



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

BOARD MEETING

Tuesday, July 7, 2020

James Monroe Building
Conference Room C, D, & E
Richmond, VA

Video and Teleconference

Videoconference:

<https://covaconf.webex.com/covaconf/j.php?MTID=m5324f8cb0e2e91b338880e2a9eba3ef4>

Meeting password: qgTAQYYC562

Teleconference:

1-517-466-2023 US Toll

1-866-692-4530 US Toll-Free

Access Code: 161 677 8553

Richmond, VA

1:00 P.M.

SBE Board Working Papers



**STATE BOARD OF ELECTIONS
AGENDA**

DATE: Tuesday, July 7, 2020

LOCATION: James Monroe Building

101 N 14th St., Richmond, VA

Conference room C, D, & E

TELECONFERENCE:

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<https://covaconf.webex.com/covaconf/j.php?MTID=m5324>

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Password: qgTAQYYC562

TIME: 1:00 PM

I. CALL TO ORDER

Robert Brink, Chairman

II. APPROVAL OF MINUTES

Jamilah LeCruise, Secretary

A. January 28, 2020

B. March 17, 2020

C. April 3, 2020

D. April 13, 2020

E. April 21, 2020

F. May 15, 2020

G. May 26, 2020

III. COMMISSIONER'S REPORT

*Christopher E. Piper
Commissioner*

IV. DISCUSSION OF VIRGINIA BEACH PRIMARY ELECTION

Robert Brink, Chairman

V. OLD BUSINESS

A. Post-Election Report

*Christopher E. Piper
Commissioner*

VI. NEW BUSINESS

A. Certification of June 23 Primary Results

*Paul Saunders
Elections Administration
Supervisor*

B. Consideration of Filing Extension under Va. Code §24.2-503

*Dave Nichols
Director of Elections Services*

**C. Drawing for Party Ballot Order
(General and Special Elections from October 1, 2020, through April 30, 2021)**

*Dave Nichols
Director of Elections Services*

D. USPS Elections Mail Presentation

*James Heo
Confidential Policy Advisor*

VII. PUBLIC COMMENT

VIII. ADJOURNMENT

NOTE: Public comment will be offered prior to Board action, but comments will be limited to the specific agenda item in question. An open public comment period will be offered prior to adjournment. Members of the public participating virtually who wish to give public comment on any of the agenda items may do so; if using WebEx, by using the raise hands feature, or if by phone, identifying themselves when the Chair opens the floor to those members of the public attending via telephone. **Due to Social distancing guidelines, we are limited to 24 seats to the public. A face mask is required to enter the building.**

<https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=30345>



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Approval of Minutes

BOARD WORKING PAPERS

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The State Board of Elections (“the Board”) meeting was held Tuesday, January 28, 2020, in the West Reading Room of the Patrick Henry Building in Richmond, Virginia. In attendance: Robert Brink, Chairman, John O’Bannon, Vice Chairman, and Jamilah LeCruise, Secretary, represented the State Board of Elections (“the Board”). Christopher E. “Chris” Piper, Commissioner, represented the Department of Elections (“ELECT”). Carol L. Lewis represented the Office of the Attorney General (“OAG”). Chairman Brink called the meeting to order at 1:02 P.M.

The first order of business was the approval of the minutes for the November 18, 2019, and December 18, 2019 minutes, presented by Secretary LeCruise. Vice Chair O’Bannon *moved that the Board approve the minutes from the November 18, 2019 Board meeting*. Secretary LeCruise seconded the motion, and the motion passed unanimously. Secretary LeCruise *moved that the Board approve the minutes from the December 18, 2019 Board meeting*. Vice Chair O’Bannon seconded the motion, and the motion passed unanimously.

Chairman Brink asked Commissioner Piper about the three Democratic presidential candidates that withdrew from the race. Commissioner Piper stated that each candidate had until December 18, 2019, to remove their name from the ballot and notify the localities. The Commissioner stated that to date ELECT has not received official notification of any withdrawals. Commissioner Piper advised that if a withdrawn candidate receives a vote, the ballot will still be counted, and credit would be provided to that candidate.

The next order of business was the Commissioner’s report, presented by Commissioner Piper. Commissioner Piper introduced three new employees Paul Saunders, Election Administration Supervisor, Cassandra Harris, Deputy Chief Information Officer, and Kierra

24 Mitchell, Board Liaison. The Commissioner stated that, in preparation for the 2020 presidential
25 election, ELECT is focusing on election security. Commissioner Piper informed the Board that,
26 as part of their focus on election security, the Board’s consideration for updating the
27 Certification for Electronic Pollbooks and the Virginia System Certification Standards was on
28 the agenda. The Commissioner informed the Board that the 2019 General Assembly passed
29 HB2178, which required localities to meet certain minimum cybersecurity standards to continue
30 to access the Virginia voter registration database.

31 Commissioner Piper stated that in 2019 the Board passed a requirement for each locality
32 to complete an assessment of their security status. The Commissioner stated that the assessments
33 have been completed, and ELECT is now gathering plans on how to implement the Minimum-
34 Security Standards. Commissioner Piper informed the Board that the contract partners would
35 provide assistance to the localities in order to ensure the standards are met. The Commissioner
36 also informed the Board that ELECT would be conducting a two-day tabletop exercise in April
37 2020.

38 Commissioner Piper stated that Virginia is a “Super Tuesday State” and the Democratic
39 Presidential Primary will be held on March 3rd. The Commissioner informed the Board that
40 there would be one ballot style for the entire state. Commissioner Piper explained that Virginia is
41 an open primary state, meaning anyone who is a registered voter is eligible to vote in the March
42 3rd Democratic primary. The Commissioner stated that the registration deadline for the
43 Democratic Primary is February 10th and the last day for in-person absentee voting is February
44 29th.

45 Commissioner Piper stated that there would be four elections this year, the March 3rd
46 Democratic Primary, the May 1st General Election with over 100 cities and towns, the June

47 Primary and then November General Election. The Commissioner informed the Board that the
48 Governor's initiative is the no-excuse/early voting bill. Commissioner Piper stated that the bill
49 allows voters to vote absentee the entire 45 days without excuse in-person. The Commissioner
50 explained that ELECT anticipates localities will open a large number of satellite locations.
51 Commissioner Piper stated that ELECT has a satellite bill that has been passed through the
52 House.

53 The Commissioner stated that during a sub-committee meeting, an agency bill was heard,
54 which requires the Board to approve certification standards for General Registrars and Directors
55 of Elections. Commissioner Piper informed the Board that this would require ELECT to create a
56 certification program that would require the General Registrars and Directors of Elections to
57 meet each requirement for the certification. The Commissioner stated that the General Registrars
58 and Directors of Elections would have an initial certification that must be met within 12 months
59 of the appointment, and it must be maintained annually. Every four years, local elections
60 officials must go through another certification, upon reappointment. The Commissioner stated
61 that the certification would be developed by the Department and approved by the Board.

62 Commissioner Piper stated that the Governor supports the bill making Election Day a
63 state holiday. Commissioner Piper stated that there are 900 budget amendments. The
64 Commissioner stated that in late 2020, the federal government, U.S. Congress, and the President
65 signed a budget bill providing 425 million dollars in additional Help America Vote Act funds for
66 cybersecurity. Commissioner Piper informed the Board that Virginia received 10.2 million
67 dollars of the 425 million dollars. The Commissioner explained that ELECT is required to have a
68 plan sent to the Elections Assistance Commission by April 27, 2020, detailing how the funds will

69 be used. Commissioner Piper explained that Virginia is required to match five percent of the 9
70 million dollars provided to Virginia in 2018, and 20 percent of the 10.2 million dollars.

71 The next order of business was the Recounts Suite Report presented by Samantha
72 Buckley, Policy Analyst. *This report is in the Working Papers for the January 28, 2020 meeting.*
73 Chairman Brink asked if this Recount Suite document would be applied to statewide and local
74 recounts. Ms. Buckley explained that ELECT would be providing another document for
75 statewide recounts. Vice Chair O'Bannon moved *that the Board adopt the proposed amendments*
76 *to the Recount Suite effective immediately.* Secretary LeCruise seconded the motion, and the
77 motion passed unanimously.

78 The next order of business was the Election Equipment presentation, presented by James
79 Heo, Confidential Policy Advisor. Mr. Heo expressed appreciation to all the vendors and ELECT
80 staff that have helped with the process. The first topic he discussed was the Hart InterCivic 2.3
81 Voting System Certification. *This report is in the Working Papers for the January 28, 2020*
82 *meeting.* Secretary LeCruise moved *that the Board certify the use of Hart InterCivic 2.3 in*
83 *elections in the Commonwealth of Virginia, pursuant to the State Certification of Voting*
84 *Systems: Requirements and Procedures.* Vice Chair O'Bannon seconded the motion, and the
85 motion passed unanimously.

86 Mr. Heo stated the next topic for discussion was the Election Equipment Uniformity
87 Plan. *This report is in the Working Papers for the January 28, 2020 meeting.* Secretary LeCruise
88 asked if there has been any pushback from the smaller localities due to the cost. Mr. Heo
89 informed the Board that they have negotiated with the vendors to provide services at a lower
90 cost. Secretary LeCruise moved *that the Board recognize that all existing voting systems and*
91 *electronic pollbooks are considered compliant with SBE standards upon the Department's*

92 *confirmation of proof of current and valid certification. These systems will remain certified*
93 *under the previous standards until July 31, 2021.* Vice Chair O’Bannon seconded the motion and
94 the motion passed unanimously.

95 Mr. Heo stated the next topic for discussion would be the amendment to the Virginia
96 Voting System Certification Standard. *This certification report is in the Working Papers for the*
97 *January 28, 2020 meeting.* Chairman Brink asked what the vendor responsibilities are for
98 training the 133 localities. Mr. Heo stated that many of the localities have contracts with the
99 vendors to assist with training. Vice Chair O’Bannon moved *that the Board approve the*
100 *adoption of amendments to the Voting System Certification Standards and that these amended*
101 *standards are effective immediately. Vendors for new equipment or software available for use in*
102 *Virginia must comply with these standards.* Secretary LeCruise seconded the motion and the
103 motion passed unanimously.

104 Mr. Heo stated the next topic for discussion would be the Electronic Pollbook
105 Certification Standard (“EPB”). *This certification report is in the Working Papers for the*
106 *January 28, 2020 meeting.* Chairman Brink asked Mr. Heo to explain the EPB “Mock Election”.
107 Mr. Heo stated that the mock elections would mimic the terms of a real election. Secretary
108 LeCruise moved *that the Board approve the adoption of the proposed Electronic Pollbook*
109 *Certification standards, effective immediately. Vendors for new equipment or software available*
110 *for use in Virginia must comply with these standards.* Vice Chair O’Bannon seconded the motion
111 and the motion passed unanimously.

112 The next order of business was the Stand By Your Ad: Anonymous Complaints and
113 Penalties presentation, presented by Arielle A. Schneider, Policy Analyst. *This memo is in the*
114 *Working Papers for the January 28, 2020 meeting.*

115 The next order of business was the GREB Workgroup Final Report, presented by The
116 Honorable John Hager, GREB Co-Chair. *This report is in the Working Papers for the January*
117 *28, 2020 meeting.* Chairman Brink expressed appreciation for all the work Mr. Hager and the
118 other former GREB members had accomplished.

119 Chairman Brink opened the floor to public comment.

120 Secretary LeCruise moved to adjourn the meeting. Vice Chair O’Bannon seconded the
121 motion and the motion passed unanimously. The meeting adjourned at approximately 2:52 P.M.

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125 Chairman
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128 Vice Chair
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131 Secretary
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The State Board of Elections (“the Board”) meeting was held by electronic communication on Tuesday, March 17, 2020. In attendance: Robert Brink, Chairman, John O’Bannon, Vice Chairman, and Jamilah LeCruise, Secretary, represented the State Board of Elections (“the Board”). Christopher E. “Chris” Piper, Commissioner, represented the Department of Elections (“ELECT”). Heather Hays Lockerman represented the Office of the Attorney General (“OAG”). Chairman Brink called the meeting to order at 1:02 P.M.

Chairman Brink informed the Board that on March 12, 2020, Governor Ralph S. Northam declared that a state of emergency exists in the Commonwealth as the result of the potential spread of COVID-19, a communicable disease presenting a threat to public health. The State Board of Elections was initially scheduled to meet in person on March 17, 2020, but is instead meeting by electronic communication means because the catastrophic nature of the potential spread of COVID-19 makes it unsafe to meet in person. Accordingly, the State Board of Elections is meeting today via teleconference.

The purpose of the meeting is to follow the directives included in the Governor’s Declaration to implement government mitigation operations and activities to return the Commonwealth to its pre-event conditions as much as possible. All non-essential, non-time sensitive matters have been removed from the agenda. The only item on the agenda today is the Democratic Presidential Primary Certification. Virginia Code 24.2-545(D) requires the State Board to certify the results of the presidential primary.

The first order of business is the certification of the Democratic Presidential Primary presented by Matt Abell, Elections Administrator. *This report is in the Working Papers for the March 17, 2020 meeting.* Secretary LeCruise moved *that the Board certify the results of the*

24 *March 3, 2020, Democratic Party Presidential Primary and, through the Department's staff,*
25 *send certified results to Susan Swecker, Chairwoman of the Democratic Party of Virginia. Vice*
26 *Chair O'Bannon seconded the motion, and the motion passed unanimously. A roll call vote was*
27 *taken:*

28 Secretary LeCruise – aye

29 Vice Chair O'Bannon – aye

30 Chairman Brink – aye

31 Vice Chair O'Bannon *moved to adjourn the meeting.* Secretary LeCruise seconded the
32 motion, and the motion passed unanimously. The meeting adjourned at approximately 1:09 P.M.

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Chairman

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Vice Chair

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Secretary

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The State Board of Elections (“the Board”) meeting was held by electronic communication on Friday, April 3, 2020. Robert Brink, Chairman, John O’Bannon, Vice Chairman, and Jamilah LeCruise, Secretary, represented the State Board of Elections (“the Board”). Christopher E. “Chris” Piper, Commissioner, represented the Department of Elections (“ELECT”). Carol Lewis represented the Office of the Attorney General (“OAG”). Chairman Brink called the meeting to order at 11:03 A.M.

Chairman Brink informed the Board that on March 12, 2020, Governor Ralph S. Northam declared that a state of emergency exists in the Commonwealth as the result of the potential spread of COVID-19, a communicable disease presenting a threat to public health. On March 30, 2020, the Governor issued an executive order requiring all individuals in Virginia to remain at their place of residence, with certain enumerated exceptions. Accordingly, the State Board of Elections is meeting by electronic communication means through this video conference.

The purpose of the meeting is to follow the directives included in the Governor’s Declaration to implement government mitigation operations and activities to return the Commonwealth to its pre-event conditions as much as possible. No non-essential, non-time sensitive matters are on the agenda.

21 The first order of business is the Drawing for the June Primary Ballot Order
22 presented by Christopher E. Piper, Commissioner. The Chairman explained to the
23 Board that under Virginia Code § 24.2-529, in the event two or more candidates
24 file simultaneously, the order of filing is required to be determined by the State
25 Board. Failure of the Board to act at this time would result in irrevocable public
26 harm inasmuch as the ballot order must be determined for ballots to be printed
27 prior to the 45-day deadline required under the federal and state law. Chairman
28 Brink advised the Board that there are two simultaneous filings. The Chairman
29 informed the Board the U.S House of Representative nominees are, in the 2nd
30 Congressional District are Ben Loyola and Scott Taylor; Republican and in the 5th
31 Congressional District are Roger Huffstetler and Jarome Bell, Democratic.

32 Chairman Brink asked Commissioner Piper to conduct the drawing of names
33 on behalf of the Board through video conference. The ballot order for the
34 Republican party is as follows:

- 35 1. Ben Loyola, Jr.
- 36 2. Scott Taylor

37 The ballot order for the Democratic party is as follows:

- 38 1. Roger Huffstetler, Jr.
- 39 2. Jarome Bell

40 Vice Chair O'Bannon moved *that the Board certify the determinations by lot of the*
41 *order of candidates on the ballot for primary elections to be held on June 09, 2020.*

42 Secretary LeCruise seconded the motion, and the motion passed unanimously. A
43 roll call vote was taken:

44 Vice Chair O'Bannon – aye

45 Chairman Brink – aye

46 Secretary LeCruise – aye

47 The next order of business is the Consideration of a Candidate Filing
48 Extension pursuant to section § 24.2-503 of the Virginia Code presented by Dave
49 Nichols, Director of Election Services. Mr. Nichols informed the Board that one
50 candidate failed to provide the 501-Statement of Organization form by the
51 deadline, and has since filed pending the approval of the Board. *This memo is in*
52 *the Working Papers for the April 3, 2020 meeting.* Vice Chair O'Bannon asked Mr.
53 Nichols to provide the details of the candidate. Mr. Nichols informed the Board
54 that the candidate's name is Jarome Webb. Vice Chair O'Bannon *moved that the*
55 *Board grant an extension pursuant to Virginia Code § 24.2-503 for candidates to*
56 *file the statement of qualifications in relation to the June Primary election.*

57 Secretary LeCruise seconded the motion, and the motion passed unanimously. A
58 roll call vote was taken:

59 Chairman Brink – aye

60 Vice Chair O’Bannon – aye

61 Secretary LeCruise – aye

62 Chairman Brink addressed the Board and asked if they wanted to provide
63 any comments. Vice Chair O’Bannon asked Commissioner Piper if he could
64 provide any information on the status of the COVID-19 Pandemic. Commissioner
65 Piper informed the Board that once more information is provided from the
66 Governor’s office, it will be shared. Secretary LeCruise moved *that the Board*
67 *adjourn the meeting*. Vice Chair O’Bannon seconded the motion, and the motion
68 passed unanimously. A roll call vote was taken:

69 Chairman Brink – aye

70 Vice Chair O’Bannon – aye

71 Secretary LeCruise – aye

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73 The meeting adjourned at approximately 11:18 A.M.

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76 Chairman

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79 Vice Chairman

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82 Secretary

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The State Board of Elections (“the Board”) meeting was held by electronic communication on Monday, April 13, 2020. Robert Brink, Chairman, John O’Bannon, Vice Chairman, and Jamilah LeCruise, Secretary, represented the State Board of Elections (“the Board”). Christopher E. “Chris” Piper, Commissioner, represented the Department of Elections (“ELECT”). Carol Lewis represented the Office of the Attorney General (“OAG”). Chairman Brink called the meeting to order at 1:30 P.M.

Chairman Brink informed the Board that on March 12, 2020, Governor Ralph S. Northam declared that a state of emergency exists in the Commonwealth as the result of the potential spread of COVID-19, a communicable disease presenting a threat to public health. On March 30, 2020, the Governor issued an executive order requiring all individuals in Virginia to remain at their place of residence, with certain enumerated exceptions. Accordingly, the State Board of Elections is meeting by electronic communication means through this video conference.

The purpose of the meeting is to follow the directives included in the Governor’s Declaration to implement government mitigation operations and activities to return the Commonwealth to its pre-event conditions as much as possible. No non-essential, non-time sensitive matters are on the agenda.

21 The sole item on the agenda was the Drawing for the June Primary Ballot
22 Order presented by Paul Saunders, Elections Services Supervisor. The Chairman
23 explained to the Board that under Virginia Code § 24.2-529, in the event two or
24 more candidates file simultaneously, the order of filing is required to be
25 determined by the State Board. Failure of the Board to act at this time would result
26 in irrevocable public harm inasmuch as the ballot order must be determined for
27 ballots to be printed prior to the 45-day deadline required under the federal and
28 state law. Chairman Brink informed the Board that there was a simultaneous filing
29 for the Republican nomination for the U.S. Senate by two candidates, Daniel M.
30 Gade and Thomas A. Speciale II.

31 Chairman Brink asked Paul Saunders to conduct the drawing of names on
32 behalf of the Board through video conference. The ballot order for the two
33 candidates resulting from that drawing is as follows: Republican party is as
34 follows:

- 35 1. Daniel M. Gade
- 36 2. Thomas A. Speciale II

37 Vice Chair O'Bannon moved *that the Board certify the determinations by lot of the*
38 *order of candidates on the ballot for primary elections to be held on June 23, 2020.*
39 Secretary LeCruise seconded the motion, and the motion passed unanimously. A
40 roll call vote was taken:

41 Chairman Brink – aye

42 Vice Chair O’Bannon – aye

43 Secretary LeCruise – aye

44 Vice Chair O’Bannon moved *that the Board adjourn the meeting*. Secretary

45 LeCruise seconded the motion, and the motion passed unanimously. A roll call

46 vote was taken:

47 Chairman Brink – aye

48 Vice Chair O’Bannon – aye

49 Secretary LeCruise – aye

50 The meeting adjourned at approximately 1:36 P.M.

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Chairman

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Vice Chairman

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Secretary

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The State Board of Elections (“the Board”) meeting was held by electronic communication on Tuesday, April 21, 2020. Robert Brink, Chairman, John O’Bannon, Vice Chairman, and Jamilah LeCruise, Secretary, represented the State Board of Elections (“the Board”). Christopher E. “Chris” Piper, Commissioner, represented the Department of Elections (“ELECT”). Carol Lewis represented the Office of the Attorney General (“OAG”). Chairman Brink called the meeting to order at 1:00 P.M.

Chairman Brink informed the Board that on March 12, 2020, Governor Ralph S. Northam declared that a state of emergency exists in the Commonwealth as the result of the potential spread of COVID-19, a communicable disease presenting a threat to public health. On March 30, 2020, the Governor issued an executive order requiring all individuals in Virginia to remain at their place of residence, with certain enumerated exceptions. Accordingly, the State Board of Elections is meeting by electronic communication means through this video conference.

The purpose of the meeting is to follow the directives included in the Governor’s Declaration to implement government mitigation operations and activities to return the Commonwealth to its pre-event conditions as much as

20 possible. No non-essential, non-time sensitive matters are on the agenda. Chairman
21 Brink stated that public comment would be held after each agenda item.

22 The first order of business was the Revised VA-NVRA-1 Voter Registration
23 Application presented by Samantha Buckley, Policy Analyst. *This report is in the*
24 *Working Papers for the April 21, 2020 meeting.* Secretary LeCruise asked if the
25 application had a period for public comment. Ms. Buckley informed the Board that
26 due to the Board previously approving the application, public comment would not
27 be necessary. Secretary LeCruise moved *that the Board approve the Department's*
28 *amendments to the Voter Registration application for July 1, 2020 distribution.*

29 Vice Chair O'Bannon seconded the motion, and the motion passed unanimously. A
30 roll call vote was taken:

31 Chairman Brink – aye

32 Vice Chair O'Bannon – aye

33 Secretary LeCruise – aye

34 The next order of business was the Revised SBE-701 Absentee Application
35 presented by Dave Nichols, Director of Elections Services. *This report is in the*
36 *Working Papers for the April 21, 2020 meeting.*

37 Chairman Brink opened the floor for public comment. Stephanie Iles,
38 General Registrar for the City of Norfolk, addressed the Board. Ms. Iles requested
39 a public comment period for the Vote by Mail Application Form. Chairman Brink

40 asked Commissioner Piper how a comment period would impact planning the
41 application form. Commissioner Piper informed the Board that a comment period
42 would hinder the process of sending it out by July 1, 2020. Vice Chair O'Bannon
43 moved *that the Board adopt the Virginia Vote by Mail Application Form to*
44 *become effective on July 1, 2020.* Secretary LeCruise seconded the motion, and the
45 motion passed unanimously. A roll call vote was taken:

46 Chairman Brink – aye

47 Vice Chair O'Bannon – aye

48 Secretary LeCruise – aye

49 The next order of business was the Satellite Voting Location Security
50 Regulation presented by James Heo, Confidential Policy Advisor. *This report is in*
51 *the Working Papers for the April 21, 2020 meeting.* Vice Chair O'Bannon moved
52 *that the Board approve the Department's proposal for regulatory action and put*
53 *forward IVAC20-70-60 for public comment.* Secretary LeCruise seconded the
54 motion, and the motion passed unanimously. A roll call vote was taken:

55 Chairman Brink – aye

56 Vice Chair O'Bannon – aye

57 Secretary LeCruise – aye

58 The last order of business was the General Registrar Certification Program
59 presented by Michael Dixon, eLearning Specialist/Instructional Designer. *This*

60 *report is the Working Papers for the April 21, 2020 meeting.* Secretary LeCruise
61 *moved that the Board adopt the proposed General Registrar Certification*
62 *Program effective July 1, 2020.* Vice Chair O’Bannon seconded the motion, and
63 the motion passed unanimously. A roll call vote was taken:

64 Chairman Brink – aye

65 Vice Chair O’Bannon – aye

66 Secretary LeCruise – aye

67 Chairman Brink addressed the Board for any closing remarks. Secretary
68 LeCruise *moved to adjourn the meeting.* Vice Chair O’Bannon seconded the
69 motion, and the motion passed unanimously. A roll call vote was taken:

70 Chairman Brink – aye

71 Vice Chair O’Bannon – aye

72 Secretary LeCruise – aye

73 The meeting adjourned at approximately 1:37 P.M.

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76 Chairman

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79 Vice Chairman

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82 Secretary LeCruise

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The State Board of Elections (“the Board”) meeting was held by electronic communication on Friday, May 15, 2020. Robert Brink, Chairman, John O’Bannon, Vice Chairman, and Jamilah LeCruise, Secretary, represented the State Board of Elections (“the Board”). Christopher E. “Chris” Piper, Commissioner, represented the Department of Elections (“ELECT”). Elizabeth Myers represented the Office of the Attorney General (“OAG”). Chairman Brink called the meeting to order at 10:00 A.M.

Chairman Brink informed the Board that on March 12, 2020, Governor Ralph S. Northam declared that a state of emergency exists in the Commonwealth as the result of the potential spread of COVID-19, a communicable disease presenting a threat to public health. On March 30, 2020, the Governor issued an executive order requiring all individuals in Virginia to remain at their place of residence, with certain enumerated exceptions. Accordingly, the State Board of Elections is meeting by electronic communication means through this video conference.

The purpose of the meeting is to follow the directives included in the Governor’s Declaration to implement government mitigation operations and activities to return the Commonwealth to its pre-event conditions as much as

20 possible. No non-essential, non-time sensitive matters are on the agenda. Chairman
21 Brink stated that public comment would be held after each agenda item.

