



Sent Via Email

September 3, 2020

Hon. Ron DeSantis
Governor of Florida
400 S. Monroe St.
Tallahassee, FL 32399
Email: GovernorRon.Desantis@eog.myflorida.com

Re: Recommendations for Conducting a Safe General Election During the COVID-19 Pandemic

Dear Governor DeSantis:

On behalf of All Voting is Local Florida, the NAACP Legal Defense and Educational Fund, Inc., League of Women Voters of Florida, Common Cause Florida, American Civil Liberties Union of Florida, Lawyers' Committee for Civil Rights Under Law, Campaign Legal Center, SPLC Action Fund, Advancement Project, The National Congress of Black Women, Women Talk Black, Disability Rights Florida, Voter Protection Corps Education and Advocacy Fund, Inc., The Florida 501(c)(3) Civic Engagement Table, NAACP Florida State Conference, and Voting Rights Lab Action, and, we urge you

to issue an Executive Order to take critical steps to ensure that the November 3, 2020 Election is conducted as safely as possible during the COVID-19 pandemic.

As we head towards the November 3, 2020 General Election, it is important to take steps now to guarantee that Florida voters are not forced to choose between their health and their fundamental right to vote and that no eligible voter is disenfranchised due to circumstances outside of their control. For many, casting a ballot in person at a polling place carries an unacceptable risk of contracting COVID-19, yet at the same time, those voters lack confidence that the United States Postal Service will be able to efficiently and reliably deliver the large volume of vote-by-mail ballots expected in the general election.¹ Many voters are increasingly concerned that they will not be able to safely cast a ballot and have that ballot counted. Although the August 18, 2020 Primary Election was generally conducted without the significant disruptions to voting that have characterized so many other states' primaries (like hours-long lines),² election officials and voters face a constantly changing landscape and must overcome unprecedented challenges.

Therefore, we urge you to use your executive authority under the Florida Emergency Management Act³ to take three essential steps to help ensure a safe and smooth general election: *First*, expand the use of drop boxes for vote-by-mail ballots; *second*, temporarily expand dates and hours of early voting; and *third*, temporarily allow vote-by-mail ballots to be counted so long as they are mailed by the close of polls and received within five days of the general election. Taking these steps will not only help protect the right to vote, but it may even save lives.

1. Expand the Use of Vote-By-Mail Drop Boxes

The COVID-19 pandemic, which has disproportionately affected the elderly, lower-income residents, and communities of color, has made in-person voting an untenable option for many voters. And, in light of the widely reported issues with the United States Postal Service, many voters are not

¹ See, e.g., *Post Office warns 46 states about mail voting delays, report says*, Tampa Bay Times (Aug. 14, 2020), available at <https://www.tampabay.com/florida-politics/buzz/2020/08/14/post-office-warns-46-states-about-mail-voting-delays-report-says/>.

² Vote-by-mail and early voting options provided critical safe alternatives to voting in person for many Floridians, preventing crowded polling places and mitigating health concerns relating to COVID-19. Executive Order 20-149 was important to these outcomes because it provided Supervisors of Elections with greater flexibility and additional options to address the unique challenges to the administration of elections due to COVID-19. See Executive Order No. 20-149 (June 17, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-149.pdf.

³ See Fla. Stat. § 252.36 (1)(b) (during a state of emergency, “the Governor may issue executive orders, proclamations, and rules and may amend or rescind them. Such executive orders, proclamations, and rules shall have the force and effect of law.”).

comfortable returning their vote-by-mail ballots by mail. Therefore, for many voters, the option to personally bring their vote-by-mail ballots to secure drop boxes has become the only acceptable choice.

Drop boxes are already authorized under Florida law. Senate Bill 7066 (“SB 7066”), which you signed into law last year, gave voters the option to return vote-by-mail ballots to secure drop boxes located at all main election offices, branch offices, and early voting sites, as well as certain other locations.⁴ These provisions have become critically important this year in light of the COVID-19 pandemic.

