



March 15, 2020

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Dear Governor DeSantis and Secretary Lee:

Dream Defenders, New Florida Majority, Organize Florida, Advancement Project National Office, and Dēmos are writing to express our concern about the impact of the coronavirus, or COVID-19, pandemic on the upcoming Presidential Preference Primary this Tuesday, March 17, 2020.

We understand that Florida officials are working hard to ensure that citizens are protected and voters can safely and securely cast their ballots in this election. We also recognize the tireless efforts of the County Supervisors of Elections (SOEs) and their staff to move quickly to adjust polling locations, recruit poll workers, and implement measures at polling places to create healthy and safe environments conducive to the vital act of American democracy: voting.

It is imperative that the State of Florida take action to ensure that registered voters, who are displaced due to the state of emergency, such as college students, persons who are quarantined (whether by mandate or by choice), and those especially vulnerable to COVID-19, such as elderly

persons, are provided real opportunities to cast ballots. This national and state emergency requires that you make additional immediate adjustments to the Presidential Preference Primary procedures for casting ballots.

As explained below, we ask that you immediately implement new procedures to protect the vote under these circumstances. These include extending the deadline for vote-by-mail ballot requests to March 17 at a minimum and preferably through March 24; extending the receive-by deadline for vote-by-mail ballots to 10 days after Election Day, an accommodation that already applies to military and overseas voters; extending early voting hours on Monday, March 16; permitting curbside voting for any voter who requests it due to concerns about COVID-19; and taking other steps to keep voters informed and safe during the voting process.

We would appreciate an opportunity to speak with you about these vital accommodations. If we do not hear from you by 12 noon on Monday, March 16, we may pursue litigation to protect the rights of Florida voters.

The Presidential Preference Primary Election

In Florida's 2020 Presidential Preference Primary election, citizens may vote by several mechanisms. All Floridians may vote in person at their polling place on Election Day, vote early in person at vote centers, or vote by mail. Election Day is Tuesday, March 17, 2020. Early voting has been underway since March 2, and is currently scheduled to end Saturday, March 14, in some counties, and Sunday, March 15, in others.¹ The deadline for voters to request a vote-by-mail ballot to be mailed directly to them (March 7) has passed. The deadline for SOEs to mail ballots to voters (March 9) has also passed. Currently, voters must return their completed ballot by 7:00 pm on Election Day by mail or personal delivery for those ballots to count.²

The Coronavirus Emergency

However, the extraordinary public health emergency caused by the worldwide coronavirus outbreak looms over these ordinary voting procedures.

On December 1, 2019, the first confirmed COVID-19 patient began experiencing symptoms in China's Hubei province.³ The novel coronavirus infection rapidly spread to other countries. By January 21, the Centers for Disease Control and Prevention (CDC) confirmed the first patient in the United States.⁴ It has led to at least 1,629 confirmed U.S. cases in 46 states and the District of Columbia.⁵ The number of actual cases is likely far higher because effective testing procedures have only slowly become widely available. Thus far, the outbreak has led to 41 deaths

¹ Fla. Stat. § 101.657. *See also* Florida Department of State, Early Voting Locations and Times (online at dos.myflorida.com/media/702721/2020-early-voting-locations-and-times-master-20200302.pdf).

² Fla. Stat. §§ 101.62(2), 101.65.

³ Fernando Duarte, "Who Is 'Patient Zero' in the Coronavirus Outbreak," BBC (Feb. 23, 2020) (online at www.bbc.com/future/article/20200221-coronavirus-the-harmful-hunt-for-covid-19s-patient-zero).

⁴ Elizabeth Cohen, "First US Case of Wuhan Coronavirus Confirmed by CDC," CNN (Jan. 21, 2020) (online at www.cnn.com/2020/01/21/health/wuhan-coronavirus-first-us-case-cdc-bn/index.html).

⁵ "Coronavirus Disease 2019 (COVID-19) in the U.S.," Centers for Disease Control and Prevention (updated Mar. 13, 2020) (online at www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html).

in the United States.⁶ On Friday, March 13, President Trump declared a national emergency to begin mobilizing the extraordinary measures necessary to address the rapidly expanding public health crisis.⁷

The outbreak has reached Florida. As of today, the Florida Department of Health has confirmed 136 cases among Floridians.⁸ For the same reasons cited above, the true number may well be much higher. Three Floridians have died.⁹ Florida Department of Education Commissioner Richard Corcoran has urged school districts statewide to keep schools closed for an additional week of spring break.¹⁰ Tens of thousands of Floridians who work for state agencies have been asked to work from home and to cancel travel for 30 days.¹¹ On Friday, March 13, Secretary Lee released a joint statement with the chief election officials of Arizona, Illinois, and Ohio, confirming that the scheduled presidential preference primary election would proceed on Tuesday, March 17, despite the emergent circumstances.¹²

The ongoing COVID-19 emergency will disrupt the normal functioning of this election.

