

In the middle of March 2020, with West Virginia's May 12 Primary Election less than two months away, COVID-19 advanced in America, and the Governor declared a state of emergency¹ in March pursuant to his authority under § 15-5-6 (a).

Candidate filing was closed, and absentee ballots were already on their way to voters. Poll worker training and early voting were just around the corner. However, COVID-19's emergence in West Virginia during the early stages of the election cycle allowed for a myriad of electoral considerations to ensure a safe, accessible and secure primary election during "stay at home" executive orders² from the Governor, and also at the recommendation of the President of the United States of America.

Preparations for holding the 2020 Primary during the COVID-19 Emergency Declaration

Upon request by the Secretary of State, Attorney General Morrissey (AG) issued an Opinion Letter³ on March 18, 2020, under his authority set forth in W. Va. Code § 5-3-1 to "give written opinions and advise upon questions of law[.]" The AG Opinion Letter interpreted the breadth of the Secretary of State's emergency powers set forth in W. Va. Code § 3-1A-6(e), finding:

[T]he Secretary may take emergency measures . . . that help ensure voter access and election integrity in the primary election, as long as those measures do not conflict with the clear, unambiguous text of Chapter 3. . . . The Secretary has full authority to invoke those powers now and while the state of emergency persists.

With regard to the Governor's emergency authority as it pertains to the election, the AG Opinion Letter continues:

[T]he Governor has separate and more extensive authority under a state of emergency. West Virginia Code § 15-5-6(c)(7), for instance, gives the Governor power "[t]o suspend the provision of any regulatory statute prescribing the procedures for conduct of state business . . . if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency." . . . Arguably, these provisions could support an order from the Governor regarding safe election procedures—potentially including personnel at polling places or the date of the primary election—if necessary to address the emergency that the coronavirus epidemic poses for the State.

On March 20, 2020, the Secretary promulgated an Emergency Rule at CSR § 153-53⁴ under his authority set forth in W. Va. Code § 3-1A-6(e)(1) as interpreted by the AG Opinion Letter. Emergency Rule CSR § 153-53 does not create new law or modify existing law. Rather, it clarifies various existing provisions of Chapter 3 election laws, including unclear or ambiguous existing definitions and procedures to ensure that all eligible voters have the opportunity to cast a valid ballot and to uphold the integrity of an election while the State of Emergency is in effect.

On March 24, 2020, the Governor issued Executive Order 9-20 for all of West Virginia. Executive Order 9-20, directing a "Stay at Home" order, was subsequently followed with Executive Order 10-20⁵ that had impacts on the 30-day timeframe for poll worker training, 30-day requirement to establish satellite

¹ Attachment A – Governor's Declaration of Emergency on March 16, 2020

² Attachment B – Governor's Executive Orders to Stay at Home

³ Attachment D – Opinion Letter from Attorney General Morrissey

⁴ Attachment E – Emergency Rule CSR § 153-53

⁵ Attachment F – Governor's Executive Order 10-20

precincts, methods of obtaining absentee ballot requests, timing of absentee ballot mailings upon request, shared polling location space and clarity on the amount of poll workers in a polling location.

On March 29, 2020, President Trump extended the “social distancing” guidelines⁶ through, at least, April 30, 2020. And subsequently on *April 1, 2020*, the Governor issued Executive Order 18-20⁷, changing the date of the election from May 12, 2020, to June 9, 2020.

The West Virginia Secretary of State published the new election calendar with updated dates and deadlines in the State Register⁸ on April 3, 2020.

The 2020 Primary in Motion:

Existing West Virginia election laws allowed for the 2020 Primary Election to be held with many options available to voters depending on their unique situation, their confidence in the method of casting their ballot and with the safety of themselves and their community in mind. West Virginia provided voting in person with very limited precinct consolidations on Election Day, early voting at the courthouses or annex’s location, satellite early voting, absentee by mail for those who cannot vote in-person and electronic ballot return for UOCAVA and persons with physical disabilities who cannot vote a secret ballot without assistance. These robust options are the most available in any voting location in the nation.

Voter Registration:

Near the close of registration for the primary election, West Virginia had 1,226,307 registered voters eligible to cast a ballot⁹. Of them, 450,909 voted in the primary election. 36.7% of all eligible voters participated in the primary election.

Near the close of registration for the primary election, West Virginia had 991,558 active voters (eligible and have not been flagged as moved or not voting in 4 or more years). 443,807 active voters voted in the primary election. 44.8% of all active voters participated in the primary election.

Near the close of registration for the Primary Election, West Virginia had 234,749 inactive voters (eligible and flagged as moved or not voting in 4 or more years). 6,408 eligible voters flagged as inactive voted in the primary election. 3% of all inactive voters participated in the primary election. A registration flagged as inactive will revert to active status once the voter updates the registration or votes in the election.

Methods of Voting in the 2020 Primary Election

The aforementioned Executive Orders 9-20 and 10-20, combined with the interpretation of code verified by the West Virginia’s Attorney General, allowed for an unprecedented situation where all West Virginia voters were eligible to request an absentee vote by mail due to medical reasons during the stay at home orders and the existence of COVID-19. In addition, voters still had the choice instead to vote in person during early voting or election day. West Virginia transitioned quickly to prepare for a steep increase in absentee ballots, to prepare voting locations for smaller in-person turnout and to keep voters and poll workers safe under current guidance of the

Centers for Disease Control and Prevention (CDC) and West Virginia Department of Health and Human Resources (DHHR).

⁶ <https://www.nytimes.com/2020/03/29/us/politics/trump-coronavirus-guidelines.html>

⁷ Attachment G – Governor’s Executive Order 18-20

⁸ <http://apps.sos.wv.gov/adlaw/register/readpdf.aspx?did=39893>

⁹ <https://sos.wv.gov/elections/Documents/VoterRegistrationTotals/2020/May2020.pdf>

Voting methods were split evenly at half of all voters choosing in-person and half choosing absentee vote by mail. Of those who voted, in-person early voting consisted of 9.4%. On Election Day, 40.7% voted in-person. The remaining votes cast, 49.9%, were by absentee ballots.

Breakdown of voting method used for the 2020 Primary Election:

	Registered	Turnout	Turnout	Absentee	Early Voting	Election Day	Total in person
STATEWIDE	1229239	450909	36.7%	49.9%	9.4%	40.7%	50.1%
BARBOUR	9690	4212	43.5%	52.6%	7.9%	39.5%	47.4%
BERKELEY	78714	23005	29.2%	44.7%	8.5%	46.9%	55.3%
BOONE	15141	6025	39.8%	38.2%	8.3%	53.5%	61.8%
BRAXTON	8306	3776	45.5%	52.3%	11.0%	36.7%	47.7%
BROOKE	18717	6304	33.7%	56.0%	4.4%	39.5%	44.0%
CABELL	57125	20514	35.9%	54.6%	6.5%	38.8%	45.4%
CALHOUN	4667	2031	43.5%	58.2%	10.3%	31.5%	41.8%
CLAY	5550	2063	37.2%	48.3%	16.8%	34.9%	51.7%
DODDRIDGE	4478	2158	48.2%	51.3%	7.9%	40.8%	48.7%
FAYETTE	28369	9905	34.9%	49.8%	9.6%	40.6%	50.2%
GILMER	4607	1808	39.2%	46.5%	9.6%	44.0%	53.5%
GRANT	7413	3579	48.3%	40.3%	14.9%	44.8%	59.7%
GREENBRIER	22904	9581	41.8%	47.2%	10.0%	42.8%	52.8%
HAMPSHIRE	13332	5194	39.0%	46.6%	7.0%	46.4%	53.4%
HANCOCK	23828	7828	32.9%	52.6%	4.8%	42.6%	47.4%
HARDY	8617	3455	40.1%	54.4%	4.4%	41.2%	45.6%
HARRISON	44880	17230	38.4%	60.5%	8.9%	30.6%	39.5%
JACKSON	19586	8682	44.3%	50.4%	11.6%	38.0%	49.6%
JEFFERSON	41211	12472	30.3%	59.1%	7.3%	33.5%	40.9%
KANAWHA	123085	48663	39.5%	51.8%	7.7%	40.4%	48.2%
LEWIS	10263	5214	50.8%	47.0%	10.0%	42.9%	53.0%
LINCOLN	12472	4318	34.6%	39.9%	13.7%	46.4%	60.1%
LOGAN	25316	7062	27.9%	26.5%	10.0%	63.4%	73.5%
MARION	40159	14714	36.6%	48.7%	10.5%	40.8%	51.3%
MARSHALL	20798	8119	39.0%	54.6%	6.1%	39.3%	45.4%
MASON	18300	7303	39.9%	55.8%	8.6%	35.7%	44.2%
MCDOWELL	15447	3694	23.9%	24.4%	5.9%	69.7%	75.6%
MERCER	41541	12458	30.0%	40.9%	15.5%	43.5%	59.1%
MINERAL	17773	6114	34.4%	48.6%	8.0%	43.4%	51.4%
MINGO	19922	5632	28.3%	16.5%	10.0%	73.4%	83.5%
MONONGALIA	71458	22641	31.7%	56.5%	11.1%	32.4%	43.5%
MONROE	9073	3880	42.8%	43.9%	13.1%	43.0%	56.1%
MORGAN	13881	5148	37.1%	54.5%	9.3%	36.2%	45.5%
NICHOLAS	16107	6523	40.5%	47.3%	7.4%	45.4%	52.7%
OHIO	29962	12244	40.9%	55.7%	5.6%	38.7%	44.3%
PENDLETON	5118	2235	43.7%	55.6%	6.7%	37.7%	44.4%
PLEASANTS	5323	2304	43.3%	49.0%	11.9%	39.0%	51.0%
POCAHONTAS	5511	2665	48.4%	50.8%	8.3%	40.9%	49.2%
PRESTON	19457	9311	47.9%	50.0%	10.1%	39.8%	50.0%
PUTNAM	38537	16400	42.6%	51.2%	8.8%	39.9%	48.8%

RALEIGH	53099	19140	36.1%	48.9%	6.0%	45.0%	51.1%
RANDOLPH	18875	7762	41.1%	44.1%	18.8%	37.1%	55.9%
RITCHIE	6130	3026	49.4%	46.2%	14.2%	39.5%	53.8%
ROANE	8809	3796	43.1%	56.0%	10.7%	33.4%	44.0%
SUMMERS	9201	3754	40.8%	54.7%	11.8%	33.6%	45.3%
TAYLOR	10766	4464	41.5%	56.3%	8.1%	35.6%	43.7%
TUCKER	5701	2748	48.2%	59.2%	6.4%	34.3%	40.8%
TYLER	6548	2711	41.4%	47.4%	10.0%	42.6%	52.6%
UPSHUR	13922	6467	46.5%	58.0%	12.1%	29.9%	42.0%
WAYNE	27198	9005	33.1%	44.9%	6.2%	49.0%	55.1%
WEBSTER	5298	2318	43.8%	43.4%	13.8%	42.8%	56.6%
WETZEL	9926	4509	45.4%	51.8%	8.4%	39.8%	48.2%
WIRT	4347	1577	36.3%	44.5%	12.9%	42.6%	55.5%
WOOD	55115	18241	33.1%	51.2%	17.0%	31.8%	48.8%
WYOMING	17666	4927	27.9%	38.1%	15.0%	46.9%	61.9%

Voting Methods by Party Ballot Participation:

