

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

JENNIFER L. DAVID; T'CHAKA SPILLER;
JORGE LEDBETTER; TRAVIS HERBERT;
DAKOTA WILCOX; COREY BOSTON;
JOSEPH STRUEMPH; and CHRISTOPHER
JONES, on behalf of themselves and all others
similarly situated,

Petitioners,

v.

STATE OF MISSOURI; MISSOURI PUBLIC
DEFENDER COMMISSION; MARY FOX,
in her official capacity as Director of
Missouri's Office of State Public Defender;
HON. JUDGE CAROL ENGLAND; HON.
JUDGE COTTON WALKER; HON. JUDGE
RONALD CARRIER; HON. JUDGE TERRY
CUNDIFF; HON. JUDGE ELIZABETH
SWANN; HON. JUDGE MICHAEL
RUMLEY; and HON. JUDGE STACEY
LETT,

Respondents.

Case No. _____

Division: _____

**CLASS ACTION PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE
RELIEF**

Petitioners, on behalf of themselves and all others similarly situated, by and through the undersigned counsel, upon knowledge with respect to their own acts and on information and belief as to other matters, hereby allege for this class action petition for injunctive and declaratory relief:

INTRODUCTION

1. More than 50 years ago, the United States Supreme Court, in *Gideon v. Wainwright*, 372 U.S. 335 (1963), held that the Constitution requires every State to provide counsel for

criminal defendants who are unable to afford an attorney. “Lawyers in criminal cases are necessities, not luxuries. . . . Without counsel, the right to a trial itself would be of little avail. . . .” *United States v. Cronin*, 466 U.S. 648, 653 (1984) (internal quotation marks omitted).

2. The Missouri Constitution similarly guarantees all persons accused in criminal prosecutions the right to counsel, Mo. Const. art. 1, § 18(a), due process, Mo. Const. art. 1, § 10, and equal rights and opportunity under the law. Mo. Const. art. 1, § 2.

3. Despite these well-established laws and long-standing principles, the State of Missouri fails to meet its constitutional obligation to provide indigent defendants with meaningful representation. For more than two decades, the State of Missouri has failed to provide poor people accused of crimes with adequate representation, resulting in the actual and constructive denial of counsel for indigent defendants across the state.

4. Since the fall of 2017, Missouri’s Office of State Public Defender (MSPD) and Respondents ENGLAND, WALKER, CARRIER, CUNDIFF, SWANN, RUMLEY, and LETT (together, “Respondent Judges”), in addition to other judges across the state, have been systematically placing (or authorizing the placement of) indigent defendants on waiting lists for legal representation, in an effort to shield public defenders from violating their ethical duties by taking on too many cases.

5. Section 600.063.3 of the Missouri Revised Statutes states that, where a public defender successfully demonstrates that they are unable to provide effective assistance of counsel due to an excessive caseload, the presiding judge may take a number of steps to provide relief, including, among other options, “[p]lac[ing] cases on a waiting list for defender services, taking into account the seriousness of the case, the incarceration status of the defendant, and such other

special circumstances as may be brought to the attention of the court by the prosecuting or circuit attorney, the district defender, or other interested parties.” § 600.063.3(5).

6. Section 600.063.3(5) violates the Missouri Constitution to the extent that it authorizes the placement of indigent defendants on waiting lists. Although State officials must take steps to alleviate the excessive caseloads facing public defenders statewide, placing indigent defendants on waiting lists—some of whom remain in pretrial detention for months, and sometimes years, in the interim—violates the right to counsel, due process, and equal rights and opportunity guaranteed to all criminal defendants.

7. The Respondents’ decisions to place—or authorize the placement of—indigent defendants on waiting lists, has created an urgent constitutional crisis in the State of Missouri. As demonstrated by the cases of each of the named Petitioners, that crisis is only worsening, depriving indigent defendants of the timely and meaningful representation to which they are constitutionally entitled.

8. Petitioners, on behalf of themselves and a class of similarly situated persons, seek to vindicate their constitutional right to be guided by competent counsel at all critical stages of their criminal and juvenile delinquency proceedings, as required by the Missouri Constitution. Petitioners ask this Court to issue a judgment declaring the use of waiting lists for legal representation unconstitutional, immediately enjoining Respondents from continuing this practice, and requiring Respondents to either immediately provide competent counsel to all indigent defendants who are currently on a waiting list in Missouri, or, if the immediate provision of competent counsel is impracticable, to dismiss the charges against all indigent defendants who are currently on a waiting list.

JURISDICTION AND VENUE

9. This Court maintains original subject-matter jurisdiction over this action under Sections 527.010 and 527.050 of the Missouri Revised Statutes and Missouri Supreme Court Rule 87.

10. Venue is proper in this Court because the Missouri State Public Defender Commission maintains offices in Cole County, Missouri.

