



July 21, 2020

Sent via electronic mail:

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Senator Amy Klobuchar
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Dear Chairman Blunt and Ranking Member Klobuchar,

I write to you on behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”). Thank you for holding this important hearing on COVID-19’s impact on elections.

LDF was founded in 1940 by Thurgood Marshall. It has been an entirely separate organization from the NAACP since 1957. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. Beginning with *Smith v. Allwright*,¹ our successful Supreme Court case challenging the use of whites-only primary elections in 1944, LDF has been fighting to overcome obstacles to ensure the full, equal, and active participation of black voters. From that era to the present, LDF has been involved in the struggle to secure, protect, and advance voting rights for Black voters and other communities of color. LDF has always been a pioneering force in our nation’s quest for greater equality and will continue to advocate on behalf of Black people, both in and outside of the courts, until equal justice for all Americans is attained.

¹ 321 U.S. 629 (1944).

Impact of COVID-19

The COVID-19 pandemic has led to unprecedented crises and loss throughout the country. To date, there have been more than 3.8 million confirmed cases of COVID-19 in the United States and over 141,400 deaths.² The pandemic is also disproportionately impacting black people. The Centers for Disease Prevention and Control (“CDC”) recently reported that Black people account for 22% of COVID-19 cases with known demographic information, despite comprising only 13% of the population.³ The report found that among people with underlying health conditions, COVID-19 related hospitalizations are six times higher and deaths are 12 times higher than among people with no underlying health conditions.⁴ Additionally, the CDC reported that COVID-19 incidence is highest among persons aged 80 or older, and COVID-19 fatalities are most commonly reported among persons aged 80 years or older regardless of the presence of underlying condition.⁵ Black people are also experiencing a tremendous economic loss. It is estimated that 45% of Black workers have lost their jobs or had their hours cut due to the COVID-19 pandemic, compared to 31% of White workers.⁶ Elections held during this pandemic and without proper and comprehensive safety procedures, disproportionately endanger older voters, Black voters, and voters with pre-existing health conditions who are particularly at-risk for complications and death from contracting the virus.⁷ This pandemic has become not only a public

² *Coronavirus in the U.S.: Latest Map and Case Count*, New York Times (last visited Jul. 21, 2020, 3:45 PM)

https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?action=click&pgtype=Article&state=default&module=styln-coronavirus®ion=TOP_BANNER&context=storylines_menu

³ Erin K. Stokes, Laura D. Zambrano, Kayla N. Anderson, et al, *Coronavirus Disease 2019 Case Surveillance*, Centers for Disease Prevention and Control (Jun. 15, 2020)

https://www.cdc.gov/mmwr/volumes/69/wr/mm6924e2.htm?s_cid=mm6924e2_w.

⁴ *Id.*

⁵ *Id.*

⁶ Danielle Kurtzleben, *Job Losses Higher Among People of Color During Coronavirus Pandemic*, National Public Radio (Apr. 22, 2020) <https://www.npr.org/2020/04/22/840276956/minorities-often-work-these-jobs-they-were-among-first-to-go-in-coronavirus-layo>.

⁷ Erin K. Stokes, Laura D. Zambrano, Kayla N. Anderson, et al, *Coronavirus Disease 2019 Case Surveillance*, Centers for Disease Prevention and Control (Jun. 15, 2020)

https://www.cdc.gov/mmwr/volumes/69/wr/mm6924e2.htm?s_cid=mm6924e2_w.



health emergency and economic crisis, but a threat to the very foundation of our democracy: free and fair elections.

Congressional Action is Urgently Needed

To combat the suppressive effect of COVID-19, Congress must proscribe responsive measures for election administration, and provide the necessary funding and resources to ensure that every eligible American can register and vote, that every ballot cast by an eligible voter is counted, that each and every election is secure, safe, and accessible. And, that all election officials, poll workers and voters are as protected as possible.

While the provision of alternative methods to in-person voting is warranted and must be provided, these measures cannot replace or come at the expense of safe, accessible, and secure in-person voting. Congress must approach upcoming elections with a “both/and” mentality. Voters must be presented with a host of voting options administered safely and in accordance with CDC guidelines⁸ in order to ensure each eligible voter has the opportunity to safely and securely cast a ballot. The resources and reforms needed to ensure a safe election include:

- At least \$3.6 billion in financial assistance;
- At least 15 consecutive days of in-person early voting in federal elections, with early voting available at least 10 hours per day and early voting sites located within walking distance of public transportation;
- Ensure that every voter can access no-excuse absentee ballots with prepaid postage in all federal elections, prohibit states from requiring notarization or witness signatures to cast an absentee ballot, and during emergencies, such as COVID-19, require states to automatically mail absentee ballots to all registered voters no later than two weeks before Election Day;

⁸ *Recommendations for Election Polling Locations*, Centers for Disease Control and Prevention (Updated Mar. 27, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

- Expand voter registration opportunities including requiring that any eligible citizen can register to vote online and requiring that any voter be allowed to register to vote on the same day that they vote (same-day voter registration);
- Defray the costs to states of undertaking public education campaigns to educate voters about new voting and registration options in the wake of COVID-19;
- Provide accommodations for voters residing on Indian lands, such as permitting tribes to designate buildings as ballot pickup and collection locations;
- Remove the 20 percent matching fund requirement in order for states to obtain federal funding for election assistance; and
- Require that at least 50 percent of funding for states be passed along to units of local government, which are responsible for the administration of elections for federal office.

