



Sent Via Email

August 8, 2020

Hon. Denise Merrill
Connecticut Secretary of State
30 Trinity Street
Hartford, Connecticut 06106
Email: denise.merrill@ct.gov

Re: Absentee ballot issues re the August 11, 2020 primary election

Dear Secretary Merrill:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”) and the New Haven Legal Assistance Association (“NHLAA”), we are writing to urge you to take immediate action to correct two significant issues that have come to light regarding absentee ballots in the upcoming primary election on Tuesday, August 11, 2020. **First**, tens of thousands of Connecticut voters are at risk of being disenfranchised because absentee ballots were not mailed on a timely basis. We urge you to immediately ask the Governor to issue an Executive Order to allow all absentee ballots to be counted so long as they are postmarked by Tuesday, August 11, 2020. **Second**, the absentee ballot inner envelope causes voter confusion because it fails to include COVID-19 as a basis for voting by absentee ballot. We urge you to immediately take all possible steps to inform the public that all voters are permitted to cast an absentee ballot, and permitted to sign the inner envelope of the absentee ballot, on the basis of COVID-19 concerns.

Tens of Thousands of Connecticut’s Voters are at Risk of Being Disenfranchised Because Absentee Ballots Were Not Mailed on a Timely Basis

It has been widely reported that the vendor retained by your office to process and mail absentee ballots for the August 11, 2020 primary was unable to fulfill its responsibilities in a timely manner, resulting in tens of thousands of Connecticut voters who had not received their absentee ballots one week before the election.¹

In response to these apparent failures, on Monday, August 3, 2020 (eight days before the primary election) your office asked Connecticut’s Town Clerks to process and mail absentee ballots that had not

¹ See Ellie Kaufman, *20,000 absentee ballots are being mailed by Connecticut town clerks one week before primary*, CNN (August 5, 2020) available at <https://www.cnn.com/2020/08/05/politics/connecticut-ballots-primary/index.html>; Christopher Keating, *A week before Connecticut’s primary, more than 20,000 voters who requested absentee ballots haven’t yet received them due to state’s mix-up*, Hartford Court (August 4, 2020) available at <https://www.courant.com/politics/hc-pol-town-clerks-absentee-problems-20200804-2fczmxd5dkhbttfילוagnuzy-story.html>.

been processed and mailed by your vendor.² The consequences are indisputable: Connecticut’s Town Clerks were not prepared to mail tens of thousands of absentee ballots to voters on August 3, 2020, and as a result, these voters will very likely not receive their absentee ballots until the very last minute. Even if these voters complete and mail their absentee ballots immediately, there is a significant risk that their absentee ballots will not be received by their Town Clerks by 8:00 p.m. on August 11, 2020 as required by state law.³ Significant numbers of Connecticut voters are therefore at risk of being disenfranchised.

These harms can be mitigated if the Governor issues an Executive Order temporarily modifying Section 9-140b of the Connecticut General Statutes to allow absentee ballots to be counted so long as they are postmarked by August 11, 2020. The Governor has undisputed authority to issue such an Executive Order in light of the ongoing COVID-19 pandemic. *See* C.T. Gen. Stat. § 28-9. As Connecticut’s Chief Elections Official, we urge you to immediately request that the Governor issue such an Executive Order.

The Absentee Ballot Inner Envelope Will Cause Voter Confusion Because It Fails to Include COVID-19 as a Basis for Voting by Absentee Ballot

The COVID-19 pandemic presents extraordinary health, safety, economic, and logistical concerns for every Connecticut resident. On May 20, 2020, Governor Lamont signed Executive Order 7QQ, which modified Section 9-135 of the Connecticut General Statutes to permit all eligible voters to lawfully cast an absentee ballot because of COVID-19.⁴ Executive Order 7QQ requires modification of the “inner envelope” of absentee ballots to reflect the fact that COVID-19 provides a basis for all voters to cast an absentee ballot.⁵ Moreover, Executive Order 7QQ authorizes your office to modify the absentee ballot envelopes to provide this accurate information.⁶ In addition, on July 31, Governor Lamont signed Bill No. 6002, which expands the reasons for which voters may cast an absentee ballot to include COVID-19, effectively guaranteeing every voter the ability to vote by absentee ballot in the August 11 primary.

² On Monday, August 3, 2020 at 3:22 p.m., an email was sent to all Town Clerks from Ilona Havrilla, an administrative assistant in your office, stating, “In light of the confusion, we are running a couple of reports for you that will identify those applications entered into the CVRS system as ‘mail in’ that were not processed by the mail house and thus should be processed by you.”

³ Connecticut law requires all absentee ballots must be “received by the clerk of the municipality in which the applicant is qualified to vote not later than the close of the polls.” *See* C.T. Gen. Stat. § 9-140b.

⁴ *See* Executive Order 7QQ(1) (providing that “a person shall be permitted to lawfully state he or she is unable to appear at a polling place because of COVID-19 if, at the time he or she applies for or casts an absentee ballot for the August 11, 2020 primary election, there is no federally approved and widely available vaccine for prevention of COVID-19.”).

