

March 19, 2020

Via Email

Hon. John Merrill
Alabama Secretary of State
State Capitol Building Suite S-105
600 Dexter Avenue
Montgomery, Alabama 36130
John.Merrill@sos.alabama.gov

Re: Ensuring Ballot Access for Alabama Voters during the Coronavirus Pandemic

Dear Secretary Merrill:

The NAACP Legal Defense and Educational Fund, Inc., Southern Poverty Law Center, the Alabama State Conference of the NAACP, the Alabama Disabilities Advocacy Program, and Greater Birmingham Ministries write to ask that you issue guidance and administrative rules to permit every eligible voter in Alabama to vote in the upcoming runoff election—now postponed to July 14, 2020¹—in a manner that is safe, secure, and orderly during this unprecedented national and statewide health crisis.

As you know, the COVID-19 (coronavirus) pandemic presents extraordinary public health, safety, and logistical concerns for every Alabama voter. On March 10, the President responded to the rapid spread of COVID-19 by declaring a national emergency.² The same day, Governor Ivey formed a COVID-19 task force to make preparations for the COVID-19 outbreak.³ On March 13, the Governor declared a state of emergency for Alabama.⁴ These declarations are based on the well-founded concern that COVID-19 could lead to the death or serious illness of millions and overwhelm our healthcare system. To date, there are 51 confirmed COVID-19 cases in Alabama.⁵ But, for each confirmed case, there could be as many as 10 unconfirmed ones.⁶ To slow the outbreak, the State has ordered school closures,

¹ Mike Carson, “Gov. Kay Ivey Postpones March 31 Runoff because of Coronavirus,” Alabama Media Group (Mar. 18, 2020), <https://www.al.com/news/2020/03/gov-kay-ivey-postpones-march-31-runoff-because-of-coronavirus.html>.

² Brooke Singman, “Trump Declares National Emergency over Coronavirus, Enlists Private Sector,” Fox News (Mar. 14, 2020), <https://www.foxnews.com/politics/trump-declares-national-emergency-coronavirus>.

³ Governor Kay Ivey to All State Government Heads, *Coronavirus (COVID-19) Preparations Protocol Memorandum*, Mar. 10, 2020, available at <http://www.doc.state.al.us/docs/Coronavirus%20Preparation%20Memo.pdf>.

⁴ Proclamation by the Governor of the State of Alabama, State of Emergency: Coronavirus (COVID-19), Mar. 13, 2020, available at <https://governor.alabama.gov/newsroom/2020/03/state-of-emergency-coronavirus-covid-19/>.

⁵ “51 confirmed cases of COVID-19 in Alabama,” Fox10tv.com, Mar. 18, 2020, https://www.fox10tv.com/news/coronavirus/confirmed-cases-of-covid--in-alabama/article_73131178-692c-11ea-be9c-7332f5f816a2.html

⁶ Ruiyun Li, et al, *Substantial undocumented infection facilitates the rapid dissemination of novel coronavirus*, Science Magazine (Mar. 16, 2020), <https://science.sciencemag.org/content/early/2020/03/13/science.abb3221>.

asked people to work from home, warned seniors and people with health issues against gatherings of more than 10 people, discouraged any groups of over 25 or where people cannot be spaced six feet apart, and urged everyone to practice social distancing.⁷

Because conducting elections and other basic governmental functions in this situation presents exceptional challenges, Governor Ivey has “direct[ed] the appropriate state agencies to exercise their statutory and regulatory authority to assist communities and entities affected.”⁸

Therefore, we urge you to use your power under state law⁹ to immediately issue rules that:

- Permit every qualified voter in Alabama to vote through mail-in absentee ballots;
- Clarify that voters with the highest susceptibility to COVID-19—including, but not limited to people over age 65, people with diabetes, and immunocompromised individuals—are exempt from the photo ID requirements related to absentee voting;
- Extend the absentee ballot request deadline to 3:00 p.m. on Election Day;
- Accept absentee ballots postmarked by Election Day (July 14) and received within 10 days of Election Day;
- Allow any voter or a designee to drop off their absentee ballot at any polling place;
- 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;
- Allow curbside voting to any eligible voter that is concerned about coming inside a polling location; and
- Undertake an aggressive voter education plan to ensure that voters are aware of and know how to exercise these options and to counter (intentional or unintentional) disinformation with facts.

The above measures, in conjunction with the recommendations made by others,¹⁰ will benefit all eligible voters, but are particularly important for older voters, low-income people,

⁷ Press Release, “Governor Ivey Issues Statement on Updated Public Health Precautionary Guidelines,” Mar. 17, 2020, <https://governor.alabama.gov/newsroom/2020/03/governor-ivey-issues-statement-on-updated-public-health-precautionary-guidelines/>.

⁸ Proclamation by the Governor, *supra* fn.3.

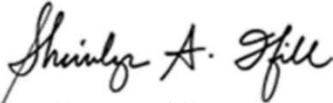
⁹ Under Alabama Code § 17-11-3(e), in a state of emergency that “renders substantial compliance” with absentee voting laws “impossible or unreasonable for a group of qualified voters who respond to the emergency,” the Secretary can “adopt an emergency rule to allow those qualified voters to vote by absentee ballot.” In these unique circumstances, where the President and Governor have called on everyone in the state to take drastic steps to “respond to the emergency,” everyone must be allowed to vote absentee under this provision.

voters with disabilities, and people of color who are less likely to have access to the healthcare, social networks, and transportation necessary to feel safe voting in-person.

Moreover, if, for example, 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 any changes. Election officials must also ensure that any poll site changes do not violate the Voting Rights Act, that any new sites are compliant with the Americans with Disabilities Act, and that the new sites are consistent with all other federal nondiscrimination and election laws. Also, to prepare for the possibility that COVID-19 may lead to the unavailability of large numbers of poll workers,¹¹ your office should immediately begin working with local election officials on a special effort to recruit and train additional poll workers.

Given the urgency of this matter, we request that you respond by **noon on Wednesday March 25, 2020** to Deuel Ross (dross@naacpldf.org), Natasha Merle (nmerle@naacpldf.org) and Caren Short (caren.short@splcenter.org). Thank you.

Sincerely,



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Benard Simelton
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/s/ James A. Tucker

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¹⁰ See, e.g., Letter from the Leadership Conference on Civil and Human Rights to State Election Officials, etc., Mar. 17, 2020, available at <http://civilrightsdocs.info/pdf/policy/letters/2020/COVID-19-Coalition-Letter-updated-3.17.20.pdf>; Brennan Center for Justice, Memorandum re: How to Protect the 2020 Vote from the Coronavirus, Mar. 16, 2020, [https://www.brennancenter.org/sites/default/files/2020-03/Coronavirus Response Memo.pdf](https://www.brennancenter.org/sites/default/files/2020-03/Coronavirus%20Response%20Memo.pdf).

¹¹ Nationally, two-thirds of poll workers are age 61 or older. Election Administration Commission, Election Administration and Voting Survey: 2018 Comprehensive Report, at 9, https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf.