

Let People Vote: The ACLU's Agenda to Protect Democracy During COVID-19 and Beyond

Voting Rights Are At Risk

“Let’s be totally clear: Voter suppression was happening in Wisconsin before COVID-19, through onerous voter ID requirements, gerrymandering, and attempted cuts to early voting. Due to the pandemic, the disparities of voter suppression have reared their ugly heads...Wisconsin is a messy dress rehearsal for what will happen in November if we don’t act.”

– ACLU Voting Rights Campaign Strategist Molly McGrath, speaking to Vox about the Wisconsin primary, which did not accommodate vote-by-mail voters

With many political leaders and lawmakers cynically refusing to authorize and fund mail-in no-excuse absentee voting, the COVID-19 pandemic has become a powerful tool to suppress the votes of poor people, people of color, people with disabilities, young adults and the elderly.

The stakes this November could not be higher, and with so many voters now facing disfranchisement, these suppression efforts have become too big and egregious for the public to ignore.

The ACLU is poised to meet the challenge and leverage the opportunity. During the past several years, we have forged a record of exposing egregious efforts at voter suppression and prevailing despite the odds.

Last year, we tackled the Trump administration’s disingenuous attempt to add a citizenship question to the census, exposing that attempt as part of a highly partisan voter suppression plot. Against the odds, we persuaded Chief Justice John Roberts, prevailing 5–4 in the U.S. Supreme Court. And today we are pursuing sanctions against the top government lawyers who knowingly misled us and the courts.

We use every strategy at our disposal. This spring, we celebrated a great win in court, striking down the Florida poll tax that had threatened to eviscerate our huge 2018 advocacy win, when we and our partners persuaded Florida voters to approve voting rights restoration to as many as 1.4 million Floridians with felony convictions.

We build on a foundation of success and an array of organizational assets that enable us not only to win in the courts, but to create a public narrative that mobilizes activists and policymakers. Responding to the pandemic in consultation with public health experts, in early March 2020, we published a *New York Times* op-ed calling for immediate and urgent steps to reduce the risks of disenfranchisement: ramp up public education on voting by mail; broaden access to voting by mail; permit early processing of absentee ballots; and protect the rights of absentee voters.

We are in this for the long haul. Just as our forceful work against voter suppression forged the foundation for our current push to protect voting rights during the pandemic, our work today will build the base for our ambitious agenda beyond Election Day 2020.

As a nonpartisan organization that neither endorses nor opposes candidates or parties, our sole interest in this area is to ensure the vibrancy and integrity of our democracy. In the pages that follow, we outline our current work and plans for the future.

FIGHTING VOTER SUPPRESSION IN THE COURTS

We have launched new litigation directly to address the pandemic's impact on voting rights, on top of our previous full docket of cases to curtail voter suppression and expand ballot access.

CONFRONTING VOTER SUPPRESSION AND COVID-19

No one should have to choose between their health and their right to vote. Because we must preserve our democracy even as we engage in social distancing, the ACLU has been advocating—and suing—to expand access to no-excuse absentee voting. This crisis may well still be with us in November, and we are committed to ensuring that everyone has the right to vote and that they do not have to risk infection to exercise the franchise.

It is crucial both that vote-by-mail be universally expanded and also that safe vote-in-person options be retained, the latter to protect the voting rights of people (such as those with disabilities or limited English proficiency) who need in-person assistance, and others who lack homes or mailing addresses.

In the current crisis, a failure to adopt and execute expansive vote-by-mail arrangements constitutes an unconstitutional burden on the right to vote.

We have filed 11 cases to protect voting rights during the COVID-19 pandemic, focusing on expanding eligibility to vote-by-mail to all voters, and removing unnecessary barriers to absentee voting. They include:

- In Georgia, we are challenging the state's failure to provide prepaid postage on mail-in ballot envelopes.
- In Kentucky, we filed suit on behalf of the League of Women Voters, the NAACP, and the Urban League, to challenge a number of requirements placing Kentuckians at dire and unnecessary risk of COVID-19 in order to vote; those requirements include restrictions on vote-by-mail and onerous new photo-ID requirements that entail visits to ID-issuing agencies.
- In Michigan, we are challenging the state's deadline for receipt of absentee ballots, arguing that the state constitution requires counting any ballots that are mailed by Election Day. If successful, this case would ensure that tens of thousands of ballots are counted in November.