PARTIES

A. Petitioners

11. Petitioner JENNIFER L. DAVID is an adult resident of CALLAWAY COUNTY, located in the 13th Judicial Circuit of the state of Missouri. Petitioner DAVID was arrested and charged with a felony offense on August 3, 2019. Upon arrest, she was taken to the Callaway County Jail in Fulton, Missouri. Petitioner DAVID was able to use a credit card to post a surety bond and was released from jail that same day. She has been out on bond ever since. Petitioner DAVID was arraigned, without counsel, before Respondent JUDGE ENGLAND on September 13, 2019. She has had several counsel status hearings before the court since that initial appearance, all without an attorney representing her. A January 7, 2020 court filing indicates that Petitioner DAVID completed a MSPD application, qualified for MSPD services, but was placed “on a wait list pending the availability of a public defender to provide representation.” Ex. A. The notice did not indicate any time frame within which Petitioner DAVID could expect to be assigned an attorney to represent her. However, after taking the initiative to reach out to MSPD via email, on January 31, 2020, Petitioner DAVID was told by MSPD that the estimated amount of time that she will be on the waitlist is eight months. Ex. B. As such, she has been unable to communicate with an attorney, review discovery, interview witnesses, gather evidence, or otherwise mount a viable defense to the charge against her. Petitioner DAVID has been a

registered nurse in Missouri since 2011. In July 2019, she suffered the tragic loss of her own infant child. Because of the pending charge against her, she is unable to find employment as a nurse and has had at least three job offers retracted because of the pending charge. Petitioner DAVID appeared for a counsel status hearing on February 21, 2020, at which time she again informed Respondent JUDGE ENGLAND that she was still on the MSPD waitlist. The court set her case out for another counsel status hearing on March 13, 2020.

12. Petitioner T'CHAKA SPILLER is an adult resident of ST. CHARLES COUNTY, located in the 11th Judicial Circuit of the state of Missouri. Petitioner SPILLER was arrested and charged with a felony offense and multiple misdemeanor offenses on November 8, 2019. Petitioner SPILLER was arraigned, without counsel, before Respondent JUDGE CUNDIFF on November 12, 2019, at which time the court denied Petitioner SPILLER's request for a bond reduction and remanded him back to the St. Charles County Jail. Since his arraignment, Petitioner SPILLER has appeared before Respondent JUDGE CUNDIFF on at least three more occasions, only to have his case continued repeatedly, specifically because he is on the waiting list and without representation. *See Ex. M.* Since being placed on the waiting list, Petitioner SPILLER has remained in pretrial detention without access to counsel. As such, he has been unable to communicate with an attorney, review discovery, interview witnesses, gather evidence, or otherwise mount a viable defense to the charges against him. While Petitioner SPILLER has been detained at the St. Charles County jail without an attorney, he has been prevented from caring for, or even checking in on his mother, who had a stroke after his arrest in November. He missed his six year old's birthday on February 22, 2020, and is frustrated that his efforts to secure joint custody with his child's mother—efforts well underway at the time of his arrest—will be delayed or otherwise negatively impacted because of his prolonged detention on a

waiting list. Mr. Spiller now has been in custody for over three months without access to an attorney and is not scheduled to return to court until March 19, 2020.

13. Petitioner JORGE LEDBETTER is an adult resident of ST. CHARLES COUNTY, located in the 11th Judicial Circuit of the state of Missouri. Petitioner LEDBETTER was arrested and charged with a felony offense on or about December 20, 2019. Petitioner LEDBETTER was arraigned, without counsel, before Respondent JUDGE SWANN on December 23, 2019. At that time, Respondent JUDGE SWANN set Petitioner LEDBETTER's bond at \$75,000, with 10% authorized and remanded him back to the St. Charles County Jail. Petitioner LEDBETTER qualified for MSPD services but was later informed that he had been placed on a waiting list for representation. Petitioner LEDBETTER has appeared before Respondent JUDGE SWANN on two subsequent occasions, only to have his case continued repeatedly because he is on the waiting list and without representation. *See* Ex. S. When Petitioner LEDBETTER asked for a bond reduction, Respondent JUDGE SWANN told him that she could not lower the bond and he would have to wait for representation. But when he applied for a public defender, Petitioner LEDBETTER was told that if he paid his bond to get out of jail he would no longer be eligible for MSPD services. Since being placed on the waiting list, Petitioner LEDBETTER has remained in pretrial detention without access to counsel. As such, he has been unable to communicate with an attorney, review discovery, interview witnesses, gather evidence, or otherwise mount a viable defense to the charge against him. While Petitioner LEDBETTER has been detained at the St. Charles County jail without an attorney, he has been prevented from supporting or caring for his fiancé, who is pregnant and due with their first child in early May 2020. Their efforts to get married have been stymied by his incarceration, and he is concerned he

will not be released from custody to be present for his child's birth. Petitioner LEDBETTER is scheduled to return to court on March 18, 2020, for a counsel status hearing.

14. Petitioner TRAVIS HERBERT is an adult resident of GREENE COUNTY, located in the 31st Judicial Circuit of the state of Missouri. Petitioner HERBERT was arrested and charged with several felony offenses on December 26, 2019. On December 27, 2019, Petitioner HERBERT was arraigned before Respondent JUDGE CARRIER, without counsel, and had his bond set at \$75,000. Subsequently, the MSPD filed a letter with the court, dated February 3, 2020, indicating that Petitioner HERBERT had been placed on a waiting list for an attorney and providing no time frame within which he is likely to receive representation in his criminal case. *See Ex. D.* Since being placed on the waiting list, Petitioner HERBERT has remained in pretrial detention without access to counsel. As such, he has been unable to communicate with an attorney, review discovery, interview witnesses, gather evidence, or otherwise mount a viable defense to the charges against him. He has been forced to navigate his court appearances—including a February 11, 2020 bond reduction hearing—without the assistance of an attorney. Petitioner HERBERT also filed a pro se discovery motion on February 13, 2020 in a desperate effort to move his case along, notwithstanding the absence of defense counsel. To make matters worse, Petitioner HERBERT was recently transferred from the Greene County Jail to the Johnson County Jail, more than 100 miles away from his family in Springfield, and has now been in the state's custody for more than two months without access to an attorney. He is scheduled to return to court on March 4, 2020 for another counsel status hearing.