	In-person GOP	Absentee GOP		In-person DEM	Absentee DEM
Statewide	59.8%	40.2%		42.8%	57.2%
Barbour	55.9%	44.1%		35.1%	64.9%
Berkeley	63.8%	36.2%		46.3%	53.7%
Boone	76.3%	23.7%		60.2%	39.8%
Braxton	56.9%	43.1%		43.2%	56.8%
Brooke	54.3%	45.7%		37.3%	62.7%
Cabell	55.7%	44.3%		38.4%	61.6%
Calhoun	45.2%	54.8%		38.9%	61.1%
Clay	56.9%	43.1%		48.8%	51.2%
Doddridge	52.3%	47.7%		33.7%	66.3%
Fayette	62.9%	37.1%		42.4%	57.6%
Gilmer	67.8%	32.2%		54.1%	45.9%
Grant	62.3%	37.7%		38.2%	61.8%
Greenbrier	66.8%	33.2%		42.3%	57.7%
Hampshire	63.8%	36.2%		37.2%	62.8%
Hancock	59.1%	40.9%		35.2%	64.8%
Hardy	58.8%	41.2%		36.0%	64.0%
Harrison	58.7%	41.3%		35.5%	64.5%
Jackson	57.3%	42.7%		37.9%	62.1%
Jefferson	56.4%	43.6%		30.9%	69.1%
Kanawha	57.9%	42.1%		42.5%	57.5%
Lewis	59.3%	40.7%		46.7%	53.3%
Lincoln	72.4%	27.6%		51.9%	48.1%
Logan	85.2%	14.8%		69.2%	30.8%
Marion	63.2%	36.8%		44.4%	55.6%
Marshall	53.7%	46.3%		40.8%	59.2%
Mason	50.2%	49.8%		37.7%	62.3%
McDowell	78.5%	21.5%		74.0%	26.0%
Mercer	66.4%	33.6%		48.4%	51.6%

Mineral	59.6%	40.4%		31.4%	68.6%
Mingo	88.1%	11.9%		81.7%	18.3%
Monongalia	55.0%	45.0%		38.6%	61.4%
Monroe	65.8%	34.2%		41.8%	58.2%
Morgan	52.7%	47.3%		25.3%	74.7%
Nicholas	61.1%	38.9%		43.4%	56.6%
Ohio	58.7%	41.3%		42.5%	57.5%
Pendleton	57.2%	42.8%		35.4%	64.6%
Pleasants	59.0%	41.0%		40.1%	59.9%
Pocahontas	56.8%	43.2%		39.5%	60.5%
Preston	58.3%	41.7%		37.1%	62.9%
Putnam	57.5%	42.5%		36.7%	63.3%
Raleigh	58.7%	41.3%		40.8%	59.2%
Randolph	68.3%	31.7%		48.6%	51.4%
Ritchie	58.6%	41.4%		38.5%	61.5%
Roane	51.0%	49.0%		35.8%	64.2%
Summers	57.1%	42.9%		37.8%	62.2%
Taylor	53.5%	46.5%		33.3%	66.7%
Tucker	47.7%	52.3%		34.0%	66.0%
Tyler	64.9%	35.1%		44.3%	55.7%
Upshur	48.6%	51.4%		27.7%	72.3%
Wayne	66.4%	33.6%		49.3%	50.7%
Webster	70.6%	29.4%		53.3%	46.7%
Wetzel	56.4%	43.6%		41.5%	58.5%
Wirt	66.0%	34.0%		43.5%	56.5%
Wood	56.6%	43.4%		39.0%	61.0%
Wyoming	75.0%	25.0%		52.2%	47.8%

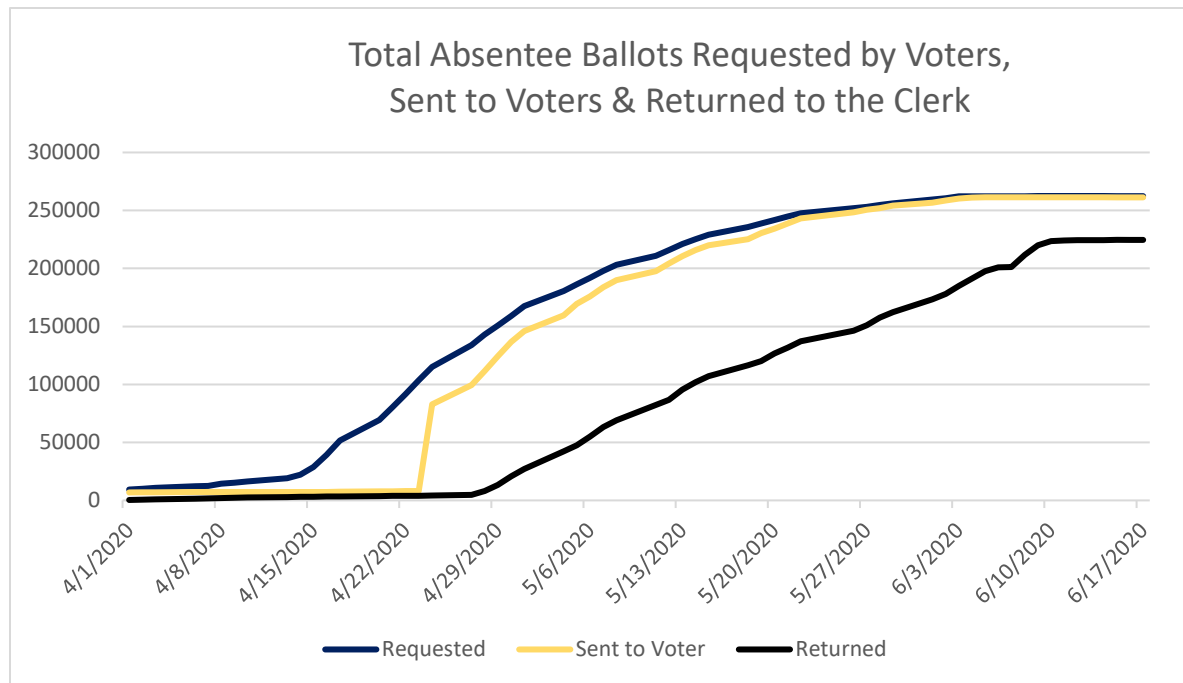
The Absentee Process in the 2020 Primary

All 55 West Virginia counties uniformly applied an absentee vote by mail process that a voter could apply to use if confined to their home and had access to mail. The medical excuse currently in law was interpreted by the March 18, 2020, Attorney General Opinion to include all voters during the stay at home orders heading into the primary election. West Virginia's excuse-based absentee vote by mail system traditionally sees a 2% use of all ballots cast. Of all votes cast in the 2020 Primary Election, nearly 50% were absentee vote by mail ballots.

Absentee vote by mail ballots are tracked in the Statewide Voter Registration System (SVRS) by the data that is entered by the county clerk upon each interaction that the clerk has in the process. Information is logged when a voter submits a request to receive an absentee ballot, when the clerk sends the ballot to the voter and when the voter returns the ballot back to the courthouse. County clerks were allowed to begin accepting absentee ballot applications for the primary election on January 1, 2020, and ballots were sent 46 days before the June 9 election date, which was April 24, 2020.

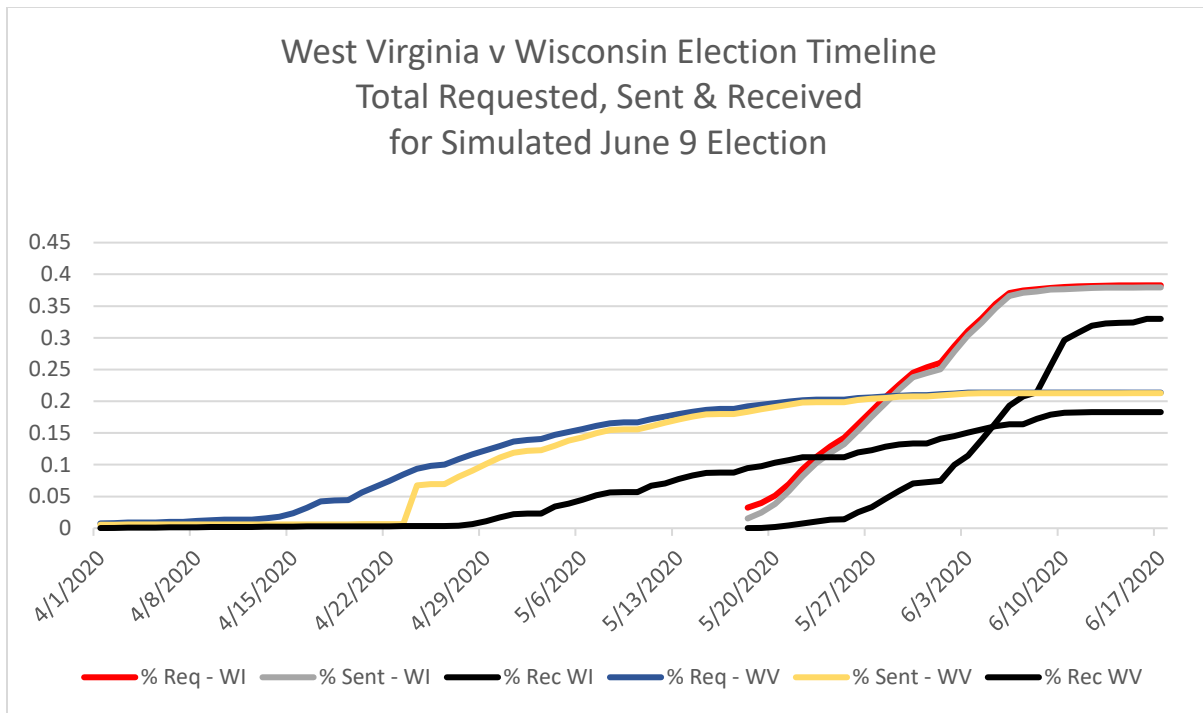
The relaxation of the requirements to initiate an absentee vote by mail ballot request in Executive Order 10-20 allowed the counties to preemptively mail an absentee request form that included an informational sheet to all voters, due to the stay at home orders cast upon all citizens. County clerks mailed these absentee request forms the week of April 13. The impacts on workflow by the county clerks can be found in the following chart.

Number of Cumulative Ballots Requested by Voters, Sent by Clerks and Returned back to the Clerks:



By engaging absentee voters early in the election cycle, the clerks were able to get a bulk of the absentee ballot requests processed and ballots sent to voters early in the process. This allowed the clerks to focus on the simultaneous duties necessary to hold in-person voting. The closures of courthouses and other county functions allowed them to borrow resources of space and manpower while doing less person-to-person transactions from other functions of county government.

Comparison to Wisconsin's election will show the difference in an elongated election process, allowing the time necessary for clerks to process applications, check for the legitimacy of the requests and give the voter time to evaluate their ballot to make informed choices. There is a possibility that one of the processes may stall, so either allowing additional time or removing timely processes to receive and return the ballot is helpful for a successful ballot cast. Due to the elevation of the pandemic in a short amount of time near the Wisconsin election and their inability to postpone Election Day, you will see a stark difference in the timing of the absentee ballot returns.