- In Missouri, we filed a lawsuit on behalf of the NAACP and League of Women Voters seeking to make absentee mail-in balloting available to all eligible voters in Missouri, and eliminate the state’s notarization requirement for absentee ballots. In response to our lawsuit, the state legislature passed a law permitting all Missouri voters to vote-by-mail in 2020, and eliminating the notary requirement for voters at high risk of severe health complications from COVID. In June, the governor signed that bill into law. We are continuing our challenge to the state’s notary requirement for all voters due to the COVID-19 pandemic and recently defeated the state’s motion to dismiss our case.
- In Montana, where vote-by-mail is routine and rural Native Americans lack mail service, we have sued to strike down a new law that would criminalize existing organizational efforts to collect and transport mail-in ballots directly to election offices, subjecting violators to up to 10 years in prison and \$50,000 in fines. In late May, we obtained a Temporary Restraining Order blocking the law while litigation continues.
- In Ohio, in support of a sweeping voting rights ballot initiative that would bring automatic registration and Election Day registration, we challenged the state’s requirement that petition signatures be collected via wet ink in person, rather than electronically. In late May, we obtained a preliminary injunction from the district court; unfortunately, that ruling was stayed by the Court of Appeals. Given the timing, we decided to suspend our ballot campaign for 2020 and will re-evaluate next steps in a future election year.
- In Virginia, we have challenged the state’s “witness requirement,” which forces any voter who submits an absentee ballot to open the ballot envelope in front of another person and have that person sign the envelope, forcing voters to violate social distancing protocols recommended by public health officials to protect their health. On April 29, we secured court approval of a settlement waiving the witness requirement for the state’s June primary. We hope to achieve the same result for November.
- In South Carolina, we are fighting to make vote-by-mail an option for all eligible voters and challenging the state’s “witness requirement.” In response to our case, the governor signed emergency legislation for the upcoming primary only that will allow people to cite the COVID-19 crisis as an excuse for absentee voting, but still required a witness. On May 25, a federal judge struck down the witness requirement for South Carolina’s June primary. We will continue litigating both issues for November.
- In Tennessee, we are fighting to make vote-by-mail an option for all eligible voters during the pandemic. We won a ruling in June that requires the state to make absentee voting available to all eligible voters for all elections in 2020. State officials violated that ruling and we subsequently received a motion to force state officials to comply with it. The state Supreme Court later denied the state’s appeal of our initial victory, which means that absentee voting is available to all eligible Tennessee voters while the case proceeds.

- In Texas, we are fighting to make vote-by-mail an option for all eligible Texas voters during the COVID-19 pandemic. We won a ruling from a state court that qualified all registered voters for a mail-in ballot as a result of the pandemic, but in a separate case, the Texas Supreme Court ruled that state law does not qualify all voters for a mail-in ballot. In yet another case, the Fifth Circuit blocked a lower court ruling allowing all voters to request absentee ballots. We are considering other options for making voting more accessible in Texas for the November election.
- We expect to file up to ten additional cases over the next two months, including in:
 - **North Carolina**, where we will challenge the witness requirement for absentee voting in state court ahead of the general election. (Incredibly, North Carolina requires either two witnesses, or one who is a notary public).
 - **Minnesota**, where we will challenge the witness signature requirement for absentee voting in state court ahead of the August 11 primary election.
 - **Georgia**, where we will challenge in federal court its failure to provide voter registration with public assistance applications, in violation of the National Voter Registration Act.
 - **Ohio**, for their failure to notify voters of a potentially disqualifying mismatch between the signature on the ballot and the one on file, and their failure to give voters the option to “fix” the apparent mismatch.
 - **Alabama, Connecticut and Puerto Rico**, where we will file challenges in federal court against their requirements of an “excuse” for absentee voting.

EXPOSING OBSTACLES, EXPANDING BALLOT ACCESS

The ACLU’s COVID-19 litigation builds upon a robust pre-pandemic docket of cases targeting voter suppression and strategically expanding ballot access. Priority work includes:

- Litigation to enfranchise 52,000 Minnesotans with felony convictions.
- Litigation to expand ballot access throughout the country by enforcing the law requiring motor vehicle and public assistance agencies to offer voter registration. Most recently, we secured settlements protecting access to the ballot for as many as 22,000 eligible voters in Missouri and 500,000 in Arizona. As applications for public assistance soar, we will likely sue to ensure these applicants can also register to vote, as federal law requires.
- Challenges to voter suppression, including an ongoing suit against a New Hampshire law that effectively targets college students and a recently resolved suit that stopped Tennessee from targeting voter registration organizations. As Election Day 2020 draws near, we are poised once again to challenge last-minute voter suppression tactics, such as “purging,” the sudden removal of potentially eligible voters from the voting rolls.

