

**VIRGINIA:**

**IN THE CIRCUIT COURT OF RICHMOND CITY**

Susan Swecker,

Plaintiff-Petitioner,

v.

J. Kirk Showalter, in her official capacity as  
General Registrar for the City of Richmond,

Defendant-Respondent.

**VERIFIED COMPLAINT FOR  
INJUNCTIVE RELIEF AND  
PETITION FOR WRIT OF  
MANDAMUS**

**At Law No.** \_\_\_\_\_

Plaintiff-Petitioner Susan Swecker (“Plaintiff”), by and through the undersigned attorneys, brings this Verified Complaint for Injunctive Relief and Petition for Writ of Mandamus against Defendant-Respondent J. Kirk Showalter, General Registrar for the City of Richmond (“General Registrar” or “Defendant”), to compel Defendant’s compliance with the Virginia Freedom of Information Act, Va. Code Ann. §§ 2.2-3700 *et seq.* Plaintiff alleges as follows:

**INTRODUCTION**

1. This lawsuit arises from the General Registrar’s failure to fully respond to a straightforward public records request. On October 9, 2020, Plaintiff, a Virginia citizen and Chairwoman of the Democratic Party of Virginia (“DPVA”), requested records from the General Registrar related to absentee voters whose returned materials are identified as containing material errors and omissions.

2. Plaintiff seeks these records so that she and the DPVA may notify and assist eligible, registered Virginia voters in Richmond, including the DPVA’s members and constituents, with curing any material errors and omissions in their ballots before the November 6, 2020 cure deadline to ensure that these voters’ ballots are counted.

3. Under the Virginia Freedom of Information Act (“FOIA law” or the “Act”), Va. Code Ann. §§ 2.2-3700 *et seq.*, *all* public records “shall be presumed open” and, unless a “narrowly construed” exception applies, *all* public records “shall be available” for inspection and copying within five business days of the request. Va. Code Ann. §§ 2.2-3700(B), 2.2-3704(B), (G).

4. Nevertheless, seventeen days after Plaintiff first made the request, the General Registrar first denied that she had any responsive records, and then produced only limited information, which she characterized as inaccurate; she has not yet provided a complete production of the requested documents. And she has done so without any justifiable reason.

5. Indeed, though the General Registrar claims that these records do not exist, Virginia law requires election officials to maintain a system for voters to track their absentee ballots’ status, *see* Va. Code Ann. § 24.2-711.1, meaning that, by law the requested records *must* exist. And, in fact, these same types of records have been maintained and produced to Plaintiff by registrars from cities and counties throughout the Commonwealth.

6. Moreover, other individuals have seen the requested lists in the General Registrar’s office and have confirmed their existence. And, most tellingly, at one point when pressed by counsel for Plaintiff about the requested documents, the General Registrar backtracked, providing a partial, incomplete response, and making it abundantly clear that her claims of not having the requested information are not credible.

7. Accordingly, Plaintiff seeks a temporary injunction and writ of mandamus to prevent irreparable harm to herself, DPVA and its members and constituents, and the Richmond voters who have attempted to vote absentee in this election, but whose ballots will be rejected if they are not cured. As required by Virginia’s FOIA law, the General Registrar must provide the

requested documents to Plaintiff immediately, and timely judicial action is therefore necessary to remedy this continued violation of the Act.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction to grant injunctive and mandamus relief under Va. Code Ann. § 2.2-3713, which permits “[a]ny person” denied the “rights and privileges conferred” by the Act “to proceed to enforce such rights and privileges by filing a petition for mandamus or injunction” in this Court.

9. Venue is appropriate under the Act because this is an action “involving a local public body” and this Court is “the circuit court of the . . . city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied.” Va. Code Ann. § 2.2-3713(A)(1).

### **PARTIES**

10. Plaintiff Susan Swecker is a resident of Monterey, Virginia and the Chairwoman of the Democratic Party of Virginia, which is a political party as defined by Va. Code Ann. § 24.2-101. As Chairwoman, Plaintiff leads DPVA’s mission to elect Democratic candidates in local, county, state, and federal elections. Part of the programming she leads for DPVA involves contacting voters whose absentee ballots have not been accepted due to deficiencies and assisting them in correcting any deficiencies to ensure their vote is counted. In so doing, Plaintiff and DPVA rely on timely and accurate public records identifying absentee voters, whether those voters’ ballots have been accepted, and, if not, the nature of the deficiency preventing their acceptance. Without these lists the DPVA is not able to complete its mission and the DPVA, its members and constituents, and Plaintiff in her role as Chairwoman are harmed.

11. Defendant J. Kirk Showalter is the General Registrar for the City of Richmond. One of the General Registrar's responsibilities is to receive absentee ballots. *See* Va. Code Ann. § 24.2-709(A). The General Registrar also maintains an absentee voter applicant list and, upon receiving an absentee ballot for a voter on the list, "mark[s] the date of receipt in the appropriate column opposite the name and address of the voter" on this list. Va. Code Ann. § 24.2-710; *see also* Va. Code Ann. § 24.2-709(A). Local election officials, moreover, must provide a system by which voters can determine if their absentee ballots have been received and their ballots' current status, such as whether it has been accepted. Va. Code Ann. § 24.2-711.1. The General Registrar is one such local election official, who the electoral board appoints. Va. Code Ann. § 24.2-109(A).

### **FACTUAL BACKGROUND**

#### **A. Virginia voters have a right to vote by mail.**

12. Registered voters in Virginia are entitled to vote by "absentee ballot." Va. Code Ann. § 24.2-700. Printed ballots have been available since mid-September. General registrars have been required to mail absentee ballot "materials" to each eligible voter after receiving an application; such materials consist of (1) the ballot, (2) an envelope in which the ballot is placed and on which the voter signs a declaration attesting to her identity and eligibility to vote ("Envelope B"), and (3) an addressed return envelope in which the voters places the ballot and Envelope B, to each eligible voter after receiving an application. *Id.* § 24.2-706(B). Voters can return these materials to the general registrar by mail, through a "drop box," or in person. *Id.*; *see also* S.B. 5120 § 1(B), 2020 Spec. Sess. I (Va. 2020).

