



SENT VIA EMAIL

October 21, 2020

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Hon. Jackie Anderson-Smith
Jefferson County Circuit Clerk
716 Richard Arrington Jr Blvd N
Birmingham, AL 35203

**Re: Cure Process for Voters Sent Instructions for Absentee Voting After
Eleventh Circuit Stay**

Dear Ms. Anderson-Smith:

We are writing to encourage your office to institute a notice and cure process for voters who may have inadvertently received incorrect information from your office about the photo ID and witness requirements for absentee voting. For those voters who may have sent in applications or ballots without the required documentation or signatures, it is only fair to give them an opportunity to resolve the omission.

It has come to our attention that after the District Court's injunction was issued in *People First v. Merrill*, Jefferson County sent "waiver statements" to voters with their absentee ballot materials that instructed them to sign and return these waivers if they chose to exempt the witness or notary requirements due to COVID-19 exposure. This procedure was allowed under the Court's order and a benefit to voters seeking to vote absentee under the Court's order. But the Eleventh Circuit Court of Appeals *stayed* the order on October 13.¹ Thus, pursuant to the terms of the Consent Order, absentee ballots or applications postmarked or received on October 14 or later²

¹ The stay is pending resolution of the case on appeal in the Eleventh Circuit.

² Absentee ballots and applications received or postmarked on or before October 13 are still covered by the injunction.

must comply with the photo ID and witness requirements. *See* Consent Order, Doc. 181, ¶ 13 (N.D. Ala. Aug. 21, 2020) (“[I]f for any reason [the] injunction or order is subsequently stayed—the Jefferson County Defendants agree to apply the standards established by this Court’s injunction or order to any absentee ballot application or absentee ballot received or postmarked between the date of this Court’s injunction and the effective date of any stay order.”).

We are concerned that if any voters were sent or received absentee ballot packets that included these waiver statements *after* the Eleventh Circuit stay, they may return their ballots without complying with the photo ID and/or witness requirements believing they are in full compliance with the law. We ask that your office create a process to notify voters who may have received your notice or used the waiver statements created by your office after the Eleventh Circuit’s stay. For example, if a voter returns a waiver statement created by your office, the voter should be notified by phone and/or email (if available) and then by mail as soon as possible. The voter should be given instructions how to cure the omission, either by bringing in their ID, emailing or mailing a photocopy, or coming in to have the clerk serve as notary for the ballot. The safest and most efficient process is, of course, best determined by your office.

We understand that your office has been managing an historic volume of absentee ballot applications and in-person absentee voters in recent weeks.¹ However, it is crucial that voters are given the opportunity to correct any issue with their ballot that resulted through no fault of their own.

Thank you for your time and attention to this important matter, and we are available to assist you and your office anyway we can.

Sincerely,



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