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WATCH

WHAT DEMOCRACY LOOKS LIKE

Protecting Voting Rights in the US during the Covid-19 Pandemic



What Democracy Looks Like

Protecting Voting Rights in the US during the Covid-19 Pandemic

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Summary

On the afternoon of March 20, 2020, James Nelson, a Black, 66-year-old longtime resident of Milwaukee, Wisconsin, went to the Midtown Center and voted early in person for the presidential primary that was taking place a couple of weeks later. “I always vote early but this year my decision was for health reasons,” Nelson said. He did not want to risk contracting Covid-19 at his polling place on election day.

His fears were well-founded. According to state data analyzed by the Associated Press, in March about half of Wisconsin’s confirmed cases of Covid-19—411 out of 842—were in Milwaukee. At the time, all eight people who had died of complications from the virus in Milwaukee County were Black.

On the state’s primary election day, April 7, Nelson, who has a long history of activism in his northside community, was curious about how it was going, so he took a long walk to the polling station to watch from afar. He told Human Rights Watch he was shocked by the long lines and the crowds. “There were old folks waiting. Some in walkers. People who looked like they were in their eighties, bent over and could barely walk,” he said. “We have to do better.”

It is not easy to hold an election during a global pandemic. However, election officials in Wisconsin made decisions that, even considering the difficult circumstances, violated citizens’ fundamental human right to vote. Milwaukee officials decided to reduce the standard 180 polling places—many of which were in small locations where social distancing would have been difficult—to five sites located in public high school gymnasiums. Reducing the number of polling places instead of increasing the number of sites is exactly the opposite of what should have happened, especially because historically disenfranchised racial minorities often feel most comfortable voting in person and reducing lines and crowds would have been advisable due to the Covid-19 pandemic. Other adjustments to secure poll workers, facilitate absentee voting, and to better support Wisconsin’s municipal clerks should also have been made. None of this would have been easy, but other US states, as well as other countries, such as South Korea, Indonesia, and North Macedonia, have shown that it can be done.

The United States will hold general elections in the midst of the pandemic on November 3, 2020. As Nelson said, the country has to do better. Doing better will be up to state and local officials working to administer the 10,000 different election jurisdictions that make up the decentralized system of elections in the United States.

This report examines changes made by election officials during the 2020 primaries in Arizona, Pennsylvania, South Carolina, and Wisconsin and their impact on voters, assessing the measures against international human rights standards. Fears of virus transmission to both voters and election workers led state and local election officials to make various changes in the voting process, including to the numbers and locations of in-person voting sites, and adjustments to “special voting” such as early, absentee, and by-mail voting. We identify lessons learned and pathways for reform for the upcoming and future elections.

Historically, many groups in the United States have had their voting rights suppressed. Even after the enactment of the 1965 Voting Rights Act, Black, Latinx, and Native American citizens experienced many obstacles to voting. Changes by some states in recent years, including those enabled by a 2013 US Supreme Court case—*Shelby County v. Holder*, which eviscerated federal oversight under the act—have made voting harder, not easier. The Covid-19 pandemic has exacerbated these problems. While changes are needed to ensure elections are safe, we found that some measures taken to address the Covid-19 pandemic in Milwaukee have had discriminatory impacts on Black and Latinx populations. Other measures taken in Philadelphia, Pennsylvania and in South Carolina may have negatively impacted the voting rights of Black people. If the same or similar mistakes are made in these jurisdictions or elsewhere in future US elections, such measures are likely to have discriminatory impacts on Black, Latinx, and Native American voters.

These same populations are disproportionately impacted by the Covid-19 virus. According to data through the end of May obtained from the Centers for Disease Control and Prevention by the *New York Times*, Latinx and Black residents of the United States have been three times as likely to become infected as their white neighbors, and Black and Latinx people have been nearly twice as likely to die from the novel coronavirus as white people. According to a separate Centers for Disease Control and Prevention study, the incidence of Covid-19 cases among Native Americans was three-and-a-half times that among whites as of July 2020.

The Covid-19 pandemic also has had specific impacts on elections, increasing voters' fear of voting in person, which is especially wrenching for populations that normally prefer going to the polls. The pandemic also has required election officials to accommodate new requirements for social distancing and personal protective equipment; and to pivot when poll workers, many of whom are older adults, did not feel safe working the polls. Jurisdictions that were inexperienced with large numbers of absentee or vote-by-mail ballots have had to adjust to an unexpected spike in these forms of "special voting."

Some states and municipalities we examined took steps to protect voting rights by creating new voting centers, recruiting new and more poll workers, increasing awareness and ease of early in-person absentee and mail-in voting, and adopting various protective measures to prevent the spread of Covid-19 during in-person voting.

However, Human Rights Watch's interviews with experts and voters and analysis of voting data show that some aspects of elections procedures during the 2020 primary season negatively affected the right to vote. These included:

- Decisions to relocate, close, and consolidate polling places. In some jurisdictions, in-person voters were forced to search for new polling locations, wait in long lines, or make no-win choices between their health and their right to vote. These changes prevented some citizens from voting, a human rights violation disproportionately suffered by Black and Latinx populations in Milwaukee, Wisconsin; and, given many Black people's preference for voting in person, likely suffered disproportionately by Black people in Philadelphia County, Pennsylvania and Richland County, South Carolina.
- The failure to take steps to overcome bureaucratic, linguistic and other barriers to absentee voting or voting by mail. While many voters persevered, these challenges prevented other people, including Black, Latinx and Native American people, from voting altogether.
- Failures to inform voters of the above measures effectively and in a timely fashion, which exacerbated negative impacts on the right to vote.

Since the 2020 United States primary season, and in the lead-up to November's general elections, some of the states and municipalities examined for this report have taken steps to improve voter access. Nevertheless, authorities at all levels and throughout in the

United States should do more to ensure that all citizens are able to vote freely without discrimination.

Elections in the United States are guided by federal, state, and local laws and regulations. International human rights law to which the United States is party also sets out important voting rights. Provisions in the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination obligate governments at all levels to take effective measures to ensure that all persons entitled to vote are able to exercise that right, and forbids laws and policies that have a racially discriminatory impact, regardless of intent. The Covid-19 pandemic places additional burdens on officials tasked with ensuring this basic right. Federal, state, and local officials should take all necessary measures to ensure that both in-person voting and “special voting”—such as by mail and other forms of absentee voting—are available and accessible so that all voters without discrimination have an adequate opportunity and means to vote.

Research has shown that in-person voting, including early in-person voting, is especially important for voters of color. The interviews and research Human Rights Watch conducted for this report support this conclusion. Some voters, especially those who have been denied their voting rights in the past, want visual confirmation, in person, that their vote has been cast. In recent months, other countries, such as South Korea and Indonesia, have increased the number of polling locations, which prioritizes in-person voting in a way that also reduces crowding and better protects health in light of the Covid-19 pandemic. US jurisdictions would do well to follow suit, planning for increased polling locations, recruiting additional poll workers, and informing voters of any changes well in advance of elections.

Given United States census data indicating that people living in poverty are less likely to exercise their right to vote, officials need to take additional steps to locate polling stations in places that give low-income people easy access to the ballot box. A moratorium on evictions announced by the Centers for Disease Control and Prevention may provide some needed protection, but many voters remain likely to move prior to the November 2020 general election because they need to reduce housing costs given the widespread economic impacts of the pandemic. Election officials should offer accommodation to voters who might otherwise experience obstacles to voting due to address changes.

Adjusting to current conditions and avoiding the mistakes of the 2020 primary season also mean that election officials will need to streamline absentee voting by making it available without requiring voters to explain why they are not voting in person, waiving witness signature requirements, supporting vote-by-mail options, and increasing the numbers and locations of drop-boxes for absentee or mail-in ballots. Because of the pandemic, officials may need more staff and resources to process a predicted increase in absentee and vote-by-mail ballots; and they are likely to need time, beyond election day, to complete their work.

Election officials should also proactively adopt measures to assist people who may face particular challenges in voting. This includes ensuring that voters who may not have a stable address—especially given the economic impacts of the Covid-19 pandemic—have clear and straightforward ways to exercise their right to vote. It includes ensuring that polling locations are physically accessible to voters who may not own a vehicle. Voters with disabilities and older voters, including those living in residential facilities, may need special accommodation, as will people who have had contact with the criminal legal system and who also have the right to vote. Given failures during recent primaries, officials should ensure that voters can promptly access an effective remedy—that is, some way of “curing” their vote in time to be counted—when things go wrong.

Voting needs to be made easier in the United States; and election officials need support to do their jobs well. They need adequate resources to adapt their procedures to the needs of all voters in their communities. Ahead of each election, federal, state, and local governments should ensure these officials have the necessary resources and are accountable for doing their jobs in accordance with fundamental human rights. Ensuring the right to vote and ensuring accountability when that right is violated are essential parts of what democracy looks like.

From a voter education perspective, the current context for United States elections is particularly fraught. Officials will need to overcome the confusion experienced during the primaries and prompted by debates over funding for the US Postal Service, crucial for mail-in voting. This confusion makes it absolutely critical for election officials to do all they can to ensure not only that sufficient safe and accessible voting options are available, but also that all voters are informed and supported so they are able to navigate their local election system. Election officials need to focus on early and clear voter education that embraces

the linguistic and other diversity of the United States—especially for Black, Latinx, Native American, and other communities that have been historically disenfranchised, and for voters with disabilities and older voters. In light of differing voter needs and preferences, as one Arizona elections official told us, the goal at this particularly challenging time should be to ensure that US voters are empowered to “choose how they want to participate in the election.”

Deciding when to give up trying to exercise one’s right to vote is a choice no citizen should ever have to make. Abd’ullah in Philadelphia, whom we interviewed for this report, came close. He spent most of his day trying to cast his vote in Pennsylvania’s June 2 primary election. He went to his regular polling station but found it closed, without any signs posted telling him where to go. When he entered his zip code into the election website, the site just froze. Abd’ullah got in his car and drove around, looking out the window for crowds and lines. He finally found a school and waited in line for over an hour—eventually only being able to vote by provisional ballot. He told us, “Someone else would have been discouraged. I myself was very, very discouraged, to the point of almost giving up. But I had my own car, so I was flexible. If I had been taking public transportation, it would not have been possible. I would have given up.”

Inspiring stories in this report like Abd’ullah’s show the courage and resolve of millions of United States citizens to exercise their right to vote even when this involves surmounting challenges and braving potential health risks. For some voters during the US primaries, an election during a global health crisis imbued the act of voting with even more meaning than before. The duty of election officials across the country should be to protect and affirm that meaningful act, doing their utmost to ensure that all citizens can freely and equally exercise their voting rights, in November 2020 and beyond.

Recommendations

To ensure the human right to vote in the United States, state and local election officials, including county and municipal officials, should:

Give priority to expanding both in-person voting and special voting to ensure that all eligible voters are able to vote without being subject to deliberate discrimination or discriminatory impacts:

- **Increase the number of polling places:** Offer as many polling places as possible with particular attention paid to locations that facilitate voting for populations that traditionally vote in person; and to reduce wait times and public health risks due to crowding at polling places. Recruit sufficiently in advance adequate numbers of poll workers to ensure safe and efficient polling stations. Offer financial and other incentives to be able to recruit individuals who are not at high risk from Covid-19 to staff the poll stations.
- **Provide drop boxes:** Increase the numbers and accessibility of secure drop boxes in all jurisdictions in which these are allowed since voters may have the experience of visual confirmation that their vote has been cast without going to the polls on election day, and avoid paying for postage or any possible problems with the US Postal Service.
- **Expand early voting:** Increase numbers of places for early voting and access to in-person early voting.
- **All-access voting centers:** When voter rolls can be easily accessed throughout a jurisdiction, allow voters to cast their vote at *any* open polling place.
- **Facilitate and adapt absentee voting and voting by mail:** Where a reason is needed for absentee voting, ensure the Covid-19 pandemic is an acceptable reason; remove witness signature requirements; make sure people do not need access to the internet or a printer in order to get their ballots; and that they can vote absentee in accessible locations or drop boxes.
- **Emphasize consultation:** Include Black, Latinx, Native American and other leaders of historically disenfranchised communities and grassroots organizations in making decisions around choice of polling place locations, communicating about, and facilitating access to polling locations.

Facilitate voting for all persons legally allowed to vote, including those needing special accommodation, those who have had contact with the criminal legal system, and those whose address has changed:

- **Prioritize voting in jails:** Ensure communication and collaboration between election administrators, such as municipal clerks, and sheriffs to facilitate voting for all eligible voters in jails (the majority of whom are eligible to vote because they have not been convicted or have low-level, misdemeanor convictions).
- **Disseminate truthful information on disenfranchisement:** Provide clear and accurate information to voters who have had contact with the criminal legal system—especially those with misdemeanor convictions, or who have newly regained the right to vote after a period of incarceration or supervision—about their right to vote.
- **End disenfranchisement based on criminal convictions:** Reform state laws to remove any barriers to the right to vote due to criminal convictions, including felonies. Meanwhile, ensure that all people who have been disenfranchised under current laws automatically have their voting rights restored after completion of their sentence, ensuring voting right restoration is not contingent upon payment of fines and fees.
- **Anticipate changes to addresses:** Adopt measures to allow all people to vote, including those who may experience address changes due to evictions or housing changes, for which the Covid-19 pandemic has put increasing numbers of people at risk. Allow same-day registration and the use of “general delivery” post office addresses for registration purposes.
- **Accommodate the needs of voters in residential facilities and of voters with disabilities.**

Educate voters through a variety of measures and with clear procedures set well in advance:

- **Expand in-person voter education:** Maximize all forms of voter education, including neighborhood-based in-person voter education in languages voters understand, about the procedures that voters must follow to vote.
- **Explain measures adopted to ensure that elections are safe:** Provide clear, advanced information about public health precautions in place at polling stations as well as those expected of voters to avoid surprises on election day.
- **Provide accurate location information in advance:** Provide clear, advanced information through a variety of mechanisms about the locations of polling places

and check addresses on mapping applications. Ensure such information is accessible to all people with disabilities, including those with sensory and intellectual disabilities.

- **Educate voters about absentee and vote-by-mail options:** Provide clear information well in advance of elections about the availability of and procedures to follow when voting by absentee or mail-in ballot. Ensure that any changes to witness signature or excuse requirements are communicated as soon as possible.
- **Provide a remedy:** Have a plan in place to ensure all voters have equal and expedient access to any remedies under state law to “cure” problems they may have encountered in casting their ballots in person or via absentee, drop-box, or the US Postal Service. Ensure adequate staffing and time for necessary follow-up.
- **Admit mistakes, communicate changes:** If there were problems during previous election cycles, build voter confidence by admitting mistakes and clearly communicating new remedial measures.

Secure international, federal, state, and municipal support to enhance respect for voting rights:

- **Minimize law enforcement presence:** limit law enforcement at or near polling stations to that absolutely necessary for polling station security, ensure that poll workers are not law enforcement personnel, and ensure that there is no chilling effect on the right to vote due to presence of law enforcement at or near polls. As a matter of last resort, if a deficit in poll workers requires the use of National Guard personnel to serve as poll workers, ensure that they wear civilian clothes.
- **Welcome nonpartisan election observers:** Build voter confidence by inviting and facilitating international and domestic impartial and nonpartisan observers.
- **Facilitate inter-agency collaboration:** State and local officials should provide financial and other incentives to ensure inter-agency collaboration on facilitating outreach and accommodation for people in quarantine with Covid-19, in hospitals, without fixed addresses, people with disabilities, and those in residential care facilities, and to ensure election officials work with departments of parole, probation, and sheriffs; and vice-versa.

To ensure the right to vote without discrimination in the United States, the US Congress should:

- **Promptly pass the John Lewis Voting Rights Advancement Act:** This federal legislation, which passed the US House of Representatives in 2019, would update

the parameters used to determine which states and territories need to seek approval for changes to electoral procedures, require public notice for voting changes, and expand voting access for Native American and Alaska Native voters.

To ensure the right to vote and the right to health, United States congressional and state appropriators should ensure election officials have the necessary resources to:

- **Protect public health:** sufficient financial support should be provided to state election officials, municipal elections commissions, and especially to municipal clerks to ensure public health measures are adequate to fully protect voting rights, as well as to protect the rights to life and health.
- **Recruit poll workers:** Financial and institutional support is necessary to provide adequate recruitment and compensation for polling place workers. Support creative staffing solutions to fulfill specific needs, including by recruiting special workers to facilitate voting in residential facilities and by enabling civilian civil service workers to staff polls.
- **Ensure adequate polling places and “special voting” measures:** As outlined above, ensure that in person voting and absentee voting or voting by mail are available to every voter as allowed under law, with accommodations for voters who need them.

Methodology

This report is based on 71 interviews conducted in July and August 2020 with international elections experts, elections and data experts, elections attorneys, elected and appointed election officials, voting rights advocates, poll workers, and voters. Due to Covid-19-related precautions, most interviews were conducted via telephone or videoconference. The total comprises 16 interviews conducted over telephone or videoconference with people in Arizona; 10 with people in Pennsylvania; and 10 with people in South Carolina. Another 27 interviews were conducted with people in Wisconsin; 15 of those were conducted in person and 12 over telephone or videoconference. Three interviews were conducted with international elections experts, 2 with data analysts and 3 with attorneys and advocates working on national elections litigation and policy. In order to preserve confidentiality, voters are named by first name only; when pseudonyms are used at the request of the interviewee this is indicated in the citation.

This report is also based on extensive desk research into United States and international efforts to administer elections during the Covid-19 pandemic. Research was especially focused on the four case study states of Arizona, Pennsylvania, South Carolina, and Wisconsin. Comprehensive national, state and local studies produced by other organizations were also reviewed, and reflect the rich variety of state, local, and community-based organizations doing powerful and important work on the human right to vote in the United States.

We relied on election and voter data analysis by All Voting is Local and Demos as well as the Brennan Center for Justice for the Wisconsin chapter. For the Arizona chapter, we relied on polling station location data compiled by the Leadership Conference on Civil and Human Rights. For the South Carolina chapter, we relied on analysis of voter turnout data for the state's primaries conducted by the Stanford-MIT Healthy Elections Project. For Pennsylvania, we conducted data analysis ourselves, using polling station location data for the entire state during the 2016 and 2020 primaries provided to us under a Right-to-Know-Law request. The Pennsylvania data were reviewed for uniqueness, completeness, and accuracy of information on zip codes, county, and number of polling locations. Demographic data were obtained from the 2014-2018 American Community Survey's B03002 table.

After several weeks of preliminary interviews and research, we chose to conduct deeper research in Arizona, Pennsylvania, South Carolina, and Wisconsin because these states represented regional variation, had closed polling places during their primaries, and had varying demographic characteristics in their non-white voting populations.

Background

Administering Elections in the United States

In the United States, elections are decentralized. The day-to-day functions of administering US elections are handled by county and municipal (city and town) officials. The state is responsible for certain aspects of elections as well, and the federal government also has a role, including in ensuring financial support for elections. According to the National Conference of State Legislatures:

[T]he result is that no state administers elections in exactly the same way as another state, and there is quite a bit of variation in election administration even within states. Each state's election administration structure and procedures grew organically, as times changed and administering an election became an increasingly complex task.¹

In its first 100 years as a nation, the United States relied on county officials to periodically hold elections. Voters were not required to register ahead of time and the voice vote was the most common voting method.² Gradually, especially starting in the 1880s, states and localities began to make changes by adopting voter registration requirements, instituting secret ballot systems, and using voting machines. States also began to adopt laws governing election administration. Though beyond the scope of this report to analyze in detail, these changes were motivated by multiple interests, including efficiency and fairness and countervailing desires to block access to the polls for Black people and other racial minorities.

¹ National Conference of State Legislatures, "Election Administration at State and Local Levels," February 3, 2020, <https://www.ncsl.org/research/elections-and-campaigns/election-administration-at-state-and-local-levels.aspx> (accessed August 23, 2020). See also Kathleen Hale, Robert Montjoy, and Mitchell Brown, *Administering Elections: How American Elections Work* (London: Palgrave Macmillan, 2015), <https://www.palgrave.com/us/book/9781137400413> (accessed August 23, 2020).

² National Conference of State Legislatures, "Election Administration at State and Local Levels," February 3, 2020, <https://www.ncsl.org/research/elections-and-campaigns/election-administration-at-state-and-local-levels.aspx> (accessed August 23, 2020).

Today, each state in the United States has a chief election official who has ultimate authority over elections in the state, but there is variety in which official(s) hold this power. For example, many states rely on their secretaries of state as their chief elections official, others require governors to appoint top election officials, and still others use appointed bipartisan election commissions.³

Regardless of the structure, the top election officials are often responsible for:

ensuring that election laws are followed by local officials statewide; administration of a statewide voter registration database. . .; assisting local election officials by providing training courses or materials on running elections in the state. . .; providing a process for testing and certifying voting equipment for use in the state; certification programs for local election officials on election procedures[;] and may also help [to] pay for certain types of elections, or a portion of expenses.⁴

Moving beyond such macro-level tasks handled by top officials, the day-to-day of election administration in the United States is run at the county or municipal level by a single individual, a board or commission of elections, or a combination of the two.⁵ In all, this means that there are more than 10,000 election administration jurisdictions in the United States. When election duties are divided, the most common division of duties is between voter registration and the actual administration of elections, but there is enormous variety. The duties handled by these county or city/town election officials include day-to-day operations of registration and voting, including absentee and early voting, election day procedures, including appointing poll workers and election officials, delivering supplies to the polls, counting ballots and canvassing returns.

³ Of the four case studies featured in this report, Arizona's chief election official is its secretary of state, Pennsylvania's is appointed by the governor, and South Carolina and Wisconsin have a board or a commission that oversees elections.

⁴ National Conference of State Legislatures, "Election Administration at State and Local Levels," February 3, 2020, <https://www.ncsl.org/research/elections-and-campaigns/election-administration-at-state-and-local-levels.aspx> (accessed August 23, 2020).

⁵ Of the four state case studies featured in this report, Pennsylvania uses a board of elections for local election administration with bipartisan appointments made at the local level; Wisconsin uses a single county- or city-elected or appointed individual to administer its elections; and Arizona and South Carolina split the duties between two county bodies or officers (for example, in Maricopa County, Arizona the responsibility to administer elections is split between the county recorder and the County Board of Elections).

Other government agencies also have a role to play in United States elections. Although not a part of our investigation or analysis for this report, the US Postal Service plays a role in delivering voter education, registration materials, and ballots to voters; and in returning registration and voted ballots to election officials. The delivery times and resources of the US Postal Service, including funding streams, sorting centers, and locations of mailboxes have been widely debated by US politicians and in the media.⁶ Departments of Transportation and of Motor Vehicles are crucial state government agencies involved in administering access to the forms of identification voters must present under state law.⁷ Sheriffs and probation officers are among the officials who play a role in ensuring or impeding the voting rights of people with criminal legal system contacts.⁸

Voting Rights Act of 1965

Beginning in 1965, the Voting Rights Act (VRA) was a crucial tool to ensure the human right to vote for all United States citizens. Before passage of the VRA, Black citizens were often blocked from the polls by intimidation, violence, poll taxes, and literacy tests. Native American, Latinx, and Asian American citizens also suffered from institutional racism that denied or severely limited their right to vote.⁹ According to the Leadership Conference on Civil and Human Rights, the Voting Rights Act brought measurable improvements: “By 1970, almost as many African Americans were registered to vote in Alabama, Mississippi, Georgia, Louisiana, North Carolina, and South Carolina as had been in the entire century before 1965.”¹⁰

Section 5 of the VRA required states and localities with a history of voting rights discrimination based on race to submit in advance any proposed changes to their voting

⁶ Luke Broadwater, Hailey Fuchs and Nick Corasaniti, “Postal Service Warns States It May Not Meet Mail-In Ballot Deadlines,” *New York Times*, August 14, 2020, <https://www.nytimes.com/2020/08/14/us/politics/usps-vote-mail.html> (accessed August 31, 2020).

⁷ National Conference of State Legislators, “Voter Identification Requirements,” August 25, 2020, <https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> (accessed August 31, 2020).

