



August 25, 2021

VIA ELECTRONIC MAIL

R. Kyle Ardoin
Secretary of State
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Re: Urgent Need for October/November Emergency Election Plan

Dear Secretary Ardoin,

On behalf of Advancement Project National Office, Anti-Defamation League South Central, Louisiana Fair Housing Action Center, Louisiana Progress, Louisiana State NAACP Conference, NAACP Legal Defense and Educational Fund, National Council of Jewish Women Greater New Orleans Section, Power Coalition for Equity and Justice, League of Women Voters of Louisiana, Southern Poverty Law Center Action Fund, and Voice of the Experienced (VOTE), we write in response to your recent statements that you will not be enacting a coronavirus emergency plan for the October and November fall elections.¹ Given the ongoing statewide health emergency in Louisiana and the dramatic rise in Delta variant cases, we urge you to take immediate action to develop, advance, and publicize an emergency election plan for

¹ Melinda DeSlatte, *No Louisiana emergency virus plan expected for fall election*, AP NEWS (Aug. 25, 2021), <https://apnews.com/article/health-elections-louisiana-coronavirus-pandemic-election-2020-dbbc0cc09ad8ab5e4d005fb7ecf2faa4>.

the October and November 2021 elections. Just yesterday, Louisiana recorded its highest number of coronavirus-related deaths in a single day, since the start of the pandemic.² Inaction is not an option. At minimum, we urge you to propose the extension of the Emergency Election Plan in effect for the spring 2021 elections.³ We also encourage you to incorporate the recommendations in this letter into any emergency plan for all future elections carried out during the evolving phases of this global pandemic.

As Louisiana’s chief elections officer, you are “charged with providing every opportunity...for individuals to exercise their right to vote.”⁴ When the governor declares a statewide emergency, you are authorized to develop an emergency election plan to “ensure maximum citizen participation in the electoral process[,] . . . provide a safe and orderly procedure for persons seeking to exercise their right to vote, minimize to whatever degree possible a person’s exposure to danger during declared states of emergency, and protect the integrity of the electoral process.”⁵ Governor Edwards renewed the statewide public health emergency on July 21, 2021, due to the “escalating prevalence” of Delta variant cases.⁶ Accordingly, your duty as Secretary of State can only be fulfilled if your office issues an emergency election plan for the October and November 2021 elections that ensures that election officials are able to administer the election and voters are able to vote under safe conditions.

Today, Louisiana is in the throes of another devastating wave of the COVID-19 pandemic, driven by the highly transmissible Delta variant and low vaccination rates. COVID-19 cases are skyrocketing, and hospitalizations and deaths due to COVID-19 are at their highest levels since the start of the pandemic. Currently, only 38% of Louisianans are fully vaccinated.⁷ Once again, Louisianans will be forced to navigate the elections amid an ongoing health crisis with life and death ramifications. As cases surge, even more protections for voters and election workers are needed to protect the health and safety of Louisianans. Particularly urgent are the expansion of mail-in voting and the extension of early voting opportunities. In prior elections held during the pandemic, Louisianans have relied on early and mail-in voting in unprecedented numbers. In April 2021, over 70,000 people voted early, both in person and by mail.⁸ Over 58,000 people voted by mail in the March 2021 elections.⁹ Further, almost one million early votes were cast statewide in the November 2020 election.¹⁰

² Tori B. Powell, *Louisiana reports record number of COVID-19 deaths*, CBS NEWS (Aug. 25, 2021), <https://www.cbsnews.com/news/louisiana-covid-19-deaths-highest-daily-total-pandemic/>.

³ Emergency Election Plan for the February 6, 2021, March 20, 2021, and April 24, 2021 Elections in the State of Louisiana, (Dec. 28, 2020), <https://www.sos.la.gov/OurOffice/PublishedDocuments/Spring2021EEP.pdf> (hereinafter the Spring 2021 Emergency Election Plan).