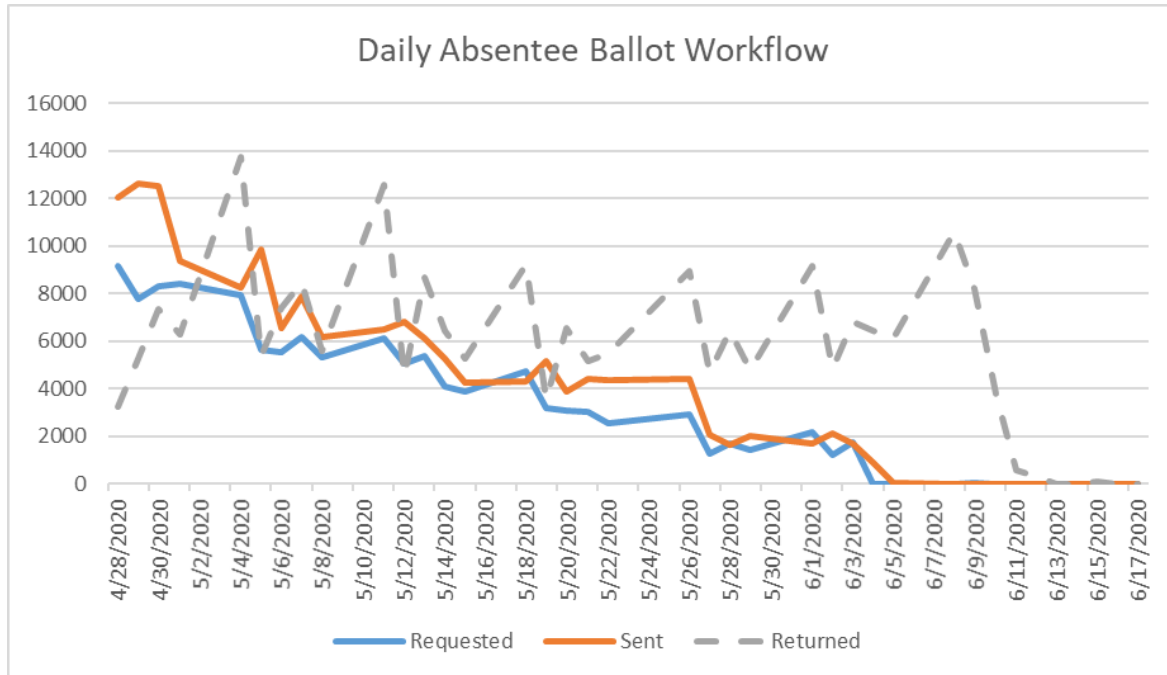
A look at the last few weeks of ballots requested and sent to voters indicates the successful nature of anticipating to build in time for absentee ballots to complete the process. Proactive voters who anticipate that they will need to request an absentee ballot and allow time for processes to take place will have a higher success rate of having their ballot count and will lower the volume at the end of an election cycle. The lower volume nearing an election will allow a clerk to expeditiously resolve the last minute voter who may not know the procedures to vote by absentee or had not made plans to vote yet.

Key Clerk Feedback on Workflow:

- *Early education of all voting options is vital for success –*
Voter confusion of the option to vote on Election Day at polling locations was sparked by the postcards and produced increased calls to clerks for clarification.
- *Unresolved items from the absentee request form are complicated for the clerks to handle –*
Voter registration changes, incomplete information or inaccurate information from the voter on the absentee request demanded the registrar to correct errors prior to mailing a ballot.
- *Human transcription of written information to data creates inevitable errors –*
The bulk of paper applications was very time consuming and meticulous attention must be kept for accurate data on the incoming side of the volume of applications. The additional volume included labor of some less experienced employees working in the process.
- *Secrecy of the information on the postcard is important for voter confidence –*
Voters relayed hesitancy via increased phone calls to clerks on providing some publicly available information of date of birth and optional phone number on the postcard that could be seen by a non-trusted source while in transit to the clerk's office. Timing and costs of a statewide mailing to all 1.2 million registered voters with delivery and return envelopes created enough doubt of achievability for the clerks to produce prior to the original May 12, 2020 election that postcard style was the best option available with

limited time and resources. Additional considerations for secrecy should be made for future mailings, especially if the mailing is to a lower volume of voters that request the absentee request form that have a higher likelihood of response in a the return envelope that is provided to the voter.

Processes by Transaction Amounts Statewide on a Daily Basis Nearing the Election



Workflow increases, ballot style preventable with time

The administration of a significant increase of absentee mail-in ballots with the change happening mid-election created some unique difficulties that had not been experienced before. Ballots sent by some counties that do not have paper scanning and tabulation processes demanded a team of ballot commissioners to recreate that ballot into an electronic voting machine to be counted on election night. This volume of intense human labor is timely and also allows for a possibility of human errors to occur in transcribing the ballot. Anticipating the volume increase will allow the ballot style to be adjusted before printing to allow scanning and tabulation to occur. This was not possible in the primary election due to time and resources.

Efficiency of absentee ballots by mail in the 2020 Primary

The absentee ballot request process required an individual person to touch the request or ballot at least 10 times to complete the process. This process of using a magnitude of paper above anything the state has ever seen before created a mountain of work as well as many opportunities for inevitable human errors. The path of the request to the ballot counting is, at a minimum, as follows:

Lifecycle of an absentee request form:

Printing vendor to USPS
USPS to voter
Voter to USPS
USPS to County Clerk

Lifecycle of an absentee ballot:

County Clerk to USPS
USPS to voter
Voter to USPS
USPS to County Clerk
County Clerk to tabulation

Two suggestions to remove opportunity for errors with absentee ballot processes:

Improvements in timeliness and efficiency of a ballot request can be met when any mail processes are able to be replaced with online processes, allowing for the immediate transfer of documents and data to the election officials. The elimination of the necessity of the USPS office from absentee vote by mail requests will prevent inevitable human errors while also transferring data to clerks for an expeditious and accurate turnaround of a ballot to a voter.

West Virginia's Direct Recording Equipment (DRE), which are ES&S' iVotronic machines, do not require additional tabulation equipment for counted ballots on Election Day. DRE counties must transpose paper absentee ballots into the DRE voting equipment to tally with other votes cast on Election Day. This process takes time and creates a possibility for human error to occur, especially at higher volume. Having additional tabulation equipment in DRE counties specifically for absentee ballots would be a solution to higher absentee vote by mail volume and the additional human component of tabulation of these paper ballots received. The long term goal of upgrading all voting equipment beyond outdated DRE devices would alleviate these accuracy concerns and improve performance in other areas of the voting experience as well. West Virginia has upgraded equipment for nearly 50% of all registered voters from the last Presidential Election to the Primary of 2020. Additional upgrades will take place in the summer of 2020.

USPS Performance in the 2020 Primary

Items that arose for election officials when dealing with USPS in high volume situations:

- Bulk rate permits for returning mail should be monitored for sufficient funds, even though USPS regulations are that election mail should not be held for postage
- Hand-sorted mail can create delays and increase errors in delivery, so machinable envelopes should be used.
- Hand-sorted mail is more likely to miss postmarks, jeopardizing the ability to accept the ballot, so machinable envelopes should be used.
- Absentee ballot requests in postcard format can be disruptive in sorting machines

Election Day:

In person voting required additional preparations than typically necessary heading into the 2020 primary election. The two major portions of additional efforts necessary for the primary election were additional protective measures to secure a safe polling location for voters and poll workers as well as poll worker recruitment.

CARES Act funding

At the onset of shutdown orders, on March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES). CARES Act funding has allowed West Virginia to better prepare for and respond to events coinciding with COVID-19 and the 2020 Election Cycle by making appropriate expenditures that provide for the security of our election and our voters in addition to planning that had already been made. The federal award provided \$3,797,620 in available funding to secure our June 9 Primary Election, and the November 3 General Election.

The administering of the HAVA CARES Act funds, and other funds available by the West Virginia Secretary of State, supports the counties efforts to ensure safe and fair elections while also allowing the flexibility

for each county to serve the varying needs of their individual communities. The distribution process for CARES Act funds begins after the county has obligated approvable primary election expenses. Once each county calculates its primary expenses, they submit a standardized application for review by the State HAVA Board and, if approved, the State Election Commission. Each layer of review ensures that reimbursement requests are appropriate, reasonable, necessary, and aligned with financial forecasts.

West Virginia anticipates distributing less than half of the CARES Act funds for reimbursement of the primary election. Absentee ballots and postage accounted for nearly 70% of the additional costs incurred in the 2020 Primary that are being reimbursed from CARES Act funds. By making absentee voting available to all citizens, and by protecting our precincts for in-person voting, West Virginia ensured that every eligible voter had multiple options to vote. West Virginia has no reported cases of COVID-19 from any in-person voting locations. All approved CARES Act reimbursements can be found at <https://sos.wv.gov/elections/Pages/CaresAct.aspx>.

Any additional PPE that had not been secured by the County Clerks on a reimbursement basis was obtained by the West Virginia Secretary of State's Office and delivered directly to the counties weeks ahead of early voting. Items delivered included face shields and gloves for poll workers and hand sanitizer and face masks for voters. The West Virginia National Guard was also able to supply hand sanitizer to cover all of Putnam and Kanawha counties polling location needs.

Polling locations

Executive Order 10-20 allowed counties to consolidate or open without the full staff of 5 poll workers on Election Day. There was significant consolidation of precincts in some locations, however, overall, Election Day polling locations remained in-tact. There were 258 polling location changes, with 80% of these changes happening in just 3 counties.

There were no reported polling locations that did not open on time. There were locations that opened without being fully staffed with 5 poll workers, as temporarily allowed by EO 10-20. Counties indicated their appreciation of having the flexibility to have less poll workers with lighter turnout but acknowledge the difficulty of opening with fewer poll workers with higher turnout in General Election without shut down orders. Clerks also appreciated the ability to train poll workers beyond 30 days prior to an election, but did indicate that additional specified training is necessary during COVID-19 and with an increase in new poll workers.

Election Night Reporting

Election night reporting was again a very successful endeavor that is a cumulative effort of the county clerk's offices partnering with the Secretary of State's Office to provide timely and accurate election results on election night. The success has skyrocketed since securing the data transfer to a more protected system hosted by SCYTL with increased protections from DDoS attacks and penetration efforts. Once again, the clerks all did a terrific job of providing the information to the state in a timely manner to keep the public informed on the unofficial and official results of the election.

STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

At Charleston

A PROCLAMATION

By the Governor

WHEREAS, beginning on the Twenty-first day of January, Two Thousand Twenty, the Center for Disease Control and Prevention activated their Emergency Response Center and began responding to an outbreak of respiratory disease caused by a novel (new) coronavirus that was first detected in China and which has now been detected in numerous countries, including in the United States; and

WHEREAS, a State of Preparedness was issued on the Fourth Day of March, Two Thousand Twenty for all counties in West Virginia, to allow agencies to coordinate and create necessary measures to prepare for the COVID-19 virus; and

WHEREAS, it is of the utmost importance that our Cabinet Secretaries, Commissioners, and Directors throughout the state have the ability to take measures necessary to ensure the safety of our citizens; and

WHEREAS, the COVID-19 epidemic constitutes a disaster under section two, article five, chapter fifteen of the Code of West Virginia; and

WHEREAS, COVID-19 has been deemed a pandemic by the World Health Organization and the President of the United States has declared a national emergency; and

WHEREAS, it is in the best interest of the citizens of West Virginia that we are able to stand up emergency operation centers and allow boards and agencies to suspend certain rules that inhibit them from responding effectively; and

NOW, THEREFORE, I, JIM JUSTICE, by virtue of the authority vested in me as Governor of the State of West Virginia, and in view of the foregoing, do hereby **FIND AND DECLARE** that a State of Emergency does exist in Barbour, Berkeley, Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood, and Wyoming Counties of West Virginia, said State of Emergency to remain in effect unless terminated by subsequent Proclamation. I therefore **INVOKE** the emergency powers set forth in section six, article five, chapter fifteen of the Code of West Virginia; **UTILIZE** the Emergency Operations Plan, as necessary; **ORDER** the West Virginia Department of Health and Human Resources, the West Virginia Division of Homeland Security and Emergency Management, and the West Virginia National Guard to mobilize appropriate personnel and resources to respond to the emergency; order all other state agencies to assist as may be requested and to do everything reasonably possible to assist affected areas and people in this state; and **DELEGATE** certain administrative powers to the West Virginia Department of Health and Human Resources, the Director of the West Virginia Division of Homeland Security and Emergency Management, and the West Virginia National Guard, as necessary, to facilitate the provision of essential emergency services to alleviate the potential impacts to the people, property, and infrastructure of West Virginia that may be caused by this outbreak. Further, I hereby **ORDER** that it is unlawful for any person, business, or other entity to sell any food items, essential consumer items, and emergency supplies in a manner that violates the provisions of section three, article six J, chapter forty-six A of the Code of West Virginia.