SOEs have closed, moved or consolidated 112 polling places in 22 counties, including many at assisted living facilities. The closure of polling places at assisted living facilities not only affects residents of the facilities but also the non-residents who vote at those locations. We also understand that numerous poll workers may withdraw from participating in this election due to concerns about the pandemic.¹³ With a lack of poll workers, SOEs may close or consolidate yet more polling places. This will necessarily hinder voters' ability to access polling sites within reasonable distances of their homes and will create confusion. Polling places that remain open with fewer poll workers may experience longer lines with wait times for voters, increasing health risks. Where SOEs utilize volunteers from other government departments to fill vacant poll worker positions, the lack of time to fully train those volunteers in election law, rules, and procedures may result in the dissemination of inaccurate information to voters or to eligible voters being wrongfully turned away from the polls.

⁶ "Coronavirus Disease 2019 (COVID-19) in the U.S.," Centers for Disease Control and Prevention (updated Mar. 13, 2020) (online at www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html).

⁷ "Transcript: Trump's Coronavirus News Conference," New York Times (Mar. 13, 2020) (online at www.nytimes.com/2020/03/13/us/politics/trump-coronavirus-news-conference.html).

⁸ "2019 Novel Coronavirus (COVID-19)," Florida Department of Health (updated Mar. 15, 2020) (online at www.floridahealth.gov/diseases-and-conditions/COVID-19/).

⁹ *Id.*

¹⁰ "Florida Department of Education Provides Recommendations for Spring Break," Florida Department of Education (Mar. 13, 2020) (online at www.fldoe.org/newsroom/latest-news/florida-department-of-education-provides-recommendations-for-spring-break.stml).

¹¹ "Gov. DeSantis Orders 2,500 Coronavirus Test Kits, Asks for Limited Mass Gatherings," News4Jax (Mar. 12, 2020) (www.news4jax.com/health/2020/03/12/gov-desantis-we-have-to-increase-our-ability-to-test-for-coronavirus/).

¹² "Statement from Arizona, Florida, Illinois and Ohio Chief Elections Officials on the Status of the March 17th State Primaries," Ohio Secretary of State (Mar. 13, 2020) (online at www.ohiosos.gov/media-center/press-releases/2020/2020-03-13/).

¹³ *See, e.g.*, Anna Bryson, "Coronavirus Florida: Sarasota County Voting Locations Change as Poll Workers Quit," Herald-Tribune (March 14, 2020) online at <https://www.heraldtribune.com/news/20200314/coronavirus-florida-sarasota-county-voting-locations-change-as-poll-workers-quit>.

In addition to these administrative problems, the declaration of a national emergency will result in vote denial for hundreds of thousands of voters. First, a multitude of college students across the State of Florida were abruptly ordered to leave their dorms and campuses and to continue classes online.¹⁴ Many of these students returned home. They are scattered across the State of Florida, the country, and perhaps the world. Prior to the pandemic, they believed they would be able to vote in person on or near campus and now they cannot. They were not prepared to vote by mail and have missed the deadline for such a request.

Second, the announcement of the pandemic has been accompanied by several advisories that will make it difficult, if not impossible, for some voters to cast a ballot. Due to quarantining, self-quarantining and social distancing, many Floridians who had planned to vote in person will be unable or unwilling to do so without putting themselves and others at risk. Changes should be implemented to limit these health risks so as not to impede the right to vote.

In previous times of natural disaster, federal judges have required states, including Florida, to mitigate the disruption caused by emergencies on the normal functioning of elections to ensure voters' opportunity to cast a ballot.¹⁵ In one case seeking to extend the voter registration deadline after Hurricane Matthew, the court stated, "This case is about the right of aspiring eligible voters to register and to have their votes counted. Nothing could be more fundamental to our democracy."¹⁶ During the additional week of voter registration, 108,000 Floridians registered to vote across the state.¹⁷

We are living in uncertain times with increasing risks to Floridians' health, including the possibility of death. There is a heightened risk for the elderly and people with compromised immune systems. We must simultaneously protect Floridians' health and their right to vote. We cannot overstate how much a refusal to adopt mitigating measures proportionate and responsive to this pandemic could disrupt voter access. Floridians are entitled to have their voices heard this election, and it is imperative that you provide voters with an array of options to cast their ballots.

