

Florida Elections in the Wake of COVID-19

July 22, 2020

Florida’s long pedigree of close elections and outsized importance in the presidential race mean it is critical for state officials to secure safe access to the ballot during the August 18 primary and November 3 general election. In recent elections, one-third of Floridians already voted by mail, but that share is expected to increase due to the pandemic, which is especially severe in Florida. Local election officials have been successfully pushing for absentee voting to alleviate health concerns, but statewide officials have implemented few systematic reforms. Florida has not implemented major statewide changes in response to the pandemic, such as deadline extensions, eligibility extensions, or all-mail voting. With little flexibility to alter existing voting laws, local officials will need to accommodate a major shift in voting preferences and implement precautions for polling places. This report describes administrative and public health measures election officials in Florida have taken to prepare for the 2020 elections amid pandemic conditions and explains the logistical, legal, and political challenges that remain.

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Table of Contents

Introduction	2
Elections in 2020	2
Key Players	3
Florida’s VBM Election Procedures	4
Pre-Election Day	4
Post-Election Day	5
Preparing for the Elections	5
Regulatory Landscape	5
Proposed Changes	5
Enacted Changes	6
Vote-By-Mail	7
Certain County Statuses	7
In-Person Voting	8
Poll-Worker Recruitment	8
Polling Place Design and Locations	9
PPE on Election-Day	9

Marketing & Outreach Campaigns	10
Implementation Challenges	11
Political Challenges	11
Ongoing Legal Challenges	11
Conclusion	12

I. Introduction

To address the public health and administrative challenges the COVID-19 pandemic poses, county officials throughout Florida have made a number of changes to the voting process to transition more voters to mail-balloting and to ensure polling places are safe. Vote-by-mail (VBM) is already popular in Florida: about one-third of Floridians vote by mail, one-third vote early, and one-third vote in-person on Election Day. As the August 18 primary election approaches, however, Florida’s election officials are expecting a major surge in VBM ballots. Nevertheless, counties must also implement practices to ensure safe in-person voting, as this will still be the preferred or most practical manner of voting for many Floridians. Counties will need to recruit and train many first-time poll workers, develop processes to efficiently count VBM ballots, and more.

A. Elections in 2020

March 17 Primary

Florida’s presidential primary [took place on March 17](#), just one day after the [first shelter-in-place order in the United States](#) went into effect. [Overall turnout was lower in the 2020 primary compared than in the 2016 primary](#). Despite the increasing number of COVID-19 cases across the country, [more Democrats voted](#) in the 2020 primary ([1.7 million](#)) than in 2016 ([1.5 million](#)). Republican turnout fell from [2.0 million to 1.2 million](#), which is not surprising given the lack of a competitive presidential primary this year. Although in-person voting was the most popular form of voting in the 2016 primary, VBM [became the most common form](#) of voting for both Republicans and Democrats in 2020. This was especially true for Republicans. [This March](#), compared to 2016, more Democrats voted by mail *and* early in-person. A Healthy Elections Project [analysis](#) of state data provides further details.

Several issues arose during the March presidential primary. In a [letter to Governor DeSantis, the Florida Supervisors of Elections](#) (FSE) wrote that “due to the COVID-19 situation and concerns of

the public, Supervisors of Elections encountered significant challenges with polling places becoming unavailable, difficulty in acquiring hand sanitizer and other supplies, and substantial numbers of poll workers deciding not to work, many at the last minute.” Palm Beach County needed to [relocate polling places amid a poll worker shortage](#). Broward County estimated that about [500 of 4,000 poll workers were absent](#) (but they were able to cover 100 of the no-shows). After the presidential primary, at least two Broward County poll workers, a greeter at Martin Luther King Community Center, and someone who worked at Weston Branch Library for nine days during the early voting period, [tested positive for COVID-19](#).

