

PROTECTING THE RIGHT TO VOTE DURING THE COVID-19 PANDEMIC

HEARING BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS

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PROTECTING THE RIGHT TO VOTE DURING THE COVID-19 PANDEMIC

WEDNESDAY, JUNE 3, 2020

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND CIVIL LIBERTIES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The subcommittee met, pursuant to call, at 10:11 a.m., via Webex, Hon. Steve Cohen [chairman of the subcommittee] presiding.

Present: Representatives Cohen, Nadler, Raskin, Swalwell, Scanlon, Dean, Garcia, Escobar, Jackson Lee, Johnson, Gohmert, Collins, Cline, and Armstrong.

Staff Present: David Greengrass, Senior Counsel; John Doty, Senior Advisor; Madeline Strasser, Chief Clerk; Moh Sharma, Member Services and Outreach Advisor; Jordan Dashow, Professional Staff Member; Anthony Valdez, Staff Assistant; John Williams, Parliamentarian; James Park, Chief Counsel, Constitution; Keenan Keller, Senior Counsel, Constitution; Sophie Brill, Counsel, Constitution; Will Emmons, Professional Staff Member, Constitution; Katy Rother, Deputy General Counsel and Parliamentarian; Betsy Ferguson, Minority Senior Counsel; Caroline Nabity, Minority Counsel; James Lesinski, Minority Counsel; Ella Yates, Minority Director of Member Services and Coalitions; and Kiley Bidelman, Minority Clerk.

Mr. COHEN. I want to start this session with a prayer.

Dear God, we find ourselves in very trying times in this country, and we would ask that for those who are sick, to heal them, for those who have lost loved ones, you give them hope and faith and solace, for those who have lost their jobs or their well-being, that don't have nutrition or opportunities to take care of their families, give them faith that we will get through this, times will be better.

And to the police, give them the fortitude to carry on. Put peace in all of their hearts and put understanding and acceptance and peace in the hearts of the protestors as well. And to the people who have rioted, give them understanding that there are better ways to go about their lives.

Amen.

All right. I would like to start this hearing.

The Committee on the Judiciary, Subcommittee on Constitution, Civil Rights and Civil Liberties will come to order. Without objection, the chair is authorized to declare a recess of this subcommittee at any time.

I welcome everyone to today's hearing on protecting the rights of voters during the COVID-19 pandemic. I thank all of our witnesses for joining us today, and I thank my colleagues for adapting to this new format and continuing to serve the American people during these challenging times.

This is the first hearing of the Judiciary Committee conducted under the new House remote proceeding rules. So we might have a few spots, but we will get through them.

I would like to remind members that we have established an email address and distribution list dedicated to circulating exhibits, motions, or other written materials that members might want to offer as part of our hearing today. If you would like to submit materials, please send them to JudiciaryDocs—Judiciary, capitalize J, Docs, capitalize D-o-c-s—JudiciaryDocs@mail.house.gov, and we will distribute them to members and staff as quickly as we can.

It is also my understanding that the gentleman from Georgia, Mr. Collins, our former full committee ranking member, will be joining our subcommittee for the remainder of this Congress. Since the full committee has not yet been able to meet to formally ratify the subcommittee assignments that he will be assuming, without objection, Mr. Collins will be designated as a voting member of this subcommittee for the purpose of today's hearing.

Welcome back, Mr. Collins.

I will now recognize myself for an opening statement.

We are in the midst of one of those moments in our Nation's history where confronting a confluence of crises, the way we respond to them will shape fundamentally who we are as a people.

To begin with, we meet virtually today because we are in the middle of a global pandemic that has taken the lives of over a hundred thousand of our fellow citizens, a pandemic that has exacerbated preexisting inequalities, disproportionately impacting African Americans among other historically disadvantaged people.

This disproportionate impact in turn reflects America's original sin, a sin that is recognized, yes, it is recognized, in our revered founding document, the United States Constitution, that sin of slavery, The systemic and pervasive anti-Black, White supremacist ideology that undergirded it and continued on through Jim Crow laws and a resistance to change, even to today, resulting in unequal opportunities and other consequences which we are still grappling with.

Another tragic manifestation of this racist poison is the pattern and practice of daily police violence against African Americans and the justifiable rage that many Americans of all races feel in reaction. And we have seen that on the streets all over America, the peaceful protestors.

In the past week thousands have taken to the streets across the country to call for an end to police violence and to affirm that Black lives matter. I stand in solidarity with all peaceful protestors and will do everything in my power as chairman to build a better, more

just America, a goal which I have dedicated my entire public life to, starting back in 1977.

It is in that vein that I am holding this hearing today. The issue that we are here to discuss, protecting the right to vote during the COVID-19 pandemic, is intrinsically tied to the protests occurring across this Nation. Police violence against Black Americans and suppressing the right to vote are two sides of the same coin. The coin of systemic racism has plagued our country since before its founding in 1619 where African Americans were first brought to this country as slaves. Think about it, 1619. That was 250 years before we became a Nation, we had slavery.

From Jim Crow to the present, politicians, particularly in my home region, the South, but elsewhere as well, have sought to deny the ability of Black Americans and other people of color to vote. People with disabilities, language minority voters, and Native Americans, among others, have also had the right to vote undermined throughout our country's history, denying them a say in how our Nation is governed.

Now we are dealing with a viral pandemic that is threatening the ability of most people to vote safely in our elections, but will have a disproportionate impact on voters of color, among others. States are being faced with a choice: Will they adapt to this new reality and ensure that everyone can vote safely in November or will they fail to act in the face of this historic challenge.

We know what needs to be done. We must ensure that all Americans eligible to vote can cast their ballots by mail if they choose, and they shouldn't have to go through endless bureaucratic hurdles to do it.

President Trump has said there is inherent fraud. That has been dismissed by about every academician who has studied this in past elections in Utah, Oregon, Washington, and even yesterday in Pennsylvania.

But he also said when he made that tweet recently that he thought it would be the end of the Republican Party, which shows he is not thinking about fraud, but he is thinking about politics. The fact is many Republicans support mail-in voting and have benefited from it and been elected. Florida is one case in particular.

States must proactively send out ballots to voters or at least send out applications for mail-in ballots to make it easy for people who fear getting ill and especially if there is a spike come November and even worse conditions and even more reasons to be concerned.

We must also ensure that voters can safely cast their votes in person. For many Americans, such as people who have changed addresses recently or have certain disabilities, voting by mail is not a realistic option, and the most obvious way to ensure that polling places will not have large crowds and long lines is to spread out the voting period and allow people to cast their ballots early.

The HEROES Act, which passed the House and is now sitting before the Senate, would mandate each of those things, and, critically, it would give the States funding they desperately need to carry all those out.

If we can afford to give the Treasury Department \$500 billion to bail out corporations, we can certainly afford the \$3.6 billion it will cost to safeguard our democracy, the very basis of our cherished

Nation's unique system of government with its source of power, the people.

No American should have to choose between their health, possibly their life, and their sacred right to vote. Democracy, including the right to vote that underpins it, is the way our Founders intended for us to respond to whatever challenges we should face. It has been and must continue to be a defining characteristic of who we are as a Nation.

I look forward to hearing from each of our witnesses gathered here and thank them for agreeing to appear and testify on this critical and timely subject.

And at this point it is my pleasure to recognize the ranking member of the subcommittee, the gentleman from Louisiana, Mr. Johnson, for his opening statement.

Mr. JOHNSON. Thank you. Thank you, Mr. Chairman, and thanks to everybody—thank you, Mr. Chairman, and thanks to everyone for joining us this morning.

This is an important subject, and I really appreciate the tone, Mr. Chairman, that you started with and the prayer. Everybody needs that right now.

Before we discuss the specific topic of today's hearing, I, too, want to just mention two things that I think are appropriate for us as the Constitution Subcommittee in the House.

First, as you noted, this is the first public hearing we have had since the terrible event that occurred in Minneapolis last week, and there are some things that I think anybody objectively observing these events can see and should agree on. I mean, the facts show that Mr. George Floyd appears to have been the victim of murder, and I personally don't believe that a close review of the video can lead anyone to any other conclusion. And the tragedy has focused the spotlight, once again, as you said, on the deep-seated problems we still have in this country.

I think all of us agree the crisis necessitates authenticate reconciliation and transformative solutions for systematic change. And I think we all agree that those are long, long overdue.

The central idea of America is that we boldly declare the self-evident truths that all men are created equal. And for that reason, we are all endowed, the Founders said, by God Himself with the same inalienable rights. Because each of us is made in God's image, the Founders insisted and we still believe, that every single person has an estimable dignity and value, and our value is not related in any way to the color of our skin or what ZIP Code we live in or what we can contribute to society. Our value is inherent because it comes from above.

Any fool who contends that he has some sort of natural right of supremacy over his neighbors violates not only the foundational creed of America that is articulated in the Declaration, but he also violates the greatest commandments of his Creator, and I think that is important for us to acknowledge.

My prayer is the same as yours, Mr. Chairman, that God will heal our Nation and help us to see one another as He does. And we also pray that He protects the brave, honorable men and women who risk their lives every day on the front lines to serve in law enforcement, because they, too, are in jeopardy now.

Looting and more violence in our Nation's streets does nothing to solve any of these problems. It makes it worse and it needs to stop, and I am sure we all—I know we all agree on that as well.

The second point I want to make is that all of us recognize that the COVID-19 pandemic has dramatically affected our country, obviously in so many countless ways. We want to express our condolences to the families and friends of all those Americans who have lost their battle to this invisible enemy, and we want to applaud the doctors, nurses, first responders, State and local health officials, and the Trump administration, too, for taking crucial steps that have helped to stem the spread of the disease any further.

I am grateful that President Trump instituted an early travel ban from China despite China's efforts to deceive the rest of the world about the effect of the virus. And I am grateful the President instituted social distancing guidelines and sanitation protocols and created a task force led by our Vice President, Mr. Pence, and several leading medical experts with decades of experience in public health. That has been very important for the country in our response.

While we are all adjusting to the new normal of our Nation, I and the other Republican members of this committee are also, we have to say this morning, disappointed that our committee is not physically meeting in D.C. right now to conduct this important hearing.

You know, if, we believe this, if grocery store workers and healthcare personnel and other essential employees can show up in person to do their job, we believe we ought to be doing the same thing.

But on the issue of the hearing today, I just want to say this, and I will be brief. We all believe in the importance of our elections, that that is central to our Republic and our democratic form of government, and we want every eligible American to participate in every vote. We just don't believe the suggestions proposed by our colleagues on the other side of the aisle in regards to our upcoming elections are in the best interests of maintaining the integrity of our election system.

Unfortunately, much of what has been proposed amounts to vast and broad Federal mandates for how States should run their elections. We believe the mandate for the Federal Government is quite clear. It is in the Constitution itself. The Elections Clause gives States the authority to administer elections within their jurisdiction.

Congress does have the authority to override State laws to regulate Federal elections, but much like everything else in the government, States know best how to serve their citizens. They are in the best position to determine how to run their elections based on each State's individual needs.

If enacted, we are concerned that the changes proposed by the majority will result in our Nation conducting elections only by mail and ballot harvesting being legalized nationwide. Those provisions will decrease public confidence in the election process at the worst possible time and increase the election susceptibility to fraud.

Even The New York Times, it has acknowledged, quote, that, “There is a bipartisan consensus that voting by mail, whatever its impact, is more easily abused than other forms,” unquote.

Similarly, the bipartisan Commission on Federal Election Reform that was co-chaired by former President Jimmy Carter and former Secretary of State James A. Baker, III, stated in its final report in 2005 that, quote, “absentee ballots remain the largest source of potential voter fraud in American elections,” unquote.

In addition to the possibility of voter fraud, absentee voting also presents several practical problems when compared to in-person voting on election day or early voting at an official early voting location. We need to seriously discuss the implications that these practices will have on our elections.

And putting aside the technological and logistical concerns about federalizing the election this close to November, we need to also seriously examine the accuracy of State voter registration rolls. There are several examples of States whose voter registration rolls outnumber the actual number of citizens in that State. Registered individuals should only be receiving one ballot, I know we all agree with that, and we need to ensure the United States Postal Service can deliver ballots on time and to the right people.

While I acknowledge concerns about the pandemic and the election, now is not the time to upend this Nation’s election system. There is too much at risk. We should be discussing how to vote in person and to do it safely in light of the new circumstances. We need to thoughtfully consider how the Federal Government can best empower States to make their own decisions regarding the election and to respond to their unique circumstances.

I look forward to hearing from all of our witnesses today. I hope we can have a productive discussion.

I thank you again, Mr. Chairman, for the tone and the opening, and I yield back.

Mr. COHEN. You are very welcome, Mr. Johnson, and thank you for your statement.

I would now like to recognize the chairman of the full Judiciary Committee, the gentleman from the Empire State, New York, Mr. Nadler, for his opening statement.

Chairman NADLER. Thank you, Chairman Cohen, and thanks to all of our witnesses for joining us today.

I want to note that although this is our first remote hearing, the committee has been hard at work since the outbreak of the pandemic. For example, we have held briefings and virtual roundtables to discuss issues such as price gouging during the COVID-19 crisis and the ways in which immigration authorities and prisons and jails are responding to the pandemic.

These events all informed our efforts to include measures in the CARES Act and the HEROES Act in response to what we learned, such as more than \$600 million to address the COVID-19 crisis in State and local prisons and jails and minimum standards for individuals in ICE detention, as well as provisions to encourage release of individuals who do not pose a risk to public safety.

Other vital measures that we worked hard to include in the HEROES Act are bankruptcy protection for homeowners and signifi-

cant funding for such critical programs as the Violence Against Women Act and the Legal Services Corporation.

We have also passed legislation to ensure that public safety officers who die or become disabled as a result of COVID-19 will receive the benefits that they and their families deserve.

And next week, as I announced over the weekend, we will hold a hearing to address issues related to police accountability.

Even when we are spread throughout the country, this committee is hard at work, and I appreciate all the members for their efforts during these challenging times.

I would also like to acknowledge this profoundly painful moment for our Nation. The wounds inflicted by centuries of racism and violence against Black Americans have once again been torn open, and in response thousands of Americans of all races have peacefully taken to the streets to exercise their constitutional rights and to demand change that is long overdue.

We have a proud history of protests and demonstrations in this country that have led to much needed changes in public policy. But at the most basic level, we govern ourselves at the ballot box. Our leaders, from local sheriffs and prosecutors to Members of Congress and the President, are supposed to be chosen by popular will. That is what makes this country a democracy. It is at the very core of self-governance by the people.

But our democracy will face a profound test this November. In the face of this global pandemic, we can no longer tolerate business as usual in our polling places. In fact, business as usual was already intolerable. The hours-long lines, purges of voter rolls, and red tape designed to suppress Americans right to vote all strike at the heart of our system of self-government.

Now these hurdles today might even be deadly, and they raise the frightening and unavoidable question of whether we will be able to call ourselves a democracy at all.

If this sounds alarmist, consider this. What is a system of government that deliberately winnows out voters because of their race or their income or their disability or because of where they live? What is a system of government in which politicians play games to keep away eligible voters who might threaten their hold on power? It is not a democracy; it is something else. And what is a government that makes its citizens choose between exercising the most fundamental constitutional right, the right to vote, and their most basic human right, to health and safety?

So I would like to say directly to the American people, there is no sitting this out. Your elected representatives are either for our democracy or against it. We do not deserve that title if we deny you the right to cast your ballots this November or if we force you to choose between exercising that right and protecting your own health.

That is why I support mandating that all States provide voters with the option to vote by mail this November and I support providing the necessary Federal resources to ensure that this happens smoothly. We must also preserve in-person voting options for those who choose not to vote by mail or are unable to do so, so that no one is disenfranchised.

We can rise to meet today's unprecedented challenges and carry out free and fair elections in November despite the pandemic. As Chairman Cohen said, we know what needs to be done. But it will not happen without our focus and vigilance. Today's hearing is a first step in that process.

I thank Chairman Cohen for holding this hearing. I look forward to hearing from our witnesses. And I yield back the balance of my time.

Mr. COHEN. Thank you, Mr. Nadler.

At this point we would normally go to the ranking member, but I understand Mr. Jordan is not present and/or does not have a statement, so we will go straight to our witnesses.

We welcome our witnesses and thank them for participating in this important hearing. I will now introduce each of the witnesses and after each introduction will recognize that witness for his or her first statement.

Your written statements will be entered into the record in their entirety. Accordingly, I ask you to summarize your oral testimony in no more than 5 minutes. If you can take less time, that would be great. Because of time constraints, I would strongly encourage you to limit those remarks perhaps to 3 if possible so that members have the maximum amount of time to ask questions.

In the absence of a timing light, I will note orally when 5 minutes have elapsed and bang my gavel. There will also be a timer on your screen, so please be mindful of it. I will be strict in the 5-minute rule.

Before proceeding with testimony, I would like to remind all of our witnesses that you have a legal obligation to provide a truthful statement and answers to this subcommittee and that any false statement you may make today will subject you to prosecution under Section 1001 of Title 18, United States Code Annotate.

Our first witness is Jocelyn Benson, the 43rd secretary of state of the State of Michigan. Her responsibilities include ensuring elections are secure and accessible for the eligible Michigan voters. In addition to being an elected official, Secretary Benson is the author of "State Secretaries of State: Guardians of the Democratic Process," the first major book on the role as of the secretary of state in enforcing elections and campaign finance law.

Secretary of State Benson received her J.D. from Harvard Law School and previously served as dean of Wayne State University School of Law in Detroit, Michigan, which I visited with Chairman Conyers in past years. She is an expert on civil rights and election law.

Madam Secretary, you are recognized for 5 minutes.

STATEMENTS OF JOCELYN BENSON, SECRETARY OF STATE, STATE OF MICHIGAN; STACEY ABRAMS, CHAIR, FAIR FIGHT ACTION; J. CHRISTIAN ADAMS, PRESIDENT AND GENERAL COUNSEL, PUBLIC INTEREST LEGAL FOUNDATION; MYRNA PÉREZ, DIRECTOR, VOTING RIGHTS AND ELECTIONS PROGRAM, BRENNAN CENTER FOR JUSTICE; TOM FITTON, PRESIDENT, JUDICIAL WATCH; DALE HO, DIRECTOR, VOTING RIGHTS PROJECT, AMERICAN CIVIL LIBERTIES UNION; BARBARA ARNWINE, PRESIDENT, TRANSFORMATIVE JUSTICE COALITION; AND MICHELLE BISHOP, DISABILITY ADVOCACY SPECIALIST FOR VOTING RIGHTS, NATIONAL DISABILITY RIGHTS NETWORK

STATEMENT OF JOCELYN BENSON

Ms. BENSON. Thank you. Thank you for the opportunity to testify today.

I started my career in Montgomery, Alabama, investigating hate groups and hate crimes throughout the country, and it was there where I developed and solidified my own commitment to continue the work of those who sacrificed so much to ensure that every citizen's right to vote is protected and secure. And today, as Michigan's secretary of State and our State's chief election officer, my work is informed and inspired by the work of many colleagues and advocates around the country, many of whom I am honored to speak alongside today.

As a whole, secretaries of state are working across party lines to ensure our [inaudible] are accessible and secure in the midst of the COVID-19 pandemic and other challenges relating to the 2020 election. But we need your help. Democracy is a team sport, and we need a sustained and committed partner in our Federal Government to ensure voters have the needed certainty and clarity that our elections will be held on schedule and that their right to vote will be secure.

The \$11.2 million that Michigan received through the CARES funding was welcome, but it was not enough to fill the \$40 million gap that these new challenges create for our State. Importantly, the HEROES Act will address these concerns effectively, and I urge everyone's support.

But, for example, in 46 States and the District of Columbia voters this year will have a right to vote by mail, but as we saw just yesterday, that right is implemented with varying degrees of effectiveness. Federal funding and standards, the specifics of which are detailed in my written testimony, will go a long way towards helping avoid these variations this fall.

Voters need clear choices on how to vote this year, and States need clear guidance and support in providing those choices. This need is particularly acute in cities in Michigan like Flint and Detroit, and in historically disenfranchised communities throughout our country, where voters' confidence and trust in their government is an additional challenge to overcome.

I want to close by sharing a success story from Michigan. We have held two elections this year, one just prior to the pandemic hitting our State and one in the midst of it. In early May we held local elections, again in the height of the pandemic, and dem-

onstrated that even in the midst of this moment, safe and secure elections are possible.

To succeed in this election, we mailed every registered voter in a jurisdiction with an election an application and instructions on how to request their ballot through the mail and vote from home. We also provided a safe option for voters seeking to cast their ballots in person on election day. We aggressively recruited new election workers to ensure that no one had to work an election if they felt uncomfortable doing so, and we provided every jurisdiction with PPE, masks, gloves, et cetera, along with clear and explicit protocols on how to ensure 6 feet of distance between all election workers and voters. This gave voters options and enabled them to choose how to safely exercise their vote.

The result was that turnout was double what it normally is for a May local election, and 99 percent of voters who participated in the May election chose to vote from home. There were no crowds in polling places, there were no long lines, and there were zero reports of fraud.

This success demonstrated that it is indeed possible, with proper planning, policies, education, and resources, to ensure our elections this fall are safe, accurate, and secure.

They also informed my more recent decision to again mail every registered Michigan voter an application and instructions on how they can vote by mail ahead of our August primary and our November general elections.

Democracy can and will survive this pandemic, but we need your ongoing help, we need all of us working together across party lines, and investment and support to ensure that it does.

Thank you.

[The statement of Ms. Benson follows:]



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

Testimony of
Jocelyn Benson
Michigan Secretary of State

Before the

U.S. House of Representatives Judiciary Committee

Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Protecting the Right to Vote During the COVID-19 Pandemic

June 3, 2020

Testimony of Secretary of State Jocelyn Benson
 Subcommittee on the Constitution, Civil Rights, and Civil Liberties
 June 3, 2020

Chairman Cohen and distinguished subcommittee members:

Thank you for the opportunity to testify today. I started my career in Montgomery Alabama, investigating hate groups and hate crimes around the country. And it was there where I solidified my commitment to continue the work of those who've come before us, who, like Detroit's Viola Liuzzo, have sacrificed so much to ensure that every citizen's right to vote is accessible and secure. Today as Michigan's Secretary of State, and our state's chief election officer, my work is informed and inspired by the work of my colleagues and voting advocates around the country, many of whom I'm honored to speak alongside today. Collectively many Secretaries of State are working across party lines to ensure our elections remain accessible and secure in the midst of the COVID-19 pandemic and other challenges relating to the 2020 elections, but we need your help.

Today I will talk about what we are doing successfully in Michigan to ensure that every vote is counted and every voice is heard. But democracy is a team sport. We need a sustained and committed partner in our federal government to ensure we continue to live up to the one person, one vote promise in our constitution.

Our needs in protecting our democracy, particularly during this pandemic, fall roughly into three areas: education, resources, and policy. My testimony provides an overview of the challenges in each category, as well as some of the creative ways my colleagues and I are working to meet and overcome those challenges.

First, as we collectively endure this moment of great uncertainty, caused by a global pandemic that has taken the lives of 100,000 Americans and many more worldwide, it's within both my authority and responsibility as Michigan's chief election officer to ensure every voter knows that they do not need to risk their health to cast their ballot. My Republican and Democrat colleagues in several states share that commitment. All voters need certainty and clarity that our elections will be held on schedule, and that their right to vote will be secure.

We know also in 46 states and the District of Columbia that voters will have a right to vote by mail this year, ensuring they don't need to leave their home in order to cast their ballot. But this method is new for many voters, and a sustained, effective effort to inform every voter of their rights and choices this year – from how to fill out a ballot at home and return it to how to safely vote in person – is critical to ensuring every citizen will have confidence that their vote is counted. This need is particularly acute in cities like Flint and Detroit – and historically disenfranchised communities throughout the country – where voters' confidence and trust in their government is an additional challenge to overcome.

The need for voter education during this pandemic however goes further. This year, perhaps more than any other, Americans will be inundated by efforts to confuse them – about the

Testimony of Secretary of State Jocelyn Benson
 Subcommittee on the Constitution, Civil Rights, and Civil Liberties
 June 3, 2020

election process, their rights, the issues at stake, and whether the elections will be held at all. These efforts – foreign, domestic, partisan or simply malicious – are designed to foster mistrust in our elections process, depress turnout, and erode confidence in the election results and the sanctity of our democracy.

They are a real threat to the health of our republic. And they will escalate in the months ahead.

We need your help to respond with truth, facts, and data in the face of any attempts to deploy false information about our elections and our voters' rights. We must educate our electorate on ways to proactively seek out reliable sources of information, and encourage productive civil dialogue. We cannot let misinformation – whether it comes from the White House, the Kremlin, or anywhere else – sow seeds of doubt in our elections. Facts must prevail over fear. All of this, as well as building the election infrastructure to receive and process ballots sent through the mail, requires resources. Funds are needed for voting equipment to process more absentee ballots, personal protective equipment for election workers, mailing supplies and postage, and more. And meanwhile, like every state in the country, Michigan's government is experiencing dramatic revenue shortfalls due to the pandemic, and we cannot meet these funding needs on state and local budgets alone. We need your help. In Michigan, we received \$11.2 million for elections from the CARES Act, but we estimate we need \$40 million to prepare for our August and November elections during the pandemic. The funding provided in the HEROES act, for example, will go much further in ensuring we are able to meet the heightened needs of our democracy this year.

Finally, state and federal policy changes are needed to support states, local election officials and voters. Simply put, voters need consistent choices on how to vote this year and states need guidance in providing those choices. At the federal level, legislation is needed to enable all voters to vote absentee without an excuse, and to return their ballots by mail, at a ballot dropbox, or in person. No-excuse absentee voting is already a permanent option for all voters in 34 states, and 12 more states temporarily allowed universal voting by mail this spring. But federal legislation, accompanied by an education campaign, would make the process simpler for states, and send the message that the practice is safe and secure. The legislation must also bolster the safety and accessibility of in-person voting and voter registration.

I want to close by sharing a success story in Michigan, where we've already conducted an election in the height of the pandemic.

The vast majority of Michigan voters amended our state constitution in November of 2018 to give every citizen the right to vote by mail, create automatic voter registration through our offices and provide the right for eligible citizens to register to vote up to and on Election Day. Recognizing the importance of responding to this groundswell, my administration quickly implemented these new rights ahead of our March 10 presidential primary, in which we saw voters cast double the absentee ballots cast in the 2016 primary, and thousands do so in the final days prior to and on Election Day. This was all before there was a single known case of the coronavirus in Michigan.

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Then in early May we held local elections – in the height of the pandemic – primarily by mail and demonstrated that even in the midst of a crisis, safe and secure elections are possible. We mailed every registered voter an application and instructions to request their ballot through the mail and vote from home.

We also provided a safe option for voters seeking to cast their ballot in person on Election Day. We launched a statewide effort – called Democracy’s Most Valuable Players or Democracy MVP – to recruit election workers and provided every jurisdiction with PPE – masks, gloves, hand sanitizer, etc. – along with maps and explicit protocols on how to lay out precincts to ensure six feet of distance between all election workers and voters. This gave voters options and enabled them to choose how they preferred to safely exercise their right to vote.

The result was that turnout doubled what it normally is for a May local election, and 99% of voters cast their ballots by mail or at a ballot dropbox. Voting in person was available, safe, and absent of any crowds or lines. There were zero reports of fraud.

The success of our two elections thus far in Michigan this year demonstrated that it is indeed possible, with the proper policies, education and resources, to ensure our remaining elections this year are safe, accurate, and secure. The experiences in these earlier elections informed my decision to mail every registered voter in Michigan an application and instructions on how they can vote by mail ahead of the August statewide primary elections. Importantly, my ability to do so was due to the CARES Act funding allocated to our state earlier this year, and we used nearly half our elections allocation on this expense. We are also continuing to recruit election workers, knowing that some of the seniors who typically serve will choose not to do so because of the coronavirus, but that jurisdictions will need more election workers than usual to count absentee ballots while still staffing polling locations so that in-person voting is accessible. Additional federal funds are necessary to help support local jurisdictions with ballot tabulators, envelope openers and other equipment that enables them to more efficiently handle large quantities of absentee ballots and protect the health of their election workers.

On our Election Day in May I visited numerous voting locations across our state and was so inspired. Even in the height of the pandemic, mask-wearing election workers were proud to be serving their communities. Meanwhile, a record number of ballots were arriving in dropboxes and mailboxes, demonstrating that even in a pandemic, people want to participate in our democracy, and for their voices to be heard.

Democracy can and will survive this pandemic. But we need your help so that I and election administrators across the country can ensure that it does. In addition to funding we need federal standards that:

- Extend the early in-person voting period in every state, allowing citizens to vote over an expanded period rather than in a cluster on Election Day;
- Assure every voter of their right to vote-by-mail (along with a number of other options for ballot return);
- Expand voter registration options to including online voter registration and same-day voter registration;

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- Prohibit polling place adjustments or consolidations that disproportionately impact vulnerable populations such as people of color, limited-English proficient citizens, and students; and
- Educate voters and potential voters of new voting rights and practices and immediately counter misinformation.

Again, I thank you for opportunity to present this testimony today, and for your work in support of elections and democracy across the country.

Mr. COHEN. Thank you, Secretary Benson, and thank you for condensing your remarks in the interests of time. We will have questions for you.

Our next witness is Ms. Stacey Abrams. Ms. Abrams is founder and chair of Fair Fight Action, an organization dedicated to advancing voting rights and electoral reform. In 2018 she was the Democratic nominee for governor of the State of Georgia, the first African American woman in U.S. history nominated by a major party as its nominee for governor.

Prior to running for governor, she served in the Georgia General Assembly from 2007 until 2017, serving as the House minority leader from 2010 to 2017. She became the first woman to lead a party in the Georgia General Assembly and the first African American leader of a party in the State House of Representatives.

Ms. Abrams received her J.D. from Yale Law School, her master of public affairs from the LBJ School of Public Affairs at the University of Texas in Austin, and her B.A. Magna cum laude from Spelman College.

I note that Ms. Abrams has another commitment at noon Eastern, so we must endeavor to stick to our time limits so that every member who wants will have a chance to ask her questions.

Ms. Abrams, thank you, and you are recognized for 5 minutes.

STATEMENT OF STACEY ABRAMS

Ms. ABRAMS. [Inaudible.] Sorry. Thank you, Chairman Cohen, Vice Chairman Raskin, Ranking Member Johnson, and members of the committee.

I come before you today as a voting rights advocate, as the founder of Fair Fight Action, and as an American deeply concerned about the challenges facing our democracy, particularly in the era of COVID-19.

Furthermore, I would do a disservice to millions of Americans if I, too, did not acknowledge the anger and anguish that link together our demands for justice and the right to choose our leaders, and through them, the policies that govern us through the profound power of the right to vote.

Across our Nation we face a public health crisis, an economics disaster, continued distrust in our justice system, and a coordinated assault on our access to our democracy. Congressional action has been vital to respond to the pandemic, but access to the right to vote will determine how recovery and systemic justice are achieved.

Financially exhausted States are reliant upon the compact made with the Federal Government for mutual aid in times of catastrophic events. To support and expand vote by mail, to place critical guardrails on access, to educate voters on their options, and to increase the safety of in-person voting, our obligation is to fund these changes.

I appreciate what the House has done to acknowledge its fundamental obligation, and I urge your Senate colleagues to take immediate action to pass the HEROES Act.

I was born in Madison, Wisconsin, and on April 7th I watched in horror as the cautionary tale of their election took place. None of us should forget the images of voters shivering in long lines and

crowded into the vastly reduced number of in-person polling locations. The Wisconsin State Journal reports 71 known cases of coronavirus as a result of that election.

The challenge is clear and uncontroverted. Crowded polling places pose a risk for voters and for the brave poll workers who risk their lives to help our democracy function during this pandemic. Our first obligation is to reduce the number of voters who will cast their ballots in person on election day through national access to vote by mail.

All States have the current capacity. However, we must remove unnecessary barriers to participation and scale infrastructure to allow widespread use of this safe, tested, and auditable method of balloting.

Furthermore, the American people want expanded access to vote by mail by a 2:1 margin, despite the false reports of potential fraud.

Voter fraud of any kind is extremely rare. As The New York Times noted, after 20 years Oregon, has documented an infinitesimal 0.00001 percent incident rate of fraud. And when we look at the Nation as a whole, in 2016 more than half of the States reported zero substantiated allegations of voter fraud, another eight States reported one such allegation, and the remaining States found a de minimus number of cases, none sufficient to alter the outcome of elections.

Recent election results also show that voting by mail offers neither party a partisan advantage. This finding confirms the fundamental truth: Our elections should not be partisan. The selections we make will be cast along party lines, but the process of determining our leadership should not be. Leaders of both parties should want higher participation in our democracy, regardless of who wins.

America does best when we acknowledge our challenges and prepare for success. The solution to promote both public health and participation in our democracy is to expand access to vote by mail, to establish uniform guidelines for 2020 so that where we live in our country will not diminish our right to participate in November's elections.

I thank you for the opportunity to take part in this important hearing, and I urge you to continue to protect access to our democracy.

[The statement of Ms. Abrams follows:]

Statement of Stacey Y. Abrams
Founder of Fair Fight Action

On Protecting the Right to Vote During the COVID-19 Pandemic
Testimony before the House Judiciary's Subcommittee on the Constitution, Civil
Rights, and Civil Liberties
June 3, 2020

Thank you, Chairman Cohen, Vice Chairman Raskin, Ranking Member Johnson, and members of the committee.

