



March 15, 2020

Via Email Only

Secretary Frank LaRose
Secretary of State for the State of Ohio
22 N 4th Street
Columbus, OH 43215

Dear Secretary LaRose:

We write on behalf of the League of Women Voters of Ohio (“LWVO”), the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”), and Dēmos to ask that you issue a directive modifying the State’s election administration rules to increase opportunities for absentee voting in a time where record numbers of the voters seek to vote by mail.

COVID-19 presents 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, and who are pregnant. This fact, along with the rapid spread of COVID-19 across Ohio and the nation, have caused panic and chaos. On March 13, the president declared a national emergency¹ and at least 39 states have declared states of emergency.² This has resulted in restrictions being placed on large gatherings, requests that people practice social distancing, and changes to election times and procedures. At least two states postponed their primary elections (Louisiana and Georgia)³ and one other (New York) modified its election administration procedures, in part,

¹ Adam Edelman et al., *Trump Declares National Emergency to Combat Coronavirus, Authorizes Waiving of Laws and Regulations*, NBC News (Mar. 13, 2020, 1:54 PM), <https://www.nbcnews.com/politics/donald-trump/trump-hold-friday-afternoon-press-conference-coronavirus-n1157981>.

² Rosie Perper, Ellen Cranley, and Sarah Al-Arshani, *More Than Half of US States have Declared States of Emergency to Fight Coronavirus – Here’s What it Means for Them*, Business Insider (Mar. 14, 2020 1:32 AM), <https://www.businessinsider.com/california-washington-state-of-emergency-coronavirus-what-it-means-2020-3>.

³ Kate Sullivan and Adam Levy, *Louisiana Will Delay Presidential Primary Due to Coronavirus*, CNN (Mar. 13, 2020, 4:57 PM), <https://www.cnn.com/2020/03/13/politics/louisiana-primary-coronavirus/index.html>; Stephanie Saul, *Georgia Postpones Its Primary as Virus Upends Voting*, N.Y.

related to absentee ballots, by executive order⁴. Conducting elections during a time of a pandemic is unprecedented.

Therefore, we urge your office to take immediate action to ease and modify absentee ballot laws so that thousands of voters are not disenfranchised during Ohio's March 17, 2020 primary election through no fault of their own. We urge you to use your statutory authority⁵ to issue a directive to county boards of election that modifies absentee ballot administration rules so that county boards may accommodate and help thousands of absentee voters who otherwise will not be able to cast a ballot, through no fault of their own. We ask that you issue a temporary directive ordering the county boards of election to do the following:

1. Allow any individual designated by the voter (including staff of nursing homes and senior centers if the voter resides in these facilities) to pick up the voter's absentee ballot and drop the voter's absentee ballot off at the board of elections by the close of polls on election day;
2. Accept absentee ballots postmarked by election day (March 17) and received by the board within 10 days of election day;
3. Send two board members (one from each political party) to deliver absentee ballots to any facilities including any public housing facilities that were previously polling sites but were moved in the last week, and return voted absentee ballots to the board of election by the close of election day;
4. Extend the absentee ballot request deadline to 3 p.m. on Election Day for those individuals (1) susceptible to COVID-19, (2) whose polling places were moved, and (3) who would be putting themselves at higher risk of contracting the disease by traveling to the polls and standing in lines; and
5. Allow any voter or their designee to drop off their absentee ballot at any polling location in the county.

On March 9, 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."⁶ The Executive Order mandates state agencies "develop and implement procedures,

Times, Mar. 14, 2020, <https://www.nytimes.com/2020/03/14/us/politics/georgia-primary-virus-2020.html>.

⁴ Nina Einsilder, *Cuomo: Signs Executive Order to Modify Election Procedures Amid COVID-19*, WNBG (Mar. 14, 2020), <https://wbng.com/2020/03/14/cuomo-signs-executive-order-to-modify-election-procedures-amid-covid-19/>.

⁵ The Secretary of State is the chief election officer in the state, with the power to issue directives to prepare rules and instructions for the conduct of elections. Ohio Rev. Code Ann. §§ 3501.04, 3501.05, 3501.053. Under Ohio law, the Secretary of State has the power to "issue instructions as to the proper method of conducting elections to members of the boards of elections by permanent or temporary directives." Ohio Rev. Code § 3501.053(A). The Secretary can issue a temporary directive beginning ninety days before election day through the fortieth day following election and these directives, unlike permanent directives, are not subject to public review and public comment. *Id.* at § 3501.053(A)(2).