⁴ Sec. of State Ardoin before the Louisiana Senate Com. on Senate of Gov’t Affairs (Apr. 15, 2020) https://senate.la.gov/s_video/videoarchive.asp?v=senate/2020/04/041520S~G_0 (59:52).

⁵ La. R.S. 18:401.3(A)

⁶ 131 JBE 2021, State of Emergency, July 21, 2021, <https://gov.louisiana.gov/assets/Proclamations/2021/131-JBE-2021-StateofEmergencysigned.pdf>.

⁷ Kevin McGill, *Louisiana: Another record for COVID-19 hospitalizations*, AP NEWS (Aug. 9, 2021), <https://apnews.com/article/health-louisiana-coronavirus-pandemic-f7420550c90732dfd26d65a63e68686d>.

⁸ Louisiana Sec. of State, “April 24, 2021 Louisiana Early Voting Statistics,” available at: https://electionstatistics.sos.la.gov/Data/Early_Voting_Statistics/Statewide/2021_0424_StatewideStats.pdf

⁹ Louisiana Sec. of State, “March 30, 2021 Louisiana Early Voting Statistics,” available at: https://electionstatistics.sos.la.gov/Data/Early_Voting_Statistics/Statewide/2021_0320_StatewideStats.pdf

¹⁰ Melinda DeSlatte, *Nearly 1 million vote early in Louisiana, breaking records*, AP NEWS, (Oct. 28, 2020), <https://apnews.com/article/election-2020-virus-outbreak-elections-voting-2020-voting-1326cb66ca7a58a5e63c424b38c7e0a2>.

Your office must alert the public about how these critical health and safety considerations will inform the administration of the upcoming elections in October and November. This fall, all Louisiana voters will have the opportunity to cast a ballot on multiple state constitutional amendments, and many will participate in key local and municipal races across multiple parishes. Every Louisianan should have the opportunity to vote safely on such important issues. Thoughtful and science-led action is necessary now to ensure the protection of voters and elections workers through these elections.

The Spring 2021 Emergency Election Plan represented a baseline for accommodations that should be made for Louisiana's voters and election workers in October and November. We urge you to extend these protections and consider additional steps to protect voters amidst the rising threats of the Delta variant:

- 1) **Expand Mail-in Voting Eligibility to All Voters:** The Spring 2021 Emergency Election Plan permitted absentee voting for registered voters who are immunocompromised, who are experiencing symptoms of COVID-19, who are self-quarantining or quarantining under medical orders, or who are caring for someone in quarantine. While the emergency plan for October and November 2021 elections should at minimum extend this rule, we urge you to go a step further by allowing *all* voters to vote by mail without needing an excuse. Doing so would minimize direct contact and reduce crowd sizes at polling locations.¹¹ The Delta variant is highly transmissible and can be spread by vaccinated and unvaccinated people alike.¹² Any measures that minimize community transmission should be taken seriously. Given the risk to all Louisianans, all voters should have a viable and safe alternative to in-person voting.
- 2) **Provide Public Guidance on Emergency Absentee Voting Qualifications:** If absentee voting by mail is not offered to all voters during the pandemic, at minimum, the more narrow COVID-19-related excuses included in the Spring 2021 Emergency Election Plan require more clarity. The categories on the COVID-19 Emergency Ballot Application are described in vague terms that discourage potentially eligible voters from requesting an absentee mail-in ballot, including voters with health conditions that are not explicitly delineated in the included categories. This is especially true because of the severe felony penalties for making false assertions to an election official which were emphasized in large, bolded font on the prior COVID-19 Emergency Ballot Application Form.¹³ Eligible voters should be encouraged, not discouraged, to vote in the manner that protects not only their health but the health of their community. Accordingly, it is vital that you equip qualified voters with the information they need to confidently request an absentee ballot in compliance with the law.

If only limited COVID-19 excuses are provided on any future emergency application, we suggest providing FAQ-style guidance on your website to assist potentially qualified voters in determining whether their individual circumstances qualify them to vote absentee under these excuses. In addition to the FAQ on the SOS website, any SOS publication (digital or paper) regarding voter eligibility for mail-in voting should reference the FAQ and offer a phone number as an alternative.