13. An absentee ballot may contain material errors or omissions that will render the ballot invalid. *See generally* Va. Admin. Code § 20-70-20(B). For example, a voter's failure to provide their last name, a signature on Envelope B, or their zip code are material omissions. *Id.*

14. If the General Registrar rejects a ballot for these reasons, the General Registrar must attempt to notify the voter via phone, email, or in writing within three days of rejecting the ballot and inform the voter that they may “cure” that deficiency. S.B. 5120 § I(A)(2), 2020 Spec. Sess. I (Va. 2020). If the voter “make[s] such necessary corrections before noon on the third day after the election,”—this year, November 6—the voter’s ballot will count. *Id.* Otherwise, the voter is disenfranchised.

15. DPVA’s workers and volunteers are also working to notify voters via phone, text, or email that their absentee ballots contain material errors or omissions. They assist these voters in timely curing these deficiencies to prevent them from being disenfranchised. In so doing, DPVA’s workers and volunteers rely on publicly available information indicating which voters’ absentee ballots have material errors and omissions so they know who to contact and help.

**B. Plaintiff properly requested records to assist voters in curing defective ballots to ensure their votes are counted.**

16. On October 9, 2020, Plaintiff, in her role as Chairwoman of the Democratic Party of Virginia sent a request under the Virginia’s FOIA law to the General Registrar seeking:

Any documents, records, or lists of absentee voters who have returned absentee vote-by-mail material (*e.g.*, Envelope B and Return Letters) found to be invalid due to material errors or omissions. Please provide the name of the absentee voter, their 9 Digit Voter Identification Number (State Voter File ID Number), as well as the nature of the material error or omission associated with that voter. Other identifying information on the list (*e.g.*, voter address, date of birth, social security number, or other information) can be redacted or omitted.

Ex. 1.A.

17. In her request, Plaintiff offered to reimburse the General Registrar for up to \$500 in costs associated with the request. Plaintiff also requested that, if necessary, the General Registrar produce the records on a rolling basis as they are located.

18. On October 16—the fifth working day after Plaintiff sent the request and statutory deadline for a response—the General Registrar responded stating that her office has “no documents which meet this request.” Ex. 1.B.

19. Nevertheless, having been informed by reliable sources, including the Chairman of the City of Richmond’s Electoral Board, James Nachman, that the records exist, on October 21, counsel for DPVA sent the General Registrar additional correspondence seeking the documents included in the October 5th request. Ex. 1.C.

20. Despite having first represented that the requested documents did not exist, the General Registrar responded to this second request with a list of 26 voters whose absentee ballots contained deficiencies. Ex. 1.D. The list identified a “date recd” for many of these voters; none of these dates, however, were later than October 9, even though the General Registrar had stated on October 16 that no such list existed and she produced this list on October 21.

21. The General Registrar explained that on October 16, “the only log [of deficient absentee ballots] of which I knew at the time was unpopulated.” *Id.* Since then, however, the General Registrar purportedly learned that “a staff member was starting to maintain this same log elsewhere” and sent a screenshot of the newly discovered log. *Id.* The General Registrar cautioned that the 26 names on the staff member’s log “are not current and do not reflect in any way the activity that we have had with the few deficient ballots that we are monitoring.” *Id.*

22. The General Registrar also explained that her office reviews incoming absentee ballots for deficiencies and “quickly” follows up with the voters “by the quickest means of communication that we have available to us with them.” *Id.*

23. During that timeframe—October 9 to October 21—twelve days of early voting passed, and it is extremely unlikely that every single absentee ballot received did not have a

material error or omission. Indeed, in comparable localities such as the City of Norfolk, which has a population of approximately 242,000 versus approximately 230,000 in the City of Richmond, 133 absentee ballots currently need to be cured. This number excludes ballots that have already been cured.

24. If Plaintiff and, as a consequence, the DPVA do not receive the records before November 6, 2020, they will be unable to help hundreds of eligible Virginia voters and DPVA will be unable to carry out its organizational mission of helping thousands of eligible Virginia voters—including its own members and constituents—cure their ballots so that their votes count. The ballot data will lose almost all practical value if not obtained with enough time to contact eligible Virginia voters.

25. Moreover, hundreds of eligible, registered voters will be disenfranchised because their ballots will not be cured.

### **COUNT ONE**

#### **VIOLATION OF THE VIRGINIA FREEDOM OF INFORMATION ACT Va. Code Ann. §§ 2.2-3700 *et seq.***

26. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set forth fully herein.

27. Virginia’s FOIA law “ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees.” Va. Code Ann. § 2.2-3700(B). Absent an exemption, *all* public records “*shall* be available for inspection and copying upon request.” *Id.* (emphasis added). “All public records . . . shall be presumed open.” *Id.*

28. The Act requires that public records on electronic data processing systems, computer databases, or other electronic sources “shall be made available to a requester at a reasonable cost.” Va. Code Ann. § 2.2-3704(G); *see also id.* (“Public bodies shall produce

nonexempt records maintained in an electronic database in any tangible medium identified by the requester.”).

29. It also requires custodians of public records to “take all necessary precautions” for the “preservation and safekeeping” of these records. Va. Code Ann. § 2.2-3704(A).

30. A public body’s response to a request under the Act must either provide the requested records or state one of the following: (1) the requested records are being withheld and why; (2) the requested records are being withheld in part and why; (3) the requested records “could not be found or do not exist” and provide the contact information of any public body that it knows has the requested information; or (4) “[i]t is not practically possible to provide the requested records or determine whether they are available within the five-work-day period.” Va. Code Ann. § 2.2-3704(B).

31. When “any person” is “denied the rights and privileges” of the Act, that person can seek to enforce those rights and privileges in the general district court or circuit court where the public body has been elected or appointed to serve and where the rights and privileges were denied. Va. Code Ann. § 2.2-3712(A).

32. A single instance of denial of the rights and privileges conferred by the Act shall be sufficient to invoke the remedies provided in the Act. Va. Code Ann. § 2.2-3713(D).

33. Here, the General Registrar has failed to provide the requested public records in full. Instead, on the last possible day to respond to Ms. Swecker’s request, the General Registrar claimed to have no responsive records. After being subsequently pressed by counsel, the General Registrar provided a screenshot of an incomplete record containing information regarding 26 vote-by-mail ballots that were determined to contain material errors or omissions. The General Registrar

admitted the screenshot was “not current” and did not “in any way” reflect her office’s efforts in reaching voters with deficient absentee ballots.

