



PROTECTING THE VOTE FOR ALL AMERICANS

June 3, 2020

Hon. Melanie Levesque
Chair, Committee on Election Law and Municipal Affairs
New Hampshire State Senate
State House, Room 105
107 North Main Street
Concord, NH 03301

Dear Senator Levesque:

Fair Elections Center¹ writes to express its support for Amendment 1281 to HB 1672, the “Coronavirus Election Protection Act of 2020,” which is currently scheduled for a hearing before the Committee on Election Law and Municipal Affairs on Thursday, June 4, 2020. The Center and its predecessor, Fair Elections Legal Network, have been helping Granite Staters gain access to the vote since 2010. We respectfully request that this letter be entered into the record as written testimony. As voters face radical changes to nearly every aspect of their lives due to COVID-19, and during a critical election year, lawmakers should make it easier, not harder, for them to cast their ballots.

On March 11, 2020, the World Health Organization declared novel coronavirus and the illness it causes, COVID-19, a pandemic.² Two days later, Gov. Chris Sununu declared a state of emergency,³ and subsequently issued emergency orders requiring

¹ Fair Elections Center is a national, nonpartisan voting rights and election reform 501(c)(3) non-profit organization based in Washington, D.C. Its mission is to use litigation, education, and advocacy to remove barriers to registration and voting, particularly those disenfranchising underrepresented and marginalized communities, and to improve election administration.

² *WHO Director-General’s opening remarks at the media briefing on Covid-19*, World Health Organization (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-Covid-19---11-march-2020>.

³ Exec. Order 2020-04, OFF. OF THE GOV. (Mar. 13, 2020), *available at* <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/2020-04.pdf>.

residents to stay at home and prohibiting gatherings of ten or more people.⁴ On April 10, 2020, Secretary of State William Gardner issued a memorandum stating that all New Hampshire voters who are concerned about voting in person due to COVID-19 qualify to vote by absentee ballot under the “disability” excuse provided in N.H. Rev. Stat. Ann. § 657:1(I).⁵ To date, however, Secretary Gardner’s office has not clarified whether voters concerned about contracting COVID-19 may register to vote by mail under the “disability” excuse provided under N.H. Rev. Stat. Ann. § 654:16. The memorandum also does not suspend the requirement under N.H. Rev. Stat. Ann. § 654:17 that voters obtain a witness signature on their absentee registration affidavit.

As of June 2, health officials have confirmed more than 1.8 million COVID-19 cases and 105,000 COVID-19-related deaths in the United States.⁶ Thankfully, New Hampshire has seen far lower rates, with less than 5,000 confirmed cases and 245 deaths,⁷ likely in part because of the state government’s swift action to implement measures to slow the virus’s spread. With a resurgence expected this fall and winter, the Legislature must act now to continue these protective measures and ensure that every registered voter can safely cast his or her ballot in the September 8 State Primary and the November 3 General Election.

Amendment 1281 would make progress toward this goal, by permitting all New Hampshire voters to cast an absentee ballot. It would also establish online voter registration, for which Fair Elections Center expressed support earlier this year through written testimony submitted on SB 631. The amendment would also require the Secretary of State to enter into an agreement with the Electronic Registration Information Center (ERIC) by June 30, 2020. ERIC, whose membership includes 31 states, including Republican-majority and Democratic-majority states, identifies potentially out-of-date voter records by comparing voter registration data between states, to motor vehicle licensing agency data, and to the Social Security Administration master death index list. For years, Fair Elections Center has monitored the process of maintaining voter registration information and we view

⁴ Emergency Order No. 16, § 1, OFF. OF THE GOV. (Mar. 23, 2020), *available at* <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-16.pdf>; Emergency Order No. 17, § 4, OFF. OF THE GOV. (Mar. 26, 2020), *available at* <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-17.pdf>.

⁵ Sec’y of State Wm. Gardner and Atty. Gen. Gordon MacDonald, *Elections Operations During the State of Emergency* 4 (Apr. 10, 2020), *available at* https://www.nhpr.org/sites/nhpr/files/202004/covid-19_elections_guidance.pdf.

⁶ *Cases in the U.S.*, CTRS. FOR DISEASE PREVENTION & CONTROL, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html#accordion-1-collapse-3> (last updated June 2, 2020).

⁷ *Id.*

ERIC as the only option for secure and effective cross-state list maintenance that helps maintain the integrity and security of the voter rolls at this critical time.

