Sent:** Monday, October 25, 2021 10:30 AM **To:** 'Tilghman, Michael (USADC)' <Michael.Tilghman@usdoj.gov> **Cc:** Pilar McLaughlin <pmclaughlin@uscrr.gov>; Sheryl Cozart <sccozart@uscrr.gov>; Andrew Gall <agall@uscrr.gov> **Subject:** Bader FOIA: Gonzalez responsive documents (Part 3 of 3)

David Ganz
General Counsel, Office of the General Counsel
U.S. Commission on Civil Rights
1331 Pennsylvania Avenue, NW Suite 1150
Washington D.C. 20425
(617) 669-6413

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Established as an independent, bipartisan, fact-finding federal agency, our mission is to inform the development of national civil rights policy and enhance enforcement of federal civil rights laws. We pursue this mission by studying alleged deprivations of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice. We play a vital role in advancing civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public.

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Date : 7/13/2020 8:32:21 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@uscrr.gov To : "Zachary Parrish" zp0984a@student.american.edu Subject : Re: [EXTERNAL] Re: Morenoff testimony Hi Zach, thanks for the update.

In this sentence on page 10, I discuss expanded absentee voting (not early voting):

Ilya Shapiro of the Cato Institute and Hans von Spakovsky of the Heritage Foundation agreed with the compelling need for expanding absentee ballot access this year, but expressed some concerns about increased risk of voter fraud.[1]

[1] CITE testimony; See also [discussion of fraud below].

From: Zachary Parrish <zp0984a@student.american.edu> Sent: Monday, July 13, 2020 8:01:00 AM To: Katherine Culliton-Gonzalez Subject: Re: [EXTERNAL] Re: Morenoff testimony Hi Kathy,

Hello, as I mentioned in my previous email, I hope you had a great weekend! I'm reaching out because, as I was reading through the draft you sent me, I noticed that you were planning on adding Hans to the list of experts that support early voting on page 10. I just wanted to offer that he said: "there is no reason to expand early voting" on page 4 of his testimony. He seemed very anti-anything-but in-person- voting to me.

Also, I know you mentioned helping to fill out the empty footnotes--the claim that footnote 108 is attached to is fully supported by the Chapman and Warren testimony I submitted last week. They mostly talk about the lack of addresses in regard to the Native American community but I believe they mention poor communities too.

I hope that helps!

Kind regards, Zach

On Thu, Jul 9, 2020 at 12:11 PM Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov> wrote:

Perfect, thanks!

As you see the doc you'll see all the footnotes that are open - I hope we can work together to help fill them in, but first I need to finalize the draft.)

file:///C:/Users/LaShondaUSCCR/Documents/Voting%20Rights%20Update%20Draft%20report%20Section%20I.7.12.20.docx#_ftn1
file:///C:/Users/LaShondaUSCCR/Documents/Voting%20Rights%20Update%20Draft%20report%20Section%20I.7.12.20.docx#_ftnref1
<mailto:kculliton-gonzalez@uscrr.gov>
<mailto:kculliton-gonzalez@uscrr.gov>

From: Zachary Parrish <zp0984a@student.american.edu> Sent: Thursday, July 9, 2020 12:03:50 PM To: Katherine Culliton-Gonzalez Subject: [EXTERNAL] Re: Morenoff testimony Hi Kathy,

All of that makes sense to me! I'll get right on it.

Best, Zach

On Thu, Jul 9, 2020 at 10:46 AM Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov> wrote:

Hi Zach, we received Dan Morenoff's testimony last night and it is assigned to you.

Before you review and summarize it, please take a look at what I have written up about the voter fraud arguments in the draft herein. Just search for "fraud" and "integrity" and you'll see what I mean.

It would be really helpful if your summary complemented what is drafted - for example, does Morenoff talk about "ballot harvesting" and does he agree with what Shapiro said about that?

Does that make sense? If not, we can have a quick call to discuss.

Thanks, Kathy -- Zachary Parrish JD/MA Candidate, Washington College of Law, American University Class of 2022 zp0984a@student.american.edu | (480)-316-4690

-- Zachary Parrish JD/MA Candidate, Washington College of Law, American University Class of 2022 zp0984a@student.american.edu | (480)-316-4690

<mailto:zp0984a@student.american.edu>
<mailto:kculliton-gonzalez@uscrr.gov>
<mailto:kculliton-gonzalez@uscrr.gov>
<mailto:zp0984a@gmail.com>
<mailto:zp0984a@gmail.com>

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I hope you both had a great weekend!

Nick, can Zach help you with the Remedies chart today while I do some editing? I may need his help later this week but not for today. I got a lot done over the weekend (here's the latest version) and today I'm editing (and will add some info on Morenoff based on Zach's summary).

From: Zachary Parrish <zp0984a@student.american.edu> Sent: Monday, July 13, 2020 8:00:00 AM To: Katherine Culliton-Gonzalez; Nicholas Bair Subject: [EXTERNAL] Dan Morenoff Testimony Summary Dear Kathy and Nicky,

Hello, I hope you both had a great weekend! I've uploaded my Morenoff summary to Securisync and attached it to this email. I look forward to the next steps in putting this all together!

Best regards, Zach Parrish

-- Zachary Parrish JD/MA Candidate, Washington College of Law, American University Class of 2022 zp0984a@student.american.edu | (480)-316-4690

<mailto:zp0984a@gmail.com> [student.american.edu](mailto:zp0984a@student.american.edu)

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Date : 7/24/2020 3:12:34 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@uscrr.gov To : "ocre" ocre@uscrr.gov Cc : "Sabrina Rodriguez (OCRE Intern)" ocreintern@uscrr.gov, "Zachary Parrish - Intern" ocreintern746@uscrr.gov, "Jacqueline Labayne (Intern)" ocreintern753@uscrr.gov Subject : voting rights draft done! Attachment : Voting Rights Update First Draft.7.24.20.docx; V2 Appendix Fully Combined_7.24.20.docx; Many thanks to everyone, especially our amazing interns, who worked on this draft. I leave you with the draft if you're interested in this deep analysis of how voters of color are being disenfranchised this year, and the draft appendices with tons of research showing why and how, and thanks for doing your part, as per the lead para of the draft report:

The nation recently lost John Lewis, who in Across that Bridge, reflecting on his experiences in Selma and the risks he and others took to establish the protections of the Voting Rights Act, left these words:

Freedom is not a state; it is an act. It is not some enchanted garden perched high on a distant plateau where we can finally sit down and rest. Freedom is the continuous action we all must take, and each generation must do its part to create an even more fair, more just society.

It is absolutely an honor to work with you all. Onward!

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Update to 2018 Assessment of Minority Voting Rights Access in the United States:

Navigating Voting During the COVID- 19 Pandemic: Considerations in Access for Minority Voters

U.S. Commission on Civil Rights Report Update | October 2020

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APPENDIX A: Map and Table of Relevant Cases

APPENDIX B: Preliminary 2020 Voter Participation Data

APPENDIX C: Review of Selected SOS Websites for Language Access

APPENDIX D: Review of Selected SOS Websites for Accessibility for Persons with Disabilities

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Acknowledgements

Katherine Culliton-González, Esq., the Commission's Office of Civil Rights Evaluation (OCRE) Director was the principal researcher and drafter of this report.

OCRE Civil Rights Analyst Nicholas Bair, Esq. and OCRE Social Scientist Dr. Marik Xavier-Brier provided valuable research and writing assistance in their areas of expertise.

OCRE interns Sabrina Rodriguez (J.D. Candidate 2021, George Washington University Law School), Zachary Parrish (J.D. Candidate 2022, American University Washington College of Law) and Jacqueline LaBayne (M.S. Candidate 2020, Florida State University), and Office of General Counsel Law Intern Joshua Gilmer, (J.D. Candidate [YEAR], [SCHOOL]) also offered valuable research and writing assistance.

Commissioner Special Assistants Alec Deull, Carissa Mulder, Amy Royce, Rukku Singla, Alison Somin, and Irena Vidulovic, assisted their Commissioners in reviewing the report.

Commissioner Legal Intern(s) _____ (J.D. Candidate [YEAR], [SCHOOL]) also offered valuable research assistance.

With the assistance of Attorney-Advisor Pilar Velasquez McLaughlin and Law Clerks _____ (J.D. Candidate [YEAR], [SCHOOL]), the Commission's General Counsel Maureen E. Rudolph reviewed and approved the report for legal sufficiency.

The Alabama, Michigan, and Missouri Advisory Committees to the U.S. Commission on Civil Rights collected and provided testimony on related civil rights issues within their jurisdiction.

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Witnesses Who Submitted Written Testimony Below is the list of experts who provided testimony for the Commission's report:

U.S. Commission on Civil Rights Report:

An Assessment of Minority Voting Rights Access in the United States:

2020 COVID-19 Update

Experts:

Leah Aden, Deputy Director of Litigation, NAACP Legal Defense Fund

Matt A. Barreto, Ph.D., Principal, Latino Decisions/UCLA Voting Rights Project

Leigh Chaplan, Director, Voting Rights Program, Leadership Conference on Civil and Human Rights

Kristen Clarke, President and Executive Director, Lawyers' Committee for Civil Rights Under Law

Honorable Marcia Fudge, OH-11, Chair, Committee on House Administration, Subcommittee on

Elections

Honorable Deb Haaland, NM-1, Co-Chair, Native American Caucus

Richard Hasen, Professor, University of California, Irvine, School of Law

Dale Ho, Director, Voting Rights Project, American Civil Liberties Union

Morgan Kousser, Professor, California Institute of Technology

Natalie Landreth, Senior Staff Attorney, Native American Rights Fund

Justin Levitt, Associate Dean for Research, Professor of Law, Gerald T. McLaughlin Fellow, Loyola

Law School

Daniel Morenoff, Executive Director, Equal Voting Rights Institute

Clark Rachfal, Director of Advocacy and Governmental Affairs, American Council for the Blind

Ilya Shapiro, Director, Robert A. Levy Center for Constitutional Studies, Cato Institute

Hans A. von Spakovsky, Manager, Election Law Reform Initiative and Senior Legal Fellow, Meese

Center for Legal and Judicial Studies. Heritage Foundation

Jerry Vattamala, Director, Democracy Program, Asian American Legal Defense and Educational Fund

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Introduction and Executive Summary

The nation recently lost John Lewis, who in *Across that Bridge*, reflecting on his experiences in Selma and the risks he and others took to establish the protections of the Voting Rights Act, left these words:

Freedom is not a state; it is an act. It is not some enchanted garden perched high on a distant plateau where we can finally sit down and rest. Freedom is the continuous action we all must take, and each generation must do its part to create an even more fair, more just society.¹

Due to potentially discriminatory changes in election procedures in the wake of the COVID-19 pandemic in 2020, the Commission decided to update our 2018 statutory report on Minority Voting Rights Access, which had studied conditions after the Supreme Court's 2013 decision in *Shelby County v. Holder* to pull back the preclearance protections in Section 5 of the Voting Rights Act (VRA).² In 2018, the Commission's research found ongoing, widespread discrimination in voting impacting Asian, Black, Latino, and Native American voters.³ This discrimination had increased since the 2013 *Shelby* decision, and overall, the increase was greater in states that were formerly protected.⁴ After *Shelby*, lack of preclearance meant that changes in voting practices in these jurisdictions were implemented without notice and without having been reviewed by the Department of Justice or a federal court, and rather than being on hold during that review process, some discriminatory changes were put into place during elections.⁵ These included reducing access to polling places, early voting, language access and voter assistance, as well as strict voter documentation requirements.⁶ Now, similar widespread changes are emerging in relation to absentee voting, and there are reductions in early voting and polling places resources, which also fall under the purview of the VRA.⁷ While these changes may be enacted with good intentions, some

1 John Lewis, *Across That Bridge: Life Lessons and a Vision for Change*, 2012, p. 5; see also Seelye, Katharine G. "John Lewis, Towering Figure of Civil Rights Era, Dies at 80." *The New York Times*, Jul. 17, 2020. <https://www.nytimes.com/2020/07/17/us/john-lewis-dead.html> (last accessed Jul. 23, 2020) ("On March 7, 1965, [Lewis] led one of the most famous marches in American history. In the vanguard of 600 people demanding the voting rights they had been denied, Mr. Lewis marched partway across the Edmund Pettus Bridge in Selma, Ala., into a waiting phalanx of state troopers in riot gear... Televised images of the beatings of Mr. Lewis and scores of others outraged the nation and galvanized support for the Voting Rights Act, which President Lyndon B. Johnson presented to a joint session of Congress eight days later and signed into law on Aug. 6, [1965]"). 2 U.S. Com'n on Civil Rights, Business Meeting of June 5, 2020. 3 U.S. Com'n on Civil Rights, An Assessment of Minority Voting Rights Access in the United States (2018), https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf, at 12, 83, 97-102, (hereinafter "Minority Voting Rights Access"). 4 Minority Voting Rights Access at 60-82 (describing changes to voting laws in formerly covered jurisdictions after the *Shelby* County decision). Prior to *Shelby*, Section 5 applied statewide in Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina and Texas, and in certain counties in California, Florida, Michigan, New York, North Carolina, South Dakota and Virginia. *Ibid.*, 28 (also noting that some states, such as New Hampshire, were able to "bail out" of the coverage because the statute permits jurisdictions to do so if they can prove that they have not discriminated in voting for ten years). 5 *Ibid.*, 57-60 (discussing immediate impacts of the *Shelby* County decision on federal VRA enforcement). 6 *Ibid.*, Ch. 2 (documenting and evaluating these practices). 7 The Commission's 2018 statutory report documented the broad application of Section 2 of the Voting Rights Act, noting that in determining which types of voting practices or procedures fall under its purview, the statutory text applies broadly to "any" voting practices or procedures. *Minority Voting Rights Access* at p. 26, citing 52 U.S.C. § 10301. See also 52 U.S.C. §

<https://www.nytimes.com/2020/07/17/us/john-lewis-dead.html>
<https://www.archives.gov/exhibits/eyewitness/html.php?section=2>
https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf

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may raise civil rights concerns. To update our 2018 research, the Commission now evaluates whether changes in 2020 voting procedures have exacerbated disparities in access to voting for minority voters, including limited-English (LEP) proficient voters, and voters with disabilities.⁸

The Commission invited and received a broad spectrum of written expert testimony expressing concerns that some of this year's changes in access to absentee voting, early voting and polling place resources may have discriminatory impacts and results.⁹ Testimony also included concerns about election integrity under current conditions.¹⁰ Commission staff also reviewed available data and ongoing cases about impacts on minority voters. Qualitative and quantitative data show that the main changes occurring through increasing use of absentee ballots as well as decreases in access to voting at the polls are disparately impacting minority voters and voters with disabilities.¹¹ The data also indicates ongoing challenges in blocking potentially discriminatory voting changes in court prior to their implementation in the primary elections,¹² with over-concentration in formerly-covered jurisdictions. (See Map 1, Appendix A). According to Hasen and Levitt, prospects of resolving these issues in court seem to be bleaker for November.¹³

10301(a) ("No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or [membership in a language minority group]"); The practices would also fall under Section 5, were it still operational. See *Minority Voting Rights Access* at pp. 45-46, documenting that

[U]nder Section 5, any voting law, practice, or procedure was subject to preclearance review prior to *Shelby* County, including: ... Eliminating or moving polling places to less accessible areas or to locations that could be perceived as intimidating, such as Sheriff's offices; New voter purge procedures; English-language literacy tests; New voter ID laws; Cutting early voting or same-day voter registration; Moving Election Day to a day that would be inconvenient to an identifiable set of voters, such as a religious holiday, or taking away Sunday voting and limiting voting to a Tuesday, and; Any other change in registration, voting, or election procedures.

8 U.S. Com'n on Civil Rights, Business Meeting of June 5, 2020. 9 See Witness List, *supra* p. iv, and testimony herein, *passim*. 10 See *infra* notes 95-113. 11 See *infra* notes 45-49, 62-66, 93-94, 118-145, 148-174, 185-91, 229-51, and 255-57. 12 Of the 70 COVID-related voting rights cases regarding changes due to the COVID-19 pandemic with impacts on minority voters, including LEP voters, and voters with disabilities, and at the time of this writing, the great majority are ongoing, and 51% (36) are in the 16 states that were formerly-covered. See *infra* notes xxx-xx and See Map 1 and Chart of Relevant Cases in Appendix A. In 2018, the Commission found that, "In the face of ongoing discrimination in voting procedures enacted by states across the country, enforcement and litigation under Section 2 of the VRA is an inadequate, costly, and often slow method for protecting voting rights. The narrowness of the remaining mechanisms to halt discriminatory election procedures before they are instituted has resulted in elections with discriminatory voting measures in place." *Minority Voting Rights Access* at 13. For relevant litigation patterns in COVID-related cases this year, see *infra* notes 153-56 (difficulty in procuring preliminary injunctions prior to primaries, especially due to Supreme Court holdings that changes would be too close to the election, despite prompt claims by minority voters). 13 See Prof. Richard L. Hasen, "Three Pathologies Related to Voting Rights Illuminated by the COVID-19 Pandemic, and How to Treat and Cure Them," *Univ. Calif. at Irvine School of Law, Legal Studies Research Paper Series No. 2020-43*, draft of June 12, 2020, at 37 (submitted to the Commission in response for request for written testimony)(hereinafter Hasen Submission)("Early in the litigation over COVID-related election disruptions, there was reason for hope that courts would provide effective treatment to deal with weak voting rights during a pandemic. As the virus and election season has worn on, however, that hope has begun to fade."); Prof. Justin Levitt, *Loyola Law School, Los Angeles, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights*, July 1, 2020 at 15 (hereinafter Levitt Statement)("particularly given the Supreme Court's willingness to stay lower court judgments without explanation, litigation will become less effective as summer turns to fall. And in just a few months, some late-breaking judicial decisions will be legitimately difficult for jurisdictions to implement in time for November.");(citations omitted).

https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=52-USC-810656473-244965480&term_occur=999&term_src=https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=52-USC-810656473-244965480&term_occur=999&term_src=https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=52-USC-1305049526-244965479&term_occur=999&term_src=title:52:subtitle:1:chapter:103:section:10301
https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=52-USC-3625706-244965480&term_occur=999&term_src=

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The Commission also analyzed 12 distinct remedies proposed to alleviate disparities and provide equal opportunity to participate in the political process.¹⁴ The national witnesses generally agree that absentee voting should be made more accessible, while preserving options for safe and accessible in-person voting.¹⁵ In testimony before the Missouri State Advisory Committee, Charles Stewart pointed out that "the issues facing us in November are ones that are of logistics... they're not ones of politics. They're ones of logistics and they have solutions that have a broad bipartisan, technocratic consensus around them."¹⁶

At the national level, Dale Ho testified that, "It is no exaggeration to say that, due to the COVID-19 pandemic, the 2020 election may be the most challenging environment for voting rights and election administration since the 1864 presidential election was held during the Civil War. No American should have to choose between protecting their health and exercising their right to vote."¹⁷ Moreover, there are over 10,500 jurisdictions that run elections in the U.S.¹⁸ Richard Hasen submitted that elections during the COVID-19 pandemic are complicated by "hyperdecentralization"¹⁹ and "deep fragmentation"²⁰ of voting rights depending upon where citizens live.²¹ This is consistent with the Commission's 2018 research showing inconsistent protections of minority voting rights in the post-*Shelby* era.²²

The risk of running elections improperly during the pandemic has become clear, as some voters and poll workers have contracted COVID-19, and some have died.²³ All are impacted by the COVID-19 pandemic in one way or another, and Dan Morenoff submitted testimony that the Commission should not focus on

14 See *infra* notes 532-36 (Complex Barriers and Remedies). 15 See *infra* notes 532-36 (Complex Barriers and Remedies). 16 See Testimony of Charles M. Stewart of Massachusetts Institute of Technology (MIT) & Stanford-MIT Healthy Elections Project, Missouri State Advisory Committee to the U.S. Com'n on Civil Rights, Briefing on COVID-19 and Access to Voting, Transcript, Jun. 25, 2020, at 12 (commenting on need to expand access to both absentee and in-person voting to avoid potentially discriminatory impacts during COVID-19). 17 Dale Ho, Director, Voting Rights Project, American Civil Liberties Union (hereinafter ACLU), Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 1, 2020, at 2-3 (hereinafter Ho ACLU Statement). 18 National Conferences of State Legislatures, "Election Administration at State and Local Levels," Feb. 3, 2020, <https://www.ncsl.org/research/elections-and-campaigns/election-administration-at-state-and-local-levels.aspx> (Elections are usually administered at the county level, though in some New England and Midwestern states it falls to cities or townships to run elections. In all, this means that there are more than 10,000 election administration jurisdictions in the U.S.). 19 Richard L. Hasen, "Three Pathologies Related to Voting Rights Illuminated by the COVID-19 Pandemic, and How to Treat and Cure Them," *Univ. Calif. at Irvine School of Law, Legal Studies Research Paper Series No. 2020-43*, draft of June 12, 2020, at 3 (submitted to the Commission in response for request for written testimony)(hereinafter Hasen Submission). 20 *Ibid.* 21 *Ibid.* 22 See, e.g., *Minority Voting Rights Access* at 9 (data shows implementation of discriminatory voting procedures in various jurisdictions, with an over-concentration in jurisdictions that were formerly covered by Section 5 VRA preclearance rules). 23 The Eleventh Circuit stated that: "Alabama recognizes that voting at polling stations increases the risk of contracting COVID-19. This risk is not theoretical. Plaintiffs presented evidence that more than 50 people from Wisconsin who recently worked or voted at polling stations there in the midst of the pandemic tested positive for COVID-19 in the two weeks following Wisconsin's April 7 election.... In Chicago, a poll worker died of COVID-19 in the weeks following his service, and Broward County, Florida, likewise reported two of its poll workers tested positive for COVID-19 just a few days after working the voting polls." *Order Denying Emergency Stay*

<https://www.ncsl.org/research/elections-and-campaigns/election-administration-at-state-and-local-levels.aspx>
<https://www.nacpldf.org/wp-content/uploads/11th-Cir-Order-DENYING-Emergency-Stay-Motion.pdf>
<https://www.nacpldf.org/wp-content/uploads/11th-Cir-Order-DENYING-Emergency-Stay-Motion.pdf>

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racial disparities.²⁴ However, they are concerning, particularly for minority voters, who are a growing and significant share of American voters and projected to comprise about one-third of the electorate in 2020 (projected to include 11 million Asian, 30 million Black and 32 million Latino voters, and other non-white, multiracial voters).²⁶ There are no comparable data about Native American or LEP voters or voters with disabilities, despite that these communities also include millions of impacted citizens.²⁷ Further, voters of color are clearly disparately impacted by COVID-19.²⁸ The Commission reviewed testimony from Leah Aden and Duell Ross of the Legal Defense Fund of the NAACP (LDF), citing data from the federal Centers for Disease Control and summarizing that:

Black people have been disproportionately impacted by COVID-19. The Centers for Disease Control and Prevention (“CDC”) has reported that while Black people are 12 percent of the U.S. population, they have constituted 22.9 percent of all COVID-19-related deaths. In many states, these disparities are starker still. For example, in Georgia, Black people are 32 percent of the population, but have accounted for 47 percent of COVID-related deaths. In South Carolina, Black people are 27 percent of the population, but have accounted for 57 percent of COVID-related deaths. These disparities exist in other communities of color as well. For example, in Virginia, Latino people have comprised 49 percent of COVID-related cases, despite comprising 10 percent of the population. And in Arizona, 21 percent of all COVID-related deaths have been comprised of Native American people, though they are 4 percent of the state’s population.²⁹

Recent data also show that Asian Americans are disparately impacted.³⁰ As discussed above and herein, data also shows that due to health risks, many voters of color want to vote absentee this year.³¹ On March 27, CDC issued an interim guidance recommending “mail-in methods of voting” to the extent jurisdictions allow, to prevent the spread of coronavirus by minimizing voters’ direct contact with other people.³² In late June, the CDC issued guidance encouraging voters to use alternatives to in-person voting if available

24 Dan Morenoff, Executive Director, The Equal Voting Rights Institute, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 8, 2020, at 1 and 5 (hereinafter Morenoff Statement). 25 In 2018, the post-election American Community Survey (ACS) estimated that the national electorate (citizens of voting age who voted) was comprised of 233,565,291 voters, of whom 67.4% (157,538,871) were white and 32.6% (76,026,420) were minority voters. American Community Survey, Voting-Age Population by Selected Characteristics, U.S. Census Bureau, 2018, <https://data.census.gov/cedsci/table?q=voting&tid=ACST1Y2018.S2901&vintage=2018>. In January, PEW estimated the projected electorate for this year to be 66.7% white; therefore it would have a slightly higher share (33.3%) of minority voters. Anthony Cilluffo and Richard Fry, “An early look at the 2020 electorate,” Pew Research Center, Jan. 30, 2019, <https://www.pewsocialtrends.org/essay/an-early-look-at-the-2020-electorate/>. 26 The electorate can be difficult to predict and in the United States, it has always been less than the total number of registered voters, which is less than the total number of eligible voters. See generally Minority Voting Rights Access at 207. 27 See American Community Survey, Voting-Age Population by Selected Characteristics, U.S. Census Bureau, 2018, <https://data.census.gov/cedsci/table?q=voting&tid=ACST1Y2018.S2901&vintage=2018>. 28 See infra notes 135-42. 29 Leah Aden, Deputy Director of Litigation and Duell Ross, Senior Counsel, NAACP Legal Defense & Educational Fund, Inc. (hereinafter LDF), Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 1, 2020, at 3 (hereinafter Aden and Ross LDF Statement). 30 Vattamala Statement at 9, 13; Levitt Statement at 3. 31 See infra notes 135-42 (discussing health disparities and increased preference of minority voters for voting absentee ballots). 32 CDC, Recommendations for Election Polling Locations: Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19), Mar. 27, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

<https://data.census.gov/cedsci/table?q=voting&tid=ACST1Y2018.S2901&vintage=2018>
<https://www.pewsocialtrends.org/essay/an-early-look-at-the-2020-electorate/>
<https://data.census.gov/cedsci/table?q=voting&tid=ACST1Y2018.S2901&vintage=2018>
<https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

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in their states.³³ Dr. Anthony Fauci has stated that there is likely to be a surge of COVID-19 cases and exposure in the fall, and that he “can’t guarantee” in-person voting will be safe.³⁴

All but Louisiana,³⁵ Mississippi,³⁶ and Texas³⁷ have provided forms of no-excuse access to absentee or mail-in voting during the primaries (and may also do so in November),³⁸ although some states are mailing all registered voters an absentee ballot, but other states have much more complex requirements.³⁹ The Commission’s research also indicates that depending on the details, absentee voting can be less accessible for minority voters, including LEP voters, and voters with disabilities. For example, requiring that an absentee ballot be witnessed may prove difficult for citizens with disabilities who are concerned about a higher risk of exposure,⁴⁰ and many minority voters are not well-served by absentee voting because they do not live at a traditional address where the absentee ballot could be mailed.⁴¹ Strict deadlines in 35 states that require absentee ballots to be received by Election Day can also be problematic this year.⁴²

33 CDC, Considerations for Election Polling Locations and Voters, Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19), updated June 22, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>. (“Consider voting alternatives available in your jurisdiction that minimize contact. Voting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others can help reduce the spread of COVID-19. Check your local election office website external icon for more information on voting alternatives available in your jurisdiction.”)(emphasis in original). 34 Jason Silverstein, “Fauci Says He ‘Can’t Guarantee’ In-person Voting in November Will Be Safe,” CBSNEWS.COM (Apr. 13, 2020), <https://www.cbsnews.com/news/coronavirus-fauci-says-he-cant-guarantee-in-person-voting-in-november-will-be-safe/?tag=CNM-00-10aac3a>. 35 See State of Louisiana, Absentee Ballot Application, COVID-19 Emergency Application, La. R.S. 18:401.3, <https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/COVID19AbsenteeBallotApplication.pdf> (requiring medical orders for exceptions). 36 See MS Code § 23-15-623 (2015) (cross-referencing requirements for application for absentee ballots such as disability, hospitalization or overseas military service); and See Bobby Harrison, Secretary of State Says Existing Law Allows Expansion of Mail-in Voting During Coronavirus Pandemic: Is That Enough?, MISSISSIPPI TODAY (June 3, 2020), <https://mississippitoday.org/2020/06/03/secretary-of-state-says-existing-law-allows-mail-in-voting-expansion-during-coronavirus-pandemic-is-that-enough/> (showing the discretion, at Congressional hearing, “Secretary of State Watson said it would be up to local circuit clerks in each county to determine whether a person could vote early under a provision of law that says people with a temporary disability can vote early by mail or in person. But Watson, who is the state’s chief elections officer, said he opposed a blanket expansion of voter by mail, though he said he would support an expansion to allow people to vote early in person at local courthouses. Watson added that if a person was seen at Walmart or a sporting goods store the day before, they had no reason to say they were afraid to go to the polls on Election Day to vote. ‘I think our circuit clerks are smart enough to figure that out,’ Watson said when asked which residents should be provided an absentee, mail-in ballot.”).

37 See infra notes 67-68 (discussing related legal issues in Texas); and See Jerry Vattamala, Director, Asian American Legal Defense and Education Fund (hereinafter AALDEF), Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 1, 2020, at 11 (hereinafter Vattamala Statement). 38 See infra notes 53-55 (expansion of absentee ballot access due to the pandemic, providing that all voters may vote absentee with no excuse, at least during the primaries). 39 See infra notes 114-121 (example of limits on third party ballot collection for Native American voters). 40 See infra notes 431-460 (challenges to voting absentee for persons with disabilities). 41 See infra notes 124-34 (lack of traditional address, no address, or recently moved). 42 See infra notes 182-207 (negative impacts of Election Day deadlines for receiving absentee ballots).

<https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>
<https://www.usa.gov/election-office>
<https://www.usa.gov/election-office>
<https://www.cbsnews.com/news/coronavirus-fauci-says-he-cant-guarantee-in-person-voting-in-november-will-be-safe/?tag=CNM-00-10aac3a>
<https://www.cbsnews.com/news/coronavirus-fauci-says-he-cant-guarantee-in-person-voting-in-november-will-be-safe/?tag=CNM-00-10aac3a>
<https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/COVID19AbsenteeBallotApplication.pdf>
<https://law.justia.com/citations.html>
<https://mississippitoday.org/2020/06/03/secretary-of-state-says-existing-law-allows-mail-in-voting-expansion-during-coronavirus-pandemic-is-that-enough/>
<https://mississippitoday.org/2020/06/03/secretary-of-state-says-existing-law-allows-mail-in-voting-expansion-during-coronavirus-pandemic-is-that-enough/>

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Concurrently, many polling places have been closed due to COVID-19. There has been a dramatic consolidation in some states, through which neighborhood-based polling places have been eliminated and voters are instead required to travel further to large, consolidated polling locations.⁴³ In addition to reducing the number of polling places and resources (such as machines and poll workers), early voting days and hours have been decreased in some jurisdictions. In 2018, the Commission found that reduction and moving of polling place locations may have a disparate impact on voters of color.⁴⁴ For example, when Maricopa County, Arizona, reduced the number of polling places from 200 to 60 in 2016, it led to extremely long lines for Latino voters.⁴⁵ Florida and North Carolina’s reduction of early voting had discriminatory impacts on Black and Latino voters,⁴⁶ and courts found that cuts to early voting in North Carolina were intentionally discriminatory, due in part to the known heightened reliance of early voting by Black voters.⁴⁷ Two decades of Census data (from 1996-2016) also show that Black voters are less likely to rely on alternative methods of voting.⁴⁸ Some reductions in access to polling places and early voting during COVID-19 are understandable, but some methods of doing so may disparately impact minority voters and voters with disabilities, who may not be able to vote by mail due to lack of internet access or a fixed address, among other factors, or who may need assistance.⁴⁹ In the post-Shelby era, because Congress has yet to update the Voting Rights Act with a new preclearance formula,⁵⁰ the public is left without the guarantees of notice of voting changes and information about the racial impacts, which were required prior to the 2013 Shelby decision.⁵¹ This year, such changes are occurring frequently and rapidly, while also no longer subject to federal preclearance review, and therefore immediately implemented during elections.

43 See infra notes 276-301. 44 U.S. Com’n on Civil Rights, An Assessment of Minority Voting Rights Access in the United States (2018), https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf, at 168-171 (examining how closure of polling places may impact minority voters). 45 U.S. Com’n on Civil Rights, An Assessment of Minority Voting Rights Access in the United States (2016), https://www.usccr.gov/pubs/2016/Minority_Voting_Access_2016.pdf, at 171-173 (discussing discriminatory impact of polling place closures in Maricopa County, Arizona). 46 Minority Voting Rights Access at 171-72 (vote centers in Latino precincts closed latest, an average of 4 hours late due to long lines; these vote centers also had less poll workers and electronic poll books per voter). 47 Minority Voting Rights Access at 66-68 (the federal court found these changes were enacted “with almost surgical precision”) and note 360 (“Regarding the cuts to early voting: ‘60.36 percent and 64.01 percent of African Americans voted early in 2008 and 2012, respectively, compared to 44.47 percent and 49.39 percent of whites. . . . In particular, African Americans disproportionately used the first seven days of early voting.’ McCrory, 831 F.3d at 216 (citing McCrory, 182 F. Supp. 3d 320 (M.D.N.C. 2016), reversed and remanded by McCrory, 831 F.3d 204).”) 48 See ACLU Statement at 8, reproducing chart of Alternative Method of Voting, By Race and Hispanic Origin: 1996 to 2016, U.S. Census Bureau, Current Population Survey, November 1996-2016 (results are from each Presidential Election). 49 See infra notes 118-131 (discussing “multiple” barriers for minority voters without a traditional address, without internet access, or who may need assistance). 50 In the Shelby opinion, Justice Roberts stated that “Congress may draft another formula based on current conditions.” Shelby Cty. v. Holder, 570 U.S. 529, 557 (2013). 51 See Minority Voting Rights Access at 46, citing 52 U.S.C. § 10304(a) (preclearance before implementation), and 28 C.F.R. § 51.10 (burden of proving nondiscrimination fell on the jurisdiction); § 51.27(n) (required contents of submission include racial impact statement); and 47 (public notice of changes in voting procedures required along with effective notice to local minority community)(citing federal regulations and cases).

https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf
https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf

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Minority Voters and Absentee Voting in 2020: Preliminary Access Issues; Demographics There are various stages and issues that can arise for minority voters in the process of absentee voting, starting with whether a citizen is allowed to vote absentee in the first place. A total of 34 states and the District of Columbia offer all voters the option of voting by absentee ballot “without requiring a particular excuse,” and several more recently increased access to absentee ballots due to the pandemic.⁵² Dale Ho reports that there are “17 remaining states that, under normal circumstances, would require an excuse to vote by mail;”⁵³ however, of these 17 states, 14 “have voluntarily waived their normal ‘excuse’ requirement for absentee voting, or have interpreted their disability or illness basis for absentee voting broadly during their primaries to essentially cover everyone while the pandemic is ongoing.”⁵⁴ Some of these states only agreed to provide no-excuse absentee voting after litigation,⁵⁵ and not all of these states have committed to make these changes in November.⁵⁶ At the time of this writing, three states do not offer no-excuse absentee voting (Louisiana, Mississippi, and Texas).⁵⁷ Jerry Vattamala expressed concern for minority voters who “are understandably reluctant to expose themselves to potential contact, especially for those who are at higher risk for severe illness from COVID-19.”⁵⁸

Leah Aden submits that in hard-hit Louisiana, where Black persons comprise 52.8% of COVID-19-related deaths,⁵⁹ and citizens who want to vote absentee must submit an excuse, none of the legal excuses include self-isolating during a pandemic, unless the citizen is doing so under medical doctor’s orders.⁶⁰ Moreover, in states with these and other “onerous” absentee voting laws, due to the pandemic, voters of color are forced to choose between risking their lives and foregoing their fundamental right to vote.⁶¹ Representative Marcia Fudge submits that these policies have at times left out low-income, minority voters who may have

52 ACLU Statement at 9; See also Nat’l Council of State Legislators, Voting Outside the Polling Place: Table 1: States with No-Excuse Absentee Voting, May 1, 2020, <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx> (these states are: AK, AZ, CA, FL, GA, IA, ID, IL, KS, MD, ME, MI, MN, MT, NC, ND, NE, NJ, NM, NV, OH, OK, PA, RI, SD, VA, VT, WI and WY (along with DC); plus CO, HI, OR, UT and WA, which conduct their election only by mail). 53 ACLU Statement at 10; As of July 17, these states are: Alabama, Arkansas, Connecticut, Delaware, Indiana, Kentucky, Massachusetts, Missouri, New Hampshire, New York, South Carolina, Tennessee, Virginia and West Virginia. Ibid. and Commission Staff Research. 54 ACLU Statement at 10. 55 ACLU Statement at 10; See also infra notes 66 (Missouri) and See Findings of Fact, Conclusions of Law, and Order and Opinion Granting in Part Motion for Preliminary Injunction, Thomas v. Andino, No. 3:20-cv-01552-JMC (D. S.C., May 25, 2020) at ¶¶ 26-27. https://www.aclu.org/sites/default/files/field_document/order_-_south_carolina_pi_granted.pdf. (discussing and quoting new state law (S.635) permitting all voters living in state of emergency (including due to the COVID-19 pandemic) may vote absentee during June 9 and June 23, 2020 run-off elections). 56 ACLU Statement at 10. 57 See supra notes 35-37; See also ACLU Statement at 11. These are all states that were formerly-covered for preclearance under Section 5 of the Voting Rights Act prior to the June 2013 Shelby decision. Ibid. and see Minority Voting Rights Access at 28. 58 Vattamala Statement at 11. 59 Louisiana Coronavirus COVID-19, La. Dept. of Health, <http://dh.la.gov/coronavirus/> (last updated June 29, 2020). 60 LDF Statement at 7; See also State of Louisiana, Absentee Ballot Application, COVID-19 Emergency Application, La. R.S. 18:401.3, <https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/COVID19AbsenteeBallotApplication.pdf>. 61 LDF Statement at 5.

<https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx>
<https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx>

more work and child care obligations with less flexibility to vote in person.⁶² CDC has stated that “institutional racism” and “housing segregation” also lead to disparities in COVID-19 health outcomes.⁶³ These disparities can in turn make it riskier for minority voters to vote at the polls,⁶⁴ and are exacerbated by racial disparities in who is considered an essential worker with less flexibility to vote in person during the hours the polls are open.⁶⁵ As discussed at a recent briefing by the Missouri State Advisory Committee, litigation on behalf of minority voters in Missouri resulted in a May 15 change in the law allowing voters who have either contracted or are in an at-risk category for contracting or transmitting COVID-19 vote via absentee ballot (although the requirement that their ballots be notarized is still under litigation).⁶⁶ Similar efforts on behalf of minority voters in Texas failed,⁶⁷ even after the state’s threat to prosecute officials permitting absentee voting was found likely to violate the Civil Rights Act of 1871’s criminal prohibitions against voter intimidation.⁶⁸

According to the U.S. Election Assistance Commission, over one-quarter of all ballots for the 2018 General Election were via mail, which totaled more than 31 million votes.⁶⁹ This year, the numbers are increasing dramatically, and with mixed results. Professor Levitt pointed out that:

62 U.S. Representative Marcia Fudge, Chair, Subcommittee on Elections, Committee on House Administration, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 1, 2020, at 13-14; Subcomm. on Elections, Report on Voting Rights and Election Administration in the United States of America, p. 6 (Nov. 2020), prepared by Chairperson Marcia L. Fudge, <https://cha.house.gov/report-voting-rights-and-election-administration-united-states-america> (“Persistent cutbacks and restrictions to early voting opportunities result in longer lines and wait times on Election Day. These cutbacks also disenfranchise those who cannot make it to the polls. Voters who work hourly jobs cannot take multiple hours off on a workday to stand in line to vote.”). See also Elora Mukherjee, “Abolishing the Time Tax on Voting,” 65:1 NOTRE DAME L. REV. 177 (200X), citing and quoting NAACP State Conference of Pennsylvania v. Cortés, 591 F. Supp. 2d 757, 765 (E.D. Pa. 2008) (“It is undisputed that the turnout as always will be concentrated in the first several hours of voting before people go to work and after 5:00 p.m. after their return from work. Even in the best of circumstances, voters can expect and must tolerate more delay than usual on November 4. Nonetheless, we would be blind to reality if we did not recognize that many individuals have a limited window of opportunity to go to the polls due to their jobs, child care and family responsibilities, or other weighty commitments. Life does not stop on election day. Many must vote early or in the evening if they are to vote at all.”). 63 Coronavirus Disease 2019 (COVID-19): Racial & Ethnic Minority Groups, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> (last updated June 25, 2020).

65 See infra notes 138 and 278-79. 66 See Missouri NAACP v. State of Missouri, No. SC98536 (Mo. S.Ct. June 23, 2020) at 5-6 (discussing Mo. S.B. 631 (2020)); and 9 (remanding remaining claims including notarization requirement); IX Mo. Stat. § 115.277(7), <https://revisor.mo.gov/main/OneSection.aspx?section=115.277&bid=48332> and See also Transcript, Missouri SAC Briefing, supra note 17, at 5 and 11 (stating that the 2020 bill eliminated the excuse requirement, but notarization is still required). Gabel, testimony, Briefing Before the Missouri Advisory Committee to the United States Commission on Civil Rights, Briefing on COVID-19 and Access to Voting, Jun. 25, 2020, transcript, pp. 23-24 (discussing Missouri’s absentee voting process and how to handle remote or in-person notarization). 67 Tex. Democratic Party v. Abbott, 961 F.3d 389 (5th Cir. 2020); Tex. Democratic Party v. Abbott, 2020 WL 3476784, at *1 (U.S. June 26, 2020). 68 Order Regarding Plaintiffs’ Motion for Preliminary Injunction, Tex. Democratic Party v. Abbott, No. 20-438 (W.D. Tex. May 19, 2020), <https://www.clearinghouse.net/chDocs/public/VR-TX-0449-0012.pdf>, Findings of Fact and Conclusions of Law, at 64-65. 69 U.S. Election Assistance Commission, “Election Administration and Voting Survey: 2018 Comprehensive Report,” Jan. 6, 2018, at 12, https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf.

<https://cha.house.gov/report-voting-rights-and-election-administration-united-states-america>
<https://cha.house.gov/report-voting-rights-and-election-administration-united-states-america>
<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>
<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>
<https://revisor.mo.gov/main/OneSection.aspx?section=115.277&bid=48332>
<https://www.clearinghouse.net/chDocs/public/VR-TX-0449-0012.pdf>
https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf

DC, Georgia, Pennsylvania, Rhode Island, West Virginia, and Wisconsin had less than 15% of 2016 general election votes cast by mail, but all reported that a majority of votes were cast by mail in this year’s primaries. Each strained mightily to deliver an electoral process capable of accommodating the primary electorate. Some failed.⁷⁰

Commission staff research confirms that of the 14 “Super Tuesday” state primaries, many of which were postponed this year due to COVID-19, voter turnout⁷¹ decreased in 9 of those 14 states (AL, AR, MA, NC, OK, TN, TX, VA, VT). And of the 5 states with increases in turnout (CA, CO, ME, MI, UT), all but California had switched from caucuses to primaries, a switch that typically increases turnout.⁷² All of these “Super Tuesday” states except Texas had no-excuse absentee voting.⁷³ See Appendix B. These data contradict the common view that increased access to absentee voting increases voter turnout.⁷⁴ Although it may correlate with many factors including the pandemic, the relative decrease in turnout may be in part because demographics of absentee voters are changing. In the past, absentee voters have been more likely to be older, white,⁷⁵ and Republican,⁷⁶ however, a more recent study suggests no significant evidence of partisan connection of absentee voters.⁷⁷ Data from the day after Georgia’s June 2 primary showed that more white voters (27.0%) requested mail-in ballots compared to Black (19.3%),

70 Levitt Statement at 9, citing Marshall Cohen, States Failed to Get Absentee Ballots to Thousands of Voters in Recent Primary Elections, Signaling Problems for November, CNN: POLITICS, <https://www.cnn.com/2020/06/20/politics/absentee-voting-election-problems/index.html> [<https://perma.cc/JUV4-8GV9>] (last updated June 22, 2020). 71 In 2018, the Commission found that “[w]hile voter turnout is an imperfect indicator of voter discrimination, data indicate that minority voter turnout still lags behind white voter turnout. Moreover, voter turnout among non-black minority groups lags significantly behind white voter turnout.” Minority Voting Rights Access at 10. The report acknowledged the social science constraints, stating that, “[i]t is extremely challenging to disaggregate the impact of voting procedures from other factors such as the popularity of candidates, and even the weather on Election Day.” *Ibid.*, p. 100 (citing sources), yet still found correlation between discriminatory voting measures and turnout of voters of color. *Ibid.*, pp. 98-100 (correlation of negative impacts on Black and Latino turnout with strict voter ID laws) and 211-15 (findings of turnout disparities for Asian, Latino and Native Americans). 72 Also, four of the five states that saw an increase had switched from caucuses to primaries this year, and the only state that saw an increase without this type of change was California. See Appendix B (analyzing data from California, Colorado, Maine, Michigan and Utah). 73 See infra notes 35-37 (discussing that only three states, LA, MS and TX, have not provided no-excuse absentee voting this year). 74 According to former Pennsylvania Governor Tom Ridge: “The June 2 primaries proved what we already knew – access to absentee ballots increases voter turnout.” See Max Greenwood, “Turnout Surges After States Expand Mail-in Voting,” THE HILL, June 7, 2020, <https://thehill.com/homenews/campaign/501384-turnout-surges-after-states-expand-mail-in-voting> (quoting Ridge); See also Missouri State Advisory Cte., Testimony of Amber McReynolds, CEO, Nat’l Vote at Home Institute, Delivering and Strengthening Democracy, Slide 6, 2020 Primary Turnout as of 6/22: The Top 6 States, and 13 of the Top 15, Are Mail-Out Ballot Centric, July 2020 (on file)(indicating the type of absentee ballot methods may impact access and therefore turnout); and Cf. supra notes 73-74 (discussing disaggregated data in Appendix B) and infra notes 75 (decreased turnout in Ohio) and 213 and 267-8 (decreased Black turnout in Wisconsin). 75 See Minority Voting Rights Access at 67 (discussing absentee voting in North Carolina: “The Fourth Circuit also found it probative that the data revealed that white voters disproportionately used absentee voting, yet the state legislature did not restrict absentee voting in any way [and instead cut forms of voting disproportionately used by minority voters].”) 76 Matt Barreto, Matthew Streib, Mara Marks, and Fernando Guerra, “Do absentee voters differ from polling place voters? New evidence from California,” Public Opinion Quarterly, 2006, vol. 70, no. 2, <http://mattbarreto.com/papers/absentee.pdf>; Brian Amos, Daniel Smith, and Casey Ste Claire, “Reprecincting and Voting Behavior,” Political Behavior, 2017, vol. 39. 77 Daniel Thompson, Jennifer Wu, Jesse Yoder, and Andrew Hall, “The Neutral Partisan Effects of Vote-by-Mail: Evidence from County-Level Roll-Outs,” Democracy & Polarization Lab, Stanford University, April 2020, <https://siepr.stanford.edu/sites/default/files/publications/20-015.pdf>.

<https://www.cnn.com/2020/06/20/politics/absentee-voting-election-problems/index.html>
<https://www.cnn.com/2020/06/20/politics/absentee-voting-election-problems/index.html>
<https://perma.cc/JUV4-8GV9>
<https://thehill.com/homenews/campaign/501384-turnout-surges-after-states-expand-mail-in-voting>
<http://mattbarreto.com/papers/absentee.pdf>
<https://siepr.stanford.edu/sites/default/files/publications/20-015.pdf>

Asian (16.5%) and Latino voters (11.2%)—the Brennan Center characterizes this data as consistent with national trends in previous elections.⁷⁸ Moreover, as among eligible Black voters in 2016 who could have requested a mail ballot but did not, 23.5% requested an absentee ballot this year; the same figure drops to 20.3% for Asian voters and only 15.1% for Latino voters,⁷⁹ yet is higher among white voters, at 30.8%.⁸⁰ In Florida, prior data shows that voters who needed assistance were less likely to vote by mail.⁸¹ White and Latino voters were more likely to vote by mail than Black voters—but rejection rates of absentee ballots have been disproportionately higher for both Black and Latino voters in Florida.⁸²

Civil rights groups are calling for increased access to absentee ballots.⁸³ Citing “chaos” during primaries in Georgia, Kentucky, Pennsylvania and Wisconsin, the Leadership Conference on Civil Rights sent a letter to Congress stating that, “In addition to expanding voter registration opportunities and providing at least two weeks of safe in-person early voting nationwide, a key reform to administer the election safely will be providing every registered American with an absentee ballot with pre-paid postage, mailed with enough time for completion and return.”⁸⁴ Their letter illustrates how the issue of access to absentee voting often intersects with other issues, such as the need for sufficient polling place resources, stating that:

- In Milwaukee, voters stood in line for hours at one of only five polling places, down from 180, after failing to receive absentee ballots in the mail, and it is estimated that more than 70 voters contracted COVID-19 on Election Day.
- Elections administrators in Pennsylvania handled unprecedented numbers of requests for absentee ballots but were unable to process them all given meager resources. This left many with no choice but to vote in person after failing to receive their ballots in the mail.
- In Georgia, voting machines broke down, poll workers received inadequate training, and voters stood in line for up to seven hours in the heat and humidity – all after failing to receive mailed ballots. This tragedy was most acute in Fulton County, which has the highest Black population in the state.
- And Tuesday [June 23], voters in Louisville, Kentucky, a community of 600,000 that is fighting for justice for the fatal shooting of Breonna Taylor, opened only one polling place. This is modern-day

78 See Georgia Secretary of State, Elections Division, Voter Absentee Files, <https://elections.sos.ga.gov/Elections/voterabsenteefile.do> (last accessed June 26, 2020); see also, Kevin Morris, “Who’s Requesting Mail Ballots in Georgia’s Upcoming Primary,” Brennan Center, June 10, 2020, <https://www.brennancenter.org/our-work/research-reports/whos-requesting-mail-ballots-georgias-upcoming-primary>. 79 Kevin Morris, “Who’s Requesting Mail Ballots in Georgia’s Upcoming Primary,” Brennan Center, June 10, 2020, <https://www.brennancenter.org/our-work/research-reports/whos-requesting-mail-ballots-georgias-upcoming-primary>; see also, Georgia Secretary of State, Elections Division, Voter Absentee Files, <https://elections.sos.ga.gov/Elections/voterabsenteefile.do> (last accessed June 26, 2020). 80 *Ibid.* 81 Ann Baringer, Michael Herron, and Daniel Smith, “Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of Coronavirus,” Election Science, April 25, 2020, at 28. 82 *Ibid.* and See infra notes 216-47 (regarding rejection rates). 83 See infra notes 532-36 (Complex Barriers and Remedies, with chart summarizing that AALDEF, ACLU, American Council for the Blind, LDF, the Lawyers’ Committee, the Leadership Conference, U.S. Representative Marcia Fudge, U.S. Representative Deb Haaland, Professor Hasan, Professor Levitt, the National Disabilities Right Network, and UCLA’s Voting Rights Project have called for expanded access to absentee voting). 84 “Mothers of the Movement” and Leadership Conference on Civil Rights, Letter to Majority Senator Leader Mitch McConnell and Minority Senate Leader Chuck Shumer (June 25, 2020), at 2, http://civilrightsdocs.info/pdf/policy/letters/2020/Mother_of_the_Movement_%20Tina_Knowles-Lawson_Senate_Letter- June_25.pdf (emphasis added).

<https://elections.sos.ga.gov/Elections/voterabsenteefile.do>
<https://www.brennancenter.org/our-work/research-reports/whos-requesting-mail-ballots-georgias-upcoming-primary>
<https://www.brennancenter.org/our-work/research-reports/whos-requesting-mail-ballots-georgias-upcoming-primary>
<https://www.brennancenter.org/our-work/research-reports/whos-requesting-mail-ballots-georgias-upcoming-primary>
<https://elections.sos.ga.gov/Elections/voterabsenteefile.do>
http://civilrightsdocs.info/pdf/policy/letters/2020/Mother_of_the_Movement_%20Tina_Knowles-Lawson_Senate_Letter-June_25.pdf
http://civilrightsdocs.info/pdf/policy/letters/2020/Mother_of_the_Movement_%20Tina_Knowles-Lawson_Senate_Letter-June_25.pdf

voter suppression plain and simple. Voters in all these states risked their health, and that of their communities, simply to make their voices heard. People should be able to exercise their constitutional right to vote and stay healthy, even during a pandemic. We should not have to choose between public health and a functioning democracy.⁸⁵

Leigh Chapman and LaShawn Warren of the Leadership Conference submitted written testimony to the Commission discussing the 2020 primaries, arguing that voters of color experienced the most systemic failures.⁸⁶ They posit that “[t]his pandemic has simply exposed – to all Americans – the [election] system’s failures, many of which have had an ongoing discriminatory impact on communities of color.”⁸⁷ They explain that problems such as machine malfunctions, long lines, polling place closures, undertrained staff, and faulty vote-by-mail practices have been present for some time,⁸⁸ and were made worse when the Supreme Court stripped the VRA of its Section 5 preclearance protections the Shelby case in 2013.⁸⁹ While acknowledging that election officials have been strained,⁹⁰ they assert that states and counties have been on notice for months, yet have failed to take proper measures to make voting in-person or by mail accessible.⁹¹ Moreover, because COVID-19 is hitting communities of color hardest, those communities will be more impacted by having to choose between risking their health and voting.⁹² Lawyers’ Committee for Civil Rights’ President and Executive Director Kristen Clarke agreed that there are racial disparities in access to absentee and in-person voting this year, stating that “the failure of officials to take action in protecting voters during the pandemic has developed into another form of minority voter suppression.”⁹³

Ilya Shapiro, Hans von Spakovsky and Dan Morenoff agreed with the need for expanding absentee ballot access this year, but expressed some concerns about increased risk of voter fraud.⁹⁴ Although incidents of voter fraud are exceedingly rare, Stanford Law School’s Law and Policy Lab recently reported that:

are opportunities for foul play. These opportunities take place throughout the chain of custody of the ballot, beginning with how a voter requests a ballot and

85 *Ibid.*, p. 2. 86 Leigh Chapman, Director, Voting Rights Program & LaShawn Warren, Executive Vice President, Government Affairs, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 1, 2020 at 1-2 (hereinafter Chapman Statement). 87 Chapman Statement, at 2. 88 Chapman Statement, at 1-2. 89 Chapman Statement, at 2. 90 Chapman Statement, at 1. 91 Chapman Statement, at 2. 92 Chapman Statement, at 2 (citing to an article by Charles Blow in the New York Times which stated that cities with higher black populations are showing that black people make up 70 to 80 percent of COVID-19 deaths, despite their lower percentage of the population). 93 Kristen Clarke, Executive Director, Written Statement for Minority Voting Rights Access Update, at 3. 94 Ilya Shapiro, Director and James T. Knight II, Legal Associate, Robert A. Levy Center for Constitutional Studies, Cato Institute, Written Testimony for the U.S. Commission on Civil Rights, Written Submission for COVID-19 Supplement to the 2018 Report on “An Assessment of Minority Voting Rights Access in the United States,” June 29, 2020 (hereinafter Shapiro Cato Institute Statement) at 1; Dan Morenoff, Executive Director, The Equal Voting Rights Institute, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 8, 2020 at 1-3 (hereinafter Morenoff Statement); See also *infra* note 534-36, with Remedies Chart (showing further detail).

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then receives, completes, and returns it. While documented cases of vote-by-mail voter fraud are rare, scholars agree that voter fraud is more prevalent in vote-by-mail than it is for in-person voting.⁹⁵

Shapiro recounted the need to meet the challenge of the pandemic, stating that “[c]hanges to our voting systems to safeguard public health, such as by allowing mail-in voting, are sorely needed, particularly if fears of a second COVID-19 wave in the fall come true.”⁹⁶ However, “[a]t the same time, hastily switching from in-person voting to more anonymized systems with which the states lack experience creates the potential for chaos, errors, and decreased electoral legitimacy in the eyes of voters.”⁹⁷ and:

There is also a practical issue with widespread absentee voting by mail: most states aren’t prepared for it. In states where mail-in voting is the primary means of conducting elections, the changes tended to be brought about gradually so that voters and officials alike could adapt. Pennsylvania, which does not usually conduct elections through the mail, saw a ‘14-fold increase in requests for absentee ballots over 2016’ for its June primary. Wisconsin had five times its normal number of requests for absentee ballots for its 2020 primary, resulting in the state being ‘unable to mail the ballots out fast enough or handle’ other aspects of the process. On the flip side, Iowa and Montana’s ‘extended preparation for the influx of ballots they were going to receive,’ helped their June primaries go comparatively smoothly.⁹⁸

Shapiro, Morenoff, and von Spakovsky oppose the practice of mailing absentee ballots to every registered voter, particularly in states like California, which Shapiro believes have “sloppy” voter roll maintenance practices, so ballots could be mailed to addresses where a voter no longer lives.⁹⁹ In 2018, the Commission examined the voter fraud arguments underlying aggressive list maintenance practices and found them to be tenuous,¹⁰⁰ while also finding that aggressive list maintenance based on commonly-used but incorrect databases could result in disparately and unfairly purging eligible minority voters from the rolls.¹⁰¹ Civil rights groups advocate for sending absentee ballots to every registered voter, to save voters who are under

95 Signature Verification and Mail Ballots: Guaranteeing Access While Preserving Integrity, STANFORD LAW SCHOOL LAW AND POLICY LAB https://www-cdn.law.stanford.edu/wp-content/uploads/2020/04/SLS_Signature_Verification_Report-5-15-20-FINAL.pdf at 13; See also Minority Voting Rights Access at 103 (voter fraud is “extraordinarily rare,” but most common form of voter fraud allegations reported by News21 1-year study was absentee ballot fraud). 96 Ilya Shapiro, Director and James T. Knight II, Legal Associate, Robert A. Levy Center for Constitutional Studies, Cato Institute, Written Testimony for the U.S. Commission on Civil Rights, Written Submission for COVID-19 Supplement to the 2018 Report on “An Assessment of Minority Voting Rights Access in the United States,” June 29, 2020 (hereinafter Shapiro Cato Institute Statement) at 1. 97 *Ibid.*, p. 1. 98 *Ibid.*, p. 3. 99 Shapiro Statement at 4. 100 Minority Voting Rights Access at 108 (discussing how there is no evidence of fraud or double-voting when double registration takes place because it is often simply the result of voters not filing a change of address; *ibid.* pp. 145-47 (examining discriminatory purges in Florida, where due to faulty methods of purging such as exact match tests, unreliable non-citizen allegations, and inaccurate data about alleged felony convictions, the majority of voters who were purged were actually eligible); *ibid.*, p. 150 (showing that Georgia similarly has faulty purging methods that have led to thousands of eligible voters purged). 101 Minority Voting Rights Access at 108 (explaining that the disparate impact on voters of color is a result of them moving more often than white voters; *ibid.*, p. 147 (citing Florida’s use of the Department of Homeland Security’s Systematic Alien Verification for Entitlements database as a complete list of U.S. citizens in 2007, despite it not actually including all naturalized citizens—an example of a faulty reliance on a database that resulted in a negative, disparate impact on people of color).

https://www-cdn.law.stanford.edu/wp-content/uploads/2020/04/SLS_Signature_Verification_Report-5-15-20-FINAL.pdf
https://www-cdn.law.stanford.edu/wp-content/uploads/2020/04/SLS_Signature_Verification_Report-5-15-20-FINAL.pdf

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stress from the pandemic from having to apply for them and to overcome racial disparities in the application process.¹⁰² Shapiro recommends expanding early voting (although von Spakovsky disagrees),¹⁰³ and he also supports increased curbside voting, absentee ballot drop-off boxes, ability for family members to drop off absentee ballots, and paid postage.¹⁰⁴ Morenoff, Shapiro and von Spakovsky agreed that there is generally a low risk of voter fraud (less than 0.00006%) with absentee voting,¹⁰⁵ but they are concerned about third party assistance, with Shapiro explaining that:

Absentee ballots are hand-marked paper ballots, which are considered the most secure type of ballot because of the lack of room for machine error, immunity from hacking, and ease of auditing to confirm results.¹⁰⁶ Using modern ballot practices, ballot forgery is near impossible because each ballot has a barcode unique to the voter and tied to a state database. Fortunately, there is similarly little evidence of widespread ballot theft.¹⁰⁷ Legitimate ballot integrity concerns do exist, however, regarding ballots mailed to incorrect addresses and the collection of ballots by third parties.¹⁰⁸

Morenoff, Shapiro and von Spakovsky believe that measures are needed prevent “ballot harvesting.”¹⁰⁹ Shapiro added that, “[w]hen crafting new election rules and procedures for 2020 and beyond, states should take great care to balance the benefit of allowing an agent to aid an elderly or disabled person in voting with the potential harm of voter disenfranchisement and coercion.”¹¹⁰ He recommends limiting the number of ballots a third party may submit,¹¹¹ while providing voters with access to “hotlines, websites, and other resources for those experiencing elder or domestic abuse,” and “secure ballot drop boxes near nursing homes and retirement communities, or to pre-pay return postage on ballots.”¹¹²

However, placing limits on the number of ballots that a third-party authorized by the individual voters can collect and submit can raise civil rights concerns. For example, a Montana court preliminarily enjoined

102 See *infra* notes 534-36 (with Remedies Chart, showing that AALDEF, Rep. Marica Fudge, the Leadership Conference, Professor Levitt, the National Disability Rights Network, and UCLA Voting Rights Project called for mailing the ballot to every registered voter). 103 Shapiro Statement at 3 (“Early in-person voting has similar benefits, and while it is more of a health risk than voting by mail, spreading voters out over a longer period of time will still help alleviate crowding on election day.”); Cf. von Spakovsky Statement at 4 (“As long as election officials open up the usual number of polling places on Election Day and implement all of the health safety protocols recommended by experts as Wisconsin did in its April 7 primary, there is no reason to expand early voting. Whether an individual votes in person during early voting or on Election Day, the health risks will be the same since election officials will be implementing the same safety protocols for in-person voting whenever it occurs.”) 104 Shapiro Statement at 3. 105 Shapiro Statement at 3; Morenoff Statement at 3. 106 *Ibid.*, p. 3, citing National Conference of State Legislatures (NCSL), “Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options,” June 22, 2020, <https://bit.ly/3i4bcsc>; Miles Parks, “Why Is Voting by Mail (Suddenly) Controversial? Here’s What You Need to Know,” NPR, June 4, 2020, <https://n.pr/386Cavg>. 107 *Ibid.*, p. 3, citing See, e.g., Miles Parks, “Fact Check: Trump Spreads Unfounded Claims About Voting By Mail,” NPR, June 22, 2020, <https://n.pr/386bozTp>; Holmes Lybrand & Tara Subramaniam, “Fact-Checking Trump’s Recent Claims that Mail-In Voting Is Rife with Fraud,” CNN, May 28, 2020, <https://cnn.it/2NDKpFz>. 108 *Ibid.*, p. 3. 109 *Ibid.*, and see Morenoff Statement at 3; von Spakovsky Statement at 6-7. 110 *Ibid.*, p. 5; See also *infra* notes 534-36, with Remedies Chart (showing several conservative experts opposed to allowing expansion of third-party ballot collection). 111 Shapiro Statement at 5. 112 *Ibid.*, p. 6.

<https://bit.ly/3i4bcsc>
<https://n.pr/386Cavg>
<https://n.pr/386bozTp>
<https://cnn.it/2NDKpFz>

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the state’s 2019 Ballot Interference Prevention Act (BIPA), which allows only “caregivers, family members, household members and acquaintances to collect ballots” who may only collect a maximum of six ballots per election.¹¹³ The court found that “[a]lthough the State alleges that BIPA promotes the State’s compelling interest in maintaining the integrity of elections, the Court finds that the State has failed to present any evidence of Montana voters being subjected to harassment and insecurity in the voting process or even a general lack integrity in Montana’s elections.”¹¹⁴ Further, these limits “will significantly suppress vote turnout by disproportionately harming rural communities, especially individual Native American in rural tribal communities across the seven Indian reservations located in Montana by limiting their access to the vote by mail process,”¹¹⁵ and they disproportionately impact Native Americans, by “making voting more burdensome and costly for voters who rely on ballot collection services.”¹¹⁶ The barriers were not singular. Seven tribes argued they were disparately impacted by “multiple barriers” including extreme housing shortages and overcrowding (10-20 people living at one address), geographic isolation coupled with high levels of poverty (up to 80%), extremely long distances (up to an hour’s drive) to post offices that are open only limited hours, lack of access to transportation, and other factors.¹¹⁷ Lack of access to a traditional address from which to receive and mail absentee ballots prompted the tribes and trusted community groups to construct their own systems to ensure that their people can vote, including third party ballot collection and hand delivery.¹¹⁸ However, the state interpreted the limits of BIPA to apply only to ballots submitted by hand delivery and not those sent by mail—practices that Native Americans had come to rely on.¹¹⁹ Based on these facts, the court enjoined the limits on third-party ballot collection.¹²⁰

In Colorado, Hawaii, Oregon, Utah, and Washington, all registered voters automatically receive mail ballots.¹²¹ Several states, such as Montana, also allow counties the option to have all-mail elections, and their numbers have expanded since the pandemic.¹²² But in 2018, the Commission found that Oregon and Washington State’s vote-by-mail-only systems had ended up discriminating against Native American voters.¹²³ The Commission evaluated successful Section 2 Voting Right Act cases as well as extensive

113 Order Granting Plaintiff’s Motion for Preliminary Injunctive Relief, *Western Native Voice v. Stapleton*, No. DV-2020-377 (Mt. 13th Jud. District at Yellowstone July 7, 2020)(hereinafter “Preliminary Injunction”), at 3; See also Temporary Restraining Order (Mt. 13th Jud. District at Yellowstone May 20, 2020)(hereinafter Temporary Restraining Order), https://www.aclu.org/sites/default/files/field_document/dv-2020-377_order_granting_plaintiffs_temporary_restraining_order_and_order_setting_hearing_on_motion_for_preliminary_injunction_1.pdf (temporary restraining order and subsequent hearing for preliminary injunction). 114 *Western Native Voice Preliminary Injunction* at 9. 115 *Id.* at 7. 116 *Id.* at 9. 117 See, e.g., *Western Native Voice Complaint* at ¶¶ 104-24; *Temporary Restraining Order* at p. 2. 118 See, e.g., *Western Native Voice Complaint* at ¶¶ 104-24; *Temporary Restraining Order* at p. 2. 119 *Western Native Voice Complaint* at ¶¶ 163-65; *Temporary Restraining Order* at 2; *Preliminary Injunction* at 3. 120 *Western Native Voice Temporary Restraining Order* at 2; *Preliminary Injunction* at 7. 121 See National Conference of State Legislatures (NCSL), “Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options,” June 22, 2020, <https://bit.ly/3i4bcsc>; Miles Parks, “Why Is Voting by Mail (Suddenly) Controversial? Here’s What You Need to Know,” NPR, June 4, 2020, <https://n.pr/386Cavg>. 122 *Ibid.* 123 Minority Voting Rights Access at 181-183.

https://www.aclu.org/sites/default/files/field_document/dv-2020-377_order_granting_plaintiffs_temporary_restraining_order_and_order_setting_hearing_on_motion_for_preliminary_injunction_1.pdf
https://www.aclu.org/sites/default/files/field_document/dv-2020-377_order_granting_plaintiffs_temporary_restraining_order_and_order_setting_hearing_on_motion_for_preliminary_injunction_1.pdf
https://www.aclu.org/sites/default/files/field_document/dv-2020-377_order_granting_plaintiffs_temporary_restraining_order_and_order_setting_hearing_on_motion_for_preliminary_injunction_1.pdf
<https://bit.ly/3i4bcsc>
<https://n.pr/386Cavg>

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testimony from community leaders.¹²⁴ One community leader testified that vote-by-mail exacerbates language barriers, because the ballots are mailed in English-only, and another tribal leader stated that “Native American homeless persons are not mailed ballots in Oregon, making voting ‘virtually impossible.’”¹²⁵ Similar testimony was received from Washington State tribal leaders who stated that Native Americans disproportionately have non-traditional addresses where mail cannot be delivered, move more frequently, have less internet access, more “problems with receiving and dropping off mail-in ballots in rural and isolated communities,” government offices that are only open during limited hours, and “historical trauma leading to apathy or distrust of the federal government,” leaving out many voters.¹²⁶ In 2018, the Alaska State Advisory [SAC] reported that, “[i]n studying the feasibility of implementing a vote-by-mail system, the Alaska SAC found many challenges to implementing a system like this in Alaska.”¹²⁷ First, “it can take up to two to three weeks to receive mail,”¹²⁸ or longer “in October or November—two of the state’s worst weather months.”¹²⁹ Further, a study found Native American voters have a low trust in mail-in voting, and “often have irregular mail and non-traditional home addresses. Rural residents often share P.O. boxes, and some members of the community fear that their neighbors would go through their mail. Furthermore, Alaska Native villages lack broadband access, meaning that voters in the Native community have to go further out of their way to participate in the election process.”¹³⁰ The Commission received written testimony from various experts stating that due to the COVID-19 pandemic, the impact lack of access to an address from which to receive an absentee ballot in the first place has been exacerbated for minority voters.¹³¹ This comports with our 2018 research findings that voters of color who strongly prefer in-person voting can be left out by vote by mail systems, unless these systems are rendered more accessible to address barriers in access.¹³² Further, a recent study found that 22% of adults have moved or know someone who has relocated due to the coronavirus, with young Asian and Latino Americans having moved the most.¹³³

In 2020, voters of color also have disproportionately more health risks and other reasons for wanting and needing to vote by mail.¹³⁴ CDC data reportedly showed among nearly 640,000 cases in nearly 1,000

124 Minority Voting Rights Access at 181 (“Native American leaders in Oregon and Washington State, both of which have converted entirely to vote-by-mail, also voiced concerns about lack of access to polling places. In these states, there are no more polling places, but there may be ballot drop-off boxes.”). 125 Minority Voting Rights Access at 181-82. 126 Minority Voting Rights Access at 183, citing Transcript of Proceedings, Pacific Northwest Hearing, Native American Voting Rights Coalition in Portland, Oregon (Jan. 24, 2018) [hereinafter Portland Transcript] at 121 (Washington), 174 (Oregon) (testimony submitted to the Commission). 127 Minority Voting Rights Access at 356. 128 Minority Voting Rights Access at 356. 129 Minority Voting Rights Access at 356-57 (discussing findings of the Alaska State Advisory Committee). 131 Minority Voting Rights Access at 182; Chapman and Warren Statement at 7. 132 See *infra* notes 534-36, with Remedies Chart, showing AALDEF, Rep. Marica Fudge, Rep. Deb Haaland, and UCLA Voting Rights Project and others agree with option to have ballots mailed to another address, along with options for third parties authorized by the voter to deliver and submit ballots, and options for drop-off boxes. 133 D’Vera Cohn, About One-Fifth of U.S. Adults Moved Due to COVID-19 or Know Someone Who Did, PEW Research, July 6, 2020, <https://www.pewresearch.org/fact-tank/2020/07/06/about-a-fifth-of-u-s-adults-moved-due-to-covid-19-or-know-someone-who-did/>. 134 See, e.g., ACLU Statement at 7, citing CDC data; see also, Fudge Statement at 5 (“The combination of limited and/or risky in-person voting opportunities and obstacles to accessing absentee voting is disenfranchising minority voters across states”).

counties across the U.S., the rate of coronavirus cases was 38 out of every 10,000 people, but among White people the rate was lower (23), while among Black people the rate was higher (62) and for Latino people it was even higher (73).¹³⁵ That is, Black and Latino people have been three times as likely to have coronavirus and are twice as likely to die.¹³⁶ This data corroborates other findings that Black and Latino communities are experiencing higher rates of complications from COVID-19 than the general population, due in part to being essential workers who have been more exposed, and due to health disparities, which may impact their voting rights this year.¹³⁷ Barriers for Latino voters may also include having a relatively high number of new voters, including young people who just turned 18, as well as newly-naturalized citizens,¹³⁸ and as first-time voters, both groups may have strongly preferred voting at the polls in order to navigate the voting process.¹³⁹ In 2020, one in ten eligible voters (total 23.2 million) are newly-naturalized citizens, and the majority are voters of color, comprised of Latino (34%), Asian (31%) and Black Americans (10%).¹⁴⁰ The Commission received testimony that the Native American community is experiencing some of the most extreme health disparities due to COVID-19,¹⁴¹ along with ongoing structural barriers to federal relief funds.¹⁴² Representative Deb Haaland testified that this increases the community's barriers to voting.¹⁴³ In New Mexico's primary, lack of infrastructure or availability of mail

135 Richard A. O'Connell Jr., Robert Gebeloff, K.K. Rebecca Lai, Will Wright and Mitch Smith, "The Fullest Look Yet at the Racial Inequality of Coronavirus," NEW YORK TIMES, July 5, 2020, <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latino-african-americans-cdc-data.html?action=click&module=Top%20Stories&pgtype=Homepage> (discussing data received through a Freedom of Information Request, with details of methodology). 136 *Ibid.* 137 LDF Statement at 1; Order Regarding Plaintiffs' Motion for Preliminary Injunction, Tex. Democratic Party v. Abbott, No. 20-438 (W.D. Tex. May 19, 2020), <https://www.clearinghouse.net/chDocs/public/VR-TX-0449-0012.pdf>, Findings of Fact and Conclusions of Law, at 37 ("The Latino community is particularly vulnerable to infection, hospitalization, and death resulting from COVID-19, due to a combination of high prevalence of underlying medical conditions and socioeconomic conditions that make contracting the disease more likely.") 138 Abby Budiman, Luis Nue-Bustamante and Mark Hugo Lopez, Naturalized Citizens Make Up Record One-in-Ten U.S. Eligible Voters in 2020, "Since 2000, Size of Immigrant Electorate Nearly Doubled to 23.2 Million, PEW RESEARCH, Feb. 2020, <https://www.pewresearch.org/hispanic/2020/02/26/naturalized-citizens-make-up-record-one-in-ten-u-s-eligible-voters-in-2020/>; and See, e.g., Tania Karas, The World, "Every 30 Seconds, a Young Latino in the U.S. Turns 18; Their Votes Count More Than Ever," KERA NEWS, Mar. 7, 2020, <https://www.keranews.org/post/every-30-seconds-young-latino-us-turns-18-their-votes-count-more-ever> (discussing the experience of first-time voters and also reporting that "Latinos' massive growth as a voting bloc is largely driven by youth coming of age. Approximately every 30 seconds, a Latino in the US turns 18 and becomes eligible to vote. That's nearly 75,000 potential new voters each month and some 900,000 each year, according to The World's analysis of Census Bureau data. Since the 2016 elections, some 3.6 million Latinos will have turned 18 in time to vote this November."). 139 See Anthony Cilluffo and Richard Frey, "An Early Look at the 2020 Electorate," PEW RESEARCH, Jan. 2019, <https://www.pewsocialtrends.org/essay/an-early-look-at-the-2020-electorate/> (discussing demographics of Generation Z). 140 See, e.g., Latino Decisions and Voter Participation Center, Latino Decisions Announces Release of New Survey Results in Six Battleground States, July 10, 2020, <https://latinodecisions.com/blog/latino-decisions-announces-release-of-new-survey-results-in-six-battleground-states/> ("Despite the scare over COVID-19 and talk about expanding our election system to include more vote-by-mail, Latinos still prefer to vote in person on election day. However, those who have not voted by mail have low familiarity with the process to register for a mail ballot; just 42% of those surveyed said they have used an absentee or vote-by-mail ballot to cast their vote, and just 54% say their state has given them enough instructions to know how to request a mail ballot.") 141 WILL CITE TO BP UPDATE TESTIMONY 142 WILL CITE TO BP UPDATE TESTIMONY 143 Congresswoman Deb Haaland, Representative of the 1st District of New Mexico, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 1, 2020, at 1-2 (hereinafter Haaland Statement).

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<https://www.clearinghouse.net/chDocs/public/VR-TX-0449-0012.pdf>
<https://www.pewresearch.org/hispanic/2020/02/26/naturalized-citizens-make-up-record-one-in-ten-u-s-eligible-voters-in-2020/>
<https://www.pewresearch.org/hispanic/2020/02/26/naturalized-citizens-make-up-record-one-in-ten-u-s-eligible-voters-in-2020/>
<https://www.keranews.org/post/every-30-seconds-young-latino-us-turns-18-their-votes-count-more-ever>
<https://www.keranews.org/post/every-30-seconds-young-latino-us-turns-18-their-votes-count-more-ever>
<https://www.pewsocialtrends.org/essay/an-early-look-at-the-2020-electorate/>
<https://latinodecisions.com/blog/latino-decisions-announces-release-of-new-survey-results-in-six-battleground-states/>
<https://latinodecisions.com/blog/latino-decisions-announces-release-of-new-survey-results-in-six-battleground-states/>

services in Indian Country made it difficult to meet absentee ballot deadlines; tribal government buildings could be designated as individual voters' addresses, but the corresponding federal fix is still pending.¹⁴⁴

Impacts of Witness/Notarization and Voter ID Requirements According to the National Council of State Legislatures, there are only 11 states that require that an absentee ballot or mailed envelope be signed by a witness or notarized.¹⁴⁵ Data herein show that these barriers can be significant for minority voters, yet the process of getting legal relief is unduly complex.¹⁴⁶ Charles Stewart of Massachusetts Institute of Technology pointed out that "if a state moves... to not requiring an excuse for voting by mail, but still requiring an application, you've doubled the number of voters who will vote by mail. However, if you have a witness requirement, an ID requirement, or a notary requirement, all that doubling of the use of the mails goes away."¹⁴⁷

In the spring of 2020 in Alabama, minority voters challenged the state's rules requiring that absentee ballots be witnessed by a third party and include a copy of voters' photo ID. The federal district court took into account Alabama and federal (CDC) data indicating severe health disparities for Black voters.¹⁴⁸ It found that Black voters and voters with disabilities would incur additional risks in going to the polls, but under Alabama's rules, if they voted absentee, they would incur health risks in procuring a photocopy of their photo ID and getting third persons to witness their ballot.¹⁴⁹ The court therefore granted a preliminary

144 Haaland Statement at 2. She added that the best way to improve voter participation in these areas is to build infrastructure for reliable mail service; to address this issue, the Native American Voting Rights Act of 2019 should be used as a solution. This bill indicates that tribal government buildings should be designated as the address and mailing address for voters who live in the Indian Country, and also designated as a separate precinct through a description of their address as specified in 11 C.F.R. § 9426.4(a)(2). See Native American Voting Rights Act of 2019, H.R. 1694, 116th Cong. (2019); see also 11 C.F.R. § 9426.4(a)(2). *Ibid.* 144 *Ibid.* 145 According to the National Conference on State Legislatures: "Eight states require the signature of a witness in addition to the voter's signature. Alaska (witness or a notary), Louisiana, Minnesota (witness or notary), North Carolina (two witnesses or a notary), Rhode Island (two witnesses or a notary), South Carolina, Virginia and Wisconsin. Three states require the absentee/mailed ballot envelope to be notarized: Mississippi, Missouri and Oklahoma." Nat'l. Conf. of State Legislatures, Voting Outside the Polling Place, Verifying Authenticity of Absentee/Mailed Ballots, June 22, 2020, <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (citations omitted). 146 See *infra* notes 148-174. 147 Transcript, Missouri SAC Briefing, *supra* note 17, at 11. 148 Peoples' First Pl at 4 ("Alabama has seen over 25,000 confirmed cases, and more than 700 deaths, from COVID-19"), and 5 ("CDC data shows that some groups have substantially higher risk of developing complications and dying from COVID-19. These include older patients; and persons with pre-existing conditions, such as hypertension, certain heart conditions, lung diseases, diabetes, and obesity; and moreover: "Available evidence also shows that if infected, 'racial and ethnic minority populations, especially African-Americans, are at substantially elevated risk of developing life-threatening COVID-19 illnesses' and dying."). Other salient facts included the virus spreading easily, and that without a vaccine, the only ways to limit are social distancing by at least six feet, and "not physically interacting with someone outside of one's household." *Id.* at 6. 149 *Id.* at 2. Specifically, the court found that "The burden here is not the finding of two people or a notary to witness a signature or the finding of a location to copy one's photo ID. Instead, the burden is tied to the fact that Plaintiffs and those similarly situated must risk death or severe illness to fulfill Alabama's absentee voter requirements and, therefore, to exercise their right to vote." *Id.* at 18. In February 2020, the Alabama State Advisory Committee also noted that the state's absentee voting "requirement to provide copy of identification imposes complication and costs on voters, particularly on those without access to copying machines." Alabama State Advisory Committee to the U.S. Com'n. on Civil Rights, Barriers to Voting in Alabama, Feb. 2020, <https://www.usccr.gov/files/2020-07-02-Barriers-to-Voting-in-Alabama.pdf>, at 45.

<https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>
<https://www.usccr.gov/files/2020-07-02-Barriers-to-Voting-in-Alabama.pdf>

injunction requiring removal of the witness and photo ID requirements for absentee voting.¹⁵⁰ This decision was upheld by the Eleventh Circuit Court of Appeals in late June,¹⁵¹ but the Secretary of State petitioned the Supreme Court arguing that the changes would be too close to the election, and on July 2, the Court decided to "stay" or block the relief for Alabama voters.¹⁵² The Eleventh Circuit had commented that the Secretary of State's argument about changes being close to an election was "not a magic wand that defendants can wave to make any unconstitutional election restriction disappear so long as an impending election exists."¹⁵³ A Montana state court determined that the same argument¹⁵⁴ was "misplaced," because the changes needed to protect voting rights would not "fundamentally alter the nature of the election,"¹⁵⁵ as its injunction "would mitigate voter suppression efforts."¹⁵⁶

In 2018, the Commission discussed that the Supreme Court's recent holdings that protective changes would come too close to an election can be problematic under current conditions.¹⁵⁷ This year's minority voting rights litigation shows a similar pattern, with cases brought soon after an issue arises,¹⁵⁸ while the

150 Memorandum Opinion Granting Preliminary Injunction, People First v. Merrill, No. 2:20-cv-00619 (N.D. Ala. June 15, 2020), https://www.splcenter.org/sites/default/files/documents/055_-_memorandum_opinion.pdf. 151 Order Denying Motion for Stay, People First v. Merrill, No. 2:20-cv-00619 (11 Cir. June 25, 2020), <https://www.naacpldf.org/wp-content/uploads/11th-Cir-Order-DENYING-Emergency-Stay-Motion.pdf>. 152 Order Granting Stay, Merrill v. People First, 591 U.S. ____ (S.Ct. July 2, 2020), https://www.supremecourt.gov/orders/courtorders/070220zr_n7io.pdf; 153 Order Denying Motion for Stay, People First v. Merrill, No. 2:20-cv-00619-AKK (11 Cir. June 25, 2020) at 21 (emphasis added), <https://www.naacpldf.org/wp-content/uploads/11th-Cir-Order-DENYING-Emergency-Stay-Motion.pdf>; See also Raysor v. DeSantis, 591 U.S. ____ (Jul. 17, 2020), J. Sotomayor, Dissenting, at 2, 4 and 6 (critiquing that voting rights claims brought "[w]ell before the August 18, 2020 primary," *id.* at 2, should not be stayed by federal courts due to being too close to an election, on a date one month before the election. *Id.* at 4. By overturning an order that would protect the voting rights of 1 million people, "the Eleventh Circuit has created the very 'confusion' and voter chill that Purcell counsels courts to avoid," so the Supreme Court should have acted to restore the district court's protective order. *Id.* at 6, https://www.supremecourt.gov/opinions/19pdf/19a1071_4h25.pdf. 154 Order Granting Plaintiffs' Motion for Preliminary Injunctive Relief, Western Native Voice v. Stapleton, No. DV-2020-377 (Mt. 13th Jud. District at Yellowstone July 7, 2020) at 4, discussing Defendants' arguments and citing Rep Nat'l Comm v. Dem. Nat'l Comm., 206 L.Ed. 2d 452, 453-5 (2020)(per curiam)(citing Purcell v. Gonzalez, 549 U.S. 1 (2006); Frank v. Walker, 574 U.S. 92 (2014); Veasy v. Perry, 574 U.S. 951 (2014)). 155 *Id.*, citing Rep. Nat'l Comm., 206 L.Ed.2d 452 at 1006-7. 156 *Id.* 157 Minority Voting Rights Access at 65-66 ("in a series of rapid decisions in which both plaintiffs and defendants asked for emergency stays, from September 24-October 18, [2014], the Supreme Court decided against making any changes to existing voting procedures too close to the election. The Court so ruled even with regard to those changes that would seem to be designed to prevent irreparable harm to voters in the upcoming election.... Another new development was that in deciding on these post-Shelby County preliminary injunctions, the Court effectively counted new voting restrictions as the existing procedures that should not be changed too close to an election. In contrast, under Section 5, the benchmark was considered to be the conditions prior to the new voting changes. Moreover, under Section 5, the new restrictions would not have gone into effect in the first place in North Carolina and Texas [where intentional discrimination was found]."). 158 See Complaint, People First of Alabama v. Merrill, No. 2:20-cv-00619 (N.D. Ala. May 1, 2020), https://moritzlaw.osu.edu/electionlaw/litigation/documents/PFOA_v_Merrill_1.pdf, and note the level of complexity needed to bring together impacted persons and sufficient evidence to make the allegations. See also Order Granting Stay, Merrill v. People First, 591 U.S. ____ (S.Ct. July 2, 2020), https://www.supremecourt.gov/orders/courtorders/070220zr_n7io.pdf; Tex. Democratic Party v. Abbott, 961 F.3d 389 (5th Cir. 2020); Tex. Democratic Party v. Abbott, 2020 WL 3478784, at *1 (U.S. June 26, 2020), and note the Complaint, filed April 7 and Amended Complaint and Motion for Preliminary Injunction, filed April 29, also illustrate prompt litigation considering the rapidly-emerging and changing circumstances. See Complaint, No. 5:20-cv-00438 (W.D. Tex. Apr. 9, 2020); Amended Complaint and Motion for Preliminary Injunction, No. 5:20-cv-00438 (W.D. Tex. Apr. 29, 2020). See *supra* notes 64-65, for discussion of the Texas litigation.

https://www.splcenter.org/sites/default/files/documents/055_-_memorandum_opinion.pdf
<https://www.naacpldf.org/wp-content/uploads/11th-Cir-Order-DENYING-Emergency-Stay-Motion.pdf>
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<https://www.naacpldf.org/wp-content/uploads/11th-Cir-Order-DENYING-Emergency-Stay-Motion.pdf>
https://www.supremecourt.gov/opinions/19pdf/19a1071_4h25.pdf
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https://www.supremecourt.gov/orders/courtorders/070220zr_n7io.pdf

process in court takes time, sometimes resulting in the Supreme Court blocking relief needed prior to an election.¹⁵⁹ This year's April 7 primary in Wisconsin, and July 14 run-offs in Alabama and Texas, have been impacted by the Court blocking relief for minority voters.¹⁶⁰ There may be time for these types of cases before November,¹⁶¹ yet whether they will survive Supreme Court scrutiny remains to be seen.¹⁶²

Returning to the Commission's evaluation of witness requirements, in North Carolina, a July 10 complaint alleged that voters of color are negatively impacted by because the state's absentee ballot rules require risky contact by requiring that one witness to be present when they vote and sign their ballot, and further, the witness cannot be a health care facility worker.¹⁶³ As discussed above, CDC data show that Black and Latino voters are harder hit by coronavirus,¹⁶⁴ and state data shows further disparities in North Carolina, where Blacks are 30% of known COVID-19 cases but only 22% of the population, and Latinos are 39% of cases but only 10% of the state population.¹⁶⁵ Moreover, the Governor issued an order stating, "[the CDC] acknowledges that social and economic differences often create health differences in communities of color, and that public health emergencies can isolate communities of colors [sic] from necessary resources," and "the COVID-19 pandemic is exposing racial disparities that are entrenched in our health care and economic institutions for communities of color."¹⁶⁶ Therefore, Plaintiffs allege that the absentee ballot witness requirement unequally burdens the right to vote for communities of color.¹⁶⁷

159 Minority Voting Rights Access at 183, citing cases; See also Tex. Democratic Party v. Abbott, 2020 WL 3478784, at *1 (U.S. Jun. 26, 2020), https://www.supremecourt.gov/opinions/19pdf/19a1055_32q3.pdf. 160 Tex. Democratic Party

Abbott, 961 F.3d 389 (5th Cir. 2020); Tex. Democratic Party v. Abbott, 2020 WL 3478784, at *1 (U.S. June 26, 2020), https://www.supremecourt.gov/opinions/19pdf/19a1055_32q3.pdf; See also Republican National Committee v. Democratic National Committee, 589 U.S. ___ (2020), https://www.supremecourt.gov/opinions/19pdf/19a1016_o759.pdf, at 4 (“The District Court on its own ordered yet an additional extension, which would allow voters to mail their ballots after election day, which is extraordinary relief and would fundamentally alter the nature of the election by allowing voting for six additional days after the election.”) 161 In the Texas case, Justice Sotomayor commented that: “This application raises weighty but seemingly novel questions regarding the Twenty-Sixth Amendment. I do not disagree with the decision to refrain from addressing them for the first time here, in the context of an emergency application to vacate a stay of an injunction. But I hope that the Court of Appeals will consider the merits of the legal issues in this case well in advance of the November election.” Tex. Democratic Party v. Abbott, 961 F.3d 389 (5th Cir. 2020); Tex. Democratic Party v. Abbott, 2020 WL 3478784, at *1 (U.S. June 26, 2020), https://www.supremecourt.gov/opinions/19pdf/19a1055_32q3.pdf. 162 See Levitt Statement at 15; Hasen Submission at 26-30. Professor Hasen argues that the application of the Supreme Court’s precedent blocking changes too close to an election cavalierly ignores the plight of African-American voters and “even if accepted during ordinary times—should be suspended when an emergency not of the parties’ own making [COVID- 19] causes a court to issue a last minute election order that prevents voter disenfranchisement.” Hasen Submission at 29-30. 163 Complaint, Chambers v. State of North Carolina, No. ____ (Sup. Ct. N.C. July 10, 2020) at ¶¶ 60 (modification to send trained election workers into health care facilities) 63 (reducing witness requirement to one rather than two witnesses required “only for 2020”), and 64 (“even under the temporary regime [with relaxed requirements for 2020], state law “retains a prohibition against using as a witness ‘an owner, manager, director, employee of the hospital, clinic, nursing home, or rest home in which the voter or patient is a resident.’” N.C. Gen. Stat. § 163-226.3(4). Even under the temporary regime, a voter hospitalized with COVID-19 cannot use a care-provider or facility personnel as witness, and therefore may still have to cause someone to visit to witness their ballot.”) 164 Complaint, Chambers v. State of North Carolina, No. ____ (Sup. Ct. N.C. July 10, 2020) at ¶¶ 3, 4 and 44 (health disparities for Black and Latino communities nationally, and in North Carolina). 165 Complaint, Chambers v. State of North Carolina, No. ____ (Sup. Ct. N.C. July 10, 2020) at ¶ 44. 166 Complaint, Chambers v. State of North Carolina, No. ____ (Sup. Ct. N.C. July 10, 2020) at ¶ 44, quoting Governor Roy Cooper, Exec. Order 143 (June 4, 2020), available at <https://files.nc.gov/governor/documents/files/EO143-Addressing-the-Disproportionate-Impact-of-COVID-19-on-Communities-of-Color.pdf>. 167 Id. at 107-8.

https://www.supremecourt.gov/opinions/19pdf/19a1055_32q3.pdf
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https://www.supremecourt.gov/opinions/19pdf/19a1016_o759.pdf
https://www.supremecourt.gov/opinions/19pdf/19a1055_32q3.pdf

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In South Carolina, a federal court took into account racial disparities similar to those in Alabama, 168 considering that “[r]acial minority groups represent at least 54% of COVID-19 deaths statewide,” 169 and “33% of hospitalized patients were black compared to 18% in the community.” 170 On May 25, the court preliminarily enjoined, for the upcoming primary, South Carolina’s requirement that absentee ballots be notarized. 171 In Virginia, minority voters and voters with disabilities brought suit and won a consent decree eliminating the witness requirement for absentee ballots. 172 Relief was sought from similar requirements in Louisiana, along with a rule that citizens who use a mark because they are unable to sign their name must have the signatures of two witnesses to apply for an absentee ballot in the first place, but that case was dismissed and as of this writing, Louisiana’s barriers stand. 173

Some voter fraud arguments have been lost at this stage. 174 For example, Alabama had argued that the witness and photo ID laws are effective at preventing voter fraud and “safeguarding voter confidence.” 175 Although the court found these to be legitimate interests, it also found that “Alabama has prosecuted a total of only sixteen people for absentee-ballot voter fraud since the year 2000...That suggests that Alabama has not found itself in recent years to have a significant absentee-ballot fraud problem.” 176

168 See Findings of Fact, Conclusions of Law, and Order and Opinion Granting in Part Motion for Preliminary Injunction, Thomas v. Andino, No. 3:20-cv-01552-JMC (D. S.C., May 25, 2020) at 7. https://www.aclu.org/sites/default/files/field_document/order_-_south_carolina_pi_granted.pdf. (“The effects of COVID-19 on the health of racial and ethnic minority groups is still emerging; however, current data suggests a disproportionate burden of illness and death among racial and ethnic minority groups.” CDC Coronavirus Disease 2019 (COVID-19), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> (last visited May 24, 2020)) (“Compared to whites, black Americans experience higher death rates, and higher prevalence rates of chronic conditions.”); See also LDF Statement at 7; and See infra notes xx-xx [DOJ section] (discussing that both the Alabama and South Carolina cases included claims that requiring third-party witnesses or notarization of absentee ballots violated Section 201 of the Voting Rights Act, which prohibits practices requiring that third parties “vouch” for the eligibility of a voter. The DOJ intervened against these arguments, and the claims were lost at the preliminary injunction stage). 169 Id. at 7; and See Id. at 24 (pertinent Findings of Fact). 170 Id. at 13; and See Id. at 24 (pertinent Findings of Fact). 171 Findings of Fact, Conclusions of Law, and Order and Opinion Granting in Part Motion for Preliminary Injunction, Thomas v. Andino, No. 3:20-cv-01552-JMC (D. S.C., May 25, 2020) at 39-40. https://www.aclu.org/sites/default/files/field_document/order_-_south_carolina_pi_granted.pdf. 172 A federal court reviewed the terms and stated that: “In ordinary times, Virginia’s witness signature requirement [for absentee ballots] may not be a significant burden on the right to vote. But these are not ordinary times. . . . Notwithstanding the proffered steps which could be taken to mitigate the risks to health in having somebody witness one’s absentee ballot, many would be dissuaded from exercising their vote both on account of the remaining health risks and required steps to mitigate them—again, especially those who are elderly, immunocompromised, or otherwise at grave risk from the virus.” League of Women Voters of Va. v. Va. State Bd. of Elections, No. 6:20-CV-00024, 2020 WL 2158249 (W.D. Va. May 5, 2020), at *8. 173 LDF Statement at 7-8, citing Complaint, Power Coal. For Equity and Justice v. Edwards, No. 20-283 (N.C. La. May 7, 2020), https://www.naacpldf.org/wp-content/uploads/FILED-COMPLAINT_Power-Coalition-v-Edwards-20-cv-00283_20200507.pdf; See also supra note 35 (citing and describing Louisiana law). 174 See, e.g., League of Women Voters of Va. v. Va. State Bd. of Elections, No. 6:20-CV-00024, 2020 WL 2158249 (W.D. Va. May 5, 2020), at *9 (noting lack of persuasive evidence that the witness requirement prevented an appreciable amount of voter fraud). 175 Id. at 3. 176 Peoples’ First PI at 19, citing a Heritage Foundation study.

https://www.aclu.org/sites/default/files/field_document/order_-_south_carolina_pi_granted.pdf
<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>
https://www.aclu.org/sites/default/files/field_document/order_-_south_carolina_pi_granted.pdf
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Moreover, other election law provisions are effective at preventing fraud and securing voter confidence, 177 and “[t]herefore, because the plaintiffs have shown that the challenged laws will likely dissuade some citizens from voting and “even one disenfranchised voter... is too many,” “the burdens imposed by the challenged election laws on voters at high risk of severe complications or death from COVID-19 are not justified by the state’s interest in enforcing these laws [witness and photo ID rules for absentee voting].” 178 Similarly, in South Carolina, the argument that witness requirements are needed to protect against fraud was undermined by the fact that Defendants had only provided one remotely relevant instance from the 1980s, 179 and when the Director of the State Election Commission Thomas Andino told the court that:

Absentee voting also requires voters to have another person witness their signature when returning their ballot. While election officials check the voter’s signature, the witness signature offers no benefit to election officials as they have no ability to verify the witness signature. Removing the requirement for a witness signature would remove a barrier many voters would likely encounter while in self-isolation. 180

Impacts of Deadlines Strict absentee ballot deadlines are another potential hurdle this year. According to National Council of State Legislatures, only 15 states (AK, CA, FL, IL, IA, KS, MD, NJ, ND, NY, OH, TX, UT, WA and WV) and the District of Columbia accept absentee ballots that are postmarked before but arrive after Election Day. 181 In 35 states, absentee ballots must be received by Election Day or they will not be counted. 182 Data from primaries in states with Election Day deadlines indicate that as of July 13, at least 65,000 absentee ballots had been rejected (not counted) due to arriving late. 183 Charles Stewart commented that, “Those who use mail-in voting for the first time — especially young, Black and Latino

177 Id. at 3 (reasoning that Alabama’s existing laws protecting against voter fraud include requiring that all absentee voters provide a drivers’ license number or the last four digits of their social security number and to submit an affidavit under penalty of perjury verifying their identity,” along with exemptions to the photo ID requirement for voters over 65 and voters with infirmities that would prevent them from going to the polls, and permitting them to vote absentee without providing a copy of their photo ID). 178 Id. at 4, quoting Dem. Exec. Cte. Of Fla. v. Lee, 915 F. 3d 1312, 1321 (11th Cir. 2019); Order Granting Stay, upheld on appeal, Merrill v. People First, 591 U.S. ____ (S. Ct. July 2, 2020), https://www.supremecourt.gov/orders/courtorders/070220zr_n7io.pdf. 179 Id. at 39 (“Here, Defendants have not offered any evidence of voter fraud in South Carolina 21 other than SCEC’s fleeting mention, during the May 15, 2020 hearing, of a voter-buying scandal from the 1980s.”) 180 Id. at 38 (emphasis of the court). 181 Nat’l Council of State Legislatures, Voting Outside the Polling Place, June 16, 2020, Table 1: Receipt and Postmark Deadlines for Absentee Ballots, citing and describing relevant state statutes. 182 Nat’l Council of State Legislatures, Voting Outside the Polling Place, June 16, 2020, Table 1: Receipt and Postmark Deadlines for Absentee Ballots, citing and describing relevant state statutes. 183 See Pam Fessler & Elena Moore, Signed, Sealed, Undelivered: Thousands of Absentee Ballots Rejected for Tardiness, NATIONAL PUBLIC RADIO, Jul. 13, 2020, <https://www.npr.org/2020/07/13/869751095/signed-sealed-undelivered-thousands-of-mail-in-ballots-rejected-for-tardiness> (Rejection rates for absentee ballots were reportedly as follows: AR (3.02%), AZ (0.85%), GA (0.74%), MO (0.65%), MI (0.53%), MN (2.03%), MS (0.16%), NE (0.23%), NH (2.26%), OK (3.01%), PA (1.07%), RI (2.65%), SC (0.39%), SD (0.53%), VA (5.63%), VT (1.00%) and WI (0.22%) (Wisconsin’s deadline was extended for 6 days)).

https://www.supremecourt.gov/orders/courtorders/070220zr_n7io.pdf
<https://www.npr.org/2020/07/13/869751095/signed-sealed-undelivered-thousands-of-mail-in-ballots-rejected-for-tardiness>
<https://www.npr.org/2020/07/13/869751095/signed-sealed-undelivered-thousands-of-mail-in-ballots-rejected-for-tardiness>

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voters — are more likely to have their ballots rejected because of errors.” 184 Leigh Chapman stated that strict deadlines were exacerbated by election officials failing to send thousands of voters’ absentee ballot materials in a timely manner in several states, and a federal court found problems due to insufficient post office services in New York. 185 Justin Levitt submitted that states delivered some ballots too late for voters to meet deadlines “in a disheartening array of jurisdictions during the 2020 primaries—the state’s broken promise can in practice be entirely disenfranchising.” 186 Brookings Institute reported that jurisdictions’ sending mail ballots late caused more voters to have to go to the polls, in turn causing long lines in several states. 187

A state court complaint in Michigan alleges that the state’s Election Day deadline rule is discriminatory. 188 The complaint alleges that “[n]early 1.6 million Michigan citizens, many of them in rural areas, poor, and/or racial minorities, have no broadband Internet access.” 189 Also, the digital divide allegedly leaves minority voters more dependent on “the costs and vicissitudes of regular mail to exercise their state constitutional right to vote an absentee ballot” 190 during five stages of voting an absentee ballot, three of which require the voter to pay postage, 191 and 1.75% of absentee ballots were rejected for the May 5, 2020 election because they arrived past the deadline. 192 At the time of this writing, this case is still pending.

184 Ibid.; See also, e.g., David Pitt, Latino Groups Sue to Stop New Absentee Ballot Procedure Law, ASSOCIATED PRESS NEWS, Jul. 14, 2020, <https://apnews.com/c77a40576e500dd4178cbb1451d8ce6d> (“Iowa has 130,000 Latino, Black and Asian voters among the more than 2 million registered voters, said Joe Henry, LULAC’s Iowa political director. While the [new state] law could make it more difficult to get absentee ballots from all voters, he noted that it’s even harder for those voting for the first time or not as familiar with the absentee balloting process and filling out the request forms.”); 185 Chapman & Warren Statement, at 3-4 (discussing Ohio, Pennsylvania and Wisconsin); See also John Powers, Common Cause New York v. Brehm Is the Canary in the Coal Mine When It Comes to Voting by Mail in the Coronavirus Age, AMERICAN BAR ASSN. HUMAN RIGHTS MAGAZINE, June 26, 2020, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-in-2020/common-cause-new-york-v-brehm-is-the-canary-in-the-coal-mine-when-it-comes-to-voting-by-mail-in-the-coronavirus-age/ (discussing Georgia, North Carolina and New York). 186 Levitt Statement at 11, citing See, e.g., Marshall Cohen, States Failed to Get Absentee Ballots to Thousands of Voters in Recent Primary Elections, Signaling Problems for November, CNN: POLITICS, <https://www.cnn.com/2020/06/20/politics/absentee-voting-election-problems/index.html> [https://perma.cc/JUV4-8GV9] (last updated June 22, 2020). (160,000 ballots in Maryland, and 14,000 ballots in Wisconsin); Darrel Rowland & Rick Rouan, After a Problem-Plagued Primary, Ohio Leaders Disagree About November Election Plan, THE COLUMBUS DISPATCH (Apr. 28, 2020, 7:50 PM) (“thousands” of ballots in Ohio); <https://www.dispatch.com/news/20200428/after-problem-plagued-primary-ohio-leaders-disagree-about-november-election-plan/> [https://perma.cc/3VRL-4GDW]; Amy Gardner et al., Voting Debacle in Georgia Came After Months of Warnings Went Unaddressed, WASH. POST (June 10, 2020), (8,000 ballot applications in Fulton County, Georgia), https://www.washingtonpost.com/politics/voting-debacle-in-georgia-came-after-months-of-warnings-went-unaddressed/2020/06/10/1ab97ade-ab27-11ea-94d2-d7bc43b26bf9_story.html [https://perma.cc/QKJ2-3BKQ?type=image]. 187 Elaine Kamarck, Youssef Ibraek and Chris Stewart, Are American Elections Pandemic-Proof? A State-by-State Scorecard, BROOKINGS INSTITUTE, updated Jul. 15, 2020, <https://www.brookings.edu/blog/fixgov/2020/07/14/are-american-elections-pandemic-proof-a-state-by-state-scorecard/>. 188 Complaint for Mandamus at 2, League of Women Voters of Mich. v. Benson (Mich. Ct. App. May 22, 2020), https://moritzlaw.osu.edu/electionlaw/litigation/documents/LWVOvBenson_1.pdf. 189 Id. at ¶ 29. 190 Id. at ¶ 30. 191 Id. at ¶ 31 (Although some county clerks pay for postage, the practice is inconsistent. “If a voter and clerk both use mail throughout the absentee ballot process, there are at least five times where mail receiving and delivery occur: (1) when the voter requests an application from the clerk by mail; (2) when the clerk mails an application to the voter; (3) when the voter mails the application back to clerk; (4) when the clerk mails a blank absentee ballot to the voter; and (5) when the voter mails the completed ballot back to the clerk. The voter must provide the postage for steps 1, 3, and 5.”) 192 Id. at ¶ 42.

<https://apnews.com/c77a40576e500dd4178cbb1451d8ce6d>
https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-in-2020/common-cause-new-york-v-brehm-is-the-canary-in-the-coal-mine-when-it-comes-to-voting-by-mail-in-the-coronavirus-age/
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<https://www.cnn.com/2020/06/20/politics/absentee-voting-election-problems/index.html>
<https://perma.cc/JUV4-8GV9>
<https://www.dispatch.com/news/20200428/after-problem-plagued-primary-ohio-leaders-disagree-about-november-election-plan/>
<https://www.dispatch.com/news/20200428/after-problem-plagued-primary-ohio-leaders-disagree-about-november-election-plan/>
<https://perma.cc/3VRL-4GDW>
https://www.washingtonpost.com/politics/voting-debacle-in-georgia-came-after-months-of-warnings-went-unaddressed/2020/06/10/1ab97ade-ab27-11ea-94d2-d7bc43b26bf9_story.html
https://www.washingtonpost.com/politics/voting-debacle-in-georgia-came-after-months-of-warnings-went-unaddressed/2020/06/10/1ab97ade-ab27-11ea-94d2-d7bc43b26bf9_story.html
<https://perma.cc/QKJ2-3BKQ?type=image>
<https://www.brookings.edu/blog/fixgov/2020/07/14/are-american-elections-pandemic-proof-a-state-by-state-scorecard/>
<https://www.brookings.edu/blog/fixgov/2020/07/14/are-american-elections-pandemic-proof-a-state-by-state-scorecard/>
https://moritzlaw.osu.edu/electionlaw/litigation/documents/LWVOvBenson_1.pdf

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In Arizona, strict deadlines for absentee ballots were fully alleviated by other measures such as increased voter outreach about absentee voting in minority languages, along with expanded mobile and early voting opportunities. In Arizona, nearly 80 percent of voters have already been voting by mail, and the state's deadline for absentee ballots to be received by 7:00 p.m. on Election Day was challenged by Plaintiffs who alleged that it "disproportionately affected Arizona's Hispanic and Latino, Native American, and rural voters, and had disenfranchised more than 17,000 Arizona voters since 2008."193 Their First and Fourteenth Amendment claims were settled on June 18, but the settlement did not include an extension of the deadline.194 Instead, the Secretary agreed to increase voter outreach efforts about the deadline,195 conducted in English and "in the languages covered under Section 203 of the VRA [Apache, Navajo and Spanish],196 on the Secretary of State's website, social media pages, and on future mailings."197 The Secretary also agreed to allocate some Coronavirus Aid, Relief, and Economic Security Act funding to expand early voting opportunities in Latino and Native American and rural communities,198 to hire temporary workers to "staff mobile early voting units in communities with limited mail access, and who have language capabilities to match the communities in which they will be working."199

In Florida, Pennsylvania, South Carolina and Wisconsin, litigation for preliminary injunctions to extend absentee ballot deadlines on behalf of minority voters has been unsuccessful to date.200 In South Carolina, although it considered health disparities in COVID-19 a good reason to enjoin the notary requirement,201 the court denied a preliminary injunction regarding the state's Election Day deadline for absentee ballots, stating that it would impose only a minimal burden.202 These types of cases could develop further between now and November, but in the meantime, primaries have been held under challenging

193 Settlement Agr. at 1, *Voto Latino v. Hobbs*, No. 2:19-cv-05685 (D.Ariz. June 18, 2020). 194 *Id.*, passim. 195 *Id.* at 4. 196 *Id.* 197 *Id.* 198 For information on impacts of cuts to early voting (as a form of in-person voting) due to COVID-19, see *infra* notes 252-307. 199 Settlement Agr. at 1, *Voto Latino v. Hobbs*, No. 2:19-cv-05685 (D.Ariz. June 18, 2020), at 4. 200 See *infra* notes 202-05 (South Carolina and Wisconsin); See also Order Denying Renewed Motion for Temporary Restraining Order and Denying in Part Preliminary Injunction, *Williams v. DeSantis*, 1:20cv67-RH-GRJ (N.D. Fla. Mar. 18, 2020), <https://www.demos.org/sites/default/files/2020-03/Order%203%2018.pdf>, at 4; Order Dismissing Complaint with Prejudice, *Disability Rights Pennsylvania v. Boockvar*, No. 88-MM-2020 (S.Ct. Pa. May 15, 2020), https://moritzlaw.osu.edu/electionlaw/litigation/documents/Disability_Rights_Pennsylvania_v_Boockvar_4.pdf; Complaint, *Disability Rights Pennsylvania v. Boockvar*, No. 88-MM-2020 (S.Ct. Pa. April 27, 2020) https://moritzlaw.osu.edu/electionlaw/litigation/documents/Disability_Rights_Pennsylvania_v_Boockvar_1.pdf, ¶ 26 ("To be counted, the voter's absentee or mail-in ballot must be received by the county board of elections "on or before eight o'clock P.M. the day of the primary or election." 25 P.S. §§ 3146.6(c), 3146.8(g)(1)(ii), 3150.16(c)."); See *Trump v. Boockvar*, No. 2:20-cv-00966 (W.D. Pa. June 29, 2020), https://moritzlaw.osu.edu/electionlaw/litigation/documents/Trump_v_Boockvar_4.pdf, at ¶ 1 (on the eve of the election on June 2, Secretary of State permitted drop-off of absentee ballots at malls and other accessible places, by third-parties). 201 Findings of Fact, Conclusions of Law, and Order and Opinion Granting in Part Motion for Preliminary Injunction, *Thomas v. Andino*, No. 3:20-cv-01552-JMC (D. S.C., May 25, 2020), at 24. https://www.aclu.org/sites/default/files/field_document/order_-_south_carolina_pi_granted.pdf. 202 *Id.* at 46-49; See also, ACLU Statement at 5, citing Chad D. Cotti et al., *The Relationship Between In-Person Voting, Consolidated Polling Locations, and Absentee Voting on COVID-19: Evidence from the Wisconsin Primary at 1-2*, National Bureau of Economic Research (Revised June 2020), <https://www.nber.org/papers/w27187>.

<https://www.demos.org/sites/default/files/2020-03/Order%203%2018.pdf>
https://moritzlaw.osu.edu/electionlaw/litigation/documents/Disability_Rights_Pennsylvania_v_Boockvar_4.pdf
https://moritzlaw.osu.edu/electionlaw/litigation/documents/Disability_Rights_Pennsylvania_v_Boockvar_1.pdf
https://moritzlaw.osu.edu/electionlaw/litigation/documents/Trump_v_Boockvar_4.pdf
https://www.aclu.org/sites/default/files/field_document/order_-_south_carolina_pi_granted.pdf
<https://www.nber.org/papers/w27187>

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conditions for voters of color and allegedly "causing mass disenfranchisement."203 On April 6, the Supreme Court blocked a preliminary injunction that would have required Wisconsin to count absentee ballots postmarked after April 7, 2020.204 The day after the Supreme Court's decision, Wisconsin held its primary election in questionable conditions,205 and failed to count approximately 18% of absentee ballots.206 In June, voters filed another complaint detailing the issues that arose during the April primary election, with the hope of resolution before November.207 There are even more potential absentee ballot issues, as the Seventh Circuit overturned a ruling that would have permitted faxing or emailing ballots to citizens who were not at their home address,208 opining that: "Some travelers' potential inconvenience does not permit a court to override the state's judgment... Wisconsin wants to control errors... and to protect the secrecy of the ballot."209 The opinion considered voters unable to be mailed absentee ballots to be "road warriors who may be out of state, or leisure travelers who don't plan ahead,"210 without mentioning those who relocated due to COVID-19.211 Considering the totality of circumstances, including a photo ID requirement for both in-person and absentee voting, a post-primary voter survey revealing "an absentee ballot crisis," and Wisconsin Elections Commission data revealing that the percent of absentee ballots requested by but not returned by voters had quadrupled (with over 150,000 ballots not returned),212 along with the closing of polling places,213 Chapman believes that "Wisconsin exemplifies a truely

203 See Chapman & Warren Statement at 1. 204 Republican National Committee v. Democratic National Committee, 589 U.S. ___ (2020), https://www.supremecourt.gov/opinions/19pdf/19a1016_o759.pdf. 205 Memorandum Opinion, *Merrill v. People First of Alabama*, No. 2:20-cv-00619-AKK (N.D. Ala. June 15, 2020) at 2 (discussing the condition of the country as affected by COVID-19), *id.* at 8 (discussing Alabama's emergency regulations to adjust to COVID-19 conditions for its primary election). https://www.splcenter.org/sites/default/files/documents/055_-_memorandum_opinion.pdf. 206 See Scott Bauer, "Tammy Baldwin, Ron Johnson call for Postal Service to investigate undelivered absentee ballots," ASSOCIATED PRESS, Apr. 10, 2020, https://madison.com/wsj/news/local/govt-and-politics/elections/tammy-baldwin-ron-johnson-call-for-postal-service-to-investigate-undelivered-absentee-ballots/article_bc2e459f-7b1-51ac-b5be-ec846a1f9c20.html (of 1.3 million absentee ballots requested, an estimated 235,000 had not been returned)(235,000/1,300,000 = 18%). Also: "A state senator said the Wisconsin Elections Commission told him that the U.S. Postal Service discovered three bins of absentee ballots destined for Oshkosh and Appleton voters that weren't delivered." *Ibid.* 207 Opinion and Order, *Democratic National Committee v. Bostelmann*, No. 3:20-CV-00249-WMC (W.D. Wis., pending) at 19. 208 *Luft v. Evers*, Nos. 16-3003 & 16-3052 (7th Cir. Jun. 29, 2020) <https://electionlawblog.org/wp-content/uploads/FrankOWL-decision.pdf> at 18, reversing the lower court's holding, 198 F. Supp. 3d at 948, that W.D. Wis. Stat. § 8.87(3), violates the Constitution. 209 *Id.* 210 *Id.* (passim); Cf. D'Vera Cohn, *About One-Fifth of U.S. Adults Moved Due to COVID-19 or Know Someone Who Did*, PEW RESEARCH, July 6, 2020, <https://www.pewresearch.org/fact-tank/2020/07/06/about-a-fifth-of-u-s-adults-moved-due-to-covid-19-or-know-someone-who-did/>. 211 Daphne Chen, Catharina Felke, Elizabeth Mulvey and Stephen Stirling, "They should have done something": Broad failures fueled Wisconsin's absentee ballot crisis, investigation shows," PBS FRONTLINE News (Apr. 21, 2020)(data-based investigation by Milwaukee Journal Sentinel, Columbia University & PBS FRONTLINE); see also Wisconsin Elections Commission, <https://elections.wi.gov/node/6918>. The data also shows that various absentee ballots were "undeliverable" or "ineligible." *Ibid.* (Commission Staff Research). 213 See *infra* notes 264-69 (discussion of racial disparities in closing polling places in Wisconsin).

https://www.supremecourt.gov/opinions/19pdf/19a1016_o759.pdf
https://www.splcenter.org/sites/default/files/documents/055_-_memorandum_opinion.pdf
https://madison.com/wsj/news/local/govt-and-politics/elections/tammy-baldwin-ron-johnson-call-for-postal-service-to-investigate-undelivered-absentee-ballots/article_bc2e459f-7b1-51ac-b5be-ec846a1f9c20.html
https://madison.com/wsj/news/local/govt-and-politics/elections/tammy-baldwin-ron-johnson-call-for-postal-service-to-investigate-undelivered-absentee-ballots/article_bc2e459f-7b1-51ac-b5be-ec846a1f9c20.html
https://madison.com/wsj/news/local/govt-and-politics/elections/tammy-baldwin-ron-johnson-call-for-postal-service-to-investigate-undelivered-absentee-ballots/article_bc2e459f-7b1-51ac-b5be-ec846a1f9c20.html
<https://electionlawblog.org/wp-content/uploads/FrankOWL-decision.pdf>
<https://electionlawblog.org/wp-content/uploads/FrankOWL-decision.pdf>
<https://www.pewresearch.org/fact-tank/2020/07/06/about-a-fifth-of-u-s-adults-moved-due-to-covid-19-or-know-someone-who-did/>
<https://www.pewresearch.org/fact-tank/2020/07/06/about-a-fifth-of-u-s-adults-moved-due-to-covid-19-or-know-someone-who-did/>
<https://elections.wi.gov/node/6918>

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bankrupt elections system, one that may work for most whites but that consistently fails its Black communities."214

Rejections of Absentee Ballots; Signature-Matching Issues Another issue facing minority voters is potential rejection of their absentee ballots, due to discretionary interpretations of state law requirements to match the voter's signature on the absentee ballot (signed under penalty of perjury) with their signature on file.215 This is "[t]he most common method to verify that absentee ballots are coming from the intended voter."216 Ilya Shapiro advises that there should always be signature verification.217 Civil rights lawyers and the federal Help America Vote Act would advocate for "ensuring signature matching and cure procedures and instructions are clear, objective, reliable, accessible, and non-discriminatory."218 Absentee ballot signature-matching policies vary widely among states. While all states require signature matching, 16 states have specific legislation requiring that absentee voters receive notice and an opportunity to "cure" discrepancies.219 Others states lack standard policies, and even among states with cure provisions, there are racial disparities in rejection rates that are not tied to differences in voter behavior.220 These factors may be exacerbated during COVID-19 as election officials and voters alike grapple with how to process the dramatically increasing need to vote

214 Chapman & Warren Statement at 2, citing Daphne Chen, Catharina Felke, Elizabeth Mulvey and Stephen Stirling, "They should have done something": Broad failures fueled Wisconsin's absentee ballot crisis, investigation shows," WISCONSIN JOURNAL SENTINEL (Apr. 21, 2020), <https://www.jsonline.com/story/news/2020/04/21/wisconsin-absentee-ballot-crisis-fueled-multiple-failures/515682500/>; and summarizing that: "The vast majority of people who responded to the in-state investigation, moreover, stated that "they requested absentee ballots at least two weeks in advance of election day but did not receive them on time." One county official called the primary "chaos," another said there was "no way humanly possible" to keep up with the flood of absentee ballot requests. And a spokesperson for the Wisconsin Elections Commission acknowledged faults with the state's ballot tracking system, postal delivery, and mailing vendor errors. Yet state and county officials had known since February that the country was in the middle of a pandemic – and they failed to prepare ahead of time." 215 See Nat'l. Conf. of State Legislatures, *Verification of Absentee Ballots, Signature Matching*, <https://www.ncsl.org/research/elections-and-campaigns/verification-of-absentee-ballots.aspx> 216 See Nat'l. Conf. of State Legislatures, *Verification of Absentee Ballots, Signature Matching*, Table 1: *Statutes Addressing Signature Discrepancies (Cure Provisions)* <https://www.ncsl.org/research/elections-and-campaigns/verification-of-absentee-ballots.aspx> (describing and citing statutes with cure provisions in: CA, CO, FL, GA, IL, IA, MA, MI, MN, MT, NV, OH, OR, UT, WA and WI). 217 *Ibid.*, p. 5; but see *infra* notes 228-47 (discussing that strict signature matching requirements may disparately impact minority voters). 218 Second Amended Complaint, *Williams v. DeSantis*, No. 1:20cv67-RH-GRJ (N.D. Fla. May 8, 2020), <https://www.demos.org/sites/default/files/2020-06/Dream%20Defenders%20Plaintiffs%20Second%20Amended%20Complaint.pdf>, at pp. 78-9 (Prayer for Relief ¶ c). See also 52 U.S.C. § 21081 (a)(6) ("Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.") and § 21081 (b) (definition of components of "voting systems"). 219 Nat'l. Conf. of State Legislatures, *Verification of Absentee Ballots, Signature Matching*, <https://www.ncsl.org/research/elections-and-campaigns/verification-of-absentee-ballots.aspx> (220 See *infra* notes 225-47; see also, Fudge Statement at 16 ("It is important to provide voters with an opportunity to cure any perceived mistakes or discrepancies with their signatures on mail-in ballots. Many voters will be casting ballots by mail for the first time and may be unfamiliar with some of the processes, including the necessity of signatures where required").

<https://www.jsonline.com/story/news/2020/04/21/wisconsin-absentee-ballot-crisis-fueled-multiple-failures/515682500/>
<https://www.jsonline.com/story/news/2020/04/21/wisconsin-absentee-ballot-crisis-fueled-multiple-failures/515682500/>
<https://www.ncsl.org/research/elections-and-campaigns/verification-of-absentee-ballots.aspx>
<https://www.ncsl.org/research/elections-and-campaigns/verification-of-absentee-ballots.aspx>
<https://www.ncsl.org/research/elections-and-campaigns/verification-of-absentee-ballots.aspx>
<https://www.demos.org/sites/default/files/2020-06/Dream%20Defenders%20Plaintiffs%20Second%20Amended%20Complaint.pdf>
<https://www.demos.org/sites/default/files/2020-06/Dream%20Defenders%20Plaintiffs%20Second%20Amended%20Complaint.pdf>
<https://www.ncsl.org/research/elections-and-campaigns/verification-of-absentee-ballots.aspx>

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absentee.221 The U.S. Election Assistance Commission (EAC) issued a guidance document222 advising election officials that "[t]he quality of the signature images in your voter registration database will play a major role in the [n]umber of ballots that are accepted or rejected."223 "Some reasons for rejection" include: no image on file or poor-quality images (including from electronic pads); records from a paper registration system were never scanned in; signatures not being updated in over 10 years; or that the voter registered online.224 EAC also advised contacting voters without a signature on file to supply one, or "follow Hawaii's lead by sending every voter a signature capture card."225 EAC estimated that 430,000 mail ballots in the 2018 General Election were uncounted, including over 100,000 that had mismatched or missing signatures on return envelopes.226 Researchers argue that some voters may be at an increased risk to have their ballots rejected, especially in the time of the pandemic.227 The developing evidence is troubling:

Evidence from Florida's 2020 primary reveals that minority mail ballots — in both the Democratic and Republican primaries — were rejected at higher rates than those cast by Anglo voters, and with African-American voters in both parties' primaries seeing ballots rejected at more than twice the rate of their Anglo counterparts. The fact of a persistent racial and ethnic disparity in the counting of mail ballots is consistent with findings in other states and in earlier years.228

221 See *supra* notes 19-32, 71 and 84 (increasing need to vote absentee, particularly for voters of color). 222 U.S. Election Assistance Commission, *Voting by Mail/Absentee Voting, COVID-19 Resource Links, GCC and SCC Resources*, <https://www.eac.gov/election-officials/voting-by-mail-absentee-voting> (last visited July 10, 2020)("This series of documents was created as part of the Cybersecurity and Infrastructure Security Agency (CISA) Elections Infrastructure Government Coordinating Council (GCC) and Sector Coordinating Council's (SCC) Joint COVID Working Group. These documents provide guidance for state, local, tribal, and territorial election officials on how to administer and secure election infrastructure in light of the COVID-19 epidemic.") 223 U.S. Election Assistance Commission, *Voting by Mail/Absentee Voting, COVID-19 Resource Links, GCC and SCC Resources, Signature Verification and Cure Process*, Are there things you should consider doing prior to the election to ensure success? <https://www.eac.gov/election-officials/voting-by-mail-absentee-voting> (last visited July 10, 2020). 224 *Ibid.* 225 *Ibid.* 226 U.S. Election Assistance Commission, "Election Administration and Voting Survey: 2018 Comprehensive Report," Jan. 6, 2018, https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf. 227 Ann Baringer, Michael Herron, and Daniel Smith, "Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of Coronavirus," *Election Science*, April 25, 2020, https://electionscience.clas.ufl.edu/files/2020/04/Baringer_Herron_Smith_VBM_FL.pdf. 228 Levitt Statement at 12, citing See Diana Cao, *Healthy Elections Project, Florida Election Analysis 21* (June 24, 2020), <https://healthyelections.org/sites/default/files/2020-06/Florida%20Election%20Memo.pdf> [https://perma.cc/WG4L-UEZ7], at 17, and stating "[i]t should be noted that these denominators are comparatively small: 1.3% of mail ballots cast in the primaries were rejected." *Id.* at 15; See, e.g., Enrijeta Shino et al., *Voting by Mail in a VENMO World: Assessing Rejected Absentee Ballots in Georgia* 16, 24-25, 27-28 (May 19, 2020) (2018 Georgia general election), https://electionscience.clas.ufl.edu/files/2020/05/GA_Venmo.pdf [https://perma.cc/AA2G-FYV4]; Anna Baringer et al., *Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus* 19-20 (April 25, 2020) (2018 Florida general election), https://electionscience.clas.ufl.edu/files/2020/04/Baringer_Herron_Smith_VBM_FL.pdf [https://perma.cc/A87B-THGL]; Daniel A. Smith, *Vote-By-Mail Ballots Cast in Florida* 3, 5, 11-13 (Sept. 19, 2018) (2012 and 2016 Florida general election), https://www.aclufl.org/sites/default/files/aclufl_-_vote_by_mail_-_report.pdf [https://perma.cc/Y2Z6-AXV7]; Joanna Lee & Deanne Kitamura, *Asian Americans Face Higher than Average Vote-By-Mail Ballot Rejection Rates in California*, *Asian Am. Advancing Justice* (Aug. 2017) (2016 general election in several California counties), <https://www.advancingjustice-la.org/sites/default/files/issuebrief-vbm-FINAL-1.pdf> [https://perma.cc/D7JT-HSRD].

<https://www.eac.gov/election-officials/voting-by-mail-absentee-voting>
<https://www.eac.gov/election-officials/voting-by-mail-absentee-voting>

https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf
https://electionscience.clas.ufl.edu/files/2020/04/Baringer_Herron_Smith_VBM_FL.pdf
<https://healthyelections.org/sites/default/files/2020-06/Florida%20Election%20Memo.pdf>
<https://perma.cc/WG4L-UEZ7>
https://electionscience.clas.ufl.edu/files/2020/05/GA_Venmo.pdf
<https://perma.cc/AA2G-FYY4>
https://electionscience.clas.ufl.edu/files/2020/04/Baringer_Herron_Smith_VBM_FL.pdf
<https://perma.cc/A87B-THGL>
https://www.aclufl.org/sites/default/files/aclufl_-_vote_by_mail_-_report.pdf
<https://perma.cc/Y2Z6-AXV7>
<https://www.advancingjustice-la.org/sites/default/files/issuebrief-vbm-FINAL-1.pdf>
<https://www.advancingjustice-la.org/sites/default/files/issuebrief-vbm-FINAL-1.pdf>
<https://perma.cc/D7JT-HSRD>

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A judicial order prior to the 2016 General Election stated that Florida's statutes regarding the rejection of mail ballots was "a crazy quilt of conflicting and diverging procedures" with the "canvassing boards across the state employing a litany of procedures when comparing signatures."229 Data consistently showed that minority voters experienced higher absentee ballot rejection rates,230 and in 2018, Black and Latino voters were over two times more likely to have their mail-in ballots rejected,231 while young voters and voters who needed assistance also had disproportionately high rejection rates.232 As of 2019, Florida state law now mandates that all counties provide notice of and opportunity to cure a mismatched signature so that their vote may be counted,233although the voter must sign a "cure affidavit" and send a copy of an acceptable ID,234and it remains to be seen whether disparate rejection rates can be resolved this year.235

Georgia has also had racial disparities in absentee ballot rejection rates.236 Georgia requires that a voter fill out the absentee ballot and information on the envelope, which includes an oath, the name of the elector, and other "required identifying information" including the voter's address, birth year, and a voter's signature or mark.237 If any of information is missing, incorrect, or the signature does not match what is on file or is not considered "valid" by local election officials, it may be rejected.238 Enrijeta Shino, Mara Suttman-Lea, Daniel Smith found that "[i]n Georgia, there is little guidance in election code as to what constitutes a 'valid' signature, and it is largely left up to the determination of the official counting the ballot,"239 and the process lends itself to "potentially subjective evaluations."240 Georgia's 2018 General Election data showed that Black and Latino voters' absentee ballots were rejected at higher rates across

229 Per Judge Walker: "What [Florida] vote-by-mail voters likely do not know, however, is that their vote may not be counted. In Florida, if a voter's signature on a vote-by-mail ballot does not match the signature on file with the supervisor of elections office then the ballot is declared 'illegal' and their vote is not counted. Moreover, that voter only receives notice that their vote was not counted after the election has come and gone and, further, is provided no opportunity to cure that defect. On the other hand, if a vote-by-mail voter doesn't bother to sign the ballot in the first place, that voter is immediately notified and provided an opportunity to cure." Order Granting Preliminary Injunction, Florida Democratic Party v. Detzner, 4:16-cv-00607 (N.D. Fla. Oct. 16, 2016), <https://moritzlaw.osu.edu/electionlaw/litigation/documents/FDP-OrderGrantingPreliminaryInjunction101716.pdf> at 3. 230 Enrijeta Shino, Mara Suttman-Lea, Daniel Smith, "Voting by Mail in a VENMO World: Assessing Rejected Absentee Ballots in Georgia," Election Science, May 19, 2020, https://electionscience.clas.ufl.edu/files/2020/05/GA_Venmo.pdf. 231 Ibid. at 19-20. 232 Ibid. at 39. 233 See Preliminary Injunction, Democratic Executive Committee of Florida v. Ertel, No. 4:18-cv-00520-RH-MJF (July 29, 2019) at 12. https://moritzlaw.osu.edu/electionlaw/litigation/documents/Democratic_Executive_CommitteeOrder.pdf, Democratic Executive Committee of Florida v. Ertel, No. 4:18-cv-00520-RH-MJF (11th Cir. July 29, 2019) at 2. 234 101 Fla. Stat. § 101.68(c)(2)(a) & (4)(d), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0101/Sections/0101.68.html. 235 See supra note 229 (discussing persistent racial disparities in 2020 primary data). 236 See Amended Complaint, Democratic Party of Georgia v. Raffensperger, No. 1:19-cv-5028-WMR (N.D. Ga. December 27, 2019), <https://www.scribd.com/document/441519041/Georgia-Democratic-Party-v-Raffensperger-Amended-Complaint>. 237 See GA Code § 21-2-384 (c)(1). 238 See GA Code § 21-2-386 (a)(1)(F). 239 Enrijeta Shino, Mara Suttman-Lea, Daniel Smith, "Voting by Mail in a VENMO World: Assessing Rejected Absentee Ballots in Georgia," Election Science, May 19, 2020, https://electionscience.clas.ufl.edu/files/2020/05/GA_Venmo.pdf, at 7. 240 Enrijeta Shino, Mara Suttman-Lea, Daniel Smith, "Voting by Mail in a VENMO World: Assessing Rejected Absentee Ballots in Georgia," Election Science, May 19, 2020, https://electionscience.clas.ufl.edu/files/2020/05/GA_Venmo.pdf, at 18.

<https://moritzlaw.osu.edu/electionlaw/litigation/documents/FDP-OrderGrantingPreliminaryInjunction101716.pdf>
<https://moritzlaw.osu.edu/electionlaw/litigation/documents/FDP-OrderGrantingPreliminaryInjunction101716.pdf>
https://electionscience.clas.ufl.edu/files/2020/05/GA_Venmo.pdf
https://moritzlaw.osu.edu/electionlaw/litigation/documents/Democratic_Executive_CommitteeOrder.pdf
http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0101/Sections/0101.68.html
<https://www.scribd.com/document/441519041/Georgia-Democratic-Party-v-Raffensperger-Amended-Complaint>
https://electionscience.clas.ufl.edu/files/2020/05/GA_Venmo.pdf
https://electionscience.clas.ufl.edu/files/2020/05/GA_Venmo.pdf

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several counties.241 State data showed rejection rates for reasons other than missing the deadlines of 0.67% for Caucasian voters, but this figure more than double for voters of color (3.53% for Asian, 2.05% for Latinos, 1.82% for Black voters).242 Researchers found these racial disparities may be due to these voters being less informed,243 but found they are also due to local officials being more likely to scrutinize these voters' return envelopes.244 Although rejection rates are not yet published, early data indicates that if Georgia's 2018 racial disparities in rejection rates continue, they may be impactful.245 The state's rate of absentee voting was less than 7% in previous years and is predicted to be closer to 75% this year.246

Minority Voters and In-Person Voting in 2020 The Commission has previously researched issues of discrimination due to reductions in access polling places, including cuts to early voting, leading to long lines and other complications extensively, and this research is now updated. In 2018, the Commission found that data has consistently shown that Black voters strongly prefer to vote at the polls, a tradition that has emerged out of the hard-fought historical battles for the right to vote, high interest in voting, and wanting to ensure against voter suppression by being physically present at the polls and receive assistance if needed.247 Latino and Asian American voters have also preferred voting at the polls,248 and insufficient polling locations have had discriminatory results for Native American voters.249 For this report, the Commission received extensive written testimony about the strong preference of minority voters for in-person voting.250 The current research indicates that related civil rights issues have become exacerbated during the time of coronavirus.