⁸ Nicole D. Porter, “Voting in Jails,” The Sentencing Project, May 7, 2020, <https://www.sentencingproject.org/publications/voting-in-jails/> (accessed August 31, 2020).

⁹ See, for example, United States Commission on Civil Rights, “An Assessment of Minority Voting Rights Access in the United States,” 2018, https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf (accessed August 23, 2020), p. 171.

¹⁰ Leadership Conference on Civil and Human Rights, “Democracy Diverted,” September 2019, <https://civilrights.org/democracy-diverted/> (accessed August 23, 2020) (citing the dissenting opinion of Justice Ginsburg in *Shelby County v. Holder*, 570 U.S. 529, 562 (2013)).

procedures to the US Department of Justice or the US District Court in Washington, DC.¹¹ The jurisdictions were required to prove that the proposed change would not deny or adversely affect the right to vote on the basis of race, color, or a voter's membership in a language minority group. In 2013, a US Supreme Court decision, *Shelby County v. Holder*,¹² invalidated the formula used to identify which states and localities had a history of voting rights discrimination, rendering Section 5 essentially useless for ensuring the human right to vote in the United States. Since *Shelby*:

States have shortened voting hours and days, enacted new barriers to voter registration, purged millions of eligible voters from the rolls, implemented strict voter identification laws, reshaped voting districts, and closed polling places. Many of these changes have been found [by courts] to discriminate against Black and Brown voters.¹³

Some of these impacts on Black and brown voters were on display during the spring 2020 primaries in the United States, even as states and localities adopted some changes in good faith in attempts to protect public health from Covid-19.

Unless and until Congress adopts legislation to re-institute some centralized oversight of voting procedures, states and localities are on their own to adapt their procedures and policies to ensure equitable access to (or impede) the right to vote for all citizens. Also, without the power of the Voting Rights Act to protect them, voters in states with a history of race-based voting rights discrimination are now left to advocate on their own through litigation under less protective laws or any other means available to ensure the human right to vote.

¹¹ Jurisdictions covered by Section 5 include: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia, and counties in California, Florida, Michigan, New York, North Carolina, and South Dakota, (Arizona and South Carolina are two of the case studies featured in this report). A selection of counties in California, Florida, Michigan, New York, North Carolina, and South Dakota were also covered and were required to submit their voting changes for approval. Counties and townships in a few other US states were removed from coverage over time through another provision of the Voting Rights Act. See United States Department of Justice, Civil Rights Division, "Jurisdictions Previously Covered by Section 5," March 11, 2020, <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5> (accessed August 23, 2020).

¹² *Shelby County v. Holder*, 570 U.S. 529 (2013).

¹³ Leadership Conference on Civil and Human Rights, "Democracy Diverted," September 2019, <https://civilrights.org/democracy-diverted/> (accessed August 23, 2020) (citing the dissenting opinion of Justice Ginsburg in *Shelby County v. Holder*, 570 U.S. 529, 562 (2013)).

Since the *Shelby* decision, applying other US laws, courts have found that certain state and local election policies have violated the prohibition in US law against *intentional* racial discrimination.¹⁴ The number of violations would be markedly higher if US courts applied the international human rights prohibition against laws and policies that have racially discriminatory *effects* (even if the intent behind them is race-neutral). That prohibition is binding on the United States, as a state party to the International Convention on the Elimination of All Forms of Racial Discrimination (discussed in more detail in Section V, below), but few US courts have been presented with a chance to enforce this prohibition; when presented with such a chance, few have been willing to enforce it, or have avoided enforcing the prohibition by deciding the case on other grounds.¹⁵

Other state and federal laws provide some voter protection. Though analysis of all such laws is beyond the scope of this report, the Help America Vote Act, enacted in 2002, has created a centralized source for election administration information, provides funds for improving election administration, and creates some minimum standards for states to follow in several key areas of election administration.¹⁶

Covid-19

At the time of writing, the United States had recorded more total deaths from the novel coronavirus than any other country in the world.¹⁷

The United States government, and state and local authorities, are obligated to protect the human rights to life and to health by adopting protective measures in light of the Covid-19 pandemic. These may include measures that affect election administration, though any

¹⁴ Leadership Conference on Civil and Human Rights, “Democracy Diverted,” September 2019, <https://civilrights.org/democracy-diverted/> (accessed August 23, 2020) (citing the dissenting opinion of Justice Ginsburg in *Shelby County v. Holder*, 570 U.S. 529, 562 (2013)).

¹⁵ See, for example, *Kane v. Winn*, 319 F. Supp. 2d 162 (D. Mass. 2004) (“the Court notes that the prohibition against racial discrimination has been affirmed in many treaties, undoubtedly has the status of customary international law and *jus cogens*, and places greater affirmative obligations on government than does the Equal Protection Clause of the Fourteenth Amendment to remedy past discrimination and to avoid actions that unnecessarily produce a disparate impact on racial minorities. . . . Yet because other international legal norms and domestic constitutional norms provide adequate grounds for decision in this case, the Court leaves further discussion for another day.”).

¹⁶ Help America Vote Act of 2002 (HAVA), Pub. L. No. 107-252, 116 Stat. 1666 (2002).

¹⁷ See World Health Organization, “WHO Coronavirus Disease (COVID-19) Dashboard,” September 8, 2020, <https://covid19.who.int/> (accessed September 8, 2020).

Covid-19-related measures that affect the right to vote should be objective and reasonable. These may include, for example, taking steps to educate people on how to prevent transmission and ensure non-discriminatory access to testing and treatment; as well as mandates to wear masks or practice social distancing. These measures may have a direct impact on the ability for individuals to get information or exercise their right to vote and require election officials to modify traditional practices related to election administration to simultaneously protect the right to health and ensure people can exercise their right to vote.¹⁸

Many international, federal, and inter-state entities have adopted guidance on administering safe and equitable elections during the Covid-19 pandemic. For example, the Centers for Disease Control and Prevention have issued guidance for election officials and voters on administering and participating in elections during Covid-19,¹⁹ and the US Election Assistance Commission has held hearings²⁰ and compiled resources²¹ on administering elections during Covid-19, as have the National Association of State Elections Directors²² and the National Conference of State Legislatures.²³ At the state level, a large variety of legislation is being introduced to address how elections can be executed during the pandemic.²⁴ Internationally, the International Foundation for Electoral Systems has published a briefing paper series on administering elections during Covid-19.²⁵

¹⁸ “Human Rights Dimensions of COVID-19 Response,” Human Rights Watch news release, March 19, 2020, <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>.

¹⁹ United States Centers for Disease Control and Prevention, “Considerations for Election Polling Locations and Voters,” June 22, 2020 <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (accessed August 25, 2020).

²⁰ United States Election Assistance Commission, “Public Hearing: Election Response to Covid-19, Administering Elections During the Coronavirus Crisis,” April 22, 2020, <https://www.eac.gov/events/2020/04/22/public-hearing-election-response-covid-19-administering-elections-during> (accessed August 25, 2020).

²¹ United States Election Assistance Commission, “Coronavirus (Covid-19) Resources,” <https://www.eac.gov/election-officials/coronavirus-covid-19-resources> (accessed August 25, 2020).

²² National Association of State Elections Directors, “COVID-19 Resources,” <https://www.nased.org/covid19> (accessed August 25, 2020).

²³ National Conference of State Legislators, “Covid-19 and Elections,” <https://www.ncsl.org/research/elections-and-campaigns/state-action-on-covid-19-and-elections.aspx> (accessed August 25, 2020).

²⁴ National Conference of State Legislators, “Covid-19 and Elections: State Legislation,” <https://www.ncsl.org/research/elections-and-campaigns/state-action-on-covid-19-and-elections.aspx> (accessed August 25, 2020).

²⁵ International Foundation for Electoral Systems, “IFES COVID-19 Briefing Series: Safeguarding Health and Elections,” <https://www.ifes.org/publications/ifes-covid-19-briefing-series-safeguarding-health-and-elections> (accessed August 25, 2020).

As explored further in this report, United States authorities have adopted measures that affect elections in the name of protecting the public from Covid-19. Some appear to appropriately respond to concerns about Covid-19 risk while ensuring that individuals' right to vote is protected. Others appear not to. It is beyond the scope of this report to determine whether measures adopted were pursued with any specific intent to block the voting rights of particular groups. Such an inquiry is not necessary to establish that certain measures may have had discriminatory impacts.

Moreover, given the many guidelines promulgated by authorities on administering safe and equitable elections during the Covid-19 pandemic, this report does not tackle the requirements in detail. However, many of the recommendations Human Rights Watch makes in this report on ensuring the right to vote—such as significantly increasing polling places, and expanding options for voting—are consistent with and in fact supportive of best practices for protecting life and health. In addition, the obligation to prevent discriminatory impacts on specific racial groups and to accommodate the needs of voters who may face additional obstacles in voting means that officials need to pay special attention to populations of color and low-income communities.

According to data through the end of May 2020 obtained from the Centers for Disease Control and Prevention by the *New York Times*, Latinx and Black residents of the United States have been three times as likely to become infected as their white neighbors, and Black and Latinx people have been nearly twice as likely to die from complications arising from the novel coronavirus as white people.²⁶ According to a separate Centers for Disease Control and Prevention study, the incidence of Covid-19 cases among Native Americans was three-and-a-half times that among whites.²⁷ Given the specific threats the Covid-19 pandemic poses to Black, Latinx, and Native American populations, and the historic disenfranchisement of these populations in the United States, extra measures should be taken to ensure these people's health and their right to vote.

²⁶ Richard A. Oppel Jr., Robert Gebeloff, K.K. Rebecca Lai, Will Wright, and Mitch Smith, "The Fullest Look Yet at the Racial Inequity of Coronavirus," *New York Times*, July 5, 2020, <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html> (accessed September 9, 2020).

²⁷ Jacqueline Howard, "Covid-19 Incidence More Than Triple Among Native Americans, new CDC Report Says," *CNN*, August 21, 2020, <https://www.cnn.com/2020/08/21/health/covid-19-native-americans-cdc-study-wellness/index.html> (accessed September 14, 2020).

Low-income communities in the United States are more likely to be exposed to the novel coronavirus, have higher mortality rates, and suffer economically.²⁸ Citing public health concerns caused by the Covid-19 pandemic, in September, the Centers for Disease Control and Prevention ordered a four-month moratorium on evictions, which may help to protect some low-income voters.²⁹ Despite the moratorium, voters may still need to change their addresses prior to the November 2020 general election because they fail to comply with the bureaucratic steps required to benefit from the moratorium, or because they need to reduce housing costs and decide to move in anticipation of the moratorium being lifted. This is especially relevant given that the most recent analysis conducted by the US Census Bureau reveals that voters with household income of more than US\$150,000 had a 57 percent participation rate in the 2014 mid-term elections, compared to just 31 percent for those making \$15,000 to \$20,000.³⁰ Given the specific threats the Covid-19 pandemic poses to low-income communities, and their low participation rates in previous elections, election officials need to take extra steps to respect the voting rights of low-income US citizens.

²⁸ “US: Address Impact of Covid-19 on the Poor,” Human Rights Watch news release, March 19, 2020, <https://www.hrw.org/news/2020/03/19/us-address-impact-covid-19-poor> (accessed September 9, 2020).

²⁹ United States Centers for Disease Control and Prevention, “Federal Register Notice: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19,” September 4, 2020, <https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19> (accessed September 8, 2020).

³⁰ Thom File, “Who Votes? Congressional Elections and the American Electorate: 1978–2014 Population Characteristics,” United States Census Bureau, July 2015, <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p20-577.pdf> (accessed September 8, 2020). Reasons for this disparity include that lower-income Americans might not be able to afford to take time off work, pay for childcare, or cover transportation costs to the polls. Lower-income voters are also more likely to rent their housing.

I. South Carolina Elections During the Covid-19 Pandemic

I tried to vote and I still could not. We need to do something about this. It is easy to suppress the vote because they require too much. Even when we try, we are told, “you’re not in compliance.” It can be exhausting. I worked hard to get my vote in, but I failed to do so. Others will also give up.

— Carrie, Columbia, South Carolina, August 18, 2020.

Voting in South Carolina

South Carolina has a history of voter disenfranchisement.³¹ Prior to the US Supreme Court’s *Shelby County v. Holder* decision in 2013, state officials were required to get approval from the US Department of Justice before changing electoral law. A photo ID law, passed by state legislators in 2011, was seen by many experts as an attempt to put voting restrictions in place.³² The law was upheld after a 2012 Justice Department challenge, but was made far less restrictive, allowing people to vote if they could explain why they had not procured an ID card. But the 2011 law and subsequent changes reflect a confusing registration and voting process that, ultimately, has interfered with the right to vote.³³ As one voting rights advocate put it, “Many voters here do not know how to get information.”³⁴

While South Carolina allows absentee ballots to be dropped off at an election office up to 30 days before the election, the process for requesting the absentee ballot is cumbersome. Voters can request a ballot in person, but local activists told us that voters

³¹ See, for example, J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven: Yale University Press, 1974); Samuel Issacharoff, Pamela Karlan, and Richard Pildes, *The Law of Democracy* (St. Paul: Foundation Press, 1998).

³² Bristow Marchant, “Who does SC’s voter ID law stop from voting? The answer might surprise you,” *The State*, September 12, 2018, <https://www.thestate.com/article218116305.html> (accessed August 28, 2020).

³³ Zachary Roth, “Confusion over South Carolina ID Law Could Keep Voters Away,” *MSNBC*, February 12, 2016, <http://www.msnbc.com/msnbc/confusion-over-south-carolina-id-law-could-keep-voters-away> (accessed August 28, 2020).

³⁴ Human Rights Watch interview with Dr. Brenda Williams, physician and voting rights advocate, Sumter, South Carolina, August 12, 2020.

may be more reluctant to do this during the Covid-19 pandemic.³⁵ Alternatively, voters can request an absentee ballot by either filling in a form online, printing and mailing it in or by requesting that a form be mailed to them by phone. Once the form is completed, it must be signed by a witness and mailed back to the county registration office before the ballot is then mailed to the voter.³⁶ A local activist told Human Rights Watch that minorities and people living in rural areas without internet access or a printer may face additional delays because their only option is to use the phone and mail.³⁷ On their forms, voters must fit within at least one of seventeen categories approved by the South Carolina Election Commission for someone to vote absentee, including military service, work and illness.³⁸

South Carolina's June Primary

In June, with confirmed cases of Covid-19 on the rise,³⁹ South Carolina voters struggled to use the state's cumbersome absentee process to vote. At the same time, poor responses to Covid-19 by election officials brought significant problems for in-person voters on election day. Polling places were closed and changed in some counties with inadequate notice to voters, and voters were confronted with long lines, confusion over ballots, and a sense of chaos that negatively impacted the right to vote in the state.

³⁵ Human Rights Watch interview with Dr. Brenda Williams, physician and voting rights advocate, Sumter, South Carolina, August 12, 2020.

³⁶ South Carolina Election Commission, "Absentee Voting," <https://www.scvotes.gov/absentee-voting> (accessed August 28, 2020).

³⁷ Human Rights Watch interview with Shaundra, Columbia, South Carolina, August 24, 2020.

³⁸ The 17 categories are: Members of the Armed Forces; Members of the Merchant Marine; Spouses and dependents residing with members of the Armed Forces or Merchant Marine; Persons serving with the American Red Cross or with the United Service Organizations (USO) who are attached to and serving with the Armed Forces outside their county of residence and their spouses and dependents residing with them; Citizens residing overseas; Persons who are physically disabled; Students attending school outside their county of residence and their spouses and dependents residing with them; Persons who for reasons of employment will not be able to vote on election day; Government employees serving outside their county of residence on Election Day and their spouses and dependents residing with them; Persons who plan to be on vacation outside their county of residence on Election Day; Persons serving as a juror in state or federal court on Election Day; Persons admitted to the hospital as emergency patients on Election Day or within a four-day period before the election; Persons with a death or funeral in the family within three days before the election; Persons confined to a jail or pre-trial facility pending disposition of arrest or trial; Persons attending sick or physically disabled persons; Certified poll watchers, poll managers, and county election officials working on Election Day; Persons sixty-five years of age or older; Persons who for religious reasons do not want to vote on a Saturday (Presidential Primaries Only). See South Carolina Election Commission, "Absentee Voting," <https://www.scvotes.gov/absentee-voting> (accessed September 8, 2020).

³⁹ "South Carolina Covid Map and Case Count," *New York Times*, September 16, 2020, <https://www.nytimes.com/interactive/2020/us/south-carolina-coronavirus-cases.html> (accessed August 28, 2020).

In the lead-up to South Carolina’s presidential primary in June, South Carolina Governor Henry McMaster, in response to the Covid-19 pandemic, took an important step to protect the right to vote by signing a bill allowing all residents to vote absentee if they cited a “state of emergency” on their absentee applications.⁴⁰ This reason had not previously been available to voters in South Carolina.

On May 25, in a lawsuit filed by the American Civil Liberties Union of South Carolina and the NAACP Legal Defense and Educational Fund, a US district court ordered that witness signatures would not be required on absentee ballot envelopes.⁴¹ Both of these changes—the “state of emergency” as a valid reason and the signature waivers—were only instituted for the statewide primary and a subsequent runoff election held on June 23, 2020. As of July 1, the changes had expired. To date, lawmakers have not restored these measures, although Republican legislators have said they would reconsider expanding absentee voting if South Carolina remains under a state of emergency in September as a result of the Covid-19 pandemic.⁴²

During the June statewide primary, South Carolinians took advantage of this increased availability of absentee voting. The number of people who voted absentee nearly doubled, from 12.5 percent of voters in the 2016 statewide primary to 22.4 percent in June 2020.⁴³ Nevertheless, voters still overwhelmingly opted to vote in person, with 75 percent of voters casting their ballots at polling stations for the statewide primary on June 9, 2020. Despite the pandemic, there was a record turnout of 767,187 voters, which was an 83.5 percent increase over the 2016 primary.⁴⁴ This record turnout occurred amidst significant delays,

⁴⁰ Jacob Reynolds, “‘We Want Everybody to Vote’ Gov. McMaster Says After Signing Absentee Voting Bill,” *WLTX (CBS News)*, May 13, 2020, <https://www.wltx.com/article/news/politics/elections/we-want-everybody-to-vote-gov-mcmaster-says-after-signing-absentee-voting-bill/101-18661e27-a7bd-4e44-9fc8-ab3bfaf73669> (accessed September 15, 2020).

⁴¹ South Carolina Election Commission, “Witness Signature No Longer Required on by Mail Ballots for June Primaries,” May 25, 2020, <https://www.scvotes.gov/witness-signature-no-longer-required-mail-ballots-june-primaries> (accessed August 28, 2020).

⁴² Jamie Lovegrave, “SC Dems Prep More Lawsuits as Legislature Punts on Absentee Voting Expansion Amid Pandemic,” *Post and Courier*, June 24, 2020, https://www.postandcourier.com/politics/sc-dems-prep-more-lawsuits-as-legislature-punts-on-absentee-voting-expansion-amid-pandemic/article_823643fc-b650-11ea-b500-239ee5e63cod.html (accessed August 28, 2020).

⁴³ South Carolina Election Commission, “Fact Sheet,” <https://www.scvotes.gov/fact-sheets> (accessed August 28, 2020).

⁴⁴ Stanford-MIT Healthy Elections Project, “The 2020 South Carolina Primary,” July 20, 2020, https://healthyelections.org/sites/default/files/2020-07/south_carolina_state_primary_memo_np_edits_adb_edits.docx.pdf (accessed August 28, 2020).

poll closures and lack of staff at some polling centers,⁴⁵ conditions that interfered with the right to vote in the state.

On June 1, the South Carolina Election Commission announced that at least 168 out of 2,200 polling stations would be moved or consolidated with other polling stations.⁴⁶ On June 8, the day before the primary vote, that number was revised to 257 polling places that would be moved statewide.⁴⁷ Chris Whitmire, the spokesman of the South Carolina Elections Commission, told the media on June 8 that the poll moves and consolidations were a result of poll worker shortages, polling station closures, or because some locations, such as senior centers, posed particular challenges in light of the pandemic.⁴⁸

Elections in Richland County, with the second-largest overall population and the largest Black population in the state, have been mired with problems in recent history.⁴⁹ During the June primary, 73 polling stations in Richland County were relocated, representing about 30 percent of all polling stations relocated across the state, and more relocations than any other county.⁵⁰ According to the Center for Public Integrity, a nonprofit and nonpartisan

⁴⁵ Adam Mintzer, “Hand-written ballots, 90-degree heat, long lines: Voter turnout in Richland County bigger than expected,” *WISNews*, June 9, 2020, <https://www.wistv.com/2020/06/09/hand-written-ballots-degree-heat-long-lines-voter-turnout-richland-county-bigger-than-expected/> (accessed September 15, 2020).

⁴⁶ Mike Ellis, “SC has poll worker shortage, unprecedented number of polling place changes due to coronavirus,” *Greenville News*, June 1, 2020, <https://www.greenvilleonline.com/story/news/2020/06/01/coronavirus-sc-poll-worker-shortage-unprecedented-number-polling-place-relocations-due-covid-19/5262114002/> (accessed August 28, 2020).

⁴⁷ Caroline Colburn, “What S.C. voters need to know ahead of Tuesday’s primaries,” *WISNews*, June 8, 2020, <https://www.wistv.com/2020/06/08/what-sc-voters-need-know-ahead-tuesdays-primaries/> (accessed August 5, 2020); Adam Mintzer, “Hand-written ballots, 90-degree heat, long lines: Voter turnout in Richland County bigger than expected,” *WISNews*, June 9, 2020, <https://www.wistv.com/2020/06/09/hand-written-ballots-degree-heat-long-lines-voter-turnout-richland-county-bigger-than-expected/> (accessed August 28, 2020).

⁴⁸ Emery Glover, “Where Do I Vote? Your Polling Place May Have Been Temporarily Moved,” *WISNews*, June 8, 2020, <https://www.wistv.com/2020/06/08/where-do-i-vote-your-polling-place-may-have-been-temporarily-moved/> (accessed September 15, 2020).

⁴⁹ Chris Trainor, “After Disastrous Primary Richland County Names New Director for Embattled Elections,” *Post and Courier*, June 19, 2020, https://www.postandcourier.com/free-times/news/local_and_state_news/after-disastrous-primary-richland-county-names-new-director-for-embattled-elections-office/article_625b4296-b24d-11ea-be00-170b1615618a.html (accessed August 28, 2020). See also Index Mundi, “South Carolina Black Population Percentage by County,” <https://www.indexmundi.com/facts/united-states/quick-facts/south-carolina/black-population-percentage#chart> (accessed September 14, 2020); Statistical Atlas, “Race and Ethnicity in Richland County, South Carolina,” <https://statisticalatlas.com/county/South-Carolina/Richland-County/Race-and-Ethnicity> (accessed September 14, 2020).

⁵⁰ Ibid. According to a list of polling changes provided by the South Carolina Election Commission, Richland County had a total of 72 of the 250 relocations; no other county experienced more than 21 relocations. South Carolina Election Commission, “2020 Statewide Primaries Polling Place Relocations,” <https://www.scvotes.gov/2020-statewide-primaries-polling-place-relocations> (accessed August 5, 2020).

newsroom, consolidation in Richland County resulted in some polling sites processing up to five times the number of usual voters.⁵¹ Of the 10 consolidated polling stations in Richland County, six were located in areas with majority Black voters.⁵² Ballots in Richland County were also misprinted with incorrect candidates, leading to further confusion.⁵³ The poor planning for the election caused Terry Graham, interim director for the Richland County Elections Board, to tell local media on election morning, “We’re not off to the start I’m looking for.”⁵⁴

The county’s interim elections director told state legislators that the county was trying to send updates to residents outlining the upcoming changes,⁵⁵ but the confusion prompted by the last-minute changes led some people to go to the wrong polling stations. For example, Human Rights Watch interviewed a 67-year-old resident of Richland County who tried to vote at her usual polling location at Rice Creek Elementary School, having received no information about polling changes. There was no information at the school indicating where she should go, but she was told by a stranger to try the Blythewood Park polling center. After waiting for over one-and-a-half hours in line, she was informed that she was at the wrong location and that she should have gone to the North Springs location. As it was already 8 p.m., she did not have sufficient time to travel to that location to vote. She told Human Rights Watch:

I was so upset. For the first time since I was 18 years old, I could not vote. It was horrible that night. I felt like they did not care if I voted or not. I just want my vote to count.... We are used to waiting in long lines to vote, but we

⁵¹ Carrie Levine and Pratheek Rebala, “‘I Wanted My Vote to Be Counted’: In South Carolina, a Peek at COVID-19’s Impact on Elections,” *Center for Public Integrity*, June 22, 2020, <https://publicintegrity.org/politics/elections/in-south-carolina-a-peek-at-covid-19s-impact-on-elections-polling-place/> (accessed August 5, 2020).