34. On information and belief, and according to the Chairman of the City of Richmond’s Electoral Board, the number of vote-by-mail ballots that the General Registrar has determined to contain a material error or omission is far greater than 26.

35. Likewise, the General Registrar has admitted that her office “quickly” follows up with such voters “by the quickest means of communication that we have available to us with them.”  
Ex. 1.D.

36. And Virginia law requires that election officials must provide a system by which voters can determine if their absentee ballots have been received and their ballots’ current status, such as whether it has been accepted. Va. Code Ann. § 24.2-711.1.

37. As a result, there must be complete records in the General Registrar’s possession that are responsive to Plaintiff’s request, but the General Registrar is refusing to provide to Plaintiff.

38. In short, the General Registrar has violated the Virginia Freedom of Information Act.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court issue the following relief:

- a. An order ordering the General Registrar to provide to Plaintiff all documents in her possession containing information relating to absentee ballots deemed to contain material errors or omissions and/or the comprehensive log of ballots that her office has determined to contain material errors or omissions on or before October 28, 2020;

- b. Issuance of a writ of mandamus ordering the General Registrar to, in compliance with the Act, Va. Code Ann. § 2.2-3700 *et seq.*, provide responsive records to Plaintiff on or before October 28, 2020.
- c. An order ordering the General Registrar to provide Plaintiff with all reasonable costs, including attorney fees, as detailed in Va. Code Ann. § 2.2-3713(D);
- d. Any such further relief as this Court deems just and necessary.

### **PETITION FOR WRIT OF MANDAMUS**

In addition, Plaintiff, by and through the undersigned attorneys, and pursuant to Va. Code Ann. §§ 2.2-3713, 17.1-513, hereby petitions this Court for the issuance of a writ of mandamus directed to the General Registrar, and in support thereof states:

39. Plaintiff incorporates by reference each of the allegations contained in the foregoing paragraphs of this Verified Complaint as though set fully herein.

40. Plaintiff has a clear right to the relief it seeks. The General Registrar has a clear legal duty to provide public records requested under the Act. *See, e.g.*, Va. Code Ann. § 2.2-3700 (“[A]ll public records shall be available for inspection and copying upon request. All public records . . . shall be presumed open.”); *see also* Va. Code Ann. § 2.2-3704 (“Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost.”).

41. Plaintiff has no adequate remedy at law. And, in any event, Plaintiff need not demonstrate the absence of an adequate remedy at law to obtain mandamus relief under the Act. *Catwright v. Commonwealth Transp. Comm’r of Va.*, 270 Va. 58, 66-67 (2005).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court hear this action pursuant to Va. Code Ann. §§ § 2.2-3713, 17.1-513 and grant a writ of mandamus ordering the General

Registrar to, in compliance with the Act, Va. Code Ann. § 2.2-3700 *et seq.*, provide responsive records to Plaintiff on or before October 28, 2020.

Dated this 26th day of October, 2020

Respectfully submitted,

/s/ Amanda R. Callais

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*Counsel for the Plaintiff-Petitioner*

**VERIFICATION**

Pursuant to Va. Code Ann. § 8.01-4.3, I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

10/26/2020

Date

Susan R Susclon

# Exhibit 1

**VIRGINIA:**

**IN THE CIRCUIT COURT OF RICHMOND CITY**

Susan Swecker,

Plaintiff-Petitioner,

v.

J. Kirk Showalter, in her official capacity as  
General Registrar for the City of Richmond,

Defendant-Respondent.

**AFFIDAVIT OF SUSAN SWECKER  
IN SUPPORT OF INJUNCTIVE  
RELIEF AND PETITION FOR WRIT  
OF MANDAMUS**

**At Law No.** \_\_\_\_\_

I, Susan Swecker, have personal knowledge of the facts contained in this affidavit and declare as follows:

1. I am a citizen of Virginia and the Chairwoman of the Democratic Party of Virginia. Through my role as Chairwoman, I have personal knowledge of the Democratic Party of Virginia's efforts to ensure voters' ballots are counted in the November 2020 election and related efforts by the Democratic Party of Virginia to obtain public election records.

2. I and the Democratic Party of Virginia are dedicated to electing candidates of the Democratic Party to public office throughout the Commonwealth of Virginia, including to the offices of the President of the United States and the United States Senate. To advance its mission, the Democratic Party of Virginia is also dedicated to ensuring that all ballots cast for Democratic Party candidates are counted. I help advance that mission as a citizen and as the Chairwoman of the Democratic Party of Virginia.

3. As part of its strategy to ensure all Virginia votes are counted, and as a service to its members and constituents to ensure that they are fully enfranchised, the Democratic Party of Virginia, under my direction, contacts absentee voters whose returned absentee materials have

been identified by general registrars as containing material errors or omissions. We inform such voters of that finding and provide them with information about how to cure their materials to make sure their votes are counted.

4. Specifically, volunteers for the Democratic Party of Virginia call voters, clearly identify themselves, ask if the voter has already been made aware of the need to cure a deficiency, and then provide information on steps the voter can take to cure the deficiency. Volunteers work carefully to provide accurate information to voters about how they can cure their ballots.

5. The only way the Democratic Party of Virginia can reach out to such voters whose returned materials have been identified by general registrars as containing material errors or omissions is by obtaining timely and accurate public records identifying absentee voters who have returned absentee vote-by-mail material (e.g., Envelope B and Return Letters) that are determined to be invalid due to material errors or omissions, and the nature of the material error or omission associated with each voter.

6. To that end, I sent a request for public information to the General Registrar for the City of Richmond on October 9, 2020. A true and accurate copy of that request is attached as Exhibit 1.A. As Exhibit 1.A shows, I requested the following public information on a rolling basis and offered to reimburse the General Registrar for up to \$500 in costs associated with providing it:

Any documents, records, or lists of absentee voters who have returned absentee vote-by-mail material (e.g., Envelope B and Return Letters) found to be invalid due to material errors or omissions. Please provide the name of the absentee voter, their 9 Digit Voter Identification Number (State Voter File ID Number), as well as the nature of the material error or omission associated with that voter. Other identifying information on the list (e.g., voter address, date of birth, social security number, or other information) can be redacted or omitted.

