

Congress of the United States
Washington, DC 20515

October 21, 2020

Dear Attorney General Yost:

During a devastating and norm-altering pandemic, your office has a responsibility to ensure that Ohioan’s right to vote is not unnecessarily burdened. Ohio depends on your leadership to ensure our voting procedures satisfy federal fairness standards. Unfortunately, the approaches taken by your office has made it more difficult for Ohioans to exercise their Constitutionally protected right to vote. As Ohio’s chief legal officer, we encourage you to join litigation against the United States Postal Service (USPS), allow the installation of multiple drop boxes without unnecessary restrictions, and retreat from unnecessary signature matching rules. Federal courts are weighing action to mitigate postal service delays, but Ohio does not have a seat at the table in these discussions.¹

Protections enshrined in the Constitution and numerous federal statutes² were designed to empower Americans with the inalienable right to vote. Keystone statutes like the Voting Rights Act (VRA) and the Americans with Disabilities Act (ADA) were drafted to empower ordinary Americans in the exercise of their Constitutionally protected right to vote. Unfortunately, state laws masquerading as “protections” against non-existent voter fraud,³ have a long history of disenfranchising Americans, particularly working-class voters and communities of color. As Justice Breyer noted in an opinion addressing previous voting restrictions in Ohio: “[i]n the late 19th and early 20th centuries, a number of ‘[r]estrictive registration laws and administrative procedures’ came into use across the United States—from literacy tests to the poll tax and from strict residency requirements to ‘selective purges.’ Each was designed ‘to keep certain groups of citizens from voting’ and ‘discourage participation.’”⁴ We fear that your positions hinder access to the ballot box and risk repeating that history, sending a chilling message to the people of our state about the value of their vote.

a. The United States Postal Service

The Trump Administration has taken deeply troubling actions to destabilize the USPS, removing high volume processing sites and cracking down on overtime, in an attempt to cast doubt on the

¹ “Judge Victor Marrero said in his ruling, the Postal Service must begin treating all election mail, including ballots, as first-class or priority mail; preapprove all overtime requested from Oct. 26 to Nov. 6, the peak times for election mail; and submit a plan to restore on-time delivery of mail to its highest level this year.” Luke Broadwater, IN LATEST LEGAL REBUKE, COURT ORDERS POSTAL SERVICE TO PRIORITIZE MAIL-IN VOTING THE NEW YORK TIMES (2020), <https://www.nytimes.com/2020/09/21/us/politics/postal-service-mail-in-voting.html> (last visited Oct 15, 2020).

² The Voting Rights Act, 52 U.S.C. §§ 10300-14; the National Voter Registration Act 42 U.S.C. § 1973gg; the Americans with Disabilities Act 42 U.S.C. §§ 12101 et seq; and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) 52 U.S.C. §§20301-20311.

³ JUSTIN LEVITT, Brennan Center for Justice, THE TRUTH ABOUT VOTER FRAUD (2007), <https://www.brennancenter.org/our-work/research-reports/truth-about-voter-fraud> (last visited Oct 15, 2020).

⁴ *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1850, 201 L. Ed. 2d 141 (2018) (Breyer, J., dissenting) quoting H. R. Rep. No. 103–9, p. 2 (1993).

reliability of the Postal Service to deliver ballots on time.⁵ Attacks on the Postal Service are an attacks on the right to vote and jeopardize the sanctity of our democracy. These assaults have proven so dangerous to States' ability to operate an election that 21 State Attorneys General sued the Postal Service to stop these cuts. Ohioans deserve an Attorney General that will fight for their right to vote. By joining this litigation, you will ensure that Ohioans' voices are heard in support of the USPS performing efficient, reliable ballot pickup and delivery.⁶ The discovery process will give the state verifiable information about how USPS intends to ensure that each ballot is postmarked,⁷ processed under first class standards,⁸ and identified when it arrives at a sorting facility.⁹ This litigation will also give the state more information about whether the high-volume processing facilities that were recently taken offline have been fully restored¹⁰ and whether the USPS is utilizing overtime during peak processing times.¹¹ Therefore, we encourage you join these Attorneys General in litigation against the Postal Service's planned service cuts.¹²

b. Signature Matching

Your office has taken a troubling position regarding signature matching of absentee ballots.¹³ Instead of working with voting rights advocates to improve the efficacy of the signature matching system, the State has gone to great lengths to enact barriers under the guise of protecting ballot integrity. The League of Women Voters, a century-old, non-partisan

⁵ Jacob Bogage, INTERNAL USPS DOCUMENTS LINK CHANGES BEHIND MAIL SLOWDOWNS TO TOP EXECUTIVES THE WASHINGTON POST (2020), <https://www.washingtonpost.com/business/2020/09/24/usps-delays-dejoy-documents/> (last visited Oct 15, 2020).