I come before you today as a voting rights advocate, as the founder of Fair Fight Action, and as an American deeply concerned about the challenges facing our democracy, particularly in the era of COVID-19. Furthermore, I would do a disservice to millions of Americans if I did not acknowledge the anger and anguish that link together our demands for justice and the right to choose our leaders, and through them, the policies that govern us through the profound power of the right to vote.

Across our nation, we face a public health crisis, an economic disaster, continued distrust in our justice system and a coordinated assault on access to our democracy. Congressional action has been vital to respond to the pandemic, but access to the right to vote will determine how recovery and systemic justice are achieved.

The House of Representatives and the United States Senate previously allocated a vital \$400 million in appropriations for states to conduct elections this year. The House also took the necessary step of passing the HEROES Act, appropriating an additional \$3.6 billion to defend the right to vote. Financially-exhausted states are reliant upon the compact made with the federal government for mutual aid in times of catastrophic events. To support and expand vote by mail, to place critical guardrails on access, to educate voters on their options and to increase the safety of in-person voting, federal investment is urgent. The House has acknowledged this fundamental obligation – to ensure that the right to vote does not require mortal harm. Today, I urge your Senate colleagues to take immediate action and pass the HEROES Act, because our democracy demands it.

I was born in Madison, Wisconsin, and on April 7, I watched in horror as the cautionary tale of their election took place. None of us should forget the images of voters shivering in long lines and crowded into the vastly reduced number of in-person polling locations. The Wisconsin State Journal reports 71 known cases of coronavirus infections as a result.¹

The challenge is clear and uncontroverted: crowded polling places pose a health risk for voters and for the brave poll workers who risk their lives to help our democracy function during this pandemic. Our first obligation is to reduce the number of voters who will cast their votes in person on Election Day through national access to vote-by-mail. All states have the current capacity; however, we must remove unnecessary barriers to participation and scale infrastructure to allow widespread use of this safe, tested

¹ https://madison.com/wsj/news/local/health-med-fit/71-people-who-went-to-the-polls-on-april-7-got-covid-19-tie-to/article_ef5ab183-8e29-579a-a52b-1de069c320c7.html

and auditable method of balloting. Further, the American people want expanded access to vote by mail by a 2:1 margin, despite false reports of potential fraud.²

Voter fraud of any kind is extremely rare. As the New York Times noted, after 20 years, Oregon has documented an infinitesimal .00001% incidence rate of voter fraud.³ When we look at the nation as a whole, in 2016, more than half of the states reported zero substantiated allegations of voter fraud. Another 8 states reported one such allegation, and the remaining states found a de minimis number of cases, none sufficient to alter the outcome of elections.⁴ President Trump's own "Presidential Advisory Commission on Election Integrity" was disbanded because the committee could not find significant evidence of fraud.⁵

Recent election results show that voting by mail offers neither party a partisan advantage.⁶ This finding confirms a fundamental truth: our elections should not be partisan. The selections we make will be cast along party lines, but the process of determining our leadership should not be. Leaders of both parties should want higher participation in our democracy, regardless of who wins.

Expanded use of vote-by-mail reduces the number of in-person voters, which will permit election administrators to meet the CDC guidelines for social distancing and health protocols. By reducing the population required to vote in person, we not only protect the voters but also those who will risk their lives to serve their fellow Americans.

America does best when we acknowledge our challenges and prepare for success. The solution to promote both public health and participation in our democracy is to expand access to vote by mail, and to establish uniform guidelines for 2020 so that where we live in our country will not diminish our right to participate in November's elections. The more Americans we can encourage to vote by mail, the safer in-person voting will be for all who need it: people with disabilities, people experiencing homelessness or displacement, people with language barriers, and people who, despite their best efforts, did not receive their mail-in ballots in time or faced challenges with completion. However, in the 21st century, no American should have to choose between their health and exercising their right to vote.

I thank you for the opportunity to take part in this important hearing, and I urge you to continue to protect access to our democracy.

² [ABC News/Washington Post Poll May 25-28 2020](#) showed that Americans, by a 2-to-1 margin, favor increased access to vote by mail, despite false reports of widespread fraud.

³ <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>

⁴ <https://www.nytimes.com/2016/12/18/us/voter-fraud.html>

⁵ <https://www.npr.org/2018/01/03/575524512/trump-dissolves-controversial-election-commission>

⁶ <https://fivethirtyeight.com/features/there-is-no-evidence-that-voting-by-mail-gives-one-party-an-advantage/>

Mr. COHEN. Thank you so much, Ms. Abrams.

Our next witness is Mr. J. Christian Adams. Mr. Adams is the president and general counsel of the Public Interest Legal Foundation. From 2005 to 2010, he worked in the Voting Section of the United States Department of Justice. Prior to his time at the Justice Department, he served as general counsel of the South Carolina secretary of state. He received his law degree from the University of South Carolina School of Law.

Mr. Adams, you are recognized for 5 minutes.

STATEMENT OF J. CHRISTIAN ADAMS

Mr. ADAMS. Thank you very much, Chairman Cohen, Chairman Nadler, Ranking Member Johnson, members of the committee. Thank you for the invitation today.

I am the president and general counsel of the Public Interest Legal Foundation, a nonpartisan charity devoted to promoting election integrity and best practices for election officials.

We have found numerous failures in election administration, and we know from Federal data that voting by mail is the most vulnerable form of voting, where hundreds of thousands of ballots have been rejected for defects and millions more end up missing or in landfills.

The United States is not ready for an emergency national vote by mail scenario in 2020 and will not be. Putting the election into the hands of the United States Postal Service would have numerous problems.

First, vote by mail would disenfranchise voters. It would move the election from transparent places where observers from both parties can monitor the process to moving it behind closed doors where the vulnerable and powerless are influenced by third parties.

I have attached to my testimony a court opinion from the Southern District of Mississippi in the case of *United States v. Brown*. The committee can see plainly how vote by mail can abuse the most vulnerable. If you peruse the opinion from pages 17 to 21, you will see what ballot harvesting fraud looks like from the inside.

Notably, the victims were poor and powerless. The victims were visited in their homes by politically connected vote harvesters, and the vote harvesters cast the ballots, not the voters.

Elections should be in the open, in transparent places, where the vulnerable can be protected from the powerful trying to cast a ballot for them.

Vote by mail also has logistical problems. The entire system was designed for in-person voting. We saw those failures yesterday in elections across the country and here in D.C. where tens of thousands of people in D.C. didn't return their ballot because they didn't get them in the mail.

State election officials and even the U.S. Justice Department have been besieged by phone calls and complaints in the last few weeks about mail ballots never arriving. We do not have the administrative infrastructure to ensure a clean automatic mail election based on current lists.

Finally, we found, for example, in Pittsburgh that people are not only registered twice or three times, that one voter was actually registered at seven active simultaneous times. My written testi-

mony shows the seven separate public voter registration records for the same person. He was registered to vote seven times by an out-of-state third-party group in the weeks before the 2016 election. Under an automatic vote-by-mail plan, that person would get seven ballots.

Thank you very much for your time and attention on this important matter.

[The statement of Mr. Adams follows:]

**Testimony of
J. Christian Adams**

**Before the House Judiciary Committee
Subcommittee of the Constitution,
Civil Rights and Civil Liberties**

**On
Protecting the Right to Vote During the COVID-19
Pandemic**

June 3, 2020

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Chairman Cohen, Ranking Member Johnson, and members of the Committee, thank you for the invitation to testify today.

I am the President and General Counsel of the Public Interest Legal Foundation, a non-partisan charity devoted to promoting election integrity and best practices for election officials. I have brought cases in federal court against election officials for failing to comply with federal law. In the course of these cases, we have found numerous failures in election administration. Among these are the same people becoming registered to vote two, three, even seven times simultaneously as Mr. Rashawn Slade was in Swissvale, Pennsylvania. We also know from federal data that voting by mail is the most vulnerable form of voting, where hundreds of thousands of ballots have been rejected for defects and millions more end up missing or in landfills. The causes of these breakdowns are complex.

These problems show in published federal data and in our litigation. We recently completed a nationwide audit of voter registration rolls for problems indicating that established maintenance standards are not being followed across the country.

The United States is not ready for an emergency national vote-by-mail scenario in 2020—and it won't be. Putting the election into the hands of the United States Postal Service would be folly, a disaster.

Vote by mail would disenfranchise people. It would move the election from transparent places where observers from both parties can monitor the process for fairness to moving it behind closed doors where the vulnerable and powerless are influenced by third parties.

I have attached to my testimony a court opinion from the Southern District of Mississippi in the case of *United States v. Ike Brown*. In this case, the Committee can see plainly how vote by mail can abuse the most vulnerable. I

worked on this case when I was at the United States Department of Justice. Peruse the opinion from page 17 to 21 to see what ballot harvesting fraud looks like from the inside. Notably, the victims were poor and powerless. The victims were visited in their homes by politically connected vote harvesters. The vote harvesters voted the ballots, not the voters. If you don't think mail ballot fraud occurs then you haven't read this court opinion. The United States won this case.

Elections should occur in the open, in transparent places, where the vulnerable can be protected from the powerful trying to cast their ballot for them.

Vote by mail also has logistical problems. The entire system was designed for in-person voting. We do not have the administrative infrastructure to ensure a clean election based on current voter lists. We found serious problems in every single state's voter rolls, some far worse than others.

People are registered multiple times. The dead are remaining on the rolls as active registrants for years, and sometimes decades in some states. Voter rolls are missing basic information like apartment numbers, birthdates, and sometimes even full names. Nobody reasonable would think we should mail ballots automatically to everyone on these broken lists.

In the past year, my organization undertook the task of compiling a national database of all available voter registration records so they could be uniformly compared against federal and state records to identify registrants appearing to be deceased, duplicated, relocated, or otherwise outdated as listed. Full social security numbers were used to validate identities. We have shared these findings with various election officials and I am pleased to report the system may be improving.

It may come as a surprise to many of you how your respective states compare to each other.

At the turn of the new year, New York, Texas, and Michigan respectively led the nation with the most deceased registrants who were positively identified

against the Social Security Death Index. When comparing with 2016 and 2018 voting history files, we see more than 14,000 ballots credited as counted long after respective dates of death.

Another emerging error pattern is duplicate registrations. These are typically individuals registered multiple times with perfectly matching information, save for a slight difference in name spelling or format. “J. Christian Adams” and “John Christian Adams” can exist in duplicate—even when address, birthdate, and all other items match.

We aren’t limited to seeing people registered twice. In fact, we found one individual who became simultaneously registered to vote *seven times* in the Pittsburgh area. These are the seven separate public voter registration records for the same person. He was registered to vote seven times by an out of state third party group largely in the weeks before the 2016 general election.

VOID	LAST NAME	FIRST NAME	MIDDLE NAME	SEX	BIRTH DATE	PARTY	HOUSE #	ADDRESS 1	ADDRESS 2	TYPE	CITY	STATE	ZIP
109115390-02	SLADE	RASHAWN	A		11/14/1998	D	7438	IRVINE ST			SWISSVAL PA		15218
109420839-02	SLADE	RASHAWN			11/14/1996	NF	7438	IRVINE ST			SWISSVAL PA		15218
109420913-02	SLADE	RASHAWN			11/14/1996	NF	7438	IRVINE ST			SWISSVAL PA		15218
109420966-02	SLADE	RASHAWN			11/14/1996	N	7438	IRVINE ST			SWISSVAL PA		15218
109420981-02	SLADE	RASHAWN		M	9/14/1996	NON	7438	IRVINE ST			SWISSVAL PA		15218
109421165-02	SLADE	RASHAWN			11/14/1996	NO	7438	IRVINE ST			SWISSVAL PA		15218
109421329-02	SLADE	RASHAWN			11/14/1996	NO	7438	IRVINE ST			SWISSVAL PA		15218

We initially thought this was a straightforward records maintenance issue. However, several states appear to demonstrate how this system weakness can be exploited with mail ballots.

During the 2016 and 2018 General Elections, public data appear to show that more than 13,000 duplicated Michigan registrants were credited for casting *second* ballots. These are registrants with the same first name, last name, date of birth and

address. Of these, 68 percent of duplicated votes were cast via mail. This data is available to election officials there and can be replicated to validate these findings. Good government groups do not have any way to ultimately validate this behavior short of walking up to homes and knocking on doors to interview the people. Election officials, on the other hand, do have ways to validate and fix any problems. Some officials in Michigan have already started that process and found our results to be helpful and largely valid.

Federal figures regarding mail balloting does not inspire full confidence in the system either. According to the U.S. Election Assistance Commission, more than 28 million mail ballots went unaccounted for and another 2 million were returned undeliverable since 2012. When ballots bounce back, outdated voter rolls are commonly to blame. But for the rest of the “Status Unknown” ballots as they are officially called, we as a nation are stuck wondering what happened with each.¹ Unlike polling place ballots, the absentee system places blind spots in the chain of custody.

It is also within these blind spots where abuses occur. Last week, the U.S. Department of Justice indicted a USPS delivery contractor for allegedly altering mail ballot request forms for the primary elections in West Virginia.²

In June 2017, a USPS mail carrier was given federal prison time for accepting \$1,000 in bribes from South Texas mail ballot harvesters, provincially known as “politiqueras,” in exchange for information regarding when and where ballots would be delivered on his routes during the 2014 Democratic Primary

¹ EAC; 2018 Election Administration and Voting Survey instrument (2019), https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAC_Election_Administration_and_Voting_Survey_Instrument.pdf

² USDOJ; Pendleton County mail carrier charged with attempted election fraud (May 26, 2020), <https://www.justice.gov/usao-ndwv/pr/pendleton-county-mail-carrier-charged-attempted-election-fraud>

contests.³ A former harvester explained in an affidavit that the mailman would allow politiqueras to follow his USPS vehicle and then signal when a mail ballot was delivered.⁴

If you don't think mail ballot fraud is occurring, then you haven't visited the Heritage Foundation's comprehensive voter fraud database. The Heritage Foundation's database of proven instances of voter fraud is notching toward 1,300 cases with hundreds of examples involving mail ballots.

In March 2015, Texas Attorney General Ken Paxton's office charged two Brownsville men for possessing marked ballots without the permission of the voters during the 2012 primary runoff elections.⁵

The results of the Dallas City Council elections in 2017 were delayed in their acceptance after a harvester going by the alias of "Jose Rodriguez" appeared on roughly 700 mail ballots, often targeting elderly voters in one of the poorer neighborhoods in west Dallas.⁶

In October 2018, four Fort Worth, Texas women were charged for 30 felony counts as a "paid voter fraud ring" targeting elderly residents during the 2016 elections. The Texas Attorney general noted that: "fraudulent applications were generated through forged signatures and by altering historical applications and resubmitting them without the knowledge of the voters. Harvesters also used deception to obtain signatures from voters ... some were forced into receiving

³ USDOJ; Former Postal Employee Sent to Prison for Soliciting Bribes During Election (June 30, 2017), <https://www.justice.gov/usao-sdtx/pr/former-postal-employee-sent-prison-soliciting-bribes-during-election>

⁴ Notarized Affidavit of Yolanda Perez Hidrogo, Published by the *McAllen Monitor* (July 11, 2014), <https://www.documentcloud.org/documents/1503297-yolanda-perez-hidrogo-affidavit-1.html>

⁵ TXAG; Attorney General Paxton's Office to Prosecute Two South Texas Men for Voter Fraud (March 18, 2015), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-paxtons-office-prosecute-two-south-texas-men-voter-fraud>

⁶ Dallas Observer; Fugitive Indicted in West Dallas Voter Fraud Case (July 11, 2017), <https://www.dallasobserver.com/news/dallas-county-grand-jury-indicts-one-for-west-dallas-voter-fraud-9646968>

primary ballots for the political party supported by the harvesters, though it was not the party the voters wanted to vote for.”⁷

After the 2018 midterms in Starr County, Texas, Modesta Vela was charged for allegedly intercepting an elderly voter’s ballot and completing it against the intended user’s wishes. The local district attorney said Vela interacted with more than 200 Democratic primary ballots that year.⁸ In 2010, Texas Rangers arrested Vela for failing to disclose her assistor status on up to 20 mail ballots in that year’s Democratic primary.⁹ The local DA dubbed her the “godmother of voter fraud.”¹⁰

We cannot neglect the case of Leslie McRae Dowless, a Republican political operative accused of illegal possession of absentee ballots and falsifying witness statements in North Carolina during the 2018 Midterms. His alleged harvesting actions later triggered the results of the North Carolina 9th Congressional District to be thrown out.¹¹

Finally, in *United States v. Brown*, the case I spoke about earlier, the Mississippi County where the case occurred saw election after election after election overturned for mail ballot fraud. The United State submitted proposed findings of fact and conclusions of law that detail these cases at paragraph 150, which I provide a clip of here in my testimony.¹²

⁷ TXAG; Work of AG Paxton’s Election Fraud Unit Results in Arrests of 4 Members of Organized Voter Fraud Ring in North Fort Worth (October 12, 2018), <https://www.texasattorneygeneral.gov/news/releases/work-ag-paxtons-election-fraud-unit-results-arrests-4-members-organized-voter-fraud-ring-north-fort>

⁸ McAllen Monitor (October 7, 2018), https://www.themonitor.com/news/local/article_f11f643c-c8e6-11e8-8795-df5e61a5389e.html

⁹ Brownsville Herald; Starr County Commissioner Convicted on Voter Fraud Charges (2010), https://www.brownsvilleherald.com/starr-county-commissioner-convicted-on-voter-fraud-charges/article_d558d8fa-75b3-5d47-b2b7-8f0da2202b09.html

¹⁰ RealClearInvestigations via Texas Monitor; True confessions of Texas vote harvesters (February 27, 2019), <https://texasmonitor.org/texas-vote-harvesters/>

¹¹ NPR; North Carolina GOP Operative Faces New Felony Charges that Allege Ballot Fraud (July 30, 2019), <https://www.npr.org/2019/07/30/746800630/north-carolina-gop-operative-faces-new-felony-charges-that-allege-ballot-fraud>

¹² Obtainable in full at PACER at S.D.Miss. Case No. 4:05-cv-00033 TSL-LRA, Document #213, page 64.

150. The most important evidence to Dr. Arrington in forming the opinion that a pattern of ballot fraud exists in Noxubee is a long series of court rulings on absentee and affidavit ballots. (Ex. P-1 ¶ 115.) These include Spencer v. Sanders, (No. 98-0113, Noxubee County Circuit Court), Allsup v. Election of the Office of the Election Commissioner for District II (No. 8350 Noxubee County Circuit Court), (Ex. P-1 ¶ 108), Misso v. Oliver, 666 So. 2d 1366 (Miss. 1992), (Ex. P-1 ¶ 116), Eichelberger v. DEC & Albert Walker, (No. 99-99, Noxubee County Circuit Court), (Ex. P-1 ¶ 135), and Heard v. Walker (No. 2003-115, Noxubee County Circuit Court) (Ex. P-1 ¶ 170.) For

example, in the Eichelberger case, the circuit court found fundamental departures from the election code in fifty-two absentee ballots. (Ex. P-1 ¶ 141; Ex. P-137.) And in Heard v. Walker, the Circuit Court found thirty-three absentee ballots that on their face had fundamental departures from the requirements of the election code. (Ex. P-1 ¶ 166.)

Proposals floating around Congress and in litigation demands could swell those figures in the years ahead.

Thank you for the opportunity to appear.

Date: June 3, 2020

Respectfully submitted,

J. Christian Adams

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J. Christian Adams is the President and General Counsel of the Public Interest Legal Foundation. PILF is dedicated to fostering election integrity and preserving

the constitutional power of states in administering elections. He served from 2005 to 2010 in the Voting Section at the United States Department of Justice where he brought a wide range of election cases to protect racial minorities in South Carolina, Florida, and Texas. He litigates election law cases throughout the United States and the Territory of Guam. He received the Department of Justice award for outstanding service and numerous other Justice Department performance awards. Prior to his time at the Justice Department, he served as General Counsel to the South Carolina Secretary of State. He has a law degree from the University of South Carolina School of Law. He is a member of the South Carolina and Virginia Bars.

Mr. COHEN. Thank you, Mr. Adams, and thank you for taking just 3 minutes and saving us some time. I appreciate it very much.

Our next witness is Ms. Myrna Perez. She is the director of the Voting Rights and Election Program at the Brennan Center for Justice at New York University School of Law. That is Chairman Nadler's district. She is the author of several nationally recognized reports and articles. She is a lecturer in law at Columbia Law School, also in Chairman Nadler's district, and has served as adjunct professor of clinical law at the NYU School of Law, still in Chairman Nadler's district.

She received her law degree from Columbia University Law School, master's in public policy from Harvard Kennedy School of Government, and undergraduate degree from Yale.

Ms. Perez, you are recognized for 5 minutes.

STATEMENT OF MYRNA PÉREZ

Ms. PÉREZ. Thank you, members, for having me.

In this time of reckoning for the country, I briefly map out five critical needs that each State must address to ensure that no voter is left behind during this pandemic. My written testimony provides more details and a voluminous resource appendix.

But the single most important thing that members of this committee can do to protect our elections against COVID is to play your part in getting State and local election administrators additional financial resources.

Funding aside, here are the needs.

First, we must expand registration opportunities. The moment we are in now makes plain that our democracy works best when we are all heard.

At this time in past Presidential election years, we would be seeing an increase in voter registration rates. We are not seeing that now, and this is no surprise. Government agencies that provide voter registration are closed. Community groups that ordinarily register voters are unable to do in-person outreach.

Accordingly, the States that don't have online registration should provide it and the States that do should boost their capacity. All online registration systems should account for the fact that some Americans do not have DMV IDs, some Americans have disabilities, and some prefer to conduct important business in another language. Also, the digital divide is real, so all Americans must have lower tech registration options, too.

Second, all eligible Americans must have the option to vote by mail. Now, every State in this country has absentee or mail voting for at least some of its citizens. That option should be available to every eligible American so that no voter has to expose themselves or others to the coronavirus.

Americans from all walks of life want to vote by mail. We know this because of polls and we know this because of the increase in the amount of requests for mail ballots.

Despite some incendiary and untrue rhetoric, vote by mail is a necessary, secure, and sensible option, especially now, for the November elections.

Of course, there are maybe some witnesses making a lot of hay out of the rare instances of abuse. There is zero dispute that appro-

priate safeguards should be in place, and they are. In fact, there are multiple layers of security for each ballot. That is why the instances of fraud are so rare.

Third, we must provide safe in-person voting options. I want to point out that no one thus far has been talking about only mail elections. Even if more voters will vote by mail this November, the country is still going to need an adequate number of polling places. Why? Lots of reasons.

Polling places are needed fail-safes because there are going to be inevitable glitches as we scale up to the massive increase in vote by mail. There are some Americans who are very deeply attached to in-person voting. Some voters need language assistance or have physical or visual impairments that make in-person voting a necessity. And, finally, some voters have mail address issues or problems with unreliable mail service.

States and localities should offer sufficient hours and days of early voting to reduce crowds and minimize lines. Polling places should be frequently cleansed and in venues suited to comply with physical distancing. Poll workers and voters need PPE and disposable implements like pens to mark paper ballots or Q-tips to press buttons.

Four, we must educate voters about the election process. Voter education is more important now than ever because of changes to primary dates and mail voting rules and because misinformation and disinformation are real threats that are occurring today.

Finally, we must be prepared for new cybersecurity threats. Resources that should have been available to secure election technology now have to be diverted to making sure that elections actually happen this November. We must continue to audit and test all of our electronic systems, particularly online registration and mail ballot application systems that will see greater use. Additionally, we need risk limiting and other post-election audits to ensure that we can trust our result tallies. Fortunately, in many places officials of both parties are working on it. We need more of that.

I am going to end with where I started. The changes needed to leave no voter behind require resources. We estimate that it will cost close to \$4 billion. Ultimately, the smooth administration of the November election will depend in large part on the levels of support that elected officials like yourselves are providing to election administrators and voters during this crisis. I am hopeful that members of this committee will model the leadership and commitment our country desperately needs right now on these topics.

Thank you.

[The statement of Ms. Pérez follows:]

Testimony of

Myrna Pérez

Director, Voting Rights & Elections Program

Brennan Center for Justice at NYU School of Law¹

Hearing on Protecting the Right to Vote During the COVID-19 Pandemic

The Committee on the Judiciary, U.S. House of Representatives

Subcommittee on the Constitution, Civil Rights, and Civil Liberties

June 3, 2020

Thank you Chairman Nadler, Ranking Member Jordan, and members of the Committee for the opportunity to submit this testimony describing the steps that this country must take to protect our fundamental right to vote in the throes of a global pandemic. While not the subject of this hearing, I would note that many of these recommendations would also alleviate some of the stresses on election administration during a time of civil unrest – like what we are facing at the moment. The Brennan Center for Justice at NYU School of Law supports this Committee’s efforts to ensure that our elections are not only free, fair, and secure, but also accessible during the COVID-19 crisis.

In this written testimony, I outline the features that each state should have to ensure that no voter is left behind. I also provide in the appendix to this testimony a voluminous amount of resources on the topic. **But the single most important thing this Committee can do to ensure that our elections run smoothly in November is for each member of this Committee to play her or his part in getting election administrators at the state and local level additional financial resources.** While Congress has provided \$400 million to help states and localities make these changes, this is a mere fraction of what is needed. We urge Congress to provide additional support immediately. Election administrators need those resources now. *Please see Appendix A for additional related information.*

¹ The Brennan Center for Justice at New York University School of Law is a nonpartisan public policy and law institute that works to reform, revitalize, and defend our country’s system of democracy and justice. I am the Director of the Brennan Center’s Voting Rights and Elections Program. I have litigated voting rights cases across the country, and authored several nationally recognized reports and articles, including *Purges: A Growing Threat to the Right to Vote* (July 2018), *Noncitizen Voting: The Missing Millions* (May 2017), and *Election Day Long Lines: Resource Allocation* (Sept. 2014). My work has been featured in media outlets across the country, including *The New York Times*, *The Wall Street Journal*, *MSNBC*, and others. I have testified previously before Congress, as well as several state legislatures, on a variety of voting rights related issues. I teach election law at Columbia Law School and I have also served as an Adjunct Professor of Clinical Law at NYU School of Law. My testimony does not purport to convey the views, if any, of the New York University School of Law.

I. The Stresses COVID is Placing on Our Election Requires Ameliorative Action

More than 100,000 people across the country have died from COVID-19. Public health experts repeatedly urge physical distancing practicing and habits if we are to minimize transmission. There are certain steps states and localities must take if we want to ensure that no voter is left behind. *Please see Appendix B for additional related information.*

(1) Expand Voter Registration Opportunities. Pre-pandemic, about 1 out of every 5 eligible Americans were not registered to vote.² In the past, millions of Americans update their voter registration information or register to vote for the first time the months and weeks before every presidential election.³ But now, states across the country have reported decreases in registration rates. According to news reports, the number of new registrations in Kentucky was at 7,000 in February and it dropped to just 500 in March.⁴ This is no surprise. Government agencies that provide voter registration services are closed. Community groups that register voters are unable to do person-to-person outreach because of transmission risks and shelter-at-home instructions. Even if these community groups could venture out, large groups of Americans are not congregating in venues and public spaces that were once desirable spots to perform voter registration.

Our democracy works best when all of us participate. It is imperative that we undertake efforts to bring those eligible, but unregistered, Americans into our electorate. Online registration opportunities are an obvious part of the solution. Ten states do not currently have a way to register to vote online for November.⁵ Those states should develop and implement those systems. Even states with existing registration systems can take steps to maximize their impact. States that limit online registration opportunities to people who have a state identification/driver's license should relax those requirements because motor vehicle offices are closed and people who do not have those IDs cannot get them.

² The Pew Charitable Trusts, *Elections Performance Index: Methodology* (August 2016), http://www.pewtrusts.org/~media/assets/2016/08/epi_methodology.pdf.

³ See, for instance, Merivaki, Thessalia. 2018. "Access Denied? Investigating Voter Registration Rejections in Florida." *State Politics & Policy Quarterly*, October. <https://doi.org/10.1177/1532440018800334>; Gimpel, James G., Joshua J. Dyck, and Daron R. Shaw. 2007. "Election-Year Stimuli and the Timing of Voter Registration." *Party Politics* 13 (3): 351–74. <https://doi.org/10.1177/1354068807075941>.

⁴ Pam Fessler, "Pandemic Puts A Crimp On Voter Registration, Potentially Altering Electorate." *NPR*, May 26, 2020, <https://www.npr.org/2020/05/26/860458708/pandemic-puts-a-crimp-on-voter-registration-potentially-altering-electorate>.

⁵ The following states do not have online voter registration: Arkansas, Maine, Mississippi, Montana, New Hampshire, South Dakota, Texas, and Wyoming. The following two states have not yet implemented this policy: New Jersey and Oklahoma. See Brennan Center for Justice, "Preparing Your State for an Election Under Pandemic Conditions," May 29, 2020, <https://www.brennancenter.org/our-work/research-reports/preparing-your-state-election-under-pandemic-conditions#1/>.

Online registration systems should also be built to withstand increased use by more voters. These systems have crashed in the past at inopportune times.⁶ And, of course, online registration systems need to be accessible for voters with disabilities and persons who prefer to conduct important business in another language.

While online registration systems need to be shored up, we must remember that the digital divide is real, and we must also take steps to ensure that unregistered, but eligible Americans who cannot use online systems for whatever reason have a lower-tech way to get activated and registered.

(2) Ensuring all eligible Americans have the option to vote by mail. Every state in the country allows at least some of its citizens to vote by mail, and that option should be available to every eligible American so that no voter has to expose themselves or others to the Coronavirus. Currently, there are 15 states where an American who wants to vote by mail may not meet the criteria for doing so in November.⁷ Notwithstanding existing restrictions, we are seeing a massive increase in demand to vote by mail. In Georgia, more than 1 million people have requested a mail ballot than in the 2016 presidential primary.⁸ In Wisconsin, nearly 800 thousand more voters cast mail ballots in the 2020 presidential primary than the 2016 presidential primary.⁹ That increase in mail balloting requires extra capacity in processing applications, counting returned ballots, and providing notice and cure opportunities to any voters whose returned ballots have issues. *Please see Appendix C for additional related information.*

While there is some incendiary and untrue rhetoric being lobbed around, vote by mail is a necessary, and sensible option—especially at the time we find ourselves in. Indeed, some states like Oregon, Colorado, and Washington have been conducting their elections almost entirely by mail for years. There has been no evidence of systematic or widespread abuse of the mail balloting process in those states. That is not surprising. There are numerous security measures at every step of the vote by mail pipeline. First, the ballot has to get mailed to an address, meaning that election administrators and law enforcement know exactly where to look if any investigation is warranted. And, mail ballots can be accompanied with Intelligent Mail Barcodes (or IMbs) that track where the ballot is at all time in the mail.¹⁰ For ballots that are returned in person, the

⁶ Laura Vozella, “Voter Registration System Crashes in VA., Preventing Some from Signing Up in Time,” Washington Post, Oct. 18, 2016, https://www.washingtonpost.com/local/virginia-politics/voter-registration-system-crashes-in-va-preventing-some-from-signing-up-in-time/2016/10/18/5336f1ae-9558-11e6-9b7c-57290af48a49_story.html?utm_term=.6ce77c14627b; Mark Caputo, “‘A Mess’: Florida’s Online Voter Registration System Panned,” Politico, Oct. 9, 2018, <https://www.politico.com/states/florida/story/2018/10/09/a-mess-floridas-online-voter-registration-system-panned-641953>.

⁷ The following states require a voter to provide an excuse to vote by mail: Alabama, Arkansas, Connecticut, Delaware, Indiana, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, New York, South Carolina, Tennessee, Texas, and West Virginia. See Brennan Center for Justice, “Preparing Your State for an Election Under Pandemic Conditions,” May 29, 2020, <https://www.brennancenter.org/our-work/research-reports/preparing-your-state-election-under-pandemic-conditions#t1/>.

⁸ Kevin Morris, “Who’s Requesting Mail Ballots in Georgia’s Upcoming Primary?” Brennan Center for Justice, May 19, 2020, <https://www.brennancenter.org/our-work/research-reports/whos-requesting-mail-ballots-georgias-upcoming-primary>.

⁹ Wisconsin Elections Commission, *April 7, 2020 Absentee Voting Report*, Wisconsin Elections Commission, 2020, <https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/April%202020%20Absentee%20Voting%20Report.pdf>.

¹⁰ Wendy R. Weiser and Harold Ekeh, “The False Narrative of Vote-by-Mail Fraud,” Brennan Center for Justice, Apr. 10, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>.

options are drop boxes that have their own security protections, election offices, or polling places that are secure enough to house voting machines. Before the ballot is actually counted, it is examined for a signature—that was made under oath, and in some states there are even more stringent measures like witness or notary requirements (which we do not believe are justified given the threat level).

(3) Providing Safe in Person Voting Options. While more voters are expected to be voting by mail this November, the country is still going to need an adequate number of safe polling places to ensure that no voters are left behind. Vote by mail will not work for every voter. There will be the inevitable glitches that are expected when undergoing such a massive scale up and polling places need to exist to function as a fail-safe. Additionally, there has historically been a racial and age disparity in the use of vote by mail. For some Americans, this preference for in-person voting may be merely habit and custom, but for others, it is a deeply held value. Consistent with this, early examinations in certain counties still reveal a large racial disparity. For example, as of May 3, 26.6% of White registered voters in Georgia had requested mail ballots for the June 9 primary, while just 18.5% of Black voters and 12% of Latino voters had done so.¹¹ For other voters, for example voters with visual or physical impairments, or voters who need the language assistance provided at polling places, in-person voting may be a necessity. And finally, there are some voters who have unreliable mail service, and cannot trust the mail to deliver something as important as their ballot.