15. Petitioner DAKOTA WILCOX is an adult resident of COLE COUNTY, located in the 19th Judicial Circuit of the state of Missouri. Petitioner WILCOX was arrested and charged with multiple misdemeanor and felony offenses on or about August 22, 2019. After being detained at

the Cole County Jail for the next several days, Petitioner WILCOX was arraigned before Respondent JUDGE WALKER on August 26, 2019. Subsequently, Petitioner WILCOX received a letter from the MSPD, dated October 2, 2019, and filed with the court on the same day, indicating that he had been placed on a waiting list for an attorney and providing no time frame within which he is likely to receive representation in his criminal case. *See* Ex. E. Since being placed on the waiting list, Petitioner WILCOX has been without access to counsel—unable to communicate with an attorney, review discovery, interview witnesses, gather evidence, or otherwise mount a viable defense to the charges against him. Petitioner WILCOX has now been in custody for nearly six months without access to an attorney. He is scheduled to return to court on March 3, 2020 for a counsel status hearing.

16. Petitioner COREY BOSTON is an adult resident of COLE COUNTY, located in the 19th Judicial Circuit of the state of Missouri. Petitioner BOSTON was arrested and charged with a felony offense on November 4, 2019. Two days later, on November 6, Petitioner BOSTON appeared before Respondent JUDGE WALKER, without counsel, while still in custody at the Cole County Jail. At the November 6 hearing, the court denied Petitioner BOSTON's request for a bail reduction and declined to set bail at all. Since then, Petitioner BOSTON has been before the court on at least one other occasion, only to have his case continued yet again.

Despite being found eligible for the services of the MSPD, Petitioner BOSTON received a letter from the MSPD, dated November 19, 2019, and filed with the court on the same day, indicating that he had been placed on a waiting list for an attorney and providing no time frame within which he is likely to receive representation in his criminal case. *See* Ex. F. Since being placed on the waiting list, Petitioner BOSTON has been without access to counsel—unable to communicate with an attorney, review discovery, interview witnesses, gather evidence, or

otherwise mount a viable defense to the charge against him. Petitioner BOSTON has now been in custody for more than three months without access to an attorney. He is scheduled to return to court on March 3, 2020 for another counsel status hearing.

17. Petitioner JOSEPH STRUEMPH is an adult resident of CASS COUNTY, located in the 17th Judicial Circuit of the state of Missouri. Petitioner STRUEMPH was charged with a felony offense on March 28, 2019. He was arraigned without counsel on April 5, 2019. After failing to appear for a hearing in June 2019, Petitioner STRUEMPH was arrested on November 26, 2019. On December 2, 2019, Petitioner STRUEMPH appeared before Respondent JUDGE RUMLEY without counsel and a cash-only bond was set. Petitioner STRUEMPH applied for MSPD services following his November 2019 arrest and was deemed indigent and entitled to representation. Subsequently, Petitioner STRUEMPH received a letter from MSPD on or about December 17, 2019, indicating that, although he was indigent and entitled to representation, he had been placed on a waiting list indefinitely, pending the availability of competent MSPD counsel with the capacity to provide representation. Since being placed on the waiting list, Petitioner STRUEMPH has remained in pretrial detention without access to counsel. As such, he has been unable to communicate with an attorney, review discovery, interview witnesses, gather evidence, or otherwise mount a viable defense to the charge against him. During his time in custody, Petitioner STRUEMPH has lost both his part-time job and his residence. On February 6, 2020, Petitioner STRUEMPH appeared before Respondent JUDGE RUMLEY, again without counsel, only to have his case continued yet again. Petitioner STRUEMPH has been in custody for nearly three months without access to an attorney. He is scheduled to return to court for a case review hearing on February 27, 2020.

18. Petitioner CHRISTOPHER JONES is an adult resident of CASS COUNTY, located in the 17th Judicial Circuit of the state of Missouri. Petitioner JONES was arrested on or about January 15, 2020, after he failed to appear at a scheduled hearing in December 2019. Petitioner JONES has been accused of violating his probation and applied for public defender services shortly after his arrest. Subsequently, Petitioner JONES received a letter from MSPD informing him that he qualified for MSPD services but was placed on a waiting list indefinitely, pending the availability of competent MSPD counsel with the capacity to provide representation. Since being placed on the waiting list, Petitioner JONES has remained in pretrial detention without access to counsel. As such, he has been unable to communicate with an attorney, review discovery, interview witnesses, gather evidence, or otherwise mount a viable defense to the charges against him. Petitioner JONES has been in custody for more than a month without access to an attorney. He is scheduled to return to court for a case review before Respondent JUDGE LETT on March 10, 2020.

B. Respondents

19. Respondent MARY FOX is sued in her official capacity as Director of the Office of State Public Defender. Mo. Ann. Stat. § 600.19 (West). In her capacity as Director of the MSPD, Respondent FOX maintains responsibility for ensuring the adequate provision of indigent defense services across the State of Missouri.

20. Respondent MISSOURI STATE PUBLIC DEFENDER COMMISSION governs the MSPD system by, among other things, promulgating rules needed for the administration of the system, monitoring the performance of the MSPD, and receiving complaints from MSPD clients. The Commission also has the authority to appoint and remove the MSPD Director and Deputy Director.

