



July 22, 2020

Senator Roy Blunt
Chair
United States Senate Committee on Rules & Administration
United States Senate
Washington, DC 20510

Senator Amy Klobuchar
Ranking Member
United States Senate Committee on Rules & Administration
United States Senate
Washington, DC 20510

Dear Chairman Blunt and Ranking Member Klobuchar,

The Leadership Conference on Civil and Human Rights is a coalition of more than 220 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States. The Leadership Conference works to strengthen our democracy to ensure that civil rights are protected and that all voices are represented in the political process. Through our work, we aim to achieve a democracy where every voter can participate in the electoral process, no matter who they are and regardless of their race, color, language, economic status, or ability. We advance this ideal by working in coalition with hundreds of national and state organizations on advocacy and education. Ultimately, we aim to create an America as good as its ideals.

We appreciate the opportunity to provide the Senate Rules Committee with our insights into the 2020 primary election, particularly as it impacted voters of color during the COVID-19 public health crisis. We will address some of the problems voters experienced during early in-person voting and vote-by-mail periods, followed by a number of recommendations for states and other jurisdictions to adopt in time for the November general presidential election to ensure a fair and inclusive election.

2020 Primaries: Election administrative failures resulted in chaos and disenfranchisement, especially for voters of color

The main takeaway from the 2020 state primaries is this: elections administrators and officials, alongside state governments, failed their citizens and caused mass disenfranchisement. It is

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worth acknowledging the strain under which officials are currently performing their duties. However, it is also necessary to emphasize that the problems surrounding this year's primaries are nothing new. Machine breakdowns, unreasonably long lines, polling place closures, faulty vote-by-mail practices, and under-trained staff and poll workers have persisted across the country for many years. So, while we acknowledge the unique circumstances posed by the pandemic, we also recognize that today's problems are a direct result of long-standing ills in elections practices across the country, ills that we have never fully addressed or remedied, some of which were exacerbated by the Supreme Court's 2013 evisceration of the Voting Rights Act's preclearance protocol. This pandemic has exposed and heightened the system's failures, many of which have had an ongoing discriminatory impact on communities of color.

It is essential to remedy these ills now, particularly since the pandemic is making voting even harder than it was before for Black, Brown, and other minority voters. As [Charles Blow](#) noted in the *New York Times*, in cities with a black majority or plurality – New Orleans, Milwaukee, and Chicago – ... “black people represent 70 to 80 percent of the deaths, though their percentages of the population don't come close to that.” COVID-19 is hitting communities of color hardest (and likely will in November too), making voting that much harder for these citizens, particularly because states and counties, to date, have failed to take necessary measures to ensure true accessibility for vote-by-mail and in-person voting. The fact is that states and counties have been on notice for months now regarding the need to conduct fair, safe, and accessible elections, and yet few rose to the task of doing what was necessary to avoid disenfranchisement. As we note below, polling place closures have hurt Black communities the hardest – and when these same communities aren't afforded reliable ways to vote by mail, then they must make the hard choice of risking their health (and that of their communities), while standing in line sometimes for hours on end, or missing the opportunity to participate in the political process. A functioning democracy would not require its citizens to make such a choice.

The states exhibiting the highest levels of election assistance failures or discriminatory practices are discussed below.

Wisconsin

Wisconsin exemplifies a deeply flawed elections system, one that may work for most whites but that consistently fails its Black communities. An [investigation](#) into the April 7 Wisconsin primary revealed an “absentee ballot crisis,” an inadequate elections computer system, “overwhelmed” clerks, and misleading ballot information. Many voters in Wisconsin who requested absentee ballots received empty envelopes or ballots *after* Election Day. Indeed, the system was overwhelmed: Fewer than 12% of votes cast in the 2016 primary were absentee compared with 73% in 2020. The vast majority of people who responded to the investigation stated that they requested absentee ballots at least two weeks in advance of Election Day but did not receive them on time. One county official called the primary “chaos,” and another said there was “no way humanly possible” to keep up with the flood of absentee ballot requests. A

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spokesperson for the Wisconsin Elections Commission acknowledged faults with the state's ballot tracking system, postal delivery, and mailing vendor errors.