⁵² Stanford-MIT Healthy Elections Project, “The 2020 South Carolina Primary,” July 20, 2020, https://healthyelections.org/sites/default/files/2020-07/south_carolina_state_primary_memo_np_edits_adb_edits.docx.pdf (accessed August 28, 2020).

⁵³ Greg Hadley, “Voters Report Races Missing from Ballots at Richland Polls During SC Primary,” *State*, June 9, 2020, <https://www.thestate.com/news/politics-government/election/article243404346.html> (accessed August 28, 2020).

⁵⁴ Greg Hadley, “Voters Report Races Missing from Ballots at Richland Polls During SC Primary,” *State*, June 9, 2020, <https://www.thestate.com/news/politics-government/election/article243404346.html> (accessed August 28, 2020).

⁵⁵ Jacob Reynolds, “Richland County to Combine About 70 Polling Locations for June Primaries Due to Covid-19 Staffing Issues,” *WCNC*, May 26, 2020, <https://www.wcnc.com/article/news/politics/elections/richland-co-to-combine-about-70-polling-locations-for-june-primaries-due-to-covid-19-staffing-issues/101-4f6eccf8-5d45-4026-acf7-cf3f80a8e1d5> (accessed August 28, 2020).

aren't used to being turned away. I had received no information in the mail about the change. The next day I called the election commission because I was so upset. They said I should have received a white card in the mail, explaining the poll change, but I had not. I told them I check my mail carefully, even the junk mail, and I had not received the notice.⁵⁶

Another voter, 71-year-old Melinda Anderson, got a robocall on election day from a candidate (not from election officials), informing her of her new polling location; to which her son drove her for curbside voting. After four hours of waiting, they had to leave and she was unable to cast her vote. She told the Center for Public Integrity, "I'm still upset that I didn't get to vote. . . . Whether my vote mattered or not, I wanted my vote to be counted. That's what I'm worried about in November."⁵⁷

Poll consolidation in Richland County led to significant lines, with many voters waiting over 2 hours in 90-degree heat.⁵⁸ In a few locations, voters waited over 6 hours to vote.⁵⁹ Curbside voting, where a voter can vote in a vehicle outside a polling location, did not work in some places in the county. "The lines wrapped around the building," one voter from Richland County with health issues who eventually decided not to vote said. "The parking lots were overwhelmed, there were long lines and there was no social distancing... we couldn't park curbside, we couldn't even get to the curb. To vote curbside would have been too much of a risk for me. I was upset."⁶⁰

Voters, especially from Black households, who opted to vote in person but without access to private transportation may have been especially disadvantaged by polling center consolidation. Data from 2017 indicates that 12 percent of Black households in Columbia

⁵⁶ Human Rights Watch interview with Dolores, Columbia, South Carolina, August 28, 2020.

⁵⁷ Carrie Levine and Pratheek Rebala, "'I Wanted My Vote to be Counted': A Peek at Covid-19's Impact on Elections," *Center for Public Integrity*, June 22, 2020, <https://publicintegrity.org/politics/elections/in-south-carolina-a-peek-at-covid-19s-impact-on-elections-polling-place/> (accessed August 28, 2020).

⁵⁸ Adam Mintzer, "Hand-written ballots, 90-degree heat, long lines: Voter turnout in Richland County bigger than expected," *WISNews*, June 9, 2020, <https://www.wistv.com/2020/06/09/hand-written-ballots-degree-heat-long-lines-voter-turnout-richland-county-bigger-than-expected/> (accessed September 15, 2020).

⁵⁹ "Richland County hires new election director after recent problems," *News 19*, June 19, 2020, <https://www.wltx.com/article/news/politics/richland-county-hires-new-election-director-after-recent-problems/101-foad1e2d-ffdf-432e-8a68-7b364f84ba1c> (accessed September 15, 2020).

⁶⁰ Human Rights Watch interview with Carrie, Columbia, South Carolina, August 18, 2020.

did not have a vehicle, versus 4 percent of white households.⁶¹ Transportation to voting centers in June was “definitely an issue” according to one local activist.⁶² In addition, given Richland County’s large Black population among South Carolina’s counties, the longstanding preference for in-person voting among Black citizens, and the numerous changed locations and poll closures in the county in June, it is likely that the negative impact on the right to vote fell disproportionately on Black people.

The situation in Richland County was so disastrous that the State Election Commission issued a press release after the primary:

The South Carolina State Election Commission is disappointed with the conduct of yesterday’s primaries in Richland County. . . . We know election officials and poll managers were faced with the extraordinarily difficult task of conducting an election in a pandemic. But yet again, voters were unnecessarily subjected to extreme wait times and confusion at polling places.⁶³

Additional Steps Needed to Protect the Right to Vote in South Carolina

In June’s primary, absentee voting increased by 213 percent compared to the 2016 primaries, with 191,000 voting absentee in 2020 versus 61,000 in 2016.⁶⁴ Absentee ballots cast by mail increased 370 percent.⁶⁵ At the time of writing, rates of infection with the novel coronavirus in South Carolina were high, with over 112,000 confirmed cases.⁶⁶ Even

⁶¹ National Equity Atlas, “Car Access: South Carolina,” 2017, https://nationalequityatlas.org/indicators/Car_access/By_race~ethnicity%3A49791/Columbia%2C_SC_Metro_Area/false (accessed August 28, 2020).

⁶² Human Rights Watch interview with Shaundra, Columbia, South Carolina, August 24, 2020.

⁶³ South Carolina Election Commission, “SEC Statement on Richland County Elections,” <https://www.scvotes.gov/sec-statement-richland-county-elections> (accessed August 28, 2020).

⁶⁴ South Carolina Election Commission, Letter from State Election Director Marci Andino to Senators Harvey Peeler and Jay Lucas, July 17, 2020, https://my.lvw.org/sites/default/files/sec_2020-07-17_letter_to_gen_assembly_covid_changes_for_ge_final.pdf (accessed August 28, 2020).

⁶⁵ South Carolina Election Commission, Letter from State Election Director Marci Andino to Senators Harvey Peeler and Jay Lucas, July 17, 2020, https://my.lvw.org/sites/default/files/sec_2020-07-17_letter_to_gen_assembly_covid_changes_for_ge_final.pdf (accessed August 28, 2020).

⁶⁶ United States Centers for Disease Control and Prevention, “Covid Data Tracker,” <https://covid.cdc.gov/covid-data-tracker/> (accessed August 28, 2020).

if rates decline into the fall, protecting the health and safety of voters should be a chief concern of voting officials and lawmakers. To that end, the state needs to **ensure more voters can more easily access absentee ballots**. On July 17, the director of the state’s Election Commission, Marci Andino, sent a letter to the state legislature. Calling the upcoming election the “greatest challenge” to South Carolina’s election system, Andino made several recommendations to lawmakers, including reinstating the “state of emergency” reason for absentee voters, removing the witness requirement on absentee envelopes and allowing for more time to count absentee ballots sent by mail.⁶⁷

Following Andino’s advice, state legislators **should extend the “state of emergency” reason** to enable all eligible residents in South Carolina to access an absentee ballot. The signature requirement waiver should likewise be extended. Furthermore, assuming voter turnout and participation increases for the November election, the number of absentee ballots mailed in could rise significantly, further straining the capabilities of county election commissions to count votes. Given the anticipated volume of ballots, more time and resources should be allotted to count ballots that were mailed in and postmarked by November 3. According to one activist, approximately 1,500 ballots that arrived too late were not counted in the June primary.⁶⁸ Other reforms being sought through litigation may increase access to absentee ballots.⁶⁹

At the same time, data from previous elections indicates that voter turnout for in-person voting in November will be high. For statewide primaries generally in South Carolina, average voter participation is around 18 percent, while presidential elections average 71

⁶⁷ South Carolina Election Commission, Letter from State Election Director Marci Andino to Senators Harvey Peeler and Jay Lucas, July 17, 2020, https://my.lvw.org/sites/default/files/sec_2020-07-17_letter_to_gen_assembly_covid_changes_for_ge_final.pdf (accessed August 28, 2020).

⁶⁸ Human Rights Watch interview with Shaundra, Columbia, South Carolina, August 24, 2020.

⁶⁹ In early August, the plaintiffs in the lawsuit filed against the Election Commission filed for a court injunction to allow all South Carolina residents the right to cast an absentee ballot in November, allow for more time for absentee ballots received by mail to be counted beyond the current deadline (7:00 p.m. election day), eliminate the witness requirement on absentee ballots and allow anyone to assist in returning absentee ballots. See John Monk, “Citing COVID-19 threat, voters ask federal judge to force SC to widen absentee voting,” *State*, <https://www.thestate.com/article244712647.html> (accessed August 7, 2020); “SC Democratic Party pushes for absentee voting changes,” *News 19*, August 5, 2020, <https://www.wltx.com/article/news/politics/elections/sc-democratic-party-pushes-for-absentee-voting-changes/101-0d9a4ca9-7186-4429-b4fd-0d5002f38a95> (accessed August 9, 2020).

percent.⁷⁰ South Carolina voters, especially Black voters, more often opt to vote in person. As one activist told Human Rights Watch, “People want to show up at the polling station to ensure that their vote is counted...there is a distrust of the mail, now more than ever.”⁷¹ Therefore, state and local election officials **need to improve the in-person voting process, including by increasing the number and age, race, and linguistic diversity of poll workers.** Many traditional poll workers in South Carolina are older and therefore at higher risk for severe complications from Covid-19.⁷² More poll workers will need to be recruited and trained as soon as possible. The state may need to consider ways to reach younger poll workers, to increase pay for work at the polls, and to allow state workers who are willing to do so to staff polling locations on election day.

It is crucial for South Carolina to **prioritize extended hours and an increased number of in-person polling locations, especially in populous areas, and communicate early and clearly to voters** about where they should vote. The June primary shows that consolidating polling locations, especially combined with the failure of election officials to provide adequate notice, adds to confusion and makes it more difficult for people and communities who rely on voting in person to do so. If a polling site must be closed, attempts should be made to move its location within the same area so that neighborhood access can be maintained.⁷³ Information about any changes to polling centers should be disseminated well in advance, working with community leaders, churches and other local groups to communicate the changes. Transportation challenges for voters to new polling locations should be mitigated, including by providing transport, especially as civil society organizations that may have provided transportation to voters in the past will face challenges with Covid-19.⁷⁴ South Carolina needs to prioritize increases to polling

⁷⁰ South Carolina Election Commission, Letter from State Election Director Marci Andino to Senators Harvey Peeler and Jay Lucas, July 17, 2020, https://my.lvw.org/sites/default/files/sec_2020-07-17_letter_to_gen_assembly_covid_changes_for_ge_final.pdf (accessed August 28, 2020).

⁷¹ Human Rights Watch interview with Shaundra, Columbia, South Carolina, August 24, 2020.

⁷² Stanford-MIT Healthy Elections Project, “The 2020 South Carolina Primary,” July 20, 2020, https://healthyelections.org/sites/default/files/2020-07/south_carolina_state_primary_memo_np_edits_adb_edits.docx.pdf (accessed August 28, 2020).

⁷³ Mike Firestone, Jack Deschler, and Louie Goldsmith, “An Action Plan to Protect In-Person Voting and Voting Rights in the Era of Covid-19,” Voter Protection Corps, <https://static1.squarespace.com/static/5d4510352755f600012998f7/t/5eeb9e73ee8615767d422e4a/1592499829207/VPC+Report+6.18+FINAL+-+FOR+WEBSITE.pdf> (accessed August 28, 2020).

⁷⁴ Human Rights Watch interview with Shaundra, Columbia, South Carolina, August 24, 2020.

locations in urban areas, which tend to have fewer locations per capita than suburban and rural locations, according to the Voting Rights Lab.⁷⁵

One activist told Human Rights Watch that they would be driving people to the polls in November, “because we want to have as few mail-in ballots as possible” due to mistrust created around mail-in ballots. To protect the most vulnerable, including older persons, **curbside voting options** should be better organized and expanded, in line with recommendations from the Centers for Disease Control and Prevention, to reduce potential exposure in long lines.⁷⁶

Ensure the right to vote for people with criminal legal system contacts. According to local advocates, ensuring voting for pretrial detainees in jail has not been a priority for election officials or sheriffs, “We have thousands of people in jail who can vote who are not convicted. Sadly, [in addition] many people released [from prison] do not think they can vote.”⁷⁷ Moreover, the state disenfranchises people with felony convictions and those on probation and parole even after they are released from prison.⁷⁸ South Carolina lawmakers should move swiftly to restore the right to vote to all persons as soon as they leave confinement, regardless of the crime of conviction, in accordance with international human rights law. They should also move toward broader reforms to end disenfranchisement for people with criminal convictions.

⁷⁵ Voting Rights Lab, “Polling Place Consolidation: Negative Impacts on Turnout and Equity,” July 2020, <https://www.votingrightslab.org/polling-place-consolidation-report> (accessed September 15, 2020).

⁷⁶ United States Centers for Disease Control and Prevention, “Considerations for Election Polling Locations and Voters,” June 22, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (accessed August 28, 2020).

⁷⁷ Human Rights Watch interview with Brett Bursey, voting rights advocate, South Carolina Progressive Network, Columbia, South Carolina, August 10, 2020.

⁷⁸ See Jean Chung, “Felony Disenfranchisement: A Primer,” The Sentencing Project, June 27, 2019, <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/> (accessed August 28, 2020).

II. Wisconsin Elections During the Covid-19 Pandemic

That fear that we won't be heard is [a] new layer of trauma on top of a history of traumatization. Especially in my community there is always that feeling that my vote is not being counted and my voice isn't being heard. . . . We want to assure people that their voices will be heard and *counted*.

— Darrol Gibson, managing director, Leaders Igniting Transformation, Milwaukee, August 3, 2020.

Oh no I never had a problem, 'cause you ain't gonna stop me from voting. If I've got to crawl to that poll, I'm going to do it.

— Mary, a 40-year-old Black resident of Milwaukee, August 6, 2020.

Voting in Wisconsin During the April Primary

In the first quarter of 2020, amidst a contradictory and last-minute series of policy moves made by Wisconsin Governor Tony Evers, the state legislature, and the state Supreme Court,⁷⁹ Wisconsin's election officials worked to prepare for the state's primary election. They adopted curbside or drive-through voting⁸⁰ and other measures to protect voters from the risk of Covid-19 transmission,⁸¹ but also raised concerns that they lacked sufficient poll workers, and that inadequate supply of hygiene products⁸² and the small size of some

⁷⁹ On April 3, 2020, Governor Evers issued Executive Order #73, which called a special session of the Wisconsin State Legislature to consider a suspension of all further in-person voting in the Spring 2020 elections, save for limited circumstances. Republicans quickly adjourned the session without consideration of the issues. In response, on April 6, 2020, the Governor issued Executive Order #74, which ordered the suspension of in-person voting from April 7, 2020 until June 9, 2020. Ultimately, this suspension was struck down by the Wisconsin Supreme Court.

⁸⁰ Wisconsin Elections Commission, "Curbside Voting, Drive-Through Voting and Outdoor Polling Places," https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Clerk%20comm%20re%20Curbside%2C%20Drive-Through%2C%20Outdoors%203.29.20_o.pdf (accessed August 5, 2020).

⁸¹ Wisconsin Elections Commission, "Public Health Guidance for Elections - COVID-19," <https://elections.wi.gov/node/6787> (accessed August 5, 2020).

⁸² Wisconsin Elections Commission, "Consolidating Polling Places and use of WisVote – COVID-19," March 31, 2020, <https://elections.wi.gov/node/6799> (accessed August 5, 2020); Wisconsin Elections Commission, "Letter to Governor Evers," March 20, 2020, <https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/3.20.20Letter%20to%20Governor.pdf> (accessed August 5, 2020).

polling stations (preventing social distancing)⁸³ created health risks for poll workers and voters during the Covid-19 pandemic. When it became clear that the primary election would move ahead despite these concerns, some of Wisconsin's municipal clerks⁸⁴ closed and consolidated polling places.⁸⁵

The City of Milwaukee consolidated its usual 180 polling locations to just five. Milwaukee Election Commission Executive Director Neil Albrecht cited “a drastic shortage of poll workers as the reason for the change.”⁸⁶ Mr. Albrecht stated that the city normally staffed its polling places with 1,400 poll workers, but only 400 poll workers would be available for the April election.⁸⁷ Other cities and counties in Wisconsin made changes, but none as drastic as Milwaukee's.⁸⁸

⁸³ Stanford-MIT Healthy Elections Project, “Wisconsin's 2020 Primary in the Wake of Covid-19,” June 30, 2020, <https://healthyelections.org/sites/default/files/2020-06/Wisconsin%E2%80%99s%202020%20Primary%20in%20the%20Wake%20of%20COVID-19.pdf> (accessed August 5, 2020).

⁸⁴ Wisconsin Elections Commission, “Deciding on a New Polling Place,” <https://elections.wi.gov/clerks/guidance/accessibility/new-polling-place> (accessed August 5, 2020).

⁸⁵ The decisions by municipal clerks to close and consolidate polling places were authorized by a March 31, 2020 memorandum by the Wisconsin Elections Commission which notified clerks that they were authorized to consolidate some, but not all, polling places. This action was taken in light of Wis. Stat. § 5.25 which requires that polling places be established at least 30 days in advance of the election by the local governing body. Wisconsin Elections Commission, “Consolidating Polling Places and Use of WisVote - COVID-19,” March 31, 2020, <https://elections.wi.gov/node/6799> (accessed August 5, 2020) (stating “It has become clear that a shortage of available election inspectors due to COVID-19 is one of the most limiting factors related to the number of polling locations to be used.”). In doing so, the commission expanded a prior directive that authorized closing polling places in nursing homes and similar facilities to other “situations in which the continuing effects of COVID-19 require changes to or consolidation of polling locations regardless of where the polling place is currently planned.” Wisconsin Elections Commission, “Elections Commission Takes Action on COVID-19 Issues for April 7 and May 12 Elections,” March 12, 2020, <https://elections.wi.gov/node/6711> (accessed August 5, 2020).

⁸⁶ Mary Spicuzza and Alison Dirr, “Milwaukee normally has 180 voting sites; because of coronavirus, fewer than 12 polling places will be open April 7,” *Milwaukee Journal Sentinel*, March 31, 2020, <https://www.jsonline.com/story/news/local/milwaukee/2020/03/31/coronavirus-milwaukee-voting-sites-cut-180-fewer-than-12/5099739002> (accessed August 5, 2020).

⁸⁷ Mary Spicuzza and Alison Dirr, “Milwaukee normally has 180 voting sites; because of coronavirus, fewer than 12 polling places will be open April 7,” *Milwaukee Journal Sentinel*, March 31, 2020, <https://www.jsonline.com/story/news/local/milwaukee/2020/03/31/coronavirus-milwaukee-voting-sites-cut-180-fewer-than-12/5099739002/> (accessed August 5, 2020).

⁸⁸ For the April 2020 election the city of Green Bay only had two available in-person polling places (Green Bay East and West High Schools), whereas in previous elections the city had operated 31 in-person polling places. The Green Bay city clerk, Kris Teske, stated that the city normally has about 280 paid poll workers; however, in the April election there were only about 20 paid poll workers. See Ben Krumholz, “Green Bay plans to have 17 poll locations in August; still needs more poll workers,” *Fox 11 News*, June 24, 2020, <https://fox11online.com/news/election/green-bay-plans-to-have-17-poll-locations-in-august-still-needs-more-poll-workers> (accessed August 5, 2020). Dane County opened 66 of 92 polling locations for the April 2020

It is unclear whether state and local officials used all means available to secure poll workers.⁸⁹ Wisconsin's state election commission had advance notice that there would be insufficient poll workers in jurisdictions across the state. One week prior to the April 7 election, the Commission issued a memorandum summarizing local polling place supply and personnel shortages as reported in the days and weeks prior by Wisconsin municipal and county clerks.⁹⁰ This memorandum stated that nearly 60 percent of Wisconsin municipalities were reporting a shortage of poll workers.⁹¹ Yet when election day came, Milwaukee in particular fell far short. State Representative LaKeshia Myers told Human Rights Watch:

The state had the option of the National Guard [to serve as poll workers] and that request should have been made sooner, especially for Milwaukee. Timing is always of the essence, and there is no excuse for how elections officials failed. They have yet to address what happened in the city of Milwaukee. Nothing.⁹²

election. Stanford-MIT Healthy Elections Project, "Wisconsin's 2020 Primary in the Wake of Covid-19," June 30, 2020, <https://healthyelections.org/sites/default/files/2020-06/Wisconsin%E2%80%99s%202020%20Primary%20in%20the%20Wake%20of%20COVID-19.pdf> (accessed August 5, 2020). The City of Racine operated all 14 of its usual polling locations for the April 2020 election; however, as a result of concern over the risk of transmission of the virus, all of the polling locations implemented curbside voting (a ballot is brought to the voter who remains in the vehicle). Journal Times Staff, "Has your polling place changed? Check here," *Journal Times*, April 7, 2020, https://journaltimes.com/news/local/has-your-polling-place-changed-check-here/article_cb4be746-cd4e-5fbo-b658-2748d3a5d686.html (accessed August 5, 2020).

⁸⁹ While state workers were asked if they would work the polls, plans to use state workers were never put in place. Also, National Guard workers in civilian clothes were ultimately used in some polling places, but it appears these plans were not put in place sufficiently in advance so that clerks felt confident about opening polling places. Finally, it also appears that clerks' apprehensiveness that they would have workers drop out at the last minute drove decision making, instead of going ahead with opening polls where there may have been a shorter or non-existent roster of possible replacement workers. See, for example, Patrick Marley and Molly Beck, "Tony Evers Asks State Workers to Staff Polls," *Milwaukee Journal Sentinel*, March 31, 2020, <https://www.jsonline.com/story/news/politics/elections/2020/03/31/coronavirus-wisconsin-tony-evers-asks-state-workers-staff-polls/5093547002/> (accessed August 20, 2020).

⁹⁰ Wisconsin Elections Commission, "Special Teleconference-Only Meeting, Polling Place Supply and Personnel Shortages Memorandum," March 31, 2020, https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Complete%20Packet%203_31.pdf (accessed August 10, 2020).

⁹¹ Ibid.

⁹² Human Rights Watch interview with LaKeshia Myers, Wisconsin state representative, Milwaukee, Wisconsin, August 5, 2020.

The poll closures meant Milwaukee voters had longer distances to travel on election day.⁹³ Voters also encountered long waits—for tens of thousands of voters, wait times were more than two hours.⁹⁴ These long lines had a chilling effect on voters for a variety of reasons. Some older people and people with disabilities or chronic health conditions were physically unable to wait in line, others feared risk of exposure to the novel coronavirus, and still others had work or other commitments that made waiting impossible. A Black voting rights advocate said:

Take my elderly next-door neighbor. I talked her through how to go to city hall to vote—how to get there and all that. But in the city of Milwaukee—we had lines wrapped around city blocks for a mile and it was raining! Now, she’s an elderly lady. She can’t take all that. What was she supposed to do? I’m pretty sure she didn’t vote.⁹⁵

According to the group Voting Rights Lab, “[T]here is a large body of research that shows how polling place consolidation has long reduced voter turnout, particularly among voters of color, rural voters, infrequent voters, and voters without vehicle access.”⁹⁶ Milwaukee’s April 7 primary is a case in point. The voting advocacy groups All Voting is Local and Demos analyzed voter turnout in Milwaukee, comparing 2016 primary data with 2020 primary data. In 2020:

[w]hile white [majority] wards had an average of 49 percent voter turnout, Black and Hispanic [majority] wards had an average of about 18 percent

⁹³ State Representative LaKeshia Myers said, “on the selection of the five voting locations, I just want to say these were not all representative locations for people. Bayview residents were told to go to Hamilton High School, which is not accessible to the bus line. Some were easily accessible by bus, but some were not.” Human Rights Watch interview with LaKeshia Myers, Wisconsin state representative, Milwaukee, Wisconsin, August 5, 2020. See also Isiah Holmes, “Racial disparities illustrated by Milwaukee’s long voter lines,” *Wisconsin Examiner*, April 8, 2020, <https://wisconsinexaminer.com/2020/04/08/racial-disparities-illustrated-by-milwaukee-long-voter-lines/> (accessed September 15, 2020).

