



STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

STEVE MARSHALL  
ATTORNEY GENERAL

501 WASHINGTON AVENUE  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.ALABAMA.GOV

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**GUIDANCE FOR LOCAL ELECTIONS OFFICIALS**

FROM: Steve Marshall  
Attorney General  
CC: Katherine Robertson, Chief Counsel  
SUBJECT: Election Day Requirements for Voters

As the state of emergency continues related to COVID-19, questions have arisen from local and county officials regarding the safety of poll workers and voters in the upcoming state and local elections set for July 14 and August 25, 2020. While the Secretary of State's Office is best suited to answer most of these questions, this memorandum addresses health-related requirements for voters on Election Day and associated constitutional implications.

Beginning with the Governor's March 18, 2020 order<sup>1</sup> to delay the state's primary run-off election and continuing with the opportunity to vote absentee in the months leading up to the July 14<sup>th</sup> election, state and local leaders have taken measures to provide for a safe election-day experience. Many local election officials have gone even farther and plan to provide masks, gloves, and implement other precautions to best ensure the health and safety of voters and poll workers.

Article VIII, Section 177(a) of the Alabama Constitution articulates the protected right of Alabamians to vote: "Every citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his or her residence."<sup>2</sup> To qualify to vote in Alabama, an individual must 1) be a U.S. citizen; 2) reside in Alabama; 3) be at least 18 years old; 4) have not been convicted of a disqualifying felony (or must have his/her rights restored); and 5) have not been legally declared "mentally incompetent by the court."<sup>3</sup> An individual must also have registered to vote 14

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<sup>1</sup> First Supplemental State of Emergency: Coronavirus (COVID-19), March 18, 2020, <https://governor.alabama.gov/newsroom/2020/03/supplemental-state-of-emergency-coronavirus-covid-19/>.

<sup>2</sup> Ala. Const. (1901) Art. VIII, §177(a).

<sup>3</sup> Ala. Code §17-3-30, et. seq.

days before the election<sup>4</sup> and must show a valid photo ID before casting an in-person ballot.<sup>5</sup>

Though the Attorney General **strongly recommends** that voters and poll workers follow CDC guidelines when in public places and behave in a manner that is respectful of poll workers and fellow voters, it is clear that state law does not allow for an individual's qualification to vote to be contingent upon the wearing of a mask or face covering, respecting social distancing, using gloves, or having a temperature in a normal range. In other words, a voter cannot be refused the right to vote unless he or she has failed to meet one of state's lawful requirements set out above. Even in a jurisdiction that has mandated via ordinance the wearing of a mask, for instance, local election officials do not have the authority to add to the state's established requirements for a voter to cast an in-person ballot. Turning a voter away for refusing to take recommended safety precautions would likely not survive constitutional scrutiny and is strongly discouraged. Note, however, that a voter may be directed to vote in a separate area, away from others, if his or her refusal to comply with health-related precautions presents a threat to those in the general voting area.

For the July 14, 2020 primary run-off election and the August 25, 2020 municipal elections, individuals who are ill or who are hesitant to vote in person are encouraged to vote absentee. For the July 14, 2020 primary run-off election, the deadline to register to vote is Monday, June 29<sup>th</sup>. The deadline to submit absentee ballot applications for this election is Thursday, July 9<sup>th</sup> and the deadline to return those applications is Monday, July 13<sup>th</sup>. For the August 25, 2020 municipal election, the deadline to register to vote is August 10<sup>th</sup>. The deadline to submit an absentee ballot application is August 20<sup>th</sup> and the deadline to return those applications is August 24<sup>th</sup>.

### Conclusion

This memorandum addresses only the narrow question of whether compliance with COVID-19-related safety measures can be a pre-condition for casting a ballot on Election Day. We conclude that they cannot and that to do so would infringe upon the voter's federal and state constitutional rights.

***Correction:*** The deadline to register to vote in the August 25 municipal election is August 10. An earlier version of this guidance misstated that date due to an editing error, which has now been corrected.

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<sup>4</sup> Ala. Code §17-3-50.

<sup>5</sup> Ala. Code §17-10-1.