



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

BOARD MEETING

Wednesday December 20, 2023
Video and Teleconference

Videoconference:

<https://covaconf.webex.com/covaconf/j.php?MTID=ma77c224ce1766434db77ab34602817e0>

Meeting password: WVdJm3C3pT3

Teleconference:

1-517-466-2023 US Toll

1-866-692-4530 US Toll-Free

Access Code: 2433 772 0974

1:00 P.M.

SBE Board Working Papers



**STATE BOARD OF ELECTIONS
AGENDA**

DATE: Wednesday, December 20, 2023

TELECONFERENCE:

+1-517-466-2023 US Toll

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Password: WVdJm3C3pT3

TIME: 1:00 P.M.

I. CALL TO ORDER

John O'Bannon, Chairman

II. APPROVAL OF MINUTES

A. December 4, 2023

Georgia Alvis-Long, Secretary

III. PUBLIC COMMENT

IV. COMMISSIONER'S REPORT

*Susan Beals
Commissioner*

V. PRESIDENTIAL BALLOT ORDER

*Paul Saunders
Elections and Registration Services
Supervisor*

VI. RISK LIMITING AUDIT RESULTS

*Claire Scott
ELECT Policy Analyst
Londo Andrews
Voting Systems Security Program Manager*

**VII. STAND BY YOUR AD POLICY REVISION
FINALIZATION**

*Tammy Alexander
Campaign Finance Compliance
and Training Supervisor
Steven Koski
ELECT Policy Analyst*

**VIII. REQUEST FOR PETITION FOR REMOVAL OF AN
ELECTORAL BOARD MEMBER**

*Paul Saunders
Elections and Registration Services
Supervisor*

IX. CLOSED SESSION

X. ADJOURNMENT

<https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=37230>

Re. public comment

Public comment will first be heard from those persons who requested to speak via chat on the WebEx. Last, we will hear from persons who provided their name and phone number to FOIA@elections.virginia.gov.

Re. limitation on individual participation in public comment

Due to the large number of persons who may wish to speak, we encourage you to be as brief as possible, with a maximum of **THREE** minutes per person. We also ask that you be prepared to unmute yourself if you hear your name announced as the next participant.

Re. individual requests for additional information

Citizens seeking additional information related to matters on this agenda may submit questions to info@elections.virginia.gov

Re. How to Participate in Public Comment

If you are a member of the public and wish to participate, you must sign up in order to be recognized to speak. Please note the following:

If you are attending in person, please ensure your name is on the sign-up list at the front door.

If you are participating virtually using WebEx, sign up using the chat feature, located on the bottom right part of the WebEx application, to add your participant name.

If you are participating virtually using a phone and cannot access WebEx's chat feature, please send an email with your name and your phone number to FOIA@elections.virginia.gov. You will need to provide your first and last name and the phone number you've used to call in.



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STATE BOARD *of* ELECTIONS

Approval of Minutes

BOARD WORKING PAPERS

1 The State Board of Elections (“the Board”) meeting was held on Monday,
2 December 4, 2023 in the Martha Brissette Conference Room of the Washington
3 Building in Richmond, Virginia. The meeting also offered public participation
4 through electronic communication so the remote public could view and hear the
5 meeting. In attendance: John O’Bannon, Chairman; Rosalyn R. Dance, Vice Chair;
6 Georgia Alvis-Long, Secretary; Delegate Donald Merricks, member; and Matthew
7 Weinstein, member represented the State Board of Elections (“the Board”). Susan
8 J. Beals, Commissioner, represented the Department of Elections (“ELECT”), and
9 Travis Andrews and Dennis Polio (attended virtually) represented the Office of the
10 Attorney General (“OAG”). Chairman O’Bannon called the meeting to order at
11 1:06 P.M.

12 The first item of business was the Approval of the Minutes from the
13 November 15, 2023 Board Meeting, presented by Secretary Alvis-Long. Vice
14 Chair Dance moved *that the Board approve the minutes from the November 15,*
15 *2023 Board Meeting.* Mr. Weinstein seconded the motion and the motion passed
16 unanimously. A roll call vote was taken:

17 Chairman O’Bannon – Aye

18 Vice Chair Dance – Aye

19 Secretary Alvis-Long – Aye

20 Delegate Merricks – Aye

21 Mr. Weinstein – Aye

22 The Chairman opened the floor to public comment. Roxanna Gray, Kenneth
23 Vande Vrede, Ann Grigorian and Ned Jones addressed the Board.

24 The next item of business was the Commissioner’s Report, presented by
25 Commissioner Beals. The Commissioner stated that ELECT conducted four Risk
26 Limiting Audits (“RLAs”) after the 2023 November General Election.
27 Commissioner Beals stated that the Board randomly selected Senate District 20 for
28 the required RLA, which includes Virginia Beach, Norfolk, Northampton, and
29 Accomack County. The Commissioner stated that the Electoral Boards (“EB”) of
30 three additional localities, Arlington County, Loudoun County and Orange County,
31 requested to hold an RLA in their jurisdiction. Commissioner Beals informed the
32 Board that the RLAs were successful and expressed her appreciation to the local
33 EBs, Officers of Elections, and General Registrars for their hard work.

34 The next item of business was the Certification of November 7, 2023
35 General Election presented by Paul G. Saunders, III, Elections Administration
36 Supervisor. *This memo is in the Working Papers for the December 4, 2023*
37 *Meeting.* Chairman O’Bannon stated *I entertain a motion that the State Board of*
38 *Elections vote to approve the certification of the General Election as presented.*

39 Vice Chair Dance *so moved*. Mr. Weinstein seconded the motion and the motion
40 passed unanimously. A roll call vote was taken:

41 Chairman O'Bannon – Aye

42 Vice Chair Dance – Aye

43 Secretary Alvis-Long – Aye

44 Delegate Merricks – Aye

45 Mr. Weinstein – Aye

46 At 1:30 P.M., Delegate Merricks stated pursuant to Virginia Code Section
47 2.2-3711(A)(7), I move *that the Board go into closed session for the purpose of*
48 *discussing pending threatened litigation and election integrity. In accordance with*
49 *Section 2.2-3712(F), Susan Beals, Commissioner of Elections, and Travis Andrews*
50 *and Dennis Polio of the Office of the Attorney General, will attend the closed*
51 *session because their presence will reasonably aid the Board in its consideration of*
52 *the subject of the meeting*. Mr. Weinstein seconded the motion and the motion
53 passed unanimously. A roll call vote was taken:

54 Chairman O'Bannon – Aye

55 Vice Chair Dance – Aye

56 Secretary Alvis-Long – Aye

57 Delegate Merricks – Aye

58 Mr. Weinstein – Aye

59 At 1:50 P.M., Delegate Merricks moved to reconvene the meeting in open
60 session, and take a roll call vote certifying that to the best of each member’s
61 knowledge (i) only such public business matters lawfully exempted from open
62 meeting requirements under this chapter and (ii) only such public business matters
63 as were identified in the motion by which the closed meeting was convened were
64 heard or discussed by the State Board of Elections. Vice Chair Dance seconded the
65 motion and the motion passed unanimously. A roll call vote was taken:

66 Chairman O’Bannon – Aye

67 Vice Chair Dance – Aye

68 Secretary Alvis-Long – Aye

69 Delegate Merricks – Aye

70 Mr. Weinstein – Aye

71 Next, the Board signed all of the Abstracts and Certifications of the winners
72 from the November 7, 2023 General Election.

73 After signing Mr. Weinstein moved *to adjourn the meeting*. Delegate
74 Merricks seconded the motion and the motion passed unanimously. A roll call vote
75 was taken:

76 Chairman O’Bannon – Aye

77 Vice Chair Dance – Aye

78 Secretary Alvis-Long – Aye

79 Delegate Merricks – Aye

80 Mr. Weinstein – Aye

81 The meeting adjourned at 3:58 P.M.

82 _____
83 Chairman

84 _____
85 Vice Chairman

86 _____
87 Secretary

88 _____
89 Board Member

90 _____
91 Board Member



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STATE BOARD *of* ELECTIONS

Public Comment

BOARD WORKING PAPERS



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Commissioner's Report

BOARD WORKING PAPERS
Commissioner Beals



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STATE BOARD *of* ELECTIONS

Drawing for Presidential Primary Ballot Order

BOARD WORKING PAPERS
Paul G. Saunders, III
Election and Registration Services Supervisor



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

Memorandum

To: Chairman O'Bannon, Vice Chair Dance, Secretary Alvis-Long, Del. Merricks, and Mr. Weinstein
From: Paul G. Saunders, III, Election and Registration Services Supervisor
Date: December 20, 2023
Re: Drawing for Presidential Primary Ballot Order

Suggested Motion:

"I move that the Board certify the ballot order as drawn."

Applicable Code Sections:

Va. Code § 24.2-545C which reads:

"The names of all candidates in the presidential primary of each political party shall appear on the ballot in an order determined by lot by the State Board."

Background:

Persons seeking access to the 2024 Presidential Primary Ballot submitted petitions to the Virginia Department of Elections as required by the filing schedule set by this Board on May 30, 2023. Petitions were transmitted to the Republican and Democratic parties as required by § 24.2-545B.

On December 16, 2023, the Democratic Party of Virginia certified that the following candidates qualified to appear on the 2024 Democratic Presidential Primary Ballot:

- Joseph Robinette Biden, Jr.
- Marianne Williamson
- Dean Benson Phillips

On December 18, 2023, the Republican Party of Virginia certified that the following candidates qualified to appear on the 2024 Republican Presidential Primary Ballot:

- Donald J. Trump
- Nikki R. Haley
- Vivek Ramaswamy
- Chris Christie
- Ron Dion DeSantis
- Ryan L. Binkley

Each of the above names has been printed on a strip of paper and will now be placed into the film canisters, and the canisters into the bowl. If the Board so moves, the order in which they are drawn from the bowl will be the order the candidates names will appear on the 2024 Democratic and Republican Primary ballots.

Staff Recommendation:

Staff recommends the Board draw the names randomly and certify that drawing as the order for names to appear on the 2024 Democratic and Republican Presidential Primary ballots.



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STATE BOARD *of* ELECTIONS

Risk Limiting Audit Results

BOARD WORKING PAPERS
Claire Scott
ELECT Policy Analyst
Londo Andrews
Voting Systems Security Program Manager



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

To: Chairman O'Bannon, Vice Chair Dance, Secretary Alvis-Long, Delegate Merricks, and Mr. Weinstein
From: Claire Scott, Policy Analyst
Date: December 20, 2023
Re: Results of the 2023 Risk-Limiting Audits for the November 2023 General Election

Applicable Code Sections:

§24.2-672.2 Risk-limiting Audit

1VAC20-60-80 Request for a risk-limiting audit for a contested race within a jurisdiction

Summary of Results of the 2023 Risk-Limiting Audit (RLA) for the November 2023 General Election:

Required RLA: Virginia Senate District 20

Pursuant to §24.2-671.2(C), this year a General Assembly race was required to be chosen at random for a ballot polling method RLA. During the November 15, 2023, State Board of Elections (SBE) meeting, Virginia Senate District 20 was randomly chosen; this district included portions of Norfolk and Virginia Beach cities as well as the entirety of Northampton and Accomack counties. The SBE set the risk limit for this RLA at 10%. The RLA was successful in the first round of the audit, falling below the 10% risk limit. The RLA confirmed the outcome reported by the electronic voting system (EVS).

Requested RLAs

The Electoral Boards of three localities requested RLAs for races wholly contained in their jurisdictions pursuant to 1VAC20-60-80 and §24.2-671.2(D) of the Code of Virginia:

- Loudoun County requested a batch comparison RLA for the Virginia House of Delegates District 27 race;
- Arlington County requested a batch comparison RLA for the Virginia Senate District 40 race; and
- Orange County requested a batch comparison RLA for their sheriff race.

The SBE approved all of these requests during their November 15, 2023 meeting and set the risk limit to 10% for each RLA.

