



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

VIRGINIA DEPARTMENT OF ELECTIONS REPORT

Alternatives to the Witness Signature Requirement on Absentee Ballots

Abstract

At the direction of the Virginia General Assembly, the Department of Elections (ELECT) has prepared a report to consider alternatives to the witness signature requirement and evaluate the strengths and weaknesses of each approach.

Executive Summary

The Virginia Department of Elections (ELECT) has prepared this report at the direction of the 2021 General Assembly.¹ The General Assembly mandated the following:

“[T]hat the Department of Elections shall convene a work group to consider and evaluate alternatives to the witness signature requirement for election officials to use to verify that an absentee ballot has been cast by the voter identified as having requested and received the absentee ballot. The work group shall include such persons determined by the Department of Elections as necessary or appropriate. The work group shall organize no later than July 31, 2021 and shall complete its work no later than October 31, 2021. If recommending any specific policies or legislative proposals, the work group, through the Commissioner of Elections, shall communicate those recommendations to the Chairmen of the House and Senate Committees on Privileges and Elections by November 15, 2021.”²

Pursuant to this mandate, the Department of Elections organized a work group consisting of members of the Virginia elections community to consider this issue. The work group included general registrars, Electoral Board members, and representatives from the Republican and Democratic parties of Virginia.³ The work group convened on two dates: first virtually on June 30, 2021, then in-person on July 28, 2021. Prior to finalizing this report, the work group received a final draft and the opportunity to submit any objections.

This report discusses several possible alternatives to Virginia’s absentee ballot witness signature requirement. Further, this report evaluates the relative strengths and weaknesses of

¹ See Acts of Assembly from Special Session I of the 2021 Virginia General Assembly, retrievable at <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0235>.

² Id.

³ Work group Members: Democratic Party Representative Frank Leone; Republican Party Representative Greg Riddlemoser and Janet Riddick; Local Electoral Board Members Jim Nix, Roger Omwake, Susan Cobb, and Jonell McFadden; and general registrars Allison Robbins, Walt Latham, Brenda Cabrera, Teri Smithson, Angela Turner, Stephanie Iles, Dianna Dutton, and Jackie Britt.

each approach⁴. The Department of Elections has considered the options below and is not currently recommending an option. However, the work group that evaluated this issue preferred **Option A**: *requiring the voter to include their date of birth and the last four digits of their social security number*. This option provides a secure and accurate means of confirming a voter's identity that is also easy for election officials to administer.

Background

Currently, Virginia law requires by-mail absentee voters to open their absentee ballot in the presence of a witness.⁵ Specifically, the witness must be present when the voter “open[s] the sealed envelope marked ‘ballot within’ and mark[s] and refold[s] the ballot.”⁶ The witness must then sign the voter's absentee ballot return envelope (Envelope B) in a designated area labeled “witness, sign here.”⁷

The witness signature requirement can create issues for voters and election administrators. For example, the requirement can be burdensome for people with limited mobility or who are unable to travel to obtain a witness; this was especially evident during the 2020 General Election, which took place at the height of the COVID-19 public health emergency. Additionally, election officials have expressed concerns about the reliability of the witness signature requirement. Registrars are legally obligated to check return envelopes for witness signatures, but there is no way for registrars to verify the identity of a witness. For those reasons, the General Assembly may desire to replace the witness signature requirement with one of the options discussed below.

⁴ For information on other states' witness signature requirements, see generally National Conference of State Legislatures' “How States Verify Voted Absentee Ballots” accessed on October 7, 2016 at <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>.

⁵ See Code of Virginia § 24.2-707 (which makes witness signatures mandatory on returned absentee ballots, except “during a declared state of emergency related to a communicable disease of public health threat.”).

⁶ Id.

⁷ See *Appendix A*.

Options Analysis:

Option A: *Require the voter to add birth year and last four digits of social security number to the absentee voter affidavit.*

This option would remove the witness signature line from the Envelope B. Instead, the Envelope B would instruct absentee voters to provide their year of birth and last four digits of their social security number.