Dale Ho discussed "significant disruptions to the traditional model of in-person voting."251 Many polling places are in schools, churches, and senior centers that are reluctant to open due to high risk of transmission of COVID-19, and because many poll workers—who are temporary workers with an

241 Enrijeta Shino, Mara Suttman-Lea, Daniel Smith, "Voting by Mail in a VENMO World: Assessing Rejected Absentee Ballots in Georgia," Election Science, May 19, 2020 at 11-12 (Black voters in Polk County had their ballots rejected more than twice that of white voters in the county (16 percent and 8 percent, respectively). Similarly, Latino voters in Putnam and Thomas counties had a rejection rate of nearly 20 percent for absentee ballots, which was consistent across several other Georgia counties for that year's election). Voters of color had their absentee ballots rejected more often, regardless of whether their ballots were returned on time or not. Ibid at 15. 242 Ibid. at Table 1. 243 Ibid at 16-17. 244 Ibid at 18. 245 See Georgia Secretary of State, Elections Division, Voter Absentee Files, <https://elections.sos.ga.gov/Elections/voterabsenteefile.do>; 246 Ibid. 247 Minority Voting Rights Access at 182; see, Fudge Statement at 4 (during 2020 primary elections "Black voters that disproportionately vote in-person and are disproportionately impacted by COVID-19 suffered from inadequate access to in-person voting"). 248 See Minority Voting Rights Access at 189. 249 Minority Voting Rights Access at 1094 ("In 2010, a federal district court in North Dakota issued a preliminary injunction enjoining closure of polling places on the Spirit Lake Tribe's reservation in North Dakota.") and 1095 (after closure of polling places on tribal lands, Native American voters would not be able to find transportation to more distant polling places). 250 Levitt Statement at 6; Chapman Statement at 7. 251 ACLU Statement at 3.

<https://elections.sos.ga.gov/Elections/voterabsenteefile.do>

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average age of 60—are unable or unwilling to risk their health in order to serve this year.252 Charles Stewart told the Missouri SAC that "great pressures on in-person voting that voters put not only at a time risk, but at a health risk... and those risks fall disproportionately on communities of color and under-served communities... We are discovering around the country, that consolidation of polling places and places like Wisconsin, are coming at the expense of the convenience and proximity of voting to communities of color."253 According to Leah Aden, Black voters use early voting at much higher rates,254 and "[t]here are many explanations for why Black voters demonstrably vote in-person, including a desire to follow family and community traditions of voting, and show children the experience of voting."255 There are reasons that Latino and Asian American voters may also prefer to vote in person, as many are first-time voters and may need assistance from poll workers.256 Aden add that disparate impacts have been difficult to prevent in court under the current federal legal regime: "Since Shelby, states in the American South [where many Black people live] have also closed 1,200 polling places, which burdens voters who lack transportation access, for example, and has led to many voters having to wait in longer lines to cast their ballots."257 Yet this year so far (as of July 1, 2020):

Far too many states have yet to make the reasonable and safe accommodations that the ongoing pandemic requires. In general, many states have left restrictions in place related to which voters are eligible to use absentee voting (or vote-by-mail) and require them to satisfy other onerous requirements related to absentee voting—rather than relax requirements. As a result, voters are forced to vote in-person and thereby risk contracting the coronavirus and potentially dying in order to exercise their fundamental right to vote. At the same time, polling place changes (e.g., closures and consolidations) have made in-person voting more onerous, leaving voters without notice of polling place changes and requiring voters to travel burdensome distances, in addition to contending

252 ACLU Statement at 3, citing U.S. Election Assistance Commission, White Paper: EAVS Deep Dive: Poll Workers and Polling Places (Nov. 15, 2017), <https://www.eac.gov/documents/2017/11/15/eavs-deep-dive-poll-workers-and-polling-places>; Fudge Statement at 5 ("In Georgia, there were reports of poll workers being trained on the job on election day because hundreds of Atlanta-area poll workers quit before the election due to fears of the coronavirus pandemic"). 253 Transcript, Missouri SAC Briefing, supra note 17, at 12. 254 LDF Statement at 5 (giving examples: "In the 2008 and 2012 elections, 70 percent of Black voters in North Carolina voted early; in Ohio in 2012, Black voters voted early at two times the rate of white voters."); See also Danielle Root, Danyelle Solomon, and Rebecca Cokley, "In Expanding Vote by Mail, States Must Maintain In-Person Voting Options During the Coronavirus Pandemic," Center for American Progress, April 20, 2020, <https://www.americanprogress.org/issues/democracy/news/2020/04/20/483438/expanding-vote-mail-states-must-maintain-person-voting-options-coronavirus-pandemic/> (in November 2018, only about 11% of Black voters chose to vote via absentee compared to 23.5% of White voters). 255 John Whitesides, Black voters don't trust mail ballots. That's a problem for Democrats, Reuters (May 29, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-election-insig/black-voters-dont-trust-mail-ballots-thats-a-problem-for-democrats-idUSKBN2351G0>; The California Voter Experience: Why African-American Voters Choose to Vote at the Polls or Vote-by-Mail, and How They Perceive Proposed Changes to California's Voting System, Cal. Civic Engagement Project (Sept. 15, 2016), <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/v57ffe66f7e0abb9f7b5f3e6/1476388465082/UCDavisCCEPVEBriefTwo.pdf>. 256 See supra notes 139-41 (regarding Latino voters); and Vattamala Statement at 4, 10. 257 LDF Statement at 3-4, citing Democracy Diverted: Polling Place Closures and the Right to Vote, The Leadership Conf. on Civil & Hum. Rights, <http://www.democracymdiverted.org> (last visited July 1, 2020); Andy Sullivan, Southern U.S. states have closed 1,200 polling places in recent years: rights group, Reuters (Sept. 10, 2019), <https://www.reuters.com/article/us-usa-election-locations/southern-us-states-have-closed-1200-polling-places-in-recent-years-rights-group-idUSKCN1VV09J>

<https://www.eac.gov/documents/2017/11/15/eavs-deep-dive-poll-workers-and-polling-places>
<https://www.americanprogress.org/issues/democracy/news/2020/04/20/483438/expanding-vote-mail-states-must-maintain-person-voting-options-coronavirus-pandemic/>
<https://www.americanprogress.org/issues/democracy/news/2020/04/20/483438/expanding-vote-mail-states-must-maintain-person-voting-options-coronavirus-pandemic/>
<https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/v57ffe66f7e0abb9f7b5f3e6/1476388465082/UCDavisCCEPVEBriefTwo.pdf>
<https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/v57ffe66f7e0abb9f7b5f3e6/1476388465082/UCDavisCCEPVEBriefTwo.pdf>
<http://www.democracymdiverted.org/>
<https://www.reuters.com/article/us-usa-election-locations/southern-us-states-have-closed-1200-polling-places-in-recent-years-rights-group-idUSKCN1VV09J>
<https://www.reuters.com/article/us-usa-election-locations/southern-us-states-have-closed-1200-polling-places-in-recent-years-rights-group-idUSKCN1VV09J>

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with the demands of social distancing to vote in-person. The experiences in Wisconsin, Georgia, and Kentucky have illuminated these challenges for the nation and world to see.258

Jerry Vattamala stated that volunteers have witnessed shortages of safe and adequate resources while monitoring recent primary elections in precincts with high numbers of Asian American voters in New York City, Philadelphia, and Malden, Massachusetts.259 Problems included delayed openings of poll sites, shortages of poll workers and interpreters, broken scanner machines, lack of enforcement of social distancing, and not providing masks or protective equipment to poll workers and voters.260 "Based on news reports and anecdotal data from AALDEF's partner community-based organizations, minority voters' interest in voting by absentee or mail ballots has increased due to the COVID-19 pandemic; however, many have encountered problems and may not have actually voted via absentee or mail ballot (including those who did not receive their ballots in time)."261 In New York City, AALDEF monitored the primary elections on June 23 and noticed that many voters who had applied for absentee ballots reported that they did not receive their ballots in time, so they were forced to vote in person.262

In Wisconsin, as the Supreme Court blocked relief, in Milwaukee (pop. ~60% Black and 30% Latino), officials had closed 175 locations, keeping only five in-person locations open for the April primary.263 The federal court had considered that numerous polling places had closed due to COVID-19 in Black and Latino precincts,264 and minority voters have relied heavily on same-day registration at the polls.265 Data from the April primary suggested that wards with higher Black and Latino residents had over 30% lower turnout.266 Researchers found that "polling place consolidation reduced overall turnout by about 8.5 points and reduced turnout among the Black population in the city by about 10.2 points," and "on the basis of these data... conversion to widespread absentee voting in the general election will result in

258 LDF Statement at 5, citing Danielle Root, Wisconsin Primary Shows Why States Must Prepare Their Elections for the Coronavirus, Ctr Am. Progress (Apr. 27, 2020), <https://www.americanprogress.org/issues/democracy/news/2020/04/27/484013/wisconsin-primary-shows-states-must-prepare-elections-coronavirus/>; Associated Press, "A complete meltdown: Long lines snarl voting in Georgia primary

coronavirus, L.A. TIMES (June 9, 2020), <https://www.latimes.com/world-nation/story/2020-06-09/georgia-primary-will-protest-energy-shift-voting-booth>; John Whitesides, Amid coronavirus, reduced voting sites in Kentucky, elsewhere a "recipe for disaster," REUTERS (June 23, 2020), <https://www.reuters.com/article/usa-election-vote/amid-coronavirus-reduced-voting-sites-in-kentucky-elsewhere-a-recipe-for-disaster-idUSL1N2D2Z2CK>. 259 Jerry Vattamala, Director, Asian American Legal Defense and Education Fund (hereinafter AALDEF), Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 1, 2020, at 7 (hereinafter Vattamala Statement), 260 *Ibid.* 261 *Ibid.* at 8. Reports also show that many jurisdictions seem ill-equipped to handle the increase in demand for absentee or mail ballots. For further information, see <https://www.nytimes.com/2020/06/10/us/politics/voting-by-mail-georgia.html>, 262 *Ibid.* at 9. 263 Chapman Statement at 3. 264 Order on Motion for Preliminary Injunction, 19-20, 22, https://moritzlaw.osu.edu/electionlaw/litigation/documents/DNC_v_Bost_170.pdf. 265 Order on Motion for Preliminary Injunction at 22-23. 266 Shruti Banerjee and Megan Gall, "Covid-19 Silenced Voters of Color in Wisconsin," Leadership Conference on Civil and Human Rights and Demos, May 14, 2020, <https://civilrights.org/blog/covid-19-silenced-voters-of-color-in-wisconsin/>.

<https://www.americanprogress.org/issues/democracy/news/2020/04/27/484013/wisconsin-primary-shows-states-must-prepare-elections-coronavirus/>
<https://www.americanprogress.org/issues/democracy/news/2020/04/27/484013/wisconsin-primary-shows-states-must-prepare-elections-coronavirus/>
<https://www.latimes.com/world-nation/story/2020-06-09/georgia-primary-will-protest-energy-shift-voting-booth>
<https://www.latimes.com/world-nation/story/2020-06-09/georgia-primary-will-protest-energy-shift-voting-booth>
<https://www.reuters.com/article/usa-election-vote/amid-coronavirus-reduced-voting-sites-in-kentucky-elsewhere-a-recipe-for-disaster-idUSL1N2D2Z2CK>
<https://www.reuters.com/article/usa-election-vote/amid-coronavirus-reduced-voting-sites-in-kentucky-elsewhere-a-recipe-for-disaster-idUSL1N2D2Z2CK>
<https://www.nytimes.com/2020/06/10/us/politics/voting-by-mail-georgia.html>
https://url.emaiprotection.link/?beRkd39aWj08XgF50nTPZLUYhpZx97NqGtDeqfSO37cF2_h7gUgFKvKxk8EXXJhYJbGQHXKpo714Colvwv6_TjmAw6ghjlbBH8_SIECY_M2iB-XeORyIVdsSmmqU21oEndMp3m8ggWKs6KG0eHM_mCWzeJrWtQySPDWvvyUS4-
<https://civilrights.org/blog/covid-19-silenced-voters-of-color-in-wisconsin/>

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disenfranchisement, which may be particularly marked among racial minorities."267 But concurrently, early voting has been limited, and the Seventh Circuit held this did not violate Section 2 of the VRA.268

The situation in Ohio is similarly challenging. Ohio's 2020 primary election was held essentially by mail, despite litigation by voters of color asking for safe-in person voting, and turnout was reportedly "was somewhere between disappointing and dismal."269 In-person voting was eliminated with narrow exceptions, and Equal Protection violations were alleged due to disproportionate impacts of voters' new duties to download, print, and correctly fill out paper ballots, as well as unreliable mail service.270 Lashunda Lee is a long-term in-person voter "does not own a printer, does not have one reasonably available to her, and the places she normally goes to access a printer are currently closed. She is concerned that going out to try to print the ballot application and mail it in could expose her or her family to COVID- 19 and is worried that she will not be able to exercise her fundamental right to vote[.]271 Munia Mostafa is a newly-naturalized citizen, who is also concerned that "any mistakes she makes during the unfamiliar absentee voting process could deny her the opportunity to cast a ballot in the upcoming primary."272 They were unable to obtain an injunction in time for the April primary,273 although their case remains open.274

J. Morgan Kousser noted that precincts with higher percentages of poor individuals may also experience longer lines due to lack of internet access, which forces citizens to choose to vote in-person.275 Kousser points out that social distancing measures will also increase the time it takes for voters to cast their ballots.276 States could require employers to allow time off to vote, but in 2018, only 22 states did so.277 Kousser fears that with long lines already developing in the 2020 primaries, some workers cannot afford to skip work to go vote, thus many poorer and disproportionately Black and Latino voters may be forced not to vote.278 Other research has shown that smaller changes in the location of polling places have been

267 Kevin Morris and Peter Miller, Voting in a Pandemic: COVID-19 and Primary Turnout in Milwaukee, Wisconsin, Research Abstract, June 23, 2020, at 2, <https://assets.documentcloud.org/documents/6955151/Mke-Turnout-1.pdf>. 268 The federal court of appeals reasoned that, although minority voters are disparately impacted by the state's cuts to early voting, "[s]o long as a state treats all voters equally, §2 does not limit the state's control of details such as hours for early voting." *Luft v. Evers*, No. 16-3003 (7th Cir. June 29, 2020) at 14. Further, the facts had changed: "The opportunity to participate may decrease as distance [to a polling place for early voting] increases. Yet the Milwaukee clerk's office is centrally located. What's more, 2017 Wis. Act 369 §1JS amended Wis. Stat. §6.855 to authorize municipalities to designate multiple sites for in-person absentee voting. See Wis. Stat. §6.855(5). The one-location rule is gone, and its replacement is not substantially similar to the old one. It seems unlikely that Wisconsin would return to a single-site requirement if allowed to do so. We remand with instructions to dismiss this aspect of the suit as moot." *Id.* at 13-14. 269 Hasen Submission at 9. 270 Complaint, League of Women Voters v. LaRose, 2:20-cv-01638 (E.D. Ohio Mar. 30, 2020), at ¶¶ 2-3 (discussing underlying allegations of Fourteenth Amendment claim). 271 *Id.* at ¶ 14. 272 *Id.* at ¶ 15. 273 See Opinion and Order, League of Women Voters v. LaRose, 2:20-cv-01638 (E.D. Ohio Apr. 3, 2020). 274 See, e.g., Demos, Cases, League of Women Voters v. LaRose, <https://www.demos.org/case/league-women-voters-ohio-v-larose> (last accessed July 6, 2020). 275 J. Morgan Kousser, Report for Dream Defenders, et al., v. Ron Desantis, et al., (District Court, Northern Florida), Case No. 1:20-cv-67-RH-GRJ, at 21 [on file]. 276 *Id.* 277 Tim Ryan Williams, "Can you take paid time off work to vote? It may depend where you live," Vox, Nov. 6, 2018, <https://www.vox.com/policy-and-politics/2018/11/1/18016220/2018-midterm-elections-time-off-work-vote>. 278 J. Morgan Kousser, Report for Dream Defenders, et al., v. Ron Desantis, et al., (District Court, Northern Florida), Case No. 1:20-cv-67-RH-GRJ, at 21 [on file].

<https://assets.documentcloud.org/documents/6955151/Mke-Turnout-1.pdf>
<https://www.demos.org/case/league-women-voters-ohio-v-larose>
<https://www.demos.org/case/league-women-voters-ohio-v-larose>
<https://www.vox.com/policy-and-politics/2018/11/1/18016220/2018-midterm-elections-time-off-work-vote>

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found to diminish the Latino vote.279 Voters of color also face stricter scrutiny at polling locations.280 The Commission found in 2018 that voters of color are disproportionality impacted by strict voter identification laws,281 and young minority voters have been asked to show identification more often.282 In April 2020, the Michigan State Advisory Committee found that "Communities of color face unique challenges at the polls, from being asked to prove U.S. citizenship to poll workers, to failing to locate interpreters or translators when help was needed."283 These practices can also lead to longer lines in minority precincts.284 After Indiana's June primary, the Indiana State Advisory Committee stated that:

In north central Indiana, there were... issues with voting centers in locations serving predominately Black and Hispanic voters. In Marion County, there were only 22 polling places in comparison to over 250 polling locations in previous elections. The resulting long lines likely produced hardships in voting based on work and childcare schedules and transportation availability, which hardships may have been socioeconomically and racially disparate. In neighboring affluent Hamilton County, there were 125 voting centers. Whatever the reason for the disparity, it seems clear that state and local election officials must improve the process leading up to the general election[.]285

In Georgia, an allegedly disproportionate numbers of polling places were closed in primarily Black and Latino neighborhoods,286 and voters reported waiting anywhere from three to six hours in some precincts.287 LaTosha Brown of Black Voters Matter reported that there were no lines at the polls in the predominantly white suburbs of Atlanta, adding that, "On my side of town, we brought stadium chairs."288 On June 18, a federal judge refused to enjoin Kentucky's extreme reduction of the number of polling

279 Levitt Statement at note 55, citing See Brian Amos et al., Reprecincting and Voting Behavior, 39 POLITICAL BEHAVIOR 133, 150 (2017) (finding that Latino voters were "significantly more likely to abstain [from voting] as a result of being reassigned" to a different precinct location). 280 See e.g., OurTime.org and Advancement Project, "The Time Tax," Nov. 18, 2013, <https://advancementproject.org/resources/the-time-tax/>; Bridgett King and Alicia Barnes, "Descriptive Representation in Election Administration: Poll Workers and Voter Confidence," Election Law Journal, 2019, vol. 18, no.1; Stephen Pettigrew, "The Racial Gap in Wait Times: Why Minority Precincts Are Underserved by Local Election Officials," Political Science Quarterly, 2017, vol. 123, no. 3, <https://www.stephenpettigrew.com/articles/pettigrew-2017-psq.pdf>. 281 See Minority Voting Rights Access at 97-102. 282 Minority Voting Rights Access at 97-98, reproducing and discussing results of November 2012 Black Youth Quarterly Survey (including adults 18-29 in different racial groups), Jon Rogowski and Cathy Cohen, "Black and Latino Youth Disproportionately Affected by Voter Identification Laws in the 2012 Election," Democracy Remixed: Black Youth and the Future of American Politics, Nov. 2015, http://blackyouthproject.com/wp-content/uploads/2015/11/voter_id_effect_2012.pdf. (for example, in states that did not have a state law requiring identification, 65.5 percent of young Black voters were asked to produce identification, compared to 55.3 percent of Latino youth, and 42.8 percent of white youth). 283 Michigan State Advisory Cte. to the U.S. Com'n. on Civil Rights, Report, Voting Rights and Access in Michigan, Apr. 2020, at 6, <https://www.usccr.gov/pubs/2020/04-20-MI-SAC-Report-Voting-Rights.pdf>. 284 Subcomm. on Elections, Report on Voting Rights and Election Administration in the United States of America, p. 6 (Nov. 2020), prepared by Chairperson Marcia L. Fudge, <https://cha.house.gov/report-voting-rights-and-election-administration-united-states-america>. 285 Indiana State Advisory Cte. to the U.S. Com'n. on Civil Rights, Statement: Indiana Advisory Committee to the U.S. Commission on Civil Rights Urges Adoption of No-Excuse Absentee Voting in Upcoming Election, at 1 (Jul. 15, 2020). 286 See e.g., Chapman Statement at 4-5; Leadership Conference Education Fund, "Democracy Diverted," Sept. 2019, <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>. 287 Zach Montellaro and Laura Barrón-López, "A hot, flaming mess": Georgia primary beset by chaos, long lines," Politico, June 9, 2020, <https://www.politico.com/news/2020/06/09/georgia-primary-election-voting-309066>. 288 *Ibid.*

<https://advancementproject.org/resources/the-time-tax/>
<https://www.stephenpettigrew.com/articles/pettigrew-2017-psq.pdf>
http://blackyouthproject.com/wp-content/uploads/2015/11/voter_id_effect_2012.pdf
<https://www.usccr.gov/pubs/2020/04-20-MI-SAC-Report-Voting-Rights.pdf>
<https://cha.house.gov/report-voting-rights-and-election-administration-united-states-america>
<https://cha.house.gov/report-voting-rights-and-election-administration-united-states-america>
<http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>
<https://www.politico.com/news/2020/06/09/georgia-primary-election-voting-309066>

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locations for the primary, finding that although the most populous counties with the greatest number of Black voters had reduced their Election Day polling places to only one, there were other options available and not enough evidence that voting would be harder.289 In response to the pandemic, the Secretary of State had relaxed requirements for absentee voting and empowered all counties to conduct in-person early voting for 15 days.290 The county with the highest Black population in the state, had only one polling place, albeit an exposition center, which the county calculated would enable thousands to vote after waiting on line at a safe distance.291 Due to disparities, Black voters would be more exposed to COVID- 19 by having to take public transportation, as well as higher risks of health complications while voting.292 However, the court found that: "The issue before this Court is not whether a hypothetical voter in Kentucky's upcoming primary election would benefit from additional polling locations. Rather, the issue is whether the challenged election procedures result in a cognizable infringement under the Constitution or an injury under the Voting Rights Act."293 The court's opinion shows ongoing difficulty in reviewing potentially discriminatory voting changes before they are implemented.294 In Kentucky and other states in the Sixth Circuit,295 Plaintiffs must show that the voting practice "actually makes voting harder for African Americans;"296 and "[t]o be clear, we fully acknowledge the bases for Plaintiffs' contention that the burden falls more heavily on Black, elderly, and disabled voters. However, there is no disenfranchisement which necessarily results from the imposition of this modest burden."297 Once facts develop into urgent situations on Election Day, things may change. At 6:00 p.m., predominantly minority voters were locked out of the Louisville, Kentucky exposition center polling place,298 despite the law that voters in line at closing must be allowed to vote.299 Election Day-litigation resulted in an emergency injunction to let them vote.300

This is similar to litigation brought during the early voting period in Florida in 2012, to expand days and hours to reduce exceedingly long lines for voters of color.301 Also in 2012: on a national level Black and

289 Memorandum Op., Nemes v. Bensigner, No. 3:20-CV-407, 2-3 (W.D. Ky. June 18, 2020), at 24-25. 290 Memorandum Op., Nemes v. Bensigner, No. 3:20-CV-407, 2-3 (W.D. Ky. June 18, 2020). 291 Memorandum Op., Nemes v. Bensigner, No. 3:20-CV-407, 2-3 (W.D. Ky. June 18, 2020), at 6. 292 *Id.* at 9-10. 293 Memorandum Op., Nemes v. Bensigner, No. 3:20-CV-407, 1 (W.D. Ky. June 18, 2020). 294 Minority Voting Rights Access at 95 (attributing this issue to being in a post-Shelby County era, and describing the time-consuming, expensive, and time-sensitive process of trying to prevent a potentially discriminatory election change before it is too late). 295 These are: Ohio, Michigan, and Tennessee. About the Court, CA6.USCOURTS.GOV, <https://www.ca6.uscourts.gov/about-court> (last visited Jun. 23, 2020). 296 Memorandum Op., Nemes v. Bensigner, No. 3:20-CV-407 (W.D. Ky. June 18, 2020), at 22, quoting Ohio Democratic Party v. Husted, 834 F.3d 620, 631 (6th Cir. 2016) (emphasis in original). 297 *Id.* at 24 (constitutional claim unsuccessful) and 28-29 (Section 2 VRA claim unsuccessful)(emphasis added). Noting the complexity of the situation during the primary, Justin Levitt testified that: "Through the single [county polling place] option was undoubtedly sufficiently inconvenient to keep some would-be voters home, the convention center location may well have been the least bad of the available alternatives." Levitt Statement at 14. 298 LDF Statement at 12. 299 Ky. Rev. Stat. Ann. § 118.035(1) (West). 300 Order, Booker v. Jefferson Cnty Election Comm'n, No. _____ (ordering polling center to allow voters in line by 6:30 p.m. local time to cast their ballot. Plaintiffs had requested that the polls remain open until 9:00 p.m. local time). 301 Data show that voters in Florida faced extremely long lines at polling locations all throughout the state – some reporting waiting in lines for over six hours and up to 19 hours – with voters of color disproportionately facing the longest wait times. OurTime.org and Advancement Project, "The Time Tax," Nov. 18, 2013, <https://advancementproject.org/resources/the-time-tax/>; See also Minority Voting Rights Access at 162-63.

<https://www.ca6.uscourts.gov/about-court>
<https://www.ca6.uscourts.gov/about-court>
<https://advancementproject.org/resources/the-time-tax/>
<https://advancementproject.org/resources/the-time-tax/>

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Latino voters' average wait time was 20.2 minutes, and White voters, 12.7 minutes.302 The Commission found in 2018 that sufficient early voting polling places, days and hours may be needed to prevent such disparately long lines for voters of color.303 Earlier this year, the Alabama State Advisory Committee reported that, "As with absentee balloting, in jurisdictions in which early voting has been offered at central locations, voting efficiency has actually increased as fewer voters appear on election day at polling places reducing congestion."304 Matt Barreto and Sonni Wankin emphasized that expanded early voting is also needed for safety this year, recommending that "states should look for opportunities to spread voting out, across multiple days of early voting, maintaining ample Election Day voting locations[.]"305 Kristen Clarke also testified that expanded early voting would have the benefit of protecting minority voting rights, and that "expanded early voting opportunities serve to 'flatten the curve,' by spreading out the number of voters over a longer period of time, thus reducing the need for poll workers at any given time, reducing the number of people that poll workers and voters will have contact with, facilitating social distancing, and ultimately reducing the number of in-person voters on Election Day."306

Issues Arising from COVID-19 Impacting Limited-English Proficient Voters There are over 11 million citizens of voting age who are limited-English proficient (LEP) and therefore need bilingual materials and assistance in order to be able to

assistance to vote.³⁰⁹ LEP voters typically vote more often at the polls, in part because they are able to receive bilingual assistance with the voting process via poll workers or the assistants they may bring with them.³¹⁰ They may find language assistance more difficult than ever to encounter during the pandemic due to the changes discussed in the prior chapter, including limited in-person voting and increased

302 Jeremy Peters, "Waiting Times at Ballot Boxes Draw Scrutiny," NEW YORK TIMES, Feb. 4, 2013, <https://www.nytimes.com/2013/02/05/us/politics/waiting-times-to-vote-at-polls-draw-scrutiny.html?adxn1=1&adxn2=1383591753-5pCgS53W/P08P3+oMDv5mg>; see also, "How Long It Took Different Groups to Vote," New York Times, Feb. 4, 2013, https://archive.nytimes.com/www.nytimes.com/interactive/2013/02/05/us/politics/how-long-it-took-groups-to-vote.html?_r=1&ref=politics; OurTime.org and Advancement Project, "The Time Tax," Nov. 16, 2013, <https://advancementproject.org/resources/the-time-tax/>. See also Minority Voting Rights Access at xx. 303 Minority Voting Rights Access at 159-60 (citing Presidential Commission on Election Administration); see also supra notes 45-49, 248-51 and 255-57 (documentation of strong preferences of minority voters for early voting). 304 Alabama State Advisory Committee to the U.S. Comm'n. on Barriers to Voting in Alabama, Feb. 2020, <https://www.usccr.gov/files/2020-07-02-Barriers-to-Voting-in-Alabama.pdf>, at 46 (citing testimony of Professor of Law and Interim Executive Dir. Southern Coalition for Social Justice Kareem Crayton). 305 Barreto and Sunni Statement at 16. 306 Clarke Statement at 11. 307 By definition, being LEP means that a person cannot fully understand the ballot and instructions if they are provided in English-only. 52 U.S.C. § 10305(b)(3)(B) ("the term "limited-English proficient" means unable to speak or understand English adequately enough to participate in the electoral process."). 308 See, e.g., 52 U.S.C. § 10503(c). 309 Asian Americans Advancing Justice – Los Angeles, Voting Rights, Language Access, <https://www.advancingjustice-la.org/what-we-do/policy-and-research/voting-rights-0> (last accessed 7/22/2020). 310 Vattamala Statement at 5-6; Levitt Statement at 5-6.

<https://www.nytimes.com/2013/02/05/us/politics/waiting-times-to-vote-at-polls-draw-scrutiny.html?adxn1=1&adxn2=1383591753-5pCgS53W/P08P3+oMDv5mg>
<https://www.nytimes.com/2013/02/05/us/politics/waiting-times-to-vote-at-polls-draw-scrutiny.html?adxn1=1&adxn2=1383591753-5pCgS53W/P08P3+oMDv5mg>
https://archive.nytimes.com/www.nytimes.com/interactive/2013/02/05/us/politics/how-long-it-took-groups-to-vote.html?_r=1&ref=politics
https://archive.nytimes.com/www.nytimes.com/interactive/2013/02/05/us/politics/how-long-it-took-groups-to-vote.html?_r=1&ref=politics
<https://advancementproject.org/resources/the-time-tax/>
<https://www.usccr.gov/files/2020-07-02-Barriers-to-Voting-in-Alabama.pdf>
<https://www.advancingjustice-la.org/what-we-do/policy-and-research/voting-rights-0>
<https://www.advancingjustice-la.org/what-we-do/policy-and-research/voting-rights-0>

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absentee voting.³¹¹ In-person language assistance is now also potentially affected by the Center for Disease Control and Prevention's new guidance for election administration during the pandemic, stating that nonessential visitors should be limited, so "poll workers and voters should be discouraged from bringing accompanying persons (e.g., family members, friends) to the polling location."³¹² This vague language may leave too much discretion to poll workers who have in the past refused to allow LEP voters to bring their assistants of choice, although they are permitted under the Voting Rights Act.³¹³

Whether LEP voters vote at home or at the polls, they will need bilingual materials and assistance, and the Voting Rights Act may require that they be provided.³¹⁴ As discussed in Minority Voting Rights Access, there are four applicable provisions of the Voting Rights Act: Section 4(e) prohibits conditioning the right to vote on the ability of persons educated in Puerto Rico to speak English.³¹⁵ Section 203 is more formulaic and requires jurisdictions that are "covered" through Census determinations as meeting a threshold of either more than 10,000 or more than 5 percent of all voting age citizens.³¹⁶ to provide all types of election materials and voter assistance in the applicable minority language.³¹⁷ The languages covered by are Spanish, Asian and Pacific Islander languages, and Native American and Alaskan Indian languages.³¹⁸ Section 203 does not include any African-based languages, although some counties in South Florida have provided voting materials and assistance in Haitian Creole, after being investigated under Section 208 of the VRA.³¹⁹ Another provision, Section 208, requires that every voter be permitted to receive assistance in voting from the assistant of their choice, as long as that assistant is not their employer or union representative.³²⁰ Additionally, Section 2 prohibits practices or procedures that abridge or deny equal opportunity to participate in the political process.³²¹

In 2018, the Commission found an increasing need for minority language materials and assistance at the national level, along with "failure to provide or make available legally required language access voting materials and to comply with Section 208's requirement that allows voters to bring an assistant of their choosing imposes unnecessary barriers to voting for LEP Asian, Latino, and Native American voters."³²²

311 Deb Haaland, Congresswoman, Representative of the 1st District of New Mexico, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 1, 2020, at 1-2, 6 and 8 (hereinafter Haaland Statement); and see supra notes 259-61 (discussing increased absentee voting and reduced early voting and Election Day polling place resources). 312 Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), Considerations for Election Polling Locations and Voters, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last updated June 22, 2020). 313 See Minority Voting Rights Access at 262; and see infra notes 322 and 418-19. 314 See, e.g., 52 U.S.C. § 10503(c). 315 See Minority Voting Rights Access at 29, discussing 52 U.S.C. § 10303(e). 316 52 U.S.C. § 10503. 317 Minority Voting Rights Access at 29, discussing 52 U.S.C. § 10503. See also Ga. Ass'n of Latino Elected Officials, Inc. v. Gwinnett Cty. Bd. of Registration & Elections, No. 1:20-cv-1587 (N.D. Ga. May 8, 2020). 318 Minority Voting Rights Access at 188-89 ("The covered language communities are as follows: Alaskan Athabascan, Aleut, American Indian (all other American Indian Tribes), American Indian (Apache), American Indian (Choctaw), American Indian (Navajo), American Indian (Pueblo), American Indian (Ute), Asian Indian, Bangladeshi, Cambodian, Chinese (including Taiwanese), Filipino, Inupiat, Korean, Spanish, Vietnamese, [and] Yup'ik"). 319 Minority Voting Rights Access at 183. 320 Ibid., 29, discussing 52 U.S.C. § 10508. 321 Ibid., 30, discussing 52 U.S.C. § 10301. 322 Ibid., 17 and 281.

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

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and decreasing enforcement by the Department of Justice.³²³ The Commission also found in 2018 that since the 2013 Shelby decision eviscerating VRA's preclearance requirements, jurisdictions like Alaska and Arizona were no longer required to submit their translations of new election materials including ballots to the Department of Justice for review, resulting in lack of sufficient translations.³²⁴ Adding to that, DOJ is no longer sending federal observers inside the polls to review not only the election materials, but also whether there are sufficient bilingual poll workers, to formerly-covered jurisdictions.³²⁵ The Commission also found that there was a gap in languages covered under Section 203, as languages such as Haitian Creole or Arab languages are left out.³²⁶ This year, the Michigan State Advisory Committee reported that because Middle Eastern and North American populations are not an identified category in the Census, it is difficult to track whether voting access is compromised.³²⁷ Rima Meroueh testified that "a lack of proper representation [] deprives the Arab community of access to basic services and rights such as language assistance at polling places."³²⁸

Other issues that have arisen in 2020 include whether absentee ballot applications, instructions and ballots are provided in languages other than English, and whether LEP voters can receive oral assistance in minority languages. Due to the pandemic, absentee ballot applications, ballots and instructions as well as information about relevant procedures on websites and access to oral assistance from home have heightened importance.³²⁹ The Commission's research below first evaluates oral LEP voter assistance issues, then moves onto ongoing challenges with written materials. The final section summarizes Commission staff research of absentee ballot materials on 6 state websites (AK, AL, AZ, FL, GA and MA) and within those states, several counties that are obliged to provide bilingual access, analyzing which have and have not met VRA standards by providing clear, accurate and complete bilingual information about absentee voting this year.³³⁰ These issues illustrate a complex set of needs for LEP voters to be able to vote "with meaningful access and understanding, without literacy issues or other barriers that voters may have."³³¹ Like many voters, their needs have changed during the pandemic.

323 Ibid., 82, 184, 196 and 239. 324 Ibid., 9, and 239-275. 325 Ibid., 59, 63, 138, 191 and 268-73. 326 Ibid., 183-84 ("Persons of African or Caribbean heritage are not included in the statutory definition of "language minority groups" under the VRA, so languages such as Haitian Creole are not covered under Section 203. Additionally, scholars have argued that Arab Americans should have their languages covered under Section 203. Although these communities' language rights can be and have been protected by other VRA provisions, because Section 203 is a strict liability provision requiring language access in jurisdictions where the threshold is met, the omission of these languages in the VRA statutory definition leaves a gap in language access protection for these voters."). 327 Michigan Advisory Committee to the U.S. Comm'n on Civil Rights, Voting Rights and Access in Michigan, (Apr. 2020), <https://www.usccr.gov/pubs/2020/04-20-MI-SAC-Report-Voting-Rights.pdf>, at 6 (hereinafter Michigan, Voting Rights Report). 328 Ibid., 30. 329 Vattamala Statement at 10, 14-15; Levitt Statement at 16. 330 28 C.F.R. § 55.19(b). 331 Minority Voting Rights Access at p. 261, note 1462 (citing Proceedings and Debates of the 97th Congress, Voting Rights Act Amendments of 1982 (S.1992), 128 Cong. Rec. S. 6497-6561 (daily ed. June 9, 1982) at 344-45 (remarks of Sen. Stevens (R-WV)); see PROPA v. Kuser, 350 F. Supp. 606, 610 (N.D. Ill. 1972)); see also United States v. Berks Cty., Pennsylvania, 277 F. Supp. 2d 570 (E.D. Pa. 2003); U.S. v. Berks Cty., 250 F. Supp. 2d 525, 529 (E.D. Penn. 2003).

<https://www.usccr.gov/pubs/2020/04-20-MI-SAC-Report-Voting-Rights.pdf>

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Oral Assistance As discussed in the prior chapter, in Arizona, on June 18 (after the primary election), Voto Latino and other groups settled with the Secretary of State regarding the state's strict deadline for absentee ballots, in that settlement, the state did not change the deadline but did agree to other measures including increasing outreach to Latino and Native American voters, in the languages covered by Section 203 of the VRA in that state (Apache, Navajo, Spanish).³³² In Indian Country in New Mexico, where approximately 500 Navajo persons request translators for voting, there is usually only one translator in each of Navajo's 13 polling precincts.³³³ For the primaries in June, only 9 precincts opened, meaning there were far fewer translators available.³³⁴ In Florida, the DREAM Defenders case on behalf of Black and Latino voters was settled on July 19, 2020.³³⁵ The case shows what types of issues are arising for LEP voters, who alleged that, because of the ongoing COVID-19 pandemic, they cannot vote in-person and that they need oral language assistance in order to cast their vote.³³⁶ This Settlement Agreement encourages Florida's 67 Supervisors of Elections to "use their websites and other platforms to make vote-by-mail ballots requests and ballots themselves available in Spanish," and the Secretary to "undertake a social media or other public relation campaign to inform voters of the three options to vote in Florida: (1) vote-by-mail, (2) early in-person voting, and (3) in-person Election Day voting," this campaign "shall be consistent with the State's obligations under Section 203 of the VRA."³³⁷ Spanish was the only language that was part of this Settlement, although Plaintiffs had asked for access in other languages.³³⁸ In Hamtramck, Michigan, Bengali translations of voting information and materials and oral language assistance for Bangladeshi voter are required under Section 203.³³⁹ Jerry Vattamala testified that his organization's research shows that Hamtramck's website is not translated; they submitted a demand letter on April 20, but at the time of this writing, Hamtramck has yet to comply.³⁴⁰

The Michigan SAC reported that during the 2018 mid-term election, a poll worker in Dearborn "harassed a voter who brought a family member or friend to help him or her translate or assist with their ballot, this poll worker was aggressive and even told the translator not to touch or point at the ballot."³⁴¹ The SAC further reported that voting-by-mail is made practically impossible for LEP people who do not wish to undergo any health risks.³⁴² This is in part because the usual language assistance from friends is

332 See supra note 145, at 17; notes 193-99. 333 Haaland Statement at 3; see also Doland, Gwyneth, "Fewer polling places present challenges for Native voters," New Mexico in Depth, May 27, 2020. Accessed July 23, 2020. <http://nminddepth.com/2020/05/27/fewer-polling-places-present-challenges-for-native-voters/>. 334 Ibid. 335 See supra note 168, at 19. See also Settlement Agreement, Nielsen v. DeSantis and Williams v. DeSantis, No. 4:20-cv- 00236-RH-MJF (N.D. Fla. July, 19, 2020), <https://www.courtfilistener.com/recap/gov.uscourts.flnd.201313/gov.uscourts.flnd.201313.601.1.1.pdf>. 336 Second Amended Complaint, Williams v. DeSantis, No. 1:20cv67-RH-GRJ (N.D. Fla. May 8, 2020), <https://www.demos.org/sites/default/files/2020-06/Dream%20Defenders%20Plaintiffs%20Second%20Amended%20Complaint.pdf>, at p. 17 (Plaintiffs ¶ 17). 337 Settlement Agreement at 2, Williams v. DeSantis (N.D. Fla. July, 19, 2020). 338 Id. at 2-3. 339 Vattamala Statement at 2. 340 Ibid. 341 Michigan, Voting Rights Report at 26 (citing Isra Daraiseh, Coordinator, ACCESS, Written Statement for the Detroit Briefing before the Michigan Advisory Committee to the U.S. Commission on Civil Rights, April 30, 2019 at 3). 342 Ibid., 18-19 (Plaintiffs ¶ 18).

<http://nminddepth.com/2020/05/27/fewer-polling-places-present-challenges-for-native-voters/>
<http://nminddepth.com/2020/05/27/fewer-polling-places-present-challenges-for-native-voters/>
<https://www.courtfilistener.com/recap/gov.uscourts.flnd.201313/gov.uscourts.flnd.201313.601.1.1.pdf>
<https://www.demos.org/sites/default/files/2020-06/Dream%20Defenders%20Plaintiffs%20Second%20Amended%20Complaint.pdf>
<https://www.demos.org/sites/default/files/2020-06/Dream%20Defenders%20Plaintiffs%20Second%20Amended%20Complaint.pdf>

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made impossible due to the pandemic.³⁴³ AALDEF sent a letter in June 2020 to jurisdictions with high concentrations of Asian-American voters, to remind election officials of their continued obligation to comply with Section 208.³⁴⁴ Showing the need for oral (and not only written) language access in absentee voting, data from previous elections have shown that absentee ballots casts by LEP voters may be disproportionately rejected by local voting officials.³⁴⁵ For instance, in California's 2012 election, "non-English-language ballots comprised just over 2.5% of votes cast but accounted for 3.3% of all rejected ballots."³⁴⁶ Matt Barreto submitted testimony that recent analyses do not suggest any improvements during 2020.³⁴⁷ AALDEF explains that "some jurisdictions currently provide Election Day hotlines with assistance from interpreters, and availability of these hotlines could be expanded in advance of Election Day, in order to help more people who want to vote by mail."³⁴⁸ However, Rep. Haaland wrote that in-call translation can be problematic for voters living on Tribal lands as phone services are usually unreliable or non-existent, and these lands may also lack internet access.³⁴⁹

Written Materials Access to written absentee ballot materials is also complex due to the pandemic. Professor Levitt testified that minority language access may be easier to satisfy at in-person polling locations (which may stock materials centrally in several different languages, or print materials in-language on demand), compared to when voting by mail, when particular materials are sent to particular individuals.³⁵⁰ He believes that jurisdictions should now ensure that absentee ballot materials "are delivered in-language to language minorities, particularly but not exclusively in jurisdictions with a federal obligation to provide such materials."³⁵¹ Counties provide most election materials, except for state-wide materials such as voter registration and absentee ballot applications, which are provided by the states.³⁵² Some LEP voters could rely on the federal voter registration form, available in 15 languages, but there is no comparable

343 Ibid., 11. 344 Vattamala Statement at 6. 345 See e.g., Daniel Smith, "Analysis of Absentee ("Vote-By-Mail") Ballots Cast in Florida," Oct. 2016, <https://electionsmith.files.wordpress.com/2016/10/smith-coie-jenner-report-dnc-fdp.pdf>. 346 Peter La Follette v. Padilla, No. CPF 17-515931, 2018 WL 4050727, (Cal. Sup. Apr. 9, 2018), https://www.aclunc.org/docs/20171113-lafollette_complaint.pdf. A 2008 study of mail-in voting in Los Angeles County showed that voters who requested a non-English absentee ballot had a much higher likelihood of their ballot being rejected compared to other absentee voters. Michael Alvarez, Thad Hall, and Betsy Sinclair, "Whose Absentee Votes are Returned and Counted: The Variety and Use of Absentee Ballots in California," Electoral Studies, Dec. 2008, vol. 27, no. 4. 347 Barreto Statement at 12. 348 Vattamala Statement at 10. See also Ibid., 7-8 ("[E]lection officials in Washington, D.C. innovated assistive technologies to adapt to COVID-19 by offering the assistance of live virtual interpreters via iPads at each poll site. Through the utilization of such virtual assistive technology, D.C.'s LEP voters received effective assistance and had access to a much larger pool of potential interpreters, and these interpreters were able to work on Election Day without having to risk contracting COVID-19."). 349 Haaland Statement at 8 ("Only 65 percent of American Indian and Alaska Natives living on Tribal lands have access to fixed broadband services, and only 68 percent of households on Tribal lands have telephone services. Tribal governments must have access to spectrum over tribal lands to exercise

trial sovereignty for their citizens, including the fundamental right of voting, as participation in the polls becomes fully digitalized.” 350 Levitt State at 6. That fact that individual pieces of paper are distributed in the mail process to specific individuals, often with imperfect information about that individual’s language preference, does not relieve officials of their obligation to provide in-language materials under the Voting Rights Act. 351 *Ibid.*, 11. 352 See Appendix C (showing absentee ballot materials and instructions on state websites).

<https://electionsmith.files.wordpress.com/2016/10/smith-coie-jenner-report-dnc-fdp.pdf>
https://www.aclunc.org/docs/20171113-lafollette_complaint.pdf

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federal absentee ballot application.³⁵³ In some states, while counties have high concentrations of LEP voters and are therefore clearly “covered” by the VRA’s requirements to provide bilingual voting materials, the state as an entirety may not have high numbers and may not be clearly covered.³⁵⁴

In Georgia, a case arose this year about who is responsible to provide translated absentee ballot materials to LEP voters.³⁵⁵ It is clear that absentee ballot applications are the type of election materials subject to the minority language requirements of the VRA, ³⁵⁶ but an emerging legal issue is whether absentee ballot applications are required to be sent in minority languages in states that are not “covered” under Section 203.³⁵⁷ In Georgia, complications arose this year due to COVID-19 as more LEP Spanish-speaking voters needing to vote absentee.³⁵⁸ Rapidly-changing primary dates also added to the confusion of LEP voters.³⁵⁹ But on May 8, 2020, a federal court held that because the State of Georgia is the entity that provided absentee ballot applications, although Gwinnett County is subject to Section 203’s requirements that it provide bilingual election materials, neither the State nor the County could not be enjoined from providing absentee ballot applications in English-only.³⁶⁰ The court also implied that LEP voters could go to the polls, by noting that there were no allegations that the Defendants were “somehow prohibiting Gwinnett County voters from otherwise choosing to vote in-person on June 9 [where they would have bilingual ballots and instructions].”³⁶¹ Also, during the course of this litigation, the county decided to mail bilingual absentee ballots and provide their own bilingual absentee ballot applications.³⁶²

The urgency of the need for bilingual access to absentee ballot applications also became apparent during this litigation. Limary Ruiz Torres and Albert Mendez are Gwinnett County voters who are LEP; they

³⁵³ See National Voter Registration Act, Federal Form, 42 U.S.C. § 1973gg et seq (requiring a federal voter registration form); U.S. Elections Assistance Comm’n, Voters, National Mail Voter Registration Form, <https://www.eac.gov/voters/national-mail-voter-registration-form> (available in 15 languages, although Native American languages are left out) (last accessed 7/22/20); cf. Voting By Mail, Absentee Voting, <https://www.eac.gov/election-officials/voting-by-mail-absentee-voting> (passim). ³⁵⁴ See Section 203 coverage formula, supra notes 316-17. ³⁵⁵ Ga. Ass’n of Latino Elected Officials, Inc. v. Gwinnett Cty. Bd. of Registration & Elections, No. 1:20-cv-1587-WMR (N.D. Ga. May 8, 2020), at 3. ³⁵⁶ Citing the language of Section 203, the Georgia federal court reasoned that whenever a covered jurisdiction such as Gwinnett County “provides any registration or voting notices, forms, instruction, assistance, or other materials or information relating to the electoral process,” it must “provide them in the language of the applicable minority group as well as in the English language,” which, in this case, should be Spanish. Ga. Ass’n of Latino Elected Officials, Inc. v. Gwinnett Cty. Bd. of Registration & Elections, No. 1:20-cv-1587-WMR (N.D. Ga. May 8, 2020) at 4 (quoting 52 U.S.C. § 10503(c)). ³⁵⁷ See Dep’t of Commerce, Bureau of the Census, Voting Rights Act Amendments of 2006, Determinations Under Section 203, 81 Fed. Reg. 87532, 87535 (Dec. 5, 2016), indicating that in Georgia, Gwinnett County is covered for Spanish, but the State is not covered (nor are any other counties). <https://www.justice.gov/crt/file/927231/download>. ³⁵⁸ Order Denying Preliminary Injunction, Ga. Ass’n of Latino Elected Officials, Inc. v. Gwinnett Cty. Bd. of Registration & Elections, No. 1:20-cv-1587-WMR (N.D. Ga. May 8, 2020), at 3. ³⁵⁹ *Ibid.* (citing Doc. 13 at ¶ 28; Doc. 17-2, Exhibit 19) (“On March 15, 2020, Secretary of State of Georgia Brad Raffensperger postponed Georgia’s presidential primary election from March 24 to May 19 due to the ongoing COVID-19 pandemic. This change of date combined the presidential primary with the previously scheduled primary date for other offices. When Governor Brian Kemp decided to extend the state of emergency until May 13, Secretary Raffensperger postponed the primary to June 9, stating that the additional time would allow officials to finalize contingency plans and find more poll workers.”). ³⁶⁰ *Ibid.* at 3, 7. ³⁶¹ *Id.* ³⁶² *Id.* at 12.

<https://www.eac.gov/voters/national-mail-voter-registration-form>
<https://www.eac.gov/election-officials/voting-by-mail-absentee-voting>
<https://www.eac.gov/election-officials/voting-by-mail-absentee-voting>
<https://www.justice.gov/crt/file/927231/download>

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were educated in Spanish-speaking schools in Puerto Rico.³⁶³ They received English-only absentee ballot applications, which they were unable to read and therefore couldn’t complete,³⁶⁴ yet they were only provided access after bringing suit and after the county stepped into the state’s role of providing absentee ballot applications.³⁶⁵ The court still found that because it was Secretary Raffensperger who unilaterally mailed out the English-only absentee ballot applications to all Georgia voters, including those in Gwinnett County,³⁶⁶ Gwinnett County had no duty under the VRA to send out bilingual applications to Gwinnett County voters.³⁶⁷ In contrast, in 2018, Massachusetts settled with the Department of Justice and agreed to provide bilingual ballots, instructions and other materials that it was responsible for providing to local election officials, even though the state was not “covered” under the VRA’s minority language provisions.³⁶⁸ This DOJ settlement shows that absentee ballot applications can be provided in minority languages for voters who need them at the local level, even if issued by the states, so that LEP voters will be able to understand the absentee voting process.³⁶⁹

According to relevant federal regulations, in jurisdictions covered under the minority language provisions of the VRA, all ballots, voting materials and instructions must be translated;³⁷⁰ and “[i]t is essential that material provided in the language of a language minority group be clear, complete and accurate.”³⁷¹ Earlier this year, Milwaukee sent the Spanish-language version of absentee ballot application instructions with the election date wrong (while it was correct in the English version).³⁷²

Evaluation of Language Access in Jurisdictions’ Websites and Absentee Voting Materials Commission staff reviewed the websites and materials of Alabama, Alaska, Arizona, Florida, Georgia, and Massachusetts, and some counties therein. All but Massachusetts were formerly-covered under the preclearance provisions of the VRA,³⁷³ and all are subject to VRA minority language provisions.³⁷⁴

³⁶³ *Id.* (citing Doc. 13 at ¶ 7, 18, 19). ³⁶⁴ *Id.* at 4. ³⁶⁵ *Id.* at 9. ³⁶⁶ *Id.* at 8. ³⁶⁷ *Id.* at 9. ³⁶⁸ See Memorandum of Understanding, United States and Commonwealth of Massachusetts (Sept. 22, 2008), <https://www.justice.gov/crt/memorandum-understanding> (noting that, “[d]uring municipal elections conducted in the City of Worcester, the City itself is responsible for printing ballots and sample ballots. During state and federal elections conducted in the City of Worcester, the Commonwealth of Massachusetts is responsible for printing ballots; sample ballots; voter instructions; and abstracts of the laws imposing penalties upon voters. Mass. Gen. Laws ch. 54 §§ 40 & 48; and agreeing that: “The United States of American and the Commonwealth of Massachusetts enter into this Memorandum of Understanding (“MOU”) in order to ensure that Puerto Rican voters in the City of Worcester, Massachusetts, covered by Section 4(e) of the Voting Rights Act, as amended, 42 U.S.C. § 1973b(e), receive bilingual election materials.”). ³⁶⁹ *Id.* 370 28 C.F.R. §§ 55.3, 55.12, 55.13, 55.15, 55.18, 55.19. ³⁷¹ *Id.* § 55.19(b). This duty applies to subdivisions that are covered and so the research encompasses subdivisions. ³⁷² Dirr, Alison. “Spanish-language absentee ballot instructions sent to 2,038 Milwaukee voters with wrong date for primary election.” Milwaukee Journal Sentinel, Feb. 11, 2020, <https://www.jsonline.com/story/news/politics/elections/2020/02/11/spanish-language-absentee-ballot-instructions-sent-2-038-milwaukee-voters-wrong-date-primary-electio/4724562002/> (also noting that corrected version of the Spanish-language absentee ballot materials was later sent). ³⁷³ Minority Voting Rights Access at 26. ³⁷⁴ See supra notes 357 (Gwinnett County coverage) and infra notes³⁸⁰ (Arizona), ³⁸⁶ (Alaska), ³⁹⁴ (Florida), ⁴⁰⁰⁻⁰² (Massachusetts) and ⁴⁰⁶ (Alabama).

<https://www.justice.gov/crt/memorandum-understanding>
<https://www.jsonline.com/story/news/politics/elections/2020/02/11/spanish-language-absentee-ballot-instructions-sent-2-038-milwaukee-voters-wrong-date-primary-electio/4724562002/>
<https://www.jsonline.com/story/news/politics/elections/2020/02/11/spanish-language-absentee-ballot-instructions-sent-2-038-milwaukee-voters-wrong-date-primary-electio/4724562002/>

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The Georgia Secretary of State’s absentee ballot application, instructions, as well as information about absentee voting procedures found on the website were all in English-only.³⁷⁵ At the time of this writing, Gwinnett County website’s absentee ballot instructions and procedures were still in English-only.³⁷⁶ There are two Absentee Ballot Applications forms, in English and in Spanish; the Spanish translation of the form is accurate.³⁷⁷ In the English version of the website, in the page titled “Election Forms” there are accurate Spanish translations of various forms (including the absentee ballot application).³⁷⁸ However, the remainder of the website is in English, unless a translation option is chosen, but that results in inaccurate Spanish translations, including in the information about absentee voting.³⁷⁹

In Arizona, several counties are covered for Spanish under Section 203, and several are covered for Native American languages.³⁸⁰ The vote-by-mail voter information on the Secretary of State’s website is in English and Spanish.³⁸¹ Part of the website is also in Spanish, which clearly labeled and accurate—but the website did not include Navajo or Apache translations.³⁸² Commission staff also viewed Coconino County (covered for Navajo), Maricopa County (Spanish), and Pinal County (Apache).³⁸³ Coconino’s website has an option for translation, but the translation is likely to be inaccurate because it uses Google Translate.³⁸⁴ Maricopa’s website has a clear and visible section labeled “Contenido Español,” and the

³⁷⁵ Georgia Secretary of State, Elections, <https://sos.ga.gov/index.php/elections> (last accessed 7/23/2020). For further information, See Appendix C at 10. ³⁷⁶ Gwinnett County, Departments, Elections, Absentee Voting By Mail, <https://www.gwinnettcountry.com/web/gwinnett/Departments/Elections> (last accessed 7/23/20). See Appendix C at 13, figure 20. ³⁷⁷ *Ibid.*, 13-14. ³⁷⁸ *Ibid.*, 12-13, figures 18-19. ³⁷⁹ *Ibid.*, 14, figure 21 (showing how visitors might be led to think that there is no PDF in Spanish because both are labeled “In English” and “En Inglés,” which means “in English” as well. The Spanish-translated PDF is the one titled “In English.”). ³⁸⁰ U.S. Census Bureau, Section 203 Determinations Table, Arizona, <https://www.census.gov/data/tables/2016/dec/rdo/section-203-determinations.html> (887,603 citizens of voting age were LEP). ³⁸¹ Arizona Secretary of State, Elections, <https://azsos.gov/elections> (last accessed 7/23/2020); see also Appendix C at 5-6. ³⁸² See Appendix C at 5, figure 6. On June 18, the Secretary agreed in a settlement to increase voter outreach and education efforts “in English and in the languages covered under Section 203 of the VRA,” and “across multiple platforms and mediums, including the Secretary of State’s website[.]” Settlement Agreement at 4, Voto Latino Foundation v. Hobbs, No. 19-cv-05685-PHX-DWL (D. Ariz. June, 18, 2020), <https://www.courtlistener.com/recap/gov.uscourts.azd.1216532/gov.uscourts.azd.1216532.57.1.pdf>. Other medium included “the Secretary of State’s social media pages, and on future mailings from the Secretary to voters.” *Id.* The official Facebook page including information about how to vote by mail, seems to be in English-only. See <https://www.facebook.com/SecretaryHobbs> (last accessed 7/21/20). ³⁸³ See Appendix C at 6-9. See also Covered Areas for Voting Rights Bilingual Election Materials – 2015, 81 Fed. Reg. 87,533 (Dec. 5, 2016). ³⁸⁴ See Minority Voting Rights Access at 186, note 1133; Mejia, Imelda. “ACLU of Texas puts counties on notice for possible violations of Voting Rights Act” ACLU of Texas, Sept. 24, 2018, <https://www.aclutx.org/en/press-releases/aclu-texas-puts-counties-notice-possible-violations-voting-rights-act> (“...[O]ne county’s use of an automated translation service translated the term “runoff election” as “election water leak” or “election drainage.”); Michael. “How good is Google translate? The most accurate language pairs.” BeTranslated, September 9, 2019. Accessed July 22, 2020. <https://www.betranslated.com/blog/how-good-is-google-translate/> (“...GT only processes lines consisting of words and letters. It quickly processes pieces of text without understanding their meaning. Therefore, a translation system relying on advanced AI technology can be inaccurate and even erroneous.”).

<https://sos.ga.gov/index.php/elections>
<https://www.gwinnettcountry.com/web/gwinnett/Departments/Elections>
<https://www.census.gov/data/tables/2016/dec/rdo/section-203-determinations.html>
<https://azsos.gov/elections>
<https://www.courtlistener.com/recap/gov.uscourts.azd.1216532/gov.uscourts.azd.1216532.57.1.pdf>
<https://www.facebook.com/SecretaryHobbs>
<https://www.aclutx.org/en/press-releases/aclu-texas-puts-counties-notice-possible-violations-voting-rights-act>
<https://www.aclutx.org/en/press-releases/aclu-texas-puts-counties-notice-possible-violations-voting-rights-act>
<https://www.betranslated.com/blog/how-good-is-google-translate/>

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translation is accurate.³⁸⁵ Pinal’s website, though available in Spanish and accurately translated, contains incomplete and outdated information.³⁸⁶

Alaska provides information through Alaska Division of Elections’ website.³⁸⁷ Under a link called “Language Assistance,” various languages seem to be available, including some that Alaska is covered for: Aleut, Inupiat, Spanish, Tagalog, and Yup’ik.³⁸⁸ Alaska is also covered for Alaskan Athabascan, but that language does not seem to be available on the website.³⁸⁹ Aleutians East Borough (covered for Spanish), Valdez-Cordova Census Area (Alaskan Athabascan), Bethel Census Area (Inupiat) and Kenai Peninsula Borough (Yup’ik) have their own websites.³⁹⁰ Most of the websites are in English-only, and while some have translations, they are labeled in English so may be difficult for an LEP person to locate.³⁹¹ Bethel Census Area is covered for Inupiat, and has recordings of oral translations for Yup’ik, although they are labeled in English.³⁹² Section 203 requires oral assistance as the primary means of language access when “the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and Americans Indians, if the predominant language is historically unwritten.”³⁹³

Florida had over 1.9 million LEP citizens of voting age in 2015, and the entire state is covered for Spanish. ³⁹⁴ Some counties also provide translations in Haitian Creole.³⁹⁵ Commission staff reviewed the websites of the three most populous counties that are covered for Spanish: Miami-Dade County, Broward County and Palm Beach County.³⁹⁶ Miami-Dade County’s website appears to be accurate and

³⁸⁵ Maricopa County Elections Department, <https://recorder.maricopa.gov/elections/> (last accessed 7/23/20). See also Appendix C at 6-7. ³⁸⁶ Pinal County, Elections, <https://www.pinalcountyaz.gov/elections/Elecciones/Pages/home.aspx> (last accessed 7/23/20). See Appendix C at 7-9. ³⁸⁷ Alaska Division of Elections, <https://elections.alaska.gov/> (last accessed 7/23/20). See Appendix C at 4. ³⁸⁸ Appendix C at 4, figure 5. See also Covered Areas for Voting Rights Bilingual Election Materials – 2015, 81 Fed. Reg. at 87,533; U.S. Census Bureau, Section 203 Determinations Table, Alaska, <https://www.census.gov/data/tables/2016/dec/rdo/section-203-determinations.html> (43,493 LEP citizens of voting age in 2015). ³⁸⁹ *Ibid.* 390 Aleutians East Borough, Departments, Clerk’s Department, Elections, Aleutians East Borough 2019 Election Information, <https://www.aleutianseast.org/?SEC=029815F1-22EF-44B6-AEB1-53A793C73CA5> (last accessed 7/23/20); City of Valdez, Elections, <http://www.valdezak.gov/133/Elections> (last accessed 7/23/20); City of Bethel Alaska, Government, Elections, <https://www.cityofbethel.org/elections> (last accessed 7/23/20); Kenai Peninsula Borough, Assembly/Clerk, Clerk’s Office, Elections, <https://www.kpb.us/assembly-clerk/elections/election-information> (last accessed 7/23/20). See Appendix C at 1-3. ³⁹¹ See Aleutians East Borough, Departments, Clerk’s Department, Elections, Aleutians East Borough 2019 Election Information, <https://www.aleutianseast.org/?SEC=029815F1-22EF-44B6-AEB1-53A793C73CA5> (last accessed 7/23/20). See Appendix C at 1, figure 1. ³⁹² City of Bethel Alaska, Government, Elections, Language Assistance, <https://www.cityofbethel.org/elections> (last accessed 7/23/20). See Appendix C at 2-3, figure 3. ³⁹³ See Minority Voting Rights Access at 188, note 1144 (discussing 52 U.S.C. § 10503(c) where it is indicated that oral assistance is also required as the primary means of language access when “the language of the

<https://recorder.maricopa.gov/elections/>
<https://www.pinalcountya.gov/elections/Elecciones/Pages/home.aspx>
<https://elections.alaska.gov/>
<https://www.census.gov/data/tables/2016/dec/rdo/section-203-determinations.html>
<https://www.aletianseast.org/?SEC=029815F1-22EF-44B6-AEB1-53A793C73CA5>
<http://www.valdezak.gov/133/Elections>
<https://www.cityofbethel.org/elections>
<https://www.kpb.us/assembly-clerk/elections/election-information>
<https://www.aletianseast.org/?SEC=029815F1-22EF-44B6-AEB1-53A793C73CA5>
<https://www.cityofbethel.org/elections>
<https://www.census.gov/data/tables/2016/dec/rdo/section-203-determinations.html>

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accessible, to both Spanish-speakers and Creole-speakers.³⁹⁷ Broward County and Palm Beach County use Google Translate, which can be inaccurate.³⁹⁸

Massachusetts expanded access to absentee ballots on July 7, stating that it will mail applications to all voters, but it remains to be seen if there will be sufficient language access.³⁹⁹ The Secretary of State's website provides absentee ballot applications in Spanish, Chinese, and Khmer; but the rest of the website is in English, which may be difficult for an LEP person to navigate.⁴⁰⁰ Boston and Worcester are covered for Spanish,⁴⁰¹ Lowell is covered for Khmer, and Quincy is covered for Chinese.⁴⁰² All of the cities use machine-generated translations for their websites, raising questions about accuracy.⁴⁰³ Boston provides translations of the Absentee Ballot Application in Spanish, Chinese and Khmer; however, the whole website is still English-only with only a Google Translate option.⁴⁰⁴ On Worcester's website, an LEP user must agree to a disclaimer stating that the "City of Worcester will not be held responsible for the consequences arising from translation provided by the Microsoft service."⁴⁰⁵

Alabama is home to an increasing Puerto Rican population including persons of voting age who are U.S. citizens by birthright and have no legal obligation to learn English in order to vote,⁴⁰⁶ yet the Secretary of State's website information on absentee voting and the absentee ballot application are in

397 Miami-Dade County, Supervisor of Elections, <https://www.miamidade.gov/global/elections/home.page> (last accessed 7/27/20). See Appendix C at 9, figure 14. 398 Broward County, Supervisor of Elections, Vote By Mail Voting, <https://www.browardsoe.org/Voting-Methods/Vote-By-Mail-Voting> (last accessed 7/23/20) (the website has a Vote-By-Mail Brochure in Spanish, but it is not labeled in this language); Palm Beach County, Supervisor of Elections, Vote By Mail, <https://www.pbcelections.org/Voters/Vote-By-Mail> (last accessed 7/23/20). See, e.g., Appendix C at 11, figure 15. 399 Ehrlich, Jamie. "Massachusetts governor signs bill allowing all voters to vote by mail." CNN, July 7, 2020. Accessed July 21, 2020. <https://edition.cnn.com/2020/07/07/politics/massachusetts-vote-by-mail-charlie-baker/index.html>. Governor Charlie Baker signed a bill on July 6 that allows all registered voters to vote by mail in the primary and general elections if they so choose. This bill expands early voting, adding additional days in order to limit crowds at the poll sites. 400 See Appendix C at 15-17. See Appendix C at 15-17. See also U.S. Census Bureau, Section 203 Determinations Table, Massachusetts, <https://www.census.gov/data/tables/2016/dec/rdo/section-203-determinations.html>. 401 See Memorandum of Understanding, United States and Commonwealth of Massachusetts (Sept. 22, 2008), <https://www.justice.gov/crt/memorandum-understanding>. 402 See Appendix C at 17-24. See also Covered Areas for Voting Rights Bilingual Election Materials – 2015, 81 Fed. Reg. at 67,535. 403 *Ibid.* 404 *Ibid.*, 17-19, figures 26 and 27. See also supra note 85 for discussion of inaccuracies in voting materials translated by Google Translate. 405 *Ibid.* (indicating that disclaimer states that images and pdf documents on the website may not be translated while using this service). 406 See Katzenbach v. Morgan, 384 U.S. 641, 658 (1966) (citing See, e.g., 111 Cong. Rec. 16235; Voting Rights, Hearings before Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 6400, 89th Cong., 1st Sess., 100-101, 420-421, 508-517 (1965) at note 3; See also Jones Act of 1917, 39 Stat. 953, conferring United States citizenship on all citizens of Puerto Rico); 52 U.S.C. § 10303(e); and See U.S. Census, 2018 ACS 1-year Estimates Data Profile, Alabama, <https://data.census.gov/cedsci/table?q=United%20States&tid=ACSDP1Y2018.DP05&g=0400000US01&hidePreview=true>, estimating that Alabama was home to 26,822 persons of Puerto Rican origin in 2018. In 2010, that number was only 13, 655, indicating recent migration and higher likelihood of having been educated in Puerto Rico, in Spanish. *Ibid.*, 2010 1-year Estimates Data Profile, Alabama, <https://data.census.gov/cedsci/table?q=United%20States&tid=ACSDP1Y2010.DP05&g=0400000US01&hidePreview=true&t=Populations%20and%20People>.

<https://www.miamidade.gov/global/elections/home.page>
<https://www.browardsoe.org/Voting-Methods/Vote-By-Mail-Voting>
<https://www.pbcelections.org/Voters/Vote-By-Mail>
<https://edition.cnn.com/2020/07/07/politics/massachusetts-vote-by-mail-charlie-baker/index.html>
<https://www.census.gov/data/tables/2016/dec/rdo/section-203-determinations.html>
<https://www.justice.gov/crt/memorandum-understanding>
<https://data.census.gov/cedsci/table?q=United%20States&tid=ACSDP1Y2018.DP05&g=0400000US01&hidePreview=true>
<https://data.census.gov/cedsci/table?q=United%20States&tid=ACSDP1Y2010.DP05&g=0400000US01&hidePreview=true&t=Populations%20and%20People>
<https://data.census.gov/cedsci/table?q=United%20States&tid=ACSDP1Y2010.DP05&g=0400000US01&hidePreview=true&t=Populations%20and%20People>

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English-only.⁴⁰⁷ Some of its counties like Jefferson County, Mobile County and Madison County either lead to the Secretary of State's website or provide the option to translate using Google Translate.⁴⁰⁸

Impacts of 2020 Election Changes on Voters with Disabilities The Commission found in 2018 that although Congress had enacted specific protections, substantial barriers for voters with disabilities continued to exist.⁴⁰⁹ 2018 Census data show that there were an estimated 40,637,764 people with disabilities living in the United States, constituting approximately 12.6 percent of the total population.⁴¹⁰ Of that number, 37,542,510 people with disabilities are of voting age, making up 21.4% of the total U.S. voting age population.⁴¹¹

There has been a rise in the voting rate of people with disabilities over the past several years. In 2016, voters with disabilities accounted for about one-sixth (16.7%) of eligible voters, which equates to about 35.4 million people.⁴¹² In 2018, voter turnout for this population increased by 8.5 percentage points relative to the 2014 midterm elections; and 14.3 million individuals with disabilities reported voting in November 2018.⁴¹³ Although people with disabilities had a higher voter registration rate (63.7%) than the general population (61.3%) in 2018, the percentage of those who voted (47.8%) was lower than the general population (49.0%).⁴¹⁴ Census data also indicated that 11.7% of people surveyed reported not voting in the 2016 presidential election due to illness or disability.⁴¹⁵ In November 2018, the percentage of people who reported not voting nationwide due to illness or disability rose to 12.8%.⁴¹⁶

In 2018, the Commission examined the statutory and regulatory framework, including the Voting Rights Act (VRA),⁴¹⁷ applicable to the right to vote for people with disabilities, writing that, "Section 208 of the VRA mandates that particular voters who require assistance to vote be provided assistance of their

407 See Appendix C at 13; see also Alabama Secretary of State, Alabama Votes, Absentee Voting Information, <https://www.sos.alabama.gov/sites/default/files/voter-pdfs/absentee/RegularAbsenteeAppFillable.pdf> (last accessed 7/23/20) (absentee ballot application). 408 Mobile County, Government, Elections & Voting, <https://www.mobilecountyal.gov/government/elections-voting/> (last accessed 7/23/20); Madison County Elections, <https://www.madisoncountyvotes.com> (last accessed 7/23/20). See Appendix C at 13-15. See also supra note 384 for discussion of inaccuracies in voting materials translated by Google Translate. 409 Minority Voting Rights Access, at 193. 410 U.S. Census Bureau, American Community Survey, Table S1810, Disability Characteristics, <https://data.census.gov/cedsci/table?q=Disability&hidePreview=false&t=Disability&tid=ACSST1Y2018.S1810> (last accessed June 16, 2020). 411 *Ibid.* 412 Lisa Schur and Douglas Kruse, "Projecting the Number of Eligible Voters with Disabilities in the November 2016 Elections," Rutgers School of Management and Labor Relations, Sept. 8, 2016, https://smr.rutgers.edu/sites/default/files/documents/faculty_staff_docs/Kruse%20and%20Schur_Disability%20electorate%20projections%202016_9-8-16.pdf. 413 Lisa Schur and Douglas Kruse, "Fact Sheet: Disability and Voter Turnout in the 2018 Elections," Rutgers School of Management and Labor Relations, <https://smr.rutgers.edu/sites/default/files/2018disabilityturnout.pdf>. 414 U.S. Census Bureau, Voting and Registration in the Election of November 2018: Reported Voting and Registration by Sex, Employment Status, Class of Worker and Disability Status: November 2018, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html> (last updated Apr. 22, 2019). 415 Minority Voting Rights Access, p. 193 (citing U.S. Census Bureau, Voting and Registration in the Election of November 2016: Reasons for Not Voting, by Selected Characteristics, U.S. CENSUS BUREAU (last updated Apr. 2, 2019)). 416 U.S. Census Bureau, Voting and Registration in the Election of November 2018: Reasons for Not Voting, by Selected Characteristics: November 2018, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html> (last updated Apr. 22, 2019). 417 Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 52 U.S.C. § 10101).

<https://www.sos.alabama.gov/sites/default/files/voter-pdfs/absentee/RegularAbsenteeAppFillable.pdf>
<https://www.mobilecountyal.gov/government/elections-voting/>
<https://www.madisoncountyvotes.com/>
<https://data.census.gov/cedsci/table?q=Disability&hidePreview=false&t=Disability&tid=ACSST1Y2018.S1810>
https://smr.rutgers.edu/sites/default/files/documents/faculty_staff_docs/Kruse%20and%20Schur_Disability%20electorate%20projections%202016_9-8-16.pdf
https://smr.rutgers.edu/sites/default/files/documents/faculty_staff_docs/Kruse%20and%20Schur_Disability%20electorate%20projections%202016_9-8-16.pdf
<https://smr.rutgers.edu/sites/default/files/2018disabilityturnout.pdf>
<https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html>
<https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html>
<https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html>

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choice."⁴¹⁸ Section 208 requires that "Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union."⁴¹⁹ The Commission's 2018 report was limited to an evaluation of the VRA, and this update is similarly focused.⁴²⁰

In testimony for a Congressional hearing on elections during the COVID-19 pandemic, Michelle Bishop of the National Disability Rights Network wrote that:

The disability community is diverse and people with disabilities are a part of every community. People who identify as LGBTQIA+ are more likely to have a disability. A quarter or more of American Indians/Alaska Natives and Black adults have a disability. People with disabilities are disproportionately low-income, and are unemployed, underemployed, or not participating in the workforce at a rate of approximately three-fourths of the entire disability community.⁴²¹

Bishop also highlighted the importance of political participation to people with disabilities, stating that:

People with disabilities are politically active. Pew reported that people with disabilities pay more attention to presidential elections and that election results matter more to people with disabilities when compared to people without disabilities. Despite the size, diversity, and political commitment of the disability community, America's electoral system remains largely inaccessible and has a long history of excluding people with disabilities – exclusion potentially exacerbated by the COVID-19 pandemic.⁴²²

In a written submission to the Commission to inform this update, Bishop emphasized the importance of providing adequate notice of any changes to voting procedures in light of the COVID-19 pandemic.⁴²³ She stated that election officials should use a variety of communications mediums, including accessible communications, to ensure that voters have adequate notice of changes.⁴²⁴

The Alabama State Advisory Committee (AL SAC) to the Commission took in testimony that some voters with developmental disabilities have been prohibited from voting because poll workers deemed the voters not able to vote because of perceived "mental incompetence," apparently in violation of the ADA

418 *Id.* at 29 (internal citations omitted). 419 52 U.S.C. § 10508. Polling place accessibility for people with disabilities is also protected by the federal Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213, the Help America Vote Act, 52 U.S.C. §§ 20910-21145, the National Voter Registration Act, 52 U.S.C. §§ 20501-20511, and the Voting Accessibility for the Elderly and Handicapped Act, 52 U.S.C. §§ 20101-20107. To note, the Commission recognizes that referring to people with disabilities as "handicapped" is offensive and is only used in this context to remain accurate to the original legislative text. 420 See Minority Voting Rights Access, p. 195; See also supra note 2. 421 Michelle Bishop, Voting Rights Specialist, National Disability Rights Network, Written Statement for the House Committee on the Judiciary – Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Protecting the Right to Vote During the COVID-19 Pandemic Hearing, p. 2 (Jun. 3, 2020) (citations omitted) (hereinafter "Bishop Statement, June 2020"). 422 *Ibid.* (citations omitted). 423 Michele Bishop, Voting Rights Specialist, National Disability Rights Network, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 1, 2020, at 6 (hereinafter Bishop Statement). 424 Bishop Statement, p. 6.

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and Alabama state law.⁴²⁵ The AL SAC attributed these violations to lack of sufficient training of poll workers.⁴²⁶ The Michigan State Advisory Committee to the Commission (MI SAC) similarly found in an April 2020 report on voting rights that "poor poll worker cultural competency and technical knowledge" can contribute to voters with disabilities encountering problems at the polls.⁴²⁷ In a recent Florida case seeking removal of barriers to voting by absentee ballot, the parties settled and agreed in part that the Florida Secretary of State would educate state election supervisors on voter accessibility issues.⁴²⁸

As discussed above, states have implemented a variety of different approaches in an attempt to allow access to the ballot during the pandemic. However, some proposed changes including one size fits all approaches to voting, such as

Mail-in voting can make it more difficult for voters with disabilities to exercise their right to vote. Election officials should ensure that accessible voting options are available and that these options are consistent with the recommendations for slowing the spread of COVID-19.429

Absentee Ballot Issues Impacting Citizens With Disabilities As discussed herein, applying for and receiving an absentee ballot can be a multistep process, and can pose unnecessary barriers to voters with disabilities.430 Barriers may include the requirement that a voter have a photo ID to vote.431 While the expansion of absentee voting can be seen as a positive step in ensuring that voters have the ability to cast their vote while also protecting themselves from contracting COVID-19, voting by mail may actually increase barriers for some voters.432 In 2018, the Commission received testimony from the Ohio State Advisory Committee (OH SAC) about barriers that voters with disabilities face. The OH SAC reported, “[s]ome of the biggest misconceptions identified during the Ohio briefing are that a person with a disability cannot vote because the person has a guardian, that a person cannot understand how to vote because the person cannot verbally communicate, and that a person who is blind cannot complete a ballot.”433 Voters with disabilities have previously reported issues with casting absentee ballots. For example, in 2012, over one-fourth (28.4%) of voters with disabilities voted by mail,

425 Alabama State Advisory Cmte to the U.S. Comm’n on Civil Rights, Barriers to Voting in Alabama, p. 32 (Feb. 2020) <https://www.usccr.gov/files/2020-07-02-Barriers-to-Voting-in-Alabama.pdf> (hereinafter AL SAC Voting Rights Report); see 42 U.S.C. § 12132; Ala. Code §§ 38-9C-4(7) and 4(5). 426 AL SAC Voting Rights Report, p. 32. 427 Michigan State Advisory Cmte to the U.S. Comm’n on Civil Rights, Voting Rights and Access in Michigan, p. 4 (April 2020) <https://www.usccr.gov/pubs/2020/04-20-MI-SAC-Report-Voting-Rights.pdf> (hereinafter MI SAC Voting Rights Report). 428 Resolution of Claims and Affirmation of Principles for November 2020 General Election, Williams v. DeSantis, No. 1:20-cv-67 (N.D. Fla. Jul. 19, 2020). 429 Centers for Disease Control and Prevention, Considerations for Election Polling Locations and Voters, (Jun. 22, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last accessed Jul. 6, 2020). 430 See supra, notes 52-58. 431 See Minority Voting Rights, pp. 193-94 (discussing how voter ID requirements have a disproportionate impact on voters with disabilities). 432 See e.g. Matt Barreto, Professor of Political Science and Chicano/a Studies, University of California-Los Angeles (hereinafter UCLA), Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 2, 2020, at 12 (hereinafter Barreto Statement). 433 Minority Voting Rights, p. 194 (internal citation omitted).

<https://www.usccr.gov/files/2020-07-02-Barriers-to-Voting-in-Alabama.pdf>
<https://www.usccr.gov/pubs/2020/04-20-MI-SAC-Report-Voting-Rights.pdf>
<https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

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compared to one-sixth (17.3%) of voters without disabilities.434 Among those voters with disabilities, about one-tenth reported difficulties.435 To alleviate some of these concerns California developed the Remote Accessible Vote-by-Mail system which allows voters with disabilities to electronically download and mark a ballot using their assistive technology devices. This system became mandatory in every county in California as of January 1, 2020.436 In response to the COVID-19 pandemic, at least 14 states have either changed the requirements for absentee and early voting or clarified how voters can use existing alternate voting options during the pandemic, by interpreting the COVID-19 pandemic to be a valid excuse for any citizen to vote absentee. 437 Some people with disabilities are at a higher risk of contracting COVID-19 and may prefer to vote using an absentee ballot rather than voting in person to reduce the risk of contracting the disease. National studies have suggested that voters with disabilities may also be more likely to vote by mail due to the accessibility of casting a ballot from home.438 Michelle Bishop explained how access to absentee ballots or vote by mail will be an important part of administering the 2020 election safely for people with disabilities, writing that:

Social distancing is our best line of defense from the threat of COVID-19, and naturally, vote by mail is a critical piece of the puzzle for keeping elections safe during the pandemic. It behooves elections administrators to allow for as many voters as possible to choose voting from home, for their own safety, as well as the health of their fellow voters and elections personnel.439

On the other hand, shifting to an all vote-by-mail election as some have suggested may increase barriers to voting for some people with disabilities. Dan Morenoff argued that:

Over the last three (3) decades, technology (and federal law) has freed blind voters, when they vote in person, to cast their ballots with the same privacy and independence enjoyed by the rest of the electorate. However, where states have shifted to mail-in-only balloting, these gains have become threatened ... it seems unlikely that private litigants will be able to address this threat everywhere that it arises between now and November. As a result, here, a group of disabled voters, protected by the Americans with Disabilities Act and the Voting Rights Act, is at risk of having those protections gutted, inadvertently, by efforts to prevent the spread of the Disease.440

434 Lisa Schur, Meera Adya, and Douglas Kruse, “Disability, Voter Turnout, and Voting Difficulties in the 2012 Election,” Research Alliance for Accessible Voting, July 18, 2013, at 10. 435 *Ibid.*, Executive Summary at 2. 436 Disability Rights California, “Many Voters with Disabilities Can Vote by Mail Privately and Independently,” Jan. 14, 2020, <https://www.disabilityrightsca.org/publications/many-voters-with-disabilities-can-vote-by-mail-privately-and-independently>. 437 See supra notes 52-58. Some states, such as New Hampshire and Virginia have interpreted the existing excuse requirement for requesting an absentee or mail ballot to include requesting a ballot because of the pandemic as a valid excuse. See Ho Statement, June 2020, p. 24. Other states, such as Kentucky and Indiana, issued orders that all voters are eligible for absentee voting or vote by mail without an excuse. Ho Statement, June 2020, p. 23. The Governor of New York issued an executive order stating that all eligible voters would receive an application for an absentee ballot in the mail. Ho Statement, June 2020, p. 24. 438 Peter Miller and Sierra Powell, “Overcoming voting obstacles: The use of convenience voting by voters with disabilities,” American Politics Research, 2016, vol. 44, no. 1; Ann Baringer, Michael Herron, and Daniel Smith, “Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of Coronavirus,” Election Science, April 25, 2020 at 7. 439 Bishop Statement, June 2020, p. 2. 440 Morenoff Statement at 5.

<https://www.disabilityrightsca.org/publications/many-voters-with-disabilities-can-vote-by-mail-privately-and-independently>
<https://www.disabilityrightsca.org/publications/many-voters-with-disabilities-can-vote-by-mail-privately-and-independently>

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As discussed above, one preliminary ruling, upheld by the Eleventh Circuit but blocked by the Supreme Court, considered allegations that Alabama’s absentee ballot witness and photo ID requirements⁴⁴¹ are unconstitutional as applied to certain voters during the COVID-19 pandemic, arguing that it imposes a severe burden on elderly and disabled voters because compliance could require them to leave their homes.⁴⁴² Some voters do not have copying machines in their homes and the Alabama Secretary of State indicated they may need to go to a store to make a copy of their photo IDs in order to apply for an absentee ballot.⁴⁴³ Alabama Secretary of State Merrill said there was no evidence that no one was available to help them do this,⁴⁴⁴ and later tweeted insensitive remarks about voters who may need assistance.⁴⁴⁵ However the court reasoned there was “no guarantee that each of those plaintiffs would be able to find a person to help make a copy for them, and requiring a vulnerable voter to find a person willing to help at the risk of potential exposure to COVID-19 is itself a burden.”⁴⁴⁶ Moreover, Plaintiffs had asked that the photo ID requirement be enjoined only for those voters over 65 and voters with disabilities who feel that it is impossible or unreasonable to comply with the photo ID requirement because of COVID-19.⁴⁴⁷ Although his ruling was later blocked by the Supreme Court on other grounds,⁴⁴⁸ the federal judge agreed, finding that this was “merely an extension” of other exceptions to the photo ID law for voters in these categories who are unable to go to the polls, and that there are other measures to prevent voter fraud, including the requirement that absentee voters provide their drivers’ license number or the last four digits of their social security number.⁴⁴⁹ Further, while the state argued that voters could find others to make copies of their photo ID for them, the court stated that:

Even assuming that is a viable option for all of these voters, finding a willing individual to assume the risk of exposure to COVID-19 is itself a burden, and does not completely eliminate the risk of exposure to the voters. Thus, the photo ID requirement could present some elderly and disabled voters who wish to vote absentee with the burden of choosing between exercising their right to vote and protecting themselves from the virus, which could dissuade them from voting.⁴⁵⁰

In a Florida lawsuit brought in part by voters with disabilities, a plaintiff with multiple sclerosis alleged that due to preexisting medical conditions, it would be unsafe for him to leave his home to vote in person during the pandemic.⁴⁵¹ However, his medical conditions do not allow him to sign his own name, a

441 See Minority Voting Rights Access, pp. 94-95; See also Greater Birmingham Ministries v. Sec’y of State of Ala., No. 18- 10151 (11th Cir. Argued July 28, 2018); Order Granting Stay, Merrill v. People First, 591 U.S. ____ (S.Ct. July 2, 2020) (stayed on other grounds), https://www.supremecourt.gov/orders/courtorders/070220zr_n7io.pdf, supra notes 148-153. 442 Peoples’ First Pl at 44-45. 443 *Id.* at 45. 444 *Id.* at 45-46. 445 Alabama Sec’y of State John Merrill, Twitter, Apr. 21, 2020, <https://twitter.com/johnmerrill/status/1252652987241172992?lang=en> (“When I come to your house and show you how to use your printer I can also teach you how to tie your shoes and to tie your tie. I could also go with you to Walmart or Kinko’s and make sure that you know how to get a copy of your ID made while you’re buying cigarettes or alcohol.”) 446 Peoples’ First Pl at 45-46. 447 *Id.* at 46-47. 448 See supra notes 148-153 (discussing that although the Court gave no reasons, staying the relief ordered by the Alabama federal judge and affirmed by the Eleventh Circuit appears to be part of a series of orders blocking changes in procedures that are sometimes considered too close to an election, and that this was the Defendants’ principal argument to the Court). 449 *Id.* at 47. 450 *Id.* at 48. 451 First Amended Complaint, Dream Defenders v. DeSantis, No. 1:20-cv-00067, ¶ 19 (N.D. Fla. Apr. 20, 2020).

https://www.supremecourt.gov/orders/courtorders/070220zr_n7io.pdf
<https://twitter.com/johnmerrill/status/1252652987241172992?lang=en>

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required step when completing an absentee ballot in Florida.⁴⁵² Another plaintiff alleged similar challenges because as someone who is blind, she cannot assess whether she is complying with social distancing guidance.⁴⁵³ Also, the only way she could vote absentee is if Florida officials allowed her to use assistive technology to mark her ballot.⁴⁵⁴ Clark Rachfal of the American Council of the Blind noted in testimony to the Commission that voting by mail poses risks for some people with disabilities during the pandemic, as each step may require the voter to seek assistance from another person.⁴⁵⁵

On May 5, 2020, Virginia entered into a partial consent judgment to resolve allegations that the state’s witness requirement for absentee ballots violated the First and Fourteenth Amendments, including factual allegations that requiring voters to potentially break social distancing procedures to have their absentee ballot witnessed could disenfranchise some voters.⁴⁵⁶ Virginia agreed in the consent judgement that it would not enforce the witness requirement on absentee ballots during the state’s primary elections on June 23, 2020.⁴⁵⁷ The state was also responsible for issuing guidance to relevant city and county election officials directing them to count any absentee ballots that are missing a witness signature but were otherwise valid.⁴⁵⁸ However in Pennsylvania, a state court denied plaintiff’s request for a preliminary injunction requesting that election officials to implement appropriate safety measures for upcoming primary and presidential elections, reasoning that should issues arise on Election Day, plaintiffs can seek remedy from Pennsylvania’s Court of Common Pleas.⁴⁵⁹

Polling Place Issues for Citizens With Disabilities In 2018, the Commission found that misconceptions and stereotypes of people with disabilities, socioeconomic factors that disproportionately affect people with disabilities such as lower incomes, less access to identification required to vote, and less access to transportation had led to some people with disabilities having a harder time voting.⁴⁶⁰ The Commission also found that limited data about voters with disabilities led to negative impacts on the capacity of poll workers to understand how best to work with people with disabilities at the polls.⁴⁶¹ Information gathered by State Advisory Committees (SACs) to the Commission found that people with disabilities experienced accessibility barriers at polling locations such as “parking and pathway situations frequently deter the voter with disabilities from access, i.e. long walks after parking, obstructions, and inadequate lighting.”⁴⁶²

452 Id. 453 *Id.* at 20. 454 Id. 455 Clark Rachfal, Director of Advocacy and Government Affairs, American Council of the Blind, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 1, 2020, at 2 (hereinafter Rachfal Statement). 456 Order Granting Joint Motion to Approve Consent Judgement, League of Women Voters of Virginia v. Virginia State Board of Elections, No. 6:20-cv-00024 (W.D. Va. May 5, 2020). 457 Partial Consent Judgement and Decree, League of Women Voters of Virginia v. Virginia State Board of Elections, No. 6:20-cv-00024 (W.D. Va. May 5, 2020) at p. 5. 458 *Id.* 459 Memorandum Opinion, Crosse v. Boockvar, No. 266 MD 2020 (Pa. Commonwealth Ct. June 2, 2020) at 11. 460 Minority Voting Rights Access, pp. 193-94. 461 Minority Voting Rights Access, p. 194. 462 Minority Voting Rights Access, p. 194. (quoting Cal. Advisory Committee to the U.S. Comm’n on Civil Rights, Voting Integrity in California: Issues and Concerns in the 21st Century 5 (June 2017), <http://www.usccr.gov/pubs/07-24-Voting-Integrity-in-CA.pdf>); The Illinois SAC also reported that some people with disabilities were subjected to longer wait times while poll workers attempted to get accessible voting machines to function.

<http://www.usccr.gov/pubs/07-24-Voting-Integrity-in-CA.pdf>
<http://www.usccr.gov/pubs/07-24-Voting-Integrity-in-CA.pdf>

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An April 2020 report by the Michigan State Advisory Committee (MI SAC) to the Commission found that voters with disabilities in Michigan faced barriers to voting in person due to a lack of accessible polling places.⁴⁶³ Access to polling places in Michigan was restricted at some polling locations due to lack of accessible parking, lack of ramps, and doorways and pathways too narrow for a wheelchair.⁴⁶⁴ The MI SAC also received testimony about how poll workers in Michigan did not have “an understanding of voting laws, and knowledge of how to accommodate voters with disabilities.”⁴⁶⁵

The CDC has issued guidance for election officials about how to prevent the transmission of COVID-19 at polling locations.⁴⁶⁶ The guidance instructs that election officials can reduce the risk of COVID-19 transmission by offering: 1) a wide variety of voting options; 2) longer voting periods including more days and longer hours and; 3) any other feasible options for reducing the number of voters who congregate indoors in polling locations at the same time.⁴⁶⁷ The guidance notes that “[r]elections with only in-person voting on a single day are higher risk for COVID-19 spread because there will be larger crowds and longer wait times.”⁴⁶⁸ Furthermore, the CDC noted that polling locations should “[l]imit nonessential visitors. Poll workers and voters should be discouraged from bringing accompanying persons (e.g., family members, friends) to the polling location,” which would disproportionately affect voters with disabilities who are entitled to assistance of a person of their choosing at the polls under the VRA.⁴⁶⁹ Voters in the 2020 primaries have reported extremely long lines at many locations across the country due to some jurisdictions closing many in-person polling locations.⁴⁷⁰ For instance, in Milwaukee, Wisconsin, officials closed all but 5 in-person locations (down from the usual 160 locations) and other large cities throughout the state also closed many locations that was projected to affect over 1 million people in the 2020 primaries.⁴⁷¹ Matt Barreto stated that some voters with disabilities who chose to vote in-person in Wisconsin reported not being provided the necessary public health protections (e.g., social distancing) when they went to cast their vote.⁴⁷²

463 MI SAC Voting Rights Report, p. 18. 464 MI SAC Voting Rights Report, p. 18. 465 MI SAC Voting Rights Report, p. 19 (internal citation omitted). 466 Centers for Disease Control and Prevention, Considerations for Election Polling Locations and Voters, (Jun. 22, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last accessed Jul. 6, 2020). 467 *Ibid.* 468 *Ibid.* 469 *Ibid.*; see 52 U.S.C. § 10508. 470 See e.g. Michelle Price and Scott Sonner, “Big Turnout, but long lines at Nevada polls draw complaints,” Associated Press, June 10, 2020, <https://apnews.com/eb8c216987916586c0b5f66c38871fa>; Zach Montellaro and Laura Barrón-López, “A hot, flaming mess: Georgia primary beset by chaos, long lines,” Politico, June 9, 2020, <https://www.politico.com/news/2020/06/09/georgia-primary-election-voting-309066>; and see supra notes 66, 187, 278. 471 Natasha Korecki, Zach Montellaro,

<https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>
<https://apnews.com/eb6c216987916586cf0b5f68c38671fa>
<https://www.politico.com/news/2020/06/09/georgia-primary-election-voting-309066>
<https://www.politico.com/news/2020/04/07/wisconsin-voters-brave-long-lines-coronavirus-172322>
<https://www.politico.com/news/2020/04/07/wisconsin-voters-brave-long-lines-coronavirus-172322>
<https://wisconsinexaminer.com/2020/04/06/wisconsin-closed-polls/>

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A 2013 study funded by the U.S. Election Assistance Commission showed that voters with disabilities may be disenfranchised when attempting to exercise their right to vote,473 and with changes to voting procedures during the 2020 election cycle due to COVID-19, they may be faced with even more issues.474Michelle Bishop wrote to the Commission about lack of accessible in-person polling locations, noting that only 40% of polling locations were accessible in 2016.475 Within polling places, only 35% of voting stations were accessible to voters with disabilities in 2016.476 According to a 2019 report from the Leadership Conference on Civil and Human Rights, some jurisdictions have used ADA accessibility requirements as a scapegoat to justify closing polling places that were not ADA-compliant, rather than coming into compliance.477 The AL SAC found, for example, that one of the five explanations that Alabama election officials offered for closing polling places was noncompliance with the ADA.478 Some polling places could be made ADA-compliant by taking steps such as: 1) creating accessible parking; 2) installing temporary ramps and/or staircases and; 3) propping open heavy doors or installing doorbells.479

Curbside Voting – Voters with Disabilities Allowing voters with disabilities to vote in person, but remain in their own car and have a poll worker bring their ballot to their car, is one way that jurisdictions can ensure that accessible, in person voting options remain available to voters with disabilities while maintaining social distancing procedures.480 U.S. Representative Marica Fudge (D-OH) submitted that election officials should implement curbside voting “to account for individuals who “are unable to enter a polling site—which may be momentarily overcrowded, contain people who refuse to comply with social distancing guidelines or be inaccessible.”481 A federal judge in Alabama reasoned that “[t]he CDC recommends that election officials encourage curbside voting for eligible voters if allowed in a jurisdiction to minimize the risk of COVID- 19 exposure,”482 and preliminarily enjoined Secretary of State Merrill’s bar of local election officials from utilizing curbside voting to assist voters with disabilities, finding that it is substantially likely to be

473 See e.g. Lisa Schur, Meera Adya, and Douglas Kruse, “Disability, Voter Turnout, and Voting Difficulties in the 2012 Election,” Research Alliance for Accessible Voting, July 18, 2013, https://www.eac.gov/sites/default/files/eac_assets/1/1/Disability%20and%20voting%20survey%20report%20for%202012%20elections.pdf; Lisa Schur, Meera Adya, and Mason Ameri, “Accessible Democracy: Reducing Voting Obstacles for People with Disabilities,” Election Law Journal, 2015, vol. 14, no. 1, https://smrl.rutgers.edu/sites/default/files/elj_accessible_democracy_reducing_voting_obstacles_for_people_with_disabilities.pdf. 474 National Disability Rights Network, “Statement on Elections Accessibility during the Covid-19 Pandemic,” Mar. 17, 2020, <https://www.ndrn.org/resource/statement-on-elections-accessibility-during-the-covid-19-pandemic/>. 475 Bishop Statement at 5. 476 Bishop Statement at 5. 477 The Leadership Conference on Civil and Human Rights, Democracy Diverted: Polling Place Closures and the Right to Vote, p. 43 (Sept. 2019) <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>. 478 AL SAC Voting Rights Report, at 39. 479 The Leadership Conference on Civil and Human Rights, Democracy Diverted: Polling Place Closures and the Right to Vote, p. 43 (Sept. 2019) <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>. 480 Bishop Statement at 4. 481 U.S. Representative Marica Fudge, Chair, Subcommittee on Elections, Committee on House Administration, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 1, 2020, at 18 (hereinafter Fudge Statement) (quoting The Impact of COVID-19 on Voting Rights and Election Administration: Ensuring Safe and Fair Elections: Hearing Before the Subcomm. on Elections, 116th Cong. (June 2020); testimony of Sherrilyn Ifill at p. 6). 482 Peoples First PI at 49.

https://www.eac.gov/sites/default/files/eac_assets/1/1/Disability%20and%20voting%20survey%20report%20for%202012%20elections.pdf
https://www.eac.gov/sites/default/files/eac_assets/1/1/Disability%20and%20voting%20survey%20report%20for%202012%20elections.pdf
https://smrl.rutgers.edu/sites/default/files/elj_accessible_democracy_reducing_voting_obstacles_for_people_with_disabilities.pdf
https://smrl.rutgers.edu/sites/default/files/elj_accessible_democracy_reducing_voting_obstacles_for_people_with_disabilities.pdf
<https://www.ndrn.org/resource/statement-on-elections-accessibility-during-the-covid-19-pandemic/>
<http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>
<http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

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unconstitutional.483 Plaintiffs argued that some voters with disabilities must vote in person, in order to receive assistance at the polls, and curbside voting would minimize their risk of exposure to COVID-19 under those circumstances.484 Some have argued that curbside voting would lead to a higher risk of voter fraud because people who vote curbside would not sign the poll list located inside the polling location.485

Early Voting Issues The Commission found in 2018 that early voting (including in-person, no-excuse absentee voting) has been a popular method of voting,486 and 35 states allowed early voting in some form.487 In June 2020, Michele Bishop testified to Congress about how access to early voting during the COVID-19 pandemic is an essential tool to reducing in-person turnout, which in turn would allow proper social distancing to protect the health and safety of voters who need to vote in person.488 An expansion of early voting during the pandemic would spread out voters over a longer period of time, reducing contact between voters and poll workers and reducing the number of voters who will need to vote on Election Day.489 Bishop also testified that election officials should consider relaxing requirements for alternatives to in person voting, such as absentee and early voting to allow more people to take advantage of these alternatives.490

The Department of Justice In 2018, the Commission reviewed two key aspects of the Department of Justice’s Civil Rights Division’s work on minority voting rights access under the Voting Rights Act (VRA): election monitoring and enforcement actions.491 Data on these activities are now updated in relation to the Commission’s current study of changes in access absentee voting, early voting and polling place resources due to the COVID- 19 pandemic on minority voters, including limited-English proficient (LEP) voters, and voters with disabilities, under the VRA.492 The Commission invited the Department to submit written testimony and received no answer.493 Public information shows relative inactivity in the two areas under evaluation.

VRA Enforcement Actions The Civil Rights Division’s Voting Section is authorized to conduct enforcement actions that may result in litigation in court, consent decrees, or out-of-court settlements to enforce relevant provisions of the Voting Rights Act.494 Starting in March, private parties have brought litigation seeking to enforce Sections 2, 4(e), 11(b), 203 and 208 of the VRA to protect the rights of minority voters, including LEP voters, and

483 Id. at 51. 484 Id. at 49. 485 Order, People First of Ala. v. Secretary of State of Ala., No. 20-12-184, p. 9 (11th Cir. Jun. 25, 2020) <https://www.naacpldf.org/wp-content/uploads/11th-Cir-Order-DENYING-Emergency-Stay-Motion.pdf>. 486 Minority Voting Rights Access, p. 158. 487 Ibid, pp. 158-59. 488 Bishop Statement, June 2020, p. 2. 489 Kristen Clarke, President & Executive Director, Lawyers’ Committee for Civil Rights Under Law, Written Statement for The Impact Of COVID-19 On Voting Rights And Election Administration: Ensuring Safe And Fair Elections hearing before the U.S. House Committee on House Administration, Subcommittee on Elections, June 11, 2020, at 19. 490 Ibid, pp. 2-3. 491 Minority Voting Rights Access at 239-40. 492 U.S. Com’n on Civil Rights, Announcement, The U.S. Commission on Civil Rights Announces COVID-19 Updates to Prior Reports on Voting Rights and Native American Needs, Jun. 5, 2020, <https://www.usccr.gov/press/2020/06-05-USCCR-COVID-Projects.pdf>. 493 See U.S. Com’n on Civil Rights, Office of Civil Rights Evaluation, Invitation Letter (on file). 494 Minority Voting Rights Access at 239, citing 52 U.S.C. §§ 10101(c), 10308(e)-(d).

<https://www.naacpldf.org/wp-content/uploads/11th-Cir-Order-DENYING-Emergency-Stay-Motion.pdf>
<https://www.usccr.gov/press/2020/06-05-USCCR-COVID-Projects.pdf>
<https://www.usccr.gov/press/2020/06-05-USCCR-COVID-Projects.pdf>

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voters with disabilities, in relation to changes that have come about in the wake of the COVID-19 pandemic.495 Although these cases are still developing and are only at the preliminary injunction stage, they show the potential applicability of these VRA provisions and the need to address emerging access issues around access to absentee ballots, early voting and polling places resources during the pandemic.496

Current data shows that similar to results reported in Minority Voting Rights Access, the Voting Section has conducted comparatively fewer related VRA enforcement actions regarding the issues under study.497 The Commission’s statutory report for FY 19, Are Rights a Reality? Evaluating Federal Civil Rights Enforcement, which evaluated 13 federal agencies’ civil rights programs, including that of the Department of Justice, also showed that only one VRA case was resolved (defined as finalized through settlement or court order) during the each of Fiscal Years 2016, 2017 and 2018.498 At the time of this writing, the last 4(e) case and the last 203 case were both resolved in 2012.499 The last Section 208 case was resolved in 2009, and it was related to language access.500 The last Section 2 case was begun in May and resolved in

495 See Complaint, People First of Ala. v. Merrill, No.2:20-cv-00619 (N.D. Ala. May 1, 2020) (alleging inter alia violation of VRA § 2); Complaint, CT State Conference of NAACP Branches v. Merrill, No. 3:20-cv-00909 (D. Conn. Jul. 2, 2020) (alleging inter alia violation of VRA § 2); Complaint, Robinson v. Bd. of Elections, No. 1:20-cv-01364 (D.D.C. May 21, 2020) (alleging violation of VRA § 2); Second Amended Complaint, Ga. Ass’n of Latino Elected Officials v. Gwinnett Cnty. Bd. of Registration and Elections, No. 1:20-cv-01587 (N.D. Ga. Jun. 8, 2020) (alleging violations of VRA §§ 4(e), 203); Complaint, New Ga. Project v. Raffensperger, No. 1:20-cv-01986 (N.D. Ga. May 8, 2020) (alleging inter alia violation of VRA § 208); Complaint, Nemes v. Bensinger, No. 3:20-cv-00407 (W.D. Ky. Jun. 8, 2020) (alleging inter alia violation of VRA § 2); Complaint, Clark v. Edwards, No. 3:20-cv-00308 (M.D. La. May 19, 2020) (alleging inter alia violation of VRA § 2); Complaint, Mich. Alliance for Retired Americans v. Benson, No. 20-000108-MM (Mich. Ct. Claims Jun. 2, 2020) (alleging inter alia violation of VRA § 2); Amended Complaint, Democracy N.C. v. N.C. State Bd. of Elections, No. 1:20-cv- 00457 (M.D.N.C. Jun. 5, 2020) (alleging inter alia violation of VRA § 208); Complaint, Middleton v. Andino, No. 3:20-cv- 01730 (D.S.C. May 1, 2020) (alleging inter alia violations of VRA §§ 2, 208); Complaint, Thomas v. Andino, No. 3:20-cv- 01552 (D.S.C. Apr. 22, 2020) (alleging inter alia violations of VRA § 2); Complaint, Tex. Democratic Party v. Abbott, No. 5:20-cv-00438 (W.D. Tex. May 11, 2020) (alleging inter alia violation of VRA § 2); Complaint, League of Women Voters Va. v. Va. State Bd. of Elections, No. 6:20-cv-00024 (W.D. Va. Apr. 17, 2020) (alleging inter alia violation of VRA § 2); Complaint, Swenson v. Bostelmann, No. 3:20-cv-00459 (W.D. Wis. May 18, 2020) (alleging inter alia violation of VRA § 11(b)); Complaint, Taylor v. Milwaukee Elections Comm’n, No. No. 20-cv-00545 (E.D. Wis. Apr. 3, 2020) (alleging inter alia violation of VRA § 2). 496 See Republican National Committee v. Democratic National Committee, 589 U.S. ___ (2020); People First of Ala. v. Merrill, No.2:20-cv-00619 (N.D. Ala. May 1, 2020); Ga. Ass’n of Latino Elected Officials v. Gwinnett Cnty. Bd. of Registration and Elections, No. 1:20-cv-01587 (N.D. Ga. Jun. 8, 2020); Clark v. Edwards, No. 3:20-cv-00308 (M.D. La. May 19, 2020); Democracy N.C. v. N.C. State Bd. of Elections, No. 1:20-cv-00457 (M.D.N.C. Jun. 5, 2020); Middleton v. Andino, No. 3:20-cv-01730 (D.S.C. May 1, 2020); Thomas v. Andino, No. 3:20-cv-01552 (D.S.C. Apr. 22, 2020); Tex. Democratic Party v. Abbott, No. 5:20-cv-00438 (W.D. Tex. May 11, 2020); League of Women Voters Va. v. Va. State Bd. of Elections, No. 6:20-cv-00024 (W.D. Va. Apr. 17, 2020). 497 Minority Voting Rights Access at 250. 498 U.S. Com’n on Civil Rights, Are Rights a Reality? Evaluating Federal Civil Rights Enforcement, p. 607 (Nov. 21, 2019) <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>. 499 See U.S. Dep’t of Justice, Civil Rights Division, Voting Section Litigation, <https://www.justice.gov/crt/voting-section-litigation> and Recent Activities of the Voting Section, <https://www.justice.gov/crt/recent-activities-voting-section> (last accessed 7/17/20); Minority Voting Rights Access, at 257. 500 See U.S. Dep’t of Justice, Civil Rights Division, Voting Section Litigation, <https://www.justice.gov/crt/voting-section-litigation> and Recent Activities of the Voting Section, <https://www.justice.gov/crt/recent-activities-voting-section> (last accessed 7/20/20); Minority Voting Rights Access, at 261 (the Commission found that DOJ brought five cases to enforce Section 208 of the VRA since the 2006 reauthorization of the VRA, but had not brought any since the Shelby County

<https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>
<https://www.justice.gov/crt/voting-section-litigation>
<https://www.justice.gov/crt/voting-section-litigation>
<https://www.justice.gov/crt/recent-activities-voting-section>
<https://www.justice.gov/crt/voting-section-litigation>
<https://www.justice.gov/crt/voting-section-litigation>
<https://www.justice.gov/crt/recent-activities-voting-section>

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June 2020, but that case (regarding a South Dakota school board’s at-large method of election diluting Native American voting rights) was not related to access issues or changes in voting practices or procedures made in the wake of COVID-19.501 In 2019, the Commission also documented activities in other Section 2 cases in which DOJ successfully challenged the at-large voting system in the City of Eastpointe, Michigan and filed a consent decree in the City of Jacksonville case.502 Further, in January 2019, DOJ was subject to a new court order regarding the Port Chester, New York litigation against an at- large voting system.503 None of these recent Section 2 activities involve COVID-19, and additionally, as these cases are vote dilution rather than a vote denial (access) cases, they are not within the scope of the current study.504 Two other recent enforcement actions do not involve VRA issues.505

In two VRA cases related to the COVID-19 pandemic, DOJ has recently intervened in and opposed claims brought by private parties in Alabama and South Carolina regarding another section of the VRA, which prohibits vouchers.506 As the Commission detailed in 2018 in Minority Voting Access, Section 201 was enacted to prohibit the practice of requiring one private citizen to “vouch” for another’s eligibility to vote.507 Because this practice was frequently used to prohibit Black citizens from voting unless a private white citizen would vouch for them, the 1965 Voting Rights Act prohibited it entirely,508 through the following statutory language: “(a) No citizen shall be denied, because of his failure to comply with any

decision; moreover, these were language access and not disability rights cases); U.S. Com’n on Civil Rights, Are Rights a Reality? Evaluating Federal Civil Rights Enforcement, p. 607 (Nov. 21, 2019) <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf> (In 2019, the Commission found that DOJ did not bring any enforcement actions under Section 208 during fiscal years 2016-2018) (hereinafter Are Rights a Reality?). 501 See Consent Decree, United States v. Chamberlain School Dist., No. 4:20-cv-4084 (D. S.D. Jun. 28, 2020)(regarding discriminatory method of at-large elections) (on file). 502 Are Rights a Reality? at 108, note 575 (discussing activities in Eastpointe and Jacksonville enforcement actions). 503 See United States v. Village of Port Chester, 1:06-cv-15173-PGG (S.D.N.Y. Jan. 29, 2019), at 1, <https://www.justice.gov/crt/case-document/file/1282251/download> (Port Chester does not have to provide new voting machines to implement the cumulative voting remedy for at-large voting system as this would be “extraordinary circumstance that not only works an extreme and undue hardship upon the Village but is detrimental to the public interest”). 504 Minority Voting Rights Access at 11, (discussing scope of study being limited to vote denial or access issues, as opposed to vote dilution cases); see also Commissioner Debo Adegbile, June

Commission Telephonic Business Meeting, Jun. 5, 2020, pp.35-36, 60-61 (discussing this current study as an update and related to three vote denial or access issues). 505 On May 8, DOJ filed a Statement of Interest of the United States Under the Uniformed and Overseas Citizens Absentee Voting Act, in a case in Georgia regarding postponement of primary and run-off elections due to COVID-19, pointing out that in any federal election, military and overseas voters must be mailed their absentee ballots 45 days in advance. Statement of Interest of the United States Under the Uniformed and Overseas Citizens Absentee Voting Act, Coalition for Good Governance v. Raffensperger, No. 1:20-cv-01667 (N.D. Ga. May 8, 2020), at 3-4 (postponement due to COVID-19 pandemic) and 5-9 (UOCAVA discussion). On May 20, DOJ entered into an agreement with Arkansas regarding voter list maintenance under the National Voter Registration Act. Memorandum of Understanding between the United States and State of Arkansas (May 1, 2020). See also U.S. Dep't of Justice, Civil Rights Division, Recent Activities of the Voting Section, <https://www.justice.gov/crt/recent-activities-voting-section> (last accessed 7/20/20). 506 See U.S. Dep't of Justice, Civil Rights Division, Recent Activities of the Voting Section, <https://www.justice.gov/crt/recent-activities-voting-section> (last accessed 7/20/20). 507 Minority Voting Rights Access at pp. 90 (regarding prohibited "tests or devices"), 86 (Commission's 1961 documentation of this practice in the Jim Crow South), and 137 (noting relation to modern-day discriminatory challenge practices as follows: "The DOJ intervened under the provisions of Section 5 on behalf of a Vietnamese fishing community in Bayou Le Batre, Alabama in 2004, where for the first time, an Asian-American candidate ran for mayor. Many Asian-American citizens had their ballots challenged, and [n]early 50 of them were forced to fill out paper ballots and have another registered voter vouch for them."). 508 Ibid.

<https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>
<https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>
<https://www.justice.gov/crt/case-document/file/1282251/download>
<https://www.justice.gov/crt/recent-activities-voting-section>
<https://www.justice.gov/crt/recent-activities-voting-section>

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test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State. (b)... 'test or device' means any requirement that a person as a prerequisite for voting or registration for voting... (4) prove his qualifications by the voucher of registered voters or members of any other class."509 The last clause has been under discussion in two recent cases.

In *People First of Alabama v. Merrill*, 510 Black voters and voters with disabilities challenged the state's requirement that absentee ballots must be notarized, alleging that it would not only be risky due to requiring third party interactions during the pandemic, but also that it was a prohibited form of voucher.511 The Civil Rights Division filed a Statement of Interest Concerning Section 201 of the Voting Rights Act arguing that the Alabama's absentee voting requirements do not violate Section 201 and "fail as a matter of law."512 First, DOJ argued that Alabama's absentee ballot requirements do not fall under the statutory language prohibiting any requirements that a voter "prove his qualifications by the voucher" of a third party, because they do not require that the third party prove the voter's qualifications.513 DOJ also pointed out that it had previously pre-cleared Alabama's absentee ballot procedures, including the witness requirements, when the state was subject to preclearance under Section 5.514 On June 15, although it preliminarily enjoined the witness requirement on other grounds, a federal court found that Alabama's third-party notary procedures do not constitute a voucher because under Alabama law only a notary, and not a private citizen, is required to vouch for the voter's identity by certifying that the person is who they claim to be.515 The court reasoned that, "The witnesses do not vouch that the voter is 18, that she is a citizen, that she is a resident of the state, or that she is not disqualified from voting."516 The court stated that the Alabama law involved vouching for identity rather than qualifications,517 finding that "plaintiffs had not established that they are likely to succeed on the merits of their VRA claims at this time."518 As 2020 elections proceed, this leaves the door open for further argument of the VRA voucher claim in the next stages of this case. DOJ also argued that because Alabama voters may use either a notary or two adult witnesses to vote absentee, it was "unlike the prohibited forms of vouching that led to Section 201's enactment," as it did not limit the pool of witnesses to "registered voters or any other class."519 The federal court disagreed with this line of reasoning, opining that DOJ's argument that providing a "failsafe" backup method to a requirement that might possibly violate the Voting Rights Act is concerning.520

509 52 U.S.C. § 10501 (emphasis added). 510 See Preliminary Injunction, *People First of Alabama v. Merrill*, No. 2:20-cv-00619 (N.D. Ala. June 15, 2020) (hereinafter *People First PI*), aff'd Order Denying Motion for Stay, *People First of Alabama v. Merrill*, No. 2:20-cv-00619-AKK (11 Cir. June 25, 2020), <https://www.naacpldf.org/wp-content/uploads/11th-Cir-Order-DENYING-Emergency-Stay-Motion.pdf>; stayed on other grounds, Order Granting Stay, *Merrill v. People First of Alabama*, 591 U.S. ____ (S. Ct. July 2, 2020), https://www.supremecourt.gov/orders/courtorders/070220zr_n7io.pdf. 511 See Complaint, *People First of Alabama v. Merrill*, No. 2:20-cv-00619 (N.D. Ala. Jul. 6, 2020) at ¶ 221-225. 512 See Statement of Interest of the United States Concerning Section 201 of the Voting Rights Act, *People First of Alabama v. Merrill*, No. 2:20-cv-00619 (N.D. Ala. May 25, 2020), <https://www.justice.gov/opa/press-release/file/1278811/download>. 513 Statement of Interest, *People First v. Merrill*, at 8-9, citing and discussing 52 U.S.C. § 10501(b)(4). 514 Statement of Interest, *People First v. Merrill*, at 14. 515 *People First PI* at 72. 516 *Id.* at 72, citing Ala. Const. art. VIII, § 177 (regarding state voter qualifications). 517 *Id.* at 72-73. 518 *Id.* at 74. 519 Statement of Interest, *People First v. Merrill*, at 11. 520 *People First PI* at 72-73.

<https://www.naacpldf.org/wp-content/uploads/11th-Cir-Order-DENYING-Emergency-Stay-Motion.pdf>
https://www.supremecourt.gov/orders/courtorders/070220zr_n7io.pdf
<https://www.justice.gov/opa/press-release/file/1278811/download>

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The Civil Rights Division also intervened in *Thomas v. Andino*, a case in which Black voters and voters with disabilities in South Carolina filed a claim opposing that state's notary requirement for absentee ballots under Section 201 of the VRA, among other claims.521 In South Carolina, minority voters challenged that state's law requiring that the oath on absentee ballots be signed by a witness, alleging 201 violations, among other claims.522 DOJ argued that the requirement is not prohibited by Section 201 because it "does not—and is not intended to—'prove [a voter's] qualifications.'" It merely mandates that an individual confirm she observed the voter's signing of the oath.523 As in Alabama, the South Carolina federal court found that "[t]he Witness Requirement is not a 'test or device'" as defined under Section 201 because the requirement does not mandate the witness to "vouch" or "prove" that the voter is qualified to vote, but instead is simply required to witness the oath taken by the voter.524 DOJ also argued that the law did not violate Section 201 because it "does not limit the pool of potential witnesses to registered voters or any other relevant class," and instead the witness may be "someone chosen by the voter."525 In this case, the federal court adopted similar reasoning, finding that since that aspect of the law is not limited to "registered voters or any other relevant class," it did not violate Section 201.526

Election Monitoring As discussed in the Commission's 2018 statutory report, after the Supreme Court's decision in *Shelby*, the Department of Justice has refrained from sending federal observers to observe elections from inside the polls in formerly-covered jurisdictions; however it has continued to send a lesser number of election monitors to observe elections, and jurisdictions may (but are not required to) permit them to see what is happening inside the polls.527 The Civil Rights Division's 2018 Performance Budget reported that:

The Division's Voting Section enforces federal voting laws and defends the United States when it faces lawsuits over voting matters. Every year, the Voting Section also monitors elections in jurisdictions around the country. In FY 2016, the Division sent over 500 election observers to 26 jurisdictions for the November general election. During the elections in November 2018, the Division deployed personnel to 35 jurisdictions in 19 states to monitor compliance with federal voting rights laws.528

521 See Statement of Interest of the United States Concerning Section 201 of the Voting Rights Act, *Thomas v. Andino*, No. 3:20-cv-1552 (D.S.C. May 11, 2020). 522 See Complaint, *Thomas v. Andino*, No. 3:20-cv-1552 (D.S.C. Apr. 15, 2020), at ¶¶ 4-6. 523 Statement of Interest, *Thomas v. Andino*, at 7 (citing cases). 524 Order, *Thomas v. Andino*, No. 3:20-cv-1552 (D.S.C. Apr. 15, 2020), at ¶¶ 97-100 (citing cases and South Carolina law) (quote is at ¶ 97). 525 Statement of Interest, *Thomas v. Andino*, at 8. 526 Order, *Thomas v. Andino*, at ¶¶ 101-104. 527 Minority Voting Rights Access at 9-10, 30, 58, and 269-74 (discussing federal observer program and DOJ determination that the *Shelby* decision implicated its ability to send observers under Sections 3 and 8 of the VRA); and 240 and 269-72 (election monitoring). 528 U.S. Dep't of Justice, Civil Rights Division 2020 Performance Budget, at 25; see also Press Release, Justice Department to Monitor Compliance with Federal Voting Laws on Election Day, Nov. 5, 2018, <https://www.justice.gov/opa/pr/justice-department-monitor-compliance-federal-voting-rights-laws-election-day>.

<https://www.justice.gov/opa/pr/justice-department-monitor-compliance-federal-voting-rights-laws-election-day>
<https://www.justice.gov/opa/pr/justice-department-monitor-compliance-federal-voting-rights-laws-election-day>

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In past federal election years, these activities were publicly reported on the DOJ website, and mainly close to the November election date.529 Similar activities have not yet been reported in 2020,530 although the Department told the Commission ____ [pending response from DOJ in AAR].

Complex Barriers and Remedies This report showed that without the remedies needed, it is unlikely that voters of color and voters with disabilities will have equal access to the ability to vote absentee or in-person.531 While the issues raised are as complex as any that have arisen during the current national health crisis, the right to vote is "preservative of all rights,"532 and as the Commission stated in 2018, it is "the bedrock of our nation's democracy."533

The majority of expert witnesses who submitted testimony to the Commission agreed with the need for comprehensive remedies focusing on access to both absentee and in-person voting (including early voting). There were some differences among conservatives, who for example did not recommend mailing ballots to every voter and proposed limiting third-party ballot collection; however, the data also shows there was broad support for many other measures.534

Here are 12 measures analyzed in relation to the testimony received by the Commission:

Table 1: Chart of Remedies Proposed by Expert Witnesses535

529 See U.S. Dep't of Justice, Civil Rights Division, Press Releases & Speeches, https://www.justice.gov/crt/civil-rights-division-press-releases-speeches?keys=election+monitoring&items_per_page=25 (last accessed July 20, 2020). 530 See U.S. Dep't of Justice, Civil Rights Division, Press Releases & Speeches, https://www.justice.gov/crt/civil-rights-division-press-releases-speeches?keys=election+monitoring&items_per_page=25 (last accessed July 20, 2020). 531 See, e.g., supra notes xx-xx, yy-yy and zz-zz. 532 Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886). 533 Minority Voting Rights at 12. 534 See Written Testimony of 15 Expert Witnesses, [will insert link]; See also supra p. iv for full names and affiliations. 535 Ibid.; Commission Staff Research.

https://www.justice.gov/crt/civil-rights-division-press-releases-speeches?keys=election+monitoring&items_per_page=25
https://www.justice.gov/crt/civil-rights-division-press-releases-speeches?keys=election+monitoring&items_per_page=25
https://www.justice.gov/crt/civil-rights-division-press-releases-speeches?keys=election+monitoring&items_per_page=25
https://www.justice.gov/crt/civil-rights-division-press-releases-speeches?keys=election+monitoring&items_per_page=25

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Proposed Remedy AALDEF ACLU ACB Cato EVRIFudgeHaalandHasenHeritage LC LDFLCCR LevittNDRNUCLA VRP Alternative Address - voters may have ballots sent to alternative address

yes yes yes yes

Language Access - every voter mailed a ballot in accordance with language preferences & provided language assistance under VRA

yes no no yes no yes yes yes yes

Accessibility - ballots available in formats that permit voters with disabilities to vote w/o assistance from others

yes yes yes yes yes yes yes

Extending Deadlines - accepting ballots as long as posted or dated by Election Day & received w/in 10 days

yes yes yes no yes yes yes yes yes

Expanding Drop-off Options - expanding # & locations of drop-boxes

yes yes yes yes yes yes yes yes

Emergency Vote-by-Mail - allowing voters to use emergency VBM procedures prior to Election Day & suspending documentation requirements

yes yes yes

Third-party Ballot Collection suspending limits on # of ballots that may be obtained & returned by non-family

yes no no no

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members authorized by voters

Extending Cure Period - extending ability of & period to correct ballots with missing or mismatched signatures

yes yes yes no yes

yes yes yes

Postage Paid - all voting materials sent with pre-paid return postage

yes yes yes yes yes yes yes

Additional Language Access - all voting materials & information provided in VRA minority languages & other languages spoken by a substantial # of voters

yes yes yes

yes

Safe & Sufficient Polling Places & Polling Place Resources

yes yes yes yes yes yes yes yes yes yes yes yes yes yes

Safe & Sufficient Early Voting yes yes yes yes no no yes yes yes yes yes

Key: support the proposed remedy yes oppose the proposed remedy no silent on the issue or do not indicate whether support/oppose SOURCE: Witness Testimony; Commission Staff Research

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APPENDIX A: Map and Table of Relevant Cases

Name State/formerly covered? Status Claims Subject Matter Relevance Link to Source

AL: People First of Ala. v. Merrill, No.2:20- cv-00619 (N.D. Ala)

AL Complaint filed 5/1/20 Preliminary injunction granted in part 6/15/20; aff'd upon appeal but stayed by Supreme Court 7/2/20.

U.S. Const. Amends. 1 and 14 Title II of ADA VRA §§ 2, 3(b), & 201

Vote-by-mail witness requirement & photo ID requirement Lack of "curbside" voting

Race Disability

Complaint: <https://electionlawblog.org/wp-content/uploads/AL- People-First-20200501- complaint.pdf> PI: <https://electionlawblog.org/wp-content/uploads/AL- People-First-20200615- PI-decision.pdf>

AK: Disability Law Center of Alaska v. Meyer (Alaska Super. Ct) AK Filed 7/17/20

U.S. Const. Amend. 26 U.S. Const. Amends. 1 and 14 due process, right to vote AK Const. Art V, § 1, & Art. I § I: Right to vote; due process AK Const. Art. 3, § 1: Civil rights AK Const.: Right to vote (geography) Title II of ADA

State mailing absentee ballot applications to all registered voters 65+, leaving out others allegedly disproportionately impacts Alaskan Natives & voters with disabilities disabilities, who were not sent applications.

Race Disability

<https://electionlawblog.org/wp-content/uploads/AK- DLC-20200717- complaint.pdf>

AZ: Mi Familia Vota v. Reagan AZ

Decided in District Court

§§ 5, 7, and 8 of the National Voter Registration Act of 1993 VRA § 2

Improper Election Administration High Absentee Ballot Rejection Rates

Race

<https://www.demos.org/sites/default/files/2019-04/2017-11-14%20Letter%20to%20Secretary%20Reagan%20re%20NVRA%20Compliance%20FINAL.pdf>

- <https://electionlawblog.org/wp-content/uploads/AL-People-First-20200501-complaint.pdf>
- <https://electionlawblog.org/wp-content/uploads/AL-People-First-20200501-complaint.pdf>
- <https://electionlawblog.org/wp-content/uploads/AL-People-First-20200501-complaint.pdf>
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- <https://electionlawblog.org/wp-content/uploads/AK-DLC-20200717-complaint.pdf>
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- <https://www.demos.org/sites/default/files/2019-04/2017-11-14%20Letter%20to%20Secretary%20Reagan%20re%20NVRA%20Compliance%20FINAL.pdf>
- <https://www.demos.org/sites/default/files/2019-04/2017-11-14%20Letter%20to%20Secretary%20Reagan%20re%20NVRA%20Compliance%20FINAL.pdf>
- <https://www.demos.org/sites/default/files/2019-04/2017-11-14%20Letter%20to%20Secretary%20Reagan%20re%20NVRA%20Compliance%20FINAL.pdf>
- <https://www.demos.org/sites/default/files/2019-04/2017-11-14%20Letter%20to%20Secretary%20Reagan%20re%20NVRA%20Compliance%20FINAL.pdf>
- <https://www.demos.org/sites/default/files/2019-04/2017-11-14%20Letter%20to%20Secretary%20Reagan%20re%20NVRA%20Compliance%20FINAL.pdf>
- <https://www.demos.org/sites/default/files/2019-04/2017-11-14%20Letter%20to%20Secretary%20Reagan%20re%20NVRA%20Compliance%20FINAL.pdf>

AZ: Voto Latino Inc. v. Hobbs (found as Voto Latino Foundation v. Hobbs) AZ

Settled 7/8/20

U.S. Const. Amends. 1 & 14 equal protection and due process clauses, 42 U.S.C. §1983, 28 U.S.C. §§ 2201, 2202 Undue Burden on the Right to Vote

Absentee ballot procedures & rejection rates; language access; early voting; in- person voting (claims settled); Extending absentee ballot reception deadlines (not part of settlement)

Race

https://moritzlaw.osu.edu/electionlaw/litigation/documents/Voto_Latino_v_Hobbs_11.pdf

AZ: Hoffard v. Cochise Cnty., No. 4:20-cv-00243 (D. Ariz.) AZ

Complaint 6/3/20

Title II of ADA Rehabilitation Act § 504 Curbside voting Disability

<https://electionlawblog.org/wp-content/uploads/AZ- Hoffard-20200607- complaint.pdf>

CT: CT State Conference of NAACP Branches v. Merrill (D. Conn.) CT Filed 7/2/20

U.S. Const. Amends. 1 & 14 Fundamental right to vote VRA § 2

Excuse requirement for absentee voting (waived for August but as of 7/21, not for November)

Race Disability Language Access

<https://electionlawblog.org/wp-content/uploads/CT- NAACP-20200702- complaint.pdf>

DC: Robinson v. Bd. of Elections, No. 1:20- cv-01364 (D.D.C.) DC

Complaint 5/21/20 TRO denied 5/28/20 VRA § 2

Polling place closures Race

<https://electionlawblog.org/wp-content/uploads/DC- Robinson-20200521- complaint.pdf>

FL: Democratic Executive Committee of Florida v. Ertel FL

Dismissed in the U.S. COA for the 11th Circuit

U.S. Const. Amends. 1 & 14 equal protection 42 U.S.C. §1983, 28 U.S.C. §§ 2201, 2202 Undue Burden on the Right to Vote

Absentee Ballots - Signature matching - Lack of opportunity to cure ballot Race

https://moritzlaw.osu.edu/electionlaw/litigation/documents/DEMOCRATIC_EXECUTIVE_COMMITTEE-1%2011818.pdf

https://moritzlaw.osu.edu/electionlaw/litigation/documents/Voto_Latino_v_Hobbs_11.pdf
https://moritzlaw.osu.edu/electionlaw/litigation/documents/Voto_Latino_v_Hobbs_11.pdf
https://moritzlaw.osu.edu/electionlaw/litigation/documents/Voto_Latino_v_Hobbs_11.pdf
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https://moritzlaw.osu.edu/electionlaw/litigation/documents/DEMOCRATIC_EXECUTIVE_COMMITTEE-1%2011818.pdf
https://moritzlaw.osu.edu/electionlaw/litigation/documents/DEMOCRATIC_EXECUTIVE_COMMITTEE-1%2011818.pdf
https://moritzlaw.osu.edu/electionlaw/litigation/documents/DEMOCRATIC_EXECUTIVE_COMMITTEE-1%2011818.pdf
https://moritzlaw.osu.edu/electionlaw/litigation/documents/DEMOCRATIC_EXECUTIVE_COMMITTEE-1%2011818.pdf
https://moritzlaw.osu.edu/electionlaw/litigation/documents/DEMOCRATIC_EXECUTIVE_COMMITTEE-1%2011818.pdf

FL: Williams v. DeSantis, No. 1:20- cv-00067 (N.D. Fla.)

FL

Settled 7/19/20: SoS shall train election supervisors in counties w/o prepaid postage, alternatives (dropboxes, mail without postage) shall be advertised SoS shall: Conduct public relations campaign to inform voters of voting options (mail, early voting, in person voting); Send registration info postcard to eligible voters who are not registered; Improve online voter registration system, before and after Nov. election; and Conduct training exercise to prepare for possible election administration scenarios.

U.S. Const. Amend. 14 Equal Protection VRA § 2 Title II of ADA Rehabilitation Act § 504

Vote by mail Early voting Polling place safety

Disability

<https://electionlawblog.org/wp-content/uploads/FL-Nielsen-20200625-3d-amd-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/FL-Nielsen-20200625-3d-amd-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/FL-Nielsen-20200625-3d-amd-complaint.pdf>
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<https://electionlawblog.org/wp-content/uploads/FL-Nielsen-20200625-3d-amd-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/FL-Nielsen-20200625-3d-amd-complaint.pdf>

Plaintiffs shall dismiss claims.

All parties pay own costs and fees.

FL: Nielsen v. DeSantis, No. 4:20- cv-00236 (N.D. Fla.)

FL

Combined with Williams v. DeSantis (above). Settled 7/19/20

1st & 14th Amendment Equal Protection

Vote by mail deadline Voter assistance ban Postage requirement Disability

<https://electionlawblog.org/wp-content/uploads/FL-Nielsen-20200504-complaint.pdf>

GA: Fair Fight Action v. Raffensperger GA

Pending in U.S. District Court; in 12/23/19 plaintiff's motion for Preliminary Injunction denied

1st & 14th Amendments - due process & equal protection 15th Amendment VRA § 2 Help America Vote Act (HAVA) §§ 301-03

Absentee Ballots: sending ballots late, refusing ballot applications Election misadministration/ mismanagement: underresourcing polling locations, undertrained staff Voting machine vulnerabilities Exact-match voter registration

Race Disabilities

<https://moritzlaw.osu.edu/electionlaw/litigation/documents/FFAC1.pdf>

<https://electionlawblog.org/wp-content/uploads/FL-Nielsen-20200504-complaint.pdf>
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<https://moritzlaw.osu.edu/electionlaw/litigation/documents/FFAC1.pdf>
<https://moritzlaw.osu.edu/electionlaw/litigation/documents/FFAC1.pdf>
<https://moritzlaw.osu.edu/electionlaw/litigation/documents/FFAC1.pdf>

GA: Georgia Coalition for The Peoples' Agenda v. Secretary of State of Georgia GA

Pending in U.S. District Court for the Northern District of Georgia Atlanta Division

VRA § 2, 1st Amendment 14th Amendment equal protection § 8 of the National Voter Registration Act

Exact match laws for voter registration Race

https://moritzlaw.osu.edu/electionlaw/litigation/documents/Georgia_Coalition_for_the_Peo.101918.pdf

GA: Martin v. Secretary of State of Georgia GA

Decided in 11th Circuit, TRO granted

14th Amendment due process and equal protection

Absentee Ballot - Signature matching

Race Disability

https://moritzlaw.osu.edu/electionlaw/litigation/documents/Georgia_Coalition_for_the_Peo.101918.pdf

GA: Black Voters Matter Fund v. Raffensperger, No. 1:20-cv-01489 (N.D. Ga.) GA

Complaint 4/8/20 PI denied 4/30/20 Amd. complaint 5/11/20

14th Amendment 24th Amendment

Postage requirement

Race & Disability

<https://electionlawblog.org/wp-content/uploads/GA-BVM-20200511-amd-complaint.pdf>

GA: Coalition for Good Governance v. Raffensperger, No. 1:20-cv-01677 (N.D. Ga.) GA

Complaint 4/20/20 Dismissed 5/14/20

14th Amendment due process 14th Amendment equal protection

Voting safety & alternatives Vote by mail Disability

<https://cases.justia.com/federal/district-courts/georgia/gandce/1:2020cv01677/276175/1/0.pdf?ts=1588971103>

Vote by mail restrictions Witness requirement No option to cure ballots

Race, disability

<https://electionlawblog.org/wp-content/uploads/LA-Clark-20200520-complaint.pdf>

ME: Merrill v. Dunlap (D. Me.) ME Filed 7/15/20

Title II of ADA Sec 504 of Rehabilitation Act Maine Human Rights Law

Absentee ballot applications, absentee ballots, and instructions on state website not accessible to voters with disabilities Disability

<https://electionlawblog.org/wp-content/uploads/ME-Merrill-20200715-complaint.pdf>

MI: Priorities USA v. Benson MI

Dismissal by stipulation without prejudice in U.S. District Court E.D. Michigan

U.S. Const. Amends. 1 and 14 equal protection & due process

Absentee Ballots - Signature matching - Opportunity to cure ballots Race

Disability

https://moritzlaw.osu.edu/electionlaw/litigation/documents/Priorities_v_Benson_1.pdf

MI: Mich. Alliance for Retired Americans v. Benson, No. 20-000108-MM (Mich. Ct. Claims)

MI Complaint 6/2/20

MI Const. Art. II § 4 Undue burden on right to vote MI Const. Art. I § 2 Undue burden on right to vote MI Const. Art. I § 17 Due process MI Const. Art. I § 5 Free speech VRA § 208, US Const. Art VI, § 2

Voter assistance ban

Disability, Language Access

<https://electionlawblog.org/wp-content/uploads/MI-MARA-20200602-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/KY-Nemes-20200608-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/KY-Nemes-20200608-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/KY-Nemes-20200608-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/KY-Nemes-20200608-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/LA-Clark-20200520-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/LA-Clark-20200520-complaint.pdf>

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<https://electionlawblog.org/wp-content/uploads/LA-Clark-20200520-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/ME-Merrill-20200715-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/ME-Merrill-20200715-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/ME-Merrill-20200715-complaint.pdf>

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<https://electionlawblog.org/wp-content/uploads/ME-Merrill-20200715-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/ME-Merrill-20200715-complaint.pdf>

https://moritzlaw.osu.edu/electionlaw/litigation/documents/Priorities_v_Benson_1.pdf

https://moritzlaw.osu.edu/electionlaw/litigation/documents/Priorities_v_Benson_1.pdf

https://moritzlaw.osu.edu/electionlaw/litigation/documents/Priorities_v_Benson_1.pdf

https://moritzlaw.osu.edu/electionlaw/litigation/documents/Priorities_v_Benson_1.pdf

<https://electionlawblog.org/wp-content/uploads/MI-MARA-20200602-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/MI-MARA-20200602-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/MI-MARA-20200602-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/MI-MARA-20200602-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/MI-MARA-20200602-complaint.pdf>

MI: Powell v. Benson, No. 2:20-cv-11023 (E.D. Mich.)

