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Introduction

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. The goal of the Voting Rights Project is to ensure that all Americans have access to the franchise and can participate in the political process on an equal basis. In addition to our work in the courts, the ACLU's Washington Legislative Office, now our National Political Advocacy Department, has led the ACLU's efforts to develop and strengthen federal laws protecting the right to vote for decades. In 2015, the department launched a 50-state campaign to protect and expand access to the ballot nationwide and has advanced ballot initiative campaigns in Florida, Michigan, and Nevada to protect and expand access to the ballot. Through our state-by-state advocacy, we have been able to achieve impactful gains for voting rights and access to the ballot around the country.

It is no exaggeration to say that, due to the COVID-19 pandemic, the 2020 elections may be the most challenging environment for voting rights and election administration since the 1864 presidential election was conducted during the Civil War. COVID-19 has killed over 140,000 people nationwide; the U.S. also has one of the highest number of infections in the world with over 3.7 million reported cases.¹ "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 others."² There is no discernible path at this point to containing the virus—and the virus poses an existential threat to our democratic process. No American should have to choose between protecting their health and exercising their right to vote, yet restrictions on eligibility and unnecessary barriers for voting by mail, as well as reductions to in-person voting opportunities resulting from the virus, threaten to force millions of voters to make precisely that choice in November.

To date, the ACLU has filed or intervened in 15 lawsuits to remove or reduce barriers to voting in response to the impact of COVID-19 on the voting process.³ Many of our lawsuits have focused on expanding voting by mail in the primary elections, such as on removing witness or notary requirements and restrictions on eligibility to vote by mail. We have achieved successful outcomes in several of our cases thus far—these courts have recognized that the restrictive requirements we have challenged would disenfranchise eligible voters. Yet expanding voting by mail is one solution that can ameliorate, but not fully solve these challenges. For a number of reasons, states must continue to ensure in-person voting remains a safe, available option for voters. Additionally, litigation alone will not solve the threat to voting rights and the foreseeable risk to public health and safety.

There are straightforward policy solutions that can reduce or eliminate obstacles to the ballot this November. But the experiences from the 2020 primaries have shown that many states and counties are unprepared—and some are unwilling—to address the seismic shift in election administration necessary to ensure the 2020 elections can proceed safely

¹ CTRS. FOR DISEASE CONTROL & PREVENTION, CASES IN THE U.S., <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited Jul. 17, 2020).

² *South Bay United Pentecostal Church v. Newsom*, No. 19A1044, 590 U.S. ____ (May 29, 2020).

³ See appendix to this testimony starting at page 20.

during the pandemic, without diminishing the fundamental right to vote. State and local officials are facing unprecedented challenges during a rapidly changing public health emergency—these challenges exist separate and apart from the continuing cybersecurity vulnerabilities exposed by the Russian cyberattacks. To run elections this year, state and local election officials will be required to revise longstanding election processes, minimize person-to-person contact, and ensure the integrity of the voting process. They must be wholly prepared, staffed, and resourced to meet these challenges.

Our testimony focuses on the significant disruptions to our democratic process caused by the COVID-19 pandemic, which has been particularly detrimental to the voting rights of people of color, Native Americans and Alaska Natives, people with disabilities, and language minority voters. Congress has a critical role to ensure voters are not disenfranchised as a result of the COVID-19 pandemic. **Baseline federal standards are necessary to ensure Americans are not forced into unsafe conditions to exercise their fundamental right to vote. These baseline rules must include, at a minimum, (i) an option to vote absentee by mail and (ii) expanded early in-person voting to create safer voting conditions.** Expanding access to early voting and voting by mail will let voters avoid crowds at polling locations and minimize person-to-person contact, reducing their risk of contracting COVID-19 while voting. A number of recent polling makes clear that Americans broadly support the availability of both no-excuse absentee voting by mail and expanded in-person voting options during the pandemic regardless of party affiliation.⁴

Though officials from both parties have taken steps to expand voting access during the pandemic, without congressional leadership, a national framework guiding states, and a substantial infusion of federal funding to actualize it, the pandemic will continue to pose an existential threat to our democratic process. **The task before Congress is clear—to help as many people as would like to, to shift to voting early or absentee, and to provide the necessary funding for states to do so.**

I. The Threat to In-Person Voting and Minority Voting Rights Posed by the COVID-19 Pandemic

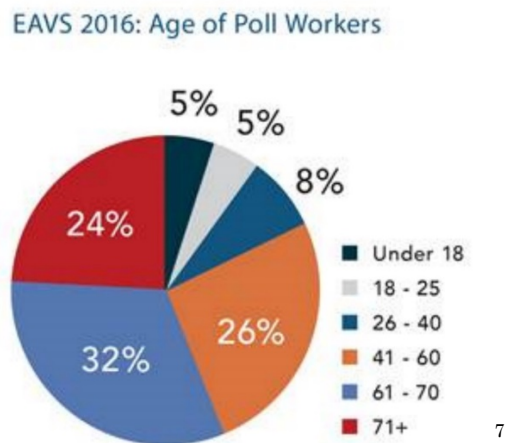
Already this primary season, we have seen significant disruptions to the traditional model of in-person voting. At least two basic interrelated problems have emerged.

