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Mr. Paul Ziriaux
Secretary, Oklahoma State Election Board
P. O. Box 53156, Oklahoma City, Oklahoma 73152
Paul.Ziriaux@elections.ok.gov

Re: Absentee Ballots

Dear Mr. Ziriaux,

We write to respectfully request that, when preparing absentee ballot materials for the upcoming 2020 elections, you include materials making clear that voters who wish to vote by absentee ballot may do so *either* by submitting a notarized ballot affidavit *or* by personally making a signed statement under penalty of perjury, pursuant to 12 O.S. § 426.

As you are aware, Oklahoma is currently in the midst of a global pandemic. The Governor has issued a state of emergency and “safer at home” order; numerous mayors across the state have issued “shelter in place” orders; and the CDC and other organizations have strongly advised individuals to halt public gatherings and limit their contact with other individuals as much as possible to avoid the spread of the novel coronavirus, 2019-nCoV. The need to limit exposure to this highly contagious virus is expected to continue for many months, and potentially until a vaccine can be produced and widely distributed. As a result, we believe that—as occurred recently in other states—an unprecedented number of Oklahoma voters will seek to vote by absentee ballot.

Unfortunately, the absentee ballot forms and directions used in prior elections suggest to voters that their ballot must include an affidavit signed in the presence of and verified by a notary public. If this were true, such a requirement would place a *substantial* burden on voters during a pandemic—not only would they face the burden of locating an eligible notary at a time when many businesses have closed their doors to the public, but they would also be forced to increase their risk of exposure by leaving their home, travelling to a notary, interacting with that notary face to face, and transferring documents between them. It would also place an unnecessary burden on notaries, who must perform such services without charge, and on our public health system, which would be forced to handle the aftermath in the event there is unnecessary spread of the virus.

Fortunately, Oklahoma law does not require that an absentee ballot be accompanied by an affidavit subscribed and sworn before a notary public, so long as the voter personally avers that the statement is signed under “penalty of perjury.”

Title 26, Section 14-107 requires absentee ballots to be accompanied by “an affidavit stating that the voter is qualified to vote and that the voter has personally marked the ballots, and has not exhibited the marked ballots to any other person.” Section 14-108 provides, among other things, that an absentee voter shall “fill out completely and sign the affidavit,” and also provides for the voter’s affidavit “to be notarized at no charge by a notary public.” But notarization by a notary public, whether or not there is a fee, is not the only way to verify a statement such that it constitutes a legally binding assertion under Oklahoma law. Under a statute enacted by the Legislature in 2002:

Whenever, under any law of Oklahoma or under any rule, order, or requirement made pursuant to the law of Oklahoma, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same (other than a deposition, or any oath of office, or an oath required to be taken before a specified official other than a notary public), the matter may with like force and effect be supported, evidenced, established, or proved by the unsworn statement in writing of the person made and signed under penalty of perjury setting forth the date and place of execution and that it is made under the laws of Oklahoma. The statement under penalty of perjury may be substantially in the following form:

"I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

(Date and Place)

(Signature)"

The signed statement under penalty of perjury shall constitute a legally binding assertion that the contents of the statement to which it refers are true. This section shall not affect any requirement for acknowledgment of an instrument affecting real property.

12 O.S. § 426 (emphasis added).

The Election Board has, in past elections, provided absentee voters with an affidavit form that requires the voter to swear that he or she is “qualified to vote in the election ... for which ballots are enclosed; I have marked these ballots myself; and I have not shown these marked ballots to any other person.” This form affidavit also includes a form verification statement for a notary public to aver that the voter’s affidavit was “subscribed and sworn before me on this date.” Ex. A. This form facilitates notarization of the voter’s affidavit by a notary public. It also, however, suggests to the voter that the statement *must* be notarized for the vote to be counted. Under 12 O.S. § 426, however, this is incorrect.

If the forms and directions provided by the Secretary do not adequately notify voters that a signed statement made under penalty of perjury is sufficient to satisfy the statutory affidavit requirement, many voters who wish to vote by mail in upcoming elections will be left under the mistaken impression they cannot do so without obtaining the signature and seal of a notary public—potentially causing them to make an unnecessary trip and unnecessary contacts, or preventing them from voting at all. This is not the law. We thus respectfully request that, for the upcoming 2020 elections, the Election Board notify voters of the § 426 procedure, and also provide voters with a form “penalty of perjury” statement, facilitating their compliance with that provision. A proposed form is attached. Ex. B.

The Secretary of the State Election Board has the authority, and obligation, to “prescribe all forms to be used in administering absentee ballot provisions of the law.” 26 O.S. § 14-127. Thus, even in ordinary times, the Secretary is empowered to—and should—include a “penalty of perjury” form (and accurate instructions) with the ballot materials, putting voters on notice of and facilitating this alternative procedure provided under 12 O.S. § 426.

In the current circumstances, however, the Secretary has even broader powers: under 26 O.S. § 22-101, the Secretary is entitled to declare an “election emergency” in the event a “national or local emergency, either natural or manmade,” “could make substantial compliance with state and federal election laws impossible or unreasonable, or could disrupt ... voting.” In such instances, the Secretary “is authorized to promulgate rules and procedures for elections conducted under an election emergency declaration consistent with purposes of state and federal election laws.” *Id.* He is also specifically authorized to “permit any changes to the ballot format necessary as a result of the election emergency.” 26 O.S. § 22-102. To the extent the Secretary has any doubt about his authority to include a “penalty of perjury” statement on the ballot forms in ordinary times, then, he is unquestionably empowered to do so under the current circumstances.

This small change to the absentee ballot form is simple, yet critically important to protect both public health and Oklahomans’ fundamental right to vote. We thus respectfully urge the Secretary to immediately announce that he will include directions and a form facilitating a Section 426 “penalty of perjury” statement in lieu of verification by a notary public in all absentee ballot materials for the upcoming 2020 elections.

We appreciate your consideration and prompt response. Because ballot deadlines are approaching and time is of the essence in this matter, we request that you advise us of your intentions in the next 48 hours. If we do not hear from you within that time, calendar considerations will compel us to pursue other legal remedies.

Sincerely,

/s/Melanie Wilson Rughani

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Joined by:

League of Women Voters of Oklahoma

Ascension St. John Health System

Oklahoma Hospital Association

Oklahoma Nurses Association

Oklahoma League for Nursing

Oklahoma Association of Clinical
Nurse Specialists

LeadingAge Oklahoma

Tulsa Medical Society - Student Advisory
Council

Developmental Disabilities Council
of Oklahoma

Let's Fix This

Generation Citizen

Oklahoma Conference of Churches

Oklahoma AFL-CIO

Freedom Oklahoma

Oklahoma Disability Law Center

Oklahomans for Criminal Justice Reform

Oklahoma Education Association

Oklahoma Parent Legislative Action Council

Oklahoma Policy Institute

Oklahoma State Conference, NAACP

Oklahoma Women's Coalition

American Civil Liberties Union of Oklahoma

CAIR Oklahoma

VOICE OKC

cc: Oklahoma Attorney General,
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