MI

Amd. complaint 4/28/20, TRO settled 5/1/20, case settled 5/19/20

Title II of ADA Michigan Persons with Disabilities Civil Rights Act

Mail ballots inaccessible Disability

<https://electionlawblog.org/wp-content/uploads/MI-Powell-20200428-amd-complaint.pdf>

MN: LaRose v. Simon, No. 62-CV-20-3149 (Minn. Dist. Ct., Ramsey Cnty.)

MN

Complaint 5/13/20, settled for primary 6/16/20

Minn. Const. Art. 1, § 2 & Art. VII, § 1 Unconstitutional burden on right to vote Minn. Const. Art. 1, § 7 Due process U.S. Const. Amends. 1 & 14 undue burden on right to vote, due process

Absentee ballot witness requirements & Election Day deadline

Disability

<https://electionlawblog.org/wp-content/uploads/MN-LaRose-20200513-complaint.pdf>

MN: LWV Minn. Educ. Fund v. Simon, No. 0:20-cv-01205 (D. Minn.)

MN

Complaint 5/19/20

U.S. Const. Amends. 1 & 14 as applied during COVID-19: undue burden on the right to vote, denial of Equal Protection on account of citizenship status

Absentee ballot witness requirements

National origin

<https://electionlawblog.org/wp-content/uploads/MN-LWV-20200519-complaint.pdf>

MN: NAACP Minn. v. Simon, No. 62-CV-20-3625 (Minn. Dist. Ct., Ramsey Cnty.) MN

Complaint 6/4/20

Minn. Const. Art. 1 & VII Fundamental right to vote, equal protection

Absentee ballot witness requirement challenged + request that each voter be mailed an absentee ballot

Race & disability

<https://electionlawblog.org/wp-content/uploads/MN-NAACP-20200605-complaint.pdf>

MO: Mo. NAACP v. Missouri, No. 20AC-CC00169 (Mo. Cir. Ct., Cole Cnty.), No. SC98536 (Mo. Sup. Ct.)

MO

Complaint 4/17/20, motion to dismiss granted 5/15/20 (State amended no-excuse requirement but witness/notarization requirement)

§ 115.277.1(2) R.S.Mo. Mo. Const. Art. I, § 25

Challenge of excuse requirements to vote absentee; amended by state law; claims about notarization requirements still open

Race, disability

<https://electionlawblog.org/wp-content/uploads/MO-NAACP-20200417-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/MI-Powell-20200428-amd-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/MI-Powell-20200428-amd-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/MI-Powell-20200428-amd-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/NY-LWV-20200708-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/NY-Hernandez-20200522-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/NY-Hernandez-20200522-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/NY-Hernandez-20200522-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/NY-Hernandez-20200522-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/NY-Hernandez-20200522-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/OH-LWV-20200331-amd-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/OH-LWV-20200331-amd-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/OH-LWV-20200331-amd-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/OH-LWV-20200331-amd-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/OH-LWV-20200331-amd-complaint.pdf>

OK: DCCC v. Zirax, 4:20-cv- 00211 (N.D. Okla.)

OK

Amended complaint 6/11/20

U.S. Const. Amends. 1 & 14 Undue burden on right to vote U.S. Const. Amend. 26 U.S. Const. Amend. 14 Procedural due process U.S. Const. Amends. 1 & 14 Free speech & association

Absentee ballot deadline, notary/witness/ID requirements, postage, assistance Disability

<https://electionlawblog.org/wp-content/uploads/OK-DCCC-20200611-amd-complaint.pdf>

PA: Trump v. Boockvar PA

Complaint filed 6/29/20 NAACP intervened 7/15/20

U.S. Const. Amends. 1 and 14 Equal Protection

Absentee ballot procedures (third-party assistance & drop boxes) Race

Complaint: <https://moritzlaw.osu.edu/electionlaw/litigation/TrumpBoockvar.php> Mot. to Intervene: https://moritzlaw.osu.edu/electionlaw/litigation/documents/Trump_v_Boockvar_104.pdf

SEE ALSO: Penn. Dem. Party v. Boockvar (seeking declaratory and injunctive relief related to outcome of Trump v. Boockvar): <https://electionlawblog.org/wp-content/uploads/PA-PDP-20200710-complaint.pdf>

PA: Crossey v. Boockvar, No. 266- MD-2020 (Penn. Commonw. Ct.), No. 32-MAP-2020 (Penn. Sup. Ct.)

PA Dismissed as moot

Penn. Constitution, Article I, § 5 Free and Equal Elections Clause; Penn. Constitution, Article I, § 1, 26 Equal Protection; Penn. Constitution, Article I, § 1 Due Process

Absentee ballots deadline, assistance, postage, notice/cure Disability

<https://electionlawblog.org/wp-content/uploads/PA-Crossey-20200422-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/OK-DCCC-20200611-amd-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/OK-DCCC-20200611-amd-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/OK-DCCC-20200611-amd-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/OK-DCCC-20200611-amd-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/OK-DCCC-20200611-amd-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/PA-Crossey-20200422-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/PA-Crossey-20200422-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/PA-Crossey-20200422-complaint.pdf>

<https://electionlawblog.org/wp-content/uploads/PA-Crossey-20200422-complaint.pdf>

PA: Disability Rights Penn. v. Boockvar, No. 83- MM-2020 (Penn. Sup. Ct.)

PA Dismissed

Penn. Const. Art. I, § 5 Free and equal elections Penn. Const. Art. I § 7, 20 Free expression and association Penn. Const. Art. I, § 1, 26 Equal protection Penn. Const. Art. VII, § 14(a) Absentee voting

Absentee ballot Election Day deadline Disability

Penn. S. Ct. Opinion: <https://electionlawblog.org/wp-content/uploads/PA-DRPA-20200515-decision.pdf> Petition for Review: <https://www.pubintlaw.org/wp-content/uploads/2020/04/20.04.27-mail-in-ballot-Petition-for-Review-pubintlaw.pdf>

PA: Drenth v. Boockvar, No. 1:20- cv-00829 (M.D. Penn.)

PA Granted Title II of ADA Rehabilitation Act § 504

Electronic transmittal of blank absentee ballot Disability

Complaint: <https://electionlawblog.org/wp-content/uploads/PA-Drenth-20200521-complaint.pdf> PI decision: <https://electionlawblog.org/wp-content/uploads/PA-Drenth-20200527-PI-decision.pdf>

SC: Bailey v. S.C. State Election Comm'n, No. 2020- 000642 (S.C. S. Ct.)

SC

Dismissed (state law amended for 2020 elections)

Fundamental Right to Vote, 42 U.S.C. § 1983, U.S. Const. Amends. 1 & 14 VRA § 2, 3 and 201

Excuse requirement for absentee voting Disability

<https://electionlawblog.org/wp-content/uploads/SC-Bailey-20200527-opinion.pdf>

<https://electionlawblog.org/wp-content/uploads/PA-DRPA-20200515-decision.pdf>

<https://electionlawblog.org/wp-content/uploads/PA-DRPA-20200515-decision.pdf>

<https://electionlawblog.org/wp-content/uploads/PA-DRPA-20200515-decision.pdf>

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<https://electionlawblog.org/wp-content/uploads/PA-DRPA-20200515-decision.pdf>

SC: Middleton v. Andino, No. 3:20- cv-01730 (D.S.C.) SC Granted in part

26th Amendment Denial or Abridgement of the Right to Vote on Account of Age 1st & 14th Amendments Equal protection, undue burden on right to vote, freedom of speech 14th & 26th Amendments poll tax VRA § 2

Absentee ballot restrictions on assistance, witness requirement; excuse requirement

Disability & race

<https://clearinghouse.net/chDocs/public/VR-SC-0079-0005.pdf>

SC: Thomas v. Andino, No. 3:20- cv-01552 (D.S.C.) SC Granted in part

U.S. Const. Amends. 1 & 14 VRA § 2, 3, & 201

Absentee ballot excuse requirement (dismissed due to change in state law) and witness requirements

Disability, race, and language access

<https://clearinghouse.net/chDocs/public/VR-SC-0078-0015.pdf>

TN: Demster v. Hargett, No. 20- 0435-III (Tenn. Chancery Ct., Davidson Cnty.) TN Granted

Tenn. Const. Art. I, § 5 and Article IV, § 1 Right to vote

Excuse requirement for absentee voting Disability

<https://electionlawblog.org/wp-content/uploads/TN- Demster-20200604- decision.pdf>

TN: Lay v. Goins, No. 20-0453-III (Tenn. Chancery Ct., Davidson Cnty.) TN Granted

Fundamental Right to Vote Article IV, §1 of the Tennessee Constitution

Excuse requirement for absentee voting Disability

<https://electionlawblog.org/wp-content/uploads/TN- Demster-20200604- decision.pdf>

TN: Memphis A. Phillip Randolph Inst. v. Hargett, No. 3:20-cv-00374 (M.D. Tenn.)

TN Complaint U.S. Const. Amends. 1 & 14

Excuse requirement for absentee voting; request to provide voters with notice of incomplete ballots & opportunity to cure Disability

<https://electionlawblog.org/wp-content/uploads/TN- Memphis-APRI- 20200501-complaint.pdf>

<https://clearinghouse.net/chDocs/public/VR-SC-0079-0005.pdf>
<https://clearinghouse.net/chDocs/public/VR-SC-0079-0005.pdf>
<https://clearinghouse.net/chDocs/public/VR-SC-0079-0005.pdf>
<https://clearinghouse.net/chDocs/public/VR-SC-0078-0015.pdf>
<https://clearinghouse.net/chDocs/public/VR-SC-0078-0015.pdf>
<https://clearinghouse.net/chDocs/public/VR-SC-0078-0015.pdf>
<https://electionlawblog.org/wp-content/uploads/TN-Demster-20200604-decision.pdf>
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<https://electionlawblog.org/wp-content/uploads/TN-Memphis-APRI-20200501-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/TN-Memphis-APRI-20200501-complaint.pdf>
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<https://electionlawblog.org/wp-content/uploads/TN-Memphis-APRI-20200501-complaint.pdf>

TX: Tex. Democratic Party v. Hughs, No. D-1- GN-20-001610 (Travis Cty. Dist. Ct.) TX

Pending in the Court of Appeals for the Fourteenth Judicial Circuit

Tex. Elec. Code § 82.002, which protects voters with disabilities or sicknesses

Excuse requirement for absentee ballots

Race (see amicus brief)

https://moritzlaw.osu.edu/electionlaw/litigation/documents/TDP_v_Hughs_0.pdf

TX: Gloria v. Hughs, No. 5:20- cv-00527 (W.D. Tex.) TX Complaint

U.S. Const. Amend. 26; 42 U.S.C. § 1983; 28 U.S.C. §§ 2201, 2202

Excuse requirement for absentee ballots Disability

<https://electionlawblog.org/wp-content/uploads/TX- Gloria-20200429- complaint.pdf>

TX: In re State of Texas, No. 20-0394 (Tex. S. Ct.)

TX Mandamus denied

Tex. Elec. Code § 82.002 definition of disability

Excuse requirement for absentee ballots

Disability & Race

<https://electionlawblog.org/wp-content/uploads/TX-In- re-TX-20200527- decision.pdf>

TX: Lewis v. Hughs, No. 5:20- cv-00577 (W.D. Tex.)

TX Complaint

U.S. Const. amends. 1, 14; 42 U.S.C. § 1983 undue burden on the right to vote; U.S. Const. amend. 14; 42 U.S.C. § 1983 equal protection U.S. Const. amend. 14; 42 U.S.C. § 1983 procedural due process U.S. Const. amend. 14, 24; 42 U.S.C. § 1983 prohibition on poll tax

Absentee ballot requirements, receipt deadline, signature-matching, ban on voter assistance, postage requirements

Disability & Race

<https://electionlawblog.org/wp-content/uploads/TX- Lewis-20200511- complaint.pdf>

TX: Tex. Democratic Party v. Abbott, No. 5:20- cv-00438 (W.D. Tex.), No. 20- 50407 (5th Cir.), Nos. 19A1055, 19- 1389 (S. Ct.) TX

Granted; subsequently stayed

VRA § 2 U.S. Const. Amends. 1, 14, 15, and 26. 42 U.S.C. § 1985

Absentee ballot excuse requirement

Disability, Race, and LEP

<https://clearinghouse.net/chDocs/public/VR-TX- 0449-0002.pdf>

https://moritzlaw.osu.edu/electionlaw/litigation/documents/TDP_v_Hughs_0.pdf
https://moritzlaw.osu.edu/electionlaw/litigation/documents/TDP_v_Hughs_0.pdf
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<https://clearinghouse.net/chDocs/public/VR-TX-0449-0002.pdf>
<https://clearinghouse.net/chDocs/public/VR-TX-0449-0002.pdf>
<https://clearinghouse.net/chDocs/public/VR-TX-0449-0002.pdf>

TX: Tex. Democratic Party v. DeBeauvoir, No. D- 1-GN-20-001610 (Travis Cnty. Dist. Ct.), No. 14-20- 00358-CV (14th Ct. App.) TX

TRO granted; subsequent appeals decision enforcing TRO; subsequently dismissed

Tex. Elec. Code § 82.002 definition of disability

Early voting; absentee ballot excuse requirement Disability

<https://clearinghouse.net/chDocs/public/VR-TX-0448-0001.pdf>

VA: Curtin v. Va. State Bd. of Elections, No. 1:20- cv-00546 (E.D. Va.) VA Denied

42 U.S.C. § 1983; U.S. Const. amends. 1 and 14 (direct & by dilution)

Absentee ballot excuse requirement Disability

<https://electionlawblog.org/wp-content/uploads/VA-Curtin-20200513-complaint.pdf>

VA: LWV Va. v. Va. State Bd. of Elections, No. 6:20- cv-00024 (W.D. Va.) VA

Consent decree (for June elections)

Fundamental Right to Vote, 42 U.S.C. § 1983, U.S. Const. Amends. 1 & 14; VRA §2 52 U.S.C. § 10301.

Absentee ballot witness requirement

Disability and Race

<https://clearinghouse.net/chDocs/public/VR-VA-0067-0001.pdf>

WI: Democratic Nat'l Comm v. Bostelmann, No. 3:20-cv-249 (W.D. Wis.) WI

Preliminary injunctive relief stayed by SCOTUS 4/6/20, pending disposition of appeal in Seventh Circuit

U.S. Const. Amends. 1 & 14 equal protection and due process clauses, 42 U.S.C. §1983, 28 U.S.C. §§ 2201, 2202 Undue Burden on the Right to Vote

Absentee ballot Election Day deadline, voter ID

Race not explicitly mentioned, but we know photo ID hits racial minorities the hardest. However, in SCOTUS, the only issue really discussed was the deadline extension.

https://moritzlaw.osu.edu/electionlaw/litigation/documents/DNC_v_Bost_1.pdf

WI: Luft v. Evers, No. 16-3083; One Wisconsin Institute, Inc. v. Jacobs, No. 16-3091 (Consolidated on appeal to 7th Cir.) WI

Decided 7th Cir. 6/29/20; rev'd most of Dist. Ct.'s ruling in Plaintiffs' favor; aff'd re: Student ID cards

U.S. Const. Amends. 1 & 14 VRA § 2 U.S. Const. Amend. 26 U.S. Const. Amend. 15

Absentee voting excuses Email/fax absentee ballots Length of residency Proof of residency

Race

<https://electionlawblog.org/wp-content/uploads/FrankO-WI-decision.pdf>

<https://clearinghouse.net/chDocs/public/VR-TX-0448-0001.pdf>
<https://clearinghouse.net/chDocs/public/VR-TX-0448-0001.pdf>
<https://clearinghouse.net/chDocs/public/VR-TX-0448-0001.pdf>
<https://electionlawblog.org/wp-content/uploads/VA-Curtin-20200513-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/VA-Curtin-20200513-complaint.pdf>
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<https://clearinghouse.net/chDocs/public/VR-VA-0067-0001.pdf>
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https://moritzlaw.osu.edu/electionlaw/litigation/documents/DNC_v_Bost_1.pdf
https://moritzlaw.osu.edu/electionlaw/litigation/documents/DNC_v_Bost_1.pdf
https://moritzlaw.osu.edu/electionlaw/litigation/documents/DNC_v_Bost_1.pdf
<https://electionlawblog.org/wp-content/uploads/FrankO-WI-decision.pdf>
<https://electionlawblog.org/wp-content/uploads/FrankO-WI-decision.pdf>
<https://electionlawblog.org/wp-content/uploads/FrankO-WI-decision.pdf>
<https://electionlawblog.org/wp-content/uploads/FrankO-WI-decision.pdf>

WI: Republican National Committee v. Democratic National Committee, 589 U.S. ___ (2020), WI

Decided; Injunction partially stayed VRA § 2

Absentee ballot Election Day deadline

Race

https://www.supremecourt.gov/opinions/19pdf/19a1016_o759.pdf

WI: Swenson v. Bostelmann, No. 3:20-cv-00459 (W.D. Wis.)

WI Complaint

§11(b) of VRA U.S. Const. Amend. 14 Equal Protection U.S. Const. Amends. 1 and 14 U.S. Const. Amend. 14 Due Process Title II of ADA In-person voting

Disability and Race

<https://electionlawblog.org/wp-content/uploads/WI-Swenson-20200518-complaint.pdf>

WI: Edwards v. Vos, No. 3:20-cv-00340 (W.D. Wis.)

WI Amd. Complaint

U.S. Const. Amends. 1 & 14 42 U.S.C. § 1983 Total Deprivation of Voting Rights; Title II of ADA

Damages, mail (multiple issues), in-person (multiple issues)

Disability and Race

<https://electionlawblog.org/wp-content/uploads/WI-Edwards-20200504-amd-complaint.pdf>

WI: Taylor v. Milwaukee Elections Comm'n, No. No. 20-cv-00545 (E.D. Wis.) WI

Denied; subsequently dismissed VRA §2 In-person (safety) Race

<https://electionlawblog.org/wp-content/uploads/WI-Taylor-20200403-complaint.pdf>

https://www.supremecourt.gov/opinions/19pdf/19a1016_o759.pdf
https://www.supremecourt.gov/opinions/19pdf/19a1016_o759.pdf
https://www.supremecourt.gov/opinions/19pdf/19a1016_o759.pdf
<https://electionlawblog.org/wp-content/uploads/WI-Swenson-20200518-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/WI-Swenson-20200518-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/WI-Swenson-20200518-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/WI-Swenson-20200518-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/WI-Swenson-20200518-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/WI-Swenson-20200518-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/WI-Edwards-20200504-amd-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/WI-Edwards-20200504-amd-complaint.pdf>
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<https://electionlawblog.org/wp-content/uploads/WI-Taylor-20200403-complaint.pdf>
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<https://electionlawblog.org/wp-content/uploads/WI-Taylor-20200403-complaint.pdf>
<https://electionlawblog.org/wp-content/uploads/WI-Taylor-20200403-complaint.pdf>

APPENDIX B: Preliminary 2020 Voter Participation Data

Voter Data and Registration, November 2018 and Projected 2020

To update our September 2018 data, Commission staff identified the following voter registration and participation rates for voters of color (and notes that comparable data about Native Americans is not available):

Table 1: Percent Voter Registration & Participation in Nov. 2018 and Projected 2020 % VREG 2018

Proj. 2020 VOTERS

Proj. % Eligible 2020 Voters

Asian 54.2% 41.7% 11 million 4.7% Black 63.7% 50.6% 30 million 12.5% Latino 53.7% 40.4% 32 million 13.3%

Source: American Community Survey, Voting-Age Population by Selected Characteristics, U.S. Census Bureau, 2018; Anthony Cilluffo and Richard Fry, "An early look at the 2020 electorate," Pew Research Center, Jan. 30, 2019; table created by Commission Staff.

Trends in Voter Participation Rates (Turnout) Data

Generally, voter turnout data show that in recent elections, about 60 percent of the voting-eligible population votes during presidential election years and about 40 percent vote during midterm elections.2 Data also show that voter turnout is often lower for primary and local elections held during odd-numbered years; and 2018 turnout was the highest midterm turnout on record since 1914 (at 49.6 percent).3

1 American Community Survey, Voting-Age Population by Selected Characteristics, U.S. Census Bureau, 2018, https://data.census.gov/cedsci/table?q=voting&tid=ACSST1Y2018.S2901&vintage=2018; Anthony Cilluffo and Richard Fry, "An early look at the 2020 electorate," Pew Research Center, Jan. 30, 2019, https://www.pewsocialtrends.org/essay/an-early-look-at-the-2020-electorate/. The Census has not published comparable data about Native Americans or voters with disabilities. 2 See e.g., U.S. Election Project, "2018 November General Election Turnout Rates," Dec. 14, 2018, http://www.electproject.org/2018g; FairVote, "Voter Turnout," https://www.fairvote.org/voter_turnout#voter_turnout_101. 3 U.S. Election Project, "2018 November General Election Turnout Rates, Dec. 14, 2018, http://www.electproject.org/2018g; USA Facts, "How COVID-19 is changing primary voting—and the November election," (last updated) May 21, 2020, https://usafacts.org/articles/2020-election-primary-vote-covid-19-mail/.

- https://data.census.gov/cedsci/table?q=voting&tid=ACSST1Y2018.S2901&vintage=2018
https://www.pewsocialtrends.org/essay/an-early-look-at-the-2020-electorate/
http://www.electproject.org/2018g
https://www.fairvote.org/voter_turnout#voter_turnout_101
http://www.electproject.org/2018g
https://usafacts.org/articles/2020-election-primary-vote-covid-19-mail/

While not all states have held their 2020 presidential primaries, analyzing the results from some of the Super Tuesday states suggest that turnout rates will be lower this year compared to the 2016 presidential primaries (see table below). This is unsurprising for several reasons. First, in 2016, both main political parties held competitive presidential races, compared to 2020 that has a Republican incumbent. Second, due to the coronavirus pandemic, many states have been forced to make changes to their primary elections (e.g., postponing, canceling in-person voting, or canceling primaries entirely).4

Table 2: Super Tuesday Voter Participation Rates (2016 vs 2020)

State Dem (2016/2020) Rep (2016/2020) Total Turnout (2016/2020)

% Turnout Change

AL 399,899/452,093 860,652/722,809 35.0% vs. 33.2% - 1.8% AR 221,020/228,351 410,920/244,399 30.2% vs. 28.0% - 2.2% CA 5,173,338/5,784,364 2,227,338/2,471,364 34.0% vs. 38.3% + 4.3% CO 123,508/958,928 N/A/681,156 17.8% vs. 46.4%* + 28.6% MA 1,220,296/1,418,180 637,703/277,002 37.4% vs. 33.7% - 3.7% ME 46,000/205,937 18,650/113,728 6.1% vs. 29.6%* + 23.5% MI 207,109/744,198 114,245/140,555 8.1% vs. 21.7%* + 13.6% NC 1,142,916/1,332,382 1,149,430/802,527 31.6% vs. 28.1% - 3.5% OK 335,843/304,281 459,922/295,601 28.6% vs. 21.2% - 7.4% TN 377,222/515,167 855,729/398,045 25.3% vs. 17.9% - 7.4% TX 1,435,895/1,869,419 2,836,488/2,017,167 24.7% vs. 21.0% - 3.7% UT 81,606/220,582 200,000/344,852 14.3% vs. 26.2%* + 11.9% VA 785,041/1,323,509 1,025,425/N/A 30.1% vs. 21.4% - 8.7% VT 135,256/158,032 61,756/39,291 39.8% vs. 39.4% - 0.4%

* States transitioned from caucuses in 2016 to a primary in 2020, turnout percentages between these two years should be compared with caution. Source: U.S. Election Project, 2016 Primary Elections & 2020 Primary Elections; table created by Commission Staff.

Preliminary data also suggest that voter turnout will be lower for the 2020 primaries compared to the 2016 primaries regardless of if the state is holding an open or closed primary. For instance, in Arizona which holds a closed primary, it had a 48.6 percent turnout

4 See e.g., USA Facts, "How COVID-19 is changing primary voting—and the November election," (last updated) May 21, 2020, https://usafacts.org/articles/2020-election-primary-vote-covid-19-mail/.

https://usafacts.org/articles/2020-election-primary-vote-covid-19-mail/

compared to 37 percent from 2016 for its Democratic primary.5 In Florida, which also holds a closed primary, 68.2 percent of the 3 million ballots cast in the 2020 presidential primary were mail-in or early votes. Comparatively, in 2016 presidential primaries (where both parties had competitive races), 52 percent of the 4 million ballots were not cast at in-person polling locations on Election Day. This year's primaries drew 30.2 percent of Florida's registered voters, compared to 46.2 percent in 2016.6 Similarly, Illinois also had a decrease in voter turnout from 2016 (46.2 percent), compared to 30.2 percent in 2020.7

According to data from the United States Elections Project, presidential primary data from February to June 2, 2020, data show that for open primaries, Montana had the highest voter turnout with 45.6 percent of voters casting a vote; and Iowa had the lowest percentage of 9.1 percent of voters casting a vote.8 Of the party-only primaries, Virginia had the highest voter turnout with 21.4 percent of voters casting a ballot and North Dakota had the lowest percentage of 2.6 percent of voters casting a ballot in the 2020 Democratic primaries.9

As of June 2, 2020, there have been more than 56 million ballots cast in the 2020 presidential primary,10 compared to the 2016 presidential primaries that had an estimated turnout of 57.6 million people or 28.5 percent of estimated eligible voters.11 Moreover, the results from both of these years are projected to be fewer than the voting results from 2008, which had a turnout of about 30.4 percent.12

Democratic Primary Trends

5 Note: Arizona cancelled its 2020 Republican Primary. See e.g., Arizona Republican Primary Results, AZ Central, July 10, 2010, https://www.azcentral.com/elections/results/primaries/rep/az/arizona/; USA Facts, "How COVID-19 is changing primary voting—and the November election," (last updated) May 21, 2020, https://usafacts.org/articles/2020-election-primary-vote-covid-19-mail/. 6 USA Facts, "How COVID-19 is changing primary voting—and the November election," (last updated) May 21, 2020, https://usafacts.org/articles/2020-election-primary-vote-covid-19-mail/. 7 Ibid. 8 United States Election Project, 2020 Presidential Nomination Contest Turnout Rates, http://www.electproject.org/2020p. 9 Ibid. 10 Ibid. 11 Drew Desilver, "Turnout was high in the 2016 primary season, but just short of 2008 record," Pew Research Center, June 10, 2016, https://www.pewresearch.org/fact-tank/2016/06/10/turnout-was-high-in-the-2016-primary-season-but-just-short-of-2008-record/. 12 Ibid.

- https://www.azcentral.com/elections/results/primaries/rep/az/arizona/
https://usafacts.org/articles/2020-election-primary-vote-covid-19-mail/
https://usafacts.org/articles/2020-election-primary-vote-covid-19-mail/
https://usafacts.org/articles/2020-election-primary-vote-covid-19-mail/
http://www.electproject.org/2020p
https://www.pewresearch.org/fact-tank/2016/06/10/turnout-was-high-in-the-2016-primary-season-but-just-short-of-2008-record/

While the data are suggesting a lower turnout for the 2020 primaries, breaking these numbers down by political party show that many states saw an increase in Democratic voter turnout that was higher than it was in 2016, but a decrease in Republican voter turnout.13 In Alabama, Democratic turnout increased from more than 398,000 in 2016 to more than 451,000 in 2020.14 In Arkansas, Democratic turnout increased from more than 218,000 to over 228,000 (with more than 99 percent of precincts reporting). North Carolina turnout increased from more than 1.1 million to more than 1.3 million (99 percent of precincts reporting). Similarly, in Tennessee, turnout increased from more than 371,000 to more than 513,000. Texas turnout rose from more than 1.4 million to more than 2.1 million (99 percent of precincts reporting); compared to 2016 when the state held a Democratic caucus, where less than 200,000 votes were cast. In Vermont, turnout increased from about 135,000 to more than 157,000 (approximately 89 percent of precincts reporting). And Virginia, turnout increased from about 783,000 to more than 1.3 million votes.

As of March 17, 2020, of the 20 states that had recorded full primary results, researchers found that Democratic turnout has generally increased since 2016 but is still under 2008 numbers. According to data from the United States Election Project as of March 2020, of the states that had voted thus far, the 2020 turnout rate among the voting-eligible population in the Democratic primary was an average of three points higher than it was in 2016, but two points lower than it was in 2008.15

However, there are a few states where Democratic turnout has been much higher (see chart below), but voting experts posit that this increase is possibly due to "more to structural changes and differing electoral contexts than higher voter enthusiasm." Which suggests that as of March 2020, voter turnout for the primaries has been "pretty unimpressive."

Chart 1: Comparative Democratic Primary Voter Turnout (2008-2020)

13 Note: turnout data for the 2016 and 2020 primaries may drastically vary by political party, since both parties had competitive races in 2016 compared to 2020. For Democratic primary voter turnout, see e.g., Claire Hansen, "Voter Turnout Surges in Several Super Tuesday States, Boosting Biden," U.S. News, Mar. 4, 2020, https://www.usnews.com/news/elections/articles/2020-03-04/voter-turnout-surges-in-several-key-super-tuesday-states-boosting-joe-biden; German Lopez, "The Democratic voter surge was very real on Super Tuesday," Vox, Mar. 4, 2020, https://www.vox.com/policy-and-politics/2020/3/4/21164518/super-tuesday-results-voter-turnout; U.S. Election Project, 2016 Primary Elections, 14 New York Times, "Alabama Primary Results," Sept. 29, 2016, https://www.nytimes.com/elections/2016/results/primaries/alabama; Andrew Prokop, "Super Tuesday: Live Results," Vox, Mar. 4, 2020, https://www.vox.com/2020/3/3/21156481/super-tuesday-live-results. 15 U.S. Election Project, 2020 Voter Turnout, http://www.electproject.org/home/voter-turnout/voter-turnout-data; Nathaniel Rakich, "Historic Turnout In 2020? Not So Far," FiveThirtyEight, Mar. 17, 2020, https://fivethirtyeight.com/features/historic-turnout-in-2020-not-so-far/.

- https://www.usnews.com/news/elections/articles/2020-03-04/voter-turnout-surges-in-several-key-super-tuesday-states-boosting-joe-biden
https://www.vox.com/policy-and-politics/2020/3/4/21164518/super-tuesday-results-voter-turnout
https://www.vox.com/policy-and-politics/2020/3/4/21164518/super-tuesday-results-voter-turnout
https://www.nytimes.com/elections/2016/results/primaries/alabama
https://www.vox.com/2020/3/3/21156481/super-tuesday-live-results
http://www.electproject.org/home/voter-turnout/voter-turnout-data
https://fivethirtyeight.com/features/historic-turnout-in-2020-not-so-far/

Source: Nathaniel Rakich, "Historic Turnout In 2020? Not So Far," FiveThirtyEight, Mar. 17, 2020, https://fivethirtyeight.com/features/historic-turnout-in-2020-not-so-far/.

For instance, the state with the biggest turnout increase from 2016 to 2020 was Colorado (that had an increase of 19 percentage points), but this increase can be explained away by the change in Colorado's primary process. Colorado switched from holding

- https://fivethirtyeight.com/features/historic-turnout-in-2020-not-so-far/
https://fivethirtyeight.com/features/historic-turnout-in-2020-not-so-far/

caucuses to a state-run primary, and voter data show that primaries generally have higher turnout than caucuses. Moreover, Colorado (along with Minnesota, Idaho, and Michigan) were also among the only 4 states that significantly improved upon their 2008 turnout.16

As of March 26, 2020, national data (based on data from 19 states) show that Democratic voters generally are turning out at higher rates than in 2016 (see map below).

Chart 2: National Democratic Primary Turnout Data (2016-2020)

16 Nathaniel Rakich, "Historic Turnout In 2020? Not So Far," FiveThirtyEight, Mar. 17, 2020, https://fivethirtyeight.com/features/historic-turnout-in-2020-not-so-far/.

- https://fivethirtyeight.com/features/historic-turnout-in-2020-not-so-far/
https://fivethirtyeight.com/features/historic-turnout-in-2020-not-so-far/

Overall, 17 of these 19 states saw higher turnout rates in 2020 compared to 2016; the two exceptions of Illinois and Oklahoma.¹⁷ For instance, in Illinois, 28.4 percent of registered voters cast ballots for the state's March 17th primary which is the third-lowest turnout for presidential primary in the past four decades. However, four of the previous six primaries in that state had turnouts of less than 30 percent.¹⁸

17 J. Miles Coleman, "Turnout in the 2020 Democratic Primary: Some Clues for the Fall," Center for Politics, University of Virginia, Mar. 26, 2020, <http://centerforpolitics.org/crystalball/articles/2020-turnout/>. 18 USA Facts, "How COVID-19 is changing primary voting – and the November election," last updated May 21, 2020, <https://usafacts.org/articles/2020-election-primary-vote-covid-19-mail/>.

<http://centerforpolitics.org/crystalball/articles/2020-turnout/>
<http://centerforpolitics.org/crystalball/articles/2020-turnout/>
<http://centerforpolitics.org/crystalball/articles/2020-turnout/>
<https://usafacts.org/articles/2020-election-primary-vote-covid-19-mail/>
<https://usafacts.org/articles/2020-election-primary-vote-covid-19-mail/>

APPENDIX C: Review of Selected SOS Websites for Language Access

Alaska

1. Aleutians West Census Area (Filipino) - No official website of this area. - The only information available can be found under the Alaska Division of elections website:

<http://www.elections.alaska.gov/Core/languageassistance.php>.

2. Aleutians West Census Area (Aleut) - No official website of this area. - The only information available can be found under the Alaska Division of elections website:

<http://www.elections.alaska.gov/Core/languageassistance.php>.

3. Aleutians East Borough (Hispanic) - To access the information for this area: [https://www.aleutianseast.org/?SEC=029815F1-22EF-44B6-AEB1-](https://www.aleutianseast.org/?SEC=029815F1-22EF-44B6-AEB1-53A793C73CA5)

53A793C73CA5. This website is of the Borough in general, there is no website of the Board or Supervisor of Elections itself. - On the menu of this page, there is an option titled Departments. Under the Clerk's Department, there is a link titled

"Elections." - Once clicked on this link, a page titled "Aleutians East Borough 2019 Election Information" appears (see Figure 1 below).

Figure 1: Screenshot for the East Borough 2019 Election Information

<http://www.elections.alaska.gov/Core/languageassistance.php>
<http://www.elections.alaska.gov/Core/languageassistance.php>
<https://www.aleutianseast.org/?SEC=029815F1-22EF-44B6-AEB1-53A793C73CA5>
<https://www.aleutianseast.org/?SEC=029815F1-22EF-44B6-AEB1-53A793C73CA5>

- From this webpage, a voter can access documents like "Notice of Special Election" and "November 5, 2019 Special Election Sample Ballot" in two languages "in Spanish" and "in Tagalog."

- However, it could be difficult for people with limited-English proficiency to access this information because it is not in their language (e.g., the text does not say "En Español").

- However, the webpage provides a sample ballot in Spanish that is well-translated. - At the end of the list, there is a link titled: "Absentee Ballot Request-Special Election," but it appears only in English on the website.

4. Valdez-Cordova Census Area (Alaskan Athabaskan) - To access the information for this area: <http://www.valdezak.gov/133/Elections>. - On the City of Valdez's website, under Departments, City Clerk, there is a page called "Elections." - Everything is in English. - There is no translation, nor Language Assistance information.

5. Bethel Census Area (Inupiat) - To access the information for this area: <https://www.cityofbethel.org/elections>. - When searched, it appears as "Elections – City of Bethel, Alaska." - There is a menu titled "Election Information," under this, there is a list and it is entirely in English. - All the information provided seems to be in English (see Figure 2 below).

<http://www.valdezak.gov/133/Elections>
<https://www.cityofbethel.org/elections>

Figure 2: Screenshot for Bethel Census Area Election Information

- However, if a voter click the first option "Election Notices and Sample Ballot," at the bottom of the page, there is an item titled "Voting Assistance and Language Translation."

- In that page, there are various links providing Yup'ik translations. This page states that: "Yup'ik translation is available during absentee in person voting as well as at each of the polling places during election day."

- There are Yup'ik Translation of Election Notices, but they are voice recordings. However, access these recordings may be limited since each of the links are written in English.

- The main menu at the beginning, below "Elections Notices and Sample Ballot," there is a link titled "Language Assistance," that leads to the same Yup'ik translation recordings.

Figure 3: Screenshot for Election Information in Yup'ik

- The website does not provide translation in Inupiat, just Yup'ik.

6. Kenai Peninsula Borough (Yup'ik) - To access the information for this area: <https://www.kpb.us/assembly-clerk/elections/election-information>. - This Borough has its own website, again, with its Departments and Offices. Under the Clerk's Office, there is information

on the Elections.

<https://www.kpb.us/assembly-clerk/elections/election-information>

Figure 4: Screenshot of Election Information for Kenai Peninsula

- Everything on the website appears in English; with no translation option. The PDFs available are also in English.

7. Alaska Division of Elections - To access the information for this area: <http://www.elections.alaska.gov/Core/absenteeearlyandpersonvoting.php>. - On the menu of this website, there is an option for "Language Assistance," which includes various languages are available

like Spanish, Tagalog, Yup'ik, and Inupiat (see Figure 5).

Figure 5: Screenshot of Alaska Division of Elections

<http://www.elections.alaska.gov/Core/absenteeearlyandpersonvoting.php>

- If a voter clicked for the Spanish translation, the information on the page is very helpful. Each sentence appears in Spanish and English, there are also sample ballots, election pamphlets and archives. There are also Voter Registration Applications and Absentee Ballot Applications. However, some of the words in Spanish are misspelled and would have to be deduced from the context which could be difficult for some voters. There is also a phone number to call for more information or help with the language.

- If instead of Language Assistance, a voter clicks on "Voters," all the information is in English, and the information is more extensive than the one seen in Spanish and other languages.

- At the time of the writing of the report, there was no sample ballot in Spanish, but there are Applications available. This option was available for some of the other languages, but some documents may not be available.

Arizona

1. Secretary of State - To access the information for this area: <https://azsos.gov/elections>. - The main page has a proper option for translation in Spanish. However, not for Navajo or Apache. The option for translation is clear for a Spanish-speaker, titled in Spanish, so a person with limited-English proficiency can clearly identify it (see Figure 6).

Figure 6: Screenshot of Arizona's Secretary of State Elections Website

- The translation in Spanish is accurate, it does not use Google Translate. It appears that the election officials offer online and telephone services in Spanish; however, the links to access this assistance are written in English.

- The link that leads to the information about Absentee Voting or Voting by Mail is also in English. However, "Voting by Mail: How to get a Ballot-by-Mail," has a link in Spanish (see Figure 7 below).

Figure 7: Screenshot for the Voting by Mail option

<https://azsos.gov/elections>

- Voter Registration Forms are also available in both languages (see Figure 8 below).

Figure 8: Screenshot for Voter Registration Forms

2. Coconino County (American Indian: Navajo) - To access the information for this area: <https://www.coconino.az.gov/2331/Elections-Office>. - The entire page is in English and there is no visible Navajo translation.

<https://www.coconino.az.gov/2331/Elections-Office>

- To access the translation tool is also difficult to find. To have the page translated, a user has to locate a tool image at the top of the page, which is commonly used to show settings. Once you click, there is a list of items, one of them is titled "Translate page." This option leads you to Google Translate, where Google can automatically translate the entire page to the language you choose (see Figure 9 below).

Figure 9: Screenshot for Coconino County Election Information

- Voters may also have difficulties learning about other topics such as early voting. For example, clicking the "Early Ballot Request," link leads the user to a form that they can fill out, but the page is in English with no translations available, unless they had previously translated the website (as described above).

- There is also an option to "Sign In," but it is unclear whether a different translation option is available once a user clicks the link.

3. Maricopa County (Hispanic) - To access the information for this area: <https://recorder.maricopa.gov/elections/>. - On the main page of the Maricopa County Elections Department, under the main menu, there are two links "English Content" and its translation in Spanish, which is "Contenido Español" (see Figure 10). Once the translation is chosen, every part of the website is accurately translated to Spanish. It is written in formal (or neutral) Spanish, that can be understood by many Spanish speakers. This suggests that the translation was probably done by a Spanish-speaker, not

<https://recorder.maricopa.gov/elections/>

through a program such as Google Translate. For example: the website uses "of usted," instead of a mix of second or third person.

- Compared to other elections pages, the Maricopa County Elections page seems to offer one of the best translations for voters. The translations and links seem to be easily accessible, visible, and accurate (see Figure 11).

Figure 10: Screenshot of the Maricopa County Elections website

Figure 11: Screenshot of the Maricopa County Elections website translated

4. Pinal County (American Indian: Apache) - The website is in English, but in the menu located on the left of the website, there is an option titled "Elections En

Español," which helps non-English speakers easily recognize a translation option (Figure 12). - Once this link is clicked, a Spanish version of the website appears (see Figure 13). The menu options are reduced on the

translated version, but it does contain all the necessary information. - The information appears to be clear and accurate, however, there is a concern regarding the date of the next election which

is available in the English version of the website (which is August 4, 2020), but in the Spanish version, there is no date visible. There is a report regarding the General Elections for November 6, 2018, and there is a menu option to view the next elections, but once the link is clicked, a pdf containing information of 2018 appears. However, it is not updated.

- On the other hand, in the Spanish home page, one can register to vote. There is information on Early Voting, but when you click on the link, it leads to the English page titled "Permanent Early Voting List Information."

- On the Spanish home page, there is also a link to view Future Elections, but it contains information of elections in 2017. But it is not updated.

- There is no Spanish information on Voting-By-Mail. - The information in Spanish, though accurate, it is incomplete and outdated. - The information in English is updated, with this year's election dates. - The contact information in Spanish is accurately translated.

Figure 12: Screenshot of the Pinal County Election information

Figure 13: Screenshot of the Pinal County Election information (translated)

Florida

1. Miami-Dade County (Hispanic) - To access the information for this area: <https://www.miamidade.gov/global/elections/home.page>. - The website is in English, but there is an option to translate, at the top of the page. The same is for the page labeled "Vote-

by-Mail Ballot" (see Figure 14). - On the "Vote-by-Mail Ballot" page, scrolling down, a user can access the Vote-by-Mail Request Form, and the website

offers a translation in English, Español, and Haitian Creole (see Figure 14). Haitian Creole is not required by Section 203, but it is an available option.

- At the top of the website, there is also a link titled "Translate," and the website is available in Spanish and Haitian Creole. - The Spanish translation seems accurate, well-redacted. There are also videos in Spanish.

2. Broward County (Hispanic) - To access the information for this area: <https://www.browardsoe.org/Voting-Methods/Vote-By-Mail-Voting>. - When searching on Google, the first option is Broward County Supervisor of Elections, under it is the link "Vote by Mail

Voting."

<https://www.miamidade.gov/global/elections/home.page>

<https://www.browardsoe.org/Voting-Methods/Vote-By-Mail-Voting>

- Once clicked, a list pops-up. All options are in English. One says "Vote-by-Mail brochure (Spanish)." However, this could be difficult for a Spanish-speaker to distinguish.

- At the top of the page, however, there is an option that says "Language," which uses Google Translate to change the page. The concern is that translations by Google Translate are not always accurate. For example, when the page is translated into Spanish, there are sentences that have syntax problems, such as "Instrucciones de voto por correo e votación anticipada." This appears to have a literal word-by-word translation problem.

- If the page is left in English, when clicking on any item of the list, it leads to another page in English. - The "Vote-by-Mail brochure (Spanish)" contains an accurate translation of the brochure. - When you click on "Vote by Mail Ballot Request Form," one of the items on the list, there is an accurate translation of

"Order your vote-by-mail ballot bellow," which is "Solicite su boleta por correo a continuación." But again, there is the option of Google Translate, which is not always helpful (see Figure 15).

- All of this is the same for Haitian Creole, one can only use Google Translate. Also, there is no Brochure in Haitian Creole.

Figure 15: Screenshot of Vote by Mail Request Form

3. Palm Beach County (Hispanic) - To access the information for this area: <https://www.pbcelections.org/Voters/Vote-By-Mail>. - When searched in Google, under the official website link, which is titled "Palm Beach County Supervisor of Elections,"

there is a link titled "Vote by Mail." - Once clicked, that link leads to a website page that is entirely in English. - There is an option at the menu located at the top of the page that says "Language," but it uses Google Translate. As stated above, this program may not always be accurate. There is also no option for Spanish on this website unless one uses the Google Translate option.

<https://www.pbcelections.org/Voters/Vote-By-Mail>

Georgia

1. Georgia Secretary of State - To access the information for this area: <https://sos.ga.gov/index.php/elections>. - The website is completely in English and there is no option for translation.

2. Gwinnett County (Hispanic) - To access the information for this area:

<https://www.gwinnettcounty.com/web/gwinnett/Departments/Elections> - On the Elections home page, there is information on Language Assistance, but it is

written only in English (see Figure 16).

Figure 16: Screenshot of the Gwinnett County Elections website

<https://sos.ga.gov/index.php/elections>

<https://www.gwinnettcounty.com/web/gwinnett/Departments/Elections>

- When clicking on the link "more," the information also only appears in English. - On the menu located on the left, there is a link titled "Language Translation Disclaimer," see the following screenshot for more details:

- On the Home page, if you click on the link labeled Forms, it leads you to a page with forms accurately translated to Spanish, but it is hard to find.

- On the Absentee Voting by Mail page, under "Important Absentee Voting by Mail Information," there are two Absentee Ballot Applications available as PDFs, that are in English and in Spanish (labeled "En Español," so that Spanish-speakers can distinguish it). However, the instructions and the rest of the page are in English. On the far right of the page, there is a link labeled English (in white, so it may be difficult to distinguish). When the link is clicked, there is a drop-down menu where a user can choose the language of the website and Spanish is available.

Figure 18: Screenshot of the Gwinnett County Absentee Voter webpage

- Analyzing the translation of the website demonstrates a few concerns. For instance, the webpage states: "No hay garantía sobre el tiempo de entrega del servicio postal; por lo tanto, esperar a que se aplique tarde puede limitar su capacidad de recibir, votar y devolver la boleta." The syntax of this sentence is incorrect, could be misunderstood, and is not translated correctly. It is a bad translation of the page and the information it offers for potential voters.

- There are other serious problems on the website. For instance, on the Spanish page, under the Absentee Ballot Applications, it states: "En Inglés" and the other says: "In English." (see Figure 19). So, it gives the impression that both are in English. When you click on the one written in Spanish, however, the PDF is in English; and when you click on the one written in English, the PDF is in Spanish. Thus, the Spanish application seems accurate, but the link seems to be incorrect.

- When the page is in English, the Spanish application is under the correct link labeled "En Español."

Figure 19: Screenshot of Absentee Ballot Information (translated)

Massachusetts

1. Secretary of the Commonwealth of Massachusetts - To access the information for this area: <https://www.sec.state.ma.us/ele/eleidx.htm>. - It appears that the website was updated recently, but it did not add any translations and the whole website is in English (see

Figure 20 below).

Figure 20: Screenshot of the Massachusetts Elections Division website

<https://www.sec.state.ma.us/ele/eleidx.htm>

- If a user clicks on any of the images, they lead to pages in English. Even the one titled "Vote by Mail" provides information only in English; and the sample application is also English-only (see Figure 21 below).

Figure 21: Screenshot of the Voting by Mail website

- However, if a user clicks on the link titled "Absentee Voting" that is located in the box titled: "Voter Information," pdfs are available for Absentee Ballot Applications in English, Spanish, Chinese, and Khmer (Cambodian). The Spanish Application seems to be accurate and well-translated (see Figure 22 below).

Figure 22: Screenshot for Absentee Voting information

2. Boston City (Spanish) - To access the information for this area: <https://www.boston.gov/departments/election>. - The website has a translation option, but it is titled "Translate," which could make it difficult for non-English speakers to locate. Each language is also titled in English (see Figure 23). - The translation offered on the page utilizes Google Translate. Once a language is chosen, a Google Translate page appears

giving the translation to the whole website (see Figure 24).

Figure 23: Screenshot of City of Boston Election Information

<https://www.boston.gov/departments/election>

Figure 24: Screenshot of Translation Options

- If a user chooses the "How to vote by absentee ballot," they can find that the applications are available in English, Spanish, Chinese, and Khmer (Cambodian).

- The instructions are written in their respective languages, which is beneficial so users can identify which form they need (see Figure 25).

Figure 25: Screenshot of Absentee Ballots with translations options

3. Worcester City (Spanish) - To access the information for this area: <http://www.worcesterma.gov/elections>. - At the top of the website, the menu has a translation option titled "Translate." Once clicked, each language is named correctly so that a non-English speaker could choose their native language without any problems (see Figure 27 below).

Figure 26: Screenshot of the Worcester City Election Commission

<http://www.worcesterma.gov/elections>

Figure 27: Screenshot of available translation options

- While there are several translation options, the translations are all machine-generated. For example, if a user chooses Spanish, there is disclaimer that states a user must agree to before continuing to the website. This disclaimer states that the translation was done using a Microsoft translation program. It states that the City of Worcester strives for an accurate translation, but it is not guaranteed. This means that the translation may not be entirely correct. Also, it indicates that pdf documents cannot be translated by the program. The website states that: the "City of Worcester will not be held responsible for the consequences arising from translation provided by the Microsoft service." Therefore, by agreeing to use the translation provided, the user is accepting the legal implications of any deficiencies or inaccuracies in the translation and retains all responsibilities or damages that may occur if the user relies upon the Microsoft translation. This disclaimer is offered in the translation of the language chosen (see Figure 28 below).

Figure 28: Microsoft Disclaimer (translated)

- The Application for Early Voting is unavailable in Spanish, stating: "Something went wrong, try again." - When the website is translated, the majority of the links that lead to pdfs or applications do not appear to work, which would make it difficult for non-English speakers to access this information. - If the website is left in English, there are pdfs in Spanish, such as the Application for Absentee Voting, but the user has to

click on a link titled: "How do I vote?" which is in English which could make it difficult for a non-native English speaker. - Once on that page, there is an Application for Absentee Voting in Spanish, titled "Application-Español" but the rest of the

page is in English-only. This could make accessing and understanding this information difficult for a voter who has limited-English proficiency. Additionally, there does not seem to be a Spanish version of the Vote-by-Mail Application and the application for Vote-by-Mail is available only in English (see Figure 29 below).

Figure 29: Screenshot of Vote-by-Mail and Absentee options

4. Lowell City (Khmer: Cambodian) - To access the information for this area: <https://www.lowellma.gov/294/Election-Census>. - The option for translation is very similar to the Coconino County website, where the translation links are hidden, hard to

distinguish, and also uses Google Translate (which may not be accurate as discussed above).

Figure 30: Screenshot of the Lowell County Elections page

<https://www.lowellma.gov/294/Election-Census>

- All the Voter Information is offered in English. When clicking on the Absentee Voting page, under the part titled: "Apply for an Absentee Ballot," there is a "click here" link. This link leads to the Secretary of State website with the Applications in various languages, including Cambodian (see Figure 31 below).

- All the Sample Ballots offered on the website are also in English.

Figure 31: Screenshot for Applying for an Absentee Ballot

5. Quincy City (Chinese) - To access the information for this area: https://www.quincyma.gov/govt/depts/city_clerk/election/default.htm. - Below is a screenshot of the website that has an option for translation, but it is titled "English," and once clicked, a drop-

down menu appears. It offers many languages and the translation is done by Google Translate.

https://www.quincyma.gov/govt/depts/city_clerk/election/default.htm

- When the desired language is clicked on, Google Translate converts the website to the language chosen. - All applications are in English, including the Vote By Mail Application and the Absentee Ballot Application. - However, the Absentee Ballot Application link leads to a page that not only provides an application, but also provides the

option to visit the Secretary of the Commonwealth of Massachusetts website where a user can find the applications in Spanish, Chinese, and Khmer.

Alabama

1. Alabama Secretary of State

- To access the information for this area: <https://www.sos.alabama.gov/alabama-votes/voter/absentee-voting>. - When first accessing the home page, there appears to be no translated information, and everything is in English. - Clicking through some of the links, such as the "Voting in Alabama" link, all the information is also in English. - There is no option for a translation and all the materials are only available in English. - A link titled "Elections Laws" contains no information regarding the Voting Rights Act, language assistance, or assistance

for voters who have limited-English proficiency.

1. Jefferson County - To access the information for this area: <https://www.jccal.org/Default.asp?ID=341&pg=Voting+Info>. - However, as the screenshot below shows, the voting website is unavailable.

2. Mobile County

<https://www.sos.alabama.gov/alabama-votes/voter/absentee-voting>

<https://www.jccal.org/Default.asp?ID=341&pg=Voting+Info>

- To access the information for this area: <https://www.mobilecountyal.gov/government/elections-voting/>. - As the below screenshot demonstrates, there is an option for translation located at the very bottom of the page through the use of Google Translate.

- There is also assistance for voters with disabilities, located at the top of the page, an option to hear recording that describes the page, and the option to make the text larger and more visible (see Figure 35 below).

Figure 35: Screenshot of Accessibility Options for Voters with Disabilities

<https://www.mobilecountyal.gov/government/elections-voting/>

- If a voter needs additional election or voting information, there is a link titled: "CLICK HERE for Mobile County Probate Court's Election Information." However, the information is only available in English and all other links lead to the Alabama Secretary of State website.

Figure 36: Screenshot of Mobile County Election Information

3. Madison County - To access the information for this area: <https://www.madisoncountyvotes.com>. - The option for a translation is visible, in the menu at the top of the page, unlike in Mobile County's website. However, it

also uses Google Translate (see Figure 37 below). - The "Application for Absentee Voting" is only in English.

Figure 37: Screenshot of the Madison County Election website

<https://www.madisoncountyvotes.com/>

APPENDIX D: Review of Selected SOS Websites for Accessibility for Persons with Disabilities

To ensure that voters with disabilities have equal access to information about voting, the Commission undertook an investigation of the websites of five state secretaries of state to assess whether they are compliant with ADA standards.¹⁹ These states were selected on the basis of being all previously covered jurisdictions under the Voting Rights Act.²⁰ One way to accomplish this was to utilize the Social Security Administration's Accessible Name and Description Inspector (ANDI) tool.²¹ The ANDI program tests websites for six main categories of accessibility. These categories include:

■ Focusable elements: these are interactive elements on a website and the program will check for conditions that may cause accessibility issues.

■ Graphics/images: the program tests for the accessibility of the graphics and images on the website, including the presence of alternative text.

■ Links/buttons: the program inspects "clickable" links and buttons for uniqueness, completeness, and accuracy. ■ Structures: tests for the presence of semantic tags and the presence of Accessible Rich Internet Applications (ARIA) roles that

are associated with the page's structure in order to be accessible for users with disabilities who use assistive technologies. ■ Color contrast: detects accessibility issues relating to color contrast in text, font-size, and background colors. These two color

values are used to calculate the contrast ratio and should meet the minimum requirement for accessibility (4.5:1).²² ■ Hidden content: provides the user the ability to discover the presence of hidden content that needs to be tested for accessibility.²³

When ANDI is launched, it analyzes the website for conditions that are commonly found to cause accessibility issues based upon the six categories or modules listed above. If the program finds a violation of one of these factors, ANDI generates an alert to help the user locate the potential accessibility issue. These alerts are broken down into three categories: Danger in red, signifying that it is

19 These five states are Alabama, Alaska, Arizona, Florida, Georgia. 20 Dept of Justice, “Jurisdictions Previously Covered by Section 5” Mar. 11, 2020, <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>. 21 General Services Administration, Government-wide IT Accessibility Program, <https://www.section508.gov/test/web-software>. 22 “The contrast ratio of 4.5:1 was chosen for level AA because it compensated for the loss in contrast sensitivity usually experienced by users with vision loss equivalent to approximately 20/40 vision. (20/40 calculates to approximately 4.5:1.) 20/40 is commonly reported as typical visual acuity of elders at roughly age 80.” See Understanding Success Criterion 1.4.3: Contrast (Minimum), [https://www.w3.org/WAI/WCAG21/Understanding/contrast-minimum.html#:~:text=3%20Contrast%20\(Minimum\)%20\(Level,Incidental](https://www.w3.org/WAI/WCAG21/Understanding/contrast-minimum.html#:~:text=3%20Contrast%20(Minimum)%20(Level,Incidental). 23 ANDI Modules, <https://www.ssa.gov/accessibility/andi/help/modules.html>.

<https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>
<https://www.section508.gov/test/web-software>
[https://www.w3.org/WAI/WCAG21/Understanding/contrast-minimum.html#:~:text=3%20Contrast%20\(Minimum\)%20\(Level,Incidental](https://www.w3.org/WAI/WCAG21/Understanding/contrast-minimum.html#:~:text=3%20Contrast%20(Minimum)%20(Level,Incidental)
[https://www.w3.org/WAI/WCAG21/Understanding/contrast-minimum.html#:~:text=3%20Contrast%20\(Minimum\)%20\(Level,Incidental](https://www.w3.org/WAI/WCAG21/Understanding/contrast-minimum.html#:~:text=3%20Contrast%20(Minimum)%20(Level,Incidental)
<https://www.ssa.gov/accessibility/andi/help/modules.html>

almost certain of an issue; Warning in orange, signifying the likelihood of an issue for screen readers; or Caution in yellow, signifying that the developer needs to further investigate the issue.²⁴

Alabama:

■ Early data from the Alabama Primaries revealed that 1,189,069 total ballots were cast by 3,576,107 registered voters for a turnout rate of 33.25 percent.²⁵

■ No data about voters with disabilities available for Spring 2020 primary elections ■ The number of voters with disabilities in Alabama increased by 14.4 percentage points from 2014 to 2018.²⁶ ■ Alabama’s Secretary of State website, “Alabama Votes” is the homepage for voters to get information on voter registration,

election information, finding their polling place, information regarding absentee voting, photo ID requirements, and upcoming elections.²⁷ Running the ANDI program on the website revealed over 20 possible accessibility alerts and issues with website links, color contrast, hidden content, and focusable items.

■ Following some of the links that provide voters further information regarding absentee voting,²⁸ the ANDI program alerted to an additional 27 accessibility concerns such as several “ambiguous links” that the program identified as a potential problem for all users, not just those who use assistive technologies.

■ The page for polling place information,²⁹ which also included information regarding registration and provisional and absentee ballots, had an additional 27 alerts, 22 of these were concerning color contrast which need manual tests to ensure accessibility.

■ The voter registration page³⁰ also had an additional 21 alerts that included navigation issues with how to request assistance from local officials and text failing to pass minimum color requirements for assistive technologies to read important notifications for voters.

Alaska:

24 ANDI Guide, <https://www.ssa.gov/accessibility/andi/help/howtouse.html>. 25 Alabama Secretary of State, Alabama Votes, <https://www2.alabamavotes.gov/electionnight/statewideResultsByContest.aspx?ecode=1001060>. 26 American Association of People, Statistics and Data, <https://www.aapd.com/advocacy/voting/statistics/>. 27 Alabama Secretary of State, Alabama Votes, <https://www.sos.alabama.gov/alabama-votes>. 28 Alabama Secretary of State, Alabama Votes, <https://www.sos.alabama.gov/alabama-votes/voter/absentee-voting>. 29 Ibid., <https://myinfo.alabamavotes.gov/VoterView/Home.do>. 30 Ibid., <https://www.sos.alabama.gov/alabama-votes/voter/register-to-vote>.

<https://www.ssa.gov/accessibility/andi/help/howtouse.html>
<https://www2.alabamavotes.gov/electionnight/statewideResultsByContest.aspx?ecode=1001060>
<https://www.aapd.com/advocacy/voting/statistics/>
<https://www.sos.alabama.gov/alabama-votes>
<https://www.sos.alabama.gov/alabama-votes/voter/absentee-voting>
<https://myinfo.alabamavotes.gov/VoterView/Home.do>
<https://www.sos.alabama.gov/alabama-votes/voter/register-to-vote>

■ There were a reported 585,377 registered voters as of June 3, 2020 which is an increase of 13,526 from 2018.³¹ ■ Data from the 2018 elections (most current election data available) show that there were 285,009 ballots cast and a voter

turnout rate of 49.84 percent.³² ■ Alaska’s official voting website, “Alaska Division of Elections” offers voters pertinent information on topics related to voting

such as accessing language assistance, information on candidates, political parties, applying for and casting absentee ballots, checking registration status and voter statistics.³³ Analyzing the main webpage through the ANDI program, revealed 78 accessibility alerts that included issues such as links missing accessible names which means that a screen reader would either not be able to read it or make a guess, which could keep an individual with visual impairment from accessing that information or potentially getting the wrong information.³⁴

■ Following some of the links that are necessary for voters, such as learning about early and absentee voting options and learning how to request voting assistance, the ANDI system found that there were an additional 26 accessibility alerts that mostly consisted of issues with failed color contrast ratios that may not allow information to be discernable to individuals with visual impairments or screen readers.

■ The Division of Elections website also had a specific “Assistance for Voters with Disabilities” webpage that offered information on accessibility assistance, and also provided videos about registration and absentee information with American Sign Language (ASL) interpreters for voters.³⁵ The ANDI program found an additional 52 alerts on this page, which mostly consisted of manual testing needed for color contrast to ensure that the informational text on the website had a contrast ratio that allows the text to be readable by people who are visually impaired.

■ The “By-Mail Ballot Delivery” webpage³⁶ also had many of the same issues as the previous pages with the majority of the alerts (43 of the 49) concerning color contrast issues that could make reading the necessary information regarding absentee voting difficult for voters who are sight impaired.

Arizona:

31 State of Alaska, Division of Elections, Number of Registered Voters by Party within Precinct, June 3, 2020, <http://www.elections.alaska.gov/statistics/2020/JUN/VOTERS%20BY%20PARTY%20AND%20PRECINCT.htm>. 32 State of Alaska, 2018 General Election, Official Results, Nov. 6, 2018, <http://www.elections.alaska.gov/results/18GENR/data/results18.pdf>. 33 Alaska Division of Elections, <http://www.elections.alaska.gov/>. 34 See ANDI Alerts, <https://www.ssa.gov/accessibility/andi/help/alerts.html>. 35 Alaska Division of Elections, Assistance For Voters With Disabilities, <http://www.elections.alaska.gov/Core/disabledvoterassistance.php>. 36 Alaska Division of Elections, By-Mail Ballot Delivery, <http://www.elections.alaska.gov/Core/votingbyemail.php>.

<http://www.elections.alaska.gov/statistics/2020/JUN/VOTERS%20BY%20PARTY%20AND%20PRECINCT.htm>
<http://www.elections.alaska.gov/results/18GENR/data/results18.pdf>
<http://www.elections.alaska.gov/>
<https://www.ssa.gov/accessibility/andi/help/alerts.html>
<http://www.elections.alaska.gov/Core/disabledvoterassistance.php>
<http://www.elections.alaska.gov/Core/votingbyemail.php>

■ As of April 1, 2020, there were a total of 3,929,260 registered voters which was an increase of 212,997 voters from 2018.³⁷ ■ While Arizona does not publicly offer a breakdown of registered voter demographics, according to data from the American

Association of People with Disabilities, the state had a 14.5 percentage point increase in voters with disabilities from 2014 to 2018.³⁸

■ Analyzing the website for accessibility via the ANDI program, it found 30 alerts that consisted of reference and link alerts that when clicked may unintentionally skip over content.

■ One of the links that the program flagged as a potential accessibility concern was information regarding the state’s elections response to the COVID-19 pandemic and how election officials are planning on mitigating those issues.³⁹

■ Many of the identified accessibility alerts were triggered due to the links under the “Popular Questions” section of the website.⁴⁰ This section provides essential information to voters, for example, how to request an early or absentee ballot, how to register, how to locate polling places, what materials voters needed to bring to a polling location in order to be allowed to vote, and how to update their voter information.

Florida:

■ In 2020, there were 13,701,765 registered voters in Florida,⁴¹ but similar to other states, Florida does not breakdown voter data by disability status.

■ Early data from the Florida Primary election revealed that 2,991,898 total ballots were cast with a voter turnout rate of 19.4 percent,⁴² which is lower than the turnout rate from the 2018 Primaries of 27 percent.⁴³

■ According to the American Association of People with Disabilities, however, the number of voters with disabilities in Florida increased by 6.2 percentage points from 2014 to 2018.⁴⁴

37 State of Arizona, Voter Registration & Historical Election Data, <https://azsos.gov/elections/voter-registration-historical-election-data>. 38 American Association of People with Disabilities, Statistics and Data, <https://www.aapd.com/advocacy/voting/statistics/>. 39 State of Arizona, Secretary of State, <https://azsos.gov/elections>. 40 State of Arizona, Secretary of State, <https://azsos.gov/elections>. 41 Florida Department of State, Division of Elections, Voter Registration Statistics, <https://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/>. 42 Florida Election Watch, 2020 Presidential Preference Primary, Mar. 17, 2020, <https://floridaelectionwatch.gov/FederalOffices/President>. 43 Florida Department of State, Division of Elections, Early Voting, <https://dos.myflorida.com/elections/data-statistics/elections-data/absentee-and-early-voting/>; Voter Turnout, <https://dos.myflorida.com/elections/data-statistics/elections-data/voter-turnout/>; Voter Registration Statistics, <https://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/>. 44 American Association of People, Statistics and Data, <https://www.aapd.com/advocacy/voting/statistics/>.

<https://azsos.gov/elections/voter-registration-historical-election-data>
<https://www.aapd.com/advocacy/voting/statistics/>
<https://azsos.gov/elections>
<https://azsos.gov/elections>
<https://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/>
<https://floridaelectionwatch.gov/FederalOffices/President>
<https://dos.myflorida.com/elections/data-statistics/elections-data/absentee-and-early-voting/>
<https://dos.myflorida.com/elections/data-statistics/elections-data/voter-turnout/>
<https://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/>
<https://floridaelectionwatch.gov/FederalOffices/President>
<https://www.aapd.com/advocacy/voting/statistics/>

■ Analyzing the Florida election’s main website through the ANDI program, revealed 35 possible accessibility alerts that included issues related to links and images that screen readers possibly would not be able to read which means that an individual who is visually impaired may miss essential information if the image does not have a text description or text equivalent located somewhere else on the page.⁴⁵

Analysis on the "Accessible Voting for Persons with Disabilities" webpage showed an additional 48 alerts, consisting of 31 contrast alerts and 17 needed manual checks.

Other pages such as the Language Assistance for Voting page⁴⁷ also contained 47 additional accessibility alerts, consisting of graphics and image issues, ambiguous links, color contrast ratios, and hidden content. The ANDI program also revealed many of the same accessibility issues on the Vote-By-Mail page and much of the flagged text is regarding information that is meant to direct voters on how to request, return, and/or correct an absentee ballot.⁴⁸

Georgia:

Early data from the 2020 Georgia Primary showed that 2,034,078 total ballots were cast; however, according to the Secretary of State's website these results are unofficial which means that the total may not include all absentee or provisional ballots at the writing of this report.⁴⁹

data from the American Association of People with Disabilities revealed that this population of voters increased 16.4 percentage points from 2014 to 2016, which is the highest increase among the five states analyzed.⁵⁰

Analyzing the main election webpage for accessibility, the ANDI program revealed 21 alerts, which means that Georgia was second in the fewest number of alerts on its main page of the five states investigated. Looking at the specific page for voters with disabilities, the program indicated an additional 87 accessibility alerts, which was the highest among the five states.⁵¹

The Absentee Voting informational page revealed an additional 56 alerts that consisted of 54 color contrast alerts, 1 table alert, and 1 graphics or image alert.⁵²

45 See ANDI Alerts, <https://www.ssa.gov/accessibility/andi/help/alerts.html>. 46 Florida Department of State, Division of Elections, <https://dos.myflorida.com/elections/for-voters/voting/accessible-voting-for-persons-with-disabilities/>. 47 Florida Department of State, Division of Elections, <https://dos.myflorida.com/elections/for-voters/voting/language-assistance-for-voting/>. 48 Florida Department of State, Division of Elections, <https://dos.myflorida.com/elections/for-voters/voting/vote-by-mail/>. 49 Georgia Secretary of State, Presidential Preference Primary, June 9, 2020, <https://results.enr.clarityelections.com/GA/103613/web.247524/#/summary>. 50 American Association of People with Disabilities, Statistics & Data, <https://www.aapd.com/advocacy/voting/statistics/>. 51 Georgia Secretary of State, Voters with Disabilities, https://sos.ga.gov/index.php/elections/voters_with_disabilities. 52 Georgia Secretary of State, Absentee Voting in Georgia, https://sos.ga.gov/index.php/Elections/absentee_voting_in_georgia

<https://www.ssa.gov/accessibility/andi/help/alerts.html>
<https://dos.myflorida.com/elections/for-voters/voting/accessible-voting-for-persons-with-disabilities/>
<https://dos.myflorida.com/elections/for-voters/voting/language-assistance-for-voting/>
<https://dos.myflorida.com/elections/for-voters/voting/vote-by-mail/>
<https://results.enr.clarityelections.com/GA/103613/web.247524/#/summary>
<https://www.aapd.com/advocacy/voting/statistics/>
https://sos.ga.gov/index.php/elections/voters_with_disabilities
https://sos.ga.gov/index.php/Elections/absentee_voting_in_georgia

The Voter Registration page also consisted of 89 accessibility alerts.⁵³

53 Georgia Secretary of State, Register to Vote, https://sos.ga.gov/index.php/Elections/register_to_vote

https://sos.ga.gov/index.php/Elections/register_to_vote

110.pdf

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Date : 7/24/2020 3:18:28 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Latrice Foshee" lfoshee@usccr.gov, "Teresa Adams" tadams@usccr.gov Subject : Re: Complaints Close-out Why not? we always totally rock:) Thank you for all you do!

From: Latrice Foshee Sent: Friday, July 24, 2020 3:17:08 PM To: Katherine Culliton-Gonzalez; Teresa Adams Subject: Complaints Close-out We are closing out complaints today, because the monthly report is due Tuesday, July 28, 2020.

159.pdf

159.pdf

Date : 7/28/2020 9:50:54 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Julie Grieco" jgrieco@usccr.gov, "Sarale Sewell" ssewell@usccr.gov Cc : "Zachary Parrish" zp0984a@student.american.edu, "Zachary Parrish - Intern" ocreintern746@usccr.gov Subject : Re: McGirt Yes - Zach is free this week and I'm copying him here. Zach, please see Julie's question below - we'd like your help on the transcript for the briefing, and it might be a nice break from all the intense legal research and citations you've been doing.

PS for Julie: ideally, we'd like Zach to be done by Friday so that he can work on the voting report after we get comments back.

Please let me know if that works on your end.

Thanks, K.

From: Julie Grieco Sent: Tuesday, July 28, 2020 8:01:49 AM To: Sarale Sewell; Katherine Culliton-Gonzalez Subject: RE: McGirt Good morning Kathy - It would be helpful if an intern could go through the transcript document for any glaring mistakes before we send it out to the panelists to review. Is that something someone would be able to take on relatively soon? Thank you! Julie From: Sarale Sewell <ssewell@usccr.gov> Sent: Monday, July 27, 2020 2:41 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Julie Grieco <jgrieco@usccr.gov> Subject: RE: McGirt Julie and I are going to chat in about 20 minutes about BP. Will let you know after our conversation. From: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Sent: Monday, July 27, 2020 2:40 PM To: Julie Grieco <jgrieco@usccr.gov>; Sarale Sewell <ssewell@usccr.gov> Subject: Re: McGirt My pleasure.

<mailto:kculliton-gonzalez@usccr.gov>
<mailto:jgrieco@usccr.gov>
<mailto:ssewell@usccr.gov>

Do you all need an intern for anything else this week or in the coming weeks?

From: Julie Grieco Sent: Monday, July 27, 2020 2:30:46 PM To: Sarale Sewell; Katherine Culliton-Gonzalez Subject: RE: McGirt This is great, thank you. From: Sarale Sewell <ssewell@usccr.gov> Sent: Monday, July 27, 2020 2:30 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Julie Grieco <jgrieco@usccr.gov> Subject: RE: McGirt Thanks Kathy From: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Sent: Monday, July 27, 2020 2:29 PM To: Julie Grieco <jgrieco@usccr.gov>; Sarale Sewell <ssewell@usccr.gov> Subject: McGirt Hi Julie and Sarale, as promised here's a summary of the McGirt case, which reaffirmed the sovereignty of the Creek Nation. Our law intern Sabrina wrote it up and I gave it some minor edits. Her last day was Friday but if you have questions I am happy to answer them and we can also ask Sabrina if needed. This is probably more text than you need but it's only 2.5 pages. She did a great job with focusing on the trust issues and in the citations, and you can pull out the text you want while leaving the rest behind (for example, details about the criminal case at issue). I think 1st para may be a very strong summary of what you need but you can read the rest of the text and see what else is of interest for your report. However, one piece I really want to keep in is that the Court held that Congress can rescind a treaty at will. This is in the last 2 lines and I feel we need it for balance. Progressives love this case but no one is mentioning this downside and I can also see why tribal leaders are not mentioning it. So, while the court held the state could not rescind the treaty and that the Tribe's jurisdiction trumps the state's, it did say that Congress could rescind it. (One reason I want to keep this in is that when Congress reads our report, they may want to make changes in the law to firm up tribal jurisdiction. It can be just one sentence or even a footnote, but I feel we should keep it in. Sorry for the long explanation of a very short point.) I hope this is helpful, and look forward to any questions you may have. Thanks, Kathy

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<mailto:kculliton-gonzalez@usccr.gov>
<mailto:jgrieco@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:jgrieco@usccr.gov>
<mailto:ssewell@usccr.gov>

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Date : 7/28/2020 11:05:57 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Zachary Parrish" zp0984a@student.american.edu, "Julie Grieco" jgrieco@usccr.gov Subject : Re: [EXTERNAL] Re: McGirt Thanks Zach!

From: Zachary Parrish <zp0984a@student.american.edu> Sent: Tuesday, July 28, 2020 10:39:46 AM To: Julie Grieco; Katherine Culliton-Gonzalez Subject: [EXTERNAL] Re: McGirt

CAUTION: This email is from outside USCCR.

Hi Julie and Kathy,

It all sounds good to me! Happy to be involved. I'll get started now.

Best regards, Zach

On Tue, Jul 28, 2020 at 10:21 AM Julie Grieco <jgrieco@usccr.gov> wrote: Thank you Kathy, I think by Friday is enough time. Zach, the briefing transcript is attached. We will be sending this out to panelists in case they want to clarify anything or correct anything in which they misspoke, but first we want to make sure the transcript is as accurate as possible (and devoid of typos or transcription errors). This could be done by reading through it, although a great way to do this would be to read the transcript while playing the briefing recording on YouTube, which is available here: https://www.youtube.com/watch?v=M_nsQZSuAt4 Let me know if you have any questions, and thank you! Julie From: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Sent: Tuesday, July 28, 2020 9:51 AM To: Julie Grieco <jgrieco@usccr.gov>; Sarale Sewell <ssewell@usccr.gov> Cc: Zachary Parrish <zp0984a@student.american.edu>; Zachary Parrish - Intern <ocreintern746@usccr.gov> Subject: Re: McGirt Yes - Zach is free this week and I'm copying him here. Zach, please see Julie's question below - we'd like your help on the transcript for the briefing, and it might be a nice break from all the intense legal research and citations you've been doing.

<mailto:jgrieco@usccr.gov>
https://url.emailprotection.link/?bH1bmLURP-9efcZNVLB6hd1gawa23HTbKoVFrWAVOITJmhynHyjJvffCv2uRPv75s7ZCczZVC2Zv6SNP_s8u6VYL6yXWgYxQC39D35Q3KivW3Ha1BcmqjHuU0B4bJvXe
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:jgrieco@usccr.gov>
<mailto:ssewell@usccr.gov>
<mailto:zp0984a@student.american.edu>
<mailto:ocreintern746@usccr.gov>

PS for Julie: ideally, we'd like Zach to be done by Friday so that he can work on the voting report after the get comments back. Please let me know if that works for your end. Thanks, K.

From: Julie Grieco Sent: Tuesday, July 28, 2020 8:01:49 AM To: Sarale Sewell; Katherine Culliton-Gonzalez Subject: RE: McGirt Good morning Kathy – It would be helpful if an intern could go through the transcript document for any glaring mistakes before we send it out to the panelists to review. Is that something someone would be able to take on relatively soon? Thank you! Julie From: Sarale Sewell <ssewell@uscrr.gov> Sent: Monday, July 27, 2020 2:41 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov>; Julie Grieco <jgrieco@uscrr.gov> Subject: RE: McGirt Julie and I are going to chat in about 20 minutes about BP. Will let you know after our conversation. From: Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov> Sent: Monday, July 27, 2020 2:40 PM To: Julie Grieco <jgrieco@uscrr.gov>; Sarale Sewell <ssewell@uscrr.gov> Subject: Re: McGirt My pleasure. Do you all need an intern for anything else this week or in the coming weeks?

From: Julie Grieco Sent: Monday, July 27, 2020 2:30:46 PM To: Sarale Sewell; Katherine Culliton-Gonzalez Subject: RE: McGirt This is great, thank you. From: Sarale Sewell <ssewell@uscrr.gov> Sent: Monday, July 27, 2020 2:30 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov>; Julie Grieco <jgrieco@uscrr.gov>

<mailto:ssewell@uscrr.gov>
<mailto:kculliton-gonzalez@uscrr.gov>
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<mailto:jgrieco@uscrr.gov>

Subject: RE: McGirt Thanks Kathy From: Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov> Sent: Monday, July 27, 2020 2:29 PM To: Julie Grieco <jgrieco@uscrr.gov>; Sarale Sewell <ssewell@uscrr.gov> Subject: McGirt Hi Julie and Sarale, as promised here's a summary of the McGirt case, which reaffirmed the sovereignty of the Creek Nation. Our law intern Sabrina wrote it up and I gave it some minor edits. Her last day was Friday but if you have questions I am happy to answer them and we can also ask Sabrina if needed. This is probably more text than you need but it's only 2.5 pages. She did a great job with focusing on the trust issues and in the citations, and you can pull out the text you want while leaving the rest behind (for example, details about the criminal case at issue). I think 1st para may be a very strong summary of what you need but you can read the rest of the text and see what else is of interest for your report. However, one piece I really want to keep in is that the Court held that Congress can rescind a treaty at will. This is in the last 2 lines and I feel we need it for balance. Progressives love this case but no one is mentioning this downside and I can also see why tribal leaders are not mentioning it. So, while the court held the state could not rescind the treaty and that the Tribe's jurisdiction trumps the state's, it did say that Congress could rescind it. (One reason I want to keep this in is that when Congress reads our report, they may want to make changes in the law to firm up tribal jurisdiction. It can be just one sentence or even a footnote, but I feel we should keep it in. Sorry for the long explanation of a very short point.) I hope this is helpful, and look forward to any questions you may have. Thanks, Kathy

-- Zachary Parrish JD/MA Candidate, Washington College of Law, American University Class of 2022 zp0984a@student.american.edu | (480)-316-4690

<mailto:kculliton-gonzalez@uscrr.gov>
<mailto:jgrieco@uscrr.gov>
<mailto:ssewell@uscrr.gov>
<mailto:zp0984a@gmail.com>

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Date : 7/30/2020 12:30:06 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@uscrr.gov To : "Rosa Celorio" rcelorio@law.gwu.edu Subject : Re: [EXTERNAL] Request for Reference - Sabrina Rodriguez Hi Professor Celorio,

I would be delighted to provide my highest recommendation for Sabrina. She is one of the best interns I've ever had, and I've been practicing civil rights law since 1993.

Could I give you a call some time to discuss?

Please let me know if you have any time this afternoon or tomorrow.

Thanks, Kathy

From: Rosa Celorio <rcelorio@law.gwu.edu> Sent: Wednesday, July 29, 2020 1:13:49 PM To: Katherine Culliton-Gonzalez Subject: [EXTERNAL] Request for Reference - Sabrina Rodriguez

CAUTION: This email is from outside USCCR.

Dear Ms. Culliton-Gonzalez:

I hope this message finds you well. I am writing because I am considering our law student Sabrina Rodriguez for a Research Assistant Position during the upcoming academic year. I would be most appreciative if you could share your thoughts of her skills, capabilities, and work performance.

All the very best and many thanks, Rosa Celorio

-- Rosa Celorio Associate Dean for International and Comparative Legal Studies and Burnett Family Professorial Lecturer in International and Comparative Law and Policy The George Washington University Law School 2000 H Street, N.W. Washington, D.C. 20052 Phone: (202) 994-1210 Email: rcelorio@law.gwu.edu | Twitter: @celorio_rosa For more information and publications: <https://www.law.gwu.edu/rosa-celorio>

<mailto:Rcelorio@law.gwu.edu>
https://url.emailprotection.link/?bwp-2KwztUG2hleadRv_oBdO5PSAfNhm5og7vRI-TS6nPPErGTZpgsCxWE3PzivO2OisHN7w3M_REOMzira3gfvDaNOiZOZ4LwaxLHY_5ppcTEIVdS3UD6-innLHtkl
https://url.emailprotection.link/?bn_DLauXBHISp4SqaxwCnc4Q4Ywu-e6PQ6MdU2Rw7DDXGePhwMMoGiizPlvqaCq_QvsaQC-B3anaUdzaA8QUEU6J4Fh91w_ujAC6Y7LWzlidjulfArfA7Ni0RqZQxS

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https://url.emailprotection.link/?bATASEuG11MvOPFb7wx3h8oTehYE6GJJAOJ9kAiuMSIEJgWgCij9D6pczrHLwO4zqwiYFp7RxZ7BccTM4WJxRzYDPbScpdLmBEWVRQc7XUeKpCjJ_xj5gKzqPwYzfpw
https://url.emailprotection.link/?bVO2qDUXR235wN_vOnM0FjuEiBc4x82BdtBw70ID6v4S5SfaNFRwPEA8DEK69UMddzrYrfJvPIPL0VyYptsX_w~~
https://url.emailprotection.link/?bXUzA3XY_7CF-uy8ehg_D0uX08gRhDVibnN8q7Frh3ISDN9b0tc9Q6AXn1zc5abTCd27KUznMjIKd1nJE0M4Eeg8seO2bYIsovcIN5T0gtpW2I4HCFkdFuS0qE7jsjAC
https://url.emailprotection.link/?bnNpppsmy5k66dqEKY7wuqlrk725zhVB3eOKNvNTXhohjLyaV2MryrSk-VyFGjJ3b92cvi3LIR_7PH8W73OsYmrv6q4SpWK3Lf3RMoM28QrgMndz6e8E7EpLEy_gamncCr

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Date : 7/30/2020 12:31:31 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@uscrr.gov To : "Sabrina Rodriguez" smrodriguez@law.gwu.edu Subject : Re: [EXTERNAL] Reference Yes, thanks, I'm happy to do that - I just replied to her email and hope she and I can talk soon.

-Kathy

From: Sabrina Rodriguez <smrodriguez@law.gwu.edu> Sent: Thursday, July 30, 2020 12:10:04 PM To: Katherine Culliton-Gonzalez Subject: [EXTERNAL] Reference

CAUTION: This email is from outside USCCR.

Hi Kathy,

Hope this email finds you well. I wrote to you because I applied for a Research Assistant Position with an Associate Dean of my university and she asked for a reference, so I gave her your email. Hope that's alright.

Kind regards, Sabrina Rodriguez

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Date : 7/31/2020 5:28:52 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@uscrr.gov To : "Sabrina Rodriguez" smrodriguez@law.gwu.edu Subject : Re: [EXTERNAL] Reference Oh that's great! Congratulations!

From: Sabrina Rodriguez <smrodriguez@law.gwu.edu> Sent: Friday, July 31, 2020 3:37:47 PM To: Katherine Culliton-Gonzalez Subject: Re: [EXTERNAL] Reference

CAUTION: This email is from outside USCCR.

Thank you! She actually offered me the Research Assistant Position yesterday.

Stay safe and healthy!

Kind regards, Sabrina

On Thu, Jul 30, 2020, 12:31 PM Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov> wrote:

Yes, thanks, I'm happy to do that - I just replied to her email and hope she and I can talk soon.

-Kathy

From: Sabrina Rodriguez <smrodriguez@law.gwu.edu> Sent: Thursday, July 30, 2020 12:10:04 PM To: Katherine Culliton-Gonzalez Subject: [EXTERNAL] Reference

CAUTION: This email is from outside USCCR.

Hi Kathy,

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Kind regards, Sabrina Rodriguez

<mailto:kculliton-gonzalez@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:smrodriguez@law.gwu.edu>

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Date : 8/13/2020 5:10:47 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Sabrina Rodriguez" smrodriguez@law.gwu.edu Subject : RE: [EXTERNAL] Reference We're all doing fine. The final draft of the voting report is due tomorrow, and the Commissioners vote on it next Friday, so we're excited about that and hope it gets adopted. How are you? From: Sabrina Rodriguez <smrodriguez@law.gwu.edu> Sent: Thursday, August 13, 2020 5:01 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: Re: [EXTERNAL] Reference

CAUTION: This email is from outside USCCR.

Thank you very much! Hope you're doing good. Kind regards, Sabrina

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From: Sabrina Rodriguez <smrodriguez@law.gwu.edu> Sent: Thursday, July 30, 2020 12:10:04 PM

<mailto:kculliton-gonzalez@usccr.gov>
<mailto:smrodriguez@law.gwu.edu>
<mailto:kculliton-gonzalez@usccr.gov>
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Date : 8/13/2020 7:52:43 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Sabrina Rodriguez" smrodriguez@law.gwu.edu Subject : RE: [EXTERNAL] Reference Oh my good luck with all that! I'm sure you'll be great and you're always so organized. I hope you got some rest and a chance to go to the beach. From: Sabrina Rodriguez <smrodriguez@law.gwu.edu> Sent: Thursday, August 13, 2020 5:16 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: Re: [EXTERNAL] Reference

CAUTION: This email is from outside USCCR.

I'm glad. Ohh wow, everything is around the corner then, that's good. Hope you all get positive feedback on it and that the votes are all in favor for it to get adopted. I'm good. Today I just started working with the Dean, my law classes start the 24th and my master's classes start Sept. 1; so let's see how that goes.

On Aug 13, 2020, at 5:10 PM, Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> wrote: We're all doing fine. The final draft of the voting report is due tomorrow, and the Commissioners vote on it next Friday, so we're excited about that and hope it gets adopted. How are you? From: Sabrina Rodriguez <smrodriguez@law.gwu.edu> Sent: Thursday, August 13, 2020 5:01 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: Re: [EXTERNAL] Reference

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<mailto:kculliton-gonzalez@usccr.gov>
<mailto:smrodriguez@law.gwu.edu>

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From: Sabrina Rodriguez <smrodriguez@law.gwu.edu> Sent: Thursday, July 30, 2020 12:10:04 PM To: Katherine Culliton-Gonzalez Subject: [EXTERNAL] Reference

CAUTION: This email is from outside USCCR.

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<mailto:kculliton-gonzalez@usccr.gov>
<mailto:smrodriguez@law.gwu.edu>

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Date : 9/1/2020 1:20:00 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Stephanie.McDonald@gmail.com" Stephanie.McDonald@gmail.com Subject : FW: interview with U.S. Commission on Civil Rights Dear Ms. McDonald, I would like to schedule a short phone interview with you, regarding the Social Scientist position you applied for at the U.S. Commission on Civil Rights. I am the Director of the Office of Civil Rights Evaluation, which is the office with the position open. Are you available Thursday (9/3) at 10:00 am ET? Please let me know. (If that time doesn't work I could possibly do Friday at 10 or 11.) Thanks, Kathy From: Gerald Fosten <geraldntn@hotmail.com> Sent: Tuesday, September 1, 2020 1:02 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: [EXTERNAL] Re: scheduling interview at U.S. Commission on Civil Rights

<http://www.usccr.gov/>

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Date : 9/1/2020 1:06:33 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Gerald Fosten" geraldntn@hotmail.com Subject : RE: scheduling interview at U.S. Commission on Civil Rights Dear Mr. Fosten, Thanks for your reply. Are you free for a phone interview this Thursday (9/3) at 11:00 am ET? Please let me know. (If that time doesn't work I could possibly do Friday at 10 or 11.) Thanks, Kathy From: Gerald Fosten <geraldntn@hotmail.com> Sent: Tuesday, September 1, 2020 1:02 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: [EXTERNAL] Re: scheduling interview at U.S. Commission on Civil Rights

CAUTION: This email is from outside USCCR.

Dear Ms. Culliton-Gonzalez, I would like to schedule a phone interview with you at the convenience of your schedule. Sincere Regards, Gerald Fosten

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Date : 9/14/2020 11:56:02 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Diego Alvarez" dalvarez@jd22.law.harvard.edu Subject : Fw: hold to welcome our newest intern Diego

Latrice Foshee Office of Civil Rights Evaluation US Commission on Civil Rights 1331 Pennsylvania Avenue,NW Washington, DC 20425 202-376-7665

From: Katherine Culliton-Gonzalez Sent: Friday, September 4, 2020 8:18:43 AM To: Katherine Culliton-Gonzalez; ocre; Shelby Taylor Cc: Nicholas Bair; Julie Grieco; Marik Xavier-Brier; Teresa Adams; Latrice Foshee Subject: hold to welcome our newest intern Diego When: Monday, September 14, 2020 12:00 PM-1:00 PM. Where: here's the Zoom link Katherine Culliton-Gonzalez is inviting you to a scheduled Zoom meeting. Topic: welcome Diego Time: Sep 14, 2020 12:00 PM Eastern Time (US and Canada) Join Zoom Meeting https://us02web.zoom.us/j/82481183180?pwd=Njc3QStVZW16L3gzVkpGT2YxWlhBQT09 Meeting ID: 824 8118 3180 Passcode: 382247 One tap mobile +13017158592,,82481183180#,,,,,,0#,,382247# US (Germantown) +13126266799,,82481183180#,,,,,,0#,,382247# US (Chicago) Dial by your location +1 301 715 8592 US (Germantown) +1 312 626 6799 US (Chicago) +1 646 558 8656 US (New York) +1 346 248 7799 US (Houston) +1 669 900 6833 US (San Jose) +1 253 215 8782 US (Tacoma) 833 548 0276 US Toll-free 833 548 0282 US Toll-free 855 880 1246 US Toll-free 877 369 0926 US Toll-free Meeting ID: 824 8118 3180 Passcode: 382247 Find your local number: https://us02web.zoom.us/j/82481183180?pwd=Njc3QStVZW16L3gzVkpGT2YxWlhBQT09

https://us02web.zoom.us/j/82481183180?pwd=Njc3QStVZW16L3gzVkpGT2YxWlhBQT09
https://us02web.zoom.us/j/82481183180?pwd=Njc3QStVZW16L3gzVkpGT2YxWlhBQT09

82481183180@zoomcrc.com Join by H.323 162.255.37.11 (US West) 162.255.36.11 (US East) 115.114.131.7 (India Mumbai) 115.114.115.7 (India Hyderabad) 213.19.144.110 (Amsterdam Netherlands) 213.244.140.110 (Germany) 103.122.166.55 (Australia) 149.137.40.110 (Singapore) 64.211.144.160 (Brazil) 69.174.57.160 (Canada) 207.226.132.110 (Japan) Meeting ID: 824 8118 3180 Passcode: 382247

mailto:82481183180@zoomcrc.com

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Date : 9/14/2020 1:01:02 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Nicholas Bair" nbair@usccr.gov Cc : "Rukku Singla" rsingla@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "ocre" ocre@usccr.gov, "dalvarez@jd22.law.harvard.edu" dalvarez@jd22.law.harvard.edu, "Shelby Taylor" st5082a@student.american.edu Subject : USCCR/NCD staff-to-staff briefing

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Date : 9/14/2020 4:42:22 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Nicholas Bair" nbair@usccr.gov, "dalvarez@jd22.law.harvard.edu" dalvarez@jd22.law.harvard.edu Subject : meet with Diego to prep for FY20 presentation

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Date : 9/14/2020 5:24:32 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "ocre" ocre@usccr.gov Cc : "Mauro Morales" mmorales@usccr.gov, "dalvarez@jd22.law.harvard.edu" dalvarez@jd22.law.harvard.edu, "Shelby Taylor" st5082a@student.american.edu, "Rukku Singla" rsingla@usccr.gov Subject : Civil Rights Conference Hi all, This Thursday, I'm going to be speaking at this afternoon conference about Civil Rights in the Time of COVID-19 in my personal capacity, if you're interested: https://www.law.miami.edu/academics/defending-promoting-human-rights-in-time-of-corona-virus. There are some amazing panelists including many law professors of color speaking on several topics that might be of interest. We have over 300 registrations so far, but they are accepting more. -Kathy

https://www.law.miami.edu/academics/defending-promoting-human-rights-in-time-of-corona-virus
https://www.law.miami.edu/academics/defending-promoting-human-rights-in-time-of-corona-virus

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Date : 9/15/2020 8:28:59 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Angelia Rorison" arorison@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Nicholas Bair" nbair@usccr.gov, "Rukku Singla" rsingla@usccr.gov, "Zakee Martin" zmartin@usccr.gov, "Maureen Rudolph" mrudolph@usccr.gov, "Pamela Dunston" pdunston@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov Cc : "Amy Royce" aroyce@usccr.gov, "Vincent A. Eng" veng@veng-group.com, "Joyce Liu" jliu@veng-group.com Subject : RE: Subminimum Release Video for Review Hi Ang, This is great! On the 2nd slide about the 1938 law, I would change the 2nd phrase to say "The 1938 law directed the Secretary of Labor... in order to prevent reduced employment opportunities." We essentially found that the last clause (needing to pay lesser wages in order to provide employment to PWD) doesn't apply in today's economy, and although it is current law, I would use the past tense about directing Labor in that regard. Therefore I recommend the above edit. Otherwise I don't have any edits. Thanks, Kathy From: Angelia Rorison <arorison@usccr.gov> Sent: Monday, September 14, 2020 7:41 PM To: Mauro Morales <mmorales@usccr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Nicholas Bair <nbair@usccr.gov>; Rukku Singla <rsingla@usccr.gov>; Zakee Martin <zmartin@usccr.gov>; Maureen Rudolph <mrudolph@usccr.gov>; Pamela Dunston <pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov> Cc: Amy Royce <aroyce@usccr.gov>; Vincent A. Eng <veng@veng-group.com>; Joyce Liu <jliu@veng-group.com> Subject: Subminimum Release Video for Review

Hello all,
Here is a link to the video I made for the release of the Subminimum Wage Report:

https://securisync.intermedia.net/us2/s/flpsNjBbU0RrzWOnswdpdp0011ef58
https://securisync.intermedia.net/us2/s/flpsNjBbU0RrzWOnswdpdp0011ef58

Still working on social media content but I should have finalized graphics and post copy to share for review tomorrow morning before our meeting.

Thanks to Rukku, Amy and Nick for their input on rough cut to get it this far!

Looking forward to your input on this and forthcoming deliverables at our meeting tomorrow.

Ang
Angelia Rorison
Director of Media and Communications
U.S. Commission On Civil Rights
1331 Pennsylvania Ave, NW
Washington, DC 20425
www.usccr.gov
Twitter: @USCCRgov

Established in 1957 by the Civil Rights Act, the Commission is the only independent, bipartisan federal agency charged with advising the President and Congress on civil rights matters.
Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels. The Commission: in our 7th decade, a continuing legacy of influence in civil rights. #USCCR60yrs
https://url.emailprotection.link/?bEoMuFIT2RY2FFKF4WMI4xGUEvsc6Zd5QWh_LD8_so_t4rziEkuA9P0GXee9GNWLUsK8JSp95BI9EKII-zTb7A~~

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Date : 9/15/2020 1:20:40 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Shelby Taylor" st5082a@student.american.edu Subject : RE: [EXTERNAL] Re: USCCR/NCD staff-to-staff briefing How are you? From: Shelby Taylor <st5082a@student.american.edu> Sent: Tuesday, September 15, 2020 1:19 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: Re: [EXTERNAL] Re: USCCR/NCD staff-to-staff briefing

CAUTION: This email is from outside USCCR.

Ok thanks!
Sent from my iPhone

On Sep 15, 2020, at 1:17 PM, Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> wrote:

I'm so sorry I sent the wrong date via Zoom – this is on Thursday. From: Shelby Taylor <st5082a@student.american.edu> Sent: Tuesday, September 15, 2020 1:11 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Rukku Singla <rsingla@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; ocre <ocre@usccr.gov>; dalvarez@jd22.law.harvard.edu; Teresa Adams <tadams@usccr.gov>; Marik Xavier-Brier <mxavierbrier@usccr.gov>; Latrice Foshee

to:foshee@usccr.gov; Julie Grieco <jgrieco@usccr.gov> Subject: [EXTERNAL] Re: USCCR/NCD staff-to-staff briefing

CAUTION: This email is from outside USCCR.

I'm in the waiting room

Sent from my iPhone

On Sep 15, 2020, at 1:00 PM, Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> wrote:

- <mailto:kculliton-gonzalez@usccr.gov>
- <mailto:kculliton-gonzalez@usccr.gov>
- <mailto:st5082a@student.american.edu>
- <mailto:kculliton-gonzalez@usccr.gov>
- <mailto:rsingla@usccr.gov>
- <mailto:mmorales@usccr.gov>
- <mailto:ocre@usccr.gov>
- <mailto:dalvarez@jd22.law.harvard.edu>
- <mailto:tadams@usccr.gov>
- <mailto:mxavierbrier@usccr.gov>
- <mailto:ifoshee@usccr.gov>
- <mailto:jgrieco@usccr.gov>
- <mailto:kculliton-gonzalez@usccr.gov>

Katherine Culliton-Gonzalez is inviting you to a scheduled Zoom meeting. Topic: USCCR/NCD staff discussion of report release Time: Sep 15, 2020 01:00 PM Eastern Time (US and Canada) Join Zoom Meeting <https://us02web.zoom.us/j/88212765297?pwd=Tit6WEdBmKJhSVZlTHUxRHZBZGtjdz09> Meeting ID: 882 1276 5297 Passcode: 029343 One tap mobile +13017158592,,88212765297#,,,,,0#,,029343# US (Germantown) +16465588656,,88212765297#,,,,,0#,,029343# US (New York) Dial by your location +1 301 715 8592 US (Germantown) +1 646 558 8656 US (New York) +1 312 626 6799 US (Chicago) +1 253 215 8782 US (Tacoma) +1 346 248 7799 US (Houston) +1 669 900 6833 US (San Jose) 877 369 0926 US Toll-free 833 548 0276 US Toll-free 833 548 0282 US Toll-free 855 880 1246 US Toll-free Meeting ID: 882 1276 5297 Passcode: 029343 Find your local number: <https://us02web.zoom.us/j/kdcQYS3ODK> Join by SIP 88212765297@zoomcrc.com Join by H.323 162.255.37.11 (US West) 162.255.36.11 (US East) 115.114.131.7 (India Mumbai) 115.114.115.7 (India Hyderabad) 213.19.144.110 (Amsterdam Netherlands) 213.244.140.110 (Germany) 103.122.166.55 (Australia) 149.137.40.110 (Singapore) 64.211.144.160 (Brazil) 69.174.57.160 (Canada) 207.226.132.110 (Japan) Meeting ID: 882 1276 5297 Passcode: 029343

- https://url.emailprotection.link/?bjGVcSmsrQTchjMN-Eln0NVJZH2s31_7JB2mNz6xlrV_OmPoyydPzhXj8mrvndzuC8A_DurGnbvtQBRovjp8pB0bTKc8L6WTmd5w_owvkiQD5Xifz3lthLQUHHjGaf10fzvCV-gSIVCL0i5A3heKaaVfB9Jbw7nT1S5mvg1js-
- https://url.emailprotection.link/?bjGVcSmsrQTchjMN-Eln0NVJZH2s31_7JB2mNz6xlrV_OmPoyydPzhXj8mrvndzuC8A_DurGnbvtQBRovjp8pB0bTKc8L6WTmd5w_owvkiQD5Xifz3lthLQUHHjGaf10fzvCV-gSIVCL0i5A3heKaaVfB9Jbw7nT1S5mvg1js-
- https://url.emailprotection.link/?bjGVcSmsrQTchjMN-Eln0BMSV_ICWwt842U469mQNAKB5NfOfk127uabf6fD9JC8K6h0Tm1juZVIR0rDTZf_AkYu5L8LsY3zw1mqn1tBFGLueA6Z_PUg0Nm955x38
- <mailto:88212765297@zoomcrc.com>

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Date : 9/15/2020 1:00:00 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Nicholas Bair" nbair@usccr.gov, "Anne Sommers (asommers@ncd.gov)" asommers@ncd.gov Cc : "Rukku Singla" rsingla@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "ocre" ocre@usccr.gov, "dalvarez@jd22.law.harvard.edu" dalvarez@jd22.law.harvard.edu, "Shelby Taylor" st5082a@student.american.edu, "Teresa Adams" tadams@usccr.gov, "Marik Xavier-Brier" mxavierbrier@usccr.gov, "Latrice Foshee" ifoshee@usccr.gov, "Julie Grieco" jgrieco@usccr.gov Subject : USCCR/NCD staff-to-staff briefing Katherine Culliton-Gonzalez is inviting you to a scheduled Zoom meeting. Topic: USCCR/NCD staff discussion of report release Time: Sep 15, 2020 01:00 PM Eastern Time (US and Canada) Join Zoom Meeting <https://us02web.zoom.us/j/88212765297?pwd=Tit6WEdBmKJhSVZlTHUxRHZBZGtjdz09> Meeting ID: 882 1276 5297 Passcode: 029343 One tap mobile +13017158592,,88212765297#,,,,,0#,,029343# US (Germantown) +16465588656,,88212765297#,,,,,0#,,029343# US (New York) Dial by your location +1 301 715 8592 US (Germantown) +1 646 558 8656 US (New York) +1 312 626 6799 US (Chicago) +1 253 215 8782 US (Tacoma) +1 346 248 7799 US (Houston) +1 669 900 6833 US (San Jose) 877 369 0926 US Toll-free 833 548 0276 US Toll-free 833 548 0282 US Toll-free 855 880 1246 US Toll-free Meeting ID: 882 1276 5297 Passcode: 029343 Find your local number: <https://us02web.zoom.us/j/kdcQYS3ODK> Join by SIP 88212765297@zoomcrc.com Join by H.323 162.255.37.11 (US West) 162.255.36.11 (US East) 115.114.131.7 (India Mumbai) 115.114.115.7 (India Hyderabad) 213.19.144.110 (Amsterdam Netherlands) 213.244.140.110 (Germany)

- <https://us02web.zoom.us/j/88212765297?pwd=Tit6WEdBmKJhSVZlTHUxRHZBZGtjdz09>
- <https://us02web.zoom.us/j/kdcQYS3ODK>
- <mailto:88212765297@zoomcrc.com>

103.122.166.55 (Australia) 149.137.40.110 (Singapore) 64.211.144.160 (Brazil) 69.174.57.160 (Canada) 207.226.132.110 (Japan) Meeting ID: 882 1276 5297 Passcode: 029343

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Date : 9/15/2020 1:40:41 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Vincent A. Eng" veng@veng-group.com, "Angelia Rorison" arorison@usccr.gov, "Rukku Singla" rsingla@usccr.gov Cc : "Mauro Morales" mmorales@usccr.gov Subject : RE: FY20 Subminimum Wages - embargoed Executive Summary for NCD ... but I just looked at and it's fine for my purposes, so for me, no need to send me another version. I defer to Rukku for her purposes. From: Katherine Culliton-Gonzalez Sent: Tuesday, September 15, 2020 1:39 PM To: 'Vincent A. Eng' <veng@veng-group.com>; Angelia Rorison <arorison@usccr.gov>; Rukku Singla <rsingla@usccr.gov> Cc: Mauro Morales <mmorales@usccr.gov> Subject: RE: FY20 Subminimum Wages - embargoed Executive Summary for NCD Yes please I didn't review the attachment and just sent it. From: Vincent A. Eng <veng@veng-group.com> Sent: Tuesday, September 15, 2020 1:31 PM To: Angelia Rorison <arorison@usccr.gov>; Rukku Singla <rsingla@usccr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Cc: Mauro Morales <mmorales@usccr.gov> Subject: [EXTERNAL] RE: FY20 Subminimum Wages - embargoed Executive Summary for NCD

CAUTION: This email is from outside USCCR.

Ugh - I sent it twice before I could type. Tell me if you want the transmittal, cover, etc. removed from the final Embargoed Exec Summary. _____ Vincent A. Eng VENG GROUP O +1 202 499 7027, x 101 M +1 703 981 6636 F +1 202 499 7030 veng@veng-group.com From: Vincent A. Eng Sent: Tuesday, September 15, 2020 1:30 PM To: 'Angelia Rorison' <arorison@usccr.gov>; 'Rukku Singla' <rsingla@usccr.gov>; 'Katherine

- <mailto:veng@veng-group.com>
- <mailto:arorison@usccr.gov>
- <mailto:rsingla@usccr.gov>
- <mailto:kculliton-gonzalez@usccr.gov>
- <mailto:mmorales@usccr.gov>
- <mailto:veng@veng-group.com>
- <mailto:arorison@usccr.gov>
- <mailto:rsingla@usccr.gov>

Culliton-Gonzalez' <kculliton-gonzalez@usccr.gov> Cc: 'Mauro Morales' <mmorales@usccr.gov> Subject: RE: FY20 Subminimum Wages - embargoed Executive Summary for NCD _____ Vincent A. Eng VENG GROUP O +1 202 499 7027, x 101 M +1 703 981 6636 F +1 202 499 7030 veng@veng-group.com From: Vincent A. Eng Sent: Tuesday, September 15, 2020 1:30 PM To: Angelia Rorison <arorison@usccr.gov>; Rukku Singla <rsingla@usccr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Cc: Mauro Morales <mmorales@usccr.gov> Subject: RE: FY20 Subminimum Wages - embargoed Executive Summary for NCD _____ Vincent A. Eng VENG GROUP O +1 202 499 7027, x 101 M +1 703 981 6636 F +1 202 499 7030 veng@veng-group.com From: Angelia Rorison <arorison@usccr.gov> Sent: Tuesday, September 15, 2020 12:43 PM To: Rukku Singla <rsingla@usccr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Vincent A. Eng <veng@veng-group.com> Cc: Mauro Morales <mmorales@usccr.gov> Subject: Re: FY20 Subminimum Wages - embargoed Executive Summary for NCD

I am pulling in Vincent for time sensitivity - he has the embargoed report and it may be super simple but I am not sure yet how to extract.

Vincent - would you be able to send us an embargoed copy of just the executive summary?

- <mailto:kculliton-gonzalez@usccr.gov>
- <mailto:mmorales@usccr.gov>
- <mailto:veng@veng-group.com>
- <mailto:arorison@usccr.gov>
- <mailto:rsingla@usccr.gov>
- <mailto:kculliton-gonzalez@usccr.gov>
- <mailto:mmorales@usccr.gov>
- <mailto:veng@veng-group.com>
- <mailto:arorison@usccr.gov>
- <mailto:rsingla@usccr.gov>
- <mailto:kculliton-gonzalez@usccr.gov>
- <mailto:kculliton-gonzalez@usccr.gov>
- <mailto:veng@veng-group.com>
- <mailto:mmorales@usccr.gov>

From: Rukku Singla Sent: Tuesday, September 15, 2020 12:36:07 PM To: Katherine Culliton-Gonzalez; Angelia Rorison Cc: Mauro Morales Subject: Re: FY20 Subminimum Wages - embargoed Executive Summary for NCD Ditto, I need the embargoed Executive Summary for the Hill offices. Thank you!

From: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Date: Tuesday, September 15, 2020 at 11:38 AM To: Angelia Rorison <arorison@usccr.gov>; Rukku Singla <rsingla@usccr.gov> Cc: Mauro Morales <mmorales@usccr.gov> Subject: FY20 Subminimum Wages - embargoed Executive Summary for NCD Could you all please share with me whatever you send out, so I can send it to NCD today?

- <mailto:kculliton-gonzalez@usccr.gov>
- <mailto:arorison@usccr.gov>
- <mailto:rsingla@usccr.gov>
- <mailto:mmorales@usccr.gov>

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Date : 9/15/2020 1:20:08 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Nicholas Bair" nbair@usccr.gov, "Anne Sommers (asommers@ncd.gov)" asommers@ncd.gov Cc : "Rukku Singla" rsingla@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "ocre" ocre@usccr.gov, "dalvarez@jd22.law.harvard.edu" dalvarez@jd22.law.harvard.edu, "Shelby Taylor" st5082a@student.american.edu, "Teresa Adams" tadams@usccr.gov, "Marik Xavier-Brier" mxavierbrier@usccr.gov, "Latrice Foshee" lfoshee@usccr.gov, "Julie Grieco" jgrieco@usccr.gov Subject : USCCR/NCD staff-to-staff briefing Katherine Culliton-Gonzalez is inviting you to a scheduled Zoom meeting. (Please ignore the last link – this one has the correct date and time.) Topic: USCCR/NCD staff discussion of report release - Thursday at 1-2 pm Time: Sep 17, 2020 02:00 PM Eastern Time (US and Canada) Join Zoom Meeting <https://us02web.zoom.us/j/85782217163?pwd=L25kVXB0SKIBMndFNzhZVmY5NEpPZz09> Meeting ID: 857 8221 7163 Passcode: 273764 One tap mobile +13017158592,,85782217163#,,,,,,0#,,273764# US (Germantown) +16465588656,,85782217163#,,,,,,0#,,273764# US (New York) Dial by your location +1 301 715 8592 US (Germantown) +1 646 558 8656 US (New York) +1 312 626 6799 US (Chicago) +1 346 248 7799 US (Houston) +1 669 900 6833 US (San Jose) +1 253 215 8782 US (Tacoma) 833 548 0282 US Toll-free 855 880 1246 US Toll-free 877 369 0926 US Toll-free 833 548 0276 US Toll-free Meeting ID: 857 8221 7163 Passcode: 273764 Find your local number: <https://us02web.zoom.us/j/85782217163?pwd=L25kVXB0SKIBMndFNzhZVmY5NEpPZz09> Join by SIP 85782217163@zoomcrc.com Join by H.323 162.255.37.11 (US West) 162.255.36.11 (US East) 115.114.131.7 (India Mumbai) 115.114.115.7 (India Hyderabad) 213.19.144.110 (Amsterdam Netherlands)

<https://us02web.zoom.us/j/85782217163?pwd=L25kVXB0SKIBMndFNzhZVmY5NEpPZz09>
<https://us02web.zoom.us/j/85782217163?pwd=L25kVXB0SKIBMndFNzhZVmY5NEpPZz09>
<mailto:85782217163@zoomcrc.com>

213.244.140.110 (Germany) 103.122.166.55 (Australia) 149.137.40.110 (Singapore) 64.211.144.160 (Brazil) 69.174.57.160 (Canada) 207.226.132.110 (Japan) Meeting ID: 857 8221 7163 Passcode: 273764

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Date : 9/15/2020 12:52:12 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Nicholas Bair" nbair@usccr.gov, "dalvarez@jd22.law.harvard.edu" dalvarez@jd22.law.harvard.edu Subject : meet with Diego to prep for FY20 presentation Katherine Culliton-Gonzalez is inviting you to a scheduled Zoom meeting. Topic: Diego/Nick/Kathy quick meeting Time: Sep 15, 2020 03:00 PM Eastern Time (US and Canada) Join Zoom Meeting <https://us02web.zoom.us/j/86554884444?pwd=RDFJNDJ6S2pGV0dBQXJPUiF6bnUrQT09> Meeting ID: 865 5488 4444 Passcode: 267524 One tap mobile +13017158592,,86554884444#,,,,,,0#,,267524# US (Germantown) +13126266799,,86554884444#,,,,,,0#,,267524# US (Chicago) Dial by your location +1 301 715 8592 US (Germantown) +1 312 626 6799 US (Chicago) +1 646 558 8656 US (New York) +1 253 215 8782 US (Tacoma) +1 346 248 7799 US (Houston) +1 669 900 6833 US (San Jose) 833 548 0276 US Toll-free 833 548 0282 US Toll-free 855 880 1246 US Toll-free 877 369 0926 US Toll-free Meeting ID: 865 5488 4444 Passcode: 267524 Find your local number: <https://us02web.zoom.us/j/86554884444?pwd=RDFJNDJ6S2pGV0dBQXJPUiF6bnUrQT09> Join by SIP 86554884444@zoomcrc.com Join by H.323 162.255.37.11 (US West) 162.255.36.11 (US East) 115.114.131.7 (India Mumbai) 115.114.115.7 (India Hyderabad) 213.19.144.110 (Amsterdam Netherlands) 213.244.140.110 (Germany) 103.122.166.55 (Australia) 149.137.40.110 (Singapore) 64.211.144.160 (Brazil) 69.174.57.160 (Canada) 207.226.132.110 (Japan) Meeting ID: 865 5488 4444

<https://us02web.zoom.us/j/86554884444?pwd=RDFJNDJ6S2pGV0dBQXJPUiF6bnUrQT09>
<https://us02web.zoom.us/j/86554884444?pwd=RDFJNDJ6S2pGV0dBQXJPUiF6bnUrQT09>
<mailto:86554884444@zoomcrc.com>

Passcode: 267524

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Date : 9/15/2020 1:17:54 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Shelby Taylor" st5082a@student.american.edu Subject : RE: [EXTERNAL] Re: USCCR/NCD staff-to-staff briefing I'm so sorry I sent the wrong date via Zoom – this is on Thursday. From: Shelby Taylor <st5082a@student.american.edu> Sent: Tuesday, September 15, 2020 1:11 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Cc: Nicholas Bair <nbair@usccr.gov>; Anne Sommers (asommers@ncd.gov) <asommers@ncd.gov>; Rukku Singla <rsingla@usccr.gov>; Mauro Morales <mmorales@usccr.gov>; ocre <ocre@usccr.gov>; dalvarez@jd22.law.harvard.edu; Teresa Adams <tadams@usccr.gov>; Marik Xavier-Brier <mxavierbrier@usccr.gov>; Latrice Foshee <lfoshee@usccr.gov>; Julie Grieco <jgrieco@usccr.gov> Subject: [EXTERNAL] Re: USCCR/NCD staff-to-staff briefing

CAUTION: This email is from outside USCCR.

I'm in the waiting room

Sent from my iPhone

On Sep 15, 2020, at 1:00 PM, Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> wrote:

Katherine Culliton-Gonzalez is inviting you to a scheduled Zoom meeting. Topic: USCCR/NCD staff discussion of report release Time: Sep 15, 2020 01:00 PM Eastern Time (US and Canada) Join Zoom Meeting <https://us02web.zoom.us/j/88212765297?pwd=Tit6WEdBMkjhSVZlTHUxRHZBZGtjdz09> Meeting ID: 882 1276 5297 Passcode: 029343 One tap mobile +13017158592,,88212765297#,,,,,,0#,,029343# US (Germantown) +16465588656,,88212765297#,,,,,,0#,,029343# US (New York) Dial by your location +1 301 715 8592 US (Germantown) +1 646 558 8656 US (New York) +1 312 626 6799 US (Chicago) +1 253 215 8782 US (Tacoma) +1 346 248 7799 US (Houston)

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<mailto:kculliton-gonzalez@usccr.gov>
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Date : 9/15/2020 1:38:02 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Anne Sommers (asommers@ncd.gov)" asommers@ncd.gov Cc : "Nicholas Bair" nbair@usccr.gov, "Angelia Rorison" arorison@usccr.gov Subject : FW: FY20 Subminimum Wages - embargoed Executive Summary for NCD Attachment : Executive Summary Pages from Subminimum Wages Report - Final Formatted - Embargoed.pdf, Dear Anne, I am sharing a highly confidential, embargoed copy of the Executive Summary of our report that will be issued this Thursday morning (9/17). As discussed, this will only be shared with your communications director for the purposes of drafting your agency's press release. I'm looping in our comms director, Angelia Rorison, in case you all had any related questions. (And please let Nick and I know if you have any non-comms-related questions.) We plan to publish the full report on our website Thursday morning, and we also look forward to our staff-to-staff briefing at 1-2 pm Thursday. If you do issue a press release, would you all send it to us? I would be remiss if I didn't thank you all again for Chair Romano's testimony and all the expertise you have contributed to the field, which informed our research on the civil rights implications of Section 14c of the Fair Labor Standards Act. We sincerely appreciate the opportunity to continue collaborate with you all on these important civil rights issues. Best regards, Kathy & Nick

September 2020

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Subminimum Wages
IMPACTS ON THE CIVIL RIGHTS OF PEOPLE WITH DISABILITIES

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U.S. COMMISSION ON CIVIL RIGHTS
The U.S. Commission on Civil Rights is an independent, bipartisan agency established by Congress in 1957. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices.
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin.
- Submit reports, findings, and recommendations to the President and Congress.
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

1 42 U.S.C. §1975a.
MEMBERS OF THE COMMISSION

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* This report was voted upon on 6/19/20, prior to Commissioner Adams' appointment.

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Subminimum Wages: Impacts on the Civil

Rights of People with Disabilities

U.S. Commission on Civil Rights 2020 Statutory Enforcement Report

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Letter of Transmittal

September 17, 2020

President Donald J. Trump Vice President Mike Pence Speaker of the House Nancy Pelosi

On behalf of the United States Commission on Civil Rights (“the Commission”), I am pleased to transmit our briefing report, Subminimum Wages: Impacts on the Civil Rights of People with Disabilities. The report is also available in full on the Commission’s website at www.usccr.gov.

This report examines current implementation of Section 14(c) of the Fair Labor Standards Act of 1938, which directs the U.S. Secretary of Labor to grant special certificates allowing for the employment of workers with disabilities below the federal minimum wage to prevent reduced employment opportunities. The Commission collected data and testimony from Members of Congress, Labor and Justice Department officials, self-advocates and workers with disabilities, family members of people with disabilities, service providers, current and former public officials, and experts on disability employment and data analysis; conducted two field visits to employment and service provision sites supporting workers with disabilities earning subminimum and competitive wages; and received thousands of public comments both in favor of and opposed to the 14(c) program.

The primary recommendation approved by the Commission majority following this inquiry was that Congress should repeal Section 14(c) with a planned phase-out period to allow transition among service providers and people with disabilities to alternative service models prioritizing competitive integrated employment.

The Commission majority approved key findings including the following: As currently utilized, the U.S. Department of Labor has repeatedly found 14(c) providers limiting people with disabilities participating in the program from realizing their full potential while allowing providers and associated businesses to profit from their labor. This limitation is contrary to 14(c)’s purpose. Persistent failures in regulation and oversight of the 14(c) program by government agencies including the Department of Labor and Department of Justice have allowed and continue to allow the program to operate without satisfying its legislative goal to meet the needs of people with disabilities to receive supports necessary to become ready for employment in the competitive economy.

People with intellectual and developmental disabilities who are currently earning subminimum wages under the 14(c) program are not categorically different in level of disability from people with intellectual and developmental disabilities currently working in competitive integrated

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employment. State-level phase outs of the use of the 14(c) program have been developed and designed for state service providers and other stakeholders to ensure that a competitive integrated employment model does not result in a loss of critical services to individuals with disabilities including former 14(c) program participants.

The Commission majority voted for key recommendations, in addition to recommending that Congress repeal Section 14(c) with a planned phase-out period. The phased repeal of 14(c) must not reflect a retreat in federal investments and support for employment success of persons with disabilities but rather a reconceptualization of the way in which the federal government can enhance the possibilities for success and growth for people with disabilities.

Congress should expand funding for supported employment services and prioritize capacity building in states transitioning from 14(c) programs. Now and during the transition period of the Section 14(c) program, Congress should assign civil rights oversight responsibility and jurisdiction, with necessary associated fiscal appropriations to conduct the enforcement, either to the Department of Labor or to the Department of Justice Civil Rights Division. Congress should also require that the designated civil rights agency issue an annual report on investigations and findings regarding the 14(c) program. During the phase-out period, Congress should require more stringent reporting and accountability for 14(c) certificate holders, and following the phase out should continue to collect data on employment outcomes of former 14(c) employees.

The Department of Justice should increase enforcement of the Olmstead integration mandate to determine whether state systems are inappropriately relying on providers using 14(c) certificates to provide non-integrated employment in violation of Olmstead. The Department should issue guidance, open more investigations, and litigate where voluntary compliance cannot be achieved.

We at the Commission are pleased to share our views, informed by careful research and investigation as well as civil rights expertise, to help ensure that all Americans enjoy civil rights protections to which we are entitled.

For the Commission,

Catherine E. Lhamon

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EXECUTIVE SUMMARY

Congress enacted the Fair Labor Standards Act in 1938 as part of the New Deal. One of the Act’s provisions, Section 14(c) (hereinafter “Section 14(c)” or “14(c)”) directs the U.S. Secretary of Labor to grant special certificates allowing for the employment of workers with disabilities below the federal minimum wage “to the extent necessary to prevent curtailment of opportunities for employment.”¹ The Fair Labor Standards Act is the federal law that sets the federal minimum wage and regulates the number of hours per week that employees are permitted to work, and it currently sets the federal minimum wage at \$7.25 an hour.² State or local minimum wages cannot be less than the federal minimum wage.³ Exceptions to the federal minimum wage include apprentices⁴ and students⁵ (generally temporary statuses), and persons with disabilities (usually a lifelong individual characteristic).⁶ The Fair Labor Standards Act’s implementing regulations require 14(c) employers to apply for a certificate and submit to federal monitoring to ensure that the subminimum wages are used if and only if workers are “in fact disabled for the work they are to perform.”⁷ The Commission’s research shows that Section 14(c) is antiquated as it was enacted prior to our nation’s civil rights laws, and its operation in practice remains discriminatory by permitting payment of subminimum wages based on disability without sufficient controls to ensure that the program operates as designed “to the extent necessary to prevent curtailment of opportunities for employment.”⁸ Although Congress enacted the program with good intentions, the Department of Labor’s enforcement data as well as several key civil rights cases and testimony from experts show that with regard to wage disparities, the program is rife with abuse and difficult to administer without harming employees with disabilities, as reflected in over 80 percent of cases

1 Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 214(c) c. 676, § 14, 52 Stat. 1060; see also, U.S. Dep’t of Labor Wage and Hour Division, 14(c) Certificate Holders, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders> (last accessed May 21, 2020). 2 29 U.S.C. § 206(a)(1). 3 Id. and see 29 U.S.C. § 203(d) (definition of “employer”). 4 29 U.S.C. § 214(a). 5 29 U.S.C. § 214(b). 6 29 U.S.C. § 214(c); see also, Finn Gardiner, Communications Specialist, Lurie Institute for Disability Policy, Brandeis University, Testimony, Briefing Before the U.S. Comm’n on Civil Rights, Washington, DC, Nov. 15, 2019, transcript, pp. 145-146 (hereinafter cited as “Subminimum Wages Briefing”) (explaining how work for subminimum wages reinforces stereotypes of people with disabilities, and how because many people with disabilities are diagnosed at birth, this reinforcement persists throughout the lives of people with disabilities). 7 29 C.F.R. § 525.12(b). 8 See infra note 66.

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<https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders>

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investigated.⁹ However, the Commission has also received broad testimony in favor of 14(c), which is also discussed extensively herein.¹⁰

Programs operated pursuant to section 14(c) have at times contributed to segregation of persons with disabilities, as some employers who hold a Section 14(c) certificate have employed people with disabilities in separate work centers,¹¹ or sheltered workshops,¹² where the employees are mainly employed with other people with disabilities and not integrated into a broader community or work setting.¹³ Regarding integration, the Commission's research shows that Section 14(c) does not require, but has often resulted in, persons with disabilities being segregated into sheltered workshops without contact with persons without disabilities, except in a support or supervisory role.¹⁴ Moreover, reviewing thousands of public comments received—both in favor of and against 14(c)—along with expert testimony, academic medical research, as well as persons interviewed during site visits also showed that persons with disabilities benefited greatly from being in

⁹ See infra notes 658-660. ¹⁰ See, e.g., infra notes 556-573. ¹¹ As of January 1, 2020, there were 1,558 14(c) certificates either issued or pending renewal by the U.S. Department of Labor's Wage and Hour Division. 1,452 of those certificates (93%) were held by Community Rehabilitation Programs; See, Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, Final Report, p. 26 (Sept. 15, 2016), https://www.dol.gov/odep/topics/pdf/ACICIEID_Final_Report_9-8-16.pdf (finding that the majority of people with disabilities earning a subminimum wage work in congregate work centers operated by Community Rehabilitation Programs); see also 29 U.S.C. § 705(4) (Community Rehabilitation Program is "a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement"); Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, Interim Report, Sept. 15, 2015, pp. 6-7, <https://www.dol.gov/odep/pdf/20150808.pdf> ("federal data confirms that most all people currently working under Section 14(c) subminimum wage certificates are working for sheltered workshops (also called community rehabilitation programs or work centers) that typically receive public funding, including federal Medicaid and Vocational Rehabilitation (VR) dollars, to provide employment-related habilitation and rehabilitation services to individuals with disabilities"). ¹² A sheltered workshop is a work center where people with disabilities work segregated from people without disabilities. The Wage and Hour Division issues 14(c) certificates to four different types of entities, for-profit business establishments, hospital/residential care facilities, school work experience programs, and nonprofit community rehabilitation programs. Many 14(c) certificate holders have historically employed people with disabilities in segregated work centers or sheltered workshops; See, Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, Interim Report, Sept. 15, 2015, p. 69, <https://www.dol.gov/odep/pdf/20150808.pdf>.

("For the past several decades, sheltered workshops have continued to operate as facility-based vocational service programs attended by adults with disabilities thought to be unable to achieve [competitive integrated employment] outcomes. Sheltered employment characteristically offer opportunities for simple work activities such as assembling, packaging, and light manufacturing for which individuals are paid a wage meant to be commensurate with productivity"). ¹³ Alison Barkoff, Director of Advocacy, Center for Public Representation, Testimony, Subminimum Wages Briefing, pp. 40-43. ¹⁴ See infra notes 520-524.

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community employment settings and not being isolated.¹⁵ This showing comports with the integration mandate of the Americans with Disabilities Act and past findings of the Commission.¹⁶

Since 1938, many thousands of sheltered workshops where employees are paid less than minimum wages have been certified under Section 14(c), and although their number is dwindling, according to the Department of Labor, there are still over 1,500 such workshops employing over 100,000 persons with disabilities, although an exact count of the total number of individuals working for subminimum wages is unavailable and other estimates are much higher.¹⁷ Some states have prohibited payment of subminimum wages and sheltered workshops altogether, but according to 2020 federal data, there are currently 14(c) certificate holders in 46 states and the District of Columbia.¹⁸ That is, all states except four (Maine, New Hampshire, Rhode Island and Vermont) currently have at least one 14(c) certificate allowing the employer to pay subminimum wages.¹⁹ Four other states (Alaska, Maryland, Oregon and Texas) are in the process of phasing out subminimum wages, although they currently still have operating 14(c) certificates.²⁰

¹⁵ See infra notes 574-578. ¹⁶ See infra notes 192-195. ¹⁷ See infra notes 443 (historic figures), 465 (current number of 14(c) workshops), and 440-444 (current number of 14(c) employees). ¹⁸ U.S. Dep't of Labor Wage and Hour Division, 14(c) Certificate Holders, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders> (last accessed Apr. 6, 2020). ¹⁹ *Ibid.*; Commission Staff Research. ²⁰ See Oregon S.B. 494 (enacted Sept. 20, 2019) (payment of subminimum wages will be prohibited after 2023); see also, infra notes 1280-1287 (discussing Oregon's phase-out plan enacted after litigation); N.H. Code Ann. Tit. 23 § 279:22; Md. Code Ann. Tit. Labor and Employment § 3-414; Alaska Code Ann. Tit. 8 § 15.120; Or. Code Ann. Tit. 16 § 653.030; Tex. Code Ann. Tit. 8 § 122.0075-0076.

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Figure ES.1: States with Current or Pending 14(c) Certificates and States Phasing out 14(c)

Source: U.S. Dep't of Labor, Data as of January 1, 2020, Chart generated by Commission Staff

To hear from currently affected stakeholders and to evaluate the civil rights implications of 14(c), the Commission collected data as well as testimony from five panels of experts, employers, advocates, a member of Congress and a lobbyist, an official from the Department of Labor, former Department of Justice officials and impacted community members, some of whom had personally worked for subminimum wages in 14(c) workshops and had since become national leaders.²¹ The Commission reviewed a series of federal agency and academic studies of 14(c). A Subcommittee of the Commission conducted two site visits: one to an employer in Virginia who has a 14(c) certificate, enabling the employer to pay subminimum wages to persons with disabilities,²² and the other to sites in Vermont, where subminimum wages have been eliminated and persons with

²¹ Subminimum Wages Briefing, transcript, *passim*, <https://www.usccr.gov/calendar/2019/11-19-Transcript-Commission-Business-Meeting.pdf>, U.S. Comm'n on Civil Rights, Briefing Agenda, Subminimum Wages: Impacts on the Civil Rights of People with Disabilities, Nov. 15, 2019, <https://www.usccr.gov/press/2019/11-05-Agenda-Subminimum-Wages.pdf>. ²² See infra notes 829-981, (Members of the Subcommittee were Commissioner Debo Adegbile, Commissioner Gail Heriot, Subcommittee Chair David Kladney, and Commission Chair Catherine Lhamon).

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disabilities are now employed through other programs.²³ The Commission evaluated these two states and five others that illustrate various types of programs for employment of persons with disabilities, ranging from 14(c) programs, to phase-out programs,²⁴ and to states that have completely phased out 14(c).²⁵

The Commission also invited public comments and within 30 days after the briefing, the Commission received the highest volume of public comments the Commission has ever received when covering any topic: over 9,700 public comments (about 8,000 as petition signatures and 1,700 as individual public comments) about the 14(c) certificate program.²⁶ The Commission heard from proponents and opponents of the program and reviewed story after story of people with a disability or disabilities who were once presumed to be only capable of working for subminimum wages in a sheltered environment, who transitioned to and excelled in competitive integrated employment. The Commission also heard and received thousands of comments, mainly from impacted parents, stating that 14(c) is needed to protect employment opportunities for people with disabilities. This report analyzes these thousands of public comments as part of the data the Commission collected and evaluated.

Chapter 1 sets forth an analysis of applicable federal law and civil rights implications. The chapter summarizes and evaluates the 1938 law as well as applicable civil rights laws. The main issues arising under the Americans with Disabilities Act are whether there is employment discrimination and whether there is compliance with the mandate that whenever possible, persons with disabilities should receive services in integrated settings.²⁷ Although there are limitations for reasonableness, the Americans with Disabilities Act generally requires integration of persons with disabilities and prohibits discrimination in employment.²⁸ This chapter also evaluates arguments for and against 14(c). The

Commission received testimony from parents who felt that their adult children with disabilities could be able to have a safe place to be during the day and have the dignity of work, and they stated that sheltered workshops paying subminimum wages provided that.²⁹ On the other hand, persons with disabilities, including some with direct experience with 14(c); state- based experts; and civil rights litigators including former Department of Justice staff indicate that the program is not only rife with abuse, but also that the program itself is exploitative and

²³ See infra notes 1055-1257. ²⁴ See infra notes 828-1039 (discussing Arizona, Missouri and Virginia). ²⁵ See infra notes 1040-1302 (discussing Maine, Oregon and Vermont). ²⁶ See infra notes 552-555. ²⁷ See infra notes 177-229 (Chapter 1, discussion of applicable law, including the reasonableness standard the Supreme Court has applied to the Americans with Disabilities Act). ²⁸ See infra note 176. ²⁹ See infra note 556.