In order to ensure that these needed polling places are safe, states and localities should undertake a number of steps. First, there should be sufficient hours and days of early voting to smooth out congestion and minimize lines. Polling places should be sited in venues that can comply with physical distancing protocols. The setup of polls sites should minimize transmission risks by, for example, making sure that entrances and waiting spaces allow for enough distance between voters. Polling places should be equipped with cleansers, water, and drying materials for frequent cleaning of spaces, machines, and hands. Poll workers and voters should have PPE like masks and gloves, and the poll site should have disposable implements like pens to mark paper ballots or Q-tips to press buttons.

It is axiomatic that we need enough polling places to ensure equal access for all voters, including those in traditionally underserved communities. Indeed, in a recently released report from the Brennan Center, we learned: Black and Latino Americans spend more time waiting in line to vote on Election Day than white voters – and even more seriously – they were more likely to report especially long wait times at the polls.¹² We also found that counties that became less white over the past decade had fewer electoral resources – namely polling places, voting machines, and poll workers – per voter in 2018 than counties that grew whiter.¹³ Similarly, counties where incomes shrank over the past decade had fewer electoral resources per voter in 2018 than counties where incomes grew.¹⁴

¹¹ Brennan Center analysis of data from L2 Political and data from the Georgia Secretary of State, available here: <https://elections.sos.ga.gov/Elections/voterabsenteefile.do>.

¹² Hannah Klain, Kevin Morris, Max Feldman, and Rebecca Ayala, *Waiting to Vote: Racial Disparities in Election Day Experiences*, 2020, hyperlink forthcoming.

¹³ *Ibid.*

¹⁴ *Ibid.*

As Covid-19 cases continue to rise, it is more important now to distribute critical electoral resources in an equitable manner to minimize voter wait times for all voters. The findings in our report suggest that allocating equal numbers of electoral resources among counties and precincts is not sufficient to produce equal wait times for all voters, particularly those of color and of lower incomes. Rather, election administrators must also focus special attention on those precincts and counties with a history of long wait times and allocate enough resources to these locations to equalize the wait times. *Please see Appendix D for additional related information.*

(4) Educating Voters About Election Processes. Voter education is always important, but given the uncertainty and disruption in American lives because of COVID-19, voter education is more critical than ever. At least 13 states have changed their primary dates,¹⁵ and at least two states have made it possible for any voter to request an absentee ballot this November.¹⁶ There are dozens of lawsuits across the country whose outcome could change one

¹⁵ These include the following: Connecticut, Delaware, Georgia, Indiana, Kentucky, Louisiana, Maryland, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and West Virginia. See Connecticut Official State Website, “Governor Lamont Orders Connecticut’s Presidential Primary Election Rescheduled to June 2,” March 19, 2020, <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2020/03-2020/Governor-Lamont-Orders-Connecticut-Primary-Election-Rescheduled-to-June-2>; State of Delaware Executive Department, Dover, “Sixth Modification of the Declaration of a State of Emergency For The State of Delaware Due to a Public Health Threat,” March 24, 2020, <https://governor.delaware.gov/wp-content/uploads/sites/24/2020/03/Sixth-Modification-to-State-of-Emergency-03242020.pdf>; Georgia Secretary of State Brad Raffensperger Official Website, “Raffensperger Announces Postponement of Primary Election Until June 9,” April 9, 2020, <https://sos.ga.gov/index.php/elections/raffensperger-announces-postponement-of-primary-election-until-june-9>; Indiana Governor Eric J. Holcomb Official Website, “Gov. Holcomb and Secretary of State Lawson Announce Primary Election to Move to June 2,” March 20, 2020, <https://calendar.in.gov/site/gov/event/gov-holcomb-and-secretary-of-state-lawson-announce-primary-election-to-move-to-june-2/>; Kentucky Official State Website, “Secretary of State Moves To Delay May 19 Elections,” March 16, 2020, <https://kentucky.gov/Pages/Activity-stream.aspx?n=SOS&prld=300>; State of Louisiana Executive Department, “Proclamation Number 46 JBE 2020: Elections – Rescheduled Due to Statewide State of Emergency Caused by COVID-19,” March 13, 2020, <https://gov.louisiana.gov/assets/Proclamations/2020/46-JBE-2020-Elections-Rescheduled.pdf>; State of Maryland Proclamation, “Renewal of Declaration of State of Emergency and Existence of Catastrophic Health Emergency — COVID-19,” March 17, 2020, <https://elections.maryland.gov/press-room/proclamation-2020-elections.pdf>; Frank LaRose, Ohio Secretary of State, “Directive 2020-06: Order from Director of Health Dr. Amy Acton Closing Polls for the March 17, 2020 Presidential Primary Election,” March 16, 2020, <https://www.ohiosos.gov/globalassets/elections/directives/2020/dir2020-06am.pdf>; Official Pennsylvania Government Website, “Gov. Wolf Signs COVID-19 Response Bills to Bolster Health Care System, Workers, and Education and Reschedule the Primary Election,” March 27, 2020, <https://www.governor.pa.gov/newsroom/gov-wolf-signs-covid-19-response-bills-to-bolster-health-care-system-workers-and-education-and-reschedule-the-primary-election/>; State of New Jersey, “Executive Order No. 120,” April 8, 2020, <https://nj.gov/infobank/eo/056murphy/pdf/EO-120.pdf>; State of New York Executive Chamber, “No. 202.12: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency,” March 28, 2020, https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.12.pdf; State of Rhode Island and Providence Plantations, “Executive Order 20-11: Ninth Supplemental Emergency Declaration – Delaying the Primary Elections and Preparing for a Predominantly Mail Ballot Election,” March 23, 2020, <https://governor.ri.gov/documents/orders/Executive-Order-20-11.pdf>; State of West Virginia Executive Department At Charleston, “Executive Order No. 18-20: By the Governor,” April 1, 2020, <https://governor.wv.gov/Documents/2020%20Proclamations/EO%2018-20.pdf>.

¹⁶ Both New Hampshire and Virginia will allow any voter to request an absentee ballot for the November general election. See New Hampshire Secretary of State William M. Gardner and Attorney General Gordon

or more significant voting rules. Any increased accessibility will be blunted, however, if voters are not aware of the new rules.

Moreover, amidst changes, Americans are vulnerable to misinformation and disinformation. Election officials may send out materials with a date from a prior election, as occurred in Washington D.C.¹⁷ But, deliberate efforts to mislead voters have also been documented, for example, on March 3, the Texas Secretary of State's office received reports of a robocall inaccurately informing voters that Democrats were supposed to vote the following day.¹⁸ Likewise, Common Cause has identified "multiple examples of cyber suppression content — social media posts with disinformation or deceptive practices that could cause a voter to be disenfranchised," during the 2020 Primary Elections.¹⁹

Fortunately, robust voter education efforts from trusted sources can be immensely helpful for motivating and encouraging voters and combatting incorrect information. This education should be culturally competent, in language, and targeted to low information voters and work for voters who do not get their information online. Education methods should include mail, telephone, trusted community leaders, radio, and television.

(5) Be Prepared for New Cybersecurity Threats. Prior to COVID-19, there was high concern that foreign cybercriminals would interfere in our elections. In some ways, this concern should be greater. Resources that should have been available to secure election technology now have to be diverted to ensuring elections happen this November. Additionally, COVID-19 dramatically incentivizes the use of online systems for registration and mail ballot requests by voters, but the increased usage makes those online systems even more attractive targets than they would have been just a few months ago.

The importance of securing our elections against cyber-attack cannot fall off our agenda. We must continue to audit and test those systems. Additionally, we need postelection audits of receipts afterwards to make sure that we can trust the electronic tallies. *Please see Appendix E for additional related information.*

Fortunately, in many places, elected and election officials of both parties are working together to make needed changes. For example, in Kentucky, the Democratic Governor and

J. MacDonald to New Hampshire Election Officials, April 10, 2020, State of New Hampshire, Elections Operations During the State of Emergency, https://www.nhpr.org/sites/nhpr/files/202004/covid-19_elections_guidance.pdf; John Wood, "Gov. Northam signs laws he says will help expand voting accessibility," WHSV newsroom, April 13, 2020, <https://www.wHSV.com/content/news/Gov-Northam-signs-bills-to-help-with-voter-turnout-569605261.html>.

¹⁷ Martin Austermuhle, "Thousands Of D.C. Voters Were Given The Wrong Primary Election Date," NPR, February 24, 2020, <https://www.npr.org/local/305/2020/02/24/808903582/thousands-of-d-c-voters-were-given-the-wrong-primary-election-date>.

¹⁸ Carrie Levine, "Online Misinformation During The Primaries: A Preview Of What's To Come?" The Center for Public Integrity, March 11, 2020, <https://publicintegrity.org/politics/elections/online-misinformation-during-the-primaries-a-preview-of-whats-to-come/>.

¹⁹ Common Cause, "Common Cause Documents and Responds to Voting Issues Across the County," March 3, 2020, <https://www.commoncause.org/press-release/common-cause-documents-and-responds-to-voting-issues-across-the-country/>.

Republican Secretary of State worked in partnership to expand absentee voting by mail and created a secure online absentee mail ballot application portal for the June 23, 2020 primary election.²⁰ Republican Secretary of State Pate of Iowa launched poll worker recruitment efforts to guard against these problems in the fall.²¹ These leaders should be commended for their bipartisan action. Congress should take heed.

II. More Resources are Needed

In March, as part of the CARES Act, Congress gave states \$400 million to protect the upcoming presidential and federal elections from any COVID-19 related disruptions.²² While this was an important start, it is insufficient, given the massive changes that are necessary to leave no voters behind.

The Brennan Center has estimated the national cost of implementing its full set of recommendations for running safe and secure elections in 2020 is approximately \$4 billion. Subsequent to release of our estimate, and working in conjunction with the R Street Institute, Alliance for Securing Democracy and the University of Pittsburgh Institute for Cyber Law, Policy and Security, separately interviewed election officials in five states – Georgia, Michigan, Missouri, Ohio and Pennsylvania – to determine the steps they were taking, and would like to take, to ensure free, fair and safe elections in 2020 during the COVID pandemic. It is patently clear that more resources are need.²³ Election officials agree, and multiple states associations, plus more than 150 individual local election officials from both parties have signed letters urging Congress to provide them with more resources to run safe and fair elections this fall. *Please see Appendix F for additional related information.*

Ultimately, the smoothness of the November election will depend in large part on the commitment that elected officials, including Congressmembers, have in supporting our election administrators and their voters during this crisis. During this time of political unrest, we must also recognize the fundamental role voting plays within our democracy and do everything we can to ensure every eligible American is able to have their voice heard. I am hopeful that members of this Committee will model the leadership and commitment our country so desperately needs during this time.

²⁰ Commonwealth of Kentucky, “Governor Beshear, Secretary Adams Issue Statements on June Election Procedures,” April 24, 2020, <https://kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prId=139>.

²¹ Office of the Iowa Secretary of State, “MEDIA RELEASE: Secretary Pate launches statewide poll worker recruitment for June primary,” April 29, 2020, https://sos.iowa.gov/news/2020_04_29.html.

²² Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, 116th Cong. (2020).

²³ Christopher R. Deluzio, Elizabeth Howard, David Levine, Paul Rosenzweig, and Derek Tisler, *Ensuring Safe Elections: Federal Funding Needs for State and Local Governments During the Pandemic*, Brennan Center for Justice, 2020, https://www.brennancenter.org/sites/default/files/2020-04/2020_04_5StateCostAnalysis_FINAL.pdf.

Myrna Perez Testimony Attachment:

<https://docs.house.gov/meetings/JU/JU00/20200603/110768/HHRG-116-JU00-Wstate-PrezM-20200603.pdf>

Myrna Perez Testimony Appendix: <https://docs.house.gov/meetings/JU/JU00/20200603/110768/HHRG-116-JU00-Wstate-PrezM-20200603-SD003.pdf>

Mr. COHEN. Thank you, Ms. Perez.

Our next witness is Tom Fitton, and if I am wrong, please correct me when you start. He is president of Judicial Watch, a position he has held since 1998.

Judicial Watch describes itself as a public interest group that investigates and prosecutes government corruption, seeking to ensure that the government and judicial officials act ethically and do not abuse the powers entrusted to them by the American public.

Judicial Watch primarily seeks access to government records, files Freedom of Information Act and other public records lawsuits, and engages in other forms of civil litigation.

Mr. Fitton—or “Fyton”—has had over 20 years of public policy experience. He received his B.A. in English from George Washington University.

You are recognized for 5 minutes, sir.

STATEMENT OF TOM FITTON

Mr. FITTON. Thank you, Chairman Cohen. And like the other participants, we really appreciate your prayer at the beginning.

Unfortunately, for years Americans have been losing faith in the integrity of our elections. Gallup has been tracking this for years. Last year they asked if Americans have confidence in the integrity of elections and the honesty of elections specifically. Only 40 percent of Americans said yes, 59 percent said no.

And, frankly, this isn't helped by plans like Governor Newsom's who issued by an executive order recently requiring that county election officials transmit mail ballots to every registered voter in the State. I view this as the real threat to the integrity of our elections.

In 2005, back when there was a bipartisan understanding about the threat of voter fraud and its connection to vote by mail and absentee ballots, the Carter-Baker Commission noted that absentee balloting is vulnerable to abuse in several ways. Blank ballots mailed to the wrong address, to large residential buildings might get intercepted. Citizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to pressure, overt and subtle, or to intimidation. Vote-buying schemes are far more difficult to detect when citizens vote by mail.

We are particularly concerned about ballots being mailed to the wrong address. Voter registration lists throughout the country are out of date, containing registrations for voters who no longer live at the stated address, who have died or are otherwise ineligible to vote. The Pew Research Center from many years back found that there were 24 million, or one out of every eight, active voter registrations in the United States that were no longer valid or significantly inaccurate. At least 1.8 million deceased individuals were listed as active voters at that time.

I don't think things have gotten much better. Data states provided to the Election Assistance Commission in 2019 showed hundreds of U.S. counties with voter lists containing more registered voters than there were citizens over the age of 18, meaning that the registration rate was over 100 percent, and looking at that data, we concluded there were at least 2.5 million extra registrants on our voter rolls. The extra registrations include both outdated

and currently active registrations, as well as inactive registrations that are pending removal.

Note that even inactive registrations can still be voted upon on election day. This doesn't require a voter to use a provisional ballot. The voter just needs to show up and say or affirm his or her address typically, and in many States that can be done just through an oral representation. To be clear, the poll worker asks the voter if he or she lives at the listed address and the voter just says yes. At that point the voter can vote.

Many counties have lists containing outdated registrations, as I said. Allegheny County, Pennsylvania, after we warned them about this, removed nearly 70,000 names from their lists because people hadn't voted within the legally required two election cycles. It only removed them after receiving a warning letter.

North Carolina's own public data shows nearly a million inactive registrations. Pennsylvania admits to 800,000 inactive registrations. We have sued those States to try and clean those rolls up.

Governor Newsom's executive order in California seems particularly cynical. While he is relying on emergency powers in the face of the pandemic to order all-mail-ballot elections, he notably has failed to restrict ballot harvesting under State law, which means that people will be showing up and interacting with people as they gather ballots, increasing, obviously, the likelihood of health issues.

Public health is cited as justification for mail ballots but is absent when talking about the massive ballot harvesting schemes being foisted upon or the attempt to foist ballot harvesting schemes on Americans.

Look, in the end, this crisis, this pandemic has blown up our economy, it has suppressed our liberties. Let's not let it blow up our elections.

[The statement of Mr. Fitton follows:]

Testimony before the United States House of Representatives Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Civil Liberties.

"Protecting the Right to Vote During the COVID-19 Pandemic."

June 3, 2020

Tom Fitton
President, Judicial Watch, Inc.

Good Morning Mr. Chairman and Members of the Subcommittee,

My name is Tom Fitton. I am President of Judicial Watch, Inc, a Washington DC-based public interest nonprofit dedicated to promoting transparency and restoring trust and accountability in government, politics, and the law. Since 1994, Judicial Watch has become the largest, most successful Freedom of Information Act (FOIA) litigator, exposing corruption in the federal government through FOIA. Consistent with our primary mission, we also have been involved for almost a decade in ensuring the honesty and integrity of our electoral processes. Judicial Watch is now the nation's premier enforcer, public or private, of the election integrity provisions of the National Voter Registration Act of 1993 (NVRA).

For years, Americans have been losing faith in the integrity of our electoral system. Many polls have been taken on this subject and they reach the same conclusion. The Gallup organization conducts a particularly interesting poll, which compares American attitudes with those of other countries. The poll simply asks respondents if they "have confidence" in the "honesty of elections." Last year, only 40% of Americans answered yes, while an astonishing 59% said no.¹ According to Gallup, the United States has "one of the worst ratings across the world's wealthiest democracies," with only Chile and Mexico reporting statistically lower ratings.² This phenomenon long predates the COVID-19 pandemic. Gallup reports that "[m]ajorities of Americans have consistently lacked confidence in the honesty of elections every year since 2012."³

Among the explanations for this loss of faith, we must include the public's impatience with the politicization of electoral procedure, and, in particular, with dubious objections to what are widely perceived to be commonsense election integrity measures. The most obvious example to date concerns the heated, partisan fight against voter ID laws. A Pew Research Center study after the 2018 elections found strong, bipartisan support for voter ID, which was favored overall by 76% of those polled and even by a considerable majority of those identifying as Democrats (63%).⁴

¹ R.J. Reinhart, *Faith in Elections in Relatively Short Supply in U.S.*, Feb. 13, 2020, available at <https://news.gallup.com/poll/285608/faith-elections-relatively-short-supply.aspx>.

² *Id.*

³ *Id.*

⁴ Kristen Bialik, *How Americans view some of the voting policies approved at the ballot box*, PEW RESEARCH CENTER, Nov. 15, 2018, available at <https://www.pewresearch.org/fact-tank/2018/11/15/how-americans-view-some-of-the-voting-policies-approved-at-the-ballot-box/>.

This support is understandable in a society where one must produce identification for so many different reasons, from getting on a plane to buying prescription drugs to working out in a gym.

That voter ID laws are so often opposed, and with significant success, by political operators is a sad sign of our times. This opposition often relies on unsupported claims that voter ID will depress minority turnout, but this effect is never seen in actual elections. Opponents also try to flip the burden of proof, arguing in effect that, unless those favoring voter ID can prove that voter fraud is a common occurrence that costs elections, there is no justification for requiring an ID. This argument is bogus. As the Supreme Court has noted, regardless of the prevalence of fraud, states have an obvious, legitimate “interest in counting only the votes of eligible voters” and in “carefully identifying all voters participating in the election process.”⁵ This interest is justified by the nature of voter fraud, which is hard to detect or punish after the fact. On a more practical note, those expressing doubt about the existence of voter fraud reveal an unrealistic, if touching, view of human nature. People cheat at more or less everything. They cheat at baseball. They cheat at sumo wrestling. They cheat when it doesn’t matter, for example at online gaming or internet chess. Indeed, they cheat at solitaire. I cannot understand why voting, which is so tied up with intense partisan feeling and enthusiasm, would be exempt from cheating.

I could easily multiply examples of commonsense election integrity laws that partisans have made the subject of unnecessary and manufactured opposition. By far the silliest example I have found was a 2017 Virginia state bill that would have required electronic pollbooks to contain the photograph taken by the Department of Motor Vehicles for each registered voter who has a driver’s license.⁶ Note that the actual photograph of a voter taken by the DMV cannot possibly discriminate against that voter. Yet Governor McAuliffe vetoed that bill.

My point here is that the American people see what they conclude are disingenuous fights over electoral procedures and lose faith in the honesty of our elections. With this background in mind I turn to measures proposed in response to the COVID-19 pandemic. One of the more common suggestions now is to require greater reliance on mail-in ballots. For example, last month Governor Newsom issued an executive order requiring that county elections officials transmit mail ballots to every registered voter in the State.⁷ I view this as a real threat to the integrity of American elections.

In 2005, the bipartisan Carter-Baker Commission noted the particular risks associated with absentee (mail-in) ballots:

Absentee ballots remain the largest source of potential voter fraud....Absentee balloting is vulnerable to abuse in several ways: Blank ballots mailed to the wrong address or to large residential buildings might get intercepted. Citizens who vote at home, at nursing homes, at the workplace, or in church are more susceptible to

⁵ *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 196 (2008).

⁶ S. 1253 (2017).

⁷ Executive Order N-64-20 (May 8, 2020).

pressure, overt and subtle, or to intimidation. Vote buying schemes are far more difficult to detect when citizens vote by mail.⁸

While I share all of these concerns, I would like to focus on the problem of ballots mailed to the wrong address. Voter registration lists throughout the country are routinely out of date, containing registrations for voters who no longer live at the stated address, who have died, or who are ineligible under the law for some other reason. This has been a problem for years. A Pew Research Center report issued during the Obama years noted that “[a]pproximately 2.75 million people have active registrations in more than one state,” that “24 million — one of every eight — active voter registrations in the United States are no longer valid or are significantly inaccurate,” and that “[m]ore than 1.8 million deceased individuals are listed as active voters.”⁹ We know about this problem at Judicial Watch because of our work in enforcing the NVRA. Data states provided to the Election Assistance Commission in 2019 showed hundreds of U.S. counties with voter lists containing more registered voters than there were citizens over the age of 18—meaning a registration rate of more than 100%. Considering just the part of counties’ voter rolls in excess of 100% shows that there are 2.5 million “extra” registrants on our nations’ voter rolls.

In particular, counties throughout the country have high numbers of “inactive” registrations that have not yet been cancelled. A registration becomes inactive when a registrant is sent, and fails to respond to, an address confirmation notice. If that registrant does not vote or otherwise contact election officials for the next two general federal elections (from two to four years), that registrations is cancelled pursuant to the NVRA.¹⁰ During that statutory waiting period the voter is called inactive.

It is crucial to note that an inactive registration can still be voted on election day.¹¹ This does not even require the voter to use a provisional ballot. The voter need only affirm his or her address, and in many states this can be done orally. To be clear, the poll worker asks a voter if he or she lives at the listed address, and the voter says “yes.” At that point, the voter can vote.

Now consider our experience in Los Angeles County, which we sued for noncompliance with the NVRA in 2017. We learned that the State of California had not been removing inactive registrations for *20 years*, pursuant to a misguided accommodation reached with Janet Renos’ Justice Department. As a result, Los Angeles County by 2018 had about 1,565,000 inactive registrations—almost one fourth of all the registrations in the County. Stated differently, the County of Los Angeles alone had more *inactive* voter registrations than the State of Hawaii has people of every age. And this is not just Judicial Watch’s calculation. These inactive registrations were tallied by Los Angeles County, and were openly admitted in the agreement it signed settling

⁸ REPT. OF COMM’N ON FED. ELECTION REFORM, BUILDING CONFIDENCE IN U.S. ELECTIONS at 46 (2005).

⁹ *Inaccurate, Costly, and Inefficient: Evidence That America’s Voter Registration System Needs an Upgrade*, PEW RESEARCH CENTER ON THE STATES, Feb. 14, 2012, at 1.

¹⁰ 52 U.S.C. § 20507(d)(2).

¹¹ 52 U.S.C. § 20507(e).

the lawsuit.¹² Some had been inactive for almost twenty years. Most had moved long ago. Tens of thousands of these inactive registrants had died. But all currently remain “registered voters.”

Until all of these registrations are formally processed under the NVRA, however, which will not be completed until 2022, they still can be voted in Los Angeles County. But Governor Newsom’s executive order requires county officials to “transmit vote-by-mail ballots for the November 3, 2020 General Election to all voters who are . . . registered to vote in that election,” making clear that “every Californian who is eligible to vote in the November 3, 2020 General Election shall receive a vote-by-mail ballot.”¹³ Under the plain terms of Governor Newsom’s order, these 1.6 million inactive registrations, the vast majority of whom no longer reside in Los Angeles County, California, should receive ballots. Circulating all of those live ballots, unmonitored by their original owners who have moved or died, is a threat to the integrity of California’s elections.

Many other counties have lists containing old, inactive registrations. Our 2018 consent decree with the Commonwealth of Kentucky addressed the hundreds of thousands of outdated registrations in that State.¹⁴ A few months ago, Allegheny County, Pennsylvania admitted that it had nearly 70,000 inactive registrations that it had failed to remove for longer than the NVRA’s statutory waiting period of two general federal elections. It only removed them after receiving a warning letter from Judicial Watch.¹⁵ North Carolina’s own published shows it has nearly a million inactive registrants. Pennsylvania admits to about 800,000 inactive registrants. Judicial Watch recently commenced lawsuits against both of those states over their failures to clean their voter rolls. If mail-in ballots are sent to the addresses of such inactive voters, there is the danger that they will be improperly voted, at which point they will become “active” again and not subject to removal. Indeed, where states or counties are not cleaning their voter rolls, even their *active* registrations become outdated.

One of the main reasons the Carter-Baker Commission identified absentee ballot fraud as “the largest source of potential voter fraud” is simple: It poses fewer risks for a person filling out and mailing a fraudulent ballot. By contrast, a person attempting “impersonation” fraud at a polling site must at least appear to cast the vote and, in consequence, may be found out and detained. Even so, a number of recent stories attest to the practice of mail-in ballot fraud. Just last week, a West Virginia postal worker was indicted for manipulating eight voters’ absentee ballots.¹⁶

¹² Settlement Agreement, *Judicial Watch v. Logan*, 2:17-cv-8948 (C.D. Cal. Jan. 3, 2019) (ECF No. 96-1) at 6, ¶1.

¹³ Executive Order N-64-20 (May 8, 2020) at 2, ¶1.

¹⁴ Consent Judgment, *Judicial Watch v. Grimes*, 3:17-cv-94 (E.D. Ky. Jul. 3, 2018) (ECF No. 39).

¹⁵ *Under Threat of Lawsuit, Allegheny Co. Purging 69,000 Inactive Voters From Rolls* (CBS PITTSBURGH, Jan. 14, 2020), available at <https://pittsburgh.cbslocal.com/2020/01/14/allegheny-county-board-of-elections-voter-rolls/>.

¹⁶ John Raby, *West Virginia Mail Carrier Charged With Altering Absentee Ballot Requests*, TIME, May 27, 2020, available at <https://time.com/5843088/west-virginia-mail-carrier-fraud-absentee-ballots/?linkId=89524172>.

In 2019, an Oakland County clerk outside Detroit, Michigan was charged with illegally altering 193 absentee ballots.¹⁷ A Minneapolis, Minnesota man was charged with helping 13 others falsify absentee ballots ahead of the 2018 election.¹⁸ In 2017, a Dallas County, Texas man was convicted after 700 mail-in ballots were witnessed and signed by a fictitious person.¹⁹ And recently in North Carolina's 9th Congressional District race, a scheme was run to steal 1,200 absentee ballots and fill them out, in a race that was decided by only 900 votes.²⁰

As a final point, it is now about five months until election day, and the pandemic's infection curve has flattened. Insisting now on all-mail ballot elections seems less like a response to a health crisis and more like a partisan application of the immortal words of Rahm Emanuel: "Never allow a good crisis to go to waste."

Governor Newsom's executive order in California seems particularly cynical. While he has relied on his emergency powers in the face of the pandemic to order all-mail ballot elections, he notably has failed to restrict ballot harvesting under State law, which allows paid employees of public sector unions, among others, to go door-to-door gathering ballots from strangers, even helping those voters to fill them out. Public health, in other words, is cited as a justification when it is convenient, and is ignored when it is inconvenient. This is just the kind of self-interested, partisan game-playing that causes American voters to react with disgust at how we conduct our elections.

Thomas J. Fitton

¹⁷ Christine Ferretti, *Southfield city clerk charged with 6 felonies tied to November election*, THE DETROIT NEWS, SEP. 23, 2019, available at <https://www.detroitnews.com/story/news/local/oakland-county/2019/09/23/southfield-city-clerk-charged-six-felonies-november-2018-election/2416101001/>.

¹⁸ Paul Walsh, *Minneapolis man charged with helping 13 people cast fraudulent ballots in 2018*, STAR TRIBUNE, Nov. 5, 2019, available at <https://www.startribune.com/minneapolis-man-acted-as-helper-for-13-people-casting-fraudulent-ballots-charges-say/564507232/>.

¹⁹ Stephen Young, *Dallas Man Pleads Guilty in 2017 West Dallas Voter Fraud Investigation*, DALLAS OBSERVER, Jun. 21, 2018, available at <https://www.dallasobserver.com/news/dallas-man-gets-six-months-for-vote-fraud-10819409>.

²⁰ David A. Graham, *North Carolina Had No Choice*, THE ATLANTIC, Feb. 22, 2019, available at <https://www.theatlantic.com/politics/archive/2019/02/north-carolina-9th-fraud-board-orders-new-election/583369/>.

Mr. COHEN. Thank you, sir. I appreciate your getting done in time, too.

Next our witness is Mr. Dale Ho. Mr. Ho is the director of the Voting Rights Project for the ACLU, the American Civil Liberties Union. In that role, he supervises the ACLU's voting rights litigation and advocacy work nationwide. He currently has active cases in dozens of States around the country. He has testified on election law issues before the Congress and in various State legislatures.

He is also an adjunct clinical professor at NYU School of Law. He received his J.D. from Yale, his undergraduate degree from Princeton.

Mr. Ho, thank you. You are recognized for 5 minutes.

STATEMENT OF DALE HO

Mr. HO. Chairman Nadler, Chairman Cohen, Ranking Member Johnson, and members of the subcommittee, the COVID-19 pandemic presents the greatest challenge to elections administration since the 1864 Presidential election was conducted during the Civil War. We will likely have fewer poll workers and polling places than in 2016 and more voters assigned per voting location than ever, all in the midst of a deadly pandemic that has already killed more than 100,000 Americans.

If we truly believe that no American should have to choose between protecting their health and exercising their right to vote, we must follow the CDC's recommendation to allow all Americans to use voting methods that minimize direct contact with other people and reduce crowd size at polling locations.

But this is a big challenge. More than 80 million Americans voted in person on election day in 2016. We must help our fellow citizens and States shift to more early and absentee voting than ever.

That is why the ACLU has actively advocated in more than 30 States and filed 10 lawsuits since the pandemic began, winning rulings in Virginia, Montana, and South Carolina.

This morning my colleagues are arguing by video conference at a hearing in Chairman Cohen's home State of Tennessee for the right to vote safely by mail during the pandemic.

Protecting the health of our fellow Americans and of our democracy itself is not a partisan issue. Take it from the Republican National Committee, which recently sent a mailer in Pennsylvania proclaiming that, quote, "Voting by mail is an easy and secure way to cast your ballot."

It is the height of bad faith that a President who himself votes by mail and the Attorney General would in recent remarks seek to undermine the American public's confidence in no-excuse absentee voting, which the majority of States currently offer, 33 in all, including several represented on this subcommittee, such as North Dakota, Ohio, and Pennsylvania. And of the 17 States that normally don't, 12 have relaxed their requirements to allow voters to vote absentee during their primaries, including Indiana, New Hampshire, and West Virginia. Following ACLU lawsuits, South Carolina did the same. And Missouri passed a bill that, if signed, will also do so.

These 12 States are a broad coalition of so-called red, blue, and purple States, and they show that it is not too late. States can adjust now to protect every American's right to vote safely during the pandemic. They must maintain that commitment in November.

There remain only five States currently refusing to let all voters vote absentee, Tennessee, Louisiana, Texas, Mississippi, and Missouri. Voters in these States, including the constituents of many members of this committee, must have the same right to vote safely during the pandemic that everyone else in this country has.

The ACLU, therefore, supports the VoteSafe Act, H.R. 6807, introduced by Congressman Clyburn and Senator Harris. Among other things, it authorizes \$5 billion for elections administration, including health and safety at polling places, and requires States to permit no-excuse absentee and early voting this year.

States are already seeing unprecedented levels of absentee requests. For example, Pennsylvania had an 18-fold increase in such requests compared to 2016. States need Federal support for printing and processing more mail-in ballots than in any previous election.

Congress has rightfully authorized trillions of dollars in spending to respond to the COVID-19 crisis. In this context, \$5 billion is a rounding error. We urge the inclusion of the VoteSafe Act in any additional COVID legislation this year.

And as Ranking Member Johnson noted, we must ensure that the Postal Service can do its job. That means ensuring it has full funding to remain solvent. It is a small but critical price to safeguard our democracy.

Thank you.

[The statement of Mr. Ho follows:]



WRITTEN STATEMENT OF
DALE HO
DIRECTOR, VOTING RIGHTS PROJECT
AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

Protecting the Right to Vote During the COVID-19 Pandemic

House Judiciary Committee

Subcommittee on the Constitution, Civil Rights, and Civil Liberties

Hearing on June 3, 2020

Submitted on June 1, 2020

Introduction

With approximately 3 million members, activists, and supporters, the ACLU is a nationwide organization that advances its mission of defending the principles of liberty and equality embodied in our Constitution and civil rights laws. For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the Constitution and laws of the United States. The ACLU's Voting Rights Project, established in 1965, has filed more than 300 lawsuits to enforce the provisions of our country's voting laws and Constitution, including the Voting Rights Act of 1965 (VRA) and the National Voter Registration Act of 1993 (NVRA).