A. Advantages of this approach.

One significant advantage of this option is that it would increase election security. Registrars and staff would be able to compare the social security number and year of birth on a voter's Envelope B against the information provided in a voter's registration record. This check would verify the voter's identity. The process would create a minimal burden on general registrars, who are already used to reviewing a voter's social security number and year of birth in the context of voter registration. The process would impose a minimal burden on voters, who already must provide their social security numbers and years of birth to register to vote.

A second advantage of this approach is that it would be relatively easy to implement compared to other options. Implementing this method would require little training for general registrars and general registrar staff, who are accustomed to reviewing voter registration applications for a social security number and year of birth.

This option would impose a modest burden on the Department of Elections to update absentee ballot instructions as well as the Envelope B.⁸ However, the Department is already accustomed to regularly reviewing and updating both the standard absentee ballot instructions and the Envelope B.

⁸ See *Appendix A* for an example of Envelope B.

A sub-option would be to allow voters to provide a driver's license number as another means of completing the Envelope B. The driver's license number would act as an alternative for voters who do not wish to provide their social security numbers and/or who do not have social security numbers. Other states like Minnesota currently allow voters to provide either a driver's license number, state identification number, or the last four digits of their social security number as means of verifying returned absentee ballots.⁹

This sub-option would be convenient for Virginia's voters. However, the work group expressed significant concerns regarding the feasibility of implementing this model in Virginia. Specifically, work group members noted that this would require a significant increase in the amount of information shared between the Department of Motor Vehicles and general registrars' offices. This burden would fall on general registrars and on the Department of Motor Vehicles.

B. Disadvantages of this approach.

A small number of registered voters do not have social security numbers. As of the date of this report, internal numbers from the Department of Elections show 343 registered voters in the state who do not have social security numbers.¹⁰ In the case of these voters, the Department of Elections could provide a voter identification number or pin as a substitute for the last four digits of the voter's social security number. Here, the driver's license number could also act as an alternative method of verifying the voter's identity.

This option would add a small burden to registrars and staff by requiring them to compare the four digits on the voter's Envelope B with the social security number listed in the

⁹ See Minnesota Statutes Annotated § 203B.07 retrieved from <https://www.revisor.mn.gov/statutes/cite/203B.07> October 7, 2021; see also Minnesota Statutes Annotated § 203B.121.

¹⁰ See *Appendix B*.

voter's registration record. However, this process would be less burdensome for election officials than other options discussed in this report.

C. States that use this approach.

Under the 2020 Minnesota Statutes, Minnesota requires voters to provide either their Minnesota driver's license number, state identification number, or the last four digits of their social security number on a statement indicating that the voter meets all the requirements established by law for voting by absentee ballot.¹¹ Similarly, Ohio requires that voters either provide their driver's license number or the last four digits of their social security number along with a signature on a statement accompanying the absentee ballot.¹²

Option B: *Maintain the COVID-19 policy and rely solely on the voter's affidavit, even when there is not a public health emergency.*

During the November 3, 2020 General Election, Virginia did not require witness signatures from absentee voters.¹³ Virginia joined states that relied solely on the affidavit or attestation statement included with the ballot to verify the identity of the voter. Under Va. Code §24.2-706.B, when signing the "Statement of Voter," the voter attests to their identity and that they are properly casting the ballot, subject to felony penalties for making false statements pursuant to Va. Code §24.2-1016.¹⁴ Signing an affidavit or oath is a prevalent feature of the voting process for all states and is required for a ballot to be considered valid. The Commonwealth could retain this policy and continue to rely on voter affidavit signage without the additional requirement of a witness signature.

¹¹ See Minnesota Statutes Annotated § 203B.07 retrieved from <https://www.revisor.mn.gov/statutes/cite/203B.07> October 7, 2021; see also Minnesota Statutes Annotated § 203B.121.

¹² See Ohio Revised Code § 3509.03 retrievable at <https://codes.ohio.gov/ohio-revised-code/section-3509.03>.

¹³ See Senate Bill 5120 from Special Session 1 of the 2020 Virginia General Assembly, retrievable from <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+SB5120>.

¹⁴ See Code of Virginia § 24.2-643; see also *Appendix C*.