First, many traditional polling locations will be unavailable in November. Polling places are often sited at 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

⁴ Chris Kahn, *Most Americans, Unlike Trump, Want Mail-In Ballots for November if Coronavirus Threatens: Reuters/Ipsos Poll*, REUTERS, Apr. 7, 2020, <https://www.reuters.com/article/us-usa-election-poll/most-americans-unlike-trump-want-mail-in-ballots-for-november-if-coronavirus-threatens-reuters-ipsos-poll-idUSKBN21P3G0>.

they were located in retirement living or senior care facilities,⁵ before postponing its primary altogether.⁶

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



In Alaska, for example, data from the Alaska Division of Elections shows that none of the states' local election jurisdictions have nearly enough election workers to staff its polling locations for its August primary, with sites at an average 34% of full staffing levels statewide.⁸ The extreme shortage of election workers is forcing Alaska's local election officials to consider closing polling locations. In Texas, a state that has refused to expand absentee voting to all voters, two of the state's largest counties, Bexar and Tarrant counties, shuttered polling locations for the state's July run-off election as the result of a shortfall of election judges.⁹

⁵ *Primary polling locations moved from nursing homes due to coronavirus concerns*, FOX19NOW.COM Mar. 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, Mar. 16, 2020, <https://www.nytimes.com/2020/03/16/us/politics/virus-primary-2020-ohio.html>.

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 James Brooks, *With elections looming, Alaska faces a shortage of poll workers because of COVID-19 concerns*, ANCHORAGE DAILY NEWS, June 14, 2020, <https://www.adn.com/politics/2020/06/14/with-elections-looming-alaska-faces-a-shortage-of-poll-workers-because-of-covid-19-concerns/>.

⁹ Alexa Ura, *Two Major Texas Counties are Trimming Polling Locations as Workers Pull Out Over Coronavirus*, TEXAS TRIBUNE, Jul. 9, 2020, https://www.texastribune.org/2020/07/09/texas-voting-coronavirus/?utm_campaign=trib-social-buttons&utm_source=twitter&utm_medium=social.

In all, 16 states have postponed their primaries due to the logistical difficulties of conducting an election during the pandemic.¹⁰ 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 where 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 we face. Multiple Florida poll workers tested positive for COVID-19 in the aftermath of the primary election.¹¹ In Chicago, a poll worker for the city's March 17 election later died of COVID-19, prompting city officials to send letters notifying voters and poll workers who were present at the same polling site.¹²

Wisconsin's primary provides perhaps the starkest example of the risks.¹³ 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.¹⁴ In Milwaukee, voters faced large crowds, long lines, and excessive wait times—all of which made social distancing impossible.

Ultimately, 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 a recent study found a “statistically and economically significant association between in-person voting and the spread of COVID-19 two to three weeks after the election.”¹⁵

¹⁰ Nick Corasaniti and Stephanie Saul, *16 States Have Postponed Primaries During the Pandemic. Here's a List*, NY TIMES, May 27, 2020, <https://www.nytimes.com/article/2020-campaign-primary-calendar-coronavirus.html>.

¹¹ Kent Justice and 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 and 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>.

¹² 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/>.

¹³ 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>.

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 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 1–2*, NATIONAL BUREAU OF ECONOMIC RESEARCH (revised June 2020), <https://www.nber.org/papers/w27187>.



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These challenges will likely persist in the fall as we head into the general election. 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 Since Dr. Fauci made that statement in late April, COVID-19 cases have surged across the country after states began to reopen and loosen restrictions beginning on Memorial Day weekend. With no national testing strategy or strategy to contain the virus, it is impossible to know the extent of the spread of COVID-19 in the fall or the number of people who will be infected at that time.

Given the challenges to in-person voting posed by the COVID-19 pandemic, the Centers for Disease Control and Prevention (CDC) 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.²⁰ In June, after several primary elections had taken place, the CDC further advised: Elections with only in-person voting on a single day are higher risk for COVID-19 spread because

¹⁶ 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/>.

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 CTRS. FOR DISEASE CONTROL & PREVENTION, RECOMMENDATIONS FOR ELECTION POLLING LOCATIONS, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last updated Jun. 22, 2020).

there will be larger crowds and longer wait times. Lower risk election polling settings include those with:

- a wide variety of voting options
- longer voting periods (more days and/or more hours)
- any other feasible options for reducing the number of voters who congregate indoors in polling locations at the same time

To provide a sense of the magnitude of the challenge we face, more than 80 million Americans voted in-person on Election Day in 2016, and under normal circumstances, we would similarly expect tens of millions of voters to seek to vote in-person on Election Day this November.

A. The Effect of the Pandemic on Minority Voting Rights

COVID-19 generally, and the pandemic's disruption of in-person voting specifically, will negatively affect the voting rights of voters of color in several ways.

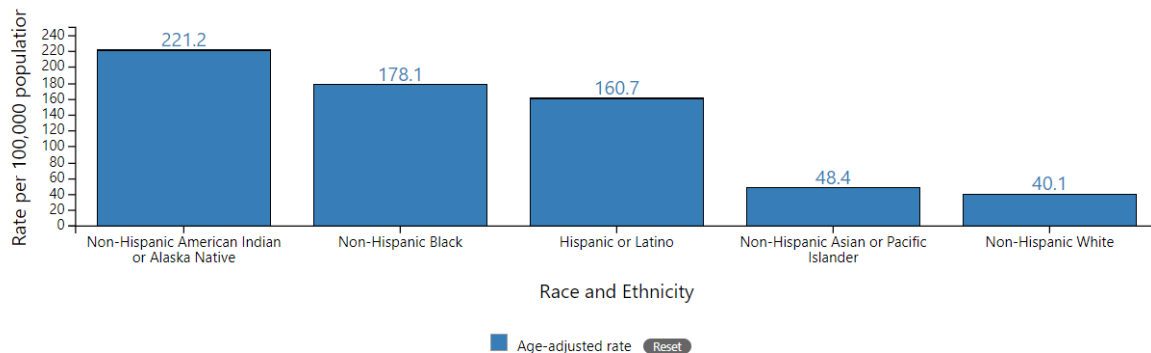
First, the COVID-19 pandemic has had a particularly devastating effect on Black communities. An analysis by the Associated Press—one of the first attempts to examine the racial disparities of COVID-19 cases and deaths nationwide—found that, in areas where demographic data has been publicly shared by government officials, Black Americans have made up 42% of people who have died from COVID-19, despite accounting for roughly only 21% of the total population in these areas.²¹ A CDC report published on April 8, which included data from 1,482 patients hospitalized across 14 states, found that African American patients made up 33% of those for whom race or ethnicity information was available, despite representing only 18% of the states' populations. This “suggest[ed] that black populations might be disproportionately affected by COVID-19.”²²