⁹⁴ First Amended Complaint, *Swenson v. Bostelmann*, 3:20-CV-459 (W.D. Wis. May 18, 2020), p. 36, ¶ 118 (In *Swenson v. Bostelmann*, several individual plaintiffs, along with the Black Leaders Organizing for Communities and Disability Rights Wisconsin, filed suit against the Wisconsin Elections Commission after the April 7 primary election. The plaintiffs’ complaint details the ways in which the Commission failed to safeguard the availability of in-person absentee voting and failed to ensure an adequate number of Election Day polling places).

⁹⁵ Human Rights Watch interview with Darrol Gibson, managing director, Leaders Igniting Transformation, Milwaukee, Wisconsin, August 3, 2020.

⁹⁶ Voting Rights Lab, “Polling Place Consolidation: Negative Impacts on Turnout and Equity,” July 2020, <https://www.votingrightslab.org/polling-place-consolidation-report> (accessed August 25, 2020).

turnout. . . . In 2016, white [majority] wards had an average of 70 percent voter turnout, compared to 37 percent turnout in Black [majority] wards, and 42 percent turnout in Hispanic [majority] wards.⁹⁷

A further statistical analysis by the Brennan Center that sought to control for the impact of the Covid-19 pandemic on voters' willingness to go to the polls, found that polling place consolidation in Milwaukee decreased turnout among non-Black voters by around 8.5 percentage points, and reduced turnout among Black voters by 10.2 percentage points.⁹⁸

Human Rights Watch interviewed registered voters in Milwaukee who were unable to vote during the April primary due to poll closures:

- Cherish, a 32-year-old Black woman in Milwaukee, said: “We went to two different high schools and the lines were just too long. I couldn’t have my elderly mom wait in a line like that. We tried two times but then we just had to go home. Oh yeah. That was bad.”⁹⁹
- Clayton, a 35-year-old Black man, said: “I didn’t vote in April. With all those lines it wasn’t worth my time.”¹⁰⁰

Others persevered and voted in person, but the experience left voters with a mix of negative (and some positive) impressions:

- Marquette University professor Robert Smith, who observed Milwaukee’s polls in April, told us: “People were very stoic and defiant in their commitment to the process. There was one location where the line to vote was four city blocks long. People brought chairs. Folks provided water. When you have these failures of government, people have to take on herculean efforts just to make it manageable.

⁹⁷ Shruti Banerjee (Demos) and Dr. Megan Gall (All Voting is Local), “Covid-19 Silenced Voters in Wisconsin,” May 14, 2020 <https://allvotingislocal.org/reports/covid-19-silenced-voters-in-wisconsin/> (accessed August 5, 2020).

⁹⁸ Peter Miller and Kevin Morris, “Voting in a Pandemic: COVID-19 and Primary Turnout in Milwaukee, Wisconsin,” SSRN, June 25, 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3634058 (accessed August 20, 2020).

⁹⁹ Human Rights Watch interview with Cherish, 32-year-old Black Milwaukee resident, Milwaukee, Wisconsin, August 6, 2020.

¹⁰⁰ Human Rights Watch interview with Clayton, 35-year-old Black Milwaukee resident, Milwaukee, Wisconsin, August 6, 2020 (pseudonym).

As much as that was a moment of abuse, it was also a moment of amazing courage.”¹⁰¹

- Sheila, a 54-year-old Black woman, said: “I mean what they did in April was just ridiculous. You know what I didn’t like besides those lines? All those police cars parked outside. I mean that was terrible.”¹⁰²
- “It took me like 3-4 hours. I was at Washington [High School] waiting in that line. There wasn’t any social distancing and people weren’t wearing masks, but I hung in there because something’s gotta change and I mean I gotta [vote] to make it happen,” 41-year-old Brenda told us.¹⁰³
- “Me and two friends were dropping off clean pens and gloves to people. We saw lines wrapped around the block,” said Iuscely Villareal, civic engagement and field manager for Wisconsin Voices.¹⁰⁴
- Molly Collins, advocacy director for the ACLU of Wisconsin, said: “It was really sad. People leaving when they hear the line is two hours long. One woman waited two-and-a-half hours in line and was told she couldn’t vote. But at the same time, every poll worker was trying to do their best. People were bringing chairs from nearby houses. People were sending pizzas to people in line. We saw people trying. We also saw how government and the courts failed those people.”¹⁰⁵
- “It was a travesty. A slap in the face to the voters to be put in an uncompromising situation with long lines and risk of coronavirus,” said 66-year-old James Nelson.¹⁰⁶

In other locations near Milwaukee, voting was uncrowded and uneventful. In Wauwatosa, a city that borders Milwaukee with a population of over 46,000 that is 86 percent white, polling locations were mostly empty.¹⁰⁷ In Germantown, with a population of just less than

¹⁰¹ Human Rights Watch interview with Professor Robert Smith, director, Center for Urban Research, Teaching and Outreach, Marquette University, Milwaukee, Wisconsin, July 29, 2020.

¹⁰² Human Rights Watch interview with Sheila, 54-year-old Black Milwaukee resident, Milwaukee, Wisconsin, August 6, 2020.

¹⁰³ Human Rights Watch interview with Brenda, 41-year-old Black Milwaukee resident, Milwaukee, Wisconsin, August 6, 2020 (pseudonym).

¹⁰⁴ Human Rights Watch interview with Iuscely Flores Villareal, civic engagement and field manager, Wisconsin Voices, Milwaukee, Wisconsin, August 7, 2020.

¹⁰⁵ Human Rights Watch interview with Molly Collins, advocacy director, ACLU of Wisconsin, Milwaukee, Wisconsin, July 22, 2020.

¹⁰⁶ Human Rights Watch interview with James Nelson, 66-year-old Black Milwaukee resident, Milwaukee, Wisconsin, August 6, 2020.

¹⁰⁷ First Amended Complaint, *Swenson v. Bostelmann*, 3:20-CV-459 (W.D. Wis. May 18, 2020), p. 38, ¶ 126.

20,000 that is 90 percent white, there were no lines at all on Election Day.¹⁰⁸ Thus, voters faced starkly different opportunities to safely cast a ballot depending on where they lived and their race.

Apart from problems with the poll closures on election day, some voters experienced limited access to in-person and mail-in absentee voting. Wisconsin law allows voters to return their absentee ballots by mail or deliver them in person to an early voting station in the state.¹⁰⁹ For this report, Human Rights Watch interviewed voters who used the absentee process in April and August without incident:

- Miles, a 45-year-old Black Milwaukeean, said: “I’ve never had any trouble voting [early by absentee]. I get those texts telling me where to go and reminding me to vote early.”¹¹⁰
- “I didn’t have any trouble voting. Even in April—I went right down there and got it done [gesturing toward the early voting location at Milwaukee’s Midtown Shopping Center],” said 67-year-old Charles.¹¹¹
- William, a 50-year-old voter with a disability¹¹² who walked with difficulty using a cane, said: “I didn’t have any problems in April. I voted [absentee] by mail. And for this [August] election, I’ve got my vote by mail ballot. . . . I don’t do a lot of moving around so either it’s got to be close by or by mail, otherwise I can’t get it done.”¹¹³

¹⁰⁸ Ibid.

¹⁰⁹ Any qualified elector (US citizen, 18 years of age, who has resided in the district in which he or she intends to vote for at least 28 days) who registers to vote is eligible to request an absentee ballot. Under Wisconsin law, voters do not need a reason or excuse, such as being out of town on Election Day, to vote absentee.

¹¹⁰ Human Rights Watch interview with Miles, 45-year-old Black Milwaukee resident, Milwaukee, Wisconsin, August 6, 2020 (pseudonym).

¹¹¹ Human Rights Watch interview with Charles, 67-year-old Black Milwaukee resident, Milwaukee, Wisconsin, August 6, 2020.

¹¹² Pursuant to Wis. Stat. § 5.25(4)(a), each polling place must be accessible to all individuals with disabilities. The Wisconsin Elections Commission must ensure that the voting system used at each polling place will permit all individuals with disabilities to vote without the need for assistance and with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place. The municipal clerk or board of election commissioners of a municipality in which an elderly or handicapped elector resides may reassign the elector to a polling place within the municipality other than the polling place serving the elector’s residence in order to permit the elector to utilize a polling place that is accessible to elderly or handicapped individuals. Wis. Stat. § 5.25(5)(b). Also, any individual with a disability may notify a municipal clerk that he or she intends to vote at a polling place on election day and may request that a specific type of accommodation be provided that will facilitate his or her voting. Wis. Stat. § 5.36.

¹¹³ Human Rights Watch interview with William, 50-year-old Black Milwaukee resident, Milwaukee, Wisconsin, August 6, 2020 (pseudonym).

However, there were serious problems in April with both in-person and mail-in absentee voting. For example, all three of the City of Milwaukee’s in-person absentee voting locations closed abruptly on March 23, 2020, following an announcement made just the day before.¹¹⁴ Subsequently, the city reopened one of these voting sites, but made it available only as a drive-through, thereby limiting it to those voters with access to a car.¹¹⁵ A lawsuit alleges that absentee voting locations were poorly publicized, leaving many voters confused or simply unaware of early voting options in the city.¹¹⁶

Absentee voting problems during the April election were covered in detail, including with testimonies from voters themselves, by the League of Women Voters in a May 2020 report:

[N]ever have we been contacted by so many voters—more than one hundred—who were disenfranchised because of the way the election was carried out. Stories have poured in from across the state. . . . While each of these voter’s stories and individual experiences are different, one thing was true for the vast majority of voters who responded to our survey: approximately 75% of them requested an absentee ballot that never arrived.¹¹⁷

In April’s primary, 150,000 absentee ballots—about 10 percent of all ballots sent—were either not returned or rejected due to errors. One voter told us:

My mom doesn’t even want to request another ballot because they never sent it. A lot of folks are older voters and they rely on absentee ballots. A lot of people are skeptical now. April was a mess.¹¹⁸

¹¹⁴ First Amended Complaint, *Swenson v. Bostelmann*, 3:20-CV-459 (W.D. Wis. May 18, 2020) p. 33, ¶ 106.

¹¹⁵ First Amended Complaint, *Swenson v. Bostelmann*, 3:20-CV-459 (W.D. Wis. May 18, 2020).

¹¹⁶ First Amended Complaint, *Swenson v. Bostelmann*, 3:20-CV-459 (W.D. Wis. May 18, 2020).

¹¹⁷ Wisconsin League of Women Voters, “Wisconsin Election Protection: 2020 Spring Election Report,” May 11, 2020, <https://drive.google.com/file/d/1VaVDxfiiAr-UrVYzZ2DExeuAwCbviTha/view> (accessed August 26, 2020).

¹¹⁸ Human Rights Watch interview with Angela Lang, executive director, Black Leaders Organizing for Communities, Milwaukee, Wisconsin, July 27, 2020.

In combination with such official failures, Covid-19 presented its own chilling effect, especially for Black and Latinx voters already disproportionately affected by the disease.¹¹⁹ Ahead of the August 11 election, a Latinx voting rights advocate told us:

You know it's the people in 53204 and 53215—those ZIP codes hit the hardest by Covid—those are the Latinx people feeling vulnerable. People are not going out because they are scared about this virus. Add to that they don't even know where the polling locations are going to be—and it's just days before the election. If they go to their regular location and it's closed, people will just give up. It's even harder because the language is just in English, information is only in English.¹²⁰

Reflecting on the April primary, a Black voting rights advocate told us:

Given the pandemic, voters already had to shift how they were thinking about voting. We know that the virus is disproportionately affecting our community, and now we see that our election system was not prepared. . . . Hopefully now there are lessons learned.¹²¹

Lessons Learned

Wisconsin election officials appear to have learned some lessons from April. For example, the five major cities of Milwaukee, Racine, Green Bay, Kenosha, and Madison applied for and received a grant for US\$6.3 million from the Center for Tech and Public Life to ensure “effective,” “resilient,” and “adaptive” election administration during the Covid-19

¹¹⁹ See, for example, Christina Cassidy and Gretchen Elkhe, “Black Voters Weighed History and Health in Wisconsin Election Amid Covid-19 Pandemic,” Associated Press, https://madison.com/wsj/news/local/govt-and-politics/black-voters-weighed-history-health-in-wisconsin-election-amid-covid-19-pandemic/article_27bc1e11-b75f-5ca8-a602-ef43a32b9311.html (accessed August 25, 2020).

¹²⁰ Human Rights Watch interview with Iuscely Flores Villareal, civic engagement and field manager, Wisconsin Voices, Milwaukee, Wisconsin, August 7, 2020.

¹²¹ Human Rights Watch interview with Angela Lang, executive director, Black Leaders Organizing for Communities, Milwaukee, Wisconsin, July 27, 2020.

pandemic.¹²² The City of Milwaukee appointed Claire Woodall-Vogg as executive director of its Elections Commission, who issued a memorandum on voting and racial equity.¹²³ The Wisconsin Elections Commission has also approved spending \$7.2 million in federal CARES Act funding, including a \$4.1 million block grant program to help local election officials and voters prepare for Fall 2020 elections amid the Covid-19 pandemic.

The increase in funds is encouraging; and on August 11, Milwaukee held elections with 168 of 180 polls open; with other cities in Wisconsin also providing larger numbers of in-person polling stations.¹²⁴ Looking toward November some local advocates are cautious in their optimism:

My biggest thing is execution. At the end of the day, are they still going to say they're looking for poll workers? I'm encouraged that there is some kind of planning happening.... But I'm waiting to see how it's all executed.¹²⁵

Darrol Gibson, managing director of Leaders Igniting Transformation in Milwaukee, said:

What to say about all this money that election officials are getting? Are we up in bus ads? Are we up in the community everywhere we need to be? How about putting ads in that say, "the process hasn't been the best but we're going to do better this time?"¹²⁶

¹²² Center for Tech and Civic Life, "CTCL Partners with 5 Wisconsin Cities to Implement Safe Voting Plan," July 7, 2020, <https://www.techandcivicle.org/wisconsin-safe-voting-plan/> (accessed August 22, 2020); Shamane Mills, "Wisconsin Cities Get Grant Funds for Elections," *Wisconsin Public Radio*, July 9, 2020, <https://urbanmilwaukee.com/2020/07/09/wisconsin-cities-get-grant-funds-for-elections-during-pandemic/> (accessed August 22, 2020).

¹²³ Cavalier Johnson, "Statement of Common Council President Cavalier Johnson on the Confirmation of Claire Woodall-Vogg," July 7, 2020, https://urbanmilwaukee.com/wp-content/uploads/2020/07/07_07-Statement-on-confirmation-of-Claire-Woodall-Vogg-with-report.pdf (accessed August 25, 2020).

¹²⁴ See, for example, Briana Reilly, "Wisconsin Cities Secure More Polling Sites, Workers for August 11 Primary," *The Cap Times*, August 10, 2020, https://madison.com/ct/news/local/govt-and-politics/wisconsin-cities-secure-more-polling-sites-workers-for-aug-11-primary/article_67916706-e872-509c-9df4-9d572787c676.html (accessed August 25, 2020).

¹²⁵ Human Rights Watch interview with Angela Lang, executive director, Black Leaders Organizing for Communities, Milwaukee, Wisconsin, July 27, 2020.

¹²⁶ Human Rights Watch interview with Darrol Gibson, managing director, Leaders Igniting Transformation, Milwaukee, Wisconsin, August 3, 2020.

Angela Lang, executive director of Black Leaders Organizing our Communities, said:

We're concerned about voter intimidation at the polls—from a racialized lens. If the lines are long, I fear people hurling racialized insults at people standing in line. We need nonpartisan election observers to stop this kind of behavior. Even if it's isolated incidents, it shouldn't happen.¹²⁷

Additional Steps Needed to Protect the Right to Vote in Wisconsin

Looking toward the November election and beyond, state and local officials have more to do to ensure the human right to vote in Wisconsin. The state needs to **invest in absentee voting** to overcome the legacy of the April election. Voters are concerned that the state may have difficulties processing the expected increase in ballots in November, especially since there were problems in the April primary. Wisconsin's nearly 1,900 municipal clerks are concerned that they do not have the resources necessary to timely process the ballots. This is especially true since Wisconsin law requires the ballots only be counted starting on election day.¹²⁸

Ensuring voter confidence in the absentee process, and ensuring municipal clerks can give **quick and effective notification to voters of problems, as well as an opportunity to "cure" their ballots**, are key challenges for the state in November and beyond.¹²⁹ An election that fully protects the human right to vote in Wisconsin should ensure timely delivery of all absentee ballots requested, extend the deadline for receipt of absentee ballots, waive the requirement that absentee ballots be signed by a witness, ensure municipal clerks have more time, equipment and staff to process returned ballots and provide statewide equitable and consistent remedies to cure faulty ballots received.

¹²⁷ Human Rights Watch interview with Angela Lang, executive director, Black Leaders Organizing for Communities, Milwaukee, Wisconsin, July 27, 2020.

¹²⁸ Human Rights Watch interview with Eileen Newcomer, voter education coordinator, League of Women Voters, Madison, Wisconsin, July 28, 2020.

¹²⁹ The Wisconsin Voting Rights Coalition has produced an advocacy checklist focusing on municipal clerks, who have important discretionary powers to address several of the problems highlighted in this report. Wisconsin Voting Rights Coalition, "Municipal Advocacy Toolkit," 2020, https://docs.google.com/document/d/1sZabGuk5djKo_XqnRJ7i7sDwMDEZLvzNJRkjejVFH9Q/edit (accessed August 5, 2020).

Voters in **nursing homes and in residential care facilities** also require special attention. On June 24, 2020, the Wisconsin Elections Commission determined that Special Voting Deputies will not be sent to nursing homes and care facilities to administer voting for the remaining elections in 2020. Residents of facilities normally served by these deputies will instead be mailed absentee ballots for each remaining 2020 election.¹³⁰ There were problems with ballots not being counted that originated from nursing homes in April, however. Milwaukee Elections Commission Executive Director Woodall-Vogg had heard that in the Milwaukee suburb of Oconomowoc the “eight percent [ballot] rejection rate was [allegedly] almost exclusively due to care facilities.”¹³¹ In addition, while some municipal clerks worked to get ballots to **quarantined and people with Covid-19**, this is largely left to clerks to manage on their own.¹³² The state should consider training a small cadre of workers who could assist such voters, including those in nursing homes.

Voters, probation officers, sheriffs, and courts need to be better informed about the voting rights of people **who have been arrested**. Individuals with a felony conviction become eligible to vote again only when they complete the terms of their sentence, including any term of probation or extended supervision.¹³³ This disenfranchises an estimated 68,000 people in Wisconsin. Human Rights Watch interviewed one such person, a 37-year-old Black Milwaukeean named James, who, when asked if he would agree to be interviewed

¹³⁰ Many nursing home and care facility residents rely on assistance from others to vote. Because most nursing homes and care facilities are not allowing guests at this time, some voters may require assistance from care facility staff to vote. Facility administrators and staff are able to assist residents in filling out their ballots or certificate envelopes and assist in completing voter registration forms and absentee requests, witness ballots, or sign a special certificate envelope (EL-122sp). The Wisconsin Elections Commission created two documents, a letter for facility administrators and a training overview document, to distribute to care facilities to make absentee voting and registering to vote as smooth as possible for their facility and residents.

¹³¹ Human Rights Watch interview with Claire Woodall-Vogg, executive director, Milwaukee Election Commission, Milwaukee, Wisconsin, August 7, 2020.

¹³² Daphne Chen, Elizabeth Mulvey, Dana Brandt, and Catharina Felke, “These Are the Clerks Who Carried Wisconsin Through its April Pandemic Election. Here Are Their Fears About November,” *Milwaukee Journal Sentinel*, *PBS Frontline*, and *Columbia Journalism Investigation*, <https://www.pbs.org/wgbh/frontline/article/coronavirus-election-wisconsin-clerks-november-ballots/> (accessed September 15, 2020) (“In Sheboygan, first-time Clerk Peggy Fischer dropped off ballots on the porches of residents who were quarantined, waited while they filled the ballots out and signed as their witness.”).

¹³³ Wis. Stat. § 6.03(1)(b), any person convicted of treason, felony or bribery may not vote unless the person's right to vote is restored through a pardon. This includes individuals on probation or parole for a felony conviction or anyone convicted of a felony who has not yet completed the terms of their sentence, including incarceration and supervision. For a detailed discussion of the harmful impacts of probation and parole in Wisconsin, see Human Rights Watch, *Revoked: How Probation and Parole Feed Mass Incarceration in the United States* (New York: Human Rights Watch, 2020), <https://www.hrw.org/report/2020/07/31/revoked/how-probation-and-parole-feed-mass-incarceration-united-states>.

about “the right to vote” in Wisconsin, told us: “I can’t even vote. I’m a convicted felon and I’m on parole. I don’t even have that right to vote.”¹³⁴ Human Rights Watch urges Wisconsin to change its laws to enfranchise these voters.¹³⁵ Even under existing law, there is more the state should do to help people understand when and how they can legally return to voting. One voting rights advocate in Milwaukee told us:

I can’t tell you how many times we’re the ones to inform people that they actually have the right to vote. We ask: “Do you mind me asking you if you’re ‘off paper?’ [a term used in Wisconsin to signify an individual’s supervision term has ended]” The state needs to do much more on restoration of voting rights. . . . They make a big deal that you lose your voting rights, but they don’t make a big deal when the rights are restored.¹³⁶

In addition, at least half of the approximately 12,000 people in **Wisconsin’s jails** retain their voting rights, but the state has not lived up to its responsibility to ensure these rights in recent elections.¹³⁷ A July 2020 report by the groups All Voting is Local and the ACLU of Wisconsin found that 32 counties do not have a written policy that specifies how people in jails can register to vote and cast a ballot.¹³⁸ According to Milwaukee’s Election Commission’s Executive Director Claire Woodall-Vogg:

¹³⁴ Human Rights Watch interview with James, a 37-year-old Black Milwaukee resident, Wisconsin, August 6, 2020 (pseudonym).

¹³⁵ As recently as 2019, Wisconsin legislators and advocacy groups worked to introduce Senate Bill 348 to allow people with felony convictions who have completed their sentences of incarceration to have their voting rights restored, even if they remain on probation or parole. The bill did not pass the legislature. See Talis Shelbourne, “Unlock the Vote Campaign Seeks to Restore ex-Offenders’ Voting Rights,” *Milwaukee Journal Sentinel*, September 5, 2019, <https://www.jsonline.com/story/news/local/milwaukee/2019/09/05/unlock-vote-campaigned-launched-support-ex-offenders-rights/2141868001/> (accessed August 25, 2020); Wisconsin State Legislature, “2019 Senate Bill 348,” <https://docs.legis.wisconsin.gov/2019/related/proposals/sb348> (accessed August 25, 2020).

¹³⁶ Human Rights Watch interview with Angela Lang, executive director, Black Leaders Organizing for Communities, Milwaukee, Wisconsin, July 27, 2020.

¹³⁷ American Civil Liberties Union and All Voting Is Local, “Ballots for All: Ensuring Eligible Wisconsin Voters in Jail Have Equal Access to Voting,” July 2020, https://allvotingislocal.org/wp-content/uploads/2020/07/ACLU-AVL-2020_Jail-Voting-Access-Report-FINAL-07012020.pdf (accessed August 25, 2020) (stating “At any given moment, there are about 12,500 Wisconsinites in county jails. More than half of those in jail have yet to be convicted of a crime, but are forced to remain in jail because they are too poor to post cash bail.”).