Remaining Elections: August 18 Primary & November 3 General Election

Florida holds closed primaries 11 weeks before the general election to nominate federal, state, county, and other local officials. [Primary](#) elections for these offices in 2020 will take place on August 18 before the November general election on November 3. This year the primary “promises a far more [hectic election cycle](#),” with congressional primaries, multiple contested commission races, school board elections, and other competitive local contests.

B. Key Players

Secretary of State Lauren M. Lee and Governor Ron DeSantis are Florida’s most senior officers in charge of election administration. Hillsborough County Supervisor of Elections [Craig Latimer took over as president of the Florida Supervisor of Elections \(FSE\)](#) on May 11, 2020. The FSE is a “professional membership organization representing the Supervisors of Elections (SOEs) of Florida’s 67 counties.” County SOEs are the primary election administrators for each [jurisdiction](#). Each county has its own [website](#) where Floridians can “register to vote, request an absentee ballot, check important dates for local elections, and [find] more details on voting.” Latimer is a supporter of vote-by-mail. [More than half of the electorate in Hillsborough County \(where Tampa sits\) cast an absentee ballot in the 2020 March presidential primary.](#)

Each of Florida’s 67 counties has a county [Canvassing Board](#) that is generally composed of three members: the county SOE, a county court judge who acts as the chair, and the chair of the board of county commissioners. Canvassing Boards have important duties such as [determining whether to count or reject VBM ballots](#) (e.g., signature mismatch) and [certifying election results](#).

In general, Florida’s [Supervisors of Elections](#) have been pushing for Floridians to register to vote by mail in anticipation of limited in-person voting due to COVID-19. In letters sent on [April 7](#) and [May 13](#) to Governor Ron DeSantis, the FSE suggested changes to the current election system in light of the pandemic. After lobbying by local officials and [Florida’s congressional delegation](#), on May 15, Secretary of State Laurel Lee [requested \\$20 million](#) in CARES Act funds to prepare for these

elections. Florida was one of the [last states](#) to formally request the federal funds distributed by the U.S. Election Assistance Commission made available by the CARES Act. To receive the \$20 million in funding, Florida must contribute an additional \$4 million from state funds. On June 17, Governor DeSantis responded to SOE's letters, issuing an [executive order](#) on emergency election management in light of COVID-19.

C. Florida's VBM Elections Procedures

Many Florida voters already vote absentee, but existing election laws and [deadlines](#) create challenges in Florida's attempt to expand mail voting to meet the capacity expected in August and November. These existing deadlines and procedures need to be taken into account when working to increase VBM capacity. As explained in the Healthy Elections Project [analysis](#) of the Florida primary election data, “[a]lthough uncounted VBM ballots make up only a small percentage of VBM attempts, as we increasingly rely on VBM to hold safe elections, the repercussions of patterns we see in VBM failures will be amplified.”

In general, absentee voting in Florida involves three steps: 1) voters send their SOE a request to vote absentee; 2) SOEs send voters their ballot; and 3) voters send their ballot to the SOE. Some voters experience a fourth and fifth step: 4) a voter receives a notice that they did not sign their ballot or that their signature does not match the signature on record; and 5) that voter sends the SOE a “Vote by Mail Cure” Affidavit with a copy of their registration. These steps are explained in more detail below.

Pre-Election Day

Although Florida describes its system as “vote-by-mail,” the only mail option provided by state law is absentee balloting. Voters must apply for a mail ballot before election officials can send it to them. The law requires election officials [to send ballots to all domestic voters who requested mail ballots for the presidential primary during a specified time frame before an election](#). For domestic voters, SOEs send the ballots during a 7-day window between 40 and 33 days before an election. These mail ballots must be sent to voters between July 9 and July 16 for the August primary election and between September 24 and October 1 for the general election. However, voters can still request a VBM ballot up to [ten days before the election](#). But SOEs must send ballots to voters [no later than 8 days](#) before the election.