These disparities extend to other minority populations. More recently, the CDC reported that “[a]s of June 12, 2020, age-adjusted hospitalization rates are highest among non-Hispanic American Indian or Alaska Native and non-Hispanic black persons, followed by Hispanic or Latino persons,” with Black Americans being hospitalized for COVID-19 at approximately 5 times the rate of non-Hispanic whites (adjusted for age):

²¹ Kat Stafford et al., *Outcry Over Racial Data Grows As Virus Slams Black Americans*, ASSOCIATED PRESS, Apr. 8, 2020, https://apnews.com/71d952faad4a2a5d14441534f7230c7c?fbclid=IwAR1plunY_qfeA2KrSUPA1TuJobAwQh53a_Qlhf5dw0dWjz-iz85GA1FOt4.

²² CDC MORBIDITY AND MORTALITY WEEKLY REPORT, HOSPITALIZATION RATES AND CHARACTERISTICS OF PATIENTS HOSPITALIZED WITH LABORATORY-CONFIRMED CORONAVIRUS DISEASE 2019—COVID-NET, 14 STATES, March 1- 30, 2020 (Apr. 8, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6915e3-H.pdf>.

Age-adjusted COVID-19-associated hospitalization rates by race and ethnicity, COVID-NET, March – June 13, 2020



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These disparities are not a random product of chance. Courtney Cogburn, an associate professor at the Columbia University School of Social Work, has opined that “[t]here are patterns at this intersection of race and socioeconomic status that make it very clear this is just not a story about poverty.” That is, racial disparities in who develops serious symptoms and dies due to COVID-19 are inextricably linked to a long history and ongoing patterns of racial discrimination against African Americans:

A history of systemic racism and inequity in access to health care and economic opportunity has made many African Americans far more vulnerable to the virus. Black adults suffer from higher rates of obesity, diabetes and asthma, which make them more susceptible, and also are more likely to be uninsured. They also often report that medical professionals take their ailments less seriously when they seek treatment.²⁴

Thus, because the COVID-19 pandemic is hitting communities of color especially hard, the health risks posed by in-person voting are especially acute for voters from these communities.

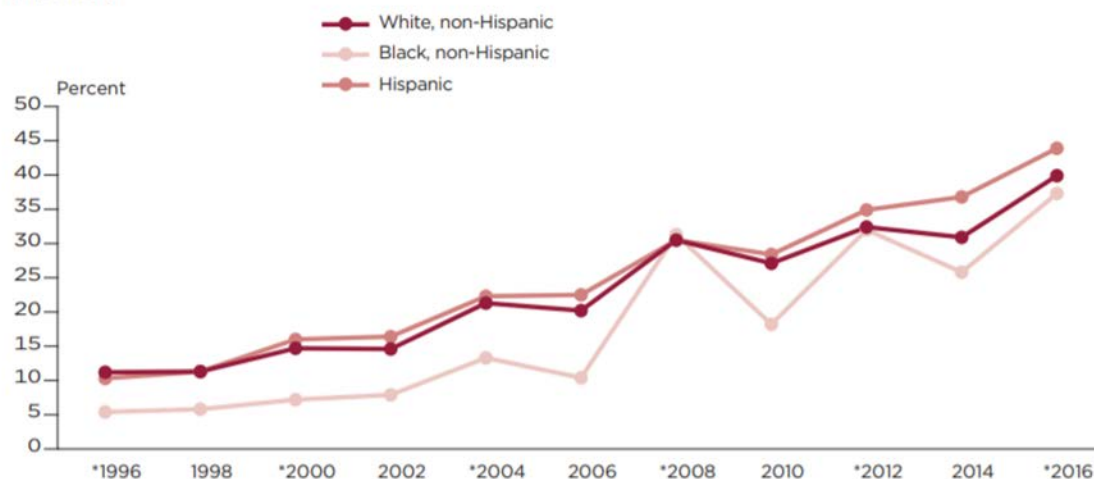
Second, the reduction of in-person voting opportunities caused by the pandemic will particularly affect Black voters, who disproportionately rely on in-person voting on Election Day. Historically, Black voters are less likely than white and Hispanic voters to utilize alternative forms of voting such as absentee voting or early in-person voting:

²³ CTRS. FOR DISEASE CONTROL & PREVENTION, COVID-19 IN RACIAL AND ETHNIC MINORITY GROUPS, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> (last updated Jun. 27, 2020).

²⁴ Stafford, *supra* note 21.

Alternative Method of Voting, by Race and Hispanic Origin: 1996 to 2016

(In percent)



*Presidential election year.

Note: Alternative method includes those who voted early and/or by absentee ballot.

The estimates presented in this section are only for individuals with valid responses to both the method and timing questions.

Source: U.S. Census Bureau, Current Population Survey, November 1996–2016.

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In-person voting is also relied upon by Native communities, which have historically faced significant, unique challenges to voting by mail, and, unfortunately, the COVID-19 pandemic greatly exacerbates these challenges.

First, the pandemic has disproportionately impacted particularly vulnerable Native American communities, whose members face higher rates of underlying health conditions, widespread poverty, and lack of basic services due to the sprawling geography of most tribal lands.²⁶ According to the CDC, American Indians and Alaska Natives have higher rates of deaths from infectious diseases than non-Hispanic whites, with some of the highest rates in remote, isolated areas of the Northern Plains and Southwest U.S. that encompass many Native American communities.²⁷ They also have higher rates of chronic diseases than other ethnic groups,²⁸ including the highest prevalence of diabetes, at more than twice that of

²⁵ U.S. CENSUS BUREAU, CHARACTERISTICS OF VOTERS IN THE PRESIDENTIAL ELECTION OF 2016 13 (Sep. 2018), <https://www.census.gov/content/dam/Census/library/publications/2018/demo/P20-582.pdf>.