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discriminatory.³⁰ Persons with disabilities who have transitioned out of 14(c) workshops were adamantly against the program.³¹ Further, some states have successfully transitioned employment of persons with disabilities to “competitive integrated employment,” in which persons with disabilities are paid at least minimum wage and are not segregated.³² In contrast, some employers, family members, and persons with disabilities feel strongly that eradication of the program would take away their choice as well as the opportunity to earn a paycheck and work in a supportive environment.³³ As mentioned, the majority of the public comments the Commission received were from parents who support the continued operation of 14(c) workshops unchanged.³⁴

Chapter 1 also provides information about Community Rehabilitation Programs and discusses how individuals’ Medicaid funded supports may be used by 14(c) and other employers through different policy iterations.³⁵ This chapter also surveys and discusses various policy options. For example, in recent years, several bills have been introduced in the U.S. Congress that have included provisions for reforming or phasing out and eventually eliminating Section 14(c) and the payment of subminimum wages to people with disabilities.³⁶ Some bills would phase out and eliminate Section 14(c), while others focus federal funding or tax credits on increasing opportunities for persons with disabilities to access competitive integrated employment.³⁷ As shown by the map above and the more detailed data herein, many states are also undergoing these types of transitions through a variety of policy models. Because there are millions of persons with disabilities with a wide range of skill sets, and with many individual and community factors at stake, it is not possible to generalize about these programs or predict the employment outcomes for all.³⁸ However, new technology as well as new programs being developed in some states show that for many people currently employed in 14(c) workshops, transitioning to competitive integrated employment is an attainable goal.³⁹ This transition may be aided by the provision of accommodations such as a job coach, peer support, or specialized training or other supports that allow persons with disabilities

³⁰ See infra note 574. ³¹ See infra notes 221. ³² See infra notes 1045-1051. ³³ See infra notes 557-558. ³⁴ See infra notes 556-564. ³⁵ See infra note 212. ³⁶ See infra notes 338-396. ³⁷ Id. ³⁸ See infra notes 1009-1039 (discussing subminimum wages in Missouri) and notes 704-705 (discussing Advisory Committee for Increasing Competitive Integrated Employment recommendation that the Wage and Hour Division verify there is a lack of competitive integrated employment opportunities in a state before issuing any 14(c) certificates in that state). ³⁹ See infra notes 1040-1054.

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to effectively work in integrated settings.⁴⁰ Data shows that such supported employment leads to higher employment rates for people with intellectual and developmental disabilities.⁴¹

To understand the available data, Chapter 2 summarizes and analyzes available national, state, and local data. At the national level, the most recent Census data, based on the 2018 American Community Survey, estimated that there were 39,674,679 people with disabilities in the United States, making up 12.6 percent of the total estimated U.S. population.⁴² The 2018 American Community Survey also found that only 35.9 percent of persons with disabilities were employed, as compared to 76.6 percent of the total population.⁴³ Further, unemployment and under-employment correlated with higher poverty rates for people with disabilities, among other impacts.⁴⁴ At the Commission’s November 2019 briefing, Jennifer Mathis of the Bazelon Center for Mental Health Law testified that: “People with disabilities continue to participate in the labor force at less than half the rate of people without disabilities, and only about 20 percent of people receiving public mental health services have any form of employment.”⁴⁵ Furthermore, data the Commission reviewed showed that between 2017 and 2016, the average wage of a person with a disability working under a 14(c) certificate was \$3.34 per hour⁴⁶ and the average number of hours worked was 16 hours per week.⁴⁷ This means that the average person with a disability working at a 14(c) certificate holding entity earned just \$53.44 per week, or \$213.76 per month.

The Commission also received testimony as to the dearth of available data about subminimum wages. Chair Neil Romano of the National Council on Disability noted in his testimony that “we collect data on things we view as important, and historically we just don’t count people with disabilities.”⁴⁸ However, there is some data, particularly regarding trends. For example, there were at least 1,558 14(c) certificate holders across the country as of January 1, 2020, and that estimate

⁴⁰ See infra note 259. ⁴¹ See infra notes 227-228; See also Jennifer Mathis, Deputy Legal Director & Director of Policy & Legal Advocacy, Bazelon Center for Mental Health Law, Written Statement for the Subminimum Wages Briefing before the U.S. Comm’n on Civil Rights, Nov. 15, 2019, at 2-3 (hereinafter Mathis Statement). (regarding the focus in the field on persons with intellectual and developmental disabilities, and belying stereotypes about persons having the most employment challenges); See infra note 388 (“the [Microsoft employment] program targets those who may have been most excluded, as the mission of the program is “to make a substantial difference in the lives of people with intellectual and developmental disabilities who have historically been overlooked in the jobs market”). ⁴² U.S. Census Bureau, American Community Survey (2018), Disability Characteristics, Table S1810, <https://data.census.gov/cedsci/table?q=S1810&tid=ACST1Y2018.S1810>. ⁴³ University of New Hampshire, Institute on Disability, 2017 Disability Statistics Annual Report, p. 2, https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf 44 Ibid. ⁴⁵ Jennifer Mathis, Subminimum Wages Briefing, pp. 199-200. ⁴⁶ See infra note 455. ⁴⁷ See infra note 456. ⁴⁸ Romano Testimony, Subminimum Wages Briefing, p. 36.

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<https://data.census.gov/cedsci/table?q=S1810&tid=ACST1Y2018.S1810>
https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf

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has decreased by about two-thirds over the past ten years.⁴⁹ Data published on the website of the Wage and Hour Division of the Department of Labor indicates that as of January 1, 2020, an estimated 100,300 people with disabilities were working for 14(c) certificate holders.⁵⁰ State and local data provides some information about Medicaid-based supports in Community Rehabilitation Programs, as well as more granular data about transitions to competitive integrated employment. Details and analysis are set forth below in Chapter 2.

Chapter 3 evaluates the role and responsibilities of the federal government. In 2009, the Government Accountability Office critiqued the enforcement procedures of the Wage and Hour Division of the Department of Labor, stating that it did not adequately investigate complaints received.⁵¹ At the Commission’s November 2019 briefing, Mary Ziegler, then the Director of Policy of the Wage and Hour Division⁵² testified that the Division had increased its enforcement of the rights of employees working in the 14(c) program. Since 2013, the Division had revoked 14(c) certificates from six employers—and none could be shown to have been revoked between 1938 and 2013. During the past 10 years, the Wage and Hour Division also ordered the payment of back wages to 88,034 employees with disabilities in 14(c) workshops.⁵³ The Commission’s research also shows that in the last 10 years the Wage and Hour Division has reviewed an average of approximately eight percent of 14(c) certificate holders and found an average 81 percent violation rate of certificate holders investigated over the ten-year period.⁵⁴

The Wage and Hour Division is limited to enforcing the Fair Labor Standards Act and does not have jurisdiction to enforce civil rights laws such as the Americans with Disabilities Act.⁵⁵ Federal enforcement of that statute by other agencies is also examined in Chapter 3. In an apparently unique case, brought by the Equal Opportunity Employment Commission, the Equal Opportunity Employment Commission won a multi-million dollar jury award when it enforced the Americans with Disabilities Act against a former 14(c) employer. Chapter 3 reviews this and other data about the effectiveness of federal government programs, including the work of the Civil Rights Division of the Department of Justice, which also enforces the Americans with Disabilities Act, reflecting

⁴⁹ See infra note 598. ⁵⁰ U.S. Dep’t of Labor Wage and Hour Division, 14(c) Certificate Holders, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders> (last accessed May 21, 2020). ⁵¹ Government Accountability Office, GAO-09-629, Wage and Hour Division Needs Improved Investigative Processes and Ability to Suspend Statute of Limitations to Better Protect Workers Against Wage Theft, pp. 14-33 (Jun. 23, 2009) <https://www.gao.gov/assets/300/291496.pdf>. ⁵² Ziegler has since retired from her position, in February 2020. See, e.g., Ben Penn, Two Senior Officials Exit Labor Department’s Wage Division, Bloomberg Law (Feb. 4, 2020) <https://news.bloomberglaw.com/daily-labor-report/two-senior-officials-exit-labor-departments-wage-hour-division>. ⁵³ See infra notes 659-661. ⁵⁴ See infra notes 656-665. ⁵⁵ See Response of the Wage and Hour Division to the Commission’s Interrogatories.

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<https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders>
<https://www.gao.gov/assets/300/291496.pdf>
<https://news.bloomberglaw.com/daily-labor-report/two-senior-officials-exit-labor-departments-wage-hour-division>
<https://news.bloomberglaw.com/daily-labor-report/two-senior-officials-exit-labor-departments-wage-hour-division>

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that much more enforcement and enforcement authority is needed. 56 This chapter also highlights the work of another federal entity, the National Council on Disability, which studied the 14(c) program in 2012 and 2018, and in both instances, found the program to be discriminatory and recommended that it be phased out.⁵⁷

In Chapter 4, the Commission evaluates how subminimum wage policy is manifested at the state level, in six states. The Commission collected information about various iterations of employment policies of persons with disabilities, in three states with 14(c) certificate holders (Virginia, Arizona, and Missouri) and in three states that have transitioned or are in the process of transitioning to competitive integrated employment (Vermont, Maine, and Oregon). This chapter also includes a deeper focus on Virginia and Vermont, based on the Commission Subcommittee's site visits to those states. The Commission undertook site visits to a current 14(c) certificate holder in Springfield, Virginia, and visited people with disabilities working in competitive integrated employment sites in and around Burlington, Vermont. A Subcommittee of Commissioners toured the facilities and met with the management of sites and employees. Commission staff also conducted individual interviews with employees with disabilities and their families to better understand their experiences.⁵⁸

Chapter 4 also includes an over-arching analysis of available data in these states with various types of policies and programs. The Commission's research at the state level indicates that transition from employment of persons with disabilities in 14(c) programs to competitive integrated employment, being paid at least minimum wage and working with persons without disabilities as peers, is possible.⁵⁹ Competitive integrated employment is shown to be possible in at least two states in which funding and supports have been in place to ensure that 14(c) workers will not lose their jobs and will have time to learn new skills. Such funding may come from an individual's own Medicaid funds, which are the same funds used in 14(c) settings.⁶⁰

In sum, the state transitions from 14(c) evaluated by the Commission seem promising and illustrate that it is possible to pay persons with disabilities at least minimum wage. However, financial and educational supports may be needed to accomplish these transitions,⁶¹ and different state policies about funding,⁶² as well as different state demographics, transportation infrastructure, and

56 See *infra* notes 736-759. 57 Nat'l Council on Disability, *National Disability Employment Policy, From the New Deal to the Real Deal: Joining the Industries of the Future* pp. 61-98 (2018). 58 See *infra* notes 829-981 and 1055-1257. 59 See *infra* notes 1040-1054. 60 See *infra* notes 780-782. 61 See *infra* notes 1055-1073, 1261-1292. 62 See *infra* notes 1021-1029 (Missouri).

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economic factors, affect the analyses and choices.⁶³ As one state agency employee interviewed stated: "One model can't be the model for all people in any services."⁶⁴ Moreover, the Commission received abundant public comments and testimony from other states indicating that many parents and employers are in favor of 14(c), seeing it as a place of safety and dignity for persons with disabilities. Herein, the Commission takes into account all of this testimony as well as the civil rights implications.

Chapter 5 states the Commissioners' findings and recommendations based upon the research, as highlighted below.

Findings and Recommendations

Highlighted Findings:

1. In 1938, Congress enacted the exception to the minimum wage requirement for people with disabilities, contained in Section 14(c) of the Fair Labor Standards Act, with a rehabilitative purpose. As currently utilized, the federal Department of Labor has repeatedly found providers operating pursuant to Section 14(c) limiting people with disabilities participating in the program from realizing their full potential while allowing providers and associated businesses to profit from their labor. This limitation is contrary to 14(c)'s purpose.
2. Persistent failures in regulation and oversight of the 14(c) program by government agencies including the Department of Labor and Department of Justice have allowed and continue to allow the program to operate without satisfying its legislative goal to meet the needs of people with disabilities to receive supports necessary to become ready for employment in the competitive economy.
3. People with intellectual and developmental disabilities who are currently earning subminimum wages under the 14(c) program are not categorically different in level of disability from people with intellectual and developmental disabilities currently working in competitive integrated employment.
4. The Commission took in bipartisan testimony in favor of keeping the 14(c) program and to end the 14(c) program. Notably, in 2016, both major party platforms included support for legislation ending the payment of subminimum wages to people with disabilities. House Committee on Education and the Workforce Chairman Bobby Scott (D-VA) introduced bipartisan legislation to phase out the 14(c) program. Chair Neil Romano, Republican appointee to the National Council on Disability, and former Republican

63 See *infra* notes 1156-1257 (interview notes from Vermont); Cf. *infra* notes 897-981 (interview notes from Virginia). 64 Notes of the Commission's General Counsel, quoting Sima Breiterman, Director of Adult Services, Subcommittee Site Visit to Think College at University of Vermont (Mar. 4, 2020).

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Governor Tom Ridge, who now leads the National Organization on Disability, both testified that ending the 14(c) program is their shared highest priority.

5. State-level phase outs of the use of the 14(c) program have been developed and designed for state service providers and other stakeholders to ensure that a competitive integrated employment model does not result in a loss of critical services to individuals with disabilities including former 14(c) program participants.
6. Increased integration of people with disabilities into the workplace and society is now legally required by the Americans with Disabilities Act and legal precedent, and is facilitated by technological advancements. These developments obviate any need for subminimum wage work.

Highlighted Recommendations:

1. Congress should repeal Section 14(c) with a planned phase-out period to allow transition among service providers and people with disabilities to alternative service models prioritizing competitive integrated employment.
2. The phased repeal of 14(c) must not reflect a retreat in Federal investments and support for employment success of persons with disabilities but rather a reconceptualization of the way in which the federal government can enhance the possibilities for success and growth for people with disabilities.
3. Congress should expand funding for supported employment services and prioritize capacity building in states transitioning from 14(c) programs.
4. Now and during the transition period of the Section 14(c) program, Congress should assign civil rights oversight responsibility and jurisdiction, with necessary associated fiscal appropriations to conduct the enforcement, either to the Department of Labor or to the Department of Justice Civil Rights Division. Congress should also require that the designated civil rights agency issue an annual report on investigations and findings regarding the 14(c) program.
5. During the phase-out period, Congress should require more stringent reporting and accountability for 14(c) certificate holders, and following the phase out should continue to collect data on employment outcomes of former 14(c) employees.
6. The Department of Justice should increase enforcement of the Olmstead integration mandate to determine whether more state systems are inappropriately relying too heavily on providers using 14(c) certificates to provide non-integrated employment in violation of Olmstead. The Department should issue guidance, open more investigations, and litigate where voluntary compliance cannot be achieved.

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Date : 9/15/2020 2:55:30 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@uscrr.gov To : "Shelby Taylor" st5082a@student.american.edu Subject : RE: [EXTERNAL] Re: USCCR/NCD staff-to-staff briefing Thanks that's good to know. There will be plenty of other opportunities, for sure. From: Shelby Taylor <st5082a@student.american.edu> Sent: Tuesday, September 15, 2020 2:51 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov> Subject: Re: [EXTERNAL] Re: USCCR/NCD staff-to-staff briefing

CAUTION: This email is from outside USCCR.

I saw the event. I won't be able to make it. I have a small group session with some of my classmates right after my time working on Marik's assignment.

Shelby A Taylor JD Candidate 2021 SBA Director of Programming Managing Editor, Health Law and Policy Brief Washington College of Law American University On Tue, Sep 15, 2020 at 2:33 PM Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov> wrote:

Thanks, we are swamped but it's all going well. Are you interested in the Miami Law event? It has a panel on criminal justice issues that I thought might interest you, if it's at a good time for you. From: Shelby Taylor

Identify Severe Maternal Morbidity?," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severemorbidity-ICD.htm>. 10 Elizabeth A. Howell, MD, MPP, "Reducing Disparities in Severe Maternal Morbidity and Mortality," U.S. National Library of Medicine, National Institutes of Health, June 2018, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>. 11 This report utilizes the term "White" to refer to non-Hispanic/Latina White/Caucasian women (unless otherwise stated). 12 This report utilizes the term "Native American" to refer to non-Hispanic/Latina American Indian/Alaska Native women (unless otherwise stated). 13 Centers for Disease Control and Prevention, "Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007–2016," *Morbidity and Mortality Weekly Report*, Vol. 68, No. 35 (Sep. 6, 2019): 763, https://www.cdc.gov/mmwr/volumes/68/wr/mm6835a3.htm?s_cid=mm6835a3_w; Elizabeth A. Howell, MD, MPP, "Reducing Disparities in Severe Maternal Morbidity and Mortality," U.S. National Library of Medicine, National Institutes of Health, June 2018, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>. 14 Centers for Disease Control and Prevention, "Pregnancy Mortality Surveillance System," <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm>. The Centers for Disease Control and Prevention (CDC) defines pregnancy-related death as "the death of a woman while pregnant or within 1 year of the end of a pregnancy—regardless of the outcome, duration or site of the pregnancy—from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes." Ibid. 15 Elizabeth A. Howell, MD, MPP, "Reducing Disparities in Severe Maternal Morbidity and Mortality," U.S. National Library of Medicine, National Institutes of Health, June 2018, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>. 16 Centers for Disease Control and Prevention, National Center for Health Statistics, *Maternal Mortality and Related Concepts*, Series 3, No. 33, February 2007, pp. 8–9, https://www.cdc.gov/nchs/data/series/sr_03/sr03_033.pdf. 17 Nina Martin and Renee Montagne, "Nothing Protects Black Women From Dying in Pregnancy and Childbirth," *ProPublica*, Dec. 7, 2017, <https://www.propublica.org/article/nothing-protects-black-women-from-dying-in-pregnancy-and-childbirth>. 18 World Health Organization, "Maternal Mortality Ratio (per 100 000 live births) Year 2017," <https://app.powerbi.com/view?r=eyJrjoINT4ZDc2N2EiMG5NC00NjUyLWVjYjAtNmM3YzYjYWF1YzZlhiwidiCl6ImY2MTBjMGI3LWJkMjQlNzQ0S04MTBILTNkYzI4MGFmYjU5MCIslmMIOj9> (accessed 3/26/2020).

Commented [KC1]: What pops out is that Asian and Latina American women are not mentioned. Either include their data or explain why they are not included. It appears that this study showed there are not racial disparities as both groups had comparable rates to White women. See Table 1: <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>. However, a study in NYC showed severe disparities among Latina women: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5380443/>.

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<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severemorbidity-ICD.htm>
<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/smm/severe-morbidity-ICD.htm>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>
https://www.cdc.gov/mmwr/volumes/68/wr/mm6835a3.htm?s_cid=mm6835a3_w
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>
<https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>
https://www.cdc.gov/nchs/data/series/sr_03/sr03_033.pdf
<https://www.propublica.org/article/nothing-protects-black-women-from-dying-in-pregnancy-and-childbirth>
<https://www.propublica.org/article/nothing-protects-black-women-from-dying-in-pregnancy-and-childbirth>
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<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>

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according to the National Center for Health Statistics (NCHS), with 658 women who died of maternal causes.19

These Racial disparities in U.S. maternal mortality rates exist for a variety of reasons, but one notable reason is due to differences in the quality of care that women of color receive as compared to White women.20 Research shows that approximately 3 out of 5 pregnancy-related deaths are preventable,21 yet certain Black women giving birthwomen of color are dying at staggering rates.22 For these reasons, this evaluation and report focuses mainly on the relevant experiences of Black women in the U.S.

Data Regarding Maternal DeathHealth in the U.S.

According to the World Health Organization (WHO), the U.S. maternal mortality ratio ranked 56th in the world in 2017, trailing behind the Russian Federation, Saudi Arabia, and Tajikistan.23 In 2018, the maternal mortality rate in the U.S. was 17.4 maternal deaths per 100,000 live births according to the National Center for Health Statistics (NCHS), with 658 women who died of maternal causes.24 The Centers for Disease Control and Prevention (CDC) defines "pregnancy-related deaths" as "the death of a woman while pregnant or within [one] year of the end of a pregnancy—regardless of the outcome, duration or site of the pregnancy—from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes."25 That definition differs from the that of the National Vital Statistics System (NVSS), which limits the data to maternal deaths related to and occurring within 42 days of

19 Centers for Disease Control, National Center for Health Statistics, "First Data Released on Maternal Mortality in Over a Decade," Jan. 30, 2020, https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm. 20 Amy Metcalfe, James Wick, and Paul Ronskley, "Racial Disparities in Comorbidity and Severe Maternal Morbidity/Mortality in the United States: An Analysis of Temporal Trends," *Acta Obstetrica et Gynecologica Scandinavica*, No. 97 (2018), 94, <https://obgyn.onlinelibrary.wiley.com/doi/pdf/10.1111/aogs.13245>. 21 Emily E. Petersen, MD; Nicole L. Davis, PhD; David Goodman, PhD; Shanna Cox, MSPH; Nikki Mayes; Emily Johnston, MPH; Carla Syverson, MSN; Kristi Seed; Carrie K. Shapiro-Mendoza, PhD; William M. Callaghan, MD; Wanda Barfield, MD, "Vital Signs: Pregnancy-Related Deaths, United States, 2011–2015, and Strategies for Prevention, 13 States, 2013–2017," *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Protection, Vol. 68, No. 18 (May 10, 2019): 423, <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6818e1-H.pdf>. 22 Emily E. Petersen, MD, Nicole L. Davis, PhD, David Goodman, PhD, Shanna Cox, MSPH, Carla Syverson, MSN, Kristi Seed, Carrie Shapiro-Mendoza, PhD, William M. Callaghan, MD, Wanda Barfield, MD, "Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007–2016," *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Protection, Vol. 68, No. 35 (Sep. 6, 2019): 762–765, <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>. 23 World Health Organization, "Maternal Mortality Ratio (per 100 000 live births) Year 2017," <https://app.powerbi.com/view?r=eyJrjoINT4ZDc2N2EiMG5NC00NjUyLWVjYjAtNmM3YzYjYWF1YzZlhiwidiCl6ImY2MTBjMGI3LWJkMjQlNzQ0S04MTBILTNkYzI4MGFmYjU5MCIslmMIOj9> (accessed 3/26/2020). 24 Centers for Disease Control, National Center for Health Statistics, "First Data Released on Maternal Mortality in Over a Decade," Jan. 30, 2020, https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm. 25 Centers for Disease Control and Prevention, "Pregnancy Mortality Surveillance System," <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>.

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https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm
<https://obgyn.onlinelibrary.wiley.com/doi/pdf/10.1111/aogs.13245>
<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6818e1-H.pdf>
<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6818e1-H.pdf>
<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>
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<https://app.powerbi.com/view?r=eyJrjoINT4ZDc2N2EiMG5NC00NjUyLWVjYjAtNmM3YzYjYWF1YzZlhiwidiCl6ImY2MTBjMGI3LWJkMjQlNzQ0S04MTBILTNkYzI4MGFmYjU5MCIslmMIOj9>
https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm
<https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>

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being pregnant.26 NVSS is the official mechanism of NCHS for collecting and disseminating vital statistics and the official source for U.S. maternal mortality statistics for international, state, and demographic comparisons.27 NVSS and NCHS use the WHO's definition of "maternal mortality" or "maternal deaths," defined as "deaths of women while pregnant or within 42 days of being pregnant, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes."28 Additionally, "[t]he classification of deaths involving pregnancy, childbirth and puerperium specifically excludes external causes (i.e., accidents, homicides, and suicides) as incidental," and excludes late maternal deaths (occurring between 43 days and 1 year of death) from this definition.29

A website called Review to Action, which serves as a resource for preventing maternal mortality, explains that "understanding maternal mortality in the United States is more difficult when words with different definitions are used interchangeably."30 It goes on to explain three common categories in which definitions of maternal mortality are grouped: pregnancy-associated death, pregnancy-associated, but not related death, and pregnancy-related death.31 It offers the following commonly-used definitions of each:

- Pregnancy-associated death – The death of a woman while pregnant or within one year of the termination of pregnancy, regardless of the cause. These deaths make up the universe of maternal mortality; within that universe are pregnancy-related deaths and pregnancy-associated, but not related deaths.
- Pregnancy-associated, but not related death – The death of a woman during pregnancy or within one year of the end of pregnancy, from a cause that is not related to pregnancy (e.g. a pregnant woman dies in an earthquake).
- Pregnancy-related death – The death of a woman during pregnancy or within one year of the end of pregnancy, from a pregnancy complication, a chain of events initiated by pregnancy, or the aggravation of an unrelated condition by the physiologic effects of pregnancy.32

26 Donna L. Hoyert, Ph.D., and Arialdi M. Miniño, M.P.H., "Maternal Mortality in the United States: Changes in Coding, Publication, and Data Release, 2018," *National Vital Statistics Reports*, Vol. 69, No. 2 (Jan. 30, 2020): 1, https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_02-508.pdf. 27 Lauren M. Rossen, Ph.D., M.S., Lindsay S. Womack, Ph.D., M.P.H., Donna L. Hoyert, Ph.D., Robert N. Anderson, Ph.D., and Sayeedha F.G. Uddin, M.D., M.P.H., "The Impact of the Pregnancy Checklist and Misclassification on Maternal Mortality Trends in the United States, 1999–2017," *National Center for Health Statistics, Vital and Health Statistics*, Series 3, No. 44 (January 2020): 1, https://www.cdc.gov/nchs/data/series/sr_03/sr03_044-508.pdf; Centers for Disease Control and Prevention, National Center for Health Statistics, "National Vital Statistics System," <https://www.cdc.gov/nchs/nvss/index.htm>. 28 Donna L. Hoyert, Ph.D., and Arialdi M. Miniño, M.P.H., "Maternal Mortality in the United States: Changes in Coding, Publication, and Data Release, 2018," *National Vital Statistics Reports*, Vol. 69, No. 2 (Jan. 30, 2020): 1, https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_02-508.pdf. 29 Ibid. 30 Review to Action, "Definitions," <https://reviewtoaction.org/learn/definitions>. 31 Ibid. 32 Ibid.

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https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_02-508.pdf
https://www.cdc.gov/nchs/data/series/sr_03/sr03_044-508.pdf
<https://www.cdc.gov/nchs/nvss/index.htm>
https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_02-508.pdf
<https://reviewtoaction.org/learn/definitions>

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Review to Action also notes that "[t]he use of these terms is important because they point to the importance of first identifying all deaths associated in time to pregnancy, and then identifying from those deaths those that were caused by or aggravated by her pregnancy or its management (essentially, if she had not been pregnant, would she have died?).33

Rates of maternal mortality, regardless of which definition of maternal mortality is utilized, are typically measured by a ratio that calculates the number of "maternal deaths," or "pregnancy-related deaths" per 100,000 live births.34 This ratio is often used as an indicator to measure the nation's health.35

There are two national data sources used for information and trends about maternal mortality in the U.S.36 As mentioned above, the NCHS is the first national source that uses death certificate information to assign ICD-1037 codes used to identify maternal deaths and produce a maternal mortality rate38 in accordance with its definition of maternal mortality.39 However, it was recognized that many women die as a result of pregnancy beyond the 42 day cutoff (as per the WHO definition).40

Established in 1986 to fill data gaps about maternal deaths in the U.S.,41 the Pregnancy Mortality Surveillance System (PMSS) is the second national source that uses either death certificates with

33 Ibid. 34 Ibid; see also Centers for Disease Control and Prevention, "Pregnancy Mortality Surveillance System," <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>; see also World Health Organization, "Maternal Mortality Ratio (per 100,000 live births)," <https://www.who.int/data/gho/indicator-metadata-registry/indicators/26>. 35 Centers for Disease Control and Prevention, "Pregnancy Mortality Surveillance System," <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>. 36 CDC Foundation, *Building U.S. Capacity to Review and Prevent Maternal Deaths: Report from Nine Maternal*

Mortality Review Committees, 2018, p. 9, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>. 37 See Centers for Disease Control and Prevention, “International Classification of Diseases, Tenth Revision (ICD-10),” <https://www.cdc.gov/nchs/icd/icd10.htm>. “ICD-10” is an abbreviation for “International Classification of Diseases, Tenth Revision,” naming a set of codes designed to:

[P]romote international comparability in the collection, processing, classification, and presentation of mortality statistics. This includes providing a format for reporting causes of death on the death certificate. The reported conditions are then translated into medical codes through use of the classification structure and the selection and modification rules contained in the applicable revision of the ICD, published by the World Health Organization (WHO). These coding rules improve the usefulness of mortality statistics by giving preference to certain categories, by consolidating conditions, and by systematically selecting a single cause of death from a reported sequence of conditions. The single selected cause for tabulation is called the underlying cause of death, and the other reported causes are the nonunderlying causes of death. The combination of underlying and nonunderlying causes is the multiple causes of death.

Ibid. 38 CDC Foundation, Building U.S. Capacity to Review and Prevent Maternal Deaths: Report from Nine Maternal Mortality Review Committees, 2018, p. 9, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>. 39 See supra note 28. 40 Cox Statement, at 1. 41 Centers for Disease Control and Prevention, “Pregnancy Mortality Surveillance System,” <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm>.

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<https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>
<https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>
<https://www.cdc.gov/nchs/icd/icd10.htm>
<https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>
<https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm>

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a checkbox that identifies a relationship between the death and a pregnancy, or death certificates that have a linked birth or fetal death certificate registered in the year preceding death to produce a pregnancy-related maternal mortality ratio⁴² in accordance with the CDC’s definition of maternal mortality.⁴³ The PMSS requests birth and death certificate data from all 50 states, New York City, and Washington, D.C., which is summarized and reviewed by epidemiologists to determine the cause of death related to pregnancy.⁴⁴ See Table 1.1 for a comparison of the PMSS and NCHS systems of data collection.

Table 1.1. National Sources of Maternal Mortality Information National Center for Health Statistics (NCHS)

Pregnancy Mortality Surveillance System (PMSS)
Data Source Death certificates Death certificates linked to fetal death and birth certificates
Time Frame During pregnancy – 42 days postpartum
During pregnancy – 365 days postpartum
Source of Classification
Maternal death -Pregnancy-associated death -Pregnancy-related death -Pregnancy-associated, but not related death*
Measure Maternal mortality rate = # of maternal deaths per 100,000 live births
Pregnancy-related mortality ratio = # of pregnancy-related deaths per 100,000 live births
Purpose Show national trends and provide a basis for international comparison
Analyze clinical factors associated with deaths, publish information that may lead to prevention strategies
Strengths – Best source of historical data (back to 1900) – Reliable basis for international comparison – Based on readily available data (death certificates)
Most clinically relevant national measure of the burden of maternal deaths
Challenges - Constrained by ICD-10 codes – Lacks sufficient detail to inform prevention strategies
- Constrained by information available on death and birth certificates – Lacks detailed information on contributors to deaths

Source: CDC Foundation, Building U.S. Capacity to Review and Prevent Maternal Deaths: Report from Nine Maternal Mortality Review Committees, 2018, p. 9, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>. * See Review to Action, “Definitions,” <https://reviewtoaction.org/learn/definitions>.

42 CDC Foundation, Building U.S. Capacity to Review and Prevent Maternal Deaths: Report from Nine Maternal Mortality Review Committees, 2018, p. 9, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>. 43 See supra note 25. 44 Cox Statement, at 1.

<https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>
<https://reviewtoaction.org/learn/definitions>
<https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>

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The maternal mortality rate in the U.S. has been steadily increasing over the past three decades.⁴⁵ See Figure 1.1, which shows the trend in maternal mortality over time, with data from PMSS from 1987 through 2016, and data from NCHS from 1987 through 2018.

Source: Centers for Disease Control and Prevention, “Pregnancy Mortality Surveillance System,” <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>; Centers for Disease Control and Prevention, Maternal Mortality and Related Concepts, Vital and Health Statistics, Series 3, No. 33, February 2007, https://www.cdc.gov/nchs/data/series/sr_03/sr03_033.pdf; Lauren M. Rossen, Ph.D., M.S., Lindsay S. Womack, Ph.D., M.P.H., Donna L. Hoyert, Ph.D., Robert N. Anderson, Ph.D., and Sayeedha F.G. Uddin, M.D., M.P.H., “The Impact of the Pregnancy Checkbox and Misclassification on Maternal Mortality Trends in the United States, 1999–2017,” National Center for Health Statistics, Vital and Health Statistics, Series 3, No. 44, January 2020, p. 30, Table III, https://www.cdc.gov/nchs/data/series/sr_03/sr03_044-508.pdf. “The PMSS numbers are reported using both the CDC’s definition of pregnancy-related deaths: “the death of a woman while pregnant or within [one] year of the end of a pregnancy—regardless of the outcome, duration or site of the pregnancy—from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes;” The NCHS numbers are reported using the WHO’s definition of maternal mortality: “deaths of women while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and the site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.”

The pregnancy-related mortality ratio (reported from PMSS data) in 1987 was 7.2 pregnancy- related deaths per 100,000 live births as compared to 16.9 deaths per 100,000 live births in 2016, which is approximately a 135 percent increase. NCHS data differs slightly, showing that the maternal mortality rate in 1987 was 6.6 deaths per 100,000 live births as compared to 17.4 in 2018, a 163 percent increase. Both data sets show an increase in the maternal mortality rate over time.

The maternal mortality rate in the U.S. varies greatly by state, as demonstrated in Figure 1.2.

45 Centers for Disease Control and Prevention, “First Data Released on Maternal Mortality in Over a Decade,” Jan. 30, 2020, https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm.

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Pregnancy Mortality Surveillance System National Center for Health Statistics

Figure 1.1.
Trends in Maternal Mortality (per 100,000 Births) 1987-2018

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of Deaths
per 100,000
Live Births

<https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>
https://www.cdc.gov/nchs/data/series/sr_03/sr03_033.pdf
https://www.cdc.gov/nchs/data/series/sr_03/sr03_044-508.pdf
https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm

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Source: Centers for Disease Control and Prevention, National Center for Health Statistics, "Maternal Mortality by State, 2018," <https://www.cdc.gov/nchs/maternal-mortality/MMR-2018-State-Data-508.pdf>.

*Alaska, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Kansas, Maine, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, West Virginia, Wisconsin, and Wyoming were excluded as the data from the original report was suppressed due to confidentiality restrictions.
**These numbers are reported using the WHO's definition of maternal mortality: "deaths of women while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and the site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes." Mortality rate per 100,000 live births.

NCHS published data available for a total of 25 states for 2018.⁴⁶ Of those states, Arkansas, Kentucky, and Alabama experienced the highest maternal mortality rates at 45.9, 40.8, and 36.4 deaths per 100,000 live births, respectively. Of those states, the states with the lowest maternal mortality rates in 2018 included Illinois, North Carolina, and California, with 9.7, 10.9, and 11.7 deaths per 100,000 live births, respectively. Of those states during the period of 2011-2015, Georgia, Louisiana, and Indiana reported the highest maternal mortality rates with 46.2, 44.8, and 41.4 deaths per 100,000 live births respectively.⁴⁷ Of those states, California, Massachusetts, and Nevada reported the lowest maternal mortality rates during the period of 2011-2015 with 4.5, 6.1, and 6.2 deaths per 100,000 live births, respectively.⁴⁸

⁴⁶ See Centers for Disease Control and Prevention, National Center for Health Statistics, "Frequently Asked Questions," <https://www.cdc.gov/nchs/maternal-mortality/faq.htm>. ⁴⁷ Casey Leins, "States With the Highest Maternal Mortality Rates," USA Today, Jun. 12, 2019, <https://www.usnews.com/news/best-states/articles/2019-06-12/these-states-have-the-highest-maternal-mortality-rates>. ⁴⁸ Ibid.

45.9
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Maternal Mortality Rates per 100,000 Births by State* 2018
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<https://www.cdc.gov/nchs/maternal-mortality/MMR-2018-State-Data-508.pdf>
<https://www.cdc.gov/nchs/maternal-mortality/faq.htm>
<https://www.usnews.com/news/best-states/articles/2019-06-12/these-states-have-the-highest-maternal-mortality-rates>
<https://www.usnews.com/news/best-states/articles/2019-06-12/these-states-have-the-highest-maternal-mortality-rates>

While state data from 2018 is displayed and discussed above, it is important to note that this NCHS data has a few caveats. First, data is not available for states with fewer than 10 maternal deaths, to protect confidentiality.⁴⁹ Second, there are “significant limitations in the quality of subnational data” that can be problematic for making comparisons across states because of small numbers.⁵⁰ Third, these NCHS state-level estimates rely on coding that makes data more comparable across states, and these estimates may differ from maternal mortality data that states publish themselves.⁵¹ The Commission has chosen to feature this 2018 NCHS data based on its comparability across states, even given these caveats, to show general trends, while also acknowledging that it would be difficult to use individual states’ data to make reliable comparisons, as each state may use different definitions or measures of maternal mortality.

Women experience various risk factors for pregnancy-related deaths, which are explored herein. Racial disparities about these factors and how they may relate to disparities in maternal mortality rates are subsequently explored. To begin the analysis, Figure 1.3 displays the various causes of maternal mortality in the U.S. over the years 2011–2016.

49 Centers for Disease Control and Prevention, National Center for Health Statistics, “Frequently Asked Questions,” <https://www.cdc.gov/nchs/maternal-mortality/faq.htm>. 50 Ibid. See also Centers for Disease Control and Prevention, National Center for Health Statistics, “Maternal Mortality by State, 2018,” 1, <https://www.cdc.gov/nchs/maternal-mortality/MMR-2018-State-Data-508.pdf>. This report noted:

For many states, the data are based on small numbers and are, therefore, statistically unreliable. Statistical variability in the maternal mortality rate is determined largely by the number of maternal deaths (i.e., as the number of deaths decreases, the variance, or measure of uncertainty, increases). Confidence intervals (lower and upper 95% confidence limits) are presented to show the level of variability in the maternal mortality rate for each state. Rates based on fewer than 20 deaths in particular have more uncertainty and wider confidence intervals. Numbers and rates based on fewer than 10 deaths are suppressed entirely to protect confidentiality.

It is likely that some of the variation in state rates is due to the marked differences in the quality of state maternal mortality data. Variation in the quality of reporting maternal deaths may be due to differences in electronic registration systems and differences in policies and programs designed to verify the pregnancy status of female decedents of reproductive age. These differences may result in underestimates of maternal deaths in some cases, and overestimates in others.

Ibid. 51 Centers for Disease Control and Prevention, National Center for Health Statistics, “Frequently Asked Questions,” <https://www.cdc.gov/nchs/maternal-mortality/faq.htm>.

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<https://www.cdc.gov/nchs/maternal-mortality/faq.htm>
<https://www.cdc.gov/nchs/maternal-mortality/MMR-2018-State-Data-508.pdf>
<https://www.cdc.gov/nchs/maternal-mortality/faq.htm>

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Source: Centers for Disease Control and Prevention, “Pregnancy Mortality Surveillance System,” <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>.

Research has shown that an increased number of pregnant women have chronic health conditions such as hypertension, diabetes, and heart disease, which may put them at higher risk for pregnancy complications.⁵² During 2011–2016, cardiovascular complications were responsible for more than a third of pregnancy-related deaths.⁵³

During the period from 2011–2015, approximately 31 percent of pregnancy-related deaths occurred during pregnancy, while approximately 36 percent occurred during delivery or during the week following delivery and approximately 33 percent occurred 1 week to 1 year postpartum.⁵⁴ During that same time period, the pregnancy-related mortality rate was highest

52 Centers for Disease Control and Prevention, “Pregnancy Mortality Surveillance System,” <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>; Kuklina EV, Ayala C, Callaghan WM. Hypertensive disorders and severe obstetric morbidity in the United States: 1998–2006. *Obstet Gynecol.* 2009;113:1299–1306; Admon LK, Winkelman TNA, Moniz MH, Davis MM, Heister M, Dalton VK. Disparities in chronic conditions among women hospitalized for delivery in the United States, 2005–2014. *Obstet Gynecol.* 2017;130(6):1319–1326; Albrecht SS, Kuklina EV, Bansil P, et al. Diabetes trends among delivery hospitalizations in the United States, 1994–2004. *Diabetes Care.* 2010;33:768–773; Correa A, Bardenheier B, Elixhauser A, Geiss LS, Gregg E. Trends in prevalence of diabetes among delivery hospitalizations, United States, 1993–2009. *Matern Child Health J.* 2015;19(3):635–642; Deputy NP, Kim SY, Conroy EJ, Bullard KM. Prevalence and changes in preexisting diabetes and gestational diabetes among women who had a live birth—United States, 2012–2016. *MMWR Morb Mortal Wkly Rep.* 2018;67:1201–1207; Kuklina EV, Callaghan WM. Chronic heart disease and severe obstetric morbidity among hospitalizations for pregnancy in the USA: 1995–2006. *Br J Obstet Gynaecol.* 2011;118:345–352; Lima FV, Yang J, Xu J, Stergiopoulos K. National trends and in-hospital outcomes in pregnant women with heart disease in the United States. *Am J Cardiol.* 2017;119(10):1694–1700. 53 Centers for Disease Control and Prevention, “Pregnancy Mortality Surveillance System,” <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>. 54 Centers for Disease Control and Prevention, “Pregnancy-related deaths,” <https://www.cdc.gov/vitalsigns/maternal-deaths/index.html>.

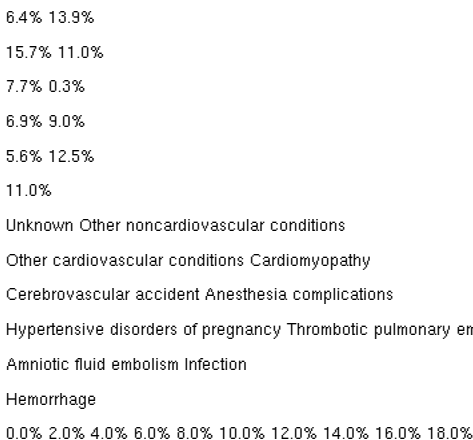


Figure 1.3.

Causes of Pregnancy-Related Death in the U.S. 2011–2016

<https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>
<https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>
<https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>
<https://www.cdc.gov/vitalsigns/maternal-deaths/index.html>

11

among women aged 35 and older.⁵⁵ In 2018, the maternal mortality rate for women aged 40 and older (81.9 deaths per 100,000 live births) was approximately 8 times that for women under age 25 (10.6 deaths per 100,000 live births).⁵⁶

Many women experience pregnancy complications—health problems that occur during pregnancy—which can affect the health of both the mother and the child.⁵⁷ These complications can manifest themselves as a result of the pregnancy, or from pre-existing health problems prior to the pregnancy.⁵⁸ Pregnancy complications can include both physical and mental conditions, and can range from mild discomforts to severe and potentially life-threatening illnesses.⁵⁹ Table 1.2 displays some common pregnancy complications.

Table 1.2. Common Pregnancy Complications Health Problems Before Pregnancy

Asthma, Depression, Diabetes, Eating Disorders, Epilepsy, High Blood Pressure, HIV, Migraines, Obesity/Weight Gain, Sexually Transmitted Infections (STIs), Thyroid Disease, Uterine Fibroids

Health Problems During Pregnancy

Anemia, Depression, Ectopic Pregnancy, Fetal Problems, Gestational Diabetes, High Blood Pressure (Pregnancy-Related), Hyperemesis Gravidarum, Miscarriage, Placenta Previa, Placental Abruption, Preeclampsia, Preterm Labor

Infections During Pregnancy

Bacterial Vaginosis, Cytomegalovirus, Group B Strep, Hepatitis B Virus, Influenza, Listeriosis, Parvovirus B19, Sexually Transmitted Infections (STIs), Toxoplasmosis, Urinary Tract Infection (UTI), Yeast Infection

Source: U.S. Department of Health and Human Services, Office on Women’s Health, “Pregnancy Complications,” <https://www.womenshealth.gov/pregnancy/youre-pregnant-now-what/pregnancy-complications>.

As noted in the Table 1.1 above, depression is a common mental health problem that can occur during or after pregnancy.⁶⁰ Approximately 1 in 9 women experience symptoms of postpartum depression,⁶¹ and the rate of pregnant women diagnosed with depression at delivery increased 7

55 Emily E. Petersen, MD; Nicole L. Davis, PhD; David Goodman, PhD; Shanna Cox, MSPH; Nikki Mayes; Emily Johnston, MPH; Carla Syverson, MSN; Kristi Seed; Carrie K. Shapiro-Mendoza, PhD; William M. Callaghan, MD; Wanda Barfield, MD, “Vital Signs: Pregnancy-Related Deaths, United States, 2011–2015, and Strategies for Prevention, 13 States, 2013–2017,” 424. 56 Centers for Disease Control and Prevention, National Center for Health Statistics, “First Data Released on Maternal Mortality in Over a Decade,” Jan. 30, 2020, https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm. 57 Centers for Disease Control and Prevention, “Pregnancy Complications,” <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-complications.html>. 58 Ibid. 59 Ibid. 60 See also Centers for Disease Control and Prevention, “Depression During and After Pregnancy,” <https://www.cdc.gov/reproductivehealth/features/maternal-depression/index.html>. 61 Ibid.; Jean Y. Ko, PhD, Karlynn M. Rockhill, MPH1, Van T. Tong, MPH, Brian Morrow, Sherry L. Farr, PhD, “Trends in Postpartum Depressive Symptoms — 27 States, 2004, 2008, and 2012,” *Morbidity and Mortality Weekly Report*, Vol. 66, No. 6 (Feb. 17, 2017): 153–158, https://www.cdc.gov/mmwr/volumes/66/wr/mm6606a1.htm?s_cid=mm6606a1_w.

<https://www.womenshealth.gov/pregnancy/youre-pregnant-now-what/pregnancy-complications>
https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm
<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-complications.html>
<https://www.cdc.gov/reproductivehealth/features/maternal-depression/index.html>
https://www.cdc.gov/mmwr/volumes/66/wr/mm6606a1.htm?s_cid=mm6606a1_w

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times from 2000 to 2015.⁶² Although depression during or after pregnancy is treatable,⁶³ approximately 60 percent of women with depressive symptoms do not receive a clinical diagnosis and approximately 50 percent of women with a diagnosis do not receive treatment.⁶⁴ Recent studies also show a sharp increase in anxiety and depression among pregnant women during the COVID-19 pandemic.

A number of psychosocial and environmental risk factors are associated with maternal mental health conditions, such as chronic stressors like racism and poverty; lack of access to insurance, transportation, and providers; substance use disorder; chronic disease; obesity; unplanned pregnancy; delay or failure to seek prenatal care; social isolation and lack of social support; childcare-associated stress; homelessness; or exposure to violence and trauma.⁶⁵ While mental health conditions do not directly kill women, they do serve as an underlying factor that can result in injury from suicide, accidental deaths, or deaths due to homicide, which makes the association between mental health and maternal mortality complex.⁶⁶ One publication from 14 Maternal Mortality Review Committees reported that mental health conditions were a leading underlying cause of pregnancy-related death in the U.S. in some certain regions of the U.S. from 2009–2017.⁶⁷ Research suggests that suicidal ideation occurs more often among pregnant women than among the general population⁶⁸ and suicide most commonly occurs in the late postpartum period,⁶⁹ with one study finding that

suicide often occurs within 9 to 12 months postpartum

62 Centers for Disease Control and Prevention, "Depression During and After Pregnancy," <https://www.cdc.gov/reproductivehealth/features/maternal-depression/index.html>; Haight, Sarah C. MPH, Byatt, Nancy DO, MS, Moore Simas, Tiffany A. MD, MPH, Robbins, Cheryl L. PhD, MS, Ko, Jean Y. PhD, "Recorded Diagnoses of Depression During Delivery Hospitalizations in the United States, 2000–2015," *American Journal of Obstetrics and Gynecology*, Vol. 133, No. 6 (June 2019): 1216–1223, https://journals.lww.com/greenjournal/Citation/2019/06000/Recorded_Diagnoses_of_Depression_During_Delivery_20.aspx. 63 Centers for Disease Control and Prevention, "Depression During and After Pregnancy," <https://www.cdc.gov/reproductivehealth/features/maternal-depression/index.html>. 64 Jean Y. Ko, PhD, Karlynn M. Rockhill, MPH1, Van T. Tong, MPH, Brian Morrow, Sherry L. Farr, PhD, "Trends in Postpartum Depressive Symptoms — 27 States, 2004, 2006, and 2012," *Morbidity and Mortality Weekly Report*, Vol. 66, No. 6 (Feb. 17, 2017): 153–156, https://www.cdc.gov/mmwr/volumes/66/wr/mm6606a1.htm?s_cid=mm6606a1_w. 65 CDC Foundation, Building U.S. Capacity to Review and Prevent Maternal Deaths: Report from Nine Maternal Mortality Review Committees, 2018, p. 37, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>. 66 CDC Foundation, Report from Maternal Mortality Review Committees: A View Into Their Critical Role, p. 32, <https://www.cdcfoundation.org/sites/default/files/upload/pdf/MMRIARepor.pdf>. CDC Foundation, Building U.S. Capacity to Review and Prevent Maternal Deaths: Report from Nine Maternal Mortality Review Committees, 2018, p. 37, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>. 67 Centers for Disease Control and Prevention, "Pregnancy-Related Deaths: Data from 14 U.S. Maternal Mortality Review Committees, 2008–2017," <https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/mmr-data-brief.html>. 68 CDC Foundation, Building U.S. Capacity to Review and Prevent Maternal Deaths: Report from Nine Maternal Mortality Review Committees, 2018, p. 38, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>. Bizu Gelaye, PhD, MPH, Sandhya Kajeepeta, MSc, and Michelle A. Williams, ScD, "Suicidal Ideation in Pregnancy: An Epidemiologic Review," *Arch Womens Ment Health*, Vol. 19, No. 5 (October 2016): 741–751, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5023474/>. 69 CDC Foundation, Building U.S. Capacity to Review and Prevent Maternal Deaths: Report from Nine Maternal

Commented [KC10]: The data in this entire section begs the question as to whether Black women have less access to the relevant health care. I mentioned it above but it may bear repeating occasionally to X reference the later section introducing the racial disparities data, as we are only in the intro but way into the weeds.

Commented [KC11]: Julie please cite and add info from the links of this article: https://www.nytimes.com/2020/09/09/parenting/mental-health-parents-coronavirus.html?surface=home-living-vi&fallback=false&req_id=881256864&algo=identity&imp_id=640959487&action=click&module=Smarter%20Living&pgtype=Homepage

Please add relevant info about new moms if you think it's relevant.

Also, can you find any studies about whether there are similar increases among Black women? If not let's leave a place holder b/c this increase during COVID-19 may intersect with racial disparities (not just gender).

<https://www.cdc.gov/reproductivehealth/features/maternal-depression/index.html>
https://journals.lww.com/greenjournal/Citation/2019/06000/Recorded_Diagnoses_of_Depression_During_Delivery_20.aspx
https://journals.lww.com/greenjournal/Citation/2019/06000/Recorded_Diagnoses_of_Depression_During_Delivery_20.aspx
<https://www.cdc.gov/reproductivehealth/features/maternal-depression/index.html>
https://www.cdc.gov/mmwr/volumes/66/wr/mm6606a1.htm?s_cid=mm6606a1_w
<https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>
<https://www.cdcfoundation.org/sites/default/files/upload/pdf/MMRIARepor.pdf>
<https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>
<https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/mmr-data-brief.html>
<https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/mmr-data-brief.html>
<https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5023474/>
https://www.nytimes.com/2020/09/09/parenting/mental-health-parents-coronavirus.html?surface=home-living-vi&fallback=false&req_id=881256864&algo=identity&imp_id=640959487&action=click&module=Smarter%20Living&pgtype=Homepage
https://www.nytimes.com/2020/09/09/parenting/mental-health-parents-coronavirus.html?surface=home-living-vi&fallback=false&req_id=881256864&algo=identity&imp_id=640959487&action=click&module=Smarter%20Living&pgtype=Homepage
https://www.nytimes.com/2020/09/09/parenting/mental-health-parents-coronavirus.html?surface=home-living-vi&fallback=false&req_id=881256864&algo=identity&imp_id=640959487&action=click&module=Smarter%20Living&pgtype=Homepage
https://www.nytimes.com/2020/09/09/parenting/mental-health-parents-coronavirus.html?surface=home-living-vi&fallback=false&req_id=881256864&algo=identity&imp_id=640959487&action=click&module=Smarter%20Living&pgtype=Homepage
https://www.nytimes.com/2020/09/09/parenting/mental-health-parents-coronavirus.html?surface=home-living-vi&fallback=false&req_id=881256864&algo=identity&imp_id=640959487&action=click&module=Smarter%20Living&pgtype=Homepage
https://www.nytimes.com/2020/09/09/parenting/mental-health-parents-coronavirus.html?surface=home-living-vi&fallback=false&req_id=881256864&algo=identity&imp_id=640959487&action=click&module=Smarter%20Living&pgtype=Homepage

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among women with higher rates of prior mental illness than women living postpartum.⁷⁰ In addition, substance abuse can lead to increased risk of suicide or unintentional overdose,⁷¹ and "[t]reatment for substance use disorder during pregnancy involves a complex assessment of risk related not only to pregnancy, but also to interactions with other treatments of comorbid conditions, such as antidepressants."⁷²

Maternal morbidity indicates risk factors and "includes physical and psychologic conditions that result from or are aggravated by pregnancy and have an adverse effect on a woman's health," and the most severe complications are commonly referred to as "severe maternal morbidity."⁷³ The CDC indicates that severe maternal morbidity "includes unexpected outcomes of labor and delivery that result in significant short- or long-term consequences to a woman's health."⁷⁴ Each year, more than 50,000 women in the U.S. experience severe maternal morbidity, and those numbers have been steadily increasing.⁷⁵ While a combination of factors is likely responsible for the increase in severe maternal morbidity in the U.S., it has been documented that CDC has documented that factors such as maternal age, pre-pregnancy obesity, preexisting chronic medical conditions, and caesarean deliveries are contributing factors.⁷⁶

The CDC identifies severe maternal morbidity using hospital discharge data and International Classification of Diseases (ICD) diagnosis and procedure codes.⁷⁷ There are currently 21 indicators (with corresponding ICD codes) used to identify delivery hospitalizations with severe maternal morbidity.⁷⁸ Figure 1.4 shows the rate of severe maternal morbidity in the U.S. from 1993–2014.

Mortality Review Committees, 2018, p. 38, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>; Wallace, M.E., Hoyert, D., Williams, C., & Mendola, P., "Pregnancy-associated homicide and suicide in 37 US states with enhanced pregnancy surveillance," *Obstetrics & Gynecology*, Vol. 215 No. 3 (2016): 364.e1– 364.e10, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5003645/>. 70 MGH Center for Women's Mental Health, "Perinatal Suicide: Highest Risk Occurs at 9 to 12 Months Postpartum," <https://womensmentalhealth.org/posts/perinatal-suicide-highest-risk-occurs-at-9-to-12-months-postpartum/>. 71 Ibid.; Bolton, J., Cox, B., Clara, I., & Sareen, J., "Use of alcohol and drugs to self-medicate anxiety disorders in a nationally representative sample, The Journal of nervous and mental disease, Vol. 194, No. 11 (November 2006): 818–825, https://journals.lww.com/jonmd/Abstract/2006/11000/Use_of_Alcohol_and_Drugs_to_Self_Medicat_Axiety.2.aspx. 72 CDC Foundation, Building U.S. Capacity to Review and Prevent Maternal Deaths: Report from Nine Maternal Mortality Review Committees, 2018, p. 38, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>. 73 Centers for Disease Control and Prevention, "Pregnancy Complications," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-complications.html>. 74 Centers for Disease Control and Prevention, "Severe Maternal Morbidity in the United States," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severematernalmorbidity.html>. 75 Ibid. 76 Ibid. 77 Ibid. 78 Centers for Disease Control and Prevention, "How Does CDC Identify Severe Maternal Morbidity?," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/smm/severe-morbidity-ICD.htm>.

Commented [KC12]: Try to explain why treatment is difficult during pregnancy b/c of not wanting to prescribe anti-depressants. It doesn't have to be long, but try to explain what the quote means so the reader can understand. The explanation can even be in the FN.

<https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5003645/>
<https://womensmentalhealth.org/posts/perinatal-suicide-highest-risk-occurs-at-9-to-12-months-postpartum/>
<https://womensmentalhealth.org/posts/perinatal-suicide-highest-risk-occurs-at-9-to-12-months-postpartum/>
https://journals.lww.com/jonmd/Abstract/2006/11000/Use_of_Alcohol_and_Drugs_to_Self_Medicat_Axiety.2.aspx
https://journals.lww.com/jonmd/Abstract/2006/11000/Use_of_Alcohol_and_Drugs_to_Self_Medicat_Axiety.2.aspx
<https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>
<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-complications.html>
<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severematernalmorbidity.html>
<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/smm/severe-morbidity-ICD.htm>

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Source: Centers for Disease Control and Prevention, "Rates in Severe Morbidity Indicators per 10,000 Delivery Hospitalizations, 1993–2014," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/smm/rates-severe-morbidity-indicator.htm>.

The vast majority of women who experienced severe maternal morbidity from 1993–2014 received blood transfusions, and so it is considered to be an indicator of the condition. therefore the rates are displayed for women with any indicator of severe maternal morbidity, women who had only blood transfusion as an indicator, and women who had some other indicator other than blood transfusion.⁷⁹ The overall rate of severe maternal morbidity (measured per 10,000 delivery hospitalizations) increased from 49.5 in 1993 to 144.0 in 2014, nearly a 200 percent increase.⁸⁰ When excluding Among women who did not receive blood transfusions, the rate of severe maternal morbidity increased from 28.6 in 1993 to 35.0 in 2014, a roughly 20 percent increase.⁸¹

There are various many commonalities among women who survive severe maternal morbidity and those who die from similar complications.⁸² The WHO has developed a "near miss" framework for understanding and classifying "the similarities, the differences and the relationship between women who died and those who survived life-threatening conditions [that

⁷⁹ Centers for Disease Control and Prevention, "Severe Maternal Morbidity in the United States," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severematernalmorbidity.html>. ⁸⁰ Centers for Disease Control and Prevention, "Rates in Severe Morbidity Indicators per 10,000 Delivery Hospitalizations, 1993–2014," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/smm/rates-severe-morbidity-indicator.htm>. ⁸¹ Ibid. ⁸² World Health Organization, "The WHO Near-Miss Approach," https://www.who.int/reproductivehealth/topics/maternal_perinatal/nmconcept/en/.

24.5

122.3

49.5

144

28.6 35

0

20

40

60

80

100

120

140

160

Blood transfusions Overall with blood transfusions Overall without blood transfusions

Figure 1.4.

Severe Maternal Morbidity (per 10,000) in the U.S. 1993-2014

Rate
of
Severe
Maternal
Morbidity
per
10,000
live
births
in
the
U.S.
1993-2014

Commented [KC13]: Why are blood transfusions important? Please convey this data a little more clearly. I think my edits take care of it here.

<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/smm/rates-severe-morbidity-indicator.htm>
<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severematernalmorbidity.html>
<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/smm/rates-severe-morbidity-indicator.htm>
<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/smm/rates-severe-morbidity-indicator.htm>
https://www.who.int/reproductivehealth/topics/maternal_perinatal/nmconcept/en/

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can] provide a more complete assessment of quality in maternal health care.”⁸³ The American College of Obstetricians and Gynecologists has acknowledged that severe maternal morbidity, or “near misses” are associated with a high rate of preventability (similar to maternal mortality), although without identification and treatment has been lacking, certain conditions could lead to maternal death.⁸⁴ Similarly, the College states that maternal mortality also has a high rate of preventability.⁸⁵

Maternal mortality is an important public health concern in the U.S., yet the federal government U.S. has faced many challenges to accurately identify and report maternal deaths.⁸⁶ The accuracy of data based upon perceived flaws in the way the U.S. investigates maternal deaths has been called into question in recent years.⁸⁷ In fact for example, while NCHS recently reported national maternal mortality statistics for 2018, it had not published a national maternal mortality rate for over a decade due to challenges with correctly identifying and reporting maternal mortality data.⁸⁸ A prominent 2016 study declared that it is “an international embarrassment” that the U.S. has not been able to provide a national mortality rate to international data repositories since 2007, citing underfunding to state and national vital statistics systems.⁸⁹ This same study, as a result of independent data analysis, reported a much higher

⁸³ Ibid. ⁸⁴ American College of Obstetricians and Gynecologists, “Severe Maternal Morbidity: Screening and Review,” *Obstetric Care Consensus*, No. 5, September 2016, <https://www.acog.org/clinical/clinical-guidance/obstetric-care-consensus/articles/2016/09/severe-maternal-morbidity-screening-and-review>. ⁸⁵ Ibid. ⁸⁶ Centers for Disease Control and Prevention, National Center for Health Statistics, *First Data Released on Maternal Mortality in Over a Decade*, Jan. 30, 2020, https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm. ⁸⁷ Marian F. MacDorman, PhD, Eugene Declercq, PhD, Howard Cabral, PhD, and Christine Morton, PhD, “Recent Increases in the U.S. Maternal Mortality Rate Disentangling Trends From Measurement Issues,” *Obstet Gynecol*, Vol. 128, No. 3 (September 2016): 8, http://d279m997dpfvgi.cloudfront.net/wp/2016/08/MacDormanM.USMatMort.OBGYN_2016.online.pdf; Annalisa Merelli, “The data on how many new mothers die in the US are in shambles,” *Quartz*, Oct. 29, 2017, <https://qz.com/1108268/maternal-mortality-data-in-the-us-is-so-bad-we-dont-actually-know-how-many-new-mothers-die/>; Robin Fields and Joe Sexton, “The Embarrassing State of U.S. Maternal Health-Care Data,” *Pacific Standard*, Oct. 24, 2017, <https://psmag.com/social-justice/the-embarrassing-state-of-maternal-health-care-data>; Robin Fields and Joe Sexton, “How Many American Women Die From Causes Related to Pregnancy or Childbirth? No One Knows,” *ProPublica*, Oct. 23, 2017, <https://www.propublica.org/article/how-many-american-women-die-from-causes-related-to-pregnancy-or-childbirth>; Boston University School of Public Health, “Better Data Collection Needed to Reduce Maternal Mortality,” Jan. 8, 2018, <https://www.bu.edu/sph/2018/01/08/better-data-collection-needed-to-reduce-maternal-mortality/>; Rachel Mayer, Alison Dingwall, Juli Simon-Thomas, Abdul Sheikhnureidin, Kathy Lewis, “The United States Maternal Mortality Rate Will Continue To Increase Without Access To Data,” *Health Affairs*, Feb. 4, 2019, <https://www.healthaffairs.org/doi/10.1377/hblog20190130.92512/full/>. ⁸⁸ Centers for Disease Control and Prevention, National Center for Health Statistics, “First Data Released on Maternal Mortality in Over a Decade,” Jan. 30, 2020, https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm. ⁸⁹ Marian F. MacDorman, PhD, Eugene Declercq, PhD, Howard Cabral, PhD, and Christine Morton, PhD, “Recent Increases in the U.S. Maternal Mortality Rate Disentangling Trends From Measurement Issues,” *Obstet Gynecol*, Vol. 128, No. 3 (September 2016): 8, http://d279m997dpfvgi.cloudfront.net/wp/2016/08/MacDormanM.USMatMort.OBGYN_2016.online.pdf. See also Donna L. Hoyert, Ph.D., and Arialdi M. Miniño, M.P.H., “Maternal Mortality in the United States: Changes in Coding, Publication, and Data Release, 2018,” *National Vital Statistics Reports*, Vol. 69, No. 2 (Jan. 30, 2020): 1, https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_02-508.pdf.

Commented [KC14]: Pincites are needed in notes 84-85.

<https://www.acog.org/clinical/clinical-guidance/obstetric-care-consensus/articles/2016/09/severe-maternal-morbidity-screening-and-review>
<https://www.acog.org/clinical/clinical-guidance/obstetric-care-consensus/articles/2016/09/severe-maternal-morbidity-screening-and-review>
https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm
http://d279m997dpfvgi.cloudfront.net/wp/2016/08/MacDormanM.USMatMort.OBGYN_2016.online.pdf
<https://qz.com/1108268/maternal-mortality-data-in-the-us-is-so-bad-we-dont-actually-know-how-many-new-mothers-die/>
<https://qz.com/1108268/maternal-mortality-data-in-the-us-is-so-bad-we-dont-actually-know-how-many-new-mothers-die/>
<https://psmag.com/social-justice/the-embarrassing-state-of-maternal-health-care-data>
<https://www.propublica.org/article/how-many-american-women-die-from-causes-related-to-pregnancy-or-childbirth>
<https://www.propublica.org/article/how-many-american-women-die-from-causes-related-to-pregnancy-or-childbirth>
<https://www.bu.edu/sph/2018/01/08/better-data-collection-needed-to-reduce-maternal-mortality/>
<https://www.bu.edu/sph/2018/01/08/better-data-collection-needed-to-reduce-maternal-mortality/>
<https://www.healthaffairs.org/doi/10.1377/hblog20190130.92512/full/>
https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm
http://d279m997dpfvgi.cloudfront.net/wp/2016/08/MacDormanM.USMatMort.OBGYN_2016.online.pdf
https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_02-508.pdf

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maternal mortality rate in the U.S. and Washington, D.C. (excluding California and Texas, which were analyzed separately) of 23.8 deaths per 100,000 live births in 2014, a 26.6 percent increase from the 2000 rate of 18.8 deaths per 100,000 live births.⁹⁰ By comparison, CDC data that stated the 2014 maternal mortality rate was 18 deaths per 100,000 live births,⁹¹ which these particular researchers believe to be underreported.⁹²

Official statistics regarding maternal deaths are obtained through death certificates completed by physicians and reported to the states, for which NCHS has made efforts to standardize across states.⁹³ In 2003, NCHS recommended that all states add a standardized pregnancy “checkbox” item to the U.S. Standard Certificate of Death to improve the identification and address the underreporting of maternal deaths,⁹⁴ according to the definition used by NCHS.⁹⁵ See Figure 1.5.

Figure 1.5.

Pregnancy Checkbox Item Addition to U.S. Standard Certificate of Death

Source: Donna L. Hoyert, Ph.D., Sayeedha F.G. Uddin, M.D., M.P.H., Arialdi M. Miniño, M.P.H., “Evaluation of the Pregnancy Status Checkbox on the Identification of Maternal Deaths,” *National Vital Statistics Reports*, Vol. 69, No. 1 (Jan. 30, 2020): 2, https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_01-508.pdf.

The implementation of the checkbox occurred very gradually, since states individually control their own vital registration systems, and it was not fully implemented until 2017.⁹⁶ With states implementing the checkbox at different times, it made it difficult for NCHS to provide accurate estimates of national-level trends during this period of time, thus national-level estimates were

⁹⁰ Ibid., 1. ⁹¹ Source: Centers for Disease Control and Prevention, “Pregnancy Mortality Surveillance System,” <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>. ⁹² Marian F. MacDorman, PhD, Eugene Declercq, PhD, Howard Cabral, PhD, and Christine Morton, PhD, “Recent Increases in the U.S. Maternal Mortality Rate Disentangling Trends From Measurement Issues,” *Obstet Gynecol*, Vol. 128, No. 3 (September 2016): 1, http://d279m997dpfvgi.cloudfront.net/wp/2016/08/MacDormanM.USMatMort.OBGYN_2016.online.pdf. ⁹³ Centers for Disease Control, National Center for Health Statistics, “First Data Released on Maternal Mortality in Over a Decade,” Jan. 30, 2020, https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm. ⁹⁴ Ibid.; Donna L. Hoyert, Ph.D., and Arialdi M. Miniño, M.P.H., “Maternal Mortality in the United States: Changes in Coding, Publication, and Data Release, 2018,” *National Vital Statistics Reports*, Vol. 69, No. 2 (Jan. 30, 2020): 1, https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_02-508.pdf. ⁹⁵ See supra note 28. ⁹⁶ Centers for Disease Control, National Center for Health Statistics, “First Data Released on Maternal Mortality in Over a Decade,” Jan. 30, 2020, https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm.

36. IF FEMALE: Not pregnant within past year Pregnant at time of death Not pregnant, but pregnant within 42 days of death Not pregnant, but pregnant 43 days to 1 year before death Unknown if pregnant within the past year

Commented [KC15]: Did they standardize the death certificates? Or the data? The reader cannot follow – when editing, please help flag inconsistencies, look at the source and edit accordingly.

https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_01-508.pdf
<https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm#ratio>
http://d279m997dpfvgi.cloudfront.net/wp/2016/08/MacDormanM.USMatMort.OBGYN_2016.online.pdf
https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2020/202001_MMR.htm
https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_02-508.pdf

not reported for a decade after 2007.97 Implementation of the pregnancy checkbox resulted in the identification of a significantly greater number of maternal deaths using that data—nearly three times greater than the number of identified maternal deaths without the use of the checkbox data.98 Evaluation of the data also found that the ratio of number of maternal deaths with the use of the pregnancy checkbox data vs. without the use of the checkbox fluctuated depending on certain characteristics such as age, race/ethnicity, and cause of death.99 Further, death certificates can identify pregnancy-associated deaths through the use of the pregnancy checkbox and the cause-of-death code, however they alone are not sufficient to identify all pregnancy-associated deaths.100 A notable complication discovered from data analysis has been the misclassification of pregnancy status on death certificates, with some research indicating that approximately 14 percent of pregnancy-associated deaths101 “had no verifiable evidence of pregnancy,” therefore contributing to biased trend estimates for the maternal mortality rate, particularly among women aged 40 and older.102 However, a recent report that examined the impact of the pregnancy checkbox noted that this was a complication of the data gathered by NCHS, but however other data sources such as PMSS, data from Maternal Mortality Review Committees, and state-based quality assurance projects, “which rely on detailed record reviews or data linkages to verify recent pregnancy status, may not be subject to the same degree of misclassification as vital records data.”103

As of the 2018 data year, all states had implemented the checkbox on their death certificates and NCHS resumed publication of the U.S. maternal mortality rate.104 Additionally, NCHS implemented new coding methods for the 2018 data year in order to “mitigate some quality

97 Lauren M. Rossen, Ph.D., M.S., Lindsay S. Womack, Ph.D., M.P.H., Donna L. Hoyert, Ph.D., Robert N. Anderson, Ph.D., and Sayeedha F.G. Uddin, M.D., M.P.H., “The Impact of the Pregnancy Checkbox and Misclassification on Maternal Mortality Trends in the United States, 1999–2017,” National Center for Health Statistics, Vital and Health Statistics, Series 3, No. 44 (January 2020): 1, https://www.cdc.gov/nchs/data/series/sr_03/sr03_044-508.pdf. 98 Donna L. Hoyert, Ph.D., Sayeedha F.G. Uddin, M.D., M.P.H., Arialdi M. Miniño, M.P.H., “Evaluation of the Pregnancy Status Checkbox on the Identification of Maternal Deaths,” National Vital Statistics Reports, Vol. 69, No. 1 (Jan. 30, 2020): 1, https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_01-508.pdf. 99 Ibid., 100 Building U.S. Capacity to Review and Prevent Maternal Deaths: Report from Nine Maternal Mortality Review Committees, 2018, p. 10, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>. See also infra notes xxx discussing the role of Maternal Mortality Review Committees and their partnership with state vital records offices and epidemiologists in working to accurately identify pregnancy-associated deaths (by use of data and records separate from just death certificates) in order to then identify pregnancy-related deaths. 101 Lauren M. Rossen, Ph.D., M.S., Lindsay S. Womack, Ph.D., M.P.H., Donna L. Hoyert, Ph.D., Robert N. Anderson, Ph.D., and Sayeedha F.G. Uddin, M.D., M.P.H., “The Impact of the Pregnancy Checkbox and Misclassification on Maternal Mortality Trends in the United States, 1999–2017,” National Center for Health Statistics, Vital and Health Statistics, Series 3, No. 44 (January 2020): 1, https://www.cdc.gov/nchs/data/series/sr_03/sr03_044-508.pdf. Pregnancy-associated deaths are defined as all deaths during pregnancy or within 1 year of pregnancy, regardless of cause. 102 Ibid., 2. 103 Ibid., 19. 104 Donna L. Hoyert, Ph.D., and Arialdi M. Miniño, M.P.H., “Maternal Mortality in the United States: Changes in Coding, Publication, and Data Release, 2018,” National Vital Statistics Reports, Vol. 69, No. 2 (Jan. 30, 2020): 1, https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_02-508.pdf.

- https://www.cdc.gov/nchs/data/series/sr_03/sr03_044-508.pdf
- https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_01-508.pdf
- <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>
- https://www.cdc.gov/nchs/data/series/sr_03/sr03_044-508.pdf
- https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_02-508.pdf

concerns identified by multiple evaluations of information on pregnancy status provided in the checkbox,” and also “adopted a new method for displaying the coded causes of death for maternal deaths in the mortality data file.105

Similar to identifying maternal deaths, identifying cases of severe maternal morbidity can be challenging—in some cases more complicated than identifying maternal deaths.106 Maternal mortality is clearly defined, but to date there is no existing consensus definition as to what conditions should represent severe maternal morbidity among the healthcare field.107 According to the American College of Obstetricians and Gynecologists (ACOG) and the Society for Maternal-Fetal Medicine (SMFM), severe maternal morbidity “is not always reported and may not be well coded in, or otherwise readily extracted from, record systems,” and “[d]efinitions of severe maternal morbidity that rely on diagnosis codes, such as the Centers for Disease Control and Prevention’s definition, may miss cases, have a relatively low positive predictive value (0.40) and, at a practical level, may be difficult for facilities to operationalize.”108 Additionally, ACOG and SMFM recommend that facilities have a screening process in place to detect cases of severe maternal morbidity, with SMFM specifically recommending the use of two screening criteria: 1) transfusion with four or more units of blood and 2) admission of a pregnant or postpartum woman to an intensive care unit, as these criteria have “high sensitivity and specificity for identifying women with severe morbidity and a high positive predictive value (0.65) for identifying severe maternal morbidity.”109 They both recommend that facilities review all cases that meet at least one of the criteria to properly characterize the events and determine if the event was potentially avoidable, but acknowledge that not every case that meets the criteria will represent preventable severe maternal morbidity, which “underscores the importance of

105 Ibid. See also Donna L. Hoyert, Ph.D., Sayeedha F.G. Uddin, M.D., M.P.H., Arialdi M. Miniño, M.P.H., “Evaluation of the Pregnancy Status Checkbox on the Identification of Maternal Deaths,” National Vital Statistics Reports, Vol. 69, No. 1 (Jan. 30, 2020): 2, https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_01-508.pdf. This report explains in detail the coding challenges and the new coding procedures for more accurately identifying maternal deaths using both the pregnancy status checkbox information as well as the cause-of-death information on the death certificate. 106 Sarah K. Kilpatrick, MD, PhD and Jeffrey L. Ecker, MD, American College of Obstetricians and Gynecologists and the Society for Maternal-Fetal Medicine, “Severe Maternal Morbidity: Screening and Review,” American Journal of Obstetrics and Gynecology, Vol. 215, No. 3 (September 2016): B18, <https://www.ajog.org/action/showPdf?pii=S0002-9378%2816%2930523-3>. 107 Ibid. 108 Ibid. See also Elliott K. Main, MD, Anisha Abreo, MPH, Jennifer McNulty, MD, William Gilbert, MD, Colleen, McNally, MD, Debra Poeltler, PhD, Katarina Lanner-Cusin, MD, Douglas Fenton, MD, Theresa, Gipps, MD, Kathryn Melsop, MS, Naomi Greene, PhD, Jeffrey B. Gould, MD, MPH, Sarah Kilpatrick, PhD, MD, “Measuring Severe Maternal Morbidity: Validation of Potential Measures,” American Journal of Obstetrics and Gynecology, Vol. 214, No. 5 (May 2016): 643 e1-643 e10, <https://www.sciencedirect.com/science/article/abs/pii/S0002937815022978>. 109 Sarah K. Kilpatrick, MD, PhD and Jeffrey L. Ecker, MD, American College of Obstetricians and Gynecologists and the Society for Maternal-Fetal Medicine, “Severe Maternal Morbidity: Screening and Review,” American Journal of Obstetrics and Gynecology, Vol. 215, No. 3 (September 2016): B18, <https://www.ajog.org/action/showPdf?pii=S0002-9378%2816%2930523-3>.

- https://www.cdc.gov/nchs/data/nvsr/nvsr69/nvsr69_01-508.pdf
- <https://www.ajog.org/action/showPdf?pii=S0002-9378%2816%2930523-3>
- <https://www.sciencedirect.com/science/article/abs/pii/S0002937815022978>
- <https://www.ajog.org/action/showPdf?pii=S0002-9378%2816%2930523-3>

reviewing each ‘screen positive’ case to identify those with true morbidity and, especially, those that may be deemed upon review to have been potentially avoidable.”110

Racial Disparities in Maternal Death RatesHealth

Significant racial and ethnic disparities exist in the pregnancy-related deaths of women across the U.S.111 These racial disparities have the greatest impact upon Black women and impact Black women of all ages, education levels, and persist across time.112 See Figure 1.6.

Source: Emily E. Petersen, MD, Nicole L. Davis, PhD, David Goodman, PhD, Shanna Cox, MSPH, Carla Syverson, MSN, Kristi Seed, Carrie

110 Ibid. See also Elliott K. Main, MD, Anisha Abreo, MPH, Jennifer McNulty, MD, William Gilbert, MD, Colleen, McNally, MD, Debra Poeltler, PhD, Katarina Lanner-Cusin, MD, Douglas Fenton, MD, Theresa, Gipps, MD, Kathryn Melsop, MS, Naomi Greene, PhD, Jeffrey B. Gould, MD, MPH, Sarah Kilpatrick, PhD, MD, “Measuring Severe Maternal Morbidity: Validation of Potential Measures,” American Journal of Obstetrics and Gynecology, Vol. 214, No. 5 (May 2016): 643 e1-643 e10, <https://www.sciencedirect.com/science/article/abs/pii/S0002937815022978>; Stacie E. Geller, Deborah Rosenberg, Suzanne Cox, Monique Brown, Louise Simonson, Sarah Kilpatrick, “A Scoring System Identified Near-Miss Maternal Morbidity During Pregnancy,” Journal of Clinical Epidemiology, Vol. 57, No. 7 (July 2004): 716-720, <https://www.sciencedirect.com/science/article/abs/pii/S0895435604000083>; Whitney B. You, Suchitra Chandrasekaran, John Sullivan, William Grobman, “Validation of a Scoring System to Identify Women with Near-Miss Maternal Morbidity,” American Journal of Perinatology, Vol. 30, No. 1 (2013): 21-24, <https://www.thieme-connect.de/products/ejournals/pdf/10.1055/s-0032-1321493.pdf>. 111 Emily E. Petersen, MD, Nicole L. Davis, PhD, David Goodman, PhD, Shanna Cox, MSPH, Carla Syverson, MSN, Kristi Seed, Carrie Shapiro-Mendoza, PhD, William M. Callaghan, MD, Wanda Barfield, MD, “Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007–2016,” Morbidity and Mortality Weekly Report, Centers for Disease Control and Protection, Vol. 66, No. 35 (Sep. 6, 2019): 762-765, <https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6635a3-H.pdf>. 112 Ibid.

16.7 12.7
40.6
29.7
13.5 11.5
0 5
10 15 20 25 30 35 40 45

All Women White Black Native American Asian/Pacific Islander

Latina

Figure 1.6.

Pregnancy-Related Deaths in the U.S. by Race/Ethnicity* 2007-2016

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Race/Ethnicity
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<https://www.thieme-connect.de/products/ejournals/pdf/10.1055/s-0032-1321493.pdf>
<https://www.thieme-connect.de/products/ejournals/pdf/10.1055/s-0032-1321493.pdf>
<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>

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Shapiro-Mendoza, PhD, William M. Callaghan, MD, Wanda Barfield, MD, "Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007–2016," Morbidity and Mortality Weekly Report, Centers for Disease Control and Protection, Vol. 68, No. 35 (Sep. 6, 2019): 763, <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>.

*Black, White, Native American, and A/PI were non-Latina; Latina women might be of any race; 25 pregnancy-related deaths with unknown race/ethnicity were included in the total analyses but not presented in an individual column.
†These numbers are reported using the CDC's definition of pregnancy-related deaths: "the death of a woman while pregnant or within [one] year of the end of a pregnancy—regardless of the outcome, duration or site of the pregnancy—from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes."

During 2007–2016, the pregnancy-related mortality ratio for all women was 16.7 deaths per 100,000 live births. The pregnancy-related mortality ratio for White women during those years was 12.7 deaths per 100,000 live births. In contrast, the pregnancy-related mortality ratio for Black women during those years was 40.8 deaths per 100,000 live births, which is 3.2 times that of White women. The pregnancy-related mortality ratio for Native American women during that time was 29.7 deaths per 100,000 live births, which is 2.3 times that of White women. The pregnancy-related mortality ratios for Asian/Pacific Islander women and Latina women during that time were 13.5 and 11.5 deaths per 100,000 live births respectively, which are 1.1 and 0.9 times that of White women, respectively.

During 2007–2016, pregnancy-related mortality ratios generally increased with maternal age across all racial and ethnic groups. See Figure 1.7.

Source: Emily E. Petersen, MD, Nicole L. Davis, PhD, David Goodman, PhD, Shanna Cox, MSPH, Carla Syverson, MSN, Kristi Seed, Carrie Shapiro-Mendoza, PhD, William M. Callaghan, MD, Wanda Barfield, MD, "Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007–2016," Morbidity and Mortality Weekly Report, Centers for Disease Control and Protection, Vol. 68, No. 35 (Sep. 6, 2019): 763, <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>.

*Black, White, Native American, and A/PI were non-Latina; Latina women might be of any race; 25 pregnancy-related deaths with unknown race/ethnicity were included in the total analyses but not presented in an individual column.

0 20 40 60 80
100 120 140 160 180 200
<20 20-24 25-29 30-34 35-39 ≥40

All Women
White
Black
Native American
Asian/Pacific Islander
Latina

Figure 1.7.
Pregnancy-Related Deaths by Race/Ethnicity* and Age Group 2007–2016

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be r
of p
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an cy
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hs)†

Age Group**
Commented [KC16]: Please add explanation that the data about these groups of women of color may be incomplete. I found some that I put down in the intro. I believe there is more data about Latinas.
<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>
<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>

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**Two pregnancy-related deaths with unknown age were excluded from age analyses. Data was omitted from certain categories due to fewer than 10 deaths, potentially causing calculated ratios to be unreliable.

†These numbers are reported using the CDC’s definition of pregnancy-related deaths: “the death of a woman while pregnant or within [one] year of the end of a pregnancy—regardless of the outcome, duration or site of the pregnancy—from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.”

The greatest racial disparities in pregnancy-related deaths from 2007-2016 were seen among Native American women and White women aged 35-39, where the pregnancy-related mortality ratio was 5.1 times higher for Native American women than White women; and among Black women and White women aged 30-34, where the pregnancy-related mortality ratio was 4.3 times higher for Black women than White women.¹¹³

During 2007-2016, racial and ethnic disparities were present at all education levels. See Figure 1.8.

Source: Emily E. Petersen, MD, Nicole L. Davis, PhD, David Goodman, PhD, Shanna Cox, MSPH, Carla Syverson, MSN, Kristi Seed, Carrie Shapiro-Mendoza, PhD, William M. Callaghan, MD, Wanda Barfield, MD, “Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007–2016,” *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Protection, Vol. 68, No. 35 (Sep. 6, 2019): 763, <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>.

*Black, White, Native American, and A/PI were non-Latina; Latina women might be of any race; 25 pregnancy-related deaths with unknown race/ethnicity were included in the total analyses but not presented in an individual column.

**687 pregnancy-related deaths with unknown educational levels were excluded from education analyses. Data was omitted from certain categories due to fewer than 10 deaths, potentially causing calculated ratios to be unreliable.

†These numbers are reported using the CDC’s definition of pregnancy-related deaths: “the death of a woman while pregnant or within [one] year of the end of a pregnancy—regardless of the outcome, duration or site of the pregnancy—from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.”

113 Ibid., 763.
0
10
20
30
40
50
60
70
A l l W
o m e n
W h i t e
B l a c k
N a t i v e
A m e r i c a n
A s i a n
/ P a c i f i c
I s l a n d e r
L a t i n a
L e s s t h a n h i g h s c h o o l
H i g h s c h o o l
S o m e c o l l e g e
C o l l e g e g r a d u a t e o r h i g h e r

Figure 1.8.
Pregnancy-Related Deaths by Race/Ethnicity* and Education Completed, 2007-2016

P r e g n a n c y - R e l a t e d M o r t a l i t y R a t i o (P M R) (n u m b e r o f p r e g n a n c y - r e l a t e d d e a t h s) †
Education Completed**

<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>

The greatest racial disparities in pregnancy-related deaths from 2007-2016 were seen among Black women and White women who had completed college degrees or who had completed some college, where the pregnancy-related mortality ratio was 5.2 times and 3.5 times higher for Black women than that of White women, respectively.¹¹⁴ Also notably, there is a sizeable disparity in the 2007-2016 pregnancy-related mortality ratio seen among Black women who had completed college degrees and White women with less than a high school diploma, where the rate was 1.6 times higher for Black women who had completed a higher level of education.¹¹⁵

The CDC has reported that “[c]ardiomyopathy, thrombotic pulmonary embolism, and hypertensive disorders of pregnancy contributed to a significantly higher proportion of pregnancy-related deaths among black women than among white women,” and “[h]emorrhage and hypertensive disorders of pregnancy contributed to a higher proportion of pregnancy-related deaths among [Native American] women than among white women.”¹¹⁶ See Table 1.3.

Table 1.3. Cause-Specific Pregnancy-Related Death, by Race/Ethnicity, 2007-2016 (Proportionate cause of death by race/ethnicity* No. (%) attributed to each cause) Cause of Death White Black Native

American Asian/ Pacific Islander

Latina Total Deaths

Hemorrhage 250 (9.1) 237 (9.7) 23 (19.7)† 66 (19.5)† 173 (15.8)† 752 (11.1)

Infection 418 (15.2) 235 (9.7)§ 10 (8.5)§ 51 (15.0) 183 (16.7) 900 (13.3)

Amniotic fluid embolism 147 (5.3) 106 (4.4) 3 (2.6) 51 (15.0)† 58 (5.3) 365 (5.4)

Thrombotic pulmonary or other embolism

246 (8.9) 265 (10.9)† 9 (7.7) 11 (3.2)§ 88 (8.0) 624 (9.2)

Hypertensive disorders of pregnancy

184 (6.7) 200 (8.2)† 15 (12.8)† 21 (6.2) 106 (9.7)† 528 (7.8)

Anesthesia complications

7 (0.3) 14 (0.6) 0 (0.0) 3 (0.9) 6 (0.5) 30 (0.4)

Cerebrovascular accidents

207 (7.5) 148 (6.1)§ 6 (5.1) 37 (10.9)† 92 (8.4) 490 (7.2)

Cardiomyopathy 288 (10.4) 345 (14.2)† 17 (14.5) 21 (6.2)§ 75 (6.8)§ 748 (11.1)

Other cardiovascular conditions

465 (16.9) 393 (16.2) 13 (11.1) 38 (11.2)§ 124 (11.3)§ 1,035 (15.3)

Other noncardiovascular medical conditions

384 (13.9) 343 (14.1) 16 (13.7) 26 (7.7)§ 130 (11.9) 903 (13.3)

Unknown 160 (5.8) 146 (6.0) 5 (4.3) 14 (4.1) 61 (5.6) 390 (5.8)

Total 2,756 2,432 117 339 1,096 6,765¶ Source: Emily E. Petersen, MD, Nicole L. Davis, PhD, David Goodman, PhD, Shanna Cox, MSPH, Carla Syverson, MSN, Kristi Seed, Carrie Shapiro-Mendoza, PhD, William M. Callaghan, MD, Wanda Barfield, MD, “Racial/Ethnic Disparities in Pregnancy-Related Deaths — United

114 Ibid., 763. 115 Ibid., 763. 116 Ibid., 763.

Commented [KC17]: Seems contradictory to what was just state above. They cannot all be “the greatest racial disparities.” Or if they are, group them together.

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States, 2007–2016,” Morbidity and Mortality Weekly Report, Centers for Disease Control and Protection, Vol. 68, No. 35 (Sep. 6, 2019): 763, <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>.

* Black, White, Native American, and A/PI women were non-Latina; Latina women could be of any race.

† Significantly higher proportion of pregnancy-related deaths compared with that among White women, p<0.05.

§ Significantly lower proportion of pregnancy-related deaths compared with that among White women, p<0.05.

¶ Twenty-five pregnancy-related deaths with unknown race/ethnicity were included in the total but not elsewhere in the table.

Additionally, Asian/Pacific Islander women and Latina women experience a higher proportion of pregnancy-related deaths due to hemorrhage than White women, and Latina women experience a higher proportion of pregnancy related deaths due to hypertensive disorders of pregnancy than White women. Cardiovascular conditions are the leading cause of pregnancy-related death for both Black and White women; hemorrhage is the leading cause of pregnancy-related death for both Native American women and Asian/Pacific Islander women; and infection is the leading cause of pregnancy-related death for Latina women.¹¹⁷

Research has shown that the timing of death among Black and White women did not significantly differ for most periods, with the exception of the period between 43-365 days postpartum (the late postpartum period) where Black women had a greater proportion of deaths at 14.9 percent as compared to 10.2 percent of deaths of White women.¹¹⁸ The greater proportion of deaths of black women during the late postpartum period can be attributed to a higher proportion of pregnancy-related deaths of black women due to cardiomyopathy.¹¹⁹ Cardiomyopathy is the most common cause of death for all women during the late postpartum period.¹²⁰

For each maternal death, nearly 100 women experience severe maternal morbidity.¹²¹ Those rates are elevated for women of color,¹²² with rates reported across various studies over 2 times higher for Black women, nearly 2 times higher for Native American women, and over 2 times higher for Hispanic women in New York City as compared to White women.¹²³ Black women are more

117 U.S. Government Accountability Office, Maternal Mortality: Trends in Pregnancy-Related Deaths and Federal Efforts to Reduce Them, GAO-20-248, March 2020, p. 16, <https://www.gao.gov/assets/710/705331.pdf>. 118 Emily E. Petersen, MD; Nicole L. Davis, PhD; David Goodman, PhD; Shanna Cox, MSPH; Nikki Mayes; Emily Johnston, MPH; Carla Syverson, MSN; Kristi Seed; Carrie K. Shapiro-Mendoza, PhD; William M. Callaghan, MD; Wanda Barfield, MD, “Vital Signs: Pregnancy-Related Deaths, United States, 2011–2015, and Strategies for Prevention, 13 States, 2013–2017,” Morbidity and Mortality Weekly Report, Centers for Disease Control and Protection, Vol. 68, No. 18 (May 10, 2019): 425, <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6818e1-H.pdf>. 119 Ibid., 426. 120 Ibid., 426. 121 Centers for Disease Control and Prevention, “Severe Maternal Morbidity in the United States,” <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severematernalmorbidity.html>; Elizabeth A. Howell, MD, MPP, Professor of Population Health Science & Policy and Obstetrics, Gynecology, and Reproductive Science, Director of the Blavatnik Family Women’s Health Research Institute, Ichan School of Medicine at Mt. Siani, Written Statement for the Racial Disparities in Maternal Health Briefing before the U.S. Commission on Civil Rights, March 2020, at 1 [hereinafter Howell Statement]. 122 Andrea A. Creanga, MD, PhD; Brian T. Bateman, MD, MSc; Elena V. Kuklina, MD, PhD; William M. Callaghan, MD, MPH, “Racial and ethnic disparities in severe maternal morbidity: a multistate analysis, 2008-2010,” American Journal of Obstetrics & Gynecology, Vol. 210, No. 5 (May 2014): 435e1.

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<https://www.gao.gov/assets/710/705331.pdf>

<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6818e1-H.pdf>

<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6818e1-H.pdf>

<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severematernalmorbidity.html>

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likely to experience comorbid illnesses and pregnancy complications than White women, with higher rates of certain types of hemorrhage, preeclampsia, pregnancy-induced and chronic hypertension, asthma, placental disorders, gestational diabetes, preexisting diabetes, and blood disorders.¹²⁴ Women of color, especially Black women, “develop these conditions at earlier [are] more likely to have complications and mortality from these conditions.”¹²⁵

Racial Disparities in Maternal MortalitiesHealth as a Federal Civil Rights Issue

The U.S. Department of Health and Human Services’ (HHS) was established in 1953¹²⁶ to “enhance and protect the health and well-being of all Americans” by “providing for effective health and human services and fostering advances in medicine, public health, and social services.”¹²⁷ HHS administrators more grant funding than all other federal agencies combined and is responsible for over 25 percent of all federal outlays.¹²⁸ With an annual budget of over \$1.2 trillion, HHS operates and funds various public health care programs and entities, including state and local health care facilities.¹²⁹

<https://www.ajog.org/action/showPdf?pii=S0002-9378%2813%2902153-4>; Elizabeth A. Howell, MD, MPP, Natalia Egorova, PhD, MPH, Amy Balbierz, MPH, Jennifer Zeitlin, DSc, MA, and Paul L. Hebert, PhD, “Site of Delivery Contribution to Black-White Severe Maternal Morbidity Disparity,” American Journal of Obstetrics & Gynecology, Vol. 215, No. 2 (August 2016): 143-152; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4967380/>; Dr. Elizabeth A. Howell, MD, MPP, Dr. Natalia N. Egorova, PhD, MPH, Dr. Teresa Janevic, PhD, MPH, Ms. Amy Balbierz, MPH, Dr. Jennifer Zeitlin, DSc, MA, and Dr. Paul L. Hebert, PhD, “Severe Maternal Morbidity Among Hispanic Women in New York City: Investigation of Health Disparities,” American Journal of Obstetrics & Gynecology, Vol. 139, No. 2 (February 2017): 285-294, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5380443/>; Howell Statement, at 1. 124 Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” Obstet Gynecol, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>; Berg, Cynthia J., et al. “Pregnancy-related mortality in the United States, 1991–1997.” Obstetrics & Gynecology, Vol; 101, No. 2 (2003): 289-296; Howell EA, Egorova NN, Balbierz A, Zeitlin J, Hebert PL. Site of delivery contribution to black-white severe maternal morbidity disparity. Am J Obstet Gynecol. 2016 Aug;215(2):143–152; Rathore SS, McMahon MJ. Racial variation in the frequency of intrapartum hemorrhage. Obstet Gynecol. 2001 Feb;97(2):178–183; Bryant AS, Seely EW, Cohen A, Lieberman E. Patterns of pregnancy-related hypertension in black and white women. Hypertens Pregnancy. 2005;24(3):281–290; Carroll KN, Griffin MR, Gebretsadik T, Shintani A, Mitchel E, Hartert TV. Racial differences in asthma morbidity during pregnancy. Obstet Gynecol. 2005 Jul;106(1):66–72; Howell EA, Egorova N, Balbierz A, Zeitlin J, Hebert PL. Black-white differences in severe maternal morbidity and site of care. Am J Obstet Gynecol. 2016;214(1):122.e121–122.e127. 125 Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” Obstet Gynecol, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>; Beckie TM. Ethnic and racial disparities in hypertension management among women. Semin Perinatol. 2017 Jun 7. 126 42 U.S.C. § 3501, Pub. L. No. 88-426, 67 Stat. 631 (1953) (HHS was originally called the Department of Health, Education, and Welfare). 127 U.S. Department of Health and Human Services, “About HHS,” <https://www.hhs.gov/about/index.html>. 128 U.S. Department of Health and Human Services, “HHS Strategic Plan FY 2018-2022 – Introduction, About HHS,” <https://www.hhs.gov/about/strategic-plan/introduction/index.html>. 129 U.S. Department of Health and Human Services, FY 2020 Budget in Brief, p. 1, <https://www.hhs.gov/sites/default/files/fy-2020-budget-in-brief.pdf>.

<https://www.ajog.org/action/showPdf?pii=S0002-9378%2813%2902153-4>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4967380/>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5380443/>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>

<https://www.hhs.gov/about/index.html>

<https://www.hhs.gov/about/strategic-plan/introduction/index.html>

<https://www.hhs.gov/sites/default/files/fy-2020-budget-in-brief.pdf>

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U.S. Constitution does not stipulate that healthcare is a fundamental right.130 Under the Equal Protection Clause of the 14th Amendment to the U.S. Constitution, states shall not “deny to any person within its jurisdiction the equal protection of the laws.”131 Government services provided voluntarily should be provided on a nondiscriminatory basis, but U.S. courts will apply varying degrees of scrutiny when evaluating Equal Protection claims.132 Typically, the Equal Protection Clause only applies to state actors.133 However, Title VI of the Civil Rights Act expands that protection to private entities, where recipients of federal funding are prohibited from discriminating based on race, national origin, or color.134 Therefore, providing a different service to an individual or providing that service to that individual in a different manner from others may be considered discriminatory.135 This applies to intentional discrimination136 as well as disparate impact discrimination,137 which HHS explains as follows:

Programs that receive Federal funds cannot distinguish among individuals on the basis of race, color or national origin, either directly or indirectly, in the types, quantity, quality or timeliness of program services, aids or benefits that they provide or the manner in which they provide them. This prohibition applies to intentional discrimination as well as to procedures, criteria or methods of administration that appear neutral but have a discriminatory effect on individuals because of their race, color, or national origin. Policies and practices that have such an effect must be eliminated unless a recipient can show that they were necessary to achieve a legitimate nondiscriminatory objective. Even if there is such a reason the practice cannot continue if there are alternatives that would achieve the same objectives but that would exclude fewer minorities.138

130 Daryl C. Dykes, *Health Injustice and Justice in Health: The Role of Law and Public Policy in Generating, Perpetuating and Responding to Racial and Ethnic Health Disparities Before and After the Affordable Care Act*, 41 *Will. Mitchell L. Rev.* 1150 (2015), <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=2900&context=wmlr>. 131 U.S. Constitution, Amendment XIV § 1. 132 Daryl C. Dykes, *Health Injustice and Justice in Health: The Role of Law and Public Policy in Generating, Perpetuating and Responding to Racial and Ethnic Health Disparities Before and After the Affordable Care Act*, 41 *Will. Mitchell L. Rev.* 1150-1152 (2015), <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=2900&context=wmlr>. 133 See *United States v. Stanley*, 109 U.S. 3, 3 S. Ct. 18 (1883) at 18. 134 42 U.S.C. § 2000d, et seq.; 45 C.F.R. § 80.3; 28 C.F.R. § 42.104. 135 U.S. Dept of Health and Human Services, “Know the Rights that Protect Us from Discrimination Based on Color or National Origin,” <https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/factsheets/yourrightsundertitleviiofthecivilrightsact.pdf>. 136 See U.S. Dept of Justice, “Title VI Legal Manual: VII Proving Discrimination – Intentional Discrimination,” p. 4, <https://www.justice.gov/crt/case-document/file/925181/download>. 137 See U.S. Commission on Civil Rights, *Are Rights a Reality? Evaluating Federal Civil Rights Enforcement*, p. 142, <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>. 138 U.S. Dept of Health and Human Services, “Civil Rights Requirements, A. Title VI of the Civil Rights Act of 1964, 42 U.S.C 2000d et seq. (Title VI),” <https://www.hhs.gov/civil-rights-for-individuals/special-topics/needed-families/civil-rights-requirements/index.html>.

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<https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/factsheets/yourrightsundertitleviiofthecivilrightsact.pdf>
<https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/factsheets/yourrightsundertitleviiofthecivilrightsact.pdf>
<https://www.justice.gov/crt/case-document/file/925181/download>
<https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>
<https://www.hhs.gov/civil-rights-for-individuals/special-topics/needed-families/civil-rights-requirements/index.html>
<https://www.hhs.gov/civil-rights-for-individuals/special-topics/needed-families/civil-rights-requirements/index.html>

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There is a longstanding history of racial discrimination in health care in the U.S. stemming from the era of segregation.139 On the most basic level, there was historically a common belief—perpetuated by scholars and medical professionals—that some racial minorities were biologically inferior based on their race, and which some scholars state that this contributed to helped building the foundation for the U.S. health care system on “a class stratified, racially segregated, and discriminatory basis.”140 This can be documented back to slavery, and linkages between gynecology in the U.S. and slavery have had a long-lasting impact on this field of medicine.141 One article describes this linkage and the effect on Black women as follows:

Without a well-developed field of pediatrics, White physicians had little to offer. Consequently, they often blamed enslaved mothers and midwives, using harsh gendered and racist language, for infant deaths that were more likely a result of mothers’ hard labor and poor nutrition. Beyond these verbal attacks, antebellum US physicians also began to use their access to Black and enslaved bodies to expand their scientific knowledge and build their professional reputations.

The impact of racialized science on the field of medicine today is painfully illustrated by the deep linkages that American gynecology has with slavery. Many of the field’s most pioneering surgical techniques were developed on the sick bodies of enslaved women who were experimented on until they either were cured or died. A slaveholding surgeon, François Marie Provost, pioneered cesarean section surgeries on American enslaved women’s bodies through repeated experimentation. James Marion Sims, another famed 19th-century gynecologist, created the surgical technique that repaired obstetrical fistula by experimenting on a group of Alabama enslaved women.

That gynecology advanced from American slavery means that Black people have always had a precarious relationship to the field and its practitioners. How does a community learn to trust doctors whose forefathers were interested only in repairing and restoring Black women’s reproductive health so that slavery could be perpetuated? How can doctors learn to be more sensitive to the concerns, both personal and cultural, of Black

139 Kerri L. Hunkele, “Segregation in United States Healthcare: From Reconstruction to Deluxe Jim Crow,” University of New Hampshire, Honors Theses and Capstones, 2014, pp. 1-49, <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1189&context=honors>; W. Michael Byrd, MD, MPH and Linda A. Clayton, MD, MPH, “Race, Medicine, and Health Care in the United States: A Historical Survey,” *Journal of the National Medical Association*, Vol. 93, No. 3 (March 2001): 11S-34S, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2593958/pdf/jnma00341-0013.pdf>; P. Preston Reynolds, MD, PhD, FACP, “Professional and Hospital Discrimination and the U.S. Court of Appeals, Fourth Circuit 1956-1967,” *American Journal of Public Health*, Vol. 94, No. 5 (May 2004): 710-720, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448322/pdf/0940710.pdf>; Vann R. Newkirk, II, “America’s Health Segregation Problem,” *The Atlantic*, May 18, 2016, <https://www.theatlantic.com/politics/archive/2016/05/americas-health-segregation-problem/483219/>. 140 W. Michael Byrd, MD, MPH and Linda A. Clayton, MD, MPH, “Race, Medicine, and Health Care in the United States: A Historical Survey,” *Journal of the National Medical Association*, Vol. 93, No. 3 (March 2001): 19S, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2593958/pdf/jnma00341-0013.pdf>. 141 Deirdre Cooper Owens PhD, and Sharla M. Fett PhD, “Black Maternal and Infant Health: Historical Legacies of Slavery,” *American Journal of Public Health*, Vol. 109, No. 10 (October 2019): 1342-1345, <https://ajph.aphapublications.org/doi/10.2105/AJPH.2019.305243>.

<https://scholars.unh.edu/cgi/viewcontent.cgi?article=1189&context=honors>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2593958/pdf/jnma00341-0013.pdf>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448322/pdf/0940710.pdf>
<https://www.theatlantic.com/politics/archive/2016/05/americas-health-segregation-problem/483219/>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2593958/pdf/jnma00341-0013.pdf>
<https://ajph.aphapublications.org/doi/10.2105/AJPH.2019.305243>

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people who still hold secrets about the forced sterilizations that older southern members of their families endured? How does the medical profession unlearn a pattern of dismissing Black women’s self-reported pain when that pattern is rooted in centuries-old soil?142

Racial bias also contributed to the perception that pregnant women of color, particularly Black women, were not worthy of motherhood.143 For example, in the 1970s, it was found that many doctors were coercing Black women into agreeing to sterilization by conditioning medical services upon consent of the operation, in part due to stereotypes that low-income Black women were lazy, promiscuous, abuse drugs and were generally unfit to be mothers.144 Prior to Title VI of the 1964 Civil Rights Act, segregation in hospitals, clinics, and doctor’s offices was prevalent and stemmed from Black Codes and Jim Crow laws.145 This also meant that medical professionals and patients were segregated by race, and White medical professionals had the legal right to deny care to Black and other non-White patients.146 Medical schools were also heavily segregated, and with a rising Black population in the U.S., Black medical professionals were severely underrepresented in the medical field and remained underrepresented until well into the 1980s.147 The lack of health care facilities that would serve Black patients as well as the incidences where Black patients were not able to gain admittance to White health care facilities historically hindered Black people’s ability to access proper medical treatment in the U.S.148

After World War II, the Hospital Survey and Construction Act of 1946—commonly known as the Hill-Burton program—commenced a large-scale initiative across the U.S. to provide states with grant funding to construct hospitals and conduct state surveys of hospital facilities.149 The National Association for the Advancement of Colored People (NAACP) along with Senators William Langer (R-ND) and Harold Burton (R-OH) argued for nondiscrimination of the use of

142 *Ibid.* 143 Gabrielle T. Wynn, “The Impact of Racism on Maternal Health Outcomes for Black Women,” *University of Miami Race & Social Justice Law Review*, Vol. 10, No. 1 (2019): 98, <https://repository.law.miami.edu/umrsjlr/vol10/iss1/6/> (citing Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*, 23 (1st ed. 1997)). 144 *Ibid.* 145 Vann R. Newkirk, II, “America’s Health Segregation Problem,” *The Atlantic*, May 18, 2016, <https://www.theatlantic.com/politics/archive/2016/05/americas-health-segregation-problem/483219/>; Kerri L. Hunkele, “Segregation in United States Healthcare: From Reconstruction to Deluxe Jim Crow,” University of New Hampshire, Honors Theses and Capstones, 2014, p. 16, <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1189&context=honors>. 146 Kerri L. Hunkele, “Segregation in United States Healthcare: From Reconstruction to Deluxe Jim Crow,” University of New Hampshire, Honors Theses and Capstones, 2014, pp. 16-17, <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1189&context=honors>. 147 W. Michael Byrd, MD, MPH and Linda A. Clayton, MD, MPH, “Race, Medicine, and Health Care in the United States: A Historical Survey,” *Journal of the National Medical Association*, Vol. 93, No. 3 (March 2001): 19S-20S, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2593958/pdf/jnma00341-0013.pdf>. 148 Kerri L. Hunkele, “Segregation in United States Healthcare: From Reconstruction to Deluxe Jim Crow,” University of New Hampshire, Honors Theses and Capstones, 2014, pp. 18-19, <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1189&context=honors>. 149 P. Preston Reynolds, MD, PhD, FACP, “Professional and Hospital Discrimination and the U.S. Court of Appeals, Fourth Circuit 1956-1967,” *American Journal of Public Health*, Vol. 94, No. 5 (May 2004): 710, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448322/pdf/0940710.pdf>.

<https://repository.law.miami.edu/umrsjlr/vol10/iss1/6/>
<https://www.theatlantic.com/politics/archive/2016/05/americas-health-segregation-problem/483219/>
<https://scholars.unh.edu/cgi/viewcontent.cgi?article=1189&context=honors>
<https://scholars.unh.edu/cgi/viewcontent.cgi?article=1189&context=honors>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2593958/pdf/jnma00341-0013.pdf>
<https://scholars.unh.edu/cgi/viewcontent.cgi?article=1189&context=honors>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448322/pdf/0940710.pdf>

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federal funds, which would provide no money to hospitals that practiced segregation.150 Senator Lister Hill (D-AL) argued for the right of state legislatures to set their own policies, thus, a compromise was reached to provide for the “equitable distribution of hospital beds for each population group,” or “separate but equal.”151

In the 1960s, following the landmark *Brown v. Board of Education* decision which declared that public education “is a right which must be made available to all on equal terms”152 and initially challenged the notion of “separate but equal,” there were a couple notable lawsuits brought that posed a challenge to “separate but equal” in the context of health care services.153 In *Simkins v. Moses H. Cone Memorial Hospital*, the Fourth Circuit U.S. Court of Appeals decided that the hospitals were in violation of the Fifth and Fourteenth Amendments of the U.S. Constitution due to the hospitals’ racially discriminatory policies of denying Black physicians and dentists admitting privileges at White facilities.154 In this case, the Fourth Circuit Court recognized the connection between the hospitals and state action due to the hospitals being recipients of Hill-Burton funds, also determining that the “separate but equal” clause of the Hill-Burton Act was unconstitutional.155 In *Cypress v. Newport News*, the Fourth Circuit U.S. Court of Appeals decided that a hospital’s denial of admitting privileges and patient segregation based on race was discriminatory, in violation of Medicare certification racial integration guidelines.156

In more recent years, it has been well-documented that measurable racial disparities still persist in the health care system that affect the treatment and quality of care that people of color receive.157 This is particularly true for the racial disparities in maternal health care that have been outlined in the preceding section.158 The following chapters will provide an in-depth examination of the drivers of this racial disparity in maternal health care, and will examine federal and state programs, initiatives, and legislation that has been put in place to help prevent maternal deaths, improve health outcomes for women, and prevent racial disparities in maternal health care.

150 *Ibid.*, 711. 151 *Ibid.*, 711. 152 See *Brown v. Board of Education of Topeka*, 347 U.S. 483, 493 (1954). 153 P. Preston Reynolds, MD, PhD, FACP, “Professional and Hospital Discrimination and the U.S. Court of Appeals, Fourth Circuit 1956-1967,” *American Journal of Public Health*, Vol. 94, No. 5 (May 2004): 710-720, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448322/pdf/0940710.pdf>. 154 *Simkins v. Moses H. Cone Memorial Hospital*, 323 F.2d 959 (4th Cir. 1963); P. Preston Reynolds, MD, PhD, FACP, “Professional and Hospital Discrimination and the U.S. Court of Appeals, Fourth Circuit 1956-1967,” *American Journal of Public Health*, Vol. 94, No. 5 (May 2004): 710-720, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448322/pdf/0940710.pdf>. 155 *Id.* 156 *Cypress v. Newport News Gen. Nonsectarian*, 375 F.2d 648 (4th Cir. 1967); P. Preston Reynolds, MD, PhD, FACP, “Professional and Hospital Discrimination and the U.S. Court of Appeals, Fourth Circuit 1956-1967,” *American Journal of Public Health*, Vol. 94, No. 5 (May 2004): 710-720, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448322/pdf/0940710.pdf>. 157 Institute of Medicine, “Unequal Treatment: What Healthcare Providers Need to Know About Racial and Ethnic Disparities in Health-Care,” March 2002, https://www.nap.edu/resource/10260/disparities_providers.pdf. 158 See *supra* notes 111-125.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448322/pdf/0940710.pdf>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448322/pdf/0940710.pdf>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448322/pdf/0940710.pdf>
https://www.nap.edu/resource/10260/disparities_providers.pdf

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Chapter 2: Understanding Racial Disparities in Maternal Health

As discussed in Chapter 1, Black women in the U.S. are dying from pregnancy-related deaths at 3-4 times the rate of White women in the U.S., and Native American women in the U.S. are dying at a rate that’s nearly 2.5 times that of White women in the U.S.159 This rate varies regionally. In New York City, for example, Black women were 12 times more likely to die from pregnancy-related causes than White women; Asian/Pacific Islander women were over 4 times as likely

and Latina women over 13 times as likely to die from pregnancy-related causes than White women.160 The rates at which women of color experience severe maternal morbidity are also higher elevated than that of White women, with Black and Native American women in the U.S. experiencing severe maternal morbidity at approximately double the rate of White women in the U.S., and Latina women in certain regions experiencing severe maternal morbidity at double the rate of White women.161 Research has shown that approximately 60 percent of maternal deaths and a significant proportion of severe maternal morbidity are preventable,162 with some research showing that these events are more preventable in women of color.163 Still, But overall, certain women of color are dying at staggering rates as compared to White women.164

In the context of discussing maternal mortality and severe maternal morbidity According to the U.S. Department of Health and Human Services, a health disparity can be defined as:

[A] particular type of health difference that is closely linked with economic, social, or environmental disadvantage. Health disparities adversely affect groups of people who have systematically experienced greater social or economic obstacles to health based on their racial or ethnic group, religion, socioeconomic status, gender, mental health,

159 See supra note 13 and Figure 1.6. 160 New York City Department of Health and Mental Hygiene, Bureau of Maternal, Infant and Reproductive Health, Pregnancy-Associated Mortality: New York City, 2006-2010, p. 5, <https://www1.nyc.gov/assets/doh/downloads/pdf/ms/pregnancy-associated-mortality-report.pdf>. 161 See supra notes 122-123. 162 Emily E. Petersen, MD; Nicole L. Davis, PhD; David Goodman, PhD; Shanna Cox, MSPH; Nikki Mayes; Emily Johnston, MPH; Carla Syverson, MSN; Kristi Seed; Carrie K. Shapiro-Mendoza, PhD; William M. Callaghan, MD; Wanda Barfield, MD, "Vital Signs: Pregnancy-Related Deaths, United States, 2011-2015, and Strategies for Prevention, 13 States, 2013-2017," Morbidity and Mortality Weekly Report, Centers for Disease Control and Protection, Vol. 68, No. 18 (May 10, 2019): 423, <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6818e1-H.pdf>. 163 Mehta, Pooja K. MD, MSHP; Kieityka, Lyn PhD, MPH; Bachhuber, Marcus A. MD, MSHP; Smiles, Dana MPH, MA; Wallace, Maeva PhD, MPH; Zapata, Amy MPH; Gee, Rebekah E. MD, MPH, "Racial Inequities in Preventable Pregnancy-Related Deaths in Louisiana, 2011-2016," Obstetrics and Gynecology, Vol. 135, No. 2 (February 2020): 276-283, https://journals.lww.com/greenjournal/Abstract/2020/02000/Racial_Inequities_in_Preventable_Pregnancy_Related.6.aspx; Howell Statement, 1. 164 Emily E. Petersen, MD, Nicole L. Davis, PhD, David Goodman, PhD, Shanna Cox, MSPH, Carla Syverson, MSN, Kristi Seed, Carrie Shapiro-Mendoza, PhD, William M. Callaghan, MD, Wanda Barfield, MD, "Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007-2016," Morbidity and Mortality Weekly Report, Centers for Disease Control and Protection, Vol. 68, No. 35 (Sep. 6, 2019): 762-765, <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>.

<https://www1.nyc.gov/assets/doh/downloads/pdf/ms/pregnancy-associated-mortality-report.pdf>
<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6818e1-H.pdf>
<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6818e1-H.pdf>
https://journals.lww.com/greenjournal/Abstract/2020/02000/Racial_Inequities_in_Preventable_Pregnancy_Related.6.aspx
https://journals.lww.com/greenjournal/Abstract/2020/02000/Racial_Inequities_in_Preventable_Pregnancy_Related.6.aspx
<https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6835a3-H.pdf>

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cognitive, sensory, or physical disability, sexual orientation, geographic location, or other characteristics historically linked to discrimination or exclusion.165

For this examination, we are focused on racial disparities in maternal health care. The Commission received testimony that some of the potential drivers of these disparities include variation in hospital quality, underlying chronic conditions, access to risk appropriate/quality care, and the impacts of structural racism and implicit bias on health.166 As data collection surrounding this issue improves, it should shed more light on the drivers of racial disparities in maternal mortality and morbidity.167 At this time, research indicates that it is generally understood that there are many complex factors that create and perpetuate racial disparities in maternal health.168

Factors Impacting Drivers of Racial Disparities in Maternal Health and Their Impact on Women of Color

Addressing "Social Determinants of Health" and to Improve Maternal Health Outcomes

According to the federal Office of Disease Prevention and Health Promotion of the Department of Health and Human Services as well as extensive public health research, addressing social determinants of health is necessary for improving health and reduce health disparities,169 including racial disparities in maternal health.170 The Office of Disease Prevention and Health Promotion houses HealthyPeople.gov, an extensive public health initiative that they describe as follows:

165 U.S. Department of Health and Human Services, The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020, Phase I Report: Recommendations for the Framework and Format of Healthy People 2020, Developing Healthy People 2020, p. 28, https://www.healthypeople.gov/sites/default/files/PhaseI_0.pdf. 166 Cox Statement, 4-5. 167 Ibid., 4. 168 Ibid., 4; Allison S. BRYANT, MD, MPH, Ayaba WORJLOH, MD, MPH, Aaron B. CAUGHEY, MD, PhD, and A. Eugene WASHINGTON, MD, MSc, "Racial/Ethnic Disparities in Obstetrical Outcomes and Care: Prevalence and Determinants," American Journal of Obstetrics & Gynecology, Vol. 202, No. 4 (April 2010): 335-343, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2847630/>; Alexis Gadson, MD, Eloho Akpovi, BS, Pooja K. Mehta, MD, MSHP, "Exploring the social determinants of racial/ethnic disparities in prenatal care utilization and maternal outcome," Seminars in Perinatology, Vol. 41, No. 5 (August 2017): 308-317, <https://www.sciencedirect.com/science/article/abs/pii/S0146000517300502?via%3Dihub>; Louisiana Department of Health, Louisiana Maternal Mortality Review Report: 2011-2016, August 2018, 22, http://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/maternal/2011-2016_MMR_Report_FINAL.pdf. 169 Office of Disease Prevention and Health Promotion, HealthyPeople.gov, "Social Determinants of Health," <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health>; Samantha Artiga and Elizabeth Hinton, "Issue Brief: Beyond Health Care: The Role of Social Determinants in Promoting Health and Health Equity," Henry J. Kaiser Foundation, May 10, 2018, p. 2, <https://www.kff.org/disparities-policy/issue-brief/beyond-health-care-the-role-of-social-determinants-in-promoting-health-and-health-equity/>. 170 See infra notes xx-xx.

Commented [KC19]: We need to lead with an explanation of why we are using these metrics. Also describe what is HealthyPeople.gov. I got some of this down but if there's more to add, please do so. There is some background research in Chanel's memo.

I added the quotation marks to soften this a bit as the subtitles are also conclusive.

https://www.healthypeople.gov/sites/default/files/PhaseI_0.pdf
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2847630/>
<https://www.sciencedirect.com/science/article/abs/pii/S0146000517300502?via%3Dihub>
http://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/maternal/2011-2016_MMR_Report_FINAL.pdf
<https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health>
<https://www.kff.org/disparities-policy/issue-brief/beyond-health-care-the-role-of-social-determinants-in-promoting-health-and-health-equity/>
<https://www.kff.org/disparities-policy/issue-brief/beyond-health-care-the-role-of-social-determinants-in-promoting-health-and-health-equity/>

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Healthy People identifies public health priorities to help individuals, organizations, and communities across the United States improve health and well-being. Healthy People 2030, the initiative's fifth iteration, builds on knowledge gained over the first 4 decades.171

HealthyPeople.gov defines social determinants of health as "conditions in the environments in which people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks."172 These social, economic, and physical "conditions" (also referred to as "place") affect people's patterns of social engagement and their sense of security and well-being.173 Access to resources such as affordable housing, quality education, public safety, availability of healthy foods, local emergency/health services, and a healthy environment can all have a significant impact on health outcomes.174

The Henry J. Kaiser Family Foundation used the following framework in a recent report for understanding social determinants of health (See Table 2.1):

Table 2.1. Social Determinants of Health Economic Stability

Neighborhood and Physical Environment

Education Food Community and Social

Context

Health Care System

Employment Housing Literacy Hunger Social integration

Health coverage

Income Transportation Language Access to

healthy options

Support systems Provider availability

Expenses Safety Early childhood education

Community engagement

Provider linguistic and

cultural competency

Debt Parks Vocational training

Discrimination Quality of care

Medical Bills

Playgrounds Higher Education

Stress

Support Walkability Zip

code/geography

171 <https://health.gov/healthypeople/about> 172 Office of Disease Prevention and Health Promotion, HealthyPeople.gov, "Social Determinants of Health," <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health>. 173 Ibid. 174 Ibid.

<https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health>

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Health Outcomes Mortality, Morbidity, Life Expectancy, Health Care Expenditures, Health Status, Functional

Limitations Source: Samantha Artiga and Elizabeth Hinton, "Issue Brief: Beyond Health Care: The Role of Social Determinants in Promoting Health and Health Equity," Henry J. Kaiser Foundation, May 10, 2018, p. 2, <https://www.kff.org/disparities-policy/issue-brief/beyond-health-care-the-role-of-social-determinants-in-promoting-health-and-health-equity/>. Information adapted by the Commission.

Addressing social determinants of health is necessary to reduce health disparities.175 While health outcomes are influenced by a number of factors, research has shown that health behaviors (e.g., smoking, diet, and exercise) and social/environmental factors have the biggest impact upon health outcomes.176 There is a connection between social determinants of health and location, and women who live in areas or neighborhoods without access to reliable transportation, healthy and affordable groceries, and safe public spaces for recreation and fitness are more likely to suffer from poor maternal health outcomes than women who live in areas with access to these resources.177 Additionally, residential racial segregation has historically been one of the leading causes of U.S. racial socioeconomic inequality, and had played a significant role in perpetuating racial disparities in health.178

It is helpful to acknowledge that race and ethnicity are salient factors when examining health inequity:

Race and ethnicity are socially constructed categories that have tangible effects on the lives of individuals who are defined by how one perceives one's self and how one is perceived by others. It is important to acknowledge the social construction (i.e., created from prevailing social perceptions, historical policies, and practices) of the concepts of race and ethnicity because it has implications for how measures of race have been used and changed over time. Furthermore, the concept of race is complex, with a rich history of scientific and philosophical debate as to the nature of race. Racial and ethnic disparities are arguably the most obstinate inequities in health over time, despite the many strides that have been made to improve health in the United States. Moreover, race and ethnicity are extremely salient factors when examining health inequity. Therefore,

175 Ibid; Samantha Artiga and Elizabeth Hinton, "Issue Brief: Beyond Health Care: The Role of Social Determinants in Promoting Health and Health Equity," Henry J. Kaiser Foundation, May 10, 2018, p. 2, <https://www.kff.org/disparities-policy/issue-brief/beyond-health-care-the-role-of-social-determinants-in-promoting-health-and-health-equity/>. 176 Ibid. See also Gopal K. Singh, Mohammad Siahpush, and Michael D. Kogan, "Neighborhood Socioeconomic Conditions, Built Environments, and Childhood Obesity," Health Affairs 29, no. 3 (March 2010):503-512, doi: 10.1377/hlthaff.2009.0730; Vincent J. Felitti et al., "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study," American Journal of Preventive Medicine 14, no. 4 (May 1998): 245-258; Raj Chetty et al., "Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States," The Quarterly Journal of Economics 129, no. 4 (Sept. 14, 2014): 1553-1623, doi: 10.1093/qje/qju022. 177 Review to Action, Building U.S. Capacity to Review and Prevent Maternal Deaths: A Report from Nine Maternal Mortality Review Committees, 2018, p. 47, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>. 178 David R. Williams and Pamela Braboy Jackson, "Social Sources Of Racial Disparities In Health," Health Affairs, Vol. 24, No. 2, (March/April 2005), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.24.2.325>.

<https://www.kff.org/disparities-policy/issue-brief/beyond-health-care-the-role-of-social-determinants-in-promoting-health-and-health-equity/>
<https://www.kff.org/disparities-policy/issue-brief/beyond-health-care-the-role-of-social-determinants-in-promoting-health-and-health-equity/>
<https://www.kff.org/disparities-policy/issue-brief/beyond-health-care-the-role-of-social-determinants-in-promoting-health-and-health-equity/>
<https://www.kff.org/disparities-policy/issue-brief/beyond-health-care-the-role-of-social-determinants-in-promoting-health-and-health-equity/>
<https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>
<https://www.healthaffairs.org/doi/full/10.1377/hlthaff.24.2.325>

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solutions for health equity need to take into account the social, political, and historical context of race and ethnicity in this country.179

In the U.S., many racial disparities in health can be linked to disparities in socioeconomic disadvantage, acknowledging that there are greater systemic obstacles to health facing women of color.180 These systemic obstacles correlate with data showings that Black women face the highest risk of poor maternal health outcomes than any other racial or ethnic group.181

As discussed in Chapter 1, in the U.S., Black women experience maternal mortality at a rate 3-4 times higher than that of White women.182 When examining some of the social determinants of health and factors that affect women of color in the U.S., research shows that 24.6 percent of Black women live in poverty as compared with 10.8 percent of White women, and Black women's median annual earnings (\$34,000) was only 64.6 percent of White men's earnings, and Black women's earnings declined by 5 percent during the period of 2004-2014.183 Nearly half of all Black women grow up in households that are in the bottom fifth of the income distribution as compared to 14 percent of White women, and approximately 35 percent of Black women remain in the bottom fifth of the income distribution as individual adults as compared to 29 percent of White women.184 Many Black residents live in economically and racially segregated neighborhoods of concentrated poverty, which has a profound effect on the equity of educational opportunities available to Black students,185 particularly for Black girls.186 While the rate of Black women attaining a Bachelor's degree has increased 23.9 percent from 2004-2014 (the second-largest improvement in attainment of higher education of any other racial/ethnic group), they still had lower rates of higher education than White women and some other racial/ethnic groups in 2014.187

179 The National Academies of Sciences, Engineering, and Medicine, Communities in Action: Pathways to Health Equity, Washington, DC: The National Academies Press, p. 58, https://www.ncbi.nlm.nih.gov/books/NBK425848/pdf/Bookshelf_NBK425848.pdf. 180 Center for Reproductive Rights, "Research Overview of Maternal Mortality and Morbidity in the United States," p. 3, https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/USPA_MH_TO_ResearchBrief_Final_5.16.pdf. 181 Ibid., 2. 182 See supra note 13. 183 Asha DuMontier, Chandra Childers, Ph.D., Jessica Milli, Ph.D., The Status of Black Women in the United States, Institute for Women's Policy Research, June 2017, pp. xviii-xix, <https://wpr.org/publications/status-black-women-united-states-report/>. The report notes that only Native American women experienced poverty at higher rates than Black women. Ibid., xix. 184 Scott Winship, Richard V. Reeves, and Katherine Guyot, "The inheritance of black poverty: It's all about the men," Brookings, Mar. 22, 2018, <https://www.brookings.edu/research/the-inheritance-of-black-poverty-its-all-about-the-men/>. 185 U.S. Commission on Civil Rights, Public Education Funding Inequity in an Era of Increasing Concentration of Poverty and Resegregation, January 2018, p. 6, <https://www.usccr.gov/pubs/2018/2018-01-10-Education-Inequity.pdf>. 186 National Women's Law Center, Let Her Learn: Stopping School Pushout for Girls of Color, pp. 3, 9-17, https://nwlc.org/wp-content/uploads/2017/04/final_nwlc_Gates_GirlsofColor.pdf. 187 Asha DuMontier, Chandra Childers, Ph.D., Jessica Milli, Ph.D., The Status of Black Women in the United States, Institute for Women's Policy Research, June 2017, p. xix, <https://wpr.org/publications/status-black-women-united-states-report/>.

https://www.ncbi.nlm.nih.gov/books/NBK425848/pdf/Bookshelf_NBK425848.pdf
https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/USPA_MH_TO_ResearchBrief_Final_5.16.pdf
https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/USPA_MH_TO_ResearchBrief_Final_5.16.pdf
<https://wpr.org/publications/status-black-women-united-states-report/>
<https://wpr.org/publications/status-black-women-united-states-report/>
<https://www.brookings.edu/research/the-inheritance-of-black-poverty-its-all-about-the-men/>
<https://www.brookings.edu/research/the-inheritance-of-black-poverty-its-all-about-the-men/>
<https://www.usccr.gov/pubs/2018/2018-01-10-Education-Inequity.pdf>
<https://www.usccr.gov/pubs/2018/2018-01-10-Education-Inequity.pdf>
https://nwlc.org/wp-content/uploads/2017/04/final_nwlc_Gates_GirlsofColor.pdf
<https://wpr.org/publications/status-black-women-united-states-report/>
<https://wpr.org/publications/status-black-women-united-states-report/>

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In 2014, 16.5 percent of non-elderly Black women lacked health coverage in the U.S.188 Although it is on the decline, Black women had the highest mortality rate from heart disease than any other racial or ethnic group.189 Black women also have a higher rate of obesity and chronic disease than any other racial or ethnic group,190 which in part can be attributed in part to factors such as low-food access in high-poverty neighborhoods,191 access to healthy foods,192 or other diet-related disparities.193 In addition, more than 40 percent of Black women experience physical violence by an intimate partner as compared with 31.5 percent of all women.194

The Commission published a report in 2018 that discussed the shortfall of federal funding for Native American programs, which documented the plight of Native Americans due to disproportionately high rates of violence/crime victimization; poor physical, mental, and behavioral health conditions; high suicide rates; low educational achievement and attainment; poor housing conditions; high rates of poverty; and high rates of unemployment.195 This, in part, is due to many Native Americans living in rural Indian Country, where resources are scarce and communities are isolated.196 Approximately 28.6 percent of Native Americans under the age of 65 do not have health insurance.197 Approximately 37 percent of Native American women are overweight, and 20 percent of those are considered obese.198 In comparison to national averages, Native Americans die at higher rates from diabetes,199 and there is a higher prevalence of this disease in Native American women.200 Native American women experience the greatest rate of

188 Ibid. 189 Ibid. 190 Marissa Tan; Abdullah Mamun, MS; Heather Kitzman, PhD; Surendra Reddy Mandapati, MPH, BDS; Lailani Dodgen, MPH, "Neighborhood Disadvantage and Allostatic Load in African American Women at Risk for Obesity-Related Diseases," Preventing Chronic Disease, Vol. 14, No. 119 (November 2017): 1, https://www.cdc.gov/pcd/issues/2017/pdf/17_0143.pdf. 191 Samantha Gailey and Tim A. Bruckner, "Obesity among black women in food deserts: An 'omnibus' test of differential risk," SSM - Population Health, Vol. 7 (2009): 4, <https://www.sciencedirect.com/science/article/pii/S2352827318302076>. 192 Judith Bell, MPA, Gabriella Mora, MPH, Erin Hagan, MBA, PhD, Victor Rubin, MCP, PhD, Allison Karpyn, PhD, Access to Healthy Food and Why it Matters: A Review of the Research, PolicyLink and The Food Trust, 2013, 1-35, http://thefoodtrust.org/uploads/media_items/access-to-healthy-food.original.pdf. 193 Jessie A. Satia, PhD, MPH, "Diet-Related Disparities: Understanding the Problem and Accelerating Solutions," Journal of the American Dietetic Association, Vol. 109, No. 4 (April 2009): pp. 610-615, [https://jandonline.org/article/S0002-8223\(08\)02332-8/pdf](https://jandonline.org/article/S0002-8223(08)02332-8/pdf). 194 Asha DuMontier, Chandra Childers, Ph.D., Jessica Milli, Ph.D., The Status of Black Women in the United States, Institute for Women's Policy Research, June 2017, p. xix, <https://wpr.org/publications/status-black-women-united-states-report/>. 195 U.S. Commission on Civil Rights, Broken Promises: Continuing Federal Funding Shortfall for Native Americans, December 2018, pp. 16-17, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>. 196 Ibid., 69, 165. 197 Centers for Disease Control and Prevention, National Center for Health Statistics, "Health of American Indian or Alaska Native Population," <https://www.cdc.gov/nchs/fastats/american-indian-health.htm>. 198 American College of Obstetricians and Gynecologists, "Health Care for Urban American Indian and Alaska Native Women," Committee Opinion No. 515, January 2012, p. 2, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2012/01/health-care-for-urban-american-indian-and-alaska-native-women>. 199 U.S. Commission on Civil Rights, Broken Promises: Continuing Federal Funding Shortfall for Native Americans, December 2018, p. 66, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>. 200 U.S. Department of Health and Human Services, Office of Minority Health, "Diabetes and American Indians/Alaska Natives," <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=33>; K.M. Venkat Narayan,

https://www.cdc.gov/pcd/issues/2017/pdf/17_0143.pdf
<https://www.sciencedirect.com/science/article/pii/S2352827318302076>
http://thefoodtrust.org/uploads/media_items/access-to-healthy-food.original.pdf
[https://jandonline.org/article/S0002-8223\(08\)02332-8/pdf](https://jandonline.org/article/S0002-8223(08)02332-8/pdf)
<https://wpr.org/publications/status-black-women-united-states-report/>
<https://wpr.org/publications/status-black-women-united-states-report/>
<https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>
<https://www.cdc.gov/nchs/fastats/american-indian-health.htm>
<https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2012/01/health-care-for-urban-american-indian-and-alaska-native-women>
<https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2012/01/health-care-for-urban-american-indian-and-alaska-native-women>
<https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=33>

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poverty than any other racial/ethnic group, with roughly 22 percent living in poverty, as compared to 9 percent of White women.201 Four out of 5 Native American women have experienced violence in their lifetime, and more than half of Native American women have experienced sexual violence or physical violence by an intimate partner in their lifetime.202

Similarly, Latinos have the highest uninsured rates of any racial or ethnic group in the U.S.,203 and approximately 20 percent of Latina204 women are uninsured as compared to 8 percent of White women.205 While Asians have the highest median income of any other racial/ethnic group in the U.S., there is a higher percentage of Asian individuals at the poverty level than White individuals, and economic status varies widely among Asian populations.206 There is also a wage gap that exists and varies widely among the various populations of Asian American and Pacific Islander women, with Nepalese, Burmese, and Fijian women paid at a rate that is approximately half that of White men.207

Racial health disparities have continued during the COVID-19 pandemic.

Regarding chronic disease, in 2008, approximately 45 percent of Americans reported having one or more chronic disease, with pulmonary conditions, hypertension, mental disorders, heart disease, diabetes, cancer, and stroke being the most prevalent reported conditions.208 Some chronic illnesses are more prevalent among people of color, for example, Native Americans are more than twice as likely and Black people are nearly 1.5 times as likely to have diabetes than White individuals.209 Overall, people of color are more likely to suffer from a chronic disease than White individuals, with Black individuals experiencing the largest disparity with 48 percent

"Diabetes Mellitus in Native Americans: The Problem and Its Implications," Changing Numbers, Changing Needs: American Indian Demography and Public Health, 1996, <https://www.ncbi.nlm.nih.gov/books/NBK233103/>. 201 National Women's Law Center, "National Snapshot: Poverty Among Women & Families, 2019," October 2019, p. 1, <https://nwlc-civ49txgw5lbb.stackpathdns.com/wp-content/uploads/2019/10/PovertySnapshot2019.pdf>. 202 National Congress for American Indians, "Research Policy Update: Violence Against American Indian and Alaska Native Women," February 2018, http://www.ncai.org/policy-research-center/research-data/prc-publications/VAWA_Data_Brief_FINAL_2_1_2018.pdf. 203 U.S. Department of Health and Human Services, Office of Minority Health, "Profile: Hispanic/Latina Americans," <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=64>. 204 This report utilizes the terms "Latino" or "Latina" to refer to Hispanic men or women respectively (unless otherwise stated). 205 National Partnership for Women & Families, "Latinas Experience Pervasive Disparities in Access to Health Insurance," April 2019, <https://www.nationalpartnership.org/our-work/resources/health-care/latinahs-health-insurance-coverage.pdf>. 206 U.S. Department of Health and Human Services, Office of Minority Health, "Profile: Asian Americans," <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=63>. 207 National Partnership for Women & Families, "Asian American and Pacific Islander Women and the Wage Gap," February 2020, <https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/asian-women-and-the-wage-gap.pdf>. 208 Partnership to Fight Chronic Disease, Almanac of Chronic Disease 2008 Edition, pp. 12, 14, http://www.patientnavigatortraining.org/course2/documents/chronic_disease_almanac_2008.pdf. 209 Ibid., 17.

