

March 24, 2020

Via Email

Hon. John Thurston
Arkansas Secretary of State
Executive Office State Capitol, Suite 256
500 Woodlane Avenue
Little Rock, AR 72201
501-682-1010

Re: Ensuring Ballot Access for Arkansas Voters during the COVID-19 Pandemic

Dear Secretary Thurston:

The NAACP Legal Defense and Educational Fund, Inc., the Christian Ministerial Alliance, and the Arkansas Community Institute write to ask that you issue guidance and administrative rules to permit every eligible voter in Arkansas to safely vote in the March 31, 2020 runoff election during this unprecedented national and statewide health crisis. We also write to raise concerns about your compliance with the National Voter Registration Act.

As you know, the COVID-19 (coronavirus) pandemic presents extraordinary public health, safety, and logistical concerns for every Arkansas voter. On March 10, the President responded to the rapid spread of COVID-19 by declaring a national emergency.¹ On March 11, Governor Hutchinson declared a state of emergency for Arkansas.² These declarations are based on the well-founded concern that COVID-19 could lead to the death or serious illness of millions and overwhelm our healthcare system. To date, there are 211 confirmed COVID-19 cases in Arkansas.³ For each confirmed case, however, there could be up to 10 unconfirmed ones.⁴ To slow the outbreak, the State has ordered school closures, advised people to work from home, to minimize personal contact, to avoid large gatherings, and to stay home if they are ill, and the State has urged everyone to practice social distancing.⁵

Because conducting elections and other government functions in this situation presents exceptional challenges, the Governor has directed every state agency to identify and suspend

¹ Brooke Singman, "Trump Declares National Emergency over Coronavirus, Enlists Private Sector," Fox News (Mar. 14, 2020), <https://www.foxnews.com/politics/trump-declares-national-emergency-coronavirus>.

² Proclamation by the Governor of the State of Arkansas, Executive Order No. 20-03, Mar. 11, 2020, available at https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-03.__1.pdf.

³ "Officials say 7 people have recovered from coronavirus in Arkansas," THV 11 Digital, Mar. 23, 2020, <https://www.thv11.com/article/news/health/coronavirus/coronavirus-in-arkansas-covid-19-updates/91-386ccf84-2651-481e-b77f-e07e703fad65>.

⁴ Ruiyun Li, et al, *Substantial undocumented infection facilitates the rapid dissemination of novel coronavirus*, Science Magazine (Mar. 16, 2020), <https://science.sciencemag.org/content/early/2020/03/13/science.abb3221>.

⁵ Proclamation by the Governor of the State of Arkansas, Executive Order No. 20-06, Mar. 17, 2020, available at https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-06.__.pdf.

any “regulatory statute, agency order or rule that in any way prevents, hinders, or delays the agency's ability to render maximum assistance to the citizens of this state while they are adhering to the guidelines to prohibit the spread of disease”⁶

To that end, we appreciate that you have recently issued guidance that explains that “[a]ll Arkansans who are eligible to vote in a runoff election are eligible to cast an absentee ballot under Arkansas’s existing absentee voting law.”⁷ Unfortunately, this guidance does not go far enough to protect voters. For example, under the guidance, a voter must apply for an absentee ballot via mail, fax, or email by today (March 24), but a voter may request an absentee ballot in-person through March 30. Further, the absentee ballot itself must be received by the county clerk by 7:30pm on Election Day (March 31) and there are needless limitations placed on who can collect absentee ballot applications.

Accordingly, we respectfully request that you take the following additional steps:

- Clarify that voters are exempt from the photo ID requirements related to absentee voting;
- To assist voters in complying with social distancing guidelines and burdened by county courthouse and polling place closures, extend the absentee ballot request deadline for mail, fax, or email applications to at least March 30 (i.e., the deadline for in-person absentee ballot requests);
- Accept absentee ballots postmarked by Election Day (March 31) and received within 10 days of Election Day;
- Allow any voter or a designee to drop off their absentee ballot at any polling place;
- Allow any person designated by the voter (including staff of nursing homes and senior centers if the voter resides in these facilities) to pick up the voter’s absentee ballot and drop that absentee ballot off by the close of polls on Election Day;
- Allow curbside voting to any eligible voter that is concerned about coming inside a polling location; and
- Undertake an aggressive voter education plan to ensure that voters are aware of and know how to exercise these options and to counter (intentional or unintentional) disinformation with facts.