7. I provided the General Registrar with this public records request on October 9, 2020, to give the General Registrar sufficient notice and to ensure that I, and the Democratic Party

of Virginia, would receive the requested information with sufficient time to both inform voters that they need to cure their ballots (particularly those who may need to cure their ballots on a short timeline), and to reduce any potential production burden on the General Registrar by giving them ample time to respond.

8. On October 16, 2020, the General Registrar responded to me via email. A true and correct copy of that email is attached as Exhibit 1.B. As shown in Exhibit 1.B, The General Registrar stated that her office has “no documents which meet this request.”

9. As part of my duties and responsibilities as Chairwoman of the Democratic Party of Virginia, I am aware of likely voter turnout patterns, processes for accepting and counting absentee ballots, and other issues that may help ensure all Virginia votes are counted. Given my position and prior work, I am generally familiar with the usual processes used to accept and process absentee ballots. As a citizen and as the Chairwoman of the Democratic Party of Virginia, I have come to understand, including by reports from the Chairman of the City of Richmond’s Electoral Board, James Nachman, that during this election the General Registrar is maintaining a cure log, which is a list of absentee voters who have returned absentee vote-by-mail material found to be invalid due to material errors or omissions. This practice is consistent with the Virginia Department of Elections’ official guidance, which instructs general registrars to keep a cure log.

10. Moreover, according to the publicly available information, around 7,000 absentee votes were cast in the City of Richmond during the 2016 general election.<sup>1</sup> Analyses by the nonprofit Virginia Public Access Project estimate that over 14,000 mail-in ballots have already been cast this year for the City of Richmond (as of October 24, 2020).<sup>2</sup> Given my understanding

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<sup>1</sup> See [https://apps.elections.virginia.gov/SBE\\_CSV/ELECTIONS/ELECTIONTURNOUT/](https://apps.elections.virginia.gov/SBE_CSV/ELECTIONS/ELECTIONTURNOUT/) (Turnout-2016 November General.csv at H2127); see also <https://www.vpap.org/elections/early-voting/richmond-city-va/>.

<sup>2</sup> <https://www.vpap.org/elections/early-voting/richmond-city-va/> (last visited October 25, 2020).

of expected turnout in this year's general election, especially from voters mailing in ballots, and my understanding that the General Registrar maintains a cure log, I decided to follow up on the General Registrar's representation that she had no documents meeting my request for information.

11. Therefore, on the morning of October 21, 2020, Jonathan S. Berkon, a lawyer writing on my behalf as the Chairwoman of the Democratic Party of Virginia and on behalf of the Democratic Party of Virginia, sent the General Registrar a letter following up on my request for information. Attached as Exhibit 1.C is a true and accurate copy of the letter Mr. Berkon sent to the General Registrar. Later that day, on October 21, 2020, the General Registrar responded in an email. Attached as Exhibit 1.D is a true and accurate copy of The General Registrar's October 21, 2020 email.

12. As shown in Exhibit 1.D, the General Registrar responded with a screenshot of a cure log of 26 voters whose absentee ballots were determined by the General Registrar to contain deficiencies. The General Registrar wrote: "Please be advised that these contents are not current and do not reflect in any way the activity that we have had with the few deficient ballots that we are monitoring." The General Registrar explained that when she responded to me on October 16, "the only log [of deficient absentee ballots] of which I knew at the time was unpopulated." The General Registrar further claimed that she did not include this screenshot in her October 16 response because "it ha[d] since come to [her] attention that a staff member was starting to maintain this same log elsewhere."

13. Given the General Registrar's original mistaken response to my request, the General Registrar's statement that the cure log of 26 voters she sent via email was "not current," my understanding of voter turnout and mail-in voting in this year's general election, and in light of knowledge I have obtained as part of my responsibilities as Chairwoman of the Democratic

Party of Virginia—including an eyewitness account by Richmond Electoral Board Chair Nachman that a list does, in fact, exist and contains more than 100 voters—it is highly likely that the General Registrar has identified more than 26 voters who have returned absentee vote-by-mail material found to be invalid due to material errors or omissions.

14. Data we have received from other cities further supports the high likelihood that the General Registrar has invalidated far more than 26 absentee ballots. For example, the City of Norfolk—which has roughly the same population as the City of Richmond—reports having 133 ballots currently flagged as defective and in need of curing, which does not even include ballot that have already been cured.<sup>3</sup> It is highly unlikely that the City of Norfolk has flagged more than 133 ballots as defective, yet during the same period the City of Richmond has flagged just 26 ballots as defective.

15. Likewise, it is highly unlikely that, given the number of voters who are voting by absentee ballot this year, coupled with the General Registrars responsibilities under the recently enacted S.B. 5120 which requires election officials to track absentee ballots and notify voters when their ballots are rejected, that the General Registrar (or her office) is not keeping a cure log, or some other equivalent record, reflecting that information. Indeed, it is precisely because her office is maintaining such a list that she provided me with the list of 26 voters referenced above.

16. Obtaining immediate access to the information I requested on October 9, 2020, is critical to my efforts, and to the Democratic Party of Virginia's efforts, to help ensure that all Virginia votes are counted, and that the Democratic Party of Virginia's members and constituents are fully enfranchised.

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<sup>3</sup> As of July 2019, the U.S. Census Bureau estimated that the City of Richmond had a population of 230,436, and that the City of Norfolk had a population of 242,742.  
<https://www.census.gov/quickfacts/fact/table/richmondcityvirginia,norfolkcityvirginia/PST045219>.

17. The deadline for correcting ballots is noon on the third day after the election, November 6, 2020. Voters who do not cure by this date are disenfranchised.

18. Aside from normal logistical issues, given the expected voter turnout, especially by voters who decide to mail their ballots in to be counted, there is no guarantee that a voter will actually receive notice from the General Registrar regarding the rejection of his or her ballot before that deadline. Likewise, in my experience as someone who has worked directly with voters for years through my work with the Democratic Party of Virginia, many voters often need multiple contact attempts before they can be informed that their ballots require follow-up action to be counted.

