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**The Leadership Conference on Civil and Human Rights**

**U.S. Commission on Civil Rights**

**Minority Voting Rights Update**

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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's work includes strengthening 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 other organizations on advocacy and education. Ultimately, we aim to create an America as good as its ideals.

We appreciate the opportunity to provide the U.S. Commission on Civil Rights with our insights into the 2020 primary election, particularly as it impacted voters of color during this unprecedented pandemic. Our testimony will focus on 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.

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

Handfuls of states have yet to conduct their primaries, but already the writing is on the wall for this election: elections administrators and officials, alongside state governments, are failing their citizens and causing mass disenfranchisement. It is 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 undertrained staff have persisted across the country for many years. So, while we acknowledge the unique circumstances posed by this 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, ills exacerbated by the Supreme Court's evisceration in 2013 of the Voting Rights Act's preclearance provision. This pandemic has simply exposed – to all Americans – 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, Chicago – ... black people represent 70 to 80 percent of the deaths, though their percentages of the population don't come close to that.” COVID 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 ensuring true accessibility to 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 a socially-distanced election, and yet few rose to the task of doing what was necessary to avoid disenfranchisement. As we note below, polling places 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 for hours on end, or missing the opportunity to participate in the political process. A true democracy would not require its citizens to make such a choice.

To date, the states exhibiting the highest levels of elections assistance incompetence and/or engaging in the majority of discriminatory practices are as follows:

### *Wisconsin*

Wisconsin exemplifies a truly bankrupt elections system, one that may work for most whites but that consistently fails its Black communities. An in-state [investigation](#) in Wisconsin revealed an “absentee ballot crisis,” an inadequate elections computer system, “overwhelmed” clerks, and misleading ballot information. Voters from 100 Wisconsin cities and towns reported a number of problems: repeated requests for absentee ballots, which resulted in having 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% this year. The vast majority of people who responded to the in-state investigation, moreover, 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;” another said there was “no way humanly possible” to keep up with the flood of absentee ballot requests. And a spokesperson for the Wisconsin Elections Commission acknowledged faults with the state's ballot tracking system, postal delivery, and mailing vendor errors. Yet state and county officials had known since February that the country was in the middle of a pandemic – and they failed to prepare ahead of time.

Of those who did receive ballots, many voters' *completed* absentee ballots went uncounted. Despite a federal court's ordering absentee ballots to be counted for up to a week beyond the election's initial date, the U.S. Supreme Court [reversed the decision](#), leaving those votes that didn't

arrive by the original April 7<sup>th</sup> deadline uncounted – even though administrators had not mailed ballots with enough time for punctual return. True, many elections officials worked overtime to process requests and ballots – and they should be commended for their efforts – but with [the state legislature and judiciary playing fast and loose with fair elections proposals](#), voters lost in the end. Given that voters received ballots out of time, they should have had additional days, or a week, in which to return them.

Voting in person went no smoother. In Milwaukee, voters [stood in line for hours](#) at one of five polling places, down from 180, after failing to receive absentee ballots in the mail; government officials had [shut down 175](#) sites in April. Madison, a much less populous town – with a whiter population – boasted a full 66 polling sites (to Milwaukee’s five). While residents there popped in and out of the polling place to vote, Black voters stood *for hours* 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 The Leadership Conference’s, 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, due to lack of funding and preparation for COVID-19 in itself, was destined to fail 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 are [50% less likely](#) to have access to voter photo IDs in the state.

### *Pennsylvania and Ohio*

[Thousands](#) of absentee ballots in Pennsylvania similarly did not reach 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.

### *Georgia*

Georgia, just like in 2018, was the epicenter of elections dysfunction and voter suppression. This year, voting machines malfunctioned and many voters stood in lines over seven hours long. With fewer available poll workers and polling places, voters waited hours to cast ballots. Plus, as of the [day before the election](#), at least 600,000 absentee ballots (representing at least one percent of all ballots cast) had not been received by elections 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.’”

Again, 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 to build disenfranchisement into their elections systems, oftentimes with the very aim of keeping Black voters from participating.

### *Kentucky*

In Kentucky, over “937,000 [voters requested](#) early ballots as of Wednesday [June 17<sup>th</sup>], 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. And 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 pm.

### **Solutions for the 2020 general election: How to ensure the chaos and disenfranchisement doesn't carry over in November**

As we've already told members of Congress by letter,

[T]he only way to salvage this disaster in time for the 2020 general election is to authorize emergency spending – \$3.6 billion to all states, as calculated by voting experts and elections officials – to all states immediately. There simply is no time for delay, as the states must prepare their elections infrastructure this summer in time for the fall. 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 (by no later than mid-July), fool-proof their online absentee application databases (by August) 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 (by July). Additionally, states will need funds to hire additional staff (to process absentee requests and mailed-in ballots), purchase necessary PPE 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.

Specifically, the Leadership Conference is advocating for \$3.6 billion of funding to be tied to policy mandates including a nationwide requirement that states offer:

- online and same-day voter registration
- at least 15 consecutive days of early in-person voting
- 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 (with a little “d”). To be sure, 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. This is so because, according to several projections, the United States will continue to require some measure of social distancing, given the current pandemic, well into the fall. States that do not send out absentee ballots to all registered citizens

should nevertheless encourage them, by way of messaging campaigns, to request absentee ballots early 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.

There is no single method or panacea for administering an election during a pandemic, but there are basic guidelines we must abide by. Vote-by-mail should also be conducted along 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, 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 (so long as they are received by elections officials within a week to 10 days following Nov. 3). 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 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 elections offices to cure signature problems. To address these disparities, voters should be given ample time – a week to ten days – to cure ballot defects.

*In addition to vote-by-mail, states and counties must provide sufficient in-person voting options*

To be sure, the vast majority of Americans will likely vote by mail this November, and we hope that most citizens – including the nearly 40% of eligible voters who have not yet participated in elections – avail themselves of this opportunity. The more citizens vote by mail, the fewer will show up in-person. But we must reiterate that, for the election to be a truly accessible, *every* state should be required to offer additional 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 election* without them. This is so for the following reasons:

- 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 U.S. (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.

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 this primary – 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 this will be our second Presidential election without the full protections of the Voting Rights Act. The U.S. House of Representatives passed HR 4 the Voting Rights

Advancement Act, a transformative bill that would restore and modernize the Voting Rights Act in December 2019, but the Senate has yet to take action. We must collectively move forward to ensure passage of this key priority to prevent state-sanctioned discrimination in elections. Otherwise, we'll see the same long lines in Georgia and Wisconsin, prevalence of ID laws in handfuls of states that keep voters from participating, and the closing of the vast majority of polling places in predominantly Black and brown communities.

Thank you for the opportunity to submit written testimony.