

Absentee instruction forms

Ballot packages for the March 23, 2021 special election in the Thirty-Eighth District of the Virginia State Senate began being sent on February 5, 2021. As of February 11, 2021, 868 such absentee ballots have been sent. Absentee ballot packages contained: (1) an outgoing envelope, (2) an envelope to return the absentee ballot, (3) an absentee ballot, which is contained in an outer envelope, and (4) a form that instructs the voter how to complete and submit their absentee ballot. The ballots that have been sent for the March 23, 2021 special election contained the regular instructions that instruct a voter that they must have a witness present when they complete their ballot.¹ If this Court enters the Amended Consent Decree, revised instructions will immediately be sent to the relevant general registrars to provide to voters², including voters who have already received an absentee ballot, similar to what was done under the terms of the Joint Amended Consent Decree entered December 22, 2020 for the January 5, 2021 special election.³ Dkt. 126.

Electronic and press outreach

The State Defendants' webpage does not currently include instructions relating to the witness requirement for the March 23, 2021 special election that deviate from the Virginia Code.

¹ An example of the instructional form sent with ballot packages for the March 23, 2021 election that have already been sent is attached as Exhibit A, and an example of that form that has been sent to uniformed and overseas voters is attached as Exhibit B. An example of the form sent to uniformed and overseas voters who received their absentee materials electronically already for the March 23, 2021 election is attached as Exhibit C.

² An example of the instructional form sent with ballot packages for the January 5, 2021 election is attached as Exhibit D, and an example of that form sent to uniformed and overseas voters is attached as Exhibit E. An example of the form sent to uniformed and overseas voters who received their absentee ballot materials electronically for the January 5, 2021 election is attached as Exhibit F.

³ As of December 21, 2020, ballot packages for the January 5, 2021 special election had begun to be mailed. As of that date, for the City of Norfolk, approximately 183 ballot packages had already been sent or emailed, and, for King William County, approximately 60 ballot packages had been sent or emailed.

Voters are directed to contact their general registrar if they have questions relating to absentee voting.⁴ Upon any relevant order of the Court, information relating to the witness requirement, if eliminated, will promptly be updated for the March 23, 2021 special election. The State Defendants will also publish a press release and provide information to voters on its social media accounts.

Communication with general registrars and voters

The State Defendants have instructed the general registrars of the localities affected by the March 23, 2021 special election that the witness requirement remains in effect at this time. To date, State Defendants are not aware of any voter who has directly contacted the State Defendants regarding the witness requirement for the March 23, 2021 special election. The State Defendants will promptly instruct general registrars regarding the requirements for the March 23, 2021 special election, if this Court enters the Amended Consent Decree.

* * *

The State Defendants' primary concern is in ensuring that every Virginian's right to vote freely, fairly, and safely is protected during this unprecedented pandemic. No Virginian should be placed in the tenuous position of having to choose between their health and their right to vote. Cognizant of this Court's holdings that "[a]pplying the witness requirement during this pandemic would impose a serious burden on the right to vote," Dkt. 69 at 1, and that entry of a prior consent decree regarding the November 3, 2020 election "would permit the State Defendants to avoid the likely unconstitutional application of a state law," Dkt. 109 at 21, State Defendants seek again to avoid a situation wherein voters may be forced to choose between their health and the right to vote. See Dkt. 109 at 18-19 ("Taking an unusual and in fact unnecessary chance with your life is a heavy

⁴ Virginia Department of Elections, *Absentee and Early Voting* (February 12, 2021), <https://www.elections.virginia.gov/casting-a-ballot/absentee-voting/>.

burden to bear simply to vote.”) (quoting *Common Cause RI. v. Gorbea*, No. 20-1753, 2020 WL 4579367, at *2 (1st Cir. Aug. 7, 2020), *aff’d* No. 20A28, 2020 WL 4680151 (U.S. Aug. 13, 2020)).

State Defendants believe the proposed consent decree is an appropriate means to reach this result.

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CERTIFICATE OF SERVICE

Pursuant to Local Rule 7(g)(3), I hereby certify that on February 12, 2021, I will file this document electronically through the Court's CM/ECF system, which will effect service on all counsel who have appeared.

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