22 The sole item on the agenda was the Drawing for Political Party Order on
23 the Ballot for Special Elections through September 2020 presented by Dave
24 Nichols, Director of Elections Services. *This report is in the Working Papers for*
25 *the May 15, 2020 meeting.* Chairman Brink asked Mr. Nichols to conduct the
26 drawing of the political party order on behalf of the Board through video
27 conference. The ballot order is as follows:

- 28 1. Democratic
- 29 2. Republican

30 Vice Chair O'Bannon moved *that the Board certify the determination by lot of the*
31 *ballot order for special elections being held July 1, 2020 through September 30,*
32 *2020.* Secretary LeCruise seconded the motion, and the motion passed
33 unanimously. A roll call vote was taken:

34 Chairman Brink – aye
35 Vice Chair O'Bannon – aye
36 Secretary LeCruise – aye

37 Chairman Brink addressed the Board for any closing remarks. O'Bannon
38 *moved to adjourn the meeting.* Secretary LeCruise seconded the motion, and the
39 motion passed unanimously. A roll call vote was taken:

- 40 Chairman Brink – aye
- 41 Vice Chair O’Bannon – aye
- 42 Secretary LeCruise – aye
- 43 The meeting adjourned at 10:18 A.M
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- 45 _____
- 46 Chairman
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- 48 _____
- 49 Vice Chairman
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- 51 _____
- 52 Secretary LeCruise
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2 The State Board of Elections (“the Board”) meeting was held by electronic
3 communication on Tuesday, May 26, 2020. Robert Brink, Chairman, John
4 O’Bannon, Vice Chairman, and Jamilah LeCruise, Secretary, represented the State
5 Board of Elections (“the Board”). Christopher E. “Chris” Piper, Commissioner,
6 and Jessica Bowman, Deputy Commissioner, represented the Department of
7 Elections (“ELECT”). Carol Lewis represented the Office of the Attorney General
8 (“OAG”). Chairman Brink called the meeting to order at 1:01 P.M.

9 Chairman Brink informed the Board that on March 12, 2020, Governor
10 Ralph S. Northam declared that a state of emergency exists in the Commonwealth
11 as the result of the potential spread of COVID-19, a communicable disease
12 presenting a threat to public health. On March 30, 2020, the Governor issued an
13 executive order requiring all individuals in Virginia to remain at their place of
14 residence, with certain enumerated exceptions. Accordingly, the State Board of
15 Elections is meeting by electronic communication means through this video
16 conference.

17 This meeting was conducted consistent with the requirements for electronic
18 meetings by public bodies set forth in Items 4-0.01 of House Bills 29 and 30, as
19 passed by the General Assembly and signed by the Governor in April of this year.
20 The purpose of the meeting is to transact the statutorily required business of the

21 Board. There will be an opportunity for public comment following the final item of
22 the meeting.

23 The first order of business is the Commissioner's report presented by
24 Commissioner Piper. The Commissioner informed the Board that ELECT
25 conducted a successful election on May 19, 2020, of 56 localities and over a
26 hundred cities and towns. Commissioner Piper explained that the Governor
27 postponed the May Election for two weeks. The Commissioner informed the Board
28 that within that timeframe, ELECT officials were able to provide personal
29 protective equipment for officers of election: single use pens, single use folders,
30 gloves, mask, hand sanitizers and disinfectant; ELECT also partnered with the
31 Department of Health to provide training materials and information on maintaining
32 a clean polling place.

33 The Commissioner stated that the Medical Reserve Corps assisted officers of
34 election with maintaining a safe and sanitary environment. Commissioner Piper
35 informed the Board regarding guidance provided to voters and localities that any
36 voter could vote by absentee ballot using reason code "2A. My disability or
37 illness". The Commissioner informed the Board that 69,318 absentee ballots were
38 returned for the May 19th Election. Commissioner Piper stated that the Medical
39 Reserve Corps would be assisting ELECT for the June Primary. The

40 Commissioner stated that nearly 90,000 registered voters requested an absentee
41 ballot, and so far, 13,539 ballots have been returned.

42 Commissioner Piper informed the Board that ELECT remains committed to
43 its other tasks, especially election security. The Commissioner informed the Board
44 that ELECT received over 60 bills from the General Assembly. Commissioner
45 Piper explained to the Board that House Bill 1 (HB 1) removed the excuse
46 requirement for using an absentee ballot effective July 1, 2020 and that HB 235
47 introduced automatic voter registration. As a first step, the Department of Motor
48 Vehicles (“DMV”) will change the “opt-out” process. The Commissioner
49 explained that soon DMV would allow citizens to opt-out of registering to vote.

50 Commissioner Piper explained to the Board that HB 201, enacting same-day
51 registration, becomes effective in 2022. Under HB 1362, the General Registrars
52 (“GR”) certification bill, GR will be required to receive and maintain a training
53 certification. The Commissioner stated that HB 19 allows voters to provide various
54 forms of non-photo identification. Commissioner Piper then explained that HB
55 220, which allows localities to provide pre-paid postage for the return of absentee
56 ballots, contains a re-enactment clause, which requires approval by the General
57 Assembly in 2021.

58 Chairman Brink asked Commissioner Piper to provide an idea of what
59 ELECT is doing for implementation on the new requirements for HB 19.

60 Commissioner Piper stated that ELECT would be updating the website and
61 continuing to provide guidance to the localities. Chairman Brink asked the
62 Commissioner whether using a Virginia driver's license facilitated the voting
63 process and reduced the likelihood of lines on election day. Commissioner Piper
64 replied that some localities do find that the use of Virginia driver's licenses using
65 electronic pollbooks and barcode readers facilitates faster check-in.

66 The Chairman asked the Commissioner to provide an estimate on how much
67 it would cost for the localities to have prepaid postage for absentee ballots. The
68 Commissioner estimated it to be around \$2-5 million annually. Mr. Heo added that
69 the cost for the postage depends on the number of absentee applications received.

70 The next order of business is the KnowInk Electronic Pollbook Certification
71 presented by James Heo, Confidential Policy Advisor. Mr. Heo expressed
72 appreciation to Karen Hoyt-Stuart, Voting Technology Program Manager the SLI
73 test lab, KnowInk staff, and Kirk Showalter; City of Richmond General Registrar.

74 *This report is in the Working Papers for the May 26, 2020 meeting.* Vice Chair
75 O'Bannon moved *that the Board certify the use of KnowInk 2.5.0 in elections in*
76 *the Commonwealth of Virginia, pursuant to the State Certification of Electronic*
77 *Pollbooks: Requirements and Procedures.* Secretary LeCruise seconded the
78 motion, and the motion passed unanimously. A roll call vote was taken:

79 Chairman Brink – aye

80 Vice Chair O'Bannon – Aye

81 Secretary LeCruise - Aye

82 Chairman Brink opened the line for public comment. Jean Thoensen of the
83 public addressed the Board. Commissioner Piper addressed the Board. The
84 Commissioner stated that the drop in registrations during April 2020 was more
85 than likely due to the closing of DMV and the cancellation of third party group
86 events.

87 Chairman Brink addressed the Board for any closing remarks. Secretary
88 LeCruise *moved to adjourn the meeting*. Vice Chair O'Bannon seconded the
89 motion, and the motion passed unanimously. A roll call vote was taken:

90 Chairman Brink – aye

91 Vice Chair O'Bannon – aye

92 Secretary LeCruise – aye

93 The meeting adjourned at approximately 1:31 P.M.

94

95 _____

96 Chairman

97

98 _____

99 Vice Chairman

100

101 _____

102 Secretary



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STATE BOARD *of* ELECTIONS

Commissioner's Report

BOARD WORKING PAPERS
Christopher E. Piper
Commissioner



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STATE BOARD *of* ELECTIONS

Discussion of Virginia Beach Primary Elections

BOARD WORKING PAPERS
Robert Brink
Chairman



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STATE BOARD *of* ELECTIONS

Post-Election Report

BOARD WORKING PAPERS

Christopher E. Piper
Commissioner



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

November 5, 2019
Post-Election Report

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Introduction

Each election in the Commonwealth of Virginia tells a story of anticipation, polls, results, candidates, voters, and election administration. Election officials are tasked with ensuring fairness and uniformity in our practices. While the story of any election is filled with anecdotes of specific instances both good and bad, the real story of administering the election is told in the data.

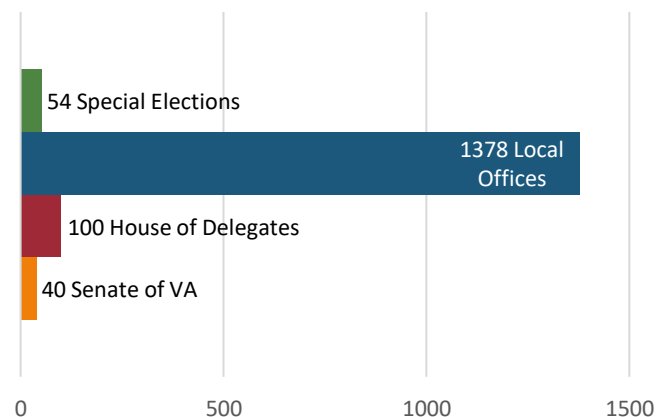
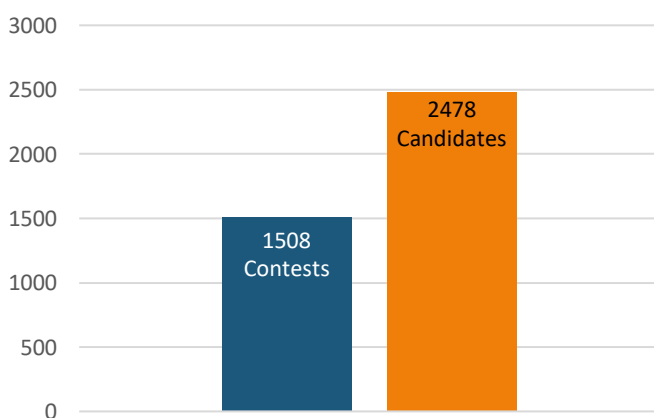
This report seeks to tell the story of the 2019 General Election through its data. By presenting the broad picture, trends are seen and areas for improvement in future elections are identified. By looking at different aspects of the election, administrators can identify areas of concern for additional training and issues for collaboration to develop best practices.

Contests and Candidates

November 2019 saw one hundred forty (140) General Assembly races, one thousand three hundred seventy-eight (1,378) local races, and nineteen (19) local referenda. The one hundred forty (140) General Assembly races included two hundred forty-five (245) candidates.

The State Board of Elections (Board) had to make a ballot access decision in four (4) candidate processing situations this election:

- It was determined during the petition review process that a candidate for Senate of Virginia, 25th District did not submit the required number of qualifying petition signatures to qualify for ballot access. Through the appeals process (VA Code § [24.2-506\(C\)](#), VA Administrative Code [1VAC20-50-30](#)), it was determined that enough qualified signatures were submitted; therefore the Board voted to grant ballot access to the candidate.
- Required party ballot access documents were not filed by the applicable deadline for a candidate for House of Delegates, 76th District and a candidate for House of Delegates, 1st District. In both cases the Board voted to accept the late submissions and grant ballot access to both candidates. The Department of Elections requested legislation (HB 1116) that would centralize the paperwork filing process with the state party offices. The bill passed the House of Delegates, but was defeated on the Senate floor.
- Required candidate and party ballot access documents were not filed by the applicable deadlines for a candidate for House of Delegates, 30th District. The Board voted not to grant ballot access due to the failure by both the candidate and the party to file required documents.

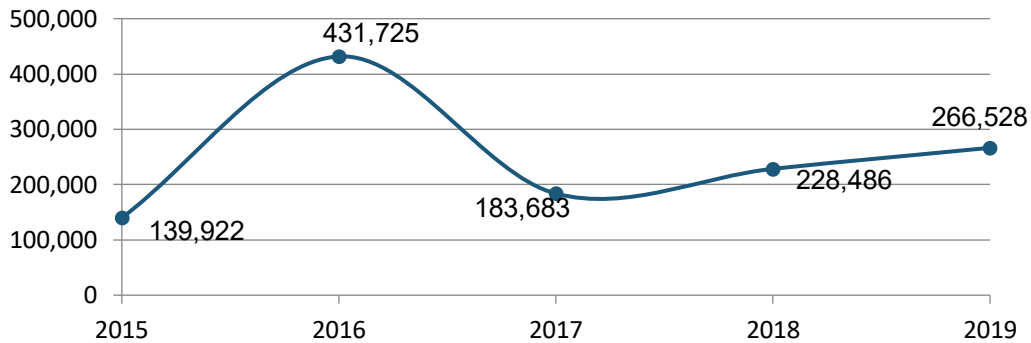


Participation

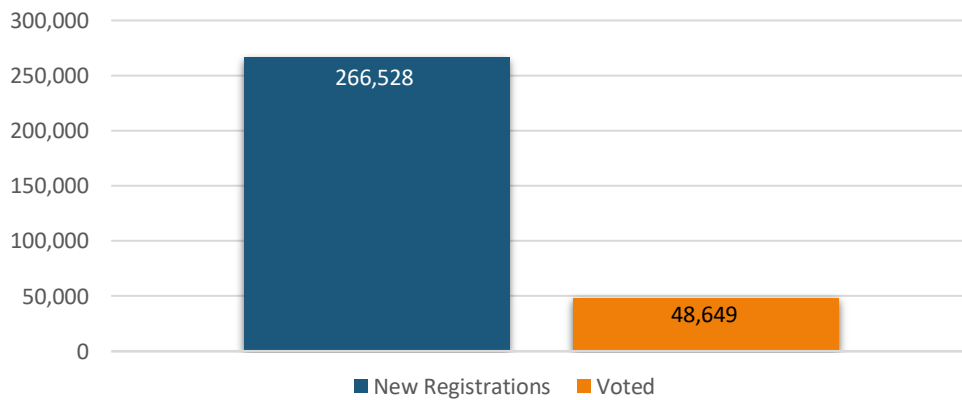
Newly Registered Voters

Continuing the trend of previous elections, people are registering to vote in greater numbers than in previous non-presidential election years. While new registrations did not equal the numbers seen in the most recent presidential election year (2016), the overall trend in non-presidential years is clear: more people are registering to vote. When the data is compared to the most recent comparable election (November 2015), the Commonwealth saw a 90% increase in the number of new registrations. Eighteen percent (18%) of these newly registered voters cast a ballot in the 2019 General Election. For comparison, forty-two percent (42%) of newly registered voters cast a ballot in the 2018 General Election.

New Registrations, 2015-2019



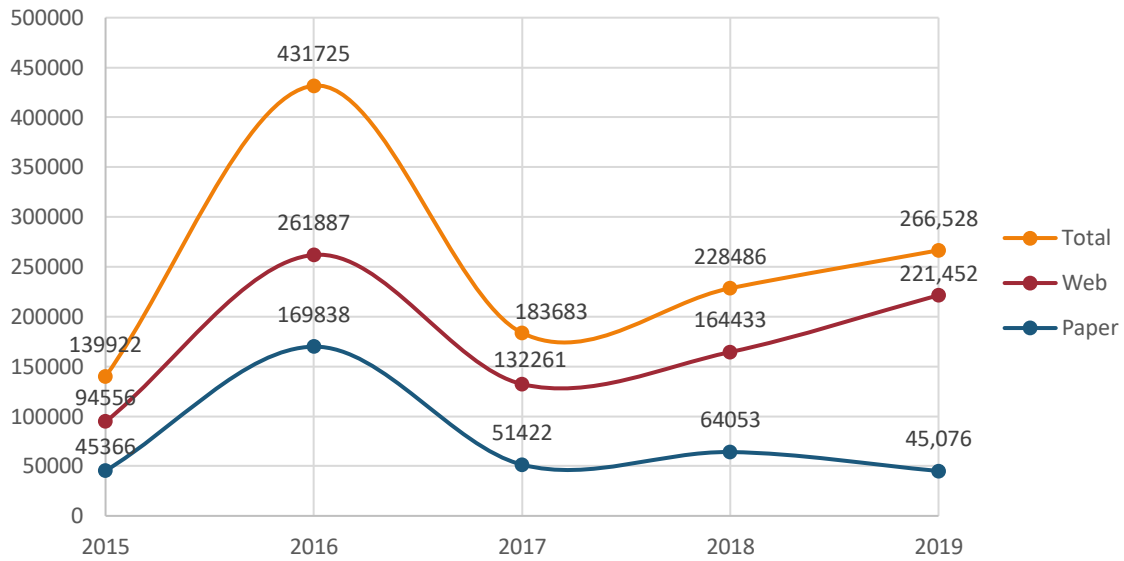
18.25% of New Registrants Voted in November



Method Used to Register

Since the implementation of electronic registration at the Department of Motor Vehicles in 2016 and the online voter registration portal in 2014, the percentage of people registering to vote electronically instead of by paper application has continued to increase. The number of registrations submitted electronically as a percentage of the overall number went up in 2019 (83%) when compared to 2018 (72%).

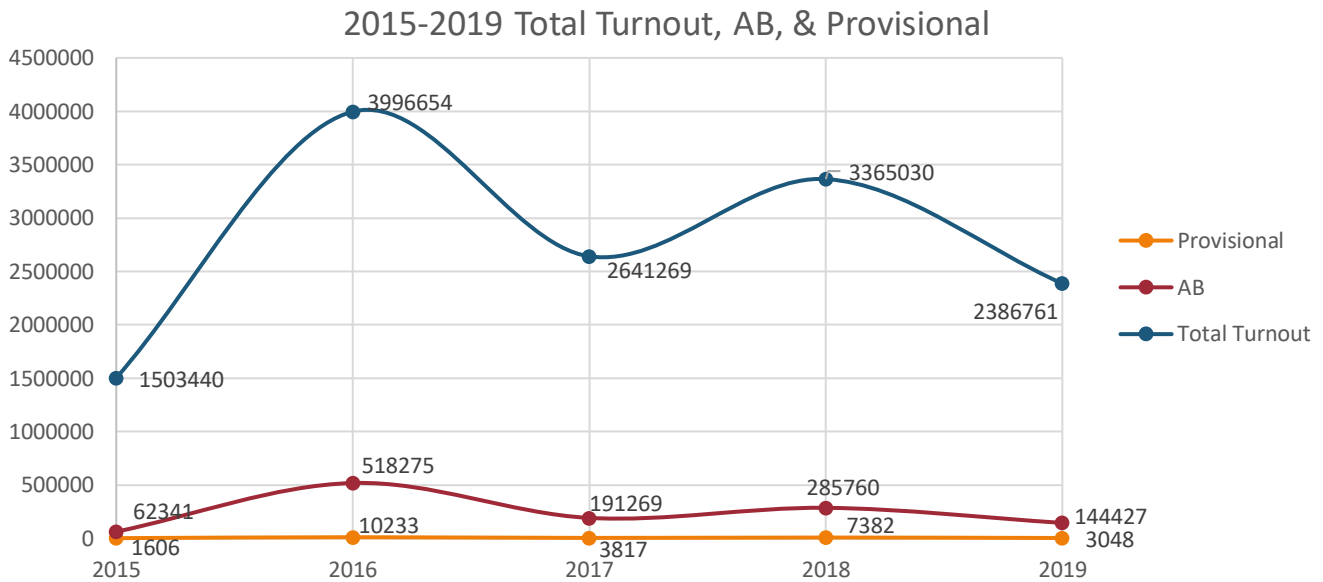
Registration Method Data Statistics 2015-2019



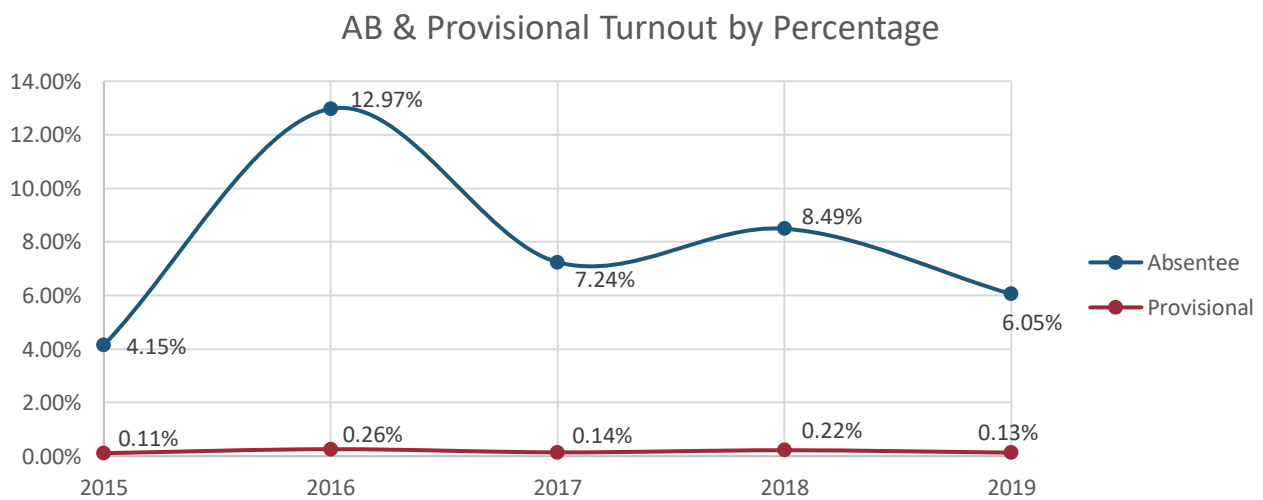
2019 November Turnout

Odd year elections without statewide offices historically present a downturn in voter participation. The trend bore true again in 2019. However, with control of the Virginia General Assembly at stake, the 2019 turnout number was markedly higher than the 2015 number. Total voter turnout in 2019 was:

- 159% of 2015,
- 60% of 2016 (presidential),
- 90% of 2017, and
- 71% of 2018.



Virginia’s rise in both the number and percentage of voters choosing to vote absentee over previous non-presidential election years retreated slightly in 2019 but still represents an increase when compared to 2015. The chart above provides the actual numbers, and the chart below shows the percentage of absentee voting and provisional ballots cast as a portion of the overall vote total.



November 5, 2019 Post-Election Report

A total of 175,788 Virginia voters requested an absentee ballot for the 2019 General Election. Of those requests, 149,746 voters (85%) returned their ballots (using the methods shown in the chart below) in time to be counted.

In 2019, the General Assembly passed legislation allowing for no-excuse, in-person early voting beginning forty-five (45) days before the 2020 General Election. The change has the potential to alter the Election Day versus absentee voting numbers, as many more voters are expected to vote early when the law takes effect for November 2020.

Absentee ballots returned on/before Election Day:

| Return Method | Count | % |
|---------------------------|----------------|-------------|
| Designated Representative | 27 | 0.02% |
| In Person | 93,609 | 62.51% |
| Mail | 56,038 | 37.42% |
| Mail (Non-USPS) | 72 | 0.05% |
| Grand Total | 149,746 | 100% |

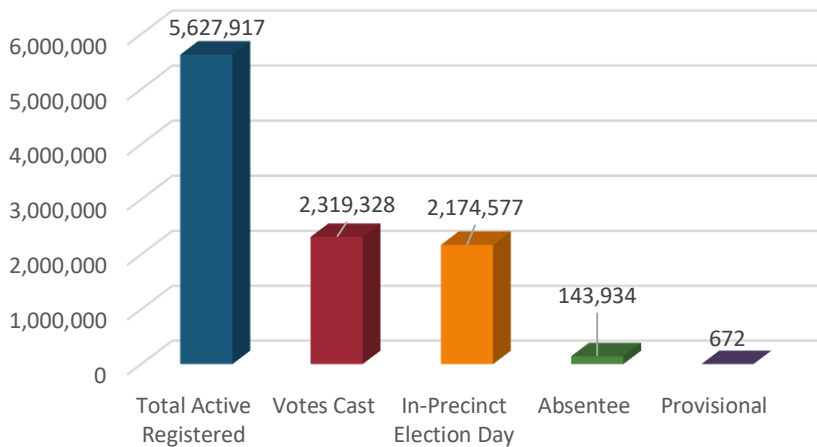
Absentee ballots returned after Election Day:

| Return Method | Count | % |
|---------------------------|--------------|-------------|
| Designated Representative | 0 | 0% |
| In Person | 5 | .11% |
| Mail | 4,693 | 99.83% |
| Mail (Non-USPS) | 3 | 0.06% |
| Grand Total | 4,701 | 100% |

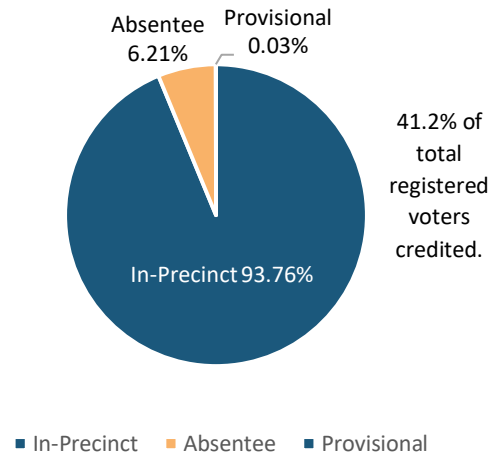
Voters and Votes Cast

Forty-one percent of Virginia's active registered voters cast a ballot in the November General Election. Of those voting, 93.76% cast their ballot in-person in a precinct on Election Day, 6.21% cast absentee ballots, and 0.03% voted provisional.

Votes Cast by Type



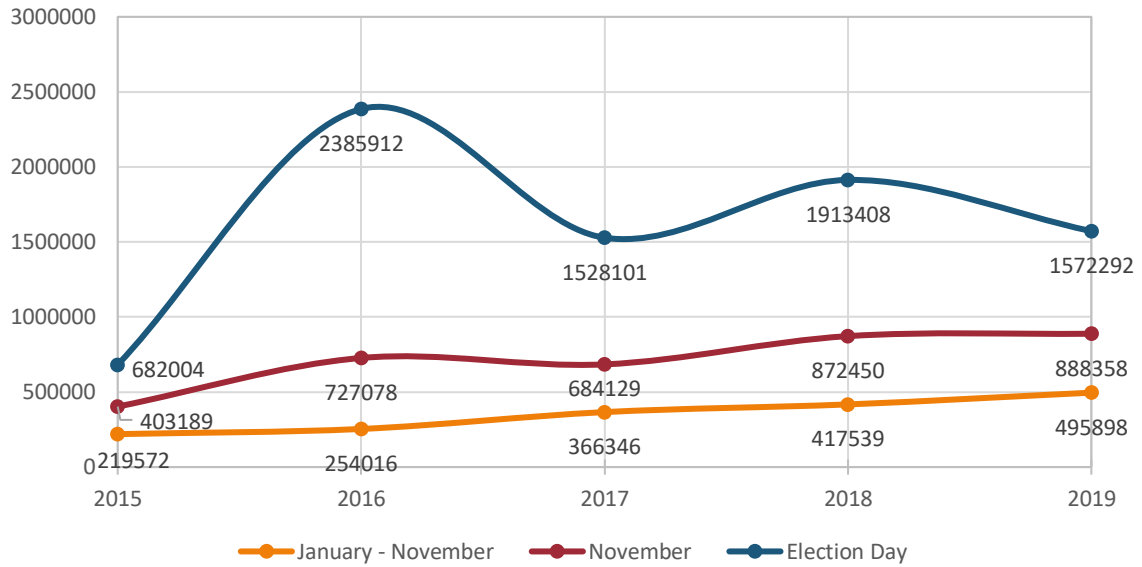
Votes Cast by Type Percentage



Web Traffic

In consistent fashion, the Department of Elections website had more traffic in 2019 than for previous non-federal election years (2017 and 2015). Traffic is expected to rise considerably in 2020 as it did in previous federal election years (2016 and 2018).