Recent Election Challenges

For more than a decade, LDF's Prepared to Vote initiative has disseminated non-partisan public education materials to prepare voters for elections and engaged volunteers around Election Day in targeted jurisdictions, primarily in the South, to work on the ground at polling places answering questions and providing voters with important information about how to comply with election laws.

Since the beginning of the pandemic, LDF's Prepared to Vote initiative has monitored key elections with a specific focus on COVID-19's impact on election administration. As COVID-19 infections continue to rise,⁹ specifically in the South, it is

⁹ Julie Bosman and Mitch Smith, *Coronavirus Cases Spike Across Sun Belt as Economy Lurches into Motion*, New York Times (Jun. 16, 2020) <https://www.nytimes.com/2020/06/14/us/coronavirus-united-states.html>.

clear that states do not have transmission under control. Even when taking into account increased availability of testing, experts conclude that the increase in confirmed cases in the Sun Belt states is a result of increased transmissions.¹⁰

Recent elections across the country have resulted in a tragedy of disenfranchisement which underscores the urgent need for legislation and funding responsive to the COVID-19 pandemic. In April, Wisconsin held an election in which thousands of mask-wearing Americans stood in staggered lines extended over city blocks¹¹ as they waited to vote amidst the most dangerous pandemic this country has faced in a century. Wisconsin’s April election resulted in at least 71 people contracting COVID-19 after voting in-person or working at the polls.¹² At least one study concluded that those counties with “more in-person voters per voting location had significantly higher rates of COVID-19 transmission after the election than counties with lower density.”¹³ Too many elections have since occurred in unsafe conditions which force voters to make the unconscionable choice between their health and safety and exercise of the franchise. Requiring eligible voters to risk contracting a serious and potentially fatal virus in order to vote is a form of voter suppression—particularly against Black and Latinx voters and voters with underlying health conditions, who have contracted and died of COVID-19 complications at a disproportionate rate.

South Carolina

In Richland County, South Carolina less than a month before the June 9th election, the County Elections Director announced a poll worker shortage as concerns of contracting coronavirus persisted. The county, which normally retains 900 to 1,000 poll workers to staff elections, had only 500 or 600 poll workers on

¹⁰ *Id.*

¹¹ Benjamin Swasey & Alana Wise, *Wisconsin Vote Ends As Trump Blames Governor For Long Lines*, NPR (Apr. 7, 2020) <https://www.npr.org/2020/04/07/828835153/long-lines-masks-and-plexiglas-barriers-greet-wisconsin-voters-at-polls>.

¹² David Wahlberg, *71 People Who Went to the Polls on April 7 Got COVID-19; Tie to Election Uncertain*, Wisconsin State Journal (May 16, 2020) 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.

¹³ Chad D. Cotti, Bryan Engelhardt, et. al., *The Relationship between In-Person Voting, Consolidated Polling Locations, and Absentee Voting on COVID-19: Evidence from the Wisconsin Primary* (May 10, 2020). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3597233.

election day.¹⁴ The shortage of poll workers resulted in merely 70 polling places being open for the election, as opposed to the standard 149 polling places.¹⁵ In turn, the polling site closures forced jurisdictions to consolidate polling locations which, coupled with understaffing, created long lines and reported wait times of three hours¹⁶—including after the official close of polls.¹⁷

The consolidation of polling sites created confusion and long lines not only in Richland County but across South Carolina. West Ashley High School became the polling location for six precincts yet only had five voting machines available for voters.¹⁸ At the Mount Pleasant Christ Church polling place, one voter attested that long lines were the result of poll workers having only one laptop to check voters in and only eight voting machines.¹⁹ Multiple voters were forced to wait in lines for

¹⁴ Greg Hadley, *Voters Report Races Missing from Ballots at Richland Polls During SC Primary*, The State (Jun. 9, 2020)

<https://www.thestate.com/news/politics-government/election/article243404346.html>.

¹⁵ Chris Trainor, *Richland County to Cut Polling Places for June 9 Primary—Possibly by More than Half*, Free Times Post and Courier (May 26, 2020 updated June 10, 2020) https://www.postandcourier.com/free-times/news/covid19/richland-county-to-cut-polling-places-for-june-9-primary-possibly-by-more-than-half/article_fe3f0cf0-9f7f-11ea-9408-0f94663bb936.html.