In my capacity as Director of the ACLU's Voting Rights Project, I supervise the ACLU's voting rights litigation, which focuses on ensuring that all Americans have access to the franchise, and that everyone is represented equally in our political processes. In that capacity, I recently argued before the Supreme Court in *Department of Commerce v. State of New York*,¹ a case in which we successfully challenged the Administration's effort to add a citizenship question to the 2020 Census questionnaire, a move that would have had devastating consequences for the representation of communities of color across the United States. In addition to my work at the ACLU, I serve as an adjunct clinical professor at NYU School of Law, and am widely published on voting rights issues, including in the *Yale Law Journal Forum* and the *Harvard Civil Rights-Civil Liberties Law Review*.

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 elections administration since the 1864 presidential election was conducted during the Civil War. No American should have to choose between protecting their health and exercising their right to vote. We can take decisive action now to save as many of us as possible from having to make such a choice.

The ACLU has been actively advocating in more than 30 states, and we have brought 10 lawsuits in the past 11 weeks to ensure that all Americans can vote safely.² My testimony today will provide a brief overview of our recent work, in the hopes that it might shed light on possible solutions to our current national emergency.

I. Eligibility to Vote by Mail

As Chief Justice Roberts noted in an opinion last week, "COVID-19 ... has killed ... more than 100,000 nationwide. At this time, there is no known cure, no effective treatment, and no vaccine. Because people may be infected but asymptomatic, they may unwittingly infect

¹ 139 S. Ct. 2551 (2019).

² A full list of the ACLU's COVID-19-related voting rights cases is attached to my testimony in Appendix A.

others.”³ To ensure that every American can safely exercise the most fundamental right we have, and to prevent our existing public health emergency from degenerating further, it is imperative that we not only surge resources to states to rapidly implement enhanced public health measures at polling places, but that we also take aggressive action to reduce crowding and long lines at polling places on Election Day, by facilitating efforts to expand early and absentee voting.

But to give you a sense of the magnitude of the challenge we face, more than 80 million Americans voted in-person on Election Day in 2016.⁴ Under normal circumstances, we would similarly expect tens of millions of voters to seek to vote in-person on Election Day this November. But many of them will be unable or reluctant to do so. Our task at hand, therefore, is to help as many of them as would like to, to shift to voting early or absentee, and to help states prepare—in particular, for what we can expect will be unprecedented surge in voting by mail.

A. Challenges for In-Person Voting During the COVID-19 Pandemic

Already this primary season, we have seen significant disruptions to the traditional model of in-person voting. At least two basic interrelated problems have emerged.

First, many polling locations will be unavailable in November. Polling places are often located in locations that will be reluctant to open up their facilities to a higher risk of transmission—such as schools, churches, and, in particular, senior centers and assisted living facilities, which obviously cannot be opened to large crowds congregating in person, given the particular vulnerabilities to COVID-19 that older people face. Ohio, for example, was forced to close 125 polling locations across the state because they were located in retirement living or senior care facilities,⁵ before postponing its primary altogether.⁶

Second, we are also seeing substantial poll worker shortages, which is hardly surprising given the average age of pollworkers. According to the U.S. Election Assistance Commission, in the 2016 election, 56% of poll workers were over the age of 60:

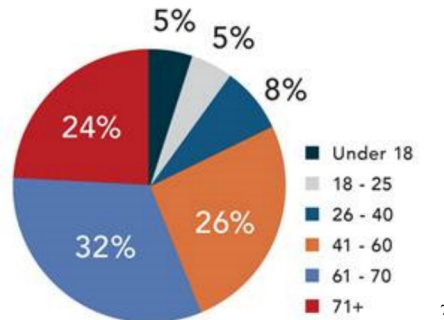
³ *South Bay United Pentecostal Church v. Newsom*, No. 19A1044, 590 U.S. ____ (May 29, 2020).

⁴ Approximately 138 million ballots were cast in 2016. *See* United States Elections Project, 2016 November General Election Turnout Rates, Sept. 5, 2018, <http://www.electproject.org/2016g>. Approximately 59.2% were NOT cast early, by mail, or absentee. *See* U.S. Elections Assistance Commission, White Paper – EAVS Deep Dive: Early, Absentee, and Mail Voting, May 17, 2017, <https://www.eac.gov/documents/2017/10/17/eavs-deep-dive-early-absentee-and-mail-voting-data-statutory-overview>.

⁵ “Primary polling locations moved from nursing homes due to coronavirus concerns,” *Fox19NOW.com*, March 10, 2020, <https://www.fox19.com/2020/03/10/changes-coming-polling-locations-due-coronavirus-concerns/>.

⁶ Nick Corasaniti and Stephanie Saul, “Ohio’s Governor Postpones Primary as Health Emergency Is Declared Over Virus,” *N.Y. Times*, March 16, 2020, <https://www.nytimes.com/2020/03/16/us/politics/virus-primary-2020-ohio.html>.

EAVS 2016: Age of Poll Workers



In all, 16 states have postponed their primaries due to the logistical difficulties of conducting an election during the pandemic.⁸ Because of polling place siting difficulties and poll worker shortages, the general election is likely to feature more voters assigned per polling location than in any election in American history—all while we are still facing a once-in-a-century global pandemic and public health officials are urging Americans to refrain from congregating in large crowds, and to practice social distancing.

The primaries have already provided multiple examples of the public health risks that we face. Multiple Florida poll workers tested positive for COVID-19 in the aftermath of the in-person primary election.⁹ In Chicago, a poll worker for the city's March 17 election died of

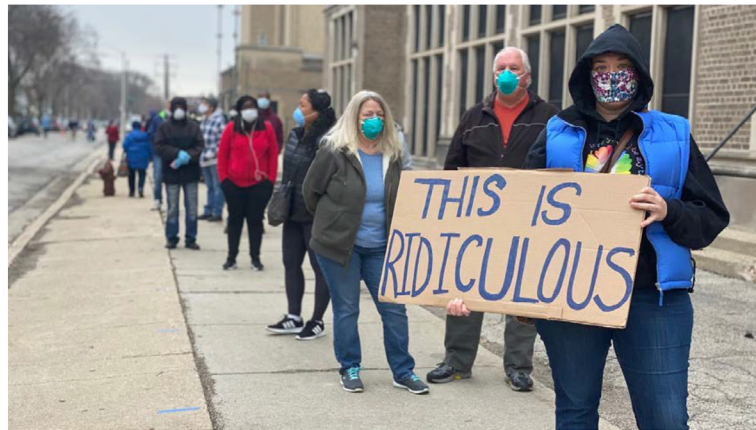
⁷ U.S. Election Assistance Commission, *White Paper: EAVS Deep Dive: Poll Workers and Polling Places* (Nov. 15, 2017), <https://www.eac.gov/documents/2017/11/15/eavs-deep-dive-poll-workers-and-polling-places>.

⁸ Nick Corasaniti and Stephanie Saul, *16 States Have Postponed Primaries During the Pandemic. Here's a List*, N.Y. Times, May 27, 2020 <https://www.nytimes.com/article/2020-campaign-primary-calendar-coronavirus.html>.

⁹ Kent Justice & Steve Patrick, *Duval County Poll Worker Tests Positive for Coronavirus*, News 4 Jax (Mar. 30, 2020), <https://www.news4jax.com/news/local/2020/03/30/duval-county-poll-worker-tests-positive-for-coronavirus/>; David Smiley & Bianca Padró Ocasio, *Florida Held Its Primary Despite Coronavirus. Two Broward Poll Workers Tested Positive*, Miami Herald (Mar. 27, 2020), <https://www.miamiherald.com/news/politics-government/article241539451.html>.

COVID-19, prompting City officials to send letters notifying voters and poll workers who were present at the same polling site.¹⁰

Wisconsin's primary provides perhaps the starkest example.¹¹ Cities in Wisconsin were forced to close polling locations, and these closures impacted voters unequally. The city of Madison had over 60 open polling sites, while in Milwaukee—a city more than twice Madison's size, with a population of roughly 600,000—only 18,803 voters cast their ballots in person, largely because all but five of the city's 180 polling locations had closed.¹² In Milwaukee, voters faced large crowds, long lines, and excessive wait times—all of which made social distancing impossible in the middle of a global pandemic:



13

¹⁰ Mary Ann Ahern, *Poll Worker at Chicago Voting Site Dies of Coronavirus, Election Officials Say*, 5 Chicago (Apr. 13, 2020), <https://www.nbcchicago.com/news/local/chicago-politics/poll-worker-at-chicago-voting-site-dies-of-coronavirus-election-officials-say/2255072/>.

¹¹ Astead W. Herndon and Jim Rutenberg, *Wisconsin Election Fight Heralds a National Battle Over Virus-Era Voting*, N.Y. Times (Apr. 6, 2020), <https://www.nytimes.com/2020/04/06/us/politics/wisconsin-primary-voting-coronavirus.html>.

¹² Jason Calvi, '2 Different Cities: ' Milwaukee Had 5 Polling Sites During COVID-19 Election; Madison Had 60+', Fox 6 (Apr. 8, 2020), <https://fox6now.com/2020/04/08/2-different-cities-milwaukee-had-5-polling-sites-during-covid-19-election-madison-had-60/>.

¹³ David D. Haynes, Wisconsin's election may have been 'ridiculous' but those who braved coronavirus to vote were anything but, Milwaukee Journal Sentinel, Apr 8, 2020, <https://www.jsonline.com/story/news/solutions/2020/04/08/wisconsin-election-ridiculous-voters-who-braved-coronavirus-lines-inspiring-vote-primary/2966298001/>

Milwaukee was far from alone. For example, “[t]here were also long lines in Green Bay, where the usual 31 polling sites were consolidated to just two.”¹⁴ Some Green Bay voters waited in line for four hours, and some were unable to cast a vote until after midnight.¹⁵ Ultimately, a contact-tracing analysis conducted by the Wisconsin Department of Health found that 52 persons who voted under these conditions tested positive for COVID-19, and economists have found a “statistically and economically significant association between in-person voting and the spread of COVID-19 two to three weeks after the election.”¹⁶

These challenges will likely persist in the fall. Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Disease, recently stated that he “can’t guarantee” that in-person voting will be safe in November 2020.¹⁷ He has described the presence of COVID-19 in the fall as “inevitable,”¹⁸ stating: “We will have coronavirus in the fall. . . . I am convinced of that because of the degree of transmissibility that it has, the global nature. What happens with that will depend on how we’re able to contain it when it occurs.”¹⁹ Similarly, CDC Director Dr. Robert Redfield, has warned of a second surge of COVID-19 in the fall, possibly even more difficult to manage with increased risks to vulnerable populations.²⁰

¹⁴ Jason Calvi, ‘2 Different Cities:’ Milwaukee Had 5 Polling Sites During COVID-19 Election; Madison Had 60+, Fox 6 (Apr. 8, 2020), <https://fox6now.com/2020/04/08/2-different-cities-milwaukee-had-5-polling-sites-during-covid-19-election-madison-had-60/>.

¹⁵ *Id.*

¹⁶ 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 (May 2020), <https://www.nber.org/papers/w27187>.

¹⁷ Jason Silverstein, *Fauci Says He “Can’t Guarantee” In-Person Voting in November Will Be Safe*, CBS NEWS (Apr. 13, 2020), <https://www.cbsnews.com/news/coronavirus-fauci-says-he-cant-guarantee-in-person-voting-in-november-will-be-safe/>.

¹⁸ Christina Maxouris, *US Could Be in for ‘a Bad Fall and a Bad Winter’ If It’s Unprepared for a Second Wave of Coronavirus, Fauci Warns*, CNN (Apr. 29, 2020), <https://www.cnn.com/2020/04/29/health/us-coronavirus-wednesday/index.html>.

¹⁹ Savannah Behrmann, ‘Convinced’: Fauci Says There Will Be Coronavirus in the Fall After Trump Says ‘It May Not Come Back’, USA Today (Apr. 23, 2020), <https://www.usatoday.com/story/news/politics/2020/04/22/coronavirus-dr-anthony-fauci-says-i-am-convinced-second-wave/3009131001/>.

²⁰ Denise Grady, *The Fear of Coronavirus and Flu Colliding in the Fall*, N.Y. Times (Apr. 22, 2020), <https://www.nytimes.com/2020/04/22/health/coronavirus-flu-season-deaths.html>; Olga Khazan, *The Scariest Pandemic Timeline*, The Atlantic (Apr. 24, 2020), <https://www.theatlantic.com/health/archive/2020/04/could-there-be-another-coronavirus-quarantine/610630/>; Lena H. Sun, *CDC Director Warns Second Wave of Coronavirus is Likely to be Even More Devastating*, Wash. Post (Apr. 21, 2020), <https://www.washingtonpost.com/health/2020/04/21/coronavirus-secondwave-cdc-director/>.

The CDC therefore instructs that we should encourage as many voters as possible “to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations,” such as mail-in methods of voting.²¹ The health risks of voting by mail are minimal. There is no evidence that COVID-19 can be spread through voting by mail, and the U.S. Postal Service has implemented safeguards to protect against the pandemic by “eliminat[ing] the requirement that customers sign [its] Mobile Delivery Devices for delivery” and requiring the customer “to step back a safe distance or close the screen door” when accepting delivery.²²

Accordingly, more than 800 public health experts have called “on our leaders to prepare for a Presidential election by mail, in which ballots are sent to all registered voters, to allow them to vote from home and ensure their health and safety” in November 2020—because “Americans should never again be asked to choose between performing one of the most hallowed obligations and privileges of citizenship—voting for our representatives at the local, state and federal levels—and our health.”²³

B. Current Laws on Eligibility to Vote by Mail

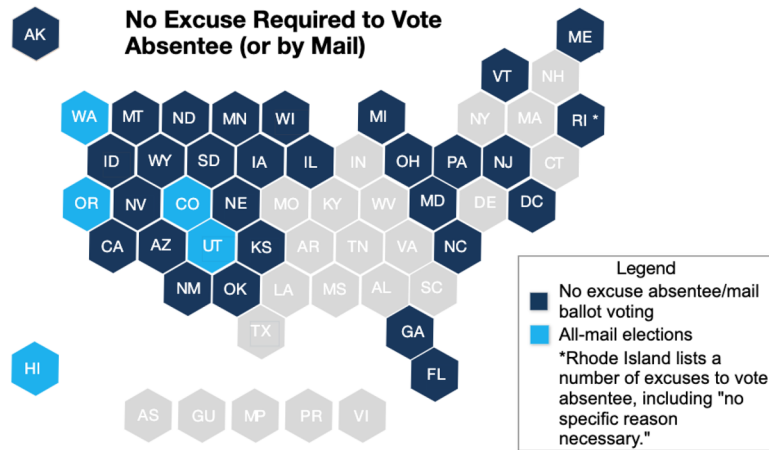
No-excuse absentee voting makes sense in ordinary circumstances, but it’s a no-brainer during the COVID-19 pandemic. Every American should be eligible to vote safely by mail during the pandemic.

²¹ Ctrs. for Disease Control & Prevention, *Recommendations for Election Polling Locations*, March 27, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

²² U.S. Postal Service, *USPS Statement on Coronavirus* (Apr. 2, 2020), <https://about.usps.com/newsroom/statements/usps-statement-on-coronavirus.htm> (citing guidance from World Health Organization, CDC, and Surgeon General).

²³ Sam Hananel, *RELEASE: More Than 800 Public Health Experts Urge Congress To Fund Vote by Mail in November*, The Hill (May 5, 2020), <https://www.americanprogress.org/press/release/2020/05/05/484590/release-800-public-health-experts-urge-congress-fund-vote-mail-november/>.

Fortunately the majority of states—33 states and the District of Columbia—currently offer all eligible voters the option of casting a ballot by mail without requiring a particular excuse:



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These 33 states are a broad and diverse group, including many of the states represented on this Subcommittee, such as Ohio, Pennsylvania, North Dakota, Maryland and California (Virginia will become the 34th state to offer no-excuse absentee voting in November²⁵).

These states are already seeing unprecedented levels of requests to vote absentee—for example, Representative Dean’s home state of Pennsylvania is seeing an *18-fold increase* in absentee ballot requests in Pennsylvania as compared to 2016.²⁶ States will need substantial federal support to surge additional resources for printing, mailing, and processing millions more mail-in ballots than they have received in any previous election.

²⁴ Nat’l Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options, Qualifying for an Absentee Ballot*, May 19, 2020, <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

²⁵ VA LEGIS 1149 (2020), 2020 Virginia Laws Ch. 1149 (H.B. 1).

²⁶ Tierney Sneed, “Four Charts That Show How Absentee Voting Is Skyrocketing In The Pandemic,” *Talking Points Memo*, May 27, 2020 (describing similar surges in other states), <https://talkingpointsmemo.com/news/absentee-voting-data-pennsylvania-new-mexico-indiana-dc>.

That leaves 17 states that, under normal circumstances, would require an excuse to vote by mail. Collectively, these states are home to more than 116 million people, hold 154 seats in the House of Representatives, and wield 188 votes in the Electoral College.²⁷

But there's some good news: of these 17 states, 12 have either 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. These states are a diverse group, and have chief elections officials from across the political spectrum. They include Alabama,²⁸ Arkansas,²⁹ Delaware,³⁰ Kentucky,³¹ New Hampshire,³² and Virginia³³—all of which have interpreted their absentee voting laws to permit all eligible voters to vote absentee under an "illness" or "disability"-related excuses.³⁴

The flexibility that these 12 states have shown in expanding eligibility to vote by mail during the primaries shows that it's not too late—where there is political will, states can make the adjustments necessary to protect every American's right to vote safely during the pandemic.

I note briefly that we at the ACLU have tried our best to do our part, playing a role in bringing about these changes. ACLU state affiliates have been advocating for these changes a number of these states. One of the states to waive its excuse requirement for the primary, South Carolina, did so³⁵ only after being subject to several lawsuits, including one filed by the ACLU in conjunction with the NAACP Legal Defense Fund.³⁶ And, as I explain below, Missouri appears poised to join this group, having recently passed a bill that, if signed into law, will permit all eligible voters to vote by mail in 2020.

²⁷ See Appendix C.

²⁸ Ala. Leg. Servs. Agency, Absentee Voting During State of Emergency, 17-11-3(e) (Mar. 18, 2020), <https://bit.ly/3cUhOqN>.

²⁹ Ark. Exec. Order No. 20-08 (Mar. 20, 2020), <https://bit.ly/2TheWwc>.

³⁰ Governor of Del., Exec. Dep't, *Sixth Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat* (Mar. 24, 2020), <https://bit.ly/3bKVfTM>.

³¹ Letter of Michael G. Adams, Sec'y of State, to Andy Beshear, Governor (Apr. 23, 2020), <https://bit.ly/3bFxI6D>.

³² Memorandum from the Sec'y of State and Att'y Gen. to New Hampshire Election Officials re: Elections Operations During the State of Emergency, 2 (Apr. 10, 2020), <https://bit.ly/2ZdZ8xV>.

³³ Va. Dep't of Elections, *Absentee Voting*, <https://bit.ly/3dU4YbW>.

³⁴ A complete list of these states is attached to the end of my testimony as Appendix B.

³⁵ Morgan Newell, *S.C.'s Absentee Ballot Expansion Bill Means Changes to Voting this Primary Season*, WBTV (May 13, 2020), <https://bit.ly/2yxuYe8>.

³⁶ See *Thomas v. Andino*, No. 3:20-CV-01552-JMC, 2020 WL 2617329, ECF No. 7-11 (D.S.C. April 28, 2020).

Not all of these 12 states have committed to making the same change for November; but we are hopeful that, having acknowledged that protecting public health and the right to vote required this change for the primary season, these states will make a similarly wise decision for the general election.

That leaves us with just 5 states that are currently refusing to let all voters cast their ballots by mail: **Louisiana, Mississippi, Missouri, Tennessee, and Texas.**

We are currently litigating in three of these states: Missouri, Tennessee, and Texas:

- The Missouri legislature, citing our lawsuit, has passed a bill that would permit all voters to vote by mail in 2020; it is awaiting the Governor's signature.³⁷
- In Tennessee, my colleagues will be in Chancery Court in Davidson County during this hearing on June 3, arguing that Tennessee's constitution protects the right to vote safely, which during the pandemic entails a right to vote by mail; or, in the alternative, that voters with preexisting conditions like asthma and diabetes—which wouldn't normally prevent them from traveling in person to a polling place, but which render them at risk of severe health complications due to COVID-19—must be given the option of voting by mail.³⁸
- The Texas Supreme Court has ruled that lack of immunity to COVID-19 does not constitute a basis for voting by mail in Texas, but has left open the question as to precisely what preexisting conditions might, under the circumstances of the pandemic, count as an illness that would qualify a voter to vote by mail.³⁹

There is no reason that voters in these states—including the constituents of Chairman Cohen, Ranking Member Johnson, and Representatives Gohmert, Garcia, Escobar, and Jackson Lee—should not have the same right to vote safely by mail during the pandemic currently enjoyed by everyone else in this country. Put another way, the constituents of Representatives Raskin, Jordan, Reschenthaler, Cline, Armstrong, Swalwell, Scanlon, and Dean will all have the right to vote safely by mail this November—and the constituents of the other members of this Committee should that right, too.

In any event, that fact that 45 states are permitting all eligible voters to vote by mail in elections this spring and summer tells you that this is not a partisan issue. Some people—including the President and the Attorney General—have recently made false or baseless remarks about the purported election integrity risks of voting by mail, which appear designed to

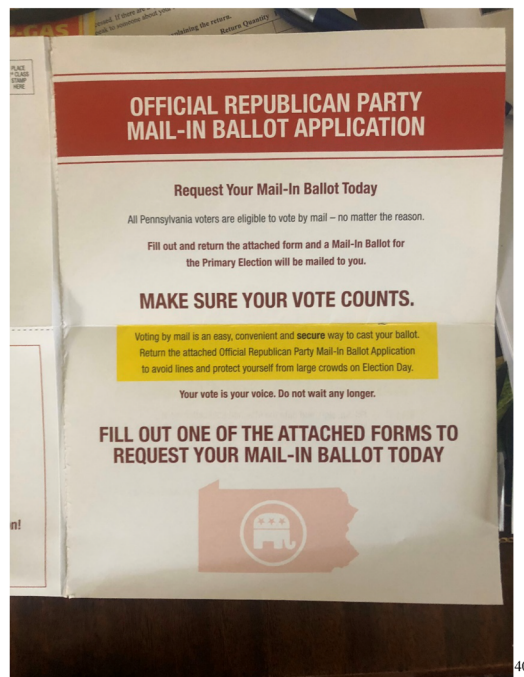
³⁷ Kurt Erickson & Tynan, *On Final Day, Missouri lawmakers approve new vote-by-mail options*, ST. LOUIS POST-DISPATCH (May 15, 2020), <https://bit.ly/2ZE62Na>.

³⁸ *Lay v. Goins*, Docket No. 20-453-IV(III) (Tenn. Chancery Court, Twentieth Judicial District, Davidson County).

³⁹ *In re State of Texas*, No. 20-0394 (Tex. Sup. Ct. May 27, 2020).

undermine confidence in American elections. I will not repeat them here. And I know that several of my co-panelists will be addressing the many security measures that states use to ensure the integrity of absentee ballots, so I will not discuss them in detail here.

But I will note that many states and elections officials across the political spectrum have, for decades, expressed broad support for widespread access to voting by mail. There is perhaps no better way to address concerns about cybersecurity and foreign interference, because you can't hack a paper ballot. We therefore agree with the Republican National Committee, which recently sent a mailer to its Pennsylvania members celebrating the fact that "[a]ll Pennsylvania voters are eligible to vote by mail," encouraging its members to do so, and stating that "[v]oting by mail is an easy, convenient, and secure way to cast your ballot":



⁴⁰ Peter Hamby, @PeterHamby, Twitter, April 10, 2020, <https://twitter.com/PeterHamby/status/1248743044678971392>.

It is the height of hypocrisy and bad faith that a President who votes by mail,⁴¹ and is the nominee of a party that describes voting by mail as “convenient” and “secure,” would seek to undermine the American public’s confidence in no-excuse absentee balloting, which a majority of states use today.

In sum, absentee voting first became widespread as a necessary solution to ensure that Americans deployed during the Civil War could still vote during the presidential election of 1864. It is perhaps fitting, as we face our biggest elections administration challenge since that election, that the solution to our current crisis is ultimately same: permitting Americans who are unable to travel in-person to the polls due to a national emergency, to vote by mail.

II. Witness Signature / Notary Requirements

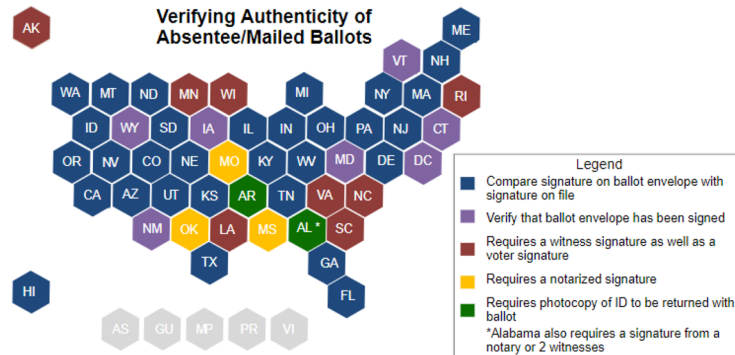
A significant portion of the ACLU’s voting rights work during the COVID-19 pandemic has gone beyond just expanding eligibility to vote by mail; it has also entailed removing unnecessary barriers that unduly burden Americans seeking to vote by mail during the pandemic. These barriers include pre-Election Day deadlines for returning absentee ballots; bans on assistance with the conveyance of absentee ballots; the failure to provide voters with prepaid postage for their ballots; and, in particular, the requirement that absentee voters obtain a witness signature on, or notarization of, their ballots. My testimony below concentrates on this latter type of barrier

A. Current laws on Witness Signature Requirements

States use a variety of methods for verifying absentee or mailed ballots, including scannable bar codes on absentee ballots or envelopes; requiring personal identifying information like Social Security numbers; signature matching; and signatures by a witness or notary.

Ensuring the security of ballots cast by mail is critical. But some methods used by states are less useful—and more burdensome—than others. In particular, witness signature or notarization requirements are quite rare. Only 11 states require that an absentee/mailed ballot envelope be signed by witnesses or notarized:

⁴¹ Anthony Mann, “President Donald Trump voted for the first time in Palm Beach County (presumably for himself),” *South Florida Sun Sentinel*, April 1, 2020, “<https://www.sun-sentinel.com/news/politics/fl-ne-donald-trump-palm-beach-county-voter-20200401-zpl3jignmzflvfguteeahbjtbn-story.html>”



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While such witness signature requirements might be only modestly burdensome during ordinary times, they are quite problematic during the COVID-19 pandemic, as Dr. Arthur Reingold, a medical doctor and a public health expert in the area of infectious diseases and epidemiology who spent eight years at the CDC, and who is now the Division Head of Epidemiology and Biostatistics at the University of California, Berkeley, School of Public Health, testified in one of our cases. More than 34 million Americans—including more than 13 million people over 65 years and older—live alone.⁴³ As Dr. Reingold explained, for “individuals without another person able to witness in their household, the requirement that they have someone witness their absentee ballot,” a witness signature requirement “place[s] them at increased risk of exposure to and/or transmission of COVID-19.”⁴⁴ This is because another person coming “in close enough proximity to witness their ballot would place them at increased risk of infection,” and “would be particularly risky for those who are at a greater risk of complications and death from COVID-19.” And for public health purposes, “to prevent increasing the scope of the outbreak of COVID-19, we must assume that anyone could be infected and could infect another person.”

⁴² Nat’l Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options, Processing, Verifying and Counting Absentee Ballots, How do officials verify voted absentee ballots?*, May 19, 2020, <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#officials>.

⁴³ U.S. Census Bureau, 2010-2018 American Community Survey 1-Year Estimates: ACS Demographic and Housing Estimates: South Carolina (2018), https://data.census.gov/cedsci/table?q=single%20person%20households&g=0100000US&hidePreview=true&tid=ACSDP1Y2018.DP02&vintage=2018&layer=VT_2018_040_00_PY_D1&cid=DP02_0001E.

⁴⁴ Declaration of Arthur Reingold, ¶ 17. See *Thomas v. Andino*, No. 3:20-CV-01552-JMC, 2020 WL 2617329, ECF No. 7-11 (D.S.C. April 28, 2020).

The risks to public health posed by such requirements during the pandemic are wholly unjustified. Thirty-nine states—including several represented on this Subcommittee, such as Ohio, North Dakota, Texas, California, and Pennsylvania—maintain election integrity without witness requirements, and rely instead on comparing the voter’s signature on their ballot envelope with their registration signature on file with the state.

Even in the states that do have such a requirement, it amounts to little more than a bureaucratic hoop. In Virginia, for example, “the witness need not print their name or the date below their signature—in fact, the Commonwealth does not require that the witness be identified in any way whatsoever. What is more, the illegibility of the witness signature is not grounds for rejecting the ballot.”⁴⁵ The same is true in South Carolina, where the Executive Director of the State Election Commission recently explained in a letter to South Carolina Governor McMaster that “the witness signature offers no benefit to election officials as they have no ability to verify the witness signature.”⁴⁶ As one federal court put it, it is difficult to see how requiring “an illegible scrawl on an envelope” does anything to combat fraud.⁴⁷

B. ACLU Cases Challenging Witness Signature Requirements

The ACLU has brought litigation in 3 states challenging witness signature or notarization requirements: Virginia, South Carolina, and Missouri. Our work has already produced tangible results for voters and for public health:

- In Virginia, a federal district court approved a consent decree blocking the witness signature requirement for Virginia’s June 23 primary. The court found that the requirement “would only increase th[e] risk” of COVID-19 transmission, and was therefore “likely unconstitutional” during the pandemic.⁴⁸
- In South Carolina, we obtained a preliminary injunction blocking the state’s witness signature requirement for South Carolina’s June 9 primary. The Court ruled that we were “likely to prevail on [our] constitutional challenge to the Witness Requirement,” because it forced our clients and the voting public “to place their health at risk during the COVID-19 pandemic.”⁴⁹

⁴⁵ *League of Women Voters of Virginia v. Virginia State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 2158249, at *9 (W.D. Va. May 5, 2020).

⁴⁶ Letter from Marci Andino to Governor McMaster, dated March 30, 2020. *See Thomas v. Andino*, No. 3:20-CV-01552-JMC, 2020 WL 2617329, ECF No. 7-4 (D.S.C. April 28, 2020).

⁴⁷ *League of Women Voters of Virginia v. Virginia State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 2158249, at *9 (W.D. Va. May 5, 2020).

⁴⁸ *League of Women Voters of Virginia v. Virginia State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 2158249, at *10 (W.D. Va. May 5, 2020).

⁴⁹ *Thomas v. Andino*, No. 3:20-CV-01552-JMC, 2020 WL 2617329, at *21 (D.S.C. April 28, 2020).

- In Missouri, in response to our case, the legislature passed a bill eliminating Missouri's notary requirement for high-risk individuals for the 2020 elections cycle, but leaving the requirement in place for all other voters.⁵⁰ The Governor has yet to sign the bill. In the meantime, our litigation continues with a hearing in the Missouri Supreme Court set for June 15.

In addition to our cases, at least one other federal court has blocked a witness signature requirement—in Wisconsin for its April primary⁵¹—but that ruling was stayed by the U.S. Court of Appeals for the Seventh Circuit.⁵² That order had unfortunate consequences, as inadequate certification of ballots—which I understand to refer to absence of a witness signature—was the number one reason for absentee ballot rejection in Wisconsin's April primary, accounting for more than 14,000 lost votes.⁵³

III. The VoteSafe Act, H.R. 6807

Separate and apart from our litigation, the ACLU has voiced our support for legislative efforts that would protect the right of every American to vote safely in November, and provide critical resources to states facing the most difficult elections administration challenge in over a century.

In particular, we have endorsed the VoteSafe Act, H.R. 6807, introduced by Congressman Clyburn and Senator Harris. Specifically, the bill:

- Authorizes a total of \$5 billion to expand vote-by-mail and early voting and to improve the safety of in-person voting during the COVID-19 pandemic.
- Requires states to permit no-excuse mail-in absentee voting.
- Requires states to maintain an early voting period of at least 20 days.
- Provide grants for states to improve the safety, efficiency, and reliability of polling places.

⁵⁰ Kurt Erickson & Tynan, *On Final Day, Missouri lawmakers approve new vote-by-mail options*, ST. LOUIS POST-DISPATCH (May 15, 2020), <https://bit.ly/2ZE62Na>.

⁵¹ *Democratic Nat'l Comm. v. Bostelmann*, No. 20-CV-249-WMC, 2020 WL 1638374, at *20 (W.D. Wis. Apr. 2, 2020).

⁵² *Democratic Nat'l Comm. v. Bostelmann*, Case: 20-1538 (7th Cir., April 5, 2020), <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/7th%20Circuit%20Order%20on%20Stay%20-%207pm.pdf>.

⁵³ Wisconsin Elections Commission, *April 7, 2020 Absentee Voting Report at 30*, (May 15, 2020), https://elections.wi.gov/sites/elections.wi.gov/files/2020-05/May%2020%2C%202020.Final_.pdf.

- Permitted uses of funding include:
 - Funding to ensure that elections are accessible to individuals with disabilities.
 - Funding to ensure adequate protections for language minority voters.
 - Funding to ensure voting access for American Indian, Alaska Native, and rural voters.
 - Implementing and promoting curbside voting.
 - Implementing and meeting a maximum wait time standard or publishing current wait times for voters.
 - Allowing voters to make advance reservations at their polling places.
 - Providing for the training and recruitment of poll workers.
 - Improving access to voter registration.

