



March 18, 2020

Via Electronic Mail and US Mail

The Honorable Frank LaRose
Ohio Secretary of State
22 North Fourth Street, 16th Floor
Columbus, Ohio 43215

Re: Notice of Non-Compliance with the National Voter Registration Act of 1993 (52 U.S.C. § 20507)

Dear Secretary LaRose:

The League of Women Voters of Ohio, the Ohio A. Philip Randolph Institute, and their counsel the American Civil Liberties Union of Ohio, Lawyers' Committee for Civil Rights Under Law, and Dēmos write to inform you that Directive 2020-06, issued on March 16, 2020, violates Section 8 of the National Voter Registration Act of 1993 (52 U.S.C. § 20507(a)) ("NVRA") because it fails to extend the voter registration deadline to 30 days prior to the new presidential primary election date in order to allow eligible Ohioans to register to vote. If the date of the primary remains June 2, 2020, as set forth in Directive 2020-06, federal law requires that voters be permitted to register to vote in that election through and including May 3, 2020.

The Directive also violates Article V, Section 1 of the Ohio Constitution, which provides that "[e]very citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, **and has been registered to vote for thirty days**, has the qualifications of an elector, and is entitled to vote at all elections..." Ohio Const. Art. V, Sec. I (emphasis added).

We also write to inform you that whatever date becomes the final and lawful date of the Ohio presidential primary election, whether by court order or by legislative action, your office must allow Ohio citizens to register to vote up to 30 days prior to Election Day to remain in compliance with Section 8 of the NVRA and Article V of the Ohio Constitution.

I. Background

The current state of affairs in Ohio and the nation is unprecedented. The spread of COVID-19 has forced state and local county officials, poll workers, voters, and ordinary individuals to grapple with new realities including how to hold inclusive, safe, and timely elections. On March 9, 2020, Ohio Governor Mike DeWine issued Executive Order 2020-01D, declaring a state of emergency in Ohio “to protect the well-being of the citizens of Ohio from the dangerous effects of COVID-19.”¹ COVID-19 presents a particularly serious risk to people who are over the age of 60, have underlying health conditions (such as heart disease, diabetes, and lung disease), have weakened immune systems, or who are pregnant. Following the declaration of the state of emergency, the State and, in particular, your office, began taking a series of emergency actions that would impact the election scheduled for March 17.

On March 9, your office issued Directive 2020-03 ordering county boards of election to relocate all polling places out of residential senior citizen facility facilities because the elderly remain most susceptible to grave consequences if they contract the coronavirus.² In response to the March 9 Directive, county election officials moved, piecemeal, more than 150 polling locations, updating their websites each day to reflect new polling location changes.

On March 16, your office, responding to concerns about the disenfranchisement of elderly, disabled, and other vulnerable voters, issued the first Directive 2020-05 which extended the absentee ballot request deadline for “confined” or “unforeseeabl[y] hospitalized” voters to 3 p.m. on March 17 and allowed the voter, their close family member, or two board of elections personnel to deliver and return absentee ballots by the close of polls on Election Day.³ Directive 2020-05 also created curbside voting opportunities for anyone concerned about entering a polling location.

Later that same day, your office and Governor DeWine’s office held a press conference to announce emergency developments concerning the March 17 primary election. Citing extraordinary public health concerns and acknowledging that it was unfair to ask voters to choose between exercising a fundamental right and protecting their health, the Governor recommended that the March 17 primary election be postponed to June 2 and absentee ballots be accepted through June 2. At the press conference, you acknowledged that you were anticipating a decision in a lawsuit by private individuals in the Franklin County Court of Common Pleas to postpone the date of the election to June 2.

At approximately 7:00 p.m. on March 16, a judge of the Franklin County Court of Common

¹ The Office of Governor Mike DeWine, *Executive Order 2020 01D* (Mar. 9, 2020), https://content.govdelivery.com/attachments/OHOOD/2020/03/09/file_attachments/1396418/Executive%202020-01D.pdf.

² Ohio Sec’y of State, Directive 2020-03, Mar. 9, 2020, <https://www.sos.state.oh.us/globalassets/elections/directives/2020/dir2020-03.pdf>.

³ The original language of Directive 2020-05 is no longer on the Secretary’s website because the Secretary rescinded Directive 2020-05 and modified it to include language of Election Day postponement to June 2, 2020. News reports track the original language in Directive 2020-06 prior to modification. Rick Rouan, *Ohio Offering Curbside Voting, Extending Absentee Deadline for Those in Hospital in Wake of Coronavirus*, USA Today (Mar. 16, 2020, 11:03 A.M.), <https://www.usatoday.com/story/news/politics/elections/2020/03/16/coronavirus-ohio-offering-curbside-voting-states-head-polls-tuesday/5058230002/>.

