



Sent Via Email

September 24, 2020

Re: Election Contingency Plans

Dear Georgia County Commissioners:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. ("LDF"), All Voting Is Local Georgia, and Fair Fight Action, we urge you to work with the election officials in your county to prepare an election contingency plan for the November 3, 2020 General Election.

Election Contingency Planning is a Universally Accepted Best Practice

It is critical that every county in Georgia develops and publicly releases an election contingency plan to ensure that county election officials are prepared to deal with emergencies that may arise in the weeks leading up to and on Election Day. The importance of election contingency planning is especially urgent this year, due to the COVID-19 pandemic, which has disproportionately affected the elderly, lower-income residents, and communities of color.

Preparing election contingency plans is a universally accepted best practice that should be implemented for timely and effective elections. The United States Election Assistance Commission has explained that "[c]hange in a voter registration and elections office is inevitable, and effective management requires election administrators to develop contingency and change management plans to respond to situations in a timely and effective manner."¹ The National Association of Secretaries of State explains that "[c]ontingency planning has long been an important part of election administration."² The National Conference on State Legislatures explains, "[e]lection officials have to expect the unexpected. The list of events that can disrupt an election reads like a version of the apocalypse . . . [t]hat's why there is no understating the importance of natural disaster preparedness and contingency plans for disruptions to voting."³ Further, the House Governmental Affairs Committee recommends that each county adopt contingency plans to avoid election delays and disruption. Specifically, the report

¹ U.S. Election Assistance Commission, *Contingency Planning and Change Management*, available at https://www.eac.gov/sites/default/files/eac_assets/1/6/Chapter_11_Contingency_Planning_and_Change_Management.pdf

² National Association of Secretaries of State, *State Laws & Practices for the Emergency Management of Elections*, available at <https://www.nass.org/sites/default/files/Election%20Cybersecurity/report-NASS-emergency-preparedness-elections-apr2017.pdf>

³ National Conference on State Legislatures, *Election Emergencies Happen*, available at <https://www.ncsl.org/research/elections-and-campaigns/election-emergencies-happen.aspx>

recommends, “to ensure proper preparation for any potential outcomes . . . [counties] must adopt an election administration plan in advance of each election day which would include contingency plans, resource allocation, and turnout expectations.”⁴

Secretary of State Raffensperger has affirmed that county election officials are expected to prepare contingency plans, explaining that the delay in the Primary Election allowed “county election officials to continue to put in place contingency plans to ensure that voting can be safe and secure when in-person voting begins and prioritizes the health and safety of voters, county election officials, and poll workers.”⁵

Notwithstanding this well-established best practice—and the direction from the Secretary of State that counties should prepare contingency plans—we are not aware of *any* county in Georgia that has prepared and published a contingency plan on their website. It is critical for all counties to prepare and publish comprehensive election contingency plans immediately to ensure that the November 3, 2020 General Election is conducted smoothly and safely.

Election Contingency Planning Could Have Prevented Significant Issues and Delays in Fulton and DeKalb Counties

Failure to plan and publish COVID-19 contingency plans resulted in critical election delays in both Fulton and DeKalb counties. On April 14, 2020, a Fulton County elections employee died from COVID-19, and a voter registration manager was hospitalized.⁶ These COVID related events led to significant processing delays over the June 9 primary election, where many voters reported problems with receiving their ballots on time.⁷

On June 18, 2020, we learned that an employee from the DeKalb County Voter Registration and Elections office tested positive for COVID-19. DeKalb County lacked any contingency plan to deal with this predictable issue. The DeKalb County Board of Health recommended a 14-day self-quarantine and a COVID-19 test for all employees who worked in the office and may have come in contact with the employee.⁸ Election officials had to request permission from the Georgia Secretary of State to postpone

⁴ Chairman Shaw Blackmon, Primary Election Investigation, House of Rep. Gov’t Affairs Committee, available at http://www.house.ga.gov/Documents/CommitteeDocuments/2020/GovernmentalAffairs/Elections_Investigation_Report.pdf

⁵ *Raffensperger Announces Postponement of Primary Election Until June 9*, Georgia Secretary of State, available at https://sos.ga.gov/index.php/elections/raffensperger_announces_postponement_of_primary_election_until_june_9

⁶ Mark Niese, *Fulton Elections Employee Dies of COVID-19 before Georgia Primary*, The AJC, available at <https://www.ajc.com/news/state--regional-govt--politics/elections-employee-dies-covid-ahead-georgia-primary/tCXDJ2aBt6QTqu6r1qEv8L/>

⁷ Kate Brumback, *Investigation: County Failed to Process Ballot Applications*, The AP, available at <https://apnews.com/cae2208194df139e5c47f43e195fe9df>

⁸ Catherine Catoura, *DeKalb County Elections employee tests positive for COVID-19, officials say*, CBS46, available at https://www.cbs46.com/news/dekalb-county-elections-employee-tests-positive-for-covid-19-officials-say/article_80a9c5dc-b258-11ea-9b0a-4b9f052ec969.html

the certification of the June 9 election results. The DeKalb County election offices were shut down, which, among other things, made it impossible for voters to deliver their absentee ballot applications in person.⁹ And most recently on September 10, 2020, another DeKalb County location was shut down without a replacement site, after an elections worker tested positive for COVID-19. Again, this most recent closure will make it impossible for voters at that location to deliver their absentee ballot applications in person.