Finally, I hereby **DELEGATE** to all state agencies the ability to suspend rules, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

DONE at the Capitol in the City of Charleston, State of West Virginia, this Sixteenth day of March, in the year of our Lord, Two Thousand Twenty in the One Hundred Fifty-eighth year of the State.




GOVERNOR

By the State


SECRETARY OF STATE

STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

At Charleston

EXECUTIVE ORDER NO. 9-20

By the Governor

WHEREAS, a State of Emergency was declared on the Sixteenth Day of March, Two Thousand Twenty for all counties in West Virginia (the “State of Emergency Declaration”), to allow agencies to coordinate and create necessary measures to prepare for and respond to the outbreak of respiratory disease caused by a novel coronavirus now known as COVID-19; and

WHEREAS, Chapter 15, Article 5, Section 6 of the Code of West Virginia authorizes the Governor to, among other things, control ingress and egress to and from a disaster area or an area where large-scale threat exists, the movement of persons within the area, and the occupancy of premises therein; and

WHEREAS, Executive Order 2-20, Executive Order 3-20, Executive Order 6-20, and Executive Order 8-20 have ordered closed or otherwise limited occupancy of businesses and establishments such as casinos, restaurants, bars, fitness centers, gymnasiums, recreation centers, barber shops, nail salons, hair salons, state park lodges, and the Hatfield McCoy Trail, all to protect public health, safety, and welfare; and

WHEREAS, further measures are necessary to protect the health, safety, and welfare of the public, to disrupt the spread of the virus, and to mitigate the impact of COVID-19, including the closure of additional businesses and facilities throughout the state; and

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) and the West Virginia Department of Health and Human Resources have recommend the public practice of social distancing, meaning staying home whenever possible and otherwise maintaining a six feet distance from other individuals, to minimize the transmission of COVID-19; and

WHEREAS, locations where people congregate unnecessarily and/or fail to follow adequate social distancing practices are therefore areas of large-scale threat and emergency; and

WHEREAS, businesses that are to remain open will need to reduce their operations to continue with minimum contact with members of the public and only essential employees, and must require proper social distancing at all times; and

WHEREAS, these measures relating to the closure of certain businesses and to limit the operation of non-essential businesses are necessary because of the propensity of the COVID-19 virus to spread via personal interactions and because of physical contamination of property due to its ability to remain on surfaces for prolonged periods of time; and

WHEREAS, it is the duty of every West Virginian to practice proper social distancing and to comply with these measures in order to protect our people, our families, and each other, against this terrible epidemic.

NOW, THEREFORE, I, JIM JUSTICE, pursuant to the authority vested in me pursuant to the provisions of Chapter 15, Article 5, Section 6 and Chapter 15, Article 5, Section 1 of the Code of West Virginia, hereby **DECLARE** and **ORDER**, effective as of 8:00 PM, Eastern Standard Time, on the Twenty-fourth day of March, Two Thousand Twenty, as follows:

1. **Stay at home or your place of residence.** To preserve public health and safety, and to ensure the healthcare system in West Virginia is capable of serving all citizens in need, especially those at high risk and vulnerable to COVID-19, all individuals within the State of West Virginia are under a general stay-at-home order and are directed to stay at home or their place of residence unless performing an essential activity. An activity is essential if the purpose of the activity is one of the following:

- a. Obtaining food, medicine, and other similar goods necessary for the individual or a family member of the individual.
- b. Obtaining non-elective medical care and treatment and other similar vital services for an individual or a family member of the individual.
- c. Going to and from an individual's workplace if such workplace and/or work is included in the definition of Essential Businesses and Operations as outlined in Section 3, below.
- d. Going to and from the home of a family member.
- e. Going to and from the home of another individual who, under the terms of a parenting plan or similar agreement, is entitled to visitation with or the care of a child.
- f. Going to and from an individual's place of worship.
- g. Engaging in outdoor activity, provided that individuals at all times and as much as reasonably possible maintain social distancing of six feet from one another and abide by a 10-person limitation on gathering size.

2. Non-essential businesses and operations must temporarily cease operations. In addition to those businesses directed to close or limit occupancy pursuant to previous executive orders, all businesses and operations in West Virginia, except Essential Businesses and Operations as defined below, are required to cease all activities within the state except for such minimum basic operations as are necessary to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or related functions, and the minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences. Businesses such as home-based businesses may continue to operate, so long as any employees or contractors of such businesses perform activities from their own residences. Further, small businesses that do not invite in the general public and which have five or less employees in the office may continue to operate, but must ensure that proper social distancing and hygiene practices are maintained.

3. Essential businesses and operations shall continue to operate. Essential Businesses and Operations, as described below, shall remain open, and individuals may leave their

residence to provide any services or to perform any work necessary to offer, provision, supply, operate, maintain, and/or repair Essential Businesses and Operations. The term “Essential Businesses and Operations” includes those industries and workers described in the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency’s March 19, 2020, *Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response* and its “Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response” attached thereto (the “CISA Guidance”). In addition to those industries and workers identified in the CISA Guidance, the following industries, businesses, and/or workers employed in such industries and businesses are specifically included as Essential Businesses and Operations under this Order:

a. Healthcare, public health operations, and health insurance companies.

Healthcare, public health operations, and healthcare insurance companies include without limitation hospitals, clinics, dental offices, pharmacies, public health entities, including those that compile, model, analyze, and communicate public health information, pharmaceutical, pharmacy, medical device and equipment, and biotechnology companies (including operations, research and development, manufacture, and supply chain), managed care organizations and related entities and attendant or related services, Medicaid providers, healthcare insurers, organizations collecting blood, platelets, plasma, and other necessary materials (including organizations hosting blood drives, provided that appropriate precautions are taken, including proper social distancing and hygiene measures during any such drive), obstetricians and gynecologists, eye care centers, including those that sell or provide glasses and contact lenses, home healthcare providers, mental health and substance use providers, other healthcare facilities and suppliers and providers of any related and/or ancillary healthcare services, and entities that transport and dispose of medical materials and remains. This includes manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment, medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting, or sterilization supplies, and tissue and

paper towel products. This category of industry shall be construed very broadly to avoid any impacts to the delivery of healthcare, broadly defined. Healthcare and public health operations does not include fitness and exercise gyms, spas, salons, barber shops, tattoo parlors, and similar facilities limited or closed under previous executive order.

- b. Grocery stores and pharmacies.** Grocery stores, pharmacies, farmers' markets, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supplies, fresh meats, fish, and poultry, prepared food, alcoholic and non-alcoholic beverages, any other household consumer products (such as cleaning and personal care products), specifically including their supply chain and administrative support operations. This includes stores that sell groceries, medicine, including over-the-counter medication not requiring a medical prescription, and also those that sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences and Essential Businesses and Operations.
- c. Food, beverage, and agriculture.** Food and beverage manufacturing, production, processing, and cultivation, including farming, livestock, seed and feed stores, fishing, baking, and other production agriculture, including cultivation, marketing, production, and distribution of animals and goods for consumption, and businesses that provide food, shelter, and other necessities of life for animals, including animal shelters, rescues, shelters, kennels, and adoption facilities. Restaurants and other facilities that prepare and serve food and/or drinks, but only for consumption off-premises, through such means as take-away, delivery, or drive-through/drive in. Schools and other entities that typically provide food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up or take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site due to the virus's propensity to physically impact surfaces and personal property.

d. Essential governmental functions. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, legislators, judges, court personnel, jurors and grand jurors, law enforcement and corrections personnel, hazardous materials responders, child protection and child welfare personnel, housing and shelter personnel, military, and other governmental employees working for or to support Essential Businesses and Operations, and all state governmental employees deemed essential employees by their respective agency head, are categorically exempt from this Order. Essential government functions means all services provided by the State or any municipality, township, county, political subdivision, board, commission, or agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety, and welfare of the public, and including contractors performing such essential government functions. Each government body shall determine its essential government functions and identify employees and/or contractors necessary to the performance of those functions. This Order does not apply to the United States government. Nothing in this Order shall prohibit any individual from performing or accessing essential government functions.

e. Human services organizations and childcare facilities and providers. Human services operations includes without limitation long-term care facilities, day care centers, day care homes, group day care homes, residential settings and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, transitional facilities, home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children, field offices that provide and help determine eligibility for basic needs including food, cash assistance, medical coverage, child care, vocational services, rehabilitation services, development centers, adoption agencies, businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals, and child care centers, day care centers, and those engaged in caretaking for children.

- f. Essential infrastructure.** Businesses, entities, or workers engaged in food production, distribution, fulfillment centers, storage facilities, preparation, and sale, construction (including without limitation construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, school construction, essential business construction, and housing construction), business management and maintenance, airport operations, operation, maintenance, and supply of utilities, including water, sewer, and gas, electrical (including power generation, distribution, and production of raw materials including without limitation coal and oil and natural gas), distribution centers, oil and biofuel refining, roads, highways, railroads, and public transportation, cyber and other security operations and services, flood control, solid waste and recycling collection and removal, and internet, video, and telecommunications systems (including the provision of global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services) and telecommunications workers. Essential infrastructure shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.
- g. Coal mining and coal-fired electric generation facilities.** Coal mining and coal-fired electric generation facilities, as well as all ancillary and support functions ranging from transportation, maintenance, equipment, and supply vendors.
- h. Manufacture, distribution, and supply chain for critical products and industries.** Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, iron ore, steel and steel products, aluminum and aluminum products, petroleum, propane, and fuel, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations including without limitation filters and filtration products and services.
- i. Transportation and travel related businesses and gas stations.** Travel related businesses facilitating access to or provision of essential activities or any Essential

Businesses and Operations, including without limitation airlines, taxis, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, and other private, public, and commercial transportation and logistics providers, travel or transport of agricultural products, foodstuffs, or related items, or other governmental travel needs, and gas stations and automobile dealers and other suppliers, auto repair, farm equipment, construction equipment, and related facilities and related facilities.

- j. Financial and insurance institutions.** Banks and banking services including without limitation ATM services, currency exchanges, consumer lenders, credit unions, appraisers, title companies, financial markets, trading and futures exchanges, payday lenders, affiliates of financial institutions, professional debt collectors and related creditor service workers, workers engaged in payment clearing and settlement, wholesale funding, and capital markets activities, entities that issue bonds, related financial institutions, institutions selling financial products, insurance companies, underwriters, agents, brokers, and related insurance claims and agency services.
- k. Hardware and supply stores.** Hardware and supply stores and businesses that sell construction, electrical, plumbing, and heating materials.
- l. Critical trades.** Building and construction tradesmen and tradeswomen, and other trades including without limitation plumbers, electricians, exterminators, filtration technicians, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC engineers, painting, moving, and relocation services, and other service providers who provide services that are necessary to maintain the safety, sanitation, and essential operation of residences, essential activities, and Essential Businesses and Operations.
- m. Mail, post, shipping, logistics, delivery, and pick-up services.** Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods, vehicles, or services to end users or through commercial channels.
- n. Religious entities.** Religious facilities, entities, and groups and religious gatherings, including weddings and funerals; provided that such gatherings should

still practice proper social distancing of six feet between persons to the greatest extent possible.