<https://www.ncbi.nlm.nih.gov/books/NBK233103/>
<https://nwlc-civ49txgw5lbbab-stackpathdns.com/wp-content/uploads/2019/10/PovertySnapshot2019.pdf>
http://www.ncai.org/policy-research-center/research-data/prc-publications/VAWA_Data_Brief_FINAL_2_1_2018.pdf
http://www.ncai.org/policy-research-center/research-data/prc-publications/VAWA_Data_Brief_FINAL_2_1_2018.pdf
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=64>
<https://www.nationalpartnership.org/our-work/resources/health-care/latinas-health-insurance-coverage.pdf>
<https://www.nationalpartnership.org/our-work/resources/health-care/latinas-health-insurance-coverage.pdf>
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=63>
<https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/asian-women-and-the-wage-gap.pdf>
<https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/asian-women-and-the-wage-gap.pdf>
http://www.patientnavigatortraining.org/course2/documents/chronic_disease_almanac_2008.pdf

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of adults reporting chronic illness as compared to 39 percent of the overall population of the U.S.²¹⁰

Other factors are important to consider as well, such as disparities in the exposure to stress.²¹¹ Recent research by the American Psychiatric Association found that there are significant racial and socioeconomic disparities in self-reported stress, where Black and Latino individuals report higher levels of stress than White respondents.²¹² There are also disparities in exposure to threats to safety and financial security, for example, violence and barriers to occupational advancement.²¹³ Furthermore, there are disparities in access to resources (personal, social, educational, and material), and “[w]ithout sufficient resources, even minor demands are stressful.”²¹⁴ Racial/ethnic minorities also report higher exposure to discrimination, which “compounds these effects by increasing threat exposure and creating barriers to the development of the resources needed to respond to these threats.”²¹⁵

The above factors that correlate with race may contribute to creating and perpetuating health disparities among women of color. In terms of maternal health outcomes, the following table displays a few additional examples of these disparities (see Table 2.2):

Table 2.2. Select Examples of Disparities in Obstetric and Gynecological Health Disparities in Health Outcomes Native

America n

Asian Black Latina White

Infertility in the past 12 mos (% of women)

N/A 10 12 9 7

Unintended pregnancy (% of pregnancies)

N/A N/A 69 56 42

Preterm birth (% of live births) 13 10 17 12 10 Fetal death (/1000 live births + fetal deaths)

N/A N/A 11 5 5

Source: The American College of Obstetricians and Gynecologists, “Racial and Ethnic Disparities in Obstetrics and Gynecology,” Committee Opinion No. 649, December 2015 (reaffirmed 2018), p. 2, <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2015/12/racial-and-ethnic-disparities-in-obstetrics-and-gynecology.pdf>.

Black women experience infertility, unintended pregnancy, preterm birth, and fetal death at a higher rate than other women of all races and ethnicities. Rates of preterm birth are elevated for Native American and Latina women as compared to White women, and rates of unintended pregnancy are elevated for Latina women as compared to White women. Noting the racial

210 “Health Disparities: A Case for Closing the Gap,” HealthReform.gov, <https://smhs.gwu.edu/rothaminstute/sites/rothaminstute/files/HCReform%20-%20Disparities%20Report.pdf>. 211 American Psychological Association, Stress and Health Disparities: Contexts, Mechanisms, and Interventions Among Racial/Ethnic Minority and Low Socioeconomic Status Populations, 2017, p. 1, <https://www.apa.org/pi/health-disparities/resources/stress-report.pdf>. 212 Ibid. 213 Ibid. 214 Ibid. 215 Ibid.

<https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2015/12/racial-and-ethnic-disparities-in-obstetrics-and-gynecology.pdf>
<https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2015/12/racial-and-ethnic-disparities-in-obstetrics-and-gynecology.pdf>
<https://smhs.gwu.edu/rothaminstute/sites/rothaminstute/files/HCReform%20-%20Disparities%20Report.pdf>
<https://www.apa.org/pi/health-disparities/resources/stress-report.pdf>

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disparity of unintended pregnancy rates for Black and Latina women as compared to White women, there is a link between unintended pregnancies and adverse perinatal outcomes, including maternal depression (although a link between unintended pregnancies and severe maternal morbidity needs further study).²¹⁶ Data for Native American women and Asian women is lacking and needs to be improved.²¹⁷ These and other disparities in maternal mortality and severe maternal morbidity can be partially explained when examining social determinants of health, however there are additional factors to consider in order to understand these disparities.

While Factors such as lower socioeconomic status and lower levels of educational attainment, as well as lack of prenatal care, increase the risk of maternal death or severe maternal morbidity. But additionally, research has shown that, “the increased risk of maternal death among racial and ethnic minority women appears to be, at least in part, independent of sociodemographic risk,”²¹⁸ as “[a]djustment for sociodemographic and reproductive factors has not [completely] explained the racial gap in pregnancy-related mortality in most studies.”²¹⁹ This is evident, for example as discussed in Chapter 1, that Black, college-educated women die at a rate that is 1.6 times higher than White women without a high school diploma.²²⁰ A combination of complex factors contribute to this disparity, and examining these additional drivers can help better understand all the factors at play.

Quality of Care

Access to Quality Healthcare

There is Well-documented evidence from the federal government and other sources such as the American Medical Association that indicates suggests that people of color have reduced access to quality health care services.²²¹ In their 2018 National Healthcare Quality and Disparities Report,

216 Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” *Obstet Gynecol*, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>; Abajobir AA, Maravilla JC, Ahati R, Najman JM. A systematic review and meta-analysis of the association between unintended pregnancy and perinatal depression. *Journal of Affective Disorders*. 2016 Mar 01;192:56–63. 217 The American College of Obstetricians and Gynecologists, “Racial and Ethnic Disparities in Obstetrics and Gynecology,” Committee Opinion No. 649, December 2015 (reaffirmed 2018), p. 2, <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2015/12/racial-and-ethnic-disparities-in-obstetrics-and-gynecology.pdf>. 218 Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” *Obstet Gynecol*, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>; Berg, Cynthia J., et al. “Pregnancy-related mortality in the United States, 1991–1997.” *Obstetrics & Gynecology*, Vol. 101, No. 2 (2003): 289–296. 219 Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” *Obstet Gynecol*, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>. 220 See supra note 115 and Chart 1.8. 221 U.S. Department of Health and Human Services, Agency for Healthcare Research and Quality, National Healthcare Quality and Disparities Report 2018, September 2019, <https://www.ahrq.gov/sites/default/files/wysiwyg/research/findings/nhqdr/2018qdr-final.pdf>; E. Richard Brown, PhD, Victoria D. Ojeda, MPH, Roberta Wyn, PhD, Rebecka Levan, MPH, Racial and Ethnic Disparities in Access

Commented [KC21]: Does she mean “prenatal?”

Commented [KC22]: In contrast to the prior section, I think the data in this section is stronger and so I would use stronger language here.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>
<https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2015/12/racial-and-ethnic-disparities-in-obstetrics-and-gynecology.pdf>
<https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2015/12/racial-and-ethnic-disparities-in-obstetrics-and-gynecology.pdf>
<https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2015/12/racial-and-ethnic-disparities-in-obstetrics-and-gynecology.pdf>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>
<https://www.ahrq.gov/sites/default/files/wysiwyg/research/findings/nhqdr/2018qdr-final.pdf>

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the Department of Health and Human Services’ Agency for Healthcare Research and Quality found that these disparities vary by state, which may indicate correlation with state policies. See Figure XX.

On a very basic level, women of color are less likely than White women to have health insurance, which causes barriers to access to quality maternal healthcare, including family planning, preconception care, prenatal care, postpartum care.²²² Black women have the highest uninsured rates among all women, are more likely to have chronic health conditions that are risk factors for maternal death, and are less likely to get care for disease prevention and management.²²³ In addition, Black women have the highest rates of unintended pregnancy, which makes it less likely for them to access the benefits of preconception care, and ultimately puts them at higher risk of complications during pregnancy, which can contribute to poorer maternal health outcomes.²²⁴

Preconception and interconception²²⁵ care aims to raise the level of wellness among women of childbearing age, prior to pregnancy,²²⁶ and has been linked to improved reproductive health outcomes.²²⁷ This is particularly important for women of color, as often they are often at higher risk than White women for preconception risk factors.²²⁸ One study found that Native American

to Health Insurance and Health Care, UCLA Center for Health Policy Research and the Henry J. Kaiser Family Foundation, April 2000, p. xi, <https://www.kff.org/wp-content/uploads/2013/01/racial-and-ethnic-disparities-in-access-to-health-insurance-and-health-care-report.pdf>; American College of Physicians, Position Paper: Racial and Ethnic Disparities in Health Care, April 2010, pp. 1–2, https://www.acponline.org/acp_policy/policies/racial_ethnic_disparities_2010.pdf; Samantha Artiga, Kendal Orgera, and Olivia Pham, “Disparities in Health and Health Care: Five Key Questions and Answers,” Mar. 4, 2020, <https://www.kff.org/disparities-policy/issue-brief/disparities-in-health-and-health-care-five-key-questions-and-answers/>; U.S. Department of Health and Human Services, Agency for Healthcare Research and Quality, National Healthcare Quality and Disparities Report 2018, September 2019, <https://www.ahrq.gov/sites/default/files/wysiwyg/research/findings/nhqdr/2018qdr-final.pdf>; Alan Nelson, MD, “Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care,” *Journal of the National Medical Association*, Vol. 94, No. 8 (August 2002): 666–668, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2594273/pdf/jnma00325-0024.pdf>. 222 Center for Reproductive Rights, “Research Overview of Maternal Mortality and Morbidity in the United States,” p. 4, https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/USPA_MH_TO_ResearchBrief_Final_5.16.pdf. 223 Ibid. 224 Ibid. 225 Interconception refers to the time between the end of one pregnancy and the conception of the next pregnancy. 226 March of Dimes, Toward Improving the Outcome of Pregnancy III, December 2010, p. 46, <https://www.marchofdimes.org/toward-improving-the-outcome-of-pregnancy-iii.pdf>. 227 Centers for Disease Control and Prevention, Recommendations to Improve Preconception Health and Health Care --- United States: A Report of the CDC/ATSDR Preconception Care Work Group and the Select Panel on Preconception Care, <https://www.cdc.gov/mmwr/preview/mmwrhtml/r5506a1.htm>; HealthyPeople.gov, “Maternal, Infant, and Child Health,” <https://www.healthypeople.gov/2020/topics-objectives/topic/maternal-infant-and-child-health?topicid=26>. 228 Clark H Denny, R Louise Floyd, Patricia P Green, Donald K Hayes, “Racial and Ethnic Disparities in Preconception Risk Factors and Preconception Care,” *Journal of Women’s Health*, Vol. 21, No. 7 (July 2012): 720, <https://pdfs.semanticscholar.org/7227/02edd5a54df2e67802e63b8934de2f6a9e2c.pdf>.

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women and Black women were most likely to have multiple preconception risk factors, such as at-risk drinking, smoking, obesity, or mental distress.²²⁹ Access to preconception care has been found to be particularly critical to reducing racial disparities in maternal healthcare between Black and White women.²³⁰

Women receiving no prenatal care are 3 to 4 times more likely to have a pregnancy-related death than women who receive prenatal care.²³¹ While there is still a lot to be understood about the content and quality of prenatal care and its relationship to maternal health,²³² it is generally accepted among medical professionals that regular prenatal care is important for improving and maintaining a healthy pregnancy and reducing the risk of pregnancy complications.²³³ Research has shown that there is a link between reduced numbers of prenatal visits and poor pregnancy outcomes (e.g., low birthweight, preterm birth, infant mortality, etc.),²³⁴ as well as some research that links fewer prenatal visits to maternal mortality or severe maternal morbidity.²³⁵ Women receiving no prenatal care are 3 to 4 times more likely to have a pregnancy-related death than women who receive prenatal care.²³⁶ Access to maternal fetal medicine subspecialists has been linked to improved health outcomes among pregnant women with chronic illness and pregnancy-related complications,²³⁷ and less frequent visits among women with chronic illness may result in

²²⁹ Ibid., 722. ²³⁰ Association of Maternal & Child Health Programs, “Opportunities and Strategies for Improving Preconception Health through Health Reform,” March 2015, p. 1, <http://www.amchp.org/Transformation-Station/Documents/AMCHP%20Preconception%20Issue%20Brief.pdf>. ²³¹ Maternal Health Task Force at the Harvard Chan School, “Maternal Health in the United States,” <https://www.mhft.org/topics/maternal-health-in-the-united-states/>; “Maternal Mortality in the United States: a Human Rights Failure,” *Contraception*, No. 83 (2011): 189, [https://www.contraceptionjournal.org/article/S0010-7824\(10\)00685-2/pdf](https://www.contraceptionjournal.org/article/S0010-7824(10)00685-2/pdf). ²³² Rebecca A. Gourevitch Alex Friedman Peahl Margaret McConnell Neel Shah, “Understanding The Impact Of Prenatal Care: Improving Metrics, Data, And Evaluation,” *Health Affairs*, Feb. 26, 2020, <https://www.healthaffairs.org/doi/10.1377/hblog20200221.833522/full/>. ²³³ Eunice Kennedy Shriver National Institute of Child Health and Human Development, “What is Prenatal Care and Why is it Important?” <https://www.nichd.nih.gov/health/topics/pregnancy/conditioninfo/prenatal-care#~:text=Pre%2DPregnancy%20and%20prenatal%20care,the%20risk%20of%20pregnancy%20complications..> ²³⁴ Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” *Obstet Gynecol*, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>; Cox RG, Zhang L, Zotti ME, Graham J, “Prenatal care utilization in Mississippi: racial disparities and implications for unfavorable birth outcomes,” *Matern Child Health J*, Vol. 15, No. 7 (October 2011) 931–942; Till SR, Everetts D, Haas DM, “Incentives for increasing prenatal care use by women in order to improve maternal and neonatal outcomes,” *Cochrane Database Syst Rev*, Vol. 12 (December 2015): CD009916 ²³⁵ Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” *Obstet Gynecol*, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>; Howell EA, Egorova NN, Balbierz A, Zeitlin J, Hebert PL, “Site of delivery contribution to black-white severe maternal morbidity disparity,” *Am J Obstet Gynecol*, Vol. 215, No. 2 (August 2016): 143–152, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4967380/>; Howell EA, Egorova NN, Janovic T, Balbierz A, Zeitlin J, Hebert PL, “Severe Maternal Morbidity Among Hispanic Women in New York City: Investigation of Health Disparities,” *Obstet Gynecol* Vol. 129 (2017):285–94. ²³⁶ Maternal Health Task Force at the Harvard Chan School, “Maternal Health in the United States,” <https://www.mhft.org/topics/maternal-health-in-the-united-states/>; “Maternal Mortality in the United States: a Human Rights Failure,” *Contraception*, No. 83 (2011): 189, [https://www.contraceptionjournal.org/article/S0010-7824\(10\)00685-2/pdf](https://www.contraceptionjournal.org/article/S0010-7824(10)00685-2/pdf). ²³⁷ Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” *Obstet Gynecol*, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>; Antony KM,

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<https://www.nichd.nih.gov/health/topics/pregnancy/conditioninfo/prenatal-care#~:text=Pre%2DPregnancy%20and%20prenatal%20care,the%20risk%20of%20pregnancy%20complications.>
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adverse pregnancy outcomes.²³⁸ Women of color are less likely than White women to start prenatal care in the first trimester of pregnancy, with Black, Native American, and Native Hawaiian/Pacific Islander women having the lowest percentages (63.6 percent, 59.4 percent, and 54.7 percent respectively) as compared to White women (79 percent).²³⁹

The postpartum period following the end of a pregnancy or “fourth trimester” is critically important for the long-term health and wellbeing of a woman.²⁴⁰ During this time, a woman is recovering from childbirth; adapting to many physical, social and psychological changes; and facing challenges including a lack of sleep, fatigue, pain, stress, mental health issues, and many others.²⁴¹ Data shows that approximately half of all maternal deaths occur during the postpartum period, between 1 day and 1 year following the end of a pregnancy.²⁴² The American College of Obstetricians and Gynecologists has emphasized the importance of receiving continuous care during this critical time, and has recently updated guidance recommending improved the content and frequency of postpartum visits,²⁴³ and among other measures, “[t]o optimize the health of women and infants, postpartum care should be an ongoing process, rather than a single encounter, with services and support tailored to each woman’s individual needs.”²⁴⁴ Additionally, postpartum care is particularly important for women with chronic illness, and women who experience poor maternal outcomes are prone to chronic illness later in life.²⁴⁵ Currently, about 40 percent of women do not attend postpartum visits.²⁴⁶

Dildy GA. Postpartum hemorrhage: The role of the Maternal-Fetal Medicine specialist in enhancing quality and patient safety. *Semin Perinatol*. 2013 Aug 01;37(4):246–256; Safi LM, Tsiaras SV. Update on Valvular Heart Disease in Pregnancy. *Current Treatment Options in Cardiovascular Medicine*. 2017 Aug 05;19(3):70; D’Alton ME, Bonanno CA, Berkowitz RL, et al. Putting the “M” back in maternal-fetal medicine. *Am J Obstet Gynecol*. 2013 Jun 01;208(6):442–448. ²³⁸ Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” *Obstet Gynecol*, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>; Eden RD, Penka A, Britt DW, Landsberger EJ, Evans ML. Re-evaluating the role of the MFM specialist: Lead, follow, or get out of the way. *The Journal of Maternal-Fetal & Neonatal Medicine*. 2005 Jan 01;18(4):253–258. ²³⁹ U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau, Child Health USA 2014, March 2015, p. 76, <https://mchb.hrsa.gov/chusa14/dl/chusa14.pdf>. ²⁴⁰ American College of Obstetricians and Gynecologists, “Optimizing Postpartum Care,” Committee Opinion No. 736, May 2018, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2018/05/optimizing-postpartum-care>. ²⁴¹ Ibid. ²⁴² Centers for Disease Control and Prevention, “Vital Signs: Pregnancy-Related Deaths, United States, 2011–2015, and Strategies for Prevention, 13 States, 2013–2017,” *Morbidity and Mortality Weekly*, Vol. 68, No. 8 (May 10, 2019): 423–429, <https://www.cdc.gov/mmwr/volumes/68/wr/mm6818e1.htm#~:text=Among%20these%20deaths%2C%2031.3%25%20occurred,hemorrhage%2C%20and%20varied%20by%20timing.> ²⁴³ American College of Obstetricians and Gynecologists, “Optimizing Postpartum Care,” Committee Opinion No. 736, May 2018, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2018/05/optimizing-postpartum-care>. ²⁴⁴ Ibid., e140. ²⁴⁵ Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” *Obstet Gynecol*, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>. ²⁴⁶ American College of Obstetricians and Gynecologists, “Optimizing Postpartum Care,” Committee Opinion No. 736, May 2018, p. e141, <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2018/05/optimizing-postpartum-care.pdf>.

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As discussed in Chapter 1, mental health disorders such as depression are common in the postpartum period,²⁴⁷ and can be underlying factors resulting in maternal deaths from suicide, accidental death, or homicide.²⁴⁸ Moreover, the rate of depression and anxiety among pregnant women has more than doubled during the COVID-19 pandemic.²⁴⁹ Data also shows that the proportion of low-income women that seek postpartum care is low,²⁵⁰ and women who do not seek prenatal care or are late in seeking pregnancy care are less likely to attend a postpartum checkup.²⁵¹

In some cases, access to quality healthcare may be a geographical issue. In rural America, there is a lack of access to quality maternal healthcare as a result of several factors such as hospital and obstetric department closures, workforce shortages, and challenges to the access of care arising from social determinants of health that affect rural mothers.²⁵² These challenges can result in negative maternal health outcomes, including maternal mortality, severe maternal morbidity, and postpartum depression.²⁵³ Native American women and other women of color are disproportionately impacted by these disparities in access to care.²⁵⁴

According to the March of Dimes, more than 5 million women in the U.S. (in 1,085 counties nationwide) live in maternity care deserts (in 1,085 counties nationwide) that have no hospital with obstetric services or no obstetric providers.²⁵⁵ While most the focus of maternity care deserts are typically in rural areas, this problem can also occur in urban areas.²⁵⁶ The continuity of care is disrupted when hospitals close in cities, which can cause barriers to access prenatal care and obstetric services due to issues of transportation, finding/coordinating new services, and insurance, which can negatively impact low-income neighborhoods and neighborhoods of color, exacerbating lack of access to healthcare services for these vulnerable populations.²⁵⁷ The March of Dimes has recommended the regionalization of perinatal care, a

²⁴⁷ See supra notes 60–64. ²⁴⁸ See supra notes 66–72. ²⁴⁹ See supra notes xx–xx. ²⁵⁰ American College of Obstetricians and Gynecologists, “Optimizing Postpartum Care,” Committee Opinion No. 736, May 2018, p. e141, <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2018/05/optimizing-postpartum-care.pdf>; De Bocanegra HT, Braughton M, Bradberry M, Howell M, Logan J, Schwarz EB. Racial and ethnic disparities in postpartum care and contraception in California’s Medicaid program. *Am J Obstet Gynecol*. 2017; Howell EA, Padrón NA, Beane SJ, et al. Delivery and Payment Redesign to Reduce Disparities in High Risk Postpartum Care. *Maternal and Child Health Journal*. 2017 Mar 01;21(3):432–438, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5380444/>. ²⁵¹ Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” *Obstet Gynecol*, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>; Siddiqui R, Bell T, Sangi-Haghighykar H, Minard C, Levison J. Predictive factors for loss to postpartum follow-up among low income HIV-infected women in Texas. *AIDS Patient Care STDs*. 2014 May;28(5):248–253. ²⁵² Centers for Medicare & Medicaid Services, *Improving Access to Maternal Health Care in Rural Communities*, p. 1, <https://www.cms.gov/About-CMS/Agency-Information/OMH/equity-initiatives/rural-health/09032019-Maternal-Health-Care-in-Rural-Communities.pdf>. ²⁵³ Ibid. ²⁵⁴ Ibid. ²⁵⁵ March of Dimes, “Nowhere to Go: Maternity Care Deserts Across the U.S.,” p. 1, https://www.marchofdimes.org/materials/Nowhere_to_Go_Final.pdf. ²⁵⁶ Ibid. ²⁵⁷ Ibid., 3.

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https://www.marchofdimes.org/materials/Nowhere_to_Go_Final.pdf

strategy to improve both maternal and neonatal outcomes, by closing the geographical gap of services and ensuring that pregnant women receive risk-appropriate care in a facility equipped with the proper resources and healthcare providers.²⁵⁸

With respect to rural areas, Aa recent study found that between 2004 and 2014, 179 rural counties in the U.S. lost hospital-based obstetrics services.²⁵⁹ Among with 45 percent of rural counties in the U.S. that did not offer any hospital-based obstetrics services, over half of rural hospitals did not offer hospital-based obstetrics services by 2014, with the most severe impacts in largely Black counties, feeling the most severe impact and in states with the strictest Medicaid eligibility requirements.²⁶⁰ Also, while 70 percent of Native Americans live in urban areas, approximately 2.2 million Native Americans who live on or close to reservations in rural and remote areas are eligible to receive services through the Indian Health Service (IHS), who operate a number of hospitals, health stations, and clinics throughout Indian Country.²⁶¹ In recent years, the IHS has only spent approximately a third of the amount on healthcare for Native Americans per capita than what is spent per capita on the federal level nationwide due to chronic underfunding, with insufficient funding to address Native American health disparities.²⁶² It has also been reported that there are significant shortages of quality healthcare providers at IHS facilities, due in part to their remote and rural locations and lower pay, among other reasons, and these facilities see a 46 percent turnover each year.²⁶³

People of color are more likely to be uninsured than White individuals.²⁶⁴ Latinos experience the highest uninsured rate of any other racial or ethnic group (at 32 percent uninsured), with Native Americans and Black individuals seeing 27 percent and 21 percent uninsured rates, respectively, compared to 13 percent of White individuals (who also have the highest rate of private medical insurance coverage and the lowest rates of Medicaid/other public insurance coverage).²⁶⁵ While the Affordable Care Act healthcare mandate served to narrow the gap in insurance coverage seen

²⁵⁸ March of Dimes, "Nowhere to Go: Maternity Care Deserts Across the U.S.," p. 9, https://www.marchofdimes.org/materials/Nowhere_to_Go_Final.pdf. ²⁵⁹ Katy B. Kozhimannil, PhD, MPA; Peiyin Hung, PhD, MSPH; Carrie Henning-Smith, PhD, MPH, MSW; et al, "Association Between Loss of Hospital-Based Obstetric Services and Birth Outcomes in Rural Counties in the United States," JAMA, Vol. 319, No. 12 (2016): 1239-1247, <https://jamanetwork.com/journals/jama/fullarticle/2674760>. ²⁶⁰ Ibid.; Adriana Gallardo and Nina Martin, "Another Thing Disappearing From Rural America: Maternal Care," ProPublica, Sep. 5, 2017, <https://www.propublica.org/article/another-thing-disappearing-from-rural-america-maternal-care>; see also Joia Crear-Perry, Founder and President, National Birth Equity Collaborative, and Board Member, Black Mamas Matter Alliance, Written Statement for the Racial Disparities in Maternal Health Briefing before the U.S. Commission on Civil Rights, March 2020, at 7 [hereinafter Crear-Perry Statement]. ²⁶¹ U.S. Commission on Civil Rights, Broken Promises: Continuing Federal Funding Shortfall for Native Americans, pp. 64-65, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>. ²⁶² Ibid. ²⁶³ National Indian Health Board, Testimony, Oversight Hearing on Indian Country Priorities for the 114th Congress, Senate Committee on Indian Affairs, Jan. 28, 2015, p. 10, <https://www.indian.senate.gov/sites/default/files/uploads/files/1.28.15%20SCIA%20Witness%20Testimony%20-%20Stacy%20Bohlen%20-%20NIH.pdf>. ²⁶⁴ The Henry J. Kaiser Family Foundation, "Health Coverage by Race and Ethnicity: The Potential Impact of the Affordable Care Act," March 2013, p. 1, <https://www.kff.org/wp-content/uploads/2014/07/8423-health-coverage-by-race-and-ethnicity.pdf>. ²⁶⁵ Ibid., 5.

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<https://www.kff.org/wp-content/uploads/2014/07/8423-health-coverage-by-race-and-ethnicity.pdf>

among people of color and White individuals and to increase the likelihood of physician visits.²⁶⁶ There are still persistent racial disparities in access to care.²⁶⁷ Notably, as of 2013, 59 percent of uninsured Black Americans, who would be eligible for Medicaid under expansion programs, lived in states with no plans to expand Medicaid.²⁶⁸

Medicaid plays a significant role in insuring people of color, particularly Black, Native American, and Latino individuals.²⁶⁹ Thirty-two percent of both Black and Native Americans, and 30 percent of Latino peoples are insured by Medicaid.²⁷⁰ A recent study found that Medicaid expansion²⁷¹ is significantly associated with lower maternal mortality rates, as seen in Medicaid expansion states as compared to states that did not expand Medicaid coverage.²⁷² The results suggest that increased access to insurance coverage and access to postpartum and preconception care can contribute to a lower maternal mortality rate.²⁷³ The study also suggests that the expansion of Medicaid is helping to decrease racial disparities in maternal mortality.²⁷⁴ However, a 2004 study noted that even with access to Medicaid, women of color may face disparities in the health services provided, as it found that Black, Latina, and Asian/Pacific Islander women were still less likely than White women to receive patient-initiated pregnancy services (prenatal services, prescriptions, and screening tests for diseases) that a woman initiates, discretionary services, and services requiring follow-up care.²⁷⁵

²⁶⁶ Jie Chen, PhD, Arturo Vargas-Bustamante, PhD, Karoline Mortensen, PhD, and Alexander N. Ortega, PhD, "Racial and Ethnic Disparities in Health Care Access and Utilization Under the Affordable Care Act," Med Care, Vol. 54, No. 2 (February 2016): 140-146, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4711386/>. ²⁶⁷ Susan L. Hayes, Pamela Riley, M.D., David C. Radley, and Douglas McCarthy, "Reducing Racial and Ethnic Disparities in Access to Care: Has the Affordable Care Act Made a Difference?," Aug. 24, 2017, <https://www.commonwealthfund.org/publications/issue-briefs/2017/aug/reducing-racial-and-ethnic-disparities-access-care-has>. ²⁶⁸ Philetha Duckett and Samantha Artiga, "Health Coverage for the Black Population Today and Under the Affordable Care Act," The Henry J. Kaiser Family Foundation, July 2013, p. 5, <https://www.kff.org/wp-content/uploads/2013/07/8460-health-coverage-for-the-black-population-today.pdf>. ²⁶⁹ The Henry J. Kaiser Family Foundation, "Health Coverage by Race and Ethnicity: The Potential Impact of the Affordable Care Act," March 2013, p. 5, <https://www.kff.org/wp-content/uploads/2014/07/8423-health-coverage-by-race-and-ethnicity.pdf>. ²⁷⁰ Ibid. ²⁷¹ See "Medicaid expansion and what it means for you," <https://www.healthcare.gov/medicaid-chip/medicaid-expansion-and-you/>. Medicaid expansion refers to the ability for all individuals in a household to qualify for Medicaid coverage based on household income alone; in states that have not expanded Medicaid, qualification may be based on household income, household size, disability, family status, and other factors (depending on the state). See also The Henry J. Kaiser Family Foundation, "Status of State Medicaid Expansion Decisions: Interactive Map," <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/>. Individual states have the option of expanding Medicaid coverage and at present, 37 states (including DC) have adopted Medicaid expansion. ²⁷² Erica L. Eliason, MPH, "Adoption of Medicaid Expansion Is Associated with Lower Maternal Mortality," Women's Health Issues, Feb. 25, 2020, [https://www.whjournal.com/article/S1049-3867\(20\)30005-0/fulltext](https://www.whjournal.com/article/S1049-3867(20)30005-0/fulltext). ²⁷³ Ibid. ²⁷⁴ Ibid. ²⁷⁵ Norma I. Gavin, PhD, E. Kathleen Adams, PhD, Katherine E. Hartmann, MD, PhD, M. Beth Benedict, DrPH, JD, and Monique Chireau, MD, MPH, "Racial and Ethnic Disparities in the Use of Pregnancy-Related Health Care Among Medicaid Pregnant Women," Maternal and Child Health Journal, Vol. 8, No. 3 (September 2004): 113-126, https://www.researchgate.net/profile/Katherine_Hartmann/publication/8216960_Racial_and_Ethnic_Disparities_in_the_Use_of_Pregnancy-Related_Health_Care_Among_Medicaid_Pregnant_Women/links/59400a545851554614a511d/Racial-and-Ethnic-Disparities-in-the-Use-of-Pregnancy-Related-Health-Care-Among-Medicaid-Pregnant-Women.pdf

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4711386/>
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https://www.researchgate.net/profile/Katherine_Hartmann/publication/8216960_Racial_and_Ethnic_Disparities_in_the_Use_of_Pregnancy-Related_Health_Care_Among_Medicaid_Pregnant_Women/links/59400a545851554614a511d/Racial-and-Ethnic-Disparities-in-the-Use-of-Pregnancy-Related-Health-Care-Among-Medicaid-Pregnant-Women.pdf
https://www.researchgate.net/profile/Katherine_Hartmann/publication/8216960_Racial_and_Ethnic_Disparities_in_the_Use_of_Pregnancy-Related_Health_Care_Among_Medicaid_Pregnant_Women/links/59400a545851554614a511d/Racial-and-Ethnic-Disparities-in-the-Use-of-Pregnancy-Related-Health-Care-Among-Medicaid-Pregnant-Women.pdf

Currently, Medicaid requires all states to cover pregnant women with incomes up to 138 percent of the federal poverty level, however many states go above and beyond this threshold and cover women with incomes between 138 percent and 380 percent of the federal poverty level.²⁷⁶ Typically, pregnancy-related Medicaid coverage for the mother must extend through 60 days postpartum, although states have the option of extending that coverage past that 60 day period.²⁷⁷ In states that have expanded Medicaid coverage, women are typically eligible to remain covered past the 60 day period due to the modified qualification criteria.²⁷⁸ In contrast, but in states that have no expanded Medicaid coverage, many women find that they do not meet the income eligibility requirements due to their income being too high (above that 138 percent threshold) which creates a lapse in coverage during that particularly vulnerable postpartum period.²⁷⁹ A recent study found that approximately 55 percent of women with health insurance coverage at delivery still experienced a coverage gap lasting six months, due to a variety of factors (geographic, being unmarried, limited English proficiency, and lower income levels), including having Medicaid or Children's Health Insurance Program (CHIP) coverage (as opposed to private insurance coverage).²⁸⁰ Additionally, there are racial disparities associated with gaps or disruptions in coverage (both Medicaid and private insurance), as from preconception to postpartum, 75.3 percent of White women had continuous coverage as compared to 55.4 percent of Black women, 49.9 percent of Native American women, and 20.5 percent of Latina Spanish-speaking Latina women.²⁸¹ Furthermore, 4 in 10 mothers with Medicaid did not access a postpartum visit—a critical opportunity to receive support or care for postpartum depression or breastfeeding challenges, or get information about nutrition, exercise, and how long to wait until getting pregnant again.²⁸²

Variation of Hospital Quality

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<http://files.kff.org/attachment/Issue-Brief-Expanding-Postpartum-Medicaid-Coverage>
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<http://files.kff.org/attachment/Issue-Brief-Expanding-Postpartum-Medicaid-Coverage>
<https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2016.1241>
https://journals.lww.com/greenjournal/Fulltext/2020/04000/Racial_and_Ethnic_Disparities_in_Perinatal.20.aspx
<https://www.healthaffairs.org/doi/10.1377/hblog20190501.254675/full>

There are significant racial disparities in the quality of care, or the care that is provided to women before, during, and after pregnancy, that women of color receive,²⁸³—and a major part of this quality of care issue is in the variation of hospital quality where women deliver.²⁸⁴ Research has shown that women of color tend to deliver in lower quality hospitals in the U.S. than white women.²⁸⁵ These hospitals that serve Black patients tend to have higher overall mortality rates and lower rates of effective evidenced-based medical treatments,²⁸⁶ and in several states, they perform worse than other hospitals on delivery-related indicators in several states.²⁸⁷ Approximately 75 percent of Black women deliver in a specific set of hospitals, where health outcomes are worse for both black and White women, and less than 20 percent of White women deliver in those same hospitals.²⁸⁸ In New York City, Black and Latina women tend to deliver in hospitals with worse outcomes, and the risk of live-threatening complications could be six times higher for any woman delivering in one hospital rather than another hospital.²⁸⁹

In New York City, Black women are more likely to deliver in hospitals with higher severe maternal morbidity rates, and this distribution may contribute to the racial disparity seen in severe maternal morbidity rates for Black as compared to

283 Howell Statement, at 2. 284 *Ibid*; Cox Statement, at 4. 285 Howell EA, Egorova NN, Balbierz A, Zeitlin J, Hebert PL, “Site of delivery contribution to black-white severe maternal morbidity disparity,” *Am J Obstet Gynecol*, Vol. 215, No. 2 (August 2016): 143–152, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4967380/>; Howell EA, Egorova N, Balbierz A, Zeitlin J, Hebert PL, “Black-white differences in severe maternal morbidity and site of care,” *Am J Obstet Gynecol*, Vol. 214, No. 1 (January 2016): e121–127, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4698019/>; 286 Morales LS, Staiger D, Horbar JD, et al, “Mortality among very low-birthweight infants in hospitals serving minority populations,” *Am J Public Health*, Vol. 95, No. 12 (December 2005): 2206–2212, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449508/>; Barnato AE, Lucas FL, Staiger D, Wennberg DE, Chandra A, “Hospital-level racial disparities in acute myocardial infarction treatment and outcomes,” *Med Care*, Vol. 43, No. 4 (April 2005): 308–313, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2121607/>; Stansbury JP, Jia H, Williams LS, Vogel WB, Duncan PW, “Ethnic disparities in stroke: epidemiology, acute care, and postacute outcomes,” *Stroke*, Vol. 36, No. 2 (February 2005): 374–386; Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” *Obstet Gynecol*, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>; 287 Creanga AA, Bateman BT, Mhyre JM, Kuklina E, Shilkret A, Callaghan WM, “Performance of racial and ethnic minority-serving hospitals on delivery-related indicators,” *Am J Obstet Gynecol*, Jun. 5, 2014; Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” *Obstet Gynecol*, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>; 288 Howell Statement, at 2; Howell EA, Egorova N, Balbierz A, Zeitlin J, Hebert PL, “Black-white differences in severe maternal morbidity and site of care,” *Am J Obstet Gynecol*, Vol. 214, No. 1 (January 2016): e121–127, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4698019/>; 289 Howell Statement, at 2; Howell EA, Egorova NN, Balbierz A, Zeitlin J, Hebert PL, “Site of delivery contribution to black-white severe maternal morbidity disparity,” *Am J Obstet Gynecol*, Vol. 215, No. 2 (August 2016): 143–152, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4967380/>; Howell EA, Egorova NN, Janevic T, Balbierz A, Zeitlin J, Hebert PL, “Severe Maternal Morbidity Among Hispanic Women in New York City: Investigation of Health Disparities,” *Obstet Gynecol* Vol. 129 (2017):285-94. 290 Howell EA, Egorova NN, Balbierz A, Zeitlin J, Hebert PL, “Site of delivery contribution to black-white severe maternal morbidity disparity,” *Am J Obstet Gynecol*, Vol. 215, No. 2 (August 2016): 143–152, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4967380/>; Howell EA, Egorova N, Balbierz A, Zeitlin J, Hebert PL, “Black-white differences in severe maternal morbidity and site of care,” *Am J Obstet Gynecol*, Vol. 214, No. 1 (January 2016): e121–127, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4698019/>; Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” *Obstet Gynecol*, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>.

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examinations that aimed to quantify the impact of delivery location on the disparity of severe maternal morbidity if women of color delivered at the same hospitals or went to hospitals in the same proportion as White women, it was found that the rate of severe maternal morbidity for Black and Latina women could be reduced significantly.²⁹¹ Additionally, research has shown that Black and Latina women are more likely to experience severe maternal morbidity within the same hospital, after accounting for factors such as maternal age, obesity, hypertension, and diabetes.²⁹²

In rural America, maternity care is disappearing from hospitals, with less than half of all rural hospitals providing maternity care.²⁹³ A recent study noted that a loss of hospital-based obstetrics services led to increases in out-of-hospital births, preterm births, or births in hospitals without any obstetrics services.²⁹⁴ The loss of maternity care in these hospitals can be attributed to physician shortages and low reimbursement for Medicaid.²⁹⁵ Due to low numbers of births in any given rural hospital.²⁹⁶ As of 2008, only 6.4 percent of obstetrician-gynecologists worked in rural areas.²⁹⁷ In addition, one study found that the maternal mortality rate is approximately 61 percent higher in rural areas than in more urban areas, which can be possibly attributed to underlying health conditions, poor prenatal care, and a lack of geographic access.²⁹⁸ These closures perpetuate racial disparities in health care, as many obstetrics services are being cut from

291 Elizabeth A. Howell, MD, MPP, “Reducing Disparities in Severe Maternal Mortality and Morbidity,” *Obstet Gynecol*, Vol. 61, No. 2 (June 2018): 4, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>; Howell EA, Egorova NN, Janevic T, Balbierz A, Zeitlin J, Hebert PL, “Severe Maternal Morbidity Among Hispanic Women in New York City: Investigation of Health Disparities,” *Obstet Gynecol* Vol. 129 (2017):285-94. 292 Howell Statement, at 2; Howell EA, Egorova NN, Janevic T, et al, “Race and Ethnicity, Medical Insurance, and Within-Hospital Severe Maternal Morbidity Disparities,” *Obstet Gynecol*, Vol. 135 (2020): 285-93. 293 See supra note 259; Gaby Galvin, “Rural Mothers, Babies at Risk When Hospitals Cut Obstetric Services,” *US News and World Report*, Jun. 13, 2019, <https://www.usnews.com/news/healthiest-communities/articles/2019-06-13/what-happens-when-rural-communities-lose-their-hospital-maternity-care>; Adriana Gallardo and Nina Martin, “Another Thing Disappearing From Rural America: Maternal Care,” *ProPublica*, Sep. 5, 2017, <https://www.propublica.org/article/another-thing-disappearing-from-rural-america-maternal-care>; Dina Fine Maron, “Maternal Health Care Is Disappearing in Rural America,” *Scientific American*, Feb. 15, 2017, <https://www.scientificamerican.com/article/maternal-health-care-is-disappearing-in-rural-america/>; 294 Katy B. Kozhimannil, PhD, MPA; Peiyin Hung, PhD, MSPH; Carrie Henning-Smith, PhD, MPH, MSW, et al, “Association Between Loss of Hospital-Based Obstetric Services and Birth Outcomes in Rural Counties in the United States,” *JAMA*, Vol. 319, No. 12 (2018): 1239–1247, <https://jamanetwork.com/journals/jama/fullarticle/2674780>. 295 National Center for Health Statistics, Division of Vital Statistics, “Births: Final Data for 2018,” *National Vital Statistics Reports*, Vol. 68, No. 13 (Nov. 27, 2019): p. 2, https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_13-508.pdf. Medicaid paid for 42.3 percent of all births in the U.S. in 2018. 296 Gaby Galvin, “Rural Mothers, Babies at Risk When Hospitals Cut Obstetric Services,” *US News and World Report*, Jun. 13, 2019, <https://www.usnews.com/news/healthiest-communities/articles/2019-06-13/what-happens-when-rural-communities-lose-their-hospital-maternity-care>. 297 American College of Obstetricians and Gynecologists, “Health Disparities in Rural Women,” *Committee Opinion No. 586*, February 2014, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2014/02/health-disparities-in-rural-women>. 298 Dina Fine Maron, “Maternal Health Care Is Disappearing in Rural America,” *Scientific American*, Feb. 15, 2017, <https://www.scientificamerican.com/article/maternal-health-care-is-disappearing-in-rural-america/>.

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<https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2014/02/health-disparities-in-rural-women>
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<https://www.scientificamerican.com/article/maternal-health-care-is-disappearing-in-rural-america/>

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hospitals that serve Black women in rural America, who experience some of the worst birth outcomes in the U.S.²⁹⁹

With regard to Native Americans, the IHS also funds the Urban Indian Health Program, which receives federal funds to provide healthcare services to serve urban dwelling Native Americans.³⁰⁰ However only 1 percent of the IHS budget is allocated to this healthcare program, and the program serves a larger proportion of non-Native Americans due to these programs accepting supplementary funds such as Medicare, Medicaid, or private insurance which restricts these programs from limiting services to just Native Americans.³⁰¹ It has been reported that Clinics funded by this program reportedly lack electronic medical records, limiting data collection and reporting of statistics, (particularly on Native Americans, for which there is already a lack of data.³⁰²) and They also lack sufficient communication with referral facilities, adequate space, and; inconsistent funding sources; moreover, and a fragmentation of care is fragmented due to a lack on-site resources such as radiology services or pharmacies which patients typically will have to pay for separately, out-of-pocket.³⁰³

Structural Racism and Implicit Racial Bias in Healthcare

There is a substantial body of research that indicates the role of implicit racial bias plays in creating and perpetuating racial disparities in healthcare.³⁰⁴ Racial stereotypes can have a

299 Adriana Gallardo and Nina Martin, “Another Thing Disappearing From Rural America: Maternal Care,” *ProPublica*, Sep. 5, 2017, <https://www.propublica.org/article/another-thing-disappearing-from-rural-america-maternal-care>; Crear-Perry Statement, at 7. 300 American College of Obstetricians and Gynecologists, “Health Care for Urban American Indian and Alaska Native Women,” *Committee Opinion No. 515*, January 2012, p. 3, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2012/01/health-care-for-urban-american-indian-and-alaska-native-women>. 301 *Ibid*. 302 U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*, p. 18, note 63, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>. 303 American College of Obstetricians and Gynecologists, “Health Care for Urban American Indian and Alaska Native Women,” *Committee Opinion No. 515*, January 2012, p. 3, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2012/01/health-care-for-urban-american-indian-and-alaska-native-women>. 304 Institute of Medicine, “Unequal Treatment: What Healthcare Providers Need to Know About Racial and Ethnic Disparities in Health-Care,” March 2002, pp. 10–12, https://www.nap.edu/resource/10260/disparities_providers.pdf; The American College of Obstetricians and Gynecologists, “Racial and Ethnic Disparities in Obstetrics and Gynecology,” *Committee Opinion No. 649*, December 2015 (reaffirmed 2018), p. 2, <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2015/12/racial-and-ethnic-disparities-in-obstetrics-and-gynecology.pdf>; Alexander R. Green, MD, MPH, Dana R. Carney, PhD, Daniel J. Pallin, MD, MPH, Long H. Ngo, PhD, Kristal L. Raymond, MPH, Lisa I. Iezzoni, MD, MSc, and Mahzarin R. Banaji, PhD, “Implicit Bias among Physicians and Its Prediction of Thrombolysis Decisions for Black and White Patients,” *Journal of General Internal Medicine*, Vol. 22, No. 9 (September 2007): 1231–1238, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2219763/pdf/11606_2007_Article_258.pdf; Kelly M. Hoffman, Sophie Trawalter, Jordan R. Axt, M. Norman Oliver, “Racial bias in pain assessment and treatment recommendations, and false beliefs about biological differences between blacks and whites,” *Proceedings of the National Academy of Sciences*, Vol. 113, No. 16 (Apr. 19, 2016): 1–6, <https://www.pnas.org/content/pnas/early/2016/03/30/1516047113.full.pdf>; Erin Dehon PhD Nicole Weiss PhD Jonathan Jones MD Whitney Faulconer MD Elizabeth Hinton MSIS Sarah Sterling MD, “A Systematic Review of

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negative impact upon the relationships between pregnant women of color and their physicians.³⁰⁵ Studies have shown that different treatment is seen among White patients and patients of color—possibly driven by healthcare providers’ attitudes towards people of color—including such as healthcare providers spending less time with patients of color, keeping patients of color waiting longer for assessment or treatment, speaking to patients of color in a more condescending tone, failing to provide interpreters to Limited English Proficiency individuals, doing less diagnostic work for patients of color, recommending different treatment options for patients of color based on assumptions about their capability to adhere to the treatment, limiting visitation to families of patients of color, and others.³⁰⁶ One study found that Black patients are “systematically undertreated for pain” as compared to White patients, and healthcare providers who falsely believe in inherent biological differences between Black and White people were more likely to underestimate Black patients’ pain severity.³⁰⁷

A survey conducted in California to learn about women’s childbearing experiences found that 11 percent of Black women reported being treated unfairly by health care providers during their hospital stay based on their race or ethnicity, as compared to 8 percent of Asian/Pacific Islander women, 5 percent of Latina women, and less than 1 percent of White women reporting unfair treatment.³⁰⁸ The survey also reported that as compared to White women, more Black and

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Commented [KC28]: How many fell in that category. It's really something that anyone would hold such beliefs so I would provide data or more explanation. One reason is that we don't want it to sound like a false accusation.

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Asian women felt that a nurse or maternity care provider used harsh, rude, or threatening language, and handled them roughly during their hospital stay than White women.³⁰⁹

While cesarean section births can be life-saving for both the fetus and/or the mother, the American College of Obstetricians and Gynecologists has recommended against the overuse of cesarean section births for all women, indicating that "the rapid increase in cesarean birth rates from 1996 to 2011 without clear evidence of concomitant decreases in maternal or neonatal morbidity or mortality raises significant concern that cesarean delivery is overused."³¹⁰ Research has shown that cesarean deliveries for low-risk pregnancies pose a greater risk of maternal mortality and morbidity than vaginal births.³¹¹ The California survey reported that Black women experience higher rates of cesarean section births (42 percent) than White women (29 percent),³¹² and these results are echoed at the national level, where 36 percent of Black women have cesarean section births as compared to 30.9 percent of White women.³¹³

Shared decision making in maternity care is patient-centered care, involving a process in which patients and healthcare providers share information, values, treatment preferences, and collaboratively arrive at a treatment plan, including a birth plan.³¹⁴ Shared decision making should ideally start during antenatal care and continue throughout birth, with regular visits to build a relationship and navigate complex care decisions.³¹⁵ While it has been linked with increased patient satisfaction, improved health outcomes, and lower healthcare costs,³¹⁶ data show that this process is vulnerable to bias and can be met with a number of barriers.³¹⁷ Since

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maternity care is complex, patients often have inadequate knowledge to make informed decisions.³¹⁸ A recent study found that maternity care providers tend to give patients disproportionate information in favor of certain interventions than against them.³¹⁹ For example, 47 percent of women who were told their baby might be large reported a discussion about possible labor induction vs. waiting for labor; and 67 percent of women who have had 1-2 previous cesarean section births and had a discussion about a repeat cesarean section wound up having one vs. women who didn't have that discussion.³²⁰ Additionally, 27 percent of women who had previous cesarean sections and 18 percent of mothers told that their babies were large indicated that their providers had not fully explained their choices or that they even had choices.³²¹ This study also noted that women who had repeat cesarean sections without prior discussion were most likely to be lower-income, Latina women without a college degree.³²² Another study reported similar disparities; Black women without a college degree reported low levels of shared decision making, and shared decision making odds were particularly low for Black women who deliver by cesarean section.³²³

While the effects of explicit bias are often conscious, implicit bias often has unconscious effects, which may not be easily acknowledged or controlled.³²⁴ Disparities can also stem from "subtle ambiguities in practitioners' and patients' interpretations of medical information because of cultural and language differences."³²⁵ With regard to systemic racism in obstetrics and

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gynecology, one article pointed out the skewed focus on the shortcomings of pregnant women of color as opposed to addressing bias on the part of practitioners, and noted the experience of Black women:

It seems that, rather than addressing systemic racism in obstetrics and gynecology, medical practitioners have instead to some extent emphasized all of the ways Black women allegedly make themselves prone to being ill during their pregnancies. Black pregnant women and non-gender binary folks are told their fatness, advanced age, dietary choices, and lack of prenatal care have increased their chances of dying during childbirth. Yet, whereas Black pregnant people and mothers are made into culprits and the initiators of their deaths, doctors, nurses, and the hospitals they run are not looked at as critically as they should be.³²⁶

Additionally, there is a lack of trust in physicians, particularly with Black and Latino patients, attributed to a longstanding history of adverse treatment of people of color in the medical system.³²⁷ There is a lack of "culturally congruent" maternity care in the U.S., as well as a lack of workforce diversity.³²⁸ Healthcare providers of color can help "mitigate cultural barriers" in the healthcare system in the U.S., but the lack of workforce diversity can impede that effort.³²⁹ For example, a recent report indicated that "Black physicians are more likely than White physicians to serve medically underserved areas and populations and have been shown to increase access to health care for Black patients, earn higher levels of patient trust and satisfaction, and in some cases, spend more time with Black patients than White physicians do."³³⁰ Black and Latino individuals make up almost a third of the U.S. population,³³¹ yet Black and Latino healthcare professionals each make up only 3 to 6 percent of the total,³³² and only about 9 percent of physicians identifying as Black, Latino, or Native American.³³³

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While science has long debunked theories about biological differences among the races³³⁴ to explain higher rates of maternal mortality,³³⁵ there has been research that shows evidence of the chronic effect of the stress of racism.³³⁶ This concept is referred to as “weathering,” and it can impact the health of a women during pregnancy, childbirth, and postpartum.³³⁷ Research has shown that Black women suffer the burden of this stress the most, as compared to White women.³³⁸ Dr. Arlene Geronimus, who has pioneered this research and coined the term “weathering,” has described the science behind her findings:

There have been folk notions and laypeople have thought that health differences between populations — such as black versus white in the U.S. — were somehow related to differences in our DNA, that we were, in a sense, molecularly programmed to have this disease or that disease. But instead, social and environmental factors, can through what’s called DNA methylation, which occurs . . . when a group of molecules attach methyl groups to specific areas of a gene’s promoter region, and either prevent the reading of certain genes and sort of forms the gene’s product, and you have genetic expression of that gene. That’s a pretty powerful idea, and it sort of refutes the kind of more DNA- centric one, that you are destined by the literal DNA you have to have certain diseases or not.

But what I’ve seen over the years of my research and lifetime is that the stressors that impact people of color are chronic and repeated through their whole life course, and in fact may even be at their height in the young adult-through-middle-adult ages rather than in early life. And that increases a general health vulnerability — which is what weathering is.³³⁹

Dr. Geronimus’ research also found that weathering can occur across socioeconomic status, finding that financial security does not necessarily counteract the psychological stressors of racism that can have negative impacts on health over time.³⁴⁰

Over the past few years, ProPublica and National Public Radio have collected hundreds of stories of mothers who have died in childbirth or of pregnancy-related complications.³⁴¹ Their series of articles surrounding this topic, called Lost Mothers, seeks to address the issue of

³³⁴ See supra note 140. ³³⁵ Patti Neighmond, “Why Racial Gaps In Maternal Mortality Persist,” NPR, May 10, 2019, <https://www.npr.org/sections/health-shots/2019/05/10/722143121/why-racial-gaps-in-maternal-mortality-persist>. ³³⁶ Arline T. Geronimus, ScD, Margaret Hicken, MPH, Danya Keene, MAT, and John Bound, PhD, “‘Weathering’ and Age Patterns of Allostatic Load Scores Among Blacks and Whites in the United States,” *American Journal of Public Health*, Vol. 96, No. 5 (May 2006): 826-833, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1470581/>. ³³⁷ Ibid. ³³⁸ Ibid. ³³⁹ Gene Demby, “Making The Case That Discrimination Is Bad For Your Health,” *The Code Switch Podcast*, NPR, Jan. 14, 2018, <https://www.npr.org/sections/codeswitch/2018/01/14/577664626/making-the-case-that-discrimination-is-bad-for-your-health>. ³⁴⁰ Patia Braithwaite, “Biological Weathering and Its Deadly Effect on Black Mothers,” *Self*, Sep. 30, 2019, <https://www.self.com/story/weathering-and-its-deadly-effect-on-black-mothers>. ³⁴¹ Nina Martin, Emma Cillekens and Alessandra Freitas, “Lost Mothers,” ProPublica, Jul. 17, 2017, <https://www.propublica.org/article/lost-mothers-maternal-health-died-childbirth-pregnancy>.

<https://www.npr.org/sections/health-shots/2019/05/10/722143121/why-racial-gaps-in-maternal-mortality-persist>
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<https://www.propublica.org/article/lost-mothers-maternal-health-died-childbirth-pregnancy>

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maternal mortality in the U.S., and has specifically highlighted the racial disparities that affect women of color, particularly Black women.³⁴² One of their particular studies focusing onfeature on Black mothers who experienced fatal complications to pregnancy identified a common theme: these women expressed feeling “devalued and disrespected by medical providers.”³⁴³ Black women perceive that they are being treated differently, which some experts and advocates believe has more to do with racism than race.³⁴⁴ This bias also transcends social status, income, or education; all women of color are at risk, with Black women often experiencing the brunt of the impact, including:

The young Florida mother-to-be whose breathing problems were blamed on obesity when in fact her lungs were filling with fluid and her heart was failing. The Arizona mother whose anesthesiologist assumed she smoked marijuana because of the way she did her hair. The Chicago-area businesswoman with a high-risk pregnancy who was so upset at her doctor’s attitude that she changed OB-GYNs in her seventh month, only to suffer a fatal postpartum stroke. . . . Over and over, black women told of medical providers who equated being African American with being poor, uneducated, noncompliant and unworthy.³⁴⁵

Native American women have also had documented experiences with this racial bias. One woman who is also a chief research officer at the Seattle Indian Health Board described the following treatment from a medical professional:

The very first thing she did was ask me to push up my sleeves so she could look at my arm, and I didn’t understand why . . . I realized that she was checking my arm to see if I had been using intravenous drugs.

She sat and questioned me for five minutes about how much I had been drinking prior to getting pregnant, and after becoming pregnant . . . I told her I wasn’t drinking, I hadn’t been drinking at any point in time. She told me, ‘I know you people drink.’³⁴⁶

³⁴² “Lost Mothers: Maternal Care and Preventable Deaths,” ProPublica, <https://www.propublica.org/series/lost-mothers>. ³⁴³ Nina Martin, ProPublica and Renee Montagne, NPR News, “Nothing Protects Black Women From Dying in Pregnancy and Childbirth,” ProPublica, Dec. 7, 2017, <https://www.propublica.org/article/nothing-protects-black-women-from-dying-in-pregnancy-and-childbirth>. ³⁴⁴ Patti Neighmond, “Why Racial Gaps In Maternal Mortality Persist,” NPR, May 10, 2019, <https://www.npr.org/sections/health-shots/2019/05/10/722143121/why-racial-gaps-in-maternal-mortality-persist>. ³⁴⁵ Nina Martin, ProPublica and Renee Montagne, NPR News, “Nothing Protects Black Women From Dying in Pregnancy and Childbirth,” ProPublica, Dec. 7, 2017, <https://www.propublica.org/article/nothing-protects-black-women-from-dying-in-pregnancy-and-childbirth>. ³⁴⁶ Elizabeth Chuck and Haimy Assefa, “She hoped to shine a light on maternal mortality among Native Americans. Instead, she became a statistic of it.” Feb. 8, 2020, <https://www.nbcnews.com/news/us-news/she-hoped-shine-light-maternal-mortality-among-native-americans-instead-n1131951>.

<https://www.propublica.org/series/lost-mothers>
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How Disparities in Maternal Mortality and Morbidity Impact Children, Families, and Communities

Maternal mortality and morbidity have wide-ranging impacts on not only children and families, but also communities. On a basic economic level, working to prevent pregnancy-related deaths and severe maternal morbidity would save billions of dollars each year.³⁴⁷ Costs associated with the treatment of pregnancy-associated complications and conditions can run into the billions, at the expense of women, their families, and the healthcare system.³⁴⁸ For example, it is estimated that the cost of treating preeclampsia each year is over \$1 billion,³⁴⁹ and in California, the estimated cost to Medi-Cal of treating pregnancy-related hemorrhage and hypertensive disorders annually is \$105 million and \$106 million, respectively.³⁵⁰ However, the cost is so much more than just financial; there is also the human toll that is taken when a mother suffers pregnancy-related complications.

Research from around the world has shown that the loss of a mother can have a multi-generational ripple effect, with physical, economic, social, and emotional consequences for her family.³⁵¹ Pregnancy complications, in some cases, pregnancy complications may have an impact on the health of the infant.³⁵² Fathers or other family members are left to shoulder the burden of childcare responsibilities as well as provide financially for a child, and may experience lost income due to the death of the mother, as well as potential debt due to hospital bills, funeral costs, etc.³⁵³ The U.S. does not offer paternal leave, and there are few states and localities that

³⁴⁷ Katherine Ellison and Nina Martin, “Nearly Dying In Childbirth: Why Preventable Complications Are Growing In U.S.,” NPR, Dec. 22, 2017, <https://www.npr.org/2017/12/22/572298802/nearly-dying-in-childbirth-why-preventable-complications-are-growing-in-u-s>. ³⁴⁸ Ibid. ³⁴⁹ Warren Stevens, PhD, Tiffany Shih, PhD, Devin Incerti, PhD, George A. Macones, MD, Baha M. Sibai, MD, Anupam B. Jena, MD, PhD, “Short-term costs of preeclampsia to the United States health care system,” *American Journal of Obstetrics and Gynecology*, Vol. 217, No. 3 (Jul. 11, 2017): 237-248, [https://www.ajog.org/article/S0002-9378\(17\)30561-6/fulltext](https://www.ajog.org/article/S0002-9378(17)30561-6/fulltext). ³⁵⁰ Katherine Ellison and Nina Martin, “Nearly Dying In Childbirth: Why Preventable Complications Are Growing In U.S.,” NPR, Dec. 22, 2017, <https://www.npr.org/2017/12/22/572298802/nearly-dying-in-childbirth-why-preventable-complications-are-growing-in-u-s>; Nadereh Pourat, PhD, Ana E. Martinez, MPH, Jeffrey McCullough, MPH, Kimberly D. Gregory, MD, MPH, Lisa Korst, MD, PhD, Gerald F. Kominski, PhD, Costs of Maternal Hemorrhage in California, UCLA Center for Health Policy Research, Health Economics and Evaluation Research Program, October 2013, p. 6, <https://healthpolicy.ucla.edu/publications/Documents/PDF/maternalhemorrhagereport-oct2013.pdf>; Nadereh Pourat, PhD, Ana E. Martinez, MPH, Jeffrey McCullough, MPH, Kimberly D. Gregory, MD, MPH, Lisa Korst, MD, PhD, Gerald F. Kominski, PhD, Costs of Gestational Hypertensive Disorders in California: Hypertension, Preeclampsia, and Eclampsia, UCLA Center for Health Policy Research, Health Economics and Evaluation Research Program, October 2013, p. 6, <http://healthpolicy.ucla.edu/publications/Documents/PDF/gestationaldisordersreport-oct2013.pdf>. ³⁵¹ Suellen Miller and José M. Belizán, “The true cost of maternal death: individual tragedy impacts family, community and nations,” *Reproductive Health*, Vol. 12, No. 56 (2015): 1-4, <https://link.springer.com/content/pdf/10.1186/s12978-015-0046-3.pdf>. ³⁵² Ibid., 2; Ben Schwartz, “A new normal: How families and fathers are affected by maternal mortality,” *Contemporary OB/GYN*, Sep. 12, 2018, <https://www.contemporaryobgyn.net/article/new-normal-how-families-and-fathers-are-affected-maternal-mortality>; U.S. Department of Labor, Women’s Bureau, Labor Force Participation

<https://www.npr.org/2017/12/22/572298802/nearly-dying-in-childbirth-why-preventable-complications-are-growing-in-u-s>
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<https://www.contemporaryobgyn.net/article/new-normal-how-families-and-fathers-are-affected-maternal-mortality>

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have implemented paternal leave policies, which can be hard to manage for fathers left to shoulder the burden alone.³⁵⁴ At the same time, they have to deal with the grief for the loss of the mother of their child, which in and of itself is a huge burden.³⁵⁵ Charles Johnson, Founder of 4Kira4Moms, experienced the loss of his wife, Kira Johnson, due to complications from a cesarean section birth of their second son.³⁵⁶ He said of his life after Kira’s death:

Kira and I were partners in every sense of the word . . . but I found myself being thrust into this new reality of being a single dad of two VERY small children and trying to figure it out. I knew that I couldn’t replace her; I had to step into that gap as best I could, and I was going to change every single diaper, fill every bottle, and I was not going to let Langston [their baby] out of my sight.³⁵⁷

While the father’s role can change dramatically following the loss of their child’s mother, roles for other family members can change as well in the aftermath, including grandparents, aunts, uncles, or siblings.³⁵⁸ In some cases, extended family members may be able to provide childcare and other support.³⁵⁹ However, especially if the mother was the primary breadwinner in the household, the child may be sent to live with other relatives if the father was not a presence in the mother’s life.³⁶⁰

Since data shows that women of color are most likely to die from pregnancy-related complications, children and families of color are more severely impacted by these deaths, particularly Black children and families, are more severely impacted by these deaths.³⁶¹ Fifty- four percent of Black children in the U.S. live with only one parent—typically the mother—as compared to 13 percent of Asian children, 19 percent of White children, 29 percent of Latino children,³⁶² and 38 percent of Native American children.³⁶³ In addition, Black mothers are more

Race by Sex, Race and Hispanic Ethnicity, 2016 Annual Averages, <https://www.dol.gov/agencies/wb/data/latest-annual-data/labor-force-participation-rates>. 354 Ben Schwartz, “A new normal: How families and fathers are affected by maternal mortality,” Contemporary OB/GYN, Sep. 12, 2018, <https://www.contemporaryobgyn.net/article/new-normal-how-families-and-fathers-are-affected-maternal-mortality>; Adam Bulger, “What Are the Laws Around Paternity Leave and Family Leave in the U.S.?” Fatherly, Feb. 19, 2020, <https://www.fatherly.com/love-money/paternity-leave-laws-state-us/>. 355 Jacqueline Howard, “When women die in childbirth, these are the fathers left behind,” CNN, Feb. 22, 2020, <https://www.cnn.com/2020/02/21/health/maternal-mortality-fathers-grief/index.html>. 356 See “Who We Are,” 4Kira4Moms, <https://4kiramoms.com/home/#mission>. 357 Ben Schwartz, “A new normal: How families and fathers are affected by maternal mortality,” Contemporary OB/GYN, Sep. 12, 2018, <https://www.contemporaryobgyn.net/article/new-normal-how-families-and-fathers-are-affected-maternal-mortality>. 358 Ibid. 359 Ibid. 360 Ibid. 361 See supra notes 111-112. 362 Pew Research Center, The American Family Today, Dec. 17, 2015, <https://www.pewsocialtrends.org/2015/12/17/1-the-american-family-today/>; Ben Schwartz, “A new normal: How families and fathers are affected by maternal mortality,” Contemporary OB/GYN, Sep. 12, 2018, <https://www.contemporaryobgyn.net/article/new-normal-how-families-and-fathers-are-affected-maternal-mortality>. 363 National Center for Education Statistics, “Indicator 3: Children’s Living Arrangements,” Figure 3.1., https://nces.ed.gov/programs/raceindicators/indicator_RAC.asp.

<https://www.dol.gov/agencies/wb/data/latest-annual-data/labor-force-participation-rates>
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https://nces.ed.gov/programs/raceindicators/indicator_RAC.asp

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likely to be in the workforce than mothers of any other race,364 with over 70 percent of Black mothers in the workforce with a child under the age of 3.365 Furthermore, 74 percent of Black mothers are the primary breadwinners of their family, so “[n]ot only are these mothers more at risk, but if tragedy does strike, their surviving immediate family members lose their primary breadwinner and often lack the support system within the family structure to adapt.”366

Advocacy, Policy, Education, and Action to Combat Racial Disparities in Maternal Health

In recent years, the issue of maternal mortality, morbidity, and racial disparities in maternal health care—particularly as it affects Black women—has been in the spotlight, due to the abysmal maternal death rate certain women of color, particularly Black and Native women. In recent years, high-profile celebrities such as Beyoncé and Serena Williams have spoken out about surviving potentially fatal pregnancy complications.367 Beyoncé suffered from preeclampsia and delivered twins via emergency cesarean section after being bedridden for a month.368 Serena Williams developed a pulmonary embolism after having a cesarean section, and after intense coughing ripped open her wound and prompted surgery, doctors also found a large hematoma in her abdomen.369 Six-time Olympic gold medalist sprinter Allyson Felix has also been very outspoken about her similar experience, as she developed a severe case of preeclampsia and had to have an emergency cesarean section at 32 weeks.370 Allyson Felix testified before the Ways and Means Committee on the topic of racial disparities in maternal mortality, stating thataying:

Mothers don’t die from childbirth, right? Not in 2019, not professional athletes, not at one of the best hospitals in the country, and certainly not to women who have a birthing

364 Daniella Zessoules, Annie McGrew, and Michael Madowitz, “The State of the U.S. Labor Market for Mothers: Pre-May 2018 Jobs Release,” Center for American Progress, May 30, 2018, <https://www.americanprogress.org/issues/economy/news/2018/05/30/451414/state-u-s-labor-market-mothers-pre-may-2018-jobs-release/>. 365 U.S. Department of Labor, Women’s Bureau, Labor Force Participation Rate by Sex, Race and Hispanic Ethnicity, 2016 Annual Averages, <https://www.dol.gov/agencies/wb/data/latest-annual-data/labor-force-participation-rates>; Ben Schwartz, “A new normal: How families and fathers are affected by maternal mortality,” Contemporary OB/GYN, Sep. 12, 2018, <https://www.contemporaryobgyn.net/article/new-normal-how-families-and-fathers-are-affected-maternal-mortality>. 366 Ben Schwartz, “A new normal: How families and fathers are affected by maternal mortality,” Contemporary OB/GYN, Sep. 12, 2018, <https://www.contemporaryobgyn.net/article/new-normal-how-families-and-fathers-are-affected-maternal-mortality>. 367 Allyson Chiu, “Beyoncé, Serena Williams open up about potentially fatal childbirths, a problem especially for black mothers,” The Washington Post, August 7 2018, <https://www.washingtonpost.com/news/morning-mix/wp/2018/08/07/beyonce-serena-williams-open-up-about-potentially-fatal-childbirths-a-problem-especially-for-black-mothers/>. 368 Ibid. 369 Ibid. 370 Rick Maese, “Olympian Allyson Felix tells Congress of racial disparities in maternal mortality,” The Washington Post, May 16, 2019, <https://www.washingtonpost.com/sports/2019/05/16/olympian-allyson-felix-tells-congress-racial-disparities-maternal-mortality/>.

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plan and a birthing suite lined up. I thought maternal health was solely about fitness, resources and care. If that was true, then why was this happening to me? I was doing everything right.

The next month was spent in the NICU and I learned that my story was not so uncommon, there were others like me - just like me. Black like me, healthy like me, doing their best – just like me.371

These are just a few glaring examples of how life-threatening pregnancy complications can affect Black women of all socioeconomic backgrounds and education levels—even decorated star athletes and millionaire celebrities.372

Advocates have been fighting for decades to empower women of color to maintain autonomy to make decisions to enable a healthy and safe, childbirth experience.373 Some advocates consider this “birth justice” movement to be a part of the larger reproductive justice movement, and aims to “dismantle inequities based on race, class, gender, and sexuality.”374 This movement is focused on establishing “systems of care that are equitable and culturally relevant,”375 acknowledging that some women have struggled to navigate the western healthcare systems that “did not focus on them.”376 These efforts aim to establish these systems of care by “addressing racism, discrimination, and bias and, thus, dismantling existing systems of care that have created and perpetuated inequities in health care service delivery and ultimately resulted in grave disparities in health outcomes.”377

Many advocates have been working hard to raise awareness to the racial disparity in maternal mortality and morbidity. In addition to the efforts ofAlongside medical professionals,

371 Allyson Felix, U.S. Track and Field Olympian, Testimony before the Ways and Means Committee on Overcoming Racial Disparities and Social Determinants in the Maternal Mortality Crisis, May 16, 2019, <https://waysandmeans.house.gov/legislation/hearings/overcoming-racial-disparities-and-social-determinants-maternal-mortality-0>. 372 Allyson Chiu, “Beyoncé, Serena Williams open up about potentially fatal childbirths, a problem especially for black mothers,” The Washington Post, August 7 2018, <https://www.washingtonpost.com/news/morning-mix/wp/2018/08/07/beyonce-serena-williams-open-up-about-potentially-fatal-childbirths-a-problem-especially-for-black-mothers/>; Rick Maese, “Olympian Allyson Felix tells Congress of racial disparities in maternal mortality,” The Washington Post, May 16, 2019, <https://www.washingtonpost.com/sports/2019/05/16/olympian-allyson-felix-tells-congress-racial-disparities-maternal-mortality/>. 373 See e.g., Sister Strong, “Reproductive Justice,” <https://www.sistersong.net/reproductive-justice/>; Black Women Birthing Justice, “What is Birth Justice?” [https://groundswellfund.org/birth-justice-fund/](https://www.blackwomenbirthingjustice.org/what-is-birth-justice#~:text=We%20believe%20that%20Birth%20Justice,wider%20movement%20against%20reproductive%20oppression.&text=Join%20BWBJ%20in%20the%20movement%20for%20birth%20justice,ideo.org,“A Campaign and Movement to Raise Awareness of Birth Justice,”https://www.ideo.org/project/voices-for-birth-justice; Groundswell Fund, “Birth Justice Fund,” <a href=). 374 Black Mamas Matter Alliance, Advancing Holistic Maternal Care for Black Women through Policy, December 2018, p. 1, <https://blackmamasmatter.org/wp-content/uploads/2018/12/BMMA-PolicyAgenda-Digital.pdf>. 375 Ibid. 376 Changing Women Initiative, “Our Creation Story,” <http://www.changingwomaninitiative.com/>. 377 Black Mamas Matter Alliance, Advancing Holistic Maternal Care for Black Women through Policy, December 2018, p. 5, <https://blackmamasmatter.org/wp-content/uploads/2018/12/BMMA-PolicyAgenda-Digital.pdf>.

Commented [KC29]: Julie can you add some scientific research to add to these examples? It may already be in Ch. 1 but I defer to you. Then could you add a sentence or a phrase to the text about it?

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<https://www.ideo.org/project/voices-for-birth-justice>
<https://groundswellfund.org/birth-justice-fund/>
<https://blackmamasmatter.org/wp-content/uploads/2018/12/BMMA-PolicyAgenda-Digital.pdf>
<http://www.changingwomaninitiative.com/>
<https://blackmamasmatter.org/wp-content/uploads/2018/12/BMMA-PolicyAgenda-Digital.pdf>

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researchers, academics, journalists, government officials, and lawmakers, there is a strong advocacy movement supported by a wealth of data and research378 that seeks to educate, cultivate research, offer recommendations, foster solutions, and create legislation and policy to address and eradicate racial disparities in maternal health.379 One recent initiative, spearheaded by the Black Mamas Matter Alliance, a Black women-led cross-sectoral alliance with many members organizations working to “advocate, drive research, build power, and shift culture for Black maternal health, rights, and justice,”380 was the creation of Black Maternal Health Week.381 Black Maternal Health Week, which takes place from April 11-17 each year, is “a week of awareness, activism, and community building intended to:

- Deepen the national conversation about Black maternal health in the U.S.;
- Amplify community-driven policy, research, and care solutions;
- Center the voices of Black Mamas, women, families, and stakeholders;
- Provide a national platform for Black-led entities and efforts on maternal health, birth and

reproductive justice; and

- Enhance community organizing on Black maternal health.382

The Black Maternal Health Week campaign serves to “amplify the voices of Black mamas and center the values and traditions of the reproductive and birth justice movements.”383 The Black Mamas Matter Alliance created a corresponding campaign social media toolkit, available to download, to provide messaging guidance around the central theme of the campaign (for 2020, it was “Centering Black Mamas: The Right to Live and Thrive”) with sample messages, shareable graphics, a list of national digital activities, and other resources to help engage.384 Additionally, there is a Black Maternal Health Week #BMHW20 Webinar Series on various topics relating to

378 See supra notes xx-xx. 379 See e.g. Black Mamas Matter Alliance, <https://blackmamasmatter.org/> and its members <https://blackmamasmatter.org/our-members/>; National Birth Equity Collective, <https://birthequity.org/>; March for Moms, <https://marchformoms.org/>; Moms Rising, <https://www.momsrising.org/>; 4Kira4Moms, <https://4kiramoms.com/>; Sista Midwife Productions, <https://www.sistamidwife.com/>; Shades of Blue Project, <http://shadesofblueproject.org/index.html>; Mama

New York state has recently implemented a pilot program that expands its Medicaid program to cover community-based doula services.406 The pilot program would include coverage of 4 prenatal visits and 4 postpartum visits, in addition to the labor and delivery, and doulas would be reimbursed \$600 by Medicaid.409 However, it has been argued that since a doula can cost anywhere from \$250 up to \$4,000 in New York City based on the doula's experience level, Medicaid would likely not cover the entire cost of doula services.410 In addition, advocates argue that this pilot may not go far enough to address racial disparities.411

While advocates note the limitations of New York's pilot doula Medicaid reimbursement program, they believe it is a step in the right direction to bringing equitable maternal care to women from underserved communities.412 As of early spring 2019, Indiana, Minnesota, New

403 Carmen Mojica, "Midwives and doulas aren't a luxury. They're a necessity." March 14, The Lily, <https://www.thelily.com/midwives-and-doulas-arent-a-luxury-theyre-a-necessity/>. 404 Ibid; Astair Bey, Aimee Brill, Chanel Porchia-Albert, Melissa Gradilla, Nan Strauss, ADVANCING BIRTH JUSTICE: Community-Based Doula Models as a Standard of Care for Ending Racial Disparities, Ancient Song Doula Services, Village Birth International, and Every Mother Counts, Mar. 25, 2019, p. 3, https://b5c19f22-2ef4-49b4-94b0-7621fdb5dbba.filesusr.com/ugd/f36f23_7d936f97617a4e34aadd8a052ac1de6.pdf. 405 Carmen Mojica, "Midwives and doulas aren't a luxury. They're a necessity." March 14, The Lily, <https://www.thelily.com/midwives-and-doulas-arent-a-luxury-theyre-a-necessity/>; Astair Bey, Aimee Brill, Chanel Porchia-Albert, Melissa Gradilla, Nan Strauss, ADVANCING BIRTH JUSTICE: Community-Based Doula Models as a Standard of Care for Ending Racial Disparities, Ancient Song Doula Services, Village Birth International, and Every Mother Counts, Mar. 25, 2019, p. 3, https://b5c19f22-2ef4-49b4-94b0-7621fdb5dbba.filesusr.com/ugd/f36f23_7d936f97617a4e34aadd8a052ac1de6.pdf. 406 Astair Bey, Aimee Brill, Chanel Porchia-Albert, Melissa Gradilla, Nan Strauss, ADVANCING BIRTH JUSTICE: Community-Based Doula Models as a Standard of Care for Ending Racial Disparities, Ancient Song Doula Services, Village Birth International, and Every Mother Counts, Mar. 25, 2019, p. 3, https://b5c19f22-2ef4-49b4-94b0-7621fdb5dbba.filesusr.com/ugd/f36f23_7d936f97617a4e34aadd8a052ac1de6.pdf. 407 Ibid. 408 New York State Department of Health, "New York State Doula Pilot Program," https://www.health.ny.gov/health_care/medicaid/redesign/doulapilot/index.htm. 409 Carolyn Adams, "New York aims to give low-income pregnant women access to doulas — but some say it's not enough," NBC News, Feb. 28, 2019, <https://www.nbcnews.com/news/nbcblk/new-york-aims-give-low-income-pregnant-women-access-doulas-n973671>. 410 Ibid. 411 Christina Gebel, MPH, LCCCE, Sarah Hodin, MPH, CD(DONA), LCCCE, "Expanding Access to Doula Care: State of the Union," Maternal Health Task Force at the Harvard Chan School, Jan. 8, 2020, <https://www.mhff.org/2020/01/08/expanding-access-to-doula-care/>. 412 Astair Bey, Aimee Brill, Chanel Porchia-Albert, Melissa Gradilla, Nan Strauss, ADVANCING BIRTH JUSTICE: Community-Based Doula Models as a Standard of Care for Ending Racial Disparities, Ancient Song Doula

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<https://www.nbcnews.com/news/nbcblk/new-york-aims-give-low-income-pregnant-women-access-doulas-n973671>
<https://www.mhff.org/2020/01/08/expanding-access-to-doula-care/>

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York, and Oregon supported Medicaid reimbursements of doulas,413 and New Jersey has more recently passed legislation that allows the state to seek federal approval of Medicaid reimbursement through a State Plan Amendment or waiver.414 The Doula Medicaid Project, an initiative of the National Health Law Program, is actively working to advocate for state legislation to expand Medicaid coverage for doula care programs across the nation.415 So far in 2020, 13 states have introduced bills regarding Medicaid coverage of doula care.416

To this end, there are a number of advocacy organizations across the nation that are making the push to provide community-based doula services to communities of color, low-income, and underserved communities.417 One example is Ancient Song Doula Services in New York, an international doula certifying organization focused on birth and reproductive justice that provides doula services to on a sliding pay scale for women in the community, focusing on communities of color.418 Ancient Song also provides education for women, engages in advocacy around the benefits of community-based doula services, and provides doula training and certification classes.419

The Southern Birth Justice Network provides similar doula services,420 and they also advocate for Black midwives and provide support through the National Black Midwives Alliance, a national membership program421 that seeks to increase the number of Black midwives and increase access to Black midwives as a means of impacting perinatal health disparities.422 The National Black Midwives Alliance provides mentorship opportunities, academic scholarships, professional development, and other events for its members.423 The Changing Women Initiative is a Native American-centered nonprofit with a mission to "support our diverse indigenous communities, to renew cultural birth, and the fundamental indigenous human right to reproductive health, dignity and justice," providing culturally congruent midwifery care to Native American women.424 The Changing Women Initiative provides home birth services,

Services, Village Birth International, and Every Mother Counts, Mar. 25, 2019, p. 4, https://b5c19f22-2ef4-49b4-94b0-7621fdb5dbba.filesusr.com/ugd/f36f23_7d936f97617a4e34aadd8a052ac1de6.pdf. 413 Madeline Pucciarello, MPH, "Building the Case for Doula Reimbursement in New Jersey Medicaid," Jul. 22, 2019, <https://www.chcs.org/building-the-case-for-doula-reimbursement-in-new-jersey-medicaid/>. 414 Ibid; State of New Jersey, Governor Phil Murphy, "Governor Murphy Signs Legislative Package to Combat New Jersey's Maternal and Infant Health Crisis," May 8, 2019, <https://www.nj.gov/governor/news/news/562019/20190508a.shtml>. 415 National Health Law Program, "Doula Medicaid Project," <https://healthlaw.org/doulamedicaidproject/>. 416 Ibid. 417 See e.g., Southern Birth Justice Network, "Improving Health Outcomes With Holistic Midwifery," <https://southernbirthjustice.org/advocacy/>; Black Women Birthing Justice, "Our Goals," <https://www.blackwomenbirthingjustice.org/our-goals/>; National Association of Certified Professional Midwives, "Midwife of Color Initiatives to Eliminate Birth Outcome Disparities," <https://nacpm.org/for-cpms/social-justice/initiatives/>; Ancient Song Doula Services, "Our Focus," <https://www.ancientsongdoulaservices.com/our-focus>. 418 Ancient Song Doula Services, "Doula Services," <https://www.ancientsongdoulaservices.com/doula-services>. 419 Ancient Song Doula Services, "Our Focus," <https://www.ancientsongdoulaservices.com/our-focus>. 420 Southern Birth Justice Network, "Home," <https://southernbirthjustice.org/>. 421 National Black Midwives Alliance, "Voice," <https://blackmidwivesalliance.org/voice>. 422 National Black Midwives Alliance, "Power," <https://blackmidwivesalliance.org/power>. 423 National Black Midwives Alliance, "Voice," <https://blackmidwivesalliance.org/voice>. 424 Changing Women Initiative, "Home," <http://www.changingwomaninitiative.com/>.

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<https://www.chcs.org/building-the-case-for-doula-reimbursement-in-new-jersey-medicaid/>
<https://www.nj.gov/governor/news/news/562019/20190508a.shtml>
<https://healthlaw.org/doulamedicaidproject/>
<https://southernbirthjustice.org/advocacy/>
<https://www.blackwomenbirthingjustice.org/our-goals/>
<https://nacpm.org/for-cpms/social-justice/initiatives/>
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<https://southernbirthjustice.org/>
<https://blackmidwivesalliance.org/voice>
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<https://blackmidwivesalliance.org/voice>
<http://www.changingwomaninitiative.com/>

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prenatal and postpartum care, a community-based women's clinic, an Indigenous midwifery fellowship to support the professional development of Indigenous midwives,425 and held its first Indigenous doula training program in the fall of 2019.426

To tackle postpartum wellness, the 4th Trimester Project, an initiative of the Jordan Institute for Families in the University of North Carolina, Chapel Hill School of Social Work, has convened a diverse group of new mothers, healthcare providers, researchers, public health professionals, social workers, community leaders, and other stakeholders to identify unmet postpartum health needs.427 The project has developed the first postpartum self-care resource, at NewMomsHealth.org, that provides health resources for new mothers, information about supports during the postpartum period, information about baby care, stories from other new mothers, and aims to connect new mothers together for sharing resources, tips, and information.428

Other advocacy efforts to reduce disparities in maternal health include research, policy work, community engagement, and maternal mortality review. For example, the National Birth Equity Collective is working to develop a community-informed theoretical model for understanding mistreatment and discrimination in childbirth by the creation and testing of a participatory patient-reported metric.429 The Collective is also active in maternal mortality review, and provides racial equity training that aims to "dismantle the root causes of health inequities."430 The National Perinatal Task Force seeks to engage and organize its virtual community working to address maternal health disparities on the grassroots level, providing tools, technical assistance, community and capacity building support in order to advance racial justice and maternal health equity.431 The Black Mamas Matter Alliance is the national voice for its members of regional birth equity and reproductive justice advocates, and actively engages in policy work that addresses Black maternal health inequities, cultivates research to inform policy that aims to improve Black maternal health, and engages in capacity building for grassroots organizations, maternity care service providers, academia, and the public health industry.432

Entities like the Groundswell Fund and Merck for Mothers have been providing financial resources for entities that seek to advance birth equity and reproductive justice, that will

425 Ibid. 426 "Navajo Founder of Changing Woman Initiative Named to InStyle Magazine's List of 50 Badass Women," Native Business, Aug. 13, 2019, <https://www.nativebusinessmag.com/navajo-founder-of-changing-woman-initiative-named-to-instyle-magazines-list-of-50-badass-women/>; Kiley Warren, "'We are our own experts,' Doula training for the mother's health," Indian Country Today, Dec. 18, 2019, <https://indiancountrytoday.com/news/we-are-our-own-experts-doula-training-for-the-mother-s-health-JRq1tuWVUuhwZYJNaemWQ>. 427 University of North Carolina, School of Social Work, Jordan Institute for Families, "The 4th Trimester Project," <https://jordaninstituteforfamilies.org/collaborate/community-initiatives/4thtrimesterproject/>. 428 The Fourth Trimester Project, "A Village for Mothers," <https://newmomhealth.com/#village>. 429 National Birth Equity Collective, "Mothers Voices Driving Birth Equity," <https://birthequity.org/what-we-do/mothers-voices-driving-birth-equity/>. 430 National Birth Equity Collective, "Solutions," <https://birthequity.org/about/birth-equity-solutions/>; National Birth Equity Collective, "Racial Equity Training," <https://birthequity.org/what-we-do/racial-equity-training/>. 431 National Perinatal Task Force, Building a Movement to Birth a More Just and Loving World, March 2018, p. 18, https://drive.google.com/file/d/0B_vxE9qdE1JDZ2Q2TgPLaTB6ME1qSGgyeDFkYnd5b0dRSWxv/view. 432 Black Mamas Matter Alliance, "Our Work," <https://blackmamasmatter.org/our-work/>.

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<https://indiancountrytoday.com/news/we-are-our-own-experts-doula-training-for-the-mother-s-health-JRq1tuWVUuhwZYJNaemWQ>
<https://indiancountrytoday.com/news/we-are-our-own-experts-doula-training-for-the-mother-s-health-JRq1tuWVUuhwZYJNaemWQ>
<https://jordaninstituteforfamilies.org/collaborate/community-initiatives/4thtrimesterproject/>
<https://newmomhealth.com/#village>
<https://birthequity.org/what-we-do/mothers-voices-driving-birth-equity/>
<https://birthequity.org/what-we-do/mothers-voices-driving-birth-equity/>
<https://birthequity.org/about/birth-equity-solutions/>
<https://birthequity.org/what-we-do/racial-equity-training/>
https://drive.google.com/file/d/0B_vxE9qdE1JDZ2Q2TgPLaTB6ME1qSGgyeDFkYnd5b0dRSWxv/view
<https://blackmamasmatter.org/our-work/>

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ultimately help to reduce disparities in maternal health and improve maternal health outcomes.433 The Birth Justice Fund, administered by the Groundswell Fund, aims to eliminate disparities in pregnancy outcomes experienced by women of color by increasing access to culturally congruent care, supporting midwives, doulas, and community-based birth centers and clinics.434 This fund also helps to support birthworkers of color (doulas, midwives, postpartum service

workers, etc.) and advocacy work to improve maternal health outcomes and reduce disparities.⁴³⁵ Merck for Mothers, a 10-year, \$50 million investment in the U.S. to efforts to prevent maternal mortality at the policy, hospital, and community levels.⁴³⁶ This includes its collaboration with the Centers for Disease Control Foundation and the Association of Maternal and Child Health Programs to improve data collection and analysis of maternal mortality data to help in the maternal mortality review process.⁴³⁷ Also, Merck for Mothers launched its Safer Childbirth Cities Initiative in 2019, funding local community-based organizations in 10 cities across the U.S. with high levels of maternal mortality and morbidity to implement innovative evidence-based approaches to reducing maternal health disparities and making safer, more equitable cities to give birth.⁴³⁸

Recommendations for Eliminating Racial Disparities and Improving Maternal Health Outcomes

Public health researchers and other stakeholders agree that a multi-faceted approach is needed in order to improve maternal health outcomes and the quality of care for all women in order to eliminate racial disparities, a multi-faceted approach is needed. The following are some recommendations and strategies from researchers, practitioners, advocates, academics, policymakers, and other stakeholders:

■ Improve data collection. Chapter 1 discussed the difficulties in identifying pregnancy-related deaths and the challenge of accurately reporting maternal mortality and morbidity data and statistics on a national level.⁴³⁹ Efforts have been made to improve the data,⁴⁴⁰ but having more accurate national data from the Pregnancy Mortality Surveillance System (PMSS) is imperative to understand the reasons why women are dying, the drivers of disparities, and how to prevent maternal deaths.⁴⁴¹ One mechanism for

⁴³³ See Groundswell Fund, <https://groundswellfund.org/>; Merck for Mothers, “<https://www.merckformothers.com/>.” ⁴³⁴ Groundswell Fund, “Birth Justice Fund,” <https://groundswellfund.org/birth-justice-fund/>. ⁴³⁵ *Ibid.* ⁴³⁶ Merck for Mothers, Making Pregnancy and Childbirth Safer in the U.S., p. 1, https://www.merckformothers.com/docs/Making_Pregnancy_Safer.pdf. ⁴³⁷ CDC Foundation, “CDC Foundation Partnership To Help Reduce Maternal Mortality In The United States,” Apr. 19, 2016, <https://www.cdcfoundation.org/pr/2016/cdc-foundation-partnership-help-reduce-maternal-mortality-united-states>; see also *infra* note 618. ⁴³⁸ Merck for Mothers, “Safer Childbirth Cities Initiative,” pp. 1-2, <https://www.merckformothers.com/docs/report-safer-childbirth-cities-initiative.pdf>. ⁴³⁹ See *supra* notes 86-110. ⁴⁴⁰ See *supra* notes 94-110. ⁴⁴¹ Cox Statement, at 2; see also *supra* notes 221-282.

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<https://www.cdcfoundation.org/pr/2016/cdc-foundation-partnership-help-reduce-maternal-mortality-united-states>
<https://www.cdcfoundation.org/pr/2016/cdc-foundation-partnership-help-reduce-maternal-mortality-united-states>
<https://www.merckformothers.com/docs/report-safer-childbirth-cities-initiative.pdf>
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improving the accuracy of data is a detailed review of maternal deaths, as a means of supplementing cause-of-death data from vital records.⁴⁴² Maternal Mortality Review Committees (MMRC)⁴⁴³ are convened at the state and local level and are multidisciplinary, comprised of representatives from “public health, obstetrics and gynecology, maternal-fetal medicine, nursing, midwifery, forensic pathology, mental and behavioral health, patient advocacy groups, and community-based organizations.”⁴⁴⁴ MMRCs “identify and review maternal deaths that occur within one year of pregnancy,” using data from “diverse sources beyond vital records and include clinical and non-clinical information such as prenatal care and hospital records, autopsy reports, informant interview, and social services records” to get a better understanding of the “details and circumstances surrounding each death in order to develop actionable recommendations to prevent future deaths.”⁴⁴⁵ On the state or local level, these MMRCs are currently in various stages of development and not every state currently has a Committee, however there has been increasing momentum to establish and enhance MMRCs across the U.S.⁴⁴⁶

■ Expand research on maternal mortality, maternal morbidity, and racial disparities. Research is critical in gaining a deeper understanding of the maternal mortality crisis and developing an evidence base on “how institutional policies impact the racial and socioeconomic disparities observed in maternal mortality.”⁴⁴⁷ Research is “an iterative and cumulative process,” and the information learned can help document “pervasive disparities,” identify “innovative evidence-based solutions” for “informed intervention and prevention.”⁴⁴⁸ Stronger systems are needed on the local, state, and federal levels for analyzing maternal health information and producing evidence-based recommendations for prevention.⁴⁴⁹

■ Improve access to maternal healthcare. Improving access to quality maternity care for women is critical, including preconception and interconception care to manage chronic illness and optimize health; prenatal care; delivery care; and postpartum care for 12 months post-delivery,⁴⁵⁰ all of which is necessary for improving pregnancy-outcomes.⁴⁵¹ This includes efforts to expand medical insurance coverage to allow women access to medical care throughout the stages of pregnancy and beyond by protecting the Affordable

⁴⁴² Cox Statement, at 2. ⁴⁴³ See *infra* notes XXXX (cross reference to Ch. 3 section on MMRCs). ⁴⁴⁴ Cox Statement, at 3. ⁴⁴⁵ *Ibid.* ⁴⁴⁶ Review to Action, “MMRC Map,” <https://reviewtoaction.org/content/mmr-map>. ⁴⁴⁷ Juanita J. Chinn, Program Director, Population Dynamics Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, Written Statement for the Racial Disparities in Maternal Health Briefing before the U.S. Commission on Civil Rights, March 2020, at 2 [hereinafter Chinn Statement]. ⁴⁴⁸ *Ibid.*, 5. ⁴⁴⁹ Center for Reproductive Rights, “Research Overview of Maternal Mortality and Morbidity in the United States,” p. 7, https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/USPA_MH_TO_ResearchBrief_Final_5.16.pdf. ⁴⁵⁰ Howell Statement, at 2. ⁴⁵¹ See *supra* notes 221-251.

<https://reviewtoaction.org/content/mmr-map>
https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/USPA_MH_TO_ResearchBrief_Final_5.16.pdf
https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/USPA_MH_TO_ResearchBrief_Final_5.16.pdf

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Care Act, by Medicaid expansion,⁴⁵² and by the extension of Medicaid coverage for women 12 months postpartum.⁴⁵³ Additionally, rural health care systems cannot be left out of policy and funding discussions, as access to maternity care in rural America is becoming scarce.⁴⁵⁴

■ Improve the quality of maternal healthcare. In particular, efforts must be made to improve hospital quality, particularly for women of color.⁴⁵⁵ Improvements in safety culture are linked with improved maternal health outcomes.⁴⁵⁶ One recommendation for improving safety in maternal healthcare is to implement standardized care practices across hospitals and health systems.⁴⁵⁷ One such mechanism for standardizing care that has seen success is the Alliance for Innovation on Maternal Health Program (AIM), which is a “national data-driven maternal safety and quality improvement initiative based on proven implementation approaches to improving maternal safety and outcomes in the U.S.” that strives to “eliminate preventable maternal mortality and severe morbidity” throughout the U.S.⁴⁵⁸ AIM strives to standardize health care processes through the use of safety bundles, which “do not introduce new guidance but are built upon established best practices,” designed “to collate a critical set of processes based on the broad universe of existing guidance, tools, and resources that have been developed by trusted organizations” and “to be universally implementable and able to be consistently used across disciplines and settings.”⁴⁵⁹

■ Address racial bias and structural racism in maternal healthcare, and promote culturally congruent care. Utilizing education, technical assistance, and health equity tools to build workforce capacity can help address disparities in maternal health care.⁴⁶⁰ These tools includesuch as providing training in implicit bias for providers⁴⁶¹ and increasing cultural competency training among healthcare professionals in order to improve the delivery or

⁴⁵² Crear-Perry Statement, at 5; see also *supra* notes 271-272. ⁴⁵³ Howell Statement, at 2; American College of Obstetricians and Gynecologists, “ACOG Statement on AMA Support for 12 Months of Postpartum Coverage Under Medicaid,” Jun. 12, 2019, <https://www.acog.org/news/news-releases/2019/06/acog-statement-on-ama-support-for-12-months-of-postpartum-coverage-under-medicaid>. ⁴⁵⁴ Crear-Perry Statement, at 7; see also *supra* notes 259-260 and 293-299. ⁴⁵⁵ See *supra* notes 283-303. ⁴⁵⁶ E.A. Howell and J. Zeitlin, “Improving Hospital Quality to Reduce Disparities in Severe Maternal Morbidity and Mortality,” *Semin Perinatol*, Vol. 41, No. 5 (August 2017): 266-272, <https://www.ncbi.nlm.nih.gov/pubmed/28735811>. ⁴⁵⁷ Howell Statement, at 2. ⁴⁵⁸ *Ibid.*; Council on Patient Safety in Women’s Health Care, “Alliance for Innovation on Maternal Health Program,” <https://safehealthcareforeverywoman.org/aim-program/>; see also *infra* notes XXXX (cross reference to AIM program in Ch. 3). ⁴⁵⁹ Council on Patient Safety in Women’s Health Care, “Patient Safety Bundles: Getting Started,” <https://safehealthcareforeverywoman.org/patient-safety-bundles/getting-started/>. ⁴⁶⁰ See e.g. Association of Maternal & Child Health Programs, “How We Can Really Advance Health Equity: Tools from the National MCH Workforce Development Center,” <http://www.amchp.org/AboutAMCHP/Newsletters/Pulse/NovDec17/Pages/How-We-Can-Really-Advance-Health-Equity-with-Tools-from-the-National-MCH-Workforce-Development-Center.aspx>. ⁴⁶¹ Howell Statement, at 2.

Commented [KC35]: Deleting so we can say this without saying it, as I’m afraid it will get slashed if we call it “structural racism.” In the alternative we can say “structural disparities” but I’m actually not sure this is proven up – but if HHS has said so as they have about other subjects (COVID) then put it back in.

<https://www.acog.org/news/news-releases/2019/06/acog-statement-on-ama-support-for-12-months-of-postpartum-coverage-under-medicaid>
<https://www.acog.org/news/news-releases/2019/06/acog-statement-on-ama-support-for-12-months-of-postpartum-coverage-under-medicaid>
<https://www.ncbi.nlm.nih.gov/pubmed/28735811>
<https://safehealthcareforeverywoman.org/aim-program/>
<https://safehealthcareforeverywoman.org/patient-safety-bundles/getting-started/>
<http://www.amchp.org/AboutAMCHP/Newsletters/Pulse/NovDec17/Pages/How-We-Can-Really-Advance-Health-Equity-with-Tools-from-the-National-MCH-Workforce-Development-Center.aspx>
<http://www.amchp.org/AboutAMCHP/Newsletters/Pulse/NovDec17/Pages/How-We-Can-Really-Advance-Health-Equity-with-Tools-from-the-National-MCH-Workforce-Development-Center.aspx>

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culturally congruent care.⁴⁶² The Commission received testimony that utilizing “disparities dashboards,” which _____, can also help stratify quality of care metrics by race and ethnicity.⁴⁶³ Efforts to increase the number of maternal health practitioners of color and maternity caregivers of color can help address racial and ethnic disparities in maternal healthcare⁴⁶⁴ and combat the lack of workforce diversity in healthcare.⁴⁶⁵ Improved communication between clinicians and patients is critical to quality maternal care, which extends to the patient’s families as well.⁴⁶⁶ The Availability of translation services areis also necessary for improving this communication.⁴⁶⁷ Additionally, strengthening local community partnerships with hospitals and health systems can be helpful for addressing disparities,⁴⁶⁸ as community-based programs can provide needed education and supplementary support for pregnant women to provide, for example, doula support, home visiting, care navigation, and postpartum classes.⁴⁶⁹

■ Implement an Equity Framework for Research, Planning, and Evaluation. The Commission received testimony from Professor Diane Rowley, who formerly worked on health disparities at CDC, that wWhen working to eliminate disparities in maternal mortality and morbidity, an equity approach must be used “that acknowledges the historical forces that created inequitable outcomes, works in the present in to correct the health effects of those exposures, and restructures society to prevent the continuation of those influences.”⁴⁷⁰ Acknowledging that “[e]quity work is a transformative, participatory process that is different from traditional approaches to creating discrete interventions or health behavior messages,” it requires changing the structural racism that overlays the social determinants of health.⁴⁷¹ One model, called the R4P model, offers five components in order to “translate complex causality into a public health equity planning, assessment, and research tool.”⁴⁷² The five components are 1) Remove (“identifying and undoing racism as it exists in institutional structures and individual

⁴⁶² Rouse Statement, at 6; Crear-Perry, at 4; Black Mamas Matter Alliance, *Setting the Standard for Holistic Care of and for Black Women*, April 2018, p. 6, http://blackmamasmatter.org/wp-content/uploads/2018/04/BMMA_BlackPaper_April-2018.pdf. ⁴⁶³ Howell Statement, at 2. ⁴⁶⁴ National Black Midwives Alliance, “Power,” <https://blackmidwivesalliance.org/power>. ⁴⁶⁵ Crear-Perry Statement, at 4; Changing Women Initiative, “Our Creation Story,” <http://www.changingwomaninitiative.com/>. ⁴⁶⁶ Howell Statement, at 2. ⁴⁶⁷ *Ibid.* ⁴⁶⁸ *Ibid.* ⁴⁶⁹ See *supra* notes 386-423; Melanie J. Rouse, Maternal Mortality Projects Manager, Virginia Department of Health’s Office of the Chief Medical Examiner, Division of Death Prevention, Written Statement for the Racial Disparities in Maternal Health Briefing before the U.S. Commission on Civil Rights, March 2020, at 6 [hereinafter Rouse Statement]. ⁴⁷⁰ Diane L. Rowley, Emeritus Professor of the Practice of Public Health, Department of Maternal and Child Health, and Senior Researcher, Sheps Center for Health Services Research, University of North Carolina, Written Statement for the Racial Disparities in Maternal Health Briefing before the U.S. Commission on Civil Rights, March 2020, at 1 [hereinafter Rowley Statement]. ⁴⁷¹ *Ibid.* ⁴⁷² *Ibid.*; Vijaya Hogan, Diane L. Rowley, Stephanie Baker White, Yanica Faustin, “Dimensionality and R4P: A Health Equity Framework for Research Planning and Evaluation in African American Populations,” *Maternal and Child Health Journal*, Vol. 22 (2018): 147-153 (on file).

Commented [KC36]: Explain what they are

http://blackmamasmatter.org/wp-content/uploads/2018/04/BMMA_BlackPaper_April-2018.pdf
http://blackmamasmatter.org/wp-content/uploads/2018/04/BMMA_BlackPaper_April-2018.pdf
<https://blackmidwivesalliance.org/power>
<http://www.changingwomaninitiative.com/>

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actions”); 2) Repair (“identifying and addressing exposures that occurred in the past, but which continue to have impact in the present”); 3) Remediate (“identifying and addressing exposures that are occurring in present time and is the risk reduction approach now prominent in public health”); 4) Restructure (“identifying and addressing exposures that will continue to affect populations into the future because risk is embedded in the structural nature of an organization or policy”); and 5) Provide (“careful implementation of actions, programs, and policies that address multiple and intersecting axes of disadvantage experienced by disparity population, taking into consideration the environments in which people work, live and play within affected communities and seek help from institutions”).⁴⁷³

Chapter 3: The Federal Role in Addressing Racial Disparities in Maternal Health

The federal government has several programs in the Department of Health and Human Services that are charged with serving the public in the area of maternal health disparities. As discussed in Chapter 1, the 1964 Civil Rights Act includes a general duty that the federal funds that agencies such as the Department of Health and Human Services distribute are not used in a discriminatory manner.⁴⁷⁴ Some departments also have specific duties based on their statutory and regulatory mandates that include assisting vulnerable individuals or combatting health disparities.⁴⁷⁵ Along with the Health Resources and Services Administration, several other departments including the Centers for Medicare and Medicaid Services (CMS), the Centers for Disease Control and Prevention (CDC), the Office of Minority Health (OMH), the Office of Population Affairs (OPA), and several Institutes within the National Institutes of Health (NIH), including the Eunice Kennedy Shriver National Institute of Child Health and Human Development, administer programs that seek to improve maternal health and reduce racial disparities. This chapter will examine these departments' current federal initiatives to prevent maternal mortality and morbidity, and to eliminate racial disparities in maternal healthcare and maternal health outcomes.

An Examination of Federal Programs

473 Rowley Statement, at 2; Vijaya Hogan, Diane L. Rowley, Stephanie Baker White, Yanica Faustini, "Dimensionality and R4P: A Health Equity Framework for Research Planning and Evaluation in African American Populations," *Maternal and Child Health Journal*, Vol. 22 (2018): 147-153 (on file). 474 See supra notes xxx-xx. 475 See [Nick please cite to FY 19 HHS chapter]; and See infra notes xxx-xx, yy-yy and zz-zz (OCRE will cross-reference the statutory and regulatory duties of the agencies discussed below).

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The Health Resources and Services Administration, a division of HHS, is the primary U.S. federal agency "charged with improving the healthcare of geographically isolated and economically or medically vulnerable individuals."⁴⁷⁶ Within the Health Resources and Services Administration, the Maternal and Child Health Bureau works to "improve the health of America's mothers, children, and families."⁴⁷⁷ After its recent Maternal Mortality Summit, the Health Resources and Services Administration issued a technical report that summarized key findings from the summit, identifying challenges that women face in receiving quality maternal health care from preconception, pregnancy, labor, delivery, postpartum, and interconception, and identified opportunities for improvement in these areas.⁴⁷⁸ Some key findings included:

- Access: Improve access to patient-centered, comprehensive care for women before, during, and after pregnancy, especially in rural and underserved areas;
- Safety: Improve quality of maternity services through efforts such as the utilization of safety protocols in all birthing facilities;
- Workforce: Provide continuity of care before, during, and after pregnancies by increasing the types and distribution of health care providers;
- Life Course Model: Provide continuous team-based support and use a life course model of care for women before, during, and after pregnancies;
- Data: Improve the quality and availability of national surveillance and survey data, research, and common terminology and definitions;
- Review Committees: Improve quality and consistency of maternal mortality review committees through collaborations and technical assistance with U.S. states; and
- Partnerships: Engage in opportunities for productive collaborations with multiple summit participants.⁴⁷⁹

Along with the Health Resources and Services Administration, several other departments including the Centers for Medicare and Medicaid Services (CMS), the Centers for Disease Control and Prevention (CDC), the Office of Minority Health (OMH), the Office of Population Affairs (OPA), and several Institutes within the National Institutes of Health (NIH), including the Eunice Kennedy Shriver National Institute of Child Health and Human Development, administer programs that seek to improve maternal health and reduce racial disparities. This chapter will examine current federal initiatives to prevent maternal mortality and morbidity, and to eliminate racial disparities in maternal healthcare and maternal health outcomes.

Medicaid

476 Health Resources and Services Administration, the Health Resources and Services Administration Maternal Mortality Summit: Promising Global Practices to Improve Maternal Health Outcomes, Technical Report, Feb. 15, 2019, p. 2, <https://www.hrsa.gov/sites/default/files/hrsa/maternal-mortality/Maternal-Mortality-Technical-Report.pdf>. 477 *Ibid.* 478 *Ibid.* 479 *Ibid.*, 3.

Commented [KC37]: Lead with more information about health disparities. I would do some research to flesh out the statutory/regulatory charges.

Commented [KC38]: Nick try to find underlying regulations for all these agencies. Also, when were they founded and what are their duties?

<https://www.hrsa.gov/sites/default/files/hrsa/maternal-mortality/Maternal-Mortality-Technical-Report.pdf>
<https://www.hrsa.gov/sites/default/files/hrsa/maternal-mortality/Maternal-Mortality-Technical-Report.pdf>

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As discussed in Chapter 2, Medicaid plays a significant role in insuring women of color.⁴⁸⁰ Medicaid was the source of payment for 42.3 percent of all births in 2018.⁴⁸¹ Of those Medicaid-covered births, 65.3 percent were to Black women as compared to 30 percent to White women, and 58.9 percent of Medicaid-covered births were to Latina women (of all races).⁴⁸² A recent study has linked Medicaid expansion with lower maternal mortality rates, showing that mortality rates were lower in Medicaid expansion states than non-expansion states, in part due to increased access to postpartum and preconception care.⁴⁸³ This study also found that Medicaid expansion effects were concentrated among Black mothers, indicating that expansion could help reduce racial disparities.⁴⁸⁴ Another previous study drew similar conclusions, and have found that the uninsured rate for women of childbearing age is nearly double in non-Medicaid expansion states than in states that have expanded Medicaid coverage (16 percent v. 9 percent).⁴⁸⁵

Medicaid is a national program designed to provide healthcare coverage for low-income people in the U.S.⁴⁸⁶ Medicaid was signed into law alongside Medicare in 1965, authorized by Title XIX of the Social Security Act.⁴⁸⁷ The Center for Medicaid and CHIP Services (CMCS), a subdivision of the Centers for Medicare & Medicaid Services (CMS) within HHS,⁴⁸⁸ is the focal point for national program policies and operations related to Medicaid.⁴⁸⁹ All 50 states, the District of Columbia, and all U.S. territories administer their own Medicaid programs within the parameters of federal regulations and guidance, so there is variance in Medicaid coverage across the U.S.⁴⁹⁰ The Affordable Care Act gave states the authority to expand Medicaid coverage to individuals under 65 years old in households that fall below 133 percent of the federal poverty level, and standardized rules of determining eligibility.⁴⁹¹ Currently, 37 states and the District of Columbia have expanded Medicaid coverage.⁴⁹² In 2017, total Medicaid spending was

480 See supra notes 269-270. 481 National Center for Health Statistics, Division of Vital Statistics, "Births: Final Data for 2018," *National Vital Statistics Reports*, Vol. 68, No. 13 (Nov. 27, 2019): p. 2, https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_13-508.pdf; see also supra note 295. 482 National Center for Health Statistics, Division of Vital Statistics, "Births: Final Data for 2018," *National Vital Statistics Reports*, Vol. 68, No. 13 (Nov. 27, 2019): p. 7, https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_13-508.pdf. 483 Erica L. Ellason, MPH, "Adoption of Medicaid Expansion Is Associated with Lower Maternal Mortality," *Women's Health Issues*, Feb. 25, 2020, [https://www.whijournal.com/article/S1049-3867\(20\)30005-0/fulltext](https://www.whijournal.com/article/S1049-3867(20)30005-0/fulltext); see also supra note 272. 484 Adam Searing and Donna Cohen Ross, "Medicaid Expansion Fills Gaps in Maternal Health Coverage Leading to Healthier Mothers and Babies," Georgetown University Health Policy Institute, Center for Children and Families, May 2019, <https://ccf.georgetown.edu/wp-content/uploads/2019/05/Maternal-Health-3a.pdf>. 485 Medicaid.gov, "Program History," <https://www.medicaid.gov/about-us/program-history/index.html>. 486 42 U.S.C. § 1396; 42 C.F.R. Chapter IV, Subchapter C. 487 U.S. Department of Health and Human Services, Centers for Medicare and Medicaid, "Organizational Chart," https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Downloads/CMS_Organizational_Chart.pdf. 488 Medicaid.gov, "Program History," <https://www.medicaid.gov/about-us/program-history/index.html>. 490 *Ibid.* 491 The Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148, 2010, 124 Stat. 119; Medicaid.gov, "Eligibility," <https://www.medicaid.gov/medicaid/eligibility/index.html>. 492 The Henry J. Kaiser Family Foundation, "Status of State Medicaid Expansion Decisions: Interactive Map," <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/>. Alabama,

https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_13-508.pdf
https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_13-508.pdf
https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_13-508.pdf
https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_13-508.pdf
[https://www.whijournal.com/article/S1049-3867\(20\)30005-0/fulltext](https://www.whijournal.com/article/S1049-3867(20)30005-0/fulltext)
<https://ccf.georgetown.edu/wp-content/uploads/2019/05/Maternal-Health-3a.pdf>
<https://www.medicaid.gov/about-us/program-history/index.html>
https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Downloads/CMS_Organizational_Chart.pdf
https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Downloads/CMS_Organizational_Chart.pdf
<https://www.medicaid.gov/about-us/program-history/index.html>
<https://www.medicaid.gov/medicaid/eligibility/index.html>
<https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/>

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approximately \$600 billion, for which approximately \$370 billion (62 percent) was financed by the federal government and approximately \$230 billion (38 percent) was financed by states and localities.⁴⁹³ This represents approximately one-sixth of all dollars spent in the health care system.⁴⁹⁴

Under Medicaid, pregnant women that qualify⁴⁹⁵ are covered for:

(2) Pregnancy-related services and services for other conditions that might complicate the pregnancy.

(i) Pregnancy-related services are those services that are necessary for the health of the pregnant woman and fetus, or that have become necessary as a result of the woman having been pregnant. These include, but are not limited to, prenatal care, delivery, postpartum care, and family planning services.

(ii) Services for other conditions that might complicate the pregnancy include those for diagnoses, illnesses, or medical conditions which might threaten the carrying of the fetus to full term or the safe delivery of the fetus; and

(3) For women who, while pregnant, applied for, were eligible for, and received Medicaid services under the plan, all services under the plan that are pregnancy-related for an extended postpartum period. The postpartum period begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.⁴⁹⁶

As discussed in Chapter 2, Medicaid plays a significant role in insuring people of color.⁴⁹⁷ Medicaid was the source of payment for 42.3 percent of all births in 2018.⁴⁹⁸ Of those Medicaid-covered births, 65.3 percent were to Black women as compared to 30 percent to White women, and 58.9 percent of Medicaid-covered births were to Latina women (of all races).⁴⁹⁹ A recent

Florida, Georgia, Kansas, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming have not adopted Medicaid expansion; and Medicaid expansion has been adopted but not yet implemented in Nebraska. See also supra note 271. 493 U.S. Department of Health and Human Services, 2018 Actuarial Report on the Financial Outlook for Medicaid, 2018, p. iv, <https://www.cms.gov/files/document/2018-report.pdf>. 494 Robin Rudowitz, Elizabeth Hinton, Maria Diaz, Madeline Guth, and Marina Tian, "Medicaid Enrollment & Spending Growth: FY 2019-2020," Henry J. Kaiser Family Foundation, Oct. 18, 2019, <https://www.kff.org/medicaid/issue-brief/medicaid-enrollment-spending-growth-fy-2019-2020/>. 495 See Henry J. Kaiser Family Foundation, "Medicaid and CHIP Income Eligibility Limits for Pregnant Women as a Percent of the Federal Poverty Level," Jan. 1, 2020, <https://www.kff.org/health-reform/state-indicator/medicaid-and-chip-income-eligibility-limits-for-pregnant-women-as-a-percent-of-the-federal-poverty-level/>. 496 42 C.F.R. §§ 440.210(2)-(3). 497 See supra notes 258-259. 498 National Center for Health Statistics, Division of Vital Statistics, "Births: Final Data for 2018," *National Vital Statistics Reports*, Vol. 68, No. 13 (Nov. 27, 2019): p. 2, https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_13-508.pdf; see also supra note 264. 499 National Center for Health Statistics, Division of Vital Statistics, "Births: Final Data for 2018," *National Vital Statistics Reports*, Vol. 68, No. 13 (Nov. 27, 2019): p. 7, https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_13-508.pdf.

<https://www.cms.gov/files/document/2018-report.pdf>
<https://www.kff.org/medicaid/issue-brief/medicaid-enrollment-spending-growth-fy-2019-2020/>
<https://www.kff.org/health-reform/state-indicator/medicaid-and-chip-income-eligibility-limits-for-pregnant-women-as-a-percent-of-the-federal-poverty-level/?currentTimeframe=0&sortModel=%7B%22colld%22%22Location%22%22sort%22%22asc%22%7D>
<https://www.kff.org/health-reform/state-indicator/medicaid-and-chip-income-eligibility-limits-for-pregnant-women-as-a-percent-of-the-federal-poverty-level/?currentTimeframe=0&sortModel=%7B%22colld%22%22Location%22%22sort%22%22asc%22%7D>
<https://www.kff.org/health-reform/state-indicator/medicaid-and-chip-income-eligibility-limits-for-pregnant-women-as-a-percent-of-the-federal-poverty-level/?currentTimeframe=0&sortModel=%7B%22colld%22%22Location%22%22sort%22%22asc%22%7D>
https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_13-508.pdf
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https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_13-508.pdf

study has linked Medicaid expansion with lower maternal mortality rates, showing that mortality rates were lower in Medicaid expansion states than non-expansion states, in part due to increased access to postpartum and preconception care.⁵⁰⁰ This study also found that Medicaid expansion effects were concentrated among Black mothers, indicating that expansion could help reduce racial disparities.⁵⁰¹ Another previous study drew similar conclusions, and have found that the uninsured rate for women of childbearing age is nearly double in non-Medicaid expansion states than in states that have expanded Medicaid coverage (16 percent v. 9 percent).⁵⁰²

Medicaid nondiscrimination regulations stipulate that “[s]tate agencies and any other beneficiaries or subbeneficiaries of Federal financial assistance provided under this subpart are subject to the nondiscrimination requirements in 45 CFR parts 80, 84, and 91,” which implement Title VI nondiscrimination provisions and “prohibit individuals from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity which received Federal financial assistance.”⁵⁰³ Section 1557 of the Affordable Care Act prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in health programs or activities receiving federal financial assistance.⁵⁰⁴ These prohibitions can apply to certain policies or procedures that appear neutral but have a discriminatory effect on individuals based on race, color, or national origin.⁵⁰⁵ Yet research shows that among Medicaid-funded births, women of color are experiencing higher rates of mortality, and there may be contributing factors that correlate with these outcomes, such as implicit bias or hospital segregation.⁵⁰⁶

In order to improve maternal health outcomes, Medicaid has pursued a few initiatives over the past decade. The Strong Start for Mothers and Newborns Initiative, a joint initiative between CMS, the Health Resources and Services Administration (the Health Resources and Services Administration), and the Administration on Children and Families (ACF), aimed at reducing preterm births, improving outcomes for infants and pregnant women, and lowering the anticipated cost of medical care during pregnancy, delivery, and the first year of life for the infant.⁵⁰⁷ This four year initiative was launched in 2012 and had two strategies: 1) an effort to reduce early elective deliveries, and 2) to enhance prenatal care models.⁵⁰⁸ The first strategy was a public-private partnership and awareness campaign to reduce the number of early elective deliveries prior to 39 weeks, and the second strategy was a funding opportunity to test the

⁵⁰⁰ Erica L. Eliason, MPH, “Adoption of Medicaid Expansion Is Associated with Lower Maternal Mortality,” *Women’s Health Issues*, Feb. 25, 2020, [https://www.whjournal.com/article/S1049-3867\(20\)30005-0/fulltext](https://www.whjournal.com/article/S1049-3867(20)30005-0/fulltext); see also supra note 261. ⁵⁰¹ Ibid. ⁵⁰² Adam Searing and Donna Cohen Ross, “Medicaid Expansion Fills Gaps in Maternal Health Coverage Leading to Healthier Mothers and Babies,” Georgetown University Health Policy Institute, Center for Children and Families, May 2019, <https://ccf.georgetown.edu/wp-content/uploads/2019/05/Maternal-Health-3a.pdf>. ⁵⁰³ 42 C.F.R. § 495.356. ⁵⁰⁴ 42 U.S.C. § 18116; Pub. L. 111-148, Title I, § 1557, Mar. 23, 2010, 124 Stat. 260; 45 C.F.R. § 92.505. See supra notes 137-138. ⁵⁰⁶ See supra notes xx-xx. ⁵⁰⁷ Centers for Medicare & Medicaid Services, “Strong Start for Mothers and Newborns Initiative: General Information,” <https://innovation.cms.gov/innovation-models/strong-start>. ⁵⁰⁸ Ibid.

Commented [KC39]: Nick, is there any analysis in FY 19 that we can pull? How are they doing in regards to this duty?

[https://www.whjournal.com/article/S1049-3867\(20\)30005-0/fulltext](https://www.whjournal.com/article/S1049-3867(20)30005-0/fulltext)
<https://ccf.georgetown.edu/wp-content/uploads/2019/05/Maternal-Health-3a.pdf>
<https://innovation.cms.gov/innovation-models/strong-start>

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effectiveness of certain enhanced prenatal interventions to reduce preterm births among women at high-risk of preterm birth covered by Medicaid or CHIP.⁵⁰⁹ In terms of the enhanced prenatal care models, nearly 46,000 women (39.8 percent Black women, 29.7 percent Latina women, and 25.6 White women) were enrolled at 211 funded sites, which represented three models of care: maternity care homes, group prenatal care, and birth centers.⁵¹⁰ An independent evaluation report of the Strong Start initiative was issued in 2018, finding that women who received prenatal care in Strong Start birth centers had a lower preterm birth rate, fewer cesarean section deliveries, and the cost of care throughout pregnancy to a year after birth was considerably less (\$2,010 less for both the mother and the infant) than for women not involved in Strong Start.⁵¹¹

Medicaid also has a Maternal and Infant Health Initiative to improve maternal and infant health outcomes, designed in part to improve the rate and content of postpartum visits.⁵¹² This initiative was launched in 2014, following the issuance of a set of strategies by an Expert Panel for Improving Maternal and Infant Health Outcomes (convened in 2012) to support states and providers in improving maternal and infant health outcomes.⁵¹³ Specifically, the goals of the initiative are to increase the rate of postpartum visits among pregnant women enrolled in Medicaid and CHIP in at least 20 states by 10 percentage points over a 3 year period.⁵¹⁴ The initiative has 4 key components, including: 1) collaborating with states to promote coverage of women before and after pregnancy; 2) strengthening technical assistance to promote policies that enhance provider service delivery; 3) expanding beneficiary engagement in their care through enhanced outreach mechanisms; and 4) partnering with other federal agencies.⁵¹⁵

In addition to building upon the strategies set forth by the Expert Panel, this initiative also leveraged current and planned CMS activities.⁵¹⁶ Some of these CMS-led activities included:⁵¹⁷

■ Improvements in data measurement and reporting of the timing and content of postpartum care

○ Collaborative Improvement & Innovation Networks (COIINs) – multidisciplinary teams of federal, state, and local leaders that work together on issues of maternal and infant health through collaborative learning, quality improvement, and

⁵⁰⁹ Ibid. ⁵¹⁰ Centers for Medicare & Medicaid, “Strong Start for Mothers and Newborns, Evaluation of Full Performance Period (2018): Findings at a Glance,” <https://innovation.cms.gov/files/reports/strongstart-prenatal-fg-finalevlprpt.pdf>. ⁵¹¹ Ian Hill, et al., Strong Start for Mothers and Newborns Evaluation: YEAR 5 PROJECT SYNTHESIS, Vol. 1: Cross-Cutting Findings, Urban Institute, September 2018, pp. ii-vi, 110, <https://downloads.cms.gov/files/cmim/strongstart-prenatal-finalevlprpt-v1.pdf>. ⁵¹² Medicaid.gov, “Maternal & Infant Health Care Quality,” <https://www.medicaid.gov/medicaid/quality-of-care/improvement-initiatives/maternal-infant-health-care-quality/index.html>. ⁵¹³ Ibid. ⁵¹⁴ Centers for Medicare & Medicaid Services, “CMCS Maternal and Infant Health Initiative,” p. 2, <https://www.medicaid.gov/medicaid/quality-of-care/downloads/maternal-and-infant-health-initiative.pdf>. ⁵¹⁵ Ibid., 3. ⁵¹⁶ Medicaid.gov, “Maternal & Infant Health Care Quality,” <https://www.medicaid.gov/medicaid/quality-of-care/improvement-initiatives/maternal-infant-health-care-quality/index.html>. ⁵¹⁷ Medicaid.gov, “Improving Maternal and Infant Health Outcomes CMCS Crosswalk of Current Activities and Identified Potential Strategies,” December 2013, pp. 1-7, <https://www.medicaid.gov/medicaid/quality-of-care/downloads/crosswalk-of-activities.pdf>.

<https://innovation.cms.gov/files/reports/strongstart-prenatal-fg-finalevlprpt.pdf>
<https://innovation.cms.gov/files/reports/strongstart-prenatal-fg-finalevlprpt.pdf>
<https://downloads.cms.gov/files/cmim/strongstart-prenatal-finalevlprpt-v1.pdf>
<https://www.medicaid.gov/medicaid/quality-of-care/improvement-initiatives/maternal-infant-health-care-quality/index.html>
<https://www.medicaid.gov/medicaid/quality-of-care/improvement-initiatives/maternal-infant-health-care-quality/index.html>
<https://www.medicaid.gov/medicaid/quality-of-care/downloads/maternal-and-infant-health-initiative.pdf>
<https://www.medicaid.gov/medicaid/quality-of-care/improvement-initiatives/maternal-infant-health-care-quality/index.html>
<https://www.medicaid.gov/medicaid/quality-of-care/improvement-initiatives/maternal-infant-health-care-quality/index.html>
<https://www.medicaid.gov/medicaid/quality-of-care/downloads/crosswalk-of-activities.pdf>
<https://www.medicaid.gov/medicaid/quality-of-care/downloads/crosswalk-of-activities.pdf>

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innovative activities; this initiative was jointly led by the Health Resources & Services Administration (the Health Resources and Services Administration) and CMS.⁵¹⁸

○ Adult Medicaid Quality Grants – two-year grant programs to support state Medicaid agencies in developing staff capacity to collect, report, and analyze data on the Core of Set of Health Care Quality Measures for Adults Enrolled in Medicaid.⁵¹⁹

○ (Planned) Building states’ capacity to improve collection of maternal and infant health core measures through a collaboration with the CDC and the Health Resources and Services Administration.⁵²⁰

■ Enhance maternal care management through education and other supports for treatment of mental health conditions such as depression

○ Maternal Health Risk Assessment for pregnant women.⁵²¹ Maternal and Infant Health State Improvement Teams and Adult Quality Grants.⁵²²

○ (Planned) Publish informational bulletin in collaboration with the Substance Abuse and Mental Health Services Administration,⁵²³ and review Managed Care Organizations’ Performance Improvement Projects in two states to improve screening and outcomes related to depression.⁵²⁴

■ Cross-cutting strategies to develop and support consumer-friendly tools for all literacy levels to support shared decision making in maternity care,⁵²⁵ as well as evaluation of the most effective models to implement shared decision making in maternity care clinical settings.⁵²⁶

⁵¹⁸ Health Resources & Services Administration, Maternal and Child Health, “Collaborative Improvement & Innovation Networks (COIINs),” <https://mchb.hrsa.gov/maternal-child-health-initiatives/collaborative-improvement-innovation-networks-coiins>. ⁵¹⁹ Medicaid.gov, “Adult Medicaid Quality Grants,” <https://www.medicaid.gov/medicaid/quality-of-care/quality-of-care-performance-measurement/adult-medicaid-quality-grants/index.html>. ⁵²⁰ CITE will be added. ⁵²¹ Centers for Medicare & Medicaid Services, Agency for Healthcare Research and Quality, “Measure: Behavioral Health Risk Assessment for Pregnant Women,” pp. 1-3, https://www.ahrq.gov/sites/default/files/wysiwyg/policymakers/chipra/factsheets/chipra_1415-p009-4-ef.pdf. ⁵²² Medicaid.gov, “Improving Maternal and Infant Health Outcomes CMCS Crosswalk of Current Activities and Identified Potential Strategies,” December 2013, pp. 1-7, <https://www.medicaid.gov/medicaid/quality-of-care/downloads/crosswalk-of-activities.pdf>; see also supra note 519. ⁵²³ Medicaid.gov, “Improving Maternal and Infant Health Outcomes CMCS Crosswalk of Current Activities and Identified Potential Strategies,” December 2013, pp. 1-7, <https://www.medicaid.gov/medicaid/quality-of-care/downloads/crosswalk-of-activities.pdf>. ⁵²⁴ Ibid.; see also Centers for Medicare & Medicaid Services, EQR PROTOCOL 3: VALIDATING PERFORMANCE IMPROVEMENT PROJECTS (PIPs), September 2012, <https://www.medicaid.gov/medicaid/quality-of-care/downloads/eqr-protocol-3.pdf>. ⁵²⁵ See Keith Begley PhD, Deirdre Daly PhD, Sunita Panda MSc, Cecily Begley PhD, “Shared decision-making in maternity care: Acknowledging and overcoming epistemic defeaters,” *Journal of Evaluation in Clinical Practice*, Vol. 25 (Jul. 5, 2019): 1113-1120, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/jep.13243>. ⁵²⁶ Medicaid.gov, “Improving Maternal and Infant Health Outcomes CMCS Crosswalk of Current Activities and Identified Potential Strategies,” December 2013, pp. 1-7, <https://www.medicaid.gov/medicaid/quality-of-care/downloads/crosswalk-of-activities.pdf>.

<https://mchb.hrsa.gov/maternal-child-health-initiatives/collaborative-improvement-innovation-networks-coiins>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/collaborative-improvement-innovation-networks-coiins>
<https://www.medicaid.gov/medicaid/quality-of-care/quality-of-care-performance-measurement/adult-medicaid-quality-grants/index.html>
<https://www.medicaid.gov/medicaid/quality-of-care/quality-of-care-performance-measurement/adult-medicaid-quality-grants/index.html>
https://www.ahrq.gov/sites/default/files/wysiwyg/policymakers/chipra/factsheets/chipra_1415-p009-4-ef.pdf
<https://www.medicaid.gov/medicaid/quality-of-care/downloads/crosswalk-of-activities.pdf>
<https://www.medicaid.gov/medicaid/quality-of-care/downloads/crosswalk-of-activities.pdf>
<https://www.medicaid.gov/medicaid/quality-of-care/downloads/crosswalk-of-activities.pdf>
<https://www.medicaid.gov/medicaid/quality-of-care/downloads/crosswalk-of-activities.pdf>
<https://www.medicaid.gov/medicaid/quality-of-care/downloads/eqr-protocol-3.pdf>
<https://www.medicaid.gov/medicaid/quality-of-care/downloads/eqr-protocol-3.pdf>
<https://onlinelibrary.wiley.com/doi/epdf/10.1111/jep.13243>
<https://www.medicaid.gov/medicaid/quality-of-care/downloads/crosswalk-of-activities.pdf>
<https://www.medicaid.gov/medicaid/quality-of-care/downloads/crosswalk-of-activities.pdf>

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○ Pilot project with 4 states using mobile messaging to support shared decision making through consumer/patient education.⁵²⁷

There has been a push by providers and other stakeholders in recent years to expand Medicaid coverage to provide 12 months of continuous coverage for women postpartum.⁵²⁸ Research has shown that there is a risk of severe maternal morbidity events or death occurring up to a year postpartum, and that postpartum visits with a health care provider are linked with reducing the rate of maternal deaths.⁵²⁹ Currently under Medicaid, women are covered for 60 days postpartum,⁵³⁰ although states have the option of extending that coverage past that 60 day period.⁵³¹ However, many women lose Medicaid coverage after that 60 day period due to strict eligibility requirements that which causes a lapse in coverage during the critical postpartum period.⁵³² Nearly 40 percent of mothers with Medicaid do not access postpartum visits.⁵³³ At its 2019 Annual Meeting, the American Medical Association adopted a new policy to extend Medicaid coverage to 12 months postpartum, pointing out the link between extending coverage and improved maternal health outcomes, and noted “[a]s physicians, we know new mothers’ medical needs extend beyond Medicaid’s current coverage period, and a longer coverage period would offer a healthier start for America’s families.”⁵³⁴ The American College of Obstetricians Gynecologists also issued a statement following the American Medical Association’s announcement on this issue, which noted that infants are covered by Medicaid through the first year of life, saying that the “baby’s mother needs the same level of access to care,” and “closing the critical gap in coverage during this vulnerable time can mean the difference between life and death for some women.”⁵³⁵

Maternal, Infant, and Early Child Home Visiting Program

⁵²⁷ Ibid. ⁵²⁸ American Medical Association, “AMA adopts new policies at 2019 Annual Meeting,” Jun. 12, 2019, <https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-2019-annual-meeting>; American College of Obstetricians and Gynecologists, “ACOG Statement on AMA Support for 12 Months of Postpartum Coverage Under Medicaid,” Jun. 12, 2019, <https://www.acog.org/news/news-releases/2019/06/acog-statement-on-ama-support-for-12-months-of-postpartum-coverage-under-medicaid>. ⁵²⁹ See supra notes 54, 61, 68-70, 118-120, 245-251, 273. ⁵³⁰ See supra note 496. ⁵³¹ Ibid. ⁵³² See supra notes 276-280. ⁵³³ Alison Stuebe Jennifer E. Moore, Pooja Mittal, Lakshmi

Rowland, Lisa Kane Low, Hayden Brown, "Extending Medicaid Coverage for Postpartum Moms," May 6, 2019, <https://www.healthaffairs.org/doi/10.1377/hlthaff.20190501.254675/full>. 534 American Medical Association, "AMA adopts new policies at 2019 Annual Meeting," Jun. 12, 2019, <https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-2019-annual-meeting>. 535 American College of Obstetricians and Gynecologists, "ACOG Statement on AMA Support for 12 Months of Postpartum Coverage Under Medicaid," Jun. 12, 2019, <https://www.acog.org/news/news-releases/2019/06/acog-statement-on-ama-support-for-12-months-of-postpartum-coverage-under-medicaid>.

Commented [KC40]: Did they recommend this? How can AMA extend Medicaid coverage? Please look at the source and reword.