¹⁶ Brindolyn (@Brindolyn), Twitter (Jun. 9, 2020, 7:52 PM)

<https://twitter.com/Brindolyn/status/1270503972604968960>; Natalie Parsons (@nataliegparsons), Twitter (Jun. 9, 2020, 2:51 PM) <https://twitter.com/nataliegparsons/status/1270428285004951552>; Torchie (@Torchie123), Twitter (Jun. 9, 2020, 2:38 PM)

<https://twitter.com/Torchie123/status/1270425152833171456>.

¹⁷ Sooji Nam (@soojinamtv), Twitter (Jun. 9, 2020, 6:01 PM)

https://twitter.com/sooji_namtv/status/1270476179477323777; Sooji Nam (@soojinamtv), Twitter (Jun. 9, 2020, 6:25 PM) https://twitter.com/sooji_namtv/status/1270482234307497985.

¹⁸ Gavin Jackson (@GavinJackson), Twitter (Jun. 9, 2020, 1:3 PM)

<https://twitter.com/GavinJackson/status/1270408674322845697>.

¹⁹ Cocky Karen (@pinksoccermom), Twitter (Jun. 9, 2020, 6:47 PM)

<https://twitter.com/pinksoccermom/status/1270487601263398913>.

more than two hours before being able to cast their ballots²⁰ and some left before being able to cast a ballot.²¹ One voter remarked:

“We voted at Oak Point which combined 5 precincts. We were lined up in the sun for hours! There were only 4 workers, 1 serving curb side, and only a total of 4 machines, 2 for Oak Brook, and 2 for River Springs people. Surely we hope it is a lot better in November! Many were not happy with having to wait about 2 hours in the hot sun!!”²²

Moreover, on election day counties across the state failed to effectively communicate information about polling place changes, closures and opening delays to voters. At least one polling place in Clarendon County was delayed in opening and a voter was forced to wait nearly an hour before casting a ballot.²³ At least one voter visited two closed polling places before confirming the correct polling site with the Election Protection Hotline.²⁴ Whether because of unexpected and increased traffic due to polling site changes, confusion about COVID-19 protocol or technical difficulties, the South Carolina Election Commission’s website was down and inaccessible for part of the morning of election day.²⁵ Voters noticed and, via social media, were redirected to a working site.²⁶ It is not clear how voters who had

²⁰ Brodie Hart (@BrodieHart) Twitter (Jun. 9, 2020, 5:30 PM) <https://twitter.com/BrodieHart/status/1270468421428359181>; Will Deal (@willtoles), Twitter (Jun. 9, 2020, 4:54 PM) <https://twitter.com/willtoles/status/1270459314856132609>; Kevin Olivett (@KevinOlivett), Twitter (Jun. 9, 2020, 6:38 PM) <https://twitter.com/kevinolivett/status/1270485480874926080>; A. Scott (@theQweenlex), Twitter (Jun. 9, 2020, 5:44 PM) <https://twitter.com/theQweenlex/status/1270471859197394944>.

²¹ Kevin Yeager (@KevinYeagerSC), Twitter (Jun. 9, 2020, 4:33 PM) <https://twitter.com/KevinYeagerSC/status/1270453879419871232>; Ed Moats, *South Carolina Votes Comment Section*, Facebook (Jun. 9, 2020) <https://www.facebook.com/scvotes/photos/a.314864018557052/3138691536174272/?type=3>.

²² Pat Derick Blackwall, *Comments Section*, ColaToday (Jun. 9, 2020) https://colatoday.6amcity.com/2020-primary-election-day-sc/?fb_comment_id=3064847843593560_3066499110095100.

²³ Larry Whorton, Facebook (Jun. 9, 2020, 9:42 AM) <https://www.facebook.com/larryhwhorton/posts/898641270657352>.

²⁴ Vicki Perry, Facebook (Jun. 9, 2020, 8:03 AM) <https://www.facebook.com/vikki.perry/posts/10158319862212264>.

²⁵ SC State Election Commission (@scvotes), Twitter (Jun. 9, 2020, 9:02 AM) <https://twitter.com/scvotes/status/1270344945975656448>.

²⁶ Mrs. J (@shannonjuliano), Twitter (Jun. 9, 2020, 9:19 AM) <https://twitter.com/shannonjuliano/status/1270344775930183680>.

questions but were not on social media, received information while the SCvotes.org site was down.

Throughout election day, numerous voters experienced serious issues with casting ballots, which potentially invalidated their vote. In Greenville County, because of inexperienced poll workers and confusion about split precincts some voters were given—and cast—the wrong ballot.²⁷ Inexperienced poll workers struggled with new and insufficiently tested voting machines that were not programed properly. As a result, key races were left off of ballots,²⁸ and confusion and malfunctioning machines forced some poll workers to distribute handwritten ballots.²⁹

Georgia

The June 9th election in Georgia was, simply put, a catastrophe and sadly one that was entirely avoidable. Georgia’s failure to comprehensively test new voting machines coupled with a shortage of, and insufficiently trained, poll workers left the state woefully unprepared to administer an election and put voters at risk of contracting COVID-19.