¹³⁸ ACLU and All Voting Is Local, “Ballots for All: Ensuring Eligible Wisconsin Voters in Jail Have Equal Access to Voting,” July 2020, https://allvotingislocal.org/wp-content/uploads/2020/07/ACLU-AVL-2020_Jail-Voting-Access-Report-FINAL-07012020.pdf (accessed August 25, 2020).

I've always struggled with how to reach eligible voters in the jail. . . . There's nothing in state law that allows us to set up the jail as a polling place. Local government hasn't yet figured this out.¹³⁹

Another key concern in the run-up to November's election is the need to ensure the voting **rights of people who do not have a stable address** or who may have been recently evicted—a particularly likely scenario given the extremely difficult economic circumstances brought about by the Covid-19 pandemic.¹⁴⁰ For example, in Milwaukee, a voting rights advocate said:

This pandemic is an economic crisis. With absentee ballots for the primary, and with rent being due, people don't know if they'll be in the same housing when the election comes around.¹⁴¹

A voter we interviewed for this report echoed this concern. Describing an ongoing dispute with his landlord over electrical wires hanging from the ceiling in his apartment, and concern he has about a neighbor whose plumbing consistently overflows, including into the voter's apartment, he told us he doesn't know if he'll be in the same place come November.¹⁴² Low-income voters in Wisconsin will face additional challenges, including with the state's restrictive voter ID laws.¹⁴³

¹³⁹ Human Rights Watch interview with Claire Woodall-Vogg, executive director, Milwaukee Election Commission, Milwaukee, Wisconsin, August 7, 2020.

¹⁴⁰ The Aspen Institute estimates some 360,000 evictions are likely to occur in Wisconsin before year's end. Katherine Lucas McKay, Zach Neumann, and Sam Gilman, "20 Million Renters Are at Risk of Eviction; Policymakers Must Act Now to Mitigate Widespread Hardship," Aspen Institute, June 19, 2020, <https://www.aspeninstitute.org/blog-posts/20-million-renters-are-at-risk-of-eviction/> (accessed August 24, 2020).

¹⁴¹ Human Rights Watch interview with Angela Lang, executive director, Black Leaders Organizing for Communities, Milwaukee, Wisconsin, July 27, 2020.

¹⁴² Human Rights Watch interview with Willy, a 42-year-old Black resident of Milwaukee, Milwaukee, Wisconsin, August 6, 2020.

¹⁴³ See, for example, Kenneth Mayer and Michael DeCrescenzo, "Estimating the Effect of Voter ID on Nonvoters in Wisconsin in the 2016 Presidential Election," University of Wisconsin Madison, September 25, 2017, <https://elections.wisc.edu/wp-content/uploads/sites/483/2018/02/Voter-ID-Study-Release.pdf> (accessed September 8, 2020) ("The burdens of voter ID fell disproportionately on low-income and minority populations. Among low-income registrants (household income under \$25,000), 21.1% were deterred, compared to 7.2% for those over \$25,000. Among high-income registrants (over \$100,000 household income), 2.7% were deterred. 8.3% of white registrants were deterred, compared to 27.5% of African Americans.").

Human Rights Watch urges Wisconsin election officials to make arrangements for this possibility and to ensure that voters are aware that residency for voting purposes is different from residency for other purposes, allowing registration at a half-way house or other facility.¹⁴⁴ Wisconsin should consider other innovations such as allowing registration at general delivery postal addresses to accommodate a likely increase in voters without a stable address.

Wisconsin should act to ensure the right to vote particularly for Black, Latinx, and Native American voters, providing **information about and access to in-person early voting and election day polling places** in languages these populations can understand.¹⁴⁵ Days before the August 11 election, Woodall-Vogg told Human Rights Watch how the city of Milwaukee had put increased effort into recruiting poll workers, and concluded:

The most important thing is that we continue to preserve as many in-person voting locations as possible. The populations [referring to Black, Native American, and Latinx populations] have a very justified mistrust of government; wanting the visual confirmation that their vote will count.¹⁴⁶

¹⁴⁴ Wisconsin Elections Commission, “Ex-Felons and Incarcerated Voters,”

https://elections.wi.gov/sites/default/files/publication/154/ex_felons_incarcerated_voters_wi_voter_guide_pdf_42117.pdf (accessed August 22, 2020).

¹⁴⁵ See, for example, Patricia McKnight, “Wisconsin’s April Primary Was a Mess. Here are Five Changes Officials Hope Will Make the Next Election Smoother,” *Milwaukee Journal Sentinel*, <https://www.jsonline.com/story/news/solutions/2020/07/23/wisconsin-officials-make-changes-upcoming-elections/5472832002/> (accessed August 22, 2020).

¹⁴⁶ Human Rights Watch interview with Claire Woodall-Vogg, executive director, Milwaukee Election Commission, Milwaukee, Wisconsin, August 7, 2020.

III. Pennsylvania Elections During the Covid-19 Pandemic

Philadelphia was a shit-show for the mail-in ballot.

— Daren, Philadelphia, August 27, 2020.

Voting in Pennsylvania

Before 2019, absentee voting in Pennsylvania was only permitted under specific circumstances.¹⁴⁷ On October 31, 2019, the state passed a new law, Act 77, which greatly expanded the ability for citizens to vote by mail.¹⁴⁸ The law created a new form of mail-in ballot that was almost identical to the state's pre-existing absentee ballots, except that mail-in ballots did not require the voter to explain why they could not vote in person. The timing of the law forced election officials to address a larger volume of mail-in ballots than expected. "They were not anticipating Covid when they passed the bill to allow mail-in voting," a law professor and Pennsylvania voter told Human Rights Watch.¹⁴⁹

Normally the process for changing or consolidating locations for in-person voting in Pennsylvania is lengthy. The county court maintains authority over the number of election districts within a county and each district has a designated polling place, chosen by the county board of elections.¹⁵⁰ To alter the number of polling locations within a county, the county board of elections must petition the county court to create additional locations or consolidate and reduce polling locations.¹⁵¹

¹⁴⁷ Pennsylvania State Legislature, Constitution of the Commonwealth of Pennsylvania, Article VII, <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/00/00.HTM> (accessed August 31, 2020).

¹⁴⁸ Governor Tom Wolf, "Governor Wolf Signs Historic Election Reform Bill Including New Mail-in Voting," October 31, 2019, <https://www.governor.pa.gov/newsroom/governor-wolf-signs-election-reform-bill-including-new-mail-in-voting/> (accessed September 1, 2020).

¹⁴⁹ Human Rights Watch interview with Anil Kalhan, Drexel law school professor and voter, Philadelphia, Pennsylvania, September 1, 2020.

¹⁵⁰ Pennsylvania State Legislature, Statutes of Pennsylvania, Title 25, Section 2702, <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=25> (accessed September 1, 2020).

¹⁵¹ Pennsylvania State Legislature, Statutes of Pennsylvania, Title 25, Section 2742, <https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=25> (accessed September 1, 2020).

Originally scheduled for April 28, 2020, Pennsylvania’s primary approached as Covid-19 cases began to rise across the state. On March 6, Pennsylvania’s Governor, Tom Wolf, issued a Proclamation of Disaster Emergency.¹⁵² On March 27, Wolf signed into law Senate Bill 422, which rescheduled the primary election and allowed polling places to be consolidated at an accelerated pace without the normally required court approval. The new law provided counties a “quicker process” for locating new polling locations or consolidating polling sites and eased rules around staffing at polling centers.¹⁵³ In addition, the secretary of the commonwealth released guidance for county boards of elections on polling place consolidation, notice to citizens, and social-distancing at the polls.¹⁵⁴ A press release issued by the governor on March 27 named Covid-19 as a specific reason for the changes.¹⁵⁵

While Bill 422 allowed for consolidation, it required that the consolidation not result in more than a 60 percent reduction of polling place locations in each county. A subsequent press release reiterated these points and potential, if vague, remedies the counties could use, stating: “Counties must notify voters of polling place changes, and may do so in a variety of ways.”¹⁵⁶

The secretary of the commonwealth guidance and the provisions of the new law relating to polling place consolidation applied to Pennsylvania’s primary only. Provisions of the law enabling reassignment of poll workers may be used in future elections. Experts predict

¹⁵² Pennsylvania Emergency Management Agency, “Proclamation of Disaster Emergency – Coronavirus (COVID-19),” March 6, 2020, <https://www.governor.pa.gov/wp-content/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf> (accessed August 16, 2020).

¹⁵³ David Thornburgh, “Committee of Seventy, General Assembly and Governor Approve Bill to Move 2020 Primary,” Committee of Seventy, March 27, 2020, <https://seventy.org/media/press-releases/2020/03/27/general-assembly-and-governor-approve-bill-to-move-2020-primary> (accessed August 16, 2020).

¹⁵⁴ Pennsylvania Department of State, “Election Operations During Covid-19,” April 28, 2020, https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Documents/PADOS_ElectionOperationsDuringCOVID19.pdf (accessed August 16, 2020).

¹⁵⁵ Governor Tom Wolf, “Gov. Wolf Signs COVID-19 Response Bills to Bolster Health Care System, Workers, and Education and Reschedule the Primary Election,” March 27, 2020, <https://www.governor.pa.gov/newsroom/gov-wolf-signs-covid-19-response-bills-to-bolster-health-care-system-workers-and-education-and-reschedule-the-primary-election/> (accessed August 16, 2020).

¹⁵⁶ Commonwealth of Pennsylvania, “PA Primary Voters Can Vote by Mail-In Ballot or In-Person at Polling Places in All Counties on June 2,” PA Media, May 9, 2020, <https://www.media.pa.gov/pages/State-details.aspx?newsid=382> (accessed August 16, 2020).

polling place consolidation is likely to occur in upcoming elections, but how many will require court approval is unknown.¹⁵⁷

Voting in the primary election was delayed five weeks from April 28 to June 2.¹⁵⁸ In the lead-up to the primary, the Democratic and Republican parties and nonpartisan civil society groups encouraged Pennsylvanians to vote by mail.¹⁵⁹ The state launched an awareness raising campaign about the date change and likewise encouraged voters to apply for mail-in ballots.¹⁶⁰ The governor's office issued a statement outlining plans to send 4.2 million postcards to residents reminding them of the new registration deadline and explaining the vote-by-mail option.¹⁶¹ Election officials ran public service announcements on radio, TV, social media, and streaming services.

Prior to 2000, Pennsylvania disenfranchised people in custody for felony convictions and those with felony convictions who had not previously registered to vote until five years after their release from prison.¹⁶² The Sentencing Project estimated in 2016 that these laws took away the voting rights of some 50,000 Pennsylvanians, about half of whom were Black.¹⁶³

¹⁵⁷ Human Rights Watch interview with Adam Bonin, Pennsylvania election law attorney, Philadelphia, Pennsylvania, September 1, 2020.

¹⁵⁸ Marina Pitofsky, "Pennsylvania to delay primary election as coronavirus spreads," *The Hill*, March 25, 2020, <https://thehill.com/homenews/campaign/489591-pennsylvania-to-delay-primary-election-as-coronavirus-spreads> (accessed August 31, 2020).

¹⁵⁹ Stanford-MIT Healthy Elections Project, "The 2020 Pennsylvania Primary Election," June 25, 2020, <https://healthyelections.org/sites/default/files/2020-07/Pennsylvania%20Pre-%20and%20Post-Mortem%20Memo.pdf>, page 4 (accessed September 8, 2020).

¹⁶⁰ Commonwealth of Pennsylvania, "Poll Workers Needed," Votes PA, <https://www.votespa.com/Pages/default.aspx> (accessed September 1, 2020).

¹⁶¹ Governor Tom Wolf, "Gov. Wolf Encourages Voters to Apply for a Mail-in Ballot," April 22, 2020, <https://www.governor.pa.gov/newsroom/gov-wolf-encourages-voters-to-apply-for-a-mail-in-ballot/> (accessed September 1, 2020). The postcards did not include information about polling location changes.

¹⁶² Commonwealth of Pennsylvania, "Information for People who Have Been Convicted of a Felony: Even if You Have Been Convicted of a Felony or Misdemeanor or are in Pretrial Detention you may be Able to Vote," Votes PA, <https://www.votespa.com/Register-to-Vote/Pages/Convicted-Felon,-Misdemeanant-or-Pretrial-Detainee.aspx> (accessed August 30, 2020).

¹⁶³ Christopher Uggen, Ryan Larson, and Sarah Shannon, "6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016," The Sentencing Project, October 2016, <https://felonvoting.procon.org/wp-content/uploads/sites/48/sentencing-project-felony-disenfranchisement-2016.pdf> (accessed August 30, 2020).

Today, individuals currently incarcerated with a felony conviction and those convicted of violating election laws in the previous four years may not vote in the state of Pennsylvania. However, people released from custody with felony convictions, those who are convicted of misdemeanors, and all people held in jails pre-conviction retain the right to vote. Once registered, jailed voters need to request an absentee ballot to vote. Both registration and requesting an absentee ballot are commonly done via the internet and may pose a challenge for some confined people who do not have internet access.¹⁶⁴

Poll Consolidation and Changes in the June Primary

Philadelphia County, home to the state's largest city, had a lower turnout in the 2020 primaries compared to 2016. According to the *Philadelphia Inquirer*, 32.4 percent of registered voters cast ballots, down from 39 percent in 2016.¹⁶⁵ Of those who voted, 50.2 percent did so by mail, 47.9 percent were in person, and 1.9 percent voted with a provisional ballot.¹⁶⁶ Other parts of the state, for example Allegheny and Bucks counties, also reported lower voter turnout compared to 2016,¹⁶⁷ but the drop off in numbers was not as great as in Philadelphia County.

Like in other states, Covid-19 posed a challenge for election officials across Pennsylvania. The pandemic made it harder to recruit polling place volunteers (who tend to be older and thus more vulnerable to severe complications from Covid-19 than the population at large),¹⁶⁸ required more spacious polling locations to help voters and workers maintain

¹⁶⁴ Pennsylvania Department of State, "Voting Rights of Convicted Felons, Convicted Misdemeanants and Pretrial Detainees," https://www.votespa.com/Register-to-Vote/Documents/Convicted_felon_brochure.pdf (accessed August 30, 2020).

¹⁶⁵ Jonathan Lai, *Philadelphia Inquirer*, Twitter feed, June 17, 2020, <https://twitter.com/Elaijuh/status/1273316075602616322?s=20> (accessed September 1, 2020).

¹⁶⁶ Jonathan Lai, *Philadelphia Inquirer*, Twitter feed, June 17, 2020, <https://twitter.com/Elaijuh/status/1273316075602616322?s=20> (accessed September 1, 2020).

¹⁶⁷ Stanford-MIT Healthy Elections Project, "The 2020 Pennsylvania Primary Election," June 25, 2020, <https://healthyelections.org/sites/default/files/2020-07/Pennsylvania%20Pre-%20and%20Post-Mortem%20Memo.pdf> (accessed September 8, 2020), p. 4.

¹⁶⁸ Jonathan Lai, "Pennsylvania allows big reduction in poll workers," *Philadelphia Inquirer*, May 7, 2020, <https://www.inquirer.com/politics/election/pennsylvania-2020-primary-poll-worker-reduction-20200507.html> (accessed August 16, 2020).

social distancing,¹⁶⁹ and necessitated money to acquire additional personal protective equipment and sterilization products.¹⁷⁰ Several of these concerns served as the impetus for the legislation to make it much easier to close and consolidate in-person voting locations.¹⁷¹

Lisa Deeley, chair of the Philadelphia Board of City Commissioners, which oversees poll workers, told *The Philadelphia Inquirer*: “Poll worker recruitment is always hard, but it is especially hard when whole election boards are telling us that they will not be working due to Covid-19, like they are doing this election.”¹⁷²

A local voting rights activist told Human Rights Watch that younger, less experienced poll workers will be needed in November, but also their inexperience should be planned for ahead of November. “A lot of the polls are run by older people who had been doing that type of work for a while,” he said. “With Covid-19, a lot of younger people without the experience or the training had to step in. They will need to do it again next time around as Covid is not going anywhere.”¹⁷³

On May 18, the Philadelphia Board of Electors sought approval to consolidate additional polling places beyond the 60 percent allowed by the new legislation.¹⁷⁴ Nine of the eleven proposed consolidations cited poll worker safety as a critical concern.¹⁷⁵ In all, 190 polling

¹⁶⁹ Jonathan Lai, “Philly will have way fewer polling places,” *Philadelphia Inquirer*, May 12, 2020, <https://www.inquirer.com/politics/election/philadelphia-new-polling-places-2020-primary-20200512.html> (accessed August 16, 2020).

¹⁷⁰ Emily Previti and Katie Meyer, “How to vote during the pandemic in Pennsylvania,” *PA Post*, May 14, 2020, <https://papost.org/2020/05/14/how-to-vote-during-the-pandemic-in-pennsylvania/> (accessed August 16, 2020).

¹⁷¹ Emily Previti, “Gov. Wolf signs bill delaying primary until June 2,” *PA Post*, March 27, 2020, <https://papost.org/2020/03/27/gov-wolf-signs-bill-delaying-primary-until-june-2/> (accessed August 16, 2020).

¹⁷² Jonathan Lai, “Pennsylvania allows big reduction in poll workers,” *Philadelphia Inquirer*, May 7, 2020, <https://www.inquirer.com/politics/election/pennsylvania-2020-primary-poll-worker-reduction-20200507.html> (accessed August 16, 2020).

¹⁷³ Human Rights Watch interview with Daren, Black voting rights activist, Philadelphia, Pennsylvania, August 27, 2020 (pseudonym).

¹⁷⁴ Office of the Philadelphia City Commissioners, “Notice: Special Meeting of the Board of Elections,” https://www.philadelphivotes.com/en/home/item/1811-special_meeting_of_the_board_of_elections (accessed August 16, 2020).

¹⁷⁵ Ibid., Office of the Philadelphia City Commissioners, “Polling Changes Spreadsheet,” <https://files.philadelphivotes.com/announcements/5->

places out of 831 used in previous elections remained open for the June 2 primary election, representing more than a 75 percent reduction in polling places.¹⁷⁶

As ordinary notice requirements were waived, many voters did not know about changes to polling locations.¹⁷⁷ Voters who were able to find their new or consolidated polling locations had lengthy travel times¹⁷⁸ and encountered long lines, crowding, greater risk of exposure to Covid-19, and confusion.¹⁷⁹

Some voters told Human Rights Watch that people were not informed of changes before June 2, election day. “On the election board’s website they would give out some general info and they ran some ads about upcoming changes,” one local activist said. “But for some people in the neighborhoods they learn things by word of mouth. This is especially true if you are from a disenfranchised community. In that case, you didn’t know where to go.”¹⁸⁰ Pennsylvania Department of State officials acknowledged that in late May:

[T]here was no message or indication on the website alerting voters that polling place locations were changing, and that they should check back at a

18_POLLING_CHANGES.xlsx#_ga=2.94757916.1240250246.1596476385-153293628.1596314192 (accessed September 15, 2020).

¹⁷⁶ Jonathan Lai, “Philly will have way fewer polling places for next month’s primary because of coronavirus. Find yours here,” *Philadelphia Inquirer*, May 12, 2020, <https://www.inquirer.com/politics/election/philadelphia-new-polling-places-2020-primary-20200512.html> (accessed August 16, 2020).

¹⁷⁷ Emily Previti and Katie Meyer, “With Pa.’s polling place changes voters might get conflicting information about where to go,” *PA Post*, May 23, 2020, <https://papist.org/2020/05/23/with-pa-s-polling-place-changes-voters-might-get-conflicting-information-on-where-to-go-june-2/> (accessed August 16, 2020); Emily Previti, “Gov. Wolf signs bill delaying primary until June 2,” *PA Post*, March 27, 2020, <https://papist.org/2020/03/27/gov-wolf-signs-bill-delaying-primary-until-june-2/> (accessed August 16, 2020).

¹⁷⁸ Jonathan Lai, “Philly will have way fewer polling places,” *Philadelphia Inquirer*, May 12, 2020, <https://www.inquirer.com/politics/election/philadelphia-new-polling-places-2020-primary-20200512.html> (accessed August 16, 2020).

¹⁷⁹ Jonathan Lai, “Philly will have way fewer polling places,” *Philadelphia Inquirer*, May 12, 2020, <https://www.inquirer.com/politics/election/philadelphia-new-polling-places-2020-primary-20200512.html> (accessed August 16, 2020); Michelle Bond et al., “Polling locations in Northwest Philly,” *Philadelphia Inquirer*, June 2, 2020, <https://www.inquirer.com/politics/election/northwest-philadelphia-voting-lines-2020-pa-primary-20200602.html> (accessed August 16, 2020).

¹⁸⁰ Human Rights Watch interview with Daren, Black voting rights activist, Philadelphia, Pennsylvania, August 27, 2020 (pseudonym).

later date. That meant the voters visiting the site had no way of knowing if their polling place information was up to date.¹⁸¹

Using data obtained from the state under a Right to Know Law request, Human Rights Watch compared the numbers of polling locations open for the 2016 primary with those open for the June 2020 primary in Pennsylvania. We found a there was a decrease of 606 polling locations, a 10.7 percent decrease statewide. In about 26 percent of the 1,581 zip codes in Pennsylvania there was a reduction in the number of polling places. In total, about 5.7 million people (45 percent of the population of Pennsylvania) live in a zip code that saw a reduction in the number of polling places. Statewide, white voters and racial minorities were impacted relatively equally by these polling place closures,¹⁸² but the impact on Black voters was more pronounced because they are more likely to vote in person, less likely to vote by mail,¹⁸³ and less likely to own a vehicle to navigate to the new polling locations (in 2017, 40 percent of Black and 20 percent of white people in the city of Philadelphia did not own a vehicle).¹⁸⁴ A ward leader for the Democratic Party submitted a declaration in *NAACP v. Boockvar*¹⁸⁵ attesting that:

Crowding 12 divisions into 1 location at Comegys [elementary school] was problematic . . . Residents from those divisions are almost exclusively African American and have a well-documented history of voting in person.

¹⁸¹ Katie Meyer and Emily Previti, “With Pa.’s last-minute polling place changes, voters might get conflicting information,” *WHYY.org*, May 23, 2020, <https://whyy.org/articles/with-pa-s-last-minute-polling-place-changes-voters-might-get-conflicting-information/> (accessed August 16, 2020).

¹⁸² In Philadelphia County white people comprise 35 percent of the population the county, and 41 percent of those who lived in zip codes which lost polling locations. Black people comprise 41 percent of the population of Philadelphia County, and 46 percent of people who lived in zip codes which lost polling locations.

¹⁸³ Jonathan Lai and Julia Terruso, “The Philadelphia Voters Most Likely to Vote in Person — or not at all — Live in Coronavirus Hot Spots,” *Philadelphia Inquirer*, May 14, 2020, <https://www.inquirer.com/politics/election/philadelphia-primary-absentee-coronavirus-covid19-20200514.html> (accessed September 1, 2020)(stating that “[Philadelphia] neighborhoods with low-income residents and communities of color are requesting absentee ballots at rates that far lag other parts of the city.”).

¹⁸⁴ National Equity Atlas, “Car Access: Philadelphia,” 2017, https://nationalequityatlas.org/indicators/Car_access#/?breakdown=2 (accessed September 1, 2020).

¹⁸⁵ In this case before the Commonwealth Court of Pennsylvania, petitioners are seeking an injunction requiring election officials to provide, among other things, sufficient number of polling places, ballot drop boxes, and at least two weeks of early voting. See, for example, Memorandum of Law in Support of Petitioner’s Application for Special Relief in the Form of a Preliminary Injunction, *NAACP v. Boockvar*, No. 364 MD 2020, Commonwealth Court of Pennsylvania, August 6, 2020, <https://www.law360.com/articles/1299598/attachments/1> (accessed August 31, 2020).