<https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-2019-annual-meeting>
<https://www.acog.org/news/news-releases/2019/06/acog-statement-on-ama-support-for-12-months-of-postpartum-coverage-under-medicaid>
<https://www.acog.org/news/news-releases/2019/06/acog-statement-on-ama-support-for-12-months-of-postpartum-coverage-under-medicaid>
<https://www.healthaffairs.org/doi/10.1377/hblog20190501.254675/full>
<https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-2019-annual-meeting>
<https://www.acog.org/news/news-releases/2019/06/acog-statement-on-ama-support-for-12-months-of-postpartum-coverage-under-medicaid>
<https://www.acog.org/news/news-releases/2019/06/acog-statement-on-ama-support-for-12-months-of-postpartum-coverage-under-medicaid>

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Established in 2010,536 the Maternal, Infant, and Early Child Home Visiting Program (MIECHV) seeks to empower pregnant women and families—especially those considered at-risk—with tools, resources, and skills to raise healthy children.537 This home visiting program is primarily aimed at protecting infant and child health, but there are components focus on improving maternal health as well.538 Research has shown a positive link between home visits and maternal and infant health.539 MIECHV is administered by the Health Resources and Services Administration in collaboration with the Administration for Children & Families (ACF).540 and funds states, territories, and tribal entities to develop and implement evidence-based, voluntary home visiting programs with health, social services, and child development professionals.541 Home visits provide information on a variety of topics, including preventative health, prenatal practices, nutrition, breastfeeding, and childcare solutions.542 In addition, they provide support for mothers by screening for postpartum depression, substance abuse, family violence, and other maternal health risks.543

In 2019, MIECHV provided over 1 million home visits, serving approximately 154,000 parents and children in all 50 states, the District of Columbia, and 5 territories.544 In addition, the Tribal MIECHV program awarded 17,972 home visits to over 3,800 adults and children in 2018, and currently funds 23 tribes, consortia of tribes, tribal organizations, and urban Indian organizations.545 In 2018, MIECHV was allocated \$400 million per year through fiscal year 2022, and in September 2019, the Health Resources and Services Administration awarded

536 42 U.S.C. 711 § 511; Pub. L. 111-148 § 2951. 537 Health Resources & Services Administration, Maternal and Child Health, "Home Visiting," <https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting-overview>. 538 Ibid. 539 Health Resources & Services Administration, "The Maternal, Infant, and Early Childhood Home Visiting Program: Program Overview," p. 1, <https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/2018-MIECHV-program-overview.pdf>; Michalopoulos, C, et al., Evidence on the Long-Term Effects of Home Visiting Programs: Laying the Groundwork for Long-Term Follow-Up in the Mother and Infant Home Visiting Program Evaluation (MIHOPE), OPRE Report 2017-73, 2017, Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services, <https://files.eric.ed.gov/fulltext/ED579153.pdf>. 540 Administration for Children & Families, Office of Child Care, "Home Visiting," <https://www.acf.hhs.gov/occ/home-visiting>. 541 Health Resources & Services Administration, Maternal and Child Health, "Home Visiting," <https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting-overview>. 542 Health Resources & Services Administration, "The Maternal, Infant, and Early Childhood Home Visiting Program: Program Overview," p. 1, <https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/2018-MIECHV-program-overview.pdf>. 543 Ibid. 544 Health Resources & Services Administration, "The Maternal, Infant, and Early Childhood Home Visiting Program: Partnering with Parents to Help Children Succeed," April 2020, <https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/programbrief.pdf>. 545 Health Resources & Services Administration, "The Maternal, Infant, and Early Childhood Home Visiting Program: Program Overview," p. 2, <https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/2018-MIECHV-program-overview.pdf>.

Commented [KC41]: OCRE is working to determine how "at risk communities" are identified, and we hope that the briefing or agency interactions may help answer this question.

We will also explore any downsides to home visits.

<https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting-overview>
<https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/2018-MIECHV-program-overview.pdf>
<https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/2018-MIECHV-program-overview.pdf>
<https://files.eric.ed.gov/fulltext/ED579153.pdf>
<https://www.acf.hhs.gov/occ/home-visiting>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting-overview>
<https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/2018-MIECHV-program-overview.pdf>
<https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/2018-MIECHV-program-overview.pdf>
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<https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/2018-MIECHV-program-overview.pdf>

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approximately \$351 million in funds to 56 states, territories, and nonprofit organizations through MIECHV.546

There are 19 different approved service delivery models that grantees can select that have been deemed effective.547 These models have been identified and reviewed through the Health Resources and Services Administration's Home Visiting Evidence of Effectiveness (HomVEE) assessment tool, which provides "an assessment of the evidence of effectiveness for home visiting models that target families with pregnant women and children from birth to kindergarten entry."548 The MIECHV program has six benchmarks in order to measure a grantee's success, including:

■ Improvement in maternal and newborn health ■ Reduction in child injuries, abuse, and neglect ■ Improved school readiness and achievement ■ Reduction in crime or domestic violence ■ Improved family economic self-sufficiency ■ Improved coordination and referral for other community resources and supports549

Grantees need to demonstrate measurable improvement in at least 4 of these benchmarks.550 The Health Resources and Services Administration provides technical assistance to grantees by "connecting awardees to technical expertise, sharing best practices, engaging experts and stakeholders, utilizing Continuous Quality Improvement (CQI) methodologies, and disseminating and translating research findings."551

A series of evaluations were conducted starting in the early years of the MIECHV program. The Mother and Infant Home Visiting Evaluation (MIHOPE) is the legislatively mandated evaluation of the MIECHV program which includes a random assignment impact study, an implementation study, a cost analysis, and an analysis of needs assessments.552 The study, launched in 2012 with data collection through 2017, includes 88 home visiting programs across 12 states, with over 4,200 enrollees in the study.553

In addition, the Mother and Infant Home Visiting Program Evaluation – Strong Start (MIHOPE- Strong Start) was launched in 2012, which evaluated the effectiveness of evidence-based home

546 Health Resources & Services Administration, Maternal and Child Health, "Home Visiting," <https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting-overview>. 547 Ibid. 548 Administration of Children and Families, "What is Home Visiting Evidence of Effectiveness?" <https://homvee.acf.hhs.gov>. 549 Health Resources & Services Administration, Maternal and Child Health, "Home Visiting," <https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting-overview>. 550 Ibid. 551 Health Resources & Services Administration, "MIECHV Program Technical Assistance," <https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting/miechv-program-ta>. 552 Administration for Children & Families, "Mother and Infant Home Visiting Program Evaluation (MIHOPE), 2011-2019," <https://www.acf.hhs.gov/opre/research/project/maternal-infant-and-early-childhood-home-visiting-evaluation-mihope>. 553 Ibid.

<https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting-overview>
<https://homvee.acf.hhs.gov/>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting-overview>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting/miechv-program-ta>
<https://www.acf.hhs.gov/opre/research/project/maternal-infant-and-early-childhood-home-visiting-evaluation-mihope>
<https://www.acf.hhs.gov/opre/research/project/maternal-infant-and-early-childhood-home-visiting-evaluation-mihope>

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visiting programs for families enrolled in Medicaid or CHIP—part of CMS' Strong Start for Mothers and Infants initiative.554 Data collection for this study ended in 2017, and the study included a random assignment impact analysis and a multi-level implementation research analysis, with 2,900 families from 66 local home visiting programs across 17 states.555 MIHOPE only included programs receiving MIECHV funding, but MIHOPE-Strong Start included programs with both MIECHV and non-MIECHV funding.556 MIHOPE included pregnant women or had children under 6 months old, but MIHOPE-Strong Start was limited to pregnant women in the first 32 weeks of pregnancy.557 The enrollees in these programs were primarily young, low-income, with over a third having not graduated from high school.558 Additionally, the enrollees were racially and ethnically diverse, with approximately 70 percent women of color (including Black, Latino, or identifying as Other/Mixed Race) in both MIHOPE and MIHOPE- Strong Start.559 By comparison, approximately a third of MIECHV program participants were Latino, 28 percent were Black, and 58 percent were White.560

A summary report (summarizing all MIHOPE and MIHOPE-Strong Start evaluations thus far) was issued in January 2019, finding that:

■ Home visiting programs in the studies were generally well implemented, with appropriate support in place to help home visitors administer the intended services

■ MIHOPE found positive effects on some family outcomes but MIHOPE-Strong Start found little effect on birth outcomes and prenatal behaviors561

554 Administration for Children & Families, "Mother and Infant Home Visiting Program Evaluation – Strong Start (MIHOPE-Strong Start), 2012-2018," <https://www.acf.hhs.gov/opre/research/project/mother-and-infant-home-visiting-program-evaluation-strong-start-mihope-ss>; see also supra notes 507-511. 555 Administration for Children & Families, "Mother and Infant Home Visiting Program Evaluation – Strong Start (MIHOPE-Strong Start), 2012-2018," <https://www.acf.hhs.gov/opre/research/project/mother-and-infant-home-visiting-program-evaluation-strong-start-mihope-ss>. 556 Ibid. 557 Charles Michalopoulos, Sarah Shea Crowne, Ximena A. Portilla, Helen Lee, Jill H. Filene, Anne Duggan, and Virginia Knox, A Summary of Results from the MIHOPE and MIHOPE-Strong Start Studies of Evidence-Based Home Visiting, Administration for Children and Families, Office of Planning, Research, and Evaluation, January 2019, p. 3, https://www.acf.hhs.gov/sites/default/files/opre/mihope_summary_brief_01_16_19_508.pdf. 558 Ibid., 6. 559 Charles Michalopoulos, Kristen Faucetta, Carolyn J. Hill, Ximena A. Portilla, Lori Burrell, Helen Lee, Anne Duggan, and Virginia Knox, Impacts on Family Outcomes of Evidence-Based Early Childhood Home Visiting: Results from the Mother and Infant Home Visiting Program Evaluation, Administration for Children and Families, Office of Planning, Research, and Evaluation, January 2019, pp. 34-35, https://www.acf.hhs.gov/sites/default/files/opre/mihope_impact_report_final20_508.pdf; Helen Lee, Sarah Crowne, Kristen Faucetta, and Rebecca Hughes, An Early Look at Families and Local Programs in the Mother and Infant Home Visiting Program Evaluation-Strong Start: Third Annual Report, p. ES-5, https://www.acf.hhs.gov/sites/default/files/opre/mihope_ssyv3_acf_compliant.pdf. 560 Charles Michalopoulos, Kristen Faucetta, Carolyn J. Hill, Ximena A. Portilla, Lori Burrell, Helen Lee, Anne Duggan, and Virginia Knox, Impacts on Family Outcomes of Evidence-Based Early Childhood Home Visiting: Results from the Mother and Infant Home Visiting Program Evaluation, Administration for Children and Families, Office of Planning, Research, and Evaluation, January 2019, p. 35, note 14, https://www.acf.hhs.gov/sites/default/files/opre/mihope_impact_report_final20_508.pdf. 561 Charles Michalopoulos, Sarah Shea Crowne, Ximena A. Portilla, Helen Lee, Jill H. Filene, Anne Duggan, and Virginia Knox, A Summary of Results from the MIHOPE and MIHOPE-Strong Start Studies of Evidence-Based

<https://www.acf.hhs.gov/opre/research/project/mother-and-infant-home-visiting-program-evaluation-strong-start-mihope-ss>
<https://www.acf.hhs.gov/opre/research/project/mother-and-infant-home-visiting-program-evaluation-strong-start-mihope-ss>
<https://www.acf.hhs.gov/opre/research/project/mother-and-infant-home-visiting-program-evaluation-strong-start-mihope-ss>
<https://www.acf.hhs.gov/opre/research/project/mother-and-infant-home-visiting-program-evaluation-strong-start-mihope-ss>
https://www.acf.hhs.gov/sites/default/files/opre/mihope_summary_brief_01_16_19_508.pdf
https://www.acf.hhs.gov/sites/default/files/opre/mihope_impact_report_final20_508.pdf
https://www.acf.hhs.gov/sites/default/files/opre/mihope_ssyv3_acf_compliant.pdf
https://www.acf.hhs.gov/sites/default/files/opre/mihope_impact_report_final20_508.pdf

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Most families in MIHOPE-Strong Start had adequate prenatal care even without home visits, and the women typically did not engage in risky behaviors, which may explain the lack of effects in MIHOPE-Strong Start.562 The summary evaluation report indicated that further research would need to be done in order to answer whether MIHOPE-Strong Start would improve birth outcomes, prenatal birth behaviors, or neonatal care amongst families if the program served a higher-risk group of families.563 MIHOPE exploratory findings also suggest that home visiting may improve maternal health, by improvements in women's general health, increased rates of health insurance coverage, and reductions in symptoms of depression.564

Alliance for Innovation on Maternal Health

As briefly discussed in Chapter 2, the Alliance for Innovation on Maternal Health (AIM) is a foundational “national data-driven maternal safety and quality improvement initiative” with the goal of “eliminating preventable maternal mortality and severe maternal morbidity” in the U.S. AIM is a national partnership that engages a variety of stakeholders including provider organizations, state health and public health systems, consumer groups, and other stakeholders in order to improve overall maternal health outcomes. AIM is funded through a cooperative grant with the Health Resources and Services Administration’s Maternal and Child Health Bureau, and funding supports facilitating multidisciplinary collaborations focused on reducing maternal mortality and severe maternal morbidity; implementation and adoption of maternal safety bundles (which include a bundle on reducing peripartum racial/ethnic disparities); and data collection and analytics within a continuous quality improvement framework to improve the implementation of safety bundles by state-based teams.

Maternal safety bundles are “a set of small straightforward evidence-based practices, that when used collectively and reliably in the delivery setting, have improved patient outcomes and reduced maternal mortality and severe maternal morbidity.” There are a number of maternal safety bundles that have a variety of focuses:

Home Visiting, Administration for Children and Families, Office of Planning, Research, and Evaluation, January 2019, p. 5, https://www.acf.hhs.gov/sites/default/files/opre/mihope_summary_brief_01_16_19_508.pdf. 562 Ibid., 13. 563 Ibid., 13. 564 Ibid., 14. 565 Council on Patient Safety in Women’s Health Care, “Alliance for Innovation on Maternal Health Program,” <https://safehealthcareforeverywoman.org/aim-program/>; see also supra notes 458-459. 566 Council on Patient Safety in Women’s Health Care, “Alliance for Innovation on Maternal Health Program,” <https://safehealthcareforeverywoman.org/aim-program/>; Health Resources & Services Administration, “Alliance for Innovation on Maternal Health (AIM),” <https://www.hrsa.gov/grants/find-funding/hrsa-18-085>. 567 Council on Patient Safety in Women’s Health Care, “Alliance for Innovation on Maternal Health Program,” <https://safehealthcareforeverywoman.org/aim-program/>. 568 See Table XX.XX, infra. 569 Health Resources & Services Administration, “Alliance for Innovation on Maternal Health (AIM),” <https://www.hrsa.gov/grants/find-funding/hrsa-18-085>. 570 Ibid.

- https://www.acf.hhs.gov/sites/default/files/opre/mihope_summary_brief_01_16_19_508.pdf
- <https://safehealthcareforeverywoman.org/aim-program/>
- <https://safehealthcareforeverywoman.org/aim-program/>
- <https://www.hrsa.gov/grants/find-funding/hrsa-18-085>
- <https://safehealthcareforeverywoman.org/aim-program/>
- <https://www.hrsa.gov/grants/find-funding/hrsa-18-085>

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- Maternal mental health: depression and anxiety
- Maternal venous thromboembolism
- Obstetric care for women with opioid use disorder
- Obstetric hemorrhage
- Postpartum care basics for maternal safety

o From birth to comprehensive postpartum visit

o Transition from maternity to well-woman care

- Prevention of retained vaginal sponges after birth
- Reduction of peripartum racial/ethnic disparities
- Safe reduction of primary cesarean birth
- Severe hypertension in pregnancy

The maternal safety bundle that aims to reduce peripartum racial and ethnic disparities provides a wealth of resources to partners broken down into four components. See Table 3.1.

Table 3.1. Reduction of Peripartum Racial/Ethnic Disparities Readiness Every Health System

- Establish systems to accurately document self-identified race, ethnicity, and primary language. o Provide system-wide staff education and training on how to ask demographic intake questions. o Ensure that patients understand why race, ethnicity, and language data are being collected. o Ensure that race, ethnicity, and language data are accessible in the electronic medical record. o Evaluate non-English language proficiency (e.g. Spanish proficiency) for providers who communicate with patients in languages other than English. o Educate all staff (e.g. inpatient, outpatient, community-based) on interpreter services available within the healthcare system.

o Provide staff-wide education on:

o Peripartum racial and ethnic disparities and their root causes. o Best practices for shared decision making.

- Engage diverse patient, family, and community advocates who can represent important community partnerships on quality and safety leadership teams.

Recognition & Prevention Every patient, family, and staff member

- Provide staff-wide education on implicit bias. o Provide convenient access to health records without delay (paper or electronic), at minimal to no fee to the maternal patient, in a clear and simple format that summarizes information most pertinent to perinatal care and wellness.

- Establish a mechanism for patients, families, and staff to report inequitable care and episodes of miscommunication or disrespect.

Response Every Clinical Encounter

- Engage in best practices for shared decision making. o Ensure a timely and tailored response to each report of inequity or disrespect. o Address reproductive life plan and contraceptive options not only during or immediately after pregnancy, but at regular intervals throughout a woman’s reproductive life.

571 Council on Patient Safety in Women’s Health Care, “Alliance for Innovation on Maternal Health Program,” <https://safehealthcareforeverywoman.org/aim-program/>.

<https://safehealthcareforeverywoman.org/aim-program/>

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- Establish discharge navigation and coordination systems post childbirth to ensure that women have appropriate follow-up care and understand when it is necessary to return to their health care provider.

- Provide discharge instructions that include information about what danger or warning signs to look out for, whom to call, and where to go if they have a question or concern.

o Design discharge materials that meet patients’ health literacy, language, and cultural needs. Reporting/Systems Learning Every Clinical Unit

- Engage in best practices for shared decision making. o Ensure a timely and tailored response to each report of inequity or disrespect. o Address reproductive life plan and contraceptive options not only during or immediately after pregnancy, but at regular intervals throughout a woman’s reproductive life. o Establish discharge navigation and coordination systems post childbirth to ensure that women have appropriate follow-up care and understand when it is necessary to return to their health care provider. o Provide discharge instructions that include information about what danger or warning signs to look out for, whom to call, and where to go if they have a question or concern. o Design discharge materials that meet patients’ health literacy, language, and cultural needs.

Source: Council on Patient Safety in Women’s Health Care, “Patient Safety Bundle: Reduction of Peripartum Racial/Ethnic Disparities,” https://safehealthcareforeverywoman.org/patient-safety-bundles/reduction-of-peripartum-raciaethnic-disparities/#link_acc-1-2-d.

By the end of fiscal year 2023, the program aims to:

- Facilitate widespread implementation of the current maternal safety bundles by maintaining the existing 10 state-based teams and expanding the program to accept 25 new state-based teams
- new maternal safety bundles that address new topics in the quality and safety of maternity care practices
- Develop and implement a national campaign focused on the current state of maternal mortality and severe maternal morbidity that highlights the impact of AIM, and how the maternal safety bundles improve maternity care practices
- Prevent 1,000 maternal deaths and 100,000 cases of severe maternal morbidity in the U.S.

There are currently 29 states that have enrolled in AIM, many of which have implemented one or more safety bundles.

572 Health Resources & Services Administration, Notice of Funding Opportunity: Alliance on Innovation on Maternal Health (AIM), Dec. 18, 2017, https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_atid=ee57642e-760f-4a3f-9477-0052db57fe25. 573 Council on Patient Safety in Women’s Health Care, “AIM States & Systems,” <https://safehealthcareforeverywoman.org/aim-program/> (accessed May 6, 2020). AIM enrolled states include Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia (according to map). (Archived link: <http://web.archive.org/web/20200422155000/https://safehealthcareforeverywoman.org/aim-states-systems-2/>. Also on file.)

- https://safehealthcareforeverywoman.org/patient-safety-bundles/reduction-of-peripartum-raciaethnic-disparities/#link_acc-1-2-d
- https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_atid=ee57642e-760f-4a3f-9477-0052db57fe25
- https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_atid=ee57642e-760f-4a3f-9477-0052db57fe25
- <https://safehealthcareforeverywoman.org/aim-program/>
- <http://web.archive.org/web/20200422155000/https://safehealthcareforeverywoman.org/aim-states-systems-2/>
- <http://web.archive.org/web/20200422155000/https://safehealthcareforeverywoman.org/aim-states-systems-2/>

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The American College of Obstetricians and Gynecologists has been a principal grantee since 2014, and in 2018, it was awarded \$2 million through AIM. This professional organization was responsible for “engaging and building partnerships with national stakeholders, promoting the adoption and implementation of hospital-focused maternal safety bundles by state-based teams, and evaluating the delivery of provider education on interconception health.”

In September 2019, the Health Resources and Services Administration announced that it would be awarding \$1.8 million in grants for the AIM Community Care Initiative, which builds upon the foundational work of the existing AIM program by focusing on the development and implementation of maternal safety bundles for non-hospital settings including community-based organizations and outpatient clinical facilities and addressing preventable maternal mortality and severe maternal morbidity among pregnant women and postpartum women in these non-hospital settings. This new initiative aims to convene a maternal safety workgroup comprised of community-focused public health and clinical experts to guide program activities; facilitate the national implementation of two existing non-hospital focused safety bundles, and development of new non-hospital focused safety bundles for use in outpatient clinical settings and community-based organizations; and data collection and analytics within a continuous quality improvement framework to improve the implementation of non-hospital focused safety bundles. In 2019, the National Healthy Start Association was awarded the sole grant of \$1.8 million for five years to support this effort.

National Child & Maternal Health Education Program

The National Child & Maternal Health Education Program (NCMHEP), administered by the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD) of the National Institutes of Health, aims to “identify key challenges in child and maternal health, review relevant research and initiate educational activities that advance the knowledge base of

574 Tracking Accountability in Government Grants System, “Alliance for Innovation on Maternal Health, FY 2014- 2020,” <https://tags.hhs.gov/SearchAdv/AdvSearchResults>. 575 American Hospital Association, “AIM Receives the Health Resources and Services Administration Grant to Expand Maternal Safety Program,” Aug. 2, 2018, <https://www.aha.org/news/headline/2018-08-02-aim-receives-hrsa-grant-expand-maternal-safety-program>; American College of Obstetricians and Gynecologists, “Alliance for Innovation on Maternal Health (AIM),” <https://www.acog.org/practice-management/patient-safety-and-quality/partnerships/alliance-for-innovation-on-maternal-health-aim>. 576 Congressional Research Service, Health Resources and Services Administration (the Health Resources and Services Administration): Maternal Health Programs, Mar. 4, 2020, <https://crsreports.congress.gov/product/pdf/R/R46256>. 577 U.S. Department of Health and Human Services, “HHS Awards \$374 Million to Programs Supporting Maternal and Child Health,” Sep. 12, 2019, <https://www.hhs.gov/about/news/2019/09/12/hhs-awards-374-million-programs-supporting-maternal-child-health.html>. 578 Health Resources & Services Administration, “Alliance for Innovation on Maternal Health (AIM) – Community Care Initiative,” <https://www.hrsa.gov/grants/find-funding/hrsa-19-109>. 579 Health Resources & Services

<https://taggs.hhs.gov/SearchAdv/AdvSearchResults>
<https://www.aha.org/news/headline/2018-08-02-aim-receives-hrsa-grant-expand-maternal-safety-program>
<https://www.aha.org/news/headline/2018-08-02-aim-receives-hrsa-grant-expand-maternal-safety-program>
<https://www.acog.org/practice-management/patient-safety-and-quality/partnerships/alliance-for-innovation-on-maternal-health-aim>
<https://www.acog.org/practice-management/patient-safety-and-quality/partnerships/alliance-for-innovation-on-maternal-health-aim>
<https://crsreports.congress.gov/product/pdf/R/R46256>
<https://www.hhs.gov/about/news/2019/09/12/hhs-awards-374-million-programs-supporting-maternal-child-health.html>
<https://www.hhs.gov/about/news/2019/09/12/hhs-awards-374-million-programs-supporting-maternal-child-health.html>
<https://www.hrsa.gov/grants/find-funding/hrsa-19-109>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/fy19-maternal-health-awards>
http://www.nationalhealthystart.org/what_we_do

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the field, and improve the health of women and children.”⁵⁸⁰ This is achieved through a partnership with over 30581 prominent maternal and child health care provider associations, federal agencies, nonprofit maternal and child health organizations, and other entities nationwide.⁵⁸² These partners serve on the NCMHEP’s Coordinating Committee, and use their scientific and medical expertise to address challenges to maternal and child health through education and outreach.⁵⁸³ Currently, the program has four initiatives that seek to educate mothers on reducing elective deliveries before 39 weeks, depression and anxiety around pregnancy, full-term pregnancy definition, and pregnancy for every body, and materials (brochures, fact sheets, resources, etc.) are included on the program website.⁵⁸⁴

Enhancing Reviews and Surveillance to Eliminate Maternal Mortality

As discussed in previous chapters, Maternal Mortality Review Committees (MMRCs) are multidisciplinary state and local committees convened to identify, review, and characterize maternal deaths that occur within one year of pregnancy using a variety of data sources beyond just vital records.⁵⁸⁵ While reliance on vital statistics is useful for identifying trends and disparities in maternal mortality and severe maternal morbidity, state and local MMRCs are most effective to comprehensively assess maternal deaths and identify methods of prevention.⁵⁸⁶ More specifically, MMRCs utilize the following process:

A MMRC gathers extensive information about each individual case of maternal death selected for review, and this information is synthesized into a story for that case. The committee convenes to further fill in the story and, for each case, answer the question, “What happened?” The committee then determines if the death was related to or aggravated by pregnancy. If so, the death is one counted in the state’s pregnancy-related mortality ratio. Committee members also will craft recommendations specific to the case to ensure that a similar story doesn’t unfold in the future.⁵⁸⁷

For each death reviewed, there are six key decisions that MMRCs make:

580 Eunice Kennedy Shriver National Institute of Child Health and Human Development, “National Child & Maternal Health Education Program,” <https://www.nichd.nih.gov/ncmhpep>. 581 Eunice Kennedy Shriver National Institute of Child Health and Human Development, “Coordinating Committee,” <https://www.nichd.nih.gov/ncmhpep/about/coordinating-committee>. 582 Eunice Kennedy Shriver National Institute of Child Health and Human Development, “National Child & Maternal Health Education Program,” <https://www.nichd.nih.gov/ncmhpep>. 583 Eunice Kennedy Shriver National Institute of Child Health and Human Development, “About the National Child & Maternal Health Education Program (NCMHPEP),” <https://www.nichd.nih.gov/ncmhpep/about>. 584 Eunice Kennedy Shriver National Institute of Child Health and Human Development, “Initiatives,” <https://www.nichd.nih.gov/ncmhpep/initiatives>. 585 See supra notes 444–445. 586 CDC Foundation, Building U.S. Capacity to Review and Prevent Maternal Deaths: Report from Nine Maternal Mortality Review Committees, 2018, p. 9, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>. 587 Review to Action, “What Makes Maternal Mortality Review Unique?” <https://reviewtoaction.org/learn/what-makes-maternal-mortality-review-unique>.

<https://www.nichd.nih.gov/ncmhpep>
<https://www.nichd.nih.gov/ncmhpep/about/coordinating-committee>
<https://www.nichd.nih.gov/ncmhpep>
<https://www.nichd.nih.gov/ncmhpep/about>
<https://www.nichd.nih.gov/ncmhpep/initiatives>
<https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>
<https://reviewtoaction.org/learn/what-makes-maternal-mortality-review-unique>
<https://reviewtoaction.org/learn/what-makes-maternal-mortality-review-unique>

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1. Was the death pregnancy-related? 2. What was the underlying cause of death? 3. Was the death preventable? 4. What were the factors that contributed to the death? 5. What are the recommendations and actions that address those contributing factors? 6. What is the anticipated impact of those actions if implemented?⁵⁸⁸

While all questions are essential, the last four questions are best for being able to determine preventability, contributing factors, recommendations for improvement, and measures for potential impact.⁵⁸⁹ The findings through examination of these questions contribute to a better understanding of how to put data into meaningful and impactful action. For example, a recent report of 9 MMRCs identified 193 recommendations for action that were grouped into 10 common themes:

■ Improve training ■ Enforce policies and procedures ■ Adopt levels of maternal care/ensure appropriate level of care determination ■ Improve access to care ■ Improve patient/provider communication ■ Improve patient management for mental health conditions ■ Improve procedures related to communication and coordination between providers ■ Improve standards regarding assessment, diagnosis, and treatment decisions ■ Improve policies related to patient management, communication and coordination

between providers, and language translation ■ Improve policies regarding prevention initiatives, including screening procedures and

substance use prevention or treatment programs⁵⁹⁰

These themes are also examined by leading cause of death, in order to better understand how to better prevent, for example, cardiovascular and coronary conditions, or hemorrhage.⁵⁹¹ In addition, the anticipated impact of recommended actions are assessed, first by assigning a specific level of prevention to each recommendation (primary prevention, secondary prevention, or tertiary prevention), and second, by assigning an expected level of impact.⁵⁹² See Figure 3.1.

Figure 3.1. Expected Level of Impact if Recommendation is Implemented

588 CDC Foundation, Building U.S. Capacity to Review and Prevent Maternal Deaths: Report from Nine Maternal Mortality Review Committees, 2018, p. 10, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>. 589 Ibid. 590 Ibid., 29. 591 Ibid., 30. 592 Ibid., 31.

<https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>

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Source: CDC Foundation, Building U.S. Capacity to Review and Prevent Maternal Deaths: Report from Nine Maternal Mortality Review Committees, 2018, p. 10, <https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>.

As seen in Figure 3.1, recommended actions are adapted from this Health Impact Pyramid, where actions at the top of the pyramid focus more on the individual level, and actions toward the bottom of the pyramid have a greater potential for population-level impact, focusing less on the individual and more on entire populations.⁵⁹³ Ideally, MMRCs will identify recommended actions across the spectrum for a comprehensive strategy for preventing maternal deaths.⁵⁹⁴ In the report from 9 MMRCs, 36.6 percent of recommended actions were categorized as primary prevention, 39.5 percent as secondary prevention, and 23.8 as tertiary prevention.⁵⁹⁵ This report identified the distribution of the levels of impact if the recommended actions were implemented, finding that 19.5 percent of recommended actions would have a small impact, 40.2 percent would have a medium impact, 29.0 percent would have a large impact, 7.7 would have an extra large impact, and 3.6 would have a giant impact.⁵⁹⁶ For example, from the themes identified above, improving training and patient management of mental health conditions would both have more of a small to medium impact if implemented; whereas adopting maternal levels of care/ensure appropriate levels of care determination and improving policies regarding prevention initiatives, including screening procedures and substance use prevention or treatment programs would have more of a large to giant impact if implemented.⁵⁹⁷ Furthermore, recommendations with large or extra large potential impacts represented over two-thirds of recommended actions for the two leading causes of death: cardiovascular and coronary conditions and hemorrhage.⁵⁹⁸

593 Ibid., 31. 594 Ibid., 31. 595 Ibid., 32. 596 Ibid., 32. 597 Ibid., 33. 598 Ibid., 34.

<https://www.cdcfoundation.org/sites/default/files/files/ReportfromNineMMRCs.pdf>

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There are currently 46 states and cities with MMRCs in the U.S.⁵⁹⁹ MMRCs have existed in various forms across the U.S. for nearly a century.⁶⁰⁰ Over the years, the work of MMRCs have contributed to significantly reducing maternal deaths, in part by identifying opportunities for prevention.⁶⁰¹ However, there was a significant reduction in activity from MMRCs in the 1980s and the number of active state committees fell to 27.⁶⁰² This was, in part, attributed to the reduction of maternal deaths.⁶⁰³ This also spurred the development of the Pregnancy Mortality Surveillance System in 1986, to meet the need for understanding and interpreting maternal deaths beyond just the death certificate.⁶⁰⁴ The reduction in the number of active MMRCs during this time was also due to MMRCs having difficulty interpreting small numbers of deaths,⁶⁰⁵ and to a larger extent, due to concern of liability of committee members and proceedings being used in litigation.⁶⁰⁶ Since then, it has been found that liability of participating in maternal mortality review is negligible, since most states have statutes that protect information used for these reviews from disclosure or use in subsequent litigation, and statutes that protect individuals from civil liability.⁶⁰⁷

MMRCs have historically worked independently from one another, which poses challenges for information-sharing due to non-standardized data collection and data analysis.⁶⁰⁸ The Enhancing Reviews and Surveillance to Eliminate Maternal Mortality program (ERASE MM) is a grant program administered by CDC to directly support entities that coordinate and manage MMRCs

599 Review to Action, “MMR Map,” <https://reviewtoaction.org/content/mmr-map>. 600 Wanda Barfield, “Transforming Tragedy Into Effective Maternal Mortality Prevention Efforts,” Health Affairs, Jun. 29, 2017, <https://www.healthaffairs.org/doi/10.1377/hlthaff.20170629.060774/full>. 601 Amy St. Pierre, MBA, Julie Zaharatos, MPH, David Goodman, PhD, and William M. Callaghan, MD, MPH, “Challenges and Opportunities in Identifying, Reviewing, and Preventing Maternal Deaths,” Obstetrics and Gynecology, Vol. 131, No. 1 (January 2018): 138–142, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6511983/>; Jamila Taylor, Cristina Novoa, Katie Hamm, and Shilpa Phadke, “Eliminating Racial Disparities in Maternal and Infant Mortality,” Center for American Progress, May 2, 2019, <https://www.americanprogress.org/issues/women/reports/2019/05/02/469186/eliminating-racial-disparities-maternal-infant-mortality/>. See also Centers for Disease Control, “Pregnancy-Related Deaths: Data from 14 U.S. Maternal Mortality Review Committees, 2008–2017,” <https://www.cdc.gov/reproductivehealth/maternal-mortality/erases-mm/mmr-data-brief.html> (discussing a key finding that MMRCs determined that 2 out of 3 deaths reviewed within the scope of the analysis were preventable). 602 Amy St. Pierre, MBA, Julie Zaharatos, MPH, David Goodman, PhD, and William M. Callaghan, MD, MPH, “Challenges and Opportunities in Identifying, Reviewing, and Preventing Maternal Deaths,” Obstetrics and Gynecology, Vol. 131, No. 1 (January 2018): 138–142, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6511983/>. 603 Ibid. 604 Ibid. 605 Ronald F. Wright, JD and Jack C. Smith, MS, “State Level Expert Review Committees – Are They Protected?” Public Health Reports, Vol. 105, No. 1 (1990): 13, https://books.google.com/books?id=ISiOCx7eFDAC&pg=PA13&lpg=PA13&dq=maternal+mortality+review+committee+inactive&source=bl&ots=n3mAIMOU2E&sig=ACfU3U1HPFDuEiFbgwpxScL1WuL_PW7QjA&hl=en&sa=X&ved=2ahUKewil-tzqhvnpA8hXPMHIEHS8iAEKQ6AEwBHoECAoQAQv=onpage&q&f=false. 607 Ibid. 608 Wanda Barfield, “Transforming Tragedy Into Effective Maternal Mortality Prevention Efforts,” Health Affairs, Jun. 29, 2017, <https://www.healthaffairs.org/doi/10.1377/hlthaff.20170629.060774/full>.

<https://reviewtoaction.org/content/mmr-map>
<https://www.healthaffairs.org/doi/10.1377/hlthaff.20170629.060774/full>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6511983/>
<https://www.americanprogress.org/issues/women/reports/2019/05/02/469186/eliminating-racial-disparities-maternal-infant-mortality/>
<https://www.americanprogress.org/issues/women/reports/2019/05/02/469186/eliminating-racial-disparities-maternal-infant-mortality/>
<https://www.cdc.gov/reproductivehealth/maternal-mortality/erases-mm/mmr-data-brief.html>
<https://www.cdc.gov/reproductivehealth/maternal-mortality/erases-mm/mmr-data-brief.html>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6511983/>
https://books.google.com/books?id=ISiOCx7eFDAC&pg=PA13&lpg=PA13&dq=maternal+mortality+review+committee+inactive&source=bl&ots=n3mAIMOU2E&sig=ACfU3U1HPFDuEiFbgwpxScL1WuL_PW7QjA&hl=en&sa=X&ved=2ahUKewil-tzqhvnpA8hXPMHIEHS8iAEKQ6AEwBHoECAoQAQv=onpage&q&f=false

https://books.google.com/books?id=ISIOcx7eFDAC&pg=PA13&lpg=PA13&dq=maternal+mortality+review+committee+inactive&source=bl&ots=n3mAIMOU2E&sig=ACfU3U1HPFDuEIfBgwxpScL1Wul_PW7QjA&hl=en&sa=X&ved=2ahUKEWil-zqhvrpAhXpMhIEHS8iAEKQ6AEwBHoECAoQAQ#v=onepage&q&f=false
https://books.google.com/books?id=ISIOcx7eFDAC&pg=PA13&lpg=PA13&dq=maternal+mortality+review+committee+inactive&source=bl&ots=n3mAIMOU2E&sig=ACfU3U1HPFDuEIfBgwxpScL1Wul_PW7QjA&hl=en&sa=X&ved=2ahUKEWil-zqhvrpAhXpMhIEHS8iAEKQ6AEwBHoECAoQAQ#v=onepage&q&f=false
<https://www.healthaffairs.org/doi/10.1377/hlbg20170629.060774/full/>

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to “identify, review, and characterize maternal deaths; and identify prevention opportunities.”⁶⁰⁹ The ERASE MM program has three goals:

- Facilitate an understanding of the drivers of maternal mortality and complications of pregnancy and better understand the associated disparities
- Determine what interventions at patient, provider, facility, system, and community levels will have the most effect
- Inform the implementation of initiatives in the right places for families and communities who need them most⁶¹⁰

The Maternal Mortality Review Information Application (MMRIA) is an important data system and tool for MMRCs to help organize and standardize maternal mortality data to begin the process of comprehensively identifying and assessing maternal mortality cases.⁶¹¹ This system is an upgrade from its predecessor, the Maternal Mortality Review Data System (MMRDS).⁶¹² It provides:

- A repository for the collection of clinical and non-clinical information surrounding a woman’s life and death, which can help facilitate review by a jurisdiction-based maternal mortality review committee
- Documentation of committee deliberations on 1) whether the death was related to pregnancy; 2) if it could have been prevented; 3) factors that contributed to the death; and 4) recommendations to prevent future deaths
- Standardized indicators, common to most pregnancy-related deaths that can be used for surveillance, monitoring, and examining maternal mortality⁶¹³

The Centers for Disease Control/CDC provides training and technical assistance to MMRCs in order to help them move forward.⁶¹⁴ For states without established MMRCs, there is a website “Review to Action” that promotes best practices in maternal mortality review, and provides resources, tools, and support for establishing a review committee.⁶¹⁵ Review to Action also helps to connect established MMRCs with resources, tools, and best practices.⁶¹⁶ Review to Action was developed in partnership with the Association of Maternal and Child Health Programs, the CDC Foundation, and the CDC Division of Reproductive Health,⁶¹⁷ and is part of a larger 2016– 2019 initiative, Building U.S. Capacity to Review and Prevent Maternal Deaths, which was

⁶⁰⁹ Centers for Disease Control and Prevention, “Enhancing Reviews and Surveillance to Eliminate Maternal Mortality (ERASE MM),” <https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/index.html>. ⁶¹⁰ Ibid. ⁶¹¹ Ibid. ⁶¹² Review to Action, “MMRIA,” <https://reviewtoaction.org/implementation/mmrria>. ⁶¹³ Centers for Disease Control and Prevention, “Enhancing Reviews and Surveillance to Eliminate Maternal Mortality (ERASE MM),” <https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/index.html>. ⁶¹⁴ Cox Statement, at 3–4. ⁶¹⁵ Centers for Disease Control and Prevention, “Enhancing Reviews and Surveillance to Eliminate Maternal Mortality (ERASE MM),” <https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/index.html>. ⁶¹⁶ Ibid. ⁶¹⁷ Review to Action, “About Us,” <https://reviewtoaction.org/about-us>.

<https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/index.html>
<https://reviewtoaction.org/implementation/mmrria>
<https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/index.html>
<https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/index.html>
<https://reviewtoaction.org/about-us>

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supported in part by funding from Merck, through an award agreement with its Merck for Mothers program.⁶¹⁸ This larger initiative also helped to support the development of MMRIA.⁶¹⁹

There are currently 25 states that are funded through ERASE MM,⁶²⁰ funded through a \$45 million grant over five years, starting in 2019.⁶²¹ The FY 2021 President’s Budget indicated that \$17.25 million was requested to provide a total of 50 awards, including 26 new awards to support all 50 states and Washington, DC.⁶²² This funding was appropriated by the Preventing Maternal Deaths Act of 2018,⁶²³ which sought to expand state, local, and tribal MMRCs and improve data collection and reporting on maternal mortality.⁶²⁴ Since the passage of the Preventing Maternal Deaths Act, all 50 states either have an existing MMRC or are in the process of developing one.⁶²⁵ In addition, through its Improving Maternal Health in America Initiative: Reducing Maternal Mortality, CDC has requested an additional \$12 million to expand MMRCs to all 50 states and Washington, D.C. to support “data collection and data-driven action to prevent maternal mortality and morbidity” by “every state to examine every case of pregnancy-related death to better understand the causes and prevention opportunities.”⁶²⁶

Health Resources and Services Administration – Maternal Mortality Summit

Another division of the Department of Health and Human Services, the Health Resources and Services Administration, is “charged with improving the healthcare of geographically isolated and economically or medically vulnerable individuals.”⁶²⁷ Within the Health Resources and Services Administration, the Maternal and Child Health Bureau works to “improve the health of

⁶¹⁸ Ibid.; see also CDC Foundation, “CDC Foundation Partnership To Help Reduce Maternal Mortality In The United States,” Apr. 19, 2016, <https://www.cdcfoundation.org/pr/2016/cdc-foundation-partnership-help-reduce-maternal-mortality-united-states>. ⁶¹⁹ CDC Foundation, “Building U.S. Capacity To Review And Prevent Maternal Deaths,” <https://www.cdcfoundation.org/building-us-capacity-review-and-prevent-maternal-deaths>. ⁶²⁰ Centers for Disease Control and Prevention, “Enhancing Reviews and Surveillance to Eliminate Maternal Mortality (ERASE MM),” <https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/index.html>. ⁶²¹ Review to Action, “About Us,” <https://reviewtoaction.org/about-us>. ⁶²² Centers for Disease Control and Prevention, FY 2021 Justification of Estimates for Appropriation Committees, pp. 157–158, <https://www.cdc.gov/budget/documents/fy2021/FY-2021-CDC-congressional-justification.pdf>. ⁶²³ Pub. L. 115–344, 132 Stat. 5047 (2018); see also infra notes XXXX. (will add cross ref to section about legislation discussing Preventing Maternal Deaths Act later in this chapter) ⁶²⁴ “Maternal Mortality: A National Crisis,” MD Edge, Mar. 18, 2020, <https://www.mdedge.com/obgyn/article/218024/obstetrics/maternal-mortality-national-crisis/page/0/1>; American Academy of Family Physicians, “Improve Maternal Mortality,” <https://www.aafp.org/dam/AAFP/documents/events/fmas/BKG-MaternalMortality.pdf>. ⁶²⁵ Committee on Energy & Commerce, Memorandum, Hearing on “Improving Maternal Health: Legislation to Advance Prevention Efforts and Access to Care,” Sep. 6, 2019, p. 2, https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Majority%20Memo%20maternal%20health_2019.09.10_1.pdf. ⁶²⁶ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Justification of Estimates for Appropriations Committees, Fiscal Year 2021, p. 13, <https://www.cdc.gov/budget/documents/fy2021/FY-2021-CDC-congressional-justification.pdf>. ⁶²⁷ Health Resources and Services Administration, the Health Resources and Services Administration Maternal Mortality Summit: Promising Global Practices to Improve Maternal Health Outcomes, Technical Report, Feb. 15, 2019, p. 2, <https://www.hrsa.gov/sites/default/files/hrsa/maternal-mortality/Maternal-Mortality-Technical-Report.pdf>.

Commented [KC42]: Lead with more information about health disparities. I would do some research to flesh out the statutory/regulatory charges and what they have to do with racial disparities..

<https://www.cdcfoundation.org/pr/2016/cdc-foundation-partnership-help-reduce-maternal-mortality-united-states>
<https://www.cdcfoundation.org/pr/2016/cdc-foundation-partnership-help-reduce-maternal-mortality-united-states>
<https://www.cdcfoundation.org/building-us-capacity-review-and-prevent-maternal-deaths>
<https://www.cdc.gov/reproductivehealth/maternal-mortality/erase-mm/index.html>
<https://reviewtoaction.org/about-us>
<https://www.cdc.gov/budget/documents/fy2021/FY-2021-CDC-congressional-justification.pdf>
<https://www.mdedge.com/obgyn/article/218024/obstetrics/maternal-mortality-national-crisis/page/0/1>
<https://www.aafp.org/dam/AAFP/documents/events/fmas/BKG-MaternalMortality.pdf>
https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Majority%20Memo%20maternal%20health_2019.09.10_1.pdf
https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Majority%20Memo%20maternal%20health_2019.09.10_1.pdf
<https://www.cdc.gov/budget/documents/fy2021/FY-2021-CDC-congressional-justification.pdf>
<https://www.hrsa.gov/sites/default/files/hrsa/maternal-mortality/Maternal-Mortality-Technical-Report.pdf>
<https://www.hrsa.gov/sites/default/files/hrsa/maternal-mortality/Maternal-Mortality-Technical-Report.pdf>

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America’s mothers, children, and families.”⁶²⁸ After its 2019 Maternal Mortality Summit, the Health Resources and Services Administration issued a technical report that summarized key findings from the summit, identifying challenges that women face in receiving quality maternal health care from preconception, pregnancy, labor, delivery, postpartum, and interconception, and identified opportunities for improvement in these areas.⁶²⁹ Some key relevant findings included:

- Access: Improve access to patient-centered, comprehensive care for women before, during, and after pregnancy, especially in rural and underserved areas;
- Safety: Improve quality of maternity services through efforts such as the utilization of safety protocols in all birthing facilities;
- Workforce: Provide continuity of care before, during, and after pregnancies by increasing the types and distribution of health care providers;
- Life Course Model: Provide continuous team-based support and use a life course model of care for women before, during, and after pregnancies;
- Data: Improve the quality and availability of national surveillance and survey data, research, and common terminology and definitions;
- Review Committees: Improve quality and consistency of maternal mortality review committees through collaborations and technical assistance with U.S. states; and
- Partnerships: Engage in opportunities for productive collaborations with multiple summit participants.⁶³⁰

Health Resources and Services Administration: Challenges to Improve Maternal Health Outcomes

The Health Resources and Services Administration funded two notable challenges that aimed to foster innovative technology-based solutions to improve maternal health outcomes.⁶³¹ These two challenges focused on:

- Helping providers remotely monitor the health of pregnant women, and empower women to make informed decisions about their own care⁶³²
- Helping improve access to quality health care for pregnant and new mothers struggling with opioid use disorder⁶³³

⁶²⁸ Ibid. ⁶²⁹ Ibid. ⁶³⁰ Ibid., 3. ⁶³¹ Health Resources Services Administration, “Remote Pregnancy Monitoring,” <https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring>; Health Resources Services Administration, “Addressing Opioid Use Disorder in Pregnant Women and New Moms,” <https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>. ⁶³² Health Resources Services Administration, “Remote Pregnancy Monitoring,” <https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring>. ⁶³³ Health Resources Services Administration, “Addressing Opioid Use Disorder in Pregnant Women and New Moms,” <https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>.

Commented [KC43]: Nick try to find underlying regulations for all these agencies. Also, when were they founded and what are their duties? Is there a legislative duty to hold a MM Summit?

Commented [KC44]: Who are these findings directed at?

Commented [KC45]: If directed at the federal government how are they doing?

<https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>
<https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>

According to data regarding poverty rates of women of color, many low-income women are women of color.⁶³⁴ Since low-income pregnant women face many barriers to accessing adequate prenatal care, the Remote Pregnancy Monitoring Challenge sought to increase remote and virtual access to quality care for low-income women; eliminate barriers to quality care; improve communication among patients and providers; provide health education to pregnant women in order to monitor their own health and care; extend services to women in rural areas and typically underserved areas with limited access to prenatal care.⁶³⁵ Additionally, since low-income pregnant women or new mothers face barriers to access to opioid treatment programs, or they otherwise face stigma, prejudice, discrimination, or limited social supports such as housing, transportation, or employment, the Opioid Use Disorder in Pregnant Women and New Moms Challenge sought to increase access to substance abuse treatment, recovery support, and other services, particularly for those in rural or underserved areas.⁶³⁶

There were two phases to each challenge. Phase 1 winners each received a \$100,000 prize, and Phase 2 winners each received a \$125,000 prize.⁶³⁷ The project is currently in Phase 3, where one team will be chosen in Spring 2020 to win a grand prize of up to \$150,000.⁶³⁸

Federal-State Grants, Programs, and Partnerships

Healthy Start The Healthy Start program was established in 1991, originally authorized by Section 301 of the Public Health Services Act,⁶³⁹ and reauthorized by the Children's Health Act of 2000.⁶⁴⁰ Healthy Start is administered by the Health Resources and Services Administration, and currently funds 101 projects in 34 states, Washington, D.C., and Puerto Rico.⁶⁴¹ The program initially focused on reducing infant mortality,⁶⁴² but was transformed in 2014 to focus more prominently on

⁶³⁴ See supra notes xx-xx. ⁶³⁵ Health Resources Services Administration, "Remote Pregnancy Monitoring," <https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring>. ⁶³⁶ Health Resources Services Administration, "Addressing Opioid Use Disorder in Pregnant Women and New Moms," <https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>. ⁶³⁷ Health Resources Services Administration, "Winners," <https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring/winners>; Health Resources Services Administration, "Winners," <https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms/winners>. ⁶³⁸ Health Resources Services Administration, "Winners," <https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring/winners>; Health Resources Services Administration, "Winners," <https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms/winners>. ⁶³⁹ 42 U.S.C. § 241. ⁶⁴⁰ Pub. L. 106-310, 114 Stat. 1101 (2000). ⁶⁴¹ *Ibid.* ⁶⁴² *Ibid.*

Commented [KC46]: It may be worth exploring how many "low-income" women are women of color.

<https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>
<https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring/winners>
<https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring/winners>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms/winners>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms/winners>
<https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring/winners>
<https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring/winners>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms/winners>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms/winners>

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improving maternal health outcomes and reducing disparities in perinatal outcomes, and applies evidence-based practices, community collaboration, organizational performance monitoring, and quality improvement to service delivery for women and children.⁶⁴³ By strengthening foundations at the community, state, and national levels, Healthy Start seeks to primarily address infant mortality and maternal health outcomes by:

- Reducing differences in access to, and use of health services
- Improving the quality of the local health care system
- Empowering women and their families
- Increasing consumer and community participation in health care decisions⁶⁴⁴

Healthy Start utilizes five strategic approaches to providing support to women, infants, and families, including improving women's health before, during, and after pregnancy; promoting quality services; strengthening family resilience; achieving collective impact; and increasing accountability through quality improvement, performance monitoring, and evaluation.⁶⁴⁵ Healthy Start projects address issues such as the quality of prenatal care and promoting positive prenatal behaviors, meeting basic health needs, reducing barriers to healthcare access, and more.⁶⁴⁶ Each family that enrolls in Healthy Start receives a standardized assessment that takes into consideration their physical and behavioral health, employment, housing, domestic violence risks, and other key factors that can help determine a family's needs.⁶⁴⁷ Through Healthy Start, participants are able to access healthcare services, enabling services (case management, home visits, education, outreach, transportation, translation, child care, housing assistance, job training, prison/jail based services), public health services (immunization, health education).⁶⁴⁸

Healthy Start provides training and technical assistance for providers through the Healthy Start EPIC Center.⁶⁴⁹ The EPIC Center website provides a number of resources and tools for providers, including information on program implementation, data collection, monitoring, evaluation, trainings, and more.⁶⁵⁰

There have been a few national and regional evaluations of the Healthy Start program over the years. A 2012 evaluation found positive programmatic outcomes, including:

- 71 percent of Healthy Start projects increased positive health behaviors among participants

⁶⁴³ Healthy Start EPIC Center, "Monitoring, Data, & Evaluation," <https://www.healthystartepic.org/healthy-start-implementation/monitoring-data-and-evaluation/>. ⁶⁴⁴ Health Resources and Services Administration, "Healthy Start," <https://mchb.hrsa.gov/maternal-child-health-initiatives/healthy-start>. ⁶⁴⁵ *Ibid.* ⁶⁴⁶ National Healthy Start Association, "Healthy Start Initiative," http://www.nationalhealthystart.org/healthy_start_initiative. ⁶⁴⁷ Health Resources and Services Administration, "Healthy Start," <https://mchb.hrsa.gov/maternal-child-health-initiatives/healthy-start>. ⁶⁴⁸ *Ibid.* ⁶⁴⁹ *Ibid.* ⁶⁵⁰ Healthy Start EPIC Center, "Monitoring, Data, & Evaluation," <https://www.healthystartepic.org/healthy-start-implementation/monitoring-data-and-evaluation/>.

<https://www.healthystartepic.org/healthy-start-implementation/monitoring-data-and-evaluation/>
<https://www.healthystartepic.org/healthy-start-implementation/monitoring-data-and-evaluation/>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/healthy-start>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/healthy-start>
http://www.nationalhealthystart.org/healthy_start_initiative
<https://mchb.hrsa.gov/maternal-child-health-initiatives/healthy-start>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/healthy-start>
<https://www.healthystartepic.org/healthy-start-implementation/monitoring-data-and-evaluation/>
<https://www.healthystartepic.org/healthy-start-implementation/monitoring-data-and-evaluation/>

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- 68 percent of Healthy Start projects increased access to available services among participants

- 49 percent of Healthy Start projects increased screening for perinatal depression
- 45 percent of Healthy Start projects increased integration of prenatal, primary care and

mental health services- 41 percent of Healthy Start projects increased the cultural competence of providers in the

community⁶⁵¹

Additionally, in earlier and smaller, qualitative examinations of Healthy Start programs, it was found that most participants were generally satisfied with the program, where infants and mothers both had increased access to healthcare services and insurance coverage, and the high rate of health education contributed to positive health outcomes.⁶⁵² However, Healthy Start programs faced challenges such as limited funding, barriers to mobility of the target population, limited staff capacity, and barriers to transportation.⁶⁵³ Additionally, Healthy Start's new focus on interconception care has the potential to address participants needs on a long-term basis.⁶⁵⁴ There is currently another evaluation underway, awarded after the program transformation in 2014, which will be able to address successes of the program since this transformation.⁶⁵⁵

In 2018, Healthy Start reported that 77.8 percent of participants initiated prenatal care during the first trimester, exceeding the fiscal year 2018 target of 75 percent.⁶⁵⁶

The Healthy Start program was appropriated \$125.5 million in 2020.⁶⁵⁷ In addition, the program received an additional \$12 million in appropriations in 2019 to help support a new initiative to reduce maternal mortality by hiring clinical service providers to provide well-woman services, maternity care, and other clinical maternal health services to clients at program sites.⁶⁵⁸

⁶⁵¹ Health Resources and Services Administration, A Profile of Healthy Start Findings from the Evaluation of the Healthy Start Program, 2012, p. 46, <https://www.abtassociates.com/insights/publications/report/profile-of-healthy-start-findings-from-the-evaluation-of-the-federal>. ⁶⁵² Margo Rosenbach, So O'Neil, Benjamin Cook, Lisa Trebino, Deborah Klein Walker, "Characteristics, Access, Utilization, Satisfaction, and Outcomes of Healthy Start Participants in Eight Sites," *Maternal Child Health Journal*, No. 14 (2010): 666, <https://link.springer.com/content/pdf/10.1007/s10995-009-0474-1.pdf>. ⁶⁵³ Andrea Brand, Deborah Klein Walker, Margaret Hargreaves, Margo Rosenbach, "Intermediate Outcomes, Strategies, and Challenges of Eight Healthy Start Projects," *Maternal Child Health Journal*, Vol. 14 (2010): 664, <https://link.springer.com/content/pdf/10.1007/s10995-008-0421-6.pdf>. ⁶⁵⁴ Margo Rosenbach, So O'Neil, Benjamin Cook, Lisa Trebino, Deborah Klein Walker, "Characteristics, Access, Utilization, Satisfaction, and Outcomes of Healthy Start Participants in Eight Sites," *Maternal Child Health Journal*, No. 14 (2010): 666, <https://link.springer.com/content/pdf/10.1007/s10995-009-0474-1.pdf>. ⁶⁵⁵ Abt Associates, "Evaluation of the Implementation and Outcomes of the Maternal & Child Health Bureau's Federal Healthy Start Program," <https://www.abtassociates.com/projects/evaluation-of-the-implementation-and-outcomes-of-the-maternal-child-health-bureaus-federal>. ⁶⁵⁶ Health Resources and Services Administration, Justification of Estimates for Appropriations Committees, Fiscal Year 2021, p. 209, <https://www.hrsa.gov/sites/default/files/hrsa/about/budget/budget-justification-fy2021.pdf>. ⁶⁵⁷ Health Resources and Services Administration, Justification of Estimates for Appropriations Committees, Fiscal Year 2021, p. 206, <https://www.hrsa.gov/sites/default/files/hrsa/about/budget/budget-justification-fy2021.pdf>. ⁶⁵⁸ *Ibid.*, 208.

<https://www.abtassociates.com/insights/publications/report/profile-of-healthy-start-findings-from-the-evaluation-of-the-federal>
<https://www.abtassociates.com/insights/publications/report/profile-of-healthy-start-findings-from-the-evaluation-of-the-federal>
<https://link.springer.com/content/pdf/10.1007/s10995-009-0474-1.pdf>
<https://link.springer.com/content/pdf/10.1007/s10995-008-0421-6.pdf>
<https://link.springer.com/content/pdf/10.1007/s10995-009-0474-1.pdf>
<https://www.abtassociates.com/projects/evaluation-of-the-implementation-and-outcomes-of-the-maternal-child-health-bureaus-federal>
<https://www.abtassociates.com/projects/evaluation-of-the-implementation-and-outcomes-of-the-maternal-child-health-bureaus-federal>
<https://www.hrsa.gov/sites/default/files/hrsa/about/budget/budget-justification-fy2021.pdf>
<https://www.hrsa.gov/sites/default/files/hrsa/about/budget/budget-justification-fy2021.pdf>

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Health Center Program

The Health Resources and Services Administration administers Health Centers throughout the country, which are "community-based and patient-directed organizations that deliver comprehensive, culturally competent, high-quality primary health care services."⁶⁵⁹ Health Centers aim to improve access to health care services by integrating a number of services into one location, such as pharmacy, mental health, substance use disorder, and oral health, where there are otherwise barriers to access for low-income and otherwise vulnerable populations.⁶⁶⁰ Most Health Centers receive federal funding to reduce disparities among vulnerable populations, and some receive funding to focus efforts on specific populations.⁶⁶¹ Operational funds for Health Centers typically come from Medicaid, Medicare, private insurance, patient fees, and other resources.⁶⁶²

While Health Centers are not primarily focused on maternity care, they do serve more than 7seven million women aged 15 to 44.⁶⁶³ In 2018, over half a million women received prenatal care at Health Centers, with 74 percent of those women receiving prenatal care in their first trimester.⁶⁶⁴ Providers also performed more than 172,000 deliveries in 2018, and the total number of obstetricians, gynecologists, and certified nurse midwives grew by 6 percent in the past 3 years.⁶⁶⁵

State Maternal Health Innovation Program

Established in 2019, the State Maternal Health Innovation (State MHI) program is administered by the Health Resources and Services Administration and supports states in fostering partnerships with maternal health experts and optimizing

their resources to support programs that help prevent maternal mortality and severe maternal morbidity, and reduce disparities in maternal health outcomes.666 This funding will support states' efforts to:

- Establish a state-focused Maternal Health Task Force to create and implement a strategic plan that incorporates activities outlined in the state's most recent State Title V Needs Assessment;

659 Health Resources and Services Administration, "What is a Health Center?" <https://bphc.hrsa.gov/about/what-is-a-health-center/index.html>. 660 Ibid. 661 Ibid. 662 Ibid. 663 Health Resources and Services Administration, "How We Improve Maternal Health," <https://www.hrsa.gov/maternal-health>. 664 Ibid. 665 Ibid. 666 Health Resources and Services Administration, "State Maternal Health Innovation Program," <https://www.hrsa.gov/grants/find-funding/hrsa-19-107>.

Commented [KC47]: What does "otherwise vulnerable" mean?

Commented [KC48]: Does the term "specific populations" include the Black community or other communities of color? If yes how much of the funding is directed that way?

<https://bphc.hrsa.gov/about/what-is-a-health-center/index.html>
<https://bphc.hrsa.gov/about/what-is-a-health-center/index.html>
<https://www.hrsa.gov/maternal-health>
<https://www.hrsa.gov/grants/find-funding/hrsa-19-107>

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- Improve the collection, analysis, and application of state-level data on maternal mortality and severe maternal morbidity;
- Promote and execute innovation in maternal health service delivery, such as improving access to maternal care services, identifying and addressing workforce needs, and/or supporting postpartum and interconception care services.667

HHS announced in September 2019 that it planned to award \$18.7 million to the State MHI program,668 which will fund nine state projects that will operate through these established Maternal Health Task Forces and will encourage collaboration with "traditional" and "non-traditional" partners, tribes and tribal organizations.669

Their goal is that by September 20, 2020, successful State MHI programs will have developed a strategic plan that identifies gaps and incorporates activities outlined in the state's Title V Needs Assessment, and issued their first annual report on maternal deaths in the state that include policy recommendations aimed at reducing preventable maternal deaths.670 In addition, successful State MHI programs will have increased the percentage of women who are covered by health insurance; receive an annual well-woman visit; receive prenatal care; receive prenatal care in their first trimester; receive a postpartum visit; screened for perinatal depression; and decreased the percentage of pregnancy-related deaths and racial, ethnic, or geographic disparities in maternal mortality rates.671

Rural Maternity and Obstetrics Management Strategies Program

The Rural Maternity and Obstetrics Management Strategies (RMOMS) Program, also established in 2019 and administered by the Health Resources and Services Administration, is a pilot program that aims to improve access to continuity of maternal and obstetrics care in rural areas through the U.S.672 The program's goals are to:

- Develop a sustainable network approach to coordinate maternal and obstetrics care within a rural regions
- Increase the delivery and access of preconception, pregnancy, labor and delivery, and postpartum services

667 Ibid. 668 U.S. Department of Health and Human Services, "HHS Awards \$374 Million to Programs Supporting Maternal and Child Health," Sep. 12, 2019, <https://www.hhs.gov/about/news/2019/09/12/hhs-awards-374-million-programs-supporting-maternal-child-health.html>. 669 Health Resources and Services Administration, "State Maternal Health Innovation Program," <https://www.hrsa.gov/grants/find-funding/hrsa-19-107>. 670 Health Resources and Services Administration, Notice of Funding Opportunity: State Maternal Health Innovation Program, Fiscal Year 2019, p. 1, https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_attid=008e1a8e-5e74-4b29-ab41-e82a522530bb. 671 Ibid. 672 Health Resources and Services Administration, "Rural Maternity and Obstetrics Management Strategies Program," <https://www.hrsa.gov/grants/find-funding/hrsa-19-094>.

Commented [KC49]: OCRE plans to investigate how this compares to previous years.

Commented [KC50]: What does "traditional" and "non-traditional" mean?

<https://www.hhs.gov/about/news/2019/09/12/hhs-awards-374-million-programs-supporting-maternal-child-health.html>
<https://www.hhs.gov/about/news/2019/09/12/hhs-awards-374-million-programs-supporting-maternal-child-health.html>
<https://www.hrsa.gov/grants/find-funding/hrsa-19-107>
https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_attid=008e1a8e-5e74-4b29-ab41-e82a522530bb
https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_attid=008e1a8e-5e74-4b29-ab41-e82a522530bb
<https://www.hrsa.gov/grants/find-funding/hrsa-19-094>

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- Develop sustainable financing models for the provision of maternal and obstetrics care
- Improve maternal and neonatal outcomes673

The program encourages funding recipients to utilize innovation to reach the program goals through an established or formal regional network structure, and aims to demonstrate the impact of access and continuity of care in the rural U.S. through testing models that focus on Rural Hospital Obstetric Service Aggregation, Network Approach to Coordinating a Continuum of Care, Leveraging Telehealth and Specialty Care, and Financial Sustainability, which are the 4 focus areas of RMOMS.674 By 2023, successful funding recipients will have created programs that foster a safe delivery environment and improved access of prenatal and specialty care for women and infants in rural communities; models of maternal and obstetrics care that are reinforced and sustained by a payment/reimbursement structure; and improved clinical outcomes for maternal and neonatal health for the preconception, pregnancy, labor, delivery, and postpartum periods.675

Supporting Maternal Health Innovation Program

Also established in 2019, the Supporting Maternal Health Innovation (Supporting MHI) Program is administered by the Health Resources and Services Administration and aims to support states and other entities or stakeholders that are focused on initiatives to reduce maternal mortality and severe maternal morbidity by:

- Providing capacity building assistance to recipients of State MHI program and RMOMS funding to implement innovative and evidence-based strategies
- Establishing a resource center to provide national guidance to the Health Resources and Services Administration funding recipients, states, and other key stakeholders676

HHS announced in September 2019 that it would award \$2.6 million for the Supporting MHI Program,677 which will support the 9 State MHI funding recipients in:

- Increasing the percentage of women covered by health insurance
- Increasing the percentage of women who receive an annual well-woman visit
- Increasing the percentage of pregnant women who receive prenatal care

673 Ibid. 674 Ibid. 675 Health Resources and Services Administration, Notice of Funding Opportunity: Rural Maternity and Obstetrics Management Strategies Program, Fiscal Year 2019, p. 3, https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_attid=0ff21e8d-4586-4750-be04-e457c6e60ac8. 676 Health Resources and Services Administration, "Supporting Maternal Health Innovation Program," <https://www.hrsa.gov/grants/find-funding/hrsa-19-106>. 677 U.S. Department of Health and Human Services, "HHS Awards \$374 Million to Programs Supporting Maternal and Child Health," Sep. 12, 2019, <https://www.hhs.gov/about/news/2019/09/12/hhs-awards-374-million-programs-supporting-maternal-child-health.html>.

https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_attid=0ff21e8d-4586-4750-be04-e457c6e60ac8
https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_attid=0ff21e8d-4586-4750-be04-e457c6e60ac8
<https://www.hrsa.gov/grants/find-funding/hrsa-19-106>
<https://www.hhs.gov/about/news/2019/09/12/hhs-awards-374-million-programs-supporting-maternal-child-health.html>
<https://www.hhs.gov/about/news/2019/09/12/hhs-awards-374-million-programs-supporting-maternal-child-health.html>

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- Increasing the percentage of pregnant women who receive prenatal care in the first trimester
- Increasing the percentage of pregnant women who receive a postpartum visit
- Increasing the percentage of women screened for perinatal depression
- Decreasing the rate of pregnancy-related deaths
- Decreasing the racial, ethnic, and/or geographic disparities in pregnancy-related mortality

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By 2024, successful Supporting MHI funding recipients will have developed a program that results in:

- 75 percent of the Health Resources and Services Administration award recipients who focus on improving maternal health accessing maternal health peer learning and shared resources created by the Supporting MHI Program award recipient
- 75 percent of the Health Resources and Services Administration award recipients who focus on improving maternal health and who receive support and/or technical assistance to reduce maternal mortality and SMM reporting they are better able to implement innovative and evidence-informed strategies to reduce and prevent maternal mortality and severe maternal morbidity
- Increasing the dissemination of national resources to support the adoption of the AIM and AIM – Community Care Initiative safety bundles, as well as other innovative, evidence-informed strategies to serve communities experiencing disparities that contribute to maternal mortality and severe maternal morbidity679

Social Security Act Title V Maternal and Child Health Block Grant Program

The Maternal and Child Health (MCH) Block Grant program was established by Title V of the Social Security Act of 1935,680 and aimed to protect the health and welfare of mothers and children.681 The program operated as a federal-state partnership that established state health and/or public welfare departments in certain states, and supported and facilitated efforts of existing agencies in others in order to extend health and welfare services to mothers and children.682 In 1981, the Title V program was converted to a block grant program.683 which

678 Health Resources and Services Administration, Notice of Funding Opportunity: Supporting Maternal Health Innovation Program, Fiscal Year 2019, pp. 1-2, https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_attid=d2d1f8cc-35be-40a7-95a9-1c07f25c5eb8. 679 Ibid., 2. 680 42 U.S.C. §§ 701-729. 681 Health Resources and Services Administration, Maternal and Child Health Bureau, Understanding Title V of the Social Security Act, p. 1, <http://www.amchp.org/AboutTitleV/Documents/UnderstandingTitleV.pdf>. 682 Ibid. 683 See Omnibus Budget Reconciliation Act of 1981 Pub. L. 97-35 (1981).

https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_attid=d2d1f8cc-35be-40a7-95a9-1c07f25c5eb8
https://grants.hrsa.gov/2010/Web2External/Interface/Common/EHBDisplayAttachment.aspx?dm_rtc=16&dm_attid=d2d1f8cc-35be-40a7-95a9-1c07f25c5eb8
<http://www.amchp.org/AboutTitleV/Documents/UnderstandingTitleV.pdf>

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consolidated several key maternal and child health programs.684 Since then, the program has been amended several times to "reflect changing national approaches to maternal and child health and welfare issues."685

The MCH Block Grant program is one of the largest federal block grant programs,686 and is the only federal program that is solely focused on improving maternal and child health outcomes.687 In fiscal year 2020, the MCH Block Grant program was appropriated \$687.7 million,688 and distributes Title V funds to grantees from 59 states and jurisdictions to provide health care services to an estimated 55 million people, which includes 91 percent of all pregnant women.689

These funds enable states to:

- Access to quality health care for mothers and children, especially for people with low incomes and/or limited availability of care
- Health promotion efforts that seek to reduce infant mortality and the incidence of preventable diseases, and to increase the number of children appropriately immunized against disease
- Access to comprehensive prenatal and postnatal care for women, especially low-income and/or at-risk pregnant women
- An increase in health assessments and follow-up diagnostic and treatment services, especially for low-income children
- Access to preventive and childcare services as well as rehabilitative services for children in need of specialized medical services
- Family-centered, community-based systems of coordinated care for children with special healthcare needs
- Toll-free hotlines and assistance in applying for services to pregnant women with infants and children who are eligible for Title XIX (Medicaid)⁶⁹⁰

The activities authorized under the MCH Block Grant Program that support the improvement of maternal health outcomes include:

- The State MCH Block Grant program

684 Health Resources and Services Administration, Maternal and Child Health Bureau, Understanding Title V of the Social Security Act, p. 1, <http://www.amchp.org/AboutTitleV/Documents/UnderstandingTitleV.pdf>. 685 Ibid. 686 Health Resources and Services Administration, "Title V Maternal and Child Health Services Block Grant Program," <https://mchb.hrsa.gov/maternal-child-health-initiatives/title-v-maternal-and-child-health-services-block-grant-program>. 687 Association of Maternal and Child Health Programs, "About Title V," <http://www.amchp.org/AboutTitleV/Pages/default.aspx>. 688 U.S. Department of Health and Human Services, Fiscal Year 2021 Health Resources and Services Administration Justification of Estimates for Appropriations Committees, p. 178, <https://www.hrsa.gov/sites/default/files/hrsa/about/budget/budget-justification-fy2021.pdf>. 689 Health Resources and Services Administration, "Title V Maternal and Child Health Services Block Grant Program," <https://mchb.hrsa.gov/maternal-child-health-initiatives/title-v-maternal-and-child-health-services-block-grant-program>. 690 Ibid.

<http://www.amchp.org/AboutTitleV/Documents/UnderstandingTitleV.pdf>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/title-v-maternal-and-child-health-services-block-grant-program>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/title-v-maternal-and-child-health-services-block-grant-program>
<http://www.amchp.org/AboutTitleV/Pages/default.aspx>
<https://www.hrsa.gov/sites/default/files/hrsa/about/budget/budget-justification-fy2021.pdf>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/title-v-maternal-and-child-health-services-block-grant-program>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/title-v-maternal-and-child-health-services-block-grant-program>

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- Special Projects of Regional and National Significance (SPRANS)⁶⁹¹

The State MCH Block Grant program distributes formula grants to states and jurisdictions to help provide health care services to mothers and children and remove barriers "to receiving comprehensive, timely, and appropriate health care" to the individual populations that MCH serves.⁶⁹² In fiscal year 2020, this program was appropriated \$558.3 million.⁶⁹³ This program has improved access to prenatal care, with the percentage of women receiving prenatal care in the first trimester of pregnancy increased from 71 percent in 2007 to 77.5 percent in 2018.⁶⁹⁴ Forty-six states also have preconception care programs to improve access to preventative and primary care for women of childbearing age.⁶⁹⁵ States and jurisdictions are also working to reduce maternal mortality, with 37 states/jurisdictions providing funding for MMRCs and another 14 states/jurisdictions in the planning process to use Title V funds to support MMRCs.⁶⁹⁶ Additionally, states are utilizing Title V funds to support the implementation and use of safety bundles⁶⁹⁷ developed through the AIM program, which is administered by the Health Resources and Services Administration.⁶⁹⁸

The Special Projects of Regional and National Significance (SPRANS) grants have two purposes: 1) to address key emerging issues in maternal and child health; and 2) to support collaborative and innovative learning across states to promote the use of evidence-based best practices.⁶⁹⁹ In fiscal year 2020, just over half of the appropriated \$119.1 million in SPRANS funding supported programs and initiatives that address "critical and emerging issues" including maternal mortality.⁷⁰⁰ SPRANS funding supports the AIM program, as well as the new AIM Community Care program that both help develop and implement safety bundles for hospital and non-hospital care to improve the quality of maternal health care, which included the development of a new safety bundle on the prevention and treatment of opioid use disorder during pregnancy.⁷⁰¹ In addition, fiscal year 2019 SPRANS funding supported some new state-focused initiatives to improve maternal health outcomes and reduce disparities in maternal mortality and severe maternal morbidity, including the State MHI Grants program and the Supporting MHI Program.⁷⁰²

691 U.S. Department of Health and Human Services, Fiscal Year 2021 Health Resources and Services Administration Justification of Estimates for Appropriations Committees, p. 178, <https://www.hrsa.gov/sites/default/files/hrsa/about/budget/budget-justification-fy2021.pdf>. 692 Ibid., 180. 693 Ibid., 184. 694 Ibid., 180. 695 Ibid., 180. 696 Ibid., 180. 697 Ibid., 181. 698 See supra notes 569-571 and Table 3.1. 699 U.S. Department of Health and Human Services, Fiscal Year 2021 Health Resources and Services Administration Justification of Estimates for Appropriations Committees, p. 181, <https://www.hrsa.gov/sites/default/files/hrsa/about/budget/budget-justification-fy2021.pdf>. 700 Ibid., 182. 701 Ibid., 182; see also supra notes 569-571 and Table 3.1. 702 Ibid., 182; see also supra notes XXXX (cross ref to previous section in this chapter discussing these programs)

<https://www.hrsa.gov/sites/default/files/hrsa/about/budget/budget-justification-fy2021.pdf>
<https://www.hrsa.gov/sites/default/files/hrsa/about/budget/budget-justification-fy2021.pdf>

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TPublic Health Service Act Title X Family Planning

The family planning grant program under Title X of the Public Health Service Act Family Planning grant program,⁷⁰³ is administered by HHS' Office of Population Affairs, and it states that is the only federal grant program dedicated to ensuring access to a broad range of family planning and preventative health services for low-income, uninsured individuals, or others.⁷⁰⁴ As discussed herein, data shows that its services reach many women of color.⁷⁰⁵ This includes family planning education and counseling; screening for breast cancer and cervical cancer; sexually transmitted disease and human immunodeficiency virus (HIV) testing; referral; prevention education; and pregnancy diagnosis and counseling.⁷⁰⁶ Competitive grants are awarded to state and local health departments and community health, family planning, and other private nonprofit agencies.⁷⁰⁷ One key service that Title X grants support is preconception healthcare.⁷⁰⁸ Preconception healthcare services help to identify and modify biomedical, behavioral, and social risks to a woman's health, or aim to improve pregnancy outcomes through prevention and management.⁷⁰⁹ Grants have supported the development of preconception health care resource centers, which provide educational materials and information for both men and women, which aim to increase the chances of having a healthy pregnancy and birth.⁷¹⁰ Also, these grants support services to help women develop a reproductive life plan, which may help identify unmet reproductive healthcare needs.⁷¹¹

Title X has received approximately \$286.4 million in funding each year since 2014.⁷¹² In 2018, Title X funded 99 different agencies, including 49 state and local health departments and 50 nonprofit family planning and community health agencies, and served approximately 3.9 million clients, 87 percent of which were women.⁷¹³ Thirty-one percent of women served identified as non-white, and 33 percent of women identified as Latina.⁷¹⁴ Title X projects rely on funding

703 42 U.S. Code § 300 et seq.; 42 C.F.R. Part 59 Subpart A. 704 Office of Population Affairs, "About Title X Grants," <https://www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/index.html>. 705 See infra notes xx-xx. 706 Office of Population Affairs, "Title X Family Planning Annual Report: 2018 National Summary," p. ES-1, <https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2018-national-summary.pdf>. 707 Ibid. 708 Office of Population Affairs, "Preconception Health & Reproductive Life Plan," <https://www.hhs.gov/opa/title-x-family-planning/preventive-services/preconception-health-and-reproductive-life-plan/index.html>. 709 Ibid. 710 Ibid. See also Centers for Disease Control and Prevention, "Before Pregnancy," <https://www.cdc.gov/preconception/index.html>. 711 Ibid. 712 U.S. Department of Health and Human Services, Budget in Brief, Fiscal Year 2021, p. 32, <https://www.hhs.gov/sites/default/files/fy-2021-budget-in-brief.pdf>. U.S. Department of Health and Human Services, Budget in Brief, Fiscal Year 2020, p. 33, <https://www.hhs.gov/sites/default/files/fy-2020-budget-in-brief.pdf?language=es>; Office of Population Affairs, "Funding History," <https://www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/funding-history/index.html>. 713 Office of Population Affairs, "Title X Family Planning Annual Report: 2018 National Summary," p. ES-1, <https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2018-national-summary.pdf>. 714 Ibid., ES-2.

<https://www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/index.html>
<https://www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/index.html>
<https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2018-national-summary.pdf>
<https://www.hhs.gov/opa/title-x-family-planning/preventive-services/preconception-health-and-reproductive-life-plan/index.html>
<https://www.hhs.gov/opa/title-x-family-planning/preventive-services/preconception-health-and-reproductive-life-plan/index.html>
<https://www.cdc.gov/preconception/index.html>
<https://www.hhs.gov/sites/default/files/fy-2021-budget-in-brief.pdf>
<https://www.hhs.gov/sites/default/files/fy-2020-budget-in-brief.pdf?language=es>
<https://www.hhs.gov/sites/default/files/fy-2020-budget-in-brief.pdf?language=es>
<https://www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/funding-history/index.html>
<https://www.hhs.gov/opa/title-x-family-planning/about-title-x-grants/funding-history/index.html>
<https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2018-national-summary.pdf>

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from a variety of sources, and are often supported by Medicaid and CHIP funding as well as other public and private sources.⁷¹⁵

Levels of Care Assessment Tool

The Levels of Care Assessment Tool (LOCATe) was developed by the CDC to promote risk-appropriate maternal and neonatal care in order to improve health outcomes for pregnant women and infants.⁷¹⁶ Because definitions and monitoring of levels of care vary widely across the U.S., there was a need to standardize assessments of levels of maternal and neonatal care.⁷¹⁷ LOCATe is a web-based tool that can help states and jurisdictions create standardized assessments of levels of maternal and neonatal care, which allows for better information sharing to ensure that women and infants who are considered high-risk of complications can receive care at a health facility that can best attend to their needs.⁷¹⁸ LOCATe was developed based on guidelines based upon the most recent guidelines from a policy statement issued by the American Academy of Pediatrics in 2012, and a joint policy statement from the American College of Obstetricians and Gynecologists and the Society for Maternal-Fetal Medicine issued in 2015 (and revised in 2019).⁷¹⁹

As of February 2019, there are 15 states (California, Colorado, Delaware, Georgia, Illinois, Iowa, the southeast perinatal region of Michigan, Mississippi, New Hampshire, New Mexico, North Carolina, Oklahoma, Tennessee, Utah, and Wyoming) and Puerto Rico participate in LOCATe.⁷²⁰ There are no fees associated with the implementation of LOCATe for providers.⁷²¹

Office of Minority Health Partnership Grants

The Office of Minority Health (OMH), a division of HHS, administers several grant programs that focus on collaborative partnerships with states or other entities in order to eliminate health

715 Ibid., ES-3. 716 Centers for Disease Control and Prevention, "CDC Levels of Care Assessment Tool (CDC LOCATe)," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/cdc-locate/index.html#tool>. 717 Ibid. 718 Ibid. 719 Ibid.; see also American Academy of Pediatrics, "Policy Statement: Levels of Neonatal Care," Pediatrics, Vol. 130, No. 3 (September 2012): 567-597, <https://pediatrics.aappublications.org/content/pediatrics/130/3/587.full.pdf>; The American College of Obstetricians and Gynecologists and The Society for Maternal-Fetal Medicine, "Obstetrics Care Consensus No. 9: Levels of Maternal Care," Obstetrics and Gynecology, Vol. 134, No. 2 (August 2019): e41-e55, <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/obstetric-care-consensus/articles/2019/08/levels-of-maternal-care.pdf>. 720 Centers for Disease Control and Prevention, "Participating States & Success Stories," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/cdc-locate/participating-state-success-stories.html>. 721 Centers for Disease Control and Prevention, "Frequently Asked Questions about CDC LOCATe," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/cdc-locate/frequently-asked-questions.html>.

Commented [KC51]: Nick please find the statute establishing this office and its duties to reduce health disparities.

Commented [KC52]: During the briefing and through agency interactions, OCRE hopes to explore how much of this funding is relevant to reducing maternal mortality disparities, as well as funding patterns over time.

<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/cdc-locate/index.html#tool>
<https://pediatrics.aappublications.org/content/pediatrics/130/3/587.full.pdf>
<https://www.acog.org/-/media/project/acog/acogorg/clinical/files/obstetric-care-consensus/articles/2019/08/levels-of-maternal-care.pdf>
<https://www.acog.org/-/media/project/acog/acogorg/clinical/files/obstetric-care-consensus/articles/2019/08/levels-of-maternal-care.pdf>
<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/cdc-locate/participating-state-success-stories.html>

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disparities and improve health outcomes for minority populations.722 OMH administered the State Partnership Program to Improve Minority Health and awarded nearly \$6 million in grants to state and territorial departments of health between 2010-2013, and renewed that grant program from 2013-2015, awarding \$3.2 million to agencies working towards eliminating disparities in access to healthcare, asthma, cancer, cardiovascular disease/stroke, immunizations, diabetes, HIV/AIDS, infant mortality/LBW, mental health and/or obesity.723 Currently, there are two grant programs that are ongoing:

- State Partnership Initiative to Address Health Disparities ■ Partnerships to Achieve Health Equity724

The State Partnership Initiative to Address Health Disparities (SPI) is a grant program that partners with state offices of minority health, health equity, tribes/tribal health agencies, or similar private organizations to conduct projects to improve health outcomes in select geographical areas and address health disparities that affect minority and disadvantaged populations.725 OMH awarded \$4.1 million to 21 different agencies under this grant program.726

The Partnerships to Achieve Health Equity is a grant program that seeks to foster collaborative initiatives with a nationwide reach that address social determinants of health, and:

- Improve access to and utilization of care by racial and ethnic minority and/or disadvantaged populations
- Increase the diversity of the health workforce through programs at the high school or undergraduate level that focus on racial and ethnic health disparities and health equity and which include mentoring as a core component
- Increase data availability and utilization of data that increases the knowledge base regarding health disparities and facilitates the development, implementation and assessment of health equity activities727

The grant program runs from July 2017 through June 2020 and has awarded \$2.3 million in grants to 6 different organizations.728

State Perinatal Quality Collaboratives

722 Office of Minority Health, "Partnerships," <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51>. 723 Ibid. 724 Ibid. 725 Ibid. 726 Ibid. 727 Ibid. 728 Ibid.

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<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51>

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Perinatal Quality Collaboratives (PQCs) are state or multistate collaboratives working to improve the quality of maternal and infant health care.729 PQCs help to identify areas of improvement for health care systems and implement changes in order to improve the systems of care.730 Efforts to improve the quality of maternal health care include:

- Reduce severe pregnancy complications associated with high blood pressure and hemorrhage
- Reduce racial/ethnic and geographic disparities ■ Reduce cesarean births among low-risk pregnant women731

PQCs are typically comprised of multidisciplinary stakeholders including a state health department, a state hospital association, and clinician leadership (representatives from physicians' or nurses' associations or other health systems), although many also liaise with representatives from public and private insurance agencies or systems, patient advocacy groups, foundations, or community health organizations.732 One key partnership that may occur is among state PQCs and state or local MMRCs, where the MMRC is able to provide data and metrics, and potentially provide "state and local incentive and drive for improvement."733

There are currently 13 state PQCs that are funded through the CDC's Division of Reproductive Health, although state PQCs exist in other states that do not receive federal support.734 Additionally, there is a National Network of Perinatal Quality Collaboratives that supports the state PQCs in their efforts by helping to strengthen PQC leadership, identify and disseminate best practices, and identify tools, training, and other resources to support the sharing of information and best practices to support a sustainable infrastructure.735

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729 Centers for Disease Control and Prevention, "Perinatal Quality Collaboratives," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pqc.htm>. 730 Ibid. 731 Ibid. 732 Elliott K. Main, MD, "Reducing Maternal Mortality and Severe Maternal Morbidity Through State-based Quality Improvement Initiatives," *Clinical Obstetrics and Gynecology*, Vol. 61, No. 2 (2018): 320, <https://dl.uswr.ac.ir/bitstream/Hannan/48265/1/2018%20COG%20Volume%2061%20Issue%202%20June%20%2816%29.pdf>. 733 Ibid., 321. 734 Centers for Disease Control and Prevention, "State Perinatal Quality Collaboratives," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pqc-states.html>. 735 Centers for Disease Control and Prevention, "National Network of Perinatal Quality Collaboratives," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/nnpqc.htm>.

Commented [KC54]: More information will be sought via the briefing and agency contacts.

<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pqc.htm>
<https://dl.uswr.ac.ir/bitstream/Hannan/48265/1/2018%20COG%20Volume%2061%20Issue%202%20June%20%2816%29.pdf>
<https://dl.uswr.ac.ir/bitstream/Hannan/48265/1/2018%20COG%20Volume%2061%20Issue%202%20June%20%2816%29.pdf>
<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pqc-states.html>
<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/nnpqc.htm>

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The Health Resources and Services Administration funded two notable challenges that aimed to foster innovative technology-based solutions to improve maternal health outcomes.736 These two challenges focused on:

- Helping providers remotely monitor the health of pregnant women, and empower women to make informed decisions about their own care737
- Helping improve access to quality health care for pregnant and new mothers struggling with opioid use disorder738

Since low-income pregnant women face many barriers to accessing adequate prenatal care, the Remote Pregnancy Monitoring Challenge sought to increase remote and virtual access to quality care for low-income women; eliminate barriers to quality care; improve communication among patients and providers; provide health education to pregnant women in order to monitor their own health and care; extend services to women in rural areas and typically underserved areas with limited access to prenatal care.739 Additionally, since low-income pregnant women or new mothers face barriers to access to opioid treatment programs, or they otherwise face stigma, prejudice, discrimination, or limited social supports such as housing, transportation, or employment, the Opioid Use Disorder in Pregnant Women and New Moms Challenge sought to increase access to substance abuse treatment, recovery support, and other services, particularly for those in rural or underserved areas.740

There were two phases to each challenge. Phase 1 winners each received a \$100,000 prize, and Phase 2 winners each received a \$125,000 prize.741 The project is currently in Phase 3, where one team will be chosen in Spring 2020 to win a grand prize of up to \$150,000.742

736 Health Resources Services Administration, "Remote Pregnancy Monitoring," <https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring>; Health Resources Services Administration, "Addressing Opioid Use Disorder in Pregnant Women and New Moms," <https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>. 737 Health Resources Services Administration, "Remote Pregnancy Monitoring," <https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring>. 738 Health Resources Services Administration, "Addressing Opioid Use Disorder in Pregnant Women and New Moms," <https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>. 739 Health Resources Services Administration, "Remote Pregnancy Monitoring," <https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring>. 740 Health Resources Services Administration, "Addressing Opioid Use Disorder in Pregnant Women and New Moms," <https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>. 741 Health Resources Services Administration, "Winners," <https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring/winners>; Health Resources Services Administration, "Winners," <https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms/winners>. 742 Health Resources Services Administration, "Winners," <https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms/winners>.

<https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>
<https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms>
<https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring/winners>
<https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring/winners>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms/winners>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms/winners>
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<https://mchbgrandchallenges.hrsa.gov/challenges/remote-pregnancy-monitoring/winners>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms/winners>
<https://mchbgrandchallenges.hrsa.gov/challenges/addressing-opioid-use-disorder-pregnant-women-and-new-moms/winners>

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Data Collection and Research

Data collection and research are vital to improving maternal health outcomes and eliminating disparities in maternal mortality and severe maternal morbidity.743 With regard to data collection on maternal mortality and severe maternal morbidity, the creation of the Pregnancy Mortality Surveillance System (PMSS) helped to fill gaps in the National Center for Health Statistics (NCHS) vital records data by providing more clinical information about causes of maternal deaths.744 While vital records data on maternal mortality has faced challenges in accuracy,745 there have been other efforts to enhance data collection on maternal mortality and severe maternal morbidity through the work of MMRCs and the development of MMRIA, which helps standardize data for better information sharing.746 Additionally, the Pregnancy Risk Assessment Monitoring System (PRAMS), a project of the CDC and state health departments, collects "state-specific, population-based data on maternal attitudes and experiences before, during, and shortly after pregnancy," and covers about 83 percent of births.747 PRAMS data is used to investigate emerging reproductive health issues in order to help state and local governments create programs and policies that help reduce maternal and infant health problems,748 and can highlight differences in postpartum visit attendance and associated barriers to postpartum care, the content of care and counseling received.749 In our 2019 report, *Are Rights Reality? Evaluating Federal Civil Rights Enforcement*, evaluating 13 federal agencies including the Department of Health and Human Services, the Commission found that Research, Data Collection, and Reporting was among the 7 essential elements for effective civil rights enforcement.750

Research is also vital to improving maternal health outcomes and eliminating disparities in maternal mortality and severe maternal morbidity. In her written testimony before the Commission, Juanita Chinn, program director in the Population Dynamics Branch of the National Institutes of Health, where she manages the programs on the Demography of Health, Mortality, and Population Composition, [title], noted that "[r]esearch is critical in developing an evidence base on how institutional policies impact the racial and socioeconomic disparities observed in maternal mortality," and this evidence base "documents the pervasive disparities and identifies opportunities for informed intervention and prevention."751

743 OCRE WILL AADD CROSS REFERENCES 744 See supra notes 27, 41-44, and Table 1.1. 745 See supra notes 93-110, Table 1.1, and Table 1.5. 746 See supra notes 444-Error! Bookmark not defined., 586-589, and 611-613. 747 Centers for Disease Control and Prevention, "What is PRAMS?" <https://www.cdc.gov/prams/index.htm>. 748 Ibid. 749 Cox Statement, at 6. 750 *Are Rights Reality?*, <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>, at 63, noting that:

Some civil rights enforcement offices (including that of HHS) have stated that the Commission has provided data to identify civil rights violations and determine whether there is compliance with federal civil rights laws is important. Since then, the Commission has repeatedly found that data collection and reporting are essential to effective civil rights enforcement, and that a lack of effective civil rights data collection is problematic.

751 Chinn Statement, at 5.

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<https://www.cdc.gov/prams/index.htm>

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In addition to funding its other maternal health programs, the Health Resources and Services Administration awarded a total of \$1.2 million for 6 research projects related to maternal health in 2018.752 In 2019, the National Institutes of Health (NIH) spent approximately \$334 million on maternal health research.753 NIH has a total of 27 Institutes and Centers,754 several of which support research on maternal health.755 The Eunice Kennedy Shriver National Institute on Child Health and Human Development (NICHD), which is authorized to conduct research on maternal health,756 alone funded about 60 percent of maternal health research projects in 2019, although 20 other NIH institutes and centers supported maternal health research as well.757 In its 2020 strategic plan, NICHD has identified maternal health as a research priority, including the development of indicators to threats to maternal health during pregnancy to help understand how pregnancy-related conditions contribute to maternal mortality and severe maternal morbidity and how they can be prevented.758 In addition, NICHD has identified health disparities as a cross-cutting issue of prioritization, noting that:

Pervasive disparities exist in the health of racial/ethnic, rural, low-resource, sexual and gender minority, and other underrepresented populations. Understanding the contribution of social, economic, structural, and regional factors is vital to advancing preventive, diagnostic, and intervention efforts. These factors are particularly important in maternal health and mortality, birth outcomes, infant mortality, child development, and exposure to trauma and injury. Improving approaches in populations that experience specific cultural, social, or access issues will be an emphasis across the research themes.759

Some NIH-funded research projects focusing on racial disparities in maternal health include:

- A study to identify and correct problems in data collection and coding of maternal deaths, which should produce more accurate maternal mortality estimates, and ultimately provide a more accurate identification of at-risk populations and a greater understanding of racial and ethnic disparities760

- Continuing research to help understand the drivers of racial disparities in severe maternal morbidity, looking further than just clinical risk factors by examining social determinants of health, including hospital quality, access to quality care, culturally and linguistically appropriate services, and institutional policies and practices761

752 Government Accountability Office, Trends in Pregnancy-Related Deaths and Federal Efforts to Reduce Them, GAO-20-248, March 2020, p. 43, <https://www.gao.gov/assets/710/705331.pdf>. 753 Chinn Statement, at 1. 754 42 U.S. Code § 281. 755 Chinn Statement, at 1. 756 42 U.S. Code § 285g. 757 Chinn Statement, at 1. 758 Eunice Kennedy Shriver National Institute on Child Health and Human Development, Strategic Plan 2020, p. 19, https://www.nichd.nih.gov/sites/default/files/2019-09/NICHD_Strategic_Plan.pdf. 759 *Ibid.*, 8. 760 Chinn Statement, at 3; see also NIH Reporter, “Methodological Issues in Maternal Mortality Research, https://projectreporter.nih.gov/project_info_description.cfm?aid=9789688&icde=49163138&ddparam=&ddvalue=&ddsub=&cr=2&scb=default&cs=ASC&pball=. 761 Chinn Statement, at 4; see also see also NIH Reporter, “Understanding Severe Maternal Morbidity: Predictors, Trends, and Disparities,”

<https://www.gao.gov/assets/710/705331.pdf>

https://www.nichd.nih.gov/sites/default/files/2019-09/NICHD_Strategic_Plan.pdf

https://projectreporter.nih.gov/project_info_description.cfm?aid=9789688&icde=49163138&ddparam=&ddvalue=&ddsub=&cr=2&scb=default&cs=ASC&pball=

https://projectreporter.nih.gov/project_info_description.cfm?aid=9789688&icde=49163138&ddparam=&ddvalue=&ddsub=&cr=2&scb=default&cs=ASC&pball=

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- An examination of hospital quality to understand why racial and ethnic minorities are giving birth in lower quality hospitals and hospitals with higher rates of severe maternal morbidity762

- A study to examine factors associated with maternal mortality, such as income inequality, structural racism, residential segregation, and how state-level policies can impact incidences of maternal mortality, specifically by race and socioeconomic status763

- Research to examine pregnancy-associated homicide—an understudied leading cause of death during pregnancy and postpartum—exploring whether “failure to identify and address factors underlying pregnancy-associated homicide with perpetuate racial inequality in mortality during pregnancy and postpartum,”764 and to identify whether social contexts in which women live, such as income inequality, structural racism, community violence, and spatial social polarization, increase risk for pregnancy-associated mortality and pregnancy-associated homicide765

Juanita Chinn, [title], noted that “[r]esearch is critical in developing an evidence base on how institutional policies impact the racial and socioeconomic disparities observed in maternal mortality,” and this evidence base “documents the pervasive disparities and identifies opportunities for informed intervention and prevention.”766

https://projectreporter.nih.gov/project_info_description.cfm?aid=9327774&icde=49165908&ddparam=&ddvalue=&ddsub=&cr=2&scb=default&cs=ASC&pball=; Stephanie A. Leonard, PhD, Elliot K. Main, MD, Karen A. Scott, MD, MPH, Jochen Profit, MD, MPH, and Suzan L. Carmichael, PhD, “Racial and Ethnic Disparities in Severe Maternal Morbidity Prevalence and Trends,” *Annals of Epidemiology*, Vol. 33 (May 2019): 30-36, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6502679/>; Stephanie A. Leonard, PhD, Elliot K. Main, MD, and Suzan L. Carmichael, PhD, “The Contribution of Maternal Characteristics and Cesarean Delivery to an Increasing Trend of Severe Maternal Morbidity,” *BMC Pregnancy Childbirth*, Vol. 19 (2019): 16, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6327483/>. 762 Chinn Statement, at 4; see also E.A. Howell and J. Zeitlin, “Improving Hospital Quality to Reduce Disparities in Severe Maternal Morbidity and Mortality,” *Semin Perinatol*, Vol. 41, No. 5 (August 2017): 266-272, <https://www.ncbi.nlm.nih.gov/pubmed/28735811>; Howell EA, Egorova NN, Janevic T, Brodman M, Balbierz A, Zeitlin J, Hebert PL, “Race and Ethnicity, Medical Insurance, and Within-Hospital Severe Maternal Morbidity Disparities,” *Obstetrics and Gynecology*, Vol. 135, No. 2 (February 2020): 285-293, <https://www.ncbi.nlm.nih.gov/pubmed/31923076>. 763 Chinn Statement, at 4. 764 *Ibid.*, 5. 765 *Ibid.*, 5; see also NIH Reporter, “Pregnancy-associated mortality,” https://projectreporter.nih.gov/project_info_description.cfm?aid=9770920&icde=49166161&ddparam=&ddvalue=&ddsub=&cr=2&scb=default&cs=ASC&pball=; Maeve E. Wallace, PhD; Joia Crear-Perry, MD; Pooja K. Mehta, MD; et al., “Homicide During Pregnancy and the Postpartum Period in Louisiana, 2016-2017,” *JAMA Pediatr.*, Vol. 174, No. 4 (February 2020): 387-388, <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2760408>; Maeve E. Wallace, PhD, Donna Hoyert, PhD, Corrine Williams, ScD, and Pauline Mendola, PhD, “Pregnancy-Associated Homicide and Suicide in 37 US States with Enhanced Pregnancy Surveillance,” *American Journal of Obstetrics and Gynecology*, Vol. 215, No. 3 (September 2016): 364.e1-364.e10, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5003645/>. 766 Chinn Statement, at 5.

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<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6327483/>

<https://www.ncbi.nlm.nih.gov/pubmed/28735811>

<https://www.ncbi.nlm.nih.gov/pubmed/31923076>

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<https://jamanetwork.com/journals/jamapediatrics/article-abstract/2760408>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5003645/>

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The Importance of Partnerships with State and Local Agencies, Private and Nonprofit Organizations, and Other Stakeholders

Recent federal efforts to address improve maternal health outcomes and eliminate disparities in maternal mortality and severe maternal morbidity have relied on partnerships among state and local entities. Improvements in data and investment in research at the state level is fundamentally important to addressing the maternal mortality crisis in the U.S. and eliminating racial disparities in maternal health care.767 However, there have been documented struggles with applying what is learned from research into clinical practice and public health behavior, as it often gets “lost in translation.”768 Some estimates indicate that it may take 15 to 17 years for a nationally endorsed guideline to “achieve widespread adoption in the community.”769 Considering that most health care is delivered in local hospitals, clinics, and offices (many of which receive federal funding), this local environment must be taken into consideration when attempting to bridge that gap to improve the quality of healthcare.770 Thus, these federal partnerships with state, local, and private entities can have a huge impact in trying to implement innovative, evidence-based policies and practices that can help improve maternal health and address racial disparities.771

Notable federal partnerships with state and local entities that have made advances in improving maternal health and reducing disparities in maternal mortality and severe maternal morbidity include:

- MMRCs. These multidisciplinary committees comprised of representatives from “public health, obstetrics and gynecology, maternal-fetal medicine, nursing, midwifery, forensic pathology, mental and behavioral health, patient advocacy groups, and community-based organizations,”772 are well-equipped to identify disparities, and are most effective to comprehensively assess maternal deaths and identify methods of prevention.773 These committees have been supported with federal funds, in part by Title V funding through the State MCH Block Grant program,774 and the Preventing Maternal Deaths Act has authorized additional funding through the ERASE MM program to encourage the

767 OCRE WILL AADD CROSS REFERENCES 768 Claude Lenfant, M.D., “Clinical Research to Clinical Practice — Lost in Translation?” *New England Journal of Medicine*, Vol. 349 (2003): 868-874, <https://www.nejm.org/doi/full/10.1056/NEJMsa035507>. 769 Elliott K. Main, MD, “Reducing Maternal Mortality and Severe Maternal Morbidity Through State-based Quality Improvement Initiatives,” *Clinical Obstetrics and Gynecology*, Vol. 61, No. 2 (2018): 320, <https://doi.uswr.ac.ir/bitstream/Hannan/48265/1/2018%20COG%20Volume%2061%20Issue%202%20June%2028%2016%29.pdf>. 770 Claude Lenfant, M.D., “Clinical Research to Clinical Practice — Lost in Translation?” *New England Journal of Medicine*, Vol. 349 (2003): 868-874, <https://www.nejm.org/doi/full/10.1056/NEJMsa035507>. 771 See Elliott K. Main, MD, “Reducing Maternal Mortality and Severe Maternal Morbidity Through State-based Quality Improvement Initiatives,” *Clinical Obstetrics and Gynecology*, Vol. 61, No. 2 (2018): 327, <https://doi.uswr.ac.ir/bitstream/Hannan/48265/1/2018%20COG%20Volume%2061%20Issue%202%20June%2028%2016%29.pdf>. 772 See supra note 444. 773 See supra note 586. 774 See supra note 696.

<https://www.nejm.org/doi/full/10.1056/NEJMsa035507>

<https://doi.uswr.ac.ir/bitstream/Hannan/48265/1/2018%20COG%20Volume%2061%20Issue%202%20June%2028%2016%29.pdf>

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<https://doi.uswr.ac.ir/bitstream/Hannan/48265/1/2018%20COG%20Volume%2061%20Issue%202%20June%2028%2016%29.pdf>

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formation of MMRCs in states or jurisdictions.775 Additionally, they have additional support through MMRIA, a data tool that helps organize and standardize maternal mortality data to begin the process of comprehensively identifying and assessing maternal mortality cases data resources;776 and Review to Action, a web resource borne from a that promotes best practices in maternal mortality review, and provides resources, tools, and support for establishing a review committee.777 CDC has also partnered with the National Indian Health Board to “identify the approaches and needs of Tribes.”778 There are currently 46 states and cities with active MMRCs in the U.S.779

- AIM and AIM-Community Care. These initiatives are national, multidisciplinary partnerships with provider organizations, state health and public health systems, consumer groups, and other stakeholders,780 primarily focused on implementation and adoption of safety bundles that help standardize clinical practices in maternal health care in an effort to reduce maternal mortality and severe maternal morbidity781 and address racial and ethnic disparities in maternal care.782 AIM and AIM-Community Care are supported through federal grants administered by the Health Resources and Services Administration,783 as well as funds from the Supporting MHI program,784 the State MCH Block Grant program,785 and SPRANS.786 There are currently 29 states that have enrolled in AIM, many of which have implemented one or more safety bundles.787

- State MHI Program. This program aims to foster partnerships with maternal health experts788 by establishing a state-focused Maternal Health Task Force in order to create a strategic plan for activities that help prevent maternal mortality and severe maternal morbidity and reduce disparities in maternal health care; improving data collection, analysis, and application on the state level; and promote innovation in maternal health service delivery.789 This program is supported through federal grants administered by the Health Resources and Services Administration,790 and also receives support through the Supporting MHI program to build recipients’ capacity and provide them with resources to

775 See supra notes 623-625. 776 See supra notes 611-613. 777 See supra notes 615-618. 778 Cox Statement, at 4. 779 See supra note 599. 780 See supra note 566. 781 See supra notes 569. 782 See supra Table 3.1. 783 See supra note 577. 784 See supra note 679. 785 See supra note 698. 786 See supra note 701. 787 See supra note 573. 788 See supra note 666. 789 See supra note 667. 790 See supra note 666.

execute their work,791 and through Title V SPRANS funding.792 There are currently 9 state recipients of State MHI funding.793

- NCMHEP. This program seeks to identify challenges and make improvements in maternal health care through reviewing research and creating education and outreach campaigns on maternal health topics.794 This program achieves its goals through a coalition of over 30 members who serve on NCMHEP's Coordinating Committee,795 comprised of federal partners, members of professional organizations, and public health foundations and nonprofits.796
- OMH Partnership Grants. For the last decade, OMH has administered several grant programs that aim to eliminate health disparities and improve health outcomes for minority populations.797 Ongoing grant programs seek to partner with state health departments, offices of minority health, tribal health departments, public health organizations, or other agencies to help reduce health disparities and achieve health equity798 by improving access and utilization of care to minority or disadvantaged populations; increasing diversity of the health workforce through educational programs and mentoring; and increase data availability and utilization that focuses on health disparities and health equity.799
- PGCs. These state or multistate collaboratives work to identify areas of quality improvement for health care systems and implement changes in order to improve the systems of maternal and infant care800 through reducing severe pregnancy complications associated with high blood pressure and hemorrhage; reducing racial/ethnic and geographic disparities; and reducing cesarean births among low-risk pregnant women.801 PGCs are multidisciplinary, comprised of state health departments, state hospital associations, representatives of physicians' or nurses' associations or other health systems, and possibly other representatives from public and private insurance agencies or systems, patient advocacy groups, foundations, or community health organizations.802 PGCs often partner or engage with MMRCs for data/information sharing and incentivizing to drive quality improvement.803
- COINs. These multidisciplinary teams comprised of federal, state, and local leaders work together on issues of maternal and infant health through collaborative learning,

791 See supra note 676. 792 See supra note 702. 793 See supra note 669. 794 See supra note 580. 795 See supra notes 581-582. 796 Eunice Kennedy Shriver National Institute of Child Health and Human Development, "Coordinating Committee," <https://www.nichd.nih.gov/ncmhep/about/coordinating-committee>. 797 See supra note 722. 798 See supra note 725. 799 See supra note 727. 800 See supra notes 729-730. 801 See supra note 731. 802 See supra note 732. 803 See supra note 733.

<https://www.nichd.nih.gov/ncmhep/about/coordinating-committee>

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quality improvement, and innovative activities.804 The Home Visiting COIN, launched in 2013, focuses on maternal and infant health, and its goals are aligned with benchmark areas legislatively mandated by the MIECHV program.805 COIN participants "self-organize, forge partnerships, and take coordinated action to address complex issues," via "structured collaborative learning, quality improvement, and innovative activities."806

Preventing Maternal Deaths Act and Other Proposed Legislation to Improve Maternal Healthcare

One notable piece of legislation that was passed in 2018 as a direct result from raised awareness about the maternal mortality crisis in the U.S. is the Preventing Maternal Deaths Act.807 This landmark bipartisan legislation aims "to support States in their work to save and sustain the health of mothers during pregnancy, childbirth, and in the postpartum period, to eliminate disparities in maternal health outcomes for pregnancy-related and pregnancy-associated deaths, to identify solutions to improve health care quality and health outcomes for mothers, and for other purposes."808 Effectively, this legislation establishes and supports Maternal Mortality Review Committees at the state level, who are responsible for reviewing every pregnancy-related death and make recommendations to prevent future deaths, and provides \$12 million a year in new funds over 5 years for states to fund these committees.809 However, the legislation does not directly address racial disparities in maternal health.

Over the past few years, there have been several notable bills introduced in Congress that seek to improve maternal healthcare:810

- The Maternal Care Access and Reducing Emergencies Act (Maternal CARE Act),811 which aims to create training programs that address implicit bias for clinicians in the field of obstetrics and gynecology, and encourages integrating culturally congruent healthcare

804 See supra note 518. 805 Health Resources Administration, "Collaborative Improvement & Innovation Networks (COINs)," <https://mchb.hrsa.gov/maternal-child-health-initiatives/collaborative-improvement-innovation-networks-coins>; see also notes 536-564. 806 Ibid. 807 Pub. L. 115-344, 132 Stat. 5047 (2018). 808 Id. 809 Mary Caffrey, "Preventing Maternal Deaths Act Headed to Trump's Desk," AJMC, Dec. 18, 2018, <https://www.ajmc.com/newsroom/preventing-maternal-deaths-act-headed-to-trumps-desk>. 810 Katy Backes Kozhimannil, Elaine Hernandez, Dara D. Mendez, Theresa Chapple-McGruder, "Beyond The Preventing Maternal Deaths Act: Implementation And Further Policy Change," Feb. 4 2019, <https://www.healthaffairs.org/doi/10.1377/hblog20190130.914004/full/>; National Partnership for Women and Families, "Federal Legislation to Improve Maternal Health," <https://www.nationalpartnership.org/our-work/health/federal-legislation-to-improve-maternal-health.html>. 811 Maternal CARE Act of 2019, S.1600, 116th Cong. (2019); Maternal CARE Act of 2018, H.R.2902, 116th Cong. (2019).

Commented [KC57]: Nick please research and confirm. If needed, ask Diego to read the statute and see if it includes this or not, then give you a citation.

<https://mchb.hrsa.gov/maternal-child-health-initiatives/collaborative-improvement-innovation-networks-coins>

<https://www.ajmc.com/newsroom/preventing-maternal-deaths-act-headed-to-trumps-desk>

<https://www.healthaffairs.org/doi/10.1377/hblog20190130.914004/full/>

<https://www.nationalpartnership.org/our-work/health/federal-legislation-to-improve-maternal-health.html>

<https://www.nationalpartnership.org/our-work/health/federal-legislation-to-improve-maternal-health.html>

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services.812 It also would award grants for pregnancy medical-home programs that seek to reduce adverse maternal health outcomes and disparities, prioritizing Medicaid enrollees, and would require the National Academy of Medicine to make recommendations for incorporating bias recognition in clinical-skills tests at medical schools.813

- The Maximizing Outcomes for Moms through Medicaid Improvement and Enhancement of Services Act (MOMMIES Act),814 which would establish a series of maternal health programs and requirements under Medicaid and CHIP, and would expand Medicaid coverage during the postpartum period from 60 days to 1 year after pregnancy.815
- The Mothers and Offspring Mortality and Morbidity Awareness Act (MOMMA's Act),816 which also would extend Medicaid and CHIP coverage during the postpartum coverage for up to 1 year, would authorize funding for implicit bias and cultural competency education, would standardize maternal mortality and morbidity data across states, would empower the CDC to provide technical assistance and publish best practices in maternal mortality and morbidity prevention, and would authorize funding for AIM.817
- The Modernizing Obstetric Medicine Standards Act (MOMS Act),818 which would authorize funding for AIM, fund the implementation and use of safety bundles, and encourage CDC to work with states to compile data from state MMRCs to improve national surveillance.819
- The Quality Care for Moms and Babies Act,820 which would direct HHS to collaborate with stakeholders to identify and publish a core set of maternity care measures, direct the Agency for Health Care Research and Quality to develop a Consumer Assessment of Healthcare Providers and Systems maternity survey, and authorize the expansion and development of PGCs.821

- The Rural Maternal and Obstetric Modernization of Services Act (Rural MOMS Act),822 which would expand initiatives to address maternal healthcare in rural areas by establishing rural obstetric networks to improve birth and maternal morbidity outcomes that 1) connect women with providers, 2) identify successful maternal care models, 3) facilitate collaboration among rural care providers, 4) provide training and guidance to providers in rural communities, and 5) collaborate with academic institutions that have

812 Congress.gov, "S.1600 - Maternal Care Access and Reducing Emergencies Act," <https://www.congress.gov/bill/116th-congress/senate-bill/1600>; Congress.gov, "H.R. 2902 - Maternal CARE Act," <https://www.congress.gov/bill/116th-congress/house-bill/2902>. 813 Congress.gov, "H.R. 2902 - Maternal CARE Act," <https://www.congress.gov/bill/116th-congress/house-bill/2902>. 814 MOMMIES Act of 2019, S.1343, 116th Cong. (2019). 815 Congress.gov, "S.3494 - MOMMIES Act," <https://www.congress.gov/bill/116th-congress/senate-bill/343/text>. 816 MOMMA's Act of 2019, H.R.1897, 116th Cong. (2019); MOMMA's Act of 2019, S.916, 116th Cong. (2019). 817 Congress.gov, "All Information (Except Text) for H.R.1897 - MOMMA's Act," <https://www.congress.gov/bill/116th-congress/house-bill/1897/all-info>; Congress.gov, "S.916 - MOMMA's Act," <https://www.congress.gov/bill/116th-congress/senate-bill/916>. 818 Modernizing Obstetric Medicine Standards (MOMS) Act of 2019, S.116, 116th Cong. (2019). 819 Congress.gov, "S.116 - MOMS Act," <https://www.congress.gov/bill/116th-congress/senate-bill/116/text>. 820 Quality Care for Moms and Babies Act of 2019, H.R.1551, 116th Cong. (2019). 821 Congress.gov, "H.R.1551 - Quality Care for Moms and Babies Act," <https://www.congress.gov/bill/116th-congress/house-bill/1551/text>. 822 Rural MOMS Act, S.3568, 115th Cong. (2018).

<https://www.congress.gov/bill/116th-congress/senate-bill/1600>

<https://www.congress.gov/bill/116th-congress/house-bill/2902>

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<https://www.congress.gov/bill/116th-congress/house-bill/1897/all-info>

<https://www.congress.gov/bill/116th-congress/senate-bill/916>

<https://www.congress.gov/bill/116th-congress/senate-bill/116/text>

<https://www.congress.gov/bill/116th-congress/house-bill/1551/text>

<https://www.congress.gov/bill/116th-congress/house-bill/1551/text>

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regional expertise.823 Additionally, this bill would add maternal health services as part of the telehealth network, and would aim to improve data collection and reporting of data on maternal health outcomes.824

- The Healthy Maternal and Obstetric Medicine (Healthy MOM) Act,825 which would improve health insurance coverage for pregnant women by creating a special enrollment period for pregnancy in some private insurance plans, ensure comprehensive maternity care to dependent children in most employment-based insurance, and guarantee 12 months of continuous Medicaid eligibility for postpartum women.826
- The Ending Maternal Mortality Act of 2018,827 which requires HHS to publish a national plan every two years that aims to reduce the rate of preventable maternal mortality that address specific issues relating to maternal mortality or severe maternal morbidity such as public awareness, at-risk populations and disparities, and quality of care.828
- The Community Access, Resources, and Education Act (CARE for Families Act),829 which would provide grant funding for local agencies and clinics to establish programs to improve nutrition and health care services for women throughout their pregnancy and postpartum.830
- The Healthy Start Reauthorization Act of 2019,831 which would provide funding for the Healthy Start program for an additional 5 years.832
- The Helping Medicaid Offer Maternity Services Act of 2019 (Helping MOMS Act),833 which would allow states to extend Medicaid and CHIP coverage for women for 1 year postpartum (from 60 days).834

Chapter 4: Case Study – A Review of Three States: California, North Carolina, and New Jersey

823 Congress.gov, "S.3568 - Rural MOMS Act," <https://www.congress.gov/bill/115th-congress/senate-bill/3568>. 824 Ibid. 825 Healthy Maternity and Obstetric Medicine Act, H.R.2778, 116th Cong. (2019); Healthy Maternity and Obstetric Medicine Act, S.1481, 116th Cong. (2019). 826 Congress.gov, "H.R.2778 - Healthy Maternity and Obstetric Medicine Act," <https://www.congress.gov/bill/116th-congress/house-bill/2778>; Congress.gov, "S.1481 - Healthy Maternity and Obstetric Medicine Act," <https://www.congress.gov/bill/116th-congress/senate-bill/1481/text>. 827 Ending Maternal Mortality Act of 2018, H.R.5761, 115th Cong. (2018). 828 Congress.gov, "H.R.5761 - Ending Maternal Mortality Act of 2018," <https://www.congress.gov/bill/115th-congress/house-bill/5761>. 829 CARE for Families Act, H.R.3117, 116th Cong. (2019). 830 Congress.gov, "All Information (Except Text) for H.R.3117 - Community Access, Resources, and Education for Families Act," <https://www.congress.gov/bill/116th-congress/house-bill/3117/all-info>. 831 Healthy Start Reauthorization Act of 2019, H.R.4801, 116th Cong. (2019). 832 Congress.gov, "H.R.4801 - Healthy Start Reauthorization Act of 2019," <https://www.congress.gov/bill/116th-congress/house-bill/4801>. 833 Helping MOMS Act of 2019, H.R.4996, 116th Cong. (2019). 834 Congress.gov, "H.R.4996 - Helping MOMS Act of 2019," <https://www.congress.gov/bill/116th-congress/house-bill/4996>.

Commented [KC58]: Does this mean women of color? And if yes please list it first.

<https://www.congress.gov/bill/115th-congress/senate-bill/3568>

<https://www.congress.gov/bill/116th-congress/house-bill/2778>

<https://www.congress.gov/bill/116th-congress/senate-bill/1481/text>

<https://www.congress.gov/bill/115th-congress/house-bill/5761>

<https://www.congress.gov/bill/115th-congress/house-bill/5761>

<https://www.congress.gov/bill/116th-congress/house-bill/3117/all-info>
<https://www.congress.gov/bill/116th-congress/house-bill/4801>
<https://www.congress.gov/bill/116th-congress/house-bill/4801>
<https://www.congress.gov/bill/116th-congress/house-bill/4996>
<https://www.congress.gov/bill/116th-congress/house-bill/4996>

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California

In line with the trend of rising maternal mortality rates in the U.S. over the past few decades, California's maternal mortality rate saw an increase from 7.7 deaths per 100,000 live births in 1999 to 16.9 deaths per 100,000 live births in 2006.⁸³⁵ Since that time, California took a more assertive approach at tackling maternal mortality, developing a methodological approach at reviewing maternal mortality cases.⁸³⁶ As a result, California saw 57 percent decline in maternal mortality, from 16.9 deaths per 100,000 live births in 2006 to 7.3 deaths per 100,000 live births in 2013.⁸³⁷ See Figure 4.1.

Source: California Maternal Quality Care Collaborative, "CA-PAMR (Maternal Mortality Review)," <https://www.cmqcc.org/research/ca-pamr-maternal-mortality-review>; Lauren M. Rossen, Ph.D., M.S., Lindsay S. Womack, Ph.D., M.P.H., Donna L. Hoyert, Ph.D., Robert N. Anderson, Ph.D., and Sayeedha F.G. Uddin, M.D., M.P.H., "The Impact of the Pregnancy Checkbox and Misclassification on Maternal Mortality Trends in the United States, 1999–2017," National Center for Health Statistics, Vital and Health Statistics, Series 3, No. 44, January 2020, p. 30, Table III, https://www.cdc.gov/nchs/data/series/sr_03/sr03_044-508.pdf.

*California's maternal mortality rate and the U.S.' maternal mortality rate both include deaths of women while pregnant or within 42 days of the end of the pregnancy related to/aggravated by the pregnancy or its management (definition does not include accidental or incidental causes).

As compared to national rates of pregnancy-related death, the California maternal mortality rate decreased from 2006 to 2013, whereas the U.S. maternal mortality rate increased during that time. In 2013, the national maternal mortality rate was three times higher than California's

⁸³⁵ California Department of Public Health, "Pregnancy Associated Mortality Review: Profile," p. 1, <https://www.cdph.ca.gov/Programs/CFH/DMCAH/CDPH%20Document%20Library/Communications/Profile-PAMR.pdf>. ⁸³⁶ Ibid. ⁸³⁷ Ibid.

7.7

16.9

7.3

9.9 13.3

22

0

5

10

15

20

25

1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013

California U.S.

Figure 4.1.

Maternal Mortality Rate California and the U.S., 1999-2013

No.

Deaths

Per

100,

000

Live

Births

Axis

Title

<https://www.cmqcc.org/research/ca-pamr-maternal-mortality-review>
<https://www.cmqcc.org/research/ca-pamr-maternal-mortality-review>
https://www.cdc.gov/nchs/data/series/sr_03/sr03_044-508.pdf
<https://www.cdph.ca.gov/Programs/CFH/DMCAH/CDPH%20Document%20Library/Communications/Profile-PAMR.pdf>
<https://www.cdph.ca.gov/Programs/CFH/DMCAH/CDPH%20Document%20Library/Communications/Profile-PAMR.pdf>

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maternal mortality rate. Based on 2013–2017 data reported by America's Health Rankings, California ranked 7th nationally for its maternal mortality rate.⁸³⁸

California defines a maternal mortality as "the death of a woman while pregnant or within 42 days of the end of a pregnancy related to, or aggravated by, the pregnancy or its management, but not from accidental or incidental causes."⁸³⁹ This definition is in line with the WHO's and NCHS's definition of maternal mortality.⁸⁴⁰ California defines a pregnancy-related death as "The death of a woman while pregnant or within one year of the end of a pregnancy related to, or aggravated by, the pregnancy, but not from accidental or incidental causes."⁸⁴¹

According to the Health Resources and Services Administration National Outcomes Measures data, collected under Title V mandate, California's severe maternal morbidity rate has increased from 2008 to 2015, but rates have remained lower than the national average for the majority of years during this time. See Figure 4.2.

Source: Health Resources and Services Administration, "National Outcome Measures," <https://mchb.tvisdata.hrsa.gov/PrioritiesAndMeasures/NationalOutcomeMeasures>. Chart adapted by the Commission.

There are significant racial disparities in maternal mortality in California. A 2018 report examining pregnancy-related deaths in California highlighted the racial disparity, reporting that

⁸³⁸ America's Health Rankings, "Health of Women and Children: Maternal Mortality, 2019," https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality_a/state/CA. ⁸³⁹ California Department of Public Health, "Pregnancy Associated Mortality Review: Profile," p. 2, <https://www.cdph.ca.gov/Programs/CFH/DMCAH/CDPH%20Document%20Library/Communications/Profile-PAMR.pdf>. ⁸⁴⁰ Ibid. ⁸⁴¹ Ibid.

112.6 123.7 128.6

133.1 137.7 138.7

143.9

144.1

98.9 110.8 113.4

119.1 127.5 131.4

147.4

135.2

0

20

40

60

80

100

120

140

Figure 4.2.

Rate of Severe Maternal Morbidity in California and U.S. 2008 to 2015

Rate
per
10,
000
live
births
annually

<https://mchb.tvisdata.hrsa.gov/PrioritiesAndMeasures/NationalOutcomeMeasures>
https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality_a/state/CA
https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality_a/state/CA
<https://www.cdph.ca.gov/Programs/CFH/DMCAH/CDPH%20Document%20Library/Communications/Profile-PAMR.pdf>
<https://www.cdph.ca.gov/Programs/CFH/DMCAH/CDPH%20Document%20Library/Communications/Profile-PAMR.pdf>

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from 2002 to 2007, 5 percent of births in California were to Black women, yet pregnancy-related death among Black women accounts for 21 percent of all pregnancy-related deaths in the state.⁸⁴² This is approximately 39.9 deaths per 100,000 live births for Black women in California, as compared to 8.5 deaths per 100,000 live births for White women in the state.⁸⁴³ Births to Latina women in California comprise 52 percent of all births in California during this time, yet pregnancy-related death among Latina women accounts for only 45 percent of all pregnancy-related deaths in the state.⁸⁴⁴ Latina women had the second highest rate of pregnancy-related death in California from 2002 to 2007 with 8.9 deaths per 100,000 live births. Asian/Pacific Islander women have a pregnancy-related death rate lower than White women during this time, with 6.1 deaths per 100,000 live births.⁸⁴⁵ There were no pregnancy-related deaths reported among Native American women or other races of women during this time.⁸⁴⁶

Racial disparities also persist in severe maternal morbidity in California.⁸⁴⁷ One study found that from 1997-2014, the prevalence of severe maternal morbidity was highest in Black women and lowest in White women, and increased 170 percent over time for each racial/ethnic group.⁸⁴⁸ In addition, the risk of experiencing severe maternal morbidity was higher in Black, Asian/Pacific Islander, Native American, and Latina women as compared to White women.⁸⁴⁹

While racial disparities still persist in maternal mortality in California, the gap has been narrowed among Black and White women across time.⁸⁵⁰ During 2011-2013, there were 26.4 deaths per 100,000 live births among Black women as compared to 7.0 deaths per 100,000 live births among White women during that time.⁸⁵¹ At its peak in 2007, the death rate for Black women was approximately double that of the 2011-2013 rate.⁸⁵² However, disparities still persist due to factors such as social determinants of health (lower wages, access to housing, unsafe environments, racism), underlying health conditions (obesity, hypertension, cardiovascular disease), differences in health insurance, differences in entry to prenatal care, and access to quality care.⁸⁵³

Medi-Cal, California's Medicaid program, accounted for approximately half of all births in California from 2002 to 2007, yet 58 percent of all pregnancy-related deaths were among Medi-

⁸⁴² California Department of Public Health, Public Health Institute, and the California Maternal Quality Care Collaborative, The California Pregnancy-Associated Mortality Review: Report from 2002 to 2007 Maternal Deaths Review, Spring 2018, p. 24, <https://www.cmqcc.org/sites/default/files/CA-PAMR-Report-1%20%283%29.pdf>. ⁸⁴³ Ibid., 25. ⁸⁴⁴ Ibid., 25. ⁸⁴⁵ Ibid., 25. ⁸⁴⁶ Ibid., 25. ⁸⁴⁷ Stephanie A. Leonard, PhD, Elliott K. Main, MD, Karen A. Scott, MD, MPH, Jochen Profit, MD, MPH, and Suzan L. Carmichael, PhD, "Racial and Ethnic Disparities in Severe Maternal Morbidity Prevalence and Trends," *Ann Epidemiol*, Vol. 33 (May 2019): 30-36, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6502679/>. ⁸⁴⁸ Ibid. ⁸⁴⁹ Ibid. ⁸⁵⁰ California Department of Public Health, "California Maternal Mortality Rates," *MCAH Bulletin*, May 2015, p. 2, https://reviewtoaction.org/sites/default/files/portal_resources/MCAH%20Bulletin_MMR%20Decline_May2015_v2.pdf. ⁸⁵¹ Ibid. ⁸⁵² Ibid. ⁸⁵³ Ibid.

<https://www.cmqcc.org/sites/default/files/CA-PAMR-Report-1%20%283%29.pdf>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6502679/>
https://reviewtoaction.org/sites/default/files/portal_resources/MCAH%20Bulletin_MMR%20Decline_May2015_v2.pdf
https://reviewtoaction.org/sites/default/files/portal_resources/MCAH%20Bulletin_MMR%20Decline_May2015_v2.pdf

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Cal recipients.⁸⁵⁴ The payer-source data was used as a proxy for income for the purposes of reporting, thus more pregnancy-related deaths occurred among lower-income women in California.⁸⁵⁵ Black and Latina women had higher rates of Medi-Cal utilization during this time (69 percent and 65 percent, respectively) as compared to White women (52 percent).⁸⁵⁶ In addition, a larger proportion of women without a high school diploma experienced pregnancy-related deaths as compared to the proportion of women who gave birth in California from 2002 to 2007 without high school diplomas (28 percent vs. 10 percent respectively), and foreign-born Latina women had the highest proportion of pregnancy-related deaths and were least likely to have completed high school.⁸⁵⁷

There are also significant racial disparities in the prevalence of severe maternal morbidity in California. A study of over 8 million births from 1997-2014, where 50 percent of women were Latina, 30 percent were White, 12 percent were Asian/Pacific Islander, 5 percent were Black, and 0.3 percent were Native American, showed that the prevalence of severe maternal morbidity in California is highest among Black women and lowest for White women.⁸⁵⁸ The risk of severe maternal morbidity was 92 percent higher among Black women, 54 percent higher among Native American women, 23 percent higher among Latina women, and 22 percent higher among Asian/Pacific Islander women than White women during that period, accounting for comorbidities, anemia, cesarean birth, and other maternal characteristics.⁸⁵⁹ In addition, the prevalence of severe maternal morbidity increased over time for all racial groups from 1997-2014, increasing by 179 percent for Black women, 175 percent for Asian/Pacific Islander women, 173 percent for Latina women, and 163 percent for White women (trends for Native American women were not analyzed due to the low number of births (10-35) each year).⁸⁶⁰

A recent qualitative study of Black women who had given birth in California between 2011 and 2015 highlighted the racial disparities in maternal health care in California.⁸⁶¹ In particular, the resulting 2016 report found the following:

■ Birth as a battle. Pregnant Black women reported that relationships with their healthcare providers often were a source of stress, anger, and distress, noting providers' refusal to listen to women's wisdom about their own bodies; lack of respect for women's boundaries or bodily autonomy; stereotyping based on race, class, age, sexual orientation, and marital status; and suppressing self-advocacy.

⁸⁵⁴ California Department of Public Health, Public Health Institute, and the California Maternal Quality Care Collaborative, The California Pregnancy-Associated Mortality Review: Report from 2002 to 2007 Maternal Deaths Review, Spring 2018, p. 25, <https://www.cmqcc.org/sites/default/files/CA-PAMR-Report-1%20%283%29.pdf>. ⁸⁵⁵ Ibid. ⁸⁵⁶ Ibid. ⁸⁵⁷ Ibid. ⁸⁵⁸ Stephanie A. Leonard, PhD, Elliott K. Main, MD, Karen A. Scott, MD, MPH, Jochen Profit, MD, MPH, and Suzan L. Carmichael, PhD, "Racial and Ethnic Disparities in Severe Maternal Morbidity Prevalence and Trends," *Ann Epidemiol*, Vol. 33 (May 2019): 30-36, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6502679/>. ⁸⁵⁹ Ibid. ⁸⁶⁰ Ibid. ⁸⁶¹ Julia Chinyere Oparah, Helen Arega, Dantia Hudson, Linda Jones, Talita Oseguera, *Battling Over Birth: Black Women & the Maternal Health Care Crisis in California*, Black Women Birthing Justice, p. 2, https://drive.google.com/file/d/0B_8112XV6aXBWHpTWi8zQUIEa1u/view.

<https://www.cmqcc.org/sites/default/files/CA-PAMR-Report-1%20%283%29.pdf>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6502679/>
https://drive.google.com/file/d/0B_8112XV6aXBWHpTWi8zQUIEa1u/view

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■ The culture of fear and coercion. Fifty-five percent of participants were anxious about birth, labor pain, and death or disablement for the or their baby, and many felt that they were coerced or pressured into having unwanted medical procedures without having adequate information about what these procedures entailed.

■ Midwifery care and attributes of positive childbirth experiences. Participants indicated having positive experiences with childbirth when they had psychological support and reassurance; when their individual values, beliefs and choices were respected; and when they felt medical professionals were competent and effective. Thirty-one percent of participants felt disempowered with their experience working with a physician/nurse team, as compared to zero participants who were dissatisfied when working with a midwife/doula team.

■ Inadequate prenatal care. Many participants encountered barriers to adequate prenatal care, such as lack of health insurance coverage, distrust of and poor treatment from prenatal care providers, and culturally inappropriate care.

■ Unnecessary and unwanted medical interventions. Participants who gave birth in hospital settings reported more violations of their right to make informed choices during labor and delivery, including pressure for an epidural or other intravenous pain medications; having their membranes stripped or water broken to induce labor; or being pushed to have a cesarean section. This study also found that Black women are negatively impacted by the overuse of cesarean section surgeries.

■ Barriers to access to doula and midwifery care. This study found a shortage of trained doulas and midwives of color; inadequate private insurance coverage or Medi-Cal coverage of doula or midwifery care; and the lack of information about doulas or midwives of color and the perception that doula or midwifery care is for White women.

■ Homebirth as a response to a broken maternal healthcare system. Only 57 percent of participants expressed a preference for hospital birth, due to many women expressing concerns about unwanted medical interventions forced upon them. Approximately 25 percent of participants expressed a preference for a home birth, due to fears about a hospital birth.

■ Inadequate postpartum support. Many participants felt they were underprepared for the challenges of postpartum recovery and expressed the need for additional support during this time for physical recovery, mental health, socio-economic concerns, and others.⁸⁶²

A 2019 report on maternity care in California found that 45 percent of all hospital births in 2017 were covered by Medi-Cal.⁸⁶³ One in 4 hospital births were low-risk, first birth cesarean section births, but rates for Black women were 6 points higher than the Healthy People 2020 goal (23.9 percent)—higher than rates for White and Latina women.⁸⁶⁴ While California had a higher rate of women overall access early prenatal care than the national average,⁸⁶⁵ there were significant

⁸⁶² Ibid., 2-5. ⁸⁶³ California Health Care Foundation, California Health Care Almanac: Maternity Care in California, a Bundle of Data, November 2019, p. 2, <https://www.chcf.org/wp-content/uploads/2019/11/MaternityCareCAAlmanac2019.pdf>. ⁸⁶⁴ Ibid. ⁸⁶⁵ Health Resources and Services Administration, "National Outcome Measures," <https://mchb.tvisdata.hrsa.gov/PrioritiesAndMeasures/NationalOutcomeMeasures>.