House of Delegates District 27

Loudoun County met the risk limit but required a second round to do so. This was due to 20 ballots that had been marked by the EVS as undervotes but were determined as proper votes for certain candidates via the SBE-approved Hand-Counting Guidelines. As such, a second round of the RLA was required. Arlo determined that a full hand tally was required to confirm the outcome of the election. During the second round of the RLA, 27 ballots were marked as undervotes by the EVS but found to be proper votes after assessment using the Hand-Counting Guidelines. All of the undervotes found during both rounds of the RLA impacted both candidates and did not change the overall margins of the race. These undervotes were the result of voters selecting a candidate by means other than filling in the bubble such as circling the candidate's name. After the full hand tally, the risk limit was met in the second round. The RLA confirmed the outcome reported by the EVS. The adjudicated votes were added to the abstract of votes, presented to the SBE, and approved by the SBE during their December 4, 2023 meeting.

Virginia Senate District 40

The risk limit was met in the first round of the RLA with only five ballots being found to be proper votes that had been marked as undervotes by the EVS. The RLA confirmed the outcome reported by the EVS. The adjudicated votes were added to the abstract of votes, presented to the SBE, and approved by the SBE during their December 4, 2023 meeting.

Orange County Sheriff Race

The risk limit was met in the first round of the RLA with only 16 ballots being found to be proper votes that had been marked as undervotes by the EVS. The RLA confirmed the outcome reported by the EVS. The adjudicated votes were added to the abstract of votes and approved by the local Electoral Board.

Conclusion

All RLAs performed for the 2023 General Election were ultimately successful in checking that the correct outcome of the election was reported by the EVS. The results reflect the hard work of election administrators and further exemplify the integrity and validity of the 2023 General Election. RLAs are an important tool in reassuring the public that EVS are accurate and reliable and provide an excellent check on the democratic process. ELECT remains a leader nationally in the administering of risk-limiting audits and intends to build on this success in the years to come to ensure safe, secure, fair, and free elections in the Commonwealth.

Pursuant to §24.2-671.2(H), ELECT has prepared a report detailing the results and key takeaways from the 2023 RLAs. This report is attached to this memo.

Attachment: November 2023 Risk-Limiting Audit Report



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STATE BOARD
of ELECTIONS



November 2023 Risk-Limiting Audit Report

DECEMBER 20, 2023

VIRGINIA DEPARTMENT OF ELECTIONS

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EXECUTIVE SUMMARY

Pursuant to §24.2-671.2 of the Code of Virginia, the Virginia Department of Elections (ELECT) is required to coordinate a post-election, pre-certification risk-limiting audit of electronic voting systems (EVS) in the Commonwealth.¹ The 2023 November General Election Risk-Limiting Audits (RLA) took place in the three weeks following the general election for both houses of the Virginia General Assembly and various local and constitutional offices. During the November 15th meeting of the State Board of Elections (SBE) Virginia Senate District 20 (SD20) was randomly chosen by the Vice Chairman of the SBE to be audited, which includes Norfolk and Virginia Beach as well as Northampton and Accomack counties.² Additionally, three local electoral boards, Arlington County, Loudoun County, and Orange County, applied for RLAs of races wholly contained within their jurisdictions.³ These races were as follows:

- Virginia Senate District 40 (SD40) in Arlington County⁴
- Virginia House of Delegates District 27 (HOD27) in Loudoun County⁵
- Sheriff in Orange County

ELECT announced the successful completion of all RLAs on December 4, 2023.⁶ The results confirmed that the machines accurately reported the outcome of the audited races.

In addition to facilitating the audit each year, §24.2-671.2 also requires ELECT to submit a report to SBE that details the results of the audit and provides an analysis of any detected discrepancies.⁷ The following report gives a comprehensive overview of the history, practice, and process of risk-limiting audits in the Commonwealth to both provide these essential details as well as promote transparency, knowledge, and confidence in Virginia elections and the RLA process.

WHAT IS A RISK-LIMITING AUDIT?

A risk-limiting audit (RLA) means an audit protocol conducted after an election and before the certification of the election results with a pre-specified minimum probability of requiring a full hand count of votes cast, if the outcome reported by the voting system differs from the outcome that would be found by a full hand count of the votes in a contested race.⁸ While RLAs do not guarantee that every vote was counted correctly, they provide strong statistical evidence that the declared winner of a contest actually received more votes.

RLAs provide a more cost-effective and efficient alternative to other forms of post-election audits by reducing the total number of paper ballots needed to confirm election results. To conduct an RLA, a voting system must be in place that produces paper ballots. RLAs analyze a random sample of hand-counted ballots to confirm the election outcomes reported by the electronic voting system. If the margin of an election is wide, fewer votes are audited; if the

¹ Code of Virginia, [§24.2-671.2](#).

² State Board of Elections, November 15, 2023 [Meeting Agenda](#); Supreme Court of Virginia, [Virginia Senate Redistricting Maps](#).

³ State Board of Elections, November 15, 2023 [Meeting Agenda](#)

⁴ Supreme Court of Virginia, [Virginia Senate Redistricting Maps](#).

⁵ Supreme Court of Virginia, [House of Delegates Redistricting Maps](#).

⁶ State Board of Elections, December 4, 2023 [Meeting Agenda](#).

⁷ Code of Virginia, [§24.2-671.2](#).

⁸ *Id.*

margin is narrow, more votes will be audited until enough evidence can confirm the results of the contest.⁹ A two person team, known as an audit review board, must review, count, and tally the sampled ballots. Once tallied, the locality uploads the results of these tallies into Arlo to determine if the risk limit was met. A risk limit means the largest probability that the risk-limiting audit will fail to correct an election outcome that differs from the outcome that would be found by a full manual tabulation of the votes on all ballots cast in the contested race.¹⁰ For example, a 10% risk limit means that there is a 90% chance that the audit will correct an incorrect outcome.

WHAT RLA METHODS DOES VIRGINIA USE?

ELECT currently utilizes the ballot polling method to conduct the mandatory annual RLA in the Commonwealth. A ballot polling method RLA is similar to an exit poll. In this case, ballots (people) are randomly selected and hand-counted (polled).¹¹ If ballots sampled are similar to the reported outcome the risk limit should be met in the first round, and the RLA completed. If the ballots sampled are not similar to the outcome reported, then a second round of the RLA will be triggered and more ballots will be sampled. This was the method used in the SD20 RLA.

In March 2023, the SBE approved local electoral boards to apply for batch comparison method RLAs.¹² Batch comparison method RLAs hand count each ballot within a randomly selected batch of ballots and compare the reported outcome. Deviations discovered during the batch comparison method RLA process are accounted for and reported to Arlo. If there are enough deviations in the sampled batches of ballots a second round of the RLA may be required. This was the method used in the HOD27, SD40, and Sheriff RLAs.

TIMELINE OF THE RLA PROCESS FOR THE NOVEMBER 2023 GENERAL ELECTION



⁹ National Conference of State Legislatures, [Risk-Limiting Audits, Postelection Audits, A Summary](#).

¹⁰ Code of Virginia, [§24.2-671.2](#).

¹¹ City of Fairfax Post-Election, Risk-Limiting Audit Pilot, 2018, [RLA Pilot Presentation](#).

¹² State Board of Elections, March 7, 2023 [Meeting Agenda](#).

WHAT WERE THE RESULTS OF THE NOVEMBER 2023 RLAs?

Annual Mandatory RLA

Pursuant to §24.2-671.2(C), this year a General Assembly race, either for the House of Delegates or State Senate, was required to be chosen at random for an RLA. During the November 15, 2023, SBE meeting, SD20 was randomly chosen via a live drawing; this district included portions of Norfolk and Virginia Beach cities as well as the entirety of Northampton and Accomack counties.¹³ In this district, Senator-elect William DeSteph won the race against Victoria Luevanos with a 14% margin between the two candidates.¹⁴ The SBE also set the risk limit for this RLA at 10%.

The RLA was successful in the first round of the audit, falling below the 10% risk limit. The RLA confirmed the outcome reported by the EVS. The results were announced at the December 4th, 2023 SBE Meeting.¹⁵

Key Takeaways

Ballot Storage

Strategically storing ballots is key to an easier and smoother RLA process. Having smaller batches of ballots allows for less labor by audit review boards; the less time that an audit review board has to take to find a specific ballot in a batch of ballots the faster an RLA round can be completed. If ballots were in smaller batches this would also create more batches for Arlo to choose from, lessening the chance of a full hand tally in subsequent rounds and of Arlo generally picking all of central absentee precinct (CAP) or early voting batches.

However, this presents a challenge to localities who may not have the time or equipment available to separate ballots into smaller batches. For example, certain EVS can be programmed to batch into a certain amount, such as 100, 1000, etc. Other EVS may not have that capability or may come at a greater cost to the locality. However, localities may consider emptying their EVS on a regular basis during early voting and CAP. For example, during early voting an EVS could be emptied at the end of the day or up to a certain number of processed ballots, creating a batch of ballots. The EVS for CAP may also be emptied at a predetermined amount of ballots, i.e. 1000 ballots, to create a batch of ballots. Breaking down notoriously large batches into smaller batches could also help in terms of a recount as the recount teams would have an easier time processing the ballots. Further discussion with both the election community and the EVS vendors on solutions for this issue should be had in preparation for 2024.

Stakeholders of the RLA

Administering and performing any RLA requires a great deal of coordination amongst both state and local stakeholders. The process includes:

¹³ State Board of Elections, November 15, 2023 [Meeting Agenda](#).

¹⁴ Virginia Department of Elections, Election Night Reporting, [Virginia Senate District 20](#), December 11, 2023.

¹⁵ State Board of Elections, December 4, 2023 [Meeting Agenda](#).

- ELECT staff from Policy, Election and Registration Services, and Information Security divisions;
- GRs and their staff;
- Local Electoral Board (EBs);
- OOE's;
- Clerks of Court and their staff, and;
- Circuit Judges.

Each group relies on the other to perform their duties to the best of their ability for the RLA process to be successful. For ELECT, this means having a robust team available and trained on the RLA process to answer questions and provide supervision. For localities, this means having all the important stakeholders present or on standby to perform their roles. GRs need to be available to coordinate the EB members, audit board members, and their staff; typically, GRs also fill the role of local manager of the RLA, an important role in ensuring that data is properly uploaded into Arlo. EB members from both major parties need to be available to observe the RLA as is required under §24.2-671.2(G).¹⁶ As many in the elections community know, the general election is not only on Election Day but actually starts 45 days before and continues until the first Monday in December when the SBE certifies elections.¹⁷ The RLA is also a part of that timeline as an RLA is essentially required after every general election, to take place after the election but before certification.¹⁸

Clerks of Court need to be available to help maintain the chain of custody of the ballots either by being present for the RLA or are available to transfer custody of the ballots to the GR or EB for the RLA. If an EB member of a major party is unavailable for the RLA, Circuit Court Judges should be available to allow for the temporary appointment of an EB member for the purpose set out in §24.2-671.2(G).¹⁹ For Northampton County, the lone Democratic EB member was unavailable for the beginning of the RLA. On an extremely short timeline, the GR for Northampton County had to find a temporary EB; the GR faced obstacles finding someone to fill the position and arranging for a Circuit Court Judge to approve the temporary appointment. Better training and communication amongst the required and potential stakeholders of the RLA should be encouraged in preparation for 2024.

Scheduling and Location of the RLA

While the RLA is on an annual basis during the same time of year, scheduling and finding a location for the RLA can be a challenge for localities, especially for those who are randomly chosen for the RLA. Three out of four localities for SD20 used their Clerk of Court's office as the Clerk of Court is the ultimate custodian of the ballots being audited. Accomack County held their RLA meeting at the GR's office as their office had more space compared to the Clerk of Court's office. When choosing a location for the RLA certain factors should be considered including but not limited to:

¹⁶ Code of Virginia, [§24.2-671.2\(G\)](#).

¹⁷ Code of Virginia, [§24.2-679\(A\)](#), [§24.2-701.1\(A\)](#).

¹⁸ Code of Virginia, [§24.2-671.2](#).

¹⁹ Code of Virginia, [§24.2-671.2\(G\)](#).