19. Immediate access to the up-to-date and accurate information that I requested is necessary so that absentee voters can be contacted and informed that the General Registrar has found a material error or omission with their returned materials, and provided with information about how to timely cure their materials to make sure their votes are counted.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 26th day of October, 2020.



\_\_\_\_\_  
Susan Swecker

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2020.

See attached Notarize.com certificate

Notarized online using audio-video communication

\_\_\_\_\_  
Notary Public

My Commission Expires:



# Exhibit 1.A



Brenner Tobe &lt;brenner.tobe@vademocrats.org&gt;

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## Request Under VA Freedom of Information Act

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**Chairwoman Swecker** <chair@vademocrats.org>

Fri, Oct 9, 2020 at 9:00 AM

To: VoterRegistration@richmondgov.com

Dear Richmond City Registrar,

This email transmits a request under the Virginia Freedom of Information Act, Va. Code Ann. §2.2-3704 et seq., for electronic copies of any documents prepared by your registrar office, listing absentee voters whose ballots you have determined to be invalid because of material errors or omissions on their submitted ballot materials (e.g., Envelope B). The formal request is provided as a letter attachment to this email. This request is only for the names and 9 digit Voter Identification Number of such voters and the nature of the corresponding material error or omission; all other identifying information may be redacted. Based on our conversations with the Virginia Department of Elections, this requested information constitutes a public record that does not fall within any of the exceptions to disclosure. We request the return of this information within five business days of the date of this email.

We are submitting this request after conversations with the Virginia Department of Elections. However, it is our hope that we can work with your office to find a streamlined way to collect this information on a weekly basis, in lieu of submitting weekly requests under the Virginia Freedom of Information Act. We are available to discuss this request in further detail at your earliest convenience.

Susan Swecker  
Chair, Democratic Party of Virginia

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98K



October 8, 2020

Dear Registrar:

I write pursuant to the Virginia Freedom of Information Act (the “Statute”), Va. Code Ann. § 2.2-3704 *et seq.*, to request public records in the possession, custody, or control of your office, as detailed below:

Any documents, records, or lists of absentee voters who have returned absentee vote-by-mail material (*e.g.*, Envelope B and Return Letters) found to be invalid due to material errors or omissions.<sup>1</sup> Please provide the name of the absentee voter, their 9 Digit Voter Identification Number (State Voter File ID Number), as well as the nature of the material error or omission associated with that voter. Other identifying information on the list (*e.g.*, voter address, date of birth, social security number, or other information) can be redacted or omitted.

As required by the Statute, I certify that I am a citizen of Virginia, and reside at [REDACTED]. See Va. Code Ann. § 2.2-3704(A).

Also as required by the Statute, I am prepared to reimburse any costs associated with this FOIA request, as outlined by the Statute, up to and including \$500.00. See Va. Code Ann. § 2.2-3704(G). Should the cost exceed that amount, I ask that you provide an estimate in advance. *Id.* See *id.* (“Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, . . . delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business.”). Alternatively, I request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in your possession, and that the records be provided in separate, Bates-stamped files.

As you know, the Statute requires a response to this request be made within five business days. See Va. Code Ann. § 2.2-3704(B). If access to the requested records will take longer than five days, please contact me with information about when I might expect copies or the ability to inspect the requested records. To the extent documents responsive to this request require longer than five days to locate and produce, we request that you make rolling productions of responsive documents as they are located. If, for any reason, you deny this request or withhold certain information, I ask that you (i) provide a list of the denied or withheld materials and (ii) justify

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<sup>1</sup> Material errors or omissions are set forth in § 24.2-707 of the Code of Virginia and in 1VAC20-70-20 of the Administrative Code of Virginia. On September 4, 2020, the General Assembly passed and the Governor signed into law additional code sections to clarify that the lack of a witness signature is not a material omission. See Chapter 1289 of the Acts of Assembly of 2020 [S. 5120].



these deletions and/or withholdings by referencing a specific Code section; and (iii) produce any reasonably segregable portions of the documents which are not exempt. *See* Va. Code Ann. § 2.2-3704(B); § 2.2-3704.01. I reserve the right to appeal a decision to withhold any information.

Please do not hesitate to contact me if there is any additional information I can provide to facilitate processing this request. Thank you for your prompt attention to this matter.

Very truly yours,

A handwritten signature in black ink that reads "Susan R. Swecker". The signature is written in a cursive, flowing style.

Susan Swecker  
Chairwoman, Democratic Party of Virginia

# Exhibit 1.B



Brenner Tobe <brenner.tobe@vademocrats.org>

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## RE: Request Under VA Freedom of Information Act

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**Showalter, Kirk - General Registrar** <Kirk.Showalter@richmondgov.com>  
To: Chairwoman Swecker <chair@vademocrats.org>

Fri, Oct 16, 2020 at 11:15 AM

Dear Ms. Swecker:

My apologies for not replying to your request sooner.

We have no documents which meet this request.

J. Kirk Showalter  
General Registrar  
City of Richmond  
(804) 646-5950  
CERA, VREO

"Thou canst not stir a flower without troubling of a star" Francis Thompson, 1897

---

**From:** Chairwoman Swecker [mailto:[chair@vademocrats.org](mailto:chair@vademocrats.org)]  
**Sent:** Friday, October 9, 2020 9:00 AM  
**To:** Voter Registration <[VoterRegistration@richmondgov.com](mailto:VoterRegistration@richmondgov.com)>  
**Subject:** Request Under VA Freedom of Information Act

**CAUTION:** This message is from an external sender - Do not open attachments or click links unless you recognize the sender's address and know the content is safe.

Dear Richmond City Registrar,

This email transmits a request under the Virginia Freedom of Information Act, Va. Code Ann. §2.2-3704 et seq., for electronic copies of any documents prepared by your registrar office, listing absentee voters whose ballots you have determined to be invalid because of material errors or omissions on their submitted ballot materials (e.g., Envelope B). The formal request is provided as a letter attachment to this email. This request is only for the names and 9 digit Voter Identification Number of such voters and the nature of the corresponding material error or omission; all other identifying information may be redacted. Based on our conversations with the Virginia Department of Elections, this requested information constitutes a public record that does not fall within any of the exceptions to disclosure. We request the return of this information within five business days of the date of this email.

