



Via U.S. Mail and Email

April 18, 2020

The Honorable Chris Piper
Commissioner of Elections
Virginia Department of Elections
Washington Building, First Floor
1100 Bank Street
Richmond, Virginia 23219
chris.piper@elections.virginia.gov

Re: Violation of Section 8(a)(1) of the National Voter Registration Act of 1993
Related to Voter Registration Deadline for June 23 Primary Election

Dear Commissioner Piper:

I write on behalf of Fair Elections Center, the League of Women Voters of Virginia, and similarly situated organizations, pursuant to 52 U.S.C. § 20510(b), to notify you that the announced voter registration deadline for the June 23 primary election¹ violates Section 8(a)(1) of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. 20507(a)(1), which requires that voter registration applicants who submit valid applications postmarked or received by 30 days before a federal election must be registered in the election. For a June 23, 2020 election, voters must be allowed to register through and including Tuesday, May 26, 2020.

As Virginia's chief election official under the NVRA², you are responsible for ensuring that all voters are registered to vote who properly submit otherwise valid applications within 30 days of elections involving candidates for federal office, including the June election.³

¹ Va. Exec. Order No. 56 (Apr. 13, 2020), *available at* [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-56-Postponing-June-9,-2020-Primary-Election-to-June-23,-2020-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-56-Postponing-June-9,-2020-Primary-Election-to-June-23,-2020-Due-to-Novel-Coronavirus-(COVID-19).pdf).

² Va. Code Ann. § 24.2-404.1

³ [https://www.elections.virginia.gov/media/castyourballot/candidatelist/June-2020-Primary-Candidates-List-\(4\)-1.pdf](https://www.elections.virginia.gov/media/castyourballot/candidatelist/June-2020-Primary-Candidates-List-(4)-1.pdf)

I. Background

Due to the crisis brought on by the spread of the novel coronavirus, which causes the infectious respiratory disease COVID-19, Virginia's election administration must accommodate voters to ensure that they do not have to choose between their fundamental right to vote and their health. Many voters are currently self-quarantining and isolating themselves to the maximum extent possible, consistent with federal and state government recommendations and mandates, including Governor Northam's Executive Order No. 55 of March 30, 2020.⁴ This order requires Virginians to remain at their place of residence except for limited purposes.

As a result of this crisis, the Governor also exercised his authority to postpone the elections scheduled for June 9, 2020 to June 23, 2020. Recognizing that "[v]oting is a fundamental right and no one should have to choose between their health and safety and their right to vote," Executive Order No. 56, signed April 13, 2020, postpones the election two weeks; however, it specifies the following:

Pursuant to § 24.2-603.1 of the Code of Virginia, only those voters duly registered to vote on the date of the original election shall be able to participate in the postponed election. Therefore, the voter registration deadline for the June 23, 2020 primary elections shall remain May 18, 2020.⁵

As a result, this registration deadline is now set for 36 days before the primary election.

II. NVRA Requirements

Section 8(a)(1) of the National Voter Registration Act of 1993 provides that each state must:

- (1) ensure that any eligible applicant is registered to vote in an election--
 - (A) in the case of registration with a motor vehicle application under [52 US.C. § 20504], if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;
 - (B) in the case of registration by mail under [52 US.C. § 20505], if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;
 - (C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not

⁴ Va. Exec. Order No. 55 (Mar. 30, 2020), *available at* [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf)

⁵ See *supra* note 1.

later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election[.]

52 U.S.C. § 20507(a)(1).

III. Executive Order 56 and Virginia Code § 24.2-603.1 Violate the NVRA to the Extent They Set a Voter Registration Deadline More than 30 Days before the June Election

NVRA serves as a backstop on lengthy deadlines that erect barriers to voter registration. The NVRA sought to remove such barriers, including with Section 8(a)(1)'s requirement that all applicants who submit a valid application be added to the voter rolls if the application is submitted by 30 days before the election.

Consistent with the Elections Clause of the U.S. Constitution, the NVRA overrides inconsistent state registration requirements. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 9 (2013) (quoting *Ex parte Siebold*, 100 U.S. 371, 392 (1880)). (“The power of Congress over the ‘Times, Places and Manner’ of congressional elections ‘is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith.’”).

Federal courts have recently concluded that registration deadlines more than 30 days before the election violate the NVRA. *See Ga. State Conference NAACP v. Georgia*, No. 1:17-CV-1397-TCB, 2017 WL 9435558, at *4 (N.D. Ga. May 4, 2017) (entering preliminary injunction preventing Georgia from utilizing registration deadline for April election for subsequent runoff election); *Ariz. Dem. Party v. Reagan*, No. CV-16-3618-PHX-SPL, 2016 WL 6523427, at *13-14 (D. Ariz. Nov. 3, 2016) (holding that Arizona's voter registration deadlines of thirty-one days before the election if registering by mail and thirty-two days prior if registering in person at the motor-vehicles division violated NVRA). Virginia's upcoming primary election is no different.

Notwithstanding the Code of Virginia Section 24.2-603.1, Virginia's registration deadline must be consistent with the NVRA's mandate under Section 8(a)(1) that voters must be registered if they submit valid applications by 30 days before the election. For a June 23 election, that date would be May 24; but, due to Memorial Day Weekend, the voter registration deadline for the June 23 election must be no later than Tuesday, May 26, 2020. *See Ariz. Dem. Party v. Reagan*, 2016 WL 6523427, at *13-14.

IV. Notice of Potential Enforcement Action

This letter serves as notice pursuant to 52 U.S.C. § 20510(b). Please contact me immediately to discuss these concerns. If you do not remedy these violations, as the

primary election is less than 120 days away, we may exercise our right to seek relief in court under 52 U.S.C. § 20510 within the next 20 days. We appreciate your prompt attention to this matter and believe that we share an interest in ensuring that, consistent with federal law, all Virginians can exercise their fundamental right to vote without barriers.

Sincerely,

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On behalf of:
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CC (via email only):

Governor Ralph D. Northam, ralph.northam@governor.virginia.gov

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