Among Wisconsin voters who did receive and return absentee ballots, many such ballots went uncounted. Despite a federal court order that would have allowed absentee ballots to be submitted by April 13 because so many voters had not received their ballots by Election Day, the U.S. Supreme Court [reversed the decision](#), leaving those ballots that weren't postmarked by Election Day uncounted. Although many election officials worked overtime to process requests and ballots – and they should be commended for their efforts – because [the state legislature and judiciary played fast and loose with fair elections proposals](#), voters lost in the end.

Voting in person during the Wisconsin primary went no smoother. In Milwaukee, a city of 600,000 people and home to the largest communities of color in the state, voters [stood in line for hours](#) at one of only five polling places, down from 180. Many such voters had requested but failed to receive an absentee ballot in the mail. Madison, a city of 250,000 and with a whiter population, had 66 polling places. While Madison residents easily popped in and out of the polling place to vote, some Black voters waited for hours to vote in Milwaukee. No American deserves that. These disparities in polling place access, moreover, account for gaps in voter participation across racial groups in the state. As our All Voting is Local Campaign wrote in a [report](#) co-authored with Demos:

A new analysis of 2020 election data in Milwaukee City shows that wards with higher Black and Hispanic populations had significantly lower voter turnout compared to wards with a high percentage of white residents. Average turnout in Black and Hispanic wards was 30 percentage points lower than the average voter turnout in white wards.... While white wards had an average of 49 percent voter turnout, Black and Hispanic wards had an average of about 18 percent turnout.

Wisconsin's primary failed its voters. But the problem was compounded by roadblocks that pre-existed the pandemic, including an onerous voter ID law, requiring individuals to present photo ID when voting in-person *and* when requesting an absentee ballot by mail. Voting by absentee ballot, moreover, requires the presence of a witness. This makes vote-by-mail difficult for many under any circumstance, but during a pandemic in which the most vulnerable of us may be sheltering at home alone – and without access to photocopiers – the rules make voting nearly impossible for those with low incomes. This may be especially true for voters of color, who are more often than whites to be low-income and thus less likely to have the resources necessary to comply with these requirements. Indeed, Black voters in Wisconsin are [50% less likely](#) than White voters to have the required forms of ID to vote.

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Pennsylvania and Ohio

[Thousands](#) of absentee ballots in Pennsylvania similarly did not reach primary voters in time for Election Day, leaving many voters with no choice but to vote in person after failing to receive their ballots in the mail. And although the Governor extended the deadline to accept mail-in ballots, so long as they were postmarked by June 2, this decision came too late and applied only to six counties. In Ohio, election officials were inundated with nearly two million requests for absentee ballots, resulting in [thousands](#) of voters not receiving absentee ballots in time to vote by mail in the April 28 primary.

Georgia

Georgia, as in 2018, was the epicenter of election dysfunction and voter suppression. This year, due to undelivered absentee ballots, malfunctioning voting machines, poll worker shortages, and polling place closures, some voters endured lines of over seven hours to cast their ballot. As of the [day before the June 9 primary election](#), at least 600,000 absentee ballots (representing at least one percent of all ballots cast) had not been received by election officials. Fulton County, home to Atlanta and a high Black population, was the subject of most complaints. As voting expert Michael McDonald of the United States Election Project [noted](#), “I have never seen the scale of election failures happening in Georgia today.”

Indeed, the system in Georgia – like that of many other states – was overwhelmed and underfunded. County election officials there mailed out 1.6 million absentee ballots this year, at least three times that which it normally does during a primary: “I’ll tell you where the biggest breakdown was, in my opinion, was how long it took us to process the absentee ballot applications,” [said Fulton County Commissioner Liz Hausmann](#). “Folks had gotten those application request forms six to eight weeks ago. And so when they weren’t getting a response, and they couldn’t find out what had happened to their request, they didn’t have faith that they could reply in time if they even got it.”

The disenfranchisement seen in this primary is comparable to that from 2018. During that election, we saw attempts to cancel voter registration applications (Georgia Secretary of State Kemp, now Governor, refused to process [53,000](#) voter registration applications, 70% of which came from Black voters, until a court issued a preliminary injunction), imposition of photo ID laws known to keep [11%](#) of the population (disproportionately affecting voters of color) from casting ballots, attempts to toss ballots due to a [severe signature-matching](#) law (again, resolved by litigation), and polling places [shuttered](#) in primarily Black and Latino neighborhoods. Much of this was made possible, moreover, because of the Supreme Court’s 2013 decision in *Shelby v. Holder*, which permitted states like Georgia, Texas, North Carolina and others with a history of voter discrimination to build disenfranchisement into their election systems, sometimes with the very aim of keeping Black voters from participating.

