

March 31, 2020
The Honorable Ralph Northam
Governor, Commonwealth of Virginia
1111 East Broad Street
Richmond, VA 23219

Dear Governor Northam:

I am writing on behalf of the American Civil Liberties Union of Virginia and our more than 100,000 members and supporters in the Commonwealth to provide recommendations as to how you, as governor, can alleviate the negative impact the novel coronavirus (COVID-19) will have on the ability of Virginians to participate in upcoming elections. We urge you to work together with the Department of Elections and local registrars and electoral boards to adopt and fund the recommendations listed below. These policies will ensure both the health and safety of our electorate and the orderly conduct of state and local elections between now and the end of the year.

We are in the midst of a global health crisis, and we understand the seriousness of the circumstances and fully appreciate the work that your administration has undertaken in the past few weeks to protect the public from this pandemic. Lives are at stake, and as government officials respond with decisive action, they must also preserve what is most fundamental to our democracy: the right to vote.

Below you will find a series of overarching recommendations that your administration should take to ensure that voting in all 2020 elections can occur safely and without disenfranchising any eligible voters. On the last page, we have pulled out seven recommendations that require urgent action and have laid out how each one could be implemented immediately.

Overarching Recommendations

- **Safely expand access to voting by mail by:**
 - a. **Eliminating unnecessary requirements for absentee voting.** In Virginia, voters may receive and cast an absentee ballot after providing a valid excuse, providing a witness signature, and providing a photo I.D. if voting absentee in person or the last four digits of their Social Security number if voting absentee by mail. These unnecessary hurdles suppress the vote in Black and Brown communities and should be removed so all registered voters can receive and cast an absentee ballot after providing basic identifying information. The witness requirement should be removed immediately in accordance with social distancing best practices. Removing the witness requirement would require a redesign of absentee ballot envelopes which currently contain text stating that ballots cannot be opened except in the presence of a witness. Va. Code 24.2-706.
 - b. **Making mail ballots safe and more accessible.** Mail ballots should be designed to maximize accessibility and ensure safety for postal workers and election officials. Self-sealing envelopes can help protect postal workers



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and election officials. Ballots must be accessible to voters in different languages, and providing electronic ballot delivery for voters with disabilities ensures they can use their own at-home assistive technology to receive and mark their ballot before printing it out and returning it.

- c. **Relaxing restrictions on who can return ballots.** Given that many people may be self-quarantined, it is important that third parties be allowed to return absentee ballots on behalf of others. HB 242 which is expected to be signed and would go into effect July 1 loosens the current restrictions on third parties returning or picking up ballots. If someone gets sick or is particularly worried about getting sick in the days leading up to the election, they should either be allowed to request a normal absentee ballot that gets counted or an emergency absentee ballot. In addition, the governor or State Board of Elections should make clear through formal guidance that voters may obtain an emergency ballot and use a designated representative on grounds of illness if they assert any concerns related to COVID-19, including that they have experienced symptoms or have a fear of contracting the virus. In addition to issuing guidance along these lines, the Department of Elections should modify the emergency absentee ballot application to clarify that such reasons are sufficient for obtaining such a ballot.

- **Ensure fairness in returning and counting absentee ballots by:**

- a. **Expanding the locations where absentee ballots can be returned.** Under current law, absentee ballots may only be returned to the office of the general registrar during normal business hours or on the first and second Saturday preceding the election. Virginia law does allow electoral boards to approve additional locations for in-person absentee balloting, but localities are not required to do so. The governor or Department of Elections should strongly encourage local electoral boards to greatly expand the number of satellite absentee balloting locations around the state and offer expanded funding to do so.
- b. **Establishing uniform processes for accepting absentee ballots.** In order to prevent the rejection of absentee ballots cast by eligible voters, it is critical that Virginia develop uniform processes, guidance, and training for election officers for signature matching and other methods to verify whether an absentee ballot was appropriately completed, and for notifying absentee voters of any problems with their ballot envelopes. Election officers must be trained to not reject ballots based on immaterial or technical defects that do not relate to ensuring that the ballot was actually completed and cast by the voter. Voters who make material errors must be notified of those errors and given a chance to correct them or otherwise satisfactorily verify their identity.
- c. **Giving voters an opportunity to correct inadvertent mistakes or material omissions on their absentee ballot envelopes.** Currently, Virginia has no law or uniform guidance requiring that voters be given an opportunity to fix errors on their absentee ballot envelope – this must be changed. The Department of Elections should issue guidance urging immediate notification of voters of problems with their ballot through multi-model communication, including phone, text, and email, and counting



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the ballot of any voter who corrects the problem within a week of being notified of it, and in advance of the deadline for completing the canvass one week after Election Day under Va. Code 24.2-671. The Department of Elections should train election workers in accordance with such guidance and encourage them to use methods of verifying ballots that enable prompt and remote verification – such as online or telephonic identity verification, or providing the voter with a replacement absentee ballot if there is time to do so – so that voters do not have to travel to the registrar in person and can cure their ballots before the canvass deadline.

d. Encouraging election officials to begin processing absentee ballots prior to Election Day. As Virginia is likely to see a dramatic increase in mail balloting in upcoming elections, it is critical that election officials be permitted to process the ballots on a rolling basis as they come in prior to Election Day. Virginia registrars are given discretion to undertake certain absentee ballot processing actions prior to Election Day when necessary to expedite the counting of absentee ballots and they should be encouraged to do so for the upcoming primaries and general elections pursuant to VA. Code § 24.2-709.1. Prohibitions on sharing any results prior to when the polls close should be strengthened if needed.

e. Accepting absentee ballots postmarked by Election Day. Given that mail delivery may be delayed, it will be important to accept ballots that are postmarked by Election Day, rather than only accepting those received by Election Day. SB 455, a bill that would allow ballots that are postmarked by Election Day to be considered “timely,” will go into effect July 1. SB 455 should be amended with a new effective date of May 1.