We are submitting this request after conversations with the Virginia Department of Elections. However, it is our hope that we can work with your office to find a streamlined way to collect this information on a weekly basis, in lieu of submitting weekly requests under the Virginia Freedom of Information Act. We are available to discuss this request in further detail at your earliest convenience.

Susan Swecker  
Chair, Democratic Party of Virginia

# Exhibit 1.C

**From:** [Berkon, Jonathan \(WDC\)](#)  
**To:** [VoterRegistration@richmondgov.com](#); [nachmanlaw@msn.com](#); [lovva13@aol.com](#)  
**Cc:** [chris.piper@elections.virginia.gov](#); [jessica.bowman@elections.virginia.gov](#); [robert.brink@elections.virginia.gov](#); [john.obannon@elections.virginia.gov](#); [jamilah.lecruise@elections.virginia.gov](#)  
**Subject:** Open Records Request: List of Deficient Mail Ballots  
**Date:** Wednesday, October 21, 2020 10:32:00 AM  
**Attachments:** [2020.10.21 Showalter Follow-Up Public Records Request \(Final\).pdf](#)  
**Importance:** High

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Please see attached. We need these records immediately. Otherwise, voters will be disenfranchised. Please let us know no later than **5 pm today**.

**Jonathan Berkon | Perkins Coie LLP**

**PARTNER**  
700 Thirteenth Street, N.W. Suite 800  
Washington, DC 20005-3960  
D. +1.202.434.1669  
F. +1.202.654.9684  
E. [JBerkon@perkinscoie.com](mailto:JBerkon@perkinscoie.com)

Visit our Covid-19 resource page: [www.perkinscoie.com/coronavirus](http://www.perkinscoie.com/coronavirus)

October 21, 2020

Jonathan S. Berkon  
JBerkon@perkinscoie.com  
D. +1.202.434.1669  
F. +1.202.654.9684

**VIA E-MAIL**

J. Kirk Showalter  
Office of the General Registrar  
City of Richmond  
2134 West Laburnum Avenue  
Richmond, Virginia 23227

**Re: Follow-Up Public Records Request Pursuant to Va. Code Ann. § 2.2-3704**

Our firm is counsel to the Democratic Party of Virginia. We are writing regarding the public records request that you received from Susan Swecker, Chairwoman of the Democratic Party of Virginia, dated October 8, 2020 that included a request for records pursuant to the Virginia Freedom of Information Act. To date, we have not received a response to our request. Further, representatives from your office have informed callers seeking to obtain information about opportunities to cure ballot deficiencies that your office is too busy to provide that information. Your office cannot continue to abdicate its obligation to provide the public records requested.

Virginia law requires your office to respond within five business days of receiving a records request,<sup>1</sup> which your office has failed to do. As such, we request that you send the information requested in the previous records request by Wednesday, October 21, 2020 at 5:00 PM. If we do not receive a response from you by that time, we will consider all available legal options to obtain the records to which we are entitled by law.

As included in the letter dated October 8, 2020, we request that you provide any documents, records, or lists of absentee voters who have returned absentee vote-by-mail material (*e.g.*, Envelope B and Return Letters) found to be invalid due to material errors or omissions.<sup>2</sup> Please provide the name of the absentee voter, their 9 Digit Voter Identification Number (State Voter File ID Number), as well as the nature of the material error or omission associated with that voter. Other identifying information on the list (*e.g.*, voter address, date of birth, Social Security number, or other information) can be redacted or omitted.

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<sup>1</sup> See Va. Code Ann. § 2.2-3704(B).

<sup>2</sup> Material errors or omissions are set forth in Va. Code Ann. § 24.2-707 and in 1 Va. Admin. Code § 20-70-20. On September 4, 2020, the General Assembly passed and the Governor signed into law additional code sections to clarify that the lack of a witness signature is not a material omission. See Chapter 1289 of the Acts of Assembly of 2020 [S. 5120].

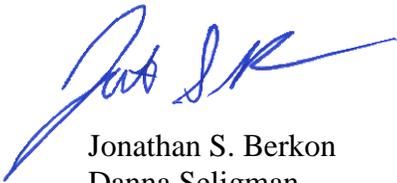
J. Kirk Showalter  
October 21, 2020  
Page 2

If the requested records will not be accessible by Wednesday, October 21, 2020, please contact me immediately with the earliest date by which we can expect copies or the ability to inspect the records. Please make rolling productions of responsive documents as they are located.

As previously requested, if, for any reason, you deny this request or withhold certain information, you must (i) provide a list of the denied or withheld materials and (ii) justify these deletions and/or withholdings by referencing a specific Code section; and (iii) produce any reasonably segregable portions of the documents which are not exempt.<sup>3</sup> We reserve the right to appeal a decision to withhold any information.

If you have any further questions or would like to discuss this, please contact us at (202) 434-1669.

Yours very truly,



Jonathan S. Berkon  
Danna Seligman  
Counsel to the Democratic Party of Virginia

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<sup>3</sup> See Va. Code Ann. §§ 2.2-3704(B), 2.2-3704.01.

