



September 14, 2020

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RE: Urgent Need For Additional Municipal Drop Boxes In Boston

Dear Mayor Walsh, Mr. O'Flaherty, and Commissioner Tavares:

We write to urge the City of Boston to provide additional secure municipal drop-boxes in advance of the November election. Our experience with the September primary—during which Boston experienced near-record voter turnout—strongly suggests that having only one drop box location in Boston on Election Day harms the right to vote, particularly for voters of color. Adding more municipal drop boxes now will expand voting access and help ensure that the City does not run afoul of the federal Voting Rights Act this November.

I. Election Protection Experience During Primary

Along with our community partners, Lawyers for Civil Rights (LCR) spearheads Massachusetts Election Protection, the nation's largest non-partisan voter protection program. Election Protection ensures that all eligible voters have the information and support they need to cast a meaningful ballot and to have their vote counted. LCR trains and coordinates hundreds of

Election Protection volunteers who monitor poll sites and provide technical support to voters in real-time through our free Election Protection Hotline: 866-OUR-VOTE.

As part of our Election Protection effort this year, we opened our hotline early and provided monitoring and technical support in advance of the September primary. By far, the largest number of complaints and questions that we received during the primary season were from voters who wanted information about returning their vote-by-mail ballot in person on Election Day. People were confused about where they could return their ballots and expressed concern upon being informed that there was only one municipal drop box location in Boston on Election Day. *See SECRETARY OF THE COMMONWEALTH WEBSITE, Find My Election Office/Drop Box, available at <https://www.sec.state.ma.us/ele/eleev/ev-find-my-election-office.htm>.* For voters who called our hotline, volunteers were able to provide real-time information about Boston's drop box location and what other options for voting existed. But other voters who lacked this information were undoubtedly deterred from voting due to the lack of convenient drop boxes in Boston on Election Day.

II. The Importance of Drop Boxes During the COVID-19 Pandemic, Particularly to Communities of Color

As you know, under the emergency voting law enacted this summer, any voter “taking precaution related to COVID-19 in response to a declared state of emergency or from guidance from a medical professional, local or state health official or any civil authority” may vote-by-mail. An Act Relative to Voting options in Response to COVID-19, St. 2020, c. 115 § 15. A completed ballot may be returned by mailing or delivering it to the appropriate city or town clerk, or by “dropping it in a secured municipal drop box....” *Id.* § 6(h)(2)(ii). As the U.S. Election Assistance Commission has noted, there are many reasons why voters may wish to return their mail-in ballot via a drop box: “voters may be motivated by lack of trust in the postal process, fear that their ballot could be tampered with, or concern that their signature will be exposed.” U.S. ELECTION ASSISTANCE COMMISSION, *Ballot Drop Box*, at 1, available at https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf. Furnishing adequate drop boxes is thus a critical means of ensuring that voters can safely cast their ballot during the current public health crisis. *See id.* (“Setting up ballot drop boxes and educating voters to use them mitigates a number of COVID-19-related risks associated with in-person voting.”)

In many localities throughout the Commonwealth, drop boxes were easily accessible on the primary Election Day. In Somerville, for example, with a population of just over 80,000 people, there were ten municipal drop boxes that were placed throughout the city. *Find My Election Office/Drop Box, supra.* In Boston, however, a city of nearly 700,000 residents, there was only *one* municipal drop box location on Election Day, which was at City Hall. *Id.* While Boston had greater availability of drop boxes during the early voting period, on Election Day itself, the only drop box location was at City Hall. The result was that many Boston voters had difficulty accessing the drop box, and some likely did not vote at all as a consequence. *See BOSTON GLOBE,*

At City Hall, Voters Hunt For Ballot Drop Boxes, While Others Hit The Polls (Sept. 1, 2020), available at <https://www.bostonglobe.com/2020/09/01/metro/town-clerks-dealing-with-thousands-mail-in-ballots-voters-polls/>. Further, as the *Boston Globe*'s account establishes, this sole drop box was poorly marked and difficult for voters to find. The drop box could be found "down a driveway, into a dark, dingy corner and behind a back door." *Id.* "There were no signs [directing voters to the drop box's location], until voters got inside." *Id.*

The fact that there was only one advertised drop box location for all of Boston on Election Day runs directly counter to regulatory guidance promulgated by the federal Election Assistance Commission—a federal agency tasked with ensuring that elections are properly run. That guidance recommends that localities should "[h]ave one drop box for every 15,000-20,000 voters." *See Ballot Drop Box, supra*, at 2. By this metric, Boston should have at least 20-25 additional, and clearly-identified, drop boxes.

Of particular concern is the disproportionate impact that the lack of drop boxes has on voters of color. City Hall is relatively distant from the neighborhoods in the City that have the greatest number of residents of color. In addition, communities of color have borne the brunt of the current pandemic, with a disproportionate number of infections and deaths, and multiple collateral consequences such as difficulty accessing employment and childcare. All of this increases the likelihood that placing the one municipal drop box at a faraway location disproportionately disenfranchises voters of color.

This state of affairs is problematic not only from a policy perspective, but also from a legal one. The federal Voting Rights Act (the "VRA") prohibits local jurisdictions from adopting voting procedures that disproportionately impact voters of color. 52 U.S.C. § 10101. Importantly, the VRA does not require plaintiffs to prove that the jurisdiction *intends* to disenfranchise voters of color; rather, the VRA is violated if a jurisdiction's practice disproportionately impacts voters of color, regardless of intent. *Id.* § 10301. Further, the Equal Protection Clause of the United States Constitution forbids states and municipalities from, "[h]aving once granted the right to vote on equal terms . . . by later arbitrary and disparate treatment, valuing one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104–05 (2000); *see also Lyman v. Baker*, 954 F.3d 351, 365 (1st Cir. 2020) (holding that "once states establish a geographical unit for electing a political representative, all who participate in the election are to have an equal vote--whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit.").¹ By providing a single drop box in such an arbitrary and limited manner, especially in light of the experience of surrounding communities and directly on-

¹ The Massachusetts Constitution also explicitly grants and protects the right to vote. *See Mass. Decl. of Rights*, art. 9 ("All elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments."); *see also Chelsea Collaborative, Inc. v. Sec'y of Commonwealth*, 480 Mass. 27, 32 (2018) ("Voting has long been recognized as a fundamental political right and indeed the preservative of all rights").

point federal guidance, the City of Boston risks incurring liability for violating well-established federal voting rights law.

III. Requested Action

Fortunately, there is still time to fix this problem before Election Day if the City acts quickly. While the City has recognized the utility of having drop boxes available during the early voting period, this availability must continue to Election Day as well. LCR therefore urges the City to (i) immediately devise a plan for the placement of at least 20-25 additional drop boxes throughout the City on Election Day, (ii) ensure that those drop boxes are clearly marked and situated in reasonably convenient locations, and (iii) undertake a public education campaign to ensure that voters are aware of those locations. In determining placement of those drop boxes, particular attention much be paid to ensuring that they are accessible to Boston's communities of color.

We request a meeting to discuss these issues further. I can be reached at 617-988-0608 or by email at osellstrom@lawyersforcivilrights.org to arrange for a mutually convenient time to meet. Thank you in advance for your prompt attention to this critical matter.

Very truly yours,

Oren Sellstrom

Oren Sellstrom
Litigation Director

cc: Michelle Tassinari, Elections Division, Office of the Secretary of the Commonwealth