Elections.Virginia.gov Total Visitors



Call Center and Online Complaints

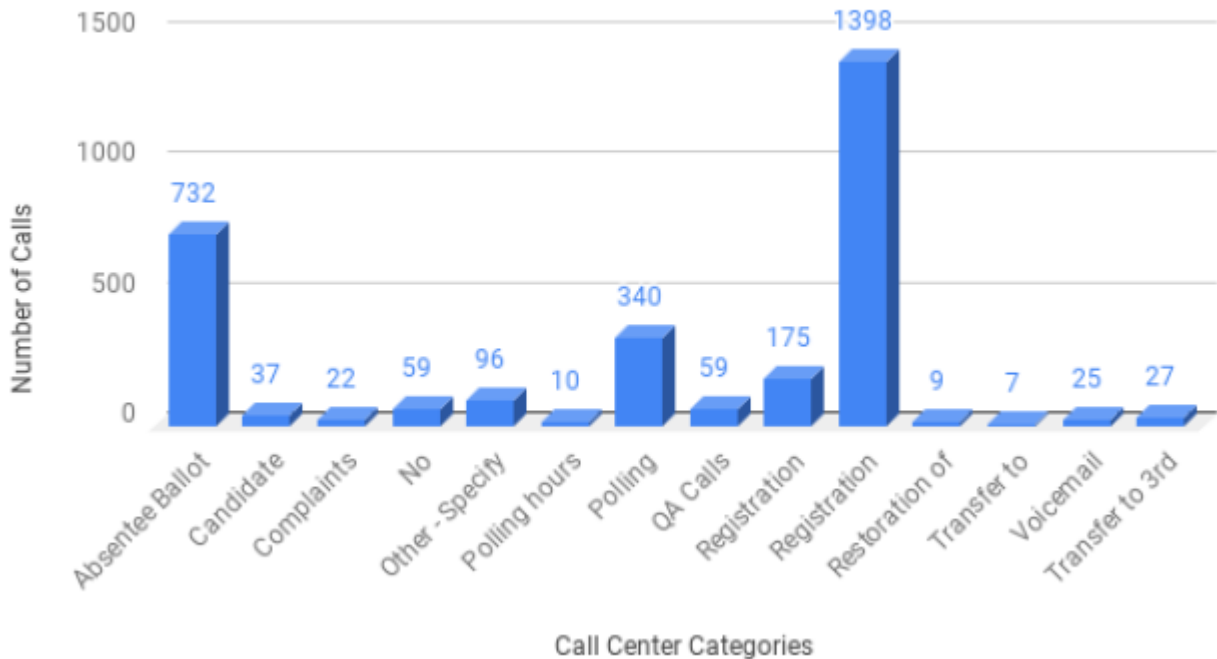
Call Center

In addition to providing information to voters, media, and the general public through the website, the Department of Elections receives a large number of telephone calls. These calls allow the Department to interact directly with constituents to provide information and services. In September, the Department employed a professional call center in effort to ensure timely management of telephone calls. Customer service representatives were given information on some of the most frequently asked questions and instructions on when to escalate a call to staff at the Department. The majority of the calls received by the Department were questions about absentee ballots and voter registration.

September 3, 2019 through November 5, 2019

Call Center Total Calls: 2,996

Call Center Disposition



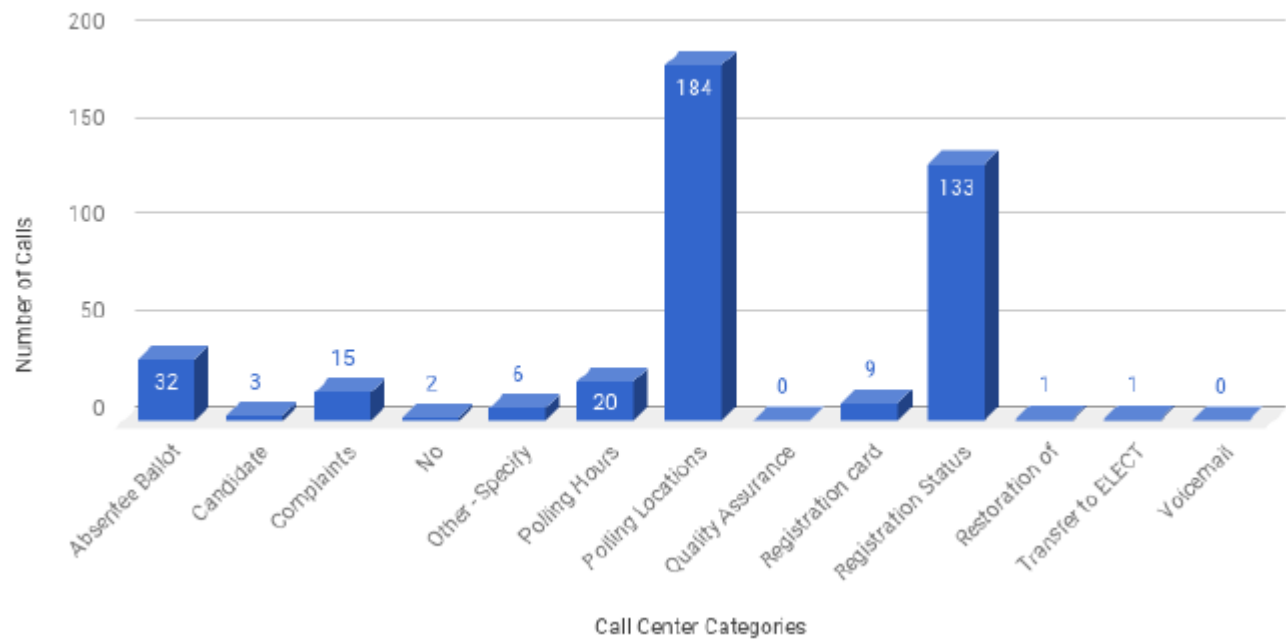
- KEY: Dispositions**
- Absentee Ballot Information
 - Candidate Information
 - Complaints
 - No Disposition/Caller Hung up
 - Other - Specify
 - Polling Hours
 - Polling Locations
 - Quality Assurance Calls
 - Registration card not yet received
 - Registration Status
 - Restoration of Rights
 - Transfer to ELECT
 - Voicemail Processed/ After Hours or Weekends

- Average Handle Time: 2:23 mins
- Average Talk Time: 2:27 mins
- Average Call Wait: 1 sec
- Average Queue Callback Wait Time: 0 sec
- Average Voicemail Callback Wait: 0 sec
- Highest Disposition: Registration Status

Election Day – November 5, 2019

Call Center Total Calls: 406

Call Center Disposition



KEY: Dispositions
 Absentee Ballot Information
 Candidate Information
 Complaints
 No Disposition/Caller Hung up
 Other - Specify
 Polling Hours
 Polling Locations
 Quality Assurance Calls
 Registration card not yet received
 Registration Status
 Restoration of Rights
 Transfer to ELECT
 Voicemail Processed/ After Hours or Weekends

- Average Handle Time: 2:11 mins
- Average Talk Time: 2:07 mins
- Average Call Wait: 1 sec
- Average Queue Callback Wait Time: 1 sec
- Average Voicemail Callback Wait: 0 sec
- Highest Disposition: Polling Locations

Online Complaints

For several years, the Department of Elections has provided an online tool for voters to voice their concerns about an election. In most cases, election officials in the voter’s locality best adjudicate these issues and the Department forwards these issues to the local general registrar (with follow-up from the Department to determine the outcome). A few of the issues are more urgent and require immediate attention from Department staff. These issues most often involve whether someone is registered to vote, finding a voter’s correct polling place, or other factors that may limit a voter’s ability to cast a ballot.

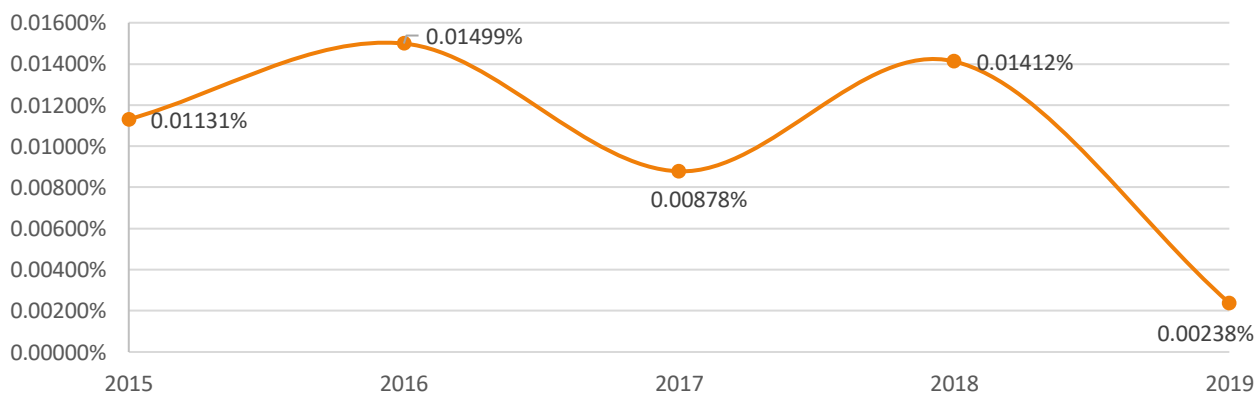
By providing a high-level overview of the patterns of voter complaints, the system sometimes alerts the Department staff to analyze complaint data and monitor what may be a situation developing in a locality or precinct. In the majority of cases, the general registrar or Officers of Election are already aware of a particular situation (e.g. long lines, voting machines issues, etc.), are working on a solution, and simply have not had time to contact the Department. In rare cases, the Department will reach out to the locality and be the first to report a problem or pattern of issues to the general registrar. Either way, the voter complaint system allows the Department and general registrars to quickly recognize and work to resolve Election Day issues.

The Department of Elections’ voter complaint website received a total of 152 complaints on Election Day 2019. While that may sound like a large number, it’s important to keep it in the context of the election as a whole. As a percentage of turnout, voter complaints came from 0.002% of the Commonwealth’s electorate. While this is a small percentage in the overall scope of Election Day, that does not diminish the importance of solving voter’s issues and learning to better anticipate and prepare for problems should they arise in future elections. Some key takeaways from this year’s complaints compared with prior years are:

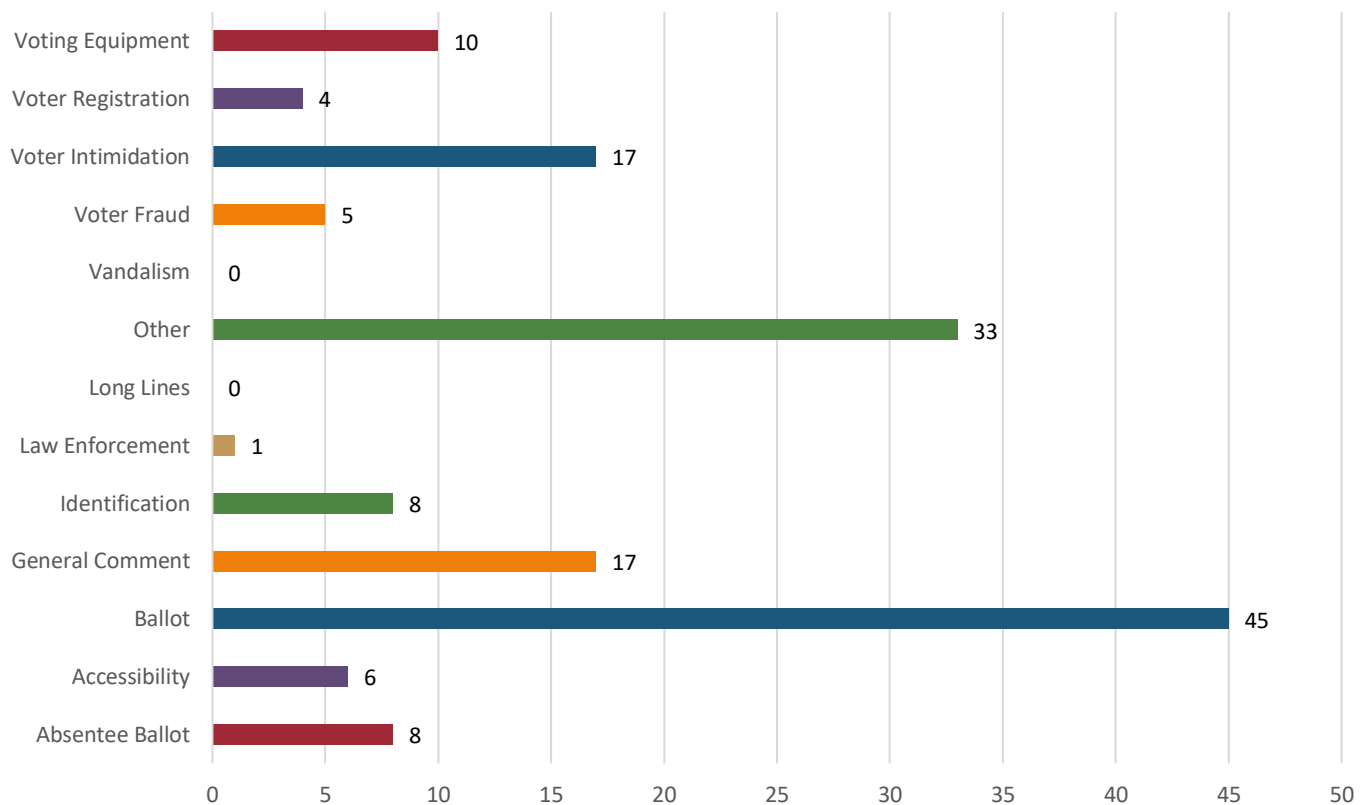
- Voter complaints in each of the past five years totaled less than 1/100th of a percent of turnout.
- 2019 saw the lowest number of voter complaints in the past 5 years.
- Accessibility and voter intimidation complaints dropped drastically in 2019 compared to the four prior years.

Demonstrative of the Commonwealth’s capacity to address voter complaints is the progress that Chesterfield County made in the area of long lines at polling places. In 2018, the Department received a considerable number of complaints regarding long lines and waiting times at polling places, and a majority of these complaints came from Chesterfield County. Recognizing this as a prime concern among their voters, Chesterfield County conducted a comprehensive review of their polling place and Election Day procedures for the purpose of making the voter’s experience at the ballot box as streamlined as possible. As a result of their practical response to their electorate’s concerns, Chesterfield County received no complaints of long lines in the 2019 election.

Voter Complaints as Percentage of Turnout 2015-2019



2019 Complaints by Type of Incident



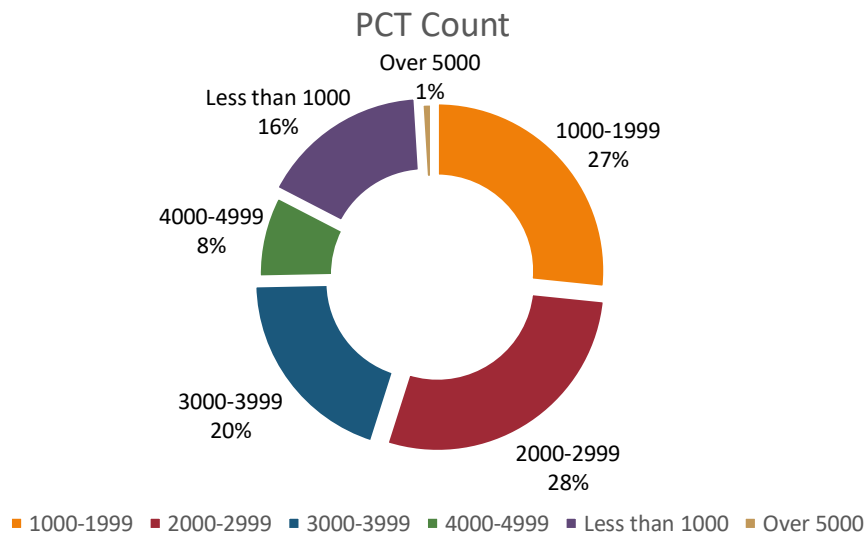
| Type of Incident | 2015 | 2016 | 2017 | 2018 | 2019 |
|--------------------|------------|------------|------------|------------|------------|
| Absentee Ballot | 3 | 61 | 18 | 26 | 8 |
| Accessibility | 15 | 27 | 15 | 32 | 6 |
| Ballot | 23 | 46 | 26 | 27 | 45 |
| General Comment | 24 | 51 | 26 | 42 | 17 |
| Identification | 9 | 28 | 12 | 27 | 8 |
| Law Enforcement | 2 | 2 | 1 | 2 | 1 |
| Long Lines | 1 | 15 | 2 | 113 | 0 |
| Other | 44 | 101 | 45 | 69 | 33 |
| Vandalism | 1 | 0 | 0 | 0 | 0 |
| Voter Intimidation | 17 | 58 | 34 | 44 | 5 |
| Voter Registration | 12 | 153 | 29 | 11 | 17 |
| Voter-Fraud | 4 | 21 | 12 | 20 | 4 |
| Voting Equipment | 15 | 36 | 12 | 62 | 10 |
| Totals | 170 | 599 | 232 | 475 | 152 |

Special Topics

Precinct Sizes

Localities across the Commonwealth employed 2,581 precincts in the November 5, 2019 General Election. This number is up from 2,441 precincts in 2018. From rural to suburban to urban, these precincts and their polling places are designed to provide voters with the ability to cast their ballots in an efficient manner. VA Code § [24.2-307](#) requires precincts to have no more than 5,000 active registered voters at the time the precinct is established. The Code also requires a general registrar to report to their governing body anytime the number of registered voters who cast a ballot in a presidential election exceeds 4,000.

As of November 2019, 24 precincts have grown to more than 5,000 active and inactive registered voters. In November, 2018 that number was 40. An additional 194 precincts (201 in November 2018) are close to that number.



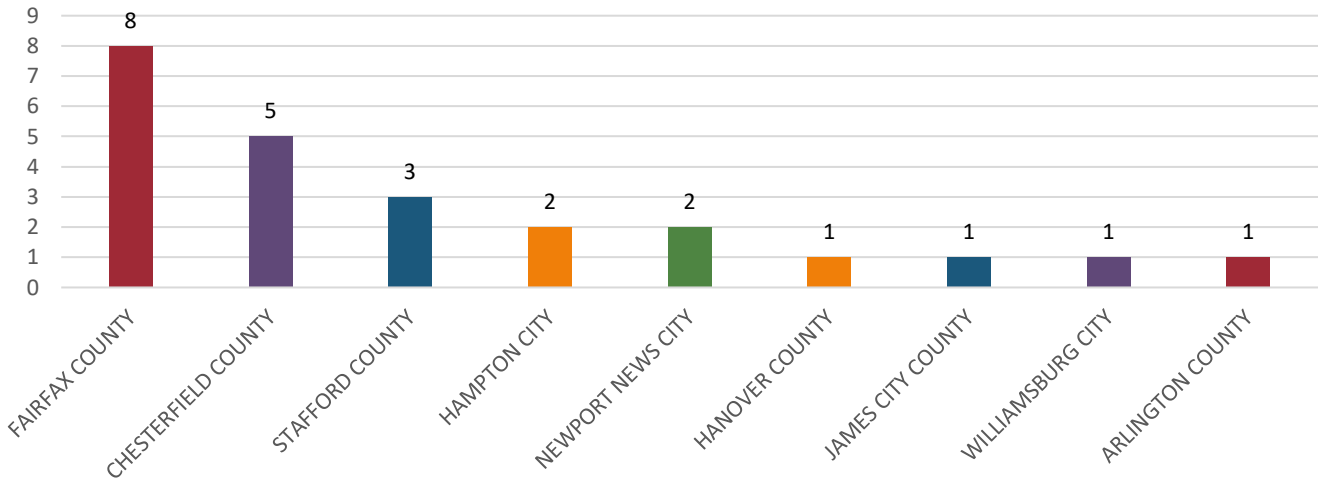
| All Reg Voters in Precinct | Precinct Count |
|----------------------------|----------------|
| Less than 1,000 | 403 |
| 1,000-2,000 | 653 |
| 2,000-3,000 | 694 |
| 3,000-4,000 | 485 |
| 4,000-5,000 | 194 |
| Over 5,000 | 24 |
| Grand Total | 2453 |

Precincts Close to Max

| All Reg Voters in Precinct | Precinct Count |
|----------------------------|----------------|
| 4,000-4,500 | 133 |
| 4,500-5,000 | 61 |
| Over 5,000 | 24 |
| Grand Total | 218 |

24 precincts in 9 localities have over 5k active and inactive registered voters

Localities with over 5k Active & Inactive Reg Voters in a Precinct



61 Precincts in 19 Localities Are Approaching 5,000 (4,500 to 5,000 voters)

| LocalityName | PCT Between 4500 and 5000 Voters |
|-----------------------|----------------------------------|
| ALBEMARLE COUNTY | 1 |
| ALEXANDRIA CITY | 4 |
| ARLINGTON COUNTY | 2 |
| CHESTERFIELD COUNTY | 5 |
| FAIRFAX COUNTY | 17 |
| FAUQUIER COUNTY | 1 |
| FREDERICKSBURG CITY | 1 |
| HAMPTON CITY | 2 |
| HENRICO COUNTY | 1 |
| JAMES CITY COUNTY | 1 |
| LYNCHBURG CITY | 4 |
| NEWPORT NEWS CITY | 4 |
| NORFOLK CITY | 1 |
| PRINCE WILLIAM COUNTY | 6 |
| SHENANDOAH COUNTY | 2 |
| SPOTSYLVANIA COUNTY | 5 |
| STAFFORD COUNTY | 2 |
| TAZEWELL COUNTY | 1 |
| YORK COUNTY | 1 |
| Total | 61 |

Election Administration Tasks

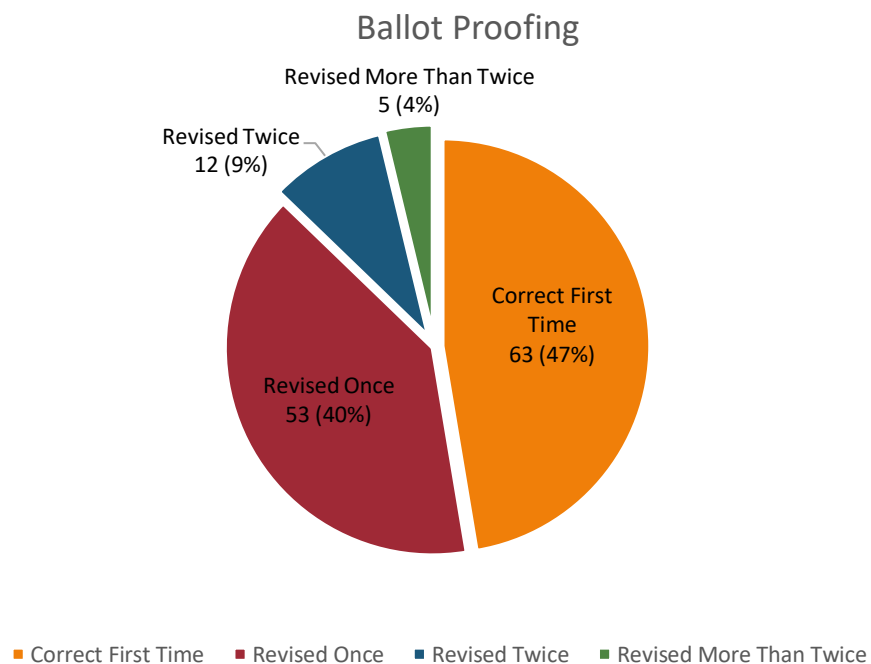
The Department requires reports, information, or certification of completion from the general registrars for several election administration tasks. The tasks include the following:

- Ballot Proofing,
- Absentee Ballot Mailing Compliance (AB compliance),
- Logic and Accuracy Testing Certification (L&A Testing),
- Election Night Reporting (ENR) Office Verification,
- Election Night Preliminary Results including estimated provisional turnout numbers,
- Actual Voter Turnout including Provisional Ballots,
- Error Report Verification,
- Voter Credit, and
- Election Abstracts/Checklist.

These tasks serve a variety of functions. Some are certification that legal requirements have been met, while others serve to make election night reporting and abstract production more accurate.

Ballot Proofing

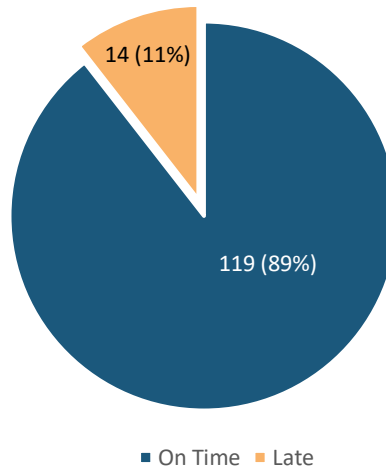
All ballots must be approved by the Department of Elections prior to their use in any election (VA Code § [24.2-612](#)). For the 2019 General Election, 63 localities submitted proofs of their ballot that did not require revisions.



Absentee Compliance

VA Code § [24.2-612](#) requires general registrars to report to the Department of Elections that ballots were available for both absentee voting by mail and in-person at least 45 days before Election Day. For this election, 119 localities reported on time to the Department, and 14 localities were late in their reporting. Ultimately, all localities were determined to have met the 45-day requirement.

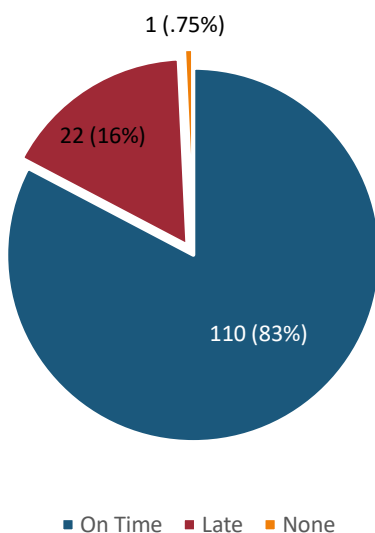
AB Compliance Survey



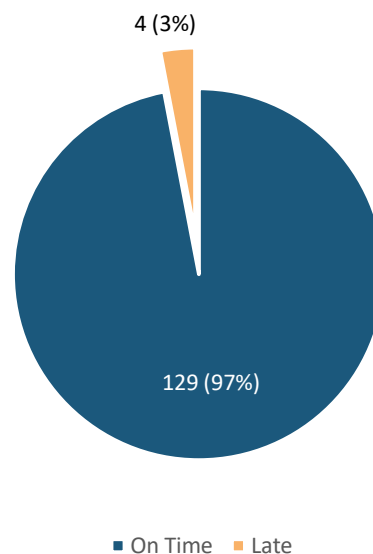
Logic and Accuracy Testing

Prior to each election, voting machines must be tested for logic and accuracy. The Logic and Accuracy (L&A) Testing ensures that the vote tabulators are correctly recording the votes from each ballot cast. L&A Testing is required to be performed on each machine that will be used for absentee voting and Election Day and must be completed before the machine is used. The Department of Elections requires that each locality certify that testing has been completed.

