



ACLU of Massachusetts  
211 Congress Street, Suite 301  
Boston, MA 02110  
617-482-3170  
www.aclum.org

May 14, 2020

Joint Committee on Election Laws  
Rep. John Lawn & Sen. Barry Finegold, Chairs

## **SUPPORT HD5075 SAFEGUARD OUR FALL ELECTIONS IN RESPONSE TO COVID-19**

Dear Chairman Finegold, Chairman Lawn, and members of the Election Laws Committee,

The ACLU of Massachusetts always strongly supports efforts to ensure ballot access. We have advocated for and helped pass many election reforms in recent years -- all with the common goal of increasing democratic participation and access to the ballot. Early voting, online registration, pre-registration for 16- and 17-year-olds, automatic voter registration. Yet none of those important reforms, of which we are all proud, is as critical as the bills before you today.

This is different. It's not just about improving our election system -- doing things better, or more efficiently, or more inclusively. The bills before you today are about averting a crisis and saving the upcoming elections.

We are grateful that many legislators and elected officials have recognized Massachusetts must change the way we run our elections this fall in light of COVID-19. Senators Creem and Rausch led the way by introducing legislation quickly and early. Several Representatives have filed legislation to facilitate voting by mail, expand early voting opportunities, and ensure adequate public health protections to safeguard in-person voting. Secretary Galvin and his staff have been proactive in working to address these issues, thinking creatively about logistical and technical details as well as necessary policy reforms.

We all agree voters should not have to choose between personal or public health and their right to vote. HD5075 matches that rhetoric with balanced, pragmatic policy.

We applaud Chairman Lawn and Leader Moran for filing this bill that thoughtfully and thoroughly responds to the situation.

### **Expand voting by mail and send a ballot to every voter for the general election**

Voters who wish to cast their ballots by mail as a precaution against COVID-19 must be affirmed in their right to do so this fall -- just as Secretary Galvin and the legislature wisely recognized this need for the local elections held in the spring. The public health imperative persists.<sup>1 2</sup>

---

<sup>1</sup> Experts warn that the spread of [COVID-19 will persist or even spike in the fall](#) and physical distancing will need to continue. We cannot ignore this reality as we plan for the fall elections.

<sup>2</sup> This legislation pertains only to the fall 2020 elections. However, it should be noted that voting by mail has a general salutary effect on democratic participation. In the 2018 midterm elections, states that permit voting by mail had, on average, 15.5% higher turnout than states that did not. In turn, voter participation increases public confidence in elections: <https://www.nonprofitvote.org/documents/2019/03/america-goes-polls-2018.pdf/>.

Indeed, we need to plan for a scenario in which an enormous percentage of the population -- perhaps as high as 60-80 percent -- will seek to cast their ballots by mail. As a practical matter, it will be impossible for local election officials to handle such a tidal wave of requests for absentee ballots in a presidential general election.

For this reason, the single most important thing you can do to safeguard the fall elections is to require the state to mail every voter an absentee ballot in November.<sup>3</sup> If we don't mail voters ballots for the general election, the impact on both clerks and voters will be substantial, making widespread voting by mail unnecessarily onerous and frustrating the democratic process.

Clerks will be buried in a tsunami of requests. Many are panicked about it -- rightly so. Responding to thousands of individual requests for absentee ballots is a ton of work on top of everything else, and the burden is likely to be completely unmanageable. Because of COVID-19, there could be more than twenty times the usual number of absentee ballots.

And if clerks are unable to process those requests in a timely manner, voters will bear the brunt of that failure. Unfulfilled absentee ballot requests will cause confusion and lead to some voters going to the polls in person against their better judgment and others staying home and missing the opportunity to vote in one of the most consequential elections of our time. These are unacceptable outcomes, and must be avoided at all costs. There will be far fewer problems for voters and for local election officials if the state mails every voter an absentee ballot for the general election.<sup>4</sup>

Sending ballots to every voter is efficient. It provides widespread access to absentee ballots without individual handling, allows the state to centralize ballot distribution, and saves municipalities time, energy, and money. Sending ballots to every voter is safe. Ballots can be individually coded and tracked, ensuring that people either vote by mail or in person, not both. States that conduct their elections by mail do not have more election fraud; fraud remains a felony and a rarity.<sup>5</sup>

### **Adopt sensible procedures for counting mail-in ballots: central tabulation in advance & counting of ballots postmarked by Election Day**

To ensure that widespread voting by mail functions smoothly this fall, this legislation would make two simple changes to the way absentee ballots are processed.

First, municipal election officials must be permitted to scan absentee and early voting ballots in the clerk's offices when they are received, rather than waiting and having to process tons of extra ballots at the polls on Election Day itself. The legislation would not permit results to be calculated or announced until the polls close.