# Exhibit 1.D



	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	
	Name of Voter	Address of Voter			Date Recd	Phone or Email	Discrepancy	Date Contacted	Name of Person who contacted the voter	Phone summary or Comments	Resolve date							
1	Anderson James				10/5/2020		B Incomp returned Env											
2	Atkins Tyrone				10/9/2020	Phone	A& request for AB Ballot	10/12/2020	JMcKee	Wants to vote in person	10/12/2020							
3	Bowman Erelene				10/9/2020	Mail	Needs signature	10/12/2020	JMcKee									
4	Brown Joyce				10/3/2020		B Incomp Needs											
5	Campbell Josephine				10/9/2020	Mail	signature	10/12/2020	JMcKee									
6	Clayton James				10/5/2020													
7	Colwell Mary Jean				9/30/2020		No Env B AB app in Return env no ballot											
8	Feggins Kiarra				10/9/2020			10/12/2020	JMcKee	Received request for AB Ballot in your return ballot envelope please call.								
9	Freeman Mary				10/15/20		No Env B		JMcKee	Fill B and returned	10/12/2020							
10	Jackson Irvin				10/09/2020	Mail	Needs signature	10/12/2020	JMcKee									
11	Johnson Ernesther				10/1/2020	no	B Incomp											
12	Johnson Jackie				10/3/2020		No Env B											
13	Jones Anita				10/3/2020	no	No Env B											
14	Poag Skarsheem				10/5/2020													
15	Stewart Annemarie				9/29/2020		No Env B											
16	Swan Brian				10/2/2020		No Env B											
17	Taylor Zakiya				10/5/2020	no	No Env B											
18	Thompson Morris				9/29/2020		No Env B											
19	Travers Nathaniel				9/30/2020	no	No Env B											
20	Tucker Katherine				10/5/2020		B Incomp											
21	Vaughn Carol				9/29/2020		No Env B											
22	Welton Martha				10/1/2020		No Env B											
23	Winkler Jessica				10/5/2020													
24	Winn Fred				9/29/2020	no	No Env B											
25	Winston Anthony				10/2/2020	no	No Env B											
26	Fitzpatrick Susan						Signature	10/15/202	JMcKee	Letter of Aff sent								
27																		
28																		

J. Kirk Showalter  
 General Registrar  
 City of Richmond  
 (804) 646-5950  
 CERA, VREO

"Thou canst not stir a flower without troubling of a star" Francis Thompson, 1897

**From:** Berkon, Jonathan (Perkins Coie) [mailto:JBerkon@perkinscoie.com]  
**Sent:** Wednesday, October 21, 2020 10:32 AM  
**To:** Voter Registration <VoterRegistration@richmondgov.com>; nachmanlaw@msn.com; lowva13@aol.com  
**Cc:** chris.piper@elections.virginia.gov; jessica.bowman@elections.virginia.gov; robert.brink@elections.virginia.gov; john.obannon@elections.virginia.gov; jamilah.lecruise@elections.virginia.gov  
**Subject:** Open Records Request: List of Deficient Mail Ballots  
**Importance:** High

**CAUTION:** This message is from an external sender - Do not open attachments or click links unless you recognize the sender's address and know the content is safe.

Please see attached. We need these records immediately. Otherwise, voters will be disenfranchised. Please let us know no later than **5 pm today**.

**Jonathan Berkon | Perkins Coie LLP**  
 PARTNER  
 700 Thirteenth Street, N.W., Suite 800  
 Washington, DC 20005-3960  
 D - +1.202.434.1669  
 F - +1.202.654.9694  
 E - JBerkon@perkinscoie.com

Visit our Covid-19 resource page: [www.perkinscoie.com/coronavirus](http://www.perkinscoie.com/coronavirus)

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# Exhibit 1.E



However, it has since come to my attention that a staff member was starting to maintain this same log elsewhere. Below is a screenshot of the existing contents. Please be advised that these contents are not current and do not reflect in any way the activity that we have had with the few deficient ballots that we are monitoring. We daily review incoming ballots for deficiencies and quickly reach out to the voters by the quickest means of communication that we have available to us with them. As such, our process would in no way disenfranchise any voter.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
	Name of Voter	Address of Voter		Date Recd	Phone or Email	Discrepancy	Date Contacted	Name of Person who contacted the voter	Phone summary or Comments	Resolve date							
1	Anderson James			10/5/2020		B Incomp											
2	Atkins Tyrone			10/9/2020	Phone	returned Env A& request for AB Ballot	10/12/2020	JMcKee	Wants to vote in person	10/12/2020							
3	Bowman Ereline			10/9/2020	Mail	Needs signature	10/12/2020	JMcKee									
4	Brown Joyce			10/3/2020		B Incomp											
5	Campbell Josephine			10/9/2020	Mail	Needs signature	10/12/2020	JMcKee									
6	Clayton James			10/5/2020													
7	Colwell Mary Jean			9/30/2020		No Env B											
8	Feggins Kiarra			10/9/2020		AB app in Return env no ballot	10/12/2020	JMcKee	Received request for AB Ballot in your return ballot envelope please call.								
9	Freeman Mary			10/15/20		No Env B		JMcKee	Fill B and returned	10/12/2020							
10	Jackson Irvin			10/09/2020	Mail	Needs signature	10/12/2020	JMcKee									
11	Johnson Ernesther			10/1/2020	no	B Incomp											
12	Johnson Jackie			10/3/2020		No Env B											
13	Jones Anita			10/3/2020	no	No Env B											
14	Poag Skarsheem			10/5/2020													
15	Stewart Annemarie			9/29/2020		No Env B											
16	Swan Brian			10/2/2020		No Env B											
17	Taylor Zakiya			10/5/2020	no	No Env B											
18	Thompson Morris			9/29/2020		No Env B											
19	Travers Nathaniel			9/30/2020	no	No Env B											
20	Tucker Katherine			10/5/2020		B Incomp											
21	Vaughn Carol			9/29/2020		No Env B											
22	Welton Martha			10/1/2020		No Env B											
23	Winkler Jessica			10/5/2020		No Env B											
24	Winn Fred			9/29/2020	no	No Env B											
25	Winston Anthony			10/2/2020	no	No Env B											
26	Fitzpatrick Susan					Signature	10/15/202	JMcKee	Letter of Aff sent								
27																	
28																	

J. Kirk Showalter  
 General Registrar  
 City of Richmond  
 (804) 646-5950  
 CERA, VREO

"Thou canst not stir a flower without troubling of a star" Francis Thompson, 1897

**From:** Berkon, Jonathan (Perkins Coie) [<mailto:JBerkon@perkinscoie.com>]  
**Sent:** Wednesday, October 21, 2020 10:32 AM  
**To:** Voter Registration <[VoterRegistration@richmondgov.com](mailto:VoterRegistration@richmondgov.com)>; [nachmanlaw@msn.com](mailto:nachmanlaw@msn.com); [lowva13@aol.com](mailto:lowva13@aol.com)  
**Cc:** [chris.piper@elections.virginia.gov](mailto:chris.piper@elections.virginia.gov); [jessica.bowman@elections.virginia.gov](mailto:jessica.bowman@elections.virginia.gov); [robert.brink@elections.virginia.gov](mailto:robert.brink@elections.virginia.gov); [john.obannon@elections.virginia.gov](mailto:john.obannon@elections.virginia.gov); [jamilah.lecruise@elections.virginia.gov](mailto:jamilah.lecruise@elections.virginia.gov)  
**Subject:** Open Records Request: List of Deficient Mail Ballots  
**Importance:** High

**CAUTION:** This message is from an external sender - Do not open attachments or click links unless you recognize the sender's address and know the content is safe.