⁶ 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.

including suspending or adopting temporary rules within an agency’s authority, consistent with recommendations from the Department of Health designed to prevent or alleviate this public health threat” and urges the public to “heed the advice of public officials.”⁷ Multiple state agencies and other public and private institutions have halted their normal course of operation.⁸ These circumstances illustrate the dire circumstances that require immediate steps including modifying election administration rules to ease the burdens on Ohioans seeking to vote in the March 17 primary election.⁹

Pursuant to Governor DeWine’s March 9 Executive Order, your office issued a directive to county boards of election to relocate polling places in nursing homes because the elderly remain most susceptible to grave consequences if they contract the coronavirus.¹⁰ In response, county election officials moved more than 150 polling locations since last week, updating their websites each day to reflect new polling location changes.¹¹ While we appreciate Ohio’s move to protect the wellbeing of individuals highly susceptible to COVID-19, changing these polling locations at the last

⁷ *Id.*

⁸ On March 12, the Department of Health signed an order prohibiting mass gatherings of one-hundred or more effective immediately and until the Governor’s office modifies or rescinds the state of emergency. Ohio Dep’t of Health, *Order to Limit and Prohibit Mass Gatherings* (Mar. 12, 2020), https://content.govdelivery.com/attachments/OHOOD/2020/03/12/file_attachments/1399681/ODH%20Order%20to%20Limit%20and%20Prohibit%20Mass%20Gatherings,%203.12.20.pdf; The Office of Governor Mike DeWine, *Ohio Bans Mass Gatherings of 100 or More* (Mar. 12, 2020), <https://governor.ohio.gov/wps/portal/gov/governor/media/news-and-media/bans-mass-gatherings-of-100-or-more>. City officials in Cleveland cancelled the city’s historic Saint Patrick’s Day parade. Vince Grzegork, *Cleveland Saint Patrick’s Day Parade Cancelled Over Corona Virus Concerns*, Cleveland Scene (Mar. 11, 2020, 11:20 a.m.), <https://www.clevescene.com/scene-and-heard/archives/2020/03/11/cleveland-st-patricks-day-parade-canceled-over-coronavirus-concerns>. Similarly, sports leagues, festivals, libraries, convention centers, and courts of common pleas have suspended their usual operations. All Ohio public school and many private K-12 schools are to be closed. WLWT Digital Staff, *Ohio Schools Closed for 3 Weeks to Stop Spread of Corona Virus; Statewide Confirmed Cases Rise to 13*, WLWT (Mar. 13, 2020, 2:14 p.m.), <https://www.wlwt.com/article/ohio-schools-closed-for-3-weeks-to-stop-spread-of-coronavirus-statewide-confirmed-cases-rises-to-13/31444271#>.

⁹ The Southern District Court of Ohio, pursuant to the March 9 Executive Order, ordered continuances of all jury trials, most grand jury proceedings, and hearings requiring in-person oral argument. *In Re Court Operations Under the Circumstances Created by COVID-19*, General Order No. 20-02 (S.D. Ohio Mar. 12, 2020). <https://www.ohsd.uscourts.gov/sites/ohsd/files//20-02%20General%20Order%20In%20Re%20Court%20Operations%20Under%20the%20Exigent%20Circumstances%20Created%20by%20COVID-19%202020-03-12.pdf>.

¹⁰ Ohio Sec’y of State, Directive 2020-03, Mar. 9, 2020, <https://www.sos.state.oh.us/globalassets/elections/directives/2020/dir2020-03.pdf>.

¹¹ Rick Rouan, *Ohio Primaries Still Set Tuesday Despite Coronavirus Concerns that Shut Down Louisiana’s*, Columbus Dispatch (Mar. 13 2020, 2:17 p.m.), <https://www.dispatch.com/news/20200313/ohio-primary-still-set-tuesday-despite-coronavirus-concerns-that-shut-down-louisianarsquos>. There are 978 nursing home facilities and 774 assisted living facilities in the State of Ohio. Ohio Health Care Ass’n, *Quick Facts About Ohio’s Long-Term Care System*, https://www.ohca.org/quick_facts_1 (last visited Mar. 15, 2020).

minute without seeking to increase access to the ballot to those living at nursing homes and similar facilities puts such individuals at high risk of disenfranchisement.

Further, in Ohio, local elections officials report that hundreds of poll workers have quit in the last few days: at least 200 in Franklin County the State's most populous county, 300 in Hamilton County, and more in other counties.¹² Most poll workers in Ohio are elderly and their doctors recommended they stay away from serving at the polls because of coronavirus. In the limited time available, boards of election are scrambling to recruit poll workers and provide the requisite training for Tuesday's primary election.