- **Maintain in-person polling locations by:**
 - a. Ensuring that polling places are sanitized and comply with social distancing recommendations.** Polling places should be cleaned and disinfected according to the CDC’s guidance and should incorporate social distance recommendations to limit the spread of disease while voting. Jurisdictions should also reassess where in-person voting locations are to ensure that polling places are not located in spaces that primarily serve communities who are at high-risk of illness, like senior care facilities. Larger rooms like school gymnasiums should be utilized so that people have space for social distancing. There should be clearly demarcated standing areas to provide at least six feet between voters and workers. Funding should be provided to change or modify existing polling locations to ensure that polling locations throughout the state are conducive to maintaining social distancing and safe for particularly vulnerable populations.
 - b. Prioritizing in-person polling locations where they are most needed and ensuring the safety of those working the polls.** Election officials should prioritize in-person polling options in low-income neighborhoods and places with high in-person turnout. Location changes should increase accessibility for racial and language minority voters as well as students and voters with disabilities. Studies show that people with low income and communities of color often have less reliable mail delivery (something that might be further exacerbated during a pandemic) and are less likely to have permanent addresses. Further, studies of mail-in ballot rejection



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rates have found that they are far more likely to be rejected than in-person ballots, and are often rejected at disparate rates across jurisdictions, particularly when local administrators use different or subjective criteria for what constitutes a problematic ballot. For example, Black, Hispanic, and Democratic voters experienced higher ballot rejection rates in Florida. Thus, in-person voting should be preserved and measures should be taken to ensure there is sufficient guidance and training provided to ensure that ballots are not unnecessarily rejected and people are given adequate opportunities to cure defective ballots. During the COVID-19 crisis, localities should work to recruit poll workers who are at lower risk from infection and ensure that there is increased funding for additional staffing to combat long lines and the need to triage different types of voters like those who may be there to drop off a ballot.



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c. Offering early voting opportunities, including nights and weekends.

To spread out in-person voting activity, Virginia should offer in-person early voting for the full 45-day window leading up to the election and make it available during weekend and evening hours. Research shows that evening and weekend availability is particularly important to ensure adequate ballot access for voters of color and younger voters.

d. Considering visual and language accessibility.

As mailed ballots pose significant accessibility challenges for people with visual disabilities, Virginia should ensure they have ADA-accessible voting machines at in-person voting locations. Since some voters with visual disabilities may be quarantined at home, Virginia should also allow for electronic ballot delivery so that voters can use their own at-home assistive technology to receive and mark their ballot before printing it out and returning it. It is also important to ensure that in-person locations are maintained in communities that may need translation services. Virginia should allow voters to choose the language of their absentee ballot during their absentee ballot request, include translations of multiple languages on all ballots, and/or provide online translations of the ballot with clear instructions on how to access them.

Urgent Action Needed by Legislative or Executive Authority:

1. Recommend an amendment to add an emergency clause to HB 1 that would begin implementation immediately, eliminating our excuse-based absentee voting system so that all voters can vote by mail regardless of having a valid excuse.
2. Recommend an amendment to HB1 to eliminate the witness requirements in current law. Under current Virginia law, absentee ballot envelopes must be opened and marked in the presence of a witness, who then must sign the envelope. This requirement was not altered by recent legislation. To protect people currently maintaining social distance and those living alone, this requirement must be eliminated. This would also require a redesign of the absentee ballot envelopes which currently contain text stating that ballots cannot be opened except in the presence of a witness. Va. Code 24.2-706.
3. Recommend an amendment adding an emergency clause to HB 19 and SB 65 that would loosen the voter ID requirements effective immediately so that voters do not have the added burden of acquiring a state issued I.D. during

this pandemic.

4. Recommend an amendment adding an emergency clause to HB 220 that requires registrars to provide return postage for absentee ballots so that it can go into effect for the May elections.
5. Recommend an amendment adding an emergency clause to SB 455 to immediately allow ballots that are postmarked by Election Day to be considered “timely.”
6. Recommend an amendment adding an emergency clause to HB 242 that allows any voter to use a designated representative if they were unable to apply for an absentee ballot by the deadline due to hospitalization or illness, or the hospitalization, illness, or death of a child, spouse, or parent, or other emergency found to justify an emergency absentee ballot. HB 242 should be put into effect immediately.
7. In the alternative, include language in the caboose budget to address these issues in the short term and incorporate legislation codifying changes for the long term into your legislative package for 2021.



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Voting is the cornerstone of our democracy and we must act quickly to make the necessary changes to protect it. We thank you for your attention to this important matter and underscore that the actions above must be taken immediately if we are going to curtail the negative impact of the COVID-19 on our upcoming elections. We strongly urge you to work together with the Department of Elections and local registrars and electoral boards to adopt and fund these recommendations.

If you have any questions, please contact ACLU-VA Director of Advocacy Jenny Glass at (804) 519-5366 or jglass@acluva.org.

Very truly yours,

A handwritten signature in blue ink, which appears to read "Claire Guthrie Gastañaga". The signature is fluid and cursive.

Claire Guthrie Gastañaga
Executive Director