⁵ *See* Executive Order 7QQ(2) (providing that “Section 9-137 of the Connecticut General Statutes is modified to provide that it shall not constitute a false statement for an elector to represent his or her eligibility to vote by absentee ballot pursuant to the modifications of Section 9-135 in Section 1 of this order, and the inner envelope described in Section 9-137 shall contain a notice describing the modification in Section 1 of this order.”).

⁶ *See* Executive Order 7QQ(3) (providing that “the Secretary of the State shall be authorized to modify any required notice, statement, or description of the eligibility requirements for voting by absentee ballot on any printed, recorded, or electronic material in order to provide accurate information to voters about the modifications to absentee voter eligibility and related requirements of this order.”).

Notwithstanding Executive Order 7QQ and Bill No. 6002, the inner envelope that was mailed to absentee voters for the August 11, 2020 primary election requires voters to affirm, under penalty of law, that they are eligible to vote in the election due to any of five enumerated reasons, none of which is COVID-19 concerns.⁷ This affirmation contained in the inner envelope is causing voter confusion because it is not clear whether voters are permitted to cast an absentee ballot due to COVID-19 concerns. Moreover, voters who wish to cast their ballot due to COVID-19 concerns, but do not otherwise qualify under any of the five enumerated reasons, may be especially reluctant to sign this affirmation because it threatens legal penalties for perjury.

The risk of voter confusion is further compounded by the inconsistent messages that have been communicated to voters about this issue. For example, the request form for the absentee ballot is inconsistent with the inner envelope because it requires voters to check “only one” of seven reasons for requesting an absentee ballot, which include, among others, “COVID-19” and “my illness” as two reasons. *See Exhibit 1.*⁸ Moreover, your website fails to resolve this confusion; as of Friday, August 7, 2020, the Absentee Ballot FAQ page on your website does not include COVID-19 as a basis for voting by absentee. *See Exhibit 2.*

The failure to include COVID-19 concerns as a basis for casting an absentee ballot is causing voter confusion. Therefore, we urge you to immediately take all possible steps to inform the public that all voters are permitted to cast an absentee ballot, and permitted to sign the inner envelope of the absentee ballot, on the basis of COVID-19 concerns. We specifically urge you to correct your website, issue a press release, and disseminate this message using all available social media tools (Facebook, Twitter, etc.). It is especially important that your messaging not only informs voters of their right to cast an absentee ballot based on COVID-19 concerns, but specifically clarifies the confusing language on the inner envelope of the absentee ballot form.

These measures will benefit all Connecticut voters who seek to cast absentee ballots during Tuesday’s primary election, but are particularly important for older voters, low income voters, and voters of color who are less likely to have access to the healthcare options, social networks, and transportation needed to feel safe voting in-person under these extraordinary conditions—and who have borne the most severe impacts of the pandemic and economic crisis. Given the importance of the right to vote, which the U.S. Supreme Court has described as “a fundamental political right, because preservative of all rights,” we believe it is critical to take these common-sense steps.⁹

⁷ The five reasons listed on the inner envelope are “(1) my active service in the armed forces; (2) my absence from the town in which I am eligible to vote during all of the hours of voting; (3) my illness or physical disability; (4) the tenets of my religion which forbid secular activity on the day of the primary, election or referendum; or (5) my duties as a primary, election or referendum official.”

⁸ The absentee ballot request form misleadingly suggests to voters that the “illness” option does not include COVID-19 concerns, which makes the failure of the inner envelope to include COVID-19 as a reason for voting absentee especially problematic.

⁹ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

We ask that you respond in writing by Thursday, August 13 to explain the specific steps you took in response to the issues raised in this letter. In addition, if you have questions or would like to discuss these issues in the meantime, please contact Michael Pernick by email or telephone at (917) 653-3401.

Sincerely,

/s/ Janell Byrd-Chichester

Janell Byrd-Chichester, Director, Thurgood Marshall Institute
Michael Pernick, Attorney
NAACP Legal Defense
& Educational Fund, Inc.
40 Record Street, 5th Fl.
New York, NY 10006
(917) 653-3401
mpernick@naacpldf.org

Alexis Smith, Executive Director
New Haven Legal Assistance Association, Inc.
205 Orange Street
New Haven, CT 06510
(203) 946-4811 ext. 1118
asmith@nhlegal.org

cc: Governor Ned Lamont

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote policies that deter voter discrimination and increase access to the electoral process. We are committed to fighting voter intimidation and suppression, particularly in jurisdictions with large Black populations.

New Haven Legal Assistance Association was incorporated in 1964 with a mission to secure justice for and to protect the rights of New Haven County residents unable to engage legal counsel. NHLAA provides free legal services to low-income individuals and families and advocates administratively and legislatively for policies which protect the interests of the poor and disadvantaged.