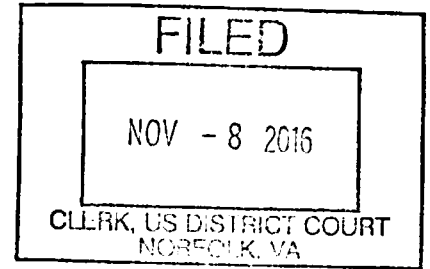


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



THEODORE PACE,
A Prospective Voter in the
Commonwealth of Virginia,

Petitioner,

v.

CIVIL ACTION NO. 2:16cv654

DONNA PATTERSON,
General Registrar for the
City of Virginia Beach,

Respondent.

ORDER

This matter comes before the court on the Petition filed today, November 8, 2016, at 1:27 P.M., on behalf of the Petitioner, Theodore Pace, by counsel, seeking an order directing the General Registrar of the City of Virginia Beach, Virginia, to provide an emergency absentee ballot to the Petitioner for voting in today's election. The Petition was filed subject to defect for failure to serve the United States Attorney for the Eastern District of Virginia. The defect was corrected by service on the United States Attorney pursuant to a filing with this court at 2:17 P.M. this same day.

Counsel represents that yesterday at 2:00 P.M., the Petitioner was physically incapacitated and restrained by cardiac monitoring and intravenous pharmacological support in

the critical care ward of the Sentara Norfolk General Heart Hospital, and thus was unable to request an emergency absentee ballot application and complete and return it by the deadline set forth in Va. Code § 24.2-705. Counsel further represents that the Petitioner remains hospitalized and is unable to vote at his polling location today.

Before proceeding further on the Petition, the court requires three authenticated verifications from counsel. First, counsel must submit verification from the Petitioner's attending physician that the Petitioner was unable timely to request an emergency ballot application, and to complete and return the ballot, by the deadline established under Virginia law, due to his medical condition. Second, counsel must also submit verification from the attending physician that the Petitioner is mentally and physically capable of voting today. Third, the court requires verification from the Petitioner that counsel is authorized to receive and submit an absentee ballot on the Petitioner's behalf. Submission to the court of the Emergency Absentee Ballot Application, attached hereto as Exhibit A, will satisfy these requirements.

/s/
-208- Rebecca Beach Smith
Chief Judge
REBECCA BEACH SMITH
CHIEF JUDGE

4:03 p.m.
November 8, 2016

COMMONWEALTH OF VIRGINIA

EMERGENCY ABSENTEE BALLOT APPLICATION**Hospitalized or Otherwise Incapacitated Voter****§§ 24.2-701 and 24.2-705, Code of Virginia****APPLICATION MUST BE REQUESTED BY 2:00 PM ON THE DAY PRIOR TO ELECTION, AND COMPLETED FORM MUST BE TURNED IN BY 5:00 PM ON THE DAY PRIOR TO THE ELECTION.**

I am registered to vote in the County/City of: _____

I am applying to vote in the: ☐ General or Special Election ☐ Democratic Primary ☐ Republican Primary
to be held on (DATE) _____.☒ I WILL NEED ASSISTANCE IN MARKING MY BALLOT due a disability, blindness, or inability to read or write (or need the ballot translated into another language). If you check this box, you will receive the form required by law.**FOR COMPLETE INSTRUCTIONS AND DEADLINES SEE REVERSE SIDE****PART I ABSENTEE VOTER'S STATEMENT -- I am unable to be present at the polls on election day because:**

(CHECK ONLY ONE REASON IN EITHER ITEM 1 OR ITEM 2 AND ENTER THE REQUIRED INFORMATION TO SUPPORT THE REASON.)

1. I was:

- a. ☐ hospitalized on or after the 7th day before the upcoming election and am still in the hospital; or
- b. ☐ hospitalized on or after the 14th day before the upcoming election in a condition that made me unable to request an absentee ballot earlier than the 7th day before the election, and I am still in the hospital.

