

March 13, 2020

The Honorable Governor Mike DeWine
Governor for the State of Ohio
Riffe Center, 77 S High Street, 30th Floor
Columbus, Ohio 43215

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

Speaker Larry Householder
Speaker of the Ohio House of Representatives
77 S High Street, # 12
Columbus, OH 43215

President Larry Obhof
President of the Ohio Senate
1 Capitol Square
Columbus, OH 43215

Re: Request to ease absentee voting opportunities in light of COVID-19

Dear Governor DeWine, Secretary LaRose, Speaker Householder, and President Obhof:

We write on behalf of the American Civil Liberties Union of Ohio (“ACLU of Ohio”) and the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”) to raise concerns regarding the State’s primary Election Day administration. Through litigation and advocacy, the ACLU of Ohio engages in work to end voter suppression and actions by state and local governments to curtail the right to vote. The Lawyers’ Committee, similarly, through litigation and advocacy, works to dismantle national, state, and local barriers to voting, prevent traditionally disenfranchised populations from exercising the franchise. The Lawyers’ Committee convenes Election Protection, the largest non-partisan voter protection program in the country that works year-round with the support of over one-hundred state and local partners to protect the vote.

First, we acknowledge that the rapid spread of COVID-19 makes this is an extremely difficult time as your offices decide how to protect the people of Ohio from illness and also protect their right to vote in the upcoming primary election on March 17, 2020. As a commonsense step to ameliorate this crisis, we urge that the deadline for voters to request an absentee ballot be extended to 6 p.m. on Saturday, March 14, and that provision be made for absentee voters to drop off absentee ballots at their assigned polling places, in addition to at their local Board of Election.

At the same time, we have also been in touch with local community members and advocacy groups, which have shared with us community members’ worry over health concerns. Community members have also shared with us the fear of disenfranchisement because they do not know whether the state will move, or has moved, their polling locations, whether it is unsafe to go to the polls on Election Day, and whether their vote by mail requests can be timely given the proximity of

Election Day. Many of our local community advocates run voter protection field programs, which they may be forced to cancel because of a severe drop in volunteers. Our partners report that poll worker recruitment is at an all-time low. Many poll workers are older and thus at higher risk of becoming gravely ill if they contract COVID-19.

Outside of the elections context, the State has taken a series of decisive actions to minimize the spread of COVID-19. On March 9, the Governor's office 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."¹ The Executive Order mandates state agencies "develop and implement procedures, 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."² Yesterday, 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.³ City officials in Cleveland cancelled the city's historic Saint Patrick's Day parade.⁴ 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.

Multiple universities have responded to the Executive Order by closing their doors and/or severely restricting access.⁵ At least twenty universities including the Ohio State University cancelled classes or transitioned to online systems. Four school districts (Beachwood, Perry, Shaker Heights, and Solon) have students who are in isolation due to possible exposure to the novel corona virus.⁶ Thursday, the Southern District Court of Ohio, pursuant to the Executive Order, ordered continuances of all jury trials, most grand jury proceedings, and hearings requiring oral argument.⁷ In response to the Executive Order, local governments, state and federal courts, and other institutions

¹ 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.

² *Id.*

³ 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>.

⁴ 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>.

⁵ WKYC Staff, *List: Northeast Ohio institutions, locations, & events that have been closed, restricted due to coronavirus threat*, WKYC (Mar. 10, 2020, 3:32 p.m.), <https://www.wkyc.com/article/news/health/coronavirus/list-northeast-ohio-institutions-locations-that-have-been-closed-restricted-due-to-coronavirus-threat/95-b7c07db3-a20d-47a2-b661-bac1042f9707>.

⁶ *Id.*

⁷ *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>.

have either shut their doors or restricted access. These occurrences illustrate the dire circumstances that require immediate steps for containment and prevention in order to ensure the health and safety of Ohioans.

On March 9, the Ohio Secretary of State's office issued a directive to county boards of election to relocate polling places in nursing homes because the elderly are most susceptible to grave consequences if they contract the corona virus.⁸ As a result of the directive, counties have relocated at least 140 polling locations within the last week and continue to do so—the Secretary of State's website has a polling place lookup tool updated daily. Though counties are now sending out notices to inform voters of their change in location, given the proximity to Election Day, not all voters will receive these notices.

