



June 2, 2020

Hon. Muriel Bowser  
Mayor of the District of Columbia  
1350 Pennsylvania Ave. NW  
Washington, DC 20004  
(202) 727-2643

**Re: Effect of Election Day Curfew on Voting Rights**

Dear Mayor Bowser:

On behalf of Campaign Legal Center, we write to express our grave concern about the District of Columbia's current plan to place residents under a 7 pm curfew tonight while holding primary elections for President and for seats on the DC Council until 8 pm.<sup>1</sup> To avoid interfering with these elections when it is critically important that the world see them proceed without obstruction, we respectfully urge you to reconsider the necessity of imposing a curfew during voting hours, which will deter voters from exercising their fundamental rights. At a minimum, the District must use all available means—including an emergency alert to mobile phones, as well as social media and broadcast outlets—to inform DC residents that the curfew does not affect their right to vote after 7 pm.

CLC is a nonpartisan, nonprofit organization based in DC and dedicated to advancing democracy through law. As election lawyers who live and work in the District, we write to express why swift corrective action is necessary to protect voting rights.

<sup>1</sup> See Teddy Amenabar & Fenit Nirappil, *Here's what you need to know about the District's curfew*, WASH. POST (June 1, 2020), <https://www.washingtonpost.com/dc-md-va/2020/06/01/dc-curfew-faq/>.

**First: Even though the curfew order deemed voting an exempt activity, placing the District under curfew during voting hours will deter DC citizens from voting.**

It is essential that voting continue as unobstructed as possible until 8 pm tonight, and that people have time to travel safely home from the polls. Although many voters have cast absentee ballots to avoid exposing themselves to Coronavirus Disease 2019 (COVID-19) at the polls, many others plan to vote in person—including some who requested but never received absentee ballots.<sup>2</sup> For voters who work morning-to-evening shifts, the hour from 7 to 8 pm is often the best or only time for them to vote.

Unfortunately, the District has created a serious risk that many voters will mistakenly believe they cannot be outside their homes to vote after 7 pm. The Order issued yesterday states that the 7 pm curfew does not apply to “[i]ndividuals who are voting and participating in election activities.”<sup>3</sup> However, many DC residents learned about the curfew yesterday from a brief emergency alert sent to their mobile phones, which did not mention any exemption for voting. Others likely heard about the curfew from news articles or social media posts that did not discuss or emphasize the voting exemption. We appreciate that you later highlighted the voting exemption during a press conference,<sup>4</sup> but this limited exposure is not sufficient to counteract the widespread dissemination of incomplete information about the curfew.

Moreover, even voters who know they formally have a right to vote and travel home from the polls after 7 pm may be justifiably afraid to exercise that right. As you publicly stated yesterday, anyone traveling outside after 7 pm tonight is “subject to be stopped and/or arrested.”<sup>5</sup> Chief of Police Peter Newsham has further noted that when officers encounter people after 7 pm, they may “check credentials to ensure that they are essential [workers], or a member of the media, or are out there to vote.”<sup>6</sup> Particularly in light of the events of the last week, the prospect of being stopped by a police officer during a public safety emergency and asked for unspecified voter “credentials” will act as a powerful

<sup>2</sup> See Julie Zauzmer, *Voters report difficulty getting mail-in ballots for D.C.’s Tuesday primary*, WASH. POST (June 1, 2020), [https://www.washingtonpost.com/local/dc-politics/voters-report-difficulty-getting-mail-in-ballots-for-dcs-tuesday-primary/2020/06/01/cfc78bda-a3fe-11ea-bb20-ebf0921f3bbd\\_story.html](https://www.washingtonpost.com/local/dc-politics/voters-report-difficulty-getting-mail-in-ballots-for-dcs-tuesday-primary/2020/06/01/cfc78bda-a3fe-11ea-bb20-ebf0921f3bbd_story.html).

<sup>3</sup> Mayor’s Order 2020-069, Continuation of District-wide Curfew during COVID-19 Public Emergency and Second Public Emergency (June 1, 2020), available at [https://mayor.dc.gov/sites/default/files/dc/sites/mayor/mb/release\\_content/attachments/Mayor%27s%20Order%202020-069.pdf](https://mayor.dc.gov/sites/default/files/dc/sites/mayor/mb/release_content/attachments/Mayor%27s%20Order%202020-069.pdf).

<sup>4</sup> DC Mayor’s Office, *Mayor Bowser and District Officials Hold Media Availability, 6/1/20* at 2:15, YOUTUBE (June 1, 2020), <https://www.youtube.com/watch?v=01hemk2mHJg>.

<sup>5</sup> *Id.* at 1:30.