- Local office availability and closings due to holidays
- Internet access by the locality manager and the audit review boards to upload data to Arlo
- The public's access to the location of the RLA to observe as the RLA is a public meeting of the EB
- Space for the audit review boards to perform the RLA

These factors will be included in ELECT's RLA guidance to localities. The random nature of the selection of most RLAs can make scheduling the location of the RLA difficult. All localities need to have a plan in place in case they are chosen for an audit. ELECT is developing a communication plan that will remind localities and provide additional training on the RLA to aide future audits.

Early Voting, CAP, and the RLA

For the RLA to be a proper audit of the outcome of the election localities must include in their ballot manifests all batches where ballots for the contested race can be found; this includes CAP and early voting batches. These batches usually are quite large and often contain ballots that do not have the contested race being audited. For ballot polling, this means that Arlo may sample a significant number of ballots that do not contain the audited race and can cause the RLA to miss the risk limit due to a lack of sampled ballots with the audited race. As noted above, more intentional ballot storage of early voting and CAP ballot batches may solve or mitigate this issue.

Training

ELECT produces an RLA Manual that details the steps necessary to perform an RLA and presents that Manual for approval to the SBE during a public meeting.²⁰ ELECT has also produced other materials to assist in the performance of an RLA.²¹ That being said, as this was the first year with the batch comparison method and the key takeaways noted above and below the RLA Manual as well as ELECT's other materials will be revised and updated to provide greater clarity to the elections community. Going into 2024 where all localities will be participating in the RLA this will be important as many localities have not participated in an RLA since 2021, the last statewide RLA.²² ELECT will also be looking for training opportunities to engage with elections community in preparation for the RLA in 2024.

Outreach

As RLAs will continue to be used in the Commonwealth, ELECT should provide more education as to an RLA's purpose and how it fits into our overall goal to have safe, secure, fair, and free elections in the Commonwealth. This will be especially valuable going into 2024 when all localities will be participating in the annual mandatory RLA. Understanding how the RLA fits into the election security process will boost the public's confidence in not only the value of RLAs but also the election process. To achieve this goal, the RLA Manual will be updated and revised to provide greater clarity in the process as well as incorporate lessons learned and feedback from the elections community.

²⁰ State Board of Elections, March 7, 2023 [Meeting Agenda](#); Virginia Department of Elections, [RLA Manual](#).

²¹ Virginia Department of Elections, Formswarehouse, [Risk Limiting Audit](#).

²² Virginia Department of Elections, [November 2020 General Election RLA Report](#).

Requested RLAs

As noted above, the SBE approved the use of the batch comparison method in March 2023 for RLAs that were requested pursuant to §24.2-671.2(D).²³ All three requested RLAs in 2023 used the batch comparison method. The risk limit for all three requested RLAs was set to 10%.

Loudoun County

Loudoun County Electoral Board requested an RLA for the Virginia House of Delegates District 27 race. In this district, Delegate-elect Atoosa Reaser won the race against Chris Harnisch with a 16.33% margin at the time of the November 15 SBE meeting.²⁴ The application did qualify under the Administrative Code of Virginia 1VAC20-60-80 as well as the Code of Virginia §24.2-671.2(D).²⁵ Loudoun County's ballot manifest contained 62,303 ballots with 23,042 of those ballots containing HOD27. This difference is due to the way early voting and CAP are processed and stored, mixing ballots not only with the audited race but also ballots that do not have the audited race. The SBE approved the application on November 15, 2023, during their public meeting.²⁶

The first round of the HOD27 RLA was Monday, November 20.²⁷ Loudoun County failed to meet the risk limit in the first round of the RLA. This was due to 20 ballots that had been marked by the EVS as undervotes but were determined as proper votes for certain candidates via the SBE-approved Hand-Counting Guidelines.²⁸ As such, a second round of the RLA was required; the second round was held on Wednesday, November 29.²⁹ Arlo determined that a full hand tally was required to confirm the outcome of the election. During the second round of the RLA, 27 ballots were found to be proper votes after assessment using the Hand-Counting Guidelines. The risk limit was met in the second round. The 47 ballots found made up .0754377799% of the total 62,303 ballots processed during the RLA. The RLA confirmed the outcome reported by the EVS. The adjudicated votes were added to the abstract of votes, presented to the SBE, and approved by the SBE during their December 4, 2023 meeting.³⁰

Arlington County

Arlington County Electoral Board requested an RLA for the Virginia Senate District 40 race. In this district, Senator-elect Barbara Favola won the race against David Henshaw with a 62.15% margin at the time of the November 15 SBE meeting.³¹ Arlington County's ballot manifest had 61,490 ballots with 59,386 ballots containing the SD40; this difference is for the same reason noted above. The application did qualify under the Administrative Code of Virginia 1VAC20-

²³ State Board of Elections, March 7, 2023 [Meeting Agenda](#); Code of Virginia, [§24.2-671.2](#).

²⁴ State Board of Elections, November 15, 2023 [Meeting Agenda](#); Virginia Department of Elections, Election Night Reporting, [Virginia House of Delegates 27](#), December 12, 2023.

²⁵ Code of Virginia, [§24.2-671.2](#); Administrative Code of Virginia, [1VAC20-60-80](#).

²⁶ State Board of Elections, November 15, 2023 [Meeting Agenda](#).

²⁷ Virginia Department of Elections, [Risk-limiting Audits](#).

²⁸ Virginia Department of Elections, [Virginia's Guide to Hand-Counting Ballots](#).

²⁹ Loudoun County, [November 2023 Government Calendar](#).

³⁰ State Board of Elections, December 4, 2023 [Meeting Agenda](#).

³¹ State Board of Elections, November 15, 2023 [Meeting Agenda](#); Virginia Department of Elections, Election Night Reporting, [Virginia Senate District 40](#), December 12, 2023.

60-80 as well as the Code of Virginia §24.2-671.2(D).³² The SBE approved the application on November 15, 2023, during their public meeting.³³

The first round of the SD40 RLA was on Tuesday, November 28.³⁴ Arlo randomly chose five batches, containing 3,450 ballots total. The risk limit was met in the first round of the RLA with only five ballots being found to be proper votes that had been marked as undervotes by the EVS via the SBE-approved Hand-Counting Guidelines.³⁵ The five ballots found made up .1449275362% of the total 3,450 ballots processed during the RLA. The RLA confirmed the outcome reported by the EVS. The adjudicated votes were added to the abstract of votes, presented to the SBE, and approved by the SBE during their December 4, 2023 meeting.³⁶

Orange County

Orange County Electoral Board requested an RLA for their Sheriff race. In this race, Sheriff-elect Jason Smith won the race against Stephen LaLuna with a 35.01% margin at the time of the November 15 SBE meeting.³⁷ Orange County's ballot manifest had 13,227 ballots with 12,814 ballots cast for this race. Unlike the two RLAs noted above, the sheriff's race is locality-wide, meaning every ballot would have the race; the difference here can be attributed to undervotes or overvotes. The application did qualify under the Administrative Code of Virginia 1VAC20-60-80 as well as the Code of Virginia §24.2-671.2(D).³⁸ The SBE approved the application on November 15, 2023, during their public meeting.³⁹

The first round of the Orange County Sheriff RLA was on Wednesday, November 29.⁴⁰ Arlo randomly chose seven batches, containing 7,273 ballots. The risk limit was met in the first round of the RLA with only 16 ballots being found to be proper votes that had been marked as undervotes by the EVS via the SBE-approved Hand-Counting Guidelines.⁴¹ The 16 ballots found made up .21999178503% of the 7,273 ballots processed during the RLA. The RLA confirmed the outcome reported by the EVS. The adjudicated votes were added to the abstract of votes and approved by the local Electoral Board.⁴²

Key Takeaways

Smaller Races and the Batch Comparison Method

Using batch comparison method RLAs for smaller races can be difficult due to the small number of batches available to audit. Deviations found during the batch comparison method RLA process, such as the small number of variations found in Loudoun County, can have more of an

³² Code of Virginia, [§24.2-671.2](#); Administrative Code of Virginia, [1VAC20-60-80](#).

³³ State Board of Elections, November 15, 2023 [Meeting Agenda](#).

³⁴ Virginia Department of Elections, [Risk-limiting Audits](#).

³⁵ Virginia Department of Elections, [Virginia's Guide to Hand-Counting Ballots](#).

³⁶ State Board of Elections, December 4, 2023 [Meeting Agenda](#).

³⁷ State Board of Elections, November 15, 2023 [Meeting Agenda](#); Virginia Department of Elections, Election Night Reporting, [Orange County Sheriff](#), December 12, 2023.

³⁸ Code of Virginia, [§24.2-671.2](#); Administrative Code of Virginia, [1VAC20-60-80](#).

³⁹ State Board of Elections, November 15, 2023 [Meeting Agenda](#).

⁴⁰ Virginia Department of Elections, [Risk-limiting Audits](#).

⁴¹ Virginia Department of Elections, [Virginia's Guide to Hand-Counting Ballots](#).

⁴² Virginia Department of Elections, [Orange County Sheriff Results](#).

effect on the RLA and the calculations made by the Arlo software. Typically, the batch comparison method is used at the statewide level such as in Georgia and Pennsylvania.⁴³ Having the batch comparison method at the statewide level allows for a greater universe of batches and for deviations found in the process to have less of an impact on whether the risk limit will be met. ELECT is in discussions with VotingWorks on ways that the software can be improved to better implement the batch comparison method at the local level.

Locality-wide Races

As stated previously, CAP and early voting batches can have a great deal of ballots that do not have the audited contest. This is also a problem in batch comparison method RLAs. If a local Electoral Board requests an RLA for a race that is not a locality-wide race, then the CAP and early voting batches will include ballots that do not have the audited race. While these ballots are not reported during a batch comparison method RLA, these ballots do slow down the processing of ballots by the audit review board as they have to sort out those ballots to then get to the ballots with the audited race. This issue was noted in the June 2023 RLA Report and appeared again during Loudoun County's November 2023 RLA.⁴⁴ In contrast, Orange County's RLA for their Sheriff's race did not have that issue as that race was a locality-wide race; every ballot in the CAP or early voting batches would have the audited race. ELECT should encourage localities who wish to perform a batch comparison method RLA to choose a race that is locality-wide to avoid audit review boards spending more time sorting the ballots than counting the ballots.

CONCLUSION

All RLAs performed for the 2023 General Election determined that the correct outcome of the election was reported by the EVSs. The results reflect the hard work of election administrators and further exemplify the integrity and validity of the 2023 General Election. RLAs are an important tool in reassuring the public that EVSs are accurate and reliable and provide an excellent check on the democratic process. ELECT intends to build upon the lessons learned during this year's audits in the coming year to ensure safe, secure, fair, and free elections in the Commonwealth.

⁴³ Georgia Secretary of State Elections Division, [Georgia's 2022 Statewide Risk Limiting Audit Confirms Results](#); Pennsylvania Department of State, [Post-Election Audits](#).

⁴⁴ Virginia Department of Elections, [June 2023 Risk-Limiting Audit Report](#).

Appendix

General Assembly Races Eligible for Random Selection in November 2023

House of Delegates Districts*	Senate Districts*
3	1
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7	3
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*Uncontested races, races below 1%, or races applied for by local electoral boards pursuant to §24.2-671.2(D) were removed from selection as they were ineligible.

Arlo Results

Virginia Senate District 20 (Virginia Beach, Norfolk, Northampton County, Accomack County)

Sample Size	Rik Limit Met?	P-Value	Audited Votes
724 ballots	Yes	.063216	William R. DeSteph: 249; Victoria A. Luevanos: 198; Write-In: 0

Virginia House of Delegates District 27 (Loudoun County)

Sample Size	Risk Limit Met	P-Value	Audited Votes
Full Hand Tally (62,303 ballots)	First Round: No Second Round: Yes	First Round: .100262 Second Round: 0	Chris K. Harnisch: 9,759; Atoosa R. Reaser: 13,191; Write-in: 109

Virginia Senate District 40 (Arlington County)

Sample Size	Risk Limit Met	P-Value	Audited Votes
5 batches (3,450 ballots)	Yes	.095313	David A. Henshaw: 617; Barbara A. Favola: 2,780; Write - In: 11

Orange County Sheriff

Sample Size	Risk Limit Met	P-Value	Audited Votes
7 batches (7,273 ballots)	Yes	.096885	Stephen M. LaLuna: 2,118; Jason C. Smith: 4,934; Write-in: 25



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Stand By Your Ad Policy Revision Finalization

BOARD WORKING PAPERS
Tammy Alexander
Campaign Finance Compliance and Training Supervisor
Steven Koski
ELECT Policy Analyst



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Memorandum

To: Chairman O’Bannon, Vice-Chair Dance, Secretary Alvis-Long, Delegate Merricks, and Mr. Weinstein

From: Tammy Alexander, Campaign Finance Compliance and Training Supervisor
Steve Koski, Policy Analyst

Date: December 20, 2023

Re: *Stand By Your Ad* Hearings Policy Revision

Suggested Motion

“I move that the State Board of Elections adopts the revised *Stand By Your Ad* Hearings Policy as presented.”

Applicable Law

Title 24.2, Chapter 9.5 of the Code of Virginia (§ 24.2-955 *et seq.*) (“Stand By Your Ad”) (“SBYA”).

Background

The current SBYA Hearings Policy was approved by the State Board of Elections (“SBE”) on February 23, 2021 (“current policy”). At its November 15, 2023 meeting, the SBE directed the Department of Elections (ELECT) to prepare a revised SBYA Hearings Policy that:

- Clarifies the scope of SBYA in relation to advertisements;
- Makes necessary revisions to ensure due process in SBYA proceedings; and
- Requires two SBYA hearings per year.

ELECT has prepared the attached SBYA Hearings Policy, which amends the current policy to:

- Clarify that a determination of whether a communication constitutes an advertisement covered by SBYA is based upon the scope and definitions set forth in SBYA;
- Increase the notice provided to respondents from 10 days to 21 days;
- Require a continuance upon subpoena request, if deemed necessary by the Chair; and
- Require that the SBE meets twice per year for SBYA hearings, but remove specific January and August dates.

Recommendation

ELECT recommends that the SBE adopts the SBYA Hearings Policy as presented.

Attachments

Revised *Stand By Your Ad* Hearings Policy (Redlined version included)

State Board of Elections Policy 2023-001

A meeting of the Virginia State Board of Elections (SBE) was held on December 20, 2023, during which the following policy was proposed by the Department of Elections (ELECT) and approved by the Board:

STAND BY YOUR AD HEARINGS

WHEREAS, Virginia Code § 24.2-955.3(D) provides that the SBE shall conduct a public hearing to determine whether to find a violation of Chapter 9.5 of Title 24.2 (commonly known as “Stand By Your Ad” or “SBYA”) and, if the SBE finds a violation of that chapter, shall assess civil penalties in accordance with that section.

NOW, THEREFORE, BE IT RESOLVED, by the SBE under its authority to issue rules and regulations to promote the proper administration of election laws and obtain uniformity in the administration of elections pursuant to Va. Code § 24.2-103(A), that:

The policy entitled “State Board of Elections Policy 2021-001” is rescinded; and

The below policy applies to the conduct of SBYA hearings held pursuant to Va. Code § 24.2-955.3(D).

Definitions

- “Clearly identified” means the candidate’s name, nickname, photograph, or drawing or the identity of the candidate is otherwise apparent—
 - through an unambiguous reference, such as the candidate’s initials (e.g., FDR), nickname (e.g., Ike), office (e.g., “the Governor”); or
 - through an unambiguous reference to their status as a candidate such as “the Democratic Senate nominee for District 5”.
- “Complainant” means the filer of a complaint.
- “Express advocacy” has the meaning given the term in 1 Va. Admin. Code 20-90-30.
- “Occurrence” means—
 - one broadcast of a radio or television political campaign advertisement;¹
 - or
 - with respect to print media,² one print media political campaign advertisement.
- “Respondent” means a person that is the subject of a complaint.

Complaints³

- Complaints may be submitted on the ELECT website at www.elections.virginia.gov/candidatepac-info/regulation-and-policies/. Complainants who submit complaints via other methods will be directed to submit a complaint online.

¹ Section 24.2-955.1.

² *Id.*

³ SBYA is silent as to the submission process for complaints.

- A complainant shall be notified upon submitting a complaint that the complainant may be required to appear or to produce evidence at a hearing arising from the complaint, as required under Va. Code § 2.2-4020(C).
- To allege a violation of SBYA, a complaint must contain all of the following—
 - The name of the complainant and the respondent;
 - A statement of the alleged violation; and
 - Evidence of the alleged violation, including—
 - In the case of print media, typically photographic evidence; or
 - In the case of radio or television, the complaint should identify the station and time at which the advertisement was aired.
- If the disputed conduct does not allege a violation of SBYA, ELECT will provide notice of receipt of the complaint to the complainant but will recommend that the SBE takes no action.
- Upon receipt of a complaint containing sufficient evidence to allege a violation of SBYA, ELECT shall investigate the complaint.

Notice

Method

- If a person is alleged to have violated SBYA, ELECT shall provide notice to the respondent via certified mail not later than 21 days before the date on which a hearing on the matter will be held.⁴
- If the respondent is a registered voter, ELECT shall send such notice via certified mail to the most recent physical address provided in the respondent's voter registration statement.
- If the respondent is a registered committee, ELECT shall send such notice via certified mail to the most recent physical address provided in the respondent's statement of organization.
- If ELECT is aware of an electronic mail address for the respondent, ELECT shall also send such notification via electronic mail.

Contents

- Each notice shall include—
 - The time,⁵ date,⁶ location,⁷ and nature of the hearing;⁸
 - The basic law under which the SBE contemplates its possible exercise of authority;⁹
 - The matters of fact and law asserted or questioned by the SBE,¹⁰ including an explanation of the alleged violation;¹¹
 - A statement of the maximum civil penalty that may be assessed with respect to

⁴ Section 24.2-955.3(D) (requiring the State Board to "send notice by certified mail to persons whose actions will be reviewed at such meeting and may be subject to civil penalty" "[a]t least 10 days prior to such hearing" (emphasis added)).

⁵ Sections 24.2-955.3(D) and 2.2-4020(B).

⁶ *Id.*

⁷ Section 2.2-4020(B).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 24.2-955.3(D).

the alleged violation;¹²

- Contact information consisting of the name, phone number, and government email address of the person designated by the SBE to respond to questions or otherwise assist a named party;¹³ and
- Notice that a default order may be issued pursuant to Va. Code § 2.2-4020.2(A) against the respondent if the respondent fails without good cause to attend or appear at the hearing and, if such a default order is issued, the SBE may conduct all further proceedings necessary to complete the hearing without the defaulting respondent's presence at the hearing.¹⁴

Hearings

Timing of Hearings

- The SBE will meet two times per year, once after each period listed below, to consider SBYA complaints received in that period:
 - July 1 through November 30.
 - December 1 through June 30.

Rights of respondents

- A respondent shall be entitled to—
 - Be accompanied by and represented by counsel;¹⁵
 - Submit oral and documentary evidence and rebuttal proofs;¹⁶
 - Conduct such cross-examination as may elicit a full and fair disclosure of the facts;¹⁷ and
 - Have the proceedings completed and a decision made with dispatch.¹⁸
- A respondent shall be given the opportunity to, on request and before the recommendations of ELECT are presented, submit in writing for the record—
 - Proposed findings and conclusions;¹⁹ and
 - Statements of reasons for the proposed findings and conclusions.²⁰
- If a respondent intends to conduct cross-examination of any person at the hearing, the respondent shall provide reasonable notice of such proposed cross-examination to the SBE prior to the hearing.

Rights of the Board

- The SBE may—
 - Administer oaths and affirmations;
 - Receive probative evidence;
 - Exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttal, or cross-examination;

¹² *Id.*

¹³ Section 2.2-4020(B).

¹⁴ Sections 2.2-4020.2(B) and 2.2-4020.2(C).

¹⁵ Section 2.2-4020(C).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 2.2-4020(D).

²⁰ *Id.*

- Rule upon offers of proof;
- Oversee a verbatim recording of the evidence;
- Hold conferences for the settlement or simplification of issues by consent;
- Dispose of procedural requests; and
- Regulate and expedite the course of the hearing.²¹

Default orders

- If a respondent without good cause fails to attend or appear at a hearing, the SBE may issue a default order against the respondent.²²
- If the SBE issues a default order, the SBE may conduct all further proceedings necessary to complete the hearing without the defaulting respondent's presence at the hearing.²³
- Not later than 15 days after the SBE gives notice to a respondent subject to a default order that an initial or final order has been rendered against the respondent, the respondent may petition the SBE to vacate the order.²⁴
 - If good cause is shown for the respondent's failure to appear, the SBE shall vacate the order and, after proper service of notice, conduct another hearing.²⁵
 - If good cause is not shown for the respondent's failure to appear, the SBE shall deny the motion to vacate.²⁶

Continuance

- A scheduled hearing shall not be delayed by the inability of the respondent to attend the hearing unless a request for a continuance is made in writing to the SBE not less than 7 days before the scheduled hearing date.
- A continuance shall not be granted unless the request is received in the required time and, in the opinion of the Chair, sets forth good and sufficient cause for the continuance.
- If a continuance is granted, ELECT staff shall notify all members of the SBE and document the grant in the official record of the meeting for continuity.

Subpoenas

- The SBE may, and on the request of a respondent shall, issue a subpoena requiring testimony or the production of other evidence.²⁷
- Upon request for a subpoena, the proceedings shall be continued, if necessary, in the opinion of the Chair, to allow reasonable time for the issuance of the subpoena and the production of the required testimony or other evidence.
- Any person who receives a subpoena issued by the SBE to appear or produce evidence with respect to a hearing and who objects to the subpoena may procure by petition a decision on the validity of the subpoena in the Circuit Court for the City of Richmond.²⁸

²¹ Section 2.2-4020(C).

²² Section 2.2-4020.2(A).

²³ Section 2.2-4020.2(C).

²⁴ Section 2.2-4020.2(E).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Section 2.2-4022.

²⁸ *Id.*

- If any person refuses or neglects to comply with a subpoena issued by the SBE with respect to a hearing, the SBE may procure an order of enforcement from the Circuit Court for the City of Richmond.²⁹

Interpreter services

- If an interpreter is required, ELECT will make appropriate arrangements to ensure an interpreter is present during the hearing. The complainant or respondent shall provide ELECT reasonable notice before the hearing that an interpreter is required.

Presentation of complaints

- With respect to each complaint, ELECT shall present information to assist the SBE in making a determination as to whether a violation has occurred and, if so, the civil penalty that should be assessed, and the respondent shall be entitled to appear and present information in response.
- In presenting each complaint, ELECT shall include—
 - The evidence submitted regarding the complaint and such other evidence as ELECT discovered during its investigation of the complaint;
 - The names of the complainant and the respondent;
 - The provision of SBYA that the respondent is alleged to have violated;
 - The manner in which SBYA is alleged to have been violated;
 - The date of the alleged violation;
 - Whether the respondent has previously violated SBYA during any election cycle;
 - The manner in which the complaint was received (i.e., online, via USPS, via FedEx, etc.);
 - A statement of whether any written explanation or proposed findings and conclusions, and statements of reasons for the proposed findings and conclusions, have been received from the respondent; and
 - The action that ELECT recommends the SBE take with respect to the complaint, including the amount of civil penalty to be assessed if ELECT recommends finding that a provision of SBYA has been violated.

Initial decision

- At a hearing at which a complaint is presented, after the complaint is presented, the SBE shall—
 - Carry out further deliberation as necessary; and
 - Conduct a vote relating to an initial decision as to whether a violation has occurred and, if so, the civil penalty that should be assessed.
- To assess a civil penalty for a violation of SBYA, the SBE must find that SBYA requirements apply to the communication in question, and that the communication fails to comply with SBYA requirements.
 - The SBE should consider whether the communication—
 - constitutes an advertisement subject to SBYA, consistent with the scope³⁰ and definitions³¹ provided by SBYA; and

²⁹ *Id.*; see also *id.* 2.2-4003.

³⁰ Section 24.2-955.

³¹ Section 24.2-955.1.

- expressly advocates for the election or defeat of a clearly identified candidate.
- Upon such finding, the SBE may then determine whether the advertisement complies with SBYA disclosure requirements, and if not, what civil penalty to assess. An initial decision of the SBE may be modified or vacated subject to the requirement that a final decision shall be rendered not later than 90 days after the date on which the hearing occurs.

Final decisions

- The SBE shall render any final decision not later than 90 days after the date on which a hearing occurs.³²
- The SBE shall provide notice to the respondent not later than 5 days after the date of its final decision,³³ and such notice shall be signed by the SBE and served upon the respondent by mail.³⁴
- The original signed copy of a final decision of the SBE shall remain in the custody of the agency as a public record.³⁵
- A decision shall briefly state—
 - The findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the agency is operating;
 - The appropriate order for a penalty under Va. Code § 24.2-955.3 or denial thereof;³⁶ and
 - The time for filing a notice of appeal under Va. S. Ct. Rule 2A:2.

Reconsideration

- A respondent may file a petition for reconsideration with the SBE of a final decision of the SBE made pursuant to Va. Code § 2.2-4020.³⁷
- A petition for reconsideration shall be filed with the SBE not later than 15 days after service of the final decision.³⁸
- A petition for reconsideration shall include—
 - A full and clear statement of the facts pertaining to the reasons for reconsideration;
 - The grounds in support thereof; and
 - A statement of the relief desired.³⁹
- Not later than 30 days after the date on which the SBE receives a respondent's timely petition for reconsideration, the SBE shall render a written decision on the petition, which shall—
 - Deny the petition;
 - Modify the case decision; or
 - Vacate the case decision and set a new hearing for further proceedings.⁴⁰

³² Section 2.2-4021(B).

³³ *Id.*

³⁴ Section 2.2-4023.

³⁵ *Id.*

³⁶ Section 2.2-4020(E).

³⁷ Section 2.2-4023.1(A).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Section 2.2-4023.1(B).

- The SBE may reconsider a final decision on its own initiative for good cause within 30 days of the date of the final decision.⁴¹

⁴¹ Section 2.2-4023.1(E).

State Board of Elections Policy 2023-001

A meeting of the Virginia State Board of Elections (SBE) was held on ~~February 23, 2024~~December 20, 2023, during which the following policy was proposed by the Department of Elections (ELECT) and approved by the Board:

STAND BY YOUR AD HEARINGS

WHEREAS, Virginia Code § 24.2-955.3(D) provides that the SBE shall conduct a public hearing to determine whether to find a violation of Chapter 9.5 of Title 24.2 (commonly known as “Stand By Your Ad” or “SBYA”) and, if the SBE finds a violation of that chapter, shall assess civil penalties in accordance with that section. ~~now therefore let it be~~

NOW, THEREFORE, BE IT RESOLVED, by the SBE under its authority to issue rules and regulations to promote the proper administration of election laws and obtain uniformity in the administration of elections pursuant to Va. Code § 24.2-103(A), that:

The policy entitled “State ~~SBE~~Board of Elections Policy 20~~1821~~-001” is rescinded; and

The below policy applies to the conduct of SBYA hearings held pursuant to Va. Code § 24.2-955.3(D).

Definitions

- “Clearly identified” means the candidate’s name, nickname, photograph, or drawing or the identity of the candidate is otherwise apparent—
 - through an unambiguous reference, such as the candidate’s initials (e.g.,~~x~~ FDR), nickname (e.g.,~~x~~ Ike), office (e.g.,~~x~~ “the Governor”); or
 - through an unambiguous reference to their status as a candidate such as “the Democratic Senate nominee for District 5”.
- “Complainant” means the filer of a complaint.
- “Express advocacy” has the meaning given the term in 1 Va. Admin. Code 20-90--30.
- “Occurrence” means—
 - one broadcast of a radio or television political campaign advertisement;¹ or
 - with respect to print media,² one print media political campaign advertisement.
- “Respondent” means a person that is the subject of a complaint.

Complaints³

- ~~SBYA is silent as to the submission process for complaints.~~
- ~~Complaints may be submitted to ELECT online on the ELECT website, by sending an email to SBYA@elections.virginia.gov, or by mailing in a complaint form. Complaints may be submitted on the ELECT website at www.elections.virginia.gov/candidatepac-~~

¹ Section 24.2-955.1.

² *Id.*

³ SBYA is silent as to the submission process for complaints.

[info/regulation-and-policies/](#). Complainants who submit complaints via other methods will be directed to submit a complaint online.

- A complainant shall be notified upon submitting a complaint that the complainant may be required to appear or to produce evidence at a hearing arising from the complaint, as required under Va. Code § 2.2-4020(C).
- To allege a violation of SBYA, a complaint must contain all of the following—
 - The name of the complainant and the respondent;
 - A statement of the alleged violation; and
 - Evidence of the alleged violation, including—
 - In the case of print media, typically photographic evidence; or
 - In the case of radio or television, the complaint should identify the station and time at which the advertisement was aired.
- If the disputed conduct does not allege a violation of SBYA, ELECT will provide notice of receipt of the complaint to the ~~complainant, but~~ complainant but will recommend that the SBE takes no action.
- Upon receipt of a complaint containing sufficient evidence to allege a violation of SBYA, ELECT shall investigate the complaint.

Notice

Method

- If a person is alleged to have violated SBYA, ELECT shall provide notice to the respondent via certified mail not later than ~~1021~~ 1021 days before the date on which a hearing on the matter will be held.⁴
- If the respondent is a registered voter, ELECT shall send such notice via certified mail to the most recent physical address provided in the respondent's voter registration statement.
- If the respondent is a registered committee, ELECT shall send such notice via certified mail to the most recent physical address provided in the respondent's statement of organization.
- If ELECT is aware of an electronic mail address for the respondent, ELECT shall also send such notification via electronic mail.

Contents

- Each notice shall include—
 - The time,⁵ date,⁶ location,⁷ and nature of the hearing;⁸
 - The basic law under which the SBE contemplates its possible exercise of authority;⁹

⁴ Section 24.2-955.3(D) (requiring the State Board to "send notice by certified mail to persons whose actions will be reviewed at such meeting and may be subject to civil penalty" "[a]t least 10 days prior to such hearing") (emphasis added).

⁵ Sections 24.2-955.3(D) and 2.2-4020(B).

⁶ *Id.*

⁷ Section 2.2-4020(B).

⁸ *Id.*

⁹ *Id.*

- The matters of fact and law asserted or questioned by the SBE¹⁰; including an explanation of the alleged violation;¹¹
- A statement of the maximum civil penalty that may be assessed with respect to the alleged violation;¹²
- Contact information consisting of the name, phone number, and government email address of the person designated by the SBE to respond to questions or otherwise assist a named party;¹³ and
- Notice that a default order may be issued pursuant to Va. Code § 2.2-4020.2(A) against the respondent if the respondent fails without good cause to attend or appear at the hearing and, if such a default order is issued, the SBE may conduct all further proceedings necessary to complete the hearing without the defaulting respondent's presence at the hearing.¹⁴

Hearings

Timing of Hearings

- ~~The SBE will meet in January of each two times per year, once after each period listed below, to consider SBYA complaints received in that period between the previous:~~
 - ~~July 1 and through~~ November 30.
 - ~~The SBE will meet in August of each year to consider SBYA complaints received between the previous~~ December 1 ~~and through~~ June 30.

Rights of respondents

- A respondent shall be entitled to—
 - Be accompanied by and represented by counsel;¹⁵
 - Submit oral and documentary evidence and rebuttal proofs;¹⁶
 - Conduct such cross-examination as may elicit a full and fair disclosure of the facts;¹⁷ and
 - Have the proceedings completed and a decision made with dispatch.¹⁸
- A respondent shall be given the opportunity to, on request and before the recommendations of ELECT are presented, submit in writing for the record—
 - Proposed findings and conclusions;¹⁹ and
 - Statements of reasons for the proposed findings and conclusions.²⁰
- If a respondent intends to conduct cross-examination of any person at the hearing, the respondent shall provide reasonable notice of such proposed cross-examination to the SBE prior to the hearing.

¹⁰ *Id.*

¹¹ Section 24.2-955.3(D).

¹² *Id.*

¹³ Section 2.2-4020(B).

¹⁴ Sections 2.2-4020.2(B) and 2.2-4020.2(C).

¹⁵ Section 2.2-4020(C).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 2.2-4020(C).*Id.*

¹⁹ Section 2.2-4020(D).

²⁰ Section 2.2-4020(D).

²¹ *Id.*

Rights of the Board

- The SBE may—
 - Administer oaths and affirmations;
 - Receive probative evidence;
 - Exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttal, or cross-examination;
 - Rule upon offers of proof;
 - Oversee a verbatim recording of the evidence;
 - Hold conferences for the settlement or simplification of issues by consent;
 - Dispose of procedural requests; and
 - Regulate and expedite the course of the hearing.²²

Default orders

- If a respondent without good cause fails to attend or appear at a hearing, the SBE may issue a default order against the respondent.²³
- If the SBE issues a default order, the SBE may conduct all further proceedings necessary to complete the hearing without the defaulting respondent's presence at the hearing.²⁴
- Not later than 15 days after the SBE gives notice to a respondent subject to a default order that an initial or final order has been rendered against the respondent, the respondent may petition the SBE to vacate the order.²⁵
 - If good cause is shown for the respondent's failure to appear, the SBE shall vacate the order and, after proper service of notice, conduct another hearing.²⁶
 - If good cause is not shown for the respondent's failure to appear, the SBE shall deny the motion to vacate.²⁷

Continuance

- A scheduled hearing shall not be delayed by the inability of the respondent to attend the hearing unless a request for a continuance is made in writing to the SBE not less than 7 days before the scheduled hearing date.
- A continuance shall not be granted unless the request **is received in the required time and**, in the opinion of the Chair, sets forth good and sufficient cause for the continuance.
- If a continuance is granted, ELECT staff shall notify all members of the SBE and document the grant in the official record of the meeting for continuity.

Subpoenas

- The SBE may, and on the request of a respondent shall, issue a subpoena requiring testimony or the production of other evidence.²⁸

²² Section 2.2-4020(C).

²³ Section 2.2-4020.2(A).

²⁴ Section 2.2-4020.2(C).

²⁵ Section 2.2-4020.2(E).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 2.2-4022.

- Upon request for a subpoena, the proceedings shall be continued, if necessary, in the opinion of the Chair, to allow reasonable time for the issuance of the subpoena and the production of the required testimony or other evidence.
- Any person who receives a subpoena issued by the SBE to appear or produce evidence with respect to a hearing and who objects to the subpoena may procure by petition a decision on the validity of the subpoena in the Circuit Court for the City of Richmond.²⁹
- If any person refuses or neglects to comply with a subpoena issued by the SBE with respect to a hearing, the SBE may procure an order of enforcement from the Circuit Court for the City of Richmond.³⁰

Interpreter services

- If an interpreter is required, ELECT will make appropriate arrangements to ensure an interpreter is present during the hearing. The complainant or respondent shall provide ELECT reasonable notice before the hearing that an interpreter is required.

Presentation of complaints

- With respect to each complaint, ELECT shall present information to assist the SBE in making a determination as to whether a violation has occurred and, if so, the civil penalty that should be assessed, and the respondent shall be entitled to appear and present information in response.
- In presenting each complaint, ELECT shall include—
 - The evidence submitted regarding the complaint and such other evidence as ELECT discovered during its investigation of the complaint;
 - The names of the complainant and the respondent;
 - The provision of SBYA that the respondent is alleged to have violated;
 - The manner in which SBYA is alleged to have been violated;
 - The date of the alleged violation;
 - Whether the respondent has previously violated SBYA during any election cycle;
 - The manner in which the complaint was received (i.e., online, via USPS, via FedEx, etc.);
 - A statement of whether any written explanation or proposed findings and conclusions, and statements of reasons for the proposed findings and conclusions, have been received from the respondent; and
 - The action that ELECT recommends the SBE take with respect to the complaint, including the amount of civil penalty to be assessed if ELECT recommends finding that a provision of SBYA has been violated.