Pleas denied the emergency motion for a temporary restraining order filed on behalf of two plaintiff voters, both aged sixty-five or older, requesting postponement of the election to June 2.⁴ Following this order, Dr. Amy Acton, Director of the Ohio Department of Health, ordered all polling locations in the State of Ohio closed on Tuesday, March 17, 2020, pursuant to her powers under Ohio law to take emergency actions to prevent the spread of infectious diseases. Subsequent to Dr. Acton's order, your office issued Directive 2020-06.

Directive 2020-06 postponed the March 17, 2020 presidential primary election to June 2, 2020. The Directive further states that “[t]he boards of elections are prohibited from processing any new voter registrations for the June 2, 2020 presidential primary election. The February 18, 2020 voter registration deadline remains the voter registration deadline.” See Attachment A, at 1 [Directive 2020-06]. This portion of Directive 2020-06 violates Section 8 of the NVRA and Article V of the Ohio Constitution. We ask that you take immediate action to comply with the law by allowing eligible persons to register to vote up to and including May 3, 2020.

II. NVRA Requirements

Section 8(a)(1) of the NVRA requires that “each State shall ensure that any eligible applicant is registered to vote in an election” if the applicant has registered to vote “not later than the lesser of 30 days, or the period provided by State law, before the date of the election.” 52 U.S.C. § 20507(a)(1). Under the NVRA, an “election” is “a general, special, primary, or runoff election” as defined under the Federal Election Campaign Act of 1971. *Id.* § 20502 (citing 52 U.S.C. § 30101(1)).⁵

III. Directive 2020-06 Violates Section 8 of the NVRA.

On its face, the voter registration deadline in Directive 2020-06 is preempted by the NVRA because the Directive prohibits county boards of election from processing any new voter registrations for the June 2, 2020 presidential primary election. It makes clear that the February 18, 2020 voter registration deadline “remains the voter registration deadline” for the June 2, 2020 election. This restriction on voter registration is a patent violation of the NVRA's requirement that the voter registration deadline must be no later than 30 days prior to any election for federal office including presidential primary elections. Therefore, you must amend Directive 2020-06 such that it extends the voter registration deadline for a contemplated June 2 presidential primary election to May 3.

In similar circumstances, other states have taken similar actions. In Georgia, a federal court found that because the date of a special runoff election was more than 30 days from the voter registration deadline set for the general election, that this original voter registration deadline violated Section 8 of the NVRA and had to be extended for those voters who wished to vote in the runoff election. Thus, the court granted the plaintiffs' preliminary injunction to extend the voter

⁴ Fox Staff, *Gov. DeWine Says Election Can't Be Held Tomorrow; Announces New Closures Including Gyms, Movie Theaters*, Fox 8 (Mar. 16, 2020, 1:52 P.M.), <https://fox8.com/news/governor-dewine-to-give-coronavirus-update/>.

⁵ In *Fish v. Kobach*, the Tenth Circuit that because the NVRA relies on the Federal Election Campaign Act to define the terms, “election” and “Federal office,” the NVRA “applies expressly to all federal general and primary elections, including presidential elections.” 840 F.3d 710, 719 n. 7 (10th Cir. 2016).

registration deadline for a June 20, 2017 special runoff election to no earlier than May 21, 2017. *See Ga. State Conf. of the NAACP v. Kemp*, No. 1:17-cv-1397, 2018 WL 2271244 (N.D. Ga. Apr. 11, 2017), Consent Decree at 3, *Ga. State Conf. of the NAACP v. Kemp*, No. 1:17-cv-1397 (N.D. Ga. Oct. 17, 2017), ECF No. 42 (extending preliminary injunction to all future federal elections including runoffs). Similarly, in response to an NVRA notice letter pointing out that the registration deadline for a runoff election violated Section 8 of the NVRA, the Secretary of State of Mississippi extended the voter registration deadline to 30 days before the runoff election. *See* Attachment B [Mississippi NVRA Notice Letter and Response].

IV. In the Event Another Election Date Is Set for the Presidential Primary Election, Your Office Must Extend the Voter Registration Deadline to a Date that Is No Earlier than 30 Days Prior to the Election.

We are aware that the Ohio legislature⁶ or a court of law⁷ may well alter the primary date set forth in Directive 2020-06. In the event that the presidential primary election occurs on a different date, either by court order or by action of the legislature, your office must comply with Section 8 of the NVRA and Article V of the Ohio Constitution, by allowing voter registration up to 30 days before the election.