The August 18, 2020 Primary Election proved that Florida’s new drop box provisions provide an effective, safe, and secure means for voters to return vote-by-mail ballots in the midst of this pandemic. However, the primary also revealed significant issues with drop box accessibility. For example, many counties lacked a sufficient number of drop boxes; many counties placed drop boxes indoors (making it difficult or impossible for voters to use the drop boxes while maintaining social distancing); and many voters reported difficulty finding drop boxes. These issues could easily be resolved through your action before the general election. Therefore, we urge you to take executive action to (a) require additional drop boxes; (b) place secure drop boxes outdoors and available 24 hours; (c) provide additional notification through multiple means of drop box locations, days, and hours of access; and (d) clarify that voters in line by 7:00 p.m. may use drop boxes.

a. Require Supervisors of Elections to Provide Additional Drop Boxes

Many Supervisors of Elections are not providing sufficient drop boxes to voters. Under state law, drop boxes are required at all main election offices, branch offices, and early voting sites, and Supervisors of Elections have discretion to place drop boxes at any location that could serve as an early voting location but is not being used as such.⁵ The law also affords broad discretion to Supervisors of Elections to place drop boxes in a wide variety of locations, including any city hall, permanent public library facility, fairground, civic center, courthouse, county commission building, stadium, convention center, government-owned senior center, or government-owned community center.⁶ Notwithstanding these many options, during the August 18, 2020 Primary Election, many Supervisors of Elections provided only the bare minimum number of drop boxes required under state law. The Department of Homeland Security recommends one drop box for every 15,000 to 20,000 voters,⁷ but most counties in Florida fell far short

⁴ See Fla. Stat. § 101.69(2).

⁵ See Fla. Stat. § 101.69(2).

⁶ See *id.* (providing that drop boxes may be placed at any site that would qualify as an early voting site); Fla. Stat. § 101.657(1)(a) (listing early voting sites).

⁷ *Ballot Drop Box*, Cybersecurity and Infrastructure Security Agency, Elections Infrastructure Subsector’s Government Coordinating Council and Sector Coordinating Council, United States Department of Homeland Security, available at https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf.

of that recommendation. For example, during the early voting period, Miami-Dade County offered only 23 drop boxes (one drop box per 65,221 active registered voters) and Broward County offered only 22 drop boxes (one drop box per 55,696 active registered voters).

Moreover, during the August 18, 2020 Primary Election, many Supervisors of Elections dramatically *reduced* the number of drop boxes available on Election Day by removing drop boxes from all early voting locations once early voting ended – Miami Dade County had only four drop boxes on Election Day, and Broward County had only two. This caused confusion and frustration among voters who, on Election Day, attempted to bring their vote-by-mail ballot to an early vote location (or their precinct) after hearing from friends and family who were able to successfully deliver ballots to an early voting location during the early voting period.⁸

Expanding drop box availability is a common sense public safety measure that has been adopted by other Governors through Executive Order to help manage the challenges presented by the pandemic.⁹ Therefore, we respectfully urge you to issue an Executive Order requiring Supervisors of Elections to take the following steps to expand drop box availability.¹⁰

- Provide at least one drop box for every 15,000 to 20,000 voters.¹¹
- Ensure that all drop boxes available to voters during the early voting period are also available to voters on Election Day.

⁸ See Michael Moline, *Groups fear voter suppression efforts could intensify for FL's general election*, Florida Phoenix (Aug. 21, 2020) available at <https://www.floridaphoenix.com/2020/08/21/groups-fear-voter-suppression-efforts-could-intensify-for-fls-general-election/>.

⁹ See California Executive Order N-67-20, (3)(b)(i) (June 3, 2020) available at <https://www.gov.ca.gov/wp-content/uploads/2020/06/6.3.20-EO-N-67-20-text.pdf> (requiring at least one vote-by-mail drop box per 15,000 voters).; Connecticut Executive Order 7QQ, New Jersey Executive Order 177 (May 20, 2020) available <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7QQ.pdf?la=en> (expanding drop box availability); New Jersey Executive Order No. 177 (Aug. 14, 2020) available at <https://nj.gov/infobank/eo/056murphy/pdf/EO-177.pdf> (expanding drop box availability); see also Revised Code of Washington 29A.40.160 (requiring a minimum of one drop box per 15,000 registered voters).

¹⁰ In the alternative, the Secretary of State should issue guidance requiring Supervisors of Elections to follow these recommendations. Because each of these steps are consistent with current law, the Secretary of State has authority to provide such guidance to Supervisors of Elections.