In the summer of 2019, Georgia awarded Dominion Voting Systems (“Dominion”) a \$107 million election contract to update voting machines across the state.³⁰ The installation of the Dominion voting machines occurred between late 2019 and March 2020. It is reportedly the largest rollout of elections equipment in U.S. history³¹ with 30,000 machines, 30,000 printers, 3,500 scanners, and 8,000

²⁷ Ariel Gilreath, *South Carolina primary voting problems crop up in Greenville and statewide, officials say*, Greenville News (Jun. 9, 2020) <https://www.greenvilleonline.com/story/news/politics/elections/2020/06/09/split-precincts-create-primary-voting-problems-greenville-sc/5329453002/>.

²⁸ Hadley *supra* note 13.

²⁹ Zach Pippin (@zachpippin), Twitter (Jun. 9, 2020, 1:58 PM) <https://twitter.com/zachpippin/status/1270415012587323392>; Noah Feit, Sarah Ellis and Isabella Cuetto, *Handwritten ballots issued, long lines at Richland County precincts*, The State (Jun. 9, 2020) <https://www.thestate.com/news/politics-government/election/article243381281.html>

³⁰ Mark Niese, *Georgia buys new voting machines for 2020 presidential election*, Atlanta Journal-Constitution (Jul. 30, 2019) <https://www.ajc.com/news/state--regional-govt--politics/georgia-awards-contract-for-new-election-system-dominion-voting/tHh3V8KZnZivJoVzZRLO40/>.

³¹ *Id.*

electronic voter registration terminals to service 7 million voters³² installed in 2,660 precincts.

After this massive installation of new voting equipment, the state of Georgia failed to sufficiently test the new voting machines. Additionally, hundreds of poll workers quit before the election due to fears of contracting COVID-19.³³ As a result, many poll workers were hired at the last minute and some were even trained on the job the very same day as the election.³⁴ On the day of the election, many poll workers had difficulty setting up voting equipment, turning on voter check in computers, and installing touchscreens.³⁵ Indeed, some poll workers encountered the same difficulty encoding voter access cards that was documented during a very limited test run in November of 2019.³⁶

Issues on election day occurred both as a result of insufficiently trained poll workers and malfunctioning equipment, and had compounding effects. Poll workers who could not operate voting machines offered voters provisional ballots and some

³² Stephen Fowler, *More Than 7 Million Georgians Are Registered to Vote In The March 24 Presidential Primary*, Georgia Public Broadcasting (Feb. 25, 2020) <https://www.gpbnews.org/post/more-7-million-georgians-are-registered-vote-march-24-presidential-primary>.

³³ Mark Niese, Greg Bluestein and Tyler Estep, *New voting machines lead to lines and problems on Georgia election day*, Atlanta Journal-Constitution (Jun. 9, 2020) <https://www.ajc.com/news/state--regional-govt--politics/new-voting-machines-cause-lines-and-problems-georgia-election-day/j8UMCg2RisHAYXSJltZ9hO/>

³⁴ Id.

³⁵ Mark Niese and Alan Judd, *Election fiasco reveals flaws with Georgia's new voting system*, Atlanta Journal-Constitution (Jun. 13, 2020) <https://www.ajc.com/news/state--regional-govt--politics/election-fiasco-reveals-flaws-with-georgia-new-voting-system/FoZjtLGPYccOrHzXHiPbDL/>.

³⁶ Niese *supra* note 32.

quickly ran out of provisional ballots.³⁷ Multiple precincts were forced to extend their polling hours because of long lines and issues with the voting machines.³⁸

Moreover, many voters were forced to vote in-person despite requesting to vote via mail-in, absentee ballot. Some voters' applications for absentee ballots were not processed,³⁹ and at least one voter reportedly received only an empty envelope in place of a mail-in ballot.⁴⁰ Reports also indicate that some of the absentee ballots sent to voters were printed on paper so thin that information bled through to the other side possibly obscuring and misrepresenting voters' input.⁴¹

The chaos created by the lack of poll workers, lack of training and new machines in Georgia also affected election workers' ability to adhere to and enforce CDC guidelines intended to minimize the risk of COVID-19 transmission at polling sites. One voter remarked that while voters were mostly wearing masks, "poll workers left a lot to be desired, not necessarily taking precautions to protect themselves, and voters, from COVID-19."⁴² Another stated that "voters maintained social distancing outside the precinct but less so inside."⁴³

³⁷ Niese *supra* note 32; *Voters run into issues at the polls across metro Atlanta. Here's what happened*, ESB-TV (Jun. 9, 2020) <https://www.wsbtv.com/news/local/live-updates-voters-run-into-long-lines-other-issues-election-day/H6XEOPWP2NAUZAMNVYW3ISQB3Q/>.