V. Conclusion

Please be advised this letter serves as written notice pursuant to 52 U.S.C. § 20510(b). Directive 2020-06 violates Section 8 of the NVRA, and this violation is current and ongoing. Please issue a Directive changing the voter registration deadline for a June 2 presidential primary election to May 3, 2020, or amend Directive 2020-06 to bring it into compliance with the law. Please be advised that if election day is changed to any other date, then you must provide for voter registration up until 30 days prior to the new election date.

We are aware of the rapidly changing circumstances impacting the conduct of elections amid the threat of COVID-19 and are hoping for a swift and amicable resolution. Please contact the undersigned to resolve this matter within the next **twenty (20)** days, no later than April 6, 2020.

Sincerely,

/s/

Jen Miller
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⁶ Anna Staver, *Householder Now Says Ohio Lawmakers Will Return Next Week to 'Legally' Set New Primary Date*, The Columbus Dispatch (Mar. 17, 2020, 12:58 P.M.), <https://www.dispatch.com/news/20200317/householder-now-says-ohio-lawmakers-will-return-next-week-to-legal-set-new-primary-date>.

⁷ *State ex rel. Ohio Democratic Party and Kiara Diane Sanders v. LaRose*, Case No. 2020-0388 (Franklin Cty. Ct. of Common Pleas, Ohio Mar. 17, 2020).

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1 Capitol Square
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ATTACHMENT A



DIRECTIVE 2020-06

March 16, 2020

To: All County Boards of Elections
Directors, Deputy Directors, and Members

Re: Order from Director of Health Dr. Amy Acton Closing Polls for the March 17, 2020
Presidential Primary Election

SUMMARY

I issue this Directive in response to Ohio Governor Mike DeWine's and Ohio Director of Health Dr. Amy Acton's order closing polling places on March 17, 2020. Their difficult but necessary decision will protect the health and well-being of Ohioans.

This Directive is issued to bring clarity to voters, Ohio's boards of elections, and poll workers in response to Dr. Acton's order.

The March 17, 2020 Presidential Primary Election is suspended until June 2, 2020. This Directive sets forth additional details.

INSTRUCTIONS

PART I – NOTICE

The boards of elections must post notice on their websites, social media, at the board of elections, and at polling places that in-person voting for the March 17, 2020 Presidential Primary Election is suspended.

PART II – VOTER REGISTRATION AND ABSENTEE VOTING

The boards of elections are prohibited from processing any new voter registrations for the June 2, 2020 presidential primary election. The February 18, 2020 voter registration deadline remains the voter registration deadline.

Boards of elections must remain open on March 17, 2020 to receive any absentee ballots at the boards of elections through 7:30 p.m. Boards of elections are required to process any UOCAVA ballots. Boards of elections are required to process any non-UOCAVA absentee ballot post-marked by Monday, March 16, 2020 and received by the boards of elections through March 27, 2020. Boards of elections are prohibited from tabulating and reporting any results until the close of polls on Tuesday, June 2, 2020.

The boards of elections are required to process absentee ballot applications received at the board of elections postmarked by Tuesday, May 26, 2020. Absentee ballots must be postmarked by June 1, 2020 and must be received by the boards of elections no later than Friday, June 12, 2020. UOCAVA absentee ballots must be submitted for mailing not later than 12:01 a.m. at the place where the voter completes the ballot, on Tuesday, June 2, 2020.

Voters with an unforeseeable hospitalization may submit applications beginning after Tuesday, May 26, 2020 and ending at 3:00 p.m. on Tuesday, June 2, 2020. An absentee voter with an unforeseeable hospitalization within the county may receive and return the absentee ballot through a family member,¹ or through two board of elections employees. If the hospitalization is out of county, the absentee voter may receive and return the absentee ballot through a family member or by mail. The absentee ballot must be postmarked no later than Monday, June 1, 2020 and received at the board of elections office no later than Friday, June 12, 2020. If the absentee ballot does not have a postmark, it must be received at the board of elections no later than 7:30 p.m. on Tuesday, June 2, 2020.

PART III – IN-PERSON VOTING ON JUNE 2, 2020

On Tuesday, June 2, 2020, boards of elections must conduct in-person voting at polling locations in their county. The polls will open at 6:30 a.m. and close at 7:30 p.m. on Tuesday, June 2, 2020. Boards of elections should work with their county prosecutors to review any contracts with polling locations to ensure that in-person voting can take place at those polling locations on Tuesday, June 2, 2020.