AB L&A



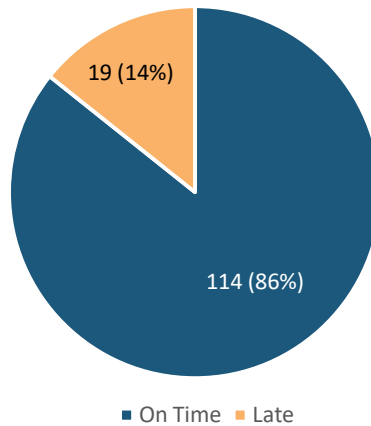
Election Day L&A



Confirm Offices Using Election Night Reporting Website

Prior to Election Day, the Department sends notice to all localities asking them to review the information presented in their Election Night Reporting (ENR) web site screens on the Department’s website. By verifying this information prior to the election, the Department can ensure all necessary elements (contests, candidates, ballot issues, precincts, etc.) are represented in order to present accurate information to the public on election night. Verifying the information in advance can reduce errors and delays in reporting.

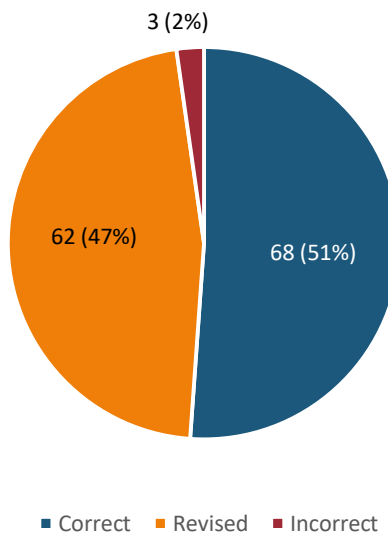
ENR Website Verification



Voter Turnout Data

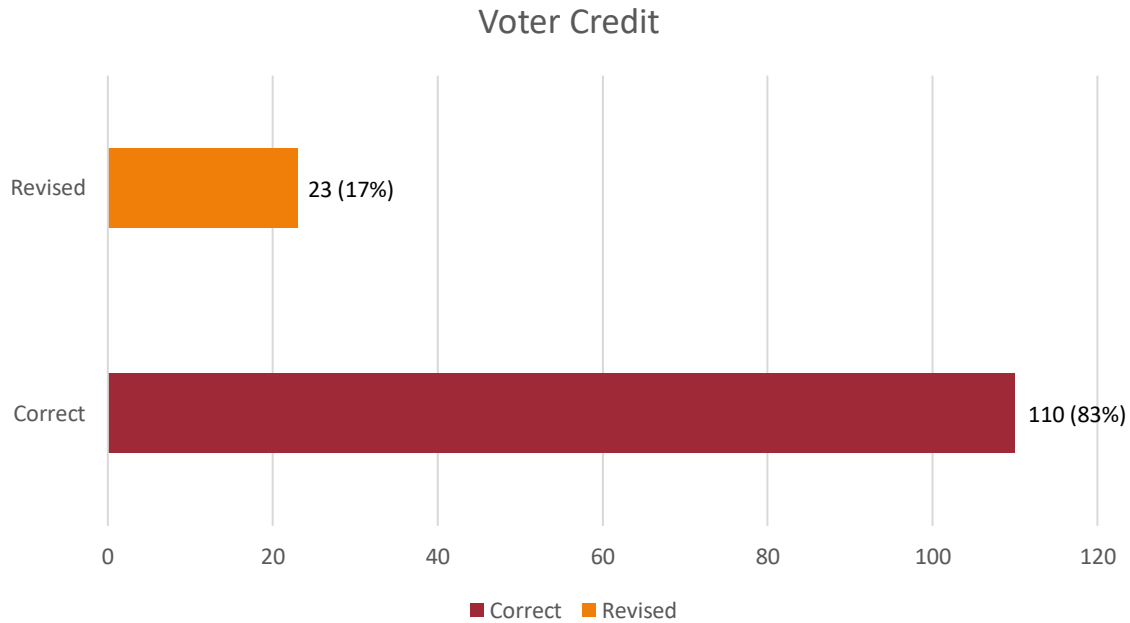
Voter turnout involves a combination of factors including, but not limited to, Election Day precinct voters, in-person and by mail absentee voters, and provisional voters. Presenting an accurate picture of the electorate by the end of canvass allows insight into the activities of voters for one election. The data from that information can be helpful in planning for future elections.

Voter Turnout (as of Feb 3, 20)



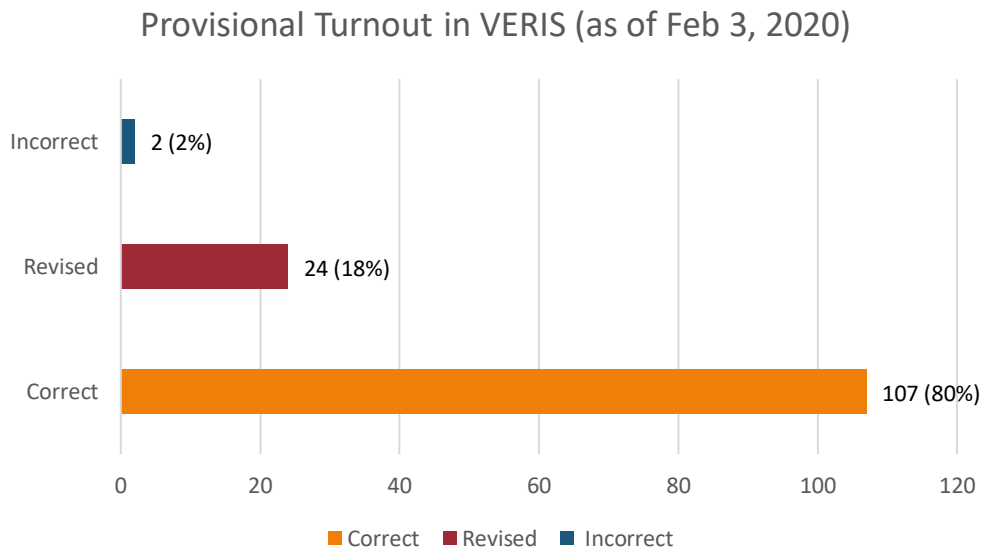
Voter Credit

Localities across the Commonwealth use either electronic or paper pollbooks to verify that a voter is registered and voting in the correct precinct. Localities who utilize paper poll books are provided with an extended deadline (30 days) to enter the information into voters' records in the Virginia Election and Registration Information System (VERIS). The chart below presents the success of the localities in applying voter credit to records after Election Day.



Provisional Voter Turnout

Another aspect of presenting accurate election information is providing provisional voter turnout. Provisional voter turnout completes the reporting of overall turnout and helps present patterns in provisional voting that may indicate a more widespread problem within a locality or throughout the Commonwealth

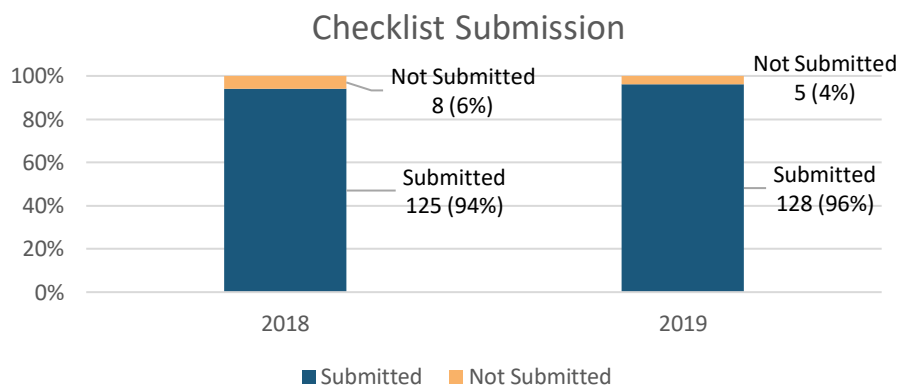


Election Results Verification

After previous elections, it was sometimes the case that data entered into VERIS and presented on the Department’s website did not fully reflect Election Day. This issue was brought before the State Board of Elections by a member of the Virginia Electoral Board Association (VEBA). In response to these concerns, and with additional staffing in place, the Department instituted a new process for verifying locality election data in VERIS. This is the second year for which this process has been used.

Prior to Election Day, the Department sends detailed instructions to all general registrars reminding them of the reports already available in VERIS that allow them to check and crosscheck data to ensure their entries are correct. The Department runs these same reports when verifying a locality’s abstracts prior to State Board certification.

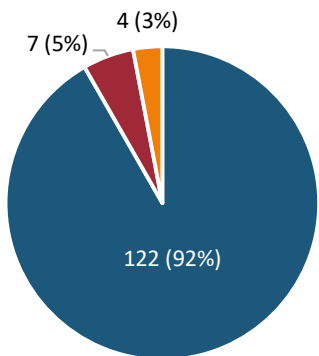
The Department instituted use of a Checklist as a means of reminding localities to run the reports as well as providing an easily accessible list of items to submit to the Department after canvass. In most cases, the Checklist has worked well and been helpful to both the locality and the Department.



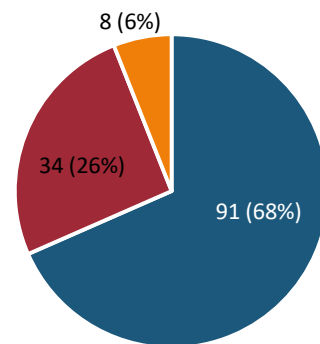
Abstracts of Votes

Abstracts are the official record of the votes cast for candidates, constitutional amendments, and referenda. It is essential that election abstracts are correct. The Department works closely with localities to ensure abstracts submitted to the Department accurately reflect vote totals. Localities submit their abstracts to the Department electronically for inspection. Once the electronic versions are approved by the Department, localities mail the originals to the Department. The electronic versions must be submitted as soon as the locality’s canvass concludes to ensure the Department has time to review and approve all of the localities’ abstracts. The Department then prepares the abstracts that are certified by the State Board of Elections.

2018 Electronic Abstract Submission



2019 Electronic Abstract Submission



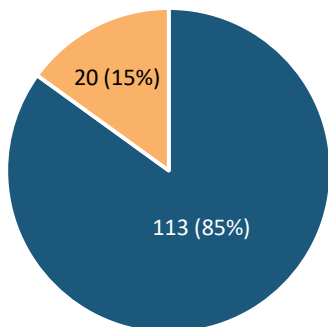
■ Correct ■ Revised ■ Submitted Paper Abstracts Only

■ Correct ■ Revised ■ Submitted Paper Abstracts Only

Voided Ballots

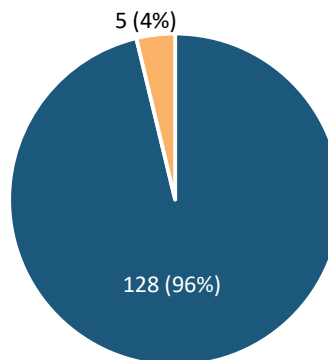
VA Code § [24.2-612](#) requires general registrars to submit a copy of each ballot used in an election for historical record purposes.

2018 Void Ballots Submission
(as of Dec 12, 2018)



■ Submitted ■ Not submitted

2019 Void Ballots Submission
(as of Feb 3, 2020)



■ Submitted ■ Not submitted

Areas Identified for Training

Each year, the Department of Elections and general registrars continue to improve the results verification process. With each election the Department is able to highlight areas for training, especially related to entering data into VERIS. Vote count results are being entered accurately, however, it is apparent that not all general registrars understand how to utilize post-election results verification reports to catch errors.

These reports can help catch human errors such as entering a number into the wrong field or transposing numbers. The Department ran these reports for all localities and worked with general registrars during canvass to identify and correct issues. Department staff tracked the kinds of issues found during this process and will build future training around these. Below are a few additional areas identified for 2020 training:

- Absentee
 - A few localities had gaps between absentee voter credit and Central Absentee Precinct voter turnout. The gaps were resolved either by including rejected absentee ballots into the CAP voter turnout or by concluding incomplete absentee records.
 - A small number of localities misunderstood the Department's guidance document and entered higher than expected values into the "In Person" central absentee precinct (CAP) voter turnout area within VERIS. The general registrars reported all of the in person absentee traffic rather than those absentee voters who return their mailed absentee ballot on Election Day.
- Write In Certifications and Winners
 - Fifteen (15) localities either didn't submit a required write-in certification or submitted an incorrect one.
 - Five (5) localities failed to enter write-in winners into VERIS.
 - These same localities failed to execute the needed write in certifications for these write-in winners.

Major Issues during the 2019 General Election

Virginia Department of Elections

Prior to the polls closing on Election Day, the Department received notice that the Election Night Reporting (ENR) website showed incorrect candidates for two offices in Charles City County. Upon investigation of the reported issue, staff at the Department determined that candidate information for those two offices was indeed incorrect. Election Administration staff first verified that Charles City County had certified that the information was correct on the ENR website (the locality did verify the information was correct when, in fact, it was not). Once verified, the Election Administration staff contacted the Information Services Division to see if a correction could be made. The correction created an unanticipated error causing the ENR website to indicate that 100% of precincts had been reported regardless of the actual number. Information Services staff pulled the website offline until the new error could be corrected. As a result, the Department's ENR website was offline for approximately an hour and a half. The outage for the website did not impact the localities' ability to enter results and other outlets (such as news outlets) continued to receive the feed without error from the Department allowing them to timely and properly display the election night results while the Department corrected the website display error.

Campbell County

Campbell County precinct Glaydis is a split precinct. A poll worker at Glaydis was unaware of the split, and provided all voters the same ballot for a short period of time after the polling place opened. Twenty-five (25) voters were impacted. Once the General Registrar became aware of the issue, the error was corrected and the poll worker was replaced.

Chesterfield County

The Election Day issues in Chesterfield County involved malfunctioning voting machines and electronic pollbook equipment.

In precinct 108, the Elections Systems and Software DS200 voting machine stopped operating. The equipment technician was unable to repair the machine and restore operation. Precinct 108 was assigned two optical scanning machines, and voting was able to continue through the arrival of a replacement voting machine.

Precincts 413, 415, 416, and 417 had issues with flash drives containing the voter information necessary to operate electronic poll books. The flash drives used were over 8 years old. Two of the impacted precincts (413 and 417) were issued replacement flash drives shortly after the general registrar was notified of the problems. Precincts 415 and 416 were able to resolve the issue without replacing the flash drives.

Stafford County

Stafford County had issues with ballot styles on Election Day due to incorrect voter information and ballot styles being provided by the receipt printer during the check-in process. The number of voters affected has not been determined. Reviewing the memo presented to the Department by the locality, the locality immediately pulled the affected printers and used the EPB screen presentation to provide accurate ballot styles to voters.

Prince William County

Prince William County's issues centered on misprinted ballots. For this election, Prince William County had 44 ballot styles and ordered their printed ballots from their regular ballot-printing vendor. The first shipment received from the vendor had an incorrect number of ballots, and Prince William County was required to order a second shipment. The second shipment contained misprinted ballots, and the issue was not discovered until Election Day. The ballots printed for the Woodbridge District, which affected 12 precincts, duplicated the front page on both sides of the ballot. As an emergency solution, Prince William County had ballots reprinted in the general registrar's office and reprinted ballots in a local printing shop. Prince William County printed 7,000 ballots.

For the 2020 Presidential Primary, Prince William County has changed ballot-printing vendors.

Insufficient number of ballots.

Multiple localities failed to ensure each polling place had a sufficient number of ballots. Pursuant to VA Code § [24.2-612](#), each general registrar must inform the Department of the number of ballots ordered for the election. The Department has authority to direct the general registrar to order the printing of more ballots. While many general registrars ordered a sufficient number of ballots for the locality as a whole, individual precincts within these specific localities were not supplied an adequate number.

Impacted localities:

Frederick County: The locality did not have a sufficient number of ballots due to an unexpected increase in voter participation. While the general registrar ordered an amount equal to nearly 40% of the registered voters, the locality saw a turnout of almost 50% for this election. To help remedy the issue, the locality began photocopying emergency ballots for all precincts early in the day and continued this process for all voters. Each polling place has an ExpressVote print-on-demand available for voters; however, some voters were not comfortable with using the ExpressVote machine or chose to wait for a ballot.

Norfolk City: Three precincts (East Ocean View, Third Presbyterian, and Suburban Park) had an insufficient number of ballots on hand. Precincts experienced higher than expected turnout and a large number of void/spoiled ballots due to voter error. The General Registrar theorizes the voter errors may have been related to recent redistricting in Norfolk from the February 14, 2019 Court Order. Additionally, there may have been increased public interest in the election due to visits from Vice President Mike Pence and actress Kerry Washington over the weekend immediately preceding the election.

As precincts began to run lower on ballot stock, chief officers of election contacted the Norfolk Elections Warehouse or General Registrar's office for additional ballots that were readily available in stock. Ballots were delivered via Electoral Board members and sworn Officers. Additionally, the registrar's office printed more ballots of each style and made those available for delivery, if needed. The registrar's office has ballot on demand printers available as well. Each Norfolk precinct utilizes ADA accessible devices, and ballots can be printed in the precinct immediately, if needed. Chief Officers were trained on the ADA accessible machines prior to the election, and the general registrar's office reviewed printing instructions with Chief Officers before Election Day.

Richmond City: One precinct was affected by an insufficient number of printed ballots. The error occurred in calculating the number of voters in that part of a split precinct. The precinct is split four ways, and the population data could not be directly extracted from VERIS. Because of this, the population in each part of the split was incorrectly calculated and fewer ballots were estimated to be necessary.

The general registrar directed the poll workers to contact the office if ballot numbers fell below 50. The poll workers did not follow this guidance and waited until the ballots were almost gone. Further, the poll workers did not use the established emergency procedure of having voters use ExpressVote or photocopying the ballot. The situation was remedied shortly after it became an issue. The general registrar had ballots delivered to the polling place within 30 minutes.

Recounts

There were a total of six (6) offices for which localities conducted recounts after the election. A total of seven (7) localities were involved in the recounts. The table below shows the offices, localities involved, and the cost of each recount. In each case, the outcome of the election did not change. Because the difference in vote totals in each was not more than one-half of one percent, each locality was responsible for the full cost of each recount (VA Code [24.2-802\(E\)](#)).

| Office | Locality/Localities | Total Cost |
|--------------------------------------|------------------------------|--------------|
| House of Delegates District 83 | Norfolk/Virginia Beach | \$ 36,869.00 |
| Commonwealth's Attorney | Orange County | \$ 3,600.00 |
| Board of Supervisors | Mathews County | \$ 7,243.64 |
| Board of Supervisors | Stafford County | \$ 1,573.77 |
| Soil and Water Conservation Director | York County | \$ 5,946.31 |
| Town Council | Floyd County (Town of Floyd) | \$ 828.82 |

Court Actions

Accomack County

The Republican Party of Virginia (RPV) issued a complaint to the Attorney for the Commonwealth in Accomack County relating to allegations that an individual may have violated VA Code § [24.2-1012](#). RPV also filed for a Motion for Temporary Injunction against the Electoral Board and general registrar to prevent them from counting absentee ballots until the issue could be decided. Ultimately, the court did not rule on the injunction prior to the time to count absentee ballots on Election Day. Accomack County counted the ballots as required by law, and the court never ruled on the injunction.

Buchanan County

The Buchanan County Republican Committee filed a Motion for Temporary Injunction to prevent the Electoral Board and general registrar from counting any absentee ballots related to any ongoing investigation into alleged violations of law. The court denied the Motion for Temporary Injunction and all absentee ballots were counted.

Fairfax County

The New Virginia Majority Education Fund filed for a Temporary Injunction on behalf of 177 college students whose voter registration was denied because the general registrar claimed not to have enough information to place the applicant in the correct precinct. The students had provided their residence address as required by law, but did not go further to provide the dorm information the general registrar claimed to need in order to complete the registration. The court granted the temporary injunction and ordered the Fairfax County general registrar's office to allow those 177 applicants to provide dorm information for their application and register through 5:00 p.m. on the Saturday before Election Day. The order also allowed those same individuals to vote provisionally on Election Day, provide the dorm information, and have their provisional vote count if they voted in the correct precinct.

Newport News City

Voters at Christopher Newport University often register using the same college campus address (1000 University Place). While the address is obviously in one location, the voters are spread out over a variety of physical locations. Because of the physical locations, some voters actually belong in Wellesley Precinct and others in Boulevard Precinct. The court ordered the Electoral Board and general registrar to, on Election Day, require voters with the college campus address to provide an exact residential address, determine the appropriate precinct for the voter, and refer the voter to the appropriate polling location to cast their ballot.

Summary and Suggested Best Practices

As noted in the introduction, the data presented here tells the story of the 2019 General Election. Ultimately, the story is a good one. With well over 2.3 million people casting a ballot and the vast majority of those doing so between the hours of 6AM and 7PM in a single day, there are always likely to be issues that arise. However, by working together, planning in advance, and knowing and implementing best practices, the vast majority of problems are solved quickly and in a manner that improves the voter's experience.

General registrars, Electoral Board members, and the Department of Elections will take the story of 2019, learn its lessons, and plan for improvements going into the 2020 presidential election.

It is with the information presented that the Department's staff recommends the following to improve election administration in the Commonwealth for future elections:

- Work with local election officials to determine how to improve absentee system to ensure more timely delivery of absentee ballots,
- Keep precinct sizes as small as possible, certainly within legal limits,
- Plan for more officers of election than the minimum required,
- Work with the governing body of the locality to procure spare equipment,
- Encourage general registrars to incorporate the Department created officer of election training tools into their officer of election training sessions, and
- Encourage general registrars to use the Department created election night and canvas training tools.

November 5, 2019 Post-Election Report

Appendix A – Buchanan Court Information

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Buchanan County Circuit - Civil Division
Pleadings/Orders Detail

Case Number: CL19000965-00

| Filed | Type | Party | Judge | Book | Page | Remarks |
|----------|----------------|-------|-------|------|------|----------------------------|
| 11/06/19 | Initial Filing | PLT | | | | COMPLAINT W/ EXHIBIT & LTR |
| 11/13/19 | Non Suit | | BKP | | | |
| 11/18/19 | Letter | | | | | FR MONAHAN TO CLERK |
| 11/06/19 | Service | | | | | PROOFS |
| 11/08/19 | Motion | PLT | | | | FOR LEAVE TO NONSUIT |
| 11/08/19 | Draft Order | | | | | |

[Return to Case](#)[Main Menu](#)[Logoff](#)

Build #: 3.8.1.1

Name List

Pleadings/Orders

Services

Main Menu

Logoff

Buchanan County Circuit - Civil Division**Case Details**

| | |
|---|--------------------------------------|
| Case Number: CL19000965-00 | Filed: 11/06/19 |
| Filing Type: Declaratory Judgment | |
| Number of Plaintiffs: 0003 | Number of Defendants: 0003 |
| Commenced By: Initial Filing | |
| Bond: | Complex Case: |

If there are more than three plaintiffs or defendants as indicated under "Number of Plaintiffs" or "Number of Defendants" in the table above, please contact the court for the additional party information.

Plaintiffs

Plaintiff 1: **BUCHANAN CO REPUBLIC COMMITTEE**

Trading as:

Attorney: RATLIFF, BRADLEY

Plaintiff 2: **HERNICK, MARCY; VC**

Trading as:

Attorney: RATLIFF, BRADLEY

Plaintiff 3: **HERNICK, MARCY**

Trading as:

Attorney: RATLIFF, BRADLEY

Defendants

Defendant 1: **BUCHANAN CO ELECTORAL BOARD**

Trading as:

Attorney: PRO SE

Defendant2: **CLEVINGER, VICKI**

Trading as:

Attorney: PRO SE

Defendant3: **BUCHANAN CO DEMOCRATIC COMMITT**

Trading as:

Attorney: PRESLEY, VERN

Hearings

| # | Date | Time | Type | Room | Duration | Jury | Result |
|---|------|------|------|------|----------|------|--------|
|---|------|------|------|------|----------|------|--------|

Date Ordered To Mediation:

Final Disposition

- **Judgment:** Other
- **Final Order Date:** 11/13/19
- **Appealed Date:**
- **Concluded By:** Dismissal

[Name List](#)
[Pleadings/Orders](#)
[Services](#)
[Main Menu](#)
[Logoff](#)

Build #: 3.8.1.1

Cedar Bluff, Virginia | Main Office
1053 Cedar Valley Drive
P. O. Box 33
Cedar Bluff, Virginia 24609
Voice: (276) 522-1220
Fax: (276) 206-2255

Weston, WV Office
324 1/2 Center Avenue
Weston, WV 26452
Voice: (304) 406-7410
Fax: (304) 693-2662



THE
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www.ratlifflaw.net

Bradley C. Ratliff, Attorney at Law^o
Jeffrey W. Stowers, Jr., Attorney at Law^o
Kristen N. Lawson, Attorney at Law^o
Mikal-Ellen Bennett, Attorney at Law^o†
Natasha L. Ratliff, Practice Administrator

FEIN: 46-2156927

Sender's E-Mail: Brad@ratlifflaw.net

November 1, 2019

VIA HAND-DELIVERY

The Honorable Beverly S. Tiller
Clerk of Court
BUCHANAN COUNTY CIRCUIT COURT
P. O. Box 929
Grundy, VA 24614

**RE: The Buchanan County Republican Committee, et al v.
Buchanan County Electoral Board, et al
Case No.: Unassigned
Buchanan County Circuit Court**

Dear Ms. Tiller:

Attached herewith, please find a Motion for Temporary Injunction that we request be immediately filed on behalf of the Buchanan County Republican Committee. This injunctive relief is sought based on credible evidence of electoral misconduct, which has been included in Affidavit form in support of this Motion. Given the minimal duration of time until the election, time is clearly of the essence in this matter and we request a hearing as soon as practicable.

Thank you in advance for your kind attention and consideration. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Bradley C. Ratliff

BCR/

Cc: Buchanan County Republican Committee
Ms. Marcy Hernick
Christopher M. Marston, Esq.