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Kentucky

In Kentucky, over “937,000 [voters requested](#) early ballots as of Wednesday [June 17th], or 27% of all registered voters in the state,” a spike from around 1.5% per election. Fewer than 200 polling places were open in Kentucky on Election Day, and Jefferson County (home to Shively, a city with Kentucky’s highest Black population) only had one polling place for [616,000](#) registered voters, and Fayette County only had one polling place for over 250,000 registered voters. In Louisville, hundreds of voters were left banging on the door when the polling place closed at 6:30 pm; voters were ultimately let in to vote after a court order kept the polling place open until 9:00 pm.

Solutions for the 2020 general election: How to ensure the chaos and disenfranchisement are avoided in November

The only way to salvage the 2020 general election is to appropriate additional federal funds – \$3.6 billion, as calculated by voting experts and election officials – to all states as soon as possible. There is no time for delay, as states must prepare their election infrastructures this summer. As experts and administrators together have [determined](#), “jurisdictions will need to purchase and deploy critical equipment and supplies months before this November’s election.” Due to necessary social-distancing protocols, states will have to implement or reinforce their online voter registration systems, fool-proof their online absentee application databases in order to greatly reduce clerks’ data-entry times (and avoid the crises we’ve seen unfold in the states to date), enhance ballot printing capacities (as states will need a “vastly increased quantity” of ballots for absentee voting), and purchase both high-speed scanners and ballot drop-boxes. Additionally, states will need funds to hire additional staff (to process absentee requests and mailed-in ballots), purchase necessary personal protective equipment to ensure safety at polling places, and adequately train all staff – and educate voters – on new procedures. These measures are not optional if we are to conduct a functional election during an ongoing pandemic.

Additional funding is especially critical because states, in addition to facing increased costs to hold safe and accessible elections, have already used much of their existing federal funding to cover emergency expenses caused by the pandemic. During a July 8, 2020 [Election Assistance Commission meeting](#), election administrators from Georgia, Kentucky, Ohio, Virginia and Wisconsin all testified that they had used CARES Act funds on primary elections in their states during the COVID-19 pandemic, and that existing money would not cover the costs of the general election. Jared Dearing, the executive director of the Kentucky state board of elections, and Barbara Goeckner, a municipal elections official from Wisconsin, both testified that the primary had used over 60% of their existing federal funding despite expecting turnout to more than double from the primary election to the general. No panelist at the EAC meeting thought their existing funding could adequately cover the cost of holding the upcoming November election. States are facing severe budget crises due to the health care and economic costs of the pandemic, and they are in dire of need of federal assistance.

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Accordingly, the Leadership Conference is advocating for \$3.6 billion of funding to be tied to policy reforms including a nationwide requirement that states offer online and same-day voter registration, at least 15 consecutive days of early in-person voting, and no-excuse absentee vote-by-mail that is available and accessible to all voters with postage paid by the government.

Vote-by-mail: A necessary, but incomplete, solution to COVID-19

As many have advocated, Americans must be provided the opportunity to vote by mail this November if we are to have an election that is safe, well-attended, and truly democratic. Elections conducted primarily through the mail have already been held successfully this election cycle. In the Michigan presidential primary held on March 10, over [one million people](#) voted by mail, doubling the number of absentee ballots cast in the 2016 presidential primary election. Municipal elections in Michigan were held May 5, amidst the COVID-19 pandemic in the state, and over 99% of ballots in that election were cast by mail or dropbox, with record breaking turnout for an election of its kind.

To capitalize on the potential of voting by mail, states should mail applications or ballots to every registered voter on their rolls, and eligible voters who can vote by mail, should do so – to protect themselves, their neighbors, and polling-place workers. States that do not send out absentee ballots to all registered voters should send them absentee ballot applications as early as possible so that they can mail and return them with enough time to have them count. Otherwise, we'll see grand-scale disenfranchisement, as we already did in Wisconsin, Georgia, and other states during the primaries.