²⁶ Christina Farr, *These Doctors and Nurses Volunteered to Battle Covid-19 in the Navajo Nation, and Came Back With a Warning*, CNBC, Jul. 13, 2020, <https://www.cnbc.com/2020/07/12/ucsf-doctors-fought-covid-19-in-navajo-nation.html>.

²⁷ CTRS. FOR DISEASE CONTROL & PREVENTION, CDC AND INDIAN COUNTRY WORKING TOGETHER at 5 (2017), https://www.cdc.gov/chronicdisease/pdf/CDC-indian-country.pdf?s_cid=bb-NCCDPHP-OD-Indian_Working_Together [hereinafter CDC AND INDIAN COUNTRY REPORT].

²⁸ CTRS. FOR DISEASE CONTROL & PREVENTION, CHRONIC DISEASES, [https://www.cdc.gov/tribal/data-resources/information/chronic-diseases.html#:~:text=American%20Indian%2FAlaska%20Native%20\(AI,more%20likely%20to%20be%20smokers](https://www.cdc.gov/tribal/data-resources/information/chronic-diseases.html#:~:text=American%20Indian%2FAlaska%20Native%20(AI,more%20likely%20to%20be%20smokers) (last reviewed Dec. 21, 2018).

non-Hispanic whites²⁹ and other health conditions that put them at increased risk of severe illness from COVID-19.³⁰

Limited federal funding for public health programs through the Indian Health Service³¹ combined with the closure of casinos and other businesses tribes usually rely on for income due to COVID-19 have left tribal healthcare systems particularly vulnerable.³² The Associated Press reported that the Navajo Nation, which has almost 65,000 members living on the reservation spread throughout Utah, Arizona, and New Mexico, had 8,187 confirmed cases of COVID-19 as of July 12, and 401 deaths.³³ This is among the highest infection rates in the country. A CNBC article following a group of doctors who flew in to work at the Navajo Nation's hospital, Gallup Indian Medical Center, in New Mexico, featured a doctor who stated even though the hospital was doing as much as it could to increase capacity to treat patients on-site, many COVID-19 patients needed to be transferred to larger hospitals in Albuquerque or even Arizona as their condition worsened.³⁴

The pandemic has had a devastating impact on the health of Native American communities due to these persistent challenges. And though in-person voting poses significant risks to Native American communities, and many states are expanding opportunities to vote by mail as a safer voting option, the socioeconomic challenges that have contributed to the spread of COVID-19 among Native American communities also pose unique obstacles for Native American voters to successfully vote by mail. As a consequence, safe in-person voting opportunities remain crucial for Native American voters to be able to vote at all.

In particular, in-person voting opportunities and language assistance from poll workers for Native communities covered by Section 203 of the Voting Rights Act have proven critical for older Native American voters who have limited English proficiency and tribes whose native language is unwritten. Many Tribal members living on reservations do not have traditional home addresses that the U.S. Postal Service will cover on regular mail routes. These members rely on post office and P.O. boxes, although some precincts even prohibit the delivery of election mail to these non-traditional addresses or use for voter registration. The Native American Rights Fund reports that Native Americans have a

²⁹ CDC AND INDIAN COUNTRY REPORT, *supra* note 28, at 5.

³⁰ CTRS. FOR DISEASE CONTROL & PREVENTION, PEOPLE OF ANY AGE WITH UNDERLYING MEDICAL CONDITIONS, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html (last updated Jun. 25, 2020).

³¹ Timothy Smith, *Why COVID-19 is Decimating Some Native American Communities*, AMERICAN MEDICAL ASSOCIATION, May 13, 2020, <https://www.ama-assn.org/delivering-care/population-care/why-covid-19-decimating-some-native-american-communities>.

³² Liz Mineo, *For Native Americans, COVID-19 is 'the Worst of Both Worlds at the Same Time'*, THE HARVARD GAZETTE, May 8, 2020, <https://news.harvard.edu/gazette/story/2020/05/the-impact-of-covid-19-on-native-american-communities/>.

³³ *Navajo Nation Coronavirus Death Toll Now More Than 400*, ASSOCIATED PRESS, Jul. 13, 2020, https://apnews.com/d3106fe9aa0f6945ecb72033f13bbdbe_

³⁴ Farr, *supra* note 26.

26.6% poverty rate, nearly twice the national level, with limited transportation opportunities to even get to a post or election office to conduct election business.³⁵

In sum, minority voters are more likely to suffer severe health complications from COVID-19, more likely to use in-person voting on Election Day, and more likely to be disproportionately affected by the particular challenges to voting posed by the COVID-19 pandemic.

B. The Effect of the Pandemic on Voters with Disabilities

Over 35 million Americans who are eligible to vote have disabilities.³⁶ The Americans with Disabilities Act and the Help America Vote Act require that voters with disabilities have the same right to a private and independent ballot as everyone else. Voters with disabilities must be able to mark, verify, and cast their ballots privately and independently, even if they choose to vote by mail. The CDC has identified numerous underlying medical conditions that render individuals at high risk for severe illness from COVID-19; all of these conditions constitute disabilities under federal law.³⁷

Voters with disabilities will be significantly impacted by election changes due to COVID-19. Many states are moving to alternative voting methods for this election cycle, and especially to voting by mail. For many voters with disabilities, particularly those with limited mobility, voting by mail is preferable to voting in person because it allows them to avoid the challenges of getting to the polls, waiting in line, and facing physical barriers at the polling place. For people whose disabilities make them more susceptible to contracting COVID-19 and developing health complications, voting by mail may be the only feasible voting option. However, for other voters with disabilities, particularly those with “print disabilities” who require in-person assistance or accessible voting technologies available at polling locations, a shift to vote-by-mail can present significant barriers, which can prevent them from voting privately and independently.³⁸

Even before the challenges presented by the COVID-19 pandemic, people with disabilities faced systemic barriers, including discriminatory voting laws and election practices,³⁹ inaccessible polling locations, and disproportionate poverty levels that prevent them from exercising their right to vote. Voters with disabilities have had consistently lower electoral turnout, even accounting for other demographic factors.⁴⁰ 28% of people with

³⁵ Native American Rights Fund, *Vote by Mail in Native American Communities*, <https://www.narf.org/vote-by-mail/> (last visited Jul. 13, 2020).