¹¹ For many counties, the easiest way to achieve this benchmark will be to place a drop box at each location that has been identified as a polling place on Election Day. Larger counties with hundreds of polling places may need additional flexibility to be selective on where they add additional boxes while ensuring equitable access to all voters.

- Ensure that drop boxes are geographically distributed in a fair and equitable manner, so that all communities have easy access to a secure drop box, especially those communities that have fewer options for USPS services.

b. Wherever Possible, Ensure That Drop Boxes Are Located Outdoors and Are Available to Voters 24 Hours Per Day During the Early Voting Period

Although some Supervisors of Elections have proactively placed drop boxes outdoors,¹² most are placing drop boxes indoors and limiting the hours they are available. However, many voters—especially those in higher risk categories or living with those in higher risk categories—are uncomfortable using drop boxes if they are located indoors. For this reason, drop boxes should be placed outdoors to provide voters with the option to deliver their vote-by-mail ballots in a safe and secure manner during the pandemic.¹³ It is also important to make drop boxes available during evening, early morning, and weekend hours, to accommodate voters who need to use a drop box outside of standard work hours or who seek to preserve social distancing by using a drop box at hours when other voters are unlikely to be present.

Unfortunately, during the August 18, 2020 Primary Election, many Supervisors of Elections placed drop boxes indoors and only offered them during voting hours, because they were under the incorrect impression that state law required drop boxes to be staffed at all times, and they lacked sufficient staffing to assign someone to remain outdoors with each drop box or staff drop boxes after hours.

Florida law does not mandate staffing for drop boxes located at main election offices, branch offices, and early voting sites.¹⁴ Staffing is required only when Supervisors of Elections place drop boxes at *other* locations that are eligible sites for early voting, but are not being used.¹⁵ Nevertheless, the “Polling Place Procedures Manual” promulgated by the Division of Elections states that all drop boxes must be “clearly labeled, sealed and placed in an area where a *designated election board member maintains*

¹² For instance, Broward County had significant success with 24-hour drop boxes during the primary. *See Broward Sets Up 24-Hour Drop Boxes For Vote-By-Mail Ballots In Primary Election*, CBS Local (Aug. 4, 2020) available at <https://miami.cbslocal.com/2020/08/04/broward-24-hour-ballot-drop-boxes-primary-election/>.

¹³ Patients are 19 times more likely to catch COVID-19 indoors, compared to an outdoor open-air environment. *See* Hiroshi Nishiura, Hitoshi Oshitani, Tetsuro Kobayashi, Tomoya Saito, Tomimasa Sunagawa, Tamano Matsui, Takaji Wakita, MHLW COVID-19 Response Team, Motoi Suzuki, *Closed environments facilitate secondary transmission of coronavirus disease 2019 (COVID-19)*, April 16, 2020, available at <https://www.medrxiv.org/content/10.1101/2020.02.28.20029272v2>.

¹⁴ *See* Fla. Stat. § 101.69(2). Florida law provides for two categories of drop boxes: *First*, it requires placement of secure drop boxes at main election offices, branch offices, and early voting sites. *Second*, it affords election supervisors the discretion to place drop boxes at other sites that could qualify as early voting sites. The statute *only* requires that sites in this second category be staffed by an employee of the supervisor or a law enforcement officer. The statute does not require that drop boxes located at main election offices, branch offices, and early voting sites be staffed.

¹⁵ *Id.*

custody and control of the drop box at all times.”¹⁶ The Manual interpretation is not only inconsistent with the plain language of state law, it is also controverted by the legislative history¹⁷ and the official bill summary of SB 7066.¹⁸ The Manual interpretation is especially problematic now, in light of the pandemic, because it makes it more difficult for Supervisors of Elections to place drop boxes outdoors, where they can be safe and accessible to voters seeking to minimize their risk of contracting COVID-19.

Other states have taken steps to ensure that drop boxes are accessible and available to voters outdoors.¹⁹ Therefore, we respectfully urge you to issue an Executive Order requiring Supervisors of Elections to take the following steps to ensure that secure drop boxes are placed in locations that are safe and accessible to voters.²⁰

¹⁶ See Form DS-DE 11, *Polling Place Procedures Manual*, Division of Elections (Apr. 23, 2020) at p. 23, available at https://dos.myflorida.com/media/703005/adopted-clean-de11_pollplaceprocmanual.pdf.