A. Advantages of this approach.

This option is familiar to Virginia voters and election officials from the November 2020 General Election.¹⁵ During that election, there were no significant issues related to the waived witness signature requirement.¹⁶ Compared to the other options in this report, this option would likely result in the fewest rejected ballots for voters. This option eliminates the risk of voters forgetting to include additional information, like a witness signature or social security number. Additionally, this option would likely result in the fastest processing of absentee ballots because it requires fewer steps for election officials.

Under current Virginia Law, this option already applies during “any election held during a declared state of emergency related to a communicable disease of public health threat.”¹⁷ Due to the fact that Virginia’s witness signature requirement changes during a state of emergency, a lot of confusion has occurred for some voters. General registrars administering the November 2021 General Election have reported that some voters are unsure if a witness signature is required on absentee ballots returned for that election. Therefore, one advantage of adopting this option is creating a uniform standard for administering absentee voting regardless of whether there is a public health related state of emergency.

B. Disadvantages of this approach.

This approach relies on the truthfulness of the individual completing the attestation and does not provide another means to verify the voter’s identity.

¹⁵ See generally the Virginia Department of Elections November 3, 2020 Post-Election Report retrievable at https://www.elections.virginia.gov/media/formwarehouse/maintenance-reports/PostElectionReport_FinalRevised_211001.pdfhttps://www.elections.virginia.gov/media/formwarehouse/maintenance-reports/PostElectionReport_FinalRevised_211001.pdf.

¹⁶ See *Id* (showing that the waived witness signature requirement did not create significant issues for Virginia’s 2020 General Election).

¹⁷ Code of Virginia § 24.2-707.

C. States that use this approach.

Maryland, Ohio, Vermont, New Hampshire, Connecticut, Delaware, New Mexico, Wyoming, and Iowa.¹⁸

Option C: *Require voters to include a copy of a valid identification (ID) with their absentee ballot.*

Several states require that voters send in a copy of an approved form of identification with their absentee ballots, while others specifically require a copy of a photo ID. Virginia could either implement a photo ID requirement or allow voters to send a copy of any of the accepted forms of identification allowed during in-person voting.¹⁹ Virginia currently accepts around 15 different forms of identification, including student IDs, some government-issued IDs, utility bills, bank statements, and many other documents accessible to most Virginians.²⁰

A. Advantages of this approach.

The primary advantage of this option would be increased election security. Requiring voters to submit a copy of an accepted form of ID would add an extra layer of verification similar to the requirements of the in-person voting experience for Virginia voters.²¹

B. Disadvantages of this approach.

This requirement could burden voters – especially lower-income voters – who may not have access to a scanner or printer. This option could also create additional hurdles to voting for individuals who are homebound or have mobility issues. This approach could lead to a significant increase in rejected ballots, as many long-time Virginia residents may not realize that

¹⁸ See The National Conference of State Legislatures’ “How States Verify Voted Absentee Ballots” accessed on October 7, 2016 at <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>.

¹⁹ See *Appendix D* for a list of acceptable state identification documents.

²⁰ *Id.*

²¹ See Code of Virginia § 24.2-701.1(A) (describing identification requirements for in-person absentee voters).

providing a copy of an acceptable ID is necessary to vote absentee by mail. Additionally, this option could impose a significant administrative burden on general registrars and their staff, who would have to provide absentee voters an opportunity to cure ballots submitted without a copy of an acceptable ID.²² Further, requiring proof of identification for mail-in ballots would compound the burdens imposed by voter ID requirements in general, including confusion both on the part of the voters and election officials as to what forms of ID are acceptable.

For processing, voter ID requirements would add an additional step for those counting ballots and would extend the time it would take to process absentee ballots. The copies of photo IDs sent to general registrars could create record retention issues for local election officials, who will have to store the copies or find a safe way to dispose of them. The extra documents could also increase the weight of the absentee ballot return envelopes, increasing the postage costs incurred by the locality.