Emergency Measures to Ensure Access to Voting

In order to make voting free, fair and accessible for all Floridians impacted by the coronavirus pandemic, we ask that in your capacity as Governor of Florida you implement these suggested measures on a statewide basis and direct all SOEs to make adjustments as needed in their respective counties to ensure that voters are accommodated in these ways:

¹⁴ See, e.g., "Miami Dade, Broward Colleges to Cancel All Classes, Transition to Remote Learning," NBC Miami (Mar. 12, 2020) (online at www.nbcmiami.com/news/local/miami-dade-college-closes-medical-campus-after-visitor-tested-positive-for-covid-19/2204781/).

¹⁵ *Florida Democratic Party v. Scott*, 215 F.Supp.3d 1250 (N.D. Fla 2016).

¹⁶ *Id.*

¹⁷ Steve Bosquet, "Surge of Post-Hurricane Matthew Voters Breaks 100,000 Mark," Miami Herald (Oct. 24, 2016), (online at miamiherald.typepad.com/nakedpolitics/2016/10/surge-of-post-hurricane-voters-breaks-100000-mark.html).

Expand Vote-by-Mail Options

The deadline for voters to request a vote-by-mail ballot has passed, but in light of the President's declaration of a national state of emergency and suggestions that voters self-quarantine as well as Governor DeSantis's declaration of a public health emergency in Florida,¹⁸ election officials should implement special accommodations for people that may have been forced to abandon their original plan to vote. This includes already registered students forced to leave their colleges and universities, people whose polling places have been closed and those who cannot risk being in a public place. Adjusting the vote-by-mail process would provide these voters an opportunity to still have their voices heard.

Florida statutes currently provide that in emergency situations when a voter is unable to leave their home, the SOE may have a ballot delivered to that person or their immediate family member on Election Day.¹⁹ As many Floridians are entering self-quarantine, their medical situations are akin to the emergency status mentioned in this statute. People are unable to leave their homes out of fear for the health and welfare of themselves and their loved ones. They are in emergency situations where absentee ballots should be made available to them up until Election Day.

Further, a separate statute allows that “[i]f a national or local emergency or other situation arises which makes substantial compliance with the provisions of state or federal law relating to the methods of voting for overseas voters impossible or unreasonable...the Elections Canvassing Commission may adopt by emergency rules such special procedures or requirements necessary to facilitate absentee voting by those persons directly affected who are otherwise eligible to vote in the election.”²⁰ We are currently in such a situation. The President of the United States and Governor DeSantis have declared a national and state emergency, respectively, related to the rapid spread of COVID-19, and voters are unable to partake in the election process in the normal manner. Local election officials are closing polling places and encountering difficulties with staffing and meeting the demands of accommodating high-risk voters. The Elections Canvassing Commission (“the Commission”) has the power to expand this statute to apply to more than just overseas voters. The Commission can create special vote-by-mail procedures to facilitate absentee voting for everyone. Now is the exact time for the Commission to act. Therefore, in order to accommodate citizens, we ask that you amend the vote-by-mail process in the following ways:

- Extend the deadline for people to request a vote-by-mail ballot from 10 days before the election to at a minimum March 17, 2020, but certainly to March 24, 2020. This extension should allow people to request ballots by all of the traditional methods as listed on the SOS’

¹⁸ Florida Department of Health Announces New Positive COVID-19 Case in Florida - Governor Ron Desantis Issued Executive Order 20-52 Declaring a State of Emergency for COVID-19 (Mar. 9, 2020), <http://www.floridahealth.gov/newsroom/2020/03/030920-florida-department-of-health-announces-new-positive-covid19-case-in-florida-governor-ron-desantis-issued-executive-order-2052-declaring-state-emergency-covid19.pr.html>.

¹⁹ Fla. Stat. §101.62(4)(c)(5).

²⁰ Fla. Stat. §101.698.

website. In addition, no individual should be required to complete an Election Day Vote-by-Mail Ballot Delivery Affidavit as a condition of obtaining a vote-by-mail ballot. The present state of emergency should be sufficient to establish every voter's eligibility to obtain their vote-by-mail ballot on or after Election Day.