¹⁷ The history of amendments to SB 7066 confirms that the legislature did not intend to impose the staffing requirement on drop boxes located at main election offices, branch offices, and early voting sites. The original language of SB 7066 as introduced did not provide for drop boxes. The language that was ultimately enacted was incorporated into SB 7066 in two amendments: *First*, an amendment incorporated on April 23, 2019 provided for drop boxes at main election offices, branch offices, and early voting sites, but did not include any requirement that drop boxes must be staffed. See SB 7066 Version c1 (Apr. 23, 2019). *Second*, an amendment incorporated on May 6, 2019 permitted Supervisors of Elections to place drop boxes in sites that are not being used as early voting locations provided that they are staffed. See SB 7066 Version e2 (May 6, 2019). This legislative history reveals that the staffing requirement that is imposed on drop boxes at unused early voting sites is distinct from, and does not apply to, the provision providing for drop boxes at main election offices, branch offices, and early voting sites.

¹⁸ The official bill summary of SB 7066 also confirms that the staffing requirement does not apply to drop boxes at main offices, branch offices, and early voting sites. See *Bill Summary for SB 7066*, The Florida Senate, available at <https://www.flsenate.gov/Committees/BillSummaries/2019/html/2038> (explaining that SB 7066 “[a]llows a voter to drop off his or her VBM ballot at a secure drop box located at each active early voting location and the supervisor’s main or branch office; allows supervisors to set-up drop-boxes at unused early voting locations authorized in s. 101.657, F.S., (i.e., courthouses, county commission buildings), provided that the site is staffed by a supervisors’ office employee or law enforcement officer during the county’s early voting hours of operation.”).

¹⁹ See, e.g., Georgia State Election Board, Rule 183-1-14-0.8-.14, *Secure Absentee Ballot Drop Boxes* (Emergency Rule Adopted at July 1, 2020 Meeting) available at <https://sos.ga.gov/admin/files/Table%20of%20Contents%20for%20SEB%20Rule%20183-1-14-0.8-.14.pdf>; Montana Directive Implementing Executive Orders 2-2020 and 3-2020 (Aug. 6, 2020) available at https://covid19.mt.gov/Portals/223/Documents/2020-08-06_Directive%20-%20November%20Elections.pdf?ver=2020-08-06-112431-693 (encouraging counties to implement curbside and drive-up voting options).

²⁰ In the alternative, the Secretary of State should issue guidance requiring Supervisors of Elections to follow these recommendations. The Secretary of State may issue such guidance because each of these recommendations is consistent with current state law. In particular, in light of the unambiguous state law permitting drop boxes at main election offices, branch offices, and early voting sites without staffing, we do not believe that the Secretary of State is foreclosed from issuing guidance to Supervisors of Elections advising them of this option, notwithstanding the contrary interpretation contained in the Polling Place Procedures Manual. To the extent there is a concern that this provision of the Polling Place Procedures Manual forecloses this option, we urge the Florida Divisions of Elections to amend the manual through an expedited rule-making process.

- Ensure that all drop boxes at main election offices, branch offices, and early voting sites are placed outdoors in a secure fashion and are available to voters 24 hours per day during the entire early voting period and on Election Day. Supervisors of Elections may, at their discretion, provide staffing for drop boxes for the purpose of assisting voters, but are not required to do so.²¹ Drop boxes should be placed in locations under 24-hour video surveillance or such surveillance should be arranged.²²
- Ensure that all drop boxes at locations *other than* main election offices, branch offices, and early voting sites are placed outdoors whenever possible, given staffing limitations.
- Wherever possible, place drop boxes in a “curbside” or “drive through” location so that voters can deliver ballots without having to leave their car.
- Ensure that all drop boxes are placed in locations that are fully compliant with accessibility requirements under the Americans with Disabilities Act.

c. Publish Clear and Accessible Resources Notifying Voters About Drop Box Locations

During the August 18, 2020 Primary Election, many voters had difficulty locating a drop box to deposit their vote-by-mail ballots.²³ Therefore, to ensure that all voters who wish to use a drop box are able to do so easily, drop box location, days, and times of access information should be published through all available and reasonable means, including through posted signs at polling sites and in government buildings. Voters should be notified about drop box locations through mail, text, and phone calls, in addition to postings online. The Secretary of State should develop a web tool that allows voters to see the location, days, and times of access of all drop boxes on a map and find the location of any drop box in their county. Diverse and inclusive methods of communication are necessary to ensure that more voters receive critical information about drop boxes and must become the standard for all counties to follow