Vote-by-mail should be conducted with the following guidelines:

- States should dispense with requirements that voters submit copies of photo IDs or, as is currently mandated in Wisconsin, obtain notary (or other witness) signatures. Many people, particularly low-income voters, won't have access to these.
- Counties should provide pre-paid postage for all return-ballot envelopes and count all ballots postmarked by Election Day. Voters should not have to guess at how long it will take their mailed ballot to be received by county offices.
- Those who vote by mail must be given notice of perceived signature (or other) defects and a true opportunity to cure such defects. Some voters of color are more likely to have their absentee ballots rejected when they vote by mail. For example, an [ACLU Florida study](#) found that “younger voters, Black voters, and Latino voters are more likely to have their vote-by-mail ballots rejected than older voters and White voters.” Additionally, the Lawyers' Committee for Civil Rights Under Law [found](#) that only 2.5 percent of White voters in Gwinnett County, GA had their absentee ballots rejected in 2018, compared to

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14.8 percent of Asian American voters, 8 percent of Black voters, and 4.3 percent of Latino voters. Voters of color, on average, typically have less time and access than White voters to travel to election offices to cure signature problems. To address these disparities, voters should be given adequate time to cure ballot defects.

To be sure, the vast majority of Americans will likely vote by mail this November, since this will be the safest way to cast a ballot. But for the election to be truly accessible, every state should be required to offer in-person methods of voting, even if on a smaller scale than traditionally offered. Of course, downsizing from 180 polling precincts to five, as occurred in Milwaukee, is an unacceptably low percentage. States, moreover, can provide these options safely and effectively through several measures, including social distancing, regular sanitizing, and employment of staff at polling places who are less susceptible to COVID-19.

In-person voting is still necessary, notwithstanding the dangers posed by COVID-19, because many groups simply will not have access to the ballot without it. This is so for many reasons, including the following:

- Mail is difficult to access in a number of areas, particularly in tribal lands and low-income neighborhoods. Many Native Americans living on tribal lands, moreover, don't have street addresses. In [Arizona](#), for example, only 18% of voters living on tribal lands outside of Maricopa and Pima Counties have physical addresses and receive mail at home; the Navajo Nation, the largest tribal land in the United States (physical size of West Virginia) doesn't have an addressing program, and most residents live in remote communities.
- Some voters – across demographics – prefer voting in-person. They trust a process they can see unfold before their eyes. This is particularly true for groups who, for historical reasons, have legitimate distrust in government.
- Limited English proficient voters (particularly in jurisdictions covered by section 203 of the Voting Rights Act), and functionally illiterate individuals simply can't avail themselves of vote-by-mail, especially if they live alone; they need the kind of assistance that would otherwise be provided at polling places. Federal law requires more than 260 jurisdictions to provide language assistance to voters.
- The paper ballots used in a vote-by-mail system are not accessible to some voters with disabilities, including those who are blind or low vision, those with limited or no manual dexterity, and those with limited literacy. For instance, a voter who is blind would not be able to see and mark a paper ballot, and the U.S. Census Bureau reported in 2016 that the [blind and low vision population](#) alone represents 2.4% of the U.S. population.



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- People experiencing homelessness or who are otherwise in transition face special challenges when voting or registering to vote. Vote-by-mail is not always a viable option for such voters.

Unless states offer voters a number of options through which to submit completed ballots, many voters – particularly persons of color, Native Americans, and other historically marginalized citizens – simply will not have access to the ballot. Unless the upcoming general election is a fair and accessible one, by providing Americans with a variety of voting options, it will not be a democratic one.

Restoration of the Voting Rights Act: How we prevent disenfranchisement in the future

To avoid some of the disasters of the recent primaries – and the previous several elections – we must restore the Voting Rights Act. Many of the problems we have seen in recent elections could have been prevented if we had Section 5 of the Voting Rights Act still intact, the powerful preclearance provision that required the Department of Justice to approve voting changes in jurisdictions with a history of voting discrimination. June 25, 2020 marked the seventh anniversary of *Shelby County v. Holder*, and the 2020 election will be our second presidential election without the full protections of the Voting Rights Act. In December 2019, the U.S. House of Representatives passed H.R. 4, the Voting Rights Advancement Act, a transformative bill that would restore and modernize the Voting Rights Act, but the Senate has yet to take up this critical legislation. We must collectively move forward to ensure passage of this key priority to prevent state-sanctioned discrimination in elections. Otherwise, we will continue to see voter suppression and barriers to the ballot box for communities of color.

Thank you for the consideration of our views.

Sincerely,

Vanita Gupta
President & CEO