Enclosure

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. (CLERK'S OFFICE USE ONLY)

Buchanan County Circuit Court

Buchanan Co. Republican Committee, and Marcy Hernick v./In re: Buchanan County Electoral Board and Vicki Clevinger
PLAINTIFF(S) DEFENDANT(S)

in her own behalf and as Vice Chairwoman of Buchanan Co. Rep. in her official capacity as Buchanan Co. Gen. Registrar

I, the undersigned [] plaintiff [] defendant [] attorney for [] plaintiff [] defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

- GENERAL CIVIL**
- Subsequent Actions**
- Claim Impleading Third Party Defendant
 - Monetary Damages
 - No Monetary Damages
 - Counterclaim
 - Monetary Damages
 - No Monetary Damages
 - Cross Claim
 - Interpleader
 - Reinstatement (other than divorce or driving privileges)
 - Removal of Case to Federal Court
- Business & Contract**
- Attachment
 - Confessed Judgment
 - Contract Action
 - Contract Specific Performance
 - Detinue
 - Garnishment
- Property**
- Annexation
 - Condemnation
 - Ejectment
 - Encumber/Sell Real Estate
 - Enforce Vendor's Lien
 - Escheatment
 - Establish Boundaries
 - Landlord/Tenant
 - Unlawful Detainer
 - Mechanics Lien
 - Partition
 - Quiet Title
 - Termination of Mineral Rights
- Tort**
- Asbestos Litigation
 - Compromise Settlement
 - Intentional Tort
 - Medical Malpractice
 - Motor Vehicle Tort
 - Product Liability
 - Wrongful Death
 - Other General Tort Liability

- ADMINISTRATIVE LAW**
- Appeal/Judicial Review of Decision of (select one)
 - ABC Board
 - Board of Zoning
 - Compensation Board
 - DMV License Suspension
 - Employee Grievance Decision
 - Employment Commission
 - Local Government
 - Marine Resources Commission
 - School Board
 - Voter Registration
 - Other Administrative Appeal

- DOMESTIC/FAMILY**
- Adoption
 - Adoption - Foreign
 - Adult Protection
 - Annulment
 - Annulment - Counterclaim/Responsive Pleading
 - Child Abuse and Neglect - Unfounded Complaint
 - Civil Contempt
 - Divorce (select one)
 - Complaint - Contested*
 - Complaint - Uncontested*
 - Counterclaim/Responsive Pleading
 - Reinstatement - Custody/Visitation/Support/Equitable Distribution
 - Separate Maintenance
 - Separate Maintenance Counterclaim

- WRITS**
- Certiorari
 - Habeas Corpus
 - Mandamus
 - Prohibition
 - Quo Warranto

- PROBATE/WILLS AND TRUSTS**
- Accounting
 - Aid and Guidance
 - Appointment (select one)
 - Guardian/Conservator
 - Standby Guardian/Conservator
 - Custodian/Successor Custodian (UTMA)
 - Trust (select one)
 - Impress/Declare/Create
 - Reformation
 - Will (select one)
 - Construe
 - Contested

- MISCELLANEOUS**
- Amend Death Certificate
 - Appointment (select one)
 - Church Trustee
 - Conservator of Peace
 - Marriage Celebrant
 - Approval of Transfer of Structured Settlement
 - Bond Forfeiture Appeal
 - Declaratory Judgment
 - Declare Death
 - Driving Privileges (select one)
 - Reinstatement pursuant to § 46.2-427
 - Restoration - Habitual Offender or 3rd Offense
 - Expungement
 - Firearms Rights - Restoration
 - Forfeiture of Property or Money
 - Freedom of Information
 - Injunction
 - Interdiction
 - Interrogatory
 - Judgment Lien-Bill to Enforce
 - Law Enforcement/Public Official Petition
 - Name Change
 - Referendum Elections
 - Sever Order
 - Taxes (select one)
 - Correct Erroneous State/Local
 - Delinquent
 - Vehicle Confiscation
 - Voting Rights - Restoration
 - Other (please specify)

[] Damages in the amount of \$ are claimed.

10/31/2019
DATE

Bradley C. Ratliff, Esq. | THE RATLIFF LAW FIRM
PRINT NAME

1053 Cedar Valley Drive, Cedar Bluff, VA 24609
ADDRESS/TELEPHONE NUMBER OF SIGNATOR

(276) 522-1220

Brad@ratlifflaw.net
EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

Bradley C. Ratliff
[] PLAINTIFF [] DEFENDANT [x] ATTORNEY FOR [] PLAINTIFF [] DEFENDANT

**"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF BUCHANAN

BUCHANAN COUNTY REPUBLICAN
COMMITTEE and MARCY HERNICK,
on her own behalf and in her capacity as
Vice Chairwoman, Buchanan County
Republican
Committee

v.

BUCHANAN COUNTY ELECTORAL
BOARD, and VICKI CLEVINGER, in her
official capacity as Buchanan County
General Registrar

.....PLAINTIFFS

Case No.: _____

.....DEFENDANTS

PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF

The Buchanan County Republican Committee and Marcy Hernick (“Plaintiffs”), by counsel and pursuant to Section 8.01-184 of the Code of Virginia (the “Code”), move this Court to enjoin the Buchanan County Electoral Board and Vicki Clevinger, in her official capacity as General Registrar (together, “Defendants”), from processing or counting any absentee ballot that is part of any ongoing investigation by the Buchanan County Office of the Commonwealth’s Attorney (“the suspect absentee ballots”) until such time as the Buchanan County Commonwealth’s Attorney finds that the ballot was not cast, or attempted to be cast, in violation of the absentee voting procedures prescribed in Chapter 7 (§ 24.2-700 et seq.) of the Code. In support of their Complaint, Plaintiffs state as follows:

Parties, Jurisdiction and Venue

1. Defendant, Buchanan County Electoral Board (the “Electoral Board”) is appointed pursuant to Section 24.2-106 of the Code to administer the conduct of elections in Buchanan County, Virginia. Defendant, Vicki Clevinger (the “Registrar”) is the General

Registrar of Buchanan County, appointed by the Electoral Board pursuant to Va. Code 24.2-110, to carry out various duties prescribed by the Electoral Board.

2. The Buchanan County Republican Committee (the "Committee") is a unit of the Republican Party of Virginia. The Committee represents its members and the candidates it has nominated to run in the General Election held, November 5, 2019.

3. Marcy Hernick is Vice Chairwoman of the Buchanan County Republican Committee, a Member of the Republican Party of Virginia, and a registered voter in Buchanan County.

4. This Court has jurisdiction over the subject matter of this lawsuit pursuant to Section 8.01-184 of the Code. This Court has, or will have, jurisdiction over Defendants following service of process pursuant to Sections 8.01-296 and -300 of the Code.

5. Venue is proper in this Court pursuant to Section 8.01-261(2) of the Code.

Governing Law

6. Chapter 7 (§ 24.2-700 et seq.) of the Code sets forth the provisions for absentee voting in the Commonwealth of Virginia.

7. Section 24.2-706 directs a general registrar to review each application for an absentee ballot to ascertain whether the applicant is a registered voter, and whether the application was properly completed and signed, and that the applicant is a registered voter of the precinct in which he offers to vote; and only upon finding all of that to be in order, shall send or deliver to the applicant the specified absentee voting materials (e.g. ballot, ballot envelope with voter statement, return envelope, and instructions for completing the ballot).

8. Section 24.2-710 directs that on receipt of an absentee ballot, the electoral board or general registrar shall mark the date of receipt, and a board member or registrar shall deposit

the return envelope and the unopened ballot envelope in an appropriate container where it remains until Election Day, unless the general registrar opts to begin processing absentee ballots prior to Election Day (including opening the sealed ballot envelopes and inserting the ballots in optical scan counting equipment) in accordance with the procedures set forth in section 24.2-709.1.

9. Pursuant to section 24.2-712, the governing body of each county may establish one or more central absentee voter precincts for the purpose of receiving, counting, and recording absentee ballots cast in the county or city; and furthermore, absentee ballots may be processed at the central absentee voter precinct prior to the closing of the polls on Election Day.

10. Chapter 6 (§ 24.2-600 et seq.) sets forth the provisions for the general administration of elections in the Commonwealth of Virginia.

11. Pursuant to section 24.2-671, the electoral board shall meet at or before 5:00 p.m. on the day after the election. The Board's sole pertinent role is to ascertain the outcome of the election by reference to the returns of the total votes in the county or city, or town in a town election, for each candidate and for or against each question and complete the abstract of votes cast at such election." *Id.*

12. Section 24.2-1090 provides that any complaint or allegation concerning unlawful conduct under title 24.2 shall be filed with the attorney for the Commonwealth of the county or city in which the alleged violation occurred.

12. Pursuant to Section 24.2-706, circuit courts have jurisdiction to issue an injunction to enforce the provisions thereof upon the application of any aggrieved voter, or political party Vice Chairwoman in an election district in whole or in part in the court's jurisdiction.

Facts

12. On October 31, 2019, Christopher Marston, Esq., Counsel to the Republican Party of Virginia, filed a complaint with Gerald Arrington Esq., Attorney for the Commonwealth for Buchanan County, alleging, upon information and belief, that violations of §24.2-1012 of the Code relating to absentee voting had occurred in connection with the 2019 general election. A copy is attached herewith and fully incorporated herein as Exhibit "A."

13. Upon information and belief, Gerald Arrington, Esq., Attorney for the Commonwealth for Buchanan County, will open an investigation into the allegations made by Mr. Marston.

14. Upon information and belief, the suspect absentee ballots are currently in the possession of Defendants.

15. Upon information and belief, based on sworn Affidavits attached hereto and incorporated fully herein as Exhibit "B," the subject ballots are improper and in violation of applicable law.

16. Virginia Code section 24.2-707(C) states, in pertinent part, as follows: "Failure to follow the procedures set forth in subsection A or B shall render the applicant's ballot void."

17. Once an absentee ballot has been voted (that is, the envelope opened and the ballot deposited into the ballot container containing voted ballots), it cannot subsequently be identified or retrieved.

18. The Defendants do not have the statutory authority to set aside the suspect absentee ballots without a court order.

Argument and Authorities

19. This court has jurisdiction to issue the injunctive relief sought by Plaintiff Ms. Hernick because she is the Vice Chairwoman of the Republican Party of Buchanan County, and the relief he seeks pertains to absentee ballots which were attempted to be cast in an election district in this Court's jurisdiction.

20. As the Supreme Court of Virginia stated in *Levisa Coal Co. v. Consolidation Coal Co.*, “[u]nder well-established principles . . . the granting of an injunction is an extraordinary remedy and rests on the sound judicial discretion to be exercised upon consideration of the nature and circumstances of a particular case.” 662 S.E.2d 44, 53 (Va. 2008). See, e.g., *Seventeen, Inc. v. Pilot Life Ins. Co.*, 205 S.E.2d 648, 653 (Va. 1974); *Akers v. Mathieson Alkali Works*, 144 S.E. 492, 494 (1928). When determining whether an injunction should issue, courts weigh the following four factors: 1) whether the plaintiff has an adequate remedy at law; 2) whether the plaintiff will suffer irreparable harm if the defendant's actions are not enjoined; 3) whether the harm to the defendant is excessively out of proportion to the harm suffered by the plaintiff; and 4) whether there is an effect on the public. See e.g., *Virginia Beach S.P.C.A., Inc. v. South Hampton Rds. Veterinary Ass'n.*, 329 S.E.2d 10, 13 (Va. 1985); *Clayborn v. Camilla Red Ash Coal Co.*, 105 S.E. 117 (Va. 1920). Courts balance these factors to determine if a plaintiff should obtain injunctive relief. See *Fancher*, 650 S.E.2d at 523; *Blue Ridge Poultry & Egg Co. v. Clark*, 176 S.E. 2d 323 (1970). The most important factors are irreparable injury and harm to the nonmoving party. See *Long & Foster Real Estate, Inc. v. CLPF–King Street Venture, L.P.*, 74 Va. Cir. 87, 2007 WL 5969400 (Va.Cir.Ct. 2007).

21. Here, Plaintiff is entitled to injunctive relief. Plaintiff will suffer immediate and irreparable harm if an injunction is not granted because once a ballot is counted, it cannot be

segregated and removed from the vote totals if it is subsequently determined that it was fraudulently requested or cast.

22. Any harm to the Defendants caused by this Court ordering them to temporarily set aside and not process or count the suspect absentee ballots is minimal, because the Defendants can move ahead with all other election processes until such time as the Commonwealth's Attorney completes his investigation.. The Defendants do not have a lawful interest that would be harmed by an injunction prohibiting them from violating Virginia election law. Any minimal administrative inconvenience the Defendants may suffer is far outweighed by the Defendants' statutory and constitutional obligations to enforce the laws that provide for a fair and orderly election process.

23. There is a very strong public interest in permitting legitimate state statutory processes to operate to preclude voting by those who are not entitled to vote. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters."). The public interest would suffer a grave harm if any of the suspect absentee ballots were cast by persons not entitled to vote but nonetheless counted. Accordingly, the public interest is served by the entry of an order enjoining the processing and counting of the suspect absentee ballots until the Commonwealth's Attorney's investigation is complete.

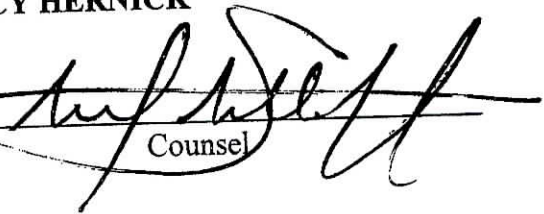
24. In the framework of requests for injunctive relief in an election setting, the Supreme Court has stated that "[i]n awarding or withholding immediate relief, a court is entitled to and consider the proximity of a forthcoming election and the mechanics and complexities of election laws, and should act and rely upon general equitable principles." *Reynolds v. Sims*, 377 U.S. 533, 585 (1964); *Purcell v. Gonzalez*, 549 U.S. at 4 (denying injunction to suspend voter

identification rules “[g]iven the imminence of the election” and the State’s “compelling interest in preserving the integrity of the election process” and “preventing voter fraud”). The suspect absentee ballots are already in the possession of the Defendants, who are statutorily entitled to begin processing absentee ballots prior to the November 5, 2019 election, so time is of the essence.

Request for Relief

For the foregoing reasons, Plaintiffs respectfully request this Honorable Court to immediately issue an injunction stopping the Defendants from processing or counting any absentee ballot that is under investigation by the Buchanan County Commonwealth’s Attorney until such time as the investigation is complete and any fraudulent ballots are so identified.

**BUCHANAN COUNTY REPUBLICAN
COMMITTEE and
MARCY HERNICK**

By 
Counsel

Bradley C. Ratliff, (VSB No.: 74185)
THE RATLIFF LAW FIRM
1053 Cedar Valley Drive
Cedar Bluff, Virginia 24609
V: (276) 522-1220
F: (276) 206-2255
E: Brad@ratlifflaw.net
Counsel to the Buchanan County Republican Party

CERTIFICATE

I certify that on October ^{31st}, 2019, I sent a copy of this Complaint for Emergency Injunctive Relief to Ms. Vicki Clevinger, Buchanan County General Registrar in her capacity as General Registrar and personally, at her address of record, and to the Buchanan County Electoral Board 1012 Walnut Street, Grundy, Virginia 24614


Counsel

EXHIBIT "A"

Copy of Correspondence dated October 31, 2019 from Christopher M. Marston, Esq., General Counsel, Republican Party of Virginia to Gerald Arrington, Esq., Buchanan County Commonwealth's Attorney.



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Republican Party of Virginia

www.rpv.org

October 31, 2019

Hon. Gerald D. Arrington
Buchanan County Commonwealth's Attorney
1012 Walnut St, Room 426
PO Box 804
Grundy VA 24614

VIA E-mail info@buchanan-ca.org; and Facsimile (276) 935-5781

Dear Mr. Arrington,

I write to make a complaint about potentially unlawful conduct under title 24.2 of the Code of Virginia pursuant to section 24.2-1019.

Specifically, I believe that Trey Adkins, Knox District Supervisor, may have committed offenses as to absent voters under section 24.2-1012.

Upon information and belief, Adkins secured absentee ballot applications from approximately 250 of the registered voters in the precincts within Knox District, filling out the applications on their behalf. None of these applications had a check mark in section 8 "Assistance To Vote" or information in section 9 "Assistant's Statement/Info".

Adkins returned to at least some of these voters once the voters had received absentee ballots, either observed them marking their ballots or assisted them in filling out their ballots, assisted them in filling out the required "Statement of Voter" on the ballot envelope, took the return ballot envelope and deposited the envelope in the mail.

Section 24.2-707 provides that "the voter shall, in the presence of a witness, (i) open the sealed envelope marked "ballot within" and (ii) mark and refold the ballot ... without assistance and without making known how he marked the ballot, except as provided by section 24.2704" (24.2-704 applies to voters who marked the "Assistance to Vote" box on their application). It

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PAID FOR AND AUTHORIZED BY THE REPUBLICAN PARTY OF VIRGINIA. CONTRIBUTIONS ARE NOT TAX DEDUCTIBLE.

further provides "[a]fter the voter has marked his absentee ballot, he shall (a) enclose the ballot in the envelope provided for that purpose, (b) seal the envelope, (c) fill in and sign the statement printed on the same envelope, (d) enclose the ballot envelope and any required assistance form with in the envelope directed to the general registrar, and (e) seal that envelope and mail it to the office of the general registrar or deliver it personally to the general registrar."

Adkins conduct appears to violate the absentee voting procedures and I respectfully request that you investigate his misconduct.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris M. Marston". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher M. Marston,
General Counsel

Cc: Marcy Hernick, Vice-Chair, Republican Party of Buchanan County

AFFIDAVIT OF Brooke Vance

Commonwealth of Virginia
Buchanan County

The undersigned, Brooke Vance, being duly sworn, hereby deposes and says:

1. I am over the age of 18 and am a resident of the Commonwealth of Virginia. I suffer no legal disabilities. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.
2. Trey Adkins observed how I marked my ballot.
3. Trey Adkins filled in the blanks in the "Statement of Voter" on the ballot envelope
4. Trey Adkins took my ballot in the return envelope and said that he would return it to the Registrar for me.

B.V.S. He took my Absence Tee form, that he brought to me to complete.

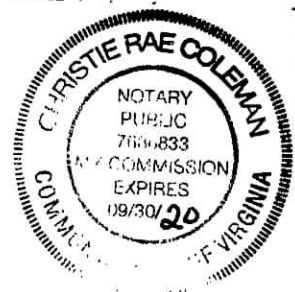
6.

I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed this 31 day of October 2019.

Brooke Vance
(Signature)

Name: Brooke Vance



NOTARY ACKNOWLEDGMENT

Commonwealth of Virginia, Buchanan County, ss:

This Affidavit was acknowledged before me on this 31st day of October 2019, by Brooke Vance, who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him and that the matters stated herein are true to the best of his information knowledge and belief.

Christie Rae Coleman
Notary Public

My commission expires 9-30-20

AFFIDAVIT OF *Dwayne Vance* I

Commonwealth of Virginia
Buchanan County

The undersigned, *Dwayne Vance*, being duly sworn, hereby deposes and says:

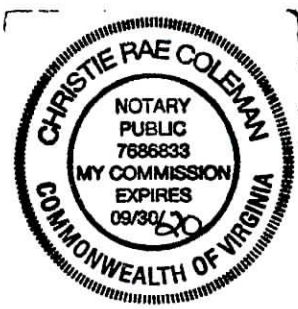
1. I am over the age of 18 and am a resident of the Commonwealth of Virginia. I suffer no legal disabilities. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.
2. Trey Adkins observed how I marked my ballot.
3. Trey Adkins filled in the blanks in the "Statement of Voter" on the ballot envelope
4. Trey Adkins took my ballot in the return envelope and said that he would return it to the Registrar for me.
- MDV. 5. *brought the ballot absentee form, and filled it out for me. and took it with me.*
- 6.

I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed this 31 day of October 2019.

Margaret Lewis
(Signature)

Name: *MARGARET DWAYNE VANCE*



NOTARY ACKNOWLEDGMENT

Commonwealth of Virginia, Buchanan County, ss:

This Affidavit was acknowledged before me on this 31st day of October 2019, by *Dwayne Vance*, who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him and that the matters stated herein are true to the best of his information knowledge and belief.

Christie Rae Coleman
Notary Public

My commission expires *9/30/20*

AFFIDAVIT OF Carolyn Davis 1

Commonwealth of Virginia
Buchanan County

The undersigned, Carolyn Davis, being duly sworn, hereby deposes and says:

1. I am over the age of 18 and am a resident of the Commonwealth of Virginia. I suffer no legal disabilities. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.

2. Trey Adkins ~~called me on~~ came to my home 8-2019 and asked me if I ~~needed him to pick up my ballot and return it to the Registrar for me.~~

C.D. Trey called and ask IF My 89 yr Uncle Needed help filling out his Ballot.

I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed this 31st day of October 2019.

Carolyn Davis
(Signature)

Name: Carolyn Davis



NOTARY ACKNOWLEDGMENT

Commonwealth of Virginia, Buchanan County, ss:

This Affidavit was acknowledged before me on this 31st day of October 2019, by Carolyn Davis, who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him and that the matters stated herein are true to the best of his information knowledge and belief.

Christie Rae Coleman
Notary Public

My commission expires 9-30-2020

C.D. Trey did not ask me The reason I requested The Abstee Ballots

AFFIDAVIT OF BOBBY LEE MAY


Commonwealth of Virginia
Buchanan County

The undersigned, BOBBY LEE MAY, being duly sworn, hereby deposes and says:

1. I am over the age of 18 and am a resident of the Commonwealth of Virginia. I suffer no legal disabilities. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.
2. On Thursday, October 3 at approximately 10:30 am/pm, I observed Trey Adkins deposit what appeared to be a large number of envelopes that I suspect to be absentee ballot envelopes in a USPS Collection Box outside of the USPS Post Office at 7505 Lesters Fork Rd, Hurley VA 24620.

I declare that, to the best of my knowledge and belief, the information herein is true, correct, and complete.

Executed this 31st day of October 2019.


Bobby Lee May



NOTARY ACKNOWLEDGMENT

Commonwealth of Virginia, Buchanan County, ss:

This Affidavit was acknowledged before me on this 31st day of October 2019, by Bobby Lee May, who, being first duly sworn on oath according to law, deposes and says that he has read the foregoing Affidavit subscribed by him and that the matters stated herein are true to the best of his information knowledge and belief.


Notary Public

My commission expires 9/30/20

EXHIBIT “C”

Applicable Virginia Statutes



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Code of Virginia
Title 8.01. Civil Remedies and Procedure
Chapter 24. Injunctions

§ 8.01-626. When court grants or refuses injunction, justice of Supreme Court or judge of Court of Appeals may review it.

Wherein a circuit court (i) grants an injunction or (ii) refuses an injunction or (iii) having granted an injunction, dissolves or refuses to enlarge it, an aggrieved party may, within 15 days of the court's order, present a petition for review to a justice of the Supreme Court; however, if the issue concerning the injunction arose in a case over which the Court of Appeals would have appellate jurisdiction under § 17.1-405 or 17.1-406, the petition for review shall be initially presented to a judge of the Court of Appeals within 15 days of the court's order. The aggrieved party shall serve a copy of the petition for review on the counsel for the opposing party, which may file a response within seven days from the date of service unless the court determines a shorter time frame. The petition for review shall be accompanied by a copy of the proceedings, including the original papers and the court's order respecting the injunction. The justice or judge may take such action thereon as he considers appropriate under the circumstances of the case.

When a judge of the Court of Appeals has initially acted upon a petition for review of an order of a circuit court respecting an injunction, a party aggrieved by such action of the judge of the Court of Appeals may, within 15 days of the order of the judge of the Court of Appeals, present a petition for review of such order to a justice of the Supreme Court if the case would otherwise be appealable to the Supreme Court in accordance with § 17.1-410. The aggrieved party shall serve a copy of the petition for review on the counsel for the opposing party, which may file a response within seven days from the date of service unless the court determines a shorter time frame. The petition for review shall be accompanied by a copy of the proceedings before the circuit court, including the original papers and the circuit court's order respecting the injunction, and a copy of the order of the judge of the Court of Appeals from which review is sought. The justice may take such action thereon as he considers appropriate under the circumstances of the case.

Code 1950, § 8-618; 1977, c. 617; 1984, c. 703; 2014, c. 526.

Code of Virginia
 Title 24.2. Elections
 Chapter 6. The Election

§ 24.2-649. Assistance for certain voters; penalties.

A. Any voter age 65 or older or physically disabled may request and then shall be handed a printed ballot by an officer of election outside the polling place but within 150 feet of the entrance to the polling place. The voter shall mark the printed ballot in the officer's presence but in a secret manner and, obscuring his vote, return the ballot to the officer. The officer shall immediately return to the polling place and shall deposit a paper ballot in the ballot container in accordance with § 24.2-646 or a machine-readable ballot in the ballot scanner machine in accordance with the instructions of the State Board.

Any county or city that has acquired an electronic voting machine that is so constructed as to be easily portable may use the voting machine in lieu of a printed ballot for the voter requiring assistance pursuant to this subsection. However, the electronic voting machine may be used in lieu of a printed ballot only so long as: (i) the voting machine remains in the plain view of two officers of election representing two political parties, or in a primary election, two officers of election representing the party conducting the primary, provided that if the use of two officers for this purpose would result in too few officers remaining in the polling place to meet legal requirements, the voting machine shall remain in plain view of one officer who shall be either the chief officer or the assistant chief officer and (ii) the voter casts his ballot in a secret manner unless the voter requests assistance pursuant to this section. After the voter has completed voting his ballot, the officer or officers shall immediately return the voting machine to its assigned location inside the polling place. The machine number, the time that the machine was removed and the time that it was returned, the number on the machine's public counter before the machine was removed and the number on the same counter when it was returned, and the name or names of the officer or officers who accompanied the machine shall be recorded on the statement of results.

B. Any qualified voter who requires assistance to vote by reason of physical disability or inability to read or write may, if he so requests, be assisted in voting. If he is blind, he may designate an officer of election or any other person to assist him. If he is unable to read and write or disabled for any cause other than blindness, he may designate an officer of election or some other person to assist him other than the voter's employer or agent of that employer, or officer or agent of the voter's union.

The officer of election or other person so designated shall not enter the booth with the voter unless (i) the voter signs a request stating that he requires assistance by reason of physical disability or inability to read or write and (ii) the officer of election or other person signs a statement that he is not the voter's employer or an agent of that employer, or an officer or agent of the voter's union, and that he will act in accordance with the requirements of this section. The request and statement shall be on a single form furnished by the State Board. If the voter is unable to sign the request, his own mark acknowledged by him before an officer of election shall be sufficient signature, provided no mark shall be required of a voter who is blind. An officer of election shall advise the voter and person assisting the voter of the requirements of this section and record the name of the voter and the name and address of the person assisting him.

The officer of election or other person so designated shall assist the qualified voter in the preparation of his ballot in accordance with his instructions and without soliciting his vote or in any manner attempting to influence his vote and shall not in any manner divulge or indicate, by signs or otherwise, how the voter voted on any office or question. If a printed ballot is used, the officer or other person so designated shall deposit the ballot in the ballot container in accordance with § 24.2-646 or in the ballot scanner machine in accordance with the instructions of the State Board.

C. If the voter requires assistance in a language other than English and has not designated a person to assist him, an officer of election, before he assists as interpreter, shall inquire of the representatives authorized to be present pursuant to § 24.2-604 whether they have a volunteer available who can interpret for the voter. One representative interpreter for each party or candidate, insofar as available, shall be permitted to observe the officer of election communicate

with the voter. The voter may designate one of the volunteer party or candidate interpreters to provide assistance. A person so designated by the voter shall meet all the requirements of this section for a person providing assistance.