An increase in absentee ballots may mean that election officials will need to increase staffing to ensure proper counting capacity. There will likely be other costs and challenges for counties. Steven Vancore, a spokesperson for the Broward County SOE, [said if absentee ballot voting increased by 10%, then there would be no additional delay in posting results. Any greater spike might require the purchase of a mail sorter which costs around \\$1 million, he said, as well as additional staffing.](#)

[A VBM ballot must be received by the SOEs' office no later than 7:00 PM on Election Day.](#) However, [VBM ballots from overseas voters that are postmarked or dated by Election Day can be counted if they are received no later than ten days after the election.](#) Election officials can start processing absentee ballots before Election Day. The deadline for the canvassing board to file the first unofficial results is the following [Friday for the primary and Saturday for the general election](#)-a short window for ballot counting and dispute resolution. Around [18,000 \(1.34%\) of VBM ballots were not counted](#) in the March presidential primary. [First time voters were more likely to have their ballots go uncounted](#) compared with returning voters (2.5% uncounted versus 1.3% respectively).

Post-Election Day

Though the majority of mail ballots are successfully counted once they reach their respective county Canvassing Board, a significant amount go uncounted. For example, [32,176 ballots were rejected by local officials in the 2018 election.](#) In the 2018 U.S. Senate race, incumbent U.S. Senator Bill Nelson lost to challenger Governor Rick Scott by roughly [10,000 votes.](#) As VBM rates increase, officials need to attempt to remedy the underlying causes of thousands of mail ballots going uncounted. The county [Canvassing Board has discretion on whether or not to accept or reject a VBM ballot due to a signature mismatch.](#) Florida law [requires that voters be notified](#) if they did not sign a [vote-by-mail ballot certificate or that the signature on the certificate does not match the signature on record.](#) They can be notified of a signature defect by [e-mail, text message, telephone, or first class mail](#) and are directed to complete and return a ["Vote-by-Mail Ballot Cure" Affidavit](#) no later than [5:00 PM. on the 2nd day after an election](#) .

According to an ACLU study, nearly 24,000 VBM ballots cast in the 2012 general election were uncounted, and nearly 28,000 went uncounted in the 2016 general election due to lateness, signature issues or other problems. [Younger voters and racial minorities](#) are more likely to have their votes go uncounted: "Despite changes in the ability of voters to 'cure' their rejected VBM ballots, the likelihood of younger and minority voters casting a mail ballot that was rejected increased in 2018 compared to 2016, while the rejection rate of VBM ballots cast by white voters decreased from 2016." In the March 2020 presidential primary, our analysis shows [uncounted mail ballots were](#) "more prevalent among Democrats, younger and first-time voters, and among Black and Hispanic voters."

II. Preparing for the Elections

A. Regulatory Landscape

Proposed Changes

On April 7, [Florida's Supervisors of Elections asked](#) Governor DeSantis to make regulatory changes in order to “give each county the flexibility to best administer the election in their county.” Specifically, they asked the Governor to:

- Allow each county SOE to designate additional or alternative Early Voting site locations
- Allow counties the option of beginning Early Voting up to 22 days prior to the August and November 2020 elections . . . and allow Early Voting to continue, at the chosen locations, through 7:00 PM on Election Day.
- Suspend the statute requiring there to be one polling place in each precinct to allow the SOE the option to relocate or consolidate polling places with Early Voting sites.
- Allow the county Supervisors to mail any requested VBM ballots between the 45th and 25th days before the Primary and General Election.
- Suspend the requirement that the Supervisor mail vote by mail ballots within two business days after receipt of a request and allow for three business days to mail.
- Allow counties to begin canvassing and tabulating Vote-By-Mail ballots upon completion of public test in section [101.5612\(2\)](#), Florida Statutes.

