



To: Members of the House of Delegates and Senate Committees on Privileges and Elections

Date: January 15, 2019

From: Claire Gastañaga, Executive Director

RE: Absentee Voting Legislation

A number of bills have been offered in the 2019 General Assembly Session that would expand absentee voting. This letter sets out the principles that the ACLU of Virginia¹ (ACLUVA) believes must guide any consideration of such legislation. ACLUVA continues to be concerned about the effects and limitations of the current excuse-based system and encourages legislators to enact a truly equal “no-excuse” absentee voting law for all Virginia voters

No-Excuse Absentee Voting

The ACLU of Virginia strongly supports legislation that allows all voters to cast absentee ballots for any reason by both in-person and by mail methods. This is commonly referred to as “no-excuse” absentee voting. This year, legislators have introduced several such bills: HB 1641 (Herring), SB 1026 (Spruill), and SB 1035 (Locke). We encourage the legislators to take up this legislation and ensure absentee voting is equally accessible to all Virginians.

Some of the legislation that has been introduced permits no-excuse absentee ballot voting in-person, but not by mail.² While any expansion of Virginia’s limited absentee voting laws is a good step forward, legislators should expand no-excuse absentee voting to include both methods of absentee voting. We encourage patrons to amend their legislation to include no-excuse absentee voting by both methods. At a minimum, we encourage patrons to amend their no-excuse in-person absentee voting legislation to require localities to establish additional satellite locations to ensure that no-excuse in-person absentee voting is accessible to as many voters as possible.

If Virginia law limits no-excuse absentee voting to in-person only, qualified voters may be excluded from participating based upon a lack of readily

¹ The ACLU of Virginia is a private, non-profit organization with 25,000 members in Virginia that protects and defends civil liberties and civil rights for everyone in the Commonwealth through advocacy, public education, and litigation with the goal of securing freedom and equality for all.

² SB 1075 (Howell); SB 1198 (Dance); SB 1206 (Stuart); HB 1959 (Toscano).

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accessible transportation, geography, income status, physical disabilities, and the constraints of modern-day individuals and families. There are localities in Virginia where voters do not have ready access to transportation that permits them to travel to designated locations to vote by absentee ballot in-person. In rural jurisdictions, some voters are not able to access the registrar's office, which may be on the opposite side of the county. In urban locations, voters without vehicles may not have ready access to public transportation to travel to a distant absentee voting site. None of the proposed legislation establishing no-excuse in-person voting would alleviate these burdens, as they do not require local election officials to establish satellite in-person absentee voting locations and distribute them in a manner that is accessible and equitable, taking into consideration population density, public transit, and travel time.

Additionally, there are voters whose work or childcare schedules simply cannot accommodate the registrar's limited office hours so that they could cast in-person absentee ballots. We are also concerned that by limiting absentee voting to in-person, it may disproportionately impact minority and rural communities and persons with disabilities.

To alleviate concerns about fairness and public disclosure of confidential information and to promote elections equally accessible to all qualified voters, the solution is to permit no-excuse absentee voting by both methods for all voters without requiring that any voter provide a reason or excuse. Any legislation establishing in-person absentee voting should require that election officials establish an equitable distribution of satellite in-person absentee voting locations in their locality and should not, unnecessarily limit the locations to public facilities if private facilities are well-located and accessible to all voters.

Excuse-Based Absentee Voting

Legislation has been introduced that would also expand the current list of statutory permitted reasons to vote by absentee ballot.³ It is commendable to expand access to absentee ballot voting and increase participation in our democracy, however, the ACLU of Virginia believes that these proposals elevate certain classes of voters over other qualified voters largely for partisan political reasons. We strongly advocate that all voters should be permitted to vote by absentee ballot, and that no class of voters be given preferential treatment when it comes to exercising the fundamental right to vote.

Further, the "excuse-based" absentee voting law presents a current and continuing threat to the privacy of all absentee voters. The law currently requires voters to disclose private and sensitive information (e.g., pregnancy, disability status, caregiver responsibilities, business and personal travel plans) to establish eligibility to vote by absentee ballot. This information is being required by a law that provides no assurance that the information will be held

³ HB 1623 (Hayes) (absentee voting permitted for individuals 65 and older).

confidential and secure, or that it will be available to defend against allegations of absentee ballot fraud, which is a class 4 felony for which there is no statute of limitations.

The only effective solution to the likely disparity associated with limited access to in-person voting and to the privacy concerns attendant on any “excuse-based” law is to amend Virginia law to permit no-excuse absentee voting in-person or by mail. No-excuse absentee voting allows all qualified voters to exercise their right to vote regardless of location or status and eliminates the need for voters to share personal and private information with general registrars. If the law remains “excuse-based,” we ask that legislators consider amending the law to provide adequate privacy protections and mandate the secure handling, maintenance and retention of voters’ confidential, personal information and ensure its accessibility to voters in cases where they are defendants in criminal cases involving alleged voter fraud.