D. A person who willfully violates subsection B or C is guilty of a Class 1 misdemeanor. In addition, the provisions of § 24.2-1016 and its felony penalties for false statements shall be applicable to any request or statement signed pursuant to this section, and the provisions of §§ 24.2-704 and 24.2-1012 and the felony penalties for violations of the law related to providing assistance to absentee voters shall be applicable in such cases.

E. In any precinct in which an electronic voting machine is available that provides an audio ballot, the officers of election shall notify a voter requiring assistance pursuant to this section that such machine is available for him to use to vote in privacy without assistance and the officers of election shall instruct the voter on the use of the voting machine. Nothing in this section shall be construed to require a voter to use the machine unassisted.

Code 1950, §§ 24-245, 24-251, 24-252, 24-310; 1950, c. 230; 1952, c. 581; 1962, c. 536; 1964, c. 593; 1969, Ex. Sess., c. 5; 1970, c. 462, §§ 24.1-129, 24.1-132, 24.1-220; 1973, c. 30; 1975, c. 515; 1978, c. 778; 1984, cc. 234, 775; 1985, cc. 197, 458; 1986, c. 558; 1987, c. 349; 1988, c. 598; 1993, c. 641; 2003, c. 1015; 2004, cc. 993, 1010; 2005, c. 569; 2006, c. 242; 2009, c. 809; 2014, cc. 540, 576.

Code of Virginia
Title 24.2. Elections
Chapter 10. Election Offenses Generally; Penalties

§ 24.2-1012. Offenses as to absent voters.

Any person who knowingly aids or abets or attempts to aid or abet a violation of the absentee voting procedures prescribed in § 24.2-649 and Chapter 7 (§ 24.2-700 et seq.) shall be guilty of a Class 5 felony.

Any person attempting to vote by fraudulently signing the name of a qualified voter shall be guilty of forgery and shall be guilty of a Class 4 felony.

Any public official who knowingly violates any of the provisions of the law concerning absent voters and thereby aids in any way the illegal casting, or attempting to cast a vote, or who connives to nullify any provisions of this chapter in order that fraud may be perpetrated, shall forever be disqualified from holding office in the Commonwealth and shall forever be disqualified from exercising the right of franchise.

Code 1950, § 24-345; 1956, c. 382; 1970, c. 462, § 24.1-274; 1993, c. 641; 2006, c. 242.

Code of Virginia
 Title 24.2. Elections
 Chapter 7. Absentee Voting

This section has more than one version with varying effective dates. Scroll down to see all versions.

§ 24.2-707. (Contingent expiration date, see second enactment clause of Acts 2019, cc. 668, 669) How ballots marked and returned by mail; cast in person; cast on voting equipment.

Per the second enactment clause of Acts 2019, cc. 668, 669, the provisions of those Acts are not applicable to elections until the general election on November 3, 2020, and as a result, this version of the Code section will continue to apply until such time.

A. On receipt of a mailed absentee ballot, the voter shall, in the presence of a witness, (i) open the sealed envelope marked "ballot within" and (ii) mark and refold the ballot, as provided in §§ 24.2-644, and 24.2-646 without assistance and without making known how he marked the ballot, except as provided by § 24.2-704.

After the voter has marked his absentee ballot, he shall (a) enclose the ballot in the envelope provided for that purpose, (b) seal the envelope, (c) fill in and sign the statement printed on the back of the envelope in the presence of a witness, who shall sign the same envelope, (d) enclose the ballot envelope and any required assistance form within the envelope directed to the general registrar, and (e) seal that envelope and mail it to the office of the general registrar or deliver it personally to the general registrar. A voter's failure to provide in the statement on the back of the envelope his full middle name or his middle initial shall not be a material omission, rendering his ballot void, unless the voter failed to provide in the statement on the back of the envelope his full first and last name. A voter's failure to provide the date, or any part of the date, including the year, on which he signed the statement printed on the back of the envelope shall not be considered a material omission and shall not render his ballot void. For purposes of this chapter, "mail" shall include delivery by a commercial delivery service, but shall not include delivery by a personal courier service or another individual except as provided by §§ 24.2-703.2 and 24.2-705.

B. An applicant who makes his application to vote in person at a time when the printed ballots for the election are available shall follow the same procedure set in subsection A above except that he may complete the procedure in person in the office of the general registrar, or at another location or locations in the county or city approved by the electoral board, before a registrar, or, if a ballot is cast at that time, before the officers of election appointed by the electoral board. Any such location shall be in a public building owned or leased by the city, the county, or a town within the county, with adequate facilities for the protection of all records concerning the absentee voters, the absentee ballots, both voted and unvoted, and any voting equipment in use at the location. Such location may be in a facility owned or leased by the Commonwealth and used as a location for Department of Motor Vehicles facilities and for an office of the general registrar. Such location shall be deemed the equivalent of the office of the general registrar for the purpose of completing the application for an absentee ballot in person pursuant to §§ 24.2-701 and 24.2-706. Any applicant who is in line to cast his ballot when the office of the general registrar or location being used for in-person absentee voting closes shall be permitted to cast his absentee ballot that day.

On the request of the applicant, made no later than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote, the general registrar may send the items set forth in subdivisions 1 through 4 of § 24.2-706 to the applicant by mail, obtaining a certificate or other evidence of mailing.

C. Failure to follow the procedures set forth in subsection A or B shall render the applicant's ballot void.

The general registrar of any county or city using a central absentee voting precinct may provide for the casting of absentee ballots on voting equipment prior to election day by applicants who are voting in person. The Department of Elections shall prescribe procedures for the use of voting equipment. The procedures shall provide for the casting of absentee ballots prior to election day by in-person applicants on voting equipment which has been certified, and is

currently approved, by the Department of Elections. The procedures shall be applicable and uniformly applied by the Department of Elections to all jurisdictions using comparable voting equipment. At least two officers of election, one representing each political party, shall be present during all hours that absentee voting is available at any location at which absentee ballots are cast prior to election day.

The requirement that officers of election shall be present if ballots are cast on voting equipment prior to election day shall not be applicable when the voting equipment is located in the office of the general registrar and the general registrar or an assistant registrar is present.

Code 1950, §§ 24-334, 24-337; 1956, c. 525; 1970, c. 462, § 24.1-232; 1972, c. 620; 1973, c. 30; 1974, c. 428; 1975, c. 515; 1978, c. 778; 1981, c. 425; 1993, c. 641; 1996, c. 393; 1997, cc. 429, 450; 2001, cc. 617, 624; 2002, cc. 785, 819; 2003, cc. 478, 1015; 2006, c. 438; 2014, cc. 453, 574, 575; 2015, cc. 313, 644, 645.

§ 24.2-707. (Contingent effective date, see second enactment clause of Acts 2019, cc. 668, 669) How ballots marked and returned by mail.

As provided in the second enactment clause of Acts 2019, cc. 668, 669, the amendments made to this Code section are applicable to elections beginning with the general election on November 3, 2020.

On receipt of a mailed absentee ballot, the voter shall, in the presence of a witness, (i) open the sealed envelope marked "ballot within" and (ii) mark and refold the ballot, as provided in §§ 24.2-644 and 24.2-646 without assistance and without making known how he marked the ballot, except as provided by § 24.2-704.

After the voter has marked his absentee ballot, he shall (a) enclose the ballot in the envelope provided for that purpose, (b) seal the envelope, (c) fill in and sign the statement printed on the back of the envelope in the presence of a witness, who shall sign the same envelope, (d) enclose the ballot envelope and any required assistance form within the envelope directed to the general registrar, and (e) seal that envelope and mail it to the office of the general registrar or deliver it personally to the general registrar. A voter's failure to provide in the statement on the back of the envelope his full middle name or his middle initial shall not be a material omission, rendering his ballot void, unless the voter failed to provide in the statement on the back of the envelope his full first and last name. A voter's failure to provide the date, or any part of the date, including the year, on which he signed the statement printed on the back of the envelope shall not be considered a material omission and shall not render his ballot void. For purposes of this chapter, "mail" shall include delivery by a commercial delivery service, but shall not include delivery by a personal courier service or another individual except as provided by §§ 24.2-703.2 and 24.2-705.

Failure to follow the procedures set forth in this section shall render the applicant's ballot void.

Code 1950, §§ 24-334, 24-337; 1956, c. 525; 1970, c. 462, § 24.1-232; 1972, c. 620; 1973, c. 30; 1974, c. 428; 1975, c. 515; 1978, c. 778; 1981, c. 425; 1993, c. 641; 1996, c. 393; 1997, cc. 429, 450; 2001, cc. 617, 624; 2002, cc. 785, 819; 2003, cc. 478, 1015; 2006, c. 438; 2014, cc. 453, 574, 575; 2015, cc. 313, 644, 645; 2019, cc. 668, 669.

Appendix B – Newport News Court Information

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

THOMAS B. AMAN,
12 Club Terrace
Newport News, VA 23606,

Plaintiff,

v.

JONELL MCFADDEN,
in her official capacity as Chair, City of
Newport News Electoral Board,
2400 Washington Avenue
Newport News, VA 23607

WENDELL BARBOUR,
in his official capacity as Vice-Chair, City of
Newport News Electoral Board,
2400 Washington Avenue
Newport News, VA 23607

DELORIS THOMAS,
in her official capacity as Secretary, City of
Newport News Electoral Board,
2400 Washington Avenue
Newport News, VA 23607

and

VICKI LEWIS,
in her official capacity as General Registrar,
2400 Washington Avenue
Newport News, VA 23607,

Defendants.

Civil Action No. CU1903587B-04

~~[Proposed]~~ **ORDER**

Upon review of Plaintiff Thomas B. Aman's Emergency Motion for *Ex Temporalis* Injunction, Memorandum in Support thereof, oral argument, and good cause being shown, it is

hereby:

ORDERED that the motion is granted; and it is further

ORDERED that: The Board and Registrar shall, for any voter who is registered to vote at 1000 University Place, Newport News, VA and whose House of Delegates district assignment has not been verified by the Board and Registrar due to a lack of confirmation of the voter's physical residential address, take the following steps if such a voter appears at the Wellesley Precinct of HD-94 to vote in the November 5, 2019 General Election:

- (1) Require the voter to provide an exact residential address (to include dormitory name, ~~room number, etc.~~);
- (2) Determine if the voter resides within the Wellesley Precinct of HD-94 or within the Boulevard Precinct of HD-95; and
- (3) If the voter resides within the Boulevard Precinct of HD-95, ^{refer the voter to the Boulevard Precinct where the voter will cast a provisional ballot.} ~~provide a provisional ballot at the Wellesley Precinct for the ballot at the Boulevard Precinct so that the voter is not required to travel to a different location to lawfully cast their ballot.~~
- (4) In the event the officers of election cannot determine the voter's precinct of residence on Election day, the voter should be given a provisional ballot and the Board should work with the voter to determine the correct address within the period permitted by law for such purpose.

So ORDERED.

DATED: This 4th day of November, 2019

By: 
The Honorable Circuit Court Judge

A COPY TESTE, Gary S. Anderson, Clerk
Newport News Circuit Court

By: , D.C.

SEEN AND AGREED:



Raymond H. Suttle, Jr. (VSB 28902)
raysuttle@jwbw.com
Jones, Blechman, Woltz & Kelly P.C.
701 Town Center Dr.
Suite 800
Newport News, Va 23606
Telephone: (757) 873-8006

Seen by Alorris Thomas, Sec.
DELORIS THOMAS

Seen by Wendell Barbour
WENDELL BARBOUR, VICE CHAIR

Seen by Vicki V. Lewis, GR
Vicki V. Lewis

Seen by ~~Janet~~
JONEL McFadden, Chair



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Certification of June 23 Primary Result

BOARD WORKING PAPERS
Paul Saunders
Elections Administration Supervisor



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Memorandum

To: Chairman Brink, Vice Chair O’Bannon, and Secretary LeCruise
From: Paul G. Saunders, III, Elections Administration Supervisor
Date: July 7, 2020
Re: Certification of Election Results for the June 23, 2020 Primary Elections

Suggested motion for a Board member to make:

“I move that the Board certify the results of the June 23, 2020 Democratic and Republican Party Primaries as presented and declare the winners of each primary to be that party’s nominee for the November 3, 2020 election.”

Applicable Code Section:

Va. Code § 24.2-534 – “As soon as possible after receipt of the certified abstract and not later than fourteen days after the day of the election, the State Board shall open and tabulate the returns. Upon completion of the tabulation the Board shall declare the nominee in the manner and form as it does in general elections.”

Attachment:

Abstracts of Votes for the following:

| Democratic Primary Offices | Winners |
|--|----------------------------|
| US House of Representatives, 1st District | Qasim Rashid |
| US House of Representatives, 4th District | A. Donald McEachin |
| US House of Representatives, 5th District | B. Cameron Webb |
| US House of Representatives, 11 th District | Gerald E. “Gerry” Connolly |

| Republican Primary Offices | Winners |
|---|---------------------|
| US Senate | Daniel M. Gade |
| US House of Representatives, 2nd District | Scott W. Taylor |
| US House of Representatives, 3rd District | John W. Collick Jr. |

Background:

Two primary elections, a Democratic and a Republican, were held on June 23, 2020 for the purpose of selecting candidates to be the Virginia political parties’ nominees for the November 3, 2020 election.

- Upon completion of the primary, local general registrars (GRs) entered all relevant primary data into the Virginia Election and Registration Information System (VERIS).

- In accordance with Va. Code § 24.2-532, within six days after the primary, local electoral boards conducted provisional ballot meetings and canvasses to ascertain and certify primary results for their localities. Upon completion of canvass, the GRs forwarded their locality's certified abstract of votes to the Department of Elections (ELECT).
- To ensure accuracy of the results, ELECT staff performed the procedures below. Staff worked with localities to resolve and/or explain any issues identified. ELECT staff:
 - confirmed all required abstracts were properly completed and submitted;
 - compared turnout to votes cast; and
 - compared results listed in the abstracts to the results entered in VERIS.

ELECT Staff Recommendation:

ELECT staff recommends that the Board vote to certify the results of the June 23, 2020 Democratic and Republican Primaries as presented and declare the winners of each primary to be that party's nominee for the November 3, 2020 election.

ABSTRACT of VOTES

Cast in the 2020 June Democratic Primary Election held on 06/23/2020 for,

Member House of Representatives

1st District

NAMES OF CANDIDATES ON THE BALLOT

TOTAL VOTES RECEIVED
(IN FIGURES)

| | |
|--------------------------------------|-------|
| Qasim Rashid | 21625 |
| Lavangelene A. Williams | 19545 |
| Total Number of Overvotes for Office | 14 |

We, the undersigned State Board of Elections, upon examination of the official abstracts of votes filed with the Department of Elections for the election held on 06/23/2020, do hereby certify that the above is a true and correct abstract of votes cast at said election for the Member House of Representatives and do, therefore, determine and declare that the following person(s) has received the greatest number of votes cast for the Member House of Representatives.

Qasim Rashid

Given under our hands this _____ day of _____, _____

_____, Chairman

_____, Vice Chairman

_____, Secretary

_____, Acting Secretary

ABSTRACT of VOTES

Cast in the 2020 June Democratic Primary Election held on 06/23/2020 for,

Member House of Representatives

4th District

NAMES OF CANDIDATES ON THE BALLOT

TOTAL VOTES RECEIVED
(IN FIGURES)

| | |
|--------------------------------------|-------|
| A. Donald McEachin | 45083 |
| R. Cazel Levine | 11287 |
| Total Number of Overvotes for Office | 20 |

We, the undersigned State Board of Elections, upon examination of the official abstracts of votes filed with the Department of Elections for the election held on 06/23/2020, do hereby certify that the above is a true and correct abstract of votes cast at said election for the Member House of Representatives and do, therefore, determine and declare that the following person(s) has received the greatest number of votes cast for the Member House of Representatives.

A. Donald McEachin

Given under our hands this _____ day of _____, _____

_____, Chairman

_____, Vice Chairman

_____, Secretary

_____, Acting Secretary

ABSTRACT of VOTES

Cast in the 2020 June Democratic Primary Election held on 06/23/2020 for,

Member House of Representatives

5th District

NAMES OF CANDIDATES ON THE BALLOT

TOTAL VOTES RECEIVED
(IN FIGURES)

| | |
|--------------------------------------|-------|
| B. Cameron Webb | 35965 |
| Claire C. Russo | 9833 |
| R. D. Huffstetler Jr. | 5337 |
| John D. Lesinski | 2902 |
| Total Number of Overvotes for Office | 10 |

We, the undersigned State Board of Elections, upon examination of the official abstracts of votes filed with the Department of Elections for the election held on 06/23/2020, do hereby certify that the above is a true and correct abstract of votes cast at said election for the Member House of Representatives and do, therefore, determine and declare that the following person(s) has received the greatest number of votes cast for the Member House of Representatives.

B. Cameron Webb

Given under our hands this _____ day of _____,

_____, Chairman

_____, Vice Chairman

_____, Secretary

_____, Acting Secretary

ABSTRACT of VOTES

Cast in the 2020 June Democratic Primary Election held on 06/23/2020 for,

Member House of Representatives

11th District

NAMES OF CANDIDATES ON THE BALLOT

TOTAL VOTES RECEIVED
(IN FIGURES)

| | |
|--------------------------------------|-------|
| Gerald E. "Gerry" Connolly | 50707 |
| Zainab M. Mohsini | 14555 |
| Total Number of Overvotes for Office | 5 |

We, the undersigned State Board of Elections, upon examination of the official abstracts of votes filed with the Department of Elections for the election held on 06/23/2020, do hereby certify that the above is a true and correct abstract of votes cast at said election for the Member House of Representatives and do, therefore, determine and declare that the following person(s) has received the greatest number of votes cast for the Member House of Representatives.

Gerald E. "Gerry" Connolly

Given under our hands this _____ day of _____, _____

_____, Chairman

_____, Vice Chairman

_____, Secretary

_____, Acting Secretary

ABSTRACT of VOTES

Cast in the 2020 June Republican Primary Election held on 06/23/2020 for,

Member United States Senate

NAMES OF CANDIDATES ON THE BALLOT

TOTAL VOTES RECEIVED
(IN FIGURES)

| | |
|--------------------------------------|--------|
| Daniel M. Gade | 208754 |
| Alissa A. Baldwin | 56165 |
| Thomas A. Speciale II | 44795 |
| Total Number of Overvotes for Office | 90 |

We, the undersigned State Board of Elections, upon examination of the official abstracts of votes filed with the Department of Elections for the election held on 06/23/2020, do hereby certify that the above is a true and correct abstract of votes cast at said election for the Member United States Senate and do, therefore, determine and declare that the following person(s) has received the greatest number of votes cast for the Member United States Senate.

Daniel M. Gade

Given under our hands this _____ day of _____, _____

_____, Chairman

_____, Vice Chairman

_____, Secretary

_____, Acting Secretary

ABSTRACT of VOTES

Cast in the 2020 June Republican Primary Election held on 06/23/2020 for,

Member House of Representatives

2nd District

NAMES OF CANDIDATES ON THE BALLOT

TOTAL VOTES RECEIVED
(IN FIGURES)

| | |
|--------------------------------------|-------|
| Scott W. Taylor | 25478 |
| Ben Loyola, Jr. | 15420 |
| Jarome Bell | 11616 |
| Total Number of Overvotes for Office | 24 |

We, the undersigned State Board of Elections, upon examination of the official abstracts of votes filed with the Department of Elections for the election held on 06/23/2020, do hereby certify that the above is a true and correct abstract of votes cast at said election for the Member House of Representatives and do, therefore, determine and declare that the following person(s) has received the greatest number of votes cast for the Member House of Representatives.

Scott W. Taylor

Given under our hands this _____ day of _____, _____

_____, Chairman

_____, Vice Chairman

_____, Secretary

_____, Acting Secretary

ABSTRACT of VOTES

Cast in the 2020 June Republican Primary Election held on 06/23/2020 for,

Member House of Representatives

3rd District

NAMES OF CANDIDATES ON THE BALLOT

TOTAL VOTES RECEIVED
(IN FIGURES)

| | |
|--------------------------------------|------|
| John W. Collick Jr. | 9004 |
| J. H. Madison Downs | 7816 |
| George M. Yacus | 5853 |
| Total Number of Overvotes for Office | 20 |

We, the undersigned State Board of Elections, upon examination of the official abstracts of votes filed with the Department of Elections for the election held on 06/23/2020, do hereby certify that the above is a true and correct abstract of votes cast at said election for the Member House of Representatives and do, therefore, determine and declare that the following person(s) has received the greatest number of votes cast for the Member House of Representatives.

John W. Collick Jr.

Given under our hands this _____ day of _____, _____

_____, Chairman

_____, Vice Chairman

_____, Secretary

_____, Acting Secretary



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Consideration of Filing Extension under Vs. Code §24.2-503

BOARD WORKING PAPERS
Dave Nichols
Director of Elections



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Memorandum

To: Chairman Brink, Vice Chair O'Bannon, and Secretary LeCruise
From: Dave Nichols, Elections Services Manager
Date: July 7, 2020
Re: Candidate Filing Extension

Possible motion for the Board to make:

Move that the Board grant an extension pursuant to Virginia Code § 24.2-503 for candidates to file the Certificate of Candidate Qualification or Statement of Economic Interest in relation to the November General elections.

Applicable Code Sections: Va. Code § 24.2-501 and Va. Code § 24.2-503

Background: Pursuant to Va. Code § 24.2-501, an individual that seeks to be a candidate for office must submit a Certificate of Candidate Qualification and a Statement of Economic Interests. Failure to submit either of these documents would prohibit an individual from having their name printed on the ballot.

Pursuant to Va. Code § 24.2-503, the State Board of Elections may grant an extension of the filing deadlines for the Certificate of Candidate Qualification and Statement of Economic Interests. Any extension granted may only be for a 10 day time period and begins on the date notice is mailed to the affected candidates. If the State Board of Election grants an extension, the Department of Elections must notify all candidates who have not filed one or both documents of the extension.



ASHBY

June 30, 2020

VIA EMAIL

Virginia State Board of Elections
1100 Bank Street
Richmond, Virginia 23219

Bob Good – Certificate of Candidate Qualification

Dear Chairman Brink, Vice Chair O’Bannon and Secretary LeCruise:

On behalf of Bob Good, the Republican nominee for United States Representative from Virginia’s Fifth Congressional District in the General Election to be held on November 3, 2020, I write to request that you extend—as provided in Section 24.2-503 of the Code of Virginia—the deadline for filing the Certificate of Candidate Qualification, and accept Mr. Good’s Certificate, which was filed three days after the statutory deadline of June 9, 2020.

Section 24.2-501 of the Code requires the filing of a Certificate of Candidate Qualification by 7:00 p.m. on the second Tuesday in June—this year, Tuesday June 9—which is the time at which the polls close on the date of the statewide primary, and also the time by which Section 24.2-510 requires a political party’s nomination by a method other than a primary to be complete. That date and time is important because it is the point at which the nomination process—whether by primary, convention or otherwise—ends and the General Election begins. In other words, the statutory deadline for filing the 501 Form coincides with the conclusion of the nominating process—and Virginia never before, in so far as I am aware, has required a candidate to file a 501 Form prior to the conclusion of the nominating process.

Of course, as the Board well knows, the COVID-19 pandemic has disrupted the nomination of candidates throughout the country this year, including in Virginia. The nomination process in Virginia has been extended as a result. Specifically, by order of Governor Northam, Virginia’s primary was delayed by two weeks, from June 9 to June 23. And by order of the Circuit Court for the City of Richmond, the deadline for parties to certify the winners of their conventions was extended to July 28, 2020. Many other associated dates and deadlines effectively moved as a consequence of these two orders.

The deadline for filing the Certificate of Candidate Qualification, however, did not automatically move. As a result, Virginia candidates this year faced the anomalous—indeed, unprecedented—situation of having to file their 501 Forms before the conclusion of their nominating events.



Some candidates, from both major political parties, missed this deadline. Mr. Good submitted his 501 Form by email on the afternoon of Friday June 12, and then by hand delivery of the original on the morning of Monday June 15.

Section 24.2-503 authorizes the Board to extend the deadline for filing the 501 Form, and we are aware that the Board in fact has done so in the past. For the following reasons, we urge the Board to do so in this case:

First, the 501 Form requires a candidate's certification that she or he is qualified to vote for and hold the office she or he seeks. The requirement of this form furthers the Commonwealth's interest in the orderly administration of its elections by ensuring that the candidates whose names are to be printed on the General Election ballot in fact are qualified to serve in office if elected, thereby avoiding a scenario in which voters elect a candidate who cannot take office. The Commonwealth's interest is met in Mr. Good's case, as he clearly is qualified for the office of United States Representative and has certified so well in advance of the finalization of the November 3, 2020 General Election ballot, which may not occur until as late as July 28 due to the Richmond Circuit Court's recent order.

Second, while the late filing of any form no doubt is inconvenient for the Department of Elections, there is no prejudice resulting from the late filing of 501 Forms this year, including in Mr. Good's case. In any other election year, these forms would not even have been due until the closing of the polls for the primary election and the deadline for completion of any other non-primary party nomination processes. The late-filing of Mr. Good's form and other forms did not deprive voters or the Commonwealth of any information that otherwise would have been available prior to the conclusion of nominations in any other year, and did not delay the formatting or printing of ballots in this year.

Third, extension of the deadline and acceptance of Mr. Good's form will give effect to the clear will of the Republican Party in Virginia's Fifth Congressional District, whose convention delegates nominated him with nearly sixty percent of the convention vote, and will forgo further disruption of the election process in a year in which it has been disrupted enough already.

At bottom, Virginia law permits the Board to extend the deadline for 501 Forms, and we understand the Board's general practice in prior years has been to grant such extensions and accept late-filed forms up to ten days following the provision of notice of the availability of the extension. Here, Mr. Good filed his form a few days late—but well in advance of any notice or extension. For this reason and all of the foregoing reasons, Mr. Good requests the Board to exercise its discretion under Section 24.2-503 to extend the deadline for filing the Certificate of Candidate Qualification and to accept his form accordingly.

On Mr. Good's behalf, thank you in advance for your consideration of this request.

Respectfully submitted,

Chris Ashby



ASHBY

July 7, 2020

VIA EMAIL

Virginia State Board of Elections
1100 Bank Street
Richmond, Virginia 23219

Extension of Filing Deadline for Certificates of Candidate Qualification

Dear Chairman Brink, Vice Chair O'Bannon and Secretary LeCruise:

On behalf of Bob Good, the Republican nominee for United States Representative from Virginia's Fifth Congressional District in the General Election to be held on November 3, 2020, I write in response to the letter you received yesterday from Marc Elias, attorney for the Democratic Congressional Campaign Committee, concerning extension of the deadline for filing the Certificate of Candidate Qualification required by Section 24.2-501 of the Code of Virginia. Mr. Elias' letter misstates the law, misleads the Board and seeks to convert what should be a non-partisan determination to extend the deadline as provided in Section 24.2-503 of the Code into a partisan decision to deny it in particular instances. For the following reasons, I urge the Board to reject Mr. Elias' request, and to extend the deadline as provided in the statute.