Enacted Changes

On May 13, President of the FSE Craig Latimer [sent a follow up letter](#) saying that SOEs’ “request for executive action cannot wait any longer.” At the time, Florida had yet to request CARES Act funding for elections, and Latimer was worried that Florida was “lagging behind nearly every other state” and that “the goods and services we need are becoming scarce.” Two days later, Secretary of State Laurel Lee requested the money. Over a month later, Governor DeSantis responded to these concerns in an [executive order](#) issued on June 17, which:

- Allows County Canvassing Boards to begin canvassing VBM ballots earlier than 22 days before the election.
- Encourages state employees to become poll workers by allowing them Administrative Leave for time training and working as poll workers.
- Directs the Division of Emergency Management to work with local officials and SOEs to provide PPE, hand sanitizer, and cleaning products to facilitate safe in-person voting.

- Encourages each Superintendent of Schools to close K-12 schools on August 18 and November 3 so that they can be used as polling locations.
- Encourages SOEs to provide timely notice to the public regarding changes in polling locations or procedures.

The executive order arguably “[fell well short of granting supervisors the leeway](#)” the FSE had requested. As explained in an [editorial by the Palm Beach Post](#), the FSEs’ initial requests were in hopes to “extend opportunities for in-person voting.” This is why they asked to extend [early voting from between 8 and 14 days to 22 days, extending the period through Election Day](#) instead of ending it two days prior. Consolidating polling places would help voters by “using larger facilities and for a longer time,” making it so counties would have fewer locations to clean and need fewer poll workers.

What SOEs got was not necessarily what they requested, however some of the changes proposed by Governor DeSantis should prove helpful. For example, SOEs asked Governor DeSantis to allow for extra days of early voting. The [executive order](#) did not do that, but it gave SOEs the ability to begin [opening VBM ballots and running them through tabulators earlier than 22 days before the election](#). The order also encourages state employees to take a paid administrative day to work as poll workers in their home counties, and for local schools to close on location day to be prepared as polling locations. However, the flexibility the FSE initially wanted went largely ignored by the order. The FSE released a [statement](#) which explained that the executive order was perhaps too late to make a difference, as many SOEs had already finalized their plans for the August election.

B. Vote-By-Mail

Except on Election Day, no excuse is needed to vote by a [vote-by-mail ballot](#) in Florida. Due to COVID-19, several local election officials are taking steps to increase the use of this option in 2020. The options to innovate are somewhat limited by Florida law. SEOs can only send mail ballots to voters who have requested them, and “[neither the county nor the SEO can direct that all voters receive a vote-by-mail ballot](#).” On June 17, Governor DeSantis gave SOEs [the ability to process VBM ballots earlier than otherwise allowed under Florida law](#). This will hopefully make it easier for counties to finish counting VBM ballots before the certification deadline, which is the following [Friday for the primary and Saturday for the general election](#). July 9 was the beginning of the mandatory window for SOEs to send VBM ballots to all domestic voters who requested VBM ballots for the August primary, and counties across Florida have already felt the surge in VBM requests.

- [Miami-Dade County plans to send out around 520,000 applications for mail-in ballots attached to a card to promote VBM as an alternative to voting in-person](#). The card will publicize VBM as a healthy and safe voting option. The Supervisor of Elections and individual County Commissioners debated the best method to

encourage VBM. Miami-Dade SOE Christina White initially only supported sending out instructions on how to request VBM, not the VBM application itself. Commissioner Danielle Levine Cava, on the other hand, wanted to send the actual VBM request applications to all 1.2 million voters who have not requested one. As a compromise, Miami-Dade will send out 520,000 VBM request applications to households with at least one voter who does not have a VBM request form on file, along with instructions for updating signatures.¹ As of [May 5, 270,000](#) Miami-Dade voters were scheduled to get mail-in ballots this year. Within a month, that number surged. Miami-Dade scheduled to send [350,000 ballots on July 16, which is a 46% increase](#) from 2016. The Miami-Dade Board of County Commissioners [passed a resolution to provide drive-through VBM ballot drop-off locations](#) at all early voting sites and certain sites on election day to take the delivery load off USPS and to ensure that ballots arrive on time.

