



The Honorable R. Kyle Ardoin
Secretary of State
State of Louisiana
8585 Archives Avenue
Baton Rouge, LA 70809

VIA EMAIL

October 28, 2021

Dear Secretary Ardoin:

We write on behalf of the Bayou Lafourche Band of Biloxi-Chitimacha, Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw, and Pointe-au-Chien Indian Tribe, (collectively, “the Tribes”) to urge you to take all necessary steps to ensure that tribal members can effectively exercise their fundamental right to vote in the October 9, 2021 (rescheduled to November 13, 2021) and November 13, 2021 (rescheduled to December 11, 2021) elections (collectively, “the Fall 2021 elections”).

As you are well aware, on August 29, 2021, Hurricane Ida made landfall, “bringing with it devastating winds, widespread power outages, and severe damages to Louisiana.”¹ As you have recognized, the devastation wrought by Hurricane Ida “poses an imminent threat to citizens participating in the [Fall 2021] elections[.]”²

This Letter details the barriers posed by Hurricane Ida for tribal members to exercise their fundamental right to vote in the Fall 2021 elections, describes your duty and legal authority to act to ensure that tribal members can cast their ballots, and proposes remedies to the identified barriers. We look forward to working with your office to ensure all tribal citizens have meaningful access to the ballot for the Fall 2021 elections.

¹ R. Kyle Ardoin, Secretary of State, State of Louisiana, Emergency Certification (Sep. 8, 2021), <https://www.sos.la.gov/OurOffice/PublishedDocuments/Emergency%20certification.pdf> [hereinafter “Emergency Election Certification”].

² *Id.*

I. Louisiana's Tribal Communities Have Been Devastated by Hurricane Ida.

The lasting damage of Hurricane Ida has been devastating. The storm first made landfall in Lafourche Parish as a Category 4 hurricane, bringing winds up to 150 miles per hour and made its second landfall in Pointe-au-Chien, located in both Terrebonne and Lafourche Parishes. It quickly destroyed critical infrastructure, homes, and other buildings in numerous surrounding parishes.³ Today, thousands remain without shelter.⁴ According to your office's estimate, the storm affected 42 percent of the State's registered voters.⁵

Louisiana's tribal communities are some of the hardest hit by Hurricane Ida. Many tribal members live in Ida's direct path and the damage to tribal communities along the Gulf Coast is particularly extensive. Many homes and other buildings in tribal communities have been almost completely leveled. In the Pointe-au-Chien tribal community, which was in the path of the hurricane's eye, only approximately 10 percent of the homes are currently habitable, and 75 percent of homes have likely been irreparably lost to the storm.⁶ The Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw likewise saw its members' homes destroyed⁷ and Bayou Lafourche Band of Biloxi Chitimacha Choctaw was similarly impacted.⁸ Many tribal members remain without access to internet and continue to experience sporadic power outages.

As a result of the widespread damage, many tribal citizens are currently living in temporary emergency housing, including the Ida Sheltering Program and with family or other tribal members. In some instances, displaced tribal members are housed near their communities, however many are staying in temporary housing hours away from their homes, including in neighboring states. Due to the conditions caused by Ida, including lengthy travel times and

³ National Environmental Satellite, Data, and Information Service, *Earth from Orbit: Hurricane Ida Causes Days of Destruction*, NOAA.gov (Sep. 2, 2021), <http://www.nesdis.noaa.gov/news/earth-orbit-hurricane-ida-causes-days-of-destruction>.

⁴ Travers Mackel, *FEMA Confirms No Trailers Have Been Delivered to Hurricane Ida Victims*, WDSU (Sep. 29, 2021), <https://www.wdsu.com/article/state-rep-tanner-magee-10000-fema-trailers-requested-zero-delivered-so-far/37779882>.

⁵ Mark Ballard, *Louisiana Fall Elections Postponed Because of Hurricane Ida Damage; See Adjusted Dates*, ADVOCATE (Sep. 9, 2021), https://www.theadvocate.com/baton_rouge/news/politics/article_3d349ef8-10d5-11ec-a37f-27340693ba1a.html.

⁶ See, e.g., *Hurricane Ida Relief Efforts*, Pointe-au-Chien Indian Tribe, <https://www.pactribe.com/about-3> (last accessed Sep. 17, 2021); Sophie Kasakove, *New Orleans Is Coming Back from Ida, but Rural Louisiana Is Still Struggling*, N.Y. TIMES (Sep. 10, 2021), <https://www.nytimes.com/2021/09/10/us/new-orleans-louisiana-ida.html>.