Initial decision

- At a hearing at which a complaint is presented, after the complaint is presented, the SBE shall—
 - Carry out further deliberation as necessary; and
 - Conduct a vote relating to an initial decision as to whether a violation has occurred and, if so, the civil penalty that should be assessed.

²⁹ *Id.*

³⁰ *Id.*; [see also id. 2.2-4003.](#)

- To assess a civil penalty for a violation of SBYA, the SBE must find that SBYA requirements apply to the communication in question, and that the communication fails to comply with SBYA requirements.
 - The SBE should consider whether the communication—
 - constitutes an advertisement subject to SBYA, consistent with the scope³¹ and definitions³² provided by SBYA; and
 - expressly advocates for the election or defeat of a clearly identified candidate.
- Upon such finding, the SBE may then determine whether the advertisement complies with SBYA disclosure requirements, and if not, what civil penalty to assess. An initial decision of the SBE may be modified or vacated subject to the requirement that a final decision shall be rendered not later than 90 days after the date on which the hearing occurs.

Final decisions

- The SBE shall render any final decision not later than 90 days after the date on which a hearing occurs.³³
- The SBE shall provide notice to the respondent not later than 5 days after the date of its final decision,³⁴ and such notice shall be signed by the SBE and served upon the respondent by mail.³⁵
- The original signed copy of a final decision of the SBE shall remain in the custody of the agency as a public record.³⁶
- A decision shall briefly state—
 - The findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the agency is operating;
 - The appropriate order for a penalty under Va. Code § 24.2-955.3 or denial thereof;³⁷ and
 - The time for filing a notice of appeal under Va. S. Ct. Rule 2A:2.

Reconsideration

- A respondent may file a petition for reconsideration with the SBE of a final decision of the SBE made pursuant to Va. Code § 2.2-4020.³⁸
- A petition for reconsideration shall be filed with the SBE not later than 15 days after service of the final decision.³⁹
- A petition for reconsideration shall include—
 - A full and clear statement of the facts pertaining to the reasons for reconsideration;

³¹ [Section 24.2-955.](#)

³² [Section 24.2-955.1.](#)

³³ Section 2.2-4021(B).

³⁴ *Id.*

³⁵ Section 2.2-4023.

³⁶ *Id.*

³⁷ Section 2.2-4020(E).

³⁸ Section 2.2-4023.1(A).

³⁹ *Id.*

- The grounds in support thereof; and
 - A statement of the relief desired.⁴⁰
- Not later than 30 days after the date on which the SBE receives a respondent's timely petition for reconsideration, the SBE shall render a written decision on the petition, which shall—
 - Deny the petition;
 - Modify the case decision; or
 - Vacate the case decision and set a new hearing for further proceedings.⁴¹
- The SBE may reconsider a final decision on its own initiative for good cause within 30 days of the date of the final decision.⁴²

⁴⁰ *Id.*

⁴¹ Section 2.2-4023.1(B).

⁴² Section 2.2-4023.1(E).

State Board of Elections Policy 2023-001

A meeting of the Virginia State Board of Elections (SBE) was held on December 20, 2023, during which the following policy was proposed by the Department of Elections (ELECT) and approved by the Board:

STAND BY YOUR AD HEARINGS

WHEREAS, Virginia Code § 24.2-955.3(D) provides that the SBE shall conduct a public hearing to determine whether to find a violation of Chapter 9.5 of Title 24.2 (commonly known as “Stand By Your Ad” or “SBYA”) and, if the SBE finds a violation of that chapter, shall assess civil penalties in accordance with that section.

NOW, THEREFORE, BE IT RESOLVED, by the SBE under its authority to issue rules and regulations to promote the proper administration of election laws and obtain uniformity in the administration of elections pursuant to Va. Code § 24.2-103(A), that:

The policy entitled “State Board of Elections Policy 2021-001” is rescinded; and

The below policy applies to the conduct of SBYA hearings held pursuant to Va. Code § 24.2-955.3(D).

Definitions

- “Clearly identified” means the candidate’s name, nickname, photograph, or drawing or the identity of the candidate is otherwise apparent—
 - through an unambiguous reference, such as the candidate’s initials (e.g., FDR), nickname (e.g., Ike), office (e.g., “the Governor”); or
 - through an unambiguous reference to their status as a candidate such as “the Democratic Senate nominee for District 5”.
- “Complainant” means the filer of a complaint.
- “Express advocacy” has the meaning given the term in 1 Va. Admin. Code 20-90-30.
- “Occurrence” means—
 - one broadcast of a radio or television political campaign advertisement;¹
 - or
 - with respect to print media,² one print media political campaign advertisement.
- “Respondent” means a person that is the subject of a complaint.

Complaints³

- Complaints may be submitted on the ELECT website at www.elections.virginia.gov/candidatepac-info/regulation-and-policies/. Complainants who submit complaints via other methods will be directed to submit a complaint online.

¹ Section 24.2-955.1.

² *Id.*

³ SBYA is silent as to the submission process for complaints.

- A complainant shall be notified upon submitting a complaint that the complainant may be required to appear or to produce evidence at a hearing arising from the complaint, as required under Va. Code § 2.2-4020(C).
- To allege a violation of SBYA, a complaint must contain all of the following—
 - The name of the complainant and the respondent;
 - A statement of the alleged violation; and
 - Evidence of the alleged violation, including—
 - In the case of print media, typically photographic evidence; or
 - In the case of radio or television, the complaint should identify the station and time at which the advertisement was aired.
- If the disputed conduct does not allege a violation of SBYA, ELECT will provide notice of receipt of the complaint to the complainant but will recommend that the SBE takes no action.
- Upon receipt of a complaint containing sufficient evidence to allege a violation of SBYA, ELECT shall investigate the complaint.

Notice

Method

- If a person is alleged to have violated SBYA, ELECT shall provide notice to the respondent via certified mail not later than 21 days before the date on which a hearing on the matter will be held.⁴
- If the respondent is a registered voter, ELECT shall send such notice via certified mail to the most recent physical address provided in the respondent's voter registration statement.
- If the respondent is a registered committee, ELECT shall send such notice via certified mail to the most recent physical address provided in the respondent's statement of organization.
- If ELECT is aware of an electronic mail address for the respondent, ELECT shall also send such notification via electronic mail.

Contents

- Each notice shall include—
 - The time,⁵ date,⁶ location,⁷ and nature of the hearing;⁸
 - The basic law under which the SBE contemplates its possible exercise of authority;⁹
 - The matters of fact and law asserted or questioned by the SBE,¹⁰ including an explanation of the alleged violation;¹¹
 - A statement of the maximum civil penalty that may be assessed with respect to

⁴ Section 24.2-955.3(D) (requiring the State Board to "send notice by certified mail to persons whose actions will be reviewed at such meeting and may be subject to civil penalty" "[a]t least 10 days prior to such hearing" (emphasis added)).

⁵ Sections 24.2-955.3(D) and 2.2-4020(B).

⁶ *Id.*

⁷ Section 2.2-4020(B).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 24.2-955.3(D).

the alleged violation;¹²

- Contact information consisting of the name, phone number, and government email address of the person designated by the SBE to respond to questions or otherwise assist a named party;¹³ and
- Notice that a default order may be issued pursuant to Va. Code § 2.2-4020.2(A) against the respondent if the respondent fails without good cause to attend or appear at the hearing and, if such a default order is issued, the SBE may conduct all further proceedings necessary to complete the hearing without the defaulting respondent's presence at the hearing.¹⁴

Hearings

Timing of Hearings

- The SBE will meet two times per year, once after each period listed below, to consider SBYA complaints received in that period:
 - July 1 through November 30.
 - December 1 through June 30.

Rights of respondents

- A respondent shall be entitled to—
 - Be accompanied by and represented by counsel;¹⁵
 - Submit oral and documentary evidence and rebuttal proofs;¹⁶
 - Conduct such cross-examination as may elicit a full and fair disclosure of the facts;¹⁷ and
 - Have the proceedings completed and a decision made with dispatch.¹⁸
- A respondent shall be given the opportunity to, on request and before the recommendations of ELECT are presented, submit in writing for the record—
 - Proposed findings and conclusions;¹⁹ and
 - Statements of reasons for the proposed findings and conclusions.²⁰
- If a respondent intends to conduct cross-examination of any person at the hearing, the respondent shall provide reasonable notice of such proposed cross-examination to the SBE prior to the hearing.

Rights of the Board

- The SBE may—
 - Administer oaths and affirmations;
 - Receive probative evidence;
 - Exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttal, or cross-examination;

¹² *Id.*

¹³ Section 2.2-4020(B).

¹⁴ Sections 2.2-4020.2(B) and 2.2-4020.2(C).

¹⁵ Section 2.2-4020(C).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 2.2-4020(D).

²⁰ *Id.*

- Rule upon offers of proof;
- Oversee a verbatim recording of the evidence;
- Hold conferences for the settlement or simplification of issues by consent;
- Dispose of procedural requests; and
- Regulate and expedite the course of the hearing.²¹

Default orders

- If a respondent without good cause fails to attend or appear at a hearing, the SBE may issue a default order against the respondent.²²
- If the SBE issues a default order, the SBE may conduct all further proceedings necessary to complete the hearing without the defaulting respondent's presence at the hearing.²³
- Not later than 15 days after the SBE gives notice to a respondent subject to a default order that an initial or final order has been rendered against the respondent, the respondent may petition the SBE to vacate the order.²⁴
 - If good cause is shown for the respondent's failure to appear, the SBE shall vacate the order and, after proper service of notice, conduct another hearing.²⁵
 - If good cause is not shown for the respondent's failure to appear, the SBE shall deny the motion to vacate.²⁶

Continuance

- A scheduled hearing shall not be delayed by the inability of the respondent to attend the hearing unless a request for a continuance is made in writing to the SBE not less than 7 days before the scheduled hearing date.
- A continuance shall not be granted unless the request is received in the required time and, in the opinion of the Chair, sets forth good and sufficient cause for the continuance.
- If a continuance is granted, ELECT staff shall notify all members of the SBE and document the grant in the official record of the meeting for continuity.

Subpoenas

- The SBE may, and on the request of a respondent shall, issue a subpoena requiring testimony or the production of other evidence.²⁷
- Upon request for a subpoena, the proceedings shall be continued, if necessary, in the opinion of the Chair, to allow reasonable time for the issuance of the subpoena and the production of the required testimony or other evidence.
- Any person who receives a subpoena issued by the SBE to appear or produce evidence with respect to a hearing and who objects to the subpoena may procure by petition a decision on the validity of the subpoena in the Circuit Court for the City of Richmond.²⁸

²¹ Section 2.2-4020(C).

²² Section 2.2-4020.2(A).

²³ Section 2.2-4020.2(C).

²⁴ Section 2.2-4020.2(E).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Section 2.2-4022.

²⁸ *Id.*

- If any person refuses or neglects to comply with a subpoena issued by the SBE with respect to a hearing, the SBE may procure an order of enforcement from the Circuit Court for the City of Richmond.²⁹

Interpreter services

- If an interpreter is required, ELECT will make appropriate arrangements to ensure an interpreter is present during the hearing. The complainant or respondent shall provide ELECT reasonable notice before the hearing that an interpreter is required.

Presentation of complaints

- With respect to each complaint, ELECT shall present information to assist the SBE in making a determination as to whether a violation has occurred and, if so, the civil penalty that should be assessed, and the respondent shall be entitled to appear and present information in response.
- In presenting each complaint, ELECT shall include—
 - The evidence submitted regarding the complaint and such other evidence as ELECT discovered during its investigation of the complaint;
 - The names of the complainant and the respondent;
 - The provision of SBYA that the respondent is alleged to have violated;
 - The manner in which SBYA is alleged to have been violated;
 - The date of the alleged violation;
 - Whether the respondent has previously violated SBYA during any election cycle;
 - The manner in which the complaint was received (i.e., online, via USPS, via FedEx, etc.);
 - A statement of whether any written explanation or proposed findings and conclusions, and statements of reasons for the proposed findings and conclusions, have been received from the respondent; and
 - The action that ELECT recommends the SBE take with respect to the complaint, including the amount of civil penalty to be assessed if ELECT recommends finding that a provision of SBYA has been violated.