Please see attached. We need these records immediately. Otherwise, voters will be disenfranchised. Please let us know no later than **5 pm today**.

**Jonathan Berkon | Perkins Coie LLP**  
 PARTNER  
 700 Thirteenth Street, N.W., Suite 800  
 Washington, DC 20005-3960  
 D: +1 202 434 1669  
 F: +1 202 654 3684  
 E: [JBerkon@perkinscoie.com](mailto:JBerkon@perkinscoie.com)

Visit our Covid-19 resource page: [www.perkinscoie.com/coronavirus](http://www.perkinscoie.com/coronavirus)

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# Exhibit 1.F

**From:** Showalter, Kirk - General Registrar  
**To:** Berkon, Jonathan (WDC); Voter Registration; nachmanlaw@msn.com; lovva13@aol.com  
**Cc:** chris.piper@elections.virginia.gov; jessica.bowman@elections.virginia.gov; robert.brink@elections.virginia.gov; john.obannon@elections.virginia.gov; jamiyah.lecruise@elections.virginia.gov; Jim Nachman; Cheryllyn Stevens; Joyce Smith (gdzdiva1@gmail.com)  
**Subject:** RE: Open Records Request: List of Deficient Mail Ballots  
**Date:** Wednesday, October 21, 2020 7:29:46 PM  
**Attachments:** image001.png  
image002.png  
image003.png

What we have is attached below by screenshot.

J. Kirk Showalter  
General Registrar  
City of Richmond  
(804) 646-5950  
CERA, VREO

"Thou canst not stir a flower without troubling of a star" Francis Thompson, 1897

**From:** Berkon, Jonathan (Perkins Coie) [mailto:JBerkon@perkinscoie.com]  
**Sent:** Wednesday, October 21, 2020 5:25 PM  
**To:** Showalter, Kirk - General Registrar <Kirk.Showalter@Richmondgov.com>; Voter Registration <VoterRegistration@richmondgov.com>; nachmanlaw@msn.com; lovva13@aol.com  
**Cc:** chris.piper@elections.virginia.gov; jessica.bowman@elections.virginia.gov; robert.brink@elections.virginia.gov; john.obannon@elections.virginia.gov; jamiyah.lecruise@elections.virginia.gov; Jim Nachman <Nachmanlaw@msn.com>; Cheryllyn Stevens <lovva13@aol.com>; Joyce Smith (gdzdiva1@gmail.com) <gdzdiva1@gmail.com>  
**Subject:** RE: Open Records Request: List of Deficient Mail Ballots

**CAUTION:** This message is from an external sender - Do not open attachments or click links unless you recognize the sender's address and know the content is safe.

Thank you. I understand that Chair Nachman – who is copied – has assured my client that there are responsive records. Please clarify.

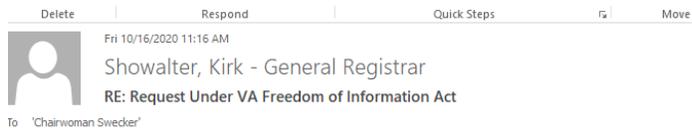
**Jonathan Berkon | Perkins Coie LLP**  
PARTNER  
700 Thirteenth Street, N.W., Suite 800  
Washington, DC 20005-3960  
D: +1.202.434.1669  
F: +1.202.654.9684  
E: JBerkon@perkinscoie.com

Visit our Covid-19 resource page: [www.perkinscoie.com/coronavirus](http://www.perkinscoie.com/coronavirus)

**From:** Showalter, Kirk - General Registrar <Kirk.Showalter@Richmondgov.com>  
**Sent:** Wednesday, October 21, 2020 5:05 PM  
**To:** Berkon, Jonathan (WDC) <JBerkon@perkinscoie.com>; Voter Registration <VoterRegistration@richmondgov.com>; nachmanlaw@msn.com; lovva13@aol.com  
**Cc:** chris.piper@elections.virginia.gov; jessica.bowman@elections.virginia.gov; robert.brink@elections.virginia.gov; john.obannon@elections.virginia.gov; jamiyah.lecruise@elections.virginia.gov; Jim Nachman <Nachmanlaw@msn.com>; Cheryllyn Stevens <lovva13@aol.com>; Joyce Smith (gdzdiva1@gmail.com) <gdzdiva1@gmail.com>  
**Subject:** RE: Open Records Request: List of Deficient Mail Ballots

Dear Mr. Berkon:

Please be advised that I responded to Ms. Swecker's email on Friday, October 16 at 11:16 AM. See screenshot below.



Dear Ms. Swecker:

My apologies for not replying to your request sooner.

We have no documents which meet this request.

J. Kirk Showalter  
General Registrar  
City of Richmond  
(804) 646-5950  
CERA, VREO

"Thou canst not stir a flower without troubling of a star" Francis Thompson, 1897

**From:** Chairwoman Swecker [mailto:chair@vademocrats.org]  
**Sent:** Friday, October 9, 2020 9:00 AM  
**To:** Voter Registration <VoterRegistration@richmondgov.com>  
**Subject:** Request Under VA Freedom of Information Act

My reply was based on the fact that the only log of which I knew at the time was unpopulated. See the screenshot below.



**Subject:** Open Records Request: List of Deficient Mail Ballots  
**Importance:** High

**CAUTION:** This message is from an external sender - Do not open attachments or click links unless you recognize the sender's address and know the content is safe.

Please see attached. We need these records immediately. Otherwise, voters will be disenfranchised. Please let us know no later than **5 pm today**.

**Jonathan Berkon | Perkins Coie LLP**

PARTNER  
700 Thirteenth Street, N.W., Suite 800  
Washington, DC 20005-3960  
D: +1.202.434.1669  
F: +1.202.654.9694  
E: [JBerkon@perkinscoie.com](mailto:JBerkon@perkinscoie.com)

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