⁶AFTER LAROSE CALLS FOR CONGRESSIONAL SUPPORT, POSTAL SERVICE CONFIRMS SIGNIFICANT UPGRADES TO SPEED UP ELECTION MAIL DELIVERY, FRANK LAROSE, SECRETARY OF STATE OF OHIO (2020), <https://www.ohiosos.gov/media-center/press-releases/2020/2020-04-24/> (last visited Oct 15, 2020).

⁷ Ellie Kaufman, POSTMARKS COME UNDER SCRUTINY AS STATES PREPARE FOR MAIL-IN VOTING CNN (2020), <https://www.cnn.com/2020/08/11/politics/postmarks-mail-in-ballots/index.html> (last visited Oct 15, 2020).

⁸U.S. Postal Service Provides Recommendations for Successful 2020 Election Mail Season, ABOUT.USPS.COM (2020), <https://about.usps.com/newsroom/national-releases/2020/0529-usps-provides-recommendations-for-successful-2020-election-mail-season.htm> (last visited Oct 15, 2020).

⁹Election Mail and Political Mail Overview, ABOUT.USPS.COM, https://about.usps.com/postal-bulletin/2020/pb22539/html/cover_005.htm (last visited Oct 15, 2020).

¹⁰LAWRENCE NORDEN ET AL., Brennan Center for Justice, ESTIMATED COSTS OF COVID-19 ELECTION RESILIENCY MEASURES (2020), <https://www.brennancenter.org/our-work/research-reports/estimated-costs-covid-19-election-resiliency-measures> (last visited Oct 15, 2020); Scott Wartman, POSTAL UNION: MAIL PILING UP IN CINCINNATI, SORTERS TAKEN OFFLINE THE ENQUIRER (2020), <https://www.cincinnati.com/story/news/politics/2020/08/18/election-2020-mail-backing-up-amid-postal-service-funding-battle-fears-grow-over-absentee-voting-nov/3384320001/> (last visited Oct 15, 2020).

¹¹ Russell Berman, WHAT REALLY SCARES VOTING EXPERTS ABOUT THE POSTAL SERVICE THE ATLANTIC (2020), <https://www.theatlantic.com/politics/archive/2020/08/how-postal-service-preparing-election/615271/> (last visited Oct 15, 2020).

¹² Erin Cox & Amy Gardner, AT LEAST 21 STATES PLAN TO SUE THE POSTAL SERVICE OVER SERVICE DELAYS, THREAT TO ELECTION THE WASHINGTON POST (2020), https://www.washingtonpost.com/politics/at-least-20-states-plan-to-sue-the-us-postal-service-over-service-delays-threat-to-election/2020/08/18/c6ca2dc6-e166-11ea-b69b-64f7b0477ed4_story.html (last visited Oct 15, 2020).

¹³ The plaintiffs in *League of Women Voters of Ohio v. LaRose* persuasively argue that “when absentee ballots are rejected because of a purported signature mismatch there is no adequate procedure or practice under Ohio law for voters to learn of purported signature mismatches and to cure them. . . Ohio law provides no standard or procedure applicable to or followed by any particular county for signature matching.” *League of Women Voters of Ohio v. LaRose.*, 2020 WL 5032514.

organization dedicated to the right to vote, said that “Ohio’s confusing, inconsistent signature match process too often results in eligible Ohio voters incorrectly having their absentee applications or ballots rejected.”¹⁴ Your decision to continuously appeal the validity of signature matching procedures has had a particularly damaging impact on men and women in our military and veterans seeking to cast a ballot. First, we encourage you to more closely consider the signature matching’s impact on the rights of those currently putting their life on the line to serve overseas in defense of our nation.¹⁵ Second, as nearly half of all veterans have pre-existing conditions, many may be voting absentee for the first time. Those who served our nation should not be asked to risk their health by having to vote in person due to the state’s flawed signature matching process. Election procedures should honor our uniformed service members and veterans as heroes, not risk relegating them to the sidelines of our democracy.