C. States that use this approach.

Alabama (along with witness signatures)²³, though these provisions were found unlawful in Alabama at the height of the COVID-19 pandemic²⁴; Arkansas (option if the voter does not include verification of registration)²⁵; Kansas (option during absentee ballot application

²² See Code of Virginia § 24.2-709.1 (describing the cure process, which applies to secrecy envelopes returned with material omissions including a missing signature; the legislature may need to provide a means to cure a missing ID if an absentee ID requirement were passed into law).

²³ See Code of Alabama §§ 17-9-30(b), 17-11-7, and 17-11-10.

²⁴ People First of Alabama v. Merrill, 467 F. Supp. 3d 1179, 1227 (N.D. Ala. 2020), appeal dismissed, No. 20-12184-GG, 2020 WL 5543717 (11th Cir. July 17, 2020). (Holding not to enforce the photo ID requirement for the July 14 runoff election for absentee voters who were over the age of 65 or disabled who determined it was impossible or unreasonable to safely satisfy that requirement in light of the COVID-19 pandemic).

²⁵ See Arkansas Constitution, Amendment 51 § 13; see also Arkansas Code Annotated §§ 7-5-409(b) (4), 7-5-412, and 7-5-416.

process)²⁶, South Dakota (option during absentee ballot application process)²⁷; and Wisconsin (required during absentee ballot process).²⁸

Option D: *Create a signature matching system in Virginia.*

The majority of states utilize a signature matching system that compares the voter's signature on a document or envelope accompanying the ballot with a signature on file.²⁹ States can use signature matching as a substitute for a witness signature requirement or in addition to a witness signature requirement.

To perform signature matching, some states use multiple signatures registered with the state and others only use the signature provided when the voter registered to vote with the election authority. Depending on the policy of the state, a signature that does not appear to match the one on file will either trigger a state's cure process or completely disqualify the ballot. If Virginia adopted this approach, the Commonwealth could compare ballot signatures to the signature provided during voter registration, the signature provided on the absentee ballot application, a signature that the voter provided to the Department of Motor Vehicles, or any combination of these.

A. Advantages of this approach.

The majority of states verify absentee ballots through signature matching.³⁰ This means that Virginia would have several models to reference while drafting related legislation and administrative procedures. Signature matching is a means of verifying a voter's identity. While

²⁶ See Kansas Statutes Annotated §§ 25-1122 and 25-1120.

²⁷ See South Dakota Code § 12-19-10.

²⁸ See Wisconsin Statutes Annotated §§ 6.87 and 6.88.

²⁹ See *Id.*

³⁰ See The National Conference of State Legislatures' "How States Verify Voted Absentee Ballots" accessed on October 7, 2016 at <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>.

signature matching can result in many rejected ballots, Virginia’s cure process could help to remedy some of those rejections.³¹

B. Disadvantages of this approach

A 2018 report from the U.S. Election Assistance Commission demonstrated that signature matching causes the rejection of many absentee ballots.³² Based on absentee ballot data from 2018, non-matching signatures were responsible for 15.8% of all the rejected ballots across the country which is the highest percentage after missed deadlines (26.9%) and “other” (34.9%).³³ Improper rejections can occur for several reasons including: signature changes over time, the type of surface the voter signed their ballot on, pen type, and other factors that may create a discrepancy between the signature accompanying the ballot and the signature in the state system. Signature matching is also vulnerable to subjectivity and bias. Additionally, there is evidence that ballot rejections as a result of signature issues may have a disproportionate impact on elderly voters, younger voters, and voters of color.³⁴ It would be difficult to ensure that there are standardized processes throughout the Commonwealth due to the subjectivity of signature matching. High ballot rejection rates could undermine voter confidence in absentee voting.

Additionally, signature matching would require substantial training for election officers. A signature matching system would also require substantial voter communication campaigns and frequent outreach to ask voters to provide an updated signature. Because of the complexities of signature matching, most states have a detailed multi-step process that significantly slows down

³¹ See Code of Virginia § 24.2-709.

³² See United States Election Assistance Commission (2018). *Election Administration and Voting Survey, 2018 Comprehensive Report* at page 23 (showing that non-matching signature is the third most common reason for rejecting by-mail absentee ballots). https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf.