With a suitable contingency plan, DeKalb County could implement protocols to allow voters to drop off their absentee ballot applications, adopt alternate staffing models that would allow the office's work to continue unaffected, and even identify alternate office space for election officials to use. Unfortunately, DeKalb County lacked a contingency plan to address the June 18 closure and they still lack a plan to help election officials adequately respond to this foreseeable issue when it happened again on September 10.

County Commissions Must Ensure That Their County Has a Comprehensive Election Contingency Plan

Although primary responsibility for preparing election contingency plans lies with county election officials, preparation of plans should be a collaborative effort that involves all necessary stakeholders. Depending on the county, it may be important to involve officials from local government agencies, including the board of health, the local emergency management agency, and local elected officials. County commissions have the obligation to convene these stakeholders and ensure that election contingency plans are in place.

At a minimum, election contingency plans must address the following issues:

- Procedures to ensure that all aspects of the voting process remain unaffected if elections office employees, poll workers, or other officials are diagnosed with COVID-19 or display symptoms of COVID-19.
- Communications plans for emergency situations, including contact information for key staff, local emergency management agencies, law enforcement, fire, medical services, utility providers, election equipment vendors, and others.
- Procedures for promptly informing voters and the news media of polling place changes and other announcements.
- Power outage procedures for polling places, including evaluation of polling place power needs for lighting and voting machines (e.g. determining necessary wattage), as well as access to (and procurement of) back-up power sources, such as generators.
- Polling place relocation instructions and lists of alternative polling locations.
- Evacuation procedures for bomb threats, fires, and other emergencies.

⁹ The Secretary of State's office directs voters to present their absentee ballot application in person as one way to deliver their application. *Vote by Absentee*, Georgia Secretary of State, available at <https://georgia.gov/vote-absentee-ballot>.

- Guidelines for managing poll worker shortages, including designating and contacting alternate poll workers.
- Development of checklists for use by election officials to ensure all regulations and procedures are carefully followed.

For additional guidance on the preparation of election contingency plans, we refer you to resources prepared by the United States Election Assistance Commission,¹⁰ the National Association of Secretaries of State,¹¹ the National Conference on State Legislatures,¹² and resources prepared by other states.¹³

If you or the election officials in your county have already prepared a contingency plan, we kindly ask that you make your plan public or share it with us immediately. We are available to help if you or the election officials in your county need assistance preparing contingency plans.

Sincerely,

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¹⁰ U.S. Election Assistance Commission, *Contingency Planning*, available at <https://www.eac.gov/election-officials/contingency-planning>; *see also* U.S. Election Assistance Commission, *Contingency Planning and Change Management*, available at https://www.eac.gov/sites/default/files/eac_assets/1/6/Chapter_11_Contingency_Planning_and_Change_Management.pdf.

¹¹ National Association of Secretaries of State, *State Laws & Practices for the Emergency Management of Elections*, available at <https://www.nass.org/sites/default/files/Election%20Cybersecurity/report-NASS-emergency-preparedness-elections-apr2017.pdf>

¹² National Conference on State Legislatures, *Election Emergencies Happen*, available at <https://www.ncsl.org/research/elections-and-campaigns/election-emergencies-happen.aspx>

¹³ *See, e.g., Election Administration Plans*, Ohio Secretary of State, available at <https://www.ohiosos.gov/elections/elections-officials/elections-officials-resources/#plans> (local boards of elections in Ohio are required to develop and submit election administration plans, which include contingency plans); *Emergency Contingency Model Plan for Elections*, Connecticut Secretary of State available at https://portal.ct.gov/-/media/SOTS/ElectionServices/Misc/Regs-Subtitle-9-174a_Emergency-Contingency-Model-Plan-F-or-Elections.pdf?la=en (a model election contingency plan for local election officials in Connecticut). Additional model plans are available from the U.S. Election Assistance Commission website.

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All Voting is Local

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

NAACP Legal Defense and Educational Fund, Inc. ("LDF")

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that prohibit voter discrimination, intimidation, and suppression and increase access to the electoral process.

Fair Fight Action

Fair Fight Action promotes fair elections in Georgia and around the country, encourages voter participation in elections, and educates voters about elections and their voting rights. Fair Fight Action brings awareness to the public on election reform, advocates for election reform at all levels, and engages in other voter education programs and communications.