---

<sup>3</sup> Importantly, HD.5075 does NOT require universal distribution of ballots or ballot applications before the primary. It is likely that local officials can manage absentee ballot requests for the primary, when turnout is lower. In addition, this bill recognizes that the short timeline and additional complications related to the primary (multiple ballots, party-affiliated and unenrolled voters) make it unrealistic to attempt to proactively mail every voter a ballot.

<sup>4</sup> HD5075 anticipates that some number of ballots would be returned as undeliverable, and addresses this potential issue wisely. Some number of undeliverable ballots is inevitable in a time when individuals may have altered their living situation in order to protect against COVID-19 infection. If a ballot does not reach the addressee, this should not result in the eligible voter's disenfranchisement; they should still be able to cast a ballot in person, so the bill prohibits the disqualification of a voter on the mere grounds that the ballot was returned as undeliverable.

<sup>5</sup> Stephanie Saul and Reid J. Epstein, *Trump is Pushing a False Argument on Vote-by-Mail Fraud. Here are the Facts.*, New York Times, Apr. 11 2020, <https://www.nytimes.com/article/mail-in-voting-explained.html>

Second, all ballots must be counted so long as they are postmarked by Election Day. With the ever evolving landscape of the pandemic it is important that voters be able to make a last minute decision -- based on their personal health concerns -- to cast their ballot through the mail. Allowing the ballots to be postmarked on Election Day and counted in the days after the election is consistent with current practices in a wide range of states, and will prevent widespread disenfranchisement. Massachusetts election officials are already familiar with this procedure, because it is used to guarantee that military service members have their ballots counted under the Uniformed and Overseas Absentee Voting Act.

### **Safeguard in-person voting with expanded early voting and public health precautions**

In-person voting is an indispensable complement to voting by mail, particularly for voters who live in places where mail delivery is not reliable, individuals with disabilities who require assistive equipment to complete a ballot, or voters who have temporarily relocated to a place with more opportunities for physical distancing or self-quarantine and therefore may not receive mail in a timely way.

Given that many of these voters live in communities of color disproportionately affected by COVID-19, guaranteeing sufficient in-person polling opportunities is an imperative matter of racial justice.<sup>6</sup> Failure to ensure adequate ballot access this fall would disenfranchise the very groups that have faced the worst forms of voter suppression throughout American history. Certainly, Massachusetts does not want to have the experience of Milwaukee, Wisconsin on April 7, where people of color and others were left standing in line for hours due to the lack of sufficient in-person polling locations.<sup>7</sup>

It is not enough to maintain the status quo during this pandemic. We must take affirmative steps to make sure that in-person voting is safe, including measures to expand early voting opportunities and adopt practices and procedures to prevent the spread of COVID-19 infection at polling places.

Expanding early voting helps people maintain physical distance by spreading out their presence at the polls over time. This bill would enable early voting in person for two weeks before the September primary and three weeks before the November general election. We appreciate other proposals that would specifically require early voting opportunities on evenings and weekends, and would be glad for the committee to adopt those complementary proposals.

In addition, the legislation would require the Secretary of State to issue regulations governing public health safeguards at early voting sites and polling places, including physical distancing and other measures to prevent COVID-19 transmission. Such regulations, and public education about them, will both protect the health of voters and poll workers and instill public confidence in participating in the fall elections.

\*\*\*

Elections matter. And this election will not only be *impacted* by COVID-19; it will have a profound effect on the future government response to the pandemic. COVID-19 has exposed and exacerbated

---

<sup>6</sup> *Data show COVID-19 is hitting essential workers and people of color hardest*, ACLU of Massachusetts, Apr. 8, 2020, <https://www.aclum.org/en/publications/data-show-covid-19-hitting-essential-workers-and-people-color-hardest>

<sup>7</sup> *Wisconsin Primary Recap: Voters Forced to Choose Between Their Health and Their Civic Duty*, New York Times, Apr. 7, 2020, <https://www.nytimes.com/2020/04/07/us/politics/wisconsin-primary-election.html>

systemic inequality across the country. We must ensure that those most impacted by the pandemic are able to vote for the leaders who will govern as our country rebuilds.

As the nation reckons with the terrible cost of this pandemic—the loss of loved ones and unprecedented economic hardship—we must ensure that our democracy itself does not suffer irreparable harm.

Time is of the essence. We are only a few months away from Election Day, and Massachusetts is already approaching crucial deadlines to set the wheels of the electoral system in motion. We urge you to act swiftly to pass legislation that will safeguard our elections and make it possible for all eligible voters to cast their ballots without undermining public health.