²¹ Unlike state law, which allows anyone to bring a completed vote-by-mail ballot to a drop box on behalf of a voter, Miami-Dade County has adopted a strict policy that limits who may bring ballots to drop boxes. *See Vote-By-Mail Ballot Return Policy*, Supervisor of Elections, Miami-Dade County, Florida, available at <https://www.miamidade.gov/elections/library/instructions/vote-by-mail-ballot-return-policy-en.pdf>. Drop boxes in Miami-Dade County must be staffed to enforce this policy. Therefore, an Executive Order should either explicitly supersede Miami-Dade County’s policy or it should carve out Miami-Dade County as an exception.

²² We recommend that any Executive Order include procedures for preserving the chain of custody of the contents of drop boxes to ensure that they remain secure.

²³ *See* Michael Moline, *Groups fear voter suppression efforts could intensify for FL’s general election*, Florida Phoenix (Aug. 21, 2020) available at <https://www.floridaphoenix.com/2020/08/21/groups-fear-voter-suppression-efforts-could-intensify-for-fls-general-election/>.

moving forward. These steps are especially important considering that drop boxes are a new and unfamiliar option for many Florida voters.

Therefore, we urge you to issue an Executive Order requiring the Secretary of State and Supervisors of Elections to take the following steps to sufficiently notify voters of drop box locations:²⁴

- Require Supervisors of Elections to submit plans to the Secretary of State specifying their drop box locations by October 4, 2020.
- Develop a central website with a statewide map reflecting all drop box locations, dates, and times of access that voters can use to find their local drop boxes.
- Widely promote drop locations to voters through all available and reasonable means, including through mail, text, and phone calls, web postings, and signs at polling sites and government buildings, and require the Secretary of State and Supervisors of Elections to do the same.

d. Clarify That Voters in Line at Drop Boxes By 7:00 P.M. May Submit Their Ballot

Florida law provides that “[a]ny elector who is in line at the time of the official closing of the polls shall be allowed to cast a vote in the election.” *See* Fla. Stat 100.011.²⁵ In order to avoid potential disputes on Election Day, it is important to clarify that this statute applies to any lines of voters seeking to deposit vote-by-mail ballots in drop boxes. There is a significant likelihood that at many drop boxes, voters will form lines as they wait to deposit their ballots on Election Day, especially if drop boxes are staffed by elections personnel who interact with each voter seeking to use the drop box, or if drop boxes are placed in a “drive through” location.²⁶

Therefore, we urge you to issue an Executive Order clarifying that all voters waiting in a line to deposit their vote-by-mail ballot in a drop box (including a line of voters inside of vehicles) at 7 p.m. on Election Day shall be allowed to deposit their ballot in the drop box.

²⁴ In the alternative, the Secretary of State should take all possible steps to inform voters of drop box locations and should issue guidance requiring Supervisors of Elections to do so as well.

²⁵ Similarly, the Polling Place Manual states that “All eligible voters standing in line at the polling place by the early voting closing hour or 7 p.m. on Election Day shall be allowed to vote. A procedure should be in place to clearly mark the end of the line such as having the deputy stand behind the last person in line to establish a cut-off point.” *See* Form DS-DE 11, *Polling Place Procedures Manual*, Division of Elections (Apr. 23, 2020) at p. 31, available at https://dos.myflorida.com/media/703005/adopted-clean-de11_pollplaceprocmanual.pdf.

²⁶ During the August 18, 2020 Primary Election, a line of cars had formed for voters seeking to use a “drive through” drop box. *See* Dara Kam, *Polls 'Quiet' During Florida's Primary Elections After Heavy Mail-In Voting*, News Service of Florida (Aug. 18, 2020), available at <https://wusfnews.wusf.usf.edu/politics/2020-08-18/polls-quiet-during-floridas-primary-elections-after-heavy-mail-in-voting>.

2. Temporarily Expand Hours and Dates of Early Voting

Early voting is one of the most important mechanisms to facilitate a safe election during a pandemic. Early voting gives voters the option to cast their ballots without facing the crowds and long lines on Election Day. It also reduces the number of voters left to cast their ballots on Election Day, and therefore reduces crowding.