Initial decision

- At a hearing at which a complaint is presented, after the complaint is presented, the SBE shall—
 - Carry out further deliberation as necessary; and
 - Conduct a vote relating to an initial decision as to whether a violation has occurred and, if so, the civil penalty that should be assessed.
- To assess a civil penalty for a violation of SBYA, the SBE must find that SBYA requirements apply to the communication in question, and that the communication fails to comply with SBYA requirements.
 - The SBE should consider whether the communication—
 - constitutes an advertisement subject to SBYA, consistent with the scope³⁰ and definitions³¹ provided by SBYA (*see* Appendix A for Virginia Code provisions); and

²⁹ *Id.*; *see also id.* 2.2-4003.

³⁰ Section 24.2-955.

³¹ Section 24.2-955.1.

- expressly advocates for the election or defeat of a clearly identified candidate.
- Upon such finding, the SBE may then determine whether the advertisement complies with SBYA disclosure requirements, and if not, what civil penalty to assess. An initial decision of the SBE may be modified or vacated subject to the requirement that a final decision shall be rendered not later than 90 days after the date on which the hearing occurs.

Final decisions

- The SBE shall render any final decision not later than 90 days after the date on which a hearing occurs.³²
- The SBE shall provide notice to the respondent not later than 5 days after the date of its final decision,³³ and such notice shall be signed by the SBE and served upon the respondent by mail.³⁴
- The original signed copy of a final decision of the SBE shall remain in the custody of the agency as a public record.³⁵
- A decision shall briefly state—
 - The findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the agency is operating;
 - The appropriate order for a penalty under Va. Code § 24.2-955.3 or denial thereof;³⁶ and
 - The time for filing a notice of appeal under Va. S. Ct. Rule 2A:2.

Reconsideration

- A respondent may file a petition for reconsideration with the SBE of a final decision of the SBE made pursuant to Va. Code § 2.2-4020.³⁷
- A petition for reconsideration shall be filed with the SBE not later than 15 days after service of the final decision.³⁸
- A petition for reconsideration shall include—
 - A full and clear statement of the facts pertaining to the reasons for reconsideration;
 - The grounds in support thereof; and
 - A statement of the relief desired.³⁹
- Not later than 30 days after the date on which the SBE receives a respondent’s timely petition for reconsideration, the SBE shall render a written decision on the petition, which shall—
 - Deny the petition;
 - Modify the case decision; or
 - Vacate the case decision and set a new hearing for further proceedings.⁴⁰

³² Section 2.2-4021(B).

³³ *Id.*

³⁴ Section 2.2-4023.

³⁵ *Id.*

³⁶ Section 2.2-4020(E).

³⁷ Section 2.2-4023.1(A).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Section 2.2-4023.1(B).

- The SBE may reconsider a final decision on its own initiative for good cause within 30 days of the date of the final decision.⁴¹

⁴¹ Section 2.2-4023.1(E).

APPENDIX A: Virginia Code Provisions

§ 24.2-955. Scope of disclosure requirements

The disclosure requirements of this chapter apply to any sponsor of an advertisement in the print media, on radio or television, or placed or promoted for a fee on an online platform, the cost or value of which constitutes an expenditure or contribution required to be disclosed under Chapter 9.3 (§ 24.2-945 et seq.) except that the disclosure requirements of this chapter do not apply to (i) an individual who makes independent expenditures aggregating less than \$1,000 in an election cycle for or against a candidate for statewide office or less than \$200 in an election cycle for or against a candidate for any other office or (ii) an individual who incurs expenses only with respect to a referendum.

2002, c. 487, § 24.2-941; 2006, cc. 787, 892; 2008, c. 825; 2020, c. 551.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 24.2-955.1. Definitions

As used in this chapter, unless the context requires a different meaning:

"Advertisement" means any message appearing in the print media, on television, on radio, or on an online platform, that constitutes a contribution or expenditure under Chapter 9.3 (§ 24.2-945 et seq.). "Advertisement" shall not include novelty items authorized by a candidate including, but not limited to, pens, pencils, magnets, and buttons to be attached to wearing apparel.

"Authorized by _____" means the same as "authorization" as defined in § 24.2-945.1.

"Campaign telephone calls" means a series of telephone calls or text messages, electronic or otherwise, made (i) to 25 or more telephone numbers in the Commonwealth, (ii) during the 180 days before a general or special election or during the 90 days before a primary or other political party nominating event, (iii) conveying or soliciting information relating to any candidate or political party participating in the election, primary or other nominating event, and (iv) under an agreement to compensate the telephone callers.

"Candidate" means "candidate" as defined in § 24.2-101.

"Candidate campaign committee" or "campaign committee" means "campaign committee" as defined in § 24.2-945.1.

"Coordinated" or "coordination" means an expenditure that is made (i) at the express request or suggestion of a candidate, a candidate's campaign committee, or an agent of the candidate or his campaign committee or (ii) with material involvement of the candidate, a candidate's campaign committee, or an agent of the candidate or his campaign committee in devising the strategy, content, means of dissemination, or timing of the expenditure.

"Conspicuous" means so written, displayed, or communicated that a reasonable person ought to have noticed it.

"Full-screen" means the only picture appearing on the television screen during the oral disclosure statement that (i) contains the disclosing person, (ii) occupies all visible space on the television screen, and (iii) contains the image of the disclosing person that occupies at least 50% of the vertical height of the television screen.

"Independent expenditure" means "independent expenditure" as defined in § 24.2-945.1.

"Name of candidate" means (i) the full name of the candidate as it appears on the statement of qualification filed pursuant to § 24.2-501 or as it will appear on the ballot or (ii) the first name, middle name, or "nickname" of the candidate as it appears on his statement of qualification and a last name of the candidate as it appears on his statement of qualification.

"Occurrence" means one broadcast of a radio or television political campaign advertisement.

"Online platform" means any public-facing website, web application, or digital application,

including a social network, ad network, or search engine, that sells advertisements.

"Online political advertisement" means an advertisement that is placed or promoted for a fee on an online platform.

"Online political advertiser" means any person who purchases an advertisement from an online platform or promotes an advertisement on an online platform for a fee.

"Political action committee" means "political action committee" as defined in § 24.2-945.1.

"Political committee" means "political committee" as defined in § 24.2-945.1.

"Political party" has the same meaning as "party" or "political party" as defined in § 24.2-101.

"Political party committee" means any state political party committee, congressional district political party committee, county or city political party committee, or organized political party group of elected officials. The term shall not include any other organization or auxiliary associated with or using the name of a political party.

"Print media" means billboards, cards, newspapers, newspaper inserts, magazines, printed material disseminated through the mail, pamphlets, fliers, bumper stickers, periodicals, websites, electronic mail, non-video or non-audio messages placed or promoted for a fee on an online platform, yard signs, and outdoor advertising facilities. If a single print media advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face.

"Radio" means any radio broadcast station that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

"Scan line" means a standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.

"Sponsor" means a candidate, candidate campaign committee, political committee, or person that purchases an advertisement.

"Telephone call" means any single telephone call or text message, electronic or otherwise, that when combined with other telephone calls or text messages constitutes campaign telephone calls.

"Television" means any television broadcast station, cable television system, wireless-cable multipoint distribution system, satellite company, or telephone company transmitting video programming that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

"Unobscured" means that the only printed material that may appear on the television screen is a visual disclosure statement required by law, and that nothing is blocking the view of the disclosing person's face.

"Yard sign" means a sign paid for or distributed by a candidate, campaign committee, or political committee to be placed on public or private property. Yard signs paid for or distributed prior to July 1, 2015, shall not be subject to the provisions of §§ 24.2-956 and 24.2-956.1.

2002, c. 487, § 24.2-942; 2003, c. 237; 2006, cc. 787, 892; 2015, c. 573; 2020, cc. 551, 554, 615.

The chapters of the acts of assembly referenced in the historical citation at the end of this

section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Request for Petition for Removal of an Electoral Board Member

BOARD WORKING PAPERS
Paul G. Saunders, III
Elections and Registration Services
Supervisor



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Memorandum

To: Chairman O'Bannon, Vice Chair Dance, Secretary Alvis-Long, Delegate Merricks and Matthew Weinstein
From: Paul G. Saunders, III, Elections and Registration Services Supervisor
Date: December 20th, 2023
Re: Request to Remove Rene Rice from Brunswick County Electoral Board

Possible Motion: *"I move pursuant to § 24.2-234.1 of the Code of Virginia, that the State Board of Elections request legal representation to prepare a petition to the Circuit Court of Brunswick County for the removal of Rene Rice from the Brunswick County Electoral Board."*

Va. Code § 24.2-234.1: "A. Any member of a local electoral board may be removed from office by the circuit court in whose jurisdiction he resides upon a petition signed by a majority of the members of the State Board as provided in § 24.2-103. The circuit court shall proceed with such removal in accordance with the provisions of § 24.2-235."

Background: It is the discretion of the State Board of Elections to take action in this matter. Taking action requires a majority vote.

Attachment: Letter from Brunswick County Electoral Board Members and General Registrar



County of Brunswick

OFFICE OF THE ELECTORAL BOARD

Gilbert J. Benjamin, *Secretary*

100 Tobacco Street, Room 103

Lawrenceville, VA 23868

Phone (434) 848-4499

Fax (434) 848-9276

December 13, 2023

Dr. John O'Bannon
Charmain Virginia State Board of Elections
1100 Bank Street, First Floor
Richmond, VA 23219

Ms. Susan Beals
Commissioner Virginia State Board of Elections
1100 Bank Street, First Floor

Re: Petition to Remove Brunswick County Electoral Board Member Rene Rice

Dear Dr. O'Bannon and Ms. Beals,

We write to formally request a petition of the removal of Ms. Rene Rice, a current member of the Brunswick County Board for severe dereliction of duties. Below is a quick synopsis of why we feel she needs to be removed.

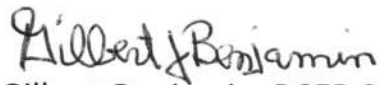
- Removed from Chair position for abuse of position
- False statements
- Complaints and allegations concerning election law offenses
- Willful neglect and corrupt conduct
- Intimidation of Officers of Elections
- Allegations of numerous criminal violations in a FOIA response from Ms. Rice
- We have not seen or heard from Ms. Rice since August 23, 2023
- Failure to appear and perform duties on November 7, 2023

Attached is our original request for removal in greater detail of the first five allegations. The matter regarding cell phones has been resolved. We appreciate your help in resolving this matter.

Sincerely,



Kerry Phelps, BCEB Chair



Gilbert Benjamin, BCEB Secretary



David Clary, Brunswick County General Registrar



County of Brunswick

OFFICE OF THE ELECTORAL BOARD

Gilbert J. Benjamin, *Secretary*

100 Tobacco Street, Room 103

Lawrenceville, VA 23868

Phone (434) 848-4499

Fax (434) 848-9276

September 7, 2023

Dr. John O'Bannon
Chairman Virginia State Board of Elections
1100 Bank Street, First Floor
Richmond, VA 23219

Ms. Susan Beals
Commissioner Virginia State Board of Elections
1100 Bank Street, First Floor
Richmond, VA 23219

RE: Petition to Remove Brunswick County Electoral Board Member, Rene' Rice

Dear Dr. O'Bannon and Ms. Beals,

We write to formally request a petition for the removal of Ms. Rene' Rice, a current member of the Brunswick County Electoral Board (BCEB).

The current composition of the BCEB includes Ms. Rice and Ms. Kerry Lawhorne-Phelps as Republican members, along with Mr. Gilbert Benjamin as the Democratic member.

Ms. Rice was appointed to the Brunswick County Electoral Board on September 20, 2021, and subsequently elected as Vice Chair during a BCEB meeting on the same date. In a later BCEB meeting on February 8, 2023, Ms. Rice assumed the position of Chair.