³⁶ Disability Rights California, *Voters with Disabilities* (Jul. 2016), <https://www.disabilityrightscalifornia.org/system/files?file=file-attachments/541201.pdf>.

³⁷ Am. Civ. Liberties Union and National Disability Rights Network (NDRN), *Let People with Disabilities Vote: Recommendations to Improve Access to Voting By Mail*, <https://www.aclu.org/other/let-people-disabilities-vote> (last accessed Jul. 15, 2020).

³⁸ *Id.*

³⁹ Bazelon Ctr. for Mental Health L. et al., *VOTE. It's Your Right: A Guide to the Voting Rights of People with Mental Disabilities* at 11-13 (2016), <https://secureservercdn.net/198.71.233.254/d25.2ac.myftpupload.com/wp-content/uploads/2017/01/voting-rights-guide-2016.pdf> (describing how only eleven states featured no disability-related restrictions on the franchise in their state constitutions or election laws).

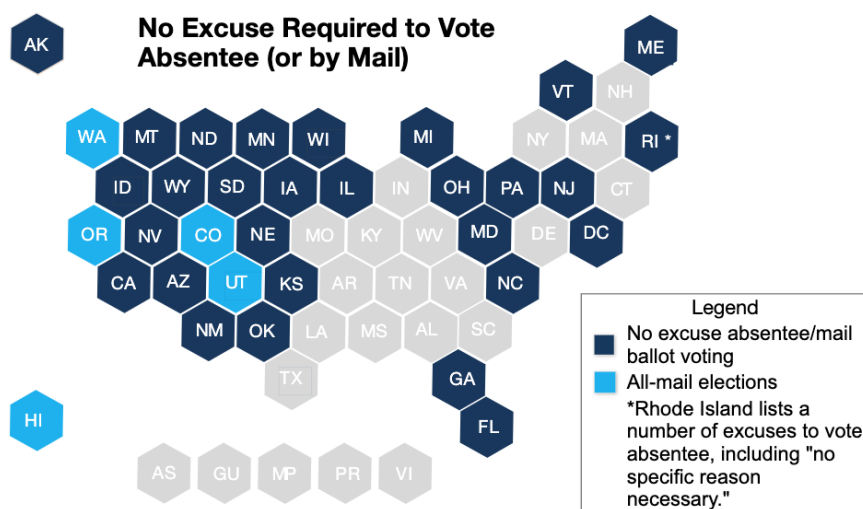
⁴⁰ Lisa Schur and Douglas Kruse, *Fact Sheet: Disability and Voter Turnout in the 2016 Elections*, Rutgers Sch. of Mgmt. & Labor Relations 2 (Jul. 2017),

disabilities live in poverty, which is more than twice the national average.⁴¹ Additionally, people with disabilities are also disproportionately people of color—25% of all adult African Americans and 30% of all Alaska Native or American Indian adults have a disability⁴²—and must deal with compounded barriers to voting.

II. Eligibility to Vote by Mail

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 So while voting by mail makes sense even in ordinary circumstances, without question every American should be able to vote safely by mail during the COVID-19 pandemic should they choose to. States and the federal government have a shared obligation to guarantee they can do so.

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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https://smlr.rutgers.edu/sites/default/files/documents/PressReleases/kruse_and_schur_-_2016_disability_turnout.pdf; Lisa Schur and Douglas Kruse, *Fact Sheet: Disability and Voter Turnout in the 2018 Elections*, Rutgers Sch. of Mgmt. & Labor Relations 3 (Jul. 2019), <https://smlr.rutgers.edu/sites/default/files/2018disabilityturnout.pdf>.

⁴¹ Staff of S. Comm. on Health, Educ., Labor & Pensions, 108th Cong., Rep. on Fulfilling the Promise: Overcoming Persistent Barriers to Economic Self-Sufficiency for People with Disabilities 2–3 (Comm. Print 2014).

⁴² Ctrs. for Disease Control and Prevention (CDC), Adults with Disabilities: Ethnicity and Race (2017) <https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html>.

⁴³ 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>.

33 states are a broad and diverse group, and will soon be joined by Virginia, which is poised to become the 34th state to offer no-excuse absentee voting permanently after the recent passage of a state bill, beginning with the November general election.⁴⁴

States are already seeing unprecedented levels of requests to vote absentee—for example, Pennsylvania saw an *18-fold increase* in absentee ballot requests as compared to 2016.⁴⁵ States will need substantial federal support to meet this surge in demand for absentee voting, including additional resources for printing, mailing, and processing millions more mail-in ballots than they have received in any previous election.

That leaves 16 states that, under normal circumstances, would require an excuse to vote by mail in November.

Of these states, 12 have voluntarily waived their normal “excuse” requirement for absentee voting, or have interpreted their disability or illness basis for absentee voting broadly at least for their primaries to essentially cover everyone while the pandemic is ongoing. These states are a diverse group, and have chief election officials from across the political spectrum. They include Alabama,⁴⁶ Arkansas,⁴⁷ Delaware,⁴⁸ Kentucky,⁴⁹ and New Hampshire⁵⁰—all of which have interpreted their absentee voting laws to permit all eligible voters to vote absentee under “illness” or “disability” – related excuses.⁵¹ Another state, Tennessee, is also permitting all voters to vote by mail during the pandemic, but only thanks to a court ruling in an ACLU case holding that Tennessee’s constitution protects the right to vote safely, which during the pandemic entails a right to vote by mail.⁵² The case is currently on appeal in the Tennessee Supreme Court.