¹¹ CENTER FOR DISEASE CONTROL AND PREVENTION, ELECTION POLLING LOCATIONS, (Apr. 20, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

¹² CENTER FOR DISEASE CONTROL AND PREVENTION, DELTA VARIANT, (Aug. 6, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>.

¹³ State of Louisiana Official Absentee Ballot Application COVID-19 Emergency Application, La. R.S. 18:401.3, <https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/COVID19AbsenteeBallotApplication.pdf>.

- 3) **Extend the Absentee Ballot Return Deadline:** Similarly, if voting by mail is not offered to all voters, the current deadline to return an absentee ballot does not allow voters who experience symptoms of COVID-19 after the deadline any reasonable method to participate in the election. Under current law, absentee ballots must be received by the registrar of voters by 4:30 p.m. CST the day before the election.¹⁴ This deadline forces voters who become symptomatic after this deadline to vote in person, which defies all personal and public health guidance. We recommend that you extend the deadline for voters to return their absentee ballots. Absentee ballots should be accepted as long as they are postmarked by election day and received before returns are canvassed.¹⁵ This allows voters who must quarantine or who are exposed or experience symptoms of COVID-19 after the current absentee ballot deadline to cast their ballots and minimize the risk of COVID-19 exposure at the polls.
- 4) **Expand Opportunities for Early Voting:** We urge you to expand opportunities for early voting by increasing the number of early voting locations throughout the state and extending the early voting period and hours. Expanding early voting is an essential mechanism for mitigating the risks of community spread and reducing the risk that people voting in person will be exposed to COVID-19. First, we implore you to exercise your authority under Louisiana law to establish additional early voting locations in all parishes in the state. Many parishes, however, have only one early polling site. During the November 2020 elections, while some parishes added additional early voting sites to minimize crowds and address concerns about social distancing,¹⁶ long lines were reported throughout the state, with many voters waiting hours.¹⁷ Today, many parishes (for instance, Caddo Parish, one of the state's most populous parishes) continue to have only one early voting site. With the Delta variant cases at their highest levels since the start of the pandemic, it is even more crucial that your office take action to establish additional early voting sites to reduce voters' risk of exposure to COVID-19. Second, you should extend the early voting period statewide by requiring all parishes to begin early voting at least 11 days before the election.¹⁸ Finally, we also request that you advise parishes to extend early voting hours by remaining open from 7:30 a.m. to 8 p.m. During the November 2020 elections, early voting hours were extended from 8 a.m. to 7 p.m. to reduce the need for residents to wait in lines and expose themselves to COVID-19.¹⁹ Adding additional

¹⁴ LOUISIANA SEC. OF STATE, VOTE ABSENTEE,

<https://www.sos.la.gov/ElectionsAndVoting/Vote/VoteByMail/Pages/default.aspx> (last visited Aug. 8, 2021).

¹⁵ See LA R.S. 18:1292.

¹⁶ Carolyn Roy, *Officials change Louisiana's early voting plan, extending dates & hours*, WBRZ, (Sept. 25, 2020), <https://www.arklatexhomepage.com/news/election/your-local-election-hq/where-to-vote-early-voting-locations-in-nwla/>. See also Stacey Tinsley, *Early Voting Bossier Parish*, BOSSIER PRESS (Oct. 14, 2020), <https://bossierpress.com/early-voting-bossier-parish/>.

¹⁷ Rilwan Balogun, *"I never expected it to be seven hours," voters wait hours on first day of early voting*, FOX NEWS, (Oct. 16, 2020), <https://www.fox8live.com/2020/10/16/i-never-expected-it-be-seven-hours-voters-wait-hours-first-day-early-voting/>.

¹⁸ See H.B. 286. See also LOUISIANA SEC. OF STATE, EARLY VOTING,

<https://www.sos.la.gov/ElectionsAndVoting/Vote/VoteEarly/Pages/default.aspx>.