- o. Educational institutions.** Educational institutions including public and private pre-K-12 schools, colleges, and universities for purposes of facilitating distance learning, performing critical research, or performing essential functions including providing for the delivery or pick-up of food for school age children; provided that proper social distancing of six feet between persons is maintained to the greatest extent possible.
- p. Laundry services.** Laundromats, dry cleaners, industrial laundry services, and laundry service providers.
- q. Supplies to work from home.** Businesses that sell, manufacture, or supply products needed for people to work from home, including IT and telecommunications services and product companies.
- r. Supplies for Essential Businesses and Operations.** Businesses that sell, manufacture, or supply other Essential Businesses and Operations with the support of materials necessary to operate, including computers, audio and video electronics, household appliances, IT and telecommunications equipment, cybersecurity software or services, hardware, paint, flat glass, electrical, plumbing, and heating material, sanitary equipment, personal hygiene products, food, food additives, ingredients, and components, medical and orthopedic equipment, optics and photography equipment, diagnostics, food and beverages, chemicals, soaps and detergents, tent and other temporary structure suppliers, and firearm and ammunition suppliers and retailers.
- s. Home-based care and services.** Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who may travel to the child's home to provide care, and other in-home services including meal delivery.
- t. Residential facilities and shelters.** Residential facilities and shelters for adults, seniors, children, pets, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness.

- u. Professional services.** Professional services, such as legal services, accounting services, insurance services, real estate services (including appraisal and title services).
 - v. Media and first amendment protected speech.** Newspapers, television, radio, and other media services.
 - w. Hotels and motels.** Hotels and motels, to the extent used for lodging and delivery or carry-out food delivery.
 - x. Funeral services.** Funeral, mortuary, cremation, burial, cemetery, and related services; provided that proper social distancing of six feet between persons is maintained to the greatest extent possible.
- 4. Prohibited activities.** All places of public amusement, whether indoors or outdoors, including but not limited to locations with amusement rides, carnivals, zoos, museums, arcades, fairs, pool halls, bingo halls, malls (except where stores in a mall that have a direct outdoor entrance and exit that provide essential services and products under the terms of this Order), children's play centers, playgrounds, bowling alleys, movie and other theaters, concert and music halls, adult entertainment venues, racetracks, social clubs, and other similar businesses shall be closed.
- 5. Avoid social gatherings.** All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes permitted by this Order. Any gathering of more than 10 people is prohibited unless exempted by this Order. Nothing in this Order prohibits the gathering of members of a household or residence.
- 6. Intent of this Order.** The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence, whether to perform essential activities, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible properly socially distance themselves from others. All provisions of this Order should be interpreted and implemented to effectuate this intent.

7. **Enforcement.** This Order may be enforced by State and local law enforcement and by state and local regulatory and/or licensing bodies to the extent possible under West Virginia law.
8. **Duration.** The provisions of this Order, and all previous executive orders relating to COVID-19, are effective until terminated by subsequent executive order.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



By the Governor

DONE at the Capitol in the City of Charleston, State of West Virginia, this Twenty-third day of March, in the year of our Lord, Two Thousand Twenty in the One Hundred Fifty-seventh year of the State.


GOVERNOR


SECRETARY OF STATE

STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

At Charleston

EXECUTIVE ORDER NO. 10-20

By the Governor

WHEREAS, a State of Emergency was declared on the Sixteenth Day of March, Two Thousand Twenty for all counties in West Virginia (the “State of Emergency Declaration”), to allow agencies to coordinate and create necessary measures to prepare for and respond to the outbreak of respiratory disease caused by a novel coronavirus now known as COVID-19; and

WHEREAS, Chapter 15, Article Five, Section 6 of the Code of West Virginia authorizes the Governor to, among other things, suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules of any state agency, if strict compliance therewith would in any way prevent, hinder, or delay necessary action in coping with the emergency; and

WHEREAS, on the nineteenth day of March, Two Thousand Twenty, Executive Order 7-20 suspended certain provisions and sections of statute that if strict compliance therewith would in any way prevent, hinder, or delay necessary action in coping with the emergency;

WHEREAS, there have been additional statutory regulations identified by our agencies that are preventing the state from best assisting the citizens of West Virginia; and

WHEREAS, the Board of Medicine and the Board of Osteopathic Medicine have identified a number of provisions in Executive Order 7-20 that would benefit from additional clarification and amendment.

NOW, THEREFORE, I, JIM JUSTICE, pursuant to the authority vested in me pursuant to the provision of Chapter 15, Article Five, Section 6 of the Code of West Virginia, hereby **DECLARE** and **ORDER** that, the following statutory regulations are to be suspended for the duration of the State of Emergency:

1. Requirement that poll worker training may only begin within 30 days of the election (W. Va. Code § 3-1-46(c));
2. Requirement that there be at least 30 days prior to Election Day to establish a satellite precinct (W. Va. Code § 3-3-2a(b)(1));
3. Requirement that voters who wish to vote an absentee-by-mail ballot must request an absentee ballot application by “oral or written request” (W. Va. Code § 3-3-5(a));
4. Requirements that the official designated to supervise and conduct absentee voting must provide to the voter an absentee ballot within just one day of receiving the absentee ballot application. Provided, that the remaining requirements regarding the appropriate address, delivery method, materials, instructions, notices, and other information are not suspended (W. Va. Code § 3-3-5(e)(1)).
5. Requirement that precincts must be operated separately with separate equipment and poll workers (W. Va. Code § 3-1-5(a) and W. Va. Code § 3-4A-30);
6. Requirements that precincts must have at least 5 poll workers present to operate on Election Day (W. Va. Code § 3-1-29, 30);
7. Requirement that any person practicing or offering to practice as a registered nurse (RN) or advanced practice registered nurse (APRN) have a license issued by the West Virginia Board of Registered Professional Nurses (W. Va. Code § 30-7-2), with the exception of those with pending complaints, investigations, consent orders, board orders, or pending disciplinary proceedings and provided the RN or APRN is licensed in another state;
8. Requirement that RN and APRN licenses have a renewal period requirement (W. Va. Code §30-7-8);
9. Requirement for supervision or presence of any other healthcare provider when anesthesia is administered by a certified registered nurse anesthetist (CRNAs) (W. Va. Code §30-7-15);

10. Requirement for APRN authorization for prescriptive authority, collaborative requirements for prescriptive authority, prescriptive formulary limitations, prescriptive refill and supply limitations, and other prescriptive limitations including continuing education and renewal requirements (W. Va. Code §30-7-15a, §30-7-15b, §30-7-15c);
11. Requirement that RNs and APRNs furnish completion of continuing education, including drug diversion and veterans' mental health, for licensure or licensure renewal (W. Va. Code §30-1-7a);
12. Any statute or rule that prescribes time limits or deadlines by which state agencies or political subdivisions or agencies thereunder must hold hearings, and allowing abeyance of such hearings or for such hearings to be conducted by telephonic means, at the sole discretion of the applicable state agency or political subdivision or agencies thereunder; provided, that where a deadline is constitutional, the agency shall conduct the hearing telephonically, through other remote technology, or in compliance with any court order.

FURTHER, I **DECLARE** and **ORDER** that the following paragraphs of Executive Order 7-20 are hereby amended as follows:

1. Paragraph 1 is hereby deleted in its entirety and replaced with the following:

Requirement of full licensure for allopathic physicians and surgeons who have no pending complaints, investigations, consent orders, board orders, or pending disciplinary proceedings and who possess valid, unrestricted medical licensure in another state, district, or territory of the United States or, at one time, possessed an unrevoked license issued by the Board of Medicine but are now retired or in inactive status (W. Va. Code § 30-3-13(a)) and (W. Va. Code § 30-3-12(h)(j));

2. Paragraph 2 is hereby deleted in its entirety and replaced with the following:

Requirement for telemedicine providers to be licensed in West Virginia (W.Va. Code § 30-3-13a(b)(2) and (W. Va. Code § 30-3-13(b))), provided that such provider possesses an unrestricted medical license in their own state and otherwise complies with the provisions of W. Va. Code § 30-3-13a;

3. Paragraph 7 is hereby deleted in its entirety and replaced with the following

Requirement of full licensure for osteopathic physicians and surgeons who have no pending complaints, investigations, consent orders, board orders, or pending

disciplinary proceedings and who possess valid, unrestricted medical licensure in another state, district, or territory of the United States or, at one time, possessed a license issued by the Board of Osteopathic Medicine, which has not been revoked, but are now retired or in inactive status (W. Va. Code § 30-14-1) and (W. Va. Code § 30-14-10(a), (c), (d));

4. Paragraph 11 is deleted in its entirety and replaced with the following:

Requirement that telemedicine be performed by video only (W. Va. Code § 30-14-12d(c)) and (W. Va. Code § 30-3-13a(c).

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

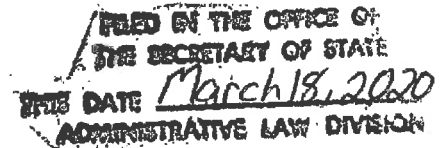


By the Governor

DONE at the Capitol in the City of Charleston, State of West Virginia, this Twenty-third day of March, in the year of our Lord, Two Thousand Twenty in the One Hundred Fifty-seventh year of the State.


GOVERNOR


SECRETARY OF STATE



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

(304) 558-2021
Fax (304) 558-0140

March 18, 2020

The Honorable Mac Warner
West Virginia Secretary of State
State Capitol Building 1, Room 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Secretary Warner:

You have asked for an Opinion of the Attorney General concerning the authority of the Secretary of State ("the Secretary") to issue emergency rules related to the upcoming primary election in response to widespread public-health concerns. This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions and advise upon questions of law . . . whenever required to do so, in writing, by . . . the Secretary of State." To the extent this Opinion relies on facts, it is based solely on the factual assertions in your correspondence with the Office of the Attorney General and in the March 16, 2020 proclamation by Governor James C. Justice II declaring a state of emergency.

Your letter describes the consequences that the spread of COVID-19 ("coronavirus") may have on the upcoming statewide primary election, which is scheduled for May 12, 2020. Your request describes several ways that the spread of coronavirus—or the fear thereof—could affect your office's ability to protect voters' rights and public safety, while maintaining public confidence in the integrity of the election process. Your request identifies provisions of the West Virginia Code that address emergency and disaster response, and asks what authority these provisions grant the Secretary when determining how best to administer a primary election in the event of a viral epidemic.

Your letter raises two primary legal questions:

- (1) *Do the Secretary's emergency rulemaking powers apply in the context of an epidemic like the spread of coronavirus, and if so how is this authority invoked?*
- (2) *What is the extent of the Secretary's authority under these provisions?*

With respect to the first question, we conclude that Section 3-1A-6(e) of the West Virginia Code, which governs emergency election procedures, can apply in the face of an actual or imminent viral epidemic in the State. This provision can be invoked by declaration of the Governor or by order of the Chief Judge of an affected judicial circuit; the Governor's March 16 declaration satisfies the statutory standard. With respect to the second question, we conclude that Section 3-1A-6(e) grants the Secretary broad emergency powers outside the ordinary rulemaking process where necessary to promote voter access and public confidence in the election process, but that any emergency rules may not contradict the specific requirements governing elections already set forth in the Code.

Discussion

Most provisions of law controlling the conduct of elections in West Virginia are set forth in Chapter Three of the West Virginia Code. Among other things, Chapter Three prescribes the date and time of elections, the timeframes for registering to vote, and the circumstances in which individuals may cast absentee ballots in person or by mail. W. Va. Code §§ 3-1-31, 3-5-1; 3-1-3, 3-1-3a; 3-3-1.