However, little has been done with respect to absentee ballot opportunities. The Secretary of State's March 9 directive does very little—it simply reiterates Ohio law that a voter or their family can drop off absentee ballots at the board of elections before 7:30 p.m. on election day, or the voter can mail their absentee ballot but it has to be postmarked prior to election day and received no later than the 10th day after election day. While Ohio is a no fault absentee state, under Ohio law, the deadline to request an absentee ballot is before 6 p.m. on the Friday before Election Day (today) if the prospective voter or their designated family returns it to the board, or before noon on the Saturday before Election Day if returned by mail. For voters who find themselves ill as a result of COVID-19,⁹ who are quarantined or self-quarantined, who learn that their polling location is now suddenly changed, or who are afraid to stand in line at the polls on Election Day, the absentee ballot request deadline is a barrier to their exercising their right to vote.

Therefore, we urge that the deadline to request an absentee ballot be extended to 6 p.m. on Saturday, March 14, and that provision be made for absentee voters to drop off absentee ballots at their assigned polling places, in addition to at their local Board of Election.

Your offices, jointly and separately, provide you with ample authority to grant the relief we request. Given the unforeseeable circumstances, the Governor has already issued a directive declaring a state of emergency in Ohio and authorizing agencies to suspend rules and adopt temporary measures to alleviate the threat from COVID-19.¹⁰ 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.¹¹ The Secretary has already issued a directive to change polling locations.¹² The Ohio Constitution vests the

⁸ Ohio Sec'y of State <https://www.sos.state.oh.us/globalassets/elections/directives/2020/dir2020-03.pdf>

⁹ The law provides special vote by mail exceptions to individuals or their minor children who are hospitalized due to an accident or unforeseeable medical emergency – “unforeseen hospitalization.” These individuals are afforded a special absentee request application (Form 11-B) that they can submit to their local board any time after Saturday at noon and before 3 p.m. on election day to request an absentee ballot. Ohio Rev. Code § 3509.08(B)(2). The applicant can then opt to have two election officials deliver their absentee ballot to any hospital located in-county or out-of-county and subsequently, return that ballot by the close of polls on election day. *Id.* It is unclear whether someone who falls sick due to the novel corona virus but is not hospitalized or simply fears going to the polls—might fall under the “unforeseeable medical emergency” umbrella and request an absentee ballot under Form 11-B.

¹⁰ *Executive Order 2020 O1D*, *supra* note 1.

¹¹ Ohio Rev. Code Ann. §§ 3501.04, 3501.05, 3501.053.

¹² In other circumstances, the Secretary of State has authorized precinct election officials or poll workers to keep the polls open beyond 7:30 p.m. on election day pursuant to a court order in that county. Ohio Sec'y of

General Assembly with the authority to suspend laws of the state”¹³ and enact “emergency laws necessary for the immediate preservation of the public peace, health or safety” that must go into immediate effect on two-thirds of all members elected to each branch of the General Assembly.¹⁴

We urge you to use all the powers of your offices to extend the deadline to request an absentee ballot to 6 p.m. on Saturday, March 14, and to allow the drop off of absentee ballots at any polling places in the county or at the boards of election] either by enacting emergency legislation, by issuing an Executive Order, or issuing an agency directive.

Given the urgency of this matter, we request that you respond within the hour to Freda Levenson at flevenson@acluohio.org and Ezra Rosenberg at erosenberg@lawyerscommittee.org . Thank you.

Sincerely,

Freda Levenson
Legal Director
ACLU of Ohio
Max Wohl Civil Liberties Center
4506 Chester Avenue
Cleveland, OH 44103

Ezra Rosenberg
Co-Director, Voting Rights Project
Lawyers’ Committee for Civil Rights Under Law
1500 K Street, NW, Suite 900
Washington, D.C. 20005

Cc:

Speaker Pro Tempore Jim Butler
Speaker Pro Tempore of the Ohio House of Representatives
77 S High Street, # 12
Columbus, OH 43215

President Pro Tempore Bob Peterson
President Pro Tempore of the Ohio Senate
1 Capitol Square
Columbus, OH 43215

State, Election Official Manual: Section 1.09 – Closing the Polls, (2019), pp. 7-25,
https://www.ohiosos.gov/globalassets/elections/directives/2019/dir2019-11_com.pdf.

¹³ Ohio Const. Art. I § 18.

¹⁴ Ohio Const. Art. II § 1(d).