<sup>6</sup> *Id.* at 4:15.

disincentive for many District residents to exercise their right to vote after 7 pm.<sup>7</sup>

And voters may reasonably fear that it is dangerous to be outside after curfew, regardless of whether they personally are stopped by the police. Voters who have been following the national news know that curfews sometimes trigger violent confrontations between police and protestors and other acts of disobedience against the curfew. And once the curfew renders it illegal for protestors to be outside, the police may initiate or escalate the use of rubber bullets, tear gas, and similar tactics.<sup>8</sup> Voters who cannot vote before 7 pm might stay home, rather than risk walking into a dangerous confrontation. This concern is especially pronounced given President Trump’s threat that the DC curfew will be “strictly enforced” by “thousands and thousands of heavily armed soldiers, military personnel, and law enforcement officers.”<sup>9</sup> Indeed, the U.S. Department of Justice—which acts outside your control—announced last night that it “has deployed all of its law enforcement components—FBI, ATF, DEA, U.S. Marshals, and BOP—and is closely coordinating with the Department of Defense and the Department of Homeland Security to maximize federal security presence throughout the District.”<sup>10</sup> There have been no reports as to whether these agencies or their officers intend to comply with—or are even aware of—the District’s directive that voters and those engaged in election activity are exempt from the curfew.

In short, many DC residents likely do not know that they are permitted to vote after 7 pm, and those that do know are likely to regard voting after curfew as prohibitively dangerous.

**Second: The 7 pm curfew will disproportionately burden voters of color, especially Black voters.**

The events of the past several weeks have demonstrated in the starkest possible terms that police encounters can be dangerous and potentially deadly

<sup>7</sup> By similar reasoning, courts have recognized that stationing police officers outside polling places is a “familiar form of voter intimidation.” *Shelby Cty. v. Holder*, 811 F. Supp. 2d 424, 486–87 (D.D.C. 2011), *rev’d on other grounds*, 570 U.S. 529 (2013); *see also Democratic Nat’l Comm. v. Republican Nat’l Comm.*, 673 F.3d 192, 196 (3d Cir. 2012) (noting that the district court entered a consent decree to resolve claims of voter intimidation tactics including “enlist[ing] the help of off-duty sheriffs and police officers to intimidate voters by standing at polling places in minority precincts”).

<sup>8</sup> *See* Zeeshan Aleem, *Dozens of cities across the country are imposing curfews. Do they work?*, VOX (May 31, 2020), <https://www.vox.com/2020/5/31/21275996/curfew-george-floyd-protest-los-angeles>.

<sup>9</sup> Statement by the President, WHITE HOUSE (June 1, 2020), <https://www.whitehouse.gov/briefings-statements/statement-by-the-president-39/>.

<sup>10</sup> Kerri Kupec (@KerriKupecDOJ), TWITTER (June 1, 2020, 8:31 PM), <https://twitter.com/KerriKupecDOJ/status/1267614847295991808>.

for Black people. DC’s police-enforced curfew creates a powerful disincentive for Black residents of the District to exercise their right to vote after 7 pm, even though voting is technically exempted from the curfew. The President’s threats exacerbate this chilling effect on democratic participation by Black citizens.

The prospect that police may stop voters traveling to or from the polls after 7 pm and ask for “credentials” also raises serious concerns about the disparate racial impact of DC’s curfew. It is unclear what, if any, “credentials” voters will be expected to show to verify that they are “voting [or] participating in election activities,” such that they are exempt from the curfew. DC does not require any form of ID for registered voters to vote, and as shown in the controversy in other jurisdictions about requiring voters to have ID to vote, the most economically disadvantaged voters—disproportionately voters of color—are most likely to lack adequate identification. Thus, requiring voters to show some form of “credential” after 7 pm could have a disparate racial impact.<sup>11</sup>

The risk of such disparate impact from this credentialing requirement is not theoretical. In this primary election, Wards 7 and 8—where many voters of color reside—have seen much lower rates of absentee ballot requests than other Wards in the District.<sup>12</sup> Therefore, a curfew limiting the ability of D.C. residents to vote in person today will have a disproportionate burden on voters in those wards.

\* \* \*

As the seat of the federal government and victim of wholesale disenfranchisement in congressional elections, DC should exercise particular care when imposing restrictions that impact the fundamental right to vote. Philadelphia recently announced that its curfew was calibrated to reflect poll closures and the need for voters to return home safely.<sup>13</sup> We would urge you to consider doing the same. Last-minute invocations of executive authority that effectively curtail access to the ballot set a dangerous precedent, which will only serve to encourage other actors and jurisdictions with less benevolent intentions to follow suit.

<sup>11</sup> See *Veasey v. Abbott*, 830 F.3d 216, 265 (5th Cir. 2016) (en banc) (affirming the district court’s finding that Texas’s voter ID law had a “discriminatory effect on minorities’ voting rights in violation of Section 2 of the Voting Rights Act”); *North Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016) (invalidating a voter ID law that “target[ed] African Americans with almost surgical precision”).

<sup>12</sup> Martin Austermuhle, *Low Absentee Ballot Requests East Of The River Raise Turnout Concerns*, DCIST (May 21, 2020), <https://dcist.com/story/20/05/21/low-absentee-ballot-requests-east-of-the-river-raise-turnout-concerns/>.

<sup>13</sup> City of Philadelphia (@PhiladelphiaGov), TWITTER (June 2, 2020 8:19 am), <https://twitter.com/PhiladelphiaGov/status/1267792885019299840>

For these reasons, we urge you to consider extending any curfew until a reasonable time after the closure of polls to ensure that voters are not deterred from exercising their fundamental rights. At the very least, please ensure that the District makes every possible effort to inform voters that they are permitted to vote after 7 pm and will not be required to produce voter “credentials” if stopped by the police. Thank you for your attention to this critically important matter.

Respectfully yours,

*/s/ Danielle Lang*

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