

SENT VIA EMAIL

April 13, 2020

Hon. Michael Watson
Mississippi Secretary of State
401 Mississippi Street
Jackson, Mississippi 39201
Email: michael.watson@sos.ms.gov

Re: Ensuring Ballot Access for Mississippi Voters During the Coronavirus Pandemic

Dear Secretary Watson:

The undersigned civil and human rights groups write to request that you take all necessary steps to preserve the fundamental right to vote and ensure that every eligible Mississippi voter can safely and securely register to vote in light of the ongoing COVID-19 pandemic. The conditions created by the pandemic present unique challenges to casting a ballot in the upcoming 2020 elections, including the primary runoff election and the Special Election for House District 88—scheduled for June 23, 2020.

As you know, the COVID-19 pandemic presents an enormous public health threat and is significantly disrupting day-to-day life across the United States. The President has issued nationwide social distancing guidelines, which have already been extended through April 30.¹ On April 3, Governor Reeves's stay-at-home order went into effect through April 20.² Numerous other Southern states have issued statewide shelter-in-place orders, some of which will remain in place through early summer.³ To-date, over 2,000 people in Mississippi have

¹ Jeanine Santucci et al., *Trump extends federal social distancing guidelines to April 30 after floating Easter deadline*, USA Today, Mar. 29, 2020, [usatoday.com/story/news/politics/2020/03/29/coronavirus-trump-extends-social-distancing-guidelines-april-30/2937504001/](https://www.usatoday.com/story/news/politics/2020/03/29/coronavirus-trump-extends-social-distancing-guidelines-april-30/2937504001/).

² State of Mississippi, Office of the Governor, Executive Order No. 1466, <https://www.sos.ms.gov/Education-Publications/ExecutiveOrders/1466.pdf>.

³ Governor Ralph Northam of Virginia issued a statewide stay at home order to remain in effect through June 10, 2020. Virginia Governor: Ralph S. Northam (Mar. 30, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-855702-en.html>. Governor John Bel Edwards of Louisiana issued a statewide stay at home order which has already been extended once and will now be in place through at least April 30, 2020. Melinda Deslatte, Louisiana 'stay at home' order to be extended through April, Associated Press, March 20, 2020, <https://apnews.com/bb2ccd9b5e7ca52660980a300c98a2db>. Governor Ron DeSantis of Florida issued a statewide stay at home order through April 30, 2020. Mary Ellen Klas & Steve Contorno, *Florida Gov. Ron DeSantis issues statewide stay-at-home order*, Tampa Bay Times, Apr. 1, 2020, <https://www.tampabay.com/news/health/2020/04/01/florida-gov-ron-desantis-issues-statewide-stay-at-home-order/>.

contracted COVID-19.⁴ And it is unclear even to top epidemiological experts when and how this crisis will end.

This reality presents real barriers to voters given current requirements for registering and casting a ballot in Mississippi. Given the Governor's stay-at-home order and public health concerns, many Mississippi voters will be reluctant or unable to register to vote and/or cast a ballot in person during the 2020 election cycle. Even if the stay-at-home order is lifted before the election, it is very likely that both low-risk and high-risk individuals will remain reluctant to vote in-person after months of complying with the stay-at-home order and social distancing guidelines. Your office can and must act now to ensure that Mississippi can carry out safe and democratic elections in the midst of this national crisis.

This public health crisis has created unprecedented logistical concerns for elections officials nationwide and some states have put voters in the unconscionable position of choosing between their health and their vote.⁵ But many states are implementing innovative solutions to ensure no one has to choose between protecting their health and exercising their right to vote. For example, Georgia's Secretary of State has mailed absentee ballot request forms to all of Georgia's 6.9 million registered voters in advance of the May 19 primary.⁶

We therefore request that you act quickly to prevent the violation of the fundamental right to vote of all eligible Mississippi voters by taking the following action:

- 1. Permit every qualified voter in Mississippi to vote by mail-in absentee ballot.**
This change and the others listed that alter the current application of state election statutes are constitutionally mandated to prevent an undue burden on Mississippians' fundamental right to vote. Requiring voters who do not meet the existing statutory excuses for absentee voting to vote in person in this ongoing public health crisis would amount to a severe burden on their right to vote. These required modifications can be implemented using the Governor's limited emergency powers under Miss. Code Ann. § 33-15-11, *et seq.*, which he can delegate to you for the specific purpose of safeguarding Mississippi voters and elections. At a minimum, you have the option to use these powers to interpret Miss. Code Ann. § 23-15-713(d) such that "temporary...physical disability" or "any person . . . whose attendance at the voting place could reasonable cause danger to himself or others" includes the current pandemic as a valid excuse to vote absentee. Expanded vote-by-mail should complement, not eliminate, in-person voting.
- 2. Mail absentee ballot applications to every registered voter or implement a centralized, online absentee ballot request system,** while also allowing absentee ballots to be requested in as many ways as possible, like email or fax. Currently, voters seeking to vote by absentee ballot must request an application from their

⁴ *Mississippi, Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times (last visited Apr. 9, 2020), available at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#states>

⁵ Ella Nilsen & Li Zhou, *How Wisconsin's election disenfranchised voters*, Vox, Apr. 7, 2020, <https://www.vox.com/2020/4/7/21212053/wisconsin-election-coronavirus-disenfranchised-voters>.