First, Section 24.2-503 does not require any candidate to demonstrate good cause or otherwise provide a reason for failing to timely file the 501 Form. Rather, it authorizes the Board to extend the deadline *in all cases*—and not in any particular case. In this regard, the statute reflects the fact that candidates (of both major parties) sometimes fail to timely file this form, as well as the General Assembly's determination that such failure should not automatically disqualify duly-nominated candidates from access to the General Election ballot. Rather, the General Assembly has authorized the Board to extend the deadline, thereby giving candidates a final chance to file the form, something we understand the Board graciously has done several times over the years.

Second, Mr. Elias argues that "[a]lthough the Board clearly has the statutory authority to reject these requests, it does not have the statutory authority to grant them." This is a blatant misstatement of the law. The statute *expressly* authorizes the Board to *extend* the deadline—not, as Mr. Elias suggests, to reject requests to extend the deadline.

Third, Mr. Elias predicts that if the Board extends the deadline as Section 24.2-503 authorizes it to do, the Board "would effectively signal that there is no temporal restriction" on the filing



requirement and complains that the Board “could grant an extension to a filing deadline up to the eve of an election.” This is silly. The necessity of finalizing and printing ballots for the General Election, in sufficient time to comply with relevant federal and state law deadlines, effectively limits the time in which the Board ever could extend the filing deadline in any year, including this one.

At bottom, by requesting the Board to refuse to extend the deadline in two particular cases, Mr. Elias seeks to politicize what should be a non-political decision to extend the deadline in all cases.¹ This is *exactly* what the General Assembly was trying to *prevent* when it changed Virginia law to limit the Board’s “unfettered discretion to grant or withhold extensions, potentially permitting Board of Elections staff to permit late entries by favored candidates.” See Letter from Marc E. Elias (July 6, 2020) at 2 (citing *El-Amin v. State Bd. of Elections*, 717 F. Supp. 1138, 1142 (E.D. Va. 1989)).

For these reasons, I urge the Board to reject Mr. Elias’ request to deny an extension to two specific candidates his client opposes—a decision that would upend the election process in a year in which it already has been significantly disrupted. Rather, the Board should extend the deadline in all cases—as Section 24.2-503 of the Code authorizes it to do, and as it has done in prior years.

Respectfully submitted,

Chris Ashby

¹ On this point, I note that, on the same day Mr. Elias sent his letter to the Board, it also was released to the political website Blue Virginia.

Seventh District Democratic Committee
2611 Cherrytree Lane
North Chesterfield, Virginia 23235

Commissioner Chris Piper
Vice Commissioner Jessica Bowman
Chairman Robert Brink
Vice-Chair John O'Bannon
Secretary Jamilah LeCruise
Virginia Department of Elections
Washington Building
1100 Bank Street, First Floor
Richmond, Virginia 23235

June 25, 2020

Dear Commissioner Piper, Deputy Commissioner Bowman, Chairman Brink, Vice-chair O'Bannon and Secretary LeCruise,

We are writing to express our concern about the Republican Party of Virginia requesting an extension for the candidate filing paperwork for the Seventh Congressional District election in November. While we certainly support greater participation in our elections and believe democracy is strongest when voters have choices, we write to express our concerns with Delegate Nick Freitas.

According to the news media, Del. Freitas neglected to file critical, essential and required paperwork for his candidacy.

Rules exist for a reason. Particularly in this time of extreme partisanship, it is even more important that rules and regulations are followed so Virginians can be assured that no partisanship or preference entered into the decision. The rules must be the same for everyone.

Moreover, the State Board of Elections website had clear and concise information starting on January 2nd to which Del. Freitas and other potential candidates had access. The information provided on the website was clear and unambiguous about the needed filings and deadlines. However, if he was confused or unsure, it is our experience that experts at the State Board of Elections are available, knowledgeable and happy to answer questions. He most assuredly could have availed himself of their expertise.

We recognize that the pandemic scrambled some dates but none of the governor's executive orders, all easily accessible on the internet, changed any of the filing deadlines.

As persons involved in election processes, we, too, often have to file documentation and follow rules, and we certainly do not expect – or receive – waivers. We have to do our jobs in a timely manner and that is certainly what should be expected of candidates.

We ask you to adhere to your rules and regulations, to uphold the process and to ensure it is fair for those who made certain to meet the deadlines.

Thank you very much for your attention to this.

Sincerely,

Abbi Easter, Chair
Seventh District Democratic Committee



Republican Party of Virginia

www.rpv.org

June 12, 2020

Robert H. Brink, Chairman
John O'Bannon, Vice-Chair
Jamilah D. LeCruise, Secretary
State Board of Elections
1100 Bank St Fl 1
Richmond VA 23219

Via E-mail

Dear Chairman Brink, Vice-Chair O'Bannon, and Secretary LeCruise:

I write to request that you use your authority under Section 24.2-503 of the Code of Virginia to extend the deadline for filing required statements of qualification and economic interests for all candidates whose filing deadline was “7:00 p.m. on the second Tuesday in June.”

As you know, the second Tuesday in June is ordinarily the day on which Virginia holds its primary election, but, this year, Gov. Northam postponed that election until June 23 (the fourth Tuesday in June). Because of the way the statute is drafted, the postponement of the election did not also postpone the many deadlines relating to the November election that fall on the same day.

Some deadlines have been extended by court order. The deadline for the Republican Party to nominate its candidates by a non-primary method, also set by the Code for the second Tuesday in June, has been extended to July 28 in order to allow for the holding of Conventions, despite the pandemic. I understand that other courts have either extended deadlines or reduced the number of signatures required for ballot access in several localities. The Board's charge to “obtain uniformity” should lead you to conclude that an extension is appropriate. *See* § 24.2-103(A).

Additionally, despite the language of the Code, candidates—whether Democratic, Republican, or Independent—have widely considered “Primary Day” to be the deadline for the filing of forms relating to the November General Election. You should also consider this general consensus in your decision on granting an extension.

The Richard D. Obenshain Center • 115 East Grace Street • Richmond, Virginia 23219
804-780-0111 • FAX: 804-343-1060

PAID FOR AND AUTHORIZED BY THE REPUBLICAN PARTY OF VIRGINIA. CONTRIBUTIONS ARE NOT TAX DEDUCTIBLE.

For foregoing reasons, on behalf of the Republican Party of Virginia, I respectfully request that when you next meet on July 7 you grant an extension for the filing of these required statements.

Sincerely,

A handwritten signature in blue ink that reads "Chris". The signature is written in a cursive, flowing style.

Chris Marston,
General Counsel

Cc: Christopher E. Piper, Commissioner of Elections

July 6, 2020

Marc Erik Elias
MElias@perkinscoie.com
D. +1.202.434.1609
F. +1.202.654.9126

BY ELECTRONIC MAIL

Robert H. Brink, Chair
John O'Bannon, Vice-Chair
Jamilah D. LeCruise, Secretary
Virginia State Board of Elections
Washington Building
1100 Bank Street, First Floor
Richmond, VA 23219

Re: Rejection of Requests for Filing Deadline Extension

Dear Chair Brink, Vice Chair O'Bannon, and Secretary LeCruise:

We write on behalf of our client, DCCC, to urge the State Board of Elections (the “**Board**”) to reject the Republican Party of Virginia’s (the “**Republican Party**”) and Bob Good’s belated requests to extend the June 9 deadline for filing the required Certificate of Candidate Qualification and/or Statement of Economic Interest forms.

We understand that at least two Republican candidates for the U.S. House of Representatives—Bob Good and Delegate Nick Freitas, candidates for Congressional Districts 5 and 7, respectively—failed to file the required statement of qualification by the June 9 statutory deadline.¹ On June 12, *three days after the deadline had already passed*, counsel for the Republican Party sent a letter to the Board requesting that you exercise authority under Va. Code Ann. § 24.2-503 to extend the deadline for filing both the statement of qualification and the statement of economic interests “for all candidates” whose filing deadline was June 9. In a letter dated June 30, *21 days after the deadline had already passed*, counsel for Mr. Good sent a similar request to extend the deadline for the statement of qualification to the Board.² We further understand that the Board will consider the Requests at its July 7 meeting.³

As discussed in further detail below, the Board should promptly reject the Requests for several reasons:

- *First*, the filing deadline was clear and unequivocal, and neither the Republican Party nor Mr. Good have provided any legitimate reason why the Board should extend the deadline at this point. The fact that other nomination process deadlines were changed or extended by

¹ See Ida Domingo, *RPV requests extension for all candidates to file required qualification form*, ABC 13 NEWS, June 12, 2020, <https://wset.com/news/local/bob-goods-campaign-missed-deadline-for-qualification-form-name-wont-appear-on-ballot>.

² The Republican Party’s letter and Mr. Good’s letter are referred to collectively herein as “the Requests.”

³ See State Board of Elections July 7, 2020 Meeting Agenda, <https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\151\30345\Agenda ELECT 30345 v4.pdf>.

gubernatorial action or court order is irrelevant; the June 9 deadline remained unchanged, and many candidates took care to meet it. Mr. Good and Delegate Freitas did not miss the filing deadline because of the coronavirus; they simply failed to take the care necessary to meet the deadline. Granting the Requests at this late date would send a clear message to future candidates and the voting public: deadlines for submitting documentation to obtain access to the ballot in Virginia are meaningless. In particular, granting the Republican Party's request would allow Delegate Freitas to qualify for the ballot despite his repeated inexplicable disregard for complying with ballot qualification deadlines. The Board is undoubtedly aware that he has now failed to meet the filing deadline for two years in a row.

- *Second*, the Republican Party and Mr. Good submitted extension requests *after the June 9 deadline had already passed*. Although the Board clearly has the statutory authority to reject these requests, it does not have clear statutory authority to grant them. To the contrary, the relevant legislative background of Va. Code Ann. § 24.2-503 indicates that the legislature intended to give the Board a *limited* authority to grant extension requests, in order to change the previous rule under which the Board had “unfettered discretion to grant or withhold extensions, potentially permitting Board of Elections staff to permit late entries by favored candidates.”⁴ If the Board now provides an extension nearly a month after the deadline, it would be acting in contravention to that limited statutory authority.
- *Third*, if the Board grants the Requests at this late date, then it would effectively signal that there is no temporal restriction applicable to the timing by which the Board can grant extensions. Taken to its logical conclusion, this would mean that the Board could grant an extension to a filing deadline up to the eve of an election. That clearly is not the law, and it does not comport with the Board's limited statutory authority. Moreover, there is no precedent for the Board granting a ten-day extension of the filing deadline more than a month after the deadline has passed, or for the Republican Party's request for an extension for “all candidates” who missed the deadline to be granted an extension, regardless of the reason for the candidates' noncompliance (*e.g.* where, as in this case, the candidates failed to make any reasonable attempt to comply with the deadline and instead missed it due to their own negligence).

We provide additional background and authority for each of these arguments below.

ARGUMENT

A. The deadline for filing the required statements was clear and unequivocal.

Virginia law provides, in relevant part, that written statements of qualification and economic interests shall be filed by (1) primary candidates not later than the filing deadline for the primary, and (2) all other candidates for U.S. Congress not running in a special election, by 7:00 p.m. on the second Tuesday in June.⁵ The filing deadline for the primary was March 26, 2020 at 5:00 p.m.⁶ The second

⁴ See *El-Amin v. State Bd. of Elections*, 717 F. Supp. 1138, 1142 (E.D. Va. 1989) (Exhibit A).

⁵ Va. Code Ann. § 24.2-503.

⁶ Va. Dep't of Elections House of Representatives Candidate Bulletin, <https://www.elections.virginia.gov/media/candidatesandpacs/revised-House-of-Representatives-June-23.pdf>; *see*

Tuesday in June was June 9, 2020.⁷ The “Candidate Bulletin” issued by the Virginia Department of Elections, which was last updated in April, after Virginia’s stay at home order was first issued on March 30, clearly and plainly repeats these deadlines throughout the document.⁸ The deadlines are also clearly stated in the Department of Elections Election Deadline Calendar.⁹

Notably, the Requests do not cogently explain why Mr. Good or Delegate Freitas (or any other candidates) missed the June 9 deadline. DCCC has submitted requests to the Department of Elections pursuant to the Virginia Freedom of Information Act to gather additional relevant facts, but based on the information we currently have available—and the Republican Party and Mr. Good do not claim otherwise—neither Mr. Good nor Delegate Freitas made any attempt, much less a reasonable attempt, to submit the required paperwork by the deadline. Indeed, it appears that Mr. Good and Delegate Freitas only became aware of the missed deadline when, on June 12, a journalist named Brandon Jarvis reported on Twitter that the Department of Elections had confirmed that both candidates had failed to file the requisite paperwork.¹⁰ That same day, Mr. Good and Delegate Freitas submitted their late paperwork, and the Republican Party of Virginia submitted the extension request at issue. Mr. Good did not submit the original copies of his paperwork until June 15.

As the U.S. District Court for the Eastern District of Virginia has previously found, it is absolutely reasonable to require candidates to timely file qualification and disclosure forms in order to gain access to the ballot.¹¹ Virginia law and the Department of Elections’ plain language guidance clearly and unambiguously stated that June 9 was the deadline for filing the required candidate qualification statement. The fact that Mr. Good and Delegate Freitas negligently failed to meet that deadline does not entitle them to an extension.¹² Nor do the other circumstances described in the Requests. In particular, the fact that the primary election was postponed until June 23, or that the deadline for the Republican Party to nominate its candidates by a non-primary method was extended to July 28 pursuant to a court order, has no bearing on Mr. Good’s and Delegate Freitas’s failure to meet the requisite filing deadline. Unlike the other deadlines, the June 9 deadline was never extended or changed by Governor

also Va. Dep’t of Elections 2020 Election Deadline Calendar, <https://www.elections.virginia.gov/casting-a-ballot/calendars-schedules/>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See Brandon Jarvis, TWITTER, June 12, 2020, https://twitter.com/Jaaavis?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor (Exhibit B).

¹¹ See *El-Amin*, 717 F. Supp. at 1142 (“Virginia’s legitimate, nondiscriminatory requirement that a candidate comply with a fixed deadline that it publicizes to all candidates falls well within the bounds of those legitimate administrative regulations that states must impose if elections are to be conducted fairly and efficiently.”).

¹² Justin Mattingly, *Freitas takes responsibility for missing another paperwork filing deadline*, RICHMOND TIMES-DISPATCH, June 15, 2020, https://www.richmond.com/news/virginia/freitas-takes-responsibility-for-missing-another-paperwork-filing-deadline/article_83b98ad4-e284-5599-bb3b-6802376ff608.html (Delegate Freitas stating, “[t]here was one aspect of this campaign that was incredibly important. The person that was hired to take care of that part failed in their duties. Yes, I failed to double-check on that.”).

Northam or court order (likely because a candidate’s ability to file these relatively simple forms was not affected by the coronavirus). Election-related deadlines were clearly in flux this election cycle because of the coronavirus, and the onus was on the candidates and their campaigns to review the applicable deadlines and comply with them. If Mr. Good or Delegate Freitas had any question about whether the June 9 deadline had changed, they should have inquired with the Department of Elections.

Mr. Good’s and Delegate Freitas’s failure to comply with the deadline is not related to the coronavirus.¹³ Instead, and for Delegate Freitas especially, this failure to comply reflects a lack of regard and care for compliance. Just last year, Delegate Freitas failed to timely file the requisite paperwork to qualify for the ballot for the House of Delegates, and the Board properly rejected his late appeal to be placed on the ballot, other than as a write-in candidate.¹⁴ If the Board allows Mr. Good and Delegate Freitas to still qualify for the ballot despite their blatant disregard of the June 9 deadline, then it will be effectively broadcasting to future candidates and the voting public that compliance with ballot access rules and deadlines is optional, and future candidates need not take the care necessary to comply with them.

B. The Board’s statutory authority is limited and should not be expanded to grant the Requests.

Even if the Board wanted to set aside these candidates’ inexcusable failure to comply with the rules by granting the Requests, it should not do so because its statutory authority is limited and has never been applied to these circumstances. The Republican Party failed to request an extension of the June 9 deadline until *three days after the deadline had already passed*. Mr. Good failed to request an extension of the June 9 deadline until *21 days after the deadline had already passed*. It is far from clear that Va. Code Ann. § 24.2-503—the statutory provision on which the both parties rely to support their requests for an extension—allows the Board to extend the deadline after the fact under the circumstances present here, where (1) the Requests were not made on or before the deadline, or even within close proximity to the deadline; (2) the extension would be applicable to “all candidates” who missed the deadline regardless of the office for which they are attempting to qualify; and (3) there is no evidence that the candidates who missed the deadline made any reasonable attempt to meet it in the first place.

To the contrary, the language in the current version of the law was intended to eliminate the Board’s previous unfettered authority to grant broad extensions to certain ballot access deadlines. As described by the U.S. District Court for the Eastern District of Virginia in *El-Amin*, “[a] 1988 amendment to the statute [regarding the deadline for filing statements of economic interests] eliminated the State Board of Elections’ authority to grant extensions of the deadline.”¹⁵ The court noted that the system in place prior to the 1988 amendment “lent itself to . . . abuse, favoritism and caprice. The old statute gave the Board of Elections unfettered discretion to grant or withhold extensions, potentially permitting Board

¹³ *See id.*

¹⁴ Graham Moomaw, *Citing missed deadlines, elections board denies Nick Freitas, Republicans, place on Nov. ballot in 30th District*, RICHMOND TIMES-DISPATCH, Aug. 7, 2019, https://www.dailyprogress.com/orangenews/news/citing-missed-deadlines-elections-board-denies-nick-freitas-republicans-place-on-nov-ballot-in-30th/article_396f50d0-b932-11e9-96a9-d30e1c34f0d0.html.

¹⁵ *El-Amin*, 717 F. Supp. at 1138.

of Elections staff (largely political appointees) to permit late entries by favored candidates.¹⁶ The new statute provides a bright-line, fixed rule that applies equally to all candidates and cannot be manipulated”).¹⁷ In 1993, the legislature amended the statute to permit the Board to grant extensions to the deadline for filing candidate qualification statements and statements of economic interests under the limited circumstances set forth in the current statute.

Virginia law now provides: “[t]he State Board *may* grant an extension of any deadline for filing either or both written statements [statement of economic interests and statement of candidate qualification] and *shall* notify all candidates who have not filed their statements of the extension. Any extension shall be granted for a fixed period of time of ten days from the date of the mailing of the notice of the extension.”¹⁸ Accordingly, the plain language of the statute—specifically the use of the word “may”—indicates that *the Board has clear authority to reject an extension request*; such requests are neither automatically granted in the ordinary course nor is the Board required to grant them. *On the other hand, the statutory authority to grant extensions is limited.* The statutory directive authorizes the Board to grant an extension only under the following explicit terms: (1) for a fixed period of time of ten days from the date of the mailing of the notice of the extension, and (2) where the Board has notified all candidates who have not filed their statements of the extension.¹⁹

At this point, if the Board grants the Requests, then the Board’s hands are tied: it would be required to extend the deadline to at least July 17. But both the statutory language and the relevant legislative background support the position that the Board’s authority to grant extensions is limited and should be contained in scope. To that end, the statute should be read to provide the *Board with authority to grant an extension of ten days from the statutory deadline, or at least in close proximity to the statutory deadline. There is no support for the Board to do what is proposed here, which would be to grant an extension that is wholly untethered from the statutory deadline.* By granting the Requests almost a full month after the deadline, the Board would be acting outside the scope of its statutory authority, as the legislature intended that the Board grant such only limited extensions.

Indeed, granting the Requests at this point, and extending the deadline from June 9 to July 17, would set the precedent that there is no temporal restriction applicable to the timing by which the Board can grant extensions. In other words, the Board could grant a request for an extension months after the deadline, or even up to the eve of the election, and that clearly is not the law. Failing to read a temporal restriction into the statutory language would also allow the Board to circumvent the ten-day limited extension by delaying its decision and sending out notices of extension indefinitely, effectively providing an extension with no limitations. Moreover, as described in the *El-Amin* case, allowing the Board to grant an extension this far from the statutory deadline would be effectively reverting to the old “unfettered system” that existed prior to the 1988 amendment and permitted manipulation and favoritism.²⁰ Had the legislature intended to do that, then there would have been no need for the

¹⁶ *Id.* at 1142-43.

¹⁷ *See El-Amin*, 717 F. Supp. at 1142-43.

¹⁸ Va. Code Ann. § 24.2-503 (emphasis added).

¹⁹ *Id.*

²⁰ *See El-Amin*, 717 F. Supp. at 1142-43.

restrictions set forth in Va. Code Ann. § 24.2-503, because the legislature could have allowed the Board its previous unfettered discretion to issue any extension it wanted at any point in time. At this late date, the Board would be acting *ultra vires* by granting the Requests.

Furthermore, the Republican Party's request is not limited to providing an extension for candidates running for certain specific offices. Instead, it asks for extensions to be granted for "all candidates" who failed to timely file. We are aware of no precedent for granting such a broad request. Importantly, the same journalist who reported that Mr. Good and Delegate Freitas missed the filing deadline later indicated that *nearly 20* Republican candidates had failed to file their paperwork in time to be on the ballot.²¹ If the Board grants the Republican Party's request, then it would necessarily have to open the floodgates to allow a number of candidates who flouted the rules to now resurrect their candidacies. Such broad, unprecedented action by the Board would send a clear signal to future candidates and the voting public that the rules and deadlines are meaningless.

C. Other recent deadline extensions and rescheduled dates are irrelevant.

The Republican Party contends that the Board's charge to "obtain uniformity" should lead you to extend the June 9 deadline because some courts have extended *other* election-related deadlines or reduced the number of signatures required for ballot access under certain circumstances. Respectfully, court decisions that have moved or extended *other* deadlines (such as the deadline for holding the Republican Party nominating convention) have no bearing on the June 9 filing deadline at issue here, which has remained unchanged and unaffected by the coronavirus. In any event, not all courts have granted such extension requests. For example, in late June, the Roanoke Circuit Court denied a candidate's request to (1) extend the deadline for submitting petition signatures and, (2) lower the number of required petition signatures.²² Thus, contrary to the Republican Party's assertion, courts have not acted uniformly in considering such extension requests.

Furthermore, the fact that the Board appears to have granted extension requests in the past does not mean that it must grant this one. The Board has the discretion to deny any such extension requests, as it did last year with respect to Delegate Freitas's *first* late filing.²³ And, counsel for DCCC have not located any precedent for the request the Board is considering here, which would extend the deadline nearly a month after it has passed for candidates who apparently made no attempt to comply in with the deadline the first place.²⁴

²¹ See Brandon Jarvis, TWITTER, June 25, 2020, <https://twitter.com/Jaaavis/status/1276294243632414720?s=20> (Exhibit C).

²² Amy Friedenberger, *Judge rejects Martin Jeffrey's request to get onto November ballot for Roanoke mayoral race*, THE ROANOKE TIMES, June 23, 2020, https://roanoke.com/news/local/judge-rejects-martin-jeffreys-request-to-get-onto-november-ballot-for-roanoke-mayoral-race/article_c135c41a-97bc-5c65-a2c7-b31d421b7870.html.

²³ Gregory Schneider, *Va. Elections Board Denies Freitas a Spot On the House Ballot*, WASH. POST, Aug. 6, 2019, https://www.washingtonpost.com/local/virginia-politics/va-elections-board-denies-freitas-a-spot-on-the-house-ballot/2019/08/06/1ffa3b6a-b87e-11e9-a091-6a96e67d9cce_story.html.

²⁴ We are aware that the Board granted an extension request in 2019 for Clinton Jenkins, whose certification of nomination for the House of Delegates was not received due to a typographical error; his form was inadvertently sent to a non-working email address for the Department of Elections. We are also aware that the Board granted an

CONCLUSION

We appreciate your consideration of the arguments and authority described herein. Please let us know if there is additional information we can provide for your consideration.

DCCC respects Virginia law and the rules and deadlines applicable to ballot access. We urge the Board to set the precedent that candidates must follow the rules if they seek to successfully qualify for the ballot. The Board should not allow those who habitually fail to follow the rules to set the precedent that such negligence and carelessness is permissible.

To the extent that the Board acts *ultra vires* by granting the Requests, the DCCC preserves its right to challenge the Board's decision in litigation.

Very Truly Yours,



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Counsel to DCCC

cc: Christopher Piper, Commissioner of Elections
Jessica Bowman, Deputy Commissioner of Elections
Dave Nichols, Elections Services Manager

extension request for candidates to file their Certificate of Candidate Qualification and/or Statement of Economic Interests in relation to the December 18, 2018 special election for House of Delegates District 24. That extension was granted just one day after the deadline; documents were thus due by November 30, 2018 instead of the previous deadline of November 19, 2018. The circumstances present in those matters—where the extension request was granted after the candidate made a good faith effort to meet the deadline, in close proximity to the deadline (one day later), or with respect to one candidate or one race—do not exist here.

Exhibit A

717 F.Supp. 1138
 United States District Court,
 E.D. Virginia,
 Richmond Division.

Sa'ad EL-AMIN, et al., Plaintiffs,
 v.

STATE BD. OF ELECTIONS, et al., Defendants.

Civ. A. No. 89-0392-R.

Aug. 7, 1989.

Synopsis

Action was brought challenging Virginia's fixed deadline by which candidates have to file financial disclosure statements. Defendants moved for summary judgment. The District Court, Richard L. Williams, J., held that fixed deadline does not violate First Amendment associational rights.

Motion granted.

West Headnotes (3)

[1] **Constitutional Law** 🔑 Right to run for public office in general; candidacy

Constitutional Law 🔑 Voting rights and suffrage in general

Election Law 🔑 Power to Restrict or Extend Suffrage

Public Employment 🔑 Elective office

Election regulations that prevent some candidates from running narrow the field and limit voters' choices; it is that restriction on fundamental right to vote, not burden on particular candidate, that violates the Constitution. *U.S.C.A. Const.Amend. 1.*

[2] **Constitutional Law** 🔑 Right to run for public office in general; candidacy

Election Law 🔑 Disclosure and Reporting Requirements

Virginia's fixed deadline, by which candidates must file financial disclosure statements, does not violate First Amendment associational rights; burden imposed on candidate is minimal, and financial disclosure requirement, with its fixed deadline, fell within limits of legitimate administrative regulation that served important interest of fair and efficient election. *U.S.C.A. Const.Amend. 1.*

1 Cases that cite this headnote

[3] **Public Employment** 🔑 Elective office
States 🔑 Appointment or election of officers

Even if Virginia created entitlement to candidacy for state offices, interest arose only when potential candidates completed all administrative requirements that went along with candidacy and prospective candidate who did not satisfy state's restrictions did not gain any entitlement.

Attorneys and Law Firms

*1138 Sa'ad El-Amin, Richmond, Va., for plaintiffs.

William H. Hauser, and K. Marshall Cook, Sr. Asst. Attys. Gen., Greg Haley, Asst. Atty. Gen., Richmond, Va., for defendants.

MEMORANDUM OPINION

RICHARD L. WILLIAMS, District Judge.