21. Respondent JUDGE CAROL ENGLAND, Circuit Court Judge for the 13th Judicial Circuit, is responsible for ensuring that all indigent defendants prosecuted in her court are provided timely access to competent counsel.
22. Respondent JUDGE COTTON WALKER, Circuit Court Judge for the 19th Judicial Circuit, is responsible for ensuring that all indigent defendants prosecuted in his court are provided timely access to competent counsel.
23. Respondent JUDGE RONALD CARRIER, Circuit Court Judge for the 31st Judicial Circuit, is responsible for ensuring that all indigent defendants prosecuted in his court are provided timely access to competent counsel.
24. Respondent JUDGE TERRY CUNDIFF, Circuit Court Judge for the 11th Judicial Circuit, is responsible for ensuring that all indigent defendants prosecuted in his court are provided timely access to competent counsel.
25. Respondent JUDGE ELIZABETH SWANN, Circuit Court Judge for the 11th Judicial Circuit, is responsible for ensuring that all indigent defendants prosecuted in her court are provided timely access to competent counsel.
26. Respondent JUDGE MICHAEL RUMLEY, Circuit Court Judge for the 17th Judicial Circuit, is responsible for ensuring that all indigent defendants prosecuted in his court are provided timely access to competent counsel.
27. Respondent JUDGE STACEY LETT, Circuit Court Judge for the 17th Judicial Circuit, is responsible for ensuring that all indigent defendants prosecuted in her court are provided timely access to competent counsel.

28. Respondent STATE OF MISSOURI has violated and continues to violate the Missouri Constitution, which requires it to ensure that no indigent defendant is prosecuted without access to counsel across the State.

FACTUAL ALLEGATIONS

Indigent Defense in Missouri

29. The State of Missouri relies almost exclusively on local MSPD offices to provide indigent defense services in all 114 counties and the City of St. Louis.

30. The chronic underfunding and increasing caseload of MSPD has led to a staffing crisis resulting in MSPD attorneys typically operating at more than double the maximum workload capacity that would allow for the consistent provision of constitutionally adequate representation to their clients.

Waiting Lists

31. In an effort to alleviate the burden on the MSPD's public defenders, the MSPD and/or criminal court judges across the state are currently placing or allowing the placement of indigent defendants on waiting lists if the local MSPD office that has been assigned does not have any attorneys on staff with the capacity to provide constitutionally sufficient representation to additional defendants at the time their applications for representation are submitted to and approved by MSPD.

32. MSPD district offices receive applications from indigent defendants and, instead of assigning the case to an attorney for those defendants who qualify as indigent, the client is placed on an MSPD waiting list until an attorney becomes available.

33. Indigent defendants who have been placed on a waiting list typically receive a form letter from the local MSPD office indicating that they are eligible for public defender services,

but have been placed on a waiting list, pending the availability of an attorney with the capacity to provide them with competent representation.

34. Upon information and belief, MSPD attorneys do not typically provide any time frame within which the criminal defendant can expect an attorney to be available to provide representation after they are placed on a waiting list. *See Exhibits C, D, E, F; see also, Exhibit G, Letter Electronically Filed on October 10, 2018 from MSPD Rod Hackathorn to Greene County Judge Mark Powell.*

35. In some districts, the MSPD files a copy of the waiting list letter, or some other notice of the indigent defendant's placement on the waiting list, with the court. In other districts, the court is made aware of the indigent defendant's placement on the waiting list when they appear before the court without counsel.

36. As a result, an indigent criminal defendant may wait months, or even *years*, before they will be assigned an attorney. As of January 9, 2020, three indigent defendants have been in pretrial detention and on a waitlist for over two years. *See Ex. H, January 9, 2020 Response to Sunshine Request from Missouri State Public Defender System (Client ID numbers ending in 7A1F8E, 6571E0 and 5BB4C3).* Forty-four indigent defendants have been on a waitlist and in pretrial detention for over one year. The average number of days indigent defendants are on a waitlist and in jail is 114 days. *Id.*

37. When an indigent defendant is placed on a waiting list, they receive no access to an attorney during critical stages of the criminal process—including at their arraignment, where bond is determined—resulting in the actual denial of counsel to indigent defendants across the State.

38. As a result, bond determinations, which normally occur at the defendant's initial appearance, are almost always made with input from the prosecution yet *without* the benefit of advocacy from defense counsel. Without that advocacy, bond may be set based on inappropriate factors, or the court may make its bond determination without the benefit of mitigating facts critical to such a determination.

39. As such, indigent defendants placed on waiting lists are often forced to remain in jail simply because they are unable to advocate effectively for release on their own recognizance or a reasonable reduction in their bond amount.

40. Some unrepresented indigent defendants also feel pressured to plead guilty before an MSPD attorney is assigned. Others will waive their right to counsel in order to move proceedings along. And in some cases, desperate defendants could negotiate their own plea deals, potentially resulting in worse plea deals for them than those that receive adequate legal assistance from counsel. *See* Ex. I, Letter from indigent defendant Stephanie Gasca Harrison.

41. Recent MSPD court filings, in addition to MSPD's own records, reveal that, as of January 2020, there were well over 4,600 criminal defendants on waiting lists across the state, approximately 600 of whom remain in pretrial detention. *See* Ex. H.

HARM TO NAMED PETITIONERS

42. All of the above-mentioned issues have combined to cause tremendous harm to Petitioners and to the Proposed Class as a whole.