⁶ Mark Niesse, *Georgia to Mail Absentee Ballot Request Forms to All Active Voters*, Atlanta Journal Constitution, Mar. 24, 2020, <https://www.ajc.com/news/state--regional-govt--politics/georgia-mail-absentee-ballot-request-forms-all-active-voters/s1ZcJ57g8qqIwyG6LNWfIM/>.

county clerk in person, by phone, or by mail. Since most voters will likely choose to vote by mail in 2020, this step should be made as simple as possible. For example, the absentee ballot application should be made available online. No one should be required to leave their home to request an absentee ballot application. Alternatively, circuit clerks could mail an absentee ballot to every registered voter.

3. **Notify voters of, and widely advertise, updated voter registration deadlines⁷ and undertake extensive voter education to ensure voters know how to register and vote during the coronavirus epidemic.** Even healthy, low-risk individuals may be reluctant to vote in-person after months of complying with the stay-at-home order and social distancing guidelines. The Secretary of State's office can help mitigate these fears by clearly communicating the steps it is taking to protect Mississippi voters at the polls. An important, but simple, initial step would be to update your website's 2020 Election Calendar. At present, it still incorrectly shows March 31 as the Primary Runoff Election Day, and March 2 as the registration deadline for the Primary Runoff Election, and there is no mention at all the special election. And, besides Governor Reeves' Executive Order and Amended Writ of Election, there has been no other announcement that the registration deadline for the primary runoff or special elections were extended to go along with the postponed elections.
4. **Implement an online voter registration system,⁸** so that voters can register to vote without leaving their homes, including a process for people without state-issued IDs to register. The option to register by mail is not a sufficient substitute to online registration because many voters do not have access to printers, envelopes, and stamps at home. The online voter registration system should be fully automated, so the submission and the processing of registration applications occurs electronically.
5. **Eliminate the requirement that absentee ballot applications be notarized or witnessed** to reduce the number of public, in-person interactions necessary to cast an absentee ballot.
6. **Allow any voter or a designee to drop off their absentee ballot at any polling place** or in secure drop boxes at accessible locations.
7. **Allow for out-of-precinct voting by requiring election officials to count the ballots of any in-person voter who appears at the incorrect polling place, but in the correct county, for all of the state or local ballot items for which the voter is**

⁷ Governor Reeves, by Executive Order No. 1461, delayed the March 31st Primary Runoff Election for the 2nd Congressional District to June 23, 2020, along with the registration deadline to comply with federal law and the Mississippi Election Code. Miss. Exec. Order No. 1461 (2020). Governor Reeves, by Amended Writ of Election, also delayed the April 21st Special Election for House District 88 to June 23, 2020. On April 7, 2020, a subset of the undersigned organizations sent a detailed letter outlining this specific request.

⁸ On March 30, 2020 the North Carolina State Board of Elections and the Dept. of Motor Vehicles announced that they would be implementing a new online voter registration program writing, "the free service comes at a time when many county boards of elections have limited access or are closed to the public, and while residents are being asked to stay home because of the spread of COVID-19." The Official North Carolina DMV Website, Voter Registration Application, <https://www.ncdot.gov/dmv/offices-services/online/Pages/voter-registration-application.aspx>.

eligible to vote. Because the pandemic will likely cause widespread polling place closures, you should not punish voters who cannot find their correct polling places.

8. **Allow any person 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 that absentee ballot off by the close of polls on Election Day.**
9. **Make absentee ballots available until Election Day and accept absentee ballots postmarked by Election Day** and received within 10 days of Election Day or received in office on Election Day if submitted in person.
10. **Clarify that curbside voting is available to any voter** unable to enter the polling place on Election Day due to COVID-19 concerns.
11. **Anticipate that absentee ballot use will increase dramatically** in the 2020 election cycle and order enough paper ballots and supplies to conduct a nearly 100% mail-based election. To address higher voting-by-mail volume, allow early processing of ballots before Election Day.
12. **Recruit additional staff to process this larger quantity of absentee ballots** and communicate with the public and news media that a larger quantity of absentee ballots could lead to delays in reporting vote totals.
13. **Provide voters notice and an opportunity to address and cure issues with absentee ballots:** you should adopt policies and practices providing voters with timely notice of technical defects on their ballots/ballot envelopes and an opportunity to cure those defects remotely.

These steps, along with others recommended by the bipartisan National Task Force on Election Crises,⁹ will protect all voters, but are particularly important for older voters, low-income people, voters with disabilities, and people of color, who are less likely to have access to healthcare, social networks, and transportation necessary to feel safe voting in person.

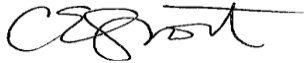
Moreover, if polling places need to be relocated to protect vulnerable populations like the elderly and people with disabilities, the affected voters must be promptly notified of the change, the relocation widely advertised, and election officials must ensure that any changes comply with the Voting Rights Act of 1965, the Americans with Disabilities Act, and other federal nondiscrimination and election laws. Finally, to prepare for the likely event that many poll workers will be unavailable,¹⁰ your office should begin working with local election officials to recruit and train additional poll workers.

⁹ National Task Force on Election Crises, COVID-19 Election Guide, <https://tinyurl.com/vebv2h>.

¹⁰ Nationally, two-thirds of poll workers are age 61 or older. Election Administration Commission, Election Administration and Voting Survey: 2018 Comprehensive Report 9, https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf.

Given the urgency of this matter, we request your response by April 20, 2020. We are available for a call or videoconference at your convenience. We look forward to working with you.

Respectfully,



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