2. I became incapacitated on or after the 7th day before the upcoming election because I am:

- a. ☐ confined to my residence by the following illness: _____; or
- b. ☐ bereaved by the death of my spouse, child or parent; or
- c. ☐ incapacitated by the following emergency: _____

I hereby designate the individual named below as my representative to receive my absentee ballot, deliver it to me, and return it. This person is at least 18 years old and is not an elected official nor a candidate for elected office nor the deputy, spouse, parent or child of an elected official or candidate. [The Registrar will give this person a separate form that must be completed and returned along with your voted ballot.]

NAME OF DESIGNATED REPRESENTATIVE: _____

I declare under felony penalty of law, that, to the best of my knowledge, the facts contained in this application are true and correct, and that I have not and will not vote in this election at any other time or place in Virginia or in any other state.

Full Name of Absentee Voter _____

Legal Virginia Residence Address _____

City/Town _____

Zip _____

Social Security Number [Last 4 digits required] _____

Area Code _____

Daytime Phone _____

Signature of Applicant _____

Date _____

DESIGNATED REPRESENTATIVE must witness voter's signature and complete information below.

(If voter cannot sign or write, print "Applicant Unable to Sign" on signature line. Box at top of form must also be checked indicating that voter will need assistance in marking the ballot.)

Full Name of Designated Representative _____

Residence Address of Designated Representative _____

City/Town _____

Zip _____

Signature of Designated Representative (as Witness) _____

PART II CERTIFICATE OF PERSON AUTHORIZED TO CERTIFY HOSPITALIZATION OR REASON FOR INCAPACITY

I, [PRINT NAME] _____, do hereby certify that the above named applicant is unable to be present at the polls on election day because the applicant: (CHECK ONE REASON, SIGN AND INDICATE YOUR POSITION)

☒ was hospitalized and is still hospitalized as stated in Part I, Item 1.

SIGN: _____

AND CHECK ONE: ☐ HOSPITAL ADMINISTRATIVE OFFICIAL
☐ LICENSED PHYSICIAN
☐ PROVIDER LICENSED BY DMKMRSAS☐ is confined to his/her residence due to illness as stated in Part I, Item 2a.

SIGN: _____

AND CHECK ONE: ☐ LICENSED PHYSICIAN
☐ PROVIDER LICENSED BY DBHDS
☐ ACCREDITED RELIGIOUS PRACTITIONER☐ is bereaved as stated in Part I, Item 2b.

SIGN: _____

AND CHECK ONE: ☐ LICENSED PHYSICIAN
☐ FUNERAL SERVICE LICENSEE
☐ ACCREDITED RELIGIOUS PRACTITIONER☐ is otherwise incapacitated, and the Electoral Board has determined that the emergency stated in Part I, Item 2c justifies the provision of an emergency ballot application to this applicant.

SIGN: _____

ELECTORAL BOARD SECRETARY

WARNING: INTENTIONALLY MAKING A MATERIALLY FALSE STATEMENT ON THIS FORM CONSTITUTES THE CRIME OF ELECTION FRAUD, WHICH IS PUNISHABLE UNDER VIRGINIA LAW AS A FELONY. VIOLATORS MAY BE SENTENCED TO UP TO 10 YEARS IN PRISON, OR UP TO 12 MONTHS IN JAIL AND/OR FINED UP TO \$2,500. YOU ALSO LOSE YOUR RIGHT TO VOTE.**Privacy Act Notice:** This form requires the last four digits of your social security number for identification and to prevent fraud. Your application will be denied if you fail to provide this or any other information necessary to determine your qualification to vote. Federal law (the Privacy Act and Help America Vote Act) and state law (the Virginia Constitution, Article II, § 2, Title 24.2 of the Code of Virginia and the Government Data Collection and Dissemination Practices Act) authorize collecting this information and restrict its use to official purposes only.