Florida law provides limited early voting options: Early voting is currently made available beginning on the 10th day before the election and ending on the 3rd day before the election, and Supervisors of Elections have discretion to offer early additional voting on the 15th through the 11th, and/or 2nd day before the election.²⁷ Florida law provides for early voting between 8 and 12 hours per day. In light of the COVID-19 pandemic, and the dramatic health risks created by crowds of voters waiting in lines to cast their ballots, it is critically important to temporarily expand the days and hours of early voting and provide voters with greater options.²⁸ Expanding early voting will reduce the strain on the voting system on Election Day by helping to mitigate long lines and making it easier to accommodate voters over more days while complying with social distancing guidelines.

Other states have temporarily expanded early voting options to protect public safety during the pandemic, including Texas, which recently extended early voting to begin on October 13, 2020.²⁹ Therefore, we urge you to issue an Executive Order adopting the following recommendations to expand early voting.

- Order early voting to occur in all counties for a 20-day period, including weekends, beginning on Tuesday, October 13, 2020 and ending on Sunday, November 1, 2020.³⁰

²⁷ Fla. Stat. § 101.657(1)(d).

²⁸ Diana Kasdan, *Early Voting: What Works*, The Brennan Center for Justice at New York University School of Law, available at https://www.brennancenter.org/sites/default/files/publications/VotingReport_Web.pdf.

²⁹ See *Texas Proclamation Extending Early Voting Period for November 3rd Election* (July 27, 2020) available at <https://gov.texas.gov/news/post/governor-abbott-issues-proclamation-extending-early-voting-period-for-november-3rd-election>; California Executive Order N-67-20, (3)(b)(i) (June 3, 2020) available at <https://www.gov.ca.gov/wp-content/uploads/2020/06/6.3.20-EO-N-67-20-text.pdf> (expanding early voting to begin four weeks before the election); Montana Directive Implementing Executive Orders 2-2020 and 3-2020 (Aug. 6, 2020) available at https://covid19.mt.gov/Portals/223/Documents/2020-08-06_Directive%20-%20November%20Elections.pdf?ver=2020-08-06-112431-693 (expanding early voting to begin over four weeks before the primary election); see also Ga. Code § 21-2-385 (providing that early voting in Georgia begins more than four weeks before Election Day).

³⁰ This is consistent with recommendations from the April 7, 2020 Letter from Florida Supervisors of Elections. See *Letter from Tammy Jones, President of Florida Supervisor of Elections, to Governor Ron DeSantis* (Apr. 7, 2020), available at <https://www.myfloridaelections.com/portals/fsase/Documents/Public%20Policy/FSE%20Recommendations%20%20COVID-19.pdf>.

- Require all polls to be open from 7 a.m. until 7 p.m. on each day of early voting.

3. Temporarily Allow Vote-By-Mail Ballots to be Counted if Mailed by the Close of Polls and Received Within Five Days of the General Election

Florida law currently provides that vote-by-mail ballots must be received by the Supervisor of Elections by 7 p.m. on Election Day.³¹ This strict deadline for vote-by-mail ballots is likely to result in widespread disenfranchisement of eligible voters who timely request and return their vote-by-mail ballots, but whose ballots—through no fault of their own—are not delivered to election officials until after the deadline. The Election Day deadline also poses a health risk to all Floridians. Voters who do not receive their vote-by-mail ballot until the final days before the election will be concerned that they will be unable to return their ballot by the deadline, and may instead go to their precinct to vote in person. This strict deadline will therefore lead to additional crowding at poll sites, further elevating the risk of COVID-19 transmission.

Tens of thousands of vote-by-mail ballots cast by voters in the August 18, 2020 Primary Election were excluded because they were received after the deadline,³² and there is good reason to anticipate significant postal service disruptions and delays leading up to the general election as well. There has been widespread evidence of mail delays and cost cutting procedures,³³ as well as specific warnings from the United States Postal Service that vote-by-mail ballots in Florida could be delayed.³⁴ In fact, the Postal Service and numerous Florida Supervisors of Elections are recommending that voters place their completed vote-by-mail ballots in the mail at least a week before Election Day to ensure timely arrival—notwithstanding the fact that many voters may not even receive their vote-by-mail ballots by then.³⁵ These well-documented issues will make it difficult—or impossible—for many Floridians to successfully return their vote-by-mail ballot by Florida’s strict deadline.