¹⁹ *Harding v. Edwards*, 487 F. Supp. 3d 498, 523-524 (M.D. La. 2020). Danielle Root, *States Should Embrace Vote by Mail and Early Voting To Protect Higher-Risk Populations From Coronavirus*, CENTER FOR AMERICAN PROGRESS, (May 14, 2020), <https://www.americanprogress.org/issues/democracy/news/2020/05/14/485072/states-embrace-vote-mail-early-voting-protect-higher-risk-populations-coronavirus/>.

early voting locations and extending the early voting period and hours will allow for effective social distancing and will help reduce the risk of crowded polling places.

- 5) **Provide PPE and Encourage Mask Wearing in Polling Places:** We recommend that you extend the current emergency plan's provisions on social distancing and protective equipment at the polls. The Spring 2021 Emergency Election Plan requires all election workers to wear masks and protective gear, as advised by the CDC. We implore you to also require all voters to wear masks when inside polling places and to provide disposable masks to individuals who arrive to vote without masks. The Centers for Disease Control and Prevention (CDC) has issued guidance recommending that both unvaccinated *and* fully vaccinated people wear masks indoors in high-transmission areas.²⁰ Governor Edwards similarly issued a mask mandate for all indoor activities.²¹ All efforts should be made to facilitate the wearing of masks within polling places to protect the health and safety of all Louisianans at risk of contracting or transmitting coronavirus.

In addition, we recommend that you continually implement other best practices to mitigate the risk of community transmission. Such strategies may include: placing social distancing markers in polling lines to ensure that voters remain at least six feet apart; cleaning voting machines between voters; separating and sanitizing used pens and pencils between voters; requiring the wearing of protective equipment, such as protective smocks, masks, face shields by poll workers; and uniformly providing hand sanitizer for voters. We encourage you to retrain election workers on the PPE Guidelines released by your office in June 2020 and make every effort to ensure compliance.²²

Over the last year, the COVID-19 virus has created unprecedented challenges for Louisianans. Sadly, the Delta variant marks a new and even more devastating chapter in this deadly pandemic. Yet with leadership in this moment, the state can work to achieve successful, inclusive, and safe election administration. We implore you to act on the recommendations outlined above.

We request a reply by Tuesday, August 31 indicating whether you will reconsider proposing an emergency election plan for the upcoming elections. Inaction will pose a dangerous risk to the health and safety of Louisianans exercising their right to vote. Thank you for your attention to this pressing matter.

Sincerely,
/s/ Arielle McTootle
Arielle McTootle, Legal Fellow
Jared Evans, Policy Counsel
Victoria Wenger, Skadden Fellow
NAACP Legal Defense and Educational Fund, Inc.

²⁰ GUIDANCE FOR FULLY VACCINATED PEOPLE, CENTERS FOR DISEASE CONTROL AND PREVENTION, (July 28, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>. Nearly every county in Louisiana falls within the CDC guidance. See Ralph Ellis, *In these 2 states, every county is listed as 'high transmission' for Covid-19*, CNN (July 27, 2021), <https://www.cnn.com/2021/07/26/health/florida-arkansas-high-covid-19-transmission/index.html>.

²¹ 137 JBE 2021, COVID-19 Public Health Emergency Mitigation Measures Statewide Mask Mandate, (Aug. 2, 2021), <https://gov.louisiana.gov/assets/Proclamations/2021/137JBE2021StateofEmergency.pdf>.

²² PPE GUIDELINES V4, YOUTUBE (Jul. 10, 2020), <https://www.youtube.com/watch?v=fhaDa3Mxdnw>.

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NAACP Legal Defense and Educational Fund, Inc. (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that prohibit voter discrimination, intimidation, and suppression and increase access to the electoral process.

Co-signed by:

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Anti-Defamation League South Central
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Louisiana Progress
Louisiana State NAACP Conference
National Council of Jewish Women, Greater New Orleans Section
Power Coalition for Equity and Justice
Southern Poverty Law Center Action Fund
Voice of the Experienced (VOTE)
League of Women Voters of Louisiana

CC:

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