

October 21, 2020

Registrars of Election Boards

Virginia State Board of Elections
1100 Bank Street
Richmond, Virginia 23219

The Honorable Ralph Northam
Governor of Virginia
111 East Broad Street
Richmond, Virginia 23219



AMERICAN CIVIL LIBERTIES UNION
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Dear Virginia Board of Elections members and local registrars,

On behalf of the ACLU of Virginia and our more than 100,000 members and supporters across the Commonwealth, we are writing to underscore concerns we have about the conduct of elections and the uniformity of the system of voting across Virginia. We are particularly concerned that the current COVID-19 pandemic, among other matters, may disproportionately impact voters in rural or low-income areas, voters of color and disabled voters. Voters across the Commonwealth are entitled to uniform access to the ballot box. We ask you to take steps to mitigate the potential for discriminatory consequences, whether direct or indirect, at polling places and with respect to processes and procedures applicable to the November 2020 election.

In these last weeks before the election, it is important to take the following minimum steps to assure safe and uniform voting practices throughout Virginia.

First, it is imperative for eligible voters to have access to relevant information to assist them in the voting process. It is important for voters to be informed about their options for voting and the relevant processes (including requesting and submitting a mail-in ballot, locations to vote in-person, and modifications to procedures at polling places to keep voters safe). Although voting-related information is available online, state and local officials should be mindful that many Virginia residents, particularly in rural or low-income areas, may not have internet access. Therefore, care should be given to the manner by which information is distributed.

In addition to the notification requirements under Virginia law (VA Code § 24.2-306 and VA Senate Bill 5120), the ACLU of Virginia recommends any notices that are published or mailed to voters should (1) include a link to the official website where additional information can be obtained, and (2) provide a phone number for the registrar or other official that voters who do not have internet access can call for additional

information. Consider additional cost-effective ways to inform voters about changes in processes and procedures, for example by posting information in public places, requesting local media outlets (print, online, radio and/or television) make announcements about where information can be obtained, or engaging volunteers or nonpartisan organizations to help disseminate information by text, phone or print material.

Additional measures must be taken to ensure access for blind, visually impaired, or other voters living with a physical disability. Pursuant to a consent decree agreed with the Commonwealth ^{1/}, by no later than September 18, Virginia should have made available to all localities a tool that allows print disabled voters to electronically receive and mark absentee ballots using screen reader assistive technologies (the Ballot Marking Tool). Any voter who uses the Ballot Marking Tool is still required to mail or physically return their absentee ballot to the relevant general register. However, localities must not reject ballots from voters with print disabilities based on the position of the voter's signature or address on the ballot return envelope.

The Virginia Department of Elections must take reasonable steps to inform the public of the availability of the Ballot Marking Tool for print disabled voters, which should include notification by media that is accessible to such print disabled persons. Further, to the extent modifications are made to in-person polling places, such modifications should reasonably accommodate persons living with disabilities. The U.S. Justice Department has provided guidance for compliance with the Americans with Disabilities Act at polling places. ^{2/} The Department of Elections should take responsibility for ensuring that all polling places are accessible.

Additional consideration should be given to notification and voting procedures to accommodate non-English speaking voters. To the extent localities do not already have measures in place to ensure that eligible voters have access to critical information for the 2020 election, localities should implement immediately procedures to provide voting and election materials in the language of applicable language groups in such localities. Vigorous outreach to identify the needs and communication channels of non-English speaking communities, availability of bilingual election personnel to respond to questions and provide assistance to non-English speaking voters, and accurate translation of materials are several of the keys to a successfully meet the needs of non-English speaking voters. Local community organizations can and should be asked to aid in such outreach, identify



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<https://www.courtlistener.com/recap/gov.uscourts.vaed.480886/gov.uscourts.vae.d.480886.37.1.pdf>

^{2/}

<https://www.ada.gov/votingchecklist.html>

volunteers to serve as election personnel, and assist with translation of materials.

The Department of Elections and Registrars of Elections must ensure that all polling places are informed about and maintain full compliance with CDC best practices for COVID-19. Overcrowded polling places with long wait times have historically impacted Black and Latino voters more than white voters.^{3/} In addition, people of color have been disproportionately burdened by COVID-19 and have experienced higher death rates attributable to the virus compared to people of other ethnicities in the United States. ^{4/} These factors could subject voters of color to a greater risk of harm from COVID-19 at in-person polling places and discourage voters of color to vote in the first place due to COVID-19-related concerns. The Department and Registrars must make every reasonable effort to assure implementation of CDC guidelines and to provide information to the public underscoring their commitment to make Election Day in-person voting safe for all. These efforts must include taking necessary steps to reduce spread, maintaining healthy environments, and effectively managing crowds to ensure safe and quick voting processes.



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The Department of Elections, local Boards of Election and Registrars of Elections must ensure drop-off locations are established and operated fairly and equitably. Each local Board of Election and Registrar of Elections should carefully review the standards that are set by the Department of Elections for the establishment and operation of drop-off locations, including security requirements, to ensure they are implemented in a manner that does not disadvantage voters of color and low-income voters. In connection with this review, it is critical to take into account the impact of establishing drop boxes in areas where voters of color and low-income voters live and work.