There are a number of ways in which Amendment 1281 could be strengthened. For example, any qualified voter should be allowed to register to vote by mail under Section 654:16. Additionally, Section 654:17 should be amended to eliminate the witness requirement for the absentee registration affidavit, which would allow qualified residents who live alone and are self-isolating for health reasons to register without risking contact with the novel coronavirus. According to the U.S. Census Bureau, of New Hampshire's 526,710 occupied households, 134,536 (26 percent) are occupied by a single household member.⁸ The amendment would also restrict online voter registration to people with ID issued by the New Hampshire Department of Public Safety Division of Motor Vehicles. This restriction would disproportionately exclude elderly voters and voters with disabilities from online voter registration, as nearly 20 percent of voters aged 65 or older and 7.2 percent of voters with disabilities lack unexpired, government-issued photo ID.⁹ Given the ongoing public health emergency, however, Amendment 1281 currently presents the best opportunity for safeguarding eligible residents' health and fundamental right to vote.

New Hampshire is three times an outlier by not making registration by mail available to all voters, not offering online voter registration, and requiring an excuse to vote by mail. There is simply no evidence that making voters take additional steps to register and cast their ballots increases voter participation. In fact, a recent report found that voter turnout is lower in states with more restrictive voting laws.¹⁰ According to the report, in 2016, New Hampshire ranked 40th in terms of how easily its citizens can exercise their right to vote.¹¹ By contrast, in 1996, it ranked 4th, making it one of the easiest states in which to vote that year.¹² To the extent that the

⁸ *American Community Survey Estimates 2013–17* (Table S2501), U.S. CENSUS BUREAU, available at <https://data.census.gov/cedsci/table?q=S2501&tid=ACSSST5Y2017.S2501&hidePreview=true&g=040000US33>.

⁹ U.S. Senator Bob Casey and U.S. Senator Amy Klobuchar, *Barriers to Voting for Older Americans: How States Are Making It Harder for Seniors to Vote*, U.S. SENATE SPECIAL COMM. ON AGING 4 (Nov. 2, 2017), available at <https://www.aging.senate.gov/imo/media/doc/Voting%20Rights%20Report.pdf>; S.E. Smith, *Voting is already hard for people with disabilities. Voter ID laws make it even harder.*, VOX (Apr. 1, 2016), <https://www.vox.com/2016/4/1/11346714/voter-id-laws-disabilities>.

¹⁰ Quan Li et al, *Cost of Voting in the American States*, 17 ELECTION L. J. 234, 234 (2018), available at <https://www.liebertpub.com/doi/pdf/10.1089/elj.2017.0478>.

¹¹ See *id.* at 241 (Fig. 1); see also *New study scrutinizes time and effort it takes to vote in each state*, NO. ILL. UNIV. (Sept. 25, 2018), <https://newsroom.niu.edu/2018/09/25/new-study-scrutinizes-time-and-effort-it-takes-to-vote-in-each-state/>.

¹² Li et al, *supra* note 10, at 242 (Fig. 2); No. Ill. Univ., *supra* note 11.

Legislature believes that expanding vote by mail could facilitate vote by mail fraud, available evidence confirms that this type of fraud is functionally nonexistent.¹³

Since the World Health Organization declared novel coronavirus a pandemic, Fair Elections Center has filed lawsuits in multiple states challenging voting laws that require or have the effect of requiring voters to vote in person or to break vital self-isolation measures. We believe that, during the pandemic, New Hampshire's in-person registration and voting requirements and its witness requirement for absentee registration affidavits severely and unnecessarily burden the right to vote by making voters choose between exercising their right to vote or protecting their or at-risk family members' health. Similarly, these rules impermissibly coerce voters into sacrificing their constitutional right to bodily integrity by forcing them to risk contracting this deadly, highly contagious disease at their polling places or during the witnessing process. As such, we strongly urge the Legislature to adopt legislation easing these restrictions. Please see our report, [Registering and Voting in the Era of COVID-19](#), for additional recommendations for improving ballot accessibility during the novel coronavirus pandemic.

Thank you for allowing Fair Elections Center to share its expertise on this matter and to express its support for Amendment 1281. Should you have any questions, I can be reached at caguilera@fairelectionscenter.org.

Sincerely,

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¹³ See Amber McReynolds and Charles Stewart III, *Let's put the vote-by-mail 'fraud' myth to rest*, THE HILL (Apr. 28, 2020), <https://thehill.com/opinion/campaign/494189-lets-put-the-vote-by-mail-fraud-myth-to-rest>; Wendy R. Weiser and Harold Ekeh, *The False Narrative of Vote-by-Mail Fraud*, BRENNAN CTR. FOR JUSTICE (Apr. 10, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>.