- **Broward County** SOE [Peter Antonacci planned to send vote-by-mail sign-up forms to the 1 million registered voters in April who have not already asked to receive mail ballots](#). By July, [Broward expected to send 250,000 ballots](#) out the first day ballots went out to the general public.
- **Palm Beach County** SOE Wendy Link had already [ordered 1 million absentee ballot envelopes for the August and November elections](#) in April. It is expected that about half of the county's 981,000 registered voters will want to vote by mail. Link [released a letter](#) on April 20 encouraging voters to request a VBM ballot. [“For the first time, VBM ballots have prepaid return postage on them. Voters may also request Vote-by-Mail ballots on the elections office website and track the entire delivery progress. To make sure every vote is counted, \[Palm-Beach\] re-designed Vote-by-Mail and Provisional ballot outer envelopes to include space for voters to provide phone numbers and email addresses, so voters can be reached in case a signature cure is required.”](#)
- **Hillsborough County** was [“one of only nine counties in the state that pays the return postage”](#) for VBM ballots. According to [Bay News 9](#), Craig Latimer said that he heard several from other SOEs who intend to also extend the practice in the 2020 elections. However, the plaintiffs in *Nielsen v. DeSantis* (discussed below) only identified five

¹ The actual [legislative text](#) reads: “[T]his Board directs the County Mayor or County Mayor’s designee, during declared public health states of emergency that affect elections, to use legally available funding sources to send every household with at least one voter who does not have a vote-by-mail ballot request on file a vote-by-mail ballot form for each registered voter in the household without a vote-by-mail ballot request on file along with instructions on how to request a vote-by-mail ballot and the importance and process for updating the voters signature on file with elections to encourage the expanded use of vote-by-mail balloting in elections during such states of emergency.”

counties that previously provided prepaid postage and would likely again: [Broward, Hillsborough, Lee, Miami-Dade, and Orange Counties](#). Those counties are all among the [most populous in Florida](#). Hillsborough also sent out postcards encouraging use of vote-by-mail to 660,000 registered voters in the county who are not signed up for it.

C. In-Person Voting

Poll-Worker Recruitment

Florida is working to avoid a repeat of the large number of poll worker absences in the March primary. In FSE President Latimer's May 7 letter to Governor DeSantis, he [warned that the state](#) "must start ordering supplies, recruiting and training poll workers, and securing voting locations now." The FSE stated that "[some level of in-person voting will continue](#)" but anticipates "[a significant statewide shortage of poll workers](#)" in the upcoming 2020 elections. Governor DeSantis responded to these concerns by giving state employees [two full days of administrative leave if they serve as poll workers](#) and encouraging local schools to close to serve as polling locations on election day. He also is encouraging school "[faculty, staff, and instructions to serve as poll workers on election day](#)." [The deadline for SOE to appoint poll workers for the August primary is July 29](#).

Counties across the state are worried about poll worker recruitment. Hundreds of poll workers declined to work during the presidential primary, so recruiting enough workers for the other 2020 contests remains a major challenge. Bay News 9 [reported](#) that Polk County SOE Lori Edwards said, "[o]ne of our biggest problems - or challenges - for all the supervisors of election are people who serve as poll workers or [are] reluctant to do so." Lake County SEO Hays explained the anticipated [poll worker shortage](#) is why Florida SOEs asked Governor DeSantis permission to consolidate polling places on election days. Some jurisdictions, however, said they expected to be [adequately staffed](#).

Polling Place Design and Locations

Like everywhere around the country, in-person voting will have to be restructured for health and reasons. Florida is preparing for lower in-person turnout and looking for new polling places that will allow for improved compliance with public health protocols. [Spectrum News reported](#) that FSE President Craig Latimer said that voting "in person is going to be different. It's going to be slow," he cautions. "We're only going to be able to allow 'x' amount of people into a polling site at any time. We're going to have the blue tape on the sidewalk just like you stand behind at the grocery store."