⁷ Julie Dermansky, *Costal Tribes in Louisiana Are in Desperate Need After Ida Wallops Their Communities*, DESMOG (Sep. 9, 2021), <https://www.desmog.com/2021/09/09/coastal-tribes-louisiana-desperate-need-hurricane-ida/>; Hallie Parker, *For Louisiana's Costal Tribes, 'Being at the End of the Earth Is a Dangerous Place'*, NOLA.COM (Sep. 6, 2021), https://www.nola.com/news/environment/article_8751e728-0d8a-11ec-9fa1-cb44d2a508a1.html.

⁸ Sarah Ravits, *"It's Everyone's Disaster:" Isolated Tribal Communities Suffer Ida's Devastation*, GAMBIT (Sep. 10, 2021), https://www.nola.com/gambit/news/the_latest/article_f96d9aa0-11d1-11ec-ba5e-1fe255de627f.html.

shortages and soaring prices of fuel, returning home has become unduly burdensome for many of the displaced tribal members.

Unfortunately, the Tribes have few resources for rebuilding, due largely to their lack of federal recognition and failures by the State to respond to repeated requests for aid both in advance and in the aftermath of Hurricane Ida.⁹ The scarcity of resources has compounded Ida's impact and prolonged the recovery in tribal communities. Tribal leaders therefore anticipate that many members will remain displaced well into Fall 2021, including during the Fall 2021 elections.

Given these conditions, should the Secretary fail to adopt an emergency election plan providing accommodations to the Tribes' members for the Fall 2021 elections it would impose an unjustifiable burden on the members' fundamental right to vote, in violation of the Fourteenth Amendment.¹⁰

II. The State of Louisiana Has a Duty to Consult Tribes on Issues Affecting the Tribes and their Members, Including the Fall 2021 Elections.

The State of Louisiana has a duty to engage with the Tribes, all of which are state-recognized,¹¹ as co-sovereigns and consult with tribal leaders on issues affecting the Tribes and their citizens. In fact, the Legislature has specifically recognized the importance of consulting with representatives of tribal communities in the State "regarding issues pertaining to Native Americans."¹²

The conditions caused by Hurricane Ida have threatened to disenfranchise thousands of Native voters, including the Tribes' members, during the Fall 2021 elections. The Tribes and their members will be directly impacted by the races and issues on the ballot, especially as voters across the state consider four amendments to the Louisiana Constitution. In addition to the state constitutional amendments, voters in various parishes will vote on amendments to their city charter as well as local government positions.

Given the importance of the Fall 2021 elections in tribal communities and to tribal members, it is crucial that the Secretary consults with the Tribes and adopts the measures requested by tribal leaders to ensure that tribal members are not disenfranchised.

⁹ Parker, *supra* note 7; Kezia Setyawan, *'I Guess We're Going to Make It: Terrebonne's Bayou Communities Struggle to Recover*, HOUMA TODAY (Sep. 2, 2021), <https://www.houmatoday.com/story/news/2021/09/02/many-terrebonne-bayou-communities-struggle-recover-hurricane-ida/5691160001/>.

¹⁰ *Harding v. Edwards*, 487 F.Supp. 3d 498, 508, 523-24, 528 (M.D. La. 2020) (holding that both the limitation of the early voting period and "the state's maintenance of limited absentee by mail voting impose[d] a burden on [the plaintiffs'] right to vote" during the COVID pandemic that was unjustified by any legitimate state interest, likely in violation of the Fourteenth Amendment, and ordering the State to expand absentee voting eligibility and increase the early voting period); *see also* *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

¹¹ *See* S. Con. Res. 105, Reg. Sess. (La. 2004).

¹² *See* La. R.S. § 46:2305 (establishing the Native American Commission within the Governor's Office of Indian Affairs).

III. The Secretary of State Has the Authority to Improve Access for Tribal Members.

Your office has broad authority to take emergency action to ensure that all eligible voters can exercise their right to vote in the wake of a statewide emergency.¹³ Once the Governor has declared a statewide emergency occurring during or before an election, the Secretary of State may adopt an emergency election plan providing additional procedures and safeguards to reduce barriers caused by the emergency conditions, which must then be approved by the Governor and relevant legislative committees.¹⁴ Most recently, in December 2020 you used this authority to expand eligibility for absentee voting to certain voters impacted by COVID-19 and to waive the requirement that first-time voters who registered to vote electronically or by mail vote in person.¹⁵

On September 8, 2021, you recognized the state of emergency created by Hurricane Ida's devastation and determined that it necessitated changes to the October election.¹⁶ Consequently, you recommended that the Governor postpone the elections by one month and reschedule early voting, voter registration deadlines, and absentee ballot deadlines to match the timeline.¹⁷ The Governor then issued an executive order rescheduling the elections.¹⁸

Unfortunately, many tribal members are likely to remain displaced through the election, making the delay alone insufficient to enable all tribal members who are eligible to vote in the Fall 2021 elections to cast a ballot. Given the extent of devastation wreaked by Hurricane Ida, especially in tribal communities, it is imperative that you use your emergency authority under La. R.S. § 18:401.3 to adopt an emergency plan to remedy the barriers tribal citizens face in the Fall 2021 elections.