Although members of my ward worked diligently to distribute materials so registered voters could apply for [vote by mail] VBM ballots, we knew our efforts had only limited successes and so we expected long lines at this polling place. Sadly, we were right. Because of the lines at Comegys, I know that many prospective voters, again who were predominantly African American, left without voting.¹⁸⁶

One Black voter told us of his frustration with the change to his poll location and his inability to access the correct location online:

On June 2 I went to my polling station on N. 25th street, in Philadelphia... I went there thinking I would vote. It was closed. There was nothing set up, no notifications, no signs. I tried to get on the city and state websites, but the sites were freezing up. You put in your zip code after entering all the info, and the site just froze up. So finally, I just decided to get in my car and drive around. I was just looking for crowds and lines, for somewhere to vote. I drive around for 30 minutes and finally found a crowd on 20th and Cecil B Moore [Avenue]; it was at a school. But I was not registered there, so I had to do a write in [provisional] ballot. I waited in that line for over an hour... I left early in the evening. I spent most of the day on this.

Someone else would have been discouraged. I myself was very, very discouraged, to the point of almost giving up. But I had my own car, so I was flexible. If I had been taking public transportation, it would not have been possible. I would have given up. I would not have known where to go.¹⁸⁷

¹⁸⁶ Declaration of Carol Jenkins, Ph.D., Ward Leader for Philadelphia's 27th Democratic Ward, August 6, 2020, <https://freespeechforpeople.org/wp-content/uploads/2020/08/received-jenkins-declaration.pdf-1.pdf> (accessed September 1, 2020), para. 9.

¹⁸⁷ Human Rights Watch interview with Abd'ullah, Philadelphia, Pennsylvania, September 1, 2020.

By contrast, a Black voter from Pennsylvania's Delaware county told us she voted "at my normal polling place. There is never a line there because it's a white part of town, it's not Philadelphia. My sister says they were stressed out in Philly."¹⁸⁸

Mail-in Ballots and the June Primary

Citing public safety, political parties, state officials, and non-profits all encouraged residents to use the new mail-in system to vote. The onset of Covid-19 meant that the new mail-in system would not get a test run in a municipal election (which generally has a lower turnout) and glitches would have to be worked out in the process.

People who requested mail-in ballots early, around April, told Human Rights Watch that they encountered no problems. "I voted by mail," a local activist told Human Rights Watch. "I saw the uncertainty early on when the election was pushed back and was able to vote, track it and I confirmed early on that my ballot was counted."¹⁸⁹ Another voter saw a story about mail-in voting on a local news station and decided it would be easier to do it early on. "It was an easy process," he said. "I applied online and three weeks later they said my ballot had been received. I had Covid-19 fears so this was just easier. I was glad I did it remotely."¹⁹⁰

Other voters, those who waited until May to request the mail-in ballot, encountered difficulties and did not have their votes counted. One voter said, "I should have done it earlier I guess. The system was good about the email notice on the status [of the ballot], but I never received it. After the elections I got a notice that they received the envelope back as returned undeliverable. I could have put down the wrong address, but I don't think I did."¹⁹¹

¹⁸⁸ Human Rights Watch interview with Tracy, Delaware county, Pennsylvania, September 1, 2020.

¹⁸⁹ Human Rights Watch interview with Daren, Black voting rights activist, Philadelphia, Pennsylvania, August 27, 2020 (pseudonym).

¹⁹⁰ Human Rights Watch interview with Joseph, Philadelphia, Pennsylvania, August 27, 2020.

¹⁹¹ Human Rights Watch interview with Neil, Philadelphia, Pennsylvania, September 1, 2020 (pseudonym).

Interviews for this report and media accounts confirm that Pennsylvania's first mail-in system resulted in ballots lost due to no fault of the voter.¹⁹² One voter told Human Rights Watch:

I tried to vote mail-in. Like others I thought this would be safer. One of my sons was not a registered voter and he got his registration. We all decided to get the mail-in ballots. We started to get the ballot information in March, but mine did not come. In April there was nothing, then in May my son's arrived, but still nothing for me.

So I started to call them. Some days I never even got a person. I can't tell you how many times and days I called. When I did get a person they sounded irritated and they would say, "Just keep waiting for your ballot." Finally, I called a friend in Pittsburgh who works for the county and she said, "Just go to the voting place on June 2." So I went and they let me vote. . . I told them I tried to do mail-in and one of them said, "It is a mess all over with the mail-in ballots." But I had a ballot there and I voted.¹⁹³

Shortcomings of the mail-in ballot procedure, coupled with speculation over the capacity of the US Postal Service, may lead to mistrust of the mail-in system in November. One voter who successfully used a mail-in ballot in June, explained to Human Rights Watch why he will vote in person in November: "I feel safer at the polling center. I see what is going on at the post office and I am not happy with it. I am not sure where I will be voting in November, but I don't feel safe with the post office."¹⁹⁴ An elections attorney in Pennsylvania recommended that the state adopt more drop boxes in easily accessible locations, including in front of polling places, in preparation for November: "The drop boxes are secure, they build confidence. I know, anecdotally, that African Americans come to the polling centers because. . . it has real meaning to them and they want to see their vote

¹⁹² Stephen Caruso, "What postal delays and lawsuits mean for mail-in ballots in Pennsylvania," *Pennsylvania Capital-Star*, August 16, 2020, <https://www.penncapital-star.com/government-politics/what-postal-delays-and-lawsuits-mean-for-mail-in-ballots-in-pennsylvania/> (accessed September 15, 2020); Jonathan Lai, "Pennsylvania's mail ballot problems kept tens of thousands from voting in a pandemic primary," *Philadelphia Inquirer*, July 30, 2020, <https://www.inquirer.com/politics/election/pa-mail-ballot-deadlines-disenfranchisement-20200730.html> (accessed September 15, 2020).

¹⁹³ Human Rights Watch interview with Tracy, Delaware county, Pennsylvania, September 1, 2020.

¹⁹⁴ Human Rights Watch interview with John, Philadelphia, Pennsylvania, August 31, 2020.

counted. The drop box could help facilitate this.”¹⁹⁵ At the same time, a local activist said that many older Black voters will insist on voting in person on the day of the election:

It is a ritual for them. It shows respect for the people who put in the fight for them to be there. Also, they are asking themselves, “Is it really safer to vote by mail? If a ballot won’t be counted?” There is no recourse for the mail-in ballot, it is just not counted. So they are saying, “I can wear a mask and gloves and I can make sure my vote will be counted.” For them it is worth the risk.¹⁹⁶

Additional Steps Needed to Ensure the Right to Vote in Pennsylvania

As the above discussion makes clear, Pennsylvania legislators and election officials should prioritize **increasing the number, accessibility, and days and hours of in-person voting locations**, particularly in locations where voters are more likely to vote in person. They should also refrain from adopting any further legislation or measures to enable reductions in in-person voting locations. Officials should recognize that in-person voting is often the preference for voters of color, including Pennsylvania’s 12 percent Black and nearly 8 percent Latinx population.¹⁹⁷

The state also needs to further invest in its **mail-in voting system**. Although the system is new, officials gained experience with it in the June primary and should apply lessons learned to better ensure the right to vote in November and beyond. One innovation that may be relatively easy to adopt is the placement of **secure drop boxes** for mail-in ballots near polling places or other easily accessible locations in communities. This should be a priority for neighborhoods with significant populations of voters of color and for Black populations, in particular. The secure drop boxes may offer some semblance of in-person voting experience while potentially reducing the numbers of people seeking to vote in person inside polling locations on election day.

¹⁹⁵ Human Rights Watch interview with Adam Bonin, Pennsylvania elections law attorney, Philadelphia, Pennsylvania, September 1, 2020.

¹⁹⁶ Human Rights Watch interview with Adam Bonin, Pennsylvania elections law attorney, Philadelphia, Pennsylvania, September 1, 2020.

¹⁹⁷ United States Census Bureau, “Census QuickFacts: Pennsylvania,” <https://www.census.gov/quickfacts/PA> (accessed August 31, 2020).

Officials need to prioritize **educating voters** about their options for exercising their right to vote, and set an adequate number of polling locations in advance so that voters do not experience confusion on election day when navigating to polling sites.

While Pennsylvania’s law enfranchises more people who have been arrested or convicted of criminal offenses than other states with more stringent rules, state election officials need to **prioritize voter education, registration, and absentee ballot request drives among voters in jails, those with misdemeanor convictions, and voters recently or soon-to-be released from confinement after a felony conviction.** In 2016, ACLU Senior Staff Attorney Sara Rose told National Public Radio, “because there are a number of states that require people to take more steps before they can vote if they have a felony conviction, there’s a lot of confusion over who can vote with a criminal conviction in Pennsylvania.”¹⁹⁸

State election officials should ensure that people without a stable address can register and receive their ballots at general delivery postal addresses or at open state or city government offices. The current voter registration form offers this instruction to Pennsylvania residents:

If you live in a rural area or are homeless and do not have a street address or a permanent residence, please . . . use the map on the printed form to show where you live or spend most of your time, and mail it to your county voter registration office.¹⁹⁹

While this accommodation is useful for those wanting to register, it does not afford those without a mailing address an opportunity to vote by mail because there is no location to which a ballot may be mailed. Moreover, some Pennsylvania citizens without a stable address may experience problems with their voter IDs not matching their registration information. These potential problems require urgent attention since in addition to the numbers of Pennsylvanians without housing prior to the Covid-19 pandemic (as of January

¹⁹⁸ Katie Blackley, “Pennsylvania’s Ex-Cons Can Vote, But Many Don’t Realize It,” *National Public Radio*, October 27, 2016, <https://www.wesa.fm/post/pennsylvania-s-ex-cons-can-vote-many-don-t-realize-it#stream/o> (accessed August 30, 2020).

¹⁹⁹ Commonwealth of Pennsylvania, Pennsylvania Voter Registration Application, <https://www.pavoterservices.pa.gov/pages/VoterRegistrationApplication.aspx> (accessed August 31, 2020).

2019 about 13,000 on any given day),²⁰⁰ and prior to the Centers for Disease Control and Prevention’s moratorium on evictions, the Aspen Institute estimated some 633,000 additional Pennsylvanians may be evicted by the end of 2020.²⁰¹ Some voters are still likely to move despite the moratorium because they are anticipating its end, or because they need to reduce housing costs regardless.

²⁰⁰ United States Interagency Coalition on Homelessness, “Pennsylvania Homelessness Statistics,” <https://www.usich.gov/homelessness-statistics/pa/> (accessed August 30, 2020).

²⁰¹ Katherine Lucas McKay, Zach Neumann, and Sam Gilman, “20 Million Renters Are at Risk of Eviction; Policymakers Must Act Now to Mitigate Widespread Hardship,” Aspen Institute, June 19, 2020, <https://www.aspeninstitute.org/blog-posts/20-million-renters-are-at-risk-of-eviction/> (accessed August 30, 2020).

IV. Arizona Elections During the Covid-19 Pandemic

In person voting is a direct representation of what democracy looks like. We need to keep voting in person; and expand voting opportunities.

— Tomas Robles, co-executive director, LUCHA, Phoenix, August 13, 2020.

[W]e in Arizona can call into question people’s insecurity about voting.... In this state the reason that people participate is because all of the community organizations have stepped up and communicated about the importance of vote by mail. Arizona is a state where you can demonstrate that vote by mail has worked for our communities.

— Alex Gomez, co-executive director, LUCHA, Phoenix, August 13, 2020.

Voting in Arizona

A substantial share of Arizonan voters are experienced and comfortable with voting by mail.²⁰² For most presidential elections, between 75 and 79 percent of Arizona’s electorate votes by mail.²⁰³ The state’s use of voting by mail prior to the Covid-19 pandemic meant that few innovations were needed in light of the pandemic to ensure citizens could easily exercise their right to vote by mail during the primaries in March and August.²⁰⁴ We repeatedly heard about the ease and success of Arizona’s vote by mail procedures from white voters. For example:

²⁰² In Arizona’s most recent senate special primary election, held on August 4, 2020, 88 percent of the ballots cast statewide were cast by mail. For the March 17 presidential preference election, 44 percent of the ballots cast in Maricopa County (the state’s most populous) were cast by mail. Maricopa County Recorder’s Office, “Maricopa County Democratic Presidential Preference Election, Final Official Results,” March 24, 2020, <https://recorder.maricopa.gov/electionarchives/2020/03-17-2020%20-1%20Final%20Official%20Summary%20Report%20PPE%202020.pdf> (accessed August 23, 2020).

²⁰³ See, for example, Human Rights Watch interview with Joel Edman, executive director, Arizona Advocacy Network, Phoenix, Arizona, July 30, 2020. See also Emily Bazelon, “Will Americans Lose Their Right to Vote in the Pandemic,” *New York Times Magazine*, May 5, 2020, <https://www.nytimes.com/2020/05/05/magazine/voting-by-mail-2020-covid.html?action=click&module=Top%20Stories&pgtype=Homepage> (accessed August 23, 2020).

²⁰⁴ Arizona voters have a number of options, including signing up for the permanent early voting list, which allows for early voting in person or by mail. Ariz. Rev. Stat. § 16-544. Voters can also make a one-time request to cast a ballot by mail. All voters may vote by mail as long as the ballot is received by 7:00 pm on Election Day. Arizona Secretary of State, “Voting by Mail: How to Get a Ballot-by-Mail,” <https://azsos.gov/votebymail> (accessed September 16, 2020). Voters can track the status of their ballot online or via text. “Each county has different in-person early voting options starting 27-days before Election Day up through 5:00 p.m. on the Friday before Election Day.” See Arizona Secretary of State, “County Election Officials Contact Information,” <https://azsos.gov/county-election-info> (accessed August 19, 2020).

- A white female voter in Tucson said her experience was unremarkable: “I voted by mail in the last election and it was easy, not surprisingly. I’m not part of a demographic that has any trouble. Almost everybody I know is privileged and everybody votes by mail.... I do know a lot of people immediately send [their ballot] off once they get it.”²⁰⁵
- A white male voter said, “I’ve had just a great experience voting in Arizona.... I’ll certainly mail my ballot early so that timing isn’t an issue and I will mail it at a post office to make sure it gets to where it needs to go.”²⁰⁶
- Another white female voter said, “I’ve been mail-in voting for years.... There are a lot of safeguards and they’ve designed the envelopes well. You have to have your wits about you but honestly it’s easy. What I do see as an issue is if the mail is late, or if people steal from our mailbox.”²⁰⁷

Populations of color, including Latinx, Native American, and Black people in the state are less likely to vote by mail than white voters. According to the executive director of one statewide voting right organization, “The people who are most registered to vote by mail are conservative white voters.”²⁰⁸ Another Arizona voting rights organization explains, “Arizonans who are less likely to vote by mail [include] Native Americans, Latinos, African Americans, and students.”²⁰⁹ Similarly, the Brennan Center for Justice found that in the 2016 presidential election in Arizona (a state that is 54 percent white, according to the US Census) “at least two-thirds of all mail ballots were cast by white voters.”²¹⁰

Arizona allows voting by mail for people held in its jails, but according to local advocates, participation is incredibly low and more work needs to be done to educate both Sheriffs and jailed voters. The state has done some work to ensure the voting rights of those in nursing homes and in residential care facilities. While voters in such facilities may vote by mail, other accommodations available prior to the Covid-19 pandemic, such as van services to polling locations for residents of care facilities for in-person voting and the dispatch of special teams to care facilities to assist voters who may need help in filling out

²⁰⁵ Human Rights Watch interview with Lee, Tucson resident, Tucson, Arizona, August 13, 2020.

²⁰⁶ Human Rights Watch interview with James, Phoenix resident, Phoenix, Arizona, August 12, 2020.

²⁰⁷ Human Rights Watch interview with Marjorie, Phoenix resident, Phoenix, Arizona, August 12, 2020.

²⁰⁸ Human Rights Watch interview with Luis Avila, executive director, Instituto, Phoenix, Arizona, August 11, 2020.

²⁰⁹ All Voting is Local, “State Programs: Arizona,” <https://allvotingislocal.org/state/arizona/> (accessed September 9, 2020).

²¹⁰ Kevin Morris, “Who Votes by Mail?” Brennan Center for Justice, April 15, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/who-votes-mail> (accessed August 23, 2020).

their ballots,²¹¹ are not available due to the pandemic. Maricopa County has adopted the possibility for individuals in care facilities, those who are self-quarantined and people with Covid-19 to use Skype or Facetime and other innovations for contactless assistance in voting.²¹²

Data on their voting patterns indicates that for Native American, Latinx, and other populations of color in Arizona, voting in person, including in-person early voting,²¹³ is essential.²¹⁴ The number of polling locations available to in-person voters is therefore critical to ensuring the right to vote without discrimination. Yet in a 2019 study, the Leadership Conference on Civil and Human Rights compared the number of polling locations in Arizona in 2012 with those available in 2018.²¹⁵ The study, which looked at 757 counties in 13 states, found Arizona had the most widespread reduction in polling places. Almost every county in Arizona (13 of 15 counties) closed polling places, for a total of 320 closures between 2012 and 2018.

The trend to close polls has continued. In Arizona's 2018 midterm election, the state's most populous county, Maricopa, had 500 polling locations. In its 2020 Presidential Preference Election, Maricopa had 150 polling locations (with the advent of Covid-19 the number was reduced from 150 to 80 due to lack of poll workers and the need to shift locations away from senior centers).²¹⁶ All of the 80 locations were vote centers, where

²¹¹ Maricopa County Recorder's Office, "Frequently Asked Questions," <https://recorder.maricopa.gov/site/faq.aspx> (accessed August 25, 2020).

²¹² Human Rights Watch interview with Rey Valenzuela, director of elections (Election Services & Early Voting), Maricopa County, Arizona, August 27, 2020.

²¹³ Patty Ferguson Bohnie testified to Congress that early voting in person is not as easy for Native American voters as others. She mentioned Arizona's 2019 voter ID law "requiring voters to also show ID if they vote early in person, while voters who vote early by mail have no such requirement. Not only does this violate equal protection, it will disproportionately impact Native voters, specifically Native language speakers who can only receive language assistance in person." United States House of Representatives, Subcommittee on Elections, "Voting Rights and Elections Administration in Arizona," October 1, 2019, <https://www.govinfo.gov/content/pkg/CHRG-116hhrg38129/html/CHRG-116hhrg38129.htm> (accessed August 25, 2020).

²¹⁴ NAACP, "Analysis from CAP and NAACP Highlights Need to Preserve In-Person Voting Options as States Expand Vote by Mail," April 20, 2020, <https://www.naacp.org/latest/analysis-cap-naacp-highlights-need-preserve-person-voting-options-states-expand-vote-mail/> (accessed September 9, 2020).

²¹⁵ Leadership Conference on Civil and Human Rights, "Democracy Diverted," September 2019, <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf> (accessed September 15, 2020).

²¹⁶ Jessica Boehm and Andrew Oxford, "Maricopa County Cuts Some Polling Places, Won't Mail Extra Ballots for Tuesday's Election," *Arizona Republic*, March 13, 2020, <https://www.azcentral.com/story/news/local/phoenix/2020/03/13/maricopa-county-mailing-ballots-democratic-presidential-preference-tuesday-election-coronavirus/5044933002/> (accessed September 15, 2020).

voters from anywhere in the county could cast their ballots. In its August 2020 primary, Maricopa had 100 polling locations (also all vote centers).²¹⁷ Alongside the reduction in numbers, the state has innovated to ensure voter access. In August, the county phased-in early voting over a period of weeks, with four centers open for early voting about four weeks prior to the election, and 55 more which opened about two weeks prior.²¹⁸ Moreover, the state has counteracted the reduction in number of polls by investing in mail-in voting in Arizona, using vote centers, enabling early voting, and increasing the number of check-in stations available per poll location.²¹⁹

Arizona's Primaries: Voting by Mail and In Person Both Important

In its March and August elections, Arizona election officials worked to provide in-person voting opportunities despite the Covid-19 pandemic. The Arizona state director of All Voting is Local described in-person voting during the March and August elections as:

Not perfect but not bad. . . .Even in places hit hard by Covid, like the Navajo Nation, the tribes still supported local voting sites; they figured out a way to work that out. . . .Of the 15 counties, most did not make any substantial changes to their polling places and that's good. It's up to the local board whether or not you can have early voting—but we had some early voting in every county.²²⁰

²¹⁷ Andrew Oxford, "Here's How to Vote Early in Arizona's August 4 Primary Election," *Arizona Republic*, July 7, 2020, <https://www.azcentral.com/story/news/politics/arizona/2020/07/07/arizona-aug-4-primary-election-2020-early-voting/5391452002/> (accessed September 15, 2020).

²¹⁸ Andrew Oxford, "Here's How to Vote Early in Arizona's August 4 Primary Election," *Arizona Republic*, July 7, 2020, <https://www.azcentral.com/story/news/politics/arizona/2020/07/07/arizona-aug-4-primary-election-2020-early-voting/5391452002/> (accessed September 15, 2020).

²¹⁹ See, for example, Human Rights Watch interview with Scott Jarrett, director of election day and emergency voting, Maricopa County, Arizona, August 27, 2020 (stating, "In August, we had more time to plan. In March it was very hard to navigate locations closing and having to move out of senior living facilities. That was all new. As election officials we plan months and months in advance. We knew the new locations would be a challenge and that's why we contacted every single voter that had not yet voted in the PPE [Presidential Primary Election] and let them know that their locations had changed. Voters could navigate to any center. County employees volunteered to man the closed locations and re-direct voters to the new locations.").

²²⁰ Human Rights Watch interview with Alex Gulotta, Arizona state director, All Voting Is Local, Phoenix, Arizona, August 10, 2020.

However, the fact that Maricopa used all new voting locations in the primaries brought some problems for in-person voters. A Latinx voting rights advocate explained that in March in Maricopa:

There were longer lines.... In one case I know of the poll worker said, “this person wasn’t in line before 7 [pm],” and that person didn’t get to vote.... People were still being told that “it wasn’t their polling location” even though that wasn’t necessary [because voters could vote at any location in the county]. With older poll workers they got confused about this.... Also we had a lot of machines that broke. People had to wait a long time for machines to be fixed. I could see a lot of those things happening again; but it’s also true that for some in-person voters it was a pretty easy process.²²¹

Some voters in Maricopa County had trouble finding the new polling locations. The same Latinx voting rights advocate said that during the August election in majority-Latinx West Phoenix:

A lot of the places we went to were really hard to see and to access. For example, we got an address for a polling location and “Food City” was there. And we’re like “okay is the location in Food City”? But there was a little sign.... We found it and it was a little room and just like a door, super-creepy.... Another location—Fowler—was really hard to find.... Once folks got there, we didn’t hear about people being turned away. We did hear that there were no Spanish speakers inside.²²²

The state director for All Voting is Local told Human Rights Watch:

Most of these are new locations.... The County needs to substantially up their signage game. Google their own addresses, find the path to navigate

²²¹ Human Rights Watch interview with Viri Hernandez, executive director, Poder in Action, Phoenix, Arizona, August 13, 2020.

²²² Human Rights Watch interview with Viri Hernandez, executive director, Poder in Action, Phoenix, Arizona, August 13, 2020.

to the polling place, and make it easy for voters.²²³

Looking toward November, some advocates are concerned that Maricopa County in particular is planning for too few in-person voting locations, especially given the predicted increase in turnout for a general election.²²⁴

For Native American voters, neither voting by mail nor voting in person is an easy option, which means that both need to be available to ensure the right to vote. This seems to be well-understood by some Arizona election officials. One said:

We work with intertribal government directly to figure out solutions for our Native voters. We work together to identify individuals who need assistance or who don't receive mail. Often, that means we have to provide an in-person environment if they opt not to do the mail.²²⁵

Detailed analysis of factors impacting Native American voting is beyond the scope of this report, but has been covered by voting rights reports issued by the Native American Voter Engagement Project of Instituto, the Native Vote project at Arizona State University, and by Patty Ferguson-Bohnee, faculty director and clinical professor of law at the Indian Legal Clinic housed at the university, among others.²²⁶ One obvious issue hampering the ease of

²²³ Human Rights Watch interview with Alex Gulotta, Arizona state director, All Voting Is Local, Phoenix, Arizona, August 10, 2020.