<https://www.chcf.org/wp-content/uploads/2019/11/MaternityCareCAAlmanac2019.pdf>
<https://mchb.tvisdata.hrsa.gov/PrioritiesAndMeasures/NationalOutcomeMeasures>

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disparities that existed among women accessing prenatal care in the first trimester.866 Only 68.8 percent of Native American women and 71.0 percent of Pacific Islander women accessed early prenatal care in California in 2018, both falling below the Healthy People 2020 target of 77.9 percent.867 Approximately 79.5 percent of Black women and 82.2 percent of Latina women accessed early prenatal care in California in 2018, as compared to 88.4 percent of White Women and 88.7 percent of Asian women, both of which surpassed the average of 84.8 percent of all women accessing prenatal care in 2018 in the state.868

In 2006, the California Pregnancy-Associated Mortality Review (CA-PAMR) was launched,869 which is the MMRC for the state of California.870 CA-PAMR is a collaborative initiative between the Maternal, Child and Adolescent Health Division of the California Department of Public Health, Stanford University's California Maternal Quality of Care Collaborative, and the Public Health Institute, tasked to investigate maternal mortality cases and associated racial/ethnic disparities, and identify improvement opportunities, and is funded through the Title V MCH Block Grant program.871 The CA-PAMR was launched when maternal mortality rates were at their peak, and it works to identify and review deaths that occurred during pregnancy or within a year after the pregnancy using the following steps:

- First, a pregnancy-associated death cohort is constructed by linking administrative data sets – maternal death certificate data are linked to birth and fetal demise data, patient discharge and emergency department data using probabilistic data linkage methods.
- Second, inclusion/exclusion criteria are applied to the pregnancy-associated death cohort to identify a subset of potential pregnancy-related cases.
- Third, additional data sources, including investigative reports (coroner, autopsy, toxicology), medical records, and other relevant data are gathered and abstracted to provide more information about this subset of cases. Case summaries are prepared for committee review.
- Next, an appointed, volunteer expert committee reviews all potential pregnancy-related cases to identify the cause of death and timing; contributing/critical factors leading up to death; whether the death was pregnancy-related; degree of preventability; and quality improvement opportunities in maternity care and support.
- Finally, all data from linked administrative datasets, abstracted records, and committee reviews are analyzed using quantitative and qualitative methods and summarized in a

866 California Health Care Foundation, California Health Care Almanac: Maternity Care in California, a Bundle of Data, November 2019, p. 19, <https://www.chcf.org/wp-content/uploads/2019/11/MaternityCareCAAlmanac2019.pdf>. 867 Ibid. 868 Ibid. 869 California Department of Public Health, "California Pregnancy-Associated Mortality Review (CA-PAMR)," <https://www.cdph.ca.gov/Programs/CFH/DMCAH/Pages/PAMR.aspx>. 870 Review to Action, "Brief Overview of the State MMR or PAMR: California," <https://reviewtoaction.org/content/california>. 871 California Department of Public Health, "California Pregnancy-Associated Mortality Review (CA-PAMR)," <https://www.cdph.ca.gov/Programs/CFH/DMCAH/Pages/PAMR.aspx>.

<https://www.chcf.org/wp-content/uploads/2019/11/MaternityCareCAAlmanac2019.pdf>
<https://www.chcf.org/wp-content/uploads/2019/11/MaternityCareCAAlmanac2019.pdf>
<https://www.cdph.ca.gov/Programs/CFH/DMCAH/Pages/PAMR.aspx>
<https://reviewtoaction.org/content/california>
<https://www.cdph.ca.gov/Programs/CFH/DMCAH/Pages/PAMR.aspx>

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publication. The expert committee produces data-informed recommendations for preventing pregnancy-related deaths.872

The CA-PAMR recently implemented a rapid case review model.873 In order to improve the accuracy and timeliness of data on maternal deaths up to 1 year after the end of pregnancy, committee members will discuss cases through electronic communication.874 This model only works to identify the cause of death and relationship to the pregnancy via electronic communication, and does not assess quality improvement opportunities and preventability in this manner.875

In 2019, the CA-PAMR was awarded funds through the ERASE-MM program.876 A total of 24 grants for 25 states were awarded, with each state receiving between \$150,000 and \$600,000 each year.877 In addition, California received \$39.66 million in Title V MCH Block Grant funding in 2019 to support a number of maternal and child health programs.878 CA-PAMR is one of the initiatives in California supported by Title V funds.879

The California Maternal Quality of Care Collaborative (CMQCC) is a multi-stakeholder organization dedicated to "ending preventable morbidity, mortality and racial disparities in California maternity care," and utilizes "research, quality improvement toolkits, state-wide outreach collaboratives and its innovative Maternal Data Center to improve health outcomes for mothers and infants."880 CMQCC was founded at Stanford University in 2006, in response to the growing maternal mortality crisis in California, and has seen subsequent success, including a decline in the maternal mortality rate by over 55 percent from 2006-2013, and a reduction of severe maternal morbidity by over 20 percent between 2014-2016 among 126 hospitals participating in its programs to reduce maternal hemorrhage and preeclampsia.881 CMQCC's Maternal Data Center is a web-based tool that generates real-time data and performance metrics

872 California Department of Public Health, "About: California Pregnancy-Associated Mortality Review (CA-PAMR)," <https://www.cdph.ca.gov/Programs/CFH/DMCAH/Pages/PAMR/About-Us.aspx>. 873 U.S. Government Accountability Office, Maternal Mortality: Trends in Pregnancy-Related Deaths and Federal Efforts to Reduce Them, GAO-20-248, March 2020, p. 47, <https://www.gao.gov/assets/710/705331.pdf>. 874 Ibid. 875 Ibid. 876 Association of Maternal & Child Health Programs, "AMCHP Congratulates States that Win New Federal Grants to Support Maternal Mortality Reviews," Aug. 16, 2019, <http://www.amchp.org/AboutAMCHP/NewsRoom/Documents/MM%20Review%20Federal%20Grants.pdf>. 877 Ibid; Centers for Disease Control and Prevention, FY 2021 Justification of Estimates for Appropriation Committees, p. 158, <https://www.cdc.gov/budget/documents/fy2021/FY-2021-CDC-congressional-justification.pdf>; see also supra note 620. The amounts of the individual state awards were not published in these sources. 878 March of Dimes, "2019 March of Dimes Report Card: California," p. 2, <https://www.marchofdimes.org/peristats/tools/reportcard.aspx?fmodrc=1®=06>; Association of Maternal & Child Health Programs, "California Maternal and Child Health Block Grant 2020," <http://www.amchp.org/Policy-Advocacy/MCHAdvocacy/2020%20State%20Profiles/California%202020%20FINAL.pdf>. 879 California Department of Public Health, "California Pregnancy-Associated Mortality Review(CA-PAMR)," <https://www.cdph.ca.gov/Programs/CFH/DMCAH/Pages/PAMR.aspx>. 880 California Maternal Quality of Care Collaborative, "Who We Are," <https://www.cmqcc.org/who-we-are>. 881 Ibid.

<https://www.cdph.ca.gov/Programs/CFH/DMCAH/Pages/PAMR/About-Us.aspx>
<https://www.gao.gov/assets/710/705331.pdf>
<http://www.amchp.org/AboutAMCHP/NewsRoom/Documents/MM%20Review%20Federal%20Grants.pdf>
<https://www.cdc.gov/budget/documents/fy2021/FY-2021-CDC-congressional-justification.pdf>
<https://www.marchofdimes.org/peristats/tools/reportcard.aspx?fmodrc=1®=06>
<http://www.amchp.org/Policy-Advocacy/MCHAdvocacy/2020%20State%20Profiles/California%202020%20FINAL.pdf>
<http://www.amchp.org/Policy-Advocacy/MCHAdvocacy/2020%20State%20Profiles/California%202020%20FINAL.pdf>
<https://www.cdph.ca.gov/Programs/CFH/DMCAH/Pages/PAMR.aspx>
<https://www.cmqcc.org/who-we-are>

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on maternity care services in over 200 participating hospitals, which helps link hospital discharge data to birth certificates or clinical data.882 Hospitals use MDC to:

- Generate nationally endorsed perinatal quality metrics
- Generate provider-level quality metrics
- Compare hospital performance to statewide, regional and system benchmarks
- Perform drill-down analysis to identify a hospital's unique QI opportunities
- Identify data quality issues that impact performance measure results, including issues

with ICD-10 coding- Facilitate performance reporting requirements to the Leapfrog Group, CMS Inpatient

Quality Reporting Program and the Joint Commission Ongoing Professional Practice Evaluation (OPPE) Program

- Support participation in quality improvement collaboratives883

In addition, CMQCC works to develop Maternal Quality Improvement Toolkits to "improve the health care response to leading causes of preventable death among pregnant and postpartum women as well as to reduce harm to infants and women from overuse of obstetric procedures."884 These toolkits (akin to AIM safety bundles) were developed in partnership with maternal health experts across California, and include best practices, tools, articles, care guidelines, hospital-level implementation guides, and professional educational materials.885 At present, there are 8 different toolkits available for use that are available from the CMQCC website,886 and CMQCC is a partner of the national AIM program.887 In addition, CMQCC engages in research, including publishing the California Pregnancy-Associated Mortality Review of pregnancy-related deaths in California;888 and engages in the California Birth Equity Collaborative, aimed specifically at improving maternal care and maternal health outcomes for Black mothers through both clinical and sociocultural interventions, which forges partnerships with hospitals, local community health organizations, and national, state, and local maternal health experts.889

A 2018 analysis of California's efforts to reduce its maternal mortality rate argues that what sets California apart from other states is its "early recognition of these maternal health problems and the combined efforts of the California Department of Public Health and the California Maternal Quality Care Collaborative, comprising clinicians, hospitals, and many other stakeholders, to

882 California Maternal Quality of Care Collaborative, "Maternal Data Center," <https://www.cmqcc.org/maternal-data-center>. 883 Ibid. 884 California Maternal Quality of Care Collaborative, "Toolkits," <https://www.cmqcc.org/resources-toolkits/toolkits>. 885 Ibid. 886 Ibid. 887 See Council on Patient Safety in Women's Health Care, "Partners of AIM," <https://safehealthcareforeverywoman.org/aim-partners-2/>. 888 California Maternal Quality of Care Collaborative, "What We Do," <https://www.cmqcc.org/about-cmqcc/what-we-do>. 889 California Maternal Quality of Care Collaborative, "Birth Equity," <https://www.cmqcc.org/qi-initiatives/birth-equity>.

<https://www.cmqcc.org/maternal-data-center>
<https://www.cmqcc.org/maternal-data-center>
<https://www.cmqcc.org/resources-toolkits/toolkits>
<https://www.cmqcc.org/resources-toolkits/toolkits>
<https://safehealthcareforeverywoman.org/aim-partners-2/>
<https://www.cmqcc.org/about-cmqcc/what-we-do>
<https://www.cmqcc.org/about-cmqcc/what-we-do>
<https://www.cmqcc.org/qi-initiatives/birth-equity>
<https://www.cmqcc.org/qi-initiatives/birth-equity>

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address these issues."890 While the reduction of maternal mortality and severe maternal morbidity cannot be attributed to any one thing, the analysis identified 4 key steps that were taken by California to achieve their success:

- Linking public health surveillance to action steps. Upon observing a rising trend of maternal deaths, California initiated its California Pregnancy-Associated Mortality Review (the state MMRC) to review pregnancy-associated deaths and identify solutions for prevention. Through this review process, CMQCC formed its first toolkit task forces and developed toolkits for implementation in hospitals. As part of larger quality improvement collaboratives, these efforts raise awareness of maternal mortality, engaged practitioners and professional organizations, and provided technical assistance in order to implement toolkits.891
- Mobilizing a broad set of public and private partners to work collaboratively. California launched CMQCC at the same time as its Pregnancy-Associated Mortality Review. CMQCC serves as a "hub for convening a broad set of stakeholders" engaging in regular communication, information and data sharing, and quality improvement work. CMQCC's Maternal Data Center was also created and serves as a "powerful tool for driving partner engagement by supporting transparency both within a given institution and externally through public reporting."892
- Establishing a low-burden, rapid-cycle data system to support improvement efforts. The establishment of CMQCC's Maternal Data Center has created a comprehensive maternal-infant data set for use in real time. The Maternal Data Center automates data transmission for over 98 percent of data elements, which reduces the need for chart reviews beyond just a couple selected data elements for clinical process measures. The system creates over 50 performance measures and data quality tools, and automatically stratifies data by subpopulation in order to better identify and understand disparities.893
- Implementing multi-partner, large-scale interventions that integrate clinical providers with public health services. The first three steps provided CMQCC a solid foundation for sustained success, which have inspired intervention projects.894 CMQCC's initial Quality Improvement Toolkits for maternal hemorrhage and preeclampsia have had over 10,000 downloads from CMQCC's website, with 92 percent of hospitals adopting the Obstetric Hemorrhage Toolkit and 75 percent of hospitals adopting the Preeclampsia Toolkit.895 In addition, CMQCC's quality improvement learning collaboratives have experienced success, with notable improvement in health outcomes for participating hospitals vs. hospitals that are not participants.896

890 Elliott K. Main, Cathie Markow, and Jeff Gould, "Addressing Maternal Mortality And Morbidity In California Through Public-Private Partnerships," Health Affairs, Vol. 37, No. 9 (September 2018), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2018.0463>. 891 Ibid. 892 Ibid. 893 Ibid. 894 Ibid. 895 Ibid. 896 Ibid.

California adopted Medicaid expansion in 2014.⁸⁹⁷ California's Medicaid program, Medi-Cal, offers several programs to cover uninsured low-income women during pregnancy.⁸⁹⁸ Low-income pregnant women can get immediate coverage for 60 days while they apply for ongoing Medi-Cal coverage, which offers prenatal care and care related to pregnancy loss but not labor and delivery or other hospitalizations.⁸⁹⁹ If pregnant women are not eligible for full-scope Medi-Cal coverage, they might be eligible for pregnancy-related Medi-Cal, which covers all medically necessary pregnancy-related services including prenatal care, labor, delivery, care after delivery, care related to pregnancy loss, care for pregnancy complications, and mental health services.⁹⁰⁰ Additionally, Medi-Cal offers a program called the Medi-Cal Access Program (MCAP) that offers low-cost comprehensive coverage for pregnancy-related care with no copayments, deductibles, or coinsurance, regardless of citizenship or immigration status.⁹⁰¹ MCAP serves women from middle-income families who can't afford insurance but have an income that places them outside the range for full-scope Medi-Cal coverage.⁹⁰² All Medi-Cal services cover postpartum women for 60 days after the pregnancy ends.⁹⁰³

California has also received funding for several national programs through various offices in HHS. The Health Resources and Services Administration's MIECHV program supports California's Home Visiting Program,⁹⁰⁴ and served 5,297 participants, 2,927 households in 2019, proving a total of 29,626 home visits that year.⁹⁰⁵ California utilizes two evidence-based models for home visiting: Healthy Families America, and Nurse-Family Partnership.⁹⁰⁶ In FY 2019, California received \$20.8 million in funds for its Home Visiting Program.⁹⁰⁷ In 2019, California received 5 awards through the Health Resources and Services Administration's Healthy Start Program for a total of \$5.1 million in funding.⁹⁰⁸ In 2018, the Health Resources and Services Administration funded 177 Health Centers in California, that served over 4,980,000 patients, a

⁸⁹⁷ California Department of Health Care Services, "Medi-Cal Expansion: Covering More Californians," <https://www.dhcs.ca.gov/Pages/Medi-CalExpansionInformation.aspx>. ⁸⁹⁸ Covered California, "Health Coverage Options for Pregnant Women," <https://www.coveredca.com/individuals-and-families/getting-covered/pregnant-women/>. ⁸⁹⁹ Ibid. ⁹⁰⁰ Ibid. ⁹⁰¹ Ibid. ⁹⁰² Ibid. ⁹⁰³ Astho, "Factsheet: State Children's Health Insurance Program (SCHIP) Coverage During Pregnancy," <https://www.astho.org/Maternal-and-Child-Health/State-Childrens-Health-Insurance-Program-SCHIP-Coverage-During-Pregnancy/>. ⁹⁰⁴ California Department of Public Health, "California Home Visiting Program (CHVP)," <https://www.cdph.ca.gov/Programs/CFH/DMCAH/CHVP/Pages/default.aspx>. ⁹⁰⁵ Health Resources and Services Administration, "California's MIECHV Program FY 2019," <https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/ca.pdf>. ⁹⁰⁶ Ibid; see also California Department of Public Health, "California Home Visiting Program (CHVP)," <https://www.cdph.ca.gov/Programs/CFH/DMCAH/CHVP/Pages/default.aspx>. ⁹⁰⁷ Health Resources and Services Administration, "Maternal, Infant, and Early Childhood Home Visiting Awards FY19," <https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting/fy19-awards>. ⁹⁰⁸ Health Resources and Services Administration, "2019 Healthy Start Grant Awards," <https://mchb.hrsa.gov/maternal-child-health-initiatives/healthy-start/awards>.

<https://www.dhcs.ca.gov/Pages/Medi-CalExpansionInformation.aspx>
<https://www.coveredca.com/individuals-and-families/getting-covered/pregnant-women/>
<https://www.coveredca.com/individuals-and-families/getting-covered/pregnant-women/>
<https://www.astho.org/Maternal-and-Child-Health/State-Childrens-Health-Insurance-Program-SCHIP-Coverage-During-Pregnancy/>
<https://www.astho.org/Maternal-and-Child-Health/State-Childrens-Health-Insurance-Program-SCHIP-Coverage-During-Pregnancy/>
<https://www.cdph.ca.gov/Programs/CFH/DMCAH/CHVP/Pages/default.aspx>
<https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/ca.pdf>
<https://www.cdph.ca.gov/Programs/CFH/DMCAH/CHVP/Pages/default.aspx>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting/fy19-awards>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/healthy-start/awards>

majority of which were low-income, women, and people of color.⁹⁰⁹ Additionally, through the Office of Minority Health's State Partnership Program to Improve Minority Health, the California Office of Multicultural Health received a grant for \$140,000 for 2010-2013.⁹¹⁰ This award funded research to enhance the availability of accurate data on differences in health status, access to care, and the provision of health services across all population groups in California; and sought to inform policies and evidence-based programs/practices, collaborating with workgroups to provide recommendations for eliminating health disparities.⁹¹¹

In May 2020, the National Health Law Program's Doula Medicaid Project issued a report that published the findings of a survey of doulas in California and a series of focus groups, and also provides recommendations about how to create "an equitable, inclusive, and sustainable program for Medi-Cal coverage for doula care here in California."⁹¹² This report found that doulas are not always able to provide services to the most underserved populations (pregnant low-income women of color) due to cost prohibitions.⁹¹³ Doulas in California provide an array of services, with approximately 82 percent of doulas provide prenatal care, 93 percent provide support during labor and delivery, and 74 percent provide postpartum support.⁹¹⁴ Approximately 90 percent of doulas in California have clients that pay directly out of pocket for services, and 30 percent surveyed reported that they are exclusively paid directly out of pocket.⁹¹⁵ Otherwise, doulas in California are compensated by bartering or trading (30 percent), reimbursements from healthcare flex spending accounts (13 percent), reimbursements from private insurance with the remainder paid directly by clients (2 percent), or they are not receiving compensation and providing doula services on a pro bono or volunteer basis (55 percent).⁹¹⁶

In February 2020, California legislators introduced a bill (AB 2258) that would establish a full-spectrum doula care pilot program to operate for 3 years for pregnant and postpartum Medi-Cal beneficiaries residing in 14 counties in the state.⁹¹⁷ The legislation, if passed, would authorize the pilot program to commence on July 1, 2021, and would mandate a program evaluation that would speak to the feasibility of a statewide doula benefit for Medi-Cal beneficiaries, if the pilot is found to be successful.⁹¹⁸

⁹⁰⁹ Health Resources and Services Administration, "2018 California Health Center Data," <https://bphc.hrsa.gov/uds/datacenter.aspx?year=2018&state=CA>. ⁹¹⁰ Office of Minority Health, "State Partnership Program," <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease;Office%20of%20Minority%20Health,%20California%20Office%20of%20Multicultural%20Health-%20State%20Partnership%20Program,> <https://minorityhealth.hhs.gov/omh/content.aspx?ID=9132&lvl=2&lvlid=51>. ⁹¹¹ Office of Minority Health, "California Office of Multicultural Health - State Partnership Program," <https://minorityhealth.hhs.gov/omh/content.aspx?ID=9132&lvl=2&lvlid=51>. ⁹¹² Amy Chen and Alexis Robles-Fradet, Building A Successful Program for Medi-Cal Coverage For Doula Care: Findings From A Survey of Doulas in California, National Health Law Program, Doula Medicaid Project, May 2020, <https://healthlaw.org/resource/doulareport/>. ⁹¹³ Ibid., 16, 21-22. ⁹¹⁴ Ibid., 20. ⁹¹⁵ Ibid., 21. ⁹¹⁶ Ibid., 21. ⁹¹⁷ National Health Law Program, "Doula Medicaid Project," <https://healthlaw.org/doulamedicaidproject/>. ⁹¹⁸ Ibid.

<https://bphc.hrsa.gov/uds/datacenter.aspx?year=2018&state=CA>
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease>
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease>
<https://minorityhealth.hhs.gov/omh/content.aspx?ID=9132&lvl=2&lvlid=51>
<https://minorityhealth.hhs.gov/omh/content.aspx?ID=9132&lvl=2&lvlid=51>
<https://healthlaw.org/resource/doulareport/>
<https://healthlaw.org/doulamedicaidproject/>

In October 2019, California Governor Gavin Newsome signed the California Dignity in Pregnancy and Childbirth Act into law.⁹¹⁹ This law requires maternal healthcare providers to undergo bias training every two years in an effort to reduce racial disparities in maternal healthcare, and will require the California Health Department to publish data related to pregnancy-related deaths and pregnancy-related conditions.⁹²⁰

North Carolina

Since 1999, the rate of pregnancy-related deaths in North Carolina has fluctuated, but ultimately has slightly increased. The rate of pregnancy-related deaths in North Carolina was 18.5 per 100,000 live births in 1999, as compared to 21.0 deaths per 100,000 live births in 2013. When examining state data from 1999-2013, the rate of pregnancy-related deaths in North Carolina was higher than the U.S. rate in 1999 and 2013, however North Carolina's rate did fall below the national average in 2006, and between 2010 and 2012. See Figure 4.3.

⁹¹⁹ Cal. Health & Safety Code § 123630 (West 2019); Tomas Kassahun, "A New California Law Seeks To Prevent Black Maternal Mortality In The State," Blavity, Oct. 9, 2019, <https://blavity.com/a-new-california-law-seeks-to-prevent-black-maternal-mortality-in-the-state?category1=news&subCat=politics>. ⁹²⁰ Tomas Kassahun, "A New California Law Seeks To Prevent Black Maternal Mortality In The State," Blavity, Oct. 9, 2019, <https://blavity.com/a-new-california-law-seeks-to-prevent-black-maternal-mortality-in-the-state?category1=news&subCat=politics>.

<https://blavity.com/a-new-california-law-seeks-to-prevent-black-maternal-mortality-in-the-state?category1=news&subCat=politics>
<https://blavity.com/a-new-california-law-seeks-to-prevent-black-maternal-mortality-in-the-state?category1=news&subCat=politics>
<https://blavity.com/a-new-california-law-seeks-to-prevent-black-maternal-mortality-in-the-state?category1=news&subCat=politics>
<https://blavity.com/a-new-california-law-seeks-to-prevent-black-maternal-mortality-in-the-state?category1=news&subCat=politics>

Source: North Carolina State Center for Health Statistics, "Figure 3: Trends in Pregnancy-related Death Rates, North Carolina Residents 1999- 2013," https://schs.dph.ncdhs.gov/data/maternal/Figure3_MaternalMortality2013.pdf; Centers for Disease Control and Prevention, "Pregnancy Mortality Surveillance System," <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm>.

*North Carolina data include pregnancy-related deaths of women aged 10-50 within a year of childbirth, in line with the CDC definition of pregnancy-related death. PMSS national data was used as a comparator, as it utilizes the same definition.

Based on 2013-2017 data reported by America's Health Rankings, North Carolina ranked 30th nationally for its maternal mortality rate, ranking slightly higher than the national average during that time.⁹²¹

During that same time period, however, North Carolina saw numbers of pregnancy-related deaths among Black women decline, virtually closing the disparities gap among Black and White women in the state. See Figure 4.4.

⁹²¹ America's Health Rankings, "Health of Women and Children: Maternal Mortality, 2019," https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality_a/state/NC.

18.5 21.0

13.2

17.3

0.0

5.0

10.0

15.0

20.0

25.0

30.0

1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013

North Carolina U.S.

Figure 4.3.

Pregnancy-Related Deaths in North Carolina and the U.S. 1999-2013

Deaths
per
100,
000
Live
Births

https://schs.dph.ncdhhs.gov/data/maternal/Figure3_MaternalMortality2013.pdf
<https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm>
https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality_a/state/NC
https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality_a/state/NC

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Source: North Carolina State Center for Health Statistics, "Figure 4. Non-Hispanic White and Non-Hispanic African-American Pregnancy-related Mortality Rates by Year North Carolina Residents 1999-2013," https://schs.dph.ncdhhs.gov/data/maternal/Figure4_MaternalMortality2013.pdf; North Carolina State Center for Health Statistics, "Figure 3: Trends in Pregnancy-related Death Rates, North Carolina Residents 1999-2013," https://schs.dph.ncdhhs.gov/data/maternal/Figure3_MaternalMortality2013.pdf.

In 1999, the rate of pregnancy-related deaths for Black women was 38.9 deaths per 100,000 live births as compared to 11.2 deaths per 100,000 live births for White women, which was about 3.5 times higher for Black women than for White women. Over time, the rate of pregnancy-related death for Black women declined significantly, measured at 24.3 deaths per 100,000 live births in 2013, which was slightly higher than the national average of 21.0 deaths per 100,000 live births. However, the rate of pregnancy-related deaths for White women increased from 1999-2013, similar to national trends, which contributed to the closing of the disparities gap by 2013, where the rate of pregnancy-related deaths for White women was 24.2 deaths per 100,000 live births, as compared to 24.3 deaths per 100,000 live births for Black women and 21.0 deaths per 100,000 live births nationally. The uptick of pregnancy-related deaths among White women mirrors an uptick nationwide of white mortality linked to opioid or alcohol abuse, suicide, obesity, and chronic diseases such as diabetes or cardiovascular disease.⁹²² However, the reasons for the increase in pregnancy-related deaths of White women in North Carolina remain unknown and are subject to investigation by health officials.⁹²³

⁹²² Julia Belluz, "Black moms die in childbirth 3 times as often as white moms. Except in North Carolina," Vox, Jul, 3, 2017, <https://www.vox.com/health-care/2017/7/3/15886892/black-white-moms-die-childbirth-north-carolina-less>; Julia Belluz, "Why the white middle class is dying faster, explained in 6 charts," Mar. 23, 2017, <https://www.vox.com/science-and-health/2017/3/23/14988084/white-middle-class-dying-faster-explained-case-deaton>. ⁹²³ Julia Belluz, "Why the white middle class is dying faster, explained in 6 charts," Mar. 23, 2017, <https://www.vox.com/science-and-health/2017/3/23/14988084/white-middle-class-dying-faster-explained-case-deaton>.



Black White North Carolina

Figure 4.4. Pregnancy-Related Deaths in North Carolina by Race 1999 to 2013

No.
Deaths
per
100,
000
Live
Births

https://schs.dph.ncdhhs.gov/data/maternal/Figure4_MaternalMortality2013.pdf
https://schs.dph.ncdhhs.gov/data/maternal/Figure3_MaternalMortality2013.pdf
<https://www.vox.com/health-care/2017/7/3/15886892/black-white-moms-die-childbirth-north-carolina-less>
<https://www.vox.com/science-and-health/2017/3/23/14988084/white-middle-class-dying-faster-explained-case-deaton>
<https://www.vox.com/science-and-health/2017/3/23/14988084/white-middle-class-dying-faster-explained-case-deaton>
<https://www.vox.com/science-and-health/2017/3/23/14988084/white-middle-class-dying-faster-explained-case-deaton>
<https://www.vox.com/science-and-health/2017/3/23/14988084/white-middle-class-dying-faster-explained-case-deaton>

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The vast majority of pregnancy-related deaths occurred among Black women and White women from 1999-2013 (49.9 percent and 40.2 percent, respectively).⁹²⁴ Nineteen pregnancy-related deaths (5.9 percent) occurred among Latina women; 8 pregnancy-related deaths (2.5 percent) occurred among Asian women; and 5 pregnancy-related deaths (1.5 percent) occurred among Native American women.⁹²⁵

According to the Health Resources and Services Administration National Outcomes Measures data, North Carolina's severe maternal morbidity rate has increased from 2008 to 2015, and rates have been hovering above the national average during this time. See Figure 4.5.

Source: Health Resources and Services Administration, "National Outcome Measures," <https://mchb.tvisdata.hrsa.gov/PrioritiesAndMeasures/NationalOutcomeMeasures>. Chart adapted by the Commission.

North Carolina has been reviewing maternal deaths since the 1940s, starting with a public-private partnership between the North Carolina Division of Public Health and the Wake Forest School of Medicine.⁹²⁶ In 1988, the North Carolina State Center for Health Statistics, a division of North Carolina Department of Health and Human Services, was one of the pioneers in establishing an enhanced population-based surveillance system that links death files with live births and fetal deaths.⁹²⁷ This linkage model resulted in a 30 percent increase in successfully

⁹²⁴ North Carolina State Center for Health Statistics, "Table 3. Pregnancy-related Mortality by Race and Ethnicity, North Carolina Residents 1999-2013," https://schs.dph.ncdhhs.gov/data/maternal/Table3_MMRReport2013.pdf. ⁹²⁵ Ibid. Pregnancy-related maternal mortality rates for Native American women, Asian women, Latina women, and women of other races were not individually reported for 1999-2013, thus were not included in the chart above. ⁹²⁶ Association of State and Territorial Health Offices, "North Carolina Leverages a Long History of Maternal Mortality Review," p. 1, <https://www.astho.org/Maternal-and-Child-Health/Documents/North-Carolina-Leverages-a-Long-History-of-Maternal-Mortality-Review/10-30-18/>. ⁹²⁷ Ibid.

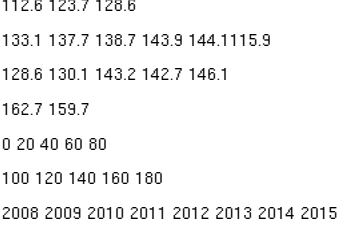


Figure 4. Rate of Severe Maternal Morbidity in North Carolina and U.S. 2008 to 2015

Rate
per
10,
000
live
births
annually

<https://mchb.tvisdata.hrsa.gov/PrioritiesAndMeasures/NationalOutcomeMeasures>
https://schs.dph.ncdhhs.gov/data/maternal/Table3_MMReport2013.pdf
<https://www.astho.org/Maternal-and-Child-Health/Documents/North-Carolina-Leverages-a-Long-History-of-Maternal-Mortality-Review/10-30-18/>
<https://www.astho.org/Maternal-and-Child-Health/Documents/North-Carolina-Leverages-a-Long-History-of-Maternal-Mortality-Review/10-30-18/>

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identifying the drivers of pregnancy-related deaths in North Carolina. 928 The State Center for Health Statistics identifies pregnancy-related deaths among women aged 10-50 that died during pregnancy or within one year after childbirth or delivery annually, 929 and the North Carolina MMRC reviews these identified deaths tri-annually. 930

In 2019, the North Carolina MMRC was awarded funds through the ERASE-MM program. 931 A total of 24 grants for 25 states were awarded, with each state receiving between \$150,000 and \$600,000 each year. 932 North Carolina allocated \$17.4 million in Title V funds in its FY 2020 budget to maternal and child health programs, 933 and spent \$14.6 million on these programs in FY 2018. 934 North Carolina's MMRC is supported by Title V funds. 935

In 2005, North Carolina issued a study that found 40 percent of pregnancy-related deaths, reviewed by the state MMRC, were preventable. 936 The study found that almost all pregnancy-related deaths due to hemorrhage or chronic disease were preventable, and cited improved quality of medical care as the most important factor in preventing these deaths. 937 Forty-six percent of maternal deaths among Black women in North Carolina are preventable as compared to 33 percent of deaths among White women in the state. 938 Based on this study, the North Carolina MMRC developed a definition of preventability as when "the death may have been averted by one or more changes in the health care system related to clinical care, facility infrastructure, public health infrastructure and/or patient factors." 939 The MMRC also categorized these preventable deaths into 4 different categories that encompass underlying

928 Ibid. 929 North Carolina State Center for Health Statistics, "Trends in Maternal Mortality Statistics," <https://schs.dph.ncdhhs.gov/data/maternal/>. 930 Review to Action, "Brief Overview of State MMR or PAMR: North Carolina," <https://reviewtoaction.org/content/north-carolina>. 931 Association of Maternal & Child Health Programs, "AMCHP Congratulates States that Win New Federal Grants to Support Maternal Mortality Reviews," Aug. 16, 2019, <http://www.amchp.org/AboutAMCHP/NewsRoom/Documents/MM%20Review%20Federal%20Grants.pdf>. 932 Ibid.; Centers for Disease Control and Prevention, FY 2021 Justification of Estimates for Appropriation Committees, p. 158, <https://www.cdc.gov/budget/documents/fy2021/fy-2021-cdc-congressional-justification.pdf>; see also supra note 620. The amounts of the individual state awards were not published in these sources. 933 Association of Maternal & Child Health Programs, "North Carolina Maternal and Child Health Block Grant 2020," <http://www.amchp.org/Policy-Advocacy/MCHAdvocacy/2020%20State%20Profiles/North%20Carolina%202020%20FINAL.pdf>. 934 Health Resources and Services Administration, "Title V MCH Block Grant Funding: State Information," <https://mchb.tvisdata.hrsa.gov/State/Detail/NC>. 935 Maternal and Child Health Services Title V Block Grant, North Carolina FY 2020 Application/FY2018 Annual Report, 2019, p. 84, <https://publichealth.nc.gov/vch/doc/NC-TitleV-PrintVersion-FY20-092619.pdf>. 936 Berg, Cynthia J. MD, MPH, Harper, Margaret A. MD, MS, Atkinson, Samuel M. MD3, Bell, Elizabeth A. MD, Brown, Haywood L. MD, Hage, Marvin L. MD, Mitra, Avick G. MD, Moise, Kenneth J. Jr MD, Callaghan, William M. MD, MPH, "Preventability of Pregnancy-Related Deaths: Results of a State-Wide Review," *Obstetrics and Gynecology*, Vol. 106, No. 6 (December 2005): 1228-1234, <https://journals.lww.com/greenjournal/pages/articleviewer.aspx?year=2005&issue=12000&article=00004&type=Fulltext>. 937 Ibid. 938 Association of State and Territorial Health Offices, "North Carolina Leverages a Long History of Maternal Mortality Review," p. 1, <https://www.astho.org/Maternal-and-Child-Health/Documents/North-Carolina-Leverages-a-Long-History-of-Maternal-Mortality-Review/10-30-18/>.

<https://schs.dph.ncdhhs.gov/data/maternal/>
<https://reviewtoaction.org/content/north-carolina>
<http://www.amchp.org/AboutAMCHP/NewsRoom/Documents/MM%20Review%20Federal%20Grants.pdf>
<https://www.cdc.gov/budget/documents/fy2021/fy-2021-cdc-congressional-justification.pdf>
<http://www.amchp.org/Policy-Advocacy/MCHAdvocacy/2020%20State%20Profiles/North%20Carolina%202020%20FINAL.pdf>
<http://www.amchp.org/Policy-Advocacy/MCHAdvocacy/2020%20State%20Profiles/North%20Carolina%202020%20FINAL.pdf>
<https://mchb.tvisdata.hrsa.gov/State/Detail/NC>
<https://publichealth.nc.gov/vch/doc/NC-TitleV-PrintVersion-FY20-092619.pdf>
<https://journals.lww.com/greenjournal/pages/articleviewer.aspx?year=2005&issue=12000&article=00004&type=Fulltext>
<https://journals.lww.com/greenjournal/pages/articleviewer.aspx?year=2005&issue=12000&article=00004&type=Fulltext>
<https://www.astho.org/Maternal-and-Child-Health/Documents/North-Carolina-Leverages-a-Long-History-of-Maternal-Mortality-Review/10-30-18/>
<https://www.astho.org/Maternal-and-Child-Health/Documents/North-Carolina-Leverages-a-Long-History-of-Maternal-Mortality-Review/10-30-18/>

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factors or actions that could potentially have prevented a pregnancy-related death: 1) preconception care and counseling, 2) patient actions, 3) systemic factors, and 4) quality of care. 940

In 2008, North Carolina developed its Preconception Health Strategic Plan, which has been updated for 2014-2019. 941 The original plan highlighted 6 strategic areas of focus:

- Pregnancy intendedness ■ Obesity and related conditions ■ Substance abuse ■ Mental health ■ Collaborative research on preconception-focused topics ■ Policy development and access to care 942

The recent supplement noted that many of these priority areas have been implemented in North Carolina and indicated the need to broaden these priorities moving forward. 943 Thus, two theoretical models were included to address 1) the social determinants of health and 2) life course perspective. 944 Life course perspective theory aims to "positively affect factors which influence the "programming" of an individual's future health and development," such as exposure in utero; a mother's health before conception; the impact of multiple stressors; risk behaviors such as smoking, food insecurity, or domestic violence; economic security; or family nurturing. 945

North Carolina also has issued a Perinatal Health Strategic Plan 2016-2020, which aims to:

- Improve healthcare, including providing interconception care to women with prior adverse pregnancy outcomes, increased access to preconception care, improved quality of prenatal care, and expanded access to healthcare
- Strengthen families and communities, including the coordination and integration of family support services, supporting the coordination and cooperation to promote reproductive health within communities, and investing in community building and urban renewal
- Addressing social and economic inequalities, including closing the education gap, reducing poverty among families, supporting working mothers and families, and undoing racism 946

940 Ibid. 941 North Carolina Department of Health and Human Services, North Carolina Preconception Health Strategic Plan: Supplement 2014-2019, p. 1, <http://www.everywomansoutheast.org/sites/default/files/North%20Carolina%20Preconception%20Health%20Strategic%20Plan%20Supplement%202014-2019.pdf>. 942 Ibid. 943 Ibid. 944 Ibid. 945 Ibid. 946 North Carolina Department of Health and Human Services, North Carolina's Perinatal Health Strategic Plan: 2016-2020, p. 2, <https://whb.ncpublichealth.com/docs/PerinatalHealthStrategicPlan-WEB.pdf>.

<http://www.everywomansoutheast.org/sites/default/files/North%20Carolina%20Preconception%20Health%20Strategic%20Plan%20Supplement%202014-2019.pdf>
<http://www.everywomansoutheast.org/sites/default/files/North%20Carolina%20Preconception%20Health%20Strategic%20Plan%20Supplement%202014-2019.pdf>
<https://whb.ncpublichealth.com/docs/PerinatalHealthStrategicPlan-WEB.pdf>

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In September 2019, North Carolina Department of Health and Human Services received a total of \$10 million in State MHI grant funds to be distributed over 5 years to support its efforts to address maternal mortality and severe maternal morbidity. 947 North Carolina is one of 9 recipients of this funding, and funds will support its Perinatal Health Strategic Plan and other efforts. 948 The University of North Carolina at Chapel Hill was also awarded \$2.6 million a year in funding for 5 years through the Supporting MHI program to support the North Carolina Department of Health and Human Services' efforts. 949

In 2011, North Carolina launched a program called Pregnancy Medical Home (PMH), developed by Community Care of North Carolina, which aims to improve the quality of perinatal care among Medicaid customers. 950 The program provides increased access to comprehensive care for women receiving Medicaid, promoting evidence-based, quality maternity care across the state for 95 percent of prenatal care providers that serve the Medicaid population. 951 PMH has six core components:

- Statewide provider network. PMH has over 450 practices and 1,000 individual providers in 95 percent of counties in North Carolina, which represents 95 percent of practices that serve pregnant women who receive Medicaid.
- Standardized risk screening. Nearly 80 percent of PMH patients receive a standardized risk screening, typically administered at the first prenatal visit, which captures medical, obstetric, and psychosocial risk factors associated with preterm birth.
- Community-based care management. Care Management for High-Risk Pregnancies (CMHRP) is a care coordination model used for Medicaid patients at risk for preterm birth identified during the screening process. CMHRP services are administered by county health department nurses and social workers, who partner with prenatal care providers.
- Local clinical leadership. Statewide PMH clinical leadership teams ("OB Teams") work to provide clinical leadership, provider education, technical assistance, and practice-level

947 North Carolina Department of Health and Human Services, "North Carolina Receives Maternal Health Innovation Grant to Strengthen Perinatal Care," Sep. 20, 2019, <https://www.ncdhhs.gov/news/press-releases/north-carolina-receives-maternal-health-innovation-grant-strengthen-perinatal>; Health Resources and Services Administration, "Maternal Health Awardees FY19," <https://mchb.hrsa.gov/maternal-child-health-initiatives/fy19-maternal-health-awards>. 948 North Carolina Department of Health and Human Services, "North Carolina Receives Maternal Health Innovation Grant to Strengthen Perinatal Care," Sep. 20, 2019, <https://www.ncdhhs.gov/news/press-releases/north-carolina-receives-maternal-health-innovation-grant-strengthen-perinatal>; Health Resources and Services Administration, "Maternal Health Awardees FY19," <https://mchb.hrsa.gov/maternal-child-health-initiatives/fy19-maternal-health-awards>. 949 North Carolina Department of Health and Human Services, "North Carolina Receives Maternal Health Innovation Grant to Strengthen Perinatal Care," Sep. 20, 2019, <https://www.ncdhhs.gov/news/press-releases/north-carolina-receives-maternal-health-innovation-grant-strengthen-perinatal>; Health Resources and Services Administration, "Maternal Health Awardees FY19," <https://mchb.hrsa.gov/maternal-child-health-initiatives/fy19-maternal-health-awards>. 950 North Carolina Department of Health and Human Services, "Pregnancy Medical Home," <https://medicaid.ncdhhs.gov/providers/programs-services/family-planning-and-maternity/pregnancy-medical-home>. 951 Community Care of North Carolina, "Pregnancy Medical Home," <https://www.communitycarenc.org/what-we-do/clinical-programs/pregnancy-medical-home>.

<https://www.ncdhhs.gov/news/press-releases/north-carolina-receives-maternal-health-innovation-grant-strengthen-perinatal>
<https://www.ncdhhs.gov/news/press-releases/north-carolina-receives-maternal-health-innovation-grant-strengthen-perinatal>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/fy19-maternal-health-awards>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/fy19-maternal-health-awards>
<https://www.ncdhhs.gov/news/press-releases/north-carolina-receives-maternal-health-innovation-grant-strengthen-perinatal>
<https://www.ncdhhs.gov/news/press-releases/north-carolina-receives-maternal-health-innovation-grant-strengthen-perinatal>

<https://mchb.hrsa.gov/maternal-child-health-initiatives/fy19-maternal-health-awards>
<https://www.ncdhhs.gov/news/press-releases/north-carolina-receives-maternal-health-innovation-grant-strengthen-perinatal>
<https://www.ncdhhs.gov/news/press-releases/north-carolina-receives-maternal-health-innovation-grant-strengthen-perinatal>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/fy19-maternal-health-awards>
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<https://medicaid.ncdhhs.gov/providers/programs-services/family-planning-and-maternity/pregnancy-medical-home>
<https://www.communitycarenc.org/what-we-do/clinical-programs/pregnancy-medical-home>
<https://www.communitycarenc.org/what-we-do/clinical-programs/pregnancy-medical-home>

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analytics by disseminating state care pathways that establish evidence-based best practices.

- Care pathways. This program promotes evidence-based clinical best practices to standardize care and set performance expectations across all PMH settings. Care pathways are available online for download on a variety of topics, including hypertension, obesity, tobacco use, substance use, and multiple gestation, and specific components of care, such as induction of labor, progesterone treatment, and postpartum care.
- Informatics. The program reports quarterly metrics using Medicaid claims, birth certificates, and risk screening data.

North Carolina has been a leader in the development of this maternal home model.⁹⁵² Early data has shown that the PMH program, which primarily focuses on the prevention of preterm birth, has seen some success.⁹⁵³ PMH providers have been generally receptive to the care pathways and have been on board with the clearly-defined guidance provided in them.⁹⁵⁴ Some believe this program is promising⁹⁵⁵ and may become a model for other states.⁹⁵⁶ Currently Missouri, Oregon, and Wisconsin have implemented similar programs.⁹⁵⁷ Some believe this model has the potential of shifting maternal healthcare towards “a holistic, patient-centered approach to pregnancy care.”⁹⁵⁸

In recent news, the PMH program had received media attention, as the declining maternal mortality rate for Black women was in part attributed to the implementation of this program, as Black women are disproportionately represented in North Carolina’s Medicaid population, thus better able to benefit from PMH.⁹⁵⁹ However, other research has shown that North Carolina is far from achieving racial equity in maternal mortality.⁹⁶⁰ A recent journal article noted that recent news on this topic “highlights the pitfalls and interpretative error associated with small

⁹⁵² Jeff Rakover, “The Maternity Medical Home: The Chassis for a More Holistic Model of Pregnancy Care?” Institute for Healthcare Improvement, March 22, 2016, http://www.ihl.org/communities/blogs/_layouts/15/ihl/community/blog/itemview.aspx?List=7d1126ec-8f63-4a3b-9926-c44ea3036813&ID=222. ⁹⁵³ Ibid. ⁹⁵⁴ Kate Berrien, Arthur Ollendorff, M. Kathryn Menard, “Pregnancy Medical Home Care Pathways Improve Quality of Perinatal Care and Birth Outcomes,” North Carolina Medical Journal, Vol. 76, No. 4 (Sep. 11, 2015): 265, <https://www.ncmedicaljournal.com/content/ncm/76/4/263.full.pdf>. ⁹⁵⁵ Elizabeth A. Howell, “Reducing Disparities in Severe Maternal Morbidity and Mortality,” Clin Obstet Gynecol, Vol. 61, No. 2 (June 2018): 387-399, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>. ⁹⁵⁶ Michael Ollive, “New Maternal Mortality Strategy Relies on ‘Medical Homes,’” Pew, Dec. 5, 2017, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/12/05/new-maternal-mortality-strategy-relies-on-medical-homes>. ⁹⁵⁷ Amber Bellazaire and Erik Skinner, Preventing Infant and Maternal Mortality: State Policy Options, National Conference of State Legislatures, April 2019, p. 12, https://www.ncsl.org/Portals/1/Documents/Health/Infant-Maternal-Mortality_v05_web.pdf. ⁹⁵⁸ Julia Belluz, “Black moms die in childbirth 3 times as often as white moms. Except in North Carolina.” Vox, Jul. 3, 2017, <https://www.vox.com/health-care/2017/7/3/15886892/black-white-moms-die-childbirth-north-carolina-less>. ⁹⁵⁹ Maria J. Small, Belinda Pettiford, Tara Owens Shuler, Kathleen Jones-Vessey, “Addressing Maternal Deaths in North Carolina: Striving to Reach Zero,” North Carolina Medical Journal, Vol. 81, No. 1 (Jan. 6, 2020): 55, <https://www.ncmedicaljournal.com/content/ncm/81/1/55.full.pdf>.

http://www.ihl.org/communities/blogs/_layouts/15/ihl/community/blog/itemview.aspx?List=7d1126ec-8f63-4a3b-9926-c44ea3036813&ID=222
http://www.ihl.org/communities/blogs/_layouts/15/ihl/community/blog/itemview.aspx?List=7d1126ec-8f63-4a3b-9926-c44ea3036813&ID=222
<https://www.ncmedicaljournal.com/content/ncm/76/4/263.full.pdf>
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5915910/>
<https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/12/05/new-maternal-mortality-strategy-relies-on-medical-homes>
<https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/12/05/new-maternal-mortality-strategy-relies-on-medical-homes>
https://www.ncsl.org/Portals/1/Documents/Health/Infant-Maternal-Mortality_v05_web.pdf
https://www.ncsl.org/Portals/1/Documents/Health/Infant-Maternal-Mortality_v05_web.pdf
<https://www.vox.com/health-care/2017/7/3/15886892/black-white-moms-die-childbirth-north-carolina-less>
<https://www.ncmedicaljournal.com/content/ncm/81/1/55.full.pdf>

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numbers,” and noted that “[w]hen aggregate data are examined, the disparity in maternal deaths for Black women compared to White women persists.”⁹⁶¹ The journal article also noted that “[i]n North Carolina, many maternal deaths underscore the importance of programs like care management services and “fourth trimester” efforts to continue the trajectory of maternal death reduction and the elimination of the Black-White disparity in maternal mortality.”⁹⁶² When looking at pregnancy-related deaths from 2000 to 2015 using 4-year aggregate pregnancy-related death ratios, it appears that the racial gap between Black and White women has narrowed, but disparities still exist.⁹⁶³ Data show that White women have significantly lower pregnancy-related mortality rates than Black women throughout that time, and while the rates for Black women have declined steadily, Black women are still 1.6 times more likely to experience a pregnancy-related death than White women in North Carolina.⁹⁶⁴

North Carolina is involved with other initiatives to address maternal mortality and reduce racial and ethnic disparities in the state. the Health Resources and Services Administration’s MIECHV program supports North Carolina’s Home Visiting Program,⁹⁶⁵ and served 821 participants, 402 households in 2019, proving a total of 6,174 home visits that year.⁹⁶⁶ North Carolina utilizes two evidence-based models for home visiting: Healthy Families America, and Nurse-Family Partnership.⁹⁶⁷ In FY 2019, North Carolina received \$3.5 million in funds for its Home Visiting Program.⁹⁶⁸ In 2019, North Carolina received 3 awards through the Health Resources and Services Administration’s Healthy Start Program for a total of \$3 million in funding.⁹⁶⁹ In 2018, the Health Resources and Services Administration funded 40 Health Centers in North Carolina, that served over 570,000 patients, a majority of which were low-income, women, and people of color.⁹⁷⁰ In addition, through the Office of Minority Health’s State Partnership Program to Improve Minority Health, the North Carolina Department of Health and Human Services received a grant for \$140,000 for 2010-2013.⁹⁷¹ This award funded a project that sought to address disparities in chronic disease burden among people of color, working with community

⁹⁶¹ Ibid. ⁹⁶² Ibid. ⁹⁶³ Ibid., 60. ⁹⁶⁴ Ibid., 60. ⁹⁶⁵ North Carolina Department of Health and Human Services, “WCH: Maternal, Infant, and Early Childhood Home Visiting Program,” <https://publichealth.nc.gov/wch/aboutus/ebhv.htm>. ⁹⁶⁶ Health Resources and Services Administration, “North Carolina’s MIECHV Program FY 2019,” <https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/nc.pdf>. ⁹⁶⁷ Ibid; North Carolina Department of Health and Human Services, “WCH: Maternal, Infant, and Early Childhood Home Visiting Program,” <https://publichealth.nc.gov/wch/aboutus/ebhv.htm>. ⁹⁶⁸ Health Resources and Services Administration, “Maternal, Infant, and Early Childhood Home Visiting Awards FY19,” <https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting/fy19-awards>. ⁹⁶⁹ Health Resources and Services Administration, “2019 Healthy Start Grant Awards,” <https://mchb.hrsa.gov/maternal-child-health-initiatives/healthy-start/awards>. ⁹⁷⁰ Health Resources and Services Administration, “2018 North Carolina Health Center Data,” <https://bphc.hrsa.gov/uds/datacenter.aspx?year=2018&state=NC>. ⁹⁷¹ Office of Minority Health, “State Partnership Grants,” <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease;Office%20of%20Minority%20Health,%20North%20Carolina%20Department%20of%20Health%20and%20Human%20Services%20State%20Partnership%20Program,https://minorityhealth.hhs.gov/omh/content.aspx?ID=9159&lvl=2&lvlid=51>.

<https://publichealth.nc.gov/wch/aboutus/ebhv.htm>
<https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/nc.pdf>
<https://publichealth.nc.gov/wch/aboutus/ebhv.htm>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting/fy19-awards>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/healthy-start/awards>
<https://bphc.hrsa.gov/uds/datacenter.aspx?year=2018&state=NC>
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease>
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease>
<https://minorityhealth.hhs.gov/omh/content.aspx?ID=9159&lvl=2&lvlid=51>

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based organizations and Native American tribes to engage in effective interventions.⁹⁷² In addition, the North Carolina Department of Health and Human Services was awarded \$150,000 for 2013-2015 to help community-based organizations and local health departments build their capacity to provide culturally and linguistically competent services and support evidence-based health and disease promotion interventions to eliminate health disparities.⁹⁷³

North Carolina also has a Perinatal Quality Collaborative that leads the AIM program in the state.⁹⁷⁴ North Carolina has adopted two AIM safety bundles on the Safe Reduction of Primary Care Cesarean Birth⁹⁷⁵ and Obstetric Hemorrhage.⁹⁷⁶

North Carolina has not yet adopted Medicaid Expansion in the state.⁹⁷⁷ However, for pregnant women who are eligible under North Carolina’s Medicaid program (NC Medicaid), they have access to maternal support services through the Baby Love Program.⁹⁷⁸ This program is offered to pregnant women during pregnancy and postpartum up to 60 days after the pregnancy ends.⁹⁷⁹ This program offers childbirth education to help women understand the changes during pregnancy, prepare for labor and delivery, and understand the postpartum period; health and behavior intervention with counseling and emotional support; and medical home visits conducted by qualified staff and include referrals to other programs for nutrition/dietary education, dental care, and counseling.⁹⁸⁰ Medicaid recipients also have access to the PMH program, even though PMH is not exclusively for customers of Medicaid.⁹⁸¹

North Carolina was one of 12 states (Colorado, Delaware, Florida, Georgia, Illinois, Louisiana, Missouri, New York, North Carolina, Ohio, Oklahoma and Utah) to participate in Merck for Mothers’ Every Mother Initiative between 2013 and 2016.⁹⁸² This initiative strengthened the capacity of these states—which represent one-third of the nation’s population—to better understand why women are dying from pregnancy complications in order to implement more

⁹⁷² Office of Minority Health, “North Carolina Department of Health and Human Services - State Partnership Program,” <https://minorityhealth.hhs.gov/omh/content.aspx?ID=9159&lvl=2&lvlid=51>. ⁹⁷³ Office of Minority Health, “State Partnership Grants,” <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease;Office%20of%20Minority%20Health,%20North%20Carolina%20Department%20of%20Health%20and%20Human%20Services,Division%20of%20Public%20Health,https://minorityhealth.hhs.gov/omh/content.aspx?ID=10159&lvl=2&lvlid=51>. ⁹⁷⁴ North Carolina Perinatal Quality Collaborative, “Initiatives,” <https://www.pqcnc.org/initiatives>. ⁹⁷⁵ North Carolina Perinatal Quality Collaborative, “AIM - Safe Reduction of Primary Cesarean Birth,” <https://www.pqcnc.org/node/13902>. ⁹⁷⁶ North Carolina Perinatal Quality Collaborative, “AIM - Obstetric Hemorrhage,” <https://www.pqcnc.org/node/13805>. ⁹⁷⁷ Kaiser Family Foundation, “Status of State Medicaid Expansion Decisions: Interactive Map,” Apr. 27, 2020, <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/>. ⁹⁷⁸ North Carolina Department of Health and Human Services, “Maternal Support Services (Baby Love Program),” <https://medicaid.ncdhhs.gov/beneficiaries/get-started/find-programs-and-services/maternal-support-services-baby-love-program>. ⁹⁷⁹ Ibid. ⁹⁸⁰ Ibid. ⁹⁸¹ North Carolina Department of Health and Human Services, “Pregnancy Medical Home,” <https://medicaid.ncdhhs.gov/providers/programs-services/family-planning-and-maternity/pregnancy-medical-home>. ⁹⁸² Merck for Mothers, Making Pregnancy and Childbirth Safer in the U.S.: Insights from 12 States, p. 2, <https://www.merckformothers.com/docs/States-Insights.pdf>.

<https://minorityhealth.hhs.gov/omh/content.aspx?ID=9159&lvl=2&lvlid=51>
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease>
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<https://medicaid.ncdhhs.gov/beneficiaries/get-started/find-programs-and-services/maternal-support-services-baby-love-program>
<https://medicaid.ncdhhs.gov/beneficiaries/get-started/find-programs-and-services/maternal-support-services-baby-love-program>
<https://medicaid.ncdhhs.gov/providers/programs-services/family-planning-and-maternity/pregnancy-medical-home>
<https://www.merckformothers.com/docs/States-Insights.pdf>

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effective solutions.⁹⁸³ The MMRCs in each of these states identified underlying causes of death (i.e. hypertension, hemorrhage) and examined emerging causes of death (i.e. mental health issues, substance use), and used their findings to craft solutions for health providers, women, and community that aim to save lives.⁹⁸⁴ North Carolina’s MMRC found that a disproportionate number of maternal deaths were caused by complications from cardiovascular disease and hypertension, and women were generally unaware of how their heart health may affect pregnancy.⁹⁸⁵ From this, North Carolina developed the Show Your Heart Some Love marketing campaign, through a partnership with other state-wide programs in order to prevent chronic disease and improve preconception health, which reached 8,400 women in the state.⁹⁸⁶ In addition, the MMRC collaborated with Community Care of North Carolina to implement a pilot project that identifies women of reproductive age with risk factors for maternal mortality or severe maternal morbidity by analyzing Medicaid claims data, and works to develop targeted strategies to improve primary care and preconception health for

these women.⁹⁸⁷

In May 2020, North Carolina legislators introduced House Bill 1141.⁹⁸⁸ This bill would require the North Carolina Department of Health and Human Services, the Division of Public Health, and the Office of Minority Health and Health Disparities to study whether implementation of an evidence-based implicit bias program for health care providers would improve maternal health and reduce infant mortality for Black women in North Carolina, and would appropriate funds for this study.⁹⁸⁹

New Jersey

State trends in maternal mortality in New Jersey mirror national statistics.⁹⁹⁰ The overall maternal death rate in New Jersey has decreased between 2009 and 2012 from 51.0 deaths per 100,000 live births to 32.8 deaths per 100,000 live births respectively.⁹⁹¹ New Jersey’s definition of maternal death aligns with the WHO’s definition.⁹⁹² When examining pregnancy-related

983 Ibid. 984 Ibid. 985 Ibid., 5. 986 Ibid., 5. 987 Ibid., 5. 988 Study Implicit Bias Program/Maternal Health, North Carolina House Bill 1141, (May 14, 2020), <https://www.ncleg.gov/Sessions/2019/Bills/House/PDF/H1141v1.pdf>. 989 Id. 990 State of New Jersey Department of Health, Trends in Statewide Maternal Mortality: New Jersey 2009-2013, p. 1, https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf. 991 Ibid., 17. 992 State of New Jersey Department of Health, “Maternal Mortality and Morbidity: Terms for New Jersey to Know,” https://nj.gov/health/maternal/documents/MM_definitions_infographic.pdf.

<https://www.ncleg.gov/Sessions/2019/Bills/House/PDF/H1141v1.pdf>
https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf
https://nj.gov/health/maternal/documents/MM_definitions_infographic.pdf

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deaths in New Jersey, which aligns with the CDC’s definition,⁹⁹³ the overall rate has decreased slightly over time.⁹⁹⁴ See Figures 4.6 and 4.7.

Source: State of New Jersey Department of Health, Trends in Statewide Maternal Mortality: New Jersey 2009-2013, p. 17, https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf; Centers for Disease Control and Prevention, “Pregnancy Mortality Surveillance System,” <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm>.

⁹⁹³New Jersey defines a pregnancy-related death as the death of a woman during pregnancy or within one year of the end of a pregnancy from a pregnancy complication, a chain of events initiated by pregnancy, or the aggravation of an unrelated condition by the physiologic effects of pregnancy.

⁹⁹⁴Ibid. See also supra note 25. ⁹⁹⁴ State of New Jersey Department of Health, Trends in Statewide Maternal Mortality: New Jersey 2009-2013, p. 1, https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf.

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2009 2010 2011 2012 2013

New Jersey U.S.

Figure 4.6.

Pregnancy-Related Deaths in New Jersey and the U.S. 2009-2013

Deaths

per

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Live

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ths

https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf
<https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm>
<https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm>
https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf

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Source: State of New Jersey Department of Health, Maternal Mortality in New Jersey 1999-2001, p. 25, https://nj.gov/health/fhs/maternalchild/documents/maternal_mortality_review_report_1999_2001.pdf; State of New Jersey Department of Health, Maternal Mortality in New Jersey 2002-2005, p. 26, https://nj.gov/health/fhs/maternalchild/documents/maternal_mortality_review_report_2002_2005.pdf; State of New Jersey Department of Health, Recommendations from the New Jersey Maternal Mortality Review Team: 2006-2008 deaths, p. 23, https://nj.gov/health/fhs/maternalchild/documents/maternal_mortality_review_team_2006_2008.pdf.

⁹⁹³New Jersey defines a pregnancy-related death as the death of a woman during pregnancy or within one year of the end of a pregnancy from a pregnancy complication, a chain of events initiated by pregnancy, or the aggravation of an unrelated condition by the physiologic effects of pregnancy.

The rate of pregnancy-related deaths in New Jersey has fluctuated since 1999. In recent years, the rate of pregnancy-related death reached a peak in 2009 with 21 deaths per 100,000 live births, soaring higher than the national average. However, since 2009, the pregnancy-related death rate has decreased and in 2013, the rate was 13.7 deaths per 100,000 live births. Pregnancy-related death rates in New Jersey have trended below national averages from 2010 to 2013.

However, based on 2013-2017 data reported by America’s Health Rankings, New Jersey ranked 47th nationally for its maternal mortality rate, ranking significantly higher than their reported national average during that time.⁹⁹⁵

New Jersey’s severe maternal morbidity rate has steadily increased from 2008 to 2015, according to the Health Resources and Services Administration National Outcomes Measures data. Rates of severe maternal mortality in New Jersey have been consistently trending above the national average from 2008 to 2015. See Figure 4.8.

⁹⁹⁵ America’s Health Rankings, “Health of Women and Children: Maternal Mortality, 2019,” https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality_a/state/NJ.

14.8

12.6

14.4

11.5

12

12.5

13

13.5

14

14.5

15

1999-2001 2002-2005 2006-2008

Figure 4.7.

Pregnancy-Related Deaths in New Jersey 1999-2008

Deaths
per
100,
000
Live
Births

https://nj.gov/health/fhs/maternalchild/documents/maternal_mortality_review_report_1999_2001.pdf
https://nj.gov/health/fhs/maternalchild/documents/maternal_mortality_review_report_2002_2005.pdf
https://nj.gov/health/fhs/maternalchild/documents/maternal_mortality_review_team_2006_2008.pdf
https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality_a/state/NJ
https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality_a/state/NJ

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Source: Health Resources and Services Administration, "National Outcome Measures," <https://mchb.tvisdata.hrsa.gov/PrioritiesAndMeasures/NationalOutcomeMeasures>. Chart adapted by the Commission.

In 2016, the New Jersey reported the percentage of severe maternal morbidity events with transfusions was 32.8 percent for women who experienced surgical/cesarean births, as opposed to 9.9 percent for women who had vaginal births and 16.1 percent for all hospitalizations.⁹⁹⁶

There is a significant racial disparity in pregnancy-related deaths in New Jersey.⁹⁹⁷ In particular, the maternal mortality rate in New Jersey is over 5 times higher for Black women than White women. See Figure 4.9.

996 State of New Jersey Department of Health, "Overview of Statewide Rates of Complications Associated with Delivery Hospitalizations, 2016," https://nj.gov/health/maternal/morbidity/mhh_reportcard/statewide_rates.shtml. 997 State of New Jersey Department of Health, Trends in Statewide Maternal Mortality: New Jersey 2009-2013, p. 1, https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf.

112.6 123.7 128.6
133.1 137.7 138.7 143.9 144.1
138 139.8 139.3 145.8 151.7
154.3 161.5 162.5
0
20
40
60
80
100
120
140
160
180
2008 2009 2010 2011 2012 2013 2014 2015

National - HCUP - State Inpatient Databases New Jersey - HCUP - State Inpatient Databases

Figure 4.8.
Rate of Severe Maternal Morbidity in New Jersey and U.S. 2008 to 2015

Rate
per
10,
000
deliv
ery
hospi
taliza
tions

<https://mchb.tvisdata.hrsa.gov/PrioritiesAndMeasures/NationalOutcomeMeasures>
https://nj.gov/health/maternal/morbidity/mhh_reportcard/statewide_rates.shtml
https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf

138

Source: State of New Jersey Department of Health, Trends in Statewide Maternal Mortality: New Jersey 2009-2013, pp. 17-18, https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf

The pregnancy-related death rate for Black women in New Jersey has decreased slightly over time, on par with national trends, from 48.8 deaths per 100,000 live births in 2009 to 46.5 deaths per 100,000 live births in 2013. However, the racial disparity in pregnancy-related deaths among Black and White women in New Jersey has persisted during this period. Women of color accounted for almost 60 percent of all pregnancy-related deaths in New Jersey during this period, with 46.2 percent being Black women, 15.4 percent being Latina women, and 7.7 percent being Asian women (as compared to 26.9 percent of White women).⁹⁹⁸

Data from 2016 on severe maternal morbidity in New Jersey shows significant racial disparities.⁹⁹⁹ In 2016, the rate of severe maternal morbidity events with transfusions in New Jersey was highest for Black women, with 31.2 per 1,000 delivery hospitalizations, as compared to 20.3 per 1,000 delivery hospitalizations for Latina women, 19.3 per 1,000 delivery hospitalizations for "Other/multi-race" women, 5.8 per 1,000 delivery hospitalizations for Asian women, and 13.4 per 1,000 delivery hospitalizations for White women.¹⁰⁰⁰ The rate for women who experienced postpartum hemorrhages with transfusions in 2016 was also highest for Black women, with 54.4 hemorrhages per 1,000 delivery hospitalizations, as compared to 50.6 for

⁹⁹⁸ State of New Jersey Department of Health, Trends in Statewide Maternal Mortality: New Jersey 2009-2013, pp. ii and 6, https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf. This report did not report maternal mortality statistics for any other racial/ethnic groups aside from those already mentioned. ⁹⁹⁹ State of New Jersey Department of Health, "Overview of Statewide Rates of Complications Associated with Delivery Hospitalizations, 2016," https://nj.gov/health/maternal/morbidity/mhh_reportcard/statewide_rates.shtml. ¹⁰⁰⁰ Ibid. Rates of severe maternal morbidity were not reported for any other specific racial/ethnic groups aside from those already mentioned.

10.2 4 8.2 8.5
12.6
48.8
62.7
25.7
44.6 46.5
21 14.1 13.3 11.6 13.7
0
10
20

2009 2010 2011 2012 2013

White Black All

Figure 4.9.

Rate of Pregnancy-Related Deaths in New Jersey by Race 2009 to 2013

Dea

ths

per

100,

000

Live

Bir

ths

https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf

https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf

https://nj.gov/health/maternal/morbidity/mhh_reportcard/statewide_rates.shtml

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Latina women, 50.0 for White women, 46.1 for Asian women, and 40.5 percent for “Other/Multi-race” women (per 1,000 delivery hospitalizations).1001

New Jersey has had a long history of reviewing maternal deaths, having been the second state in the U.S. to establish an MMRC in 1932.1002 Since 1999, the maternal mortality review process has evolved to become interdisciplinary, using a steering committee to oversee the process.1003 Since 1999, the MMRC has reviewed approximately 700 cases of maternal death, and has aided the process of several quality improvement initiatives to improve the safety of pregnant women in New Jersey.1004

In 2019, New Jersey Governor Phil Murphy signed legislation that formalized the establishment of a Maternal Mortality Review Commission to annually review and report maternal deaths in the state.1005 The Commission would be comprised of 31 interdisciplinary members who would be mandated to perform reviews and prepare reports to inform about maternal mortality on a regular basis.1006 This legislation formally established New Jersey’s MMRC within the New Jersey Department of Health and increased the legal authority of the committee.1007

In 2019, New Jersey’s MMRC was awarded a total of \$2.25 million in funding through CDC’s ERASE MM program to support the enhancement of its state MMRC.1008 New Jersey will receive \$450,000 annually through September 29, 2024.1009 A total of 24 grants for 25 states were awarded, with each state receiving between \$150,000 and \$600,000 each year.1010 New

1001 Ibid. Rates of hemorrhage were not reported for any other specific racial/ethnic groups aside from those already mentioned. 1002 Centers for Disease Control and Prevention, State Maternal Mortality Review: Accomplishments of Nine States, p. 46, <http://www.amchp.org/Calendar/Webinars/Womens-Health-Info-Series/Documents/Strll.pdf>. 1003 Ibid. 1004 State of New Jersey Department of Health, Trends in Statewide Maternal Mortality: New Jersey 2009-2013, p. 1, https://www.nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf. 1005 P.L. 2019, c.75; N.J. A1862 (2018), https://www.njleg.state.nj.us/2018/Bills/A2000/1862_I1.HTM. 1006 Ibid.; see also State of New Jersey, Governor Phil Murphy, “Governor Murphy Signs Legislation to Establish Maternal Mortality Review Committee,” May 1, 2019, <https://nj.gov/governor/news/news/562019/approved/20190501a.shtml>. 1007 State of New Jersey Department of Health, “New Jersey Department of Health Receives \$450,000 Federal Grant to Support Maternal Mortality Efforts,” Aug. 22, 2019, [https://www.nj.gov/health/news/2019/approved/20190822a.shtml#~:text=The%20New%20Jersey%20Maternal%20Mortality%20Review%20Committee%20\(NJMMRC\)%20works%20to,review%20all%20pregnancy%20associated%20deaths.&text=%E2%80%9CBy%20enhancing%20data%20collection%20and,findings%20into%20better%20ca re%20quality.%E2%80%9D](https://www.nj.gov/health/news/2019/approved/20190822a.shtml#~:text=The%20New%20Jersey%20Maternal%20Mortality%20Review%20Committee%20(NJMMRC)%20works%20to,review%20all%20pregnancy%20associated%20deaths.&text=%E2%80%9CBy%20enhancing%20data%20collection%20and,findings%20into%20better%20ca re%20quality.%E2%80%9D). 1008 Association for Maternal & Child Health Programs, “AMCHP Congratulates States that Win New Federal Grants to Support Maternal Mortality Reviews,” Aug. 16, 2019, <http://www.amchp.org/AboutAMCHP/NewsRoom/Documents/MM%20Review%20Federal%20Grants.pdf>; Lilo H. Stainton, “New Federal Funding to Boost NJ Maternal Health Improvements,” NJ Spotlight, Sep. 25, 2019, <https://www.njspotlight.com/2019/09/new-federal-funding-to-boost-nj-maternal-health-improvements/>. 1009 State of New Jersey Department of Health, “New Jersey Department of Health Receives \$450,000 Federal Grant to Support Maternal Mortality Efforts,” Aug. 22, 2019, <https://www.nj.gov/health/news/2019/approved/20190822a.shtml>. 1010 Association of Maternal & Child Health Programs, “AMCHP Congratulates States that Win New Federal Grants to Support Maternal Mortality Reviews,” Aug. 16, 2019, <http://www.amchp.org/AboutAMCHP/NewsRoom/Documents/MM%20Review%20Federal%20Grants.pdf>; Centers for Disease Control and Prevention, FY 2021 Justification of Estimates for Appropriation Committees, p. 158,

<http://www.amchp.org/Calendar/Webinars/Womens-Health-Info-Series/Documents/Strll.pdf>

https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf

https://www.njleg.state.nj.us/2018/Bills/A2000/1862_I1.HTM

<https://nj.gov/governor/news/news/562019/approved/20190501a.shtml>

[https://www.nj.gov/health/news/2019/approved/20190822a.shtml#~:text=The%20New%20Jersey%20Maternal%20Mortality%20Review%20Committee%20\(NJMMRC\)%20works%20to,review%20all%20pregnancy%20associated%20deaths.&](https://www.nj.gov/health/news/2019/approved/20190822a.shtml#~:text=The%20New%20Jersey%20Maternal%20Mortality%20Review%20Committee%20(NJMMRC)%20works%20to,review%20all%20pregnancy%20associated%20deaths.&)

[https://www.nj.gov/health/news/2019/approved/20190822a.shtml#~:text=The%20New%20Jersey%20Maternal%20Mortality%20Review%20Committee%20\(NJMMRC\)%20works%20to,review%20all%20pregnancy%20associated%20deaths.&](https://www.nj.gov/health/news/2019/approved/20190822a.shtml#~:text=The%20New%20Jersey%20Maternal%20Mortality%20Review%20Committee%20(NJMMRC)%20works%20to,review%20all%20pregnancy%20associated%20deaths.&)

[https://www.nj.gov/health/news/2019/approved/20190822a.shtml#~:text=The%20New%20Jersey%20Maternal%20Mortality%20Review%20Committee%20\(NJMMRC\)%20works%20to,review%20all%20pregnancy%20associated%20deaths.&](https://www.nj.gov/health/news/2019/approved/20190822a.shtml#~:text=The%20New%20Jersey%20Maternal%20Mortality%20Review%20Committee%20(NJMMRC)%20works%20to,review%20all%20pregnancy%20associated%20deaths.&)

<http://www.amchp.org/AboutAMCHP/NewsRoom/Documents/MM%20Review%20Federal%20Grants.pdf>

<https://www.njspotlight.com/2019/09/new-federal-funding-to-boost-nj-maternal-health-improvements/>

<https://www.nj.gov/health/news/2019/approved/20190822a.shtml>

<http://www.amchp.org/AboutAMCHP/NewsRoom/Documents/MM%20Review%20Federal%20Grants.pdf>

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Jersey allocated \$11.5 million in Title V funds in its FY 2020 budget to maternal and child health programs,1011 and spent \$10.3 million on these programs in FY 2018.1012 New Jersey’s MMRC is supported by Title V funds.1013

One notable initiative to emerge from recommendations from feedback from New Jersey’s MMRC1014 was the Perinatal Mood Disorders Initiative, also known as the Speak Up When You’re Down campaign.1015 In 2006, New Jersey became the first state in the U.S. to pass legislation to mandate universal screening, education, and referral for perinatal mood disorders in hospitals that offer inpatient obstetric services.1016 The program collaborates with member hospitals, health centers, mental health clinicians, and community-based organizations in order to further the following goals:

- Provide education to healthcare providers on perinatal mood disorders signs and symptoms and screening methods, and information on local perinatal mental health resources
- Raise awareness about perinatal mood disorders and provide information about hospital and community referrals to assist women and their families
- Support member hospitals and community-based organizations by establishing new mothers’ groups
- Provide a continuum of care during the perinatal period by conducting follow-up phone calls to at-risk mothers to ensure they are connected to mental health services and/or support groups.
- Monitor, collect and analyze member hospital perinatal mood disorders screening data ■ Maintain an updated listing of regional support groups and a directory of perinatal mental health providers1017

<https://www.cdc.gov/budget/documents/fy2021/FY-2021-CDC-congressional-justification.pdf>; see also supra note 620. The amounts of the individual state awards were not published in these sources. 1011 Association of Maternal & Child Health Programs, “New Jersey Maternal and Child Health Block Grant 2020,” <http://www.amchp.org/Policy-Advocacy/MCHAdvocacy/2020%20State%20Profiles/New%20Jersey%202020%20FINAL.pdf>. 1012 Health Resources and Services Administration, “Title V MCH Block Grant Funding: State Information,” <https://mchb.tvisdata.hrsa.gov/State/Detail/NC>. 1013 Maternal and Child Health Services Title V Block Grant, New Jersey FY 2020 Application/FY2018 Annual Report, 2019, p. 10, https://mchb.tvisdata.hrsa.gov/uploadedfiles/StateSubmittedFiles/2020/NJ/NJ_TitleV_PrintVersion_FY20.pdf. 1014 State of New Jersey Department of Health, Trends in Statewide Maternal Mortality: New Jersey 2009-2013, p. 20, https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf. 1015 Partnership for Maternal & Child Health of Northern New Jersey, “Perinatal Mood Disorders,” <https://partnershipmch.org/programs/ppd/>; State of New Jersey Department of Health, “Mental Health Concerns for New Parents,” <https://nj.gov/health/fhs/maternalchild/mentalhealth/>. 1016 Partnership for Maternal & Child Health of Northern New Jersey, “Perinatal Mood Disorders,” <https://partnershipmch.org/programs/ppd/>. 1017 Ibid.

<https://www.cdc.gov/budget/documents/fy2021/FY-2021-CDC-congressional-justification.pdf>

<http://www.amchp.org/Policy-Advocacy/MCHAdvocacy/2020%20State%20Profiles/New%20Jersey%202020%20FINAL.pdf>

<http://www.amchp.org/Policy-Advocacy/MCHAdvocacy/2020%20State%20Profiles/New%20Jersey%202020%20FINAL.pdf>

<https://mchb.tvisdata.hrsa.gov/State/Detail/NC>

https://mchb.tvisdata.hrsa.gov/uploadedfiles/StateSubmittedFiles/2020/NJ/NJ_TitleV_PrintVersion_FY20.pdf

https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf

<https://partnershipmch.org/programs/ppd/>

<https://nj.gov/health/fhs/maternalchild/mentalhealth/>

<https://partnershipmch.org/programs/ppd/>

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Since the Speak Up When You’re Down initiative started, over \$9 million has been invested into education, screening, and treatment of perinatal mood disorders in the state.1018

New Jersey also has the Improving Pregnancy Outcomes program, aimed at improving maternal and infant health outcomes for high-need women and reducing racial, ethnic, and economic disparities through a collaborative and community-driven approach.1019 This initiative utilizes two different models, which are 1) the Community Health Worker model that conducts outreach and client recruitment within a targeted community; and 2) the Central Intake, which is a single point of entry for screening and referral, using standardized screening tools and working to eliminate duplication of services and efforts.1020 Both the Speak Up When You’re Down and Improving Pregnancy Outcomes programs are funded through the MCH Title V Block Grant program.1021

New Jersey has been focused on understanding the needs and experiences of Black women in the state, supporting community models of care that acknowledge the impacts of structural racism.1022 In 2018, New Jersey awarded \$4.3 million in funds through its Healthy Women, Healthy Families initiative in an effort to improve maternal and infant health outcomes for Black families across New Jersey.1023 This effort would work to improve access and quality of perinatal care in order to reduce disparities. In addition, \$450,000 was allocated for a doula pilot program, partnering with Uzazi Village in Kansas City for community doula training, in municipalities with high rates of Black infant mortality to improve birth outcomes for Black families.1024 Shereef Elnahal, MD, MBA, Commissioner at the New Jersey Department of Health, reported that approximately 17,000 women had been screened through Healthy Women, Healthy Families, and

more than 9,000 had been referred to health and community health services.1025 Additionally, more than 60 healthy babies were born with the help of doulas, and New Jersey's state Medicaid program started reimbursing the cost of doula care in July 2019 as a direct result of the program's success.1026

New Jersey has received federal funding for participation in several national HHS programs. the Health Resources and Services Administration 's MIECHV program supports New Jersey's

1018 State of New Jersey Department of Health, Trends in Statewide Maternal Mortality: New Jersey 2009-2013, p. 1, https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf. 1019 Association of Maternal & Child Health Programs, "New Jersey Maternal and Child Health Block Grant 2019," <http://www.amchp.org/Policy-Advocacy/MCHAdvocacy/2019%20State%20Profiles/New%20Jersey%202019.pdf>. 1020 Ibid. 1021 Ibid. 1022 Kim Krisberg, "Programs work from within to prevent black maternal deaths: Workers targeting root cause — Racism," The Nation's Health, August 2019, <http://thenationshealth.aphapublications.org/content/49/6/1.3-0>. 1023 New Jersey Department of Health, "NJ Agencies Awarded \$4.7 Million to Improve Black Infant, Maternal Mortality," Jul. 11, 2018, <https://www.state.nj.us/health/news/2018/20180711a.shtml>. 1024 Ibid.; Kim Krisberg, "Programs work from within to prevent black maternal deaths: Workers targeting root cause — Racism," The Nation's Health, August 2019, <http://thenationshealth.aphapublications.org/content/49/6/1.3-0>. 1025 Kim Krisberg, "Programs work from within to prevent black maternal deaths: Workers targeting root cause — Racism," The Nation's Health, August 2019, <http://thenationshealth.aphapublications.org/content/49/6/1.3-0>. 1026 Ibid.

https://nj.gov/health/fhs/maternalchild/documents/nj_maternal_mortality_trends_2009_2013.pdf
<http://www.amchp.org/Policy-Advocacy/MCHAdvocacy/2019%20State%20Profiles/New%20Jersey%202019.pdf>
<http://thenationshealth.aphapublications.org/content/49/6/1.3-0>
<https://www.state.nj.us/health/news/2018/20180711a.shtml>
<http://thenationshealth.aphapublications.org/content/49/6/1.3-0>
<http://thenationshealth.aphapublications.org/content/49/6/1.3-0>
<http://thenationshealth.aphapublications.org/content/49/6/1.3-0>

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Home Visiting Program,1027 and served 10,595 participants, 5,805 households in 2019, proving a total of 60,869 home visits that year.1028 New Jersey utilizes three evidence-based models for home visiting: Healthy Families America, Nurse-Family Partnership, and Parents as Teachers.1029 In FY 2019, North Carolina received \$10.8 million in funds for its Home Visiting Program.1030 In 2019, New Jersey received 3 awards through the Health Resources and Services Administration 's Healthy Start Program for a total of \$3.2 million in funding.1031 In 2018, the Health Resources and Services Administration funded 23 Health Centers in New Jersey, that served over 548,000 patients, a majority of which were low-income, women, and people of color.1032 In addition, through the Office of Minority Health's State Partnership Program to Improve Minority Health, the New Jersey Minority and Multicultural Health Office received a grant for \$140,000 for 2010-2013.1033 This award funded a project that sought to strengthen, evaluate and develop new collaborations among programs in the department to develop policies for a comprehensive infrastructure, targeting racial and ethnic populations.1034 New Jersey's Department of Health and the Office of Minority and Multicultural Health also received \$200,000 for 2015-2020 to conduct a project that seeks to engage in interventions in partnership with community-based organizations to develop health disparities profiles of older Black residents in the greater Newark area to assess indicators of mental health status; mental and brain health awareness and knowledge, and physical activity.1035

New Jersey has a Perinatal Quality Collaborative, which is a statewide partnership of stakeholders that work to improve the quality and safety of maternal and infant healthcare in New Jersey.1036 New Jersey is one of 13 states funded through the CDC's Division of

1027 State of New Jersey, Department of Children and Families, "Home Visitation Programs," <https://www.nj.gov/dcf/families/early/visitation/>. 1028 Health Resources and Services Administration, "North Carolina's MIECHV Program FY 2019," <https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/nc.pdf>. 1029 Ibid. 1030 Health Resources and Services Administration, "Maternal, Infant, and Early Childhood Home Visiting Awards FY19," <https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting/fy19-awards>. 1031 Health Resources and Services Administration, "2019 Healthy Start Grant Awards," <https://mchb.hrsa.gov/maternal-child-health-initiatives/healthy-start/awards>. 1032 Health Resources and Services Administration, "2018 New Jersey Health Center Data," <https://bphc.hrsa.gov/uds/datacenter.aspx?year=2018&state=NJ>. 1033 Office of Minority Health, "State Partnership Grants," <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease>; Office of Minority Health, "New Jersey Minority and Multicultural Health Office - State Partnership Program," <https://minorityhealth.hhs.gov/omh/content.aspx?ID=9166&lvl=2&lvlid=51>. 1034 Office of Minority Health, "New Jersey Minority and Multicultural Health Office - State Partnership Program," <https://minorityhealth.hhs.gov/omh/content.aspx?ID=9166&lvl=2&lvlid=51>. 1035 Office of Minority Health, "State Partnership Grants," <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease>; Office of Minority Health, "Grant Program: STATE PARTNERSHIP INITIATIVE TO ADDRESS HEALTH DISPARITIES (SPI)," <https://www.minorityhealth.hhs.gov/omh/content.aspx?lvl=2&lvlid=51&ID=133>. 1036 "New Jersey Perinatal Quality Collaborative," p. 1, https://www.essexadapt.org/wp-content/uploads/2018/10/NJ-Perinatal-Quality-Collaborative_Informational-Flyer-10-02-18.pdf.

<https://www.nj.gov/dcf/families/early/visitation/>
<https://mchb.hrsa.gov/sites/default/files/mchb/MaternalChildHealthInitiatives/HomeVisiting/pdf/nc.pdf>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting/fy19-awards>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/healthy-start/awards>
<https://bphc.hrsa.gov/uds/datacenter.aspx?year=2018&state=NJ>
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease>
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease>
<https://minorityhealth.hhs.gov/omh/content.aspx?ID=9166&lvl=2&lvlid=51>
<https://minorityhealth.hhs.gov/omh/content.aspx?ID=9166&lvl=2&lvlid=51>
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease>
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=51#~:text=The%20purpose%20of%20the%20State,%2C%20asthma%2C%20cancer%2C%20cardiovascular%20disease>
<https://www.minorityhealth.hhs.gov/omh/content.aspx?lvl=2&lvlid=51&ID=133>
https://www.essexadapt.org/wp-content/uploads/2018/10/NJ-Perinatal-Quality-Collaborative_Informational-Flyer-10-02-18.pdf
https://www.essexadapt.org/wp-content/uploads/2018/10/NJ-Perinatal-Quality-Collaborative_Informational-Flyer-10-02-18.pdf

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Reproductive Health,1037 receiving \$1 million in funding over the course of 5 years.1038 New Jersey is enrolled in AIM, and its Perinatal Quality Collaborative has implemented both the obstetrical hemorrhage and severe hypertension patient safety bundles,1039 and has developed a toolkit for implementation of these patient safety bundles.1040 It is also partnering with the New Jersey Department of Health to reduce the incidence of cesarean section births for low-risk, first-time mothers.1041

New Jersey adopted and implemented Medicaid expansion in 2014.1042 New Jersey's Medicaid program serves pregnant women and covers eligible women with household incomes at or below 200 percent of the federal poverty level.1043 New Jersey Medicaid covers pregnant women during the pregnancy and for 60 days after delivery or after the date of the end of the pregnancy.1044 The state Medicaid program covers clinical physician services, inpatient and outpatient hospital services, including pediatric and prenatal care, nurse midwife services, and mental health services.1045

First Lady Tammy Murphy of New Jersey has spearheaded a new initiative to reduce maternal mortality in New Jersey and eliminate racial disparities in maternal healthcare called Nurture NJ.1046 This initiative acknowledges that New Jersey's maternal mortality rate is one of the worst in the U.S., and seeks to boost a statewide awareness campaign with a "multi-pronged, multi-agency approach to improve maternal and infant health among New Jersey women and children."1047 The goal of this initiative is to make New Jersey the safest place in the country to give birth and raise a baby.1048 Initiatives include:

- An annual Black Maternal and Infant Health Leadership Summit
- First Lady's Family Festival event series
- Quarterly interdepartmental maternal and infant health meetings

1037 Centers for Disease Control and Prevention, "State Perinatal Quality Collaboratives," <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pqc-states.html>. 1038 "New Jersey Perinatal Quality Collaborative," p. 1, https://www.essexadapt.org/wp-content/uploads/2018/10/NJ-Perinatal-Quality-Collaborative_Informational-Flyer-10-02-18.pdf. 1039 Ibid. 1040 New Jersey Hospital Association Perinatal Quality Collaborative, Reducing Maternal Morbidity and Mortality Toolkit, <http://www.njha.com/media/516755/NJ-AIM-Toolkit-NJHAFinal.pdf>. 1041 "New Jersey Perinatal Quality Collaborative," p. 1, https://www.essexadapt.org/wp-content/uploads/2018/10/NJ-Perinatal-Quality-Collaborative_Informational-Flyer-10-02-18.pdf. 1042 The Kaiser Family Foundation, "Status of State Medicaid Expansion Decisions: Interactive Map," <https://www.kff.org/medicaid/issue-brief/status-of-state-medicare-expansion-decisions-interactive-map/>. 1043 State of New Jersey, Department of Human Services, Division of Medical Assistance & Health Services, "NJ Medicaid, Pregnant Women," <https://www.state.nj.us/humanservices/dmahs/clients/medicaid/pregnant/index.html>. 1044 Ibid. 1045 State of New Jersey, Department of Human Services, Division of Medical Assistance & Health Services, "NJ FamilyCare Maternal Health Coverage," p. 2, https://www.state.nj.us/humanservices/dmahs/clients/medicaid/pregnant/pregnancy_fact_sheet.pdf. 1046 Lilo H. Stainton, "First Lady Spearheading Plan to Reduce NJ's High Maternal Mortality Rate," Jan. 24, 2020, <https://www.njspotlight.com/2020/01/first-lady-spearheading-plan-to-reduce-njs-high-maternal-mortality-rate/>. 1047 State of New Jersey, Governor Phil Murphy, "Nurture NJ," <https://nj.gov/governor/admin/fl/nurturenj.shtml>. 1048 Ibid.

<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pqc-states.html>
https://www.essexadapt.org/wp-content/uploads/2018/10/NJ-Perinatal-Quality-Collaborative_Informational-Flyer-10-02-18.pdf
https://www.essexadapt.org/wp-content/uploads/2018/10/NJ-Perinatal-Quality-Collaborative_Informational-Flyer-10-02-18.pdf
<http://www.njha.com/media/516755/NJ-AIM-Toolkit-NJHAFinal.pdf>
https://www.essexadapt.org/wp-content/uploads/2018/10/NJ-Perinatal-Quality-Collaborative_Informational-Flyer-10-02-18.pdf
https://www.essexadapt.org/wp-content/uploads/2018/10/NJ-Perinatal-Quality-Collaborative_Informational-Flyer-10-02-18.pdf
<https://www.kff.org/medicaid/issue-brief/status-of-state-medicare-expansion-decisions-interactive-map/>
<https://www.state.nj.us/humanservices/dmahs/clients/medicaid/pregnant/index.html>
https://www.state.nj.us/humanservices/dmahs/clients/medicaid/pregnant/pregnancy_fact_sheet.pdf
<https://www.njspotlight.com/2020/01/first-lady-spearheading-plan-to-reduce-njs-high-maternal-mortality-rate/>
<https://nj.gov/governor/admin/fl/nurturenj.shtml>

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- A comprehensive, statewide strategic plan to reduce maternal mortality by 50% over five years and eliminate racial disparities in birth outcomes1049

Nurture NJ will utilize philanthropic funding and national expertise, with partners Nicholson Foundation and the Community Health Acceleration Partnership that have committed \$282,000 to the initiative through June 2020.1050 This initiative is a short-term strategy to "triage" maternal health problems, seeking to connect low-income women with diverse health services, but a long-term solution is still being developed that will build upon existing findings and programs that will seek additional investment and will solicit input from clinicians, academics, mothers, and other nongovernmental experts to help low-income women access quality maternal care.1051

In recent years, the New Jersey legislature has also been more focused on addressing maternal mortality and reducing racial disparities in maternal health care. New Jersey recently passed legislation to form the New Jersey Maternity Care Quality Collaborative,1052 a multidisciplinary stakeholder team to identify quality improvements for birthing centers in order to improve maternal health outcomes.1053 The Collaborative aligns its focus on overarching statewide goals of decreasing maternal mortality, maternal morbidity, and racial disparities in maternal health in New Jersey, working under the umbrella of Nurture NJ.1054

The New Jersey Department of Health was awarded over \$10 million over 5 years for the State MHI program, one of 9 awardees working to improve maternal health outcomes.1055 The New Jersey Department of Health was one of 9 awardees, and funding will support the efforts of the newly-formed New Jersey Maternity Care Quality Collaborative,1056 to develop blueprints for change and identify proven strategies to help birthing centers improve maternal health outcomes.1057 This funding will also enhance New Jersey's capacity to collect and analyze maternal health data.1058

1049 Ibid. 1050 Lilo H. Stainton, "First Lady Spearheading Plan to Reduce NJ's High Maternal Mortality Rate," Jan. 24, 2020, <https://www.njspotlight.com/2020/01/first-lady-spearheading-plan-to-reduce-njs-high-maternal-mortality-rate/>. 1051 Ibid. 1052 N.J. P.L. 2019, Chapter 133 (June 24, 2019), https://www.njleg.state.nj.us/2018/Bills/AL19/133_HTM. 1053 Lilo H. Stainton, "New Federal Funding to Boost NJ Maternal Health Improvements," NJ Spotlight, Sep. 25, 2019, <https://www.njspotlight.com/2019/09/new-federal-funding-to-boost-nj-maternal-health-improvements/>. 1054 State of New Jersey Department of Health, "New Jersey Department of Health Launches Maternal Data Center with Release of Cesarean Birth Rates," May 28, 2019, <https://www.nj.gov/health/news/2019/approved/20190528a.shtml#~:text=The%20New%20Jersey%20Maternal%20Care%20Quality%20Collaborative%20is%20a%20multidisciplinary,of%20maternal%20healthcare%20in%20NJ.&text=The%20data%20released%20today%20is,System%20and%20birth%20record%20data>. 1055 Lilo H. Stainton, "New Federal Funding to Boost NJ Maternal Health Improvements," NJ Spotlight, Sep. 25, 2019, <https://www.njspotlight.com/2019/09/new-federal-funding-to-boost-nj-maternal-health-improvements/>; Health Resources and Services Administration, "Maternal Health Awardees FY19," <https://mchb.hrsa.gov/maternal-child-health-initiatives/fy19-maternal-health-awards>. 1056 See supra notes 1052-1053. 1057 Lilo H. Stainton, "New Federal Funding to Boost NJ Maternal Health Improvements," NJ Spotlight, Sep. 25, 2019, <https://www.njspotlight.com/2019/09/new-federal-funding-to-boost-nj-maternal-health-improvements/>. 1058 Ibid.

<https://www.njspotlight.com/2020/01/first-lady-spearheading-plan-to-reduce-njs-high-maternal-mortality-rate/>
https://www.njleg.state.nj.us/2018/Bills/AL19/133_HTM
<https://www.njspotlight.com/2019/09/new-federal-funding-to-boost-nj-maternal-health-improvements/>
<https://www.nj.gov/health/news/2019/approved/20190528a.shtml#~:text=The%20New%20Jersey%20Maternal%20Care%20Quality%20Collaborative%20is%20a%20multidisciplinary,of%20maternal%20healthcare%20in%20NJ.&text=The%20data%20released%20today%20is,System%20and%20birth%20record%20data>
<https://www.nj.gov/health/news/2019/approved/20190528a.shtml#~:text=The%20New%20Jersey%20Maternal%20Care%20Quality%20Collaborative%20is%20a%20multidisciplinary,of%20maternal%20healthcare%20in%20NJ.&text=The%20data%20released%20today%20is,System%20and%20birth%20record%20data>

<https://www.nj.gov/health/news/2019/09/new-federal-funding-to-boost-nj-maternal-health-improvements/>
<https://mchb.hrsa.gov/maternal-child-health-initiatives/fy19-maternal-health-awards>
<https://www.nj.gov/health/news/2019/09/new-federal-funding-to-boost-nj-maternal-health-improvements/>

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In May 2019, the New Jersey Department of Health announced the launch of its Maternal Data Center.1059 This launch also included the release of surgical/cesarean section birth rates by hospital among women at low-risk for complications, indicating a rate of 30.3 surgical procedures per 100 live births, which is higher than the national target of 23.9 surgical procedures per 100 live births.1060 The Maternal Data Center's website includes this data on unnecessary surgical births, as well as other data on maternal health including a Maternal Health Report Card of hospitals across NJ.1061 New Jersey Health Commissioner Shereef Elnahal indicated that this launch "represents the first data to action release through the New Jersey Maternal Data Center and the New Jersey Maternal Care Quality Collaborative," and that "Nurture NJ and the Department are focused on sharing high quality data in order to drive improvements."1062

Also in 2019, New Jersey passed legislation that provide for the expansion of Medicaid for group prenatal care, which allow health centers to bill for these services.1063 Specifically, group prenatal care that follows the CenteringPregnancy® model is covered by Medicaid, which provides for 10 prenatal visits of 90 to 120 minutes each.1064 This legislation increases access to prenatal care among vulnerable populations, aiming to improve maternal health and birth outcomes for women in New Jersey.1065 In addition, there have been bills signed into law that provide Medicaid coverage for doula care; establish perinatal episode of care pilot program in Medicaid; prohibit health benefits coverage for certain non-medically necessary early elective deliveries under Medicaid; and codify current practice regarding the completion of a Perinatal Risk Assessment form by certain Medicaid providers.1066

Other bills have been introduced in New Jersey that would establish a maternal healthcare pilot program to evaluate a shared decision making tool; establish a maternity care public awareness campaign; require that hospital emergency departments ask women of childbearing age about recent pregnancy history; develop a set of standards for respectful care at birth and a public outreach initiative; and urge the CDC to develop a uniform data collection system on maternal

1059 Ibid. 1060 State of New Jersey Department of Health, "New Jersey Maternal Health Data Center," <https://nj.gov/health/maternal/>. 1061 State of New Jersey Department of Health, "New Jersey Department of Health Launches Maternal Data Center with Release of Cesarean Birth Rates," May 26, 2019, <https://www.nj.gov/health/news/2019/09/new-federal-funding-to-boost-nj-maternal-health-improvements/>. 1062 Ibid. 1063 "New Jersey Expands Medicaid Program to Include Coverage for CenteringPregnancy® to Improve Maternal Health and Birth Outcomes," <https://www.globenewswire.com/news-release/2019/08/13/1901222/0/en/New-Jersey-Expands-Medicaid-Program-to-Include-Coverage-for-CenteringPregnancy-to-Improve-Maternal-Health-and-Birth-Outcomes.html>. 1064 Ibid. 1065 Ibid. 1066 State of New Jersey, Governor Phil Murphy, "Governor Murphy Signs Legislative Package to Combat New Jersey's Maternal and Infant Health Crisis," May 6, 2019, <https://www.nj.gov/governor/news/news/562019/20190506a.shtml>.

<https://nj.gov/health/maternal/>
<https://www.nj.gov/health/news/2019/09/new-federal-funding-to-boost-nj-maternal-health-improvements/>
<https://www.nj.gov/health/news/2019/09/new-federal-funding-to-boost-nj-maternal-health-improvements/>
<https://www.nj.gov/health/news/2019/09/new-federal-funding-to-boost-nj-maternal-health-improvements/>
<https://www.globenewswire.com/news-release/2019/08/13/1901222/0/en/New-Jersey-Expands-Medicaid-Program-to-Include-Coverage-for-CenteringPregnancy-to-Improve-Maternal-Health-and-Birth-Outcomes.html>
<https://www.globenewswire.com/news-release/2019/08/13/1901222/0/en/New-Jersey-Expands-Medicaid-Program-to-Include-Coverage-for-CenteringPregnancy-to-Improve-Maternal-Health-and-Birth-Outcomes.html>
<https://www.globenewswire.com/news-release/2019/08/13/1901222/0/en/New-Jersey-Expands-Medicaid-Program-to-Include-Coverage-for-CenteringPregnancy-to-Improve-Maternal-Health-and-Birth-Outcomes.html>
<https://www.nj.gov/governor/news/news/562019/20190506a.shtml>

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mortality.1067 In addition, New Jersey was the first state to recognize January 23rd as Maternal Health Awareness Day in 2018.1068

1067 "Assembly Approves Maternal Health Bills that Address Disparities in Maternal Mortality Rates between African-American and White Women," [Insider NJ](https://www.insidemj.com/press-release/assembly-approves-maternal-health-bills-address-disparities-maternal-mortality-rates-african-american-white-women/), Mar. 25, 2019, <https://www.insidemj.com/press-release/assembly-approves-maternal-health-bills-address-disparities-maternal-mortality-rates-african-american-white-women/>. 1068 State of New Jersey Department of Health, "January 23rd is Maternal Health Awareness Day in New Jersey," <https://www.nj.gov/health/news/2018/01/23/20180123a.shtml>.

<https://www.insidemj.com/press-release/assembly-approves-maternal-health-bills-address-disparities-maternal-mortality-rates-african-american-white-women/>
<https://www.insidemj.com/press-release/assembly-approves-maternal-health-bills-address-disparities-maternal-mortality-rates-african-american-white-women/>
<https://www.insidemj.com/press-release/assembly-approves-maternal-health-bills-address-disparities-maternal-mortality-rates-african-american-white-women/>
<https://www.nj.gov/health/news/2018/01/23/20180123a.shtml>

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Date : 9/15/2020 2:33:22 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Shelby Taylor" st5082a@student.american.edu Subject : RE: [EXTERNAL] Re: USCCR/NCD staff-to-staff briefing Thanks, we are swamped but it's all going well. Are you interested in the Miami Law event? It has a panel on criminal justice issues that I thought might interest you, if it's at a good time for you. From: Shelby Taylor <st5082a@student.american.edu> Sent: Tuesday, September 15, 2020 2:13 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: Re: [EXTERNAL] Re: USCCR/NCD staff-to-staff briefing

CAUTION: This email is from outside USCCR.

I am fine and thank you for asking! I am listening to some of the interviews Marik completed and helping him modify the transcripts. The information is so good and I am glad to be able to hear all the varying perspectives. I hope your week is going well! Shelby A Taylor JD Candidate 2021 SBA Director of Programming Managing Editor, Health Law and Policy Brief Washington College of Law American University On Tue, Sep 15, 2020 at 1:49 PM Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> wrote:

How are you? From: Shelby Taylor <st5082a@student.american.edu> Sent: Tuesday, September 15, 2020 1:19 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: Re: [EXTERNAL] Re: USCCR/NCD staff-to-staff briefing

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Ok thanks!

Sent from my iPhone

<mailto:kculliton-gonzalez@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:st5082a@student.american.edu>
<mailto:kculliton-gonzalez@usccr.gov>

On Sep 15, 2020, at 1:17 PM, Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> wrote:

I'm so sorry I sent the wrong date via Zoom – this is on Thursday. From: Shelby Taylor <st5082a@student.american.edu> Sent: Tuesday, September 15, 2020 1:11 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Cc: Nicholas Bair <nbair@usccr.gov>, Anne Sommers <asommers@ncd.gov>, Rukku Singla >, dalvarez@jd22.law.harvard.edu; Teresa Adams <tadams@usccr.gov>; Mark Xavier-Brier <mxavierbrier@usccr.gov>; Latrice Foshee <lfoshee@usccr.gov>; Julie Grieco <jgrieco@usccr.gov> Subject: [EXTERNAL] Re: USCCR/NCD staff-to-staff briefing

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I'm in the waiting room

Sent from my iPhone

On Sep 15, 2020, at 1:00 PM, Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> wrote:

Katherine Culliton-Gonzalez is inviting you to a scheduled Zoom meeting. Topic: USCCR/NCD staff discussion of report release Time: Sep 15, 2020 01:00 PM Eastern Time (US and Canada) Join Zoom Meeting <https://us02web.zoom.us/j/88212765297?pwd=Tit6WEdBMkZlTHUxRHZBZGtdZD09> Meeting ID: 882 1276 5297 Passcode: 029343 One tap mobile +13017158592,88212765297#,,,,,0#,,029343# US (Germantown) +16465588656,88212765297#,,,,,0#,,029343# US (New York) Dial by your location +1 301 715 8592 US (Germantown) +1 646 558 8656 US (New York) +1 312 626 6799 US (Chicago)

<mailto:kculliton-gonzalez@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:st5082a@student.american.edu>
<mailto:kculliton-gonzalez@usccr.gov>
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https://url.emailprotection.link/?bjGVcSmsHrQTchjMN-Eln0NVJZH2s31_7JB2mNZ6xrxV_OmPoyydPzhXj8mrvndzuC8A_DurGnbvtQBRovpj8pB0bTKc8L6Wtmd5w_owvkiQD5Xlfz3lthLQUHHjGaf10fzvCV-gSIVLCIOI5A3heKaaVfB9Jbw7nT1S5mvq1js~

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<mailto:88212765297@zoomcrc.com>

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Date : 9/15/2020 3:43:22 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "dalvarez@jd22.law.harvard.edu" dalvarez@jd22.law.harvard.edu Cc : "Nicholas Bair" nbair@usccr.gov Subject : the Act
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Date : 9/15/2020 1:38:39 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Vincent A. Eng" veng@veng-group.com, "Angelia Rorison" arorison@usccr.gov, "Rukku Singla" rsingla@usccr.gov Cc : "Mauro Morales" mmorales@usccr.gov Subject : RE: FY20 Subminimum Wages - embargoed Executive Summary for NCD Yes please I didn't review the attachment and just sent it. From: Vincent A. Eng <veng@veng-group.com> Sent: Tuesday, September 15, 2020 1:31 PM To: Angelia Rorison <arorison@usccr.gov>; Rukku Singla <rsingla@usccr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Cc: Mauro Morales <mmorales@usccr.gov> Subject: [EXTERNAL] RE: FY20 Subminimum Wages - embargoed Executive Summary for NCD

CAUTION: This email is from outside USCCR.

Ugh - I sent it twice before I could type. Tell me if you want the transmittal, cover, etc. removed from the final Embargoed Exec Summary. _____ Vincent A. Eng VENG GROUP O +1 202 499 7027, x 101 M +1 703 981 6636 F +1 202 499 7030 veng@veng-group.com From: Vincent A. Eng Sent: Tuesday, September 15, 2020 1:30 PM To: 'Angelia Rorison' <arorison@usccr.gov>; 'Rukku Singla' <rsingla@usccr.gov>; 'Katherine Culliton-Gonzalez' <kculliton-gonzalez@usccr.gov> Cc: 'Mauro Morales' <mmorales@usccr.gov> Subject: RE: FY20 Subminimum Wages - embargoed Executive Summary for NCD _____ Vincent A. Eng

- <mailto:veng@veng-group.com>
- <mailto:arorison@usccr.gov>
- <mailto:rsingla@usccr.gov>
- <mailto:kculliton-gonzalez@usccr.gov>
- <mailto:mmorales@usccr.gov>

VENG GROUP O +1 202 499 7027, x 101 M +1 703 981 6636 F +1 202 499 7030 veng@veng-group.com From: Vincent A. Eng Sent: Tuesday, September 15, 2020 1:30 PM To: Angelia Rorison <arorison@usccr.gov>; Rukku Singla <rsingla@usccr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Cc: Mauro Morales <mmorales@usccr.gov> Subject: RE: FY20 Subminimum Wages - embargoed Executive Summary for NCD _____ Vincent A. Eng VENG GROUP O +1 202 499 7027, x 101 M +1 703 981 6636 F +1 202 499 7030 veng@veng-group.com From: Angelia Rorison <arorison@usccr.gov> Sent: Tuesday, September 15, 2020 12:43 PM To: Rukku Singla <rsingla@usccr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Vincent A. Eng <veng@veng-group.com> Cc: Mauro Morales <mmorales@usccr.gov> Subject: Re: FY20 Subminimum Wages - embargoed Executive Summary for NCD

I am pulling in Vincent for time sensitivity - he has the embargoed report and it may be super simple but I am not sure yet how to extract.

Vincent - would you be able to send us an embargoed copy of just the executive summary?

From: Rukku Singla Sent: Tuesday, September 15, 2020 12:36:07 PM To: Katherine Culliton-Gonzalez; Angelia Rorison Cc: Mauro Morales Subject: Re: FY20 Subminimum Wages - embargoed Executive Summary for NCD Ditto, I need the embargoed Executive Summary for the Hill offices. Thank you!

- <mailto:veng@veng-group.com>
- <mailto:arorison@usccr.gov>
- <mailto:rsingla@usccr.gov>
- <mailto:kculliton-gonzalez@usccr.gov>
- <mailto:mmorales@usccr.gov>
- <mailto:veng@veng-group.com>
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- <mailto:kculliton-gonzalez@usccr.gov>
- <mailto:veng@veng-group.com>
- <mailto:mmorales@usccr.gov>

From: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Date: Tuesday, September 15, 2020 at 11:38 AM To: Angelia Rorison <arorison@usccr.gov>, Rukku Singla <rsingla@usccr.gov> Cc: Mauro Morales <mmorales@usccr.gov> Subject: FY20 Subminimum Wages - embargoed Executive Summary for NCD Could you all please share with me whatever you send out, so I can send it to NCD today?

- <mailto:kculliton-gonzalez@usccr.gov>
- <mailto:arorison@usccr.gov>
- <mailto:rsingla@usccr.gov>
- <mailto:mmorales@usccr.gov>

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Date : 9/16/2020 9:23:25 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Anne Sommers (asommers@ncd.gov)" asommers@ncd.gov Subject : FW: FY20 Subminimum Wages - embargoed Executive Summary for NCD Attachment : Executive Summary Pages from Subminimum Wages Report - Final Formatted - Embargoed.pdf, Resending to be sure you received this highly confidential info. From: Katherine Culliton-Gonzalez Sent: Tuesday, September 15, 2020 1:38 PM To: Anne Sommers (asommers@ncd.gov) <asommers@ncd.gov> Cc: Nicholas Bair <nbair@usccr.gov>; Angelia Rorison <arorison@usccr.gov> Subject: FW: FY20 Subminimum Wages - embargoed Executive Summary for NCD Dear Anne, I am sharing a highly confidential, embargoed copy of the Executive Summary of our report that will be issued this Thursday morning (9/17). As discussed, this will only be shared with your communications director for the purposes of drafting your agency's press release. I'm looping in our comms director, Angelia Rorison, in case you all had any related questions. (And please let Nick and I know if you have any non-comms-related questions.) We plan to publish the full report on our website Thursday morning, and we also look forward to our staff-to-staff briefing at 1-2 pm Thursday. If you do issue a press release, would you all send it to us? I would be remiss if I didn't thank you all again for Chair Romano's testimony and all the expertise you have contributed to the field, which informed our research on the civil rights implications of Section 14c of the Fair Labor Standards Act. We sincerely appreciate the opportunity to continue collaborate with you all on these important civil rights issues. Best regards, Kathy & Nick

September 2020
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Subminimum Wages

IMPACTS ON THE CIVIL RIGHTS OF PEOPLE WITH DISABILITIES

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is an independent, bipartisan agency established by Congress in 1957. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices.
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin.
- Submit reports, findings, and recommendations to the President and Congress.
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.¹

¹ 42 U.S.C. §1975a.

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U.S. Commission on Civil Rights

1331 Pennsylvania Avenue, NW

Washington, DC 20425

(202) 376-8128 voice

TTY Relay: 711

www.usccr.gov

* This report was voted upon on 6/19/20, prior to Commissioner Adams' appointment.

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Subminimum Wages: Impacts on the Civil

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U.S. Commission on Civil Rights 2020 Statutory Enforcement Report

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Letter of Transmittal

September 17, 2020

President Donald J. Trump Vice President Mike Pence Speaker of the House Nancy Pelosi

On behalf of the United States Commission on Civil Rights ("the Commission"), I am pleased to transmit our briefing report, Subminimum Wages: Impacts on the Civil Rights of People with Disabilities. The report is also available in full on the Commission's website at www.usccr.gov.

This report examines current implementation of Section 14(c) of the Fair Labor Standards Act of 1938, which directs the U.S. Secretary of Labor to grant special certificates allowing for the employment of workers with disabilities below the federal minimum wage to prevent reduced employment opportunities. The Commission collected data and testimony from Members of Congress, Labor and Justice Department officials, self-advocates and workers with disabilities, family members of people with disabilities, service providers, current and former public officials, and experts on disability employment and data analysis; conducted two field visits to employment and service provision sites supporting workers with disabilities earning subminimum and competitive wages; and received thousands of public comments both in favor of and opposed to the 14(c) program.

The primary recommendation approved by the Commission majority following this inquiry was that Congress should repeal Section 14(c) with a planned phase-out period to allow transition among service providers and people with disabilities to alternative service models prioritizing competitive integrated employment.

The Commission majority approved key findings including the following: As currently utilized, the U.S. Department of Labor has repeatedly found 14(c) providers limiting people with disabilities participating in the program from realizing their full potential while allowing providers and associated businesses to profit from their labor. This limitation is contrary to 14(c)'s purpose. Persistent failures in regulation and oversight of the 14(c) program by government agencies including the Department of Labor and Department of Justice have allowed and continue to allow the program to operate without satisfying its legislative goal to meet the needs of people with disabilities to receive supports necessary to become ready for employment in the competitive economy.

People with intellectual and developmental disabilities who are currently earning subminimum wages under the 14(c) program are not categorically different in level of disability from people with intellectual and developmental disabilities currently working in competitive integrated

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employment. State-level phase outs of the use of the 14(c) program have been developed and designed for state service providers and other stakeholders to ensure that a competitive integrated employment model does not result in a loss of critical services to individuals with disabilities including former 14(c) program participants.

The Commission majority voted for key recommendations, in addition to recommending that Congress repeal Section 14(c) with a planned phase-out period. The phased repeal of 14(c) must not reflect a retreat in federal investments and support for employment success of persons with disabilities but rather a reconceptualization of the way in which the federal government can enhance the possibilities for success and growth for people with disabilities.

Congress should expand funding for supported employment services and prioritize capacity building in states transitioning from 14(c) programs. Now and during the transition period of the Section 14(c) program, Congress should assign civil rights oversight responsibility and jurisdiction, with necessary associated fiscal appropriations to conduct the enforcement, either to the Department of Labor or to the Department of Justice Civil Rights Division. Congress should also require that the designated civil rights agency issue an annual report on investigations and findings regarding the 14(c) program. During the phase-out period, Congress should require more stringent reporting and accountability for 14(c) certificate holders, and following the phase out should continue to collect data on employment outcomes of former 14(c) employees.

The Department of Justice should increase enforcement of the Olmstead integration mandate to determine whether state systems are inappropriately relying on providers using 14(c) certificates to provide non-integrated employment in violation of Olmstead. The Department should issue guidance, open more investigations, and litigate where voluntary compliance cannot be achieved.

We at the Commission are pleased to share our views, informed by careful research and investigation as well as civil rights expertise, to help ensure that all Americans enjoy civil rights protections to which we are entitled.

For the Commission,

Catherine E. Lhamon

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EXECUTIVE SUMMARY

Congress enacted the Fair Labor Standards Act in 1938 as part of the New Deal. One of the Act's provisions, Section 14(c) (hereinafter "Section 14(c)" or "14(c)") directs the U.S. Secretary of Labor to grant special certificates allowing for the employment of workers with disabilities below the federal minimum wage "to the extent necessary to prevent curtailment of opportunities for employment."¹ The Fair Labor Standards Act is the federal law that sets the federal minimum wage and regulates the number of hours per week that employees are permitted to work, and it currently sets the federal minimum wage at \$7.25 an hour.² State or local minimum wages cannot be less than the federal minimum wage.³ Exceptions to the federal minimum wage include apprentices⁴ and students⁵ (generally temporary statuses), and persons with disabilities (usually a lifelong individual characteristic).⁶ The Fair Labor Standards Act's implementing regulations require 14(c) employers to apply for a certificate and submit to federal monitoring to ensure that the subminimum wages are used if and only if workers are "in fact disabled for the work they are to perform."⁷ The Commission's research shows that Section 14(c) is antiquated as it was enacted prior to our nation's civil rights laws, and its operation in practice remains discriminatory by permitting payment of subminimum wages based on disability without sufficient controls to ensure that the program operates as designed "to the extent necessary to prevent curtailment of opportunities for employment."⁸ Although Congress enacted the program with good intentions, the Department of Labor's enforcement data as well as several key civil rights cases and testimony from experts show that with regard to wage disparities, the program is rife with abuse and difficult to administer without harming employees with disabilities, as reflected in over 80 percent of cases

¹ Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 214(c) c. 676, § 14, 52 Stat. 1060; see also, U.S. Dep't of Labor Wage and Hour Division, 14(c) Certificate Holders, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders> (last accessed May 21, 2020). ² 29 U.S.C. § 206(a)(1). ³ Id. and see 29 U.S.C. § 203(d) (definition of "employer"). ⁴ 29 U.S.C. § 214(a). ⁵ 29 U.S.C. § 214(b). ⁶ 29 U.S.C. § 214(c); see also, Finn Gardiner, Communications Specialist, Lurie Institute for Disability Policy, Brandeis University, Testimony, Briefing Before the U.S. Comm'n on Civil Rights, Washington, DC, Nov. 15, 2019, transcript, pp. 145-146 (hereinafter cited as "Subminimum Wages Briefing") (explaining how work for subminimum wages reinforces stereotypes of people with disabilities, and how because many people with disabilities are diagnosed at birth, this reinforcement persists throughout the lives of people with disabilities). ⁷ 29 C.F.R. § 525.12(b). ⁸ See infra note 66.

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<https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders>
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<https://www.law.cornell.edu/uscode/text/29/203#d>

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investigated.⁹ However, the Commission has also received broad testimony in favor of 14(c), which is also discussed extensively herein.¹⁰

Programs operated pursuant to section 14(c) have at times contributed to segregation of persons with disabilities, as some employers who hold a Section 14(c) certificate have employed people with disabilities in separate work centers,¹¹ or sheltered workshops,¹² where the employees are mainly employed with other people with disabilities and not integrated into a broader community or work setting.¹³ Regarding integration, the Commission's research shows that Section 14(c) does not require, but has often resulted in, persons with disabilities being segregated into sheltered workshops without contact with persons without disabilities, except in a support or supervisory role.¹⁴ Moreover, reviewing thousands of public comments received—both in favor of and against 14(c)—along with expert testimony, academic medical research, as well as persons interviewed during site visits also showed that persons with disabilities benefited greatly from being in

⁹ See *infra* notes 658-660. ¹⁰ See, e.g., *infra* notes 556-573. ¹¹ As of January 1, 2020, there were 1,558 14(c) certificates either issued or pending renewal by the U.S. Department of Labor's Wage and Hour Division. 1,452 of those certificates (93%) were held by Community Rehabilitation Programs; See, Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, Final Report, p. 28 (Sept. 15, 2016), https://www.dol.gov/odep/topics/pdf/ACICIEID_Final_Report_9-8-16.pdf (finding that the majority of people with disabilities earning a subminimum wage work in congregate work centers operated by Community Rehabilitation Programs); see also 29 U.S.C. § 705(4) (Community Rehabilitation Program is "a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement"); Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, Interim Report, Sept. 15, 2015, pp. 6-7, <https://www.dol.gov/odep/pdf/20150808.pdf> ("federal data confirms that most all people currently working under Section 14(c) subminimum wage certificates are working for sheltered workshops (also called community rehabilitation programs or work centers) that typically receive public funding, including federal Medicaid and Vocational Rehabilitation (VR) dollars, to provide employment-related habilitation and rehabilitation services to individuals with disabilities"). ¹² A sheltered workshop is a work center where people with disabilities work segregated from people without disabilities. The Wage and Hour Division issues 14(c) certificates to four different types of entities, for-profit business establishments, hospital/residential care facilities, school work experience programs, and nonprofit community rehabilitation programs. Many 14(c) certificate holders have historically employed people with disabilities in segregated work centers or sheltered workshops; See, Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, Interim Report, Sept. 15, 2015, p. 69, <https://www.dol.gov/odep/pdf/20150808.pdf>.

("For the past several decades, sheltered workshops have continued to operate as facility-based vocational service programs attended by adults with disabilities thought to be unable to achieve [competitive integrated employment] outcomes. Sheltered employment characteristically offer opportunities for simple work activities such as assembling, packaging, and light manufacturing for which individuals are paid a wage meant to be commensurate with productivity"). ¹³ Alison Barkoff, Director of Advocacy, Center for Public Representation, Testimony, Subminimum Wages Briefing, pp. 40-43. ¹⁴ See *infra* notes 520-524.

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https://www.dol.gov/odep/topics/pdf/ACICIEID_Final_Report_9-8-16.pdf
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community employment settings and not being isolated.¹⁵ This showing comports with the integration mandate of the Americans with Disabilities Act and past findings of the Commission.¹⁶

Since 1938, many thousands of sheltered workshops where employees are paid less than minimum wages have been certified under Section 14(c), and although their number is dwindling, according to the Department of Labor, there are still over 1,500 such workshops employing over 100,000 persons with disabilities, although an exact count of the total number of individuals working for subminimum wages is unavailable and other estimates are much higher.¹⁷ Some states have prohibited payment of subminimum wages and sheltered workshops altogether, but according to 2020 federal data, there are currently 14(c) certificate holders in 46 states and the District of Columbia.¹⁸ That is, all states except four (Maine, New Hampshire, Rhode Island and Vermont) currently have at least one 14(c) certificate allowing the employer to pay subminimum wages.¹⁹ Four other states (Alaska, Maryland, Oregon and Texas) are in the process of phasing out subminimum wages, although they currently still have operating 14(c) certificates.²⁰

¹⁵ See *infra* notes 574-578. ¹⁶ See *infra* notes 192-195. ¹⁷ See *infra* notes 443 (historic figures), 465 (current number of 14(c) workshops), and 440-444 (current number of 14(c) employees). ¹⁸ U.S. Dep't of Labor Wage and Hour Division, 14(c) Certificate Holders, <https://www.dol.gov/agencies/vhd/workers-with-disabilities/section-14c/certificate-holders> (last accessed Apr. 6, 2020). ¹⁹ *Ibid.*; Commission Staff Research. ²⁰ See Oregon S.B. 494 (enacted Sept. 20, 2019) (payment of subminimum wages will be prohibited after 2023); see also, *infra* notes 1280-1287 (discussing Oregon's phase-out plan enacted after litigation); N.H. Code Ann. Tit. 23 § 279:22; Md. Code Ann. Tit. Labor and Employment § 3-414; Alaska Code Ann. Tit. 8 § 15.120; Or. Code Ann. Tit. 16 § 653.030; Tex. Code Ann. Tit. 8 § 122.0075-0076.

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<https://www.dol.gov/agencies/vhd/workers-with-disabilities/section-14c/certificate-holders>

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Figure ES.1: States with Current or Pending 14(c) Certificates and States Phasing out 14(c)

Source: U.S. Dep't of Labor, Data as of January 1, 2020, Chart generated by Commission Staff

To hear from currently affected stakeholders and to evaluate the civil rights implications of 14(c), the Commission collected data as well as testimony from five panels of experts, employers, advocates, a member of Congress and a lobbyist, an official from the Department of Labor, former Department of Justice officials and impacted community members, some of whom had personally worked for subminimum wages in 14(c) workshops and had since become national leaders.²¹ The Commission reviewed a series of federal agency and academic studies of 14(c). A Subcommittee of the Commission conducted two site visits: one to an employer in Virginia who has a 14(c) certificate, enabling the employer to pay subminimum wages to persons with disabilities,²² and the other to sites in Vermont, where subminimum wages have been eliminated and persons with

²¹ Subminimum Wages Briefing, transcript, *passim*, <https://www.usccr.gov/calendar/2019/11-19-Transcript-Commission-Business-Meeting.pdf>, U.S. Comm'n on Civil Rights, Briefing Agenda, Subminimum Wages: Impacts on the Civil Rights of People with Disabilities, Nov. 15, 2019, <https://www.usccr.gov/press/2019/11-05-Agenda-Subminimum-Wages.pdf>. ²² See *infra* notes 829-981, (Members of the Subcommittee were Commissioner Debo Adegbile, Commissioner Gail Heriot, Subcommittee Chair David Kladney, and Commission Chair Catherine Lhamon).

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<https://www.usccr.gov/press/2019/11-05-Agenda-Subminimum-Wages.pdf>
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disabilities are now employed through other programs.²³ The Commission evaluated these two states and five others that illustrate various types of programs for employment of persons with disabilities, ranging from 14(c) programs, to phase-out programs,²⁴ and to states that have completely phased out 14(c).²⁵

The Commission also invited public comments and within 30 days after the briefing, the Commission received the highest volume of public comments the Commission has ever received when covering any topic: over 9,700 public comments (about 8,000 as petition signatures and 1,700 as individual public comments) about the 14(c) certificate program.²⁶ The Commission heard from proponents and opponents of the program and reviewed story after story of people with a disability or disabilities who were once presumed to be only capable of working for subminimum wages in a sheltered environment, who transitioned to and excelled in competitive integrated employment. The Commission also heard and received thousands of comments, mainly from impacted parents, stating that 14(c) is needed to protect employment opportunities for people with disabilities. This report analyzes these thousands of public comments as part of the data the Commission collected and evaluated.

Chapter 1 sets forth an analysis of applicable federal law and civil rights implications. The chapter summarizes and evaluates the 1938 law as well as applicable civil rights laws. The main issues arising under the Americans with Disabilities Act are whether there is employment discrimination and whether there is compliance with the mandate that whenever possible, persons with disabilities should receive services in integrated settings.²⁷ Although there are limitations for reasonableness, the Americans with Disabilities Act generally requires integration of persons with disabilities and prohibits discrimination in employment.²⁸ This chapter also evaluates arguments for and against 14(c). The Commission received testimony from parents who felt that their adult children with disabilities should be able to choose to have a safe place to be during the day and have the dignity of work, and they stated that sheltered workshops paying subminimum wages provided that.²⁹ On the other hand, persons with disabilities, including some with direct experience with 14(c); state- based experts; and civil rights litigators including former Department of Justice staff indicate that the program is not only rife with abuse, but also that the program itself is exploitative and

²³ See *infra* notes 1055-1257. ²⁴ See *infra* notes 828-1039 (discussing Arizona, Missouri and Virginia). ²⁵ See *infra* notes 1040-1302 (discussing Maine, Oregon and Vermont). ²⁶ See *infra* notes 552-555. ²⁷ See *infra* notes 177-229 (Chapter 1, discussion of applicable law, including the reasonableness standard the Supreme Court has applied to the Americans with Disabilities Act). ²⁸ See *infra* note 176. ²⁹ See *infra* note 556.

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discriminatory.³⁰ Persons with disabilities who have transitioned out of 14(c) workshops were adamantly against the program.³¹ Further, some states have successfully transitioned employment of persons with disabilities to “competitive integrated employment,” in which persons with disabilities are paid at least minimum wage and are not segregated.³² In contrast, some employers, family members, and persons with disabilities feel strongly that eradication of the program would take away their choice as well as the opportunity to earn a paycheck and work in a supportive environment.³³ As mentioned, the majority of the public comments the Commission received were from parents who support the continued operation of 14(c) workshops unchanged.³⁴

Chapter 1 also provides information about Community Rehabilitation Programs and discusses how individuals’ Medicaid funded supports may be used by 14(c) and other employers through different policy iterations.³⁵ This chapter also surveys and discusses various policy options. For example, in recent years, several bills have been introduced in the U.S. Congress that have included provisions for reforming or phasing out and eventually eliminating Section 14(c) and the payment of subminimum wages to people with disabilities.³⁶ Some bills would phase out and eliminate Section 14(c), while others focus federal funding or tax credits on increasing opportunities for persons with disabilities to access competitive integrated employment.³⁷ As shown by the map above and the more detailed data herein, many states are also undergoing these types of transitions through a variety of policy models. Because there are millions of persons with disabilities with a wide range of skill sets, and with many individual and community factors at stake, it is not possible to generalize about these programs or predict the employment outcomes for all.³⁸ However, new technology as well as new programs being developed in some states show that for many people currently employed in 14(c) workshops, transitioning to competitive integrated employment is an attainable goal.³⁹ This transition may be aided by the provision of accommodations such as a job coach, peer support, or specialized training or other supports that allow persons with disabilities

30 See infra note 574. 31 See infra notes 221. 32 See infra notes 1045-1051. 33 See infra notes 557-558. 34 See infra notes 556-584. 35 See infra note 212. 36 See infra notes 338-396. 37 Id. 38 See infra notes 1009-1039 (discussing subminimum wages in Missouri) and notes 704-705 (discussing Advisory Committee for Increasing Competitive Integrated Employment recommendation that the Wage and Hour Division verify there is a lack of competitive integrated employment opportunities in a state before issuing any 14(c) certificates in that state). 39 See infra notes 1040-1054.

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to effectively work in integrated settings.⁴⁰ Data shows that such supported employment leads to higher employment rates for people with intellectual and developmental disabilities.⁴¹

To understand the available data, Chapter 2 summarizes and analyzes available national, state, and local data. At the national level, the most recent Census data, based on the 2018 American Community Survey, estimated that there were 39,674,679 people with disabilities in the United States, making up 12.6 percent of the total estimated U.S. population.⁴² The 2018 American Community Survey also found that only 35.9 percent of persons with disabilities were employed, as compared to 76.6 percent of the total population.⁴³ Further, unemployment and under-employment correlated with higher poverty rates for people with disabilities, among other impacts.⁴⁴ At the Commission’s November 2019 briefing, Jennifer Mathis of the Bazelon Center for Mental Health Law testified that: “People with disabilities continue to participate in the labor force at less than half the rate of people without disabilities, and only about 20 percent of people receiving public mental health services have any form of employment.”⁴⁵ Furthermore, data the Commission reviewed showed that between 2017 and 2018, the average wage of a person with a disability working under a 14(c) certificate was \$3.34 per hour⁴⁶ and the average number of hours worked was 16 hours per week.⁴⁷ This means that the average person with a disability working at a 14(c) certificate holding entity earned just \$53.44 per week, or \$213.76 per month.

The Commission also received testimony as to the dearth of available data about subminimum wages. Chair Neil Romano of the National Council on Disability noted in his testimony that “we collect data on things we view as important, and historically we just don’t count people with disabilities.”⁴⁸ However, there is some data, particularly regarding trends. For example, there were at least 1,558 14(c) certificate holders across the country as of January 1, 2020, and that estimate

40 See infra note 259. 41 See infra notes 227-228; See also Jennifer Mathis, Deputy Legal Director & Director of Policy & Legal Advocacy, Bazelon Center for Mental Health Law, Written Statement for the Subminimum Wages Briefing before the U.S. Comm’n on Civil Rights, Nov. 15, 2019, at 2-3 (hereinafter Mathis Statement). (regarding the focus in the field on persons with intellectual and developmental disabilities, and belying stereotypes about persons having the most employment challenges); See infra note 388 (“the [Microsoft employment] program targets those who may have been most excluded, as the mission of the program is “to make a substantial difference in the lives of people with intellectual and developmental disabilities who have historically been overlooked in the jobs market”). 42 U.S. Census Bureau, American Community Survey (2018), Disability Characteristics, Table S1810, <https://data.census.gov/cedsci/table?q=S1810&tid=ACST1Y2018.S1810>. 43 University of New Hampshire, Institute on Disability, 2017 Disability Statistics Annual Report, p. 2, https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf 44 Ibid. 45 Jennifer Mathis, Subminimum Wages Briefing, pp. 199-200. 46 See infra note 455. 47 See infra note 456. 48 Romano Testimony, Subminimum Wages Briefing, p. 38.

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<https://data.census.gov/cedsci/table?q=S1810&tid=ACST1Y2018.S1810>
https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf

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has decreased by about two-thirds over the past ten years.⁴⁹ Data published on the website of the Wage and Hour Division of the Department of Labor indicates that as of January 1, 2020, an estimated 100,300 people with disabilities were working for 14(c) certificate holders.⁵⁰ State and local data provides some information about Medicaid-based supports in Community Rehabilitation Programs, as well as more granular data about transitions to competitive integrated employment. Details and analysis are set forth below in Chapter 2.

Chapter 3 evaluates the role and responsibilities of the federal government. In 2009, the Government Accountability Office critiqued the enforcement procedures of the Wage and Hour Division of the Department of Labor, stating that it did not adequately investigate complaints received.⁵¹ At the Commission’s November 2019 briefing, Mary Ziegler, then the Director of Policy of the Wage and Hour Division⁵² testified that the Division had increased its enforcement of the rights of employees working in the 14(c) program. Since 2013, the Division had revoked 14(c) certificates from six employers—and none could be shown to have been revoked between 1938 and 2013. During the past 10 years, the Wage and Hour Division also ordered the payment of back wages to 68,034 employees with disabilities in 14(c) workshops.⁵³ The Commission’s research also shows that in the last 10 years the Wage and Hour Division has reviewed an average of approximately eight percent of 14(c) certificate holders and found an average 81 percent violation rate of certificate holders investigated over the ten-year period.⁵⁴

The Wage and Hour Division is limited to enforcing the Fair Labor Standards Act and does not have jurisdiction to enforce civil rights laws such as the Americans with Disabilities Act.⁵⁵ Federal enforcement of that statute by other agencies is also examined in Chapter 3. In an apparently unique case, brought by the Equal Opportunity Employment Commission, the Equal Opportunity Commission won a multi-million dollar jury award when it enforced the Americans with Disabilities Act against a former 14(c) employer. Chapter 3 reviews this and other data about the effectiveness of federal government programs, including the work of the Civil Rights Division of the Department of Justice, which also enforces the Americans with Disabilities Act, reflecting

49 See infra note 598. 50 U.S. Dept of Labor Wage and Hour Division, 14(c) Certificate Holders, <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders> (last accessed May 21, 2020). 51 Government Accountability Office, GAO-09-629, Wage and Hour Division Needs Improved Investigative Processes and Ability to Suspend Statute of Limitations to Better Protect Workers Against Wage Theft, pp. 14-33 (Jun. 23, 2009) <https://www.gao.gov/assets/300/291496.pdf>. 52 Ziegler has since retired from her position, in February 2020. See, e.g., Ben Penn, Two Senior Officials Exit Labor Department’s Wage Division, Bloomberg Law (Feb. 4, 2020) <https://news.bloomberglaw.com/daily-labor-report/two-senior-officials-exit-labor-departments-wage-hour-division>. 53 See infra notes 659-661. 54 See infra notes 656-665. 55 See Response of the Wage and Hour Division to the Commission’s Interrogatories.