However, several of these states that do not generally permit no-excuse absentee voting have not yet committed to making the same change for November. 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. But such decisions cannot be made or responsibly executed last-minute—voters and election officials need clarity on the election process well in advance of the election to adequately plan for the election and ensure everyone can vote.

⁴⁴ VA LEGIS 1149 (2020), 2020 Virginia Laws Ch. 1149 (H.B. 1).

⁴⁵ 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>.

⁴⁶ Ala. Leg. Servs. Agency, Absentee Voting During State of Emergency, 17-11-3(e) (Mar. 18, 2020), <https://bit.ly/3cUhOqN>.

⁴⁷ Ark. Exec. Order No. 20-08 (Mar. 20, 2020), <https://bit.ly/2TheWwc>.

⁴⁸ 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>.

⁴⁹ Letter of Michael G. Adams, Sec’y of State, to Andy Beshear, Governor (Apr. 23, 2020), <https://bit.ly/3bFxi6D>.

⁵⁰ 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>.

⁵¹ A complete list of these states is attached to the end of my testimony as Appendix B.

⁵² *Lay v. Goins*, Docket No. 20-453-IV(III) Temporary Injunction Order (Tenn. Chancery Court, Twentieth Judicial District, Davidson County, June 4, 2020) <https://www.aclu.org/legal-document/order-lay-v-goins>.

a. Witness Signature/Notary Requirements

There are a wide range of 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.

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Ensuring the security of ballots cast by mail is critical. But certain 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:



⁵³ 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>.

⁵⁴ U.S. CENSUS BUREAU, 2010-2018 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES: ACS DEMOGRAPHIC AND HOUSING ESTIMATES: SOUTH CAROLINA (2018).

witness in their household, the requirement that they have someone witness their absentee ballot,” a witness signature requirement “places[s] them at increased risk of exposure to and/or transmission of COVID-19.”⁵⁵ 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.”

The risks to public health posed by such requirements during the pandemic are wholly unjustified. Thirty-nine states 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 (though we note that signature requirement are also associated with problems for voters, such as voters with disabilities who may not be able to sign their names consistently). And, even in the states that do have witness or notary requirements, 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.”⁵⁶ 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.”⁵⁷ As one federal court put it, it is difficult to see how requiring “an illegible scrawl on an envelope” does anything to combat fraud.⁵⁸

b. ACLU Cases Challenging Witness Signature Requirements

The ACLU has brought litigation in five states challenging witness signature or notarization requirements: Virginia, South Carolina, Missouri, Minnesota, and North Carolina. 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 23rd 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.⁵⁹
- In South Carolina, we obtained a preliminary injunction blocking the state’s witness signature requirement for South Carolina’s June 9 primary. The Court

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.

⁵⁵ 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).

⁵⁶ *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).

⁵⁷ 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).

⁵⁸ *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).

⁵⁹ *Id.* at *10 (W.D. Va. May 5, 2020).

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.”⁶⁰

- In Missouri, in response to our case, the legislature recently 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.⁶¹ We have ongoing litigation on this issue.
- In Minnesota, our case was filed last month, on June 5, on behalf of the NAACP and individual voters, asking to suspend Minnesota’s requirement that voters get a witness to sign their ballot envelope due to the risk of exposure to COVID-19, and also asking that absentee ballots be sent to all registered voters. The case is currently pending
- In North Carolina, we filed a lawsuit this month on July 10 asking a North Carolina state court to block the state from enforcing its witness requirements while the COVID-19 emergency orders are in place. The case is currently pending.

In addition to our cases, two other federal courts have blocked witness signature requirements. First, in Wisconsin a district court enjoined the witness requirement for Wisconsin’s April primary⁶²—but that ruling was stayed by the U.S. Court of Appeals for the Seventh Circuit.⁶³ That stay had serious consequences for voters, as inadequate certification of ballots—which is understood 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.⁶⁴ Second, in Alabama, a district court granted a preliminary injunction against Alabama’s witness signature requirement,⁶⁵ but an application to stay that ruling was granted the Supreme Court.

III. Importance of In-Person Voting Opportunities

In-person voting remains fundamental to the democratic process and, as explained in Section I, is necessary for large segments of the population to be able to vote at all, such as individuals with disabilities, those with limited English proficiency, individuals with limited postal access, or those who register after mail-in ballots have been sent out.⁶⁶

⁶⁰ *Thomas v. Andino*, No. 3:20-CV-01552-JMC, 2020 WL 2617329, at *21 (D.S.C. April 28, 2020).

⁶¹ Kurt Erickson and Tynan, *On Final Day, Missouri Lawmakers Approve New Vote-By-Mail Options*, ST. LOUIS POST-DISPATCH (May 15, 2020), <https://bit.ly/2ZE62Na>.

⁶² *Democratic Nat’l Comm. v. Bostelmann*, No. 20-CV-249-WMC, 2020 WL 1638374, at *20 (W.D. Wis. Apr. 2, 2020).

⁶³ *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>.

⁶⁴ 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.

⁶⁵ *People First of Alabama v. Merrill*, No. 2:20-CV-00619-AKK, 2020 WL 3207824 (N.D. Ala. June 15, 2020).

⁶⁶ See generally *supra* Section I.