The Secretary is the "chief election officer" of the State, W. Va. Code § 3-1A-6(a), and as such has many powers and responsibilities related to the administration of Chapter Three. With respect to rulemaking, the Secretary may consult with the State Election Commission to "promulgate legislative rules . . . as may be necessary to standardize and make effective the provisions of [Chapter Three]." *Id.* The Secretary also has power to promulgate "emergency rules" in certain circumstances. *See, e.g., id.* §§ 3-1-48(i) (Secretary may issue emergency rules to effectuate the State's access to federal grants under the Help America Vote Act); 3-12-14(a)(3) (Secretary may issue emergency rules to effectuate the public financing program for Supreme Court of Appeals elections). Most relevant to your request, Section 3-1A-6(e) also provides emergency rulemaking powers in the event of a natural disaster, war, or similar exigent circumstance:

- (1) The Secretary shall also have the power, after consultation with the Secretary of the Department of Military Affairs and Public Safety, to implement emergency procedures and rules to ensure that all eligible voters have the opportunity to cast a valid ballot and to uphold the integrity of an election in the

event of natural disaster as declared by the Governor of this state, terrorist attack, war or general emergency, if any of which occur during or immediately preceding an election.

(2) For purposes of this subsection, a “general emergency” means circumstances preventing the casting of ballots in one or more voting precincts. The chief judge of the circuit court of the county where the casting of ballots is being prevented must declare by order that a general emergency exists.

W. Va. Code § 3-1A-6(e).

The Secretary’s emergency authority under Section 3-1A-6(e) differs from ordinary rulemaking power in four respects. *First*, this authority may be invoked in four specific circumstances during or immediately before an election: a “natural disaster as declared by the Governor of this state, terrorist attack, war or general emergency.” W. Va. Code § 3-1A-6(e)(1). *Second*, the Secretary consults with the Secretary of the Department of Military Affairs and Public Safety, rather than the Board of Elections, before implementing rules pursuant to Section 3-1A-6. *Id.* *Third*, these rules take effect immediately: The Secretary is empowered to “implement” election rules as “emergency rules,” which are not subject to pre-approval by the Legislature, in contrast to ordinary rules. *Id.*; *see also id.* § 29A-3-15(a). *Fourth*, instead of general rules that are issued to “standardize and make effective” Chapter Three’s provisions, rules issued under Section 3-1A-6(e) must advance the twin goals of “ensur[ing] that all eligible voters have the opportunity to cast a valid ballot” and “uphold[ing] the integrity of an election.” *Id.* § 3-1A-6(a), (e)(1).

I. Section 3-1A-6(e) Applies In Response To Public-Health Concerns After Declaration Of The Governor Or Order Of The Chief Judges Of The Judicial Circuits Where Affected Precincts Are Located.

Your first question concerns the first of these four distinctions. Your letter asks whether Section 3-1A-6(e) can apply in the context of a threatened public-health crisis (as opposed to an attack or a natural disaster like a flood), and the mechanisms by which it can be invoked. We conclude that the proclamation declaring a state of emergency issued by Governor Justice on March 16, 2020 is sufficient to trigger Section 3-1A-6(e), and note that the Secretary’s authority could also be invoked by an order from the Chief Judge of each judicial circuit affected by the threat of an epidemic.

The first basis for invoking Section 3-1A-6 is “in the event [that] a natural disaster [is] declared by the Governor.” W. Va. Code § 3-1A-6(e)(1). The West Virginia Code does not contain a specific procedure for declaring a “natural disaster.” Rather, the Governor may declare a general state of emergency or a state of preparedness “if a natural or man-made disaster of major proportions has actually occurred or is imminent within the state.” *Id.* § 15-5-6(a). This

statute expressly includes an “epidemic” as one form of “disaster” for which the Governor may make an emergency declaration. *Id.* § 15-5-2(h). As Section 3-1A-6(e) and the emergency-declaration provisions “relate to the same persons or things [and] have a common purpose,” we “regard[] [them] in *pari materia* to assure recognition and implementation of the legislative intent.” *Miller v. Wood*, 229 W. Va. 545, 552, 729 S.E.2d 867, 874 (2012). Thus, a state of emergency declared on the basis of an “actual[]” or “imminent,” naturally occurring “epidemic,”

W. Va. Code § 15-5-6(a) would satisfy Section 3-1A-6(e)’s requirement of a “natural disaster” “declared by the Governor,” *id.* § 3-1A-6(e)(1).

Here, the Governor’s March 16 proclamation found that “the COVID-19 epidemic constitutes a disaster under section two, article five, chapter fifteen of the Code of West Virginia,” and declared a state of emergency in all 55 counties. STATE OF WEST VIRGINIA, EXEC. DEP’T, A PROCLAMATION BY THE GOVERNOR 1-2 (Mar. 16, 2020), *available at* <https://governor.wv.gov/Documents/2020%20Proclamations/State-of-Emergency-March-16-2020.pdf>. This disaster is plainly “natural” as every indication shows it is not man-made, and rather arose and spreads through natural processes. Regardless, an epidemic like that at issue here is a valid statutory basis for the Governor to declare an emergency, and because there is no separate statutory mechanism to declare a “natural disaster,” it seems clear that the Legislature intended the Secretary to be able to implement emergency election rules in response to a state of emergency. We thus conclude that the Governor’s March 16 declaration declaring that a state of emergency exists because of the coronavirus epidemic is a sufficient basis to trigger the Secretary’s powers under Section 3-1A-6(e).

Section 3-1A-6(e) would also independently apply in any counties where the chief judge of the relevant circuit court, as described in West Virginia Code Section 51-2-1(a), issues an order finding a “general emergency” because “circumstances [are] preventing the casting of ballots in one or more voting precincts” within the circuit. W. Va. Code § 3-1A-6(e)(1)-(2). Public-health related travel restrictions or advisories would almost certainly satisfy this standard. Your letter also asks what procedures would govern seeking an order declaring a “general emergency.” The West Virginia Code and circuit court rules do not require a specific process for issuing such an order, but based on similar contexts, the chief judge could issue this order *sua sponte* or at the Secretary’s request. Chief judges are free to make similar determinations *sua sponte*, for example, when “weather or other emergency conditions in that county prevent the general transaction of court business in that county.” *Id.* § 2-2-2(b); *see also id.* § 3-10-3(b) (chief judge of a circuit is “responsible for” issuing an order and proclamation of special elections to fill judicial vacancies). Nevertheless, we note that orders declaring a general emergency must be issued by each of West Virginia’s thirty-one judicial circuits; no provision of the Code or West Virginia Constitution provides authority for the Supreme Court of Appeals to declare a statewide emergency (outside the context of court administration), and such an order could create tension with the Governor’s power to do so under Section 15-5-6.

II. Section 3-1A-6(e) Authorizes Emergency Election Rules To Ensure Eligible Voters Have The Opportunity To Vote And To Uphold Election Integrity, Provided They Do Not Contradict Clear Statutory Requirements.

Your second question asks about the scope of the Secretary's powers under Section 3-1A-6(e), including whether they include the ability to implement emergency election rules that are "beyond or different than those in current" election laws. We conclude that the statute provides authority to issue broad, flexible rules without following the ordinary rulemaking

procedures where those rules are consistent with Chapter Three or speak to an issue on which the statute is silent. Section 3-1A-6(e) does not, however, authorize rules that contradict a clear statutory command.

The Secretary's general power to promulgate legislative rules is limited to rules that are "necessary to standardize and make effective the provisions of [Chapter Three]." W. Va. Code § 3-1A-6(a). The Secretary's power to implement emergency election rules is broader, extending beyond what is merely "necessary" to implement the specific directives of Chapter Three to include rules designed to "ensure that all eligible voters have the opportunity to cast a valid ballot and to uphold the integrity of an election." *Id.* § 3-1A-6(e)(1). Omitting the narrowing focus on "the provisions of [Chapter Three]" indicates that the Legislature intended to grant more latitude under Section 3-1A-6(e) to implement emergency election rules than for ordinary election rules. *See Christopher J. v. Ames*, 241 W. Va. 822, 831, 828 S.E.2d 884, 893 (2019) ("As the United States Supreme Court has recognized, when the Legislature includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that the Legislature acts intentionally and purposely in the disparate inclusion or exclusion." (Quotation and alterations omitted)); *see also Gibson v. Northfield Ins. Co.*, 219 W. Va. 40, 47, 631 S.E.2d 598, 605 (2005) ("Explicit direction for something in one provision, and its absence in a parallel provision, implies an intent to negate it in the second context." (Quotation and alterations omitted)).

This broad power to implement emergency election rules is subject to two important limitations. *First*, the Legislature may validly delegate rulemaking power only where it defines "clear public policy objectives or guidelines." *Fairmont Gen. Hosp., Inc. v. United Hosp. Ctr., Inc.*, 218 W. Va. 360, 367, 624 S.E.2d 797, 804 (2005) (citing W. Va. Const. art. VI, § 1). Here, the Legislature's policy objectives for emergency election rules include "ensur[ing] that all eligible voters have the opportunity to cast a valid ballot" and "uphold[ing] the integrity of [the] election." W. Va. Code § 3-1A-6(e)(1). Any rules issued pursuant to Section 3-1A-6(e) thus must be in furtherance of these goals. *Second*, it is a foundational tenet of regulatory rulemaking that "[w]here a statute contains clear and unambiguous language, an agency's rules or regulations must give that language the same clear and unambiguous force and effect that the language commands in the statute." Syl. pt. 4, *Maikotter v. Univ. of West Virginia Bd. of Trustees/West Virginia Univ.*, 206 W. Va. 691, 527 S.E.2d 802 (1999). Thus, the Secretary

cannot implement emergency election rules that violate or alter clear statutory requirements in Chapter Three.

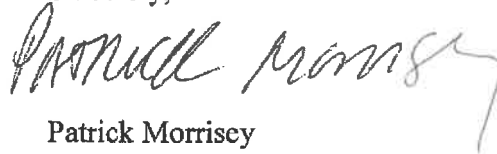
Any emergency election rule the Secretary implements must therefore operate within the boundaries of Chapter Three and advance the twin goals of promoting eligible voters' ability to vote and ensuring election integrity. These guidelines leave a number of options open to the Secretary under Section 3-1A-6(e) when preparing for the upcoming primary election—especially because Chapter Three is “construed in favor of enfranchisement, not disenfranchisement,” so any ambiguity when implementing Chapter Three during a state of emergency would likely be resolved in favor of broader access for eligible voters. *State ex rel. Bowling v. Greenbrier Cty. Comm’n*, 212 W. Va. 647, 649, 575 S.E.2d 257, 259 (2002) (citing *State ex rel. Sowards v. Cty. Comm’n of Lincoln Cty.*, 196 W.Va. 739, 750, 474 S.E.2d 919, 930 (1996)).

One option almost certainly available to the Secretary, for example, would be allowing broader access to absentee, by mail voting in the 2020 primary election. Chapter Three makes individuals eligible to vote absentee by mail if they are “confined to a specific location and prevented from voting in person throughout the period of voting in person” due to “illness . . . or other medical reason.” W. Va. Code § 3-3-1(b)(1)(A). The statute does not specifically define “other medical reason,” which leaves room for the Secretary to issue an emergency rule interpreting this term for purposes of the upcoming primary election to encompass individuals subject to mandatory or voluntary quarantine, as well as those advised to limit travel or avoid locations—like polling places—with groups of people in close proximity. Under an emergency rule of that nature, all eligible voters could likely vote absentee by mail while the coronavirus epidemic affects or threatens the State by relying on state-wide or local advisories. A rule could also account for national directives, like the President’s recent guidelines for mitigating the spread of coronavirus that call on everyone in the country to “avoid discretionary travel,” stay home whenever possible, and avoid gatherings of more than ten people. CTR. DISEASE CONTROL, THE PRESIDENT’S CORONAVIRUS GUIDELINES FOR AMERICA: 15 DAYS TO SLOW THE SPREAD 2 (Mar. 16, 2020), *available at* https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf. An emergency rule interpreting the statutory grounds for eligibility to vote absentee by mail that is tailored to the coronavirus epidemic would be consistent with Chapter Three, and would also advance the Secretary’s duty under Section 3-1A-6(e) to help “ensure all eligible voters have an opportunity to cast a valid ballot.”