MOBILIZING ACTIVISTS AND POLICYMAKERS

Together with ACLU state-based affiliates, we are in the thick of advocacy with public officials to expand vote-by-mail access.

TARGETING CONGRESS

Given the current patchwork of state laws governing mail-in voting, we have demanded federal action. Congressional action is crucial to a timely nationwide fix, which requires both federal authority and a massive infusion of funds. The stimulus legislation, despite our best efforts, has thus far been insufficient, providing only \$400 million for new COVID-19 election expenses that will be in the billions.

In mid-April, we launched a petition to Congress, demanding Congress “pass a COVID-19 relief package that includes a mandated 14-day minimum early vote period, no-excuse mail-in absentee voting, and at least \$4 billion in federal funds—the amount required to make early voting and vote-by-mail accessible nationwide—so that no one has to choose between their health and their right to vote.” We also want to ensure personal protective equipment for poll workers, many of whom are in their 60s or older.

We have launched a national campaign to force federal action. With resources, we will use every tool in our considerable toolbox, including:

- Patch-through calls from ACLU activists to key members of Congress. This costs \$10,000 per member of Congress per campaign.
- Paid digital ads to target the social feeds of key members of Congress.
- Republican consultants to provide access to potentially receptive Republican members of Congress.
- Mobilizing our People Power army of volunteers, already seasoned digital activists, to target key stakeholders via text and phone banking.
- Outreach from high-profile ACLU staff and celebrities. Previously, our video “elevator pitch” explaining our Supreme Court census case and featuring ACLU Voting Rights Project Director Dale Ho and comedian Ike Barinholtz went viral.
- The creation and release of vote-by-mail advertising that can be tailored to our federal, state, and local lobbying. One such ad might raise the alarm by using the visuals of the dire turnout in Wisconsin, underscoring that no one should have to risk their life to vote.
- Action alerts, petitions, emails, and social media to mobilize our activist base and the public; letters to Congress from our lobbyists; coalition-building with grasstop and grassroots groups as appropriate.
- With additional resources, we could even create a public service announcement, calling on congressional and state leaders to make voting safe and accessible. With visuals of the long and dangerous voting lines in Milwaukee, Wisconsin, to

serve as a backdrop, we could then create audio for each targeted jurisdiction that would say something like: Tell our leaders in X jurisdiction to ACT NOW: Mail ballot applications with pre-paid postage to all registered voters in X jurisdiction.”

TARGETING STATES

We have been conducting advocacy in more than 30 states to make voting by mail possible in the states that limit it, and easier in the states that already allowed it. When we first began pressing for mail-in voting in early March, 17 states would not let everyone vote-by-mail. In the weeks since, eight of those states—including so-called red states like Alabama, Indiana, and West Virginia—have agreed to allow mail-in voting.

In the months from now through September, we will be pushing a vote-by-mail and ballot access campaign in counties and municipalities in at least four key states. Using our People Power volunteers, letters-to-the-editor, and patch through calls, we will likely target Florida, Michigan, Pennsylvania, and Wisconsin, all states where we already have a record of accomplishment in voting rights advocacy.

In each state we will leverage our advocacy successes—if Milwaukee and Allegheny (Pittsburgh) counties can already move forward on mail-in absentee ballots, what’s stopping other counties in Wisconsin and Pennsylvania? If Florida already offers eight days of early voting, why not now offer the 14 days authorized by law?

Our southeastern affiliates will also work together as a collective to lead a regional effort to build momentum to ensure easy, accessible vote-by-mail options among other reforms. With a history of voter suppression, the southeast region demands a strong resistance: It will get it in the collective power of our southern state-based affiliates, acting with one voice in the media and with policy makers toward common voting rights goals. Areas of potential focus for the Southern Collective include a joint audience research project that will steer investment in strategic and deliberate digital list acquisition through targeted voter education programs as well as building local volunteer infrastructure to support outreach to specific audiences, poll watching, legal observation, and exploring how volunteers could call into multiple states across region.