43. Petitioner JENNIFER DAVID was arrested in Callaway County, Missouri, on August 3, 2019, and charged with a felony offense. Ms. David has had several counsel status hearings before the court. A January 7, 2020 court filing indicates that Ms. David completed an MSPD application, qualified for MSPD services, but was placed "on a wait list pending the availability

of a public defender to provide representation.” Although the notice does not indicate any time frame related to the availability of an attorney, Ms. David took the initiative to reach out to MSPD via email, and on January 31, 2020, Ms. David was told by an MSPD official that the estimated amount of time that she will be on the waitlist is eight months. Until an attorney is assigned to represent her, Ms. David is forced to navigate the court system on her own without the guiding hand of counsel. Ms. David, a registered nurse, has been unable to find employment because of her pending charges. She appeared for a counsel status hearing on February 21, 2020, at which time she again informed Respondent JUDGE ENGLAND that she was still without counsel and remained on the waitlist. The court set her case out for another counsel status hearing on March 13, 2020.

44. Petitioner T’CHAKA SPILLER was arrested and charged with a felony offense and multiple misdemeanor offenses on November 8, 2019 in St. Charles County. Mr. Spiller applied for MSPD services on a separate felony case prior to his arrest, on November 1. He was told he qualified for MSPD services. On November 12, 2019, Mr. Spiller appeared for arraignment before Respondent JUDGE CUNDIFF, without counsel, while still in custody at the St. Charles County Justice Center. At the November 12 hearing, Mr. Spiller was read his charges and his request for bond change was denied. Mr. Spiller has been before the court on two other occasions, only to have his case continued again and again. Respondent JUDGE CUNDIFF also has continued Mr. Spiller’s case without Mr. Spiller even appearing in court. Mr. Spiller has been forced to navigate his court appearances, including multiple bond reduction hearings, without the assistance of an attorney, and has been unable to take any steps to develop a viable defense to the charges against him. Mr. Spiller has been in custody for over three months without access to an attorney and is not scheduled to return to court until March 19, 2020. Mr. Spiller has

been told that the waitlist is seven to eight weeks long if you are detained, and even longer if you are not incarcerated. While Mr. Spiller has been detained at the St. Charles County jail without an attorney, he has been prevented from caring for, or even checking in on, his mother, who had a stroke after his arrest in November. He has already missed his six-year-old's birthday on February 22, 2020, and is frustrated that his efforts to secure joint custody with his child's mother—efforts well underway at the time of his arrest—will be delayed or otherwise negatively impacted because of his prolonged detention on a waiting list.

45. Petitioner JORGE LEDBETTER was arrested and charged with a felony offense on or about December 20, 2019. Mr. Ledbetter was arraigned, without counsel, before Respondent JUDGE SWANN on December 23, 2019. At that time, Respondent Judge Swann set Mr. Ledbetter's bond at \$75,000, with 10% authorized. Mr. Ledbetter qualified for MSPD services but was later informed that he had been placed on a waiting list for representation. Mr. Ledbetter has appeared before Respondent Judge Swann on two subsequent occasions, only to have his case continued repeatedly because he is on the waiting list and without representation. When he asked for a bond reduction, Respondent Judge Swann told him she could not lower the bond and he would have to wait for representation. But when he applied for a public defender, he was told that if he paid his bond to get out of jail he would no longer be eligible for MSPD services. He applied for a public defender in December 2019 and was placed on a waiting list on or about January 2, 2020. He was told the wait would be eight to ten weeks long. Since being placed on the waiting list, Mr. Ledbetter has remained in pretrial detention without access to counsel. As such, he has been unable to communicate with an attorney, review discovery, interview witnesses, gather evidence, or otherwise mount a viable defense to the charge against him. While Mr. Ledbetter has been detained at the St. Charles County jail without an attorney, he has

been prevented from supporting or caring for his fiancé, who is pregnant and due with their first child in early May 2020. Their efforts to get married have been stymied by his incarceration, and he is concerned he will not be released from custody to be present for his child's birth. Mr. Ledbetter has called the public defender's office nearly every day he has been in custody. No one has ever returned his calls. His family has called the public defender's office on his behalf and has also not received a return call. Mr. Ledbetter is scheduled to return to court on March 18, 2020, for a counsel status hearing.

46. Petitioner TRAVIS HERBERT was arrested and charged with several felony offenses in Greene County on December 26, 2019. On December 27, 2019, Petitioner Herbert was arraigned before Respondent JUDGE CARRIER, without counsel, and had his bond set at \$75,000. Subsequently, the MSPD filed a letter with the court, dated February 3, 2020, indicating that Mr. Herbert had been placed on a waiting list for an attorney and providing no time frame within which he is likely to receive representation in his criminal case. *See* Ex. D. Since being placed on the waiting list, Mr. Herbert has remained in pretrial detention without access to counsel. As such, he has been unable to communicate with an attorney, review discovery, interview witnesses, gather evidence, or otherwise mount a viable defense to the charges against him. He has been forced to navigate his court appearances—including a February 11, 2020 bond reduction hearing—without the assistance of an attorney. Mr. Herbert also filed a pro se discovery motion on February 13, 2020, in a desperate effort to move his case along, notwithstanding the absence of defense counsel. Mr. Herbert was recently transferred from the Greene County Jail to the Johnson County Jail, more than 100 miles away from his family in Springfield. He is scheduled to return to court in Greene County on March 4, 2020, for another counsel status hearing.