Boards of elections must update their voter registration systems and signature pollbooks after Friday, March 27, 2020 and continue to regularly update to ensure that the board maintains a complete and accurate list of voter history.

PART IV – CURE AND CANVASS TIMELINE

A. POST-ELECTION CURE PERIOD

Each board of elections must be open to the public on each of the seven calendar days immediately following Tuesday, June 2, 2020, and during the hours specified below, in order to allow voters to cure a deficiency on an absentee or provisional ballot, as provided for in state law:²

- Wednesday, June 3rd 8:00 a.m. – 5:00 p.m.
- Thursday, June 4th 8:00 a.m. – 5:00 p.m.

¹ [R.C. 3509.05\(A\)](#) defines “family member” as “spouse of the elector, the father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece of the elector.”

² [R.C. 3505.181\(B\)\(7\)](#); [R.C. 3509.06\(D\)\(3\)](#). See also *Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612 (6th Cir. 2016) (holding that the seven-day post-election cure period for absentee and provisional ballots established in state law is constitutional).

- Friday, June 5th 8:00 a.m. – 5:00 p.m.
- Saturday, June 6th 8:00 a.m. – 12:00 p.m.
- Sunday, June 7th 1:00 p.m. – 5:00 p.m.
- Monday, June 8th 8:00 a.m. – 5:00 p.m.
- Tuesday, June 9th 8:00 a.m. – 5:00 p.m.

B. TIMELINE FOR OFFICIAL CERTIFICATION

Consistent with current law, the boards of elections:

- (1) May begin the official canvass of the presidential primary election on Tuesday, June 23, 2020;
- (2) Must begin the official canvass of the presidential primary election on Saturday, June 27, 2020;
- (3) Must complete the official canvass of the presidential primary election by Friday, July 3, 2020.

Additional instructions regarding the administration of in-person voting, Election Night Reporting on June 2, 2020, and official canvass is forthcoming.

PART V – CAMPAIGN FINANCE DEADLINES

The upcoming campaign finance deadline other-wise known as the post-primary³ deadline is adjusted according to the Tuesday, June 2, 2020 presidential primary election. Therefore, the post-primary campaign finance deadline is Friday, July 10, 2020.

If the board has any questions regarding this Directive, please contact the Secretary of State’s elections counsel at (614) 728-8789.

Yours in service,



Frank LaRose
Ohio Secretary of State

³ R.C. 3517.10(A)(2).

ATTACHMENT B



June 22, 2017

Via Email, Fax, and U.S. Mail

Email Address: delbert.hosemann@sos.ms.gov

The Honorable Delbert Hosemann
Mississippi Secretary of State
New Capitol
Room 105
Jackson, Mississippi 39201

Re: Notice of non-compliance with the
National Voter Registration Act of 1993 (52 U.S.C. § 20507)

Dear Secretary Hosemann:

We write on behalf of the Mississippi State Conference of the NAACP, the eligible voters it represents, and others similarly situated, to notify you that your office and the State of Mississippi are in violation of Section 8 of the National Voter Registration Act of 1993 (52 U.S.C. § 20507(a)) (“NVRA”) because the State’s voter registration procedure requires voting-eligible Mississippi citizens to register to vote more than thirty days prior to a runoff election for a federal office.

In federal primary and special elections, there is a runoff election if no candidate receives a majority of the votes cast. Miss. Code Ann. §§ 23-15-191, 23-15-305, 23-15-833, 23-15-853, and § 23-15-855. The State currently offers no opportunity for eligible Mississippians who are not registered to vote in time for the initial federal primary or special election to register and vote in the subsequent runoff election, which occurs if no candidate receives a majority of the votes cast.

To be eligible to vote in any election, including those for federal office, Mississippi citizens must be registered to vote at least thirty days before an election. Miss. Code Ann. §§ 23-15-11, 23-15-125. The Mississippi Attorney General’s Office has opined that only voters who were registered thirty days prior to the preceding primary or special election are eligible to vote in the following runoff election. *See* MS AG Op. Horton, 1983 WL 43044 (1983) (voters not registered thirty days prior to the first primary are not eligible to vote in the second primary); MS AG Op. Hillman, 2011 WL 1909371 (2011) (the registration deadline for a runoff is the deadline associated with the preceding election).