This correspondence seeks to provide the Virginia State Board of Elections with detailed information pertaining to potential code violations and concerning statements made by Ms. Rice towards her fellow Electoral Board members, Mrs. Lawhorne-Phelps and Mr. Gilbert Benjamin, as well as Mr. David Clary, the General Registrar.

Outlined below are specific instances that warrant attention:

ITEM #1: Per Virginia Code § 24.2-1016. False statements; penalties.

“Any willfully false material statement or entry made by any person in any statement, form, or report required by this title shall constitute the crime of election fraud and be punishable as a Class 5 felony. Any preprinted statement, form, or report shall include a statement of such unlawful conduct and the penalty provided in this section.”

On June 22, 2023, Ms. Rice sent an email to the BCEB, which included concerns she had gathered during her visits to precincts on June 20th, the Republican Primary Election Day. Item #6 in this email raised concerns about actions, character, and behavior, specifically, physical altercations and breaches of the 40-foot election law boundaries by candidates and their outside poll workers.

Subsequent to the BCEB meeting on June 23, 2023, both Mr. Gilbert Benjamin, BCEB Secretary, and Mr. David Clary, the General Registrar, contacted personnel from the Totaro precinct to corroborate the reported altercation, and both were informed that the physical altercations did not occur.

ITEM #2: Per VA Code § 24.2-1019, Complaints and allegations concerning election law offenses.

“Any complaint or allegation concerning unlawful conduct under this title shall be filed with the attorney for the Commonwealth of the county or city in which the alleged violation occurred.”

During the June 23, 2023, BCEB meeting, Ms. Rice was apprised that her report of physical altercations among candidates, as cited in her June 22, 2023, email, should be reported to the Commonwealth’s Attorney. She confirmed that she had not taken this step.

ITEM #3: Per Virginia Code § 24.2-1001. Willful neglect or corrupt conduct.

“A. If any officer of election, member of an electoral board, or other person on whom any duty is enjoined by law relative to any election, is guilty of willful neglect of his duty, he shall be guilty of a Class 1 misdemeanor.

B. If any person listed in subsection A is guilty of any corrupt conduct in the execution of his duty, he shall be guilty of a Class 5 felony.”

At the April 19, 2023, BCEB meeting, concerns from past elections prompted an agreement to convene precinct Chiefs to address issues ahead of the June 20th Republican Primary. This meeting was scheduled for May 3rd, but Ms. Rice did not

attend. Subsequently, during the June 23, 2023, BCEB meeting, Ms. Rice raised concerns about the reimbursement of mileage expenses, which had been ongoing since March 2023. Upon investigation, it was revealed that the County of Brunswick Finance Department found Ms. Rice's mileage claims unreasonable. Ms. Rice left the meeting abruptly, leaving the two remaining Board members to conclude the remaining business matters.

ITEM #4: Per Virginia Code § 24.2-1009. Stealing or tampering with ballot containers, voting or registration equipment, software, records, or documents.

“Any person who (i) steals or willfully, fraudulently, or wrongfully tampers with any part of any ballot container, voting or registration equipment, records, or documents, which are used in any way within the registration or election process, (ii) steals or willfully, fraudulently, or wrongfully tampers with the software used to prepare and operate voting equipment or the software or hardware used to collect and disseminate election returns, (iii) steals or willfully, fraudulently, or wrongfully tampers with an electronic activation device or electronic data storage medium of the type used to prepare, operate or back-up electronic voting equipment, (iv) willfully, fraudulently, or wrongfully intercepts, alters or disrupts the electronic transmission of election returns or the posting of returns on the Internet, (v) fraudulently makes any entry, deletion, or alteration to any item listed in (i), or (vi) aids, abets, or permits any other person to violate the provisions of clauses (i) through (v), shall be guilty of a Class 5 felony.”

Despite repeated requests, Ms. Rice has retained three cell phones acquired by the BCEB since March 2023. She has not responded to communication attempts through voicemail, email, text, or certified mail regarding the return of these phones. The local Sheriff's Office has been engaged in this matter.

ITEM #5 Per Virginia Code § 24.2-1000. Intimidation of officers of election.

“Any person who, by bribery, intimidation, threats, coercion, or other means in violation of the election laws willfully hinders or prevents, or attempts to hinder or prevent, the officers of election at any polling place, voter satellite office, or other location being used by a locality for voting purposes from holding an election is guilty of a Class 5 felony.”

During the June 20, 2023, Republican primary, Ms. Rice removed several officers of elections from their precincts. Conversations with these officers revealed concerns about Ms. Rice's inquiries regarding Electoral Board members and the General Registrar. Some officers reported feeling targeted and apprehensive about her intentions. Several officers of election reported that Ms. Rice requested them to sign a journal to verify her presence at the precinct, a request perceived as outside the scope of her official duties.

ITEM #6: Allegation of numerous criminal violations in a FOIA response from Ms. Rice.

During the August 23, 2023, BCEB meeting, Ms. Cyliene Montgomery, Chair of the Brunswick County Democratic Committee, submitted a FOIA request regarding issues involving Ms. Rice. During the citizens' comments section, Ms. Montgomery expressed concerns about Ms. Rice's unilateral decision-making and was followed by Mr. Eric Brazeal, Chair of the Brunswick County Republican Committee, in calling for Ms. Rice's resignation. Ms. Rice responded to the FOIA request on August 23, 2023, with a document titled "*Submission of FOIA Policies and Procedures of Brunswick County*," which was not endorsed by the BCEB. Her response included unfounded accusations, including **sexism, racism, harassment, and physical threats to her well-being by the other BCEB members and the General Registrar.**

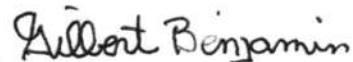
Ms. Rice's recurrent pattern of leaving BCEB meetings when her proposals are not adopted or becoming unresponsive to fellow Board members, coupled with her possession of BCEB-owned cell phones and the allegations in the FOIA response, raises significant concerns about her ability to effectively discharge her responsibilities as an Electoral Board member.

The Brunswick County Electoral Board and the Brunswick County Republican Party Chair respectfully request Ms. Rene' Rice's removal from the Brunswick County Electoral Board based on the information detailed in this letter. We kindly request that the Virginia State Board of Elections consider this petition at your next Board meeting on September 12, 2023.

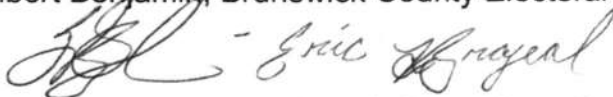
Respectfully submitted,



Kerry Lawhorne-Phelps, Brunswick County Electoral Board Chair



Gilbert Benjamin, Brunswick County Electoral Board Secretary



Eric Brazeal, Brunswick County Republican Party Chair

cc: David Clary, Brunswick County General Registrar

Brunswick County Electoral Board Meeting

August 23, 2023

Call to Order: The meeting was called to order at 10:00 a.m. by Chairwoman Rene' Rice. In attendance were:

Rene' Rice, Chairwoman

Kerry Phelps, Vice Chairwoman

David Clary, Registrar

Gilbert Benjamin, Secretary

Cyliene Montgomery, Chairwoman of the Brunswick County Democratic Committee

Eric Brazeal, Chairman of the Brunswick County Republican Committee

Rebecca Mullins Officer of Election for Brunswick County

Welcome: The Chairwoman welcomed the EB, Registrar, and Citizens to the EB meeting.

Adopt Agenda: The Secretary made a motion to amend the agenda by having a special meeting address items D, E, and F second by the Vice Chairwoman.

Adopt Minutes: The Secretary made a motion to accept the April 19, 2023, minutes seconded by the Vice Chairwoman, and the motion was carried.

Registrar's Update: The Registrar informed EB that because of Virginia law changes new envelopes had to be ordered and four hundred fifty ballots had to be mailed out. He handed out unofficial sample ballots.

Old Business: The Chairwoman had not finalized a plan for the Verizon cell phones for EB and did not bring it to the meeting. The Secretary made a motion that the Chairwoman turn in cell phones and ask the County to put the EB on their cell phone plan seconded by the Vice Chairwoman and the motion was carried. The Chairwoman opposed.

The Secretary made a comment on the success of the CPR Training and hoped that we could do another training in the future.

New Business:

- a. The Chairwoman believes there should be equal pay for the Chair and Vice Chair based on the Secretary's stipend. The Vice-Chair and Secretary disagreed based on the workload of the Secretary Further it was explained to the Chairwoman that the stipends received by the EB are assigned at the State level and that the Secretary was the only EB member eligible to receive extra pay.
- b. The Secretary gave EB a handout on the Officer of Election reassignments.

- c. The Secretary made a motion to remove Chairwoman Rene' Rice as Chairwoman of the EB seconded by the Vice Chairwoman and the motion was carried the Chairwoman opposed and said she would not resign.

The Secretary made a motion to make Vice Chairwoman Kerry Phelps Chairwoman of the EB seconded by the Vice Chairwoman and the motion carried Rene' Rice opposed.

The Secretary made a motion to make Rene' Rice Vice Chairwoman seconded by the Chairwoman and the motion carried.

Citizen Comments:

Eric Brazeal expressed his concerns on how Rene' Rice conducted herself as Chairwoman of the EB and he requested her to resign he also submitted a letter to the EB.

Rebecca Mullins expressed concerns over not working Early voting for more than one day her daughter not working at all and that the Officers of Election are not being treated fairly by the EB.

Cyliene Montgomery stated that she is looking forward to the business of the EB getting back to normal She also submitted a FOIA request to the EB.

The meeting was adjourned at 11:08 am
Submitted on August 28, 2023
Gilbert J. Benjamin, Secretary-EB

Dear Electoral Board members,

I write to you today to express concerns for our current leadership in the electoral board, specifically Chairwoman Renee Rice. It has come to my attention in recent months there have been exaggerated filings for reimbursement as well as unnecessary treatment of poll workers as well as other members of the Board. After first hearing of these concerns I called Renee and believed the problems would work themselves out. After making that call I quickly learned that it wasn't a one time situation, and multiple citizens continued to reach out to me expressing concerns about Renee.

Due to the fact that there has been mounting evidence regarding on going issues with expense filing , treatment of others, inaccurate interpretation of the Virginia Code, making "executive decisions" when votes should be taken, and unprofessionally walking out of the electoral board July meeting, I believe as the Republican Chairman of Brunswick County it is time for me to speak on these issues.

It is the electoral boards responsibility to operate free and fair elections not gossip about firing registrars, not demanding to make executive decisions when there should be votes. As a Chairwoman Renee should be leading, not dictating. Duties have not been preformed, and procedures have not been followed. Walking out of meetings while business is occurring is inexcusable, especially for chairman. The board has a legal responsibility to provide our county with fair elections, and I feel with Renee's leadership Brunswick County is in jeopardy of failing on that responsibility. Therefore as the Chairman of the Republican Committee, and the individual who presented Renee for the position, I feel there has been a dereliction of duty. Being the insurmountable evidence, and magnitude of individuals who have expressed concern I am politely requesting for Renee Rice to resign from the electoral board.

Sincerely,

Eric Brazeal – Chairman Republican Committee of Brunswick County



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

CLOSED SESSION

BOARD WORKING PAPERS

December 20, 2023

Closed Session

1. **Into closed session:** “Pursuant to Virginia Code Section 2.2-3711(A)(7), I move that the Board go into closed session for the purpose of discussing pending threatened litigation. In accordance with Section 2.2-3712(F), Susan Beals, Commissioner of Elections, and Travis Andrews and Dennis Polio of the Office of the Attorney General, will attend the closed session because their presence will reasonably aid the Board in its consideration of the subject of the meeting.”

a. After the motion is seconded, the Board members must vote (must be a roll call vote).

2. **Out of closed session:** “I move to reconvene the meeting in open session, and take a roll call vote certifying that to the best of each member’s knowledge (i) only such public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard or discussed by the State Board of Elections”

a. After the motion is seconded, poll the members for each vote. Each member must vote individually and not as a group.