³⁸ Chuck Williams, *Superior Court judge extends Muscogee County voting hours until 9 p.m. because of confusion at two precincts*, WRBL.com (Jun. 9, 2020) <https://www.wrbl.com/news/politics/superior-court-judge-extends-muscogee-county-voting-hours-until-9-p-m-because-of-confusion-at-two-precincts/>;

Cobb County, GA (@cobbcountygovt), Twitter (Jun. 9, 2020, 4:39 PM) <https://twitter.com/cobbcountygovt/status/1270455507246080001>; DeKalb County, GA (@ItsInDeKalb), Twitter (Jun. 9, 2020 6:23 PM)

<https://twitter.com/ItsInDeKalb/status/1270481778373992450?s=20>.

³⁹ AltBlue (@atl_randy), Twitter (Jun. 9, 2020 9:37 AM)

https://twitter.com/atl_randy/status/1270349208969785345; Stephanie A. (@popgunsazzy), Twitter (Jun. 9, 2020 11:16 AM) <https://twitter.com/popgunsazzy/status/1270374262205972480>.

⁴⁰ Kevin A. Cronin (@Kevinacronin), Twitter (Jun. 9, 2020 9:23 AM)

<https://twitter.com/Kevinacronin/status/1270345834383761408>.

⁴¹ *Election Live Updates: Miller, Whitby Head to Runoff for Macon Mayor*, Macon Telegraph (Jun. 9, 2020)

<https://www.macon.com/news/politics-government/election/article243396926.html>.

⁴² Greg Bluestein, *It's primary day in Georgia: Here's what to watch in a COVID-19 election*, Atlanta Journal Constitution, (Jun. 9, 2020) <https://www.ajc.com/news/state--regional-govt--politics/primary-day-georgia-here-what-watch-covid-election/JYeDjvUkJpGz40fN8CfwI/>.

⁴³ Voters run into issues at the polls across metro Atlanta *supra* note 66.

As the COVID-19 pandemic continues and, indeed, surges in states across the country, by failing to ensure that all voters who chose to vote in-person had access to safe and secure polling sites, the states of Georgia and South Carolina risked exacerbating an already catastrophic public health crisis. Without oversight, guidance and legislation from Congress, elections across the country will be subject to reckless and dangerous conditions similar to those in South Carolina and Georgia. The health and safety of voters and the security and veracity of our elections must not be a partisan issue. The right to vote is fundamental to the perseverance of our democracy and a wide range of voting options must be implemented so that citizens may practice safe voting throughout the duration of this pandemic.

Alabama

Despite pressure from leading medical experts and authorities, Alabama Governor Kay Ivey refused to implement a statewide mandate that masks be worn in public on election day to help prevent the spread of COVID-19.⁴⁴ In the absence of such a mandate, county election offices took the lead in implementing social distancing and COVID-19 safety precautions during Alabama's July 14th election. Though precautions varied by polling place, reports show poll workers wore masks and/or face shields,⁴⁵ continuously disinfected surfaces, and ensured the layout of polling locations would allow for social distancing.⁴⁶ Reports also indicate that some polling places maintained separate lines for non-mask and mask wearers and posted guidelines for enforcing COVID-19 precautions outside polling places.⁴⁷ One poll worker confirmed that measures were being taken to diligently adhere to

⁴⁴ Paul Gattis, *Alabama mayors, hospital officials call for statewide mask requirement*, AL.com (Jul. 10, 2020) <https://www.al.com/news/2020/07/alabama-mayors-hospital-officials-call-for-statewide-mask-requirement.html>.

⁴⁵ Probate Judge Frank Barger, Facebook (Jul. 14, 6:30 AM) <https://www.facebook.com/JudgeBarger/photos/pb.1271662419612962.-2207520000../2991707744275079/?type=3&theater>.

⁴⁶ Ugochi Iloka (@UgochiWBRC), Twitter (Jul. 14, 2020 9:22 AM) <https://twitter.com/UgochiWBRC/status/1283029071186857986>.

⁴⁷ Jeff Poor (@jeff_poor), Twitter (Jul. 14, 2020 11:33 AM) https://twitter.com/jeff_poor/status/1283061999317012480.

social distancing guidelines, though some of the measures were causing delays.⁴⁸ They remarked that while the current set-up was “[f]ine for a sleepy one-race runoff” it is “[u]ntenable” for November’s presidential election.”⁴⁹

Still, across the state there were reports of poll worker shortages often as a result of COVID-19 concerns. A Shelby County Probate Judge reported that the county had “a difficult time” staffing some polling locations due to poll workers calling out over the weekend and due to sickness or COVID-19 related concerns.⁵⁰ Additionally, the Lee County Clerk could only obtain half the poll workers they usually employ.⁵¹

