

VIRGINIA: IN THE CIRCUIT COURT OF NORTHAMPTON COUNTY

**IN RE: ELECTION DAY - HOLIDAY - PARTIAL CLOSING - CLERK'S
OFFICE AND COURT TO REMAIN OPEN FOR ACTIONS
RELATED TO ELECTION**

ORDER

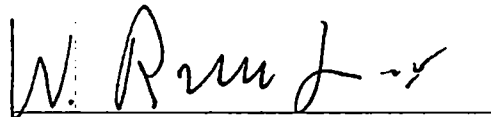
This 28th day of October 2020, the Court finds that Election Day is a legal holiday, pursuant to Virginia Code Section §2.2-3300. Virginia Code Section §2.2-3301 provides that legal holidays are valid. The Clerk and the Court must be available to file and hear actions relating to the election in a timely manner should such matters arise.

The Court ORDERS that:

1. The Office of the Clerk of the Circuit Court shall remain open during its normal operating hours and until two hours after the polls close only for the limited purpose of filing actions related to the election and setting expedited hearings as required by the Court or by law. The Clerk will otherwise close the office to other business at her discretion but shall not accept filings in any other cause of action. The Clerk shall provide a method for accepting filings in relation to the election at her discretion.
2. The Court shall be available for hearings as determined by law or by a judge of this Court; and a Judge and the court will be available until two hours after polls close.
3. The Northampton County Sheriff's Office will provide security as needed for the Clerk's Office and the Court at needed and the Northampton County Sheriff's Office will coordinate with the Clerk.
4. This Order remains in effect from November 3, 2020, and on each Election Day thereafter until revoked by law or a subsequent order of this Court.

The Clerk shall post a copy of this Order.

Entered this 28th day of October 2020.

A handwritten signature in black ink, appearing to read 'W. Revell Lewis, III', is written over a horizontal line.

W. REVELL LEWIS, III, Judge

SUPREME COURT OF VIRGINIA

CHIEF JUSTICE

S. BERNARD GOODWYN

JUSTICES

CLEO E. POWELL

D. ARTHUR KELSEY

STEPHEN R. MCCULLOUGH

TERESA M. CHAFIN

WESLEY G. RUSSELL, JR.

THOMAS P. MANN

SENIOR JUSTICES

CHARLES S. RUSSELL

LAWRENCE L. KOONTZ, JR.

DONALD W. LEMONS

LEROY F. MILLETTE, JR.

WILLIAM C. MIMS



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CLERK

MURIEL-THERESA PITNEY

EXECUTIVE SECRETARY

KARL R. HADE

CHIEF STAFF ATTORNEY

K. LORRAINE LORD

REPORTER OF DECISIONS

KENT SINCLAIR

STATE LAW LIBRARIAN

GAIL WARREN

October 18, 2023

Dear Circuit Court Judges,

As we approach Election Day, it is especially important for judges (and sheriffs, clerks and magistrates) to be prepared for any number of contingencies and possible emergencies.

This year, Election Day is a state holiday. For all of us, this presents unique challenges in providing access to justice and ensuring that the voting process is peaceful and orderly. I recognize that on most holidays, courts and clerks' offices might be closed, but I believe access to courts will need to be provided throughout Election Day in the event of any election-related emergency. I urge you to carefully review your schedules and to consult with the clerks in your circuit, and with the sheriffs who provide court security, to discuss how any urgent election-related issues will be handled.

Criminal matters, including behavior that is threatening or intimidating to voters, can likely be addressed by magistrates who will be on duty throughout the Commonwealth. Emergency civil matters involving, for example, access to polling places and hours of operation, will require access to a circuit court judge who has the necessary support from the clerk of court and the necessary security to conduct proceedings. Issues that may arise include matters related to voter registration, voting hours, protecting peace and order at polling places, voter intimidation, recounts and contested elections. A brief summary of Virginia statutes related to these issues is attached for your reference.

I also recognize that, apart from any criminal or civil cases, circuit court clerks have unique election-related responsibilities. These responsibilities include taking custody of and securing "all pollbooks, printed ballots and other election materials in sealed boxes." Va. Code § 24.2-668.


Accordingly, as in previous years, I again ask that you take steps to ensure that judges are available in the jurisdictions within your circuit on November 7, 2023, until approximately two (2) hours after the polls close, to address any emergency matters that could arise in connection with the election. My colleagues on the Supreme Court of Virginia, as well as the Clerk of the Supreme Court, will also be available.

Chief Circuit Court Judges
October 18, 2023
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The Supreme Court Clerk's office will be available and answering calls until about two hours after the polls close. On Election Day, Supreme Court Clerk's Office personnel may be contacted by telephone at (804) 692-0790 or (804) 786-5656. Court of Appeals Clerk's Office personnel may be contacted by telephone at (804) 786-0679 or (804) 786-0029.

Individual circuit courts may wish to post public notices at the courthouse door and on their local websites advising the public that on Tuesday, November 7, 2023, the court will be open only for election-related issues. Prerecorded telephone messages could convey the same information.

Very truly yours,

A handwritten signature in black ink, reading "S. Bernard Goodwyn". The signature is written in a cursive style with a large, stylized "S" and "G".