47. Petitioner DAKOTA WILCOX was arrested and charged with multiple misdemeanor and felony offenses in Cole County on August 22, 2019. After being detained at the Cole County Jail for the next several days, Mr. Wilcox was arraigned before Respondent JUDGE WALKER on August 26, 2019. Since then, Mr. Wilcox has remained in pretrial detention and appeared before the court on seven different occasions, including a bond reduction hearing on January 24, 2020, during which the court denied his motion and declined to set bail at all. Despite being found eligible for public defender services, Mr. Wilcox was placed on a waiting list for an attorney and given no time frame within which he is likely to receive representation in his criminal case. As such, Mr. Wilcox has been forced to navigate all of his court appearances—including his recent bond reduction hearing—without the assistance of an attorney, and has been unable to take any steps to develop a viable defense to the charges against him. Mr. Wilcox has now been in custody for nearly six months without access to an attorney and is scheduled to return to court on March 3, 2020.

48. Petitioner COREY BOSTON was arrested on or about November 4, 2019 in Cole County, and charged with a felony offense. Two days later, on November 6, Mr. Boston appeared before Respondent JUDGE WALKER, without counsel, while still in custody at the Cole County Jail. At the November 6 hearing, the court denied Mr. Boston's request for a bail reduction and declined to set bail at all. Since then, Mr. Boston has been before the court on at least one other occasion, only to have his case continued yet again. Despite being found eligible for the services of the MSPD, Mr. Boston was placed on a waiting list for an attorney and given no time frame within which he is likely to receive representation in his criminal case. As such, Mr. Boston has been forced to navigate his court appearances—including his November 2019 bond reduction hearing—without the assistance of an attorney, and has been unable to take any

steps to develop a viable defense to the charge against him. Mr. Boston has now been in custody for more than three months without access to an attorney and is not scheduled to return to court until March 3, 2020.

49. Petitioner JOSEPH STRUEMPH was charged with a felony offense on March 28, 2019, but not taken into custody. He was arraigned before Respondent JUDGE RUMLEY, without counsel, on April 5, 2019. After failing to appear for a hearing in June 2019, Mr. Struempf was arrested on November 26, 2019. On December 2, 2019, Mr. Struempf appeared before Respondent JUDGE RUMLEY without counsel and a cash-only bond was set. Mr. Struempf applied for MSPD services soon after his November arrest. But despite being found eligible for the services of the MSPD, Mr. Struempf received a letter from the MSPD, dated December 17, 2019, indicating that he had been placed on a waiting list for an attorney and providing no time frame within which he is likely to receive representation in his criminal case. Unable to afford bond, Mr. Struempf has remained in pretrial detention since his arrest. During his time in custody, Mr. Struempf has lost both his part-time job and his residence. On February 6, 2020, Mr. Struempf appeared before Respondent JUDGE RUMLEY, again without counsel, only to have his case continued yet again. Mr. Struempf has been in custody for nearly three months without access to an attorney and is scheduled to return to court on February 27, 2020.

50. Petitioner CHRISTOPHER JONES was arrested on or about January 15, 2020, after he failed to appear at a scheduled hearing in December 2019. Petitioner JONES has been accused of violating his probation and applied for public defender services shortly after his arrest. .Despite being found eligible for the services of the MSPD, Mr. Jones was subsequently placed on a waiting list for representation and denied access to counsel. Mr. Jones has been in custody

for more than a month without access to an attorney and is not scheduled to return to court until March 10, 2020.

51. MSPD's own records demonstrate that, in the 17th Judicial Circuit, where Petitioners STRUEMPH and JONES were arrested and charged, there were approximately 460 individuals on the waiting list as of January 9, 2020, roughly 70 of whom remain in pretrial detention.

52. MSPD's own records demonstrate that, in the 19th Judicial Circuit, where Petitioners WILCOX and BOSTON were arrested and charged, there were approximately 282 individuals on the waiting list as of January 9, 2020, roughly 89 of whom remain in pretrial detention.

53. MSPD's own records demonstrate that, in the 13th Judicial Circuit, where Petitioner DAVID was arrested and charged, there were 897 individuals on the waiting list as of January 9, 2020, 10 of whom remain in pretrial detention.

54. MSPD's own records demonstrate that, in the 31st Judicial Circuit, where Petitioner HERBERT was arrested and charged, there were 969 individuals on the waiting list as of January 9, 2020, 192 of whom remain in pretrial detention.

55. MSPD's own records demonstrate that, in the 11th Judicial Circuit, where Petitioners SPILLER and LEDBETTER were arrested and charged, there were 336 individuals on the waiting list as of January 9, 2020, 69 of whom remain in pretrial detention.

56. Many individuals eligible for public defenders outside of these circuits also remain on a waiting list and/or in pretrial detention, including but not limited to:

<i>Public Defender District Office</i>	<i>Approximate Number of Indigent Defendants on Waiting List as of January 2020</i>	<i>Approximate Number of Indigent Defendants on Waiting List and in Pretrial Detention as of January 2020</i>
15th Judicial Circuit (Sedalia)	69	12

16th Judicial Circuit (Kansas City)	644	78
20th Judicial Circuit (Union)	246	31
26th Judicial Circuit (Lebanon)	50	11
29th Judicial Circuit (Carthage)	245	3
37th Judicial Circuit (West Plains)	77	10
39th Judicial Circuit (Monett)	131	16

RESPONDENT LIABILITY

57. Respondents have not provided Petitioners, or those similarly situated, with the representation to which they are constitutionally entitled. By placing Petitioners on waiting lists and/or ordering that waitlists be maintained as a solution to overburdened MSPD offices, Respondents have denied Petitioners representation altogether at critical stages of their proceedings, constructively denied Petitioners counsel at other stages because MSPD's excessive workloads would hamstring even the best of lawyers, and denied Petitioners the basic investigation and counseling that the Missouri Constitution demands.