EDUCATING THE PUBLIC

In the United States, every state has its own set of voting laws—and voting protocols are shifting in response to the pandemic. We have launched “[Keep Calm and Carry On Voting](#),” a frequently updated page on our website that now includes voting rights and ballot access information for every state with an upcoming primary.

We will expand and improve this resource for the general election, to include voting rights and ballot access information for all 50 states. We will draw the public to our site and advance the know-your-rights/get-out-the-vote movement, with paid and unpaid social media, advertising, corporate partnerships and celebrity engagement.

In addition to providing much-needed voter education information, active marketing of this page will also provide an opportunity for the ACLU to reach new audiences. For example, even one corporate partner tweeting about this resource to its followers and informing its employees can leverage tens of thousands of new people to the ACLU. Once part of the ACLU community, we would engage them in additional activism for voting rights and other issues depending on their interests, and conceivably toward becoming “card carrying” members.

BEYOND ELECTION DAY: DE-RIGGING THE VOTE

Voter suppression tactics that obstruct ballot access can rig the vote. But there’s another equally important way election outcomes can be rigged, via gerrymandering—the deliberate drawing of voting districts to favor partisan or otherwise illegitimate outcomes.

Gerrymandering has destroyed fairness in elections throughout America and contributed to partisan gridlock. It has also—contrary to law—prevented Black, Latinx, and Native American communities from having their votes count fairly and hindered their ability to secure fair representation in government.

The current census—and the nationwide redistricting work that will follow—present a critical opportunity to make districts more fair.

Although the actual process of redrawing district lines will not begin in earnest until 2021, redistricting is an extremely complicated, highly technical, and resource-intensive process. A sustained effort to influence the line drawing process in key states requires us to conduct substantial work now, with litigation running into through at least 2023.

Our plan includes:

- Identifying key states and localities that are strategically important, and where there is an opportunity to make substantial improvements in existing maps;
- Drawing maps that provide meaningful representation to communities of color, achieve partisan fairness, and comply with other legal obligations;
- Building political consensus among stakeholders and legislatures around such maps (and adjusting them based on feedback from coalition partners);
- Advocating for our maps in a state or locality’s redistricting process (either through the legislature or relevant redistricting body, such as an independent commission); and
- Litigating where the maps that are actually adopted by the legislature fail to accommodate our concerns and violate federal or state laws.

The ACLU is ideally situated to play a lead role in redistricting fights in up to a dozen key states. We have always had litigation capacity and expertise in voting rights. But our new advocacy muscle—our growing capacity to influence the political process—allows us to play a role throughout the actual line drawing process, which will enable us to have

a more significant and wider impact on maps than simply waiting to litigate after maps have already been adopted. We also now have the technical capacity for map drawing that forms the backbone of redistricting work—through our new and expert data analytics department.

With resources, we are poised to make a huge difference to the fairness of the vote throughout America.

THE ACLU'S SINGULAR CAPACITY TO SPUR ACTION

As a multi-issue organization that works on many social justice and geographic fronts, the ACLU has the unique capacity to lead, coordinate, and catalyze change. Our integrated advocacy combines litigation with public education: winning key rulings, gaining “earned media” on progressive issues, and shifting public opinion.

This capacity to deploy multiple strategies along with our local offices, staff, and expertise mean that we provide one-stop shopping, something no other organization can offer. The laws, rules and procedures related to voting vary state-by-state, and as the only advocacy group with a litigating and lobbying presence in every single state, we are uniquely poised to push through such reforms no matter the strategy. When we encounter setbacks in our advocacy, we readily switch gears to litigate the issues—as we did when the Florida legislature endeavored to undercut Amendment 4 (which we helped pass). We ultimately filed suit and prevailed.

The fight for fair elections requires all hands on deck, the full engagement of organizations throughout civil society. The ACLU is positioned to lead, given our record of success; our high public profile; our nationwide network of state affiliates on the frontlines; our extensive relationships with grass-tops and grassroots stakeholders; our partnerships with federal and state policymakers; our robust docket of relevant cases; our in-house data analysis team; and our ability to mobilize online volunteers, activists, and supporters.

CONCLUSION

These perilous times require that the ACLU be more daring than ever, pushing the envelope to protect democracy. We must prevail. Your support will enable us to use every strategy and asset at our disposal, maximizing the likelihood these critical efforts will succeed.