³¹ Fla. Stat. § 101.6103(2).

³² See David Smiley and Erin Doherty, *Mail ballots from nursing home residents, entire family didn’t count in Florida primary*, The Miami Herald (Aug. 28, 2020), available at <https://www.miamiherald.com/news/politics-government/article245268070.html>.

³³ See Matthew Daly, *Mail delays likely as new postal boss pushes cost-cutting*, AP (July 15, 2020) available at <https://apnews.com/59c25efd4d325c4895f8ba85517f9bfd>.

³⁴ See Letter from Thomas J. Marshall, General Counsel and Executive Vice President, United States Postal Service, to Florida Secretary of State Laurel Lee (July 29, 2020), available at <https://www.politico.com/f/?id=00000173-eeb1-d94e-a1f7-eeb1f5770000>.

³⁵ United States Postal Service, *State and Local Election Mail: User’s Guide* (Jan. 2020), <https://about.usps.com/publications/pub632.pdf> - (recommends that voters mail their marked return ballots at least 1 week before the due date”)

Florida law already provides that ballots cast by military and overseas voters will be counted if they are postmarked or executed by Election Day.³⁶ In light of the COVID-19 pandemic, this practice should be temporarily expanded to apply to all voters. Not only will this change help ensure that no Florida voters have their ballots rejected because of circumstances outside of their control, but it will also help promote a safe election in the midst of the pandemic. Governors in numerous other states with laws requiring receipt of vote-by-mail or absentee ballots by the close of polls on Election Day have exercised their emergency authority to temporarily accept ballots if they are postmarked by Election Day,³⁷ and a federal court recently ordered Georgia to count absentee ballots postmarked by Election Day and received within three days, explaining that “the risk of disenfranchisement is great” if absentee ballots only count if they are received by the close of polls.³⁸ We urge you to adopt the following recommendations to provide Florida voters with this same security and confidence as voters in these other states.

- Provide that vote-by-mail ballots will be accepted if received by November 8, 2020 (five days after the general election), as long as they have been postmarked by 7 p.m. on Election Day or are otherwise indicated by the United States Postal Service to have been mailed on or before the close of polls.
- Extend the deadline for voters to submit vote-by-mail ballot cure affidavits pursuant to Fla. Stat. § 101.68(4) from November 5, 2020 to November 10, 2020.

We urge you to implement these commonsense and nonpartisan recommendations so that Florida voters can safely and successfully cast their ballots in the November 3, 2020 General Election. We further ask that you or your representatives agree to meet with us within the next week to discuss our

³⁶ See *Military and Overseas Citizens Voting*, Florida Division of Elections, available at <https://www.dos.myflorida.com/elections/for-voters/voting/military-and-overseas-citizens-voting/>. Many other provisions of Florida law that also use postmark deadlines. See, e.g., Fla. Stat. Ann. § 97.053 (postmark deadline for voter registration forms); § 192.047 (postmark deadline for tax returns); § 607.15092 (postmark deadline for annual fees for corporation registrations); § 197.582 (postmark deadline for property claim filings).

³⁷ See New Jersey Executive Order No. 177, § 14 (Aug. 14, 2020) available at <https://nj.gov/infobank/eo/056murphy/pdf/EO-177.pdf> (suspending New Jersey’s ballot-return deadline and allowing vote-by-mail ballots to count if postmarked by Election Day); Connecticut Executive Order 7MMM (Aug. 10, 2020) available at <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7MMM.pdf> (suspending Connecticut’s requirement that absentee ballots must be received by Election Day and allowing absentee ballots to count so long as they are postmarked by Election Day); Commonwealth of Pennsylvania Executive Order 2020-02 (Jun. 1, 2020) available at <https://www.governor.pa.gov/wp-content/uploads/2020/06/20200601-EO-Deadline-Extension.pdf> (suspending the requirements for receipt of absentee and mail-in ballots for six counties and providing that such ballots shall count if postmarked by the election); see also Kansas Statutes 25-1132 (permitting mail ballots to count if “postmarked or otherwise indicated by the United States postal service to have been mailed on or before the close of the polls on the date of the election”).