Voters who were not comfortable or able to vote in-person voted absentee by mail in record numbers. According to officials in counties around the state, more people requested absentee ballots for the runoff election than in past primary runoff elections. Indeed, the number of absentee ballots issued during the primary was comparable only to the number of absentee ballots requested during a general election.⁵² Though more than 43,000 absentee ballots were requested for Alabama’s primary, only 26,500 were returned as of July 13, 2020.⁵³ Alabama’s refusal to allow no-excuse absentee voting, had a disenfranchising effect as many voters experienced setbacks in obtaining their absentee ballots. One voter “tried 3 times to apply for

⁴⁸ Anne Leader (@anneleader), Twitter (Jul. 14, 2020 8:46 AM) <https://twitter.com/anneleaderegval/status/1283020047984852994>.

⁴⁹ Id.

⁵⁰ Hilary Simon, *What to expect when you go to the polls for the Alabama Senate runoff*, WRBL.com, (Jul. 14, 2020) <https://www.wrbl.com/news/alabama-news/what-to-expect-when-you-go-to-the-polls-for-the-alabama-senate-runoff/>.

⁵¹ Anne Leader (@anneleader), Twitter (Jul. 14, 2020 9:11 AM) <https://twitter.com/anneleaderegval/status/1283026396353363970>.

⁵² Tyler Fingert, *Coronavirus pandemic prompts more people to vote from home in Mobile and Baldwin counties*, Fox 10 (Jul. 13, 2020) https://www.fox10tv.com/news/coronavirus/coronavirus-pandemic-prompts-more-people-to-vote-from-home-in-mobile-and-baldwin-counties/article_6efc2070-c57a-11ea-b13a-73ced95c63ac.html.

⁵³ WHNT News, *More than 43,000 absentee ballots requested for Tuesday runoff election*, WHNT 19 News (Jul. 14, 2020) https://whnt.com/news/more-than-43000-absentee-ballots-requested-for-tuesday-runoff-election/?utm_campaign=socialflow&utm_source=t.co&utm_medium=referral.

and receive an absentee ballot here in Mobile” and on election day, still had not received their absentee ballot.⁵⁴

While some voters were apprehensive about voting during a pandemic and without statewide safety precautions in place, a voter in Mobile County commented that she found “the method that they’re actually using there was pretty safe.”⁵⁵ Another voter stated that voting in Mobile was an “unbelievably organized, controlled, unbelievable experience. [She] was in and out in 5 minutes. Social distancing marks were on the floor everyone was wearing a mask & [she] even got to keep the pen for my paper ballot.”⁵⁶ Still, there were reports of voters who did not, or refused to, wear masks. One poll worker estimated that “25% of [their] last 16 voters were maskless.”⁵⁷

In contrast to the high number of absentee ballots, in-person voting on election day was about 7% below projections, with a turnout rate of somewhere between 10-15%.⁵⁸ Secretary of State John Merrill attributed at least part of the election’s low turnout to voters’ “extreme caution during the COVID-19 pandemic.”⁵⁹ However, instead of implementing voter safety measures in line with CDC recommendations or expanding access to absentee ballots to ensure all eligible voters had the opportunity to safely cast a ballot, Secretary of State Merrill declared that state law does not allow for county election officials to mandate the use of masks as a requirement for being able to vote.⁶⁰

⁵⁴ Cindy Barton (@cindyrf2010), Twitter (Jul. 14, 2020 10:07 AM)

<https://twitter.com/cindyrf2010/status/1283040320075321353>.

⁵⁵ Nicolette Schleisman, *Mobile County voters head to the polls amid coronavirus pandemic*, News 5 WKRG (Jul. 14, 2020) https://www.wkrg.com/health/coronavirus/mobile-county-voters-head-to-the-polls-amid-coronavirus-pandemic/?utm_source=t.co+&utm_medium=referral&utm_campaign=socialflow.

⁵⁶ Gioto (@jtopper49), Twitter (Jul. 14, 2020 11: 07 AM)

<https://twitter.com/jtopper49/status/1283055407376867330>

⁵⁷ Anne Leader (@anneleaderegval), Twitter (Jul. 14, 2020 1:37 PM)

<https://twitter.com/anneleaderegval/status/1283093155815063553>.

⁵⁸ WSFA Staff, *RESULTS: Alabama primary runoff election*, WSFA News 12 (Jul. 14, 2020)

<https://www.wsfa.com/2020/07/14/percent-turnout-possible-alabama-runoff-election/>.

⁵⁹ Id.

⁶⁰ Kim Chandler, *Alabama elections chief: Masks can’t be required at polls.*, Associated Press (Jul. 10, 2020)

<https://apnews.com/1fa30dd8ada13ad4c27d93fd9c9da9ad>.