In May, FSE president [Latimer said](#) that "finding new polling locations" would be an issue. [July 19 is the deadline for SOEs to designate early voting sites for the August primary and provide the Division of Elections with the addresses, dates and hours for early voting sites](#). In May, Latimer said

getting in contact with officials who operate schools and civic centers that have been used as polling locations had been difficult due to pandemic lockdowns. SOEs [initially asked](#) Governor DeSantis to allow them to establish regional early voting centers on Election Day to alleviate limited staffing and location concerns. The request for regional early voting centers was not directly addressed in the Governor’s recent executive order. Governor DeSantis is “encouraging” schools to coordinate with their respective SOE [“to ensure an efficient transition of the schools for use as precinct polling”](#) locations, including facilitating cleaning before and after the election.

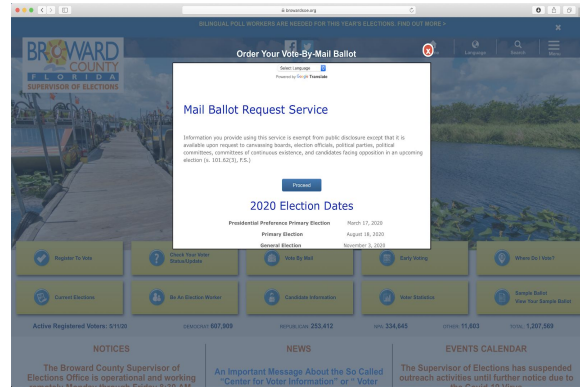
PPE on Election Day

The FSE said that election administration [“must be made a priority for the acquisition of supplies like hand sanitizer and other resources to ensure in-person voting is in accordance with CDC and FDOH \[Florida Department of Health\] guidelines.”](#) The state does have access to some protective equipment to help safeguard precincts. In March, while many states had difficulties obtaining emergency PPE supplies from the federal government, [Florida’s requests were fulfilled](#). Federal funds from the CARES Act [are expected to help cover](#) sanitary items, such as sneeze guards, wipes, and hand sanitizers (in addition to new VBM supplies like ballot stuffers—and possibly postage for VBM ballots). Governor DeSantis directed the Director of the Division Management to [“coordinate with each County Emergency Management Director to facilitate providing any PPE...requested by a SOE.”](#)

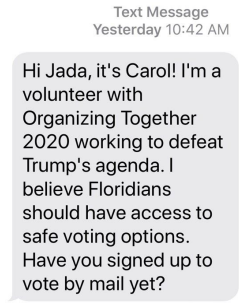
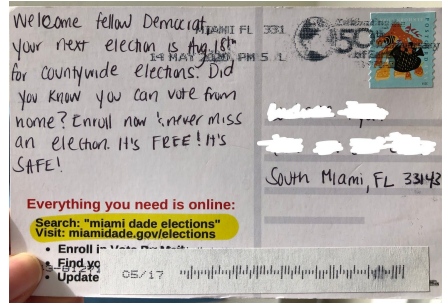
D. Marketing and Outreach Campaigns

Election officials, political parties, and grassroots organizations are all publicizing VBM. Voters are receiving reminders in the mail and via text message. Most Florida SOE county websites have pop-ups and banners directing voters how to vote by mail. President of the FSE Craig Latimer made a [2 minute video](#), which strongly encourages VBM. His twitter feed, @HillsboroughSOE, heavily publicizes VBM.

For example, the [Broward](#), [Miami-Dade](#), and [Palm Beach](#) County Supervisor of Elections websites include an automatic pop-up to request a mail ballot. Like many other Florida SOEs, the jurisdictions are actively supporting expanded use of VBM.



Miami-Dade Democrats have a [“We Won’t Stop Talking About Vote-By-Mail”](#) campaign to encourage outreach. While “in-person voting will still be an option to some degree,” Democrats in the jurisdiction say they “need to prepare Democrats across Miami-Dade to vote from the safety and comfort of their homes.” Included below are postcards that were sent to registered voters encouraging VBM sent by Miami-Dade Democrats the week of May 18. Also included is a sample text message sent by [Organizing Together 2020](#) to encourage VBM.



