



January 10, 2017

The Honorable Terry McAuliffe
Governor, Commonwealth of Virginia
3rd Floor, Patrick Henry Building
1111 East Broad Street
Richmond, VA 23219

Dear Governor McAuliffe:

We were gratified to read today of the legislation that you are supporting to expand voter access to the polls. Your proposal to repeal the unnecessary and discriminatory voter ID requirements currently in place has our unqualified strong support. In addition, we are pleased that you are seeking changes to Virginia's excuse-based absentee voting laws; however, we believe that the changes that you have recommended do not go far enough to achieve fairness and protect important privacy interests of voters.

The ACLU of Virginia continues to be concerned about the effects and limitations of the current excuse-based system and encourages you to advocate more broadly for legislation that would extend "no-excuse" absentee voting equally to all Virginia voters. This letter sets out the principles that we believe must guide any consideration of such legislation – principles that we will be sharing with all 140 members of the General Assembly as well.

In-Person Absentee Voting

The ACLU of Virginia strongly supports legislation that allows all voters to cast absentee ballots for any reason both in-person and by mail. This is commonly referred to as "no-excuse" absentee voting. The legislation you said you support and some legislation already introduced would permit no-excuse absentee ballot voting in-person, but not by mail.¹ While any expansion of Virginia's limited absentee voting laws is a good step forward, Virginia should expand no-excuse absentee voting to include both methods of absentee voting. We are encouraging patrons of no-excuse absentee voting legislation to amend their legislation to include no-excuse absentee voting by both methods.

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 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,

¹ SB 844 (Howell, Favola; Kory); SB 979 (Dance); SB 1002 (Ebbin); HB 1631 (Sullivan);

voters without vehicles may not have ready access to public transportation to travel to a distant absentee voting site.

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 limiting no-excuse absentee voting to in-person may disproportionately impact minority and rural communities and persons with disabilities.

Moreover, at least one bill introduced to date that permits in-person, no-excuse absentee voting includes a caveat that individuals with a disability wishing to apply for an annual absentee ballot still are required to disclose their disability status, which is sensitive and confidential information.² Further, the application would require supporting documentation from their medical provider. Such information currently is not protected from disclosure under Virginia open records laws. No qualified voter in a no-excuse absentee voting system should have to disclose such personal information to the government (and, potentially, any member of the public) in order to exercise their right to vote in-person or by mail. We are encouraging the patron to amend the legislation to allow all qualified voters to apply for an annual absentee ballot without providing a reason or supporting documentation.

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 any voter to provide a reason or excuse.

Excuse-Based Absentee Voting

It is not enough simply to expand the current list of permitted excuses/reasons to vote by absentee ballot.³ It is commendable to expand access to absentee ballot voting and increase participation in our democracy. Nonetheless, the ACLU of Virginia believes that proposals to grant only certain voters the right to no-excuse absentee voting elevate certain classes of voters over other qualified voters largely for partisan political reasons. We strongly believe that any changes to our current excuse-based system of absentee voting must grant to all voters equally the right to vote by absentee ballot, and that no class of voters should be given preferential treatment when it comes to exercising the fundamental right to vote.

As stated above, the current "excuse-based" absentee voting law presents a current and continuing threat to the privacy of voters. The law currently requires voters to disclose private and sensitive information in order to vote by absentee ballot. This information is being required by a law that provides no assurance that the information will be held

² SB 882 (Spruill)

³ HB 1630 (Sullivan); SB 792 (Ebbin; Kory); SB 827 (Wexton, Kory); SB 845 (Howell, Favola; Kory); SB 1016 (Barker)

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 problems associated with the current excuse-based system of absentee voting, including the likely disparate impact and basic unfairness associated with limited access to in-person voting and 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 for every voter.

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 you join us in asking legislators to consider amending the current law to provide adequate privacy protections and mandate the secure handling and maintenance of voters' confidential, personal information and its accessibility to voters in cases where they are defendants in criminal cases involving alleged voter fraud.

Again, thank you for seeking to open the ballot box more widely to Virginia voters. We look forward to working with you to achieve greater equity and fairness in Virginia's voting laws. Granting every voter the right to vote absentee in person or by mail without a reason would be an important step toward these goals.

Very truly yours,



Claire Guthrie Gastanaga

Cc: The Honorable Nancy Rodrigues, Secretary of Administration
Edgardo Cortés, Commissioner of Elections

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