



March 25, 2020

VIA EMAIL

RE: COVID-19 and Absentee Voting in 2020 Elections

To the Secretary of State, Mr. Brad Raffensperger:

As Georgia prepares for the likely escalation of COVID-19 within its borders, the ACLU of Georgia writes to provide recommendations that may ensure the elections this year occur without compromising public health or disenfranchising any eligible voter.

The ACLU of Georgia recognizes the gravity of the circumstances. Just two days ago, Governor Kemp issued an emergency order banning gatherings of 10 or more, requiring “medically fragile” Georgians to shelter in place for the next two weeks, and shutting down bars and nightclubs. Lives are at stake, and as government officials respond with decisive action, they must also preserve our democratic systems. We hope that your Office will consider the ACLU of Georgia as a resource in your work to develop a plan that protects the health and safety of all Georgians while preserving the sacred right to vote.

While we appreciate the decision to mail absentee ballot applications to all registered voters, we have additional concerns. The following recommendations should be adopted quickly to ensure that voting in Georgia in 2020 remains fair, accessible, and safe.

CORONAVIRUS AND ABSENTEE VOTING

In light of the current threat posed by COVID-19 and statewide emergency measures to curb the spread of the virus, voting by mail may be a preferred option for all registered voters, especially those who may need assistance or are immune-compromised. The Office of the Secretary of State should make absentee voting by mail, as well as in-person advance voting, widely available, easily accessible, and safe for all registered voters.

To the extent that any of these recommendations can only be enacted by county Boards of Registration and Elections, we urge you, as the chief election official, to issue guidance to all 159 counties to implement such recommendations. The ACLU of Georgia is happy to assist in any such efforts.

Absentee Voting by Mail

Requesting and Receiving Absentee Ballots

All registered voters should be offered the option to cast their ballot by mail at no cost. Not only would this greatly facilitate absentee voting and reduce the unnecessary spread of the COVID-19

virus, it avoids potentially violating constitutional prohibitions on poll taxes.¹ Given the public health advice to practice social distancing, elections officials must assume that demand for mail-in absentee ballots will skyrocket this year, potentially up to 100%. At a minimum, your Office should:

- Mail absentee ballot applications to all “active” and “inactive” registered voters on a rolling basis or, alternatively, after the voter registration deadline to ensure all registered voters receive an absentee ballot application (not just voters deemed “active” who are presently registered).²
- Include pre-paid postage and self-sealing envelopes for any and all mail return.
- Print enough absentee ballots and accompanying envelopes to account for the potential need to mail absentee ballots to every registered voter. Your Office should do this immediately, as COVID-19 could unexpectedly impact printing vendor capacity.
- Be clear and transparent about changes to voting options by mounting a public education campaign to inform voters of their options. This public education campaign must be advertised in multiple languages and accessible to voters with disabilities. Any public education campaign should also include instructional aids, *e.g.*, “how-to” infographics and videos, to demonstrate the correct way to complete an absentee ballot application and the ballot, itself. This will protect absentee voters from having their ballots rejected for inadvertent technical errors.

Returning Absentee Ballots

Voters who choose to complete an absentee ballot should have expanded options for returning their ballots. Many voters do not feel comfortable trusting the mail system, especially during this crisis, to deliver their completed absentee ballots and, therefore, would prefer to drop off their ballots in person. They may also have no choice but to drop off their ballot to ensure that it is received on time. For voters who need to drop off their ballots in person, they should be able to do so while still maintaining social distancing, *i.e.*, remaining six feet apart from other voters.

As far as we are aware, county registrar offices are only required to accept in-person delivery of absentee ballots at their Board of Registration and Elections office. The problem is that in some counties, the Board location is too distant for many voters and/or is located in non-frequented government buildings that are difficult to find. For example, Gwinnett County, which spans over

¹ Failure to include pre-paid postage for all mail return may constitute a poll tax because a person’s ability to cast an absentee ballot should not depend upon their ability to pay the cost of postage. Voters should not have to choose between exposing themselves to COVID-19 and paying a poll tax in order to vote. *See Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 668 (1966) (“Wealth, like race, creed, or color, is not germane to one’s ability to participate intelligently in the electoral process.”).

² The ACLU of Georgia is aware of and appreciates your Office’s recent announcement to mail absentee ballot applications to all “active” registered voters. However, because “inactive” voters may still vote, we ask that your Office mail absentee ballot applications to those voters, as well.

400 miles with a population of over 900,000 residents, only offers absentee voters one location for delivering their absentee ballot in person: the Gwinnett County Voter Registrations and Elections Office. As a result, absentee voters who wish to hand-deliver their absentee ballots, no matter where they live in the county, must travel to Lawrenceville to do so. This location is impracticable to reach, especially for those living on the outskirts of the county.

For these reasons, we ask that the Office of the Secretary of State issue guidance or work to amend Georgia's Rules and Regulations regarding absentee voting to require county registrar offices to:

- Include pre-paid postage and self-sealing envelopes for any and all mail return (to the extent not already covered by the State).
- Allow voters to drop off sealed absentee ballots at any county advance voting location during the advance voting period.³
- Allow voters to drop off sealed absentee ballots at their polling place on Election Day.