Budget language approved during the 2020 Special Session of the General Assembly (Senate Bill 5120) requires drop-off locations at the Registrar's office, satellite voting locations available for in-person absentee voting and precinct polling locations on Election Day. The budget language also gives broad discretion to the registrar of each city or county to establish additional drop-off locations within the city or county as it deems necessary. The Department of Elections will set standards for the establishment and operation of such additional -off locations. These discretionary locations and operational standards for drop boxes could be established and implemented in drop a manner that disadvantages people of color and low-income voters within the applicable city or county. In light of possible issues with mail delivery,

^{3/} Protecting Public Health in the 2020 Elections (Voting Rights Lab), page 14; Waiting to Vote (Brennan Center), page 8.

^{4/} Protecting Public Health in the 2020 Elections (Voting Rights Lab), page 5.

drop boxes for the return of mail-in ballots are a critical part of ensuring that all Virginians are able to exercise their fundamental right to vote.

Specifically, [Senate Bill 5120](#), subsections B.3 and B.4, provides,

3. The general registrar of each county or city shall establish at the office of the general registrar and each voter satellite office in operation for an election a drop-off location for the purpose of allowing voters to deposit completed absentee ballots for such election. On the day of the election, there shall also be a drop-off location at each polling place in operation for the election. The general registrar may establish additional drop-off locations within the county or city as he deems necessary. All drop-off locations shall be accessible; be on public property, unless located at a polling place; and otherwise comply with any criteria for drop-off locations set by the Department of Elections.

4. The Department of Elections shall set standards for the establishment and operation of drop-off locations, including necessary security requirements. [The Department of Elections shall submit such standards to the Chairmen of the House and Senate Committees on Privileges and Elections, the Senate Committee on Finance and Appropriations, and the House Committee on Appropriations within 30 days of the effective date of this act.]

See also the following background on [ongoing voter rights litigation in Ohio 5/](#): [Voting Groups Sue Ohio Secretary of State, Seek to Expand the Availability of Ballot Drop Boxes for November Election](#).

With the increase in absentee voting in Virginia, it is critical that each local Board of Election and Registrar of Elections timely verify that absentee ballots have been completed correctly. Although the general registrar is required under Senate Bill 5120 to notify a voter of a defect rendering the voter's ballot void within three days of finding such defect, the voter may not have time to remedy the defect if the registrar does not review the voter's ballot in a timely manner. Therefore, the ACLU of Virginia recommends that each general registrar examine absentee ballot envelopes to verify the correct completion of the required voter affirmation and the absence of any other defect *within 24 hours of receipt of each absentee ballot* in order to expedite the notification of the applicable voter of a defect. If a new absentee ballot is to be issued to the voter to remedy any such defect, the issuance should be undertaken promptly to expedite the remedial action. Additionally, print-disabled voters may not have their absentee votes rejected due to fact that their ballot envelope contains a signature

^{5/} <https://lawyerscommittee.org/wp-content/uploads/2020/08/OhioBallotDropBoxes.pdf>



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or address in an incorrect location, and general registrars should have procedures in place to identify ballot envelopes received from print-disabled voters.

Senate Bill 5120 subsection A.2 specifically provides,

2. If the general registrar finds during the examination of a returned absentee ballot envelope that the required voter affirmation was not correctly or completely filled out or that a procedure required by § 24.2-707 of the Code of Virginia was not properly followed, and such error or failure shall render the ballot void by law, the general registrar shall, within three days of such finding, notify the voter of the error or failure. However, notwithstanding the provisions of §§ 24.2-706 and 24.2-707 of the Code of Virginia, the failure of an absentee voter marking and returning a mail absentee ballot for the November 3, 2020, general election, and any special election or ballot measure held on that date, to have a witness sign the statement on the back of the absentee ballot return envelope shall not be considered a material omission and shall not render his ballot void. Such notice shall be made by phone, email, or in writing and shall provide information to the voter as to how to correct the issue so his ballot may be counted. The voter shall be entitled to make such necessary corrections before noon on the third day after the election, and his ballot shall then be counted pursuant to the procedures set forth in § 24.2-709.1 of the Code of Virginia if he is found to be entitled to vote. Notwithstanding any other provision of law to the contrary, no absentee ballot needing correction shall be delivered to the officers of election at the appropriate precinct until the voter is provided the opportunity to make the necessary corrections pursuant to this subparagraph.

It is critical that voters be notified promptly, and as early as possible, of any voting defect in absentee ballots to ensure that each vote is counted.

Finally, each local Board of Election and Registrar of Elections must take steps to ensure that all election officials are trained to identify conduct that constitutes illegal voter intimidation prohibited by state law and to report it to the Registrar who should have a plan to address it immediately when it occurs. No voter should be intimidated or hindered from casting their vote and limitations on such conduct should be reported promptly by the Registrar to the Commonwealth's Attorney for the locality who is vested by statute with the responsibility to enforce the law. Care should be taken to educate election officials about the application of the intimidation statutes to voter challenges and to recognize and report possible conspiracies to intimidate or hinder voters by use of the challenge statute promptly. At the same time, election officials must be trained to respect the First Amendment rights of anyone to be present



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on public property to make their views known as long as they respect the 40 foot buffer zone around the entrance to a polling location and do not engage in conduct that objectively hinders or intimidates any voter or otherwise violates the law.

Ensuring that every eligible voter in the Commonwealth of Virginia has a full and fair opportunity to exercise their right to vote is critical to our democracy. The foregoing principles and guidelines are not intended to be an exhaustive approach to ensuring fairness in this November's election, but timely adherence to such principles and guidance will serve to advance the rights of all voters in Virginia. We encourage you to take steps to implement such uniform guidance in the November 2020 election and in future elections.



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Thank you for your attention to these critically important issues.

Very truly yours,

Claire Guthrie Gastañaga
Executive Director
ACLU of Virginia