²²⁴ Human Rights Watch email correspondence with Alex Gulotta, Arizona state director, All Voting is Local, Phoenix, Arizona, August 10, 2020 (stating "In 2020, prior to COVID, we had advocated and they had agreed not to change the polling place configuration (for the primary and the general in 2020). Then COVID hit. Maricopa set up approximately 100 vote centers for the August primary. They are talking about 150-170 vote centers for the November election. We are advocating for more.").

²²⁵ Human Rights Watch interview with Rey Valenzuela, director of elections (Election Services & Early Voting), Maricopa County, Arizona, August 27, 2020.

²²⁶ See, for example, Instituto, "Hearing from Native Voices, the Covid-19 Impact on Voting in Arizona's Native American Communities," August 2020, <https://www.instituto.io/blog/hearing-from-native-voices-the-covid-19-impact-on-voting-in-arizonas-native-american-communities> (accessed September 15, 2020); Indian Legal Clinic, "Native Vote – Election Protection Project: 2016 Election Report," Sandra Day O'Connor College of Law, Arizona State University, March 6, 2018, <https://law.asu.edu/sites/default/files/pdf/2016-native-vote-election-protection-report.pdf> (accessed August 24, 2020); Indian Legal Clinic, "Native Vote – Election Protection Project: 2014 Election Report," Sandra Day O'Connor College of Law, Arizona State University, April 20, 2015, <https://law.asu.edu/sites/default/files/multimedia/faculty-research/centers/ilp/2014-native-vote-election-protection-report-appendices.pdf> (accessed September 15, 2020); Patty Ferguson-Bohnee, "The History of Indian Voting Rights in Arizona: Overcoming Decades of Voter Suppression," 47 Ariz. St. L.J. 1099 (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2754783 (accessed August 25, 2020).

in-person voting for Native Americans is the distances some people must travel to vote given that their counties of residence may cover large geographical areas; another is that they often have personal or cultural reasons to maintain their registration in one location while working in another. For example, for the March primary, one Native couple, who preferred to maintain their voter registration on the Navajo Nation, had moved to Tsaile to work at Dine College:

[B]ut she was registered [154 miles away] in Kaibito and her husband was registered [193 miles away] near Flagstaff. So, they had to travel extremely long distances so that each could vote [in person].²²⁷

Arizona's Latinx and Native American voters have also experienced some problems with voting by mail in the recent primaries. Some Latinx and Native American voters both struggle to read and fill out ballots due to language difficulties or fear of government forms.²²⁸ Many Native voters find the address requirement a major impediment to mail-in voting:

- “Two-thirds of Native voters live in the city—but their address is on the reservation and so there are a lot of Native American voters that no one can access or find.”²²⁹
- “Our community members generally prefer to vote in person on election day because voting by mail is difficult due to unreliable mail service on the reservation and issues related to their nontraditional addresses.”²³⁰

Latinx voters also benefit from both in-person and mail-in voting options. One Latinx voting rights advocate told us that during the primaries held in the context of Covid-19, “it’s been a little bit of both, older Latinx folks want to vote in person. But the younger voters have been voting by mail.”²³¹

²²⁷ Human Rights Watch interview with Navajo Nation member Raina Roanhorse, Native American outreach specialist, Instituto, Sanders, Arizona, August 13, 2020.

²²⁸ Human Rights Watch interview with Luis Avila, executive director, Instituto, Phoenix, Arizona, August 11, 2020.

²²⁹ Human Rights Watch interview with Luis Avila, executive director, Instituto, Phoenix, Arizona, August 11, 2020.

²³⁰ United States House of Representatives, Subcommittee on Elections, “Voting Rights and Elections Administration in Arizona,” October 1, 2019, <https://www.govinfo.gov/content/pkg/CHRG-116hhrg38129/html/CHRG-116hhrg38129.htm> (accessed August 25, 2020).

²³¹ Human Rights Watch interview with Viri Hernandez, executive director, Poder in Action, Phoenix, Arizona, August 13, 2020.

Additional Steps Needed to Protect the Right to Vote in Arizona

Voter education is crucial to ensuring the right to vote in Arizona. According to one Maricopa County elections official, “Right now the critical need is communicating with voters on how they can be successful in this election.”²³² Voter education works when it is led by the communities toward which it is directed and when it embraces Arizona’s rich diversity, including even within one demographic category, as well as the multiple languages spoken by Arizona voters.²³³ For example, one Native American voting rights advocate explained:

There are 22 tribal communities [in Arizona]. They are quite diverse—there are urban and rural; the cultures are very different.... We have many Native American elders age 50 and up...who are out at the polls and...when you think of the group under age 50, the needs are different.²³⁴

Arizona’s reliance on **voting by mail** is an essential tool for the state in the context of Covid-19, even if it is a mode of voting that has proven less useful for Latinx, Native American, and Black voters. There are linguistic, timing, and registration innovations that Arizona has tried and should continue to try to make mail-in voting more accessible.²³⁵

²³² Human Rights Watch interview with Scott Jarrett, director of election day and emergency voting, Maricopa County, Arizona, August 27, 2020.

²³³ Interviews conducted for this report indicate that voter education conducted in Spanish by Latinx organizations and activists in Arizona has increased the voter participation and use of “special” voting procedures such as vote-by-mail. See, for example, Human Rights Watch interview with Viri Hernandez, executive director, Poder in Action, Phoenix, Arizona, August 13, 2020; Human Rights Watch interview with Luis Avila, executive director, Instituto, Phoenix, Arizona, August 11, 2020; Human Rights Watch interview with Alex Gomez, co-executive director, LUCHA, Phoenix, Arizona, August 13, 2020.

²³⁴ Human Rights Watch interview with Navajo Nation member Raina Roanhorse, Native American outreach specialist, Instituto, Sanders, Arizona, August 13, 2020.

²³⁵ Black, Native American, and Latinx voters who struggle without access to transportation and poor understanding of voting locations, sometimes rely on friends or voting rights advocates to collect mail-in ballots and deliver them to election officials. This practice of ballot collecting has been under court challenge. Although at the time of writing it is allowed to continue based on a ruling by the United States Court of Appeals for the Ninth Circuit, Arizona’s attorney general has asked the US Supreme Court to overturn the ruling. See “Hobbs Asks High Court to Decline Ballot Harvesting Case,” *Arizona Capitol Times*, July 4, 2020, <https://azcapitoltimes.com/news/2020/07/04/hobbs-asks-high-court-to-decline-ballot-harvesting-case/> (accessed August 25, 2020).

This is a complex task since pending court cases may alter the rules for voting by mail in Arizona,²³⁶ and it may be impacted by US Postal Service capacity.²³⁷

To minimize any problems stemming from possible constraints of the Postal Service, Arizona should prioritize **secure ballot drop boxes**.²³⁸ According to our interviews with Maricopa County officials, this is a priority for them, though there are some limitations around securing and monitoring these drop boxes that the county and state should work to overcome.²³⁹ Arizona should work to place secure ballot drop boxes near areas of public transportation, residential care facilities, and lower income and minority communities.

²³⁶ In *Ariz. Democratic Party v. Hobbs*, No. CV-20-01143-PHX-DLR (D. Ariz. June 10, 2020), the Arizona Democratic Party and the Democratic National Committee sued Arizona challenging a state election rule to discard mail-in ballots missing a signature on the return envelope without providing such voters the same opportunity to fix the error afforded to voters whose envelope signature does not match the signature in their voter registration record. Plaintiffs alleged that Arizona voters “whose mail ballots are rejected because of a lack of signature will not have an equal opportunity to ‘cure’ their ballots as those voters whose ballots are flagged for rejection based on a perceived signature mismatch.” The signature mismatch voters have up to five days to correct the signature, whereas those with missing signatures have no chance to cure the problem.

²³⁷ A full analysis of these issues is beyond the scope of this report; however it is worth noting that on July 29, 2020, Thomas Marshall, the general counsel and executive vice president of the United States Postal Service notified Katie Hobbs, the Arizona secretary of state, that “certain deadlines for requesting and casting mail-in ballots are incongruous with the Postal Service’s delivery standard.” According to the letter, “[t]his mismatch creates a risk that ballots requested near the deadline under [Arizona] state law will not be returned by mail in time to be counted under [Arizona] laws....” The letter provides recommended timeframes and mailing procedures for (1) voters to submit ballot requests (2) officials to mail blank ballots to voters and (3) voters to mail completed ballots to election officials which may impact votes being properly counted. Letter from Thomas J. Marshall to Katie Hobbs, July 29, 2020, <https://context-cdn.washingtonpost.com/notes/prod/default/documents/d1b752f9-f8c9-4c18-b548-4eb9668c672a/note/36253644-7029-4dd3-bd1c-f824054400c2> (accessed August 25, 2020).

²³⁸ Because cash-strapped counties may struggle to purchase the secure ballot drop boxes, lack of funding may become a challenge to the wider use of secure ballot drop boxes. For example, the Navajo County Recorder’s Office stated it purchased secure ballot drop boxes with the help of a grant. See Navajo County Arizona, “Secure Ballot Drop Box Information,” <https://www.navajocountyaz.gov/Departments/Recorder/Secure-Ballot-Drop-Box-Information> (accessed September 8, 2020).

²³⁹ Human Rights Watch interview with Rey Valenzuela, director of elections (Election Services & Early Voting), Maricopa County, Arizona, August 27, 2020 (stating that “Right now the figures for November are we will have 6 drop box locations open 27 days ahead [in the form of early voting centers]; 49 locations two weeks before the election; 90 one week before and 150 locations on election day. We can put a drop box in other government facilities. We’re trying to get drop boxes in clerks offices—20 beyond those I mentioned is our goal. One secure permanent one is right outside our department. We’re looking to partner with some venues around the valley to do contactless drive through drop boxes, but eyes have to be on the box at all times... Under state law you must affix with concrete bolts. . .not every facility is willing to do that. We’re restricted on the permanent ones, that’s why we only have one permanent one in the parking lot of our office.”).

In-person early voting is essential to guaranteeing the right to vote in Arizona and can reduce crowds and lines at polling stations to help prevent Covid-19.²⁴⁰ This is in part because in-person, early voting locations serve as secure sites for return of vote by mail ballots, in addition to secure drop boxes.²⁴¹ Other innovations for early voting should be considered. According to the director of a statewide NGO in Arizona:

We need to be pushing for early voting in Tribal lands. Navajo, Tohono O’odum, a lot more early voting and a lot more creativity. Doing drive through voting—in a parking lot.... Set up a ballot-on-demand printer in the parking lot so people can get their ballots and vote.... For the August election Coconino County set up drive through early voting. That’s a really smart thing. They should stand up like 10 of those. For a subset of people who want to do it; that’s a safe way for people to vote.²⁴²

While specific problems exist with early voting in Arizona due to voter ID requirements,²⁴³ the state has made some changes, acknowledging that the pandemic has made renewing drivers licenses very difficult.²⁴⁴

Other adaptations to make in-person voting more equitable, such as having **adequate translation to Spanish or Native languages** at polling stations, should be prioritized. For example:

²⁴⁰ United States Centers for Disease Control and Prevention, “Considerations for Election Polling Locations and Voters,” June 22, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (accessed August 25, 2020).

²⁴¹ Human Rights Watch email correspondence with Rey Valenzuela, director of elections (Election Services & Early Voting), Maricopa County, Arizona, September 2, 2020.

²⁴² Human Rights Watch interview with Alex Gulotta, Arizona state director, All Voting Is Local, Phoenix, Arizona, August 10, 2020.

²⁴³ A detailed discussion of problems with voter ID laws in Arizona, and of several of the problems highlighted in this report can be found in the Arizona Advisory Committee to the United States Commission on Civil Rights’ memo to the US Commission on Civil Rights, June 15, 2018, <https://www.usccr.gov/pubs/2018/07-25-AZ-Voting-Rights.pdf> (accessed August 24, 2020).

²⁴⁴ Arizona Governor Doug Ducey issued an executive order deferring the expiration of driver’s licenses between March 1, 2020, and September 1, 2020, by six months, and requiring all Arizona and municipal agencies to accept driver’s licenses that expire between March 1, 2020 and September 1, 2020 as valid identification for any purposes for which the driver’s license cards would otherwise be accepted. Ariz. Exec. Order No. 2020-08, <https://azgovernor.gov/governor/executive-order/2020-08> (accessed August 25, 2020).

At polling locations at certain sites, they have Navajo translators but it takes resources, so it doesn't happen for smaller tribes in Arizona. A lot of times they [these smaller tribes] really are just dismissed because no one wants to take the effort to make sure there is a polling location that is convenient to them.²⁴⁵

Arizona needs to work to ensure the voting **rights of people who do not have a stable address or who may have been recently evicted**. Prior to the Centers for Disease Control and Prevention's moratorium on evictions, the Aspen Institute estimated that more than half a million Arizonans are at risk of eviction by the end of 2020.²⁴⁶ Some voters are still likely to move despite the moratorium because they are anticipating its end, or because they need to reduce housing costs. Therefore, the state should ready itself for an increase in evictions before the November 2020 elections. While Arizona law does provide options for individuals without an address, voters and election officials should educate voters about these options, including registration for people at "general delivery" post office addresses.²⁴⁷ Looking forward, Arizona law should be changed to allow for election day registration.²⁴⁸

²⁴⁵ Human Rights Watch interview with Navajo Nation member Raina Roanhorse, Native American outreach specialist, Instituto, Sanders, Arizona, August 13, 2020.

²⁴⁶ Katherine Lucas McKay, Zach Neumann, and Sam Gilman, "20 Million Renters Are at Risk of Eviction; Policymakers Must Act Now to Mitigate Widespread Hardship," Aspen Institute, June 19, 2020, <https://www.aspeninstitute.org/blog-posts/20-million-renters-are-at-risk-of-eviction/> (accessed August 24, 2020).

²⁴⁷ Human Rights Watch interview with Rey Valenzuela, director of elections (Election Services & Early Voting), Maricopa County, Arizona, August 27, 2020 (stating "You can go into the vote center and update your address; you can do that at any vote center. You can use general delivery addresses, a conversion address, or even use the city clerk's office as your address.").

²⁴⁸ According to the Arizona Center for Disability Law, "A person who does not reside at a fixed permanent or private structure shall be properly registered to vote if that person is qualified and if that person's registration address is any of the following places in the state: 1) A homeless shelter to which the registrant regularly returns; 2) A temporary place for living that the individual is a resident of (halfway house, transitional housing, etc.); 3) The county courthouse in the county in which the resident resides; 4) A general delivery address for a post office covering the location where the registrant is a resident. A person who is otherwise qualified to vote shall NOT be refused registration or declared not qualified to vote because the person does not live in a permanent, private or fixed structure." Arizona Clean Elections Committee, "Voters Without an Address," <https://www.azcleelections.gov/how-to-vote/voters-without-an-address> (accessed September 15, 2020). Election day registration was one of the recommendations made by the Arizona Advisory Committee in its voting rights memo to the United States Commission on Civil Rights, June 15, 2018, <https://www.usccr.gov/pubs/2018/07-25-AZ-Voting-Rights.pdf> (accessed August 24, 2020).

There remains an enormous voter, probation officer, court and sheriff education problem in Arizona with regard to **voters who are or were involved in the criminal legal system**. According to testimony and analysis by the US Civil Rights Commission,²⁴⁹ at least half of the people in Arizona's jails retain their voting rights, but the state has not lived up to its responsibility to ensure they knew about and could exercise these rights in recent elections.²⁵⁰ According to the Arizona Coalition to End Jail-Based Disenfranchisement, "During the March [primary] election, out of those estimated 2,700 eligible [jailed] voters, 7 voters cast a ballot."²⁵¹ As one election official put it, allowing in-person voting in the jail "takes some partnership from the Sheriff's Office. Because of Covid-19 and other logistical challenges, the Sheriff was not able to allow for in-person voting within the jails at this time. Eligible voters detained in jails are able to vote by mail."²⁵²

Under Arizona law, a felony conviction triggers cancellation of voter registration²⁵³ and formerly incarcerated people with felony records are required to re-register. This is particularly concerning because Latinx and Black communities are disproportionately affected by felony disenfranchisement and the process is sufficiently complicated to have a chilling effect on voters.²⁵⁴ In addition, people with two or more felony convictions

²⁴⁹ United States House of Representatives, Subcommittee on Elections, "Voting Rights and Elections Administration in Arizona," October 1, 2019, <https://www.govinfo.gov/content/pkg/CHRG-116hhrg38129/html/CHRG-116hhrg38129.htm> (accessed August 25, 2020).

²⁵⁰ Lauren Castle, "Arizona Jail Inmates Voting Rights," *Arizona Central*, August 4, 2020, <https://www.azcentral.com/story/news/politics/elections/2020/08/04/arizona-jail-inmates-voting-rights/5521404002/> (August 25, 2020).

²⁵¹ The Arizona Coalition to End Jail-Based Disenfranchisement, "Unlock The Vote Arizona," July 2020, https://www.votefromjail.org/wp-content/uploads/2020/07/July-JBV-Report.pdf?_ga=2.141748593.2141915449.1598115550-1768011538.1595017722 (accessed September 15, 2020).

²⁵² Human Rights Watch interview with Rey Valenzuela, director of elections (Election Services & Early Voting), Maricopa County, Arizona, August 27, 2020.

²⁵³ Arizona Advisory Committee, "Voting Rights Memo to the US Commission on Civil Rights," June 15, 2018, <https://www.usccr.gov/pubs/2018/07-25-AZ-Voting-Rights.pdf> (accessed August 24, 2020).

²⁵⁴ "On final discharge, any person who has not previously been convicted of a felony offense shall automatically be restored any civil rights that were lost or suspended as a result of the conviction if the person pays any victim restitution imposed. However, individuals are still encouraged to file an application to restore civil liberties to ensure that the court informs the elections office that the petitioner's civil rights have been restored. Individuals may also apply to have their civil rights restored. On final discharge, a person who has previously been convicted of a felony or who has not paid any victim restitution that was imposed may apply to the superior court to have the person's civil rights restored." Ariz. Rev. Stat. § 13-908(1)(A). '[F]inal discharge' means the completion of probation or the receipt of an absolute discharge from the state department of corrections or the United States Bureau of Prisons. A.R.S. § 13-908(1)(H). See Maricopa County, "Public Advocate - Restoration of Rights," <https://www.maricopa.gov/faq.aspx?TID=66> (accessed August 10, 2020).

remain disenfranchised in the state even after they have served their sentences, as are people with past felony convictions who still owe fines and fees to the state.²⁵⁵ Arizona should change both law and policy to ensure re-enfranchisement in accordance with international human rights law when a person is released from confinement, regardless of the crime of conviction and regardless of any fines and fees owed.

Human Rights Watch also urges Arizona election officials to **keep law enforcement away** from polling stations unless absolutely necessary for polling station security. The executive director of a voting rights organization in Arizona said, referring to Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) agencies, “If I’m in [a] mixed status family, if I see an ICE / CBP van, [it] makes it really scary to go into the voting booth.”²⁵⁶ The executive director of a Latinx voting rights organization said:

When polling places are in schools and when you go and see a police car, that’s scary. [During the March election] I had one person call me and say “oh no I can’t go there, there are police there.” We know that the presence has an effect on people even though in that case they didn’t stop anyone.²⁵⁷

²⁵⁵ Arizona Advisory Committee, “Voting Rights Memo to the US Commission on Civil Rights,” June 15, 2018, <https://www.usccr.gov/pubs/2018/07-25-AZ-Voting-Rights.pdf> (accessed August 24, 2020).

²⁵⁶ Human Rights Watch interview with Luis Avila, executive director, Instituto, Phoenix, Arizona, August 11, 2020.

²⁵⁷ Human Rights Watch interview with Viri Hernandez, executive director, Poder in Action, Phoenix, Arizona, August 13, 2020.

V. Voting Rights and Non-Discrimination under International Law

Elections During Health Crises

Governments around the world have grappled with managing elections during public health crises. In 2014, Liberia proceeded with in-person voting for senatorial elections during an outbreak of the Ebola virus. An international elections expert told Human Rights Watch:

In Liberia, we worked with local community leaders to try to get them information on how to limit [Ebola's] spread. Once it was time for Liberians to go to the polls, the crisis of the epidemic had largely passed.²⁵⁸

While Liberia's election was largely regarded as credible, the election was delayed and election rallies were banned because of Ebola, and turnout on election day was about 25 percent.²⁵⁹

Covid-19 has affected elections internationally in a variety of ways. According to the International Institute for Democracy and Electoral Assistance, from February 21 to August 17, 2020, at least 36 countries and territories have held national elections or referendums as originally planned despite Covid-19, and at least 25 countries and territories have decided to postpone national elections and referendums, citing pandemic concerns.²⁶⁰

²⁵⁸ Human Rights Watch interview with David Carroll, director, Democracy Program, The Carter Center, Atlanta, Georgia, August 10, 2020.

²⁵⁹ "Ebola Crisis: Vote Count Under Way in Liberia Senate Election," *BBC*, December 21, 2014, <https://www.bbc.com/news/world-africa-30553837> (accessed September 9, 2020);

Farai Gundan, "Former Football Superstar-Turned Politician, George Weah Wins Liberian Senate Seat In Landslide Victory," *Forbes*, December 29, 2014, <https://www.forbes.com/sites/faraigundan/2014/12/29/former-football-superstar-turned-politician-george-weah-wins-liberian-senate-seat-in-landslide-victory/#54cecc78788e> (accessed September 9, 2020).

²⁶⁰ International Institute for Democracy and Electoral Assistance, "Global Overview of Covid-19 Impact on Elections," March 18, 2020, <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections> (accessed September 15, 2020).

South Korea went ahead with its April 15, 2020 parliamentary election despite the pandemic. South Korea recruited 20,000 additional poll workers; ensured temperature checks and widespread use of masks and gloves for voters and poll workers; prioritized mail-in voting; encouraged voters to take advantage of early voting at 3,500 stations where prior registration was not required; provided accommodations for people who were quarantined at home or hospitalized; kept all 14,300 election-day polling places open (with the exception of many polling places in diplomatic missions for overseas voters, which were closed);²⁶¹ and created separate polling places for people who tested positive for the virus that causes Covid-19 or who failed temperature checks.²⁶² According to one data analyst, these innovations and accommodations combined with a “flattened” Covid-19 curve to result in the highest voter turnout in South Korea since 1992 (66 percent of voters turned out).²⁶³

Another international elections expert interviewed for this report explained that in countries such as South Korea and North Macedonia:

What we saw instead of closing stations was an increase in time available for voting. And what we are recommending to the election commissions we work with is that, if anything, they increase the number of polling stations to reduce crowds. We also did not see as many dropouts of poll workers in other countries as we saw in the US. All over the world, we see older people [normally] taking those positions and they are a higher risk group, so authorities have to train more people who can replace them if needed and build poll workers’ confidence that the elections will be safe.²⁶⁴

²⁶¹ Park Han-na, “Overseas voting for general elections kicks off,” *Korea Herald*, April 1, 2020, <http://www.koreaherald.com/view.php?ud=20200401000741> (accessed August 18, 2020).

²⁶² Antonio Spinelli, “Managing Elections under the COVID-19 Pandemic: The Republic of Korea’s Crucial Test,” International Institute for Democracy and Electoral Assistance, July 30, 2020, <https://www.idea.int/sites/default/files/publications/managing-elections-during-pandemic-republic-korea-crucial-test.pdf> (accessed August 18, 2020).

²⁶³ Adhy Aman, “Elections in a Pandemic: Lessons From Asia,” *Diplomat*, August 5, 2020, <https://thediplomat.com/2020/08/elections-in-a-pandemic-lessons-from-asia/> (accessed August 18, 2020).

²⁶⁴ Human Rights Watch interview with Fernanda Buril, senior research officer, Center for Applied Research and Learning, International Foundation for Electoral Systems (IFES), Arlington, Virginia, August 7, 2020. Because IFES does not work in South Korea, Buril’s comment is based on secondary and expert sources rather than direct experience.