IV. Requested Action

The Tribes acknowledge and appreciate that you have taken steps to ensure that eligible voters can cast their ballot in the Fall 2021 elections, including delaying the previously

¹³ La. R.S. § 18:401.3.

¹⁴ *Id.*

¹⁵ See R. Kyle Ardoine, Secretary of State, State of Louisiana, *Emergency Election Plan for the February 6, 2021, March 20, 2021, and April 24, 2021 Elections in the State of Louisiana* (Dec. 28, 2020), <https://www.sos.la.gov/OurOffice/PublishedDocuments/Spring2021EEP.pdf>.

¹⁶ Emergency Election Certification, *supra* note 1 (“due to Hurricane Ida’s devastation in the state, numerous election issues, including but not limited to: 1) the location of displaced voters; 2) the displacement of nursing home residents; 3) the lack of and consistency of postal service delivery; 4) extensive power outages; 5) damage to and relocation of early voting and election day polling places; 6) damage to the offices of registrars of voters and clerks of court; 7) displaced election commissioners, registrars of voters staff, clerks of court staff and parish boards of election supervisors members; and the ability to publish notices required by law, would make holding the elections currently scheduled for October 9, 2021 and November 13, 2021 impossible and would impair the integrity of the elections.”); see also La. Proclamation No. 165 JBE 2021 (Aug. 26, 2021), <https://gov.louisiana.gov/assets/Proclamations/2021/165JBE2021StateofEmergency.pdf> (declaring a state of emergency during Hurricane Ida and its aftermath).

¹⁷ *Id.*

¹⁸ La. Exec. Order. No. 2021 JBE 13 (Sep. 9, 2021), <https://www.sos.la.gov/OurOffice/PublishedDocuments/2021JBE13ElectionsRescheduled.pdf>.

scheduled October 9 and November 13 elections. However, because of the scope of devastation in the tribal communities, a one-month delay will be insufficient to guarantee that tribal members are able to exercise their right to vote. Specifically, the Tribes anticipate that many tribal members will continue to be displaced from their permanent residences in the tribal communities during the election. Given the conditions of displacement, requiring tribal citizens who are not eligible for mail voting under current laws to travel to their polling place on Election Day or early voting location, as well as requiring those who are eligible for mail voting to do so under restrictive standards that are not realistic amid an ongoing crisis would impose an unjustifiable burden on their fundamental right to vote.¹⁹ *Harding v. Edwards*, 484 F. Supp. 3d 299, 313 (M.D. La. 2020) (“While the Pandemic is a circumstance beyond the state’s control, the procedures for voting during Pandemic circumstances are *not* beyond the state’s control.”) (internal citations omitted).

The Tribes thus request that the Secretary take the following actions to ensure tribal citizens have equal access to the franchise in the Fall 2021 elections:

- Ensure mail voting access for all displaced voters, including those who are displaced within the same parish as their permanent residence and may not otherwise qualify to vote absentee under the current rule;
- Extend the deadline for receipt of absentee ballots until one week following Election Day, provided that ballots are postmarked no later than the date of the election;
- Adopt an emergency rule permitting absentee voters or their family members, caretakers, or a representative of their choosing to hand deliver voted mail ballots to the registrar of voters in which the voter is temporarily residing in addition to the parish where the voter’s permanent address is located;
- Conduct individualized outreach to displaced tribal members at emergency shelters;
- Provide mobile voting units in tribal communities during the early voting period, scheduled to coincide with community cleanup days;
- Provide mobile voting units in emergency shelters;
- Provide staffing and assistance to parish officials to assess polling place damage and determine which polling places will be unusable in the Fall 2021 elections; and
- Conduct voter education via local and electronic media informing voters of their options for voting if displaced, including how to request and return a mail ballot.

¹⁹ See also *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983) (noting where plaintiffs allege a violation of the fundamental right to vote, a court “must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate against the precise interest put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff’s rights.”); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667 (1966) (quoting *Reynolds v. Sims*, 377 U.S. 533, 561-62) (1964) (“Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.”)

Time is of the essence. We urge you to act swiftly to ensure that eligible voters are not disenfranchised as a result of Hurricane Ida's devastation. We ask that you please respond to this letter no later than November 5, 2021. If you have any questions, please contact Valencia Richardson at vrichardson@campaignlegalcenter.org.

We look forward to working with you to protect tribal citizens' fundamental right to vote.

Sincerely,

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On behalf of:

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Grand Caillou/Dulac Band of Biloxi-Chitimacha-Choctaw, and
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