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County Election Supervisors
State of Georgia

October 15, 2020

Re: Voters Who Requested Absentee Ballots But Choose to Vote In Person

Dear Election Supervisors:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), All Voting Is Local Georgia, and SPLC Action Fund, we urge you to make a plan immediately for the likelihood that a significant number of voters who requested absentee ballots will seek to vote in person. It is expected that there will be a large number of such voters and a plan is necessary to avoid long delays at the polls.

An Unprecedented Number of Voters Who Requested Absentee Ballots Will Choose to Vote in Person

An unprecedented 1.5 million Georgia voters have already requested absentee ballots, and this figure is expected to continue to rise over the coming days and weeks.¹ A significant portion of these voters may decide to vote in person for many reasons, including the following:

1. Some voters who requested an absentee ballot may not receive their absentee ballot in time and may be left with no choice but to vote in person.
2. In light of widely-publicized postal service delays in mail delivery,² and the recent order of the Eleventh Circuit Court of Appeals providing that any absentee ballot that arrives after the election will be disqualified even if it is postmarked by November 3, 2020,³ many voters will be concerned that their absentee ballot may not be received by the deadline and will instead choose to vote in person.

¹ Mark Niese, *More Absentee Ballots Already Cast in Georgia Than in All 2016*, AJC (Oct. 6, 2020), <https://www.ajc.com/politics/more-absentee-ballots-already-cast-in-georgia-than-in-all-2016/WL2UPBRSANCHZBZ4XT6FUJTNCQ/>.

² See Nicole Carr and Matt Johnson, *Postal Service Funding, Delays Lead to Mail-in Voting Concerns in Georgia*, WSB-TV ATLANTA, <https://www.wsbtv.com/news/local/atlanta/postal-service-funding-delays-lead-mail-in-voting-concerns-georgia/M3T2T2B2MBCIFAC2IZ67UKWIM4/> (last updated Aug. 16, 2020).

³ *The New Georgia Project v. Raffensperger*, No. 20-13360 (11th Cir. 2020).

3. In light of widespread concerns over significant delays in reporting election results, many voters who had requested or returned absentee ballots may decide to cancel their absentee ballots so they can vote in person and have their vote counted on Election Day.
4. In light of widespread concerns that absentee ballots may be invalidated based on technicalities, which disproportionately affect voters of color, many voters may choose to vote in person notwithstanding the fact that they had requested or returned an absentee ballot.⁴
5. Voters may choose to vote in person if the absentee ballot they received suffers from any of the technical defects that affected ballots during Georgia’s primary, including confusing instructions⁵ or missing or defective envelopes.⁶
6. Some voters may not be able to confirm whether their absentee ballots are accepted on the “My Voter Page” and will seek to vote in person to ensure that their vote is counted.

For these reasons and others, you will likely encounter an unprecedented number of voters who requested an absentee ballot, and in some cases returned their absentee ballot, but instead seek to vote in person.

Voters Who Request and/or Return an Absentee Ballot Are Allowed to Vote In Person If They Surrender or Cancel Their Absentee Ballot

Georgia law allows voters who have received their absentee ballot to bring it with them to their precinct, surrender it to the poll manager, and cast a regular ballot. *See* O.C.G.A. § 21-2-388(1). The law also provides that voters who never received their absentee ballot, or who have already mailed their ballot, may vote in person at their precinct so long as their absentee ballot has not yet been received by the registrar and it is cancelled by the poll manager. *See* O.C.G.A. § 21-2-388(2). After the poll manager confirms that the voters’ absentee ballot has been cancelled, the voter is permitted to cast a regular ballot.⁷

Voters who request or return an absentee ballot, and subsequently choose to vote in person, have a variety of legitimate reasons for doing so. On September 8, 2020, Secretary of State Raffensperger announced that his office intended to investigate approximately 1,000 individuals alleged to have voted

⁴ *See* Sue Halpern, *Georgia Voters Get Another Reason to be Worried*, THE NEW YORKER (Sept. 11, 2020), <https://www.newyorker.com/news/daily-comment/georgia-voters-get-another-reason-to-be-worried>.

⁵ Mark Niese, *Georgia Absentee Voting Instructions to be Corrected*, AJC (May 1, 2020), <https://www.ajc.com/news/state--regional-govt--politics/georgia-absentee-voting-instructions-corrected/kzkuKmLufxIRcwIW0oEzCN/>.

⁶ *Id.*

⁷ Only if the poll manager is unable to verify the identity of a voter or confirm the ballot has not been received should the voter cast a provisional ballot. *See* Help America Vote Act, 52 U.S.C. § 21082; *see also* *White v. Blackwell*, 409 F. Supp. 2d 919 (N.D. Ohio 2006) (holding that a state cannot prohibit provisional ballot access to voters who applied for an absentee ballot). Such provisional votes must be counted so long as the registrar determines that the person casting the provisional ballot “timely registered to vote and was eligible to vote.” *See* O.C.G.A. § 21-2-419(c)(1).

twice in the June primary, but his office recently conceded that there was no evidence of systemic voter fraud.⁸ Rather, many voters who had requested absentee ballots and subsequently attempted to vote in person likely did so because they were concerned their absentee ballots would not be received or counted.⁹ A robust and efficient cancellation system reduces the chance that voters will inadvertently vote twice due to poll worker error.

Election Officials Should Make Plans to Accommodate Significant Numbers of Voters at Poll Sites Seeking to Surrender or Cancel Absentee Ballots

We urge you to immediately make plans to ensure that voters can efficiently surrender or cancel their absentee ballots if they choose to vote in person. We specifically recommend that you consider taking the following steps:

1. Identify and train dedicated staff members to assist voters who need to surrender or cancel absentee ballots, so that poll managers need only review the staff members' work and approve the surrender or cancellation.
2. Develop a streamlined and efficient process for cancelling absentee ballots that does not require poll managers to place a phone call to the registrar's office for each voter seeking to cancel an absentee ballot. If a phone call is necessary, establish a dedicated phone line specifically for this purpose.
3. Educate voters through all reasonable means that they may vote in person even if they requested or returned an absentee ballot, but if they do so, they should allocate additional time at their precinct to surrender or cancel their absentee ballot.

If you have questions or would like to discuss these issues in the meantime, please contact Michael Pernick by email at mpernick@naacpldf.org or telephone at (917) 790-3597.

Sincerely,

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⁸ See Mark Niese, *Inquiry shows 1,000 Georgians may have voted twice, but no conspiracy*, Atlanta Journal-Constitution (Sept. 30, 2020) available at <https://www.ajc.com/politics/inquiry-finds-1000-georgians-may-have-voted-twice-but-no-conspiracy/RGS3UI7JRJE5XP4OAL3T3BYDDI/>.

⁹ See *id.*

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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.

All Voting is Local

All Voting is Local fights to eliminate needless and discriminatory barriers to voting through advocacy, coalition partnership, and outreach. It is a collaborative campaign housed at The Leadership Conference Education Fund, the education and research arm of the Leadership Conference on Civil and Human Rights, the nation’s oldest and largest civil and human rights coalition of more than 200 national organizations. We are dedicated to building public will for laws and policies that promote and protect voting rights.

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.