As we explained in our letter urging co-sponsorship of the bill,⁵⁴ it is critical that Congress provide the electoral framework and funding necessary for state officials to address the unprecedented challenges facing voters, poll workers, and election administrators during the COVID-19 pandemic. The VoteSafe Act would ensure that Americans can participate in our democracy on a full and equal basis at the ballot box, without having to choose between casting their ballots and protecting their health.

The bill presents a reasonable, balanced approach that—in addition to providing minimum uniform federal standards for early in-person and absentee voting for the 2020 election, to ensure that people can vote safely during the pandemic—also gives states the flexibility to address the particular needs of their respective voting population by providing substantial federal funding.

Congress has rightfully authorized trillions of dollars in new spending to respond to the COVID-19 crisis. In this context, \$5 billion dollars to enable states to cope with a once-in-a-century challenge to elections administration amounts to little more than a rounding error. It is a small—but absolutely critical—price to pay to safeguard our democracy.

Conclusion

The COVID-19 pandemic presents us with an unprecedented threat to voting rights. But there are obvious and simple solutions that we can take now, to protect every American's right to vote while safeguarding public health.

⁵⁴ ACLU Letter to the House of Representatives Urging Cosponsorship of the VoteSafe Act, H.R. 6807, May 14, 2020, <https://www.aclu.org/letter/aclu-letter-house-representatives-urging-cosponsorship-votesafe-act-hr-6807>.

I thank you again for the opportunity to testify before you, and look forward to answering any questions that you have.

Appendix A - ACLU COVID-19-Related Voting Rights Litigation

The ACLU has filed or intervened in ten lawsuits to protect voting rights and absentee ballot access in response to the impact of COVID-19 on the voting process.

Eligibility to Vote By Mail

1. Thomas v. Andino – South Carolina (Absentee Voting and Witness Requirement)

Summary: The ACLU filed a federal lawsuit on April 22 challenging South Carolina’s requirements that (1) all absentee ballots have a third-party witness signature on the ballot envelope and (2) voters must have a valid excuse as defined by state law for voting by mail. State election officials rejected the view that self-isolation due to the COVID-19 pandemic qualifies as a valid excuse “because of injury or illness” under state law. The lawsuit seeks to block the state from enforcing the requirements, and to have the court issue guidance instructing local officials to count all otherwise valid absentee ballots that are missing a witness signature for the state’s upcoming elections.

Status: In response to our litigation, on May 13, the Governor [signed legislation](#) ensuring all eligible voters could vote by mail in the June primary due to the COVID-19 pandemic. On May 25, the federal district court granted the ACLU’s request for a preliminary injunction and [blocked](#) the witness signature requirement for ballots cast in the June primary in response to the ACLU’s lawsuit.

2. Missouri NAACP v. Missouri – Missouri (Absentee Voting and Notary Requirement)

Summary: On April 17, the ACLU [filed a lawsuit on behalf](#) of the Missouri NAACP to ensure all eligible voters have access to absentee mail-in voting in Missouri. Due to the COVID-19 pandemic, many voters may choose to self-isolate. Missouri requires an excuse for voters to access mail-in absentee ballots. The lawsuit seeks a ruling from the court that voters confining themselves to avoid contracting COVID-19 are eligible to vote under the state’s “confinement due to illness” excuse. The lawsuit charges that refusing no-excuse mail-in absentee voting, or alternatively, refusing absentee ballots to those self-confining to avoid exposure to COVID-19, is a violation of the right to vote under the Missouri Constitution.

Status: In response to our litigation, on May 15, the Missouri legislature [passed a bill](#) permitting all Missouri voters to vote by mail during the 2020 elections, and eliminating the notary requirement for certain voters at high risk of severe COVID-19 health complications, but leaving the notary requirement in place for other voters. The bill is awaiting the Governor’s signature. On May 18, the trial court dismissed this case. *See Missouri State Conference of the NAACP v. Missouri*, No. 20AC-CC00169, Order (Cole County Circuit Court, May 18, 2020). The case is now pending in the Missouri Supreme Court.

3. Texas Democratic Party v. Debeauvoir – Texas (Absentee Voting)

Summary: On April 1 the ACLU joined a lawsuit seeking to declare that due to the COVID-19 crisis, all registered voters are eligible to receive a mail-in ballot. The lawsuit argues that all registered voters should be eligible to vote-by-mail on the basis of “disability” in the Texas Election Code’s vote-by-mail provision. The suit also charges that the court should order the state to accept and tabulate all mail-in ballots received by eligible voters under this category.

Status: On April 15, a Texas judge granted a preliminary injunction effectively permitting all registered voters to vote by mail-in ballot as a result of the COVID-19 public health crisis. On May 14, an appeals court ruled that the lower court order must remain in effect while appeals proceed. But on May 15, the Texas Supreme Court stayed that order. On May 27, the Texas Supreme Court ruled in related litigation that lack of immunity to COVID-19 does not constitute a basis for voting by mail in Texas. The ruling leaves unclear what, if any preexisting conditions, might qualify a voter to vote by mail during the pandemic.

4. [Lav v. Goins](#) – Tennessee (Absentee Voting)

Summary: On May 15, the ACLU filed a lawsuit in state court seeking to declare that Tennessee’s constitution guarantees a right to vote safely by mail during the COVID-19 crisis; or alternatively, that voters with preexisting medical conditions rendering them at risk of severe health complications from COVID-19 are entitled to vote by mail under the state’s existing illness excuse for absentee voting.

Status: A hearing on the plaintiffs’ motion for a temporary injunction is scheduled for June 3.

Witness Signature Requirements

5. [League of Women Voters of Virginia v. Virginia State Board of Elections](#)⁵⁵ – Virginia Witness Requirement

Summary: On April 17, 2020, the ACLU filed a federal lawsuit challenging the state’s witness requirement for mail-in absentee voting. Under Virginia law, any voter submitting an absentee ballot must open the envelope in front of another person, fill out the ballot, then have the third-person sign the outside of the ballot envelope before mailing it back. The lawsuit asks the court to block the witness requirement during the COVID-19 crisis and issue guidance instructing election officials to count otherwise valid ballots missing a witness signature. Proceedings will continue for the November general election.

⁵⁵ *League of Women Voters of Virginia v. Virginia State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 2158249, at *10 (W.D. Va. May 5, 2020).

Status: On May 5, the court [approved a consent decree](#), pursuant to which the State agreed to remove the witness requirement for voters during the June primary. Proceedings will continue with respect to the November general election.

Other Barriers to Voting By Mail

6. [League of Women Voters of Michigan v. Benson](#) – Michigan Absentee Deadline

Summary: The ACLU filed a lawsuit in Michigan appeals court to challenge the state's deadline for receipt of absentee mail-in ballots. The state requires all absentee ballots to be received by Election Day in order to be counted. The lawsuit charges that this requirement violates the Michigan constitution and seeks a court declaration that election officials should accept and tabulate all otherwise valid ballots postmarked by Election Day.

Status: The ACLU filed a complaint for mandamus in the Michigan Court of Appeals on May 22, 2020.

7. [Collins v. Adams](#) – Kentucky Voter ID

Summary: On May 27 the ACLU filed a federal lawsuit challenging Kentucky's photo ID law during the pandemic for voters unable to obtain photo ID because DMV offices are closed or inaccessible, and who lack means to submit required photocopies of their IDs with their absentee ballots. The case also seeks to extend Kentucky's current no-excuse absentee voting rules from its primary to the general election.

Status: The complaint was filed on May 27 in the U.S. District Court for the Western District of Kentucky.

8. [Western Native Voice v. Stapleton](#) – Montana Prohibition on Ballot Collection

Summary: On March 12, 2020, the ACLU and NARF brought suit in Montana state court on behalf of Western Native Voice (WNV) challenging a Montana statute restricting Native Americans' access to the ballot. A majority of Montana's citizens vote by mail, and the state's rural tribal communities rely on get-out-the-vote (GOTV) organizers like WNV who collect and transport ballots. Montana's Ballot Interference Prevention Act (BIPA) imposed severe restrictions on GOTV organizers which would deny ballot access to many Native American voters.

Status: On May 20, the Montana District Court [issued a temporary restraining order](#) blocking the law pending the outcome of a hearing scheduled for May 29. The primary is on June 2.

9. **[Black Votes Matter v. Raffensperger](#)** – Georgia Failure to Provide Postage

Summary: On April 8, the ACLU [filed a complaint](#) on behalf of Black Votes Matter in federal district court challenging the constitutionality of a Georgia law requiring citizens to buy postage stamps when submitting mail-in absentee ballots and absentee applications. The COVID-19 pandemic makes voting unrealistic for voters, meaning most will have to submit mail-in absentee ballots if they wish to vote. Forcing citizens to pay for postage to mail in their ballots means they must pay to participate in the democratic process. The lawsuit charges that this is equivalent to a poll tax and is thus unconstitutional. The lawsuit is seeking a preliminary injunction to force Georgia to send all voters prepaid returnable envelopes for mail-in absentee ballots and absentee ballot applications.

Status: On April 30, the court denied Plaintiffs' motion for a preliminary injunction regarding the June primary election. *Black Voters Matter Fund et al v. Raffensperger*, 20-cv-01489-AT, Doc. No. 83 (N.D. Ga. April 30, 2020). The case remains ongoing.

Ballot Initiatives

10. **[Thompson v. DeWine](#)** – Ohio Ballot Initiative Signature Requirements

Summary: On April 30 the ACLU filed for emergency approval to intervene in Ohio federal district court to ensure access to the ballot in November. The ACLU is representing the Ohioans for Secure and Fair Elections (OSFE) who seek to amend the Ohio Constitution. Due to the COVID-19 pandemic, OSFE seeks to extend the deadlines and ease restrictions applicable to petitions for proposed amendments to the Ohio Constitution.

Status: On May 21 the district court ordered the Ohio Secretary of State to accept electronic signatures and extend the deadline. On May 26, the United States Court of Appeals for the Sixth Circuit [stayed the district court order](#).

**Appendix B – States that Have Altered Eligibility Rules for Voting By Mail
Due to the COVID-19 Pandemic**

Twelve states have made the switch to no-excuse mail-in voting in light of the pandemic:

<u>State</u>	<u>Description</u>
Alabama	Alabama has allowed “any qualified voter who determines it is impossible or unreasonable to vote at their voting place” as a result of COVID-19 to vote by mail in primary runoff elections being held in July by reason that “a physical illness or infirmity [] prevents [the voter’s] attendance at the polls.” ⁵⁶
Arkansas	Arkansas has determined that Ark. Code Ann. §§ 7-5-402, which only allows absentee voting for people who are “absent or unable to attend an election due to illness or physical disability,” should be read “so that all eligible qualified electors currently entitled to vote in the March 31, 2020 election may request the appropriate absentee ballots from their county of residence.”
Connecticut	The Governor of Connecticut has issued an executive order modifying Conn. Gen. Stat. Ann. § 9-135 to allow any eligible voter to vote by absentee ballot in the August 11, 2020 primary if “he or she is unable to appear at his or her polling place . . . because of the sickness of COVID-19.” ⁵⁷

⁵⁶ Governor of Arkansas, Exec. Order No. 20-08, (Mar. 20, 2020), <https://bit.ly/2TheWwc>.

⁵⁷ Conn. Exec. Order No. 7QQ (May 20, 2020) <https://bit.ly/2LWF0Zq>.

Delaware	A Delaware executive order provides that for upcoming primary and special elections, “the qualification of ‘sick or physically disabled’ [in Delaware vote-by-mail provisions] shall apply to and include any such voter who is asymptomatic of COVID-19 . . . and who herself or himself freely chooses to use such qualification to vote by absentee ballot.” ⁵⁸
Indiana	The Indiana Election Commission issued an order stating that “[a]ll registered and qualified voters are afforded the opportunity to vote no-excuse absentee by mail.” ⁵⁹
Kentucky	The Governor of Kentucky issued an executive order stating that “[a]ll Kentuckians should utilize absentee voting by mail for the June 23, 2020 primary if they are able to do so.” ⁶⁰
Massachusetts	Massachusetts law clarifying that “any person taking precaution related to COVID-19 in response to a declared state of emergency or from guidance from a medical professional, local or state health official, or any civil authority shall be deemed to be unable by reason of physical disability to cast their vote in person,” which is one of the reasons set forth in the state constitution that permits a Massachusetts voter to vote by mail. ⁶¹

⁵⁸ Governor of Delaware, Exec. Dep’t, *Sixth Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat* (Mar. 24, 2020), <https://bit.ly/3bKVfTM>.

⁵⁹ Ind. Elec. Comm’n. Order No. 2020-37, *Concerning Emergency Provisions Affecting the 2020 Indiana Primary Election*, March 25, 2020, <https://bit.ly/2yznaJ1>; Chris Sikich, *Indiana Election Officials have message for Hoosiers: Please, Please, Please Vote by Mail*, INDYSTAR, (May 15, 2020 7:44 P.M.) <https://bit.ly/2Abpbv8>.

⁶⁰ Ky. Exec. Order 296, (April 24, 2020), <https://bit.ly/3d3jfDj>.

⁶¹ An Act Granting Authority to Postpone 2020 Municipal Elections in the Commonwealth and Increase Voting Option in Response to the Declaration of Emergency to Respond to COVID-19, ch. 45 (2020), <https://bit.ly/2LFSZTc>.

New Hampshire	New Hampshire has interpreted its “physical disability” provision to “appl[y] equally to voters who are experiencing symptoms of COVID-19 . . . and those who are self-quarantining as a preventative measure.” ⁶²
New York	The Governor of New York has issued an executive order stating that every eligible voter will receive an application for an absentee ballot with postage paid to return the application. ⁶³
South Carolina	The South Carolina General Assembly passed a bill, which was signed by the Governor and which allows any voter to cite the state of emergency resulting from the COVID-19 pandemic as a recognized reason to request an absentee ballot. ⁶⁴
Virginia	The Virginia Department of Elections issued a statement clarifying that “[v]oters may choose reason ‘2A My disability or illness’” to vote absentee in upcoming elections due to COVID-19. ⁶⁵

⁶² Memorandum from the Sec’y of State and Att’y General to New Hampshire Election Officials re: Elections Operations During the State of Emergency 2 (Apr. 10, 2020), <https://bit.ly/2ZdZ8xV>.

⁶³ N.Y. Exec. Order No. 202-23 (April 24, 2020) <https://on.ny.gov/3ekb0mj>.

⁶⁴ Morgan Newell, *S.C.’s Absentee Ballot Expansion Bill Means Changes to Voting this Primary Season*, WBTV (May 13, 2020), <https://bit.ly/2yxuYe8>.

⁶⁵ Va. Dep’t of Elections, <https://bit.ly/3dU4YbW> (last visited May 18, 2020). In addition to this administrative clarification that was triggered by the ongoing pandemic, the Virginia General Assembly amended Virginia’s election laws to permanently allow for no-excuse absentee voting starting with the November 2020 general election. VA LEGIS 1149 (2020), 2020 Virginia Laws Ch. 1149 (H.B. 1).

<p style="text-align: center;">West Virginia</p>	<p>West Virginia now permits all registered voters to vote absentee in forthcoming elections due to “[i]llness, injury or other medical reason which keeps [the voter] confined,” defining “other medical reason” as “any threat to a person’s health posed by an epidemic, pandemic, outbreak, disease, virus, or other emergency, which creates potential harm to the public interest, peace, health, safety, or welfare of citizens or voters.”⁶⁶</p> <p>West Virginia construes “confined” as being “restricted to a specific location for reasons beyond that person’s control, including a recommendation by state or federal authorities for the person to self-quarantine, avoid public places or close contact with other persons.”⁶⁷</p>
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Additionally, the Missouri legislature has recently approved a new vote-by-mail option, pending the Governor’s signature.⁶⁸

⁶⁶ W. Va. Code R. §§ 153-53-2–153-53-3.

⁶⁷ W. Va. Code R. § 153-53-2.

⁶⁸ Kurt Erickson & Tynan, *On Final Day, Missouri lawmakers approve new vote-by-mail options*, ST. LOUIS POST-DISPATCH (May 15, 2020), <https://bit.ly/2ZE62Na>.

Appendix C – Population Size of 17 States that Do Not Have Statutes Currently Permitting All Eligible Voters to Vote By Mail

State	Population ¹	Number of Representatives	Electoral Votes
Alabama	4,903,185	7	9
Arkansas	3,017,825	4	6
Connecticut	3,565,287	5	7
Delaware	973,764	1	3
Indiana	6,732,219	9	11
Kentucky	4,467,673	6	8
Louisiana	4,648,794	6	8
Massachusetts	6,949,503	9	11
Mississippi	2,976,149	4	6
Missouri	6,137,428	8	10
New Hampshire	1,359,711	2	4
New York	19,453,561	27	29
South Carolina	5,148,714	7	9
Tennessee	6,833,174	9	11
Texas	28,995,881	36	38
Virginia	8,535,519	11	13
West Virginia	1,792,147	3	5
TOTAL	116,490,534	154	188

Mr. COHEN. Thank you, Mr. Ho.

Barbara Arnwine is our next witness. She is president and founder of the Transformative Justice Coalition. She has previously worked on matters including the passage of the landmark Civil Rights Act of 1991 and the 2006 reauthorization of provisions to the Voting Rights Act.

Currently, she also serves as co-chair and facilitator of the National Commission for Voter Justice, the Millennial Votes Matter Convening, and the Voting Rights Alliance. She was the head of the Lawyers' Committee for Civil Rights Under Law from February 1989 to June of 2015, and she holds the honorific title of president emeritus.

She has taught at Columbia University School of Law. Ms. Arnwine holds degrees from Duke School of Law and Scripps College.

Ms. Arnwine, you are recognized for 5 minutes. Thank you.

STATEMENT OF BARBARA ARNWINE

Ms. ARNWINE. Yes. Thank you so much, Chairman Cohen and Ranking Member Johnson and all the members of the subcommittee. I just want to talk and add and supplement what you have heard already.

Virus voter suppression is our new reality. I have been writing about voter suppression, the 61 forms of voter suppression—you can find it at votingrightsalliance.org—laying out what has been confronting our country since 2011 in this modern era.

But now, because of COVID-19, we are seeing an era of virus voter suppression. In Texas, we have 16.2 million voters totally confused about can they, in fact, vote if they are afraid of COVID or, like in the State of Missouri, they are in a hospice or if they are in a nursing home or if they have comorbidities. And the courts have been [inaudible]. And Ken Paxton, the Texas AG, has been threatening to, in fact, raise criminal penalties against voting rights groups.

We also know that another thing we have not talked about yet is that in the national press there have been articles reporting on threats by bad actors to actually place 50,000 vigilantes, so-called voter challengers, at polls, talking about they are going to recruit and facilitate the participation of voter challengers who are former military and former and off-duty police officers, and we know that the targets of these actions, as we have seen in the past, are polls where there are voters of color. I have had to stop such programs in Louisville, Harrisburg, Pennsylvania, and other places.

I also wanted to be point out that, as Myrna Pérez pointed out, that we need to really address right now in massive voter registration campaigns, including drive-up voter registration, which has been used now by some people and is having some great success. We need to institute massive voter outreach and voter education.

And we did not talk about one of the big problems that we had in 2016 that led to some of the decrease in African American voter participation, and that is the problem of disinformation and foreign interference. And we know that that is still a problem and the big techs have not done enough to address that problem, especially

Facebook. So we need to create massive rapid response systems to combat voter disinformation.

Another thing that hasn't been mentioned is that of the 214 million-plus registered voters, some 8.7 percent are on what is called inactive lists. If you are on an inactive list in many of these States, you do not receive a mail-in ballot. You will not receive an application. You have got to go through a process to clean up whatever the issue is. And we believe there should be aggressive outreach to the 18 million people in our country who sit on inactive lists.

We also believe that there are—as we know, there are over 18 million people who have been purged over the last several years who have no clue that they have been purged from the voter rolls. They also deserve active outreach.

These are the important things. In the voter options, of course, vote by mail is only one option, and it really should be viewed as only one option, because vote by mail has several impediments for people of color communities. And I am not going to get into those. Those are laid out in my testimony about what we could do to make sure that those are not barriers.

But we have also have got to have, in addition to expanded early voting, we need drive-up voting. We have found out—one thing nobody talks about is that in the States that have modeled vote by mail, they have——

Mr. COHEN. You are coming up on the 5 minutes. Wrap up.

Ms. ARNWINE. And that actually concludes my testimony. Thank you so much, Mr. Cohen.

[The statement of Ms. Arnwine follows:]

Hearing: "Protecting the Right to Vote During the COVID-19 Pandemic"

Barbara Arnwine

President and Founder, Transformative Justice Coalition

6-1-2020

**Written testimony of Barbara R. Arnwine, President & Founder,
Transformative Justice Coalition
before the
U.S. House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Civil Liberties
“Protecting the Right to Vote During the COVID-19 Pandemic”**

Chairman Cohen, Ranking Member Johnson, Members of the Subcommittee, Thank you for the opportunity to testify today on this important topic of “Protecting the Right to Vote During the COVID-19 Pandemic.”

My name is Barbara R. Arnwine and I am the Founder and President of the Transformative Justice Coalition (TJC), a national non-profit organization devoted to racial, gender and economic justice, which commenced operations in 2015. I am also the immediate Past President and Executive Director of the Lawyers’ Committee for Civil Rights Under Law where I proudly served for 26 years.

In addition to serving as President of the Transformative Justice Coalition, I also serve as the convener for the Voting Rights Alliance an organization of 100 plus voting rights civil rights Civic engagement, and community organizations. In addition, I serve as one of the four co-chairs of the National Commission for Voter Justice which was founded in January 2018 through the vision of Reverend Jesse Louis Jackson Sr.

TJC, entered 2020 cognizant of the urgent need for the protection of our Democracy from the insidious threat of the modern era of voter suppression which had become manifest in our nation since January, 2011. In April, 2011, I created the Map of Shame which was the first national tool to expose and educate the American public about the rise of contemporary voter suppression in the states. Since, I released the Map of Shame, there has been erected a formidable and substantial regime of disenfranchising barriers to the ballot box and to the ability to have votes counted for millions of eligible but vulnerable voters. And early this year, TJC and the Voting Rights Alliance republished an updated version of my new document entitled “61 Forms of Voter Suppression.”

The COVID-19 Pandemic has significantly altered our voting rights plans for 2020 and ushered in a new era of “virus voter suppression.” Sadly, some states and private actors are exploiting the deadly COVID-19 to disenfranchise many of our nation’s most vulnerable voters. Every disadvantage attributable to ingrained American racism has been manifested and exacerbated in this pandemic era. This is particularly true in the arena of voting rights.

TJC is operating a massive 2020 coalitional voter education, voter registration support, PSA and social media outreach, organizing and training campaign under the rubric of “Our March to the Ballot Box.” Over 100 organizations from 28 states participate in our Voter Justice Network.

In the remaining months to the November 3rd elections, there are several imperative challenges confronting voters throughout the United States:

1. Due to covid-19 shutdowns, voter registration is down significantly across the United States, over 70-90% in many states.
2. Some states are actively exploiting COVID-19 to increase voter suppression. Indeed, we are in an era of "virus voter suppression."
3. Well intentioned rampant support for vote-by-mail overlooks its negative impacts on African American, Latino, Native American, and Asian voters, and voters with disabilities.
4. Voters, especially African American, Latino and native American voters, fear for their personal safety and health if they vote in person and are confronted by long lines or infected at voting polls.
5. There is massive voter confusion leading to massive voter disenfranchisement, as election dates have been changed, polling places closed, and serious bad mishandling of vote-by-mail by election boards and ballot vendors.
6. In "no excuse" absentee balloting states, although many states have correctly sought to expand voting opportunities, others have refused to do so, while holding on to restrictive procedures such as witness requirements and notarization requirements.
7. Bad actors are threatening to place 50,000 vigilantes, so-called voter challengers at the polls of voters of color.
8. Not enough has been done to prevent foreign and domestic disinformation campaigns which target African American voters to discourage their participation in the voting process or seek to brighten racial tensions and discord.
9. The COVID-19 pandemic has now intersected and been compounded by the other pandemic of police killings, hate crimes, and white vigilantism. During massive national protests, how are voters able to vote?

We urge Congress, states, and local governments to embrace the following Voter Justice Recommendations:

VOTER JUSTICE RECOMMENDATIONS:

1. Ensure every eligible voter is able to cast a ballot and have it counted
2. Protect most vulnerable voters
3. Invest in new innovative COVID-19 Voter Registration campaigns, including drive up voter registration.
4. Institute Massive Voter Outreach and Voter Education Programs
5. Educate, Register, Encourage, and Mobilize voters
6. Invest in Civic engagement by non-partisan, non-profit organization
7. Oppose voter suppression and voter intimidation
8. Eliminate barriers to voting, especially COVID-19 virus voter suppression
9. Create Rapid Response Systems to combat voter disinformation campaigns
10. Prevent a recurrence of 2016's decrease of Black ballots counted, blocking of Native American and student voters, & flattening of Latino voter participation
11. Congress pass legislation with funding and guidelines to Ensure election security
12. Restore the *Voting Rights Act*

13. Inspire youth leadership and involvement in the political process.

MOST CRITICAL RECOMMENDATION: CONGRESS AND THE STATES ADOPT VOTER OPTIONS AS FOLLOWS:

1. Vote By Mail= No Excuse, No Barriers Absentee Voting:

- No application process Preferred
- No witnesses or notarization requirements
- No exact signature match requirements
- Applications mailed directly to all voters
- Ballots mailed directly to all voters
- Return envelopes with pre-paid postage
- Postmarked by election day
- Aggressive outreach to all voters on inactive list
- Outreach to purged voters
- Strong outreach and voter education support for all voters: both digital and nondigital is essential
- No requirement for mail in of a copy of ID
- Must provide for forwardable ballots

2. Expand Early Voting

- Need at least 3 weeks of early voting including Sundays
- In some states, if given the opportunity to early vote, over 50% of Black people will vote early!

3. Drive Up Voting

- Curbside voting
- Drop boxes
- Ballot collection outside or at polling sites

4. Safe On-site Polling Places

- Adequate number of polling places (currently, there are too many reductions)
- PPE for all poll workers & voters

- Actively recruit younger poll workers
- Active disinfecting of polling sites
- Use paper ballots & let voters keep pens
- Regularly disinfect all voting equipment
- Provide free transportation to polling sites

CONCLUSION

In conclusion, despite the valiant efforts of lawyers, organizations and individuals to fight against this covid-19 era virus voter suppression there, is no substitute for aggressive congressional action to protect the rights of voters now under attack. Only Congress can formulate and adopt appropriate legislation which adequately response to the challenge challenges of this era.

there is nothing more critical to our democracy than the right of every citizen the cast of ballad and have it counted. The COVID-19 pandemic interposes new but sumountable obstacles. If the recommendations that have been put forth or adopted there is a substantial chance that most voters right to vote will be protected.

Thank you again for this opportunity to testify and I look forward to answering your questions.

Mr. COHEN. You are welcome, Ms. Arnwine. Thank you for appearing before the committee and for your work.

Our final witness is Michelle Bishop. Ms. Bishop is the disability advocacy specialist for voting rights at the National Disability Rights Network, where she is responsible for coordinating voting rights initiatives in every U.S. State, district and territory, as well as providing training and technical assistance to the nationwide network regarding voting rights and access for voters with disabilities under the Help America Vote Act.

Ms. Bishop received her master of social work and social economic development from Brown School of Washington U in St. Louis and a bachelor of arts in sociology and English literature from the State University of New York at Geneseo.

Ms. Bishop, you are now recognized for 5 minutes.

STATEMENT OF MICHELLE BISHOP

Ms. BISHOP. Thank you for the opportunity to testify today representing the National Disability Rights Network, or NDRN, which is a nonprofit membership organization for the federally mandated Protection and Advocacy, or P&A, network.

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.

Reducing in-person turnout in 2020 is, unfortunately, necessary to enable in-person voters to properly social distance while voting and allow poll workers to sanitize between voters.

Therefore, now is the time to relax deadlines for requests in return of mail ballots. Now is the time to eliminate barriers like requirements for doctor notes, notaries, and witness signatures.

These extra hoops to jump through pose a health risk for voters with disabilities and particularly those that are immunosuppressed, who are under stay-at-home orders or are in quarantine, that must then break their self-isolation to access doctors, notaries, or witnesses simply to be able to vote.

Even with these measures in place, it should be noted that traditional vote-by-mail systems are not and have never been accessible to voters with disabilities. People who are blind or low vision, have print disabilities, limited literacy, limited manual dexterity, and other disabilities cannot privately and independently mark, verify, and cast a hand-marked paper ballot.

States that not have already done so must immediately implement some form of electronic ballot delivery or remote accessible ballot marking system that provides an electronic ballot to voters who choose to vote from home. These technologies are widely available and have been in use reliably for years in primarily vote-by-mail States and for military and overseas voters.

When vote-by-mail systems are not made accessible for voters with disabilities, we, in essence, ask people with disabilities, who are considered the most vulnerable under COVID-19, to be the only voters who take to the polls and assume the personal health

risk of in-person voting while their non-disabled peers have the privilege of voting from the safety of their homes.

That said, voting by mail is not and may never be a panacea. Many of the remote accessible vote-by-mail systems currently market ready or in use by voting jurisdictions across the Nation make vote by mail significantly more accessible, but not fully accessible. As a result, in-person voting locations must be available to the greatest extent possible and follow Centers for Disease Control and other federally recommended health guidelines for COVID-19 safety.

Early voting periods and hours for in-person voting must be extended for several weeks before election day to reduce congestion at the polls and allow for social distancing. The number of ballot marking devices or other accessible voting stations must also be significantly increased at every polling location, and voters should be allowed to vote curbside.

Even in States where curbside voting is not currently allowed, its use would ease accessibility and Federal compliance issues that will inevitably arise from the limited number of available polling places and unexpected relocation of polling places, as well as to allow voters at greater risk in regard to COVID-19 to limit their exposure.

Many Members of Congress have stepped up to propose legislation to help address these issues, including the HEROES Act and the VoteSafe Act. NDRN calls on Congress to work together to pass a bill that will address the safety issues raised around voting during this time as well as ensuring accessibility for people with disabilities.

Congress must also act now to pass the PAVA Program Inclusion Act and provide the territorial government and P&A of the Northern Mariana Islands, as well as the Native American Disability Law Center, with desperately needed HAVA funding to ensure access to the vote for Pacific Islanders and Native Americans with disabilities. Extending funding to the only two P&As excluded from the Protection and Advocacy for Voter Access program is a simple and no-cost legislative fix.

Finally, Congress and the U.S. Department of Justice play a critical role in ensuring that elections are fair, accurate, safe, and accessible. The delicate patchwork of Federal laws that protect the rights of voters with disabilities must be protected, restored, and enforced to their full capacity.

We call them Americans with disabilities because they are, first and foremost, Americans, and their civil rights, as well as the health of all voters and the health of our democracy, depend on it. Thank you.

[The statement of Ms. Bishop follows:]



**House Committee on the Judiciary - Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Protecting the Right to Vote During the COVID-19 Pandemic
Wednesday, June 3, 2020 at 11:00am**

**Protecting the Rights of Voters with Disabilities During the COVID-19 Pandemic
Michelle Bishop - Disability Advocacy Specialist for Voting Rights, National Disability Rights Network**

Chairperson Cohen, Vice Chair Raskin, and Ranking Member Johnson, thank you for the opportunity to testify today regarding the voting rights of people with disabilities during the COVID-19 global pandemic.

National Disability Rights Network and the Protection & Advocacy Systems

The National Disability Rights Network (NDRN) is the non-profit membership organization for the federally mandated Protection and Advocacy (P&A) and Client Assistance Program (CAP) systems for individuals with disabilities. The P&As and CAPs were established by the United States Congress to protect the rights of people with disabilities and their families through legal support, advocacy, referral, and education. P&As and CAPs are in all 50 states, the District of Columbia, Puerto Rico, and the US territories (American Samoa, Guam, Northern Mariana Islands, and the US Virgin Islands), and there is a P&A and CAP affiliated with the American Indian Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. Collectively, the P&A and CAP Network is the largest provider of legally based advocacy services to people with disabilities in the United States. Through the Protection and Advocacy for Voter Access (PAVA) program, created by the Help America Vote Act (HAVA), the P&As have a federal mandate to “ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote and accessing polling places”¹ and are the leading experts on access to the vote for people with disabilities in the United States.

I am the Voting Rights Specialist for NDRN, where I am responsible for coordinating voting rights initiatives in every state, the District of Columbia, Puerto Rico, and other territories, as well as providing training and technical assistance to NDRN’s nationwide network regarding voting rights and access for voters with disabilities under HAVA, the Americans with Disabilities Act (ADA), and other applicable federal laws. I also work in coalition with the broader civil rights community in Washington, DC to ensure strong federal policy regarding voting rights and election administration.

¹ <https://www.congress.gov/107/plaws/publ252/PLAW-107publ252.pdf>

Voters with Disabilities

The United States Census Bureau has reported up to 56.7 million people with disabilities live in the community, totaling approximately 19 percent of the non-institutionalized US population.² The Centers for Disease Control and Prevention and Pew Research Center believe that number is closer to 25 percent, or one in four Americans.³⁴ Further, the School of Management and Labor Relations at Rutgers University projected that there were 35.4 million people with disabilities eligible to vote in the United States, one-sixth of the total American electorate, during the 2016 Election.⁵

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.⁶ A quarter or more of American Indians/Alaska Natives and Black adults have a disability.⁷ 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.⁸

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.⁹ 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.