Our boards of elections are made up of professionals whose primary mission is expanding and protecting voter access. These boards are dedicated to serving all Ohioans. Instead of continuing to cynically run out the clock on the signature matching litigation which limits voters’ rights, we implore the State to voluntarily adopt changes sought by voting rights advocates.

c. Secure Drop Boxes

We are also disturbed by the State’s decision to dedicate precious time and taxpayer resources to mount continuous challenges to repeated court rulings that Ohio law allows counties to install additional secure ballot drop boxes across the county. This is even more puzzling given that the Ohio Secretary of State indicates they wish they had the legal authority to install additional drop boxes.¹⁶ Three courts, state and federal, have agreed that the plain meaning of the law¹⁷ allows for the installation of multiple drop boxes. First, Judge Frye of the Franklin County Court of Common Pleas called Secretary LaRose’s decision to limit drop boxes “arbitrary and unreasonable”.¹⁸ Then Judge Polster, a federal judge from the Northern District Ohio, told Secretary LaRose that “nothing in state law prohibits off-site drop boxes.”¹⁹ Finally, Ohio’s Tenth District Court of Appeals told the Secretary that “If...[he] wants to permit additional drop boxes, he has the authority to do so and nothing in this decision prohibits him.”²⁰ Clearly, when it comes to making it easier for Ohioan’s vote safely and securely, you and Secretary LaRose cannot take “yes” for an answer. We note without irony that the Secretary of State’s recent Directive 2020-22 announcing changes to drop box location policy was announced next to a

¹⁴ LWV OF OHIO FILES LAWSUIT TO CORRECT FLAWED SIGNATURE MATCH PROCESS FOR ABSENTEE BALLOTS | LEAGUE OF WOMEN VOTERS (2020), <https://www.lwv.org/newsroom/press-releases/lwv-ohio-files-lawsuit-correct-flawed-signature-match-process-absentee> (last visited Oct 15, 2020).

¹⁵ The Uniformed and Overseas Citizens Absentee Voting Act. 52 U.S.C. §§20301-20311.

¹⁶ Tierney Sneed, WHY HAS OHIO’S TOP ELECTION OFFICIAL CHANGED HIS TUNE ON BALLOT DROPBOXES? TALKING POINTS MEMO (2020), <https://talkingpointsmemo.com/news/why-has-ohios-top-election-official-changed-his-tune-on-ballot-dropboxes> (last visited Oct 15, 2020).

¹⁷ Ohio Rev. Code § 3509.05

¹⁸ *Ohio Democratic Party vs. Frank LaRose*, Case No. 20CV-5634 (Franklin County Court of Common Pleas, September 15, 2020).

¹⁹ *A. Philip Randolph Institute, of Ohio v. Larose*, 2020 WL 5524842 (N.D. Ohio, 2020).

²⁰ *Ohio Democratic Party, v. Frank LaRose*, 2020 WL 5874872 (Ohio App. 10 Dist., 2020).

tweet decrying the fact that litigation creates more uncertainty for voters.²¹ The State Attorney General’s litigation strategy is perpetuating this uncertainty.

d. Americans with Disabilities Act

The ADA provides a fairly simple directive: people with an “impairment that substantially limits one or more major life activities” must be afforded accommodations necessary to allow them to participate in democracy.²² COVID-19 poses significant challenges for Ohioans seeking to access government services and, if left unchecked, policies defended by the State Attorney General pose dramatic impediments to those with disabilities, including the immunocompromised and senior citizens, seeking to cast their ballots.²³ Facilitating election participation through broad drop box access, prepaid postage for absentee ballots, and less restrictive signature matching rules would enable better ballot access to people with disabilities. ADA coverage in the context of voting is well settled law and we must be mindful of the risks that voting in person amidst a pandemic poses on the most vulnerable among us.²⁴ Given the unprecedented impacts of COVID-19 on the fabric of American life, we urge you to consider the impact that restricting secure drop ballot boxes, allowing the USPS to implement dangerous mail delivery policies, and defending onerous signature matching rules have had on the rights of people with disabilities.