Co-Chairs
Teresa Wynn Roseborough
Adam Klein

Secretary
Eleanor H. Smith

Treasurer
David Smith

General Counsel
Nicholas T. Christakos

*President and
Executive Director*
Kristen Clarke



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David Smith

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Nicholas T. Christakos

President and

Executive Director

Kristen Clarke

This conflicts with Section 8(a)(1) of the NVRA, which requires that each State shall “ensure that any eligible applicant is registered to vote in an election” if the applicant has registered to vote “not later than the lesser of 30 days, or the period provided by State law, before the date of the election.” 52 U.S.C. § 20507(a)(1). Notably, the NVRA defines “election” with reference to the Federal Election Campaign Act of 1971 (FECA). 52 U.S.C. § 20502(1) (citing 52 U.S.C. § 30101(1)(A)). FECA defines “election” as “a general, special, primary, or runoff election.” *Id.* Elections for federal office are defined so as to include those for a “Representative in... Congress.” 52 U.S.C. § 30101(3).

A person is registered to vote under Section 8 when “the valid voter registration form of the applicant” is: (1) “submitted to the appropriate State motor vehicle authority” in accordance with 52 U.S.C. §20504 (registration by application simultaneous with an application for a motor vehicle driver's license); (2) submitted by postmarked mail in accordance with 52 U.S.C. §20505; (3) “accepted at the voter registration agency” in accordance with 52 U.S.C. §20506; or (4) otherwise “received by the appropriate State election official.” 52 U.S.C. §§ 20507(a)(1)(A)–(D).

Last year, in an analogous case in Georgia, a court granted a preliminary injunction enjoining a similar runoff election voter registration procedure because it required citizens to register more than thirty days prior to a runoff election for federal offices in violation of Section 8 of the NVRA. *Ga. State Conf. of the NAACP v. Kemp*, No. 1:17-cv-1397, 2018 WL 2271244 (N.D. Ga. Apr. 11, 2017). Similarly, in *Ariz. Democratic Party v. Reagan*, No. CV-16-03618-PHX-SPL, 2016 WL 6523427, (D. Ariz. Nov. 3, 2016), the Court also determined that the Arizona Secretary of State violated Section 8 of the NVRA by imposing voter registration deadlines exceeding the NVRA’s thirty day limit by only one or two days depending upon whether the applications were mailed-in or presented in person.

Thus, it is clear that the current voter registration procedure under Mississippi law for federal primary and special elections violates Section 8 of the NVRA by requiring voting eligible Mississippians to register to vote more than thirty days prior to the primary and special election runoff elections for federal offices.

The upcoming United States Senate Democratic primary runoff election on June 26, 2018 exemplifies how these provisions of Mississippi law violate the NVRA. The registration deadline for the June 5, 2018 primary election was on May 7, 2018. According to the NVRA, the voter registration deadline for the June 26, 2018 Democratic primary runoff should have been May 29, 2018 (accounting for



weekends and holidays). Thus, State law deprived eligible Mississippians twenty-two additional days to register to vote in this federal runoff election that they should have been afforded under the NVRA.

Co-Chairs

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Secretary

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General Counsel

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Executive Director

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Eligible Mississippians will continue to suffer the denial of their right to register to vote up to thirty days prior to future federal runoff elections – including in the event the November 6, 2018 special election for United States Senator goes to a runoff on November 27, 2018.

Although we are not required to give you advance written notice of the State's violation of Section 8 of the NVRA, this letter is being tendered in the hope that the State will immediately voluntarily undertake remedial action to bring the State into compliance with Section 8 of the NVRA, so that all eligible citizens will be able to participate in future runoff elections for federal offices in Mississippi including, if necessary, the November 27, 2018 runoff election for United States Senate.

Please contact the undersigned to resolve this matter within the next twenty (20) days.

Sincerely,

John Powers¹
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STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

CIVIL LITIGATION DIVISION

July 12, 2018

Via U.S. Mail and Electronic Mail

John Powers, Counsel
Voting Rights Project
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue NW, Suite 400
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jpowers@lawyerscommittee.org

Re: Notice of non-compliance with the National Voter Registration Act of 1993

Dear Mr. Powers,

I am writing on behalf of Secretary of State Delbert Hosemann and in response to your letter dated June 22, 2018. Consistent with the National Voter Registration Act of 1993, the deadline to register to vote will be thirty (30) days prior to the date of any Mississippi election for federal office, including thirty days prior to a runoff election. A qualified voter who registers to vote thirty days before a runoff election for federal office will be permitted to cast a ballot in that runoff election. The Attorney General opinions referenced in your letter do not interpret or address the requirements of the National Voter Registration Act and do not inhibit election officials' compliance with the Act.

Sincerely,



Harold E. Pizzetta III
Assistant Attorney General

HEP:fh