III. Implementation Challenges

A. Political Challenges

It appears that the FSE and Governor DeSantis are not on the same page regarding actions that need to be taken to ensure a healthy election. This is apparent by the [press release the FSE published](#) after Governor DeSantis passed an executive order on new election procedures. The executive order issued on June 17 “[came more than 10 weeks after the supervisors urged DeSantis to act ‘as soon as possible,’](#)” and just days before the supervisors needed to send ballot designs to the printers. The FSE said that the executive order “[comes at a point when many of the state’s Supervisors of Elections have](#)

[already solidified their plans for the August Primary Election.](#)” The FSE also noted that the recommendations in the executive order were “[substantially different](#)” than the recommendations it sent to the governor in April.

Democrats and Republicans disagree on what reforms are needed to ensure a functioning electoral system during the pandemic. Other than the June 17 executive order, Governor DeSantis has been largely absent from conversations regarding the upcoming elections. Florida Democrats, on the other hand, largely supported the FSEs’ proposals. Florida Democratic Party Chairwoman Terry Rizzo said that efforts to expand VBM and early voting are a good start, but they [do not go far enough](#). Florida Democrats want the state to “set standards for fair and equitable demographic, geographic and population distribution centers” to avoid long lines and encourage voter participation.

B. Ongoing Legal Challenges

Nielsen et al v. DeSantis et al

Democratic Super PAC Priorities USA and several other plaintiffs are suing Governor DeSantis and other state election officials. They filed a [complaint](#) in the U.S. District Court in Tallahassee on May 4, [asserting a series of legal violations](#) in the operation of Florida’s elections laws—under the [First Amendment, equal-protection and due-process clauses, as well as the 24th Amendment, which prohibits poll taxes](#). Essentially, plaintiffs want Florida to extend the deadlines by which a mail-in ballot can be received by local officials, and to pay for postage for VBM ballots. They also seek a court order to increase voter-registration outreach and to “[implement protective measures for in-person voting](#).” The Republican National Committee and other Republican organizations have [intervened](#) in the case. Trial is scheduled for July 20.

Williams et al v. DeSantis et al

[LatinoJustice Puerto Rican Legal Defense & Education Fund](#) and several other plaintiffs are suing DeSantis, Secretary of State Laurel Lee, and the Florida Elections Canvassing Commission. The [initial complaint](#), filed the day before the presidential primary, asked for “injunctive relief ordering the extension of vote-by-mail options and other accommodations at polling places is necessary to protect the fundamental right to vote.” The lawsuit alleges the current regime has a disparate impact on black, Latinx, and disabled people and violates both the Voting Rights Act and Americans with Disabilities Act. Now, they [are asking Florida to](#):

- Conduct outreach to unregistered and inactive voters offering the opportunity to register to vote or update their registrations
- Mail a vote-by-mail ballot to all registered voters in their preferred language

- Simplify the online voter registration process by modifying requirements and providing registrants with notice of application errors
- Extend the deadline to register to vote, return a VBM ballot, and cure any issues with signatures on a ballot
- Expand early voting and the use of drop boxes for vote-by-mail ballots
- Provide voters with disabilities with accommodations that will enable them to privately cast a ballot

IV. Conclusion

Although many Florida SOEs and others in the state have been pushing for voters to vote by mail in hopes that it will lead to a safer election, there has been little direction from top state government officials. Existing rules regarding VBM receipt, counting deadlines, and signature verification remain. Counties are working to reform in-person voting to ensure adequate social distancing and provide PPE safeguards to make voters comfortable enough to show up to the polls. As Covid-19 cases skyrocket and the election draws near, procurement of the necessary safety materials for elections becomes more urgent. Governor DeSantis's actions encouraging state employees and school staff to volunteer and train as poll workers will be critical if the counties wish to fill gaps in poll worker recruitment. The state has one more election in which to test its election-related measures to respond to the COVID pandemic. The August 18 primary provides another opportunity for Florida's counties to roll out the measures that will provide for safe and secure voting in November.