⁶ *Id.*

⁷ Press Release, “Important Election Update: Early Voting for General Primary Runoff Election Begins Tuesday, March 24th,” Arkansas Secretary of State, March 18, 2020, available at <https://content.govdelivery.com/accounts/ARSOS/bulletins/281e8cf>.

The above measures, in conjunction with the recommendations made by others,⁸ will benefit all eligible voters, but are particularly important for older voters, low-income people, voters with disabilities, and people of color who are less likely to have access to the healthcare, social networks, and transportation necessary to feel safe voting in-person. In fact, to protect the fundamental right to vote in times of crisis, federal courts have ordered election officials to extend voting deadlines or make other accommodations to address states of emergency.⁹

Moreover, because polling places are being relocated to protect the public health and vulnerable populations, like elderly people and people with disabilities, affected voters must be promptly notified of any changes.¹⁰ Election officials must ensure that no polling site relocation violates the Voting Rights Act, that any new poll sites are compliant with the Americans with Disabilities Act, and that the new sites are consistent with all other federal nondiscrimination and election laws. Also, to prepare for the possibility that COVID-19 may lead to the unavailability of large numbers of poll workers,¹¹ your office should immediately begin working with local officials on a special effort to recruit and train more poll workers.

Finally, we write to notify you that the State of Arkansas is not in compliance with Sections 5 and 7 of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20504 et seq. Arkansas is systematically failing to ensure that a driver’s license or identification card application, renewal, or change of address transaction serves as a voter registration application or change of address in accordance with Section 5. Arkansas is also not in compliance with Section 7 of the NVRA. While Arkansas permits individuals to apply for public benefits online at <https://access.arkansas.gov/Welcome.aspx>, that website is not set up to accept or transmit voter registration applications or to assist voters with the registration process. Rather, voters are directed to print and mail-in their registration forms. This letter serves as notice per 52 U.S.C. § 20510(b) of violations by Arkansas of the NVRA.

Given the urgency of the COVID-19 concerns, we request that you respond by **noon tomorrow (Wednesday March 25, 2020)** to Deuel Ross (dross@naacpldf.org) and Natasha Merle (nmerle@naacpldf.org). Thank you.

⁸ See, e.g., Letter from the Leadership Conference on Civil and Human Rights to State Election Officials, etc., Mar. 17, 2020, available at <http://civilrightsdocs.info/pdf/policy/letters/2020/COVID-19-Coalition-Letter-updated-3.17.20.pdf>; Brennan Center for Justice, Memorandum re: How to Protect the 2020 Vote from the Coronavirus, Mar. 16, 2020, [https://www.brennancenter.org/sites/default/files/2020-03/Coronavirus Response Memo.pdf](https://www.brennancenter.org/sites/default/files/2020-03/Coronavirus%20Response%20Memo.pdf).

⁹ *D.N.C. v. Bostelmann*, No. 20-cv-249, 2020 WL 1320819 (W.D. Wis. Mar. 20, 2020); *Florida Democratic Party v. Scott*, No. 4:16-cv-626, 2016 WL 6080225 (N.D. Fla. Oct. 12, 2016).

¹⁰ See Bill Bowden, *Election officials in Arkansas proceed carefully*, Arkansas Democrat Gazette, Mar. 22, 2020, available at <https://www.arkansasonline.com/news/2020/mar/22/election-officials-proceed-carefully/>

¹¹ Nationally, two-thirds of poll workers are age 61 or older. Election Administration Commission, Election Administration and Voting Survey: 2018 Comprehensive Report, at 9, https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf.

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Sincerely,

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