- Allow people to request that their ballot be sent to them via e-mail or fax. Florida statutes currently provide that overseas voters may request that a vote-by-mail ballot be emailed or faxed.²¹ As mentioned above, our current state of emergency warrants expanding this option to all voters.
- Adjust the deadline for people to return their vote-by-mail ballot, counting them as long as they are postmarked at a minimum by March 17, 2020 or later and are received by March 27, 2020, consistent with the accommodation already made for military and overseas voters. Currently, most mail ballots must be received by 7:00 PM on Election Day to count. Under Florida statute, SOEs are currently required to count ballots of overseas voters received up to 10 days after Election Day as long as the ballot was postmarked no later than Election Day.²² In this emergency situation, SOEs should similarly count ballots from all voters as long as the ballots are postmarked by Election Day and received within 10 days.
- Allow people to submit their ballot via fax. Florida statute already provides that overseas voters may submit their vote-by-mail ballot via facsimile.²³
- Allow people utilizing vote-by-mail to submit their ballots at a variety of drop boxes, including drop boxes at polling sites that are not their precincts. Currently, Florida statutes allow voters to drop off mail ballots at “secure drop boxes...at the main office of the supervisor, at each branch office of the supervisor, and at each early voting site provided . . . that any such site must be staffed during the county’s early voting hours of operation by an employee of the supervisor’s office or a sworn law enforcement officer.”²⁴ Under this statute, election officials should ensure that from now until election day, voters may drop off ballots at a secure drop box at all polling sites that are staffed. It is vital that this convenient ballot return option is thoroughly publicized to voters in the remaining time it is available.
- Allow a third-party individual to collect ballots from those utilizing vote-by-mail and drop off these ballots at the drop boxes mentioned above. Florida statutes do not currently limit who is allowed to return voted ballots to a drop box, and in light of the national state of emergency, SOEs should allow for individuals, including third-party groups, to voluntarily collect ballots on behalf of others and deliver these ballots to drop boxes. There should not be a limit on the number of ballots that a person is able to collect and drop off through the extended balloting period.

Extend Early Voting Dates & Times Statewide

- Institute early voting in all of Florida’s counties for Monday, March 16, 2020 for the hours of 7:00 AM- 9:00 PM. Currently, the early voting statute does not provide for early voting

²¹ Fla. Stat. §101.62(4)(c)(2).

²² Fla. Stat. §101.6952(5).

²³ Fla. Stat. §101.697.

²⁴ Fla. Stat. §101.69(2).

on the day before Election Day, but the statute also does not prohibit it.²⁵ In order to provide additional opportunities for people to vote during low-volume times, election officials should institute early voting on Monday, the day before the election.

Make Polling Locations Healthy, Safe, and Accessible for All Voters

- Permitting voters to vote curbside with a paper ballot.
- Give poll workers discretion to permit voters from vulnerable populations (senior citizens, voters who are immunocompromised, etc.) to move to the front of the line of waiting voters.
- Assign line-walkers to make sure voters are in their correct polling location, have required identification, articulate any needs for assistance so that everyone may check in and move through the polling place efficiently.
- Revise the layout of polling places to ensure that stations and individuals are six feet apart, while maintaining as paramount voter privacy when marking ballots.
- Train and instruct poll workers to sanitize all appropriate surfaces within the polling place multiple times regularly throughout Election Day.
- Ensure that, beyond the recommendations above, Supervisors of Elections are aware of and following the CDC's recommendations for polling place health and safety during the COVID-19 outbreak.²⁶

Communicate All Changes to Voters

- SOEs should contact all voters whose polling places have changed as a result of site relocations. Supervisors should also attempt to station a poll worker at each of the old voting sites to alert voters that the polling place has changed.
- SOEs should update their county websites to specifically flag polling places that have changed as a result of site relocations.
- The state should develop public service announcements and transmit them via print, radio, and social media to alert Floridians to the expanded opportunities to vote.

We look forward to your prompt response. Please do not hesitate to contact Gilda R. Daniels or Chiraag Bains should you have any questions or wish to discuss this letter and the accommodations it lays out in more detail. Thank you for your attention and cooperation.

Best Regards,

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²⁵ Fla. Stat. §101.657(1)(d).

²⁶ "Recommendations for Election Polling Locations," Centers for Disease Control (Mar. 10, 2020) (www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html).

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