Louisiana

Issues with Louisiana’s July 11th primary election began weeks before election day. On July 1st, some 4,000 applications for mail-in ballots were discovered sitting at a post office in downtown New Orleans—undelivered and therefore incomplete.⁶¹ Neither the New Orleans Registrar nor the U.S. Postal Service could offer an explanation as to how long the ballots had been sitting there, nor why the applications had not been delivered. The state’s failure to process absentee ballot applications, may have, and likely did, prevent people from voting absentee or voting at all during the primary election. Indeed, at least one voter received their absentee ballot about an hour before the deadline to postmark the ballot.⁶² Some voters who did not receive their absentee ballots, were able to still go to the polls and vote in-person,⁶³ however, other voters said they would not, or could not, vote in-person due to medical status and the risk of contracting COVID-19.⁶⁴ While the Secretary of State announced that voters whose ballots were not received by the 4:30 PM July 10th deadline would be permitted to vote in-person,⁶⁵ this response offered no recourse for those who were disenfranchised because they did not receive their absentee ballots and were not able to vote in-person.

In addition to difficulties processing absentee ballots, reports indicate that two days prior to the primary election, parishes in Louisiana faced poll worker shortages as a result of concerns regarding COVID-19. The Orleans Clerk of Court reported “over 2 dozen commissioners...[came] down with the virus and others [chose] not to participate.”⁶⁶ Similarly in East Baton Rouge, the Clerk of Court's

⁶¹ Greg LaRose, Orleans registrar: 4,000 mail-in ballot requests sat at post office, WDSU News (updated Jul. 11, 2020) <https://www.wdsu.com/article/orleans-registrar-4000-mail-in-ballot-requests-sat-at-post-office/33279835>

⁶² Garrett Hazelwood (@gdhazelwood), Twitter (Jul. 10, 2020 4:35 PM) <https://twitter.com/gdhazelwood/status/1281688436513087490>.

⁶³ Bartelby Jones (@orbis_quintus), Twitter (Jul. 11, 2020 9:20 AM) https://twitter.com/orbis_quintus/status/1281941392688898048.

⁶⁴ Klaus Nomi Malone (@prokchorp), Twitter (Jul. 11, 2020 9:16 AM) <https://twitter.com/prokchorp/status/1281940469665148933>.

⁶⁵ *Absentee Ballot Deadlines for the July 11*, Secretary of State of Louisiana (Jul. 7, 2020) <https://www.sos.la.gov/Pages/NewsAndEvents.aspx>.

⁶⁶ Rob Masson, *Voting officials take precautions ahead of Saturday election*, Fox 8 (Jul. 9, 2020) <https://www.fox8live.com/2020/07/09/voting-officials-take-precautions-ahead-saturday-election/>.

election administrator said that the Parish was operating at their “bare minimum number” of poll workers.⁶⁷

Despite the reality and risk of contracting or inadvertently transmitting COVID-19, a spokesperson for the Secretary of State’s office said that enforcing a statewide mask-requirement would “be disenfranchising” to voters.⁶⁸ Masks, therefore, were not required throughout Louisiana—even in places like Jefferson Parish and New Orleans, where mandates that masks be worn when engaging in other activities, like grocery shopping or going to the salon, were already in place. Thus, on July 11th voters in Louisiana were forced to risk their health and safety in order to exercise their right to vote. While accounts from voters on election day included positive reports of COVID-19 precautions at polling sites, including efforts to wipe down surfaces and maintain social distancing,⁶⁹ voters also reported negative and unsafe experiences. A voter in Orleans Parish reported on social media that poll workers were not wearing masks, laughed at her when she inquired as to why no masks were being worn, and did not make any changes to protect the voter once she explained she was immunocompromised.⁷⁰ Another voter recounted that her mother’s polling site “had no sanitizer and tried to hand her a pen.”⁷¹ Her mother left her own hand sanitizer at the polling place.

⁶⁷ Blake Paterson, *Here's what Baton Rouge is doing to keep Saturday's election safe from coronavirus*, The Advocate (Jul. 10, 2020) https://www.theadvocate.com/baton_rouge/news/coronavirus/article_380be82a-c200-11ea-a37d-e719d52e7c7a.html.

⁶⁸ Matt Sledge, *In first for coronavirus pandemic era, New Orleans area voters head to the polls Saturday*, Nola.com (Jul. 10, 2020) https://www.nola.com/news/coronavirus/article_1fc0f760-c2e6-11ea-94c3-b36f1486abf2.html.

⁶⁹ Mask Wearing Maenad (@maenadjess), Twitter (Jul. 11, 2020, 11:01 AM) <https://twitter.com/maenadjess/status/1281966839355056128>; Rene Dugar (@renedugar), Twitter (Jul. 11, 2020, 9:20 AM) <https://twitter.com/renedugar/status/1281941504156733441>.

⁷⁰ Casey Haeg (Martin) (@caseyhaeg), Twitter (Jul. 11, 2020, 1:41 PM) <https://twitter.com/caseyhaeg/status/1282007211309293573>.

