OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR

MIKE COONEY
LT. GOVERNOR

TO: Montanans; all officers and agencies of the State of Montana
FROM: Governor Steve Bullock
DATE: March 25, 2020
RE: Directive Implementing Executive Orders 2-2020 and 3-2020 and providing for measures to implement the 2020 June primary election safely

Executive Orders 2-2020 and 3-2020 declare that a state of emergency exists in Montana due to the global outbreak of COVID-19 Novel Coronavirus.

Section 10-3-104(2)(a), MCA, authorizes the Governor, during a state of emergency, to "suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster." Further, it authorizes the Governor to "control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area." Section 10-3-104(2)(c), MCA. Montana's public health laws also authorize the Department of Public Health and Human Services (DPHHS), acting under the Governor's direction, to "issue written orders for correction" of "conditions of public health importance," to "prevent and mitigate conditions of public health importance" through measures including "isolation and quarantine" and "abatement of public health nuisances." Section 50-1-202, MCA. The Department, under the Governor's direction, may also take action to correct public health deficiencies in "buildings or facilities where people congregate." Section 50-1-203, MCA. *See also*, § 50-1-204, MCA (isolation and quarantine measures authorized).

As the number of cases of COVID-19 continues to grow across the United States, the Centers for Disease Control and Prevention has urged states to "[e]ncourage voters to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations." Other jurisdictions have also identified traditional election procedures as posing an enhanced risk to public health and human safety. Unfortunately, these factors are present in Montana's typical election procedures as well: election workers, many of whom are aged 60 or older, in close proximity to one another; large crowds or lines congregating in a limited number of locations; and the exchange of papers, pens, and other possible vectors for infection.

Before an election, county election administrators, the Secretary of State, and others must follow a range of strict deadlines that begin months before voting. In Montana, some of these deadlines have passed, while other substantial deadlines related to election procedures are imminent. Thus, while voting in the primary election in Montana will end in two months, the first ballots—to Montana's overseas and military voters—will be sent in just a few weeks.

With election timelines rapidly approaching, I have consulted with representatives for county clerks and county election administrators, the Secretary of State, and political leaders from both parties, including the Speaker of the House and the President of the Senate, about how to conduct the upcoming June 2 primary election in a manner that protects public health and minimizes the spread of

communicable disease. While the Secretary of State has, appropriately, not taken a position, the others are unanimous in their recommendation to provide counties in Montana with the option to expand voting by mail, to make in-person polling places safer against the transmission of disease, and, while coping with the outbreak, to do everything possible to protect and promote the franchise in Montana.

I have also consulted with public health experts and emergency management professionals, and have determined that typical election procedures in Montana could hinder the response to the emergency by promoting community transmission of COVID-19, and pose serious health and safety risks to all Montanans—voters, poll workers, and non-voters alike. These risks are even more severe for Montanans who are immunocompromised or over the age of 60.

Accordingly, this Directive provides measures that I have determined are necessary to protect public health and human safety in elections in Montana this spring. The measures fall into three broad categories. First, the Directive provides additional time for school districts to submit plans to hold all-mail elections. Second, the Directive permits counties, at their local discretion, to expand access to mail voting procedures *and* early voting. Third, the Directive requires additional measures by all counties, regardless of their voting procedures, to ensure appropriate social distancing and make voting and voter registration safer for all Montanans. The Directive applies only to school elections this spring and the June primary election.

Crucially, Montanans can, in effect, vote early or vote by mail already by utilizing an absentee ballot. The more Montanans who vote early, the less crowding and pressure there is on any given day of voting. But under the current procedures, as many as hundreds of thousands of Montanans who do not sign up for an absentee ballot will still face the choice on June 2 whether to vote in person, with possible exposure to hundreds of other people, or to stay home. The mail ballot provisions of Title 13, Chapter 19 of the Montana Code Annotated still allow for in-person voting during the entire voting period, much like now. To be clear: in counties with mail ballots, in-person voting is still permitted. The hope in giving counties the option to invoke mail ballot procedures is to shift the presumption: the default would be that Montanans can vote without leaving home, while the option to vote in-person remains. The opposite presumption exists now, and could pose serious public health risks under the trying and unprecedented circumstances of the COVID-19 outbreak.

Fortunately, Montana already has a simple, clear, well-established set of procedures in law that govern mail elections.

Montanans should never have to choose between their safety and their democracy. The measures in this Directive are designed to ensure that both are protected to the maximum extent possible. It will not be easy or without difficulty, but I have determined that these measures are necessary to empower local leaders to make the choices that best protect their communities' public and civic health.

In accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, and the laws of the State of Montana, Title 10, Chapter 3 and Title 50, Chapter 1, MCA, and other applicable provisions of the Constitution and Montana Law, I hereby direct the following measures be in place in the State of Montana effective immediately:

1. School elections may be conducted by mail; deadline extended

- The deadline to submit plans to conduct a school election by mail is extended to April 1, 2020. Any jurisdiction that did not submit a plan for a school election by mail may now do so until April 1, 2020.

- Consistent with this Directive, strict compliance with the deadline for submission of such plans as it pertains to school elections in the spring of 2020, provided in §§ 13-19-201, MCA, *et seq.*, and related statutes is suspended.

2. Counties permitted to conduct mail ballot elections and expanded early voting

- Counties in Montana are permitted, but not required, to conduct the June 2 primary election under the mail ballot provisions of Title 13, Chapter 19.
  - Section 13-19-104(3)(a), MCA is suspended for this purpose only.
  - The mail provisions of Title 13, Chapter 19 apply, except as otherwise specified below or elsewhere in this Directive.

- Counties that opt in must also expand opportunities for early voting by:
  - Making ballots available at the election administrator's office or other designated location from May 4, 2020, until the end of the election.
  - Allowing voters to apply for, receive, and mark a ballot in-person in a manner consistent with the provisions of § 13-13-222, MCA.
    - If an elector marks a ballot in-person under this provision, and has also been sent a mail ballot, the election administrator shall mark the mailed ballot as void in the statewide voter registration system.
  - For counties identified in the settlement *Wandering Medicine v. McCulloch*, there must be a satellite voting office capable of providing the early voting services described above from May 4, 2020, until the end of the election in accordance with their agreements.
  - Provisions of Title 13, Chapter 19 that are inconsistent with this Directive are suspended to the extent necessary to achieve conformity with the above.

- To expand voting access and provide voters the most time possible to vote early or return a mail ballot, counties that opt in shall send mail ballots 25 days before the end of the election, on May 8, 2020, consistent with the timeline for absentee ballots provided in § 13-13-205, MCA. Strict compliance with the standard 20-day time period for mail ballots provided in § 13-19-207, MCA, is suspended.

- Counties that choose to opt in must submit a written plan to the Secretary of State under the provisions of §§ 13-19-201, MCA, *et seq.*, MCA, though the deadline for political subdivisions to request a June 2, 2020 primary mail ballot election at § 13-19-202(2), MCA, is suspended until April 2, 2020.

- Counties that opt in must include a prominent notice with instructions sent to voters with mail ballots that a postage stamp is not necessary to return the ballot by mail.

- Counties that opt in may seek reimbursement from the state Department of Administration for postage costs incurred by voters returning a ballot through the mail, to be paid from the fund provided at § 10-3-312, MCA, or through federal emergency assistance and response funds if available, subject to the approval of the Office of Budget and Program Planning. Further guidance will be distributed to counties on how to obtain this reimbursement.
  - Nothing in this Directive prevents counties from seeking additional reimbursement from the federal government or the Secretary of State if federal emergency assistance is made available.

3. Measures Required for Safe Registration and Voting

- All counties, regardless of whether a county invokes the mail ballot and early voting provisions described above, shall establish, implement, and enforce social distancing policies sufficient to ensure a minimum of six feet of distance between individuals at polling locations, designated drop-off locations, or public-facing portions of facilities involved in voting.

- To minimize the need for in-person registration or lines for registration near the end of the election period, the close of regular voter registration provided at § 13-2-301(a), MCA, is suspended until 10 days before the end of the election.
    - It is the responsibility of any individual who does not register in-person before the election to ensure that they receive and return a ballot before the end of the election, either under mail ballot/early vote procedures provided in this directive for individuals registered in counties that opt in, or through typical voting procedures in a county that does not.

- Counties are encouraged to explore drive-up options for voting, registration, and other voter services. Counties are also encouraged to promote the availability of early voting or voting by mail. Finally, counties are encouraged to use the designated places of deposit provisions of Title 13, Chapter 19, provided that these too are administered consistent with social distancing guidelines.

Authorities: Section 10-3-104, MCA; Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; §§ 10-3-103, -302, and -305, MCA; §§ 50-1-202, -203, and -204, MCA; and all other applicable provisions of state and federal law.

Limitations

- This Directive is effective immediately and expires at the end of the declared state of emergency in Executive Orders 2-2020 and 3-2020.
- This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.
- This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Montana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.