Improving Access to Vote by Mail

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. Voters who opt to vote by mail optimize their own social distancing, but every voter that chooses a remote ballot also decreases the number of voters that will turn out to polling places and vote centers on Election Day or during early voting periods. Reducing in person turnout in 2020 is, unfortunately, necessary to enable in person voters to properly social distance while voting and allow poll workers to sanitize between voters. There are many simple steps that can be taken to increase the usability and accessibility of vote by mail.

Now is the time to relax deadlines for absentee ballot applications and return of absentee ballots. Now is the time to eliminate barriers to accessing absentee and vote by mail ballots, including requirements for doctor notes, notaries, and witnessed signatures. Not only are these barriers for voters with disabilities in any election year, but they pose an additional health risk to voters with disabilities, and particularly

²<https://www2.census.gov/library/publications/2012/demo/p70-131.pdf>

³<https://www.cdc.gov/media/releases/2018/p0816-disability.html>

⁴<https://www.pewresearch.org/fact-tank/2016/09/22/a-political-profile-of-disabled-americans/>

⁵https://smmr.rutgers.edu/sites/default/files/documents/faculty_staff_docs/Kruse%20and%20Schur_Disability%20electorate%20projections%202016_9-8-16.pdf

⁶<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3490559/>

⁷<https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html>

⁸<https://disabilitycompendium.org/annualreport>

⁹<https://www.pewresearch.org/fact-tank/2016/09/22/a-political-profile-of-disabled-americans/>

those that are immunosuppressed, who are under stay at home orders or in quarantine that must then break their self-isolation to access doctors, notaries, or witnesses just to be able to vote.

Even with these measures in place, it should be noted that traditional vote by mail systems are not, and have never been, accessible to voters with disabilities. People who are blind or low vision, have print disabilities,¹⁰ limited literacy, limited manual dexterity, and other disabilities cannot privately and independently mark, verify, and cast a hand marked paper ballot. Dropping traditional paper ballots into the mail simply will not work for all voters. States that have not already done so must immediately implement some form of electronic ballot delivery or remote accessible ballot marking system that provides an electronic ballot to voters who choose to vote from home. These technologies are widely available and have been in use reliably for years in primarily vote by mail states. In fact, every state currently has some form of remote ballot marking in place for military and overseas voters, as required by the MOVE Act.¹¹ These are tested systems, already in use, that can be expanded for use by domestic voters to enhance the accessibility of vote by mail systems. Federal law is clear that any option made available to voters must be accessible for people with disabilities,¹² including vote by mail.

At this time, it becomes important now more than ever to make our vote by mail systems as accessible as possible. Any voter for whom voting by mail is not accessible is a voter who cannot opt to vote from home and will be forced to contribute to congestion at the polls. Further, when vote by mail systems are not made accessible for voters with disabilities, we in essence ask people with disabilities who are considered the most vulnerable for COVID-19 to be the only voters who take to the streets and assume the personal health risk of in person voting, while their non-disabled peers have the privilege of voting from the safety of their homes.

Voting by mail is an important option that must be made available and accessible to all voters, but it is not and may never be a panacea. Many of the remote accessible vote by mail systems currently market-ready or in use by voting jurisdictions across the nation make vote by mail significantly more accessible. However, any vote by mail system that requires a voter to verify and cast a paper ballot is not fully accessible to voters with disabilities. Further, electronic ballot delivery systems rely on voters supplying their own technology, including computers, tablets, smartphones, and whatever assistive technology or software the voter needs, as well as requiring access to internet or cellular data service. Adults with disabilities are 20 percent less likely than their non-disabled peers to subscribe to home broadband and own a traditional computer, a smartphone, or a tablet.¹³ Consequently, solutions that require voters to provide their own technology or secure their own internet access are a useful option that makes the vote accessible for some voters, but they are not a complete solution in themselves. The onus is, and must be, on the government to provide the supplies voters need to cast their ballots. After all, we do not turn voters away from polling places for failing to bring their own pens to mark their ballots. Until the United States is prepared to make vote by mail fully accessible, in person voting is a necessity.

¹⁰ Print disabilities is a term that encompasses disabilities that make it difficult or impossible to access standard printed text. These include blindness or visual impairments, physical disabilities that limit manual dexterity (e.g., cerebral palsy, hand tremors, quadriplegia), and certain learning disabilities.

¹¹ <https://www.fvap.gov/uploads/FVAP/Policies/moveact.pdf>

¹² https://www.ada.gov/ada_voting/ada_voting_ta.htm

¹³ <https://www.pewresearch.org/fact-tank/2017/04/07/disabled-americans-are-less-likely-to-use-technology/>

The Necessity of In-Person Voting

The question is not: do we need in person voting? The question for 2020 is: how do we make in person voting safe? Polling locations must follow Center for Disease Control (CDC) and other federally recommended health guidelines for COVID-19 safety. Polling locations should also be prepared to provide personal protective equipment (PPE), sanitizers, and handwashing stations for personnel and voters. Early voting periods and hours for in person voting must be extended for several weeks before Election Day to reduce congestion at the polls and allow for social distancing. The number of ballot marking devices or other accessible voting stations must also be significantly increased at every polling location, and voters should be allowed to vote curbside. Even in states where curbside voting is not currently allowed, its use would ease ADA-compliance issues that will inevitably arise from the limited number of available polling places and unexpected relocation of polling places, as well as to allow voters at greater risk in regard to COVID-19 to limit their exposure.

I would be remiss if I did not take this opportunity to also discuss the current state of polling place accessibility in the United States. The US Government Accountability Office (GAO) surveys of polling place accessibility span 20 years. In 2000, GAO data indicated that only 16 percent of polling places had an accessible path of travel from the parking area to the voting booth.¹⁴ This percentage has slowly but steadily increased to 27 percent in 2008¹⁵ and to 40 percent in 2016¹⁶. To be clear, 40 percent is an all-time high in architectural access, meaning that less than half of polling places were compliant with federal law during the 2016 presidential election. Worse, GAO began to investigate the accessibility of voting stations within polling places starting with the 2008 study, during which only 54 percent of voting booths were determined to be accessible.¹⁷ In 2016, the prevalence of accessible voting stations fell to a dismal 35 percent – a drop of 19 percentage points in just 2 presidential election cycles.¹⁸ GAO found that voting booths were less likely to be set up to ensure voter privacy, set up for wheelchair access, have headphones readily apparent for audio balloting, or even be turned on for voters to use.¹⁹ In their 2016 findings, GAO combined architectural access data with voting booth data for the first time and reported an astonishing 17 percent of polling places are compliant with federal law and fully accessible for voters with disabilities – fewer than 1 in 5.²⁰ In this complicated and frightening time, America's polling places must be made safe for all voters, but a pandemic cannot be used as an opportunity to shirk federal access law and the civil rights of voters with disabilities.

Role of Congress and the Federal Government

Congressional funding is sorely needed to ensure that elections in 2020 are fair, safe, and protect the rights of voters with disabilities, and NDRN applauds the passage of the HEROES Act by the US House of Representatives which provides critical funding for elections during our current health crisis. The United States government has an obligation to ensure that states, territories, and local jurisdictions can acquire PPE and other needed supplies for in person voting, as well as remote accessible vote by mail systems that can be implemented immediately. Many Members of Congress have stepped up to propose legislation to help address these issues by introducing the *Vote Safe Act*, *The Natural Disaster and*

¹⁴<https://www.gao.gov/new.items/d02107.pdf>

¹⁵<https://www.gao.gov/assets/300/296294.pdf>

¹⁶<https://www.gao.gov/assets/690/687556.pdf>

¹⁷<https://www.gao.gov/assets/300/296294.pdf>

¹⁸<https://www.gao.gov/assets/690/687556.pdf>

¹⁹<https://www.gao.gov/assets/690/687556.pdf>

²⁰<https://www.gao.gov/assets/690/687556.pdf>

Emergency Ballot Act, and *The DemocracyCorps Act*. NDRN calls on Congress to work together to pass a bill that will address the safety issues raised around voting during this time as well as ensuring accessibility for people with disabilities.

Further, Congressional funding is always needed to assist elections administrators to procure, maintain, and improve polling locations and equipment and for NDRN's national network of P&As to provide invaluable consultation on compliance with HAVA and the ADA. In this vein, Congress must act now to pass the *PAVA Program Inclusion Act* (HR5510) and provide the territorial government and P&A of the Northern Mariana Islands, as well as the Native American Disability Law Center, with desperately needed HAVA funding to ensure access to the vote for Pacific Islanders and Native Americans with disabilities. Extending funding to the only two P&As excluded from PAVA is a simple, no cost legislative fix.

Finally, Congress and the US Department of Justice play a critical role in ensuring that elections are fair, accurate, safe, and accessible. A delicate patchwork of federal laws that protect the rights of voters with disabilities - the ADA, HAVA, the Voting Accessibility for the Elderly and Handicapped Act, the National Voter Registration Act, and the Voting Rights Act. Each of these laws must be protected, restored, and enforced to their full capacity. We call them Americans with disabilities because they are, first and foremost, Americans. Their civil rights, as well as the health of our voters and the health of our democracy, depend on it.

Mr. COHEN. Thank you, Ms. Bishop.

That concluded our witnesses. We will go to the period of questions. Each member will have 5 minutes to ask questions, and I will start with myself.

For Ms. Abrams, thank you for joining us today. Out of all the challenges that you and other witnesses have described in carrying out the election this November, what worries you the most? Is it intentional voter suppression, or is it sheer incompetence, or some combination of the two?

Ms. Abrams.

Ms. ABRAMS. Thank you, Mr. Chairman.

Let's understand that voter suppression takes three forms: Can you register and stay on the rolls, can you access a ballot, and can you get your ballot counted.

As a number of the witnesses have testified, voter registration remains a challenge as does voter purging based on false information and poor, to use your language, incompetence often that removes people from the rolls unnecessarily.

But what we also have to focus on is the ability to cast a ballot. As Ms. Bishop pointed out, the challenge that we face is that there are populations that only have one method of casting their ballot. Because of disability, because of language barriers, because of homelessness or displacement due to eviction through foreclosure through COVID-19, or because they are unable to participate otherwise in the process of voting by mail, they need to go in person.

And so my deep worry is that because we focus on one or the other to the exclusion of one of those processes, we do not use the full toolbox at our disposal and we invalidate the opportunity to vote.

And I would like to point out to this committee that South Korea, which began experiencing COVID-19 infection rates at the exact same time as the United States, managed to scale up a national election on April 15th that had the single highest voter turnout they have seen in 30 years. They did it through a combination of investing in vote by mail, but also meeting the guidelines for health protection when people went to vote in person.

That is why the critical nature of the HEROES Act says that we don't pick one or the other, but we absolutely fund the States, as Secretary of State Benson pointed out, we fund States to scale up their existing capacity.

Thirty-four States vote by mail already. Sixteen States have—34 States have vote by mail with no excuses, 16 require excuses, and as Mr. Ho pointed out, there is only a handful of States right now that are refusing to expand that access because of restrictions on who can provide the excuse.

But if we do all three, if we provide in-person voting early, in-person voting on election day, and vote by mail, then we will not have to face the questions of incompetence because any challenges to the voting process can be met by allowing people to utilize another methodology.

Mr. COHEN. Thank you, Ms. Abrams.

Secretary Benson, President Trump falsely accused you of illegally sending millions of mail-in ballots to Michigan voters. Can

you explain what Michigan actually did, and in your mind, is this a partisan issue?

Ms. BENSON. Thank you for the question and the opportunity to again restate and clarify exactly what we did in Michigan.

One, we feel that educating voters about their choices and rights in the midst of this pandemic is exactly the job of secretaries of state and chief election officers right now. What I did in Michigan, as several of my colleagues in West Virginia and Iowa and Nebraska and Georgia have also done, is simply mail an application to every registered voter for them to request to vote by mail and receive a ballot through the mail in August, in our August primary and in our November election.

Now, that is something that in particular has been called by the voters I serve and work for in their effort to amend our Constitution in 2018 to create a right to vote by mail for every citizen in our State.

So in my view, this is not nearly a partisan issue and certainly shouldn't be one. The responsibility and authority that secretaries of state have to educate and inform citizens about their rights, particularly in this time of great uncertainty, and give them the clarity as to how they can exercise the vote, regardless of who they vote for, it is critical.

And I also want to mention two things, if I can, because there has been a lot of misinformation also about what happens when you get an application and why this is so different than getting a ballot.

An application simply enables the voter to both affirmatively request that they would like to vote by mail and confirm their identity when they do so. It actually enables us to clarify and clean our list in a way that ensures that we are accurately delivering a vote by mail to our citizens who are rightfully registered to vote and addressing issues as they may arise if there are voters who may have been recently deceased who on our list that we then can learn about and take steps to remove.

So the other piece of this is our effort in Michigan has actually enabled us to increase the integrity of the elections, to increase the——

Mr. COHEN. Secretary Benson, let me ask you this. Did any Republicans complain about the results of the election and claim there was fraud in the absentee votes?

Ms. BENSON. No, not in the May election.

Mr. COHEN. Yes. Yes. It was mentioned that the post office didn't get some ballots delivered on time in D.C. If a person asked for an absentee ballot and doesn't get it on time, can they not still go to the election booth if they can make it and ask to vote in person?

Ms. BENSON. Yes. At least in Michigan, which I can state with authority. In Michigan, if you don't—one, we can track when ballots have been received. We are implementing a voter tracking system so that voters can track that receipt and return of ballots as well so that they can plan ahead.

But yes, if for whatever reason you haven't received or just have chosen not to return your ballot prior to the election, you will always have in Michigan the option to show up in person, surrender

your ballot if you have it, or simply vouch that you voted and then vote in person.

Mr. COHEN. Thank you.

Mr. Ho, my time is running out. You mentioned that Tennessee is having an election of the jurisdiction, a court action. Even if the suit is successful, what are some of the dangers having these issues decided by the courts?

Mr. HO. Thank you for that, Chairman Cohen. So you broke up for a minute there, so I wasn't quite sure what your question—

Mr. COHEN. We are in court right now in Tennessee. What are some of the—if the suit is successful, even if it is successful, of having these issues determined in court rather than by the legislature?

Mr. HO. Well, I think it is best for these kinds of issues to be resolved in advance of the election and as far in advance of the election as possible to give elections authorities the time that they need to prepare. I think that is obviously the ideal way to do it.

But where a legislature won't do that, such as in the case of your home State of Tennessee, there is no choice. If we want all voters to have the option, the choice not to risk their health when they are exercising their right to vote, we have no choice but to go to court. And that hearing is underway right now as I speak in Chancery Court in Davidson County.

Mr. COHEN. Thank you, Mr. Ho.

My time is up, and I would now like to recognize Mr. Johnson for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman. I will get right to it.

The first question is for Mr. Fitton. In May, House Democrats passed the HEROES Act, as has been discussed, and it included various proposals aimed at federalizing the election process. One of those proposals, as we know, is ballot harvesting.

That is still a term that is unfamiliar to a lot of Americans who haven't experienced that. Could you briefly explain what ballot harvesting is and why it is so susceptible to fraud?

Mr. FITTON. Well, ballot harvesting in the way critics have described it, such as Judicial Watch, would allow third-party strangers to go around and collect ballots and then allegedly deliver them to polling places or locations where ballots are collected.

And in California, they have an extreme version of ballot harvesting that has virtually no regulation about who can do it, whether they can select someone based on whether they are Democrats or Republicans. They don't have real checks in place to make sure ballots are delivered.

And obviously when you have third-party strangers going around collecting ballots, that is a recipe for voter intimidation. It is one thing to allow in emergency circumstances a terribly, for instance, infirm person to have their spouse deliver a ballot for them. It is far different to have party operatives and interested third parties roaming the streets, knocking on doors, and demanding or, quote, asking for ballots. It is a recipe for voter intimidation, and that is why it is largely banned across the country.

We rightly opposed what happened in North Carolina with that ballot harvesting fraud, but of course, ballot harvesting was illegal in North Carolina, and you can see why because of the temptation for fraud.

So the bill that is out there, as best I can tell, would nationalize this intimidatory ballot harvesting scheme, upend the voting laws in terms of voter ID in 35 States, and undermine the security, to the extent it is available or has been implemented in the few States that are pursuing it, in absentee ballots.

Talk about causing chaos on election day. To do this so quick, so close to election day is just irresponsible, in my view.

Mr. JOHNSON. Thank you very much.

Mr. Adams, Democrats have also proposed that States, when an election is held, quote, “in an area in which an emergency or disaster,” unquote, is declared will automatically mail absentee ballots to registered voters in that area. And your organization, the Public Interest Legal Foundation, found that 244 counties, spanning 29 States in addition to the District of Columbia, had voter registration rates over 100 percent of the population.

How might these bloated registration rolls lead to increased fraud if the States adopt all-mail voting?

Mr. ADAMS. Right. And we have upped the game of just looking at that ratio where we have actually looked at the rolls. As you see in my written testimony, individuals like Rashawn Slade in Pittsburgh are registered seven different times. We have duplicate registrations around the country. People get on the rolls in multiple States.

If you have automatic vote mail mailouts, Mr. Ranking Member, you would have people like Rashawn Slade getting seven ballots to vote in the Pennsylvania election. That is not good policy, no matter what the need.

Mr. JOHNSON. Very good.

Mr. Fitton, back to you. The Election Clause in the U.S. Constitution gives each State the authority to administer elections within its jurisdiction, and it only gives Congress the authority to step in to regulate Federal elections, as we know. But arguably, States are best positioned to administer elections to address their own unique needs.

Do you agree with that sentiment? And if so, what challenges do you foresee if every State is forced to administer an election in the same manner?

Mr. FITTON. Well, one size fits all isn’t going to work. You have the Baker-Carter Commission note the example as being the exception that proves the rule. Just because it may work in Oregon doesn’t mean it will work in other States. In States where you have populations that are moved in and out more quickly, you have tremendous risk to having all-mail voter fraud or increased risk for voter fraud as a result of having these mail ballots flood the system—both, frankly, applications and ballots directly.

You know, the concern is, are the States doing sensible steps to make sure that people are able to vote on election day? And, look, what we are hearing about today is a plan that has been in place long before COVID. So they are using, in my view, the pretext of the pandemic as an excuse to get a policy proposal that will undermine election integrity.

Why oppose voter ID? Why oppose Federal law that requires States to take reasonable steps to clean up the rolls? Why oppose even the notion of citizenship verification? To me, that is setting

up the steal. And the American people have the right to have confidence in their elections. And when I hear about the rare instances of voter fraud, I get frustrated. If it is your vote that is stolen, it is your right that is destroyed.

Mr. COHEN. Thank you, sir. Appreciate it, Mr. Johnson.

Mr. JOHNSON. I yield back, Mr. Chair.

Mr. COHEN. Thank you, sir.

Our next questioner is Mr. Nadler from New York for 5 minutes.

Chairman NADLER. Thank you, Mr. Chairman.

Secretary Benson, we are hearing a lot today about voter fraud. Could you briefly describe what Michigan does to ensure that mail-in ballots are legitimate, the ways that States can do this without suppressing the right to vote, and particularly comment on what Mr. Fitton said about ballot harvesting?

Ms. BENSON. Sure. I will start with the ballot harvesting. Of course, it is illegal. And the term ballot harvesting does not appear in Michigan law. But, you know, if the question is about whether a person can drop off another person's ballot, there are really only limited circumstances in which that is allowed and generally only by an immediate family member or someone the voter shares a home with.

But importantly, the signature check has on multiple levels our confirmation that the only person voting a ballot, returning a ballot is the voter themselves.

That signature takes place—the signature check takes place both when the application is returned and the voter requests a ballot to be sent to them. That signature on that application is matched with the voter registration signature.

And then, secondly, when the ballot is ultimately returned, the voter must sign the outside of the envelope, and that signature is then matched to all the other signatures we have on file. And as any expert will tell you, it is significantly harder to forge a signature than it is to create a fake ID.

And so, in our view, in my view, that signature check enables us—and this is a time-tested method that has been in place in States for decades—to ensure that the people returning ballots, voting the ballots, are the voters themselves. And, two, if there is any effort to create any fraud in the process, that we catch it and that we prosecute it swiftly and effectively.

CHAIRMAN NADLER. And more generally, how frequently have you seen incidents of election fraud in your State, whether from mail-in ballots or in-person voting?

Ms. BENSON. Evidence of fraud is infinitesimal in Michigan and in many other States, some that have been doing vote by mail for decades and others around the country. And again, it is infinitesimal, as several studies have consistently shown. And, secondly, in the rare times when it does occur, we catch it and we prosecute it.

Chairman NADLER. Thank you. And Secretary Benson, Attorney General Barr recently said that he was worried about foreign governments sending fake mail-in ballots to manipulate our elections. Several State election officials have said this concern is baseless, including because States closely track ballots when they mail them out in the first place. Does it seem plausible to you that a foreign government could mail in counterfeit ballots in Michigan?

Ms. BENSON. No, it does not. And to me, that more strikes to what is the bigger issue facing our elections and our electorate this year, which is the effort to sow seeds of doubt in the integrity of the process, and in that way, harm voters' confidence in the elections and in their results.

That effort to push back against misinformation, false information about our elections process is one of the most important efforts that we all need to be engaged in across party lines this year.

Chairman NADLER. Thank you.

Ms. Abrams, in this moment of profound pain across our Nation I am especially troubled that the American people may be losing faith in our institutions of government and in our democracy itself. What would you say to potential voters who are worried that their ballots won't be counted or who have lost faith that their participation matters?

Ms. ABRAMS. Thank you, Mr. Chairman.

I think the most effective statement we can make is that we want every eligible voter to be able to cast their ballot and to protect their health.

One of the challenges facing our Nation is a deep suspicion about the value of every voice and the value of every person in our Nation. And to the extent that we know a disproportionate number of those dispossessed in our process are people of color, namely African Americans, it is a critical moment for us to demonstrate that their access to the ballot will not be impeded because of situations beyond their control.

We watched people get sick in Wisconsin standing in long lines, forced to crowd together because of diminished polling places in order to cast a ballot for their future. And we know that the 2020 election is going to necessarily draw a great deal of attention because we are not only running a Presidential election, we are running elections that are going to determine everything from district attorneys, county sheriffs to state legislators and governors.

And so we want every American who has the right to vote to know that they have the freedom to do so and the access, and that access will not exist if we have limited means and people have to put their lives at mortal risk in order to cast a ballot. That simply reaffirms the belief that we do not value their humanity, and that is an inappropriate statement for any American to make, especially political leaders, who are charged with ensuring access to our democracy.

Chairman NADLER. And that is why mail-in voting is so crucial.

Ms. ABRAMS. Absolutely. Mail-in voting is part of the process. But again, there are going to be populations that cannot use mail-in voting.

So let's be clear. We don't want—I do not advocate for universal mail-in balloting. I advocate for mail-in balloting in the 2020 election in response to the COVID pandemic that allows every eligible American the option to mail in their ballot rather than put their life at risk by standing in a crowded line in likely reduced polling places unless we have to because they have no other option.

Chairman NADLER. Thank you, and I yield back.

Mr. COHEN. Thank you, Mr. Chairman. Appreciate it.

Our next questioner will be Mr. Gohmert of Texas for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman. And I, too, appreciate the way you started this hearing. I have been used to Christian beliefs being belittled by the majority too many times since your arrival in 2007, so I am really honest in saying how much I appreciate the tenor with which you started this hearing.

I also want to express thoughts and prayers going out for George Foley—I am sorry—George Floyd’s family and all of those. It is just tragic, the looting and rioting we have seen, especially costing minority businesses their life’s work, a real tragedy, and we need to bring about this same type of feeling that we have had in this hearing. We can disagree but not get violent, not destroy people, or for goodness sakes, Italia Marie Kelly, who was killed by a protestor and her sister. You know, it wasn’t a cop. It was one of you people, the protesters, that kind of stuff. We all need to encourage that kind of thing to stop.

And I keep hearing in this hearing, though, about the concern over the COVID-19 or coronavirus, but I haven’t heard any of our witnesses for the majority express that concern about the protests, the rioting, and the looting, whereas in many places we are not even allowed to go unless we wear a mask, but that is those of us who are trying to be law-abiding.

Mr. FITTON, do you recall the aftermath of the election in 2000 and—well, 2000, 2001, who it was that was screaming for election reform and that every single county, every parish, everybody needed to go to electronic voting? And they pushed the majority, Republican majority into passing a Federal law mandating—unfunded mandating—requiring electronic voting. Do you recall that?

Mr. FITTON. Yes. Many on the left objected to the outcome in Florida, how it was determined, and obviously that was impacted by the controversy over paper ballots, so there was this push for electronic voting.

Generally speaking, all the voting machines that were engineered as a result of that money, they are all getting old, and they all need to be replaced.

And there is no secure way to vote over the internet. We don’t have the technology to do it. We don’t have the competency to do it. And the least second most secure way to vote is over the mail.

If you want the vote—if you want to be sure your vote is counted, the best way to do it is to show up and vote. And to hear inflammatory rhetoric that you are choosing your life over your vote is just not appropriate, and it causes people to be nervous about voting. That is as suppressive as anything I have heard, telling people they are going to die or likely to die if they vote.

We can see that people will exercise their First Amendment rights if they think it is important. Voting is important, and they will vote in person. They should be able to vote in person without being scared to death about doing it.

Mr. GOHMERT. Well, we have already heard in this hearing that we watched Wisconsin voters getting sick, and that occurred on April 7, 2020. But they—my understanding was Wisconsin held that vote without the mail-in mandate and actually they did not see a spike in COVID-19 cases. Are you familiar with what happened in Wisconsin?

Mr. FITTON. I am not aware of any public health impact to voting in person. And the COVID pandemic is receding. We now know that the concerns about it were largely overblown. If you have true concerns, in many States you can vote by absentee ballot. Frankly, I think absentee ballots are too readily available, but the law is what it is.

And this is a solution in search of a problem. If you want to vote by mail, you likely can. So let's stop fooling people, and let's start preparing for the election rather than trying to upend the election. The time has passed. We have got to be printing ballots this month.

Mr. GOHMERT. Before my time expires, I needed to ask unanimous consent. This is an exhibit authored by Christian Adams and Hans Von Spakovsky, "COVID-19 and Ebola: What We Can Learn From Prior Elections." I would ask that be made part of the record, without objection.

Mr. Cohen. Without objection, it will be done.
[The information follows:]

MR. GOHMERT FOR THE OFFICIAL RECORD



ISSUE BRIEF

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COVID-19 and Ebola: What We Can Learn from Prior Elections

Hans von Spakovsky and J. Christian Adams

KEY TAKEAWAYS

America and other nations, including Liberia during the Ebola epidemic, have successfully conducted free and fair elections during health crises.

With sufficient resources, states can take the necessary precautions to ensure voters are safe while casting their ballots in the 2020 elections.

We must not put the ballots of all Americans into the hands of the U.S. Postal Service if we are to have faith in the security and integrity of the outcome.

There is unprecedented pressure being brought to bear on election officials by the media, liberal advocacy organizations, and legislators like Speaker Nancy Pelosi (D-CA) to hold an all-mail election in November.¹ They point to the current circumstances of the COVID-19 pandemic to justify a fundamental transformation of how an election should be run—in *six months*. But the question arises whether this is really necessary given the current health threat that has resulted in a temporary, partial shutdown of the country—particularly if the country has reopened for business by November.

This is a crucially important question. If, by the date of the general election—November 3, 2020—the disease has been suppressed, shutdowns across the country are over, and the public is back at work, back in school, and back in their churches, synagogues, and mosques, will there really be any reason for voters *not* to be back in their polling places to cast in-person votes?

This paper, in its entirety, can be found at <http://report.heritage.org/ib5066>

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Probably not.

That is only part of the problem for those advocating a fundamental transformation of how America conducts elections. But they have an even bigger problem. Namely, who says we cannot conduct a regular normal election even if the threat of COVID-19 is still an issue? One thing is for certain, other countries have conducted successful in-person elections during an epidemic.

Lessons from the Ebola Epidemic

Lessons can be learned from how elections have been conducted during other public health crises, such as the 2014 senatorial elections in Liberia in the midst of the West African Ebola epidemic. While different in many ways from the COVID-19 virus, Ebola is an extraordinarily dangerous pathogen in terms of its infectiousness and fatality rates. Ebola symptoms include high fever, debilitating vomiting and diarrhea, and perhaps most emblematic of the 2014 outbreak, internal and visible external bleedings from your eyes and pores.²

Yet despite the devastating Ebola outbreak in the middle of the Liberian election, it was possible to create polling places that protected voter health with some help from outside organizations. The International Foundation for Electoral Systems (IFES), headquartered in Washington, DC, works in countries around the world to promote democratic elections.³ In 2014, they were instrumental in assisting Liberia to make its polling places safe despite Ebola. According to IFES President Anthony Banbury, that election was crucial in ensuring “continuity of government and to maintain Liberia’s fragile peace” after a “devastating civil war.”⁴

So how did the National Elections Commission of the Republic of Liberia (the Commission) do it? What lessons can America learn from the Liberian experience with an epidemic?

The Liberian Guidelines

According to the IFES, Liberian election officials worked closely with health experts to “integrate a range of practical health measures, such as social distancing and revised processing, to ensure the safe exchange of ballot papers, ID cards, pens, and other common voting materials.”⁵ Poll workers were also trained in the “roll of queue controllers,” and there was an extensive voter-education effort.

In other words, Liberia did the very same thing during the election that we are already doing today in dealing with the coronavirus: Businesses that are open to the public, such as grocery stores, drug stores, and chains like Lowes and Home Depot, have all incorporated social distancing and the use of face masks, gloves, and cleaning supplies into their business models—just as Liberia apparently incorporated the same tools, procedures, and distancing into the lines of voters waiting to vote and the clean-up and sanitation of poll locations and the voting materials being used to minimize the spread of any possible contamination.

And the Commission educated the public on the importance of using and applying all of these preventative measures. In fact, the Commission provided very specific guidelines “to prevent the spread of the Ebola Virus Disease,” not just for polling places, but also for “Town Hall Meetings, Political Rally, and other Campaign Activities.”⁶

For political activities, that included “hand washing corners and temperature monitoring equipment” at all points of “entry/commencement of such campaign gatherings” with the exclusion of any individual whose temperature was above a certain point, and notification of public health authorities. All attendees were required to maintain “a non-contact distance of at least three (3) feet.”⁷

All polling and election officials were required by the Commission to undergo special training and health screening to be able to appropriately administer the election on Election Day with the health and safety precautions mandated by public health officials in place.⁸ All of those procedures were to be applied to the “deployment and retrieval of electoral materials and personnel” including the “washing of hands before entering vehicles” along with “temperature monitoring of individuals before boarding the vehicle.”⁹ Similarly, the same procedures were directed to be applied to the “tallying, tabulating, and collating of data from voting precincts across the country,” including maintenance of the required three-foot physical separation requirement between all election officials.¹⁰

When it came to the actual polling locations, election officials were directed to immediately “isolate” any “visibly sick person” showing the “symptoms of Ebola Virus Disease.” Voter’s temperatures were also to be checked prior to admittance, with an additional check for voters with no visible signs of Ebola “at an interval of thirty minutes from the last check.”¹¹

Poll workers were directed to maintain the three-foot spacing between voters in the “queues” or voter lines, using white paint on the floor (similar to what we are all seeing these days at our grocery stores and pharmacies). If there was more than one line of voters waiting to cast their ballots, a distance of four feet was to be maintained between the separate lines.¹²

Normally in Liberia, a voter must hand his “voting card” to an election official when he enters a polling place in order that the information identifying that voter can be compared to the voter registration list. The Commission directed that voters would be “instructed to display their voting cards to the voter ID staff” so they could read them “without physical contact.”¹³

The IFES, working with the Commission, identified 40 points in the election process that constituted an Ebola transmission risk, including “items [that] moved between hands, such as voter registration cards, ballot papers, pens, and more.” Those risks were mitigated through a “set of practical recommendations” that were “integrated into election-day operations.”¹⁴

Using all of the recommended precautions of health officials, Liberia held its election on December 20, 2014—in the midst of an epidemic.¹⁵ It was only the third election since the end of what the U.N. Secretary-General, who was in Liberia the day before the election, called a “brutal war.”¹⁶ That election was conducted with *in-person voting*—not an all-mail election—and the U.N. congratulated Liberia on organizing a successful election “under challenging circumstances, particularly in the midst of difficulties posed by the Ebola crisis.”¹⁷

The CARE Act and Wisconsin’s Successful Election

It worked. And state election officials have something that the Liberians did not have: a large amount of federal funds to implement polling place health protocols. On March 27, 2020, President Donald Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARE Act) into law. The Act provided \$400 million in emergency funds that are being distributed to the states by the U.S. Election Assistance Commission to “prevent, prepare for, and respond to the coronavirus for the 2020 federal election cycle.” That preparation and response already started in Wisconsin.¹⁸

Voter Turnout. Wisconsin successfully held its primary election on April 7, 2020, with both absentee balloting and in-person voting. The voter turnout of 34.3 percent was virtually identical to the turnout of 34.9 percent in 2008, when there was a heavily contested race between Hillary Clinton and Barack Obama. And it was eight percentage points *higher* than in 2012 when turnout was only 26.1 percent.¹⁹

Worker Training. Wisconsin’s Elections Commission promulgated an extensive poll worker training manual (the Manual), providing mandated health procedures for the administration of polling places on Election Day.²⁰ It included the placement of prominent warning signs stating the rules to

be followed by voters, including a “Health Alert” telling them not to enter the building if they showed certain specific symptoms. Instead, they were given a phone number to call for a “curbside ballot.”