This case is before the Court on the defendants' motion to dismiss or for summary *1139 judgment. The parties agree that there is no genuine issue of material fact, disputing only which side is entitled to judgment as a matter of law. *See Fed.R.Civ.P. 56(c).*

I

Virginia Code § 24.1-167 requires candidates for most state, city and county offices to file a financial disclosure statement by 5:00 p.m. on the Friday immediately following

the second Tuesday in June, in this case June 16, 1989. A 1988 amendment to the statute eliminated the State Board of Elections' authority to grant extensions of the deadline.

The statement requires candidates to disclose various sources of income, such as gifts and honoraria, as well as major investments and liabilities and other financial interests. The State Board of Elections keeps the forms on file for public examination throughout the campaign, but does not itself review them for any purpose.

Any candidate who fails to file the disclosure form and other required forms by the deadline will not be listed on the official November ballot, though he or she may run as a write-in candidate without filing any forms at all. In 1989, 465 candidates met the deadlines: 180 Democrats, 104 Republicans, and 181 independents. Six candidates were disqualified for failing to file the required forms on time.

Incumbents are exempt from the financial disclosure requirement if they have complied with Va.Code §§ 2.1–639.13, 2.1–639.14, and 2.1–639.40. Those sections require officeholders to file the same disclosure statement by January 15 of each year. Incumbents who miss the January deadline suffer no penalty, but like other candidates must file the statement by the June deadline. Any candidate, whether incumbent or not, may satisfy the requirement in an election year by filing the statement at any time from January 1 through the June deadline.

Sa'ad El–Amin announced his candidacy as an independent for Commonwealth's Attorney for the City of Richmond, an office subject to the financial disclosure requirement, on April 3, 1989. He obtained a “candidate package” from the State Board of Elections, a freely distributed package of calendars, deadline notices and required forms. No financial disclosure form was included in the package, but various other forms mentioned the disclosure form and the June 16 deadline. He filed the other forms on time, but inadvertently failed to file the disclosure form by 5:00 p.m. on June 16.

A newspaper reporter reminded El–Amin the following Monday, June 19, that El–Amin had missed the deadline and therefore would not be on the official ballot, and El–Amin filed the form the same day. When Susan Fitz–Hugh, the Secretary of the Board of Elections, told El–Amin that she lacked statutory authority either to accept his late filing or to grant an extension, El–Amin brought this suit claiming that the disclosure provisions violated constitutional guarantees

of equal protection, due process and freedom of speech and association.

After the Court denied El–Amin's motion for a temporary restraining order, he filed an amended complaint adding as plaintiffs three registered voters who support his candidacy. They alleged that the Board's refusal to print El–Amin's name on the ballot violated their first amendment rights to vote for El–Amin. The state promptly filed its motion to dismiss or for summary judgment.

II

As an initial matter, the Supreme Court has not been entirely consistent in its review of access-to-ballot claims. Some cases apply a form of equal protection analysis, assessing the regulation's disparate effects on different recognizable groups of voters. *See, e.g., Clements v. Fashing*, 457 U.S. 957, 962–63, 102 S.Ct. 2836, 2843–44, 73 L.Ed.2d 508 (1982) (upholding restrictions forbidding incumbents from running for other offices); *Bullock v. Carter*, 405 U.S. 134, 140, 92 S.Ct. 849, 854, 31 L.Ed.2d 92 (1972) (invalidating filing fees because they disproportionately burden poorer candidates). More recently, the Court has focused on whether such regulations burden *1140 first amendment freedoms of speech and association. *See, e.g., Eu v. San Francisco Democratic Central Committee*, 489 U.S. 214, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989); *Anderson v. Celebrezze*, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983). The Fourth Circuit recently chose the latter approach based on the particular statute and claims at issue. *Dixon v. Maryland State Admin. Bd. of Election Laws*, 878 F.2d 776, 779–80 (4th Cir.1989).

In this case, first amendment analysis appears more appropriate because it would require more of the Virginia statute. The plaintiffs claim that the statute denies equal protection only because they allege that incumbents receive preferential treatment. Even if the statute draws such a distinction, as discussed *infra*, the Court could not scrutinize it strictly because it does not make a “suspect classification.” In contrast, if El–Amin correctly portrays this statute as explicitly entrenching current officeholders against electoral attack, the statute would have to pass exacting review under the first amendment.

El–Amin might also benefit from strict equal protection scrutiny if he can claim violation of a “fundamental right,”

but he cannot assert a right to be a candidate at all, much less to have his name printed on the official ballot rather than to run as a write-in candidate. See *Dixon*, 878 F.2d at 779; *Clements*, 457 U.S. at 963, 102 S.Ct. at 2843; *Bullock*, 405 U.S. at 143, 92 S.Ct. at 856. The other plaintiffs, who claim a violation of their right to vote for El-Amin, might be able to demonstrate a fundamental right, see *Bullock*, 405 U.S. at 143, 92 S.Ct. at 856, but if the statute burdens their rights the Court would examine the statute no less strictly under the first amendment. Because on El-Amin's equal protection claim the Court would largely review the statute only for a "rational basis," the first amendment requires much closer scrutiny than does the fourteenth. If the statute survives a first amendment balancing test, then the equal protection claim also lacks merit because (on these facts) the latter doctrine places no greater restraints on the state.

III

[1] The associational right at issue in this case is not so much El-Amin's individual right to be a candidate, but the other plaintiffs' right to vote for him. *Clements*, 457 U.S. at 963, 102 S.Ct. at 2843; *Bullock*, 405 U.S. at 143, 92 S.Ct. at 856. Election regulations that prevent some candidates from running narrow the field and limit voters' choices; it is this restriction on the fundamental right to vote, not the burden on a particular candidate, that violates the Constitution. The concern is particularly pointed when a statute "limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status." *Anderson*, 460 U.S. at 793, 103 S.Ct. at 1572; see also Tribe, *Constitutional Law* § 13.19 at 1100 (2d ed. 1988) (collecting cases and concluding that the Supreme Court applies strict scrutiny only where regulations "effectively deny a cognizable group a meaningful right to representation."). For example, the March deadline in *Anderson* applied only to independent candidates and thereby denied an effective vote to those voters who are not content with the agendas of the two major parties. Similarly, the filing fee required by Texas in *Bullock* precluded poor candidates and constituencies from participating in the electoral process regardless of how qualified or popular those candidates may have been. The question in this case, therefore, is whether the fixed June deadline impermissibly burdens a particular segment of the electorate or, more generally, limits voters' ability to exercise fully their right to vote.

Though the state cannot regulate elections with such a heavy hand that it denies full political participation, the right to vote would be equally compromised if the state were not permitted some latitude in ensuring that elections are fair and honest, and that voters have an opportunity to make informed choices as well as numerous ones. These "important regulatory interests [in assuring fair and honest elections] are generally sufficient to justify reasonable, nondiscriminatory restrictions." *1141 *Anderson*, 460 U.S. at 788, 103 S.Ct. at 1570. Courts reviewing state election laws must keep the voters' interests foremost, and in balancing the plaintiffs' claim against the statute must determine whether those collective interests are better promoted by the state's statutory effort or the plaintiffs' constitutional arguments.

The *Anderson* Court established the following familiar framework for evaluating these competing approaches: the Court must first assess the "character and magnitude of the asserted injury" to the plaintiffs' first amendment rights, and then evaluate the "legitimacy and strength" of the state's interests and their need to burden the plaintiffs' rights. *Anderson*, 460 U.S. at 789, 103 S.Ct. at 1570.

The plaintiffs' complaint does not clearly articulate the right they claim was violated, but moves to the second prong of the *Anderson* test, claiming that the state has no compelling interest in the June 16 deadline and that less restrictive alternatives are available (for example, providing extensions). Essentially, the complaint charges that the statute violates the first amendment because the strict deadline unnecessarily limits voters' choices without advancing their concededly important interest in fair, honest and informed campaigns.

IV

[2] Concerning the first prong of the *Anderson* test, the Virginia statute does place some burden on the plaintiffs' first amendment rights. Any candidate who misses the filing deadline loses the "simple, yet undoubted, advantage of being declared official." *Dixon*, 878 F.2d at 781. Consequently, these candidates may well have difficulty raising money and communicating their message to like-minded voters.

The "magnitude" of the burden, however, is small indeed, for candidates can avoid their unofficial fate simply by filing the form sometime during the first six months of election year. Its requirements are simple and well publicized. Materials in the candidate's package mention the disclosure form and the

deadline for filing it. The form requires at most a few hours of accounting for various investments and sources of income.

In comparison to this insignificant burden, courts have routinely upheld petition requirements that require potential candidates to gather hundreds of signatures by a certain deadline before they can be placed on the ballot. For example, in *Libertarian Party of Virginia v. Davis*, 766 F.2d 865 (4th Cir.1985), the Fourth Circuit upheld Va.Code § 24.1-159, which requires political organizations other than parties who wish to be listed on the ballot to gather at least 200 signatures from each congressional district in Virginia and that each signature be witnessed by another registered voter from the same district as the signer. The Court held that the statute's requirement of "only a nominal demonstration of support" passed constitutional muster. In contrast, the simple filing of a form by a certain date can hardly be said to infringe associational rights.

Nor can the plaintiffs demonstrate that § 24.1-167 "limits political participation by an identifiable political group." *Anderson*, 460 U.S. at 793, 103 S.Ct. at 1572. The statute applies regardless of a candidate's party affiliation, and El-Amin does not allege that the burden falls more heavily on poorer or minority candidates. The plaintiffs do argue that the statute gives preferential treatment to incumbents. This charge, if well grounded, would require strict scrutiny of the statute, for "[f]ew prospects are so antithetical to the notion of rule by the people as that of a temporary majority entrenching itself by cleverly manipulating the system through which voters, in theory, can register their dissatisfaction by choosing new leadership." Tribe, § 13-18.

But § 24.1-167 does not give any preference to incumbents. In fact, Virginia statutes require incumbents to file the financial disclosure form five months *earlier* than new candidates. Failure to file by January 15 technically constitutes malfeasance for which an incumbent could be removed from office. See Va.Code § 2.1-639.19. Though as a realistic matter *1142 this drastic action seems unlikely, even if the statute prescribed no penalty at all for missing the January deadline, incumbents would still be subject to the same strict deadline as new candidates in June, and would be no more entitled to an extension than was El-Amin. Furthermore, new candidates are permitted to file the statement at any time from January 1 of election year through June 16, just as incumbents are. The Court can discern no favoritism for incumbents, who would no doubt cry foul if the statute required them to file by January 15 without extension

or required them to file a second statement in June. Applying the tests of either equal protection or the first amendment, this statute simply does not favor incumbents.

Virginia's legitimate, nondiscriminatory requirement that a candidate comply with a fixed deadline that it publicizes to all candidates falls well within the bounds of those legitimate administrative regulations that states must impose if elections are to be conducted fairly and efficiently. No voter could complain that his or her right to vote was compromised if he or she forgot to vote on the right Tuesday in November; El-Amin's claim amounts to no more than that.

V

Because the statute does not appreciably burden the plaintiffs' rights, their claim fails the first prong of the *Anderson* test and the Court need not evaluate the state's asserted interests. Even if the burden on the plaintiffs were greater, the state's interests in the disclosure requirement and the fixed deadline weigh heavily in the balance. The plaintiffs do not challenge the state's interest in collecting financial information on candidates and holding it for public review, to ensure that an informed electorate can judge a candidate's possible biases. Amended Complaint ¶ 31; see, e.g., *Plante v. Gonzalez*, 575 F.2d 1119, 1134-37 (5th Cir.1978). Rather, they argue that the state has no interest in collecting the information as early as it does nor in strict adherence to a particular deadline. In fact, they claim that the latter practice is "capricious and arbitrary state action." Amended Complaint ¶ 39. They point out that the Board of Elections does not use the information in the form for any purpose (except making it available to the public), and that because the ballots are not printed until September there is no need to determine official candidates by mid-June.

The plaintiffs somewhat underestimate the time needed to prepare for November elections even after the Board has determined the slate of official candidates. As reviewed in defendant Fitz-Hugh's affidavit, the Board needs several months to ensure that all local election ballots throughout the state correctly list each of the 465 candidates and are ready to be distributed. The deadline thus extends beyond the need for the financial information; more generally, the state has an interest (though perhaps not a compelling one) in determining the field of official candidates early so that voters may begin considering and debating their relative qualifications.

The state could avoid these problems, of course, by requiring the statement to be filed but not making it a prerequisite to official status. But the state's important interest in informing the electorate would justify the requirement that the statements be available to the public throughout the campaign. *See, e.g., Eu v. San Francisco Democratic Central Comm.*, 489 U.S. 214, —, 109 S.Ct. 1013, —, 103 L.Ed.2d 271, 285 (1989); *Anderson*, 460 U.S. at 796, 103 S.Ct. at 1574. The deadline guarantees that voters have early access to important information about how candidates will conduct themselves in office, information that may not otherwise be available and will often be worthy of public debate. An earlier deadline is also more important for local elections, which normally receive much less publicity than statewide or national elections. *Cf. Anderson*, 460 U.S. at 798, 103 S.Ct. at 1575.

The plaintiffs' claim that a fixed deadline is "capricious and arbitrary" fails on its face. The system before the 1988 amendment lent itself to much more abuse, favoritism and caprice. The old statute gave the Board of Elections unfettered discretion to *1143 grant or withhold extensions, potentially permitting Board of Elections staff (largely political appointees) to permit late entries by favored candidates. The new statute provides a bright-line, fixed rule that applies equally to all candidates and cannot be manipulated.

A more benign regulation cannot be imagined. The statute evenhandedly imposes a simple requirement on all potential candidates that furthers legitimate state interests. Balancing the interests, the Court concludes that the statute places an insignificant burden on candidacy that is unlikely to pose any serious barrier to reasonably diligent candidates, and therefore does not appreciably restrict voters' choices. At the same time it promotes an informed electorate without the potential for corruption inherent in the old statute, and

therefore the voters' interests are better furthered with the statute than without it. The Constitution does not protect candidates from their own carelessness.

VI

[3] Finally, El-Amin also argues that by meeting the residency and other requirements to be a candidate for Richmond Commonwealth's Attorney, he somehow gained a property interest in candidacy that the Board of Elections has taken without due process of law. Property interests, of course, are created not by the Constitution but by some independent guarantee, primarily state law; the Constitution only mandates that certain procedures be followed when state-created property interests are taken. *See, e.g., Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972); *Kersey v. Shipley*, 673 F.2d 730, 732 (4th Cir.1982).

In this case, if the state has created any "entitlement to candidacy" for state offices at all, a doubtful proposition at best, that interest certainly arises only when a potential candidate has completed all of the administrative requirements that go along with candidacy. Even if such a right exists generally, El-Amin gained no entitlement because he did not satisfy the state's restrictions, which serve as a condition precedent to any property interest that may exist. The Board of Elections therefore did not deprive El-Amin of any property.

For these reasons, the defendants' motion is GRANTED as a motion for summary judgment and the case is DISMISSED.

All Citations

717 F.Supp. 1138

Exhibit B



Explore

Settings



Brandon Jarvis

36.1K Tweets

Follow

10 11 10

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Brandon Jarvis @Jaaavis · Jun 12

The Freitas campaign was unaware any letter being sent with a postmark prior to the Tuesday, I would like to add. Good didn't respond to this question either.

1 9 64

Show this thread



Brandon Jarvis @Jaaavis · Jun 12

The campaign for Bob Good has not responded to any requests for comment. Nor have they returned any phone calls

1 9 67

Show this thread



Brandon Jarvis @Jaaavis · Jun 12

The Dept of Elections told me that the State Board of Election has the ability to grant an extension to the candidates if they choose to do so.

2 10 75

Show this thread



Brandon Jarvis @Jaaavis · Jun 12

Reminder, I talked to VDE twice today and they told me they have not filed. I was told earlier in the day that Freitas' lawyer believed there was an extension to the deadline. VDE told me that is not true.

1 13 87

Show this thread



Brandon Jarvis @Jaaavis · Jun 12

A statement from Freitas' campaign manager: Reminder, I talked to VDE twice today and they told me they have not filed. I was told earlier in the day that Freitas' lawyer believed there was an extension to the deadline. VDE told me that is not true.

I've been checking on this today because we hired someone specifically to manage compliance with these rules. But our form has

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What's happening

Premier League · 3 hours ago
Southampton vs Manchester City



Pop · Trending
charlie puth

Trending in United States
st joseph

UFC · 3 hours ago
Welterweight champ Kamaru Usman will defend his title against Jorge Masvidal at UFC 251, ESPN reports



NASCAR · Trending
Blaney

Trending with: Preece, Truex

Don't miss what's happening

People on Twitter are the first to know.

Log in

Sign up

Exhibit C



Explore

Settings

Tweet

Brandon Jarvis @Jaaavis
 How surprised would you be if I told you that nearly 20 GOP candidates failed to file their paperwork in time to be on the ballot in VA? Who would be to blame for such a gross incompetence for Republicans? Call the Dept of Elections and start asking about candidates

7:20 PM · Jun 25, 2020 · Twitter for iPhone

40 Retweets 134 Likes

Lindsey Dougherty @LindeyDougherty · Jun 25
 Replying to @Jaaavis
 Is this a relatively new thing? That's a ridiculous number of people.
 Any Dems that failed to file timely?
 1 3

Brandon Jarvis @Jaaavis · Jun 25
 One that I know of and they weren't congressional or even state level. If I was DPVA I would sacrifice that one Dem for 20 GOP but 🙄
 1 9

1 more reply

Enough @ehartman1975 · Jun 25
 Replying to @Jaaavis
 Because Republicans don't believe laws and rules apply to them.
 1 24

PAnna @PAnnaVote · Jun 25
 Bingo!
 3

Fire Stoney @rvapol · Jun 25
 Replying to @Jaaavis
 Please tell me they are not going to let them on the ballot anyway.

Search Twitter

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 Sign up now to get your own personalized timeline!

Sign up

Relevant people

Brandon Jarvis @Jaaavis [Follow](#)
 Journalist - - - Be the change -
 @styleweekly @Henricocitizen
 jarvisrva@gmail.com

What's happening

COVID-19 · 3 hours ago
Broadway actor Nick Cordero dies at 41 after months of COVID-19 complications

Trending in United States
Target

Trending in United States
#JUSTICEFORVANNESSAGUILLEN

Television · 3 hours ago
The Chi airing on Showtime

Video games · Trending
Rhea
 Trending with: Byleth, Sylvain

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 People on Twitter are the first to know.

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★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Drawing for Party Ballot Order (General and Special Elections from October 1, 2020, through April 30, 2021)

BOARD WORKING PAPERS

Dave Nichols
Director of Elections



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Memorandum

To: Chairman Brink, Vice Chair O'Bannon, and Secretary LeCruise
From: Dave Nichols, Election Services Manager
Date: July 7, 2020
Re: Ballot Order Drawing for elections occurring October 1, 2020 through April 30, 2021

Suggested motion for a Board member to make:

"I move that the Board certify the determination by lot of the ballot order for all general and special elections being held October 1, 2020 through April 30, 2021."

Applicable Code Sections:

Va. Code § 24.2-613.B – "For elections for federal, statewide, and General Assembly offices only, each candidate who has been nominated by a political party or in a primary election shall be identified by the name of his political party. Independent candidates shall be identified by the term "Independent." For the purpose of this section, any Independent candidate may, by producing sufficient and appropriate evidence of nomination by a "recognized political party" to the State Board, have the term "Independent" on the ballot converted to that of a "recognized political party" on the ballot and be treated on the ballot in a manner consistent with the candidates nominated by political parties."

Va. Code § 24.2-613.C – "... the State Board shall determine by lot the order of the political parties... 'recognized political parties' shall be treated as a class; the order of the recognized political parties within the class shall be determined by lot by the State Board..."

Applicable Dates:

All general and special elections between October 1, 2020 and April 30, 2021.

ELECT Staff Recommendation:

ELECT staff recommends that the Board determine by lot and then certify the ballot order for all general and special elections being held between October 1, 2020 and April 30, 2021.



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

USPS Elections Mail Presentation

BOARD WORKING PAPERS
James Heo
Confidential Policy Advisor



Virginia State Elections Board Outreach

Lisa Adams

National Political & Elections Outreach Team

July 7, 2020

Agenda:

- **Introductions USPS / State**
- **State elections officials to share 2020 General Election plan**
- **Discuss the following topics:**
 - USPS plans on how we will handle the heavy volume of ballots for the November election
 - Communication and outreach with the local BOE's and the State officials
 - Considerations for planned mailings or mass mailings
 - State and/or local procedures regarding election mail printing
 - Delivery timeframes for First Class Mail and Marketing Mail
 - Mailpiece design
 - Election Mail visibility
 - Prepaid postage options on return ballots
 - Coordination with printers

USPS Meeting Attendees:

Daniel Bentley - National Election Mail Program Manager

Justin Glass - Operations Manager

Leonetta Jackson - Operations Manager

Rod Sallay - Manager Legislative Policy & Strategy

Lisa Adams - Cap Metro Area Marketing Manager / National Outreach Team

Lynne Hallett - BRM / QBRM Product Manager

Ben Farmer – Richmond District Marketing Manager

Thank you!





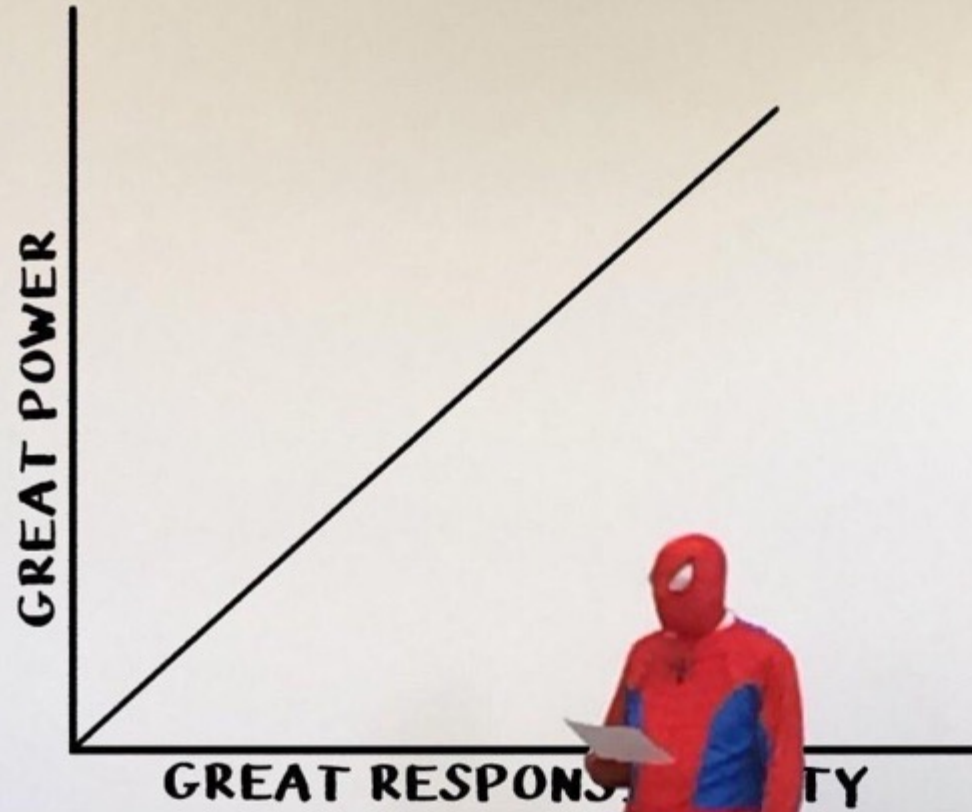
July 7th, 2020

Delivering Democracy VA: 2020 Elections in the COVID Era

Tammy Patrick

Senior Advisor to the Elections Team

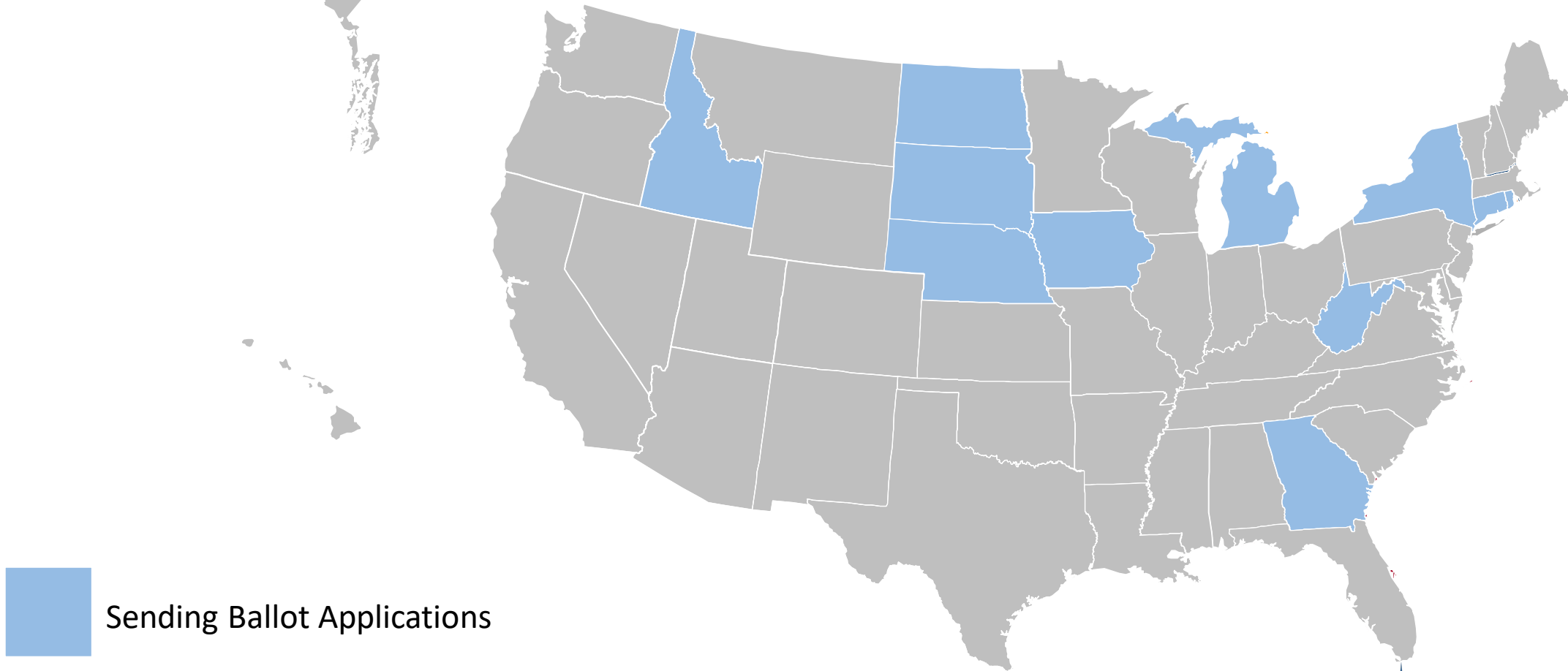
- Trends
- Ballot Delivery & Return