Additionally, as we saw during the Washington D.C. primary, where thousands did not receive their requested ballots,⁶⁷ and in Georgia, where several hundred voters were mailed the wrong ballot,⁶⁸ in-person voting remains an important backstop for voters who encounter problems with the absentee voting process. Moreover, some voters simply prefer to vote in person because they believe it is a more reliable way of casting their ballot and ensuring it counts, which is reasonable since absentee ballots are consistently rejected at higher rates than ballots of voters who vote in person. Moreover, as noted by election experts Nathaniel Persily and Dr. Charles Stewart III:

Voter behavior is highly resistant to change. Many Americans have voted in person their entire adult lives, and some view it as an expression of civic pride and duty. Still others do not trust the postal system to deliver their ballot or have absorbed the criticism by Trump and others and, on principle, will not vote by mail. People with certain disabilities may vote more easily in person, as may those who need language assistance.⁶⁹

For all these reasons—and as advised by the CDC—states should extend and increase in-person voting opportunities to the extent public health and safety permit to minimize crowding and long wait times at polling locations. States must also ensure safe and hygienic voting conditions for voters and poll workers.

IV. Federal legislation is Necessary to Protect Voters

While the ACLU and other litigating organizations have made good progress in expanding access to absentee voting during the primaries, state-by-state litigation will not ultimately solve the threat to voting rights and foreseeable risk to public health and safety. Voters need full and fair access to the voting process while the pandemic is ongoing and clarity about their rights and voting options. There are four important steps Congress can take to protect voters.

First, Congress should enact for the 2020 elections a federal requirement for no excuse mail-in absentee voting, with additional funding and minimum specifications about vote by mail processes to help ensure safety, security, and ease of access. To be clear, Congress has the constitutional authority to require states, rather than simply encourage with funds, to take these important steps to protect the right to vote in a federal election.⁷⁰ Requirements must ensure the following:

⁶⁷ Trevor M. Stanley, *D.C.'s vote-by-mail process backfired in the primaries. Let's hope it gets it right by November*, WASHINGTON POST (July 17, 2020), https://www.washingtonpost.com/opinions/local-opinions/dcs-vote-by-mail-process-backfired-in-the-primaries-lets-hope-it-gets-it-right-by-november/2020/07/15/4b061124-c1ee-11ea-b4f6-cb39cd8940fb_story.html.

⁶⁸ Mark Niesse, *Wrong absentee ballots mailed to over 700 Georgia voters*, THE ATLANTA JOURNAL-CONSTITUTION (Jul. 19, 2020), <https://www.ajc.com/politics/wrong-absentee-ballots-mailed-to-over-700-georgia-voters/QX6UOJ24LJBB3ND4BFD4H577UA/>.

⁶⁹ Nathaniel Persily and Charles Stewart III, *The Looping Threat to Voting in Person*, The Atlantic, June 27, 2020, <https://www.theatlantic.com/ideas/archive/2020/06/looming-threat-voting-person/613552/>.

⁷⁰ U.S. CONST. art. I, § 4; *see also* *Ariz. v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013); *Foster v. Love*, 522 U.S. 67, 69 (1997).

- i. Every voter must be offered a no excuse mail-in ballot;
- ii. Multiple methods of requesting an absentee ballot, such as online or in conjunction with voter registration services;
- iii. Ballots postmarked by Election Day are accepted and counted;
- iv. Ballots include a pre-paid and self-sealing return envelope;
- v. In-person, secured drop boxes available through Election Day until polls close;
- vi. States begin processing absentee ballots prior to Election Day;
- vii. Absentee ballots are not discarded based on errors or technicalities without first notifying voters of defects and giving them an opportunity to cure them, ideally through methods other than visiting a government office.

Second, for the reasons summarized in this testimony, Congress should adopt a federal requirement for the 2020 elections that all states institute a minimum early voting period of 14 days, including at least one Saturday and one Sunday.

Third, Congress should appropriate \$4 billion in total federal funding for the 2020 elections and make it available immediately to states, counties, and municipalities. This funding would assist states and local governments in meeting the costs associated with expanding a no-excuse mail-in absentee voting option to every voter, continuity of safe and hygienic in-person voting, and expansion of voter registration opportunities to address predictable obstacles to voter registration resulting from the pandemic. Federal funding is mission critical for counties to deal with the surge in absentee voting—including investments in technology, software, staffing, and postage—and to guarantee in-person voting options (including expanded early in-person voting) are operational, appropriately sited and/or relocated, staffed, accessible, and equipped with the appropriate health and safety equipment during the pandemic environment.

Resources are also required to expand voter registration services to increase the availability of remote transactions through online registration and account for decreased in-person registration opportunities. A massive investment in public education is also necessary to ensure voters are aware of the changes in voting procedures. Funding must also include specific line items to help guarantee access to members of the public who will face the greatest barriers to voting during a continuing pandemic environment, such as accommodations for voters residing in Indian lands, elderly voters, voters with disabilities, and language minority voters.

Funding should guarantee a minimum of 75% to counties and municipalities through cash or in-kind contributions and should not include a state matching requirement. Unobligated funds should remain available for five years to ensure funds remain available through the next Presidential election cycle, while also giving states flexibility for staffing, procurement needs, and longer-term planning.

Fourth, Congress should make available an additional \$4 million to the U.S. Election Assistance Commission (EAC) for increased administration and operational costs in distributing federal funds to states, and additional state support. Additionally, a massive effort to help with voter education about the changes and new options will be needed, and with additional funding the EAC can help with that.

Conclusion

Litigation alone will not solve these critical problems for voters, and patch-work solutions are insufficient for protecting public health during our democratic process. Congress must act swiftly so states and local election officials can begin preparing *now* and plan to address the exponential surge in absentee voting, staffing demands, and necessary technological upgrades. Supplies—including software, printers, ballot paper, tabulators, voting machines, pens, and letter openers—must be ordered immediately. Supply vendors will need ample time to ramp up production to meet the expected surge in demand for their products. Training programs for a new contingent of election workers must be developed and executed. Congress must act now to ensure elections proceed and Americans can vote freely and fairly this November.