S. Bernard Goodwyn

Enclosure

cc: Circuit Court Clerks

Voter registration. The registration deadline was Monday, October 16, *see* Code § 24.2-416 (registration records “shall be closed during the 21 days before a primary or general election”). The general registrar processes voter registration applications and, if an application is denied, the registrar must notify the person within five days of the denial. Code § 24.2-422(A). A person whose voter registration application has been denied may appeal to the circuit court of the county or city in which he offers to register “within 10 days of being notified of the denial” and “without payment of writ tax or giving security for costs.” Code § 24.2-422(B). A \$10 filing fee must be paid upon filing the petition. *Id.*

Once a petition is filed, the clerk of court shall immediately give notice to the chief judge of the court and the attorney for the Commonwealth, who shall appear and defend against the petition on behalf of the Commonwealth. *Id.* “The matter shall be heard and determined on the face of the petition, the answer made in writing by the general registrar, and any evidence introduced as part of the proceedings.” *Id.* The statute also provides these proceedings “shall take precedence over all other business of the court and shall be heard as soon as possible.” *Id.*

Voting hours. On the day of the general election, the polls shall be open from 6:00 a.m. to 7:00 p.m. at each polling place. Code § 24.2-603. The officers of election shall list the names of all qualified voters in line at the polling place at 7:00 p.m. and permit those voters and no others to vote after 7:00 p.m. *Id.* Code § 24.2-653.2 contemplates that “a court of competent jurisdiction” may extend the polling hours at a polling place. “[A]ny ballots marked after the normal polling hours by persons who were not already in line at the time the polls would have closed, notwithstanding the court order, shall be treated as provisional ballots under this section.” *Id.*

Protecting peace and order at polling places. “The officers of election, with the consent of the chief law-enforcement officer for the county or city, may designate a law-enforcement officer who shall attend at the polling place and preserve order inside and outside the polling place.” Code § 24.2-606. It is unlawful for any person, while the polls are open and ballots are being counted, or within one hour of opening or after closing, “(i) to loiter or congregate within 40 feet of any entrance of any polling place; (ii) within such distance to give, tender, or exhibit any ballot, ticket, or other campaign material to any person or to solicit or in any manner attempt to influence any person in casting his vote; (iii) to hinder or delay a qualified voter in entering or leaving a polling place; or (iv) to knowingly possess any firearm as defined in § 18.2-308.2:2 within 40 feet of any building, or part thereof, used as a polling place.” Code § 24.2-604(A).

Voter intimidation. Code § 24.2-607(B) makes clear that “[n]o person shall conduct himself in a noisy or riotous manner at or about the polls so as to disturb the election or insult or abuse an officer of election.” It is “unlawful for any person to hinder, intimidate, or interfere with any qualified voter so as to prevent the voter from casting a secret ballot.” Code § 24.2-607(A); *see also* Code § 24.2-604(C) (stating neither a candidate nor any authorized representative of the candidate or his or her political party may “be in a position to see the marked ballot of any other voter” or otherwise “impede the orderly conduct of the election”). If

the officers of election determine a person has hindered, intimidated, or interfered with a qualified voter, they may order that person to cease such action. Code § 24.2-607(A).

A person who disturbs the conduct of the election or intimidates voters may be jailed. If the person does not cease the intimidating conduct when directed to do so, Code § 24.2-607(A), or otherwise “conducts himself in a noisy or riotous manner at or about the polls so as to disturb the election or insult or abuse an officer of election,” Code § 24.2-607(B), that person may be committed to the local jail for a period not exceeding twenty-four hours. *Id.* Any person who hinders, intimidates, or interferes with any qualified voter so as to prevent the voter from casting a secret ballot is guilty of a class 1 misdemeanor. Code § 24.2-607(A).

Recounts and Contested Elections. A petition for a recount of an election, other than an election for presidential electors, shall be filed within 10 days from the day the State Board of Elections or the local electoral board certifies the result. Code § 24.2-801(A). The petition must be filed in the Circuit Court of the City of Richmond in the case of a statewide office or a statewide referendum and, for any other office or any other referendum, in the circuit court of the county or city in which the candidate being challenged resides or comprising a part of the election district involved with the referendum. *Id.*; *see also* Code § 24.2-801.1 (stating the procedure for a petition for a recount of an election of presidential electors, which shall be filed in the Circuit Court of the City of Richmond). “The chief judge of the circuit court in which [the] petition is filed shall promptly notify the Chief Justice of the Supreme Court of Virginia, who shall designate two other judges to sit with the chief judge.” Code § 24.2-801(D). Code §§ 24.2-802.1 and -802.2 provide the procedures for adjudicating the recount.

Code §§ 24.2-803 through -814 address contested elections. Contests of elections of electors for President and Vice President shall be filed in the Circuit Court of the City of Richmond before a special court composed of the chief judge and two judges from circuit courts not contiguous to the City of Richmond, as appointed by the Chief Justice of the Supreme Court of Virginia. Code § 24.2-805.

Contests of an election to any county, city, town, or district office shall be filed in the circuit court of the county or city that the challenged candidate listed as his residency on his certificate of candidate qualification. Code § 24.2-806; *see also* Code § 24.2-808 (complaint must be filed within 30 days after the date of the general election).