While the Governor’s declaration of emergency remains in place, we thus conclude that the Secretary may take emergency measures like the example above that help ensure voter access and election integrity in the primary election, as long as those measures do not conflict with the clear, unambiguous text of Chapter Three. Section 3-1A-6(e) is designed to provide broad and flexible authority to respond to serious public-health concerns like the coronavirus epidemic. The Secretary has full authority to invoke those powers now and while the state of emergency persists.

Finally, although this Opinion Letter addresses the Secretary's emergency powers, we also note that the Governor has separate and more extensive authority under a state of emergency. West Virginia Code § 15-5-6(c)(7), for instance, gives the Governor power "[t]o suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business . . . if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency." Similarly, West Virginia Code § 15-5-6(c)(6) provides authority "[t]o control ingress and egress to and from a disaster area or an area where large-scale threat exists, the movement of persons within the area and the occupancy of premises therein." Arguably, these provisions could support an order from the Governor regarding safe election procedures—potentially including personnel at polling places or the date of the primary election—if necessary to address the emergency that the coronavirus epidemic poses for the State.

Sincerely,



Patrick Morrissey
Attorney General

Lindsay See
Solicitor General

Curtis R.A. Capehart
Deputy Attorney General

Thomas Lampman
Assistant Solicitor General



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

3/20/2020 10:44:19 AM

Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Secretary Of State TITLE-SERIES: 153-53

RULE TYPE: Legislative Amendment to Existing Rule: No

RULE NAME: ELECTION PROCESSES AND ABSENTEE
ELIGIBILITY DURING STATE OF EMERGENCY

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

3-1A-6(e)

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

PRIMARY CONTACT:

NAME: Donald Kersey

ADDRESS: State Capitol Bldg 1 Ste 157 K
Charleston, WV 25305

EMAIL: dkersey@wvsos.gov

PHONE NUMBER: 304-558-6000

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Pursuant to the Governors Proclamation declaring a State of Emergency for a natural disaster on March 16, 2020, the Attorney Generals Opinion Letter entered on March 18, 2020, and the Secretary of States authority provided in W. Va. Code § 3-1A-6(e)(1), this Rule establishes guidance and clarity regarding various election processes and absentee eligibility.

Furthermore, due to the emergency nature of a State of Emergency, pursuant to W. Va. Code § 3-1A-6(e) and W. Va. Code § 15-5-6(c)(7), the Secretary of State has the authority to issue this Rule upon declaration of a State of Emergency for a natural disaster by Proclamation of the Governor without regard to the regular rule-making procedures set forth in W. Va. Code § 29A-3-1 et seq. Therefore, there shall be no public notice and comment period for Rules filed by the Secretary of State during a State of Emergency declared for a natural disaster, and this Rule shall take effect upon filing.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/a

C. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

N/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Donald Kersey--By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 53
ELECTION PROCESSES AND ABSENTEE ELIGIBILITY DURING STATE OF EMERGENCY

§ 153-53-1. General.

1.1. Scope. -- Pursuant to the Governor's Proclamation declaring a State of Emergency for a natural disaster on March 16, 2020, the Attorney General's Opinion Letter entered on March 18, 2020, and the Secretary of State's authority provided in W. Va. Code § 3-1A-6(e)(1), this Rule establishes guidance and clarity regarding various election processes and absentee eligibility.

Furthermore, while this Rule cannot violate or alter clear statutory requirements in Chapter Three of the West Virginia Code, the law is construed in favor of enfranchisement, not disenfranchisement. Therefore, the provisions of this Rule shall be construed in favor of broader access for eligible voters to uphold the integrity of an election and ensure all eligible voters have the opportunity to cast a valid ballot in an election held during the current State of Emergency.

1.2. Authority. -- W. Va. Code § 3-1A-6(e)(1).

1.3. Filing Date. -- March 20, 2020.

1.4. Effective Date. -- March 20, 2020.

1.5. Sunset Provision. -- This rule shall terminate on the date of a subsequent Proclamation issued by the Governor declaring the State of Emergency is no longer in effect.

§ 153-53-2. Definitions.

2.1. "Confined" means a person who is restricted to a specific location for reasons beyond that person's control, including a recommendation by state or federal authorities for the person to self-quarantine, avoid public places or close contact with other persons.

2.2. "County clerk" means the clerk of a West Virginia county commission.

2.3. "Disaster" is defined in W. Va. Code § 15-5-2(h), which definition includes the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural cause, epidemic, air contamination, or other public calamity requiring emergency action.

2.4. "During or immediately preceding an election" means the time period starting with the first day of candidate filing established in W. Va. Code § 3-5-7(c), and continuing through the certification of results for any primary, general, or special election.

2.5. "Natural disaster" means a disaster caused by the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural cause, including fire, flood, earthquake, wind, snow, storm, epidemic, air contamination, blight, drought, infestation or other public calamity requiring emergency action.

2.6. “Other medical reason” means any threat to a person’s health posed by an epidemic, pandemic, outbreak, disease, virus, or other medical emergency, which creates potential harm to the public interest, peace, health, safety, or welfare of citizens or voters.

2.7. “Poll worker” or “poll workers” mean one or more poll clerks or election commissioners assigned to a precinct by a county clerk for election-related duties in an election.

2.8. “Team” means two poll workers of opposite or different political parties assigned to a precinct by a county clerk for election-related duties in an election.

§153-53-3. Absentee-By-Mail Voting Eligibility.

3.1. Pursuant to W. Va. Code § 3-3-1(b), registered and other qualified voters in all West Virginia counties are authorized to vote an absentee ballot by mail under the following conditions:

3.1.1. If the voter is confined to a specific location and prevented from voting in person throughout the period of voting in person because of disability, illness, injury, or other medical reason;

3.1.2. The voter marks the first box in Section 4.A. on the West Virginia Absentee Ballot Application for “*Illness, injury or other medical reason which keeps me confined*”; and

3.1.3. All other requirements and deadlines for voting an absentee-by-mail ballot set forth in W. Va. Code § 3-3-1 *et seq.* are satisfied.

3.2. The procedures for applying for and receiving an absentee-by-mail ballot from a county clerk set forth in W. Va. Code § 3-3-5 shall remain in full force and effect during a State of Emergency.

3.3. The following statutory crimes set forth in the West Virginia Code related to absentee ballot voting, election fraud, or voting fraud shall remain in full force and effect during a State of Emergency. The Secretary of State shall exercise the authority provided in Chapter 3 of the West Virginia Code to fully investigate and refer for criminal prosecution any person that commits any election crime, including but not limited to:

3.3.4. Any person who, with the intent to commit fraud, obtains, removes, or disseminates an absent voter’s ballot, intimidates an absent voter, or completes or alters an absent voter’s ballot, which is a felony pursuant to W. Va. Code § 3-9-19;

3.3.5. Improper removal or possession of any ballot outside of its statutory storage place or location, which is a felony pursuant to W. Va. Code § 3-9-2;

3.3.6. Vote buying or promising a thing of value to any person as consideration for the voter to cast a vote for or against any candidate for any office, which is felony pursuant to W. Va. Code § 3-9-13;

3.3.7. Falsely swearing on any affidavit related to an absentee-by-mail applications, ballot, or other election-related affidavit, which is a misdemeanor pursuant to W. Va. Code §§ 3-3-4 and 3-9-3;

3.3.8. Counseling, advising, aiding or abetting another in the commission of false swearing, which is a misdemeanor pursuant to W. Va. Code §§ 3-3-4 and 3-9-3;

3.3.9. Signing the name of a voter without the voter's consent on any certificate, application, ballot, report, statement or writing with intent to mislead and deceive, which is a misdemeanor pursuant to W. Va. Code § 3-9-1(h);

3.3.10. Inducing, attempting to induce, or conspiring with any voter to write, paste or otherwise place on the ballot a name of any person, or any sign or device of any kind, as a distinguishing mark by which to indicate to any other person how such voter voted, which is a misdemeanor pursuant to W. Va. Code § 3-9-8; and

3.3.11. Illegal voting by any person who knowingly votes when not legally entitled, which is a misdemeanor pursuant to W. Va. Code § 3-9-17.

§ 153-53-4. Absentee Ballot Processing.

4.1. Absentee ballots received in a county clerk's office prior to Election Day may be processed in the usual manner, at the same time and under the same procedures for early voting pursuant to W. Va. Code § 3-3-3 and other applicable laws and regulations.

4.2. Absentee ballots received after the last day of the early voting period, and up to Election Day, may be processed in the usual manner set forth in W. Va. Code §§ 3-3-7 and 3-3-8.

4.3. Absentee ballots received after Election Day shall be processed in the usual manner as set forth in W. Va. Code § 3-6-6.

4.4. If a county cannot process absentee ballots received at any time due to reasons beyond the county's control, including but not limited to an unanticipated increase in absentee ballot volume or lack of staff or resources, absentee ballots may be processed at the county clerk's discretion at the most appropriate time and in the most appropriate manner according to law leading up to canvass.

4.5. In administering, superintending, processing, storing and managing absentee-by-mail ballots during a State of Emergency, the county clerk and county staff shall protect the integrity of the election and ensure all eligible voters have the opportunity to cast a valid ballot according to law.

4.6. All laws setting forth absentee ballot requirements for tracking, counting, separating, storing, and protecting the integrity of the ballot and voters' personal information are in full force and effect during a State of Emergency.

§ 153-53-5. Poll Worker Training.

5.1. Pursuant to W. Va. Code § 3-1-46(c), poll workers are required to attend an instructional program within thirty days of an election.

5.2. For counties that held an election in the year 2020, those poll workers have already and recently attended the same or similar instructional program, which includes one or more audio-visual programs produced by the Secretary of State in conjunction with the State Election Commission.

5.3. In light of the State of Emergency and risk of an epidemic being spread to any potential poll workers who attend the training held by the county clerk, any person who has attended an instructional program for a county's special election held in the year 2020 may satisfy the requirements of W. Va. Code § 3-1-46 under the State of Emergency if all of the following conditions are met:

5.3.1. The earlier instructional program included in-person training on the safe, secure and proper operation of the voting system in use for the 2020 Primary Election;

5.3.2. The person attends or views an approved instructional program provided by the county clerk's office in digital or electronic format during the time period required by law; and

5.3.3. The person swears or affirms in a manner approved by the county clerk that he or she attended by viewing the digital or other instructional program. Acceptable forms of proof of such attendance include but are not limited to a signed affidavit or oath that is received or administered by the county clerk (or county clerk's designee) at any time prior to working as a poll worker.

5.4. County commissions have the authority to determine the appropriate poll worker training salary pursuant to W. Va. Code § 3-1-44.

§ 153-53-6. Poll Worker Availability on Election Day.

6.1. Pursuant to W. Va. Code § 3-1-29(a), each precinct shall have two teams of poll workers, and one additional election commissioner.

6.2. Pursuant to W. Va. Code § 3-1-30(j), if a poll worker fails to appear at a precinct polling place on Election Day, the polling place may open for in-person voting under the following conditions:

6.2.1. There is a team of poll workers assigned to process voters at the check-in table, and an additional team of poll workers assigned to monitor the ballot box(es) or precinct scanner(s);

6.2.2. The election officials present contact the county clerk for assistance in filling the vacancy on Election Day; and

6.2.3. If the election officials are unable to contact the county clerk within a reasonable time, they shall diligently attempt to fill the position when an eligible person of the same political party that nominated the person who is absent until a qualified person has agreed to serve.

6.3. If two teams of poll workers are present at the precinct polling place, the fifth election commissioner to be appointed may belong to any political party.

