

United States Senate  
WASHINGTON, DC 20510

June 23, 2020

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National Association of State Election Directors  
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The Honorable Paul Pate  
President  
National Association of Secretaries of State  
444 North Capitol Street NW, Suite 401  
Washington, DC 20001

Dr. Ms. Augino and Secretary Pate:

We write today concerning the prospect of voter suppression and intimidation in the context of the COVID-19 Pandemic. While we must be vigilant against efforts to suppress voters and curtail voting rights in every election, the 2020 General Election is particularly vulnerable to interference during this public health crisis.

Prior to the COVID-19 public health emergency, there were already many indicators of increased levels of voter suppression ahead of the 2020 election. In 2016, individuals reported more than 4,000 instances of voter intimidation – substantially more than were reported four years earlier.<sup>1</sup> And in both the years before and since 2016, we’ve seen multiple states adopt laws ostensibly aimed at erecting obstacles to voting by particular communities.

Throughout the spring primary season, the pandemic has caused delays and dangerous conditions for voters. In Wisconsin for example, the state proceeded with an in-person election with wholly inadequate procedures for voting safely – resulting in at least 50 cases.<sup>2</sup> It is evident that substantive measures must be taken to ensure that no American must choose between their franchise and their health. However, the urgent need for new safe voting procedures, including the importance of safe, evidence-based secure alternatives to voting in person, increases the risk that some policies could – intentionally or otherwise - deter and discourage voter participation.

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<sup>1</sup> Alan Neuhauser. November 8, 2016. “Voter Intimidation Complaints Surge”. U.S. News & World Report. Retrieved from: <https://www.usnews.com/news/politics/articles/2016-11-08/voter-intimidation-complaints-surge>

<sup>2</sup> Scott Bauer. April 29, 2020. “52 who worked or voted in Wisconsin election have COVID-19”. ABC News. Retrieved from: <https://abcnews.go.com/Health/wireStory/52-worked-voted-wisconsin-election-covid-19-70406317>

As many states begin to evaluate the next phase of the COVID-19 response, there is an active debate regarding how to use testing and immunity designations to safely reopen. Many experts have suggested using so-called “immunity passports” or health status apps to track immunity and health in society. While we do not establish a position on that debate in this letter, it is critical that we do not allow immune-status to act as a barrier to the ballot-box in any way.

Further, while precincts nationwide can and should actively encourage measures like the use of PPE, substantial sanitation and social distancing in-line with recommendations from the CDC, reasonable modifications must be made to ensure equal opportunity for individuals with disabilities. For example, persons with autism are often unable to wear a mask for any extended period. In cases like this, it is critical that guidance interpreting the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act be issued to clarify that reasonable modifications must be made to ensure that social distancing measures do not serve as a barrier to the polls for individuals with disabilities.

The risk that novel procedures may deter voters is further complicated by the disturbing racial disparities in Coronavirus cases. In almost every state, evidence suggests that African Americans have been disproportionately affected by the virus.<sup>3</sup> Communities of color have frequently faced active efforts to inhibit their franchise – unfortunately, it is likely that there are those who will attempt to use COVID-19 safety procedures as a pretext to suppress voters and undermine the political voice of these communities. We must proactively take steps to safeguard these communities and other vulnerable groups from voter suppression and intimidation.

America has a fraught history of voter suppression and immunoprivilege.<sup>4</sup> We urge both the National Association of State Election Director and the National Association of Secretaries of State to work proactively to counter attempts to suppress vulnerable and historically-disenfranchised voters during this health crisis. If states and localities do adopt health or immune-status tools for screening at polling places, voters should know of those plans well in advance. Specifically, we recommend:

- Given well-documented efforts in 2016 to spread false information – including about the time, location, and methods of voting – in an effort to confuse and deter voters, any safety procedures should be announced and publicized months ahead of the November election.<sup>5</sup> Further, any information about voting and safety procedures should be communicated in a variety of languages and formats.
- Strong privacy and security testing should take place months ahead of any deployment of any screening tools, along with civil rights audits and impact assessments.

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<sup>3</sup> Laura Barrón-López. May 5, 2020. “A new study shows just how badly black Americans have been hit by Covid-19”. Politico. Retrieved from: <https://www.politico.com/news/2020/05/05/black-counties-disproportionately-hit-by-coronavirus-237540>

<sup>4</sup> Kathryn Olivarius. April 12, 2020. “The Dangerous History of Immunoprivilege”. The New York Times. Retrieved from: <https://www.nytimes.com/2020/04/12/opinion/coronavirus-immunity-passports.html>

<sup>5</sup> Young Mie Kim. November 20, 2018. “Voter Suppression Has Gone Digital”. Brennan Center for Justice. Retrieved from: <https://www.brennancenter.org/our-work/analysis-opinion/voter-suppression-has-gone-digital>

- Policies should be evaluated for compliance with the Americans with Disabilities Act and rather than closing polling places with accessibility problems, changes must be made to ensure that those polling places are made accessible and that reasonable modifications are made to meet the needs of voters with disabilities. Further, poll workers should be trained on how to operate accessible voting machines and on how to interact with voters with disabilities.
- In the event that a state or locality chooses to adopt these screening tools, it is imperative that voters potentially barred from entry into a polling place due to suspected illness be given the opportunity to cast their ballots swiftly and securely – including through convenience voting measures such as the provision of same-day absentee ballots, curbside voting, or other reasonable, secure, and private accommodations.
- When determining which measures to adopt and the impact of such measures on historically disenfranchised communities, states and localities should conduct meaningful engagement with community leaders.

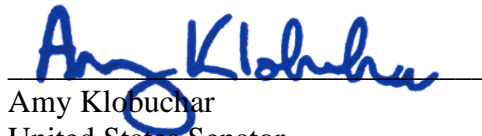
An aggressive and early effort, paired with extensive convenience voting measures, will be a key defense to ensure that every American can feel safe and confident exercising the franchise.

Thank you for your attention to this matter.

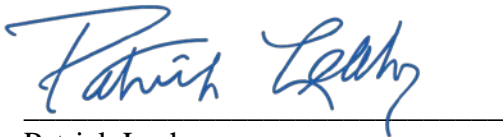
Sincerely,



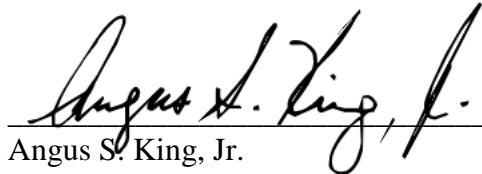
Mark R. Warner  
United States Senator



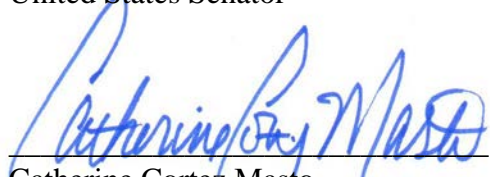
Amy Klobuchar  
United States Senator



Patrick Leahy  
United States Senator




Angus S. King, Jr.  
United States Senator



Catherine Cortez Masto  
United States Senator




Tom Udall  
United States Senator



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Richard J. Durbin  
United States Senator



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Dianne Feinstein  
United States Senator