



COMMONWEALTH of VIRGINIA

*Office of the Attorney General
Richmond 23219*

Mark R. Herring
Attorney General

202 North Ninth Street
Richmond, Virginia 23219
804 - 786 - 2071
804 - 225 - 4541 TDD

MEMORANDUM

To: Robert H. Brink
Chairman, Virginia State Board of Elections

Christopher E. Piper
Commissioner, Virginia Department of Elections

From: Carol L. Lewis
Assistant Attorney General

Date: May 24, 2021

Subject: Letter of Assurance for Periodic Review of Regulations – Election Administration [1 VAC 20-60]

Pursuant to the Code of Virginia and Executive Order 14 (as amended July 16, 2018), a periodic review of a regulation every four years shall include an examination by the Office of the Attorney General to ensure statutory authority. In that regard, I have reviewed the State Board of Elections regulations referenced above. In my view, as counsel to the State Board of Elections and Department of Elections, these regulations may be promulgated pursuant to Title 24.2 *et seq.* of the Code of Virginia (Code). The regulations do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal law.

The regulation 1 Va. Admin. Code 30 should be amended. Subsection (A) of that provision requires that, “representatives of candidates and political parties authorized to observe the election are prohibited from taking photos or video within the polling place.” Chapter 561 of the *Code of Virginia* was passed in 2020 and removed the requirement that, “[a]uthorized representatives shall be allowed, whether in a regular polling place or central absentee voter precinct, to use a handheld wireless communications device, but **shall not be allowed to use such a device to capture a digital image inside the polling place or central absentee voter precinct.**” See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0561&201+ful+CHAP0561>. (emphasis added)

Accordingly, there does not seem legal basis for the prohibition on capturing digital images inside polling places or central absentee precincts if the representative is not hindering or delaying the election, or otherwise violating Virginia Code § 24.2-604.

This memorandum addresses legal matters only and is not intended to serve, nor should it be construed, as a comment for or against the merits of the regulations.