The Office of the Secretary of State should also work with elections officials and lawmakers to extend the deadline for county registrar offices to receive and count absentee ballots. The current deadline requires that absentee ballots be received by the county registrar no later than the close of polls on Election Day. This deadline is untenable, since many voters who apply for absentee ballots before the deadline may not even receive the absentee ballot in the mail until it is too late to comply with the deadline.

It will be even worse this year, as the volume of absentee ballots skyrockets. To account for delays in U.S. Mail, as well as administrative processing delays caused by COVID-19, the deadline should be extended as follows:

- County registrar offices should count absentee ballots postmarked by and received no later than three days after Election Day. Otherwise, county registrars may be exposed to constitutional liability.⁴

³ Georgia Rules and Regulations already allow county registrar offices to designate additional sites to receive absentee ballots (Ga. Comp. R. & Regs. 183-1-14-.08), but the rule is not followed consistently from county to county. Some counties give voters multiple options for returning their sealed ballots, including the option to return ballots to any advance voting location in the county. However, other counties only allow voters to deliver their sealed absentee ballots to the county's main Board of Registration and Elections office. This inconsistency has the potential to cause mass confusion.

⁴ County registrar offices already accept and count absentee ballots from our military and overseas citizens that are postmarked by and received within three days of Election Day. Ga. Comp. R. & Regs. 183-1-14-.10. Additionally, a Georgia federal court has, in extraordinary circumstances, required county elections officials to accept and count absentee ballots postmarked by and received within three days of Election Day. *Democratic Party of Georgia v. Burkes et al.*, 1:18-cv-00212-WLS (M.D. Ga. Nov. 11, 2018) (granting permanent injunction to require county to count absentee ballots postmarked by Election Day and received no later than three days thereafter, amid a natural disaster).

To the extent your Office is unable to do this under an emergency, we urge you to push for legislation that would accomplish it this year. The ACLU of Georgia is happy to lend assistance in such efforts.

Processing Absentee Ballots

Given the anticipated surge of absentee voting by mail, ballot processing and administrative capacity should be expanded to handle the influx of absentee ballot applications and absentee ballots. The Office of the Secretary of State should issue specific guidance to elections officials and lawmakers urging them to increase funding and hire additional elections staff to process absentee ballot applications and absentee ballots. Resource plans to hire additional staff can include recruiting workers who were displaced or laid off due to the COVID-19 pandemic.

Additionally, the Office of the Secretary of State should train all elections staff responsible for absentee ballot processing, including those newly hired, on all recent changes to voting rules and options. Because more Georgians may prefer to vote by mail in the 2020 elections, it is imperative that counties have enough staff to process absentee ballots and to notify absentee voters of any defects in their ballots. Absentee voters must receive prompt notification by mail, email, and/or telephone, if their absentee ballot is rejected so that they have an opportunity to timely cure the defects and still have their votes count.⁵

Absentee Voting in Person (Advance Voting)

The Office of the Secretary of State should work with county elections officials to ensure that advance voting locations and polling places remain open and safe. Many people do not wish to, do not know how to, or cannot use absentee voting by mail. For example, people without Internet and/or mail access, those who need language assistance to vote, and people with disabilities who rely on voting machines to cast a private and independent ballot may be disenfranchised if polling places are closed.

If preparations are underway to modify polling places in light of COVID-19, the Office of the Secretary of State should encourage elections officials to use schools, which are now closed to staff and students, as polling places and advance voting locations. Additionally, the Office of the Secretary of State should issue guidance to county elections officials to ensure the following:

- Polling place location changes increase, rather than limit, accessibility for racial and language minority voters, students, and voters with disabilities.
- Voters are immediately given notice of any polling place changes, with a second notice given within weeks of the November election. Notice may include – but is not limited to – mailing or emailing written notice and using all available press outlets, social media, social media campaigns, and your Office’s website.

⁵ Prompt notice of a rejected absentee ballot is already required under Georgia’s Rules and Regulations (Ga. Comp. R. & Regs. 183-1-14-.13 (2020)), but with the anticipated surge in absentee voting, it is critical that county registrars have the capacity to implement this rule correctly and efficiently for the 2020 elections.

- Plans are implemented so that residents in facilities where polling places used to be but are now removed, *e.g.*, senior care facilities or other residential sites, are still able to cast a ballot with the same level of ease and convenience.
- Adequate polling place resources, including voting machines, ballots, and poll workers⁶, are provided to minimize lines, since crowds and exposure time are key determinants of the likelihood of contracting viruses. This is particularly critical since Governor Kemp recently banned gatherings of 10 people or more, unless people could maintain spacing of at least six feet apart.

CONCLUSION

The urgency of deliberate and thoughtful action is imperative to ensure that the 2020 election is free, fair, accessible, and secure. The ACLU of Georgia is eager to work with the Office of the Secretary of State to accomplish the recommendations outlined above, and we are willing to be a resource for your Office throughout this process. We are pleased with the measures your Office has already taken, and we want to further ensure implementation of additional public policies that will limit the threats presented by this public health crisis while remaining faithful to the constitutional rights of all Georgians.

For Justice,



Andrea Young
Executive Director
ACLU of Georgia

⁶ Resource plans may include recruiting poll workers who were displaced or laid off due to the COVID-19 pandemic.