SBE-705(1) REV 7/13

EMERGENCY ABSENTEE BALLOT APPLICATION - INSTRUCTIONS

You may use this form only if you are now in the hospital or otherwise incapacitated and on or after the 7th day before the election you:

- Were hospitalized; or
- Became ill and confined to your residence; or
- Were bereaved by the death of a spouse, child, or parent; or
- Were otherwise incapacitated by an emergency found by your county or city electoral board to justify providing an emergency ballot application.

You may also use this form if you were hospitalized on or after the 14th day before the election in a condition that made you unable to request an absentee ballot earlier than the 7th day before the election (and you are still in the hospital).

| | |
|-----------------|--|
| PART I. | ABSENTEE VOTER'S STATEMENT <ul style="list-style-type: none"> • Check only one box in PART I (either in Item 1 or Item 2) and enter information required. • Enter name of your designated representative. • Read the oath ("I declare...") and print your full name, residence address, social security number (last four digits required) and a daytime phone number where you can <u>currently</u> be reached. • Sign and date. <u>If you cannot sign or write</u>, your designated representative must enter "applicant cannot sign" on the signature line. <u>The box at top of form indicating that you will need assistance in marking your ballot must also be checked.</u> • Your designated representative must see you sign the form, print his/her name and address and sign as witness. |
| PART II. | CERTIFICATION <ul style="list-style-type: none"> • Person authorized to certify your hospitalization or incapacity must complete this part. (Only the persons listed below the signature line are authorized to certify that reason.) • Person certifying must check the <u>box corresponding to the reason you have stated in Part I</u>, • Sign on the line provided and • Check the box indicating his or her title/position. |

DEADLINES

- You or your representative must request this application from your local voter registration office **before 2:00 PM on the day before the election**. It must be delivered to you by the person you designate as your representative. [The request for the application may be by phone or other means, and the registrar may fax the application to your representative, upon request.]
- Your representative must personally return this completed application to the general registrar's office **no later than 5:00 p.m. on the day before the election**, deliver your ballot to you, and return it to the electoral board according to the instructions provided with the ballot. **Your voted ballot must be received before the time the polls close (7:00 PM on election day) or it cannot be counted.**
- Your representative will also receive a form with the ballot that he/she must complete and sign stating that the instructions for the representative were followed. This form must be returned with your voted ballot, following the instructions provided with the ballot.
- If the box was checked on this application indicating that you would need assistance in marking your ballot, a separate assistance form will also be given your representative with your ballot. The person who helps you mark the ballot must complete this form, and it also must be returned with your voted ballot following the instructions.

DEFINITIONS – For purposes of this absentee application:

"Accredited religious practitioner" is a person trained in spiritual healing or other healing arts and accredited by a formal religious order. The signature of a minister who is not so trained and accredited (ordained or otherwise) is not acceptable. [§ 24.2-705, Code of Virginia]

"Funeral service licensee" is a person licensed in the practice of funeral services. [§ 54.1-2800, Code of Virginia]

"Hospital" is a facility licensed in which the primary function is the provision of diagnosis, of treatment, and of medical and nursing services, surgical and non surgical, for two or more nonrelated individuals, including hospitals known by various nomenclature or designation such as sanitariums, and general, acute, rehabilitation, chronic disease, short-term, long term, outpatient surgical, and inpatient or outpatient maternity hospitals. For purposes of this application, the facility must be located in Virginia, the District of Columbia or a contiguous state. [§ 32.1-123, 37.2-100 and 24.2-705, Code of Virginia]

"Provider licensed by DBHDS" (Department of Behavioral Health and Developmental Services) is a person, entity, or organization (excluding an agency of the federal government) that delivers services to persons with mental illness, intellectual disability, or substance abuse, services to persons who receive day support, in-home support, or crisis stabilization services funded through the Individual and Families Developmental Disabilities Support Waiver, , or residential services for persons with brain injury. "Provider" includes a hospital, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. The signature of the person who is a licensed provider or a representative of the licensed entity or organization is acceptable. [§ 37.2-403, Code of Virginia]