6.4. If less than two teams of poll workers are present at the opening of the precinct polling place, or at any time during the voting process on Election Day, under the direction of the county clerk all poll workers shall ensure all eligible voters have the opportunity to cast a valid ballot in an election held during the current State of Emergency under the following conditions:

6.4.1. No voter may be issued a ballot without a team of poll workers being present at the check-in table;

6.4.2. No voter may cast a ballot without a team of poll workers present at the ballot box(es) or precinct scanner(s); and

6.4.3. At least one team of poll workers shall be present for each part of the voting process that requires a team of poll workers.

6.5. Pursuant to W. Va. Code § 3-1A-6(c) and the Attorney General's Opinion referenced in Section 1.1 of this Rule, all election officials and poll workers shall construe this Rule to support broader access for eligible voters to uphold the integrity of an election under the law.

§ 153-53-7. Precinct Polling Place Location Changes.

7.1. Pursuant to W. Va. Code § 3-1-7(f), if for any reason a designated precinct's polling place location is unavailable during a State of Emergency, the county clerk may direct the poll workers for that precinct to hold the election at the nearest place which can be secured for the purpose of voting, which may include combining multiple precincts into a new or existing polling place location pursuant to Section 7.4. of this Rule.

7.2. Under the direction of the county clerk, the poll workers assigned to the relocated precinct shall provide the affected voters with the address and directions to the new polling place location by (1) proclamation to the voters present at the original polling place at the time for opening the polls, and (2) posting a notice at or near the entrance of the original polling place location.

7.3. For any precinct polling place location changes made pursuant to W. Va. Code § 3-1-7(f) and Section 7.1 of this Rule, the county commission shall take all reasonable measures to issue public notice to all affected voters regarding the precinct polling place location change. Such notice may include but is not limited to newspaper legal ads, social media outreach, statewide or local media coverage, website banners or notices, postcards or any other form or medium of public notice deemed appropriate by the county commission under a State of Emergency.

7.4. A precinct which must be relocated during a State of Emergency may be combined into a new or existing polling place location under the following conditions:

7.4.1. The appropriate number of teams of poll workers are assigned to each precinct combined into the same polling place location;

7.4.2. Each precinct's voter check-in table and poll books are kept and maintained separately;

7.4.3. All poll workers in the combined location may provide general assistance to all voters and other poll workers within the polling place location, which assistance includes but is not limited to assisting voters with setting up and using the electronic voting machines, sanitizing voting machines and other election materials, objects or surfaces, assisting other poll workers in an emergency, gathering or delivering general supplies or materials at the county clerk's discretion, and providing information and comfort to voters concerned with long lines or health risks; and

7.4.4. Pursuant to W. Va. Code § 3-1-5(a), each precinct shall be operated separately and independently with separate voting booths, ballot boxes or scanners, poll workers, counting boards and whenever possible in separate rooms. *Provided*, that county clerks and poll workers must ensure that all eligible voters have the opportunity to cast a valid ballot and uphold the integrity of the election during a State of Emergency.

7.5. A polling place precinct location change shall be in effect only during the State of Emergency. No subsequent order or action by a county commission is necessary to reestablish the original precinct polling place location after the State of Emergency is lifted.

§ 153-53-8. Canvassing the Election.

8.1. The county commissioners in each county sitting as the ex officio board of canvassers shall initially convene canvass on the fifth day (Sunday excepted) after the election held in their county pursuant to W. Va. Code § 3-6-9(a)(1).

8.2. At the initial canvass, the board of canvassers shall determine whether additional time is required for the county clerk to process the election returns prior to canvassing the election.

8.3. In making its determination, the board of canvassers shall consider all health and safety information regarding the State of Emergency provided by the Governor, Department of Health and Human Resources, federal Center for Disease Control and Prevention, other relevant state or federal agencies and the county clerk's opinion regarding staff and resources available to properly process the election returns and prepare for canvass.

8.4. If, upon the considerations set forth in Section 8.3. of this Rule, the board of canvassers determines that the canvass of the election can begin immediately in a timeframe that does not disenfranchise voters, including those who submitted absentee-by-mail ballots, the board of canvassers may initiate the canvass pursuant to W. Va. Code § 3-6-9.

8.5. If, upon the considerations set forth in Section 8.3. of this Rule, the board of canvassers determines pursuant to W. Va. Code § 3-6-9(a)(3) that additional time is needed to receive and process the election returns received during a State of Emergency, the board of canvassers may establish a later date to reconvene canvass, but which later date shall be no longer than absolutely necessary and does not otherwise conflict with any deadline set forth in Chapter 3 of the West Virginia Code.

8.6. All procedures, deadlines, and requirements set forth in W. Va. Code § 3-6-9 shall remain in full force and effect for canvassing an election held during a State of Emergency.

§ 153-53-9. Special Authority, Procedures and Applicability of this Rule under a State of Emergency.

9.1. This Rule applies only upon declaration of a State of Emergency for a natural disaster by Proclamation of the Governor, and shall remain in effect only during the time that a State of Emergency is in effect.

9.2. Pursuant to W. Va. Code § 5-3-1, the West Virginia Attorney General has issued a written opinion addressing the Secretary of State's authority to issue emergency rules upon a declaration of a State of Emergency for a natural disaster by Proclamation of the Governor. This Rule is promulgated in accordance with the opinion of the Attorney General, which is available on the Attorney General's website at the following URL:
<https://ago.wv.gov/publicresources/Attorney%20General%20Opinions/Documents/March%2018%20Opinion.pdf.pdf>.

9.3. Due to the emergency nature of a State of Emergency, pursuant to W. Va. Code § 3-1A-6(e) and W. Va. Code § 15-5-6(c)(7), the Secretary of State has the authority to issue this Rule upon declaration of a State of Emergency for a natural disaster by Proclamation of the Governor without regard to the regular rule-making procedures set forth in W. Va. Code § 29A-3-1 *et seq.* Therefore, there shall be no public notice and comment period for Rules filed by the Secretary of State during a State of Emergency declared for a natural disaster.

STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

At Charleston

EXECUTIVE ORDER NO. 18-20

By the Governor

WHEREAS, a State of Emergency was declared on the Sixteenth Day of March, Two Thousand Twenty for all counties in West Virginia (the “State of Emergency Declaration”), to allow agencies to coordinate and create necessary measures to prepare for and respond to the outbreak of respiratory disease caused by a novel coronavirus now known as COVID-19; and

WHEREAS, Chapter 15, Article 5, Section 6 of the Code of West Virginia authorizes the Governor, among other things, to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules of any state agency, if strict compliance therewith would in any way prevent, hinder, or delay necessary action in coping with the emergency, to control ingress and egress to and from a disaster area or an area where large-scale threat exists, the movement of persons within the area, and the occupancy of premises therein, and to perform and exercise other functions, powers, and duties that are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, it is projected by national and state health officials that the COVID-19 pandemic will continue to worsen throughout the country and throughout the state, with an apex for the number of cases occurring in West Virginia on or about the last week of April 2020; and

WHEREAS, the primary elections in West Virginia are currently scheduled to be held on May 12, 2020, soon after the currently anticipated apex of the pandemic; and

WHEREAS, the constitutional right to cast a ballot in a fair election in this state is sacrosanct and the right to cast a ballot in person, if a person desires to, on the polling day must be preserved to the extent possible, even in this state of emergency; and

WHEREAS, the congregation of the public at polling places so soon after the projected apex of the COVID-19 pandemic poses a large-scale threat to the public health, safety, and welfare; and

WHEREAS, the state has taken significant steps to date to mitigate the spread of the COVID-19 virus, but the virus remains a serious threat to the health, safety, and welfare of the public, and further efforts and actions are necessary to disrupt the spread of the virus and to mitigate the impact of COVID-19, including the postponement of West Virginia's primary elections currently scheduled for May 12, 2020; and

WHEREAS, it has been advised that postponing the date of the West Virginia primary elections approximately one month, to June 9, 2020, is in the best interest of the public health, safety, and welfare; and

WHEREAS, the postponement of the primary elections in this state will necessitate the postponement of municipal elections in this state for a similar period of time to allow voting resources to be efficiently utilized and to ensure that all elections proceed in the safest manner possible during this state of emergency, and the postponement of the primary elections may likewise make it necessary or advisable for levying bodies to coordinate with the appropriate county commission and board of ballot commissioners, in consultation with the State Auditor, regarding the possibility of placing the question of such levies on the primary elections ballot.

NOW, THEREFORE, I, JIM JUSTICE, pursuant to the authority vested in me pursuant to the provisions of Chapter 15, Article 5, Section 6 and Chapter 15, Article 5, Section 1 of the Code of West Virginia, hereby **DECLARE** and **ORDER**, as follows:

1. The provisions of West Virginia Code § 3-5-1, regulating the particular date on which primary elections are to be held, are suspended for the primary elections currently scheduled to be held on May 12, 2020, to the extent that the date provided for such primary shall be moved forward approximately one month to June 9, 2020.
2. The provisions of all other statutes of the West Virginia Code regulating particular dates by which certain actions relating to elections in this state must be performed,

in the discretion of the West Virginia Secretary of State, are likewise suspended for the same period of time, to the extent the Secretary of State deems necessary or advisable in order to properly conduct the primary elections on June 9, 2020. The Secretary of State is instructed to update the 2020 Elections Calendar, published by the West Virginia Secretary of State's Office, Elections Division, and the Secretary of State advises that this update will be complete and available by April 6, 2020.

3. The provisions of West Virginia Code § 8-5-5 and other applicable sections of Code regulating the particular date(s) on which municipal elections are to be held are suspended for the elections currently scheduled to be held between June 1, 2020, and June 9, 2020, to the extent that the date(s) provided for such elections shall be moved forward an equal number of days, and all local governing bodies charged with administering or conducting such elections shall take such actions as may be necessary or advisable to effect such postponement, in consultation with the West Virginia Secretary of State.
4. The provisions of West Virginia Code § 8-4-7, § 8-4-8, and other applicable sections of Code regulating the timing requirements for municipalities with election dates or procedures established under a charter to amend their charter to allow for a postponement of any municipal elections currently scheduled to be held between June 1, 2020, and June 9, 2020, are suspended to the extent that the timing requirements for amending such municipality's charter may need to be expedited to allow for a postponement of such elections for the number of days as may be necessary to postpone such municipal elections until a date after June 9, 2020, and all local governing bodies charged with administering or conducting such elections shall take such actions as may be necessary or advisable to effect such postponement, in consultation with the West Virginia Secretary of State. To the extent that any municipal charter or other law allows for emergency meetings or other procedures to otherwise postpone the election dates for such municipalities, such emergency meetings or other procedures may be used.
5. Any and all materials published or provided to the public by a state agency or other public body to date which may cite or reference the May 12, 2020 primary elections date shall be amended to cite or refer to the June 9, 2020 primary elections date

provided for in this Order, in order to ensure the public is properly and consistently noticed of the postponed date of the primary elections; provided that those ballots and voting machines that have been printed or programed, prior to the effective date of this Order, with the date May 12, 2020 shall be excluded from the requirement of this section to amend materials.

6. Local levying bodies which must present a levy to the voters of their jurisdiction prior to July 1, 2020, are permitted to coordinate with the appropriate county commission and board of ballot commissioners, after consultation with the State Auditor, regarding the possibility of placing the question on the levy on the ballot for the June 9, 2020 primary election provided for under this Order; provided that the appropriate county commission and board of ballot commissioners are not required to add the question of a levy to the ballot for the June 9, 2020 primary election if there are insufficient time and/or resources to add the requisite language to election materials, ballots, voting machines, or other required materials. The local levying body shall follow the procedures set forth in Chapter 11 of the West Virginia Code for public notice and other requirements.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



By the Governor

DONE at the Capitol in the City of Charleston, State of West Virginia, this First day of April, in the year of our Lord, Two Thousand Twenty in the One Hundred Fifty-seventh year of the State.


GOVERNOR


SECRETARY OF STATE