e. Voting Rights Act

Ohio’s systematic efforts to limit voter participation through restrictive voting laws have a direct impact on our state’s obligation under the VRA. As the Ninth Circuit Court of Appeals said in *Democratic Nat’l Comm. v. Hobbs*, “frequent changes in polling locations; confusing placement of polling locations; and high rates of residential mobility. These factors disproportionately affect minority voters.”²⁵ At this unprecedented time minority communities are being

²¹ LAROSE ISSUES DIRECTIVE ON ADDITIONAL OPTIONS TO RETURN ABSENTEE BALLOTS, Frank LaRose, Secretary of State of Ohio (2020), <https://www.sos.state.oh.us/media-center/press-releases/2020/2020-10-05/> (last visited Oct 15, 2020).

²² 42 § USC 12102.

²³ “The [ADA] includes a nonexclusive list of ‘major life activities’ that could be limited by an impairment. Severe cases of COVID-19 most commonly affect the “major life activity” of ‘breathing,’ but COVID-19 may also limit other major life activities like ‘caring for oneself, performing manual tasks, . . . eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.’ A nonexclusive list of “major bodily functions” is also included in the definition of ‘major life activities.’ COVID-19 affects most commonly the major bodily function of the “respiratory system,” but also could affect the other listed systems, “including but not limited to, functions of the immune system, . . . digestive, bowel, . . . [and] circulatory . . . functions.” Importantly, an individual vulnerable to COVID-19 complications or death may also have a “disability” defined by these terms, and therefore, be covered by the ADA. Frank Griffen, *COVID-19 and Public Accommodations Under the ADA*, ST. LOUIS UNIVERSITY JOURNAL OF LAW, <https://www.slu.edu/law/law-journal/online/2020-21/covid19-public-accommodations-under-ada.php> (last visited Oct 15, 2020).

²⁴ The requirement for blind people to certify their signature is an onerous process that makes voting more difficult for people with certain disabilities. AMERICAN COUNCIL OF THE BLIND, TESTIMONY TO U.S. COMMISSION ON CIVIL RIGHTS, *Jul 1, 2020* https://securisync.intermedia.net/us2/s/folder?public_share=2n8deuGPijceQXIrch5zS0011ef58&id=Lw%3D%3D (last visited Oct 15, 2020).

²⁵ *Democratic Nat’l Comm. v. Hobbs*, 948 F.3d 989, 1001 (9th Cir. 2020).

disproportionately impacted by COVID-19,²⁶ students are temporarily away from campus, families have relocated, and even the President of the United States was in quarantine. We must recognize these unique circumstances and take every step to ensure that Ohioans can vote freely and fairly. Onerous barriers that impede Ohioans ability to access the ballot box undermine the intent and purpose of the VRA.²⁷ We therefore urge you to consider the disproportionate impact that aforementioned barriers to voting are having on communities protected by the VRA.

f. Conclusion

Once again, as Ohio's chief legal officer, we urge you to consult with the Secretary of State to join the litigation against the USPS, allow the installation of multiple drop boxes without unnecessary restrictions and retreat from unnecessary signature matching rules. You have an obligation to represent our citizens in protecting disenfranchised groups under the ADA, the VRA, the National Voter Registration Act, and, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

Sincerely,



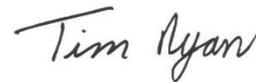
Marcy Kaptur
Member of Congress



Sherrod Brown
United States Senator



Marcia L. Fudge
Member of Congress



Tim Ryan
Member of Congress



Joyce Beatty
Member of Congress

²⁶ Communities, Schools, Workplaces, & Events, Centers for Disease Control and Prevention (2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html> (last visited Oct 15, 2020).

²⁷ AMERICAN COUNCIL OF THE BLIND, TESTIMONY TO U.S. COMMISSION ON CIVIL RIGHTS, *Jul 1, 2020* https://securisync.intermedia.net/us2/s/folder?public_share=2n8deuGPijceQXIrch5zS0011ef58&id=Lw%3D%3D, (last visited Oct 15, 2020).