As a result of last-minute polling location changes and fears around contracting the coronavirus, an increased number of voters were in need of absentee ballots on very short notice. However, short staffing at county boards of election, slow postal delivery times, and the number of steps needed for a voter to request an absentee ballot (mailing an absentee request either in person or by mail, receiving the ballot by mail, and having to mail back the ballot) makes it all but impossible for these voters to receive and return their ballots in a timely way. In Montgomery County, 1,042 absentee ballots were requested from March 11 to March 14; the board mailed out all ballots. Of these ballots requested, the board has not received 1,041 and only one ballot was returned over the counter.¹³ In Lucas County, from March 11 to March 14, 404 individuals requested an absentee ballot which the board mailed out—11 were received and designated by the board as "countable," 1 was returned undeliverable, and 392 have not been received by the board at all.¹⁴ In Summit County, the board of election received 1,157 absentee ballot requests from March 11 to March 14 and mailed out all ballots. Of the ballots mailed, 1,139 have not been returned to the board as of today, 17 were returned over-the-counter, and 1 was undeliverable. The data from only three counties in the state demonstrates that thousands of voters will most likely not be able to vote by absentee ballot because of short staffing on boards, lack of poll workers, and the slow mail delivery times.¹⁵

¹² Rick Rouan et al., *Ohio Election Boards Frantically Seeking Poll Workers Due to Coronavirus Outbreak*, Cincinnati Enquirer (Mar. 12, 2020, 5:57 PM), <https://www.cincinnati.com/story/news/politics/2020/03/12/ohio-elections-boards-frantically-seeking-poll-workers-due-coronavirus-outbreak/5033374002/>.

¹³ Data available at Montgomery County's absentee generation report website, <https://lookup.boe.ohio.gov/vtrapp/montgomery/avreport.aspx> (last visited Mar. 15, 2020).

¹⁴ Data available at Lucas County's absentee generation report website, <https://lookup.boe.ohio.gov/vtrapp/lucas/avreport.aspx> (last visited Mar. 15, 2020). Since March 11, the Lucas County board has rejected at least 379 timely requested absentee ballots designating them as "problem applications"—Under Ohio law, these individuals have a right to cure their deficiency before the board issues them an absentee ballot. The board must send out a notice to the voter—usually most boards send these notices out by mail. Given the time restraints, it is highly probable that most of these individuals will not be able to cure their ballot, receive an absentee ballot, and vote the ballot in time for it to be counted.

¹⁵ Ohio has had a historical problem of slow mail delivery because of inefficient mail routes. The postal service sends mail from some counties to processing centers in Indiana or Michigan before the mail reaches its Ohio destination. The postal service sends mail from many of Ohio's smaller counties to processing centers in other counties even for delivery in the same county. Given these realities, many voters who requested an absentee ballot by mail or voted a ballot by mail will not receive their ballot in time to vote in the March 17 primary election.

Many other voters have not been able to request an absentee ballot request by the deadline—Friday at 6 p.m. for in-person requests and Saturday at noon for requests by mail. Yet other voters have timely requested absentee ballots but their boards have deemed these ballots deficient and there remains no additional time for these voters to cure their deficiency, cast a ballot, and return the ballot in time for it to be counted. In addition, due to coronavirus fears, a record number of voters prefer return their ballot by mail. The problem is that under Ohio law, a ballot must be postmarked the day before Election Day (Monday March 16) in order to be counted. Voters, many who struggle with illness and disability and have not yet received their absentee ballots, will not be able to postmark it by Monday in time for the ballot to be counted.

For example, Alicia Hopkins is a voter who uses a wheelchair, is immuno-compromised, has low vision and has developmental disabilities. She lives in a public housing authority in Akron, Ohio. Ms. Hopkins found out Friday through social media channels that the county had moved her polling place, which previously was at her residence. Ms. Hopkins planned to vote in person at the polling place in her building, but her doctor ordered her not to leave her apartment. On March 13, Ms. Hopkins applied for an absentee ballot—her friend was able to drop off her request at the board of election. Ms. Hopkins has not received her absentee ballot yet. Because she is a domestic violence survivor, she receives mail at a postbox which is a 20-25 minute drive away from her residence. She is worried that she will not receive her ballot by Monday, the last date to postmark the ballot. Ms. Hopkins is one of many voters who timely requested an absentee ballot and have not yet received their ballot in the mail. These voters will be disenfranchised by the State’s absentee procedures unless your office eases election administration processes around absentee voting in these dire circumstances.

Given the urgency of this matter, we request that you respond **by 11 AM on Monday, March 16, 2020** to Jen Miller at director@lwvohio.org, Ezra Rosenberg at rosenberg@lawyerscommittee.org and Brenda Wright at bwright@demos.org. Thank you.

Sincerely,

/s/

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