⁷¹ In reality I'm just a glamorous person (@mimi41), Twitter (Jul. 11, 2020, 5:06 PM) <https://twitter.com/mimi41/status/1282058740284497921>.

Texas

In Texas, despite largely positive reports on election day,⁷² safety precautions regarding COVID-19 were not universally followed. On election day, a voter with an underlying health condition found her regular polling place closed and was forced to vote at a different site where she experienced “[z]ero ability to social distance & [the] election judge handling my IDs” without a mask.⁷³

Like in other states, voters in Texas reported not receiving their absentee ballot before election day.⁷⁴ As a result, voters who requested absentee ballots because of underlying health concerns and to protect themselves from contracting a potentially fatal virus, were forced to vote in-person or be disenfranchised. A disabled voter had difficulty completing the absentee ballot application and voting by mail, and was only able to vote on election day because their daytime caregiver was willing to clock out of work early to provide transportation to the polls.⁷⁵

Additionally, there were scattered reports of problems like poor signage,⁷⁶ machines malfunctioning at least three separate times at one location for the

⁷² Bertha Angela Smith (@parallelfox), Twitter (Jul. 14, 2020 10:22 AM) <https://twitter.com/parallelfox/status/1283044168194039811>; Jonathan Ochart (@jonathanochart), Twitter (Jul. 14, 2020 9:28 AM); Travis County Clerk (@traviscountyclerk), Twitter (Jul. 14, 2020 11:51 AM) <https://twitter.com/TravisCoClerk/status/1283066617321140224>; Fab Miss Em is “social distancing” her ass off

(@fabmissem), Twitter (Jul. 14, 2020 4:02 PM) <https://twitter.com/fabmissem/status/1283129839399075846>.

⁷³ Melissa (@Texasgemi), Twitter (Jul. 14, 2020 12:43 PM) <https://twitter.com/Texasgemi/status/1283079804351328256>.

⁷⁴ Kimberly O’Neil (justkimonline), Twitter (Jul. 14, 2020 9:30 AM) <https://twitter.com/JustKimOnline/status/1283031233447034884>; Chantel L. Jones (@chanteljones_), Twitter (Jul. 14, 2020 9:40 AM) https://twitter.com/chanteljones_/status/1283033709051076614.

⁷⁵ Katija Gruene (@qweekat), Twitter (Jul. 14, 2020 2:35 PM) <https://twitter.com/qweekat/status/1283107951721558018>

⁷⁶ Kireau (@qireau), Twitter (Jul. 14, 2020 5:42 PM) <https://twitter.com/qireau/status/1283154898654298114>.

Democratic (but not the Republican) primary,⁷⁷ a long wait followed by technical problems,⁷⁸ and improper electioneering.⁷⁹

Conclusion

Across the country we have seen decisions from courts, state and local governments, and election administration officials which ignore or significantly diminish the reality that voters—particularly Black voters, elderly voters and voters with underlying health conditions—face the untenable choice of risking their health and very possibly their lives to exercise the fundamental right that the Supreme Court described 134 years ago as “preservative of all rights,”⁸⁰ or be disenfranchised. Congress must take action to ensure that during this unprecedented time, elections are administered without disenfranchising any of our fellow citizens. We are in a state of national crisis now and it is critical that we safeguard both the health and safety of voters and our democracy. We must not, we cannot, sacrifice one for the other.

There is still time for Congress to act. Indeed, as COVID-19 cases continue to rise across the country⁸¹ it is critical that Congress pass legislation requiring compliance with CDC guidelines and providing states with the funds necessary to administer safe, secure and accessible elections. The COVID-19 pandemic has restricted access to the ballot for far too many eligible voters and has exposed the vulnerabilities in our democracy which have allowed voter suppression to go unchecked. Each and every election provides an opportunity for voters to engage with and influence policy, to elect members to represent them and their concerns, and to participate in the political process enshrined in the founding of our nation. In local elections and presidential elections alike, each vote is sacred. One vote, one election in which the right to vote is restricted, is one too many. Congress has the

⁷⁷ Timothy Arnold, CMP, CMM (@LVMtgConcierge), Twitter (Jul. 14, 2020 10:29 AM) <https://twitter.com/LVMtgConcierge/status/1283045910201741317>.

⁷⁸ David Babbs, Facebook (Jul. 14, 2020 9:42 AM) <https://www.facebook.com/david.b.501/posts/3577320528945797>.

⁷⁹ ハッピーエンド (@moon_WRX), Twitter (Jul. 14, 2020 10: 54 AM) https://twitter.com/moon_WRX/status/1283052300852961280.

⁸⁰ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

⁸¹ As of, Jul. 21, 2020 COVID-19 cases are rising in 41 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. *Coronavirus in the U.S.: Latest Map and Case Count supra* note 2.



authority to act and protect this sacred right which is at risk during these unprecedented times. We urge you to do so.

Sincerely,

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