Sanitizing Stations. The Manual required hand washing/sanitizing stations for all voters when entering and leaving a polling place, as well as before and after voting. Tables, door handles, pens, voting booths, voting equipment, and everything else being touched or handled in the polling place were to be sanitized regularly “or at least every ten minutes.” There was a ban of “all non-election related activities in the polling location that could promote congregation and close personal contact.”

Social Distancing. Pursuant to the Manual, voter lines had to maintain six-foot social distancing between voters, including using tape, floor markings, and chalk inside and outside the polling location to “establish appropriate gaps between voters and poll workers.” Precinct officials were given authority to stagger voters “to limit the number of voters in a facility or voting area at the same time.” Doors were to be kept open to “increase air flow and eliminate unnecessary touching of doors and door handles.”

Health Screenings and Disposable Items. According to the Manual, all precinct workers were to be given health screenings prior to their shift. There were numerous procedures for avoiding personal contact. For example, Wisconsin is a voter ID state, but the ID could be reviewed and checked without the poll workers ever touching the ID presented by the voters. Voters were allowed to bring their own pens from home to mark their ballots and sign the registration poll book, and disposable items such as pens were to be sanitized or discarded after each use.

Curbside Voting. There were special procedures for “curbside voting” in the Manual for voters who could not come into a polling location. IDs could be checked through the car window, for example, while ballots were then passed through a slightly opened car window using a “privacy sleeve” and returned in the same way.

The Wisconsin Election Commission generated an Election Day checklist outlining all of these procedures for poll workers.²¹ In summary, Wisconsin put in even stricter, more careful procedures for its election workers and voters than those seemingly being followed by all of the businesses that have been allowed to remain open during the COVID-19 crisis. Additionally, those voters who did not want to vote in-person, including the elderly who may be more susceptible, could still vote by absentee ballot.

The Associated Press reported on only seven virus cases that “may” be related to Election Day, but Wisconsin health officials say that they cannot confirm the patients “definitely got [COVID-19] at the polls.” Instead, local

health officials are now asking *newly infected* individuals whether they voted. But the fact that they voted does not establish that they were infected at the polls rather than through some other means.²² There were 1,551,711 voters who cast ballots in the primary according to the Wisconsin Elections Commission.²³

South Korea also held national legislative elections on April 15 in the midst of the COVID-19 epidemic. The country has suffered 10,765 infections and 247 fatalities. In an election in which *29 million* votes were cast, South Korean health authorities report “no infections from this month’s general election” from COVID-19.²⁴

The United States is vastly richer and wealthier than Liberia and has exponentially more resources than Liberia. In 2018, the U.S. gross domestic product (GDP) was over \$20 trillion.²⁵ Liberia’s GDP in 2018 was only a little over \$3 billion.²⁶ As former Ohio Secretary of State Ken Blackwell, who is chairman of the bipartisan board of the IFES, says:

If Liberia was able to safely hold an in-person election amid an Ebola outbreak, there is no reason we cannot do so here in the United States in the wake of this pandemic. It will take planning, resources, and carefully developed protocols, but adhering to our existing set of electoral rules is well worth the effort.²⁷

Conclusion

Now it is up to the states. Even assuming that COVID-19 will still be an issue six months from now, which is a possibility, with CARE Act funding states will have the funds and resources needed to implement all of the protective health protocols recommended by experts for polling places and equipment to prevent the spread of disease.

The answer is not to put the ballots of Americans and the administration of the presidential and congressional election into the hands of the U.S. Postal Service—at least not if we want to have faith in the security and integrity of the outcome.

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Endnote

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Mr. GOHMERT. And I meant to get to Mr. Adams, but my time has expired. Thank you.

Mr. COHEN. Thank you, Mr. Gohmert. You are ahead of me on the time clock.

Mr. Raskin is next, 5 minutes.

Mr. RASKIN. Thank you very much, Mr. Chairman. And our GOP colleagues have started with praise of you, so I am going to start with a word about Mr. Johnson, because I am always carried away with his eloquence. But I was especially struck today that he began by denouncing the cold-blooded murder of George Floyd by Officer Chauvin. And he also called—and I wrote it down, but please correct me if I got it wrong, Mr. Johnson—he called for transformative solutions for systemic change, which is a beautiful phrase that I am going to hang on to whether or not he actually said it, but I think that he did.

But with that, I think I have got to depart from my friend from Louisiana because when he started to talk about elections, he lost me. He said States know best on how to run their elections. Well, of course that is true, but States also know best how to steal elections, how to suppress the vote, how to depress the vote, and how to disenfranchise African Americans and racial minorities.

So when he says this is no time to upend elections in America, my friend, the elections in America have been upended by the COVID crisis.

And we don't have to get into a blame game about whether, you know, you think that Donald Trump has engaged in the most exquisite and perfect management of a pandemic in American history or you think it has been an absolute debacle. Regardless of where you want to pin responsibility, we have lost more than 105,000 of our people, 2 million people have been sickened, 40 million people have been thrown out of work, and the elections have been thrown into disarray not by any of the secretaries of state like the wonderful secretary of state we have just seen from Michigan or any of the voting rights activists. They have been thrown into disarray by COVID-19.

Ohio had to close 125 polling places because they were in retirement homes or senior living centers. We have seen tremendous poll worker shortages across the country because most poll workers are retirees. They are older Americans, and many of them are following the Centers for Disease Control recommendation not to go outside to be in groups.

Sixteen States, including my own, Maryland, have had to postpone their primaries. And when one was prevented from doing so, Wisconsin, we ended up with 71 cases of COVID-19 of people who stood in those long lines wrapped around the block as they struggled to get into, I think it was, four or five polling places in all of Milwaukee, as many, many polling places didn't open in the State of Wisconsin because there was nobody to run them. So come on. Get real.

And to have Mr. Fitton come out here and say that concerns about COVID-19 are overblown is just extraordinary and baffling to me. I suppose no one in his family or no one he knows has been affected by COVID-19, but the idea that the concerns have been overblown is just outrageous.

Now, let me start with a question for Mr. Ho. You said something that was really astounding. You said that the Republican National Committee had sent out a mailer saying that mail-in voting is an easy and secure way to vote. And yet, the Republican witnesses today are testifying against vote by mail and are undermining vote by mail.

Can you explain that? Did you get that wrong? Are you misquoting them, Mr. Ho?

Mr. HO. No. There is a mailer that the Republican National Committee sent to all Republican voters in Pennsylvania, which I cited and included a screen shot of in my written testimony, encouraging voters to vote by mail, celebrating the fact that everyone in Pennsylvania can do so, and assuring them that it is a, quote, convenient and secure way to cast your ballot.

This is not, aside from a few voices, this is not a partisan issue. States across the political spectrum have no-excuse absentee voting. Many States, again, across the political spectrum are going farther than that and mailing ballot applications to all voters, States like Georgia, Iowa, Nebraska, Ohio, West Virginia, and most recently, Wisconsin.

I think everyone understands it is common sense to help Americans vote securely and safely in this election.

Mr. RASKIN. Thank you.

And if I could just shift to Stacey Abrams, just picking up on what Mr. Ho said. I understand 33 States have vote by mail, a voting from home option. That is 66 percent or two-thirds of the States. You say that all Americans should have a vote by mail option. And if the vast majority of people already have a vote by mail option, where is the opposition coming from? This is just bizarre to me.

Ms. ABRAMS. Thirty-four States have no-excuses vote by mail, 16 States have some version of vote by mail. So all 50 States plus the District of Columbia offer vote by mail.

The challenge is the access. And it is those States that have constrained access or those States that need to scale up who are going to request it. We saw this play out yesterday in Pennsylvania where the number of people requesting vote by mail because they can outstripped the capacity of the States to meet the need.

The issue is not that it can't be done, it is that the States require support to make it so, and we need guardrails.

Just to address the question, it is not—we are not trying to force States to all conform in exact ways to the same elections, but we are trying to set a floor for what the basic understanding of being able to participate in our democracy looks like in the midst of a pandemic. We are setting a floor, not a ceiling.

Mr. RASKIN. Thank you. And finally—

Mr. COHEN. Your time is up, Mr. Raskin. I am sorry.

Mr. RASKIN. Thank you, Mr. Chairman.

Mr. COHEN. You are welcome.

Next is Mr. Collins from Georgia.

Welcome back.

Mr. COLLINS. Thank you, Chairman. It is good to see you again, and I look forward to the time when we can do this in person as we go forward.

It has been really interesting to me, and it is interesting that my friend, Mr. Raskin, we have engaged in rhetorical flourishes together for many years now, and it is interesting, though, that what I just saw went from praising work that we can all do together, which needs to happen on the issue of police action, which I am encouraging our chairman, I am glad to hear we are going to have a hearing next week on that, because what happened in Minneapolis was nothing but murder. And we have seen it in Georgia, down here and in other places where we just have—our society has to come to grips with this.

And you, I think, Mr. Cohen, and others, Ms. Jackson Lee and others, were on the police working group that we had a few years ago, and we need to continue that. So I am glad the chairman is looking for that. That is what needs to happen.

But today's flourishes are interesting to me, and I am concerned about the discussion here going forward because the wording that is used here is something that is bothersome in the sense of let's take what actually is happening. Let's take mine and Ms. Abrams' home State of Georgia. And the interesting issue here is, is that we have been working—and, unfortunately, Georgia, frankly, because of some things that have been said by Ms. Abrams and others on the committee and throughout across the country, has been held up as a place in which suppression and voters were not encouraged to vote, and simply, the numbers don't show that. And in fact, from 2014 to 2018, African American male and female went up 12 percent, 14 percent, 13 percent of White males, 16 percent female. White and Hispanic voter participation has increased from 18 to 24 percent in our State of Georgia.

When we look at this and we are talking about the no-excuse voting, which, again, I go back to—and a quick question here, because I have a question, because I know that Ms. Abrams is very precise in her wording. And you used in your wording in your opening statement “uncontroverted.” And I would assume, Ms. Abrams, that you would agree with me that uncontroverted means it is with truth and validity, not disputed or denied, correct? That is a question.

Ms. ABRAMS. I was attempting to turn my mike—my microphone on.

Mr. COLLINS. Okay. I have that problem too.

Ms. ABRAMS. As for the definition of the word “uncontroverted,” yes, I would agree with your definition.

Mr. COLLINS. Okay. Well, then, the question, and this came up several times here, we keep bringing up Wisconsin, yet a Stanford and World Health Organization study that says that there is no correlation between rise in COVID cases in Wisconsin because of the voting. There may have been more, 71 cases, as you said, but there has been no rise overall. And the question is, of those 71, can it be definitively determined that they caught it at the voting place?

So it is very interesting we should say that this is uncontroverted, and your wording was it broke your heart to see them standing in long lines. Did it also break your heart to see folks standing in long lines in Fulton County and DeKalb County

because local officials there chose to limit their voting machines and limit their polling locations?

We need to make sure that we continue this process and honest discussion and not rhetoric that tends to scare people.

The question that comes into my mind here—and I want to go back. There was a discussion, and it has been stated by some of the Democratic members, it has been stated by the chairman earlier, it has been stated by you, Ms. Abrams, and others that you are being forced to choose, forced to choose. And we just got off the discussion with Mr. Ho, and he was talking about how many—and you actually thought it as well—how many have no-excuse absentee voting.

Now, I will agree with you that there are other people that may have—that those voting preferences need to be encouraged. I would encourage that. Everybody needs to vote.

But my question is, where is the choice to put your life in danger if in such as our home State of Georgia anyone can request an absentee ballot and get it? Where are we—is that not just use of overblown language to say that in States like Georgia and others, to make a political point that we are just saying nobody can vote? That seems a contradiction.

Ms. Abrams, are you going to answer that?

Ms. ABRAMS. I will try to address all of the questions.

First and foremost, the number of 71 cases have been directly related to April 7th, according to the Wisconsin State Journal, which is in my testimony.

Number two, no one has claimed that voting has created an overwhelming majority of cases, but there is a direct correlation and that is uncontroverted based on the evidence before us.

As to the—

Mr. COLLINS. I will stop you there, Ms. Abrams. Ms. Abrams, can I ask you this? Because I want to go back to something, because uncontroverted means not disputed.

And you are a fabulous attorney. I have known you for a long time, but I will say that, and somebody will politically use it against me.

But I am going to say this. You understand that—and I am saying that April 7 is the start date for those, all 71, to have received the virus at that time, that is probably not a provable statement. And to keep stating it is a provable fact is not being a forthright and honest discussion of what happened in Wisconsin.

Ms. ABRAMS. To continue my response, the issue of who has a choice to vote, it is not a choice if you apply for an absentee ballot but the infrastructure of the State is insufficient to meet your request. That is the reason for the request for funding, because in the State of Georgia, for example, yes, millions of people have requested a ballot, but not everyone has received it because the State does not have the funding at the local or State level to meet the needs, and that is going to be expanded when we get to November.

But I not only represent the State of Georgia. The work I do is across the entire United States. And so I speak for voters in every single State in our Nation, particularly voters of color, who wish to use this choice to vote by mail but may not be able to if their State is insufficiently funded with [inaudible] right to vote.

Mr. COLLINS. Well, I would agree with that, but——

Mr. COHEN. Mr. Collins, your 5 minutes are up, and I thank you.

Mr. COLLINS. I yield back. Thank you.

Mr. COHEN. You are welcome, sir.

Thank you, Ms. Abrams.

Next is on the Democrat side, Mr. Swalwell.

Mr. SWALWELL. Thank you, Chairman.

And I think we would be tone deaf if we didn't recognize the moment our country is in right now. And I did welcome the opportunity in a bipartisan way for this committee to live up to the role that it has played in the past, to work on civil rights legislation, to protect Black Americans from police abuses, continued police abuses.

But going to voting, which, of course, relates to the plight of African Americans in our country, I want to ask, Ms. Abrams, you are familiar with H.R. 1, the For the People Act. I just want to know, in Georgia, what would that legislation, if it was signed into law, what would it mean for an upcoming Georgia election considering some of the voting abuses we have seen in your State in the past?

Ms. ABRAMS. Thank you, Representative Swalwell.

I want to address a statement made earlier, which is that there is some correlation between increased participation and the absence of suppression.

In fact, we know that in the United States, often we see as a response to suppression an attempt to respond by increasing presence. That does not mean that every person who attempts to participate is allowed to do so. That is the moral equivalent, as I have said before this committee, to the committee, that because more people get into the water, suddenly there are fewer sharks. That is not the correlation that we should use, and it is not the appropriate test of access to our democracy.

What H.R. 1 would provide is a solution to a number of the challenges that folks in Georgia face. Number one, automatic voter registration and same-day registration would solve the challenge of exact match and the voter purges that have plagued the State of Georgia, particularly for African Americans in our State.

The additional language that permits expanded access to the right to vote across the country would absolutely guarantee voters of color more direct access. Black and brown voters are the most likely to have their absentee ballots rejected. They are the most likely to be subjected to more restrictive voter ID laws.

And let's be clear, there is no—there is absolutely no contest with the notion of being able to prove who you are. The challenge with voter ID laws is that they become more and more restrictive, thereby eliminating people who should otherwise be able to cast a ballot, including a 100-year-old woman in the State of Wisconsin who when they passed their law, because she could not provide a birth certificate because she was born during segregation in Missouri, was disallowed from voting for the first time in more than a decade.

That is the challenge that gets addressed by H.R. 1. We remove the barriers to voting, we remain protective of our democracy, but we also expand access to everyone who is eligible to participate.

Mr. SWALWELL. Ms. Abrams, does voting by mail go as far back as the Civil War?

Ms. ABRAMS. It does, indeed. Voting by mail—sorry.

Mr. SWALWELL. Go ahead.

Ms. ABRAMS. Yes.

Mr. SWALWELL. And today, a soldier in Afghanistan who does not have a ballot box that they can go and vote at, are they voting by mail?

Ms. ABRAMS. They are, indeed.

Mr. SWALWELL. And are their ballots any less secure than a vote by mail here at home?

Ms. ABRAMS. They are not. In fact, under UOCAVA, we have made appropriate mechanisms available in every single State to guarantee access to vote by mail, which is why the controversy around expanded access is so perplexing, because we have States that permit it.

And what we are saying is that in the midst of a pandemic that has robbed most States of the economic resources they need, that the Federal Government as part of our mutual aid compact should step up and provide the resources necessary to allow every State to participate in our democracy.

And that is why we have the United States. It is why we have this joint relationship between States and the Federal Government. And it has worked during the 1918 pandemic, during the Civil War, and it works every single election cycle for our military.

Mr. SWALWELL. And did you know, Ms. Abrams, that last month in California's 25th Congressional District, there was a 100 percent vote by mail election where the President said that it was going to be a fraudulent outcome, and a Republican, Mike Garcia, was the winner? Did you know that?

Ms. ABRAMS. Not only is that true, but we know in the State of Utah, they use 100 percent vote by mail. Vote by mail does not privilege one community over the other, but equal access guarantees that there is equal participation, and that should be the goal of a democracy.

Mr. SWALWELL. And Ms. Abrams, are you aware of any recent polling about support for voting from home by the American people?

Ms. ABRAMS. According to a Washington Post/ABC News poll, it is a 2 to 1 margin of support for vote by mail because people do not want to have to make the choice of risking their lives even on the most infinitesimal chance when there is a logical and logistical way to solve the problem, particularly because it protects then those who have no choice but to vote in person.

Mr. SWALWELL. Thank you, Ms. Abrams, and thank you to our witnesses. I yield back.

Mr. COHEN. Thank you, Mr. Swalwell.

I want to thank the Republicans for allowing us to move the hearing up an hour so that Ms. Abrams could participate. She has to leave at—I believe it is noon, 1 o'clock maybe Eastern time. If Mr. Armstrong—Mr. Cline is next—if Mr. Armstrong or a Democrat has a question for Ms. Abrams, you can ask it now, and then that time will be taken from the time you have your 5 minutes.

Mr. Armstrong, do you have a question?

Mr. ARMSTRONG. I don't.

Mr. COHEN. Thank you, sir.

Does a Democrat have a question for Ms. Abrams? If not, we will proceed to Mr. Cline. And if you would ask—if you have a question of Ms. Abrams, if you would ask it first, and then we will proceed on.

Mr. Cline, you are recognized for 5 minutes.

Mr. CLINE. Thank you, Mr. Chairman. I want to thank you for your opening remarks and for the opening prayer. And our thoughts and prayers are with the American people during this difficult time.

It is an unprecedented time in the history of our Nation. In the midst of a global pandemic, citizens will be asked to do their civic duty by participating in elections, not just in November but in primaries and in local elections. And just last month, cities and towns in my home State of Virginia held local elections. Not only did they appear to have been held without incident, but in some cases the turnout was higher than in previous elections.

COVID-19 has changed how we live our lives with every decision we make, weighing the risks of our actions, whether it is grocery shopping, planning doctors' visits, and even now voting. As election day approaches, it is important for us to consider what we can do to ensure that it is conducted safely, securely, with strong protections against fraud, and fairly with accuracy.

While I believe that my colleagues on the other side of the aisle would agree with those goals, I am concerned that H.R. 1 and their proposal to federalize essentially our election process would largely impede those goals.

The Constitution vests States with the responsibility to administer elections. That is because each State is best positioned to run their own elections. And even more concerning than the prospect of losing a State's ability to best address the needs of their own citizens and localities is the potential of fraud that federalizing elections could cause or encourage.

Although I support absentee balloting and support recent efforts in Virginia to move to an all absentee or no-excuse absentee balloting, I am concerned with some of the proposals for mail-in voting, especially as it applies to those States that don't have updated voter rolls.

When you vote in Virginia absentee, the voter must request the absentee ballot. They have to fill out the ballot in the presence of a witness, although during COVID-19 that has been waived. And they must sign the envelope before returning it to the registrar. We take appropriate measures to ensure that anyone who needs an absentee ballot receives one, and anyone who returns a completed absentee ballot has their vote counted.

You know, as the U.S. Election Assistance Commission has noted, maintaining accurate voter registration lists is essential to protecting election integrity, and that is where we have differing standards all around the country. While COVID-19 has presented us with challenges, Congress has stepped up and acted by passing the CARES Act, which provides around \$400 million to help States and to prevent, prepare for, and respond to coronavirus domestically and internationally for the 2020 Federal election cycle.

And I want to ask Mr. Fitton, it has been suggested that States, when an election is held in an area in which an emergency or disaster is declared, automatically mail absentee ballots to registered voters in that area. Do you have any concerns with that proposed order, with an all mail-in voting requirement absent updating the voter registration rolls?

Mr. FITTON. Yes. Specifically in California, we have a settlement with the State of California, Los Angeles County, where they are removing right now up to 1.6 million names from their rolls. Our analysis from last year found 14 counties totaling over a million extra names on the rolls.

So in theory, all those folks would get ballots because they are still registered to vote. And Newsom's plan, aside from its legality, whether he has the authority to do it, it is bad policy.

Look, I understand that we need to be prepared for a potential surge in absentee ballot requests, but it is the wrong way to vote if you are concerned about secure voting. It should be resolved—it should be reserved for emergency situations, our military deployed overseas. And if you want your vote to be secure and counted, the best way to ensure that is to go vote in person.

And we have these concerns about COVID-19. How does that comport with this massive push for ballot harvesting, which is illegal virtually everywhere? Ballot harvesting means people going around and taking ballots in person from people. This is the old adage, never let a crisis go to waste, and the left is doing it here.

It is going to—this debate is undermining our confidence in elections because it is confusing people. They can vote in person. They can pursue mail-in ballots as appropriate if they need to. But we should be encouraging people to vote in person. That is the best way to be sure that votes are secure and counted.

Mr. CLINE. Thank you.

Mr. Chairman, in the interest of time, I am going to yield back.

Mr. COHEN. Thank you, Mr. Cline, very much.

Ms. Sheila Jackson Lee has a question for Ms. Abrams, and she would ask that briefly.

Ms. Abrams.

Ms. JACKSON LEE. Mr. Chairman, thank you very much.

Ms. Abrams, thank you so very much.

How important is it to ensure that in a mail ballot program that individuals who receive that then desire to vote in person, that there is protection for that individual, those individuals?

Was I heard?

Mr. COHEN. Is Ms. Abrams still with us?

Voice. No.

Mr. COHEN. She has left?

I am sorry, Congresswoman Lee. I didn't see your request in time. We had gotten started. So no time will be taken from you.

And we will now recognize Ms. Scanlon for 5 minutes.

Ms. SCANLON. Thank you very much. I am honored to be able to participate in this first virtual hearing by the Constitutional Subcommittee of House Judiciary. It is so important that Congress be able to conduct its essential business for the American people at a time when one of the most essential things that we can do is to limit the spread of COVID-19 and protect those whose physical

presence is essential by maintaining social distancing whenever we can.

And of course there is an obvious parallel between this virtual hearing and one of the central topics in our discussion today, which is the important role of voting by mail to allow voters to exercise their essential constitutional right while maintaining social distancing during a public health emergency.

I represent Pennsylvania, and has been noted by several speakers, we had our primary election yesterday. Last year, in its wisdom, the Pennsylvania Legislature overwhelmingly passed broad voting reforms, including no-excuse mail-in ballots, and they did so on a strong bipartisan basis, 70 percent of both houses.

Yesterday was the first opportunity for voters to use the system, and there is no denying that there were some challenges in implementing it, largely because of the COVID-19 epidemic, which has killed more than 6,000 Pennsylvanians already.

We had almost 2 million Pennsylvanians apply for mail-in ballots. And while this presented logistical challenges, by and large, it ran smoothly, and we are all going to be working together, State, local, and Federal, to improve the process for the fall.

One thing that was absolutely clear was the need for additional resources, for scanning, printing, and processing these ballots.

One of the biggest issues we had at the polls yesterday was staffing, given the disparate impact of COVID-19 on the seniors who we typically rely upon to staff our polling places. Many polling places had to be consolidated.

And so I got a message from a friend who was working at the polls yesterday, and she was really shocked and horrified by how many people refused to vote by mail and instead clogged the polling places because they had heard the President's derogatory statements about voting by mail. She said that, you know, she is really concerned as a healthcare professional that the lack of adequate mail-in voting is going to trigger another wave of coronavirus in our region, and we have just come out of a peak. We would like to avoid another one.

It was interesting. Last week on my way back from our voting session in D.C., I heard the Republican secretary of state in Washington share her State's success with mail-in voting in an NPR interview entitled "Lessons to Learn From Washington State's Decades-Long Experience of Mail-in Voting." And I would ask unanimous consent to enter that transcript in the record.

Mr. COHEN. Without objection, it will be done.

[The information follows:]

MS. SCANLON FOR THE OFFICIAL RECORD

9/1/2020

Lessons To Learn From Washington's Decades-Long Experience Of Mail-In Voting : NPR



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ELECTIONS

Lessons To Learn From Washington's Decades-Long Experience Of Mail-In Voting

May 28, 2020 · 4:04 PM ET

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NPR's Ailsa Chang speaks with Washington Secretary of State Kim Wyman, who oversees voting in her state. Mail-in voting has been used there for decades — and Wyman says there's been little fraud.

AILSA CHANG, HOST:

The presidential election is now less than six months away, and with the dangers of gathering in large groups, many states have been looking to expand mail-in voting. President Trump has claimed without evidence that mail-in voting leads to more fraud. But five states already vote almost entirely by mail, including the state of Washington, which is why we called up Kim Wyman. She is Washington's secretary of state, she is a Republican, and she oversees voting in her state. Welcome.

KIM WYMAN: Thank you.

CHANG: So why did Washington state decide to move to a mostly mail-in system in the first place?

WYMAN: Well, you know, I think it became a matter of convenience. And, you know, people's lives have really changed in the last 40 years. People work away from home. A

lot of times, both people in the household work. And it's not what voting was in the 1950s. And so the polling place model, for many people in our state, didn't work any longer, and this was a model that we could build a security in as well as the accessibility. And our voters love it.

CHANG: And just to be clear, what is the difference between voting by absentee ballot and voting by mail?

WYMAN: The real difference is absentee ballots are something that are requested by the voter, and a vote-by-mail election is something that's mandated by government or by a legislature. So I think that's why it becomes a very emotional topic for people - because it goes from a choice to a mandate.

CHANG: Some of your Republican colleagues say that mail-in voting creates more of a risk for fraud because you can't verify someone's ID in person. How would you respond to that?

WYMAN: Well, that's not been our experience here in Washington state. First and foremost, we've had voter ID at the time of registration since 2006 in our state, so we actually do have an ID check. And beyond that, we did a comparison in 2018 of voting history, and we found that about .004% of our voters did, it appears, try to vote fraudulently. They voted for someone else who had passed away, or they voted more than once. And that was 142 people out of 3.2 million ballots cast.

CHANG: Is that rate of fraud any higher if you compare it to when Washington State wasn't using a mostly mail-in system?

WYMAN: I think that they're comparable. I don't think a polling place system is perfect, and I don't think a vote-by-mail system is perfect. And let's face it. No level of fraud is acceptable. But you can build in security measures that keep it very low, and I think that's what we've done successfully here in Washington.

MARY LOUISE KELLY, HOST:

I'm also curious just about general voter participation. Are voter numbers higher or lower in Washington compared to other states that don't have a mail-in system of

9/1/2020

Lessons To Learn From Washington's Decades-Long Experience Of Mail-In Voting : NPR

voting?

WYMAN: Washington's experience has been consistently higher turnout elections, and I think you really see it in our off-year elections where we elect local officials like mayors and city council members and that type of thing. That's where you see a really dramatic increase. In our presidential years, we're on average. But I think what you consistently see is Washington is in the top six to 10 states every election for turnout.

CHANG: What do you think other states can learn from Washington state's experience? For example, is it feasible to switch the entire country over to a mail-in system by this November, you think?

WYMAN: Well, you know, when you look at the states that have moved to vote-by-mail or are moving currently to vote-by-mail, it's taken them, you know, five to 10 years to do that because you need to build in the capacity for the volume. You need to have high-speed ballot sorters and envelope sorters to deal with the incoming mail. And right now the question is, is that equipment even in the supply chain? Is it even available? You also need to build up the staffing and the space requirements, especially in COVID-19, to be able to have that machinery to have that production.

So I think that it's a heavy lift for states that are in low percentage of absentee ballots currently, like, you know - like Tennessee, where you see 2% of their ballots cast by mail. They could probably have an expansion of absentee voting, but they couldn't make the switch completely to vote-by-mail between now and November.

CHANG: Republican Kim Wyman is the secretary of state for Washington. Thank you very much for talking with us today.

WYMAN: You're welcome.

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Ms. SCANLON. Thank you.

I wanted to turn for a minute to the issue of disability voting. Ms. Bishop, even under normal circumstances, without a pandemic raging, our voting systems are often inaccessible for individuals with disabilities. And I introduced the Disabilities Voting Rights Act, which was included in H.R. 1, to try to get our State and Federal officials to invest in mail-in voting and making polling locations more accessible.

Can you speak to concrete steps we should be taking to ensure that voting during this pandemic is accessible and that individuals with disabilities are not prevented from participating in the vote?

Ms. BISHOP. Absolutely. And thank you for that question.

We talked a lot today about the importance of mail-in voting as a way to keep voting safe, especially to deter congestion at the polls. And I think that is critical during COVID-19. But what we can't overlook here is even the way we describe it, mail-in voting, voting by mail, what we are essentially describing is a paper ballot that is inherently inaccessible to people with disabilities.

And I think the most obvious example of that, if I were a voter who was blind, and I went to my polling place, and you gave me a paper ballot and a pen, and you asked me to mark it privately and independently which is my right under Federal law, I can't do that.

So if you mail the same ballot to my home, I don't magically regain my vision when I sit down at my kitchen table. That ballot is still inaccessible to me. We have to have options that make mail-in voting accessible to people with disabilities.

And, fortunately, they exist, and they have been in use for years, particularly in States that have prominent vote by mail systems. And honestly, any State under the MOVE Act has to provide it for our military and our overseas voters. Electronic delivery of blank ballots and remote accessible vote by mail systems are making it significantly more accessible for people with disabilities to access vote by mail.

It is not a quick fix, it doesn't make it fully accessible for all voters, but it does drastically improve the accessibility, which in the time of COVID-19 means that more voters will be able to opt to vote by mail and won't be forced to make that decision to go to the polls and risk their health to be able to cast their ballot.

So it is critical that any States that don't currently offer electronic ballot delivery broadly to their voters expand it right now and make that an option for all voters.

Ms. SCANLON. Thank you. And I believe my time has expired, so I will yield back.

Mr. COHEN. Thank you, Ms. Scanlon.

Our next questioner will be Mr. Armstrong.

And Mr. Armstrong, thank you. You are recognized for 5 minutes.

Mr. ARMSTRONG. Thank you, Mr. Chairman, and thanks for having this hearing. It gives me my sporadic opportunity to educate people on how we do things in North Dakota.

And I think I would start with saying there truly are no Federal elections. There are only local elections that elect Federal officers and Federal elected officials.

And I know that because North Dakota has probably the easiest voting in the entire country. We have no voter registration. We have a 30-day residency requirement. We allow felons to vote when they are out of prison. And we are proud of all of those things. And I think that is one of the problems I have, and have significantly, with how we are doing this.

And just to be clear, during this primary during COVID, we are doing vote by mail throughout the whole State. It was actually fairly easy for us to set up because we have a number of vote by mail counties already that are almost exclusively vote by mail.

But as is always the case when we try and do these things from a Federal level, when we are attempting to solve [inaudible] a perceived problem somewhere else, it will cause problems in places like mine. There are things we do very well, but we do them in the aspect of being a very, very rural State. Requiring 20 days early voting in a State—in a county with 700 people doesn't make any sense.

And in fact, we have spent many years in different counties and different jurisdictions to get this right. We have places that have extended early voting, and then we have places that shorten it up but have it open significantly outside business hours. We do a lot of those things.

The other thing we do with all absentee and early voting is require that it is postmarked a day before the election. North Dakotans want to know the result of their election on election day.

But just other things that exist in all of these different proposals that make it difficult. Mandating that when a declared emergency exists that it is automatically vote by mail is pretty interesting for us. What most people call weather emergencies, we usually call Tuesday. In varying degrees in some place or another within our State, there is a national—or there is a Federally declared emergency, whether it is for drought, flood, blizzard, all of those different things.

These proposals forbid ID requirements for vote by mail. We need voter ID because we don't have voter registration. It would be contrary to North Dakota State law. And there is a conflict with all of those different things.

But as we spend so much time talking about how we deal with voter registration and the different issues involved in that, again, North Dakota doesn't have it, and so we deal with different things.

And I have to say, too, even as we are doing this right now in North Dakota, you want your population to have confidence in the ballot, in the voting process. And in our secretary of state's zeal and effort, which I applaud, to ensure that everybody had the opportunity to vote, I should also say that if more than three-fourths of the ballots that have been requested by absentee voting in North Dakota are returned, this will be our highest voter turnout in the history. I anticipate that probably won't be the case and we will be closer to at or slightly above average.

But when we do this, I mean, we are seeing—and this is—I mean, people are getting ballots sent to their house, ballot applications sent to their house for people who haven't lived there in three generations, and those types of things cause voters to cause concern over that, and we need to continue to move forward.

So I guess my question for either—well, I suppose Mr. Fitton. As we nationalize these things, for a State like North Dakota we would have to completely revamp how we do our voting. And in our case, it would actually be more restrictive, not less, to our citizens. Isn't that correct?

Mr. FITTON. Yes, that is the concern here. You have this national plan that is being proposed that would upend the voting laws in all States in some form or another, and from our perspective most importantly, the laws that secure the votes, such as voter ID laws.