³⁸ *New Georgia Project v. Raffensperger*, No. 20-cv-1986, Order on Motion for Preliminary Injunction (N.D. Ga. Aug. 31, 2020).

recommendations. Please reach out to Brad Ashwell by email at brad@allvotingislocal.org or phone at (850) 294-1008 to coordinate a time for a meeting.

Sincerely,

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cc: Florida Department of State; Florida Division of Elections

All Voting Is Local

All Voting is Local works to eliminate needless and discriminatory barriers to voting before they happen, to build a democracy that works for us all. It is a collaborative campaign housed at The Leadership Conference Education Fund, in conjunction with the American Civil Liberties Union Foundation; the American Constitution Society; the Campaign Legal Center; and the Lawyers' Committee for Civil Rights Under Law.

NAACP Legal Defense and Educational Fund, Inc. ("LDF")

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that prohibit voter discrimination, intimidation, and suppression and increase access to the electoral process.

The League of Women Voters of Florida

The League of Women Voters of Florida, a nonpartisan political organization, encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. The League works year-round across the state of Florida to register voters, provide voters with election information through voter guides as well as candidate forums and debates.

Common Cause

Common Cause is a nonpartisan, grassroots organization dedicated to upholding the core values of American democracy. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. Learn more at www.CommonCause.org.

American Civil Liberties Union of Florida

The ACLU of Florida is freedom's watchdog, working daily in the courts, legislatures and communities to defend individual rights and personal freedoms guaranteed by the Constitution and the Bill of Rights. For additional information, visit our website at: www.aclufl.org.

Lawyers' Committee for Civil Rights Under Law

The Lawyers' Committee for Civil Rights Under Law, a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. Now in its 57th year, the Lawyers' Committee is continuing its quest to "Move America Toward Justice." The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice for all, particularly in the areas of voting rights, criminal justice, fair housing and community development, economic justice, educational opportunities, and hate crimes.

Campaign Legal Center

The nonpartisan Campaign Legal Center (CLC) advances democracy through law at the federal, state and local levels, fighting for every American's rights to responsive government and a fair opportunity to participate in and affect the democratic process. CLC seeks a future in which the American political process is accessible to all citizens, resulting in representative, responsive and accountable government.

SPLC Action Fund

The SPLC Action Fund is dedicated to fighting for racial justice alongside impacted communities in pursuit of equity and opportunity for all. We work primarily in the Deep South where we have offices in Alabama, Georgia, Florida, Louisiana, Mississippi, and Washington, D.C.

Advancement Project

Rooted in the great human rights struggles for equality and justice, we exist to fulfill America's promise of a caring, inclusive and just democracy.

The National Congress of Black Women

The National Congress of Black Women is non-profit organization dedicated to the educational, political, economic and cultural development of Black women and the communities they serve.

Women Talk Black

Women Talk Black's mission is to support and increase Black women's participation in voting and civic engagement.

Disability Rights Florida

Disability Rights Florida is the state's federally mandated Protection and Advocacy (P&A) system benefitting Floridians with disabilities through the provision of free-and-confidential legal and advocacy services. Disability Rights Florida maintains authority across nine separate federal grants, including the federal Protection and Advocacy for Voting Access (PAVA) program, created by the Help America Vote Act of 2002 (HAVA). More information about Disability Rights Florida's participation in the statewide disability voting and elections accessibility coalition Access the Vote Florida is available at: www.accessthevote.org.

Voter Protection Corps Education and Advocacy Fund, Inc.

Voter Protection Corps Education and Advocacy Fund, Inc. is a nonpartisan 501(c)(4) nonprofit that leverages the experience of the nation's leading voter protection experts to identify specific opportunities to intervene and protect the right to vote. In this cycle, Voter Protection Corps is focusing on county-level policy advocacy and poll worker recruitment in a variety of states, including Florida.

The Florida 501(c)(3) Civic Engagement Table

The Florida 501(c)(3) Civic Engagement Table was founded with the expectation that greater coordination among (c)(3) organizations across the state would lead to an overall increase in civic participation among historically marginalized communities. We, along with our partners, share a vision of achieving full participation and representation in our democracy among historically marginalized communities throughout the state of Florida.

Voting Rights Lab Action

Voting Rights Lab Action is a nonpartisan organization that brings state advocacy, policy, and legislative expertise to the fight for voting rights. We work in partnership with organizations across the country to

build winning state legislative campaigns that secure, protect, and defend the voting rights of all Americans.