³³ See *Id.*

³⁴ See “Signed, Sealed, Delivered-Then Discarded.” Graham, David A., *The Atlantic*, Atlantic Media Company, 6 Nov. 2020, www.theatlantic.com/ideas/archive/2020/10/signature-matching-is-the-phrenology-of-elections/616790/.

the processing of absentee ballots. Election officers and local officials would potentially have to manage hundreds to thousands of ballots with rejected signature matches through the absentee ballot cure process.

C. States that use this approach.

Thirty-two states and the District of Columbia use this approach. These states include: Washington, Oregon, California, Nevada, Arizona, Utah, Idaho, Montana, Hawaii, North Dakota, South Dakota, Nebraska, Kansas, Colorado, Texas, Louisiana, Arkansas, Mississippi, Tennessee, Illinois, Indiana, Michigan, Ohio, Kentucky, West Virginia, Georgia, Florida, New Jersey, New York, Massachusetts, Rhode Island, and Maine.³⁵

Conclusion

All of the options listed above are viable alternatives to the absentee ballot witness signature requirement. The work group that examined this issue favored **Option A**: *require the voter to add birth year and last four digits of social security to the absentee voter affidavit*. Additionally, the work group expressed concerns about including driver's license numbers in the scope of this option, because doing so would demand increased information sharing between general registrars and the Department of Motor Vehicles. The Department of Elections is not making a recommendation at this time on an alternative to the witness signature requirement. However, the Department is confident that our election officials would administer any of these options in a way that promotes and supports accurate, fair, open, and secure elections for the citizens of the Commonwealth of Virginia.

³⁵ See The National Conference of State Legislatures' "How States Verify Voted Absentee Ballots" accessed on October 7, 2016 at <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>.

Appendix A

**Ballot Envelope B - Place your ballot in this envelope.
Do not put anything except your ballot in this envelope.**

Statement of Voter

Your ballot will not be counted if you do not fill in this form completely

I do hereby state, subject to felony penalties for making false statements pursuant to §24.2-1016, Code of Virginia, that my full name is

First _____ Middle _____

Last _____ Suffix _____
(Jr., Sr., III, etc.)

that I am now or have been at some time since last November's general election a legal resident of (state your legal residence in Virginia including the house number, street name or rural route address, city, zip code);

House Number, Street Name or Rural Route Address _____

City _____ Zip code _____

that I received the enclosed ballot(s) upon application to the registrar of such county or city; that I opened the envelope marked "ballot within" and marked the ballot(s) in the presence of the witness, without assistance or knowledge on the part of anyone as to the manner in which I marked it (or I am returning the form required to report how I was assisted); that I then sealed the ballot(s) in this envelope; and that I have not voted and will not vote in this election at any other time or place.

I swear/affirm, under felony penalty for making willfully false material statements or entries, that the information provided on this form is true.

Voter, sign here

X _____

Witness, sign here

X _____

Date (MM/DD/YYYY) _____

VA-VBM-Envelope-B-7-2020

Appendix B

Number of Voters without Social Security Numbers by Locality

Locality	Total
ALBEMARLE COUNTY	5
ALEXANDRIA CITY	15
ALLEGHANY COUNTY	4
AMHERST COUNTY	1
APPOMATTOX COUNTY	1
ARLINGTON COUNTY	24
AUGUSTA COUNTY	1
BEDFORD COUNTY	1
BRISTOL CITY	1
BRUNSWICK COUNTY	2
BUCHANAN COUNTY	2
CAMPBELL COUNTY	1
CHARLOTTESVILLE CITY	2
CHESAPEAKE CITY	12
CHESTERFIELD COUNTY	4
CULPEPER COUNTY	4
DANVILLE CITY	1
FAIRFAX CITY	3
FAIRFAX COUNTY	68
FALLS CHURCH CITY	2
FAUQUIER COUNTY	1
FLOYD COUNTY	2
FRANKLIN COUNTY	1
FREDERICK COUNTY	1
FREDERICKSBURG CITY	2
GREENE COUNTY	1
GREENSVILLE COUNTY	3
HALIFAX COUNTY	12
HAMPTON CITY	4
HARRISONBURG CITY	1
HENRICO COUNTY	4
JAMES CITY COUNTY	1
KING WILLIAM COUNTY	1