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

The ACLU has filed or intervened in eleven 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. 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.

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. On May 18, the trial court dismissed this case, but the Missouri Supreme Court subsequently reversed that decision and remanded back to the trial court for further proceedings. Plaintiffs’ challenge to the notary requirement remains ongoing.

3. [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. Proceedings regarding plaintiffs’ challenge to the excuse requirement and the witness requirement remain ongoing for the November general election.

4. [Lay 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: On June 4, a trial court in Tennessee ruled in favor of the plaintiffs, issuing a temporary injunction requiring the state to permit all eligible voters to vote by mail. The case is currently on appeal before the Tennessee Supreme Court.

5. [Collins v. Adams](#) – Kentucky (Absentee Voting and Photo 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.

6. [Connecticut NAACP v. Merrill](#) – Connecticut (Absentee Voting)

Summary: The American Civil Liberties Union and ACLU of Connecticut filed a federal lawsuit seeking to make absentee mail-in voting available to every eligible voter during the COVID-19 pandemic. The lawsuit was filed on behalf of the Connecticut State Conference of NAACP Branches and the League of Women Voters of Connecticut, as well as an

individual Connecticut resident who requires a safe alternative to voting in-person during COVID-19 because her age places her at higher risk for severe illness from COVID-19.

Status: The case is currently pending in federal court.

Witness Signature Requirements

7. People First of Alabama v. Merrill – Alabama (Witness and Photo ID Requirements)

Summary: The ACLU and ACLU of Alabama joined a lawsuit brought by NAACP LDF, Southern Poverty Law Center, and Alabama Disabilities Advocacy Program seeking to ease absentee voting restrictions for vulnerable voters, such as voters with disabilities and elderly voters. The case was filed on behalf of several Alabama voters who require a safe alternative to voting in-person at a polling place during the COVID-19 pandemic because their health conditions make them higher risk for severe illness and death from COVID-19.

Status: After winning a preliminary injunction in trial court blocking enforcement of the state's witness requirement for absentee ballots and photo ID law for voters who are over 65 or disabled, the order was stayed by the Supreme Court pending the disposition of the appeal in the Eleventh Circuit. The Supreme Court's stay resulted in the restrictions enjoined by the trial court to be put back in place for Alabama's July 14 runoff election.

8. League of Women Voters of Virginia v. Virginia State Board of Elections (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.

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.

9. NAACP Minnesota-Dakotas Area State Conference v. Simon – Minnesota (Witness Requirement & Prohibition on Universal Distribution of Absentee Ballots)

Summary: On June 5, the ACLU filed a lawsuit on behalf of the NAACP and individual voters, asking to suspend Minnesota's requirement that voters get a witness to sign their ballot envelope due to the risk of exposure to COVID-19, and also asking that absentee ballots be sent to all registered voters.

Status: Proceedings are ongoing.

10. [Chambers v. State of North Carolina](#) – North Carolina (Witness Requirement)

Summary: On July 10, the ACLU filed court in North Carolina state court asking the court to block the state from enforcing the witness requirements while COVID-19 emergency orders are in place and/or community transmission of COVID-19 is occurring, and order it to issue guidance instructing city and county election officials to count otherwise validly cast absentee ballots that are missing witness signatures.

Status: The lawsuit was filed in Wake County Superior Court in Raleigh, North Carolina, on July

Other Barriers to Voting By Mail

11. [Donald J. Trump for President, Inc. v. Boockvar](#) – Pennsylvania (Absentee Voting)

Summary: The ACLU, ACLU of Pennsylvania, and others moved to intervene as defendants in a recent lawsuit brought by the Trump campaign and Republican Party attempting to block voters in Pennsylvania from depositing their mail ballots in drop boxes instead of mailboxes, a proven secure and streamlined process often used by states that conduct all-mail elections.

Status: The case is currently pending in federal district court.

12. [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. A decision is pending.

13. [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 further proceedings. Trial is scheduled for September.

14. [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

15. [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

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

| <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.” ⁷¹ |
| 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.” ⁷² |
| 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.” ⁷³ |

⁷¹ Governor of Arkansas, Exec. Order No. 20-08, (Mar. 20, 2020), https://bit.ly/2TheWwc_

⁷² Conn. Exec. Order No. 7QQ (May 20, 2020) https://bit.ly/2LWF0Zq_

⁷³ 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>.

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| 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.” ⁷⁴ |
| 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.” ⁷⁵ |
| 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. ⁷⁶ |
| Missouri | Missouri has allowed any registered voter to cast a mail-in ballot in 2020 elections. ⁷⁷ |
| 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.” ⁷⁸ |
| 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. ⁷⁹ |

⁷⁴ 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) <https://bit.ly/2Abpbv8>.

⁷⁵ Ky. Exec. Order 296, (April 24, 2020), <https://bit.ly/3d3jfdJ>.

⁷⁶ 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>.

⁷⁷ Jaclyn Discroll and Rachel Lippman, Missouri Governor Signs Bill Making Absentee Voting Easier for Some in Pandemic (Jun. 4, 2020), *available at* <https://bit.ly/2AWcvZs>.

⁷⁸ 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>.

⁷⁹ N.Y. Exec. Order No. 202-23 (Apr. 24, 2020) <https://on.ny.gov/3ekb0mj>.

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| 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. ⁸⁰ |
| 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. ⁸¹ |
| West Virginia | <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.”⁸²</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.”⁸³</p> |

⁸⁰ Morgan Newell, *S.C.’s Absentee Ballot Expansion Bill Means Changes to Voting this Primary Season*, WBTV (May 13, 2020), <https://bit.ly/2yxuYe8>.

⁸¹ 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).

⁸² W. Va. Code R. §§ 153-53-2–153-53-3.

⁸³ W. Va. Code R. § 153-53-2.