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<https://news.bloomberglaw.com/daily-labor-report/two-senior-officials-exit-labor-departments-wage-hour-division>
<https://news.bloomberglaw.com/daily-labor-report/two-senior-officials-exit-labor-departments-wage-hour-division>

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that much more enforcement and enforcement authority is needed. ⁵⁶ This chapter also highlights the work of another federal entity, the National Council on Disability, which studied the 14(c) program in 2012 and 2018, and in both instances, found the program to be discriminatory and recommended that it be phased out.⁵⁷

In Chapter 4, the Commission evaluates how subminimum wage policy is manifested at the state level, in six states. The Commission collected information about various iterations of employment policies of persons with disabilities, in three states with 14(c) certificate holders (Virginia, Arizona, and Missouri) and in three states that have transitioned or are in the process of transitioning to competitive integrated employment (Vermont, Maine, and Oregon). This chapter also includes a deeper focus on Virginia and Vermont, based on the Commission Subcommittee’s site visits to those states. The Commission undertook site visits to a current 14(c) certificate holder in Springfield, Virginia, and visited people with disabilities working in competitive integrated employment sites in and around Burlington, Vermont. A Subcommittee of Commissioners toured the facilities and met with the management of sites and employees. Commission staff also conducted individual interviews with employees with disabilities and their families to better understand their experiences.⁵⁸

Chapter 4 also includes an over-arching analysis of available data in these states with various types of policies and programs. The Commission’s research at the state level indicates that transition from employment of persons with disabilities in 14(c) programs to competitive integrated employment, being paid at least minimum wage and working with persons without disabilities as peers, is possible.⁵⁹ Competitive integrated employment is shown to be possible in at least two states in which funding and supports have been in place to ensure that 14(c) workers will not lose their jobs and will have time to learn new skills. Such funding may come from an individual’s own Medicaid funds, which are the same funds used in 14(c) settings.⁶⁰

In sum, the state transitions from 14(c) evaluated by the Commission seem promising and illustrate that it is possible to pay persons with disabilities at least minimum wage. However, financial and educational supports may be needed to accomplish these transitions,⁶¹ and different state policies about funding,⁶² as well as different state demographics, transportation infrastructure, and

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economic factors, affect the analyses and choices.⁶³ As one state agency employee interviewed stated: “One model can’t be the model for all people in any services.”⁶⁴ Moreover, the Commission received abundant public comments and testimony from other states indicating that many parents and employers are in favor of 14(c), seeing it as a place of safety and dignity for persons with disabilities. Herein, the Commission takes into account all of this testimony as well as the civil rights implications.

Chapter 5 states the Commissioners’ findings and recommendations based upon the research, as highlighted below.

Findings and Recommendations

Highlighted Findings:

1. In 1938, Congress enacted the exception to the minimum wage requirement for people with disabilities, contained in Section 14(c) of the Fair Labor Standards Act, with a rehabilitative purpose. As currently utilized, the federal Department of Labor has repeatedly found providers operating pursuant to Section 14(c) limiting people with disabilities participating in the program from realizing their full potential while allowing providers and associated businesses to profit from their labor. This limitation is contrary to 14(c)’s purpose.
2. Persistent failures in regulation and oversight of the 14(c) program by government agencies including the Department of Labor and Department of Justice have allowed and continue to allow the program to operate without satisfying its legislative goal to meet the needs of people with disabilities to receive supports necessary to become ready for employment in the competitive economy.
3. People with intellectual and developmental disabilities who are currently earning subminimum wages under the 14(c) program are not categorically different in level of disability from people with intellectual and developmental disabilities currently working in competitive integrated employment.
4. The Commission took in bipartisan testimony in favor of keeping the 14(c) program and to end the 14(c) program. Notably, in 2016, both major party platforms included support for legislation ending the payment of subminimum wages to people with disabilities. House Committee on Education and the Workforce Chairman Bobby Scott (D-VA) introduced bipartisan legislation to phase out the 14(c) program. Chair Neil Romano, Republican appointee to the National Council on Disability, and former Republican

63 See infra notes 1156-1257 (interview notes from Vermont); Cf. infra notes 897-961 (interview notes from Virginia). 64 Notes of the Commission’s General Counsel, quoting Sima Breiterman, Director of Adult Services, Subcommittee Site Visit to Think College at University of Vermont (Mar. 4, 2020).

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Governor Tom Ridge, who now leads the National Organization on Disability, both testified that ending the 14(c) program is their shared highest priority.

5. State-level phase outs of the use of the 14(c) program have been developed and designed for state service providers and other stakeholders to ensure that a competitive integrated employment model does not result in a loss of critical services to individuals with disabilities including former 14(c) program participants.
6. Increased integration of people with disabilities into the workplace and society is now legally required by the Americans with Disabilities Act and legal precedent, and is facilitated by technological advancements. These developments obviate any need for subminimum wage work.

Highlighted Recommendations:

1. Congress should repeal Section 14(c) with a planned phase-out period to allow transition among service providers and people with disabilities to alternative service models prioritizing competitive integrated employment.
2. The phased repeal of 14(c) must not reflect a retreat in Federal investments and support for employment success of persons with disabilities but rather a reconceptualization of the way in which the federal government can enhance the possibilities for success and growth for people with disabilities.
3. Congress should expand funding for supported employment services and prioritize capacity building in states transitioning from 14(c) programs.
4. Now and during the transition period of the Section 14(c) program, Congress should assign civil rights oversight responsibility and jurisdiction, with necessary associated fiscal appropriations to conduct the enforcement, either to the Department of Labor or to the Department of Justice Civil Rights Division. Congress should also require that the designated civil rights agency issue an annual report on investigations and findings regarding the 14(c) program.
5. During the phase-out period, Congress should require more stringent reporting and accountability for 14(c) certificate holders, and following the phase out should continue to collect data on employment outcomes of former 14(c) employees.
6. The Department of Justice should increase enforcement of the Olmstead integration mandate to determine whether more state systems are inappropriately relying too heavily on providers using 14(c) certificates to provide non-integrated employment in violation of Olmstead. The Department should issue guidance, open more investigations, and litigate where voluntary compliance cannot be achieved.

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Date : 9/16/2020 9:24:21 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Anne Sommers" ASommers@ncd.gov Subject : RE: gentle reminder ahead of tomorrow Hi Anne, I sent an embargoed copy of the Executive Summary yesterday and just resent it to be sure you received it. Is there anything else that would be helpful? Information about the briefing perhaps? -Kathy From: Anne Sommers <ASommers@ncd.gov> Sent: Wednesday, September 16, 2020 9:06 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: [EXTERNAL] gentle reminder ahead of tomorrow

CAUTION: This email is from outside USCCR.

Hi Katherine, if you have opportunity today to send forward anything today that you think will help us prep for tomorrow, please do! Thanks, Anne

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Date : 9/16/2020 9:26:23 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Anne Sommers" ASommers@ncd.gov Subject : RE: FY20 Subminimum Wages - embargoed Executive Summary for NCD No worries! I'm glad to collaborate. From: Anne Sommers <ASommers@ncd.gov> Sent: Wednesday, September 16, 2020 9:24 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: [EXTERNAL] Re: FY20 Subminimum Wages - embargoed Executive Summary for NCD

CAUTION: This email is from outside USCCR.

Thanks, Katherine! I had completely overlooked your email. So grateful you resent. Just what I was looking for.

From: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Sent: Wednesday, September 16, 2020 9:23 AM To: Anne Sommers <ASommers@ncd.gov> Subject: FW: FY20 Subminimum Wages - embargoed Executive Summary for NCD Resending to be sure you received this highly confidential info. From: Katherine Culliton-Gonzalez Sent: Tuesday, September 15, 2020 1:38 PM To: Anne Sommers (asommers@ncd.gov) <asommers@ncd.gov> Cc: Nicholas Bair <nbair@usccr.gov>; Angelia Rorison <arorison@usccr.gov> Subject: FW: FY20 Subminimum Wages - embargoed Executive Summary for NCD Dear Anne, I am sharing a highly confidential, embargoed copy of the Executive Summary of our report that will be issued this Thursday morning (9/17). As discussed, this will only be shared with your communications director for the purposes of drafting your agency’s press release. I’m looping in our comms director, Angelia Rorison, in case you all had any related questions. (And please let Nick and I know if you have any non-comms-related questions.) We plan to publish the full report on our website Thursday morning, and we also look forward to our staff-to-staff briefing at 1-2 pm Thursday. If you do issue a press release, would you all send it to us? I would be remiss if I didn’t thank you all again for Chair Romano’s testimony and all the expertise you have contributed to the field, which

informed our research on the civil

<mailto:kculliton-gonzalez@usccr.gov>
<mailto:ASommers@ncd.gov>
<mailto:asommers@ncd.gov>
<mailto:asommers@ncd.gov>
<mailto:nbair@usccr.gov>
<mailto:aronison@usccr.gov>

rights implications of Section 14c of the Fair Labor Standards Act. We sincerely appreciate the opportunity to continue collaborate with you all on these important civil rights issues. Best regards, Kathy & Nick

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Date : 9/16/2020 9:28:59 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Anne Sommers" ASommers@ncd.gov Subject : RE: gentle reminder ahead of tomorrow Aw thanks, but I'm also happy to be called Katherine. So on a personal note, my mom wanted to name me Maxine but it was not in the family bible that came over from Ireland, so I am named after my grandmother, Katherine Mary. And I loved her a lot! From: Anne Sommers <ASommers@ncd.gov> Sent: Wednesday, September 16, 2020 9:28 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: [EXTERNAL] Re: gentle reminder ahead of tomorrow

CAUTION: This email is from outside USCCR.

By the way, a woman I correspond with all the time is a Katherine (as is my sister, funny enough), and so I am stuck with calling you Katherine even though you prefer Kathy. My apologies! And this transgression coming from an Anne with an "e" and no one ever getting that right! 💎

From: Anne Sommers <ASommers@ncd.gov> Sent: Wednesday, September 16, 2020 9:26 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: Re: gentle reminder ahead of tomorrow Nope, that was it! Thanks again, Kathy!

From: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Sent: Wednesday, September 16, 2020 9:24 AM To: Anne Sommers <ASommers@ncd.gov> Subject: RE: gentle reminder ahead of tomorrow Hi Anne, I sent an embargoed copy of the Executive Summary yesterday and just resent it to be sure you received it. Is there anything else that would be helpful? Information about the briefing perhaps? -Kathy From: Anne Sommers <ASommers@ncd.gov> Sent: Wednesday, September 16, 2020 9:06 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: [EXTERNAL] gentle reminder ahead of tomorrow

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Date : 9/16/2020 9:33:06 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Anne Sommers" ASommers@ncd.gov Subject : RE: gentle reminder ahead of tomorrow Great story! From: Anne Sommers <ASommers@ncd.gov> Sent: Wednesday, September 16, 2020 9:32 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: [EXTERNAL] Re: gentle reminder ahead of tomorrow

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Aww. That's a great story. Names often have fun stories, and I love hearing them. My first name is after my mom's first life-sized baby doll that she apparently adored, and my middle name, Christine, is because if I was a boy, I was going to be Christian. They had to scramble with a name because they thought I was a boy up until I was delivered!

From: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Sent: Wednesday, September 16, 2020 9:28 AM To: Anne Sommers <ASommers@ncd.gov> Subject: RE: gentle reminder ahead of tomorrow Aw thanks, but I'm also happy to be called Katherine. So on a personal note, my mom wanted to name me Maxine but it was not in the family bible that came over from Ireland, so I am named after my grandmother, Katherine Mary. And I loved her a lot! From: Anne Sommers <ASommers@ncd.gov> Sent: Wednesday, September 16, 2020 9:28 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: [EXTERNAL] Re: gentle reminder ahead of tomorrow

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<mailto:ASommers@ncd.gov>
<mailto:ASommers@ncd.gov>
<mailto:kculliton-gonzalez@usccr.gov>

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Date : 9/23/2020 12:10:44 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Irena Vidulovic" ividulovic@usccr.gov, "Nicholas Bair" nbair@usccr.gov Subject : RE: U.S. Commission on Civil Rights: Racial Disparities in Maternal Health Briefing Attachment : image001.png;image002.gif;image003.gif; Sounds good, will do. From: Irena Vidulovic <ividulovic@usccr.gov> Sent: Wednesday, September 23, 2020 10:32 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Nicholas Bair <nbair@usccr.gov> Subject: Fw: U.S. Commission on Civil Rights: Racial Disparities in Maternal Health Briefing

Dear Kathy and Nick,

Please see below the email exchange with Krystal Thomas the scheduler and executive assistant to Congresswoman Herrera Beutler. Please reach out to her directly for the Congresswoman's availability.

Thanks!

Irena

From: Thomas, Krystal <Krystal.Thomas@mail.house.gov> Sent: Friday, March 13, 2020 1:29 PM To: Irena Vidulovic Subject: [EXTERNAL] RE: U.S. Commission on Civil Rights: Racial Disparities in Maternal Health Briefing

Thank you Irena, and thank you for letting me know. We completely understand and are appreciative of the precaution you are taking. Please reach out when there is a future event held in Washington DC.

Thank you and all the best,

Krystal

<mailto:Krystal.Thomas@mail.house.gov>

Krystal Thomas

Executive Assistant/Scheduler

Rep. Jaime Herrera Beutler (WA-03)

2352 Rayburn House Office Building

jhb.house.gov Phone: (202) 225-3536

From: Irena Vidulovic <ividulovic@usccr.gov> Sent: Friday, March 13, 2020 12:58 PM To: Thomas, Krystal <Krystal.Thomas@mail.house.gov> Subject: Re: U.S. Commission on Civil Rights: Racial Disparities in Maternal Health Briefing

Dear Krystal,

As the COVID-19 situation continues to evolve and reported cases climb, the Commission has made the difficult decision to postpone the briefing on Racial Disparities in Maternal Health that was to be held next Friday, March 20th, 2020 in DC. The decision was not made lightly and was done out of caution to ensure the safety and health of participants and Commission staff. The Commission is looking to reschedule the briefing at a future date and will be updating the public once we have more information.

From: Thomas, Krystal <Krystal.Thomas@mail.house.gov> Sent: Monday, February 24, 2020 5:15:51 PM To: Irena Vidulovic Subject: [EXTERNAL] RE: U.S. Commission on Civil Rights: Racial Disparities in Maternal Health Briefing

Hi Irena, by happenstance I was able to get an answer for you before tomorrow. Unfortunately, the appropriate staffer will also be out of town for the district work period and will be unable to participate in the maternal health briefing. Thank you kindly for the invitation and please be assured how much our boss prioritizes this

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<mailto:Krystal.Thomas@mail.house.gov>
<mailto:Krystal.Thomas@mail.house.gov>

issue in her legislative business here in DC and Washington state.

All the best to you and the event!

Krystal

Krystal Thomas

Executive Assistant/Scheduler

Rep. Jaime Herrera Beutler (WA-03)

2352 Rayburn House Office Building

jhb.house.gov Phone: (202) 225-3536

From: Irena Vidulovic <ividulovic@usccr.gov> Sent: Monday, February 24, 2020 3:08 PM To: Irena Vidulovic <ividulovic@usccr.gov> Subject: U.S. Commission on Civil Rights: Racial Disparities in Maternal Health Briefing

https://url.emailprotection.link/?bZhqQ5QPv2HWjvRo5fncpTgTFF1-1-WmTW1Lde0W_Ux16gGqWBxUyEKrLdnKOY0weY7v3qKtLyzZZkqpVgFgC9eBaOKKQSwk7KI-lurFEH-Ni65baeOncEdxN7b1QplEmjYNGPQFfzmI8JQmEDQKwaHGEGE9o4B12yt0lVdDgs3WVd9OroxEj2gQpamwTRPclYW0dDgqgbEdVMcW2V6lcq-IBL5xO7fhuBuihg4X6wtpgx5BY8-DuuEWqa5_0JZLBgRryTY3Ym99JVncE6nf4CSujK2UG_pjJcYJMNZPJ3ymcGNtpTm3-zK0XkYtcUtdYx-Ec_3GHZ8A4I5putpWMjtlaxMjJsLXBgqjTvwqV_L_ZdkgkMhS9XDyTxHJSh1HLzgmFGxkXA-szoEb9P_lbHYB_d11XD8QrMUDoa_vw26n2dQS-Aiiz3LmBukWQWctr2HUwGazGuNIMaH_qbrMQ~~mailto:ividulovic@usccr.gov
<mailto:ividulovic@usccr.gov>

Racial Disparities in Maternal Health Briefing

March 20, 2020 | Washington, DC

The U.S. Commission on Civil Rights will hold a briefing on March 20, 2020, on maternal health disparities in the United States. The Commission's investigation seeks to examine the federal role in preventing negative pregnancy-related health outcomes and pregnancy-related deaths of women in the U.S. The Commission will analyze current data regarding pregnancy-related and pregnancy-associated deaths, including data collected by the Centers for Disease Control and Prevention (CDC), the National Institute of Minority Health and Health Disparities, and the Department of Health and Human Services' (HHS) State Partnership Initiative to Address Health Disparities. The Commission's investigation and subsequent report will aim to inform work being carried out in the federal government to address racial disparities in maternal health outcomes.

Commissioners will hear from government officials, academic experts, healthcare providers, advocates, and impacted persons. Members of the public will be able to address the Commission in an open comment session. The Commission will accept written materials for consideration as we prepare our report; submit to maternalhealth@usccr.gov no later than April 20, 2020. From this investigation, the Commission plans to issue a report with actionable recommendations to address this critical civil rights issue.

DATE:

Friday, March 20, 2020

LOCATION:

U.S. Commission on Civil Rights

1331 Pennsylvania Ave. NW, Suite 1150

Washington, DC 20425

<mailto:maternalhealth@usccr.gov>

AGENDA:

Briefing (expert panels): 9:00 am – 4:00 pm ET*

Open Comment Session (public testimony): 5:00 pm – 6:30 pm ET*

The briefing will live-stream .

Stay abreast of updates at www.usccr.gov and on Twitter and Facebook.

Irena Vidulovic

Special Assistant to Commissioner Debo P. Adegbile

U.S. Commission on Civil Rights

P: 202-376-7795 | M: 202-591-9969

ividulovic@usccr.gov

<http://usccr.gov/>

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tNd9zoGq2EzNUxrzQ~~
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Date : 9/24/2020 12:57:10 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Brian P. Hoey [BHoey@AbilityOne.gov]" bhoey@abilityone.gov Cc : "Maureen Rudolph" mrudolph@usccr.gov, "Nicholas Bair" nbair@usccr.gov, "Angelia Rorison" arorison@usccr.gov Subject : RE: Request for address to send letter regarding Subminimum Wage report issued today Attachment : image001.png; Dear Dr. Hoey, You are correct that we didn't send a copy of the report to your Commission. Please don't hesitate to let us know if you have any further questions. Best regards, -Kathy Katherine Culliton-Gonzalez Director, Office of Civil Rights Evaluation U.S. Commission on Civil Rights From: Brian P. Hoey [BHoey@AbilityOne.gov] <bhoey@abilityone.gov> Sent: Monday, September 21, 2020 2:56 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Cc: Maureen Rudolph <mrudolph@usccr.gov>; Nicholas Bair <nbair@usccr.gov>; Angelia Rorison <arorison@usccr.gov> Subject: [EXTERNAL] RE: Request for address to send letter regarding Subminimum Wage report issued today

CAUTION: This email is from outside USCCR.

Thanks, Angelia. Hello, Katherine. Regarding the report issued last week – “Subminimum Wages: Impacts on the Civil Rights of People with Disabilities” – could you please confirm whether a review copy of the AbilityOne section (pp. 137-140) was made available to the U.S. AbilityOne Commission? Thank you. Brian P. Hoey, Ph.D. Senior Advisor U.S. AbilityOne Commission 1401 South Clark Street, Suite 715 Arlington, VA 22202 M: 408-410-6318 bhoey@abilityone.gov www.abilityone.gov

<mailto:bhoey@abilityone.gov>
https://url.emailprotection.link/?bY8JHSOTQgRDqLeJ5C_dqknG16CnalsrstSsTd4Z2QFpUuX3wAe2eQd4Nnaaa3t2X1O0DIX1jydgJ-KrsMo7jTA~~

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From: Angelia Rorison <arorison@usccr.gov> Sent: Monday, September 21, 2020 1:59 PM To: Brian P. Hoey [BHoey@AbilityOne.gov] <bhoey@abilityone.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Cc: Maureen Rudolph <mrudolph@usccr.gov>; Nicholas Bair <nbair@usccr.gov> Subject: Re: Request for address to send letter regarding Subminimum Wage report issued today ATTENTION: This email was sent from outside of AbilityOne.gov. Please be cautious opening attachments, clicking on links, taking action on requested tasks or responding with sensitive information.

Hi Brian,

I would like to introduce you to the Commission's Office of Civil Rights Evaluation Director (OCRE), Katherine Culliton-Gonzalez. Katherine leads the OCRE team and would be the best person to speak in regards to the Subminimum Wage report.

Best regards,

Angelia

From: Brian P. Hoey [BHoey@AbilityOne.gov] <bhoey@abilityone.gov> Sent: Monday, September 21, 2020 12:31:28 PM To: Angelia Rorison Subject: [EXTERNAL] RE: Request for address to send letter regarding Subminimum Wage report issued today

CAUTION: This email is from outside USCCR.

Hi Angelia,

<mailto:arorison@usccr.gov>
<mailto:bhoey@abilityone.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:mrudolph@usccr.gov>
<mailto:nbair@usccr.gov>
<mailto:bhoey@abilityone.gov>

Thanks for your reply. No, this issue not time sensitive. Regarding contacting the principal writer on the Subminimum Wage Report, yes, I would appreciate that. Best regards, Brian

From: Angelia Rorison <arorison@usccr.gov> Sent: Friday, September 18, 2020 8:12 AM To: Brian P. Hoey [BHoey@AbilityOne.gov] <bhoey@abilityone.gov> Subject: Re: Request for address to send letter regarding Subminimum Wage report issued today ATTENTION: This email was sent from outside of AbilityOne.gov. Please be cautious opening attachments, clicking on links, taking action on requested tasks or responding with sensitive information.

Hello Brian,

Our address is:

1331 Pennsylvania Avenue NW, Suite #1150 Washington, DC 20425 We are all at full teleworking capacity due to the pandemic so mail retrieval is weekly and not daily. Is this time sensitive? Our Office of Civil Rights Evaluation (OCRE) is the research arm of the Commission, the team there wrote the report. Would you like me to connect you to our principal writer on the Subminimum Wage Report? If you need to address the physical mail it can go to OCRE. Let me know if you have any questions, Angelia

From: Brian P. Hoey [BHoey@AbilityOne.gov] <bhoey@abilityone.gov> Sent: Thursday, September 17, 2020 4:43:48 PM To: Angelia Rorison Subject: [EXTERNAL] Request for address to send letter regarding Subminimum Wage report issued today

<mailto:arorison@usccr.gov>
<mailto:bhoey@abilityone.gov>
<mailto:bhoey@abilityone.gov>

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Hello,

I am writing to you because you are identified as the contact on the press release for the report issued today -- “Subminimum Wages: Impacts on the Civil Rights of People with Disabilities.”

I am unaware of whether the Commission had an opportunity to review the U.S. AbilityOne Commission section of your report before it was published – can you please let me know who I would contact to confirm whether a review copy was made available to the Commission?

Thank you.

Brian P. Hoey, Ph.D. Senior Advisor

U.S. AbilityOne Commission

1401 South Clark Street, Suite 715

Arlington, VA 22202

M: 408-410-6318

bhoey@abilityone.gov www.abilityone.gov

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Date : 10/15/2020 10:06:02 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Angelia Rorison" arorison@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Rukku Singla" rsingla@usccr.gov, "Irena Vidulovic" ividulovic@usccr.gov, "Zakee Martin" zmartin@usccr.gov, "Pamela Dunston" pdunston@usccr.gov, "Nicholas Bair" nbair@usccr.gov, "Maureen Rudolph" mrudolph@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov, "Vincent A.

Eng <veng@veng-group.com, "Joyce Liu" <jliu@veng-group.com, "Gerald Fosten" <gfofen@usccr.gov Subject : RE: Planning Meeting On Maternal Health Briefing Hi Ang, I didn't have time to review and wanted to give you a heads' up that I may have a minor edit. I'll get my review to you as soon as possible. Thanks, Kathy From: Angelia Rorison <arorison@usccr.gov> Sent: Thursday, October 15, 2020 9:32 AM To: Mauro Morales <mmorales@usccr.gov>; Rukku Singla <rsingla@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>; Zakee Martin <zmartin@usccr.gov>; Pamela Dunston <pdunston@usccr.gov>; Nicholas Bair <nbair@usccr.gov>; Maureen Rudolph <mrudolph@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>; Vincent A. Eng <veng@veng-group.com>; Joyce Liu <jliu@veng-group.com>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Gerald Fosten <gfofen@usccr.gov> Subject: Re: Planning Meeting On Maternal Health Briefing

Greetings All,

Please find the attached Save the Date for final review.

Let me know if you have any edits.

Ang

From: Mauro Morales Sent: Tuesday, October 13, 2020 5:21 PM To: Mauro Morales; Rukku Singla; Irena Vidulovic; Zakee Martin; Pamela Dunston; Nicholas Bair; Maureen Rudolph; Pilar McLaughlin; Angelia Rorison; Vincent A. Eng; Joyce Liu; Katherine Culliton-Gonzalez; Gerald Fosten Subject: Planning Meeting On Maternal Health Briefing When: Thursday, October 15, 2020 11:00 AM-12:00 PM. Where: [https://us02web.zoom.us/j/3938172441?](https://us02web.zoom.us/j/3938172441?pwd=NGiFRUZIUHNgbFZVN3RoRjR5K2JCQT09)

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pwd=NGiFRUZIUHNgbFZVN3RoRjR5K2JCQT09

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213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

69.174.57.160 (Canada)

207.226.132.110 (Japan)

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Date : 10/15/2020 10:33:23 AM From : "Katherine Culliton-Gonzalez" <kculliton-gonzalez@usccr.gov To : "Angelia Rorison" <arorison@usccr.gov, "Mauro Morales" <mmorales@usccr.gov, "Rukku Singla" <rsingla@usccr.gov, "Irena Vidulovic" <ividulovic@usccr.gov, "Zakee Martin" <zmartin@usccr.gov, "Pamela Dunston" <pdunston@usccr.gov, "Nicholas Bair" <nbair@usccr.gov, "Maureen Rudolph" <mrudolph@usccr.gov, "Pilar McLaughlin" <pmclaughlin@usccr.gov, "Vincent A. Eng" <veng@veng-group.com, "Joyce Liu" <jliu@veng-group.com, "Gerald Fosten" <gfofen@usccr.gov Subject : RE: Planning Meeting On Maternal Health Briefing Attachment : 20201113 Save Date Maternal Health Briefing final.kcgedit.docx; Hi Ang, Here's my proposed edit to this fantastic draft, which is necessary to clarify the scope of the project. My only change is to one sentence, but to explain in case helpful, I feel it's needed to avoid stating that we are going to study maternal health for all women, as opposed to the civil rights issue as identified under our jurisdiction. Thanks, Kathy From: Angelia Rorison <arorison@usccr.gov> Sent: Thursday, October 15, 2020 9:32 AM To: Mauro Morales <mmorales@usccr.gov>; Rukku Singla <rsingla@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>; Zakee Martin <zmartin@usccr.gov>; Pamela Dunston <pdunston@usccr.gov>; Nicholas Bair <nbair@usccr.gov>; Maureen Rudolph <mrudolph@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>; Vincent A. Eng <veng@veng-group.com>; Joyce Liu <jliu@veng-group.com>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Gerald Fosten <gfofen@usccr.gov> Subject: Re: Planning Meeting On Maternal Health Briefing

Greetings All,

Please find the attached Save the Date for final review.

Let me know if you have any edits.

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From: Mauro Morales Sent: Tuesday, October 13, 2020 5:21 PM To: Mauro Morales; Rukku Singla; Irena Vidulovic; Zakee Martin; Pamela Dunston; Nicholas Bair; Maureen Rudolph; Pilar McLaughlin; Angelia Rorison; Vincent A. Eng; Joyce Liu; Katherine Culliton-Gonzalez; Gerald Fosten

Subject: Planning Meeting On Maternal Health Briefing When: Thursday, October 15, 2020 11:00 AM-12:00 PM. Where: [https://us02web.zoom.us/j/3938172441?](https://us02web.zoom.us/j/3938172441?pwd=NGiFRUZIUHNgbFZVN3RoRjR5K2JCQT09)

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+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

877 369 0926 US Toll-free

833 548 0276 US Toll-free

833 548 0282 US Toll-free

855 880 1246 US Toll-free

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<https://us02web.zoom.us/j/3938172441?pwd=NGlFRUZIUHNgbFZVN3RoRjR5K2JCQT09>

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<https://us02web.zoom.us/j/3938172441?pwd=NGlFRUZIUHNgbFZVN3RoRjR5K2JCQT09>

Meeting ID: 393 817 2441

Passcode: 250052

Find your local number: <https://us02web.zoom.us/u/kxNvh0Jr5>

Join by SIP

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Join by H.323

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

69.174.57.160 (Canada)

207.226.132.110 (Japan)

Meeting ID: 393 817 2441

Passcode: 250052

<https://us02web.zoom.us/u/kxNvh0Jr5>

<mailto:3938172441@zoomcrc.com>

Virtual Public Briefing

Racial Disparities in Maternal Health

November 13, 2020 | Washington, DC

The U.S. Commission on Civil Rights will hold a virtual briefing on November 13, 2020, on maternal health disparities in the United States. The Commission's investigation seeks to examine the federal role in the federal role in addressing racial disparities in maternal health outcomes, including negative pregnancy-related health outcomes and pregnancy-related deaths of women in the United States. preventing negative pregnancy-related health outcomes and pregnancy-related deaths of women in the United States, and racial disparities in maternal health outcomes. The Commission will analyze current data regarding pregnancy-related and pregnancy-associated deaths, including data collected by the Centers for Disease Control and Prevention, the National Institute of Minority Health and Health Disparities, and the Department of Health and Human Services' State Partnership Initiative to Address Health Disparities.

Commissioners will hear from subject matter experts such as government officials, academics, healthcare providers, advocates, and impacted persons. The Commission will accept written materials from the public for consideration as we prepare our report; submit to maternalhealth@usccr.gov no later than December 14, 2020. From this investigation, the Commission plans to issue a report to address this critical civil rights issue.

DATE: Friday, November 13, 2020

LOCATION: The briefing will be live-streamed.

AGENDA: Briefing (expert panels): 10:00 am – 1:30 pm ET* Open Comment Session (public testimony): Written comments submitted to maternalhealth@usccr.gov by December 14.

Stay abreast of updates at www.usccr.gov and on Twitter and Facebook.

*Schedule subject to change

<mailto:maternalhealth@usccr.gov>

<https://www.youtube.com/user/USCCR/videos>

<mailto:maternalhealth@usccr.gov>

<http://www.usccr.gov/>

<https://twitter.com/USCCRGov>

<https://www.facebook.com/USCCRGov/>

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Date : 10/29/2020 12:59:04 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Angelia Rorison" arorison@usccr.gov, "Maureen Rudolph" mrudolph@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov, "Nicholas Bair" nbair@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov, "Zakee Martin" zmartin@usccr.gov, "Angelia Rorison" angelia.rorison@gmail.com, "Gerald Fosten" gfofosten@usccr.gov, "Pamela Dunston" pdunston@usccr.gov, "Joyce Liu" jliu@veng-group.com, "Irena Vidulovic" ividulovic@usccr.gov, "Vincent A. Eng" veng@veng-group.com, "Rukku Singla" rsingla@usccr.gov Subject : RE: Planning for Virtual Briefing on Maternal Health I'm good with the way it is. From: Angelia Rorison <arorison@usccr.gov> Sent: Thursday, October 29, 2020 12:55 PM To: Maureen Rudolph <mrudolph@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Nicholas Bair <nbair@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>; Zakee Martin <zmartin@usccr.gov>; Angelia Rorison <angelia.rorison@gmail.com>; Gerald Fosten <gfofosten@usccr.gov>; Pamela Dunston <pdunston@usccr.gov>; Joyce Liu <jliu@veng-group.com>; Irena Vidulovic <ividulovic@usccr.gov>; Vincent A. Eng <veng@veng-group.com>; Rukku Singla <rsingla@usccr.gov> Subject: Re: Planning for Virtual Briefing on Maternal Health

Thanks Maureen!

I think this is great! I don't think we need to add strongly - but open to it if other feel it is needed.

From: Maureen Rudolph Sent: Thursday, October 29, 2020 12:31:04 PM To: Angelia Rorison; TinaLouise Martin; Katherine Culliton-Gonzalez; Nicholas Bair; Pilar McLaughlin; Zakee Martin; Angelia Rorison; Gerald Fosten; Pamela Dunston; Joyce Liu; Irena Vidulovic; Vincent A. Eng; Rukku Singla Subject: Re: Planning for Virtual Briefing on Maternal Health Suggestion below for language. Am thinking "preferred" may unintentionally send the wrong message about who we want to hear from. Thinking "encourages" is better. Open to saying "strongly encourages" if that helps. Thoughts? Suggestion here: In addition to the testimony collected on Friday, November 13, 2020, via virtual briefing, the Commission welcomes the submission of material for consideration as we prepare our report. Please submit such information to maternalhealth@usccr.gov no later than December 14, 2020, or by mail to OCRE/Public Comments, ATTN: Maternal Health, U.S. Commission on Civil

<mailto:maternalhealth@usccr.gov>

Rights, 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425. The Commission encourages the use of email to provide public comments due to the current COVID-19 pandemic.

From: Angelia Rorison Sent: Thursday, October 29, 2020 11:49:43 AM To: TinaLouise Martin; Katherine Culliton-Gonzalez; Nicholas Bair; Pilar McLaughlin; Zakee Martin; Angelia Rorison; Gerald Fosten; Pamela Dunston; Joyce Liu; Irena Vidulovic; Vincent A. Eng; Rukku Singla; Maureen Rudolph Subject: Re: Planning for Virtual Briefing on Maternal Health

Adding in the address for the easiest fix:

mail to OCRE/Public Comments, ATTN: Maternal Health, U.S. Commission on Civil Rights, 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425.

From: TinaLouise Martin Sent: Thursday, October 29, 2020 11:39:44 AM To: Angelia Rorison; Katherine Culliton-Gonzalez; Nicholas Bair; Pilar McLaughlin; Zakee Martin; Angelia Rorison; Gerald Fosten; Pamela Dunston; Joyce Liu; Irena Vidulovic; Vincent A. Eng; Rukku Singla; Maureen Rudolph Subject: RE: Planning for Virtual Briefing on Maternal Health Did we say if they mail in comments they should put "Attention Maternal Health Briefing" on the envelope? I don't think I saw this in the notice. From: Angelia Rorison <arorison@usccr.gov> Sent: Thursday, October 29, 2020 11:29 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>; Nicholas Bair <nbair@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>; Zakee Martin <zmartin@usccr.gov>; Angelia Rorison <angelia.rorison@gmail.com>; Gerald Fosten <gfosten@usccr.gov>; Pamela Dunston <pdunston@usccr.gov>; Joyce Liu <jliu@veng-group.com>; Irena Vidulovic <ividulovic@usccr.gov>; Vincent A. Eng <veng@veng-group.com>; Rukku Singla <rsingla@usccr.gov>; Maureen Rudolph <mrudolph@usccr.gov> Subject: Re: Planning for Virtual Briefing on Maternal Health

Thank you Kathy!

Everyone:

I will vet with OGC - if there are no other comments on language, once approved by OGC I will move forward with the Federal Register and website posting.

From: Katherine Culliton-Gonzalez Sent: Thursday, October 29, 2020 11:21:37 AM To: Angelia Rorison; TinaLouise Martin; Nicholas Bair; Pilar McLaughlin; Zakee Martin; Angelia Rorison; Gerald Fosten; Pamela Dunston; Joyce Liu; Irena Vidulovic; Vincent A. Eng; Rukku Singla; Maureen Rudolph Subject: RE: Planning for Virtual Briefing on Maternal Health I have suggested edits herein about preferring comments by email. Thanks, K. From: Angelia Rorison <arorison@usccr.gov> Sent: Wednesday, October 28, 2020 11:17 AM To: TinaLouise Martin <tmartin@usccr.gov>; Nicholas Bair <nbair@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>; Zakee Martin <zmartin@usccr.gov>; Angelia Rorison <angelia.rorison@gmail.com>; Gerald Fosten <gfosten@usccr.gov>; Pamela Dunston <pdunston@usccr.gov>; Joyce Liu <jliu@veng-group.com>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>; Vincent A. Eng <veng@veng-group.com>; Rukku Singla <rsingla@usccr.gov>; Maureen Rudolph <mrudolph@usccr.gov> Subject: Re: Planning for Virtual Briefing on Maternal Health

Hello All,

Attached is the Sunshine Act notice draft for the 11/13 Briefing on Racial Disparities in Maternal Health for final circulation. Please review and supply comments by EOD tomorrow (Thur. 10/29) for timely posting to the Federal Register.

Many thanks,

Ang

From: TinaLouise Martin Sent: Tuesday, October 27, 2020 10:42 AM To: TinaLouise Martin; Nicholas Bair; Pilar McLaughlin; Zakee Martin; Angelia Rorison; Gerald Fosten; Pamela Dunston; Joyce Liu; Katherine Culliton-Gonzalez; Irena Vidulovic; Vincent A. Eng; Rukku Singla; Maureen Rudolph Subject: [EXTERNAL] Fwd: Planning for Virtual Briefing on Maternal Health When: Thursday, October 29, 2020 11:00 AM-12:00 PM. Where: <https://us02web.zoom.us/j/86811187644?pwd=T1JWt3VqY2pHUy9pSnQ3dXl2MncrUT09>

CAUTION: This email is from outside USCCR.

<mailto:arorison@usccr.gov>
<mailto:tmartin@usccr.gov>
<mailto:nbair@usccr.gov>
<mailto:pmclaughlin@usccr.gov>
<mailto:zmartin@usccr.gov>
<mailto:angelia.rorison@gmail.com>
<mailto:gfosten@usccr.gov>
<mailto:pdunston@usccr.gov>
<mailto:jliu@veng-group.com>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:ividulovic@usccr.gov>
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<https://us02web.zoom.us/j/86811187644?pwd=T1JWt3VqY2pHUy9pSnQ3dXl2MncrUT09>
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----- Forwarded message ----- From: TinaLouise Martin <tmartin@usccr.gov> Date: Tue, Oct 27, 2020 at 10:28 AM Subject: Planning for Virtual Briefing on Maternal Health To: Nicholas Bair <nbair@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>; Zakee Martin <zmartin@usccr.gov>; Angelia Rorison <angelia.rorison@gmail.com>; Gerald Fosten <gfosten@usccr.gov>; Pamela Dunston <pdunston@usccr.gov>; Joyce Liu <jliu@veng-group.com>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>; Vincent A. Eng <veng@veng-group.com>; Rukku Singla <rsingla@usccr.gov>; Maureen Rudolph <mrudolph@usccr.gov>

TinaLouise Martin is inviting you to a scheduled Zoom meeting. Join Zoom Meeting <https://us02web.zoom.us/j/86811187644?pwd=T1JWt3VqY2pHUy9pSnQ3dXl2MncrUT09> Meeting ID: 868 1118 7644 Passcode: 268479 One tap mobile +13017158592,,86811187644#,,,,0#,,268479# US (Germantown) +13126266799,,86811187644#,,,,0#,,268479# US (Chicago) Dial by your location +1 301 715 8592 US (Germantown) +1 312 626 6799 US (Chicago) +1 646 558 8656 US (New York) +1 253 215 8762 US (Tacoma) +1 346 248 7799 US (Houston) +1 669 900 6633 US (San Jose) 633 548 0276 US Toll-free 633 548 0262 US Toll-free 655 860 1246 US Toll-free 677 369 0926 US Toll-free Meeting ID: 868 1118 7644 Passcode: 268479 Find your local number: <https://us02web.zoom.us/u/kbxbRDlgg> Join by SIP 86811187644@zoomcrc.com Join by H.323

<mailto:tmartin@usccr.gov>
<mailto:nbair@usccr.gov>
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<mailto:zmartin@usccr.gov>
<mailto:angelia.rorison@gmail.com>
<mailto:gfosten@usccr.gov>
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<mailto:jliu@veng-group.com>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:ividulovic@usccr.gov>
<mailto:veng@veng-group.com>
<mailto:rsingla@usccr.gov>
<mailto:mrudolph@usccr.gov>
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https://url.emailprotection.link/?bjGVcSmshrQTchjMN-Eln0-RR3DK7paHUA45M90AahL9By8aFRKjzqs6y6NfxJm8VXLgP1r3K5QAN44_pKg--
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162.255.37.11 (US West) 162.255.36.11 (US East) 115.114.131.7 (India Mumbai) 115.114.115.7 (India Hyderabad) 213.19.144.110 (Amsterdam Netherlands) 213.244.140.110 (Germany) 103.122.166.55 (Australia) 149.137.40.110 (Singapore) 64.211.144.160 (Brazil) 69.174.57.160 (Canada) 207.226.132.110 (Japan) Meeting ID: 868 1118 7644 Passcode: 268479

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Date : 10/29/2020 11:21:38 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Angelia Rorison" arorison@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov, "Nicholas Bair" nbair@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov, "Zakee Martin" zmartin@usccr.gov, "Angelia Rorison" angelia.rorison@gmail.com, "Gerald Fosten" gfosten@usccr.gov, "Pamela Dunston" pdunston@usccr.gov, "Joyce Liu" jliu@veng-group.com, "Irena Vidulovic" ividulovic@usccr.gov, "Vincent A. Eng" veng@veng-group.com, "Rukku Singla" rsingla@usccr.gov, "Maureen Rudolph" mrudolph@usccr.gov Subject : RE: Planning for Virtual Briefing on Maternal Health Attachment : DRAFT 20201113 Sunshine Act Racial Disparities in Maternal Health NB amr.kcg.docx; I have suggested edits herein about preferring comments by email. Thanks, K. From: Angelia Rorison <arorison@usccr.gov> Sent: Wednesday, October 28, 2020 11:17 AM To: TinaLouise Martin <tmartin@usccr.gov>; Nicholas Bair <nbair@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>; Zakee Martin <zmartin@usccr.gov>; Angelia Rorison <angelia.rorison@gmail.com>; Gerald Fosten <gfosten@usccr.gov>; Pamela Dunston <pdunston@usccr.gov>; Joyce Liu <jliu@veng-group.com>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>; Vincent A. Eng <veng@veng-group.com>; Rukku Singla <rsingla@usccr.gov>; Maureen Rudolph <mrudolph@usccr.gov> Subject: Re: Planning for Virtual Briefing on Maternal Health

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Ang

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Subject: [EXTERNAL] Fwd: Planning for Virtual Briefing on Maternal Health When: Thursday, October 29, 2020 11:00 AM-12:00 PM. Where: <https://us02web.zoom.us/j/86811187644?pwd=T1JWt3VqY2pHUy9pSnQ3dXl2MncrUT09>

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----- Forwarded message ----- From: Tina Louise Martin <tmartin@usccr.gov> Date: Tue, Oct 27, 2020 at 10:28 AM Subject: Planning for Virtual Briefing on Maternal Health To: Nicholas Bair <nbair@usccr.gov>, Pilar McLaughlin <pmclaughlin@usccr.gov>, Zakee Martin <zmartin@usccr.gov>, Angella Rorison <angella.rorison@gmail.com>, Gerald Fosten <gfosten@usccr.gov>, Pamela Dunston <pdunston@usccr.gov>, Joyce Liu <jliu@veng-group.com>, Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>, Irena Vidulovic <ividulovic@usccr.gov>, Vincent A. Eng <veng@veng-group.com>, Rukku Singla <rsingla@usccr.gov>, Maureen Rudolph <mrudolph@usccr.gov>

Tina Louise Martin is inviting you to a scheduled Zoom meeting. Join Zoom Meeting <https://us02web.zoom.us/j/86811187644?pwd=T1JWt3VqY2pHUy9pSnQ3dXI2MncrUT09> Meeting ID: 868 1118 7644 Passcode: 268479 One tap mobile +13017156532,,86811187644#,,,,,0#,,268479# US (Germantown) +13126266799,,86811187644#,,,,,0#,,268479# US (Chicago) Dial by your location +1 301 715 6592 US (Germantown) +1 312 626 6799 US (Chicago) +1 646 558 8656 US (New York) +1 253 215 8762 US (Tacoma) +1 346 248 7799 US (Houston) +1 669 900 6633 US (San Jose) 833 548 0276 US Toll-free 833 548 0282 US Toll-free 855 860 1246 US Toll-free 877 369 0926 US Toll-free Meeting ID: 868 1118 7644

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- <mailto:rsingla@usccr.gov>
- <mailto:mrudolph@usccr.gov>

https://url.emailprotection.link/?bjGVcSmsrQTchjMN-Eln0Dq6k4_qtDXAKcosuMINKNw_TbRsR8QK_ibKivFV3cKdn9JEPQR_YWafFn6kkgjbolPELX2TANdZTemb2ft7tsq0t_wkvRRUmJAHGsAKZHvpyZi0vmhgPzuEX2-OKIRdovo6BNJuYWISEM0AAqjXU-

Passcode: 268479 Find your local number: <https://us02web.zoom.us/j/86811187644?pwd=T1JWt3VqY2pHUy9pSnQ3dXI2MncrUT09> Join by SIP 86811187644@zoomcrc.com Join by H.323 162.255.37.11 (US West) 162.255.36.11 (US East) 115.114.131.7 (India Mumbai) 115.114.115.7 (India Hyderabad) 213.19.144.110 (Amsterdam Netherlands) 213.244.140.110 (Germany) 103.122.166.55 (Australia) 149.137.40.110 (Singapore) 64.211.144.160 (Brazil) 69.174.57.160 (Canada) 207.226.132.110 (Japan) Meeting ID: 868 1118 7644 Passcode: 268479

https://url.emailprotection.link/?bjGVcSmsrQTchjMN-Eln0E-RR3DK7paHUA45M90AahL9By8aIFRkizqs6y6NfxJm8VXLqP1r3K5QAN44_pKq~~
<mailto:86811187644@zoomcrc.com>

1
Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Public Briefing, Racial Disparities in Maternal Health, Notice of Commission Business Meeting, and Call for Public Comments

DATES: Friday, November 13, 2020, 10:00 a.m. ET.

ADDRESSES: Virtual Briefing and Business Meeting. FOR FURTHER INFORMATION CONTACT: Angella Rorison (202) 376-8359; TTY: (202) 376-8116; publicaffairs@usccr.gov.

SUPPLEMENTARY INFORMATION: On Friday, November 13, 2020, at 10:00 a.m. Eastern Time, the U.S. Commission on Civil Rights will hold a virtual briefing to examine the federal role in addressing racial disparities in maternal health outcomes, including negative pregnancy- related health outcomes and pregnancy-related deaths of women in the United States.

The Commission will analyze current data regarding pregnancy-related and pregnancy- associated deaths, including data collected by the Centers for Disease Control and Prevention, the National Institute of Minority Health and Health Disparities, and the Department of Health and Human Services’ State Partnership Initiative to Address Health Disparities.

This briefing is open to the public via Weblink. The event will live-stream at <https://www.youtube.com/user/USCCR/videos>. (Streaming information subject to change.) Public participation is available for the event with view access, along with an audio option for listening.

Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, November 13, 2020, is <https://www.streamtext.net/player?event=USCCR>. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript. To request additional accommodations, persons with disabilities should email access@usccr.gov by Monday, November 6, 2020 indicating “accommodations” in the subject line. Briefing Agenda for Racial Disparities in Maternal Health: 10:00 am – 1:30 pm All times Eastern Time

- I. Introductory Remarks: Chair Catherine E. Lhamon: 10:00 – 10:05 am
- II. Panel 1: Policy and Legislation: 10:05 – 11:05 am
- III. Break: 11:05 – 11:15 am
- IV. Panel 2: Service Providers/Private Organizations: 11:15 am – 12:15 pm
- V. Break: 12:15 – 12:25 pm

Commented [AR1]: Flagging for input on timing

- <mailto:publicaffairs@usccr.gov>
- <https://www.youtube.com/user/USCCR/videos>
- <https://www.streamtext.net/player?event=USCCR>
- <mailto:access@usccr.gov>

- 2
- VI. Panel 3: Lived Experience: 12:25 – 1:25 pm
- VII. Closing Remarks: Chair Catherine E. Lhamon: 1:25 – 1:30 pm
- VI. Adjourn Meeting.

Schedule is subject to change.

Call for Public Comments:

In addition to the testimony collected on Friday, November 13, 2020 via virtual briefing, the Commission welcomes the submission of material for consideration as we prepare our report. Please submit such information to maternalhealth@usccr.gov no later than December 13, 2020. Although email comments are preferred, comments may also be sent by mail to OCRE/Public Comments, U.S. Commission on Civil Rights, 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425.

Dated: October 30, 2020

David Mussatt, Supervisory Chief, Regional Programs Unit.

Commented [KC2]: Should we change the date to a Friday, 30 days after? Just flagging in case needed, although there may have been some reason for the date to be Saturday, Dec. 14. I defer to OGC/Ang.

Commented [AR3]: Took this from a prior notice, thoughts on leaving off as mail for COVID protocol?

Commented [NB4R4]: We may need to keep the physical address for accessibility reasons, general counsel’s office will be able to advise (sorry for raising issues without providing solutions!)

Commented [KC5R4]: Suggesting edits along the lines of what was discussed in our meeting.

Commented [AR6]: David is sending Sunshine Act Notices until I receive my PC as Macs are not compatible with the Federal Register – who would have thought!?!

<mailto:maternalhealth@usccr.gov>

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Date : 10/30/2020 6:30:48 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "CULLIKAT@HOTMAIL.COM" CULLIKAT@HOTMAIL.COM Subject : FW: Senator Warren and Congresswoman Haaland Condemn Republican Appointees’ Censorship of Important New Report on the Pandemic’s Impact on Native Nations | U.S. Senator Elizabeth Warren of Massachusetts From: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>
Sent: Friday, October 30, 2020 5:48 PM To: ocre@usccr.gov Subject: FW: Senator Warren and Congresswoman Haaland Condemn Republican Appointees’ Censorship of Important New Report on the Pandemic’s Impact on Native Nations | U.S. Senator Elizabeth Warren of Massachusetts

<https://www.warren.senate.gov/newsroom/press-releases/senator-warren-and-congresswoman-haaland-condemn-republican-appointees-censorship-of-important-new-report-on-the-pandemics-impact-on-native-nations> FOR IMMEDIATE RELEASE October 30, 2020 Contacts: Ashley Woolheater (Warren): 202-224-2292 Felicia Salazar (Haaland): 202-961-1594

Senator Warren and Congresswoman Haaland Condemn Republican Appointees’ Censorship of Important New Report on the Pandemic’s Impact

on Native Nations

Promises” report on federal funding shortfalls for Native Nations

Washington, DC - United States Senator Elizabeth Warren (D-Mass.) and Congresswoman Deb Haaland (D-N.M.) today released a joint statement condemning Republican appointees’ actions to block the publication of new information about the pandemic’s ongoing impacts on Native Nations, which were to be released publicly as an update to the U.S. Commission on Civil Rights’ (USCCR) landmark report, Broken Promises: Continuing Federal Funding Shortfall for Native Americans.

Joint Statement from Senator Warren and Congresswoman Haaland:

“Today’s vote to censor not just the report, but any official Commission statements on the pandemic’s impact on Native Americans, is disgraceful and a missed opportunity, especially because tribal communities have been disproportionately impacted by the virus. It also reinforces a pattern of the federal government minimizing and disregarding the needs of—and obligations to—Native Americans.

- https://www.warren.senate.gov/newsroom/press-releases/senator-warren-and-congresswoman-haal-and-condemn-republican-appointees-censorship-of-important-new-report-on-the-pandemics-impact-on-native-nations
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By suppressing this report, certain members of the Commission highlight the need for more scrutiny—not less—of this administration’s failure to uphold its responsibilities to Native Americans.”

In May 2020, Senator Warren and Congresswoman Haaland asked the USCCR to update its landmark report, Broken Promises: Continuing Federal Funding Shortfall for Native Americans, in light of the pandemic’s ongoing impacts on Native Nations across the United States. They wrote: “The Administration’s failure to uphold the trust responsibility to provide adequate relief, health services, and public safety resources to tribal communities has exacerbated the pandemic’s impact. This failure requires the Commission’s voice.” The USCCR voted to take up this request.

The USCCR then completed the work of collecting important and illuminating testimony from Native advocates and leaders on the devastating impacts of the COVID-19 pandemic on American Indian and Alaska Native people, and drafted a written update to Broken Promises. But Republican members of the Commission – including two members recently appointed by President Trump – and an Independent member blocked the publication of the report. In addition, those same commissioners also blocked the release of commissioner statements on this topic— a break from the USCCR’s longstanding practice when it undertakes an investigation but does not issue a report. During the discussion portion of the meeting, they did not explain their votes, unlike all of the commissioners who voted in favor of publicly publishing the report.

At today’s meeting, USCCR Chair Catherine E. Lhamon said before the vote, “The needs our investigation uncovered are staggering,” including sky-high rates of hospitalization for Native Americans, the Indian Health Service’s very limited supply of ventilators and other resources for COVID-19 patients, and even outright discrimination against Native American patients. “It is our mandate at this Commission to conduct careful study of civil rights issues like these, and report our findings to Congress, the President, and the American people.”

In addition to Chair Lhamon, three other commissioners explained that they would vote to publish the report because it included critical findings about the severe consequences of lack of broadband internet access in Indian Country, the lack of funding for preventive public health programs, the shortage of personal protective equipment for tribal health care providers, and the severe difficulties tribal nations face in accessing COVID-19 economic relief programs, among other topics. The four commissioners who voted against publishing the report, and then voted against the release of formal commissioner statements, said nothing.

Senator Warren and Congresswoman Haaland also stated:

“It is embarrassing that the commissioners who voted to censor this report and block commissioner statements did not even have the courage to explain themselves. We thank the commissioners who voted to publish the report, the Commission staff who worked on drafting it, and the Native advocates and leaders who offered testimony to inform the report. We encourage everyone to revisit the Broken Promises report and to read the testimony submitted for this expected update to Broken Promises.”

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The USCCR members who voted to publish the report are Chair Catherine E. Lhamon and Commissioners Debo P. Adegbile, David Kladney, and Michael Yaki. Commissioners who voted against are Trump appointees Stephen Gilchrist and J. Christian Adams, along with Gail Heriot and Peter N. Kirsanow. A tie vote is insufficient for a motion to carry. In August 2019, Senator Warren and Congresswoman Haaland released a comprehensive legislative proposal for a forthcoming bill, the Honoring Promises to Native Nations Act to address chronic underfunding and barriers to sovereignty in Indian Country. The legislation will hold the federal government accountable for honoring America’s legal promises to Native peoples and be informed by the recommendations in the Broken Promises report. On May 26, 2020, Senator Warren and Congresswoman Haaland published a joint op-ed in The Washington Post: “The federal government fiddles as COVID-19 ravages Native Americans that outlines how the mismanagement of the pandemic resulted in alarming rates of COVID-19 infections and disproportionate economic impacts for Native communities.

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Date : 11/20/2020 8:48:30 AM From : "Katherine Culliton-Gonzalez" <kulliton-gonzalez@usccr.gov To : "Juliette Singarella" jrs436@georgetown.edu Subject : RE: [EXTERNAL] Applications Update Hi Juliette, could you please send me the letter? I had been asking which version you wanted me to use so that's why I didn't send it. Could you send it to me? If I don't hear from you I'll dig up your original draft and update it but would prefer if you can send it today, so I can be sure I'm using the right version and salutation. Thanks very much, Kathy From: Juliette Singarella -jrs436@georgetown.edu Sent: Friday, October 30, 2020 5:17 PM To: Katherine Culliton-Gonzalez <kulliton-gonzalez@usccr.gov> Subject: Re: [EXTERNAL] Applications Update

CAUTION: This email is from outside USCCR.

Hi Kathy, Happy Friday! I wanted to let you know I just sent the application for If/When/How. If you have a moment, you can email the letter to RJFP@ifwhenhow.org any time by 5:00 PM on November 2. Thanks so much for all your help! Have a great weekend. All the best, Juliette On Wed, Oct 28, 2020 at 4:24 PM Juliette Singarella -jrs436@georgetown.edu- wrote:

Hi Kathy, Thanks so much! I just finished my second round of interviews with the Judge today, and they went really well! I should be hearing back from her in a few weeks. In the meantime, I'm going to keep applying to other opportunities. For the fellowships, I edited slightly the final version of the clerkship letter you had sent me. They each now reference another gender-based project I worked on at the Commission. I also changed the names/position titles to reflect the applications. I've attached them for your review. I am hoping to turn in at least one by this Friday, and will keep you posted. Thanks again for everything.

mailto:RJFP@ifwhenhow.org
mailto:jrs436@georgetown.edu

Best, Juliette On Tue, Oct 20, 2020 at 4:54 PM Katherine Culliton-Gonzalez <kulliton-gonzalez@usccr.gov> wrote:

Hi Julia, that's great news! For the two other opportunities you mention below, did you want me to send the same as I sent for your clerkship? -Kathy From: Juliette Singarella -jrs436@georgetown.edu- Sent: Tuesday, October 20, 2020 4:16 PM To: Katherine Culliton-Gonzalez <kulliton-gonzalez@usccr.gov> Subject: [EXTERNAL] Applications Update

CAUTION: This email is from outside USCCR.

Hi Kathy, Happy Tuesday! I hope you are doing well. I wanted to reach out and give you an update on the job search and the fellowship applications. First, I have just started to hear back from clerkships! I have an interview tomorrow with a judge at the DC Superior Court, which I am really looking forward to. She stated that she was really impressed by my letters of recommendation when she reached out to me with the interview offer, so thank you for that! Second, I am

currently getting my application together for a fellowship at If/When/How—a reproductive justice organization, and Georgetown’s Women’s Law and Public Policy Fellowship Program—both with the clinical (with the Domestic Violence Clinic) and non-clinical positions. The If/When/How Application is due on Monday, November 2, and the WLPFP application is due on Friday, November 6. I am hoping to get both of those done and submitted by October 30. You can email the letter of recommendation separately around the same time. I will let you know on the day that I actually submit both applications, in case I end up submitting earlier or later than that date, but I wanted to let you know now in case you are making any final edits or have any questions. The non-clinical WLPFP email is morrisjc@georgetown.edu, and the clinical WLPFP email is dvclinic@law.georgetown.edu. The If/When/How email is RJFP@ifwhenhow.org. Thanks so much for everything! Best, Juliette

<mailto:kculliton-gonzalez@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:jrs436@georgetown.edu>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:morrisjc@georgetown.edu>
<mailto:dvclinic@law.georgetown.edu>
<mailto:RJFP@ifwhenhow.org>

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Date : 11/2/2020 12:26:49 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Angelia Rorison" arorison@usccr.gov, "Maureen Rudolph" mrudolph@usccr.gov, "TinaLouise Martin" tmartin@usccr.gov, "Nicholas Bair" nbair@usccr.gov, "Pilar McLaughlin" pmclaughlin@usccr.gov, "Zakee Martin" zmartin@usccr.gov, "Angelia Rorison" angelia.rorison@gmail.com, "Gerald Fosten" gfosten@usccr.gov, "Pamela Dunston" Pdunston@usccr.gov, "Joyce Liu" jliu@veng-group.com, "Irena Vidulovic" ividulovic@usccr.gov, "Vincent A. Eng" veng@veng-group.com, "Rukku Singla" rsingla@usccr.gov Subject : RE: Maternal Health Media Advisory for Circulation Attachment : DRAFT Media Advisory Racial Disparities in Maternal Health.kcg.docx; Hi Ange, I added some titles that were missing which we must have unintentionally left off. For example, Nadine Gracia is also an M.D. so because we use that title for others, we should use it for her. If this takes up to much space, I recommend deleting the periods in these titles, for example M.D. could be MD or M.P.H. could be MPH. I defer to you on whether the abbreviations should have periods, and mainly wanted to be sure we are treating all panelists with equity, if that makes sense. I defer to Nick if more changes are needed as the panelists become finalized. Thanks, K. From: Angelia Rorison <arorison@usccr.gov> Sent: Monday, November 2, 2020 10:23 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Maureen Rudolph <mrudolph@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>; Nicholas Bair <nbair@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>; Zakee Martin <zmartin@usccr.gov>; Angelia Rorison <angelia.rorison@gmail.com>; Gerald Fosten <gfosten@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; Joyce Liu <jliu@veng-group.com>; Irena Vidulovic <ividulovic@usccr.gov>; Vincent A. Eng <veng@veng-group.com>; Rukku Singla <rsingla@usccr.gov> Subject: Maternal Health Media Advisory for Circulation

Hello everyone,

Please find the Maternal Health Briefing Media Advisory/Press Release for your review. I need all comments and final panelists by Monday 11/9 for a send date of 11/10.

A reminder: I will not be working Thursday-Friday and I will be unable to attend the planning meeting.

Irena - I will send you an update for the meeting tomorrow on media timeline and deliverables status.

Let me know if you have any questions,

Ang

From: Angelia Rorison Sent: Thursday, October 29, 2020 1:00:33 PM To: Katherine Culliton-Gonzalez; Maureen Rudolph; TinaLouise Martin; Nicholas Bair; Pilar McLaughlin; Zakee Martin; Angelia Rorison; Gerald Fosten; Pamela Dunston; Joyce Liu; Irena Vidulovic; Vincent A. Eng; Rukku Singla Subject: Re: Planning for Virtual Briefing on Maternal Health

Thanks Kathy - I will get this document finalized and sent for posting to Federal Register and website today.

From: Katherine Culliton-Gonzalez Sent: Thursday, October 29, 2020 12:59:03 PM To: Angelia Rorison; Maureen Rudolph; TinaLouise Martin; Nicholas Bair; Pilar McLaughlin; Zakee Martin; Angelia Rorison; Gerald Fosten; Pamela Dunston; Joyce Liu; Irena Vidulovic; Vincent A. Eng; Rukku Singla Subject: RE: Planning for Virtual Briefing on Maternal Health

I'm good with the way it is.

From: Angelia Rorison <arorison@usccr.gov> Sent: Thursday, October 29, 2020 12:55 PM To: Maureen Rudolph <mrudolph@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Nicholas Bair <nbair@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>; Zakee Martin <zmartin@usccr.gov>; Angelia Rorison <angelia.rorison@gmail.com>; Gerald Fosten <gfosten@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; Joyce Liu <jliu@veng-group.com>; Irena Vidulovic <ividulovic@usccr.gov>; Vincent A. Eng <veng@veng-group.com>; Rukku Singla <rsingla@usccr.gov> Subject: Re: Planning for Virtual Briefing on Maternal Health

Thanks Maureen!

<mailto:arorison@usccr.gov>
<mailto:mrudolph@usccr.gov>
<mailto:tmartin@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:nbair@usccr.gov>
<mailto:pmclaughlin@usccr.gov>
<mailto:zmartin@usccr.gov>
<mailto:angelia.rorison@gmail.com>
<mailto:gfosten@usccr.gov>
<mailto:Pdunston@usccr.gov>
<mailto:jliu@veng-group.com>
<mailto:ividulovic@usccr.gov>
<mailto:veng@veng-group.com>
<mailto:rsingla@usccr.gov>

I think this is great! I don't think we need to add strongly - but open to it if other feel it is needed.

From: Maureen Rudolph Sent: Thursday, October 29, 2020 12:31:04 PM To: Angelia Rorison; TinaLouise Martin; Katherine Culliton-Gonzalez; Nicholas Bair; Pilar McLaughlin; Zakee Martin; Angelia Rorison; Gerald Fosten; Pamela Dunston; Joyce Liu; Irena Vidulovic; Vincent A. Eng; Rukku Singla Subject: Re: Planning for Virtual Briefing on Maternal Health

Suggestion below for language. Am thinking "preferred" may unintentionally send the wrong message about who we want to hear from. Thinking "encourages" is better. Open to saying "strongly encourages" if that helps. Thoughts?

Suggestion here:

In addition to the testimony collected on Friday, November 13, 2020, via virtual briefing, the Commission welcomes the submission of material for consideration as we prepare our report. Please submit such information to maternalhealth@usccr.gov no later than December 14, 2020, or by mail to OCRE/Public Comments, ATTN: Maternal Health, U.S. Commission on Civil Rights, 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425. The Commission encourages the use of email to provide public comments due to the current COVID-19 pandemic.

From: Angelia Rorison Sent: Thursday, October 29, 2020 11:49:43 AM To: TinaLouise Martin; Katherine Culliton-Gonzalez; Nicholas Bair; Pilar McLaughlin; Zakee Martin; Angelia Rorison; Gerald Fosten; Pamela Dunston; Joyce Liu; Irena Vidulovic; Vincent A. Eng; Rukku Singla; Maureen Rudolph Subject: Re: Planning for Virtual Briefing on Maternal Health

Adding in the address for the easiest fix:

<mailto:maternalhealth@usccr.gov>

mail to OCRE/Public Comments, ATTN: Maternal Health, U.S. Commission on Civil Rights, 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425.

From: TinaLouise Martin Sent: Thursday, October 29, 2020 11:39:44 AM To: Angelia Rorison; Katherine Culliton-Gonzalez; Nicholas Bair; Pilar McLaughlin; Zakee Martin; Angelia Rorison; Gerald Fosten; Pamela Dunston; Joyce Liu; Irena Vidulovic; Vincent A. Eng; Rukku Singla; Maureen Rudolph Subject: RE: Planning for Virtual Briefing on Maternal Health

Did we say if they mail in comments they should put "Attention Maternal Health Briefing" on the envelope? I don't think I saw this in the notice.

From: Angelia Rorison <arorison@usccr.gov> Sent: Thursday, October 29, 2020 11:29 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>; Nicholas Bair <nbair@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>; Zakee Martin <zmartin@usccr.gov>; Angelia Rorison <angelia.rorison@gmail.com>; Gerald Fosten <gfosten@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; Joyce Liu <jliu@veng-group.com>; Irena Vidulovic <ividulovic@usccr.gov>; Vincent A. Eng <veng@veng-group.com>; Rukku Singla <rsingla@usccr.gov>; Maureen Rudolph <mrudolph@usccr.gov> Subject: Re: Planning for Virtual Briefing on Maternal Health

Thank you Kathy!

Everyone:

I will vet with OGC - if there are no other comments on language, once approved by OGC I will move forward with the Federal Register and website posting.

From: Katherine Culliton-Gonzalez Sent: Thursday, October 29, 2020 11:21:37 AM To: Angelia Rorison; TinaLouise Martin; Nicholas Bair; Pilar McLaughlin; Zakee Martin; Angelia Rorison; Gerald Fosten; Pamela Dunston; Joyce Liu; Irena Vidulovic; Vincent A. Eng; Rukku Singla; Maureen Rudolph Subject: RE: Planning for Virtual Briefing on Maternal Health

<mailto:arorison@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:tmartin@usccr.gov>
<mailto:nbair@usccr.gov>
<mailto:pmclaughlin@usccr.gov>
<mailto:zmartin@usccr.gov>
<mailto:angelia.rorison@gmail.com>
<mailto:gfosten@usccr.gov>
<mailto:Pdunston@usccr.gov>
<mailto:jliu@veng-group.com>
<mailto:ividulovic@usccr.gov>
<mailto:veng@veng-group.com>
<mailto:rsingla@usccr.gov>

<mailto:mrudolph@usccr.gov>

I have suggested edits herein about preferring comments by email. Thanks, K.

From: Angella Rorison <arorison@usccr.gov> Sent: Wednesday, October 28, 2020 11:17 AM To: TinaLouise Martin <tmartin@usccr.gov>; Nicholas Bair <nbair@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>; Zakee Martin <zmartin@usccr.gov>; Angella Rorison <angella.rorison@gmail.com>; Gerald Fosten <gfosten@usccr.gov>; Pamela Dunston <pdunston@usccr.gov>; Joyce Liu <jliu@veng-group.com>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>; Vincent A. Eng <veng@veng-group.com>; Rukku Singla <rsingla@usccr.gov>; Maureen Rudolph <mrudolph@usccr.gov> Subject: Re: Planning for Virtual Briefing on Maternal Health

Hello All,

Attached is the Sunshine Act notice draft for the 11/13 Briefing on Racial Disparities in Maternal Health for final circulation. Please review and supply comments by EOD tomorrow (Thur. 10/29) for timely posting to the Federal Register.

Many thanks,

Ang

From: TinaLouise Martin Sent: Tuesday, October 27, 2020 10:42 AM To: TinaLouise Martin; Nicholas Bair; Pilar McLaughlin; Zakee Martin; Angella Rorison; Gerald Fosten; Pamela Dunston; Joyce Liu; Katherine Culliton-Gonzalez; Irena Vidulovic; Vincent A. Eng; Rukku Singla; Maureen Rudolph Subject: [EXTERNAL] Fwd: Planning for Virtual Briefing on Maternal Health When: Thursday, October 29, 2020 11:00 AM-12:00 PM. Where: <https://us02web.zoom.us/j/86811187644?pwd=T1JWT3VqY2pHUy9pSnQ3dXI2MncrUT09>

<mailto:arorison@usccr.gov>
<mailto:tmartin@usccr.gov>
<mailto:nbair@usccr.gov>
<mailto:pmclaughlin@usccr.gov>
<mailto:zmartin@usccr.gov>
<mailto:angella.rorison@gmail.com>
<mailto:gfosten@usccr.gov>
<mailto:pdunston@usccr.gov>
<mailto:jliu@veng-group.com>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:ividulovic@usccr.gov>
<mailto:veng@veng-group.com>
<mailto:rsingla@usccr.gov>
<mailto:mrudolph@usccr.gov>
<https://us02web.zoom.us/j/86811187644?pwd=T1JWT3VqY2pHUy9pSnQ3dXI2MncrUT09>
<https://us02web.zoom.us/j/86811187644?pwd=T1JWT3VqY2pHUy9pSnQ3dXI2MncrUT09>

CAUTION: This email is from outside USCCR.

----- Forwarded message ----- From: TinaLouise Martin <tmartin@usccr.gov> Date: Tue, Oct 27, 2020 at 10:28 AM Subject: Planning for Virtual Briefing on Maternal Health To: Nicholas Bair <nbair@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>; Zakee Martin <zmartin@usccr.gov>; Angella Rorison <angella.rorison@gmail.com>; Gerald Fosten <gfosten@usccr.gov>; Pamela Dunston <pdunston@usccr.gov>; Joyce Liu <jliu@veng-group.com>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Irena Vidulovic <ividulovic@usccr.gov>; Vincent A. Eng <veng@veng-group.com>; Rukku Singla <rsingla@usccr.gov>; Maureen Rudolph <mrudolph@usccr.gov>

TinaLouise Martin is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://us02web.zoom.us/j/86811187644?pwd=T1JWT3VqY2pHUy9pSnQ3dXI2MncrUT09>

Meeting ID: 868 1118 7644

Passcode: 268479

One tap mobile

+13017158592,,86811187644#,,,,,0#,,268479# US (Germantown)

+13126266799,,86811187644#,,,,,0#,,268479# US (Chicago)

Dial by your location

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 646 558 8656 US (New York)

+1 253 215 8782 US (Tacoma)

<mailto:tmartin@usccr.gov>
<mailto:nbair@usccr.gov>
<mailto:pmclaughlin@usccr.gov>
<mailto:zmartin@usccr.gov>
<mailto:angella.rorison@gmail.com>
<mailto:gfosten@usccr.gov>
<mailto:pdunston@usccr.gov>
<mailto:jliu@veng-group.com>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:ividulovic@usccr.gov>
<mailto:veng@veng-group.com>
<mailto:rsingla@usccr.gov>
<mailto:mrudolph@usccr.gov>
https://url.emailprotection.link/?bjGVcSmshrQTchjMN-Eln0Dq6k4_qtDXAKcosuMINxNw_TbRsR8QK_ibKivFV3cKdn9JEPQR_YWaffN6kkgbolPELX2TANdZTemb2ft7tsq0t_wkvRRUmJAHGsAKZHvpyZi0vmhgPzuEX2-OKIRdoyo6BNJuYWISEM0AAqjXU-
https://url.emailprotection.link/?bjGVcSmshrQTchjMN-Eln0Dq6k4_qtDXAKcosuMINxNw_TbRsR8QK_ibKivFV3cKdn9JEPQR_YWaffN6kkgbolPELX2TANdZTemb2ft7tsq0t_wkvRRUmJAHGsAKZHvpyZi0vmhgPzuEX2-OKIRdoyo6BNJuYWISEM0AAqjXU-

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

833 548 0276 US Toll-free

833 548 0282 US Toll-free

855 880 1246 US Toll-free

877 369 0926 US Toll-free

Meeting ID: 868 1118 7644

Passcode: 268479

Find your local number: <https://us02web.zoom.us/u/kbexbRDlgg>

Join by SIP

86811187644@zoomcrc.com

Join by H.323

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

69.174.57.160 (Canada)

207.226.132.110 (Japan)

https://url.emailprotection.link/?bjGVcSmsHrQTchjMN-Eln0E-RR3DK7paHUA45M90AahL9By8aIFRkjzqs6y6NfxbJm8VXLqP1r3K5QAN44_pKg~~mailto:86811187644@zoomcrc.com

Meeting ID: 868 1118 7644

Passcode: 268479

MEDIA ADVISORY November 10, 2020

Contact: Angelia Rorison Email: arorison@usccr.gov

Tel: 202-376-8359

U.S. Commission on Civil Rights Virtual Briefing Racial Disparities in Maternal Health

WHAT:

On Friday, November 13, 2020, at 10:00 a.m. Eastern Time, the U.S. Commission on Civil Rights will hold a virtual briefing to examine the federal role in addressing racial disparities in maternal health outcomes, including negative pregnancy-related health outcomes and pregnancy-related deaths of women in the United States. The Commission will analyze current data regarding pregnancy-related and pregnancy-associated deaths, including data collected by the Centers for Disease Control and Prevention, the National Institute of Minority Health and Health Disparities, and the Department of Health and Human Services' State Partnership Initiative to Address Health Disparities. The Commission will hear from subject matter experts such as government officials, academics, healthcare providers, advocates, and impacted persons. From this investigation, the Commission plans to issue a report to address this critical civil rights issue.

WHO:

I. Introductory Remarks: 10:00 – 10:05 a.m. EDT • Catherine E. Lhamon, Chair, U.S. Commission on Civil Rights

II. Panel 1: Policy and Legislation: 10:05 – 11:05 a.m. EDT ■ U.S. Representative Ayanna Pressley (MA-07) ■ Shanna Cox, M.S.P.H. – Associate Director for Science, Division of Reproductive Health, Center for Disease Control and Prevention ■ Shannon Dowler, M.D. – Chief Medical Officer, North Carolina Medicaid ■ J. Nadine Gracia, M.D., M.S.C.E. (pending) – Former Deputy Assistant Secretary for Minority Health, HHS ■ U.S. Representative Jaime Herrera Beutler (WA-03) (pending)

III. Break: 11:05 – 11:15 am EDT

IV. Panel 2: Service Providers/Private Organizations: 11:15 a.m. – 12:15 p.m. EDT ■ Leana Wen, M.D. – Visiting Professor of Health Policy and Management, George Washington

University Milken Institute School of Public Health ■ Angela Doyinsola Aina, M.P.H. – Interim Executive Director and Research Lead, Black

Mamas Matter Alliance ■ Joia Adele Crear-Perry, M.D., F.A.C.O.G. – Founder and President, National Birth Equity

Collaborative ■ Taraneh Shirazian, M.D. – President and Medical Director, Saving Mothers; Assistant

Professor at New York University Langone Medical Center

V. Break: 12:15 – 12:25 pm EDT

<mailto:arorison@usccr.gov>
<https://www.usccr.gov/about/bio/Lhamon.php>

VI. Panel 3: Lived Experience: 12:25 – 1:25 p.m. ■ Chanel Porchia-Albert – Board Member, March for Moms; Founder, Ancient Song Doula

Services ■ Nan Strauss – Managing Director, Policy, Advocacy & Grantmaking, Every Mother Counts ■ Jennifer Jacoby – Federal Policy Counsel, U.S. Policy and Advocacy Program, Center for

Reproductive Rights ■ Nicolle L. Gonzales, B.S.N., R.N., M.S.N., C.N.M. – Executive Director and Founder,

Changing Women Initiative ■ Mauricio Leone, M.P.H. – Chief Operating Officer and Senior Director, Obria Clinics

VII. Closing Remarks: 1:25 – 1:30 a.m. EDT • Catherine E. Lhamon, Chair, U.S. Commission on Civil Rights

WHEN:

Friday, November 13, 2020 | 10:00 a.m. – 1:30 p.m. EDT

WHERE:

Hearing will be livestreamed on the USCCR YouTube Channel here.

###

The U.S. Commission on Civil Rights is the only independent, bipartisan agency charged with advising the President and Congress on civil rights and reporting annually on federal civil rights enforcement. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels. For information about the Commission, please visit www.usccr.gov and follow us on Twitter and Facebook.

<https://www.youtube.com/user/USCCR/videos>

<http://www.usccr.gov/>

<https://twitter.com/USCCRGov>

<https://www.facebook.com/USCCRGov/>

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Date : 11/2/2020 1:28:23 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Juliette Singarella" jrs436@georgetown.edu Subject : RE: [EXTERNAL] Re: FW: Recommendation for Juliette Singarella I'm so sorry! We have a weird new quarantine system, and it was there, but your other messages came through. I unblocked you as a Sender so it should be fine in the future. Is the letter I sent OK? If not I may be able to rescind and send another. From: Juliette Singarella <jrs436@georgetown.edu> Sent: Monday, November 2, 2020 1:23 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: [EXTERNAL] Re: FW: Recommendation for Juliette Singarella

CAUTION: This email is from outside USCCR.

Hi Kathy, I'm not sure what exactly is happening with our correspondences missing one another. I responded to you this morning with an updated version at 9:30. I just re-checked, and it said it was sent to your email (kculliton-gonzalez@usccr.gov). Just want to verify that my messages are getting sent to you, in case I have to reach you in the future! Maybe it was sent to your spam folder? Best, Juliette On Mon, Nov 2, 2020 at 1:16 PM Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> wrote:

Hi Juliette, I didn't hear back from you so just sent the latest letter I had on hand, adapted with a general salutation. Best of luck! Please let me know how this all works out. -Kathy From: Katherine Culliton-Gonzalez Sent: Monday, November 2, 2020 1:15 PM To: 'RJFP@ifwhenhow.org' <RJFP@ifwhenhow.org> Subject: Recommendation for Juliette Singarella Please see my attached strong recommendation of Juliette Singarella. Katherine Culliton-Gonzalez, Esq. Director, Office of Civil Rights Evaluation

<mailto:kculliton-gonzalez@usccr.gov>

<mailto:kculliton-gonzalez@usccr.gov>

<mailto:kculliton-gonzalez@usccr.gov>

<mailto:RJFP@ifwhenhow.org>

<mailto:RJFP@ifwhenhow.org>

U.S. Commission on Civil Rights www.usccr.gov

https://url.emailprotection.link/?bEoMuFIT2RY2FFKF4WMI4xG-9fOvbrT5GyjWuS:Z7zS_0w9VYy9OnoTIZqkS01I3XN_ECo8rFcVUIHaSMC70EmA~~

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Date : 11/2/2020 1:54:59 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "RJFP@ifwhenhow.org" RJFP@ifwhenhow.org Subject : FW: Recommendation for Juliette Singarella Attachment : KCG Letter of Recommendation for Juliette Singarella - If-When-How Fellowship.pdf Dear Recruiting Coordinator, I accidentally sent the wrong version of my letter of recommendation. Please accept this corrected version. Thank you, -Kathy From: Katherine Culliton-Gonzalez Sent: Monday, November 2, 2020 1:15 PM To: 'RJFP@ifwhenhow.org' <RJFP@ifwhenhow.org> Subject: Recommendation for Juliette Singarella Please see my attached strong recommendation of Juliette Singarella. Katherine Culliton-Gonzalez, Esq. Director, Office of Civil Rights Evaluation U.S. Commission on Civil Rights www.usccr.gov

<http://www.usccr.gov/>

November 2, 2020

Dear Recruiting Coordinator,

It is my pleasure to recommend Juliette Singarella for the 2021 If/When/How Reproductive Justice Fellowship

Program. Her excellent research and communication skills, strong work ethic, and engaging personality will make her an asset to any employer lucky enough to hire her. In turn, as an If/When/How Fellow, Juliette will gain practical knowledge and experience which will prove invaluable as she launches her career as a legal professional and advocate.

I worked with Juliette during the summer of 2019 when she was an intern at the United States Commission on Civil Rights (USCCR). Among dozens of law students who have interned with me in over 20 years of practice, Juliette is among the most talented and promising. She has an innate intelligence that enables her to learn quickly and deeply analyze fact patterns, cases, statutes and constitutional law principles. Because of her talent, Juliette became my go-to intern in the Office of Civil Rights Evaluation and aided me in various important projects. Her most significant contribution was in the USCCR's report examining the civil rights of women in prison. Specifically, she analyzed the efficacy of the Department of Justice's enforcement of the Prison Rape Elimination Act, delving into the Department's findings letters to determine whether state prisons were exhibiting unconstitutional disciplinary and procedural practices. Her research and writings were adopted directly into our report Women In Prison: Seeking Justice Behind Bars. Juliette was also instrumental in the USCCR brief, Federal #MeToo: Examining Sexual Harassment in Government Workplaces, where she aided our team in bringing to light the many flaws in the sexual harassment policies of the Department of State and the National Aeronautics and Space Administration. Juliette's strength in writing and research was evident throughout her time in our office, as she contributed meaningfully to these and other important USCCR reports, which are relayed directly to Congress and the President to advise them on civil rights issues.

Juliette was a reliable and diligent worker, with whom I could entrust difficult research and analytical problems. Not only was her work timely and efficient, but it was thorough and thoughtful. Juliette was a valuable mentee whose passion for the law and civil rights translated into dedication to each and every assignment.

On a more personal note, Juliette is an outgoing and thoughtful person, curious about the world around her, and with a deep desire to help improve the lives of other people. This is obvious in her general legal and academic experiences. At Georgetown Law, she dedicated a year to campaigning for the reproductive freedom of marginalized African women in her role as a member of the International Women's Human Rights Clinic, and she contributed to a project illuminating the entrenched racism that blights low-income communities as a research assistant to Professor Sheryll Cashin. During her summers, she has used her employment opportunities at the USCCR and the Sexual Assault Legal Institute to continue her mission to defend vulnerable populations.

Each of these experiences has shaped her as both a person and a lawyer, and provided her with a unique set of skills and qualities that will enable her to be an effective If/When/How Fellow.

I wholeheartedly endorse Juliette Singarella's application for the If/When/How Reproductive Justice Fellowship Program. A young person of considerable ability and promise, her already impressive skills can only improve with time and experience. Please feel free to reach me at my personal cell (202) 531-8139, if you have any questions or need any further information at all.

Sincerely,
Katherine Culliton-Gonzalez, Esq.
Director, Office of Civil Rights Evaluation
U.S. Commission on Civil Rights

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Date : 11/2/2020 1:17:45 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Mauro Morales" mmorales@usccr.gov Subject : FW: Recommendation for Juliette Singarella Attachment : KCG Letter of Recommendation for Juliette Singarella - Fellowship.pdf; FYI I sent another letter of recommendation for Juliette and I'll let you know if I hear news from her. From: Katherine Culliton-Gonzalez Sent: Monday, November 2, 2020 1:17 PM To: 'Juliette Singarella' <jrs436@georgetown.edu> Subject: FW: Recommendation for Juliette Singarella Hi Juliette, I didn't hear back from you so just sent the latest letter I had on hand, adapted with a general salutation. Best of luck! Please let me know how this all works out. -Kathy From: Katherine Culliton-Gonzalez Sent: Monday, November 2, 2020 1:15 PM To: 'RJFP@ifwhenhow.org' <RJFP@ifwhenhow.org> Subject: Recommendation for Juliette Singarella Please see my attached strong recommendation of Juliette Singarella. Katherine Culliton-Gonzalez, Esq. Director, Office of Civil Rights Evaluation U.S. Commission on Civil Rights www.usccr.gov

<mailto:RJFP@ifwhenhow.org>
<http://www.usccr.gov/>

November 2, 2020

To Whom It May Concern,

It is my pleasure to recommend Juliette Singarella for your fellowship. Her excellent research and communication skills, strong work ethic, and engaging personality will make her an asset to any employer lucky enough to hire her. In turn, as a judicial clerk Juliette will gain practical knowledge and experience which will prove invaluable as she launches her career as a legal professional.

I worked with Juliette during the summer of 2019 when she was an intern at the United States Commission on Civil Rights (USCCR). Among dozens of law students who have interned with me in over 20 years of practice, Juliette is among the most talented and promising. She has an innate intelligence that enables her to learn quickly and deeply analyze fact patterns, cases, statutes and constitutional law principles. Because of her talent, Juliette became my go-to intern in the Office of Civil Rights Evaluation and aided me in various important projects. Her most significant contribution was in the USCCR's report examining the civil rights of women in prison. Specifically, she analyzed the efficacy of the Department of Justice's enforcement of the Prison Rape Elimination Act, delving into the Departments' findings letters to determine whether state prisons were exhibiting unconstitutional disciplinary and procedural practices. Her research and writings were adopted directly into our report Women In Prison: Seeking Justice Behind Bars. Juliette was also instrumental in the USCCR brief, In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes.

In that report, she assessed the differences between hate crimes committed on the basis of race, ethnicity, and/or national origin; gender identity or sexual orientation; religion; and disability, and the Department of Justice's response to such crimes. Juliette's strength in writing and research was evident throughout her time in our

office, as she contributed meaningfully to these and other important USCCR reports, which are relayed directly to Congress and the President to advise them on civil rights issues.

Juliette was a reliable and diligent worker, with whom I could entrust difficult research and analytical problems. Not only was her work timely and efficient, but it was thorough and thoughtful. Juliette was a valuable mentee whose passion for the law and civil rights translated into dedication to each and every assignment.

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I wholeheartedly endorse Juliette Singarella's application. Please feel free to reach me at my personal cell (202) 531-8139, if you have any questions or need any further information at all.

Sincerely,

Katherine Culliton-Gonzalez, Esq.

Director, Office of Civil Rights Evaluation

U.S. Commission on Civil Rights

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Date : 11/2/2020 1:16:44 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usCCR.gov To : "Juliette Singarella" jrs436@georgetown.edu Subject : FW: Recommendation for Juliette Singarella Attachment : KCG Letter of Recommendation for Juliette Singarella - Fellowship.pdf; Hi Juliette, I didn't hear back from you so just sent the latest letter I had on hand, adapted with a general salutation. Best of luck! Please let me know how this all works out. -Kathy From: Katherine Culliton-Gonzalez Sent: Monday, November 2, 2020 1:15 PM To: 'RJFP@ifwhenhow.org' <RJFP@ifwhenhow.org> Subject: Recommendation for Juliette Singarella Please see my attached strong recommendation of Juliette Singarella. Katherine Culliton-Gonzalez, Esq. Director, Office of Civil Rights Evaluation U.S. Commission on Civil Rights www.usCCR.gov

<http://www.usCCR.gov/>

November 2, 2020

To Whom It May Concern,

It is my pleasure to recommend Juliette Singarella for your fellowship. Her excellent research and communication skills, strong work ethic, and engaging personality will make her an asset to any employer lucky enough to hire her. In turn, as a judicial clerk Juliette will gain practical knowledge and experience which will prove invaluable as she launches her career as a legal professional.

I worked with Juliette during the summer of 2019 when she was an intern at the United States Commission on Civil Rights (USCCR). Among dozens of law students who have interned with me in over 20 years of practice, Juliette is among the most talented and promising. She has an innate intelligence that enables her to learn quickly and deeply analyze fact patterns, cases, statutes and constitutional law principles. Because of her talent, Juliette became my go-to intern in the Office of Civil Rights Evaluation and aided me in various important projects. Her most significant contribution was in the USCCR's report examining the civil rights of women in prison. Specifically, she analyzed the efficacy of the Department of Justice's enforcement of the Prison Rape Elimination Act, delving into the Departments' findings letters to determine whether state prisons were exhibiting unconstitutional disciplinary and procedural practices. Her research and writings were adopted directly into our report Women In Prison: Seeking Justice Behind Bars. Juliette was also instrumental in the USCCR brief, In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes. In that report, she assessed the differences between hate crimes committed on the basis of race, ethnicity, and/or national origin; gender identity or sexual orientation; religion; and disability, and the Department of Justice's response to such crimes. Juliette's strength in writing and research was evident throughout her time in our office, as she contributed meaningfully to these and other important USCCR reports, which are relayed directly to Congress and the President to advise them on civil rights issues.

Juliette was a reliable and diligent worker, with whom I could entrust difficult research and analytical problems. Not only was her work timely and efficient, but it was thorough and thoughtful. Juliette was a valuable mentee whose passion for the law and civil rights translated into dedication to each and every assignment.

On a more personal note, Juliette is an outgoing and thoughtful person, curious about the world around her, and with a deep desire to help improve the lives of other people. This is obvious in her general legal and academic experiences. At Georgetown Law, she dedicated a year to campaigning for the reproductive freedom of marginalized African women in her role as a member of the International Women's Human Rights Clinic, and she contributed to a project illuminating the entrenched racism that blights low-income communities as a research assistant to Professor Sheryll Cashin. During her summers, she has used her employment opportunities at the USCCR and the Sexual Assault Legal Institute to continue her mission to defend vulnerable populations. Each of these experiences has shaped her as both a person and a lawyer, and provided her with a unique set of skills and qualities that will enable her to be an effective judicial clerk.

I wholeheartedly endorse Juliette Singarella's application. Please feel free to reach me at my personal cell (202) 531-8139, if you have any questions or need any further information at all.

Sincerely,

Katherine Culliton-Gonzalez, Esq.

Director, Office of Civil Rights Evaluation

U.S. Commission on Civil Rights

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Date : 11/2/2020 4:09:42 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Juliette Singarella" jrs436@georgetown.edu Subject : RE: [EXTERNAL] Re: FW: Recommendation for Juliette Singarella I'm very glad to help in any way I can! From: Juliette Singarella <jrs436@georgetown.edu> Sent: Monday, November 2, 2020 3:53 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: [EXTERNAL] Re: FW: Recommendation for Juliette Singarella

CAUTION: This email is from outside USCCR.

Excellent! And I have one last fellowship application--for the Georgetown's Women Law and Public Policy Fellowship Program--that I plan on submitting on the 5th (this Thursday). I will send you a finalized/dated version of the respective letter of rec with all the relevant edits/salutations in a brand new email chain, so that you have a clear copy of which one to use, because our email threads have gotten so mixed up at this point! That should be the last letter of recommendation that needs to be sent. I am waiting to hear back from a few judges at the DC Superior Court as of this moment after I interviewed with them. Hopefully I'll have a job by the end of this month or start of December, and this chaotic process will be over! Again, I appreciate all your help. It has meant the world to have your support! On Mon, Nov 2, 2020 at 1:55 PM Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> wrote:

Done! Sorry for the email mix-ups. Thanks for figuring it all out like the smart young attorney you are. Best, K. From: Katherine Culliton-Gonzalez Sent: Monday, November 2, 2020 1:55 PM To: 'RJFP@ifwhenhow.org' <RJFP@ifwhenhow.org> Subject: FW: Recommendation for Juliette Singarella Dear Recruiting Coordinator, I accidentally sent the wrong version of my letter of recommendation. Please accept this corrected version. Thank you, -Kathy

<mailto:kculliton-gonzalez@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:RJFP@ifwhenhow.org>
<mailto:RJFP@ifwhenhow.org>

From: Katherine Culliton-Gonzalez Sent: Monday, November 2, 2020 1:15 PM To: 'RJFP@ifwhenhow.org' <RJFP@ifwhenhow.org> Subject: Recommendation for Juliette Singarella Please see my attached strong recommendation of Juliette Singarella. Katherine Culliton-Gonzalez, Esq. Director, Office of Civil Rights Evaluation U.S. Commission on Civil Rights www.usccr.gov

<mailto:RJFP@ifwhenhow.org>
<mailto:RJFP@ifwhenhow.org>
https://url.emailprotection.link/?bEoMuFIT2RY2FFKF4WMI4xG-9fOvbrT5GyjWuSzZ7zS_0w9VYy9OnoTIZqkS01I3XN_ECo8rFcVUiHaSMC70EmA~~

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Date : 11/2/2020 1:55:56 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Juliette Singarella" jrs436@georgetown.edu Subject : FW: Recommendation for Juliette Singarella Attachment : KCG Letter of Recommendation for Juliette Singarella - If-When-How Fellowship.pdf, Done! Sorry for the email mix-ups. Thanks for figuring it all out like the smart young attorney you are. Best, K. From: Katherine Culliton-Gonzalez Sent: Monday, November 2, 2020 1:55 PM To: 'RJFP@ifwhenhow.org' <RJFP@ifwhenhow.org> Subject: FW: Recommendation for Juliette Singarella Dear Recruiting Coordinator, I accidentally sent the wrong version of my letter of recommendation. Please accept this corrected version. Thank you, -Kathy From: Katherine Culliton-Gonzalez Sent: Monday, November 2, 2020 1:15 PM To: 'RJFP@ifwhenhow.org' <RJFP@ifwhenhow.org> Subject: Recommendation for Juliette Singarella Please see my attached strong recommendation of Juliette Singarella. Katherine Culliton-Gonzalez, Esq. Director, Office of Civil Rights Evaluation U.S. Commission on Civil Rights www.usccr.gov

<mailto:RJFP@ifwhenhow.org>
<http://www.usccr.gov/>

November 2, 2020

Dear Recruiting Coordinator,

It is my pleasure to recommend Juliette Singarella for the 2021 If/When/How Reproductive Justice Fellowship Program. Her excellent research and communication skills, strong work ethic, and engaging personality will make her an asset to any employer lucky enough to hire her. In turn, as an If/When/How Fellow, Juliette will gain practical knowledge and experience which will prove invaluable as she launches her career as a legal professional and advocate.

I worked with Juliette during the summer of 2019 when she was an intern at the United States Commission on Civil Rights (USCCR). Among dozens of law students who have interned with me in over 20 years of practice, Juliette is among the most talented and promising. She has an innate intelligence that enables her to learn quickly and deeply analyze fact patterns, cases, statutes and constitutional law principles. Because of her talent, Juliette became my go-to intern in the Office of Civil Rights Evaluation and aided me in various important projects. Her most significant contribution was in the USCCR's report examining the civil rights of women in prison. Specifically, she analyzed the efficacy of the Department of Justice's enforcement of the Prison Rape Elimination Act, delving into the Department's findings letters to determine whether state prisons were exhibiting unconstitutional disciplinary and procedural practices. Her research and writings were adopted directly into our report Women In Prison: Seeking Justice Behind Bars. Juliette was also instrumental in the USCCR brief, Federal #MeToo: Examining Sexual Harassment in Government Workplaces, where she aided our team in bringing to light the many flaws in the sexual harassment policies of the Department of State and the National Aeronautics and Space Administration. Juliette's strength in writing and research was evident throughout her time in our office, as she contributed meaningfully to these and other important USCCR reports, which are relayed directly to Congress and the President to advise them on civil rights issues.

Juliette was a reliable and diligent worker, with whom I could entrust difficult research and analytical problems. Not only was her work timely and efficient, but it was thorough and thoughtful. Juliette was a valuable mentee whose passion for the law and civil rights translated into dedication to each and every assignment.

On a more personal note, Juliette is an outgoing and thoughtful person, curious about the world around her, and with a deep desire to help improve the lives of other people. This is obvious in her general legal and academic experiences. At Georgetown Law, she dedicated a year to campaigning for the reproductive freedom of marginalized African women in her role as a member of the International Women's Human Rights Clinic, and she contributed to a project illuminating the entrenched racism that blights low-income communities as a research assistant to Professor Sheryll Cashin. During her summers, she has used her employment opportunities at the USCCR and the Sexual Assault Legal Institute to continue her mission to defend vulnerable populations. Each of these experiences has shaped her as both a person and a lawyer, and provided her with a unique set of skills and qualities that will enable her to be an effective If/When/How Fellow.

I wholeheartedly endorse Juliette Singarella's application for the If/When/How Reproductive Justice Fellowship Program. A young person of considerable ability and promise, her already impressive skills can only improve with time and experience. Please feel free to reach me at my personal cell (202) 531-8139, if you have any questions or need any further information at all.

Sincerely,
Katherine Culliton-Gonzalez, Esq.
Director, Office of Civil Rights Evaluation

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Date : 11/2/2020 1:15:19 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "RJFP@ifwhenhow.org" RJFP@ifwhenhow.org Subject : Recommendation for Juliette Singarella Attachment : KCG Letter of Recommendation for Juliette Singarella - Fellowship.pdf; Please see my attached strong recommendation of Juliette Singarella. Katherine Culliton-Gonzalez, Esq. Director, Office of Civil Rights Evaluation U.S. Commission on Civil Rights www.usccr.gov

November 2, 2020

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Sincerely,

Katherine Culliton-Gonzalez, Esq.

Director, Office of Civil Rights Evaluation

U.S. Commission on Civil Rights

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Date : 11/3/2020 2:19:35 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Juliette Singarella" jrs436@georgetown.edu Subject : FW: [EXTERNAL] Re: FW: Recommendation for Juliette Singarella Attachment : image001.jpg; We got it in! And I'm looking forward to the next one as per your email. Best, K. From: If/When/How RJFP <RJFP@ifwhenhow.org> Sent: Tuesday, November 3, 2020 2:18 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: [EXTERNAL] Re: FW: Recommendation for Juliette Singarella

CAUTION: This email is from outside USCCR.

Dear Kathy, Thank you, your letter has been received and this version will be added to Juliette Singarella's application file. I appreciate your input. Best, Cammie On Mon, Nov 2, 2020 at 10:55 AM Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> wrote:

Dear Recruiting Coordinator, I accidentally sent the wrong version of my letter of recommendation. Please accept this corrected version. Thank you, -Kathy From: Katherine Culliton-Gonzalez Sent: Monday, November 2, 2020 1:15 PM To: "RJFP@ifwhenhow.org" <RJFP@ifwhenhow.org> Subject: Recommendation for Juliette Singarella Please see my attached strong recommendation of Juliette Singarella. Katherine Culliton-Gonzalez, Esq. Director, Office of Civil Rights Evaluation U.S. Commission on Civil Rights www.usccr.gov

<mailto:kculliton-gonzalez@usccr.gov>

<mailto:kculliton-gonzalez@usccr.gov>

<mailto:RJFP@ifwhenhow.org>

<mailto:RJFP@ifwhenhow.org>

https://url.emailprotection.link/?bEoMuFIT2RY2FFKF4WMI4xG-9fOvbrT5GvjWuSzZ7zS_0w9VYy9OnoTIZqkS0113XN_ECo8rFcVUiHaSMC70EmA~~

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Reproductive Justice Fellowship Program (RJFP) www.ifwhenhow.org

Lawyering for Reproductive Justice

This email is sent by a nonprofit legal organization and may contain information that is legally privileged and confidential. If you are not the intended recipient, please permanently delete this email and notify us immediately.

https://url.emailprotection.link/?baClnjp6E-VOQE8KiQjg5s67gX-AuJbRNPdNcv3RrqRxDIPXc_T5V2Od6ehWtuX_noHHnEyxSDNIQKdk7ExcCMw~~

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Date : 11/5/2020 12:50:37 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Juliette Singarella" jrs436@georgetown.edu Subject : FW: FW: [EXTERNAL] WLPPFP App LoR Fyi – and good luck! From: Jill Morrison <Jill.Morrison@law.georgetown.edu> Sent: Thursday, November 5, 2020 12:37 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: Re: FW: [EXTERNAL] WLPPFP App LoR

CAUTION: This email is from outside USCCR.

Thanks so much. Warmly- Jill On Thu, Nov 5, 2020 at 12:24 PM Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> wrote:

Dear Recruiting Coordinator, Please see my attached strong recommendation of Juliette Singarella. Please don't hesitate to let me know if you have any questions. On a personal note, I began my career in 1993 working on women's rights issues, and I appreciate all the interest and skill that Juliette brings to this critical area. She is extremely talented and wonderful to work with. Again, just let me know if you have any questions or need any further information at all. Best regards, -Kathy Katherine Culliton-Gonzalez, Esq. Director, Office of Civil Rights Evaluation U.S. Commission on Civil Rights www.usccr.gov

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<mailto:kculliton-gonzalez@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
https://url.emailprotection.link/?bEoMuFIT2RY2FFKF4WMI4xG-9fOvbrT5GyjWuSszZ7zS_0w9VYy9OnoTIZqkS01I3XN_ECo8rFcVUIHaSMC70EmA~~

Jill C. Morrison
Director, Women's Law & Public Policy Fellowship and
Leadership & Advocacy for Women in Africa Program
Office: Gewirz 315
Phone: 202-662-9644;
Zoom personal room: <https://georgetown.zoom.us/j/7635897164>
Email: morrisjc@law.georgetown.edu;
Website: <http://www.law.georgetown.edu/wlppfp/>

Support the Fellowship Program here! under "Direct Your Gift," select "Other" and specify "WLPPFP."

https://url.emailprotection.link/?bah3KK6rNWSmBJZi9bbTwm4k2vP3DGOmbFi6FV9onu8Hf_VqcKQrVgoTkaDRG00Jq9NmsALq3QAufX4Isb0zfV0SZjd4pvo6sQB1B64Ooq1PwOA6O3ulQdIlwAEwVvYUA
<mailto:morrisjc@law.georgetown.edu>
<https://url.emailprotection.link/?biZKMT15uW9IVHXf9Aikzi33kAHjgFPUNvKVIjGk6QA6YTAmdUPn2yKfaS1XJzYHCxvtgPFRi0nKg26KJSL0xY-0rOSSh4DbNKUyevRpabRk4zKBRYkGZc0bD-k6qOI7h>
https://url.emailprotection.link/?bII0Hpe6Cxc5X5ITBQ5HkHv0FermjQe5OF7W7lhss6hCG-EQLAybu_CD0C2skRjWAbn8gvjKoiNsRSjvtg8-L-2IT-cpR-JEARD9PnKO_00bJH40nomVU40NYgz9332W7trGEUP5HL6rE57MpHlwmxzCgPvfpawXaaqa_3J_hg5bbacA3qlswrfMUilCYWdSc0vJWkwn9_vy_6ORbUg~~

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Date : 11/5/2020 12:24:52 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "morrisjc@georgetown.edu" morrisjc@georgetown.edu Subject : FW: [EXTERNAL] WLPPFP App LoR Attachment : KCG Letter of Recommendation for Juliette Singarella - WLPPFP.docx; Dear Recruiting Coordinator, Please see my attached strong recommendation of Juliette Singarella. Please don't hesitate to let me know if you have any questions. On a personal note, I began my career in 1993 working on women's rights issues, and I appreciate all the interest and skill that Juliette brings to this critical area. She is extremely talented and wonderful to work with. Again, just let me know if you have any questions or need any further information at all. Best regards, -Kathy Katherine Culliton-Gonzalez, Esq. Director, Office of Civil Rights Evaluation U.S. Commission on Civil Rights www.usccr.gov

November 5, 2020
Dear Recruiting Coordinator,

It is my pleasure to recommend Juliette Singarella for the 2021 Women's Law & Public Policy Fellowship Program. Her excellent research and communication skills, strong work ethic, and engaging personality will make her an asset to any employer lucky enough to hire her. In turn, as a WLPPFP fellow, Juliette will gain practical knowledge and experience which will prove invaluable as she launches her career as a legal professional and advocate.

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I wholeheartedly endorse Juliette Singarella's application for WLPPFP. A young person of considerable ability and promise, her already impressive skills can only improve with time and experience. Please feel free to reach me at my personal cell (202) 531-6139, if you have any questions or need any further information at all.

Sincerely,
Katherine Culliton-Gonzalez, Esq. Director, Office of Civil Rights Evaluation U.S. Commission on Civil Rights

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Date : 11/9/2020 9:21:22 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "ocre" ocre@usccr.gov, "DIEGO ALVAREZ- OCRE Intern" ocreintern746b@usccr.gov, "Shelby Taylor" st5082a@student.american.edu, "Diego Alvarez" dalvarez@jd22.law.harvard.edu Subject : OCRE team virtual coffee break This is just an informal get-together for those who would like to participate.

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Date : 11/9/2020 11:40:20 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "ocre" ocre@usccr.gov, "DIEGO ALVAREZ- OCRE Intern" ocreintern746b@usccr.gov, "Shelby Taylor" st5082a@student.american.edu, "Diego Alvarez" dalvarez@jd22.law.harvard.edu Cc : "Nicholas Bair" nbair@usccr.gov, "Gerald Fosten" gfoften@usccr.gov, "Marik Xavier-Brier" mxavierbrier@usccr.gov, "Latrice Foshee" lfoshee@usccr.gov Subject : OCRE team virtual coffee break This is just an informal get-together for those who would like to participate. I moved it until Thursday as we'll have early dismissal tomorrow. I have a few meetings but I'm around tomorrow if anyone wants to chat.

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Date : 11/30/2020 2:03:43 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "ocre" ocre@usccr.gov Cc : "Diego Alvarez" dalvarez@jd22.law.harvard.edu, "DIEGO ALVAREZ- OCRE Intern" ocreintern746b@usccr.gov, "Shelby Taylor" st5082a@student.american.edu, "Shelby Taylor (Intern)" Ocreintern753@usccr.gov Subject : OCRE team meeting on drafting outlines Marik (and Kathy) will go over some best practices for drafting outlines, which we have developed over the last few years. Marik has been instrumental in this and also is the author of the greatest number of reports, so an amateur social scientist (at best), I believe this is a tried and true methodology. We'll circulate a one-pager tomorrow morning, for discussion.

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Date : 11/30/2020 4:50:56 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "ocre" ocre@usccr.gov Cc : "Diego Alvarez" dalvarez@jd22.law.harvard.edu, "DIEGO ALVAREZ- OCRE Intern" ocreintern746b@usccr.gov, "Shelby Taylor" st5082a@student.american.edu, "Shelby Taylor (Intern)" Ocreintern753@usccr.gov, "Nicholas Bair" nbair@usccr.gov, "Julie Grieco" jgrieco@usccr.gov, "Gerald Fosten" gfoften@usccr.gov, "Teresa Adams" tadams@usccr.gov, "Mauro Morales" mmorales@usccr.gov, "Zakee Martin" zmartin@usccr.gov, "Latrice Foshee" lfoshee@usccr.gov, "Marik Xavier- Brier" mxavierbrier@usccr.gov Subject : OCRE team meeting on

drafting outlines Attachment : Key Points for Outline Drafting.11.30.20.docx; Marik (and Kathy) will go over some best practices for drafting outlines, which we have developed over the last few years. Marik has been instrumental in this and also is the author of the greatest number of reports, so I believe this is a tried and true methodology. Please see the attached one-pager, for discussion Tuesday at 1 pm ET.

KCG & MXB 11/30/20

Key Elements of OCRE Draft Outlines:

- (1) Always follow the Concept Paper – and utilize the Research Plan when drafting to ensure topic areas are consistent
- (2) Chapters should include: a. Executive Summary – Blueprint/description of the study and following chapters b. Introduction – Narrative; Why the Commission Took it Up; Applicable Civil Rights Law; Brief discussion of Data c. Data – Qualitative (including relevant demographics, community data, affected communities) & Quantitative (including national statistics, comparative studies' findings, disparity data); Incorporate/utilize testimony & public comments
- d. Federal Role & Response (esp. important if statutory report) e. Comparison among jurisdictions/case studies
- (3) Order and substance of the chapters may vary depending on the study
- (4) Don't overpromise – Keep it narrow! a. This will be voted upon so you'll be promising to do what is drafted b. Report should not be unduly long – it cannot address everything about the topic c. Utilize research plan to determine significant and important factors to focus on d. Every point must be tied to the main topic e. Consider readability f. Arc of the narrative
- (5) Don't spend much space on explaining a particular agency and its duties – only what's necessary to understand the topic
- (6) Don't spend much space on literature review – only highlights of empirical studies and focus on what the audience needs to know
- (7) Leave leeway for what you will discover during the research/collecting stages
- (8) In every chapter, keep in mind that we need to present bipartisan arguments and address opposing views
- (9) Plan to write in an accessible manner and consider audience
- (10) Consult with lead SA (only as needed)
- (11) When in doubt – don't be afraid to reach out to other OCRE staff and talk to Kathy – projects don't have to be written/analyzed in isolation

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Date : 12/17/2020 12:59:47 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@uscrr.gov To : "ocre" ocre@uscrr.gov Cc : "Diego Alvarez" dalvarez@jd22.law.harvard.edu, "DIEGO ALVAREZ– OCRE Intern" ocreintern746b@uscrr.gov, "Shelby Taylor" st5082a@student.american.edu, "Shelby Taylor (Intern)" Ocreintern753@uscrr.gov, "Nicholas Bair" nbair@uscrr.gov, "Julie Grieco" jgrieco@uscrr.gov, "Gerald Fosten" gfosten@uscrr.gov, "Teresa Adams" tadams@uscrr.gov, "Mauro Morales" mmorales@uscrr.gov, "Zakee Martin" zmartin@uscrr.gov, "Latrice Foshee" lfoshee@uscrr.gov, "Marik Xavier- Brier" mxavierbrier@uscrr.gov Subject : OCRE team meeting on drafting outlines Attachment : Key Points for Outline Drafting.11.30.20.docx; Marik (and Kathy) will go over some best practices for drafting outlines, which we have developed over the last few years. Marik has been instrumental in this and also is the author of the greatest number of reports, so I believe this is a tried and true methodology. Please see the attached one-pager, for discussion Tuesday at 1 pm ET. Sending Zoom link: <https://us02web.zoom.us/j/84713790045?pwd=ZEEsVGI0aFJJOWQ2cysrdm1jdVNPQT09>

<https://us02web.zoom.us/j/84713790045?pwd=ZEEsVGI0aFJJOWQ2cysrdm1jdVNPQT09>

<https://us02web.zoom.us/j/84713790045?pwd=ZEEsVGI0aFJJOWQ2cysrdm1jdVNPQT09>

KCG & MXB 11/30/20

Key Elements of OCRE Draft Outlines:

- (1) Always follow the Concept Paper – and utilize the Research Plan when drafting to ensure topic areas are consistent
- (2) Chapters should include: a. Executive Summary – Blueprint/description of the study and following chapters b. Introduction – Narrative; Why the Commission Took it Up; Applicable Civil Rights Law; Brief discussion of Data c. Data – Qualitative (including relevant demographics, community data, affected communities) & Quantitative (including national statistics, comparative studies' findings, disparity data); Incorporate/utilize testimony & public comments
- d. Federal Role & Response (esp. important if statutory report) e. Comparison among jurisdictions/case studies
- (3) Order and substance of the chapters may vary depending on the study
- (4) Don't overpromise – Keep it narrow! a. This will be voted upon so you'll be promising to do what is drafted b. Report should not be unduly long – it cannot address everything about the topic c. Utilize research plan to determine significant and important factors to focus on d. Every point must be tied to the main topic e. Consider readability f. Arc of the narrative
- (5) Don't spend much space on explaining a particular agency and its duties – only what's necessary to understand the topic
- (6) Don't spend much space on literature review – only highlights of empirical studies and focus on what the audience needs to know
- (7) Leave leeway for what you will discover during the research/collecting stages
- (8) In every chapter, keep in mind that we need to present bipartisan arguments and address opposing views
- (9) Plan to write in an accessible manner and consider audience
- (10) Consult with lead SA (only as needed)
- (11) When in doubt – don't be afraid to reach out to other OCRE staff and talk to Kathy – projects don't have to be written/analyzed in isolation

788.pdf

788.pdf

Date : 12/17/2020 2:03:53 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@uscrr.gov To : "Katherine Culliton-Gonzalez" kcullitongonzalez@gmail.com Subject : FW: Virtual Holiday Party Attachment : HOLIDAY PATY 2020.docx; From: Angelia Rorison <arorison@uscrr.gov> Sent: Thursday, December 17, 2020 7:56 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov> Subject: Re: Virtual Holiday Party

Good morning Kathy!

Just wanted to check and see if you would be willing to run the ice breakers for the holiday party?

Attached is the latest agenda from Pam (not finalized) that shows timing of ice breakers.

I found some ice breakers online (see below) but please use your own, just wanted to be helpful - if you are willing, of course.

Holiday Icebreakers (all christmas though and no Kwanzaa or Hanukkah:

<https://www.whiteelephanrules.com/christmas-icebreaker-questions/>

Non Holiday:

<https://museumhack.com/list-icebreakers-questions/>

<https://www.cozymeal.com/virtual-team-building-activities/virtual-ice-breakers>

Let me know what you think!

Ang

<https://www.whiteelephanrules.com/christmas-icebreaker-questions/>

<https://museumhack.com/list-icebreakers-questions/>

<https://www.cozymeal.com/virtual-team-building-activities/virtual-ice-breakers>

From: Mauro Morales Sent: Wednesday, December 16, 2020 1:07:28 PM To: Pamela Dunston; TinaLouise Martin; Angelia Rorison; Katherine Culliton-Gonzalez; Pilar McLaughlin Subject: RE: Virtual Holiday Party

Wonderfull! Looking forward to it.

From: Pamela Dunston <pdunston@uscrr.gov> Sent: Wednesday, December 16, 2020 1:06 PM To: TinaLouise Martin <tmartin@uscrr.gov>; Angelia Rorison <arorison@uscrr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov>; Pilar McLaughlin <pmclaughlin@uscrr.gov> Cc: Mauro Morales <mmorales@uscrr.gov> Subject: RE: Virtual Holiday Party

From: TinaLouise Martin <tmartin@uscrr.gov> Sent: Wednesday, December 16, 2020 12:48 PM To: Pamela Dunston <pdunston@uscrr.gov>; Angelia Rorison <arorison@uscrr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov>; Pilar McLaughlin <pmclaughlin@uscrr.gov> Cc: Mauro Morales <mmorales@uscrr.gov> Subject: RE: Virtual Holiday Party

Did I miss the attachment?

From: Pamela Dunston <Pdunston@usccr.gov> Sent: Wednesday, December 16, 2020 10:05 AM To: Angelia Rorison <arorison@usccr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>

<mailto:Pdunston@usccr.gov>
<mailto:tmartin@usccr.gov>
<mailto:arorison@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:pmclaughlin@usccr.gov>
<mailto:mmorales@usccr.gov>
<mailto:tmartin@usccr.gov>
<mailto:Pdunston@usccr.gov>
<mailto:arorison@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:pmclaughlin@usccr.gov>
<mailto:mmorales@usccr.gov>
<mailto:Pdunston@usccr.gov>
<mailto:arorison@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:tmartin@usccr.gov>
<mailto:pmclaughlin@usccr.gov>

Cc: Mauro Morales <mmorales@usccr.gov> Subject: RE: Virtual Holiday Party

Hi All,

Please see the revised party agenda with times for each item. Let me know if you have any questions/changes. I would like to share the agenda with each manager. Thanks.

From: Pamela Dunston Sent: Monday, December 14, 2020 5:23 PM To: Angelia Rorison <arorison@usccr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov> Cc: Mauro Morales <mmorales@usccr.gov> Subject: RE: Virtual Holiday Party

Hi All,

Angelia and I met and came up with the party agenda for Thursday. Tina will be our DJ for the party. Ang and I will met on Wednesday morning at 9:30 am to finalize the games. Let me know if you have any questions. Thanks

From: Angelia Rorison <arorison@usccr.gov> Sent: Monday, December 14, 2020 11:25 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Pamela Dunston <Pdunston@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov> Cc: Mauro Morales <mmorales@usccr.gov> Subject: Re: Virtual Holiday Party

Thanks for letting us know Kathy and hoping the construction wraps up quickly.

<mailto:mmorales@usccr.gov>
<mailto:arorison@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:tmartin@usccr.gov>
<mailto:pmclaughlin@usccr.gov>
<mailto:mmorales@usccr.gov>
<mailto:arorison@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:Pdunston@usccr.gov>
<mailto:tmartin@usccr.gov>
<mailto:pmclaughlin@usccr.gov>
<mailto:mmorales@usccr.gov>

For the Drawful Game, I will need to stream on zoom separately from my ipad and think I can figure out how to do this for music too. Let me do some research.

Also, to make things flow on the day of the party, I can take lead coordinating the zoom call on technical side for games and music. Someone (or several) will need to take lead on "hosting" the party, i.e. keeping the party flowing from games to other events.

What do you think?

Ang

From: Katherine Culliton-Gonzalez Sent: Monday, December 14, 2020 10:46:09 AM To: Pamela Dunston; Angelia Rorison; TinaLouise Martin; Pilar McLaughlin Cc: Mauro Morales Subject: RE: Virtual Holiday Party

Hi everyone! I hope you all had a nice weekend.

On my end, I need some help with the music and wonder if anyone else can stream Alexa's holiday playlist, which is really nice.

(WSSC has started extremely noisy construction on the water tower right behind my house. It's very loud and even requires earplugs and shakes our houses (and we are trying to fix these issues) but I can't promise to have good audio on my end anymore.)

Can someone else do the music?

Sorry, K.

From: Pamela Dunston <Pdunston@usccr.gov> Sent: Tuesday, December 8, 2020 12:12 PM To: Angelia Rorison <arorison@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>; Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov> Cc: Mauro Morales <mmorales@usccr.gov> Subject: RE: Virtual Holiday Party

Thanks

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Angelia Rorison <arorison@usccr.gov>

Date: 12/8/20 12:10 PM (GMT-05:00)

To: TinaLouise Martin <tmartin@usccr.gov>, Pamela Dunston <Pdunston@usccr.gov>, Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>, Pilar McLaughlin <pmclaughlin@usccr.gov>

Cc: Mauro Morales <mmorales@usccr.gov>

Subject: Re: Virtual Holiday Party

Great - yes, I can do this! I will wait until to send out tomorrow, just in case someone has a time conflict.

From: TinaLouise Martin Sent: Tuesday, December 8, 2020 12:08:23 PM

<mailto:Pdunston@usccr.gov>
<mailto:arorison@usccr.gov>
<mailto:tmartin@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:pmclaughlin@usccr.gov>
<mailto:mmorales@usccr.gov>
<mailto:arorison@usccr.gov>
<mailto:tmartin@usccr.gov>
<mailto:Pdunston@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:kculliton-gonzalez@usccr.gov>
<mailto:pmclaughlin@usccr.gov>
<mailto:mmorales@usccr.gov>

To: Pamela Dunston; Katherine Culliton-Gonzalez; Angelia Rorison; Pilar McLaughlin Cc: Mauro Morales Subject: RE: Virtual Holiday Party

Ok, the date is good with Mauro. He suggested we start around 2pm to accommodate the west coast folks.

Ang, can we count on you to draft an invite with a zoom link?

From: Pamela Dunston <Pdunston@usccr.gov> Sent: Tuesday, December 8, 2020 9:29 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Angelia Rorison <arorison@usccr.gov>; TinaLouise Martin <tmartin@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov> Subject: RE: Virtual Holiday Party

Wow. Lots of great ideas and info. I will

Look at a few links and get back to the group later today.

Thanks.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov>

Date: 12/8/20 9:19 AM (GMT-05:00)

<mailto:Pdunston@uscrr.gov>
<mailto:kculliton-gonzalez@uscrr.gov>
<mailto:arorison@uscrr.gov>
<mailto:tmartin@uscrr.gov>
<mailto:pmclaughlin@uscrr.gov>
<mailto:kculliton-gonzalez@uscrr.gov>

To: Angelia Rorison <arorison@uscrr.gov>, TinaLouise Martin <tmartin@uscrr.gov>, Pilar McLaughlin <pmclaughlin@uscrr.gov>

Cc: Pamela Dunston <Pdunston@uscrr.gov>

Subject: RE: Virtual Holiday Party

I love this! But I think the trivia should be more inclusive, and found this list of questions that includes Hanukkah and Kwanzaa: <https://www.bustle.com/life/holiday-trivia-questions-zoom-parties>. It looks hard, though...

From: Angelia Rorison <arorison@uscrr.gov> Sent: Tuesday, December 8, 2020 9:15 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov>; TinaLouise Martin <tmartin@uscrr.gov>; Pilar McLaughlin <pmclaughlin@uscrr.gov> Cc: Pamela Dunston <Pdunston@uscrr.gov> Subject: Re: Virtual Holiday Party

Thanks for getting this started Tina!

I also think December 17th is a good date! Amazon christmas playlist is sure to include all the hits - thanks Kathy!

I can volunteer for games if that is ok - or join whoever wants to take the lead on games.

We have a subscription to an online virtual game that we've been playing with friends and family during the pandemic called Drawful 2. It is easy to use with zoom and always pretty hilarious. It is like an updated version of pictiory. Here is a link to learn more: <https://www.jackboxgames.com/drawful-two/>.

Also I found this great blog last night with a bunch of ideas: <https://museumhack.com/virtual-christmas-party/>

<mailto:arorison@uscrr.gov>
<mailto:tmartin@uscrr.gov>
<mailto:pmclaughlin@uscrr.gov>
<mailto:Pdunston@uscrr.gov>
<https://www.bustle.com/life/holiday-trivia-questions-zoom-parties>
<mailto:arorison@uscrr.gov>
<mailto:kculliton-gonzalez@uscrr.gov>
<mailto:tmartin@uscrr.gov>
<mailto:pmclaughlin@uscrr.gov>
<mailto:Pdunston@uscrr.gov>
<https://www.jackboxgames.com/drawful-two/>
<https://museumhack.com/virtual-christmas-party/>

Here are a few of the better ideas:

1. Online Holiday Bingo

Online Holiday Bingo is a fun and familiar game you can play at your virtual holiday party. You can play a focused version of the game by allowing teammates to interact on chat and in breakout rooms, or you can play as a group throughout the party.

2. Virtual Holiday Scavenger Hunt Virtual scavenger hunts are fun and active ways to spend time on a Zoom call. The activity takes about 15 minutes, and will increase engagement and excitement, will help carry the energy for the remainder of your event. The best items to hunt for also have story or "show and tell" opportunities, like favorite gifts and Christmas candy. To play, just fire off prompts and whoever brings the item back first gets a point. Plus you can award extra points if that person shares more about the object.

5. Virtual Christmas Trivia Trivia is a great option for any virtual holiday party or online meeting. Participants can answer using the chat or poll features, or audibly via webcam. You could also incorporate the raise hand reaction as a makeshift buzzer. (PDF of trivia questions attached)

7. Virtual Holiday Icebreakers

One of the drawbacks of virtual parties is that while video rooms can unite and entertain your whole team at once, there are fewer opportunities for one-on-one conversations. You can remedy the situation by splitting the group into breakout rooms for activities and small group interactions.

Here are some holiday icebreakers to get started with:

- What is the strangest Christmas present you ever received? • What one question would you ask Santa? • Do you open presents on Christmas Eve or Christmas morning?
- What is your favorite holiday food? • What is your favorite Christmas flick? • Does your family practice any interesting Christmas traditions? • What act might land you on the naughty list? • What act might land you on the nice list?

12. Virtual Holiday Team Building Games

Party games can elevate any affair, virtual soirees included. You and your Christmas crew can play a variety of virtual Christmas games over video call, including:

- Holiday-themed trivia: Break into teams, separate into breakout rooms, and complete timed trivia questions centered around the holiday in categories like Christmas around the world, Yuletide traditions, and holiday songs.
- Christmas movie charades: Act out the title of festive flicks like "Miracle on 34th Street" or parts from holiday classics such as the infamous tongue- stuck-on-pole scene from "A Christmas Story"
- Yuletide Pictionary: Screen-share and select the whiteboard feature, then give one team member a seasonal prompt such as reindeer, mistletoe, or eggnog. The teammate will have sixty seconds to draw the word while other guests guess.

20. Holiday Recipe Guide (OR Cocktail Recipe???)

The holidays involve a whole lot of cooking. Swapping recipes allows your team to add a new surprise among the passed-down family standards. You can edit together a team holiday recipe guide full of drool-worthy dishes like "gingerbread cinnamon roll casserole," or chuckle-worthy tips like "decoy cookies so that nobody raids your stash."

To compile your collection:

- Ask for a minimum of one recipe from every teammate. • Organize the instructions based on category, such as hors d'oeuvres, mains, and desserts.
- Use InDesign or Canva to make the guide visually appealing • Send the completed collection to the whole team.
- Because some folks are visual learners, you can reserve time during the party for cooking demonstrations or holiday-themed cookoffs.

From: Katherine Culliton-Gonzalez Sent: Tuesday, December 8, 2020 8:45:41 AM To: TinaLouise Martin, Pilar McLaughlin; Angelia Rorison Cc: Pamela Dunston Subject: RE: Virtual Holiday Party

Good morning, I think Dec. 17th is fine. For music, I could just put on the Amazon holiday station, which is pretty good.

I like the trivia and games ideas, but I'm not sure about ugly sweaters.

From: TinaLouise Martin <tmartin@uscrr.gov> Sent: Monday, December 7, 2020 2:08 PM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@uscrr.gov>; Pilar McLaughlin <pmclaughlin@uscrr.gov>; Angelia Rorison <arorison@uscrr.gov> Cc: Pamela Dunston <Pdunston@uscrr.gov> Subject: FW: Virtual Holiday Party

FYI. Please add Pam to the email thread.

Thank you.

From: Pamela Dunston <Pdunston@uscrr.gov> Sent: Monday, December 7, 2020 1:57 PM To: TinaLouise Martin <tmartin@uscrr.gov> Subject: RE: Virtual Holiday Party

<mailto:tmartin@uscrr.gov>
<mailto:kculliton-gonzalez@uscrr.gov>
<mailto:pmclaughlin@uscrr.gov>
<mailto:arorison@uscrr.gov>
<mailto:Pdunston@uscrr.gov>
<mailto:Pdunston@uscrr.gov>
<mailto:tmartin@uscrr.gov>

Hi

Yes if yiu need it. I think 1 hour or 1 1/2. Here are a few ideas

Chistmas music

Christmas trivia.

Games where we vote for best song, movie, activity

Ugly sweater contest

Thanks

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: TinaLouise Martin <tmartin@usccr.gov>

Date: 12/7/20 12:35 PM (GMT-05:00)

To: Pamela Dunston <Pdunston@usccr.gov>

Subject: FW: Virtual Holiday Party

FYI, did you say you wanted to help as well?

<mailto:tmartin@usccr.gov>
<mailto:Pdunston@usccr.gov>

From: TinaLouise Martin Sent: Monday, December 7, 2020 10:56 AM To: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov>; Pilar McLaughlin <pmclaughlin@usccr.gov>; Angelia Rorison <arorison@usccr.gov> Subject: Virtual Holiday Party

Good morning everyone,

I'm trying to come up with a date for the Holiday Party. Do you guys think Thursday, December 17th is a good date? Also should it be for 1-2 hours? Do you all have suggestions on what we should do? I know Kathy said she had music and possibly games?

We could also have a zoom meeting do discuss if you like. Anyone can take the lead, I'm just reaching out. LOL

TinaLouise Martin

Director of Management/Human Resources

U.S. Commission on Civil Rights

1331 Pennsylvania Ave., NW, Suite 1150

Washington, DC20425

Phone: 202-494-9337

<mailto:kculliton-gonzalez@usccr.gov>
<mailto:pmclaughlin@usccr.gov>
<mailto:arorison@usccr.gov>

USCCR HOLIDAY PARTY 2020

Please wear something festive and if you like put up decoration or holiday background

WELCOME: PAM (2 MIN)

GREETING TO ALL STAFF: MAURO (5 MIN)

SUPERVISORS THANKS TO STAFF: MAURO (OSD, PAU, OGC) 5 MIN, DAVID M.- ROs; KATHYN – OCRE

JOHN – BFD; PAM D. – ASCD; TINA – HRD & OM (2 MIN PER SUPERVISOR/TOTAL 15 MIN)

INTRO OF GAME SHOW - ANGELIA

ICE BREAKER #1 (5 MIN)

GAME #1 – SAVENGER HUNT #1 (FIND 3 TO 4 ITEMS 10 MIN)

WINNER WILL GET A \$5 GIFT CARD

ICE BREAKER #2 (5 MIN)

GAME #1 – SAVENGER HUNT #2 (FIND 3 TO 4 ITEMS 10 MIN)

GAME # 2 – HOLIDAY TRIVIA (10 MIN) Christmas, Kwanza & Hannukah

GAME #1 – SAVENGER HUNT #3 (FIND 3 TO 4 ITEMS 10 MIN)

Note: Time permitting interactive employee activity- Little known fact about yourself or hidden talents (10 min)

EMPLOYEE HOLIDAY GREETINGS (15 MINTUES)

WRAP UP: TINA (2 MIN)

PARTY PLANNERS THANK YOU!!

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806.pdf

Date : 12/18/2020 5:15:12 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "paycheck@gdcii.com" paycheck@gdcii.com Subject : Automatic reply: [EXTERNAL] Paycheck8: JULIE GRIECO - T&A has been approved. To Whom It May Concern,

I'll be out of the office from 8/22 until 8/31.

If you need anything urgently, please contact other Commission staff, or send me a text.

Best regards, Kathy

812.pdf

812.pdf

Date : 12/19/2020 1:21:31 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "reports@intermedia.net" reports@intermedia.net Subject : Automatic reply: Email Quarantine Report (kculliton- gonzalez@usccr.gov) - 12/19/20 To Whom It May Concern,

I'll be out of the office from 8/22 until 8/31.

If you need anything urgently, please contact other Commission staff, or send me a text.

Best regards, Kathy

814.pdf

814.pdf

Date : 12/21/2020 8:31:23 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Key Executive Leadership Programs, American University" key@american.edu Subject : Automatic reply: [EXTERNAL] Roger W. Jones Executive Leaders Podcast Series | Listen to the latest Episode! To Whom It May Concern,

I'll be out of the office from 8/22 until 8/31.

If you need anything urgently, please contact other Commission staff, or send me a text.

Best regards, Kathy

816.pdf

816.pdf

Date : 12/21/2020 11:20:44 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Hilton" honors@h1.hilton.com Subject : Automatic reply: [EXTERNAL] A Holiday Message from Hilton's President & CEO To Whom It May Concern,

I'll be out of the office from 8/22 until 8/31.

If you need anything urgently, please contact other Commission staff, or send me a text.

Best regards, Kathy

818.pdf

818.pdf

Date : 12/21/2020 1:23:24 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Liddell, Christopher P. EOP/WHO" Christopher.P.Liddell@who.eop.gov Subject : Automatic reply: Thank you To Whom It May Concern,

I'll be out of the office from 8/22 until 8/31.

If you need anything urgently, please contact other Commission staff, or send me a text.

Best regards, Kathy

819.pdf

819.pdf

Date : 12/21/2020 2:14:42 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Mary Gibert - AK" mary.gibert@gsa.gov Subject : Automatic reply: [EXTERNAL] Re: Thank you To Whom It May Concern,

I'll be out of the office from 8/22 until 8/31.

If you need anything urgently, please contact other Commission staff, or send me a text.

Best regards, Kathy

822.pdf

822.pdf

Date : 12/21/2020 5:46:43 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Isadora.yoffie@gsa.gov" isadora.yoffie@gsa.gov Subject : Automatic reply: [EXTERNAL] OPM Presidential Transition Guide & OGE Legal Advisories To Whom It May Concern,

I'll be out of the office from 8/22 until 8/31.

If you need anything urgently, please contact other Commission staff, or send me a text.

Best regards, Kathy

827.pdf

827.pdf

Date : 12/22/2020 10:47:19 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Caitlyn Tierney" ctierney@vt.edu, "Latrice Foshee" lfoshee@usccr.gov Subject : RE: [EXTERNAL] Re: Spring 2021 Internship Thanks Caitlyn! I'm really looking forward to working together. -Kathy From: Caitlyn Tierney <ctierney@vt.edu> Sent: Tuesday, December 22, 2020 10:46 AM To: Latrice Foshee <lfoshee@usccr.gov> Cc: Katherine Culliton-Gonzalez <kculliton-gonzalez@usccr.gov> Subject: [EXTERNAL] Re: Spring 2021 Internship

CAUTION: This email is from outside USCCR.

Good Morning! Thank you for the time you have spent considering me for this internship. I am delighted to accept your offer! I am available to start on January 18th. I am available to work from 9:00 a.m. to 5:00 p.m.. However, I am able to work later on Wednesday-Friday if necessary, and I am more than willing to start at an earlier time as well. Please let me know if you need anything else from me in the meantime! Thank you again for this opportunity, Caitlyn Tierney On Tue, Dec 22, 2020 at 10:20 AM Latrice Foshee <lfoshee@usccr.gov> wrote:

Good Morning Caitlin,, After consulting with our director, Kathy Culliton-Gonzalez, I am happy to offer you an opportunity to intern with us for the upcoming spring 2021 semester. We believe that you will be an asset to our research agenda. Please confirm your acceptance of this opportunity as soon as possible, so that I can schedule your start date. Our Administrative Services Division requires a 30-day notice to onboard interns. In your response, please include your desired start date and work schedule (ex, M-F 9:00 a.m. to 5:00 p.m.). Due to the pandemic, all agency employees, including interns, are currently working remotely. Please contact me if you have any questions or need additional information. Thank you so much for your interest in the Commission. Best Regards, Latrice Foshee Intern Coordinator Office of Civil Rights Evaluation

<mailto:lfoshee@usccr.gov>

U.S. Commission on Civil Rights 133 Pennsylvania Avenue, NW, Suite 1150 Washington, DC 20425

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Date : 12/24/2020 11:39:10 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "monday.com" no_reply@monday.com Subject : Automatic reply: [EXTERNAL] Your daily highlights from U.S. Commission on Civil Rights To Whom It May Concern,

I'll be out of the office from 8/22 until 8/31.

If you need anything urgently, please contact other Commission staff, or send me a text.

Best regards, Kathy

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Date : 12/25/2020 1:21:29 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "reports@intermedia.net" reports@intermedia.net Subject : Automatic reply: Email Quarantine Report (kculliton-gonzalez@usccr.gov) - 12/25/20 To Whom It May Concern,

I'll be out of the office from 8/22 until 8/31.

If you need anything urgently, please contact other Commission staff, or send me a text.

Best regards, Kathy

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Date : 12/25/2020 11:36:31 AM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Amazon.com Gift Cards" gc-orders@gc.email.amazon.com Subject : Automatic reply: [EXTERNAL] Gift card from Mauro A. Morales

is waiting To Whom It May Concern,

I'll be out of the office from 8/22 until 8/31.

If you need anything urgently, please contact other Commission staff, or send me a text.

Best regards, Kathy

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Date : 12/27/2020 5:26:23 PM From : "Katherine Culliton-Gonzalez" kculliton-gonzalez@usccr.gov To : "Katherine Culliton-Gonzalez" kcullitongonzalez@gmail.com Subject : Automatic reply: [EXTERNAL] RE COCID-19 in Indian Country To Whom It May Concern,

I'll be out of the office from 8/22 until 8/31.

If you need anything urgently, please contact other Commission staff, or send me a text.

Best regards, Kathy