58. Respondents have placed Petitioners on waiting lists despite other remedies available under Missouri Statute 600.063.3 to address excessive caseloads, such as appointing private counsel.

59. Absent this Court's intervention, Respondents will continue to fail to provide Petitioners with the representation to which they are constitutionally entitled.

60. Placing Petitioners on waiting lists is illustrative and typical of the experience of indigent defendants throughout the State of Missouri and results from the lack of sufficient

funding, inflated workloads, and structural deficiencies that have been repeatedly identified by every entity that has assessed Missouri's public defender system over the last 25 years.

61. Respondents have been on notice for decades that MSPD is failing to provide constitutionally sufficient representation. Numerous studies, reports, and recommendations have been presented to state officials over the years; and the Missouri Supreme Court's decisions in *State ex rel. Missouri Pub. Def. Comm'n v. Waters*, 370 S.W.3d 592 (Mo. 2012), and *State ex rel. Missouri Pub. Def. Comm'n v. Pratte*, 298 S.W.3d 870 (Mo. 2009), raised serious concerns about Missouri's public defender system.

62. Despite being on notice of the many deficiencies plaguing Missouri's indigent defense system, Respondents continue to place Petitioners on waiting lists in an effort to sidestep the problem.

63. Respondents' continued reliance on waiting lists to address the larger deficiencies of Missouri's indigent defense system is the proximate cause of the harm suffered by the named Petitioners and the Proposed Class they seek to represent.

CLASS ALLEGATIONS

64. Petitioners file this class action lawsuit pursuant to Rule 52.08 on behalf of all indigent persons who have been charged with a crime and are currently on a waiting list for legal representation, or who will be charged with a crime and placed on a waiting list for legal representation during the pendency of this litigation ("Proposed Class").

65. There are currently more than 4,600 individuals on waiting lists across the state and the lists continue to grow. As such, the Proposed Class is so numerous that joinder of all members is impractical.

66. There are important questions of law and fact raised in this case that are common to the Proposed Class, including:

- a. Whether Mo. Rev. Stat. § 600.063.3's authorization of waiting lists is unconstitutional because it violates the right to counsel.
- b. Whether Respondents have violated the Missouri Constitution by placing indigent criminal defendants who qualify for MSPD representation on waiting lists without access to counsel.
- c. Whether Respondents are required under the Missouri Constitution, and under Missouri law, to immediately provide competent legal representation to all indigent criminal defendants who have been placed on MSPD waiting lists across the state; and
- d. Whether the Respondent Judges are required under the Missouri Constitution, and under Missouri law, to dismiss all pending charges against indigent criminal defendants who have been placed on a waiting list and denied access to counsel.

67. As described above, Respondents' placement of indigent criminal defendants on waiting lists has deprived indigent criminal defendants of their constitutional right to counsel in Missouri.

68. When a criminal defendant is placed on a waiting list, they are deprived of counsel. The particular criminal statute under which the defendant has been charged is irrelevant—the mere act of being placed on a waiting list prevents a defendant from receiving benefits to which they are constitutionally entitled.

69. As a result, Respondents have violated the constitutional rights of the more than 4,600 criminal defendants currently on waiting lists in Missouri. And, if allowed to continue,

Respondents' reliance on waiting lists will result in the violation of the rights of thousands more indigent defendants in the months and years to come.

70. The claims of the Class representatives are typical of the claims of the Proposed Class as a whole. Like all of the Proposed Class members, the Proposed Class representatives have been placed on a waiting list for legal representation by the MSPD, despite having been formally charged with crimes and qualifying for MSPD representation, in violation of the Missouri Constitution.

71. The Class representatives will fairly and adequately protect the interests of the Proposed Class. The interests of the Proposed Class representatives are not in conflict with the interests of any other indigent defendant, and the Proposed Class representatives have every incentive to pursue this litigation vigorously on behalf of themselves and the Proposed Class as a whole.

72. The Proposed Class representatives are being represented by experienced, well-resourced counsel in this matter, including the national American Civil Liberties Union's Criminal Law Reform Project, the American Civil Liberties Union of Missouri, the Roderick & Solange MacArthur Justice Center, and Orrick, Herrington & Sutcliffe LLP, each of whose attorneys possess extensive litigation experience. The attorneys for the Proposed Class representatives have substantial expertise in litigating class action lawsuits generally and in public defense-related litigation in particular, including in the state of Missouri.

73. The prosecution of separate actions by individual members of the Proposed Class would create a risk of adjudications with respect to individual Proposed Class members that, as a practical matter, would be dispositive of the other members not parties to the individual adjudications.

74. Collectively, Respondents have placed, or authorized the placement of, thousands of indigent defendants on waiting lists for legal representation, in violation of the Missouri Constitution. As such, these Defendants have acted, or refused to act, on grounds generally applicable to the entire Proposed Class, thereby making it appropriate for this Court to issue final declaratory and injunctive relief for all Proposed Class members.