Other countries, such as Australia, France, and Iran, were experiencing rising numbers of Covid-19 cases at the time they held their elections, which appears to have negatively impacted voter turnout.²⁶⁵ In August, Indonesia announced its plan to increase the number of available polling stations by 50,000 in advance of its December 9, 2020 regional elections.²⁶⁶

US Obligations under International Human Rights Law

International human rights treaties to which the United States is party recognizes the rights of all citizens to vote without discrimination. According to the US federal government, “The most fundamental principle defining credible elections is that they must reflect the free expression of the will of the people.”²⁶⁷ This statement echoes the International Covenant on Civil and Political Rights, which provides that “every citizen shall have the right and opportunity” without discrimination or “unreasonable restrictions” to “vote and be elected at genuine periodic elections...guaranteeing the free expression of the will of the electors.”²⁶⁸

International human rights law “does not impose any particular electoral system.”²⁶⁹ It does set out voting rights and non-discrimination obligations that are binding on the

²⁶⁵ Adhy Aman, “Elections in a Pandemic: Lessons From Asia,” *Diplomat*, August 5, 2020, <https://thediplomat.com/2020/08/elections-in-a-pandemic-lessons-from-asia/> (accessed August 18, 2020). Fernanda Buriil offered the following thoughts on France and Australia’s elections: “The case of France was interesting to me because, looking at the preventive measures they put in place, I honestly don’t see major problems. It seems like they covered transmission risks well, but people were not satisfied with them and very worried about the disease. I think timing was very relevant there, since elections were in March, when Europe was becoming the epicenter of the outbreak and everything was still too new and unfamiliar to voters. Australia only had state-level elections during the pandemic, but we also saw some important efforts there to expand remote voting options, including vote by phone. All of that to say that I think, sometimes, election commissions can do a relatively good job with the preventive measures, but other factors impact the success of elections (e.g., timing, voters’ expectations about and trust in public authorities, and their expectations about other voters’ compliance with measures).” Email correspondence with Fernanda Buriil, senior research officer, Center for Applied Research and Learning, International Foundation for Electoral Systems (IFES), August 27, 2020.

²⁶⁶ “Safeguarding Democracy in Time of the Pandemic,” *Jaring*, August 19, 2020, <https://jaring.id/berita/hukum-politik-dan-hak-asasi/safeguarding-democracy-in-time-of-the-pandemic/> (accessed September 1, 2020).

²⁶⁷ United States Agency for International Development, “Supporting Free and Fair Elections,” <https://www.usaid.gov/what-we-do/democracy-human-rights-and-governance/supporting-free-and-fair-elections> (accessed August 25, 2020).

²⁶⁸ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art 25. The US ratified the ICCPR on June 8, 1992.

²⁶⁹ United Nations Human Rights Committee (HRC), CCPR General Comment No. 25, art. 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, July 12, 1996, CCPR/C/21/Rev.1/Add.7, <https://www.refworld.org/docid/453883fc22.html> (accessed September 9, 2020), para. 21.

national, state and local governments in United States.²⁷⁰ In its general comment on the right to vote, the UN Human Rights Committee, the independent expert committee that provides authoritative interpretations of the ICCPR, stated that governments are obligated to take “effective measures to ensure that all persons entitled to vote are able to exercise that right.”²⁷¹ Governments are expected to address “factors which impede citizens from exercising the right to vote and the positive measures which have been adopted to overcome these factors.”²⁷²

In addition, governments have an obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to eliminate racial discrimination in all its forms and guarantee the rights of everyone in the enjoyment of political rights, including the right to vote.²⁷³

To ensure that all citizens are able to exercise their right to vote in the current context of the Covid-19 pandemic, federal, state, and local officials in the United States should take all necessary measures to ensure that *both in-person and “special voting” are available and accessible so that all voters without discrimination have an adequate opportunity and means to vote.*

As they plan for upcoming elections in November 2020 and beyond, policymakers and election officials should look to the following six principles consistent with international human rights law.

1. Protect the right to health and the right to vote.

US federal, state, and local governments have a responsibility to protect the human rights to life and to health in the context of Covid-19.²⁷⁴ In order to do this, election officials in the

²⁷⁰ ICCPR, art. 50 (“The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.”).

²⁷¹ HRC General Comment No. 25, para. 11.

²⁷² HRC General Comment No. 25, para. 13.

²⁷³ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Dec. 21, 1965, 660 U.N.T.S. 195, art. 5(c). The United States ratified ICERD in 1994.

²⁷⁴ ICCPR, art. 6. The HRC has stated that states party to the ICCPR have an obligation pursuant to the right to life to address the prevalence of life-threatening diseases. HRC General Comment No. 36, art. 6 (Right to Life), September 3, 2019, CCPR/C/GC/35, <https://www.refworld.org/docid/5e5e75e04.html> (accessed September 10, 2020), para. 25. Also, under

United States should consider a range of measures, such as open registration, mail-in voting, multi-day early voting, increased numbers of polling places to decrease crowding, imposition of social distancing rules, and sanitation and disinfection protocols at voting stations. Election workers and monitors should be provided appropriate personal protective equipment (PPE). Where wearing of masks or gloves is required to enter a polling place, such materials should be made available at polling places and no one should be denied their right to vote on grounds of not having the proper equipment.

While the above measures are critical to protecting the rights to life and health, officials should also ensure that any conditions that apply to voting are objective and reasonable, consistent with the right to vote.²⁷⁵ For example, as noted above, Milwaukee election officials' decision to reduce the number of polling places from 180 to 5 in the state's presidential primary on April 7 failed to meet this standard: far from being objective and reasonable, the reduction in fact may have increased the risk to life and health due to increased crowding and longer wait times for those who tried to vote in person, while also drastically limiting the ability of people to vote. If restrictions on the right to vote are objective and reasonable but produce racially discriminatory effects, they also violate international human rights standards.

2. No unreasonable restrictions, discrimination, or racially discriminatory effects.

Under article 25 of the ICCPR, every adult citizen has the right to vote, which may not be subject to discrimination on the basis of race, sex, religion or other listed categories.²⁷⁶

international law, everyone has the right "to the enjoyment of the highest attainable standard of physical and mental health" without discrimination on the basis of sex, age, or other prohibited grounds. UN General Assembly, International Covenant on Economic, Social and Cultural Rights, December 16, 1966, United Nations, Treaty Series, vol. 993, p. 3, art. 12, <https://www.refworld.org/docid/3ae6b36co.html> (accessed September 9, 2020). The United States signed the ICESCR in 1977 but has not yet ratified it. See also Committee on Economic, Social and Cultural Rights (CESCR), "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights," General Comment No. 14, The Right to the Highest Attainable Standard of Health, E/C.12/2000/4 (2000), para. 12. The rights to life and to health are also inextricably linked to provisions on the right to non-discrimination that are included in the ICCPR and in the Convention on the Elimination of All Forms of Racial Discrimination. ICCPR, arts. 2, 26; ICERD arts. 1, 2, 5.

²⁷⁵ HRC General Comment No. 25, para 4.

²⁷⁶ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 25 (stating "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing

The ICERD makes clear that even when government officials have no discriminatory intent, they are obligated to prevent “discriminatory effects” of any policy, including restrictions on the right to vote that disproportionately impact particular racial groups.²⁷⁷

Officials should pay particular attention to this principle in light of the long US history of discrimination against Black and brown people, including with respect to voting. The UN Committee on the Elimination of Racial Discrimination, the expert body charged with providing authoritative interpretations of the ICERD, has expressed particular concern over “the obstacles faced by individuals belonging to racial and ethnic minorities and indigenous peoples to effectively exercise their right to vote.” The US Supreme Court decision in *Shelby County v. Holder* has heightened these concerns.²⁷⁸

It is also because of the racially discriminatory effects of felony disenfranchisement laws in the United States, primarily affecting Black Americans, that the Committee on the Elimination of Racial Discrimination and the Human Rights Committee have recommended that the United States end disenfranchisement of people who have completed their sentences, ensure voting rights in jails, and review all automatic felony disenfranchisement laws.²⁷⁹ Human Rights Watch interprets the requirement that individuals complete their sentences to mean that they are released from incarceration;

the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.”). The US ratified the ICCPR on June 8, 1992.

²⁷⁷ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Dec. 21, 1965, 660 U.N.T.S. 195, art. 1, which states “In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life” [emphasis added].

²⁷⁸ See CERD Concluding Observations CERD/C/USA/CO/7-9, September 25, 2014, para. 11.

²⁷⁹ See CERD Concluding Observations CERD/C/USA/CO/7-9, September 25, 2014; Human Rights Committee Concluding Observation, CCPR/C/USA/CO/4, 23 April 2014. See also, A/HRC/33/61/Add.2 (Working Group on People of African Descent, 2016) Working Group of Experts on People of African Descent (“The Working Group calls upon the Government to ensure that all states repeal laws that restrict voting rights. In particular, it urges reinstatement of the voting rights of persons convicted of a felony who have completed their sentences.”). Human Rights Watch has previously noted that in most cases, felony disenfranchisement in the United States is not objective, reasonable, or proportionate, and has recommended that policymakers in the United States move away from felony disenfranchisement entirely. Human Rights Watch, *Losing the Vote* (New York: Human Rights Watch, 1998) https://www.hrw.org/legacy/reports98/vote/usvot980-07.htm#P118_2910.

accordingly, people under probation or parole supervision, or who may owe fines and fees, should have their voting rights restored and respected.²⁸⁰

3. Provide forms of secret and secure voting, including in-person voting and “special voting,” that ensure all citizens are able to vote.

Election officials in the US need to take “effective measures to ensure that all persons entitled to vote are able to exercise that right.”²⁸¹ International standards recognize that “special” forms of voting such as absentee mail-in ballots may “give greater effect to the right to vote.”²⁸² International law requires governments to ensure that each person’s vote is private and secret.²⁸³ In-person voting should always be an option for voters, and requires attention to polling places: “Polling places must be established in locations that

²⁸⁰ See Human Rights Watch, *Revoked*, July 31, 2020, <https://www.hrw.org/report/2020/07/31/revoked/how-probation-and-parole-feed-mass-incarceration-united-states>; “US: Florida Needs to Protect Voting Rights for All,” Human Rights Watch news release, April 27, 2020, <https://www.hrw.org/news/2020/04/27/us-florida-needs-protect-voting-rights-all>. (“[R]equiring people to pay fines, fees, and restitution violates [the ICCPR’s] requirement not to subject the right to vote to a “distinction of any kind, such as ... race ... property, birth or other status.” Whether or not a person can afford these fees, the requirement to pay before voting is unreasonable as it amounts to a de facto restriction on the right to vote based on property requirements. It’s also inconsistent with the state’s obligations to take effective measures to ensure that everyone entitled to vote can do so.”).

²⁸¹ HRC, General Comment No. 25.

²⁸² Organization for Security and Co-operation in Europe (OSCE), “Existing Commitments for Democratic Elections in OSCE Participating States,” Warsaw, October 2003, <https://www.osce.org/files/f/documents/o/d/13956.pdf> (accessed August 25, 2020) (“Special voting, e.g., voting conducted either in advance or on election day in residential facilities (including hospitals, other residential institutions, or places of detention or imprisonment), at special sites (such as military bases, diplomatic and consular facilities, or ships at sea), through absentee (including postal) balloting; or by other voting conducted outside the polling station (such as for ill or infirm persons), as well various forms of remote electronic voting, potentially gives greater effect to the right to vote.”). The United States is one of 57 participating states in the OSCE. “Special voting” was also recommended in the Commonwealth of Independent States Electoral Convention, 3(3): “In the cases and in the course stipulated by the laws, the citizen should be provided with the possibility to exercise their right to vote through organization of an [advance] voting, voting outside the voting premises or other voting procedures assuring provision of the maximum convenience for voters.” European Commission for Democracy through Law (Venice Commission), “Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States,” Strasbourg, January 22, 2007, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-EL\(2006\)031rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-EL(2006)031rev-e) (accessed August 10, 2020).

²⁸³ ICCPR, art. 25 (a “genuine periodic election...shall be held by secret ballot....”). See also OSCE, “The Copenhagen Document,” <https://www.oscepa.org/documents/election-observation/election-observation-reports/documents/1344-osce-copenhagen-document-1990-eng/file> (accessed August 4, 2020), para. 7.4 (“To ensure that the will of the people serves as the basis of the authority of government, the participating States will ensure that votes are cast by secret ballot or by equivalent free voting procedure”).

ensure that voters have an equivalent opportunity to exercise their right to vote in a way that is not unduly burdensome.”²⁸⁴

Given the various challenges to voting faced by different sectors of the US population, which are more acute in the context of the Covid-19 pandemic, officials should offer a range of in-person and “special” voting options that would ensure that all eligible voters are able to exercise their right to vote.

4. Take positive measures to overcome difficulties in voting.

International human rights law obligates governments take “[p]ositive measures” to overcome specific difficulties, including some forms of disability, language barriers, poverty, or impediments to freedom of movement, that would “prevent persons entitled to vote from exercising their rights effectively.”²⁸⁵ This includes anticipating the possibility that persons may need to change their addresses for voting purposes to general delivery addresses or other temporary addresses given the likelihood of evictions and housing transitions due to the economic impacts of the pandemic (some of which will persist despite the Centers for Disease Control and Prevention’s moratorium on evictions).²⁸⁶ It also includes ensuring that voters only need to travel a reasonable distance to reach their polling places.

²⁸⁴ See, for example, OSCE Office for Democratic Institutions and Human Rights (ODIHR) final report on the 2000 Albanian local-government elections, p. 19. (“[V]oters should always have the possibility of voting in a polling station.”). See also, Inter-Parliamentary Council, “Declaration on Criteria for Free and Fair Elections,” Unanimously adopted by the Inter-Parliamentary Council at its 154th session (Paris, 26 March 1994) 2(5), <https://www.ipu.org/our-impact/strong-parliaments/setting-standards/declaration-criteria-free-and-fair-elections> (accessed August 4, 2020) (“Every voter has the right to equal and effective access to a polling station in order to exercise his or her right to vote.”). OSCE, “Existing Commitments for Democratic Elections in OSCE Participating States,” Warsaw, October 2003, <https://www.osce.org/files/f/documents/o/d/13956.pdf> (accessed August 25, 2020) (“The location of polling stations should be, as far as possible, equally convenient and accessible to voters in terms of geographical conditions and existing transportation facilities.”).

²⁸⁵ HRC, General Comment No. 25, para. 12.

²⁸⁶ Jessica Lussenhop, “Coronavirus: Why US is expecting an ‘avalanche’ of evictions,” *BBC*, August 7, 2020, <https://www.bbc.com/news/world-us-canada-53088352> (accessed August 19, 2020). According to the National Conference of State Legislatures, as of 2019 same-day registration was available in 21 US states. Of the four states featured in this report, only Wisconsin currently has this option. National Conference of State Legislatures, “Same Day Voter Registration,” <https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx> (accessed August 21, 2020).

When a voter needs assistance in casting a ballot, assistance should be provided by someone chosen by the voter or by another person chosen in a neutral manner.²⁸⁷ Governments should adopt measures to assist voters needing accommodation, including where necessary exemptions from requirements placed on other voters, to ensure persons are not denied their right to vote. This may include persons with disabilities, older persons, persons who are ill with Covid-19 or otherwise limited in their mobility, or others who may be not be able to comply, or need support to comply with new public health measures applicable to voting. Finally, election officials should make “information and materials about voting ...available in minority languages.”²⁸⁸

5. Provide speedy review, appeal, and remedy (or “cure”) for voting rights violations.

International law requires an effective remedy whenever an individual experiences a human rights violation, including a voting rights violation. Voters claiming their rights have been denied or violated should be provided with a fair hearing and appeal, and the right to a speedy and effective remedy.²⁸⁹ An effective remedy is most likely one that allows the complainant to “cure” their denial of voting rights within the election timeframe.²⁹⁰

6. Use impartial non-partisan elector observers.

²⁸⁷ Organization for Security and Cooperation in Europe (OSCE), “Existing Commitments for Democratic Elections in OSCE Participating States,” Warsaw, October 2003, <https://www.osce.org/files/f/documents/o/d/13956.pdf> (accessed August 25, 2020)(stating “Applicable laws and regulations shall provide that all voting must be personal, and no exceptions should be made by election workers to permit any form of non-personal voting (including group, family, or informal proxy voting),except when a voter who is not able to cast a ballot requires personal assistance in order to do so. In the latter situation, the assistance should be provided by someone of the voter’s own choosing or by another person chosen in a neutral manner, who shall be obliged to respect the secrecy of the vote, and the potential for undue influence should be avoided.”).

²⁸⁸ OSCE, “Existing Commitments for Democratic Elections in OSCE Participating States,” Warsaw, October 2003, <https://www.osce.org/files/f/documents/o/d/13956.pdf> (accessed August 25, 2020).

²⁸⁹ ICCPR, art. 2(3). See also OSCE, International Standards and Commitments on the Right to Democratic Elections: A Practical Guide to Democratic Elections Best Practice, November 20, 2002; ODIHR.GAL/44/02/Rev.1; <https://www2.osce.org/files/f/documents/9/3/16859.pdf> (accessed September 9, 2020).

²⁹⁰ Inter-Parliamentary Council, “Declaration on Criteria for Free and Fair Elections,” Unanimously adopted by the Inter-Parliamentary Council at its 154th session (Paris, 26 March 1994) <https://www.ipu.org/our-impact/strong-parliaments/setting-standards/declaration-criteria-free-and-fair-elections> (accessed August 4, 2020), art. 4(9) (“States should ensure that violations of human rights and complaints relating to the electoral process are determined promptly within the timeframe of the electoral process and effectively by an independent and impartial authority, such as an electoral commission or the courts.”).

Each constituent state of the United States has unique and sometimes contradictory rules governing the use of electoral observers²⁹¹ and only 35 US states have laws explicitly allowing and regulating the use of non-partisan electoral observers.²⁹² However, impartial, non-partisan, electoral observers are useful in assisting officials with holding free and fair elections. In accordance with international standards, such observers often add to the credibility of elections by recognizing and highlighting those processes that worked well to protect the right to vote, as well as identifying problems.

²⁹¹ According to the Carter Center and the National Conference of State Legislatures, of the four state case studies contained in this report, Arizona and Pennsylvania do not allow nonpartisan electoral observers on election day; South Carolina and Wisconsin allow nonpartisan electoral observers.

²⁹² The Carter Center and the National Conference of State Legislatures, “A Guide to Election Observer Policies in the United States,” October 2016, <https://www.cartercenter.org/resources/pdfs/peace/democracy/cc-us-election-observation.pdf> (accessed August 17, 2020).

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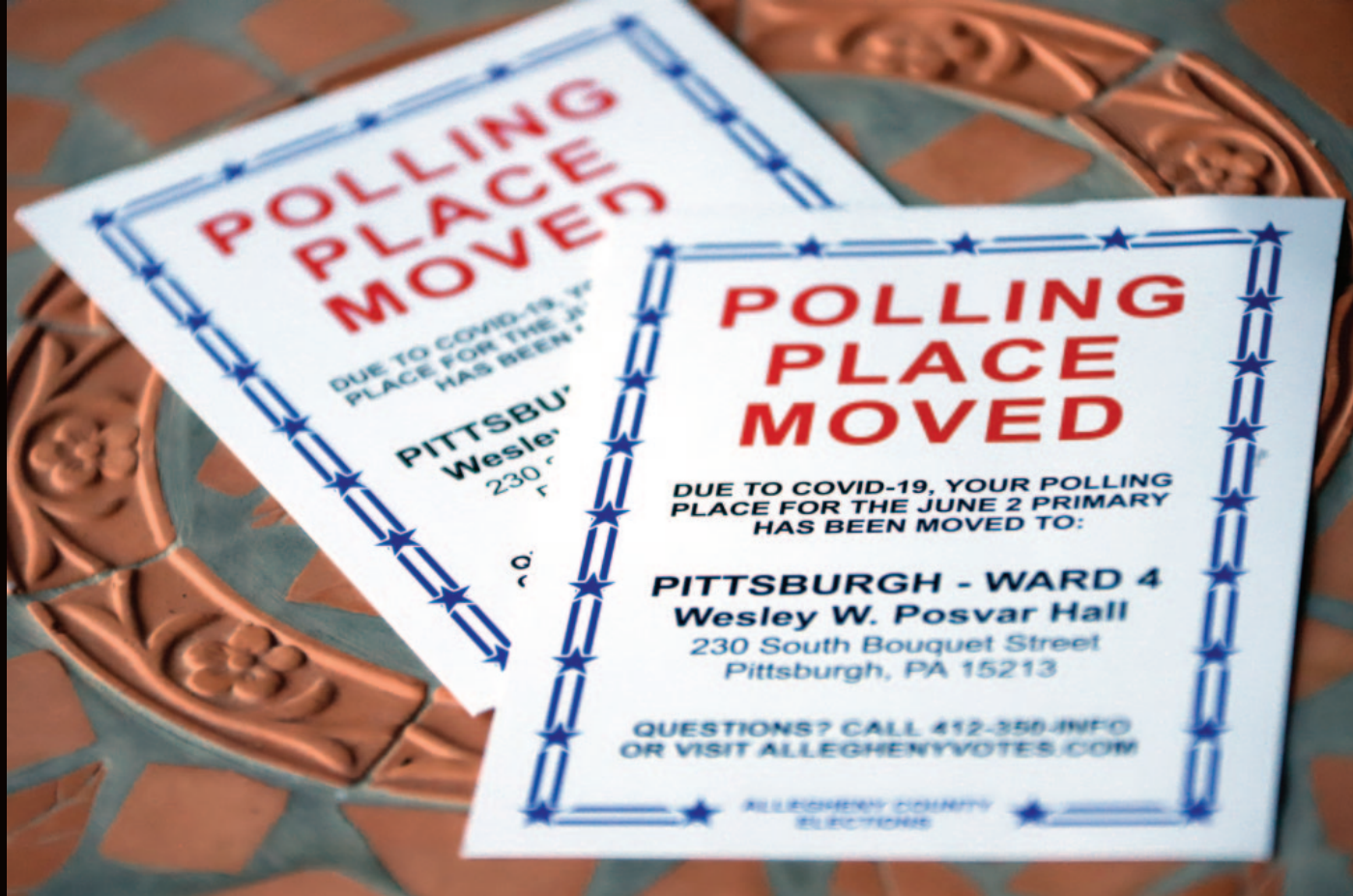
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This report draws upon information, insights, and perspectives provided by the numerous practitioners, advocates, and election officials we interviewed. They provided candid assessments of the state of the US systems of elections, directed us to voters, helped us to shape our recommendations, and strengthened our understanding of voting rights issues in the states and communities in which they work. We are immensely grateful to each of them, whether named in this report or not.

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WHAT DEMOCRACY LOOKS LIKE

Protecting Voting Rights in the US during the Covid-19 Pandemic

Ensuring the right to vote during the Covid-19 global pandemic is not easy but experience to date suggests concrete measures US jurisdictions can and should take as the country prepares for national elections in November. *What Democracy Looks Like*—based on investigations in Arizona, Pennsylvania, South Carolina, and Wisconsin, and drawing on international as well as US experience—identifies good practices as well as a series of Covid-19-related changes to elections procedures that negatively affected the right to vote in US primary elections held earlier in 2020. The latter include:

- Decisions to relocate, close, and consolidate polling places;
- Failures to take steps to overcome bureaucratic, linguistic, and other barriers to absentee voting or voting by mail;
- Failures to adequately inform voters of the above measures in a timely fashion.

While many voters persevered, these challenges prevented other people, in some cases disproportionately Black, Latinx, and Native American people, from voting altogether.

To ensure this experience is not repeated, state and local election officials should take measures in November 2020 and beyond, specified in the report, to ensure that both in-person voting and “special voting”—such as by mail and other forms of absentee voting—are available and accessible so that all voters without discrimination have an adequate opportunity and means to vote. Ensuring the right to vote and holding government accountable when that right is violated are essential parts of what democracy looks like.

(above) A mailer sent to voters for the June 2, 2020, Pennsylvania primary election advises them of a change in the location of their polling place in Pittsburgh.

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(front cover) A voter wearing a mask to protect against coronavirus lines up at Riverside High School for the Wisconsin primary election on April 7, 2020, in Milwaukee.

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