Now, most Americans support voter ID in significant numbers, both Republican and Democrat. This is a noncontroversial issue, other than some hardcore activists on one side who oppose voter ID using fraudulent numbers and reasons for doing so, in my view.

Look, you should be able to vote in November. We all agree on that. We want people to be safe. We also want the votes to be secure. Blowing up the system now is the wrong thing to do, whether at the national level or even State by State, where you get confusion reigning as opposed to reassuring voters their votes will be counted in the ordinary course, in the ordinary way, just vote as you normally are used to doing so, we will get through it. What we are hearing now is an effort to disrupt the elections, not to secure them.

Mr. COHEN. Thank you.

Mr. Armstrong, your 5 minutes are up. I now have another reason to think well of North Dakota other than what used to be called small college football, ice hockey, and those are the two I mostly know. But now calling, you all do great, and you.

Mr. ARMSTRONG. Thank you, Mr. Chairman.

Mr. COHEN. You are welcome. Thank you very much.

Next is Ms. Dean for 5 minutes.

Ms. DEAN. Thank you, Mr. Chairman. And I thank you and the ranking member for your thoughtful opening to this first hearing of our subcommittee. I am pleased to be a part of it. I am mindful of the moment of extraordinary difficulty in our country and in our world.

I am going to start with my first question, if I may, for Secretary of State Benson. As my friend and colleague Mary Gay Scanlon pointed out, yesterday was primary election day here in Pennsylvania, delayed due to the pandemic. It was a test to see how prepared we are in managing for November's general election.

It is a tough time for every State. We are figuring things out as we go, and naturally there are going to be some problems. For example, a good problem is 161,000 folks in my county of Montgomery County applied for mail-in ballots. This is the first time we have had that opportunity. The county had estimated perhaps maybe 20,000 or 30,000 based on 2016 absentee ballots of only 9,000. So instead a whopping 161,000 voters sought to seek a mail-in ballot.

Unfortunately, some of the problems that we have experienced, and they are learning, is that for some voters their ballots went out by market mail instead of being marked priority mail. For those who aren't familiar, that is the same type of postage indicia that would be spam mail, delaying its delivery for as long as 10 to 14 days if not more.

Some of my own constituents, including a member of my own staff, did not get their ballot in time for this election even though they applied in time. So there are lots of problems we can expect. That is just one important one.

But, Secretary, from your experience, as you pointed out, printing more ballots costs money. Mailing more ballots costs money. Ensuring our polling places are safe and well equipped costs money. Our Postal Service is on the front lines and needs resources, and our local and State governments need our Federal support.

Secretary, as the official responsible for administering your State's elections, in what areas or issues of election administration have you felt those lack of resources?

Ms. BENSON. Thank you very much for your question and for pointing out exactly what we have learned here in Michigan, which is that with resources, with sufficient funds [inaudible] it appears the solutions to address a lot of these concerns are out there and can be implemented. But lacking those resources, you will lead to—it is hard to adapt a system that previously was primarily in person to a system that is predominantly voting by mail quickly.

Now, we were able to do that in Michigan. In 2018 voters amended our law, similar to Pennsylvania, which I know was a new law, to have a right to vote by mail. And so like many other States, we saw a significant influx in our March 10th Presidential primary and anticipating another influx in the fall of people voting by mail.

But the benefit that we and Pennsylvania and other States have is that States like Colorado and Washington, as was mentioned earlier, Oregon, and even to a certain extent California, have been doing this work, have been allowing vote by mail in robust systems in their States for decades. So we have an opportunity to learn from both their mistakes and their best practices and with appropriate resources import a lot of the systems they have developed, the technology that they use, the people, the people power that is necessary as well, and the education tools that is needed to ensure voters know what their choices are, what their options are, and that they are empowered to fix challenges if they don't receive their ballot on time, which for many different variables can oftentimes occur despite the best intentions of everyone involved.

So we cannot overestimate the importance of these resources in enabling us to anticipate and solve these problems before we prepare for November, and the HEROES Act does provide sufficient resources, I believe, to enable us all to do that.

Ms. DEAN. Not only for State and local governments, but also for the Postal Service, which I will continue to fight for, I know we all will.

You began in your opening statement talking about some of the particular challenges of communities of color or economically disadvantaged communities, perhaps Flint. Can you point out some of the difficulties in making sure folks have full access to mail-in and in-person voting?

Ms. BENSON. The difficulties are both expounded by inequality and an access to resources, but also historical disenfranchisement and historical disconnect and lack of responsiveness from the gov-

ernment officials and systems that are meant to serve and protect these residents.

And so we are fighting decades, generations of trauma. And as we are seeing across this country now, the need to effectively do more to better serve communities of color and historically marginalized and disenfranchised communities also is underscored at the ballot box.

And it is why this has been at the heart of my work and so many others in the voting rights arena, recognizing that, as has been mentioned in many different ways today, there is no one size fits all approach to ensuring every vote is counted and every voice is heard.

It takes every one of us working together at the local level, at the State level, community leaders, other voices, trusted voices, to educate voters about their rights and ensure they know the choices.

It takes election officials, administrators preparing an infrastructure that can embrace and serve, meeting voters where they are at to enable all choices to be fully balloted in successful ways to cast a vote.

And then it also takes all of us fighting back against efforts to deceive, particularly communities of color, but all voters, about their rights and their access to the vote issue now more than ever.

All of this does take resources, but also everyone in this hearing today and everyone watching has a platform that they can also use to dispel myths and counter efforts to misinform the public with facts about the realities, the work we are all doing to ensure every voice is heard. And so I think that is why these conversations and this work is also important in addition to those resources.

Mr. COHEN. I think our time is up. I think we are way beyond time. Thank you very much.

Our next questioner will be Ms. Garcia.

Ms. GARCIA. Thank you, Mr. Chairman, and thank you to the ranking member. I, too, thought that the comments that you made opening up our hearing were not only thoughtful but just another reminder of what has shaken our country to its core with the tragic death of George Floyd.

You know, I am a person of faith. From an early age my faith has taught me that we are all God's children. Certainly George Floyd was not treated as the child of God that he is.

The color of one's skin should not determine the justice they receive. Likewise, it should not determine the access to the ballot box that you get.

Recently the Texas Supreme Court ruled that if a voter fears contracting COVID-19, that this does not qualify as a disability. It is intentionally confusing in an effort to mislead voters into not requesting a mail-in ballot. Nevertheless, the decision also made it clear that voters can apply for a mail-in ballot if they believe the risk to COVID-19 is significant.

Mr. Chairman, the Texas Supreme Court issued this decision virtually, presumably from home or their offices, because they considered their concern for their own well-being and for their own health. So why shouldn't they hold the same standards for safety and well-being for all Texas voters?

This is not a time for political games in the middle of a pandemic. We should not be misleading voters into falsely choosing between their health and voting. That is why on April 2nd I led a letter to the governor and the secretary of state of Texas urging them to implement a no-excuse vote by mail for all elections in the State of Texas until the end of this year, while still preserving in-person voting as long as in-person voting locations are structured to respond to public health concerns.

I think this is what many of us are saying. We are not trying to do away with in-person voting. We just want to ensure that in-person voting is safe and healthy for everyone, but that everyone also receive the option by voting from home.

We are banking from home. We are shopping from home. We are buying groceries from home. We are ordering food from home. We are doing everything from home. So, frankly, it makes sense that we also vote from home.

Mr. Chairman, I do at this time want to ask unanimous consent to introduce into the record my letter to the governor and the secretary of state of Texas.

Mr. COHEN. Without objection, it will be introduced.

[The information follows:]

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AND CITIZENSHIP
TASK FORCE ON POVERTY AND OPPORTUNITY
VICE CHAIR ON URBAN POVERTY

April 2, 2020

The Honorable Greg Abbott
Office of the Governor-State of Texas
P.O. Box 1248
Austin, TX 78711-2428

The Honorable Ruth R. Hughs
Secretary of State-Elections Division
P.O. Box 12060
Austin, TX 78711-2060

Dear Governor Abbott and Secretary Hughs:

We respectfully request your consideration to implement no-excuse vote-by-mail for all elections in the state of Texas until the end of this year, while preserving in-person voting opportunities for those who need them, as long as in-person voting locations are structured to respond to public health concerns.

On March 13, 2020, Governor Abbott officially declared a state of disaster for all counties in Texas due to the rapid spread of COVID-19. Furthermore, on March 25, 2020 President Donald Trump granted a Major Disaster Declaration for Texas.

The proposal requested above is plausible under current Texas law because of Governor Abbott and President Trump's recent disaster declaration. Section 418.016(a) of the Texas Government Code states that:

"The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster."

We urge you to use this statute to waive all limitations on voting-by-mail statewide for elections taking place through the remainder of the year. It is vital that we act immediately to defend the constitutional rights of all Texans and prevent future COVID-19 related illnesses and deaths.

Currently, many Texans are unable to vote-by-mail due to strict eligibility guidelines and varying laws across municipalities. This causes confusion among the electorate and reduces voter turnout. However, a statewide no-excuse vote-by-mail order would let all Texans participate in

the electoral process, without risking exposure to COVID-19 in large crowds and long lines, which are all too common when voting in person.

No-excuse statewide voting-by-mail would protect the health of voters and polling place workers and volunteers. As of the date of this letter, the Centers for Disease Control (CDC) website suggests that election officials encourage “voting methods that minimize direct contact with other people.”¹ Specifically, the CDC suggests using “mail-in methods of voting if allowed in the jurisdiction” to combat the spread of COVID-19.²


Still, we understand that in-person voting may be necessary in some instances. In this case, we ask that in-person polling location operations follow public health guidelines to ensure the health of voters and polling place workers and volunteers.

However, implementing no excuse vote-by-mail for the remainder of the year is the best way to implement CDC guidelines. It also eliminates confusion among Texas voters about mail-in ballot eligibility, prevents a decrease in voter turnout and protects the health of Texas voters and polling place volunteers to ensure that everyone can still perform their civic duties.

No one should have to decide between exercising their constitutional right to vote and their health and the health of their families.

Thank you for your attention to this matter. We look forward to working with you to defend the rights of Texans during this unprecedented health crisis.

Sincerely,


Sylvia R. Garcia
Member of Congress

Additional Cosigners:

Representative Lloyd Doggett
Representative Sheila Jackson Lee
Representative Veronica Escobar
Representative Colin Allred
Representative Al Green
Representative Joaquin Castro
Representative Lizzie Fletcher
Representative Vicente Gonzalez
Representative Henry Cuellar
Representative Eddie Bernice Johnson
Representative Marc Veasey
Representative Filemon Vela

¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

² *ibid.*

Ms. GARCIA. Thank you.

And I want to begin, Mr. Chairman, with my first question for Ms. Pérez.

Ms. Pérez, are you familiar with this Texas case, and is this just but one example of the reason that we need a Federal standard, if you will, on eligibility for stay-at-home voting to ensure that one State is not doing one thing and other States are relaxing rules and can vote during this pandemic without any real excuse because of the fear of the virus?

Ms. Pérez. Yes, Ms. Garcia. As you may remember, I am from Texas. I am from San Antonio.

We surely need to make sure that there are minimum standards so that it doesn't matter where you live, you will be entitled to the basic ability to cast a ballot that will count. And one of the things that the Brennan Center has done has been to check which States have different policies that are needed in order to make sure that no voter is left behind. I have submitted that in the record, and I would encourage all to take a look at it.

One of the things that I am finding so interesting about this conversation is that all of the dispute over whether or not we need to have basic minimum standards is one policy question, but the other policy question is, if you want States and localities to play the role that they want to play in making sure that no voter is left behind, please give them funding. They are asking for funding. They are telling Congress that they need more resources.

So even if there is a debate over this, that, or the other, there should be no debate among any member on this committee that we are all better off if State and local election administrators have the resources that they need.

At this point in the game, them having the resources will automatically make elections a bit better. And we can do more if there are minimum standards, but as a baseline, I am hoping and I am hearing that there is a commonality for wanting to support our State and local election administrators, and I am hoping that members of this committee go and do everything that they can to make sure that those State and local election administrators get the extra \$4 billion that they need.

Ms. GARCIA. Thank you.

Mr. Chairman, I see I am out of time. I do have a couple of other questions and I will submit them later to the record.

Mr. COHEN. Thank you, Ms. Garcia. And I did mention when you asked to have something admitted to the record, I said it is granted or admitted, but it is admitted.

Thank you.

Ms. GARCIA. Thank you.

Mr. COHEN. You are welcome.

Ms. Escobar, you are next.

Ms. ESCOBAR. Thank you so much, Mr. Chairman, and thanks to all of our panelists. This is such an important conversation.

And, Mr. Chairman, thank you for opening up our conversation today acknowledging what is happening in the world around us right now. And I think that that is part of why it is so confusing to me as to what the controversy is surrounding making it easier for people to be safe and to participate in their elections.

As a reminder, this global pandemic has taken over 100,000 American lives and counting. In my own county, for example, the numbers of deaths keep increasing every day. We know that if people are not socially distancing, they are putting themselves at risk.

And there are certain communities and certain people who are more vulnerable than others. We know that the elderly are more vulnerable. We also know that people with underlying health conditions are more vulnerable.

But there is a third group that is more vulnerable, and I think it is very important that we talk about it, especially because of what is happening in the country right now. That third group is minority populations, primarily Latinos and African Americans, who are dying at disproportionately higher rates because they are more at risk.

And I am not going to take time going into why they are more at risk, but I would refer everyone to Dr. Fauci's comments about Latino and African American communities, which he says, by the way, are as vulnerable to COVID-19 as people who live in assisted living facilities. That is how vulnerable we are.

So we have got to do everything possible. We have a fundamental obligation to provide for the health, safety, and welfare of the people that we represent.

Ms. Arnwine, I want to ask you a question, my first question. The State of Texas, my State of Texas, is, unfortunately, notorious for creating obstacles for voters. We rank right up there when it comes to voter suppression.

We heard my colleague, Mr. Armstrong, earlier talk about the really great work that his State is doing, and he used that as an example as to why we shouldn't federalize rules or regulations. But can you tell us, explain to the American public, why we need the Federal Government to step in with resources and regulations, please?

Ms. ARNWINE. Thank you so much for that question because we absolutely need to make sure that every single American is protected.

There is so much confusion out there because different States do different things. It makes no sense that in Texas there is no—that the disability category for excused voting is so limited and that the Supreme Court couldn't give people clarity on what that means and instead told people, well, we don't think you will be prosecuted," when the AG is threatening to prosecute everybody. It made no zero sense. That is unfair. That is un-American. We want to make sure that every American has the same rights.

It is wrong that in North Carolina they say you have got to have two witnesses in a COVID era and a notarization if you are going to have an absentee ballot. That makes zero sense. It is unfair, it is unsafe, and it is un-American.

You know——

Ms. ESCOBAR. Thank you so much. I am so sorry, Ms. Arnwine, I want to get to one more question before my time runs out. Thank you for that response.

Ms. Bishop, you talked about the need to have sort of a hybrid approach so that as many people as possible vote safely from their own home, so that the disabled would have the ability to go in per-

son. Can you describe for the American public why it is important to take that approach?

Ms. BISHOP. And it was said earlier today by another one of our witnesses, thank you for raising this issue again, that in order to really make our elections work for all voters, we have to be able to provide a broad range of options. There is no one size fits all way of voting that is going to work for everyone. Neither in-person voting nor vote by mail have honestly been made fully accessible for people with disabilities at this point, despite the fact that there are several Federal laws that protect that right for them.

So we have to be able to provide as many options as possible for people with disabilities. If we don't make our vote by mail as accessible as possible, they are not able to choose the safety of voting from their homes, which is a privilege for those who are non-disabled. But if we don't also make our in-person options available and as safe and as accessible as possible, people for whom vote by mail just simply does not work will not be able to cast their ballot.

So it is critical that we are implementing electronic ballot delivery for vote by mail, but also that we have in-person voting to the greatest extent possible, we have as many ballot marking devices or accessible voting systems as possible, that we have a minimum of one machine per precinct is not sufficient, and that we are letting in curbside voting to reduce exposure to COVID-19.

Ms. ESCOBAR. Thank you both so much.

I yield back, Mr. Chairman.

Mr. COHEN. Thank you, Ms. Escobar. When I first saw you on the screen, I thought I have been in that house.

Ms. ESCOBAR. You have.

Mr. COHEN. Nice to see that house again. Thank you.

Ms. ESCOBAR. Thank you.

Mr. COHEN. Next is Ms. Jackson Lee for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, thank you so very much. And let me as well add my appreciation for the words of faith that you offered at the beginning and to thank you for mentioning the murder of our hometown son in George Floyd. I know that we in Houston and the Nation appreciate your faith and your words.

Let me also acknowledge the ranking member for expressing the importance of a systemic change that has to occur in this Nation as well as a cultural change.

Let me ask unanimous consent to place this headline, the Houston Chronicle yesterday, "Tens of Thousands March in Floyd's Name." In fact, it was 60,000 persons. I ask unanimous consent to place this in the record.

Mr. COHEN. Without objection, so done.

[The information follows:]

Tens of thousands march on downtown Houston to memorialize George Floyd

✱ houstonchronicle.com/news/houston-texas/houston/article/Large-Houston-crowd-memorizes-George-Floyd-15312644.php

Emily Foxhall, St. John Barned-Smith, Nicole Hensley, Jasper Scherer, Dylan McGuinness

Local // Houston

June 2, 2020 Updated: June 3, 2020 10:46 a.m.

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Protesters hold signs in the reflecting pool in front of Houston's City Hall as they listen to speeches after a march in honor of George Floyd on Tuesday, June 2, 2020.

Elizabeth Conley, Houston Chronicle / Staff photographer [Show More](#) [Show Less](#)

The sound of George Floyd's name reverberated around the downtown streets of the city where he grew up, where tens of thousands of people rallied demanding justice, demanding accountability, demanding change.

"Say his name!"

"George Floyd!"

People of all backgrounds had gathered for the Tuesday rally at Discovery Green organized by Black Lives Matter and rapper Trae Tha Truth. In the beating-down heat, they followed a procession of Floyd's family and Houston public officials to a gathering in front of City Hall.

Now Playing:

Here are the sights and sounds of the march for George Floyd in Houston on June 2, 2020. Video: Laura Duclos/Houston Chronicle

Tensions would later flare as police worked to get protesters to leave the area after dark, but, to begin, protesters and police took a knee, a gesture that has become a powerful symbol in the Black Lives Matter movement. It also brought back imagery of how Floyd died.

It had been eight days since a video showed a Minneapolis police officer kneeling on Floyd's neck, as Floyd repeatedly pleaded for air. His death inspired protests in cities around the world, including Houston, where residents now came together yet again to make their voices heard.

Funeral for George Floyd

A public memorial will be held June 8 from noon to 6 p.m. at The Fountain of Praise Church, 13950 Hillcroft Ave. A private service at an undisclosed location is slotted for June 9 at 11 a.m.

They arrived on horseback and on foot from all reaches of the sprawling city, forming one of the biggest protest crowds here in recent memory; organizers estimated attendance at 60,000. With political support, and leadership from those who knew Floyd, people in his diverse hometown were standing up for one of their own.

"We know the world's watching right now," Trae tha Truth (whose given name is Frazier Thompson III) told the crowd. "George sparked the change in the world that we need right now."

Floyd, 46, grew up several miles from City Hall in Third Ward. He graduated from Yates High School in 1993, where friends remembered him as a "gentle giant" — a laid-back man in a 6-foot-6-inch frame.

"Big Floyd," friends called him.

The passionate protest in his honor was a protest with Houston flair. The list of speakers included prominent local politicians, such as Mayor Sylvester Turner and two longtime African American Congress members, Reps. Sheila Jackson Lee and Al Green.

Ninety-one-year-old Rev. Bill Lawson, who founded Third Ward's Wheeler Avenue Baptist Church, was there in his wheelchair.

Others revved the engines of their motorcycles so the sound echoed between the skyscrapers as "I'm so Houston" played from speakers.

They were representing the Bayou City, spreading a universal message. "END POLICE BRUTALITY," a sign read. "JUSTICE 4 GEORGE," said another.

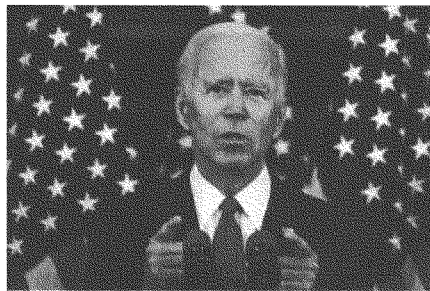
One girl, maybe 5, hoisted a sign that was almost the size of her body: "I matter."

More for you

- [City health officials fear protest crowds will spur COVID surge](#)



- [Joe Biden will attend George Floyd's funeral, family attorney...](#)



"Today it's about lifting up the family of George Floyd," Turner said. "It's about supporting 16 members of his family who have taken the time ... walked through the streets just like you did, to be here with you today."

Added Turner: "We want them to know George did not die in vain."

Earlier in the afternoon, city employees removed piles of bricks and rocks where they found them. Photos of violence of prior protests across the country — burned out police cars, people shot with rubber bullets, broken glass of looted stores — weren't far from mind.

When everyone took a knee at Discovery Green, the crowd hushed.

A group of black trail riders helped lead the way. At least one wore a T-shirt that read: "Black Cowboys Matter."

Soon, the slow, impassioned march to City Hall began. The marchers passed Houston police officers at the intersections. Some posed for photos, while others stood stoic.

Later in the evening, about 20 protesters would silently take a knee in front of those officers. A protester would thank them for letting them peacefully gather. The officers would nod back.

Crystal Lewis stood against a wall on Walker Street, watching awestruck as the chanting crowd passed. She was crying. She hadn't known the march was going to happen.

"This is so beautiful," Lewis said. "I have never seen so many people get together like this."

The crowd extended so far from City Hall that it was hard to hear as Reps. Jackson Lee and Green pushed for change. "I will not lie," Green said. "I am angry." Jackson Lee promised to introduce a police reform bill soon.

In the crowd, there was an edgy energy. Some passed out hand sanitizer and water. Others got into the reflection pool. Alexis Nick, 23, and Kenisha Mynor, 25, weaved their way down McKinney Street, leading chants of "No justice. No peace."

Violence like the taking of Floyd's life led Nick, who studied criminal justice, to want to pursue a career in law. She was upset that the community had to rally like this to see justice done — to see people who committed murder be charged with murder.

"This hits home for me," Nick said. "It's 2020 and we're still fighting injustices that African American men and women have faced. And if we're being completely honest, it's frickin' pitiful."

As the speeches ended, the question became: What next?

In front of City Hall, Johnny Salazar and Rey Salvador, both 20, held an American flag. They had spray-painted a clenched black fist on it, with the words "Black Lives Matter." A crowd of young protesters surrounding it whooped and cheered.

"People have had enough," Salazar said. "Too many people have lost their lives."

Dylan Allen, 20, of Greenspoint, came to take a photo with the pair. Previous killings have drawn outrage — only for that outrage to die away, he said. He hoped that wouldn't happen this time.

Small groups of protesters confronted police. "Say his name," they yelled for a few minutes at two separate groups of officers. The officers stood quietly and showed little emotion.

Another agitated crowd surrounded Police Chief Art Acevedo. The chief spoke to them individually, giving his phone number to one, verbally sparring with another.

"You don't know what's in my heart!" Acevedo said to one angry protester, who criticized him.

He told protesters some of the changes for law enforcement need to come from legislative fixes.

Some in the crowd demanded he release videos of recent officer-involved shootings in Houston. Acevedo offered varying reasons why the department hasn't released bodycam videos, including concerns from family members.

The skirmishes would increase as the sun set, with police detaining people they said were refusing to leave the area.

But for now a 60-year-old woman approached the back steps of City Hall and asked an officer manning a barricade if her two grandchildren could take a photo with him.

Detective Kacey Saulsberry quickly moved the fence and walked down the stairs to pose with Lauryn, 5, and London, 4. Both wore stickers of badges that said "junior police."

"I just wanted to show them, let them be a part of something they probably will get to understand later in life," said Latricia Tate, the grandmother. "Say, 'We was there.' You know? 'My granny took us.'"

Ms. JACKSON LEE. It evidences the fact that in the messages that came out of that were people's desire for change. That change comes about through the power of voting. That is why this hearing is so crucial to be able to assess how we ensure in 2020 voting for all Americans.

My friends are correct, we have had a disparate impact of COVID-19 across the Nation and right here. We have lost pastors and political activists, people you see every day, who happen to be African American.

So my first question is to Dale Ho. In light of the fact that the President has indicated that he plans to file lawsuits against every State that has mail-in ballots that refuses or removes the restrictions, as they should, to adhere to the democracy of this Nation, what stricture, what should Congress put in place? And how important as well is the restoration of Section 5 of the Voting Rights Act?

Thank you, Mr. Ho.

Mr. HO. Thank you very much for that question.

Obviously, restoring the Voting Rights Act is of critical importance to voters all across this country. And I do think it is quite ironic that, on the one hand, some critics of congressional efforts to set minimum health and safety standards for voting during the pandemic on the grounds of State authority are at the very same time threatening the authority of States with Federal litigation to try to stop those States from taking actions to facilitate safe and secure voting by mail.

There is nothing to fear from helping Americans vote.

Ms. JACKSON LEE. Thank you.

So Congress needs to intervene, I would take it, to ensure that protection?

Mr. HO. Well, I think Congress should set minimum standards for protecting health and safety and should do its best to make sure that State efforts to facilitate voting are not interfered with.

But I just want to make one point clear. Even if Congress does none of those things, we will see a record number of ballots cast by mail in this election because the majority of States already allow for no-excuse absentee voting and more voters than ever want to use it. In Wisconsin, it was five times the number of voters than in 2016; in Pennsylvania, 18 times—

Ms. JACKSON LEE. Thank you.

Let me ask to, I believe, Ms. Bishop, Michelle Bishop. I am in total support of expanding the opportunities for voters with disabilities. One of the things that I have seen violated is the right of a voter to come to the polls and have curbside voting. I want to ensure that that is never undermined and done safely in light of COVID-19. Help us understand how important that is.

And let me ask Ms. Arnwine just a specific question after Ms. Bishop, specific question on the voting. We know that the people impacted negatively on mass mail balloting happens to be African Americans, for many cultural reasons. The ballot may come, they don't use it, they go to the polls, and they are punished by not being able to vote. Think about how we have to protect minorities as relates to voting.

Ms. Bishop, if you would answer the importance of those with disability, but particularly the curbside voting which I want to focus on.

Ms. BISHOP. Yes. Thank you for that question.

Curbside voting, I think, is a largely misunderstood issue. It is actually a critical stopgap measure, even outside of the context of the global pandemic. We have not yet made America's polling places fully accessible to people with disabilities.

In fact, the U.S. Government Accountability Office has studied this. Most recently in 2016, they found that in terms of architectural access to a polling place, wide enough doorways, paths of travel, accessible parking, less than half of America's polling places were actually accessible, only 40 percent.

And, unfortunately, that 40 percent is actually an all-time high. So that almost half is the best we have ever done realistically at making all of our polling places accessible.

We have to fix that. But until we can, allowing people with disabilities to vote curbside, if they are not able to get into the polling place, is an important way to make sure they are still able to cast their ballot.

So regardless of COVID-19, curbside voting is a critical measure and could also be really useful in the context of the pandemic as well because it allows you to reduce your exposure or potential exposure to COVID-19 if you are able to stay inside your vehicle. It is the same thing we see at COVID-19 testing centers, these are primarily drive-through.

Mr. COHEN. Thank you.

Ms. Arnwine, would you address the same question?

Ms. JACKSON LEE. The question of protecting Black voters who come out with the mail ballot at their home.

Thank you.

Ms. ARNWINE. Absolutely. And I have been dealing with this, as you can imagine, of them blowing up my phone and blowing up my emails with problems that Blacks are having with the mail-in ballot problem around the country.

One of the things that we know right now is that if you make people call in for an application for a ballot, that doesn't work, or if you tell them that they can print it out at home, remember 30 percent, 29 percent of all people in Philadelphia who are Black do not even have internet access. So that is just not realistic.

So one of the things that we have been pushing very strongly, as we have talked about today, is that all States have to mail ballots, mail applications, have prepaid responses, because those stamps confuse, and that is another problem.

The other thing that I want to join Michelle Bishop very strongly, curbside voting works beautifully for people of color. Drop box, ballot collection right at the polling sites, all of these things are good and we have got to have many, multiple, expanded options. That is what we need. And I am hearing of so many problems because with bad voter education and people have not retooled their thinking about how to best reach, outreach to Black people, how to educate them about mail-in balloting, but also how to make it easy to do it. And I am hearing from too many people who are really registered voters. I have helped them. I have called up the boards

of elections, and I have talked to them, and these are registered voters who got no mail-in ballot.

Mr. COHEN. We are going to have to wrap up.

Ms. ARNWINE. Yes.

Mr. COHEN. Thank you, Ms. Arnwine.

Thank you, Congresswoman Jackson Lee. Thank you for your words of comfort to the country. And I know you will be in Houston for the funeral, and I am sorry about the loss of your constituent and his family members here.

Ms. JACKSON LEE. Thank you.

Mr. COHEN. This concludes today's hearing.

I started by saying how the right to vote has been diminished for years, and it goes back to America's original sin, it is inscribed in our Constitution, which we fought a Civil War over and still never overcame.

It has been interesting in this hearing to hear that the five States with least access to voting by mail, my home State of Tennessee, Missouri, Mississippi, Louisiana, and Texas, are all States that had slavery. It is interesting that there is some connection there, I suspect. Old times there are not forgotten.

With that, I want to thank our witnesses for appearing today. Without objection, all members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record.

I want to thank the Republicans for allowing us to start early and facilitate Ms. Abrams' attendance.

And with that, this hearing is adjourned.

[Whereupon at 12:39 p.m. the subcommittee was adjourned.]

APPENDIX

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House of Representatives
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HOUSE COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON DIVERSITY
AND INCLUSION
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS
TASK FORCE ON ARTIFICIAL INTELLIGENCE
HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND CIVIL LIBERTIES
SUBCOMMITTEE ON IMMIGRATION
AND CITIZENSHIP
TASK FORCE ON POVERTY AND OPPORTUNITY
VICE CHAIR ON URBAN POVERTY

April 2, 2020

The Honorable Greg Abbott
Office of the Governor-State of Texas
P.O. Box 1248
Austin, TX 78711-2428

The Honorable Ruth R. Hughs
Secretary of State-Elections Division
P.O. Box 12060
Austin, TX 78711-2060

Dear Governor Abbott and Secretary Hughs:

We respectfully request your consideration to implement no-excuse vote-by-mail for all elections in the state of Texas until the end of this year, while preserving in-person voting opportunities for those who need them, as long as in-person voting locations are structured to respond to public health concerns.

On March 13, 2020, Governor Abbott officially declared a state of disaster for all counties in Texas due to the rapid spread of COVID-19. Furthermore, on March 25, 2020 President Donald Trump granted a Major Disaster Declaration for Texas.

The proposal requested above is plausible under current Texas law because of Governor Abbott and President Trump's recent disaster declaration. Section 418.016(a) of the Texas Government Code states that:

"The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster."

We urge you to use this statute to waive all limitations on voting-by-mail statewide for elections taking place through the remainder of the year. It is vital that we act immediately to defend the constitutional rights of all Texans and prevent future COVID-19 related illnesses and deaths.

Currently, many Texans are unable to vote-by-mail due to strict eligibility guidelines and varying laws across municipalities. This causes confusion among the electorate and reduces voter turnout. However, a statewide no-excuse vote-by-mail order would let all Texans participate in

the electoral process, without risking exposure to COVID-19 in large crowds and long lines, which are all too common when voting in person.

No-excuse statewide voting-by-mail would protect the health of voters and polling place workers and volunteers. As of the date of this letter, the Centers for Disease Control (CDC) website suggests that election officials encourage “voting methods that minimize direct contact with other people.”¹ Specifically, the CDC suggests using “mail-in methods of voting if allowed in the jurisdiction” to combat the spread of COVID-19.²

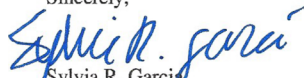
Still, we understand that in-person voting may be necessary in some instances. In this case, we ask that in-person polling location operations follow public health guidelines to ensure the health of voters and polling place workers and volunteers.

However, implementing no excuse vote-by-mail for the remainder of the year is the best way to implement CDC guidelines. It also eliminates confusion among Texas voters about mail-in ballot eligibility, prevents a decrease in voter turnout and protects the health of Texas voters and polling place volunteers to ensure that everyone can still perform their civic duties.

No one should have to decide between exercising their constitutional right to vote and their health and the health of their families.

Thank you for your attention to this matter. We look forward to working with you to defend the rights of Texans during this unprecedented health crisis.

Sincerely,


Sylvia R. Garcia
Member of Congress

Additional Cosigners:

Representative Lloyd Doggett
Representative Sheila Jackson Lee
Representative Veronica Escobar
Representative Colin Allred
Representative Al Green
Representative Joaquin Castro
Representative Lizzie Fletcher
Representative Vicente Gonzalez
Representative Henry Cuellar
Representative Eddie Bernice Johnson
Representative Marc Veasey
Representative Filemon Vela

¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

² Ibid.

Mr. Adams for the record – U.S. v. Ike Brown Opinion:

<https://docs.house.gov/meetings/JU/JU00/20200603/110768/HHRG-116-JU00-20200603-SD001.pdf>