CLAIMS FOR RELIEF

Count I

Violation of Article 1, Section 18(a) of the Missouri Constitution (Right to Counsel) (All Petitioners and the Proposed Class against All Respondents)

75. Petitioners reallege and incorporate by reference as if fully set forth herein the allegations contained in all preceding paragraphs of this Petition.

76. Article 1, Section 18(a) of the Missouri Constitution requires Respondents to ensure that all indigent defendants in criminal or juvenile delinquency proceedings receive meaningful and effective legal representation.

77. Section 600.063.3(5) of the Missouri Revised Statutes violates Article 1, Section 18(a) of the Missouri Constitution to the extent that it allows courts to authorize the placement of indigent defendants on waiting lists for legal representation, making it impossible for such defendants to receive meaningful and effective legal representation.

78. Respondents have violated and continue to violate Article 1, Section 18(a) of the Missouri Constitution by placing, or authorizing the placement of, indigent defendants on waiting lists without access to counsel.

Count II

Violation of Article 1, Section 10 of the Missouri Constitution (Due Process) (All Petitioners and the Proposed Class against All Respondents)

79. Petitioners reallege and incorporate by reference as if fully set forth herein the allegations contained in all preceding paragraphs of this Petition.

80. Under Article 1, Section 10 of the Missouri Constitution, Respondents are required to ensure that all indigent defendants in criminal or juvenile delinquency proceedings receive meaningful and effective legal representation.

81. Section 600.063.3(5) of the Missouri Revised Statutes violates Article 1, Section 10 of the Missouri Constitution to the extent that it authorizes courts and/or the MSPD to place indigent defendants on waiting lists for legal representation, without any hearing or other individualized determination, making it impossible for such defendants to receive meaningful and effective legal representation.

82. Respondents have violated and continue to violate Article 1, Section 10 of the Missouri Constitution because they have failed to ensure that Petitioners and Proposed Class Members, indigent defendants across the state, who are entitled to representation by the MSPD or other appointed counsel if MSPD is not available, receive meaningful legal representation.

Count III
Violation of Article 1, Section 2 of the Missouri Constitution (Equal Rights and Opportunity)
(All Petitioners and the Proposed Class against All Respondents)

83. Petitioners reallege and incorporate by reference as if fully set forth herein the allegations contained in all preceding paragraphs of this Petition.

84. Under Article 1, Section 2 of the Missouri Constitution, Respondents are required to ensure that all indigent defendants in criminal or juvenile delinquency proceedings maintain access to equal rights and opportunity under the law and are not discriminated against on the basis of wealth and, as such, receive constitutionally sufficient representation comparable to that which is provided to criminal defendants who have hired private counsel.

85. Section 600.063.3(5) of the Missouri Revised Statutes violates Article 1, Section 2 of the Missouri Constitution to the extent that it authorizes courts and/or the MSPD to discriminate

against indigent defendants by placing them on waiting lists for legal representation, without any hearing or other individualized determination, making it impossible for such defendants to receive meaningful and effective legal representation comparable to that which is provided to criminal defendants who have hired private counsel.

86. Respondents have violated and continue to violate Article 1, Section 2 of the Missouri Constitution because they have failed to ensure that Petitioners and Proposed Class Members, indigent defendants across the state, who are entitled to representation by the MSPD or other appointed counsel if MSPD is not available, receive legal representation that is constitutionally sufficient and comparable to that which is provided to criminal defendants who have hired private counsel.

Count IV
Violation of Article 1, Section 10 of the Missouri Constitution
(Due Process) (All Plaintiffs and the Proposed Class against All Respondents)

87. Petitioners reallege and incorporate by reference as if fully set forth herein the allegations contained in all preceding paragraphs of this Petition.

88. Under Article 1, Section 10 of the Missouri Constitution, the State of Missouri is required to ensure that all indigent defendants in criminal or juvenile delinquency proceedings receive meaningful and effective legal representation.

89. Respondents have violated and continue to violate Article 1, Section 10 of the Missouri Constitution because they have failed to ensure that Petitioners and the Proposed Class Members—indigent defendants across the State who are entitled to representation by MSPD—receive meaningful legal representation, resulting in the actual and constructive denial of their right to counsel.

90. This unconstitutional practice of placing Petitioners and the Proposed Class Members on waiting lists as alleged here in Count IV is independent of the unconstitutionality of Section 600.063.3(5) of the Missouri Revised Statutes as alleged in Count II.

RELIEF REQUESTED

WHEREFORE, Petitioners respectfully request that this Court:

- A) Certify this case as a class action pursuant to Rule 52.08;
- B) Declare that Section 600.063.3(5) violates the Missouri Constitution to the extent that it authorizes the placement of indigent criminal defendants on waiting lists for legal representation;
- C) Declare that the placement of indigent criminal defendants on waiting lists for legal representation violates the Missouri Constitution and Missouri statutory law;
- D) Enjoin Respondents from continuing to place indigent criminal defendants on waiting lists for legal representation;
- E) Order Respondents to immediately remove all indigent criminal defendants currently on a waiting list for counsel in Missouri and (1) appoint competent counsel to all such indigent criminal defendants; or, if appointment of counsel is impracticable, (2) immediately dismiss the charges against all such indigent criminal defendants.
- F) Award Petitioners and the Proposed Class reasonable attorneys' fees and costs incurred during the course of this litigation pursuant to Mo. Rev. Stat. § 527.100 and Rule 87.09 and any other applicable law; and
- G) Grant any other relief the Court deems necessary and proper to protect Petitioners and the Class from further harm.

Respectfully submitted this 27th day of February, 2020,

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