

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

BELIA ARLENE OCASIO, ET AL.

Plaintiffs,

v.

**COMISION ESTATAL DE
ELECCIONES, ET AL.,**

Defendants.

CIVIL NO. 20-1432 (PAD)

APPENDIX

Defendants' answer to the Complaint (Docket No. 35).

1. Averment 20. COVID-19, also known as SARS-CoV-2, is an infectious disease caused by a novel coronavirus that has spread throughout the world at an alarming pace. **Admitted.**

2. Averment 21. The virus spreads very easily and in a number of ways. For example, the virus can be spread through droplet transmission. In other words, when an infected individual speaks, coughs, or sneezes, they expel droplets which can transmit the virus to others in their proximity. COVID-19 is also aerosolized and can be transmitted by inhaling contaminated tiny droplets that remain in the air. Lastly, the virus is also known to be spread through the touching of contaminated surfaces. Each infected individual is estimated to infect two to eight others, and asymptomatic individuals may also transmit the virus to others. **Admitted.**

3. Averment 23. Because transmission of the virus can occur via environmental surfaces, there is also risk of spread of the virus at any location where multiple individuals touch surfaces. **Admitted.**

4. Averment 24. The range of consequences from contracting COVID-19 is extensive. Individuals who contract the virus typically present with a fever, cough, and shortness of breath,

which can escalate to respiratory failure, heart damage, and other life-threatening complications. Other individuals infected with the virus have experienced muscle aches, headaches, chest pain, diarrhea, coughing up blood, sputum production, runny nose, nausea, vomiting, sore throat, confusion, lack of senses of taste and smell, and anorexia. While many infected individuals are entirely asymptomatic, many others—including many senior citizens—have died from the virus.

Admitted.

5. Averment 25. The CDC has classified older adults and those with underlying health conditions as high-risk individuals. The CDC found that the risk for severe illness from COVID-19 increases with age.¹ Additionally, people with certain underlying medical conditions may also be at increased risk from COVID-19, including those affected by asthma or hypertension, amongst other conditions. **Admitted.**

6. Averment 30. While efforts to control the COVID-19 infection rates in Puerto Rico were initially successful, there has been a recent surge in COVID-19 cases. On March 12, 2020, Governor Wanda Vázquez-Garced issued an Executive Order declaring a state of emergency in Puerto Rico and acknowledging that it was “necessary to devise an action plan in conjunction with all the agencies in order to address this emergency as promptly and efficiently as required.” One day later, on March 13, Puerto Rico confirmed its first three cases of COVID-19. **Admitted.**

7. Averment 31. On March 15, 2020, Governor Vázquez-Garced ordered the closure of public and private nonessential operations, as well as a curfew on all citizens from 9:00 P.M. to 5:00 A.M. Approximately two weeks later, on March 30, the Governor imposed a strict 24-hour, 7 days-a-week lockdown, allowing citizens to leave their homes between 5:00 A.M. and 7:00 P.M. only to receive or provide essential services. **Admitted.**

8. Averment 44. In response to the COVID-19 outbreak in Puerto Rico, on June 4, 2020, the Legislative Assembly issued a Joint Resolution postponing the date of the primary elections from June 7, 2020 to August 9, 2020. In the Joint Resolution, the Legislative Assembly recognized the potential spread of COVID-19 at voting locations and authorized the CEE to take all necessary measures to ensure the safety and health of the voters for the primaries. The Joint Resolution also expanded eligibility for early voting for the primaries to include (i) individuals over sixty (60) years of age; (ii) those under quarantine due to testing positive for COVID-19; (iii) individuals with chronic lung diseases or asthma (as verified by a qualified doctor in Puerto Rico), (iv) persons with compromised immune systems (e.g., cancer patients), (v) individuals who are morbidly obese, and (vi) other high risk individuals and/or with vulnerable health conditions, pursuant to the World Health Organization Recommendations. The Joint Resolution applied only to the primaries and was silent on any accommodations necessary for the general election in November 2020. **Admitted.**

9. Averment 45. On June 20, 2020, Governor Vázquez-Garced signed into law the Election Code 2020, which officially expanded the categories of people qualified to vote early in the general election to include individuals who are in the hospital or require long-term care, have physical impediments, medical conditions, or other mobility constraints. Senior citizens were not included in the expanded categories. Importantly, however, the Election Code also empowered the Commission to add to (but not subtract from) the listed categories of voters eligible for early voting. **Admitted.**

10. Averment 54. During the first week of August, Puerto Rico held its early voting and general voting for its primaries. On August 1 (the day designated for early voting for the primaries),

late ballots plagued Puerto Rico's voting locations. Many counties did not receive ballots until hours later. With over 21,000 early voters, the late ballots resulted in long and crowded lines filled with the same at-risk communities that early voting was adopted to safeguard. To address the disenfranchisement that occurred, those unable to vote during the early voting period were allowed to vote on the day of the primary (August 9), with "preferential treatment" and a "fast lane" to be provided to accommodate these voters. While this accommodation was made to ensure that citizens had an opportunity to exercise their right to vote, it comes at the expense of their health and safety—these voters (those identified as particularly at-risk of exposure by the Legislative Assembly) were forced to travel to polling locations and be exposed to others twice, and come into contact with even larger crowds at the primaries, further increasing their risk of infection.

Admitted.

12. Averment 55. Voters who sought to cast their ballots in-person during the August 9, 2020 primaries encountered perilous issues. Many voters who traveled to polling stations reported waiting in crowded lines for hours, as ballots were delayed in arriving at polling stations. The delays were so severe that many precincts closed their polling stations early, completely disenfranchising many and resulting in a number of local lawsuits. **Admitted.**

13. Averment 56. In response to a preliminary injunction motion, the Supreme Court of Puerto Rico issued a ruling directing the CEE to resume the primaries on August 16. **Admitted.**

14. Averment 57. The steady increase in COVID-19 coupled with Puerto Rico's failure to implement efficient safety measures at its voting locations, necessitate the adoption of early and absentee voting alternatives for senior citizens for the general elections on November 3.