LEE COUNTY	7
LOUDOUN COUNTY	3
LYNCHBURG CITY	9
MANASSAS CITY	1
MIDDLESEX COUNTY	1
MONTGOMERY COUNTY	2
NEWPORT NEWS CITY	7
NORFOLK CITY	4
ORANGE COUNTY	1
PAGE COUNTY	11
PITTSYLVANIA COUNTY	3
PORTSMOUTH CITY	19
PRINCE EDWARD COUNTY	3
PRINCE WILLIAM COUNTY	3
RADFORD CITY	1
RICHMOND CITY	11
RICHMOND COUNTY	1
ROANOKE CITY	8
ROCKINGHAM COUNTY	2
SCOTT COUNTY	6
SHENANDOAH COUNTY	7
SOUTHAMPTON COUNTY	2
SPOTSYLVANIA COUNTY	2
SUFFOLK CITY	10
VIRGINIA BEACH CITY	16
WARREN COUNTY	1
WASHINGTON COUNTY	1
WESTMORELAND COUNTY	1
WINCHESTER CITY	1
WISE COUNTY	11
Total	343

Appendix C

Code of Virginia § 24.2-706.

"Statement of Voter."

"I do hereby state, subject to felony penalties for making false statements pursuant to § 24.2-1016, that my FULL NAME is _____ (last, first, middle); that I am now or have been at some time since last November's general election a legal resident of _____ (STATE YOUR LEGAL RESIDENCE IN VIRGINIA including the house number, street name or rural route address, city, zip code); that I received the enclosed ballot(s) upon application to the registrar of such county or city; that I opened the envelope marked 'ballot within' and marked the ballot(s) in the presence of the witness, without assistance or knowledge on the part of anyone as to the manner in which I marked it (or I am returning the form required to report how I was assisted); that I then sealed the ballot(s) in this envelope; and that I have not voted and will not vote in this election at any other time or place.

Signature of Voter _____

Date _____

Signature of witness _____"

Appendix D



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Voter Identification

All voters casting a ballot in-person will be asked to show one form of identification. Any voter who does not present acceptable identification may instead sign a statement, subject to felony penalties, that they are the named registered voter who they claim to be. Any voter who does not present acceptable identification or sign this statement must vote a provisional ballot.

Identification	Is Accepted?
Virginia driver's license	Yes, may be current or expired.
Valid DMV-issued ID card	Yes
Valid employee ID card, containing a photograph, issued by voter's employer in ordinary course of business (public or private employer)	Yes
U.S. Military ID	Yes
Valid student ID issued by a public or private school of higher education located in Virginia	Yes
Valid student ID, containing a photograph, issued by a public or private school of higher education located in the U.S.	Yes
Valid student ID issued by a public or private high school in Virginia	Yes
Valid U.S. passport or passport card	Yes
Government-issued ID card from a federal, Virginia, or local political subdivision	Yes
Voter ID card issued by the Department of Elections	Yes
Voter confirmation documents	Yes
Valid tribal enrollment or other tribal ID	Yes, if issued by one of the 11 tribes recognized by Virginia.**
Nursing home resident ID	Yes, if issued by a government facility
Current utility bill, bank statement, government check, or paycheck containing the name and address of the voter	Yes. The document cannot be more than 12 months old.
Any other current government document containing the name and address of the voter	Yes
Signed ID Confirmation Statement	Yes
Out-of-state driver's license	No
Membership card from private organization displaying a photograph	No
Credit card displaying a photograph	No
Virginia Driver's Privilege card	No

* "Valid" means the document is genuine and is not expired for more than twelve months, except for a Virginia driver's license, for which the expiration date should not be considered when determining its validity.

**The eleven recognized tribes are: Cherokeehaka (Nottoway), Chickahominy, Chickahominy Eastern Division, Mattaponi, Monacan, Nansemond, Nottoway, Pamunkey, Patawomeck, Rappahannock, and Upper Mattaponi. (<https://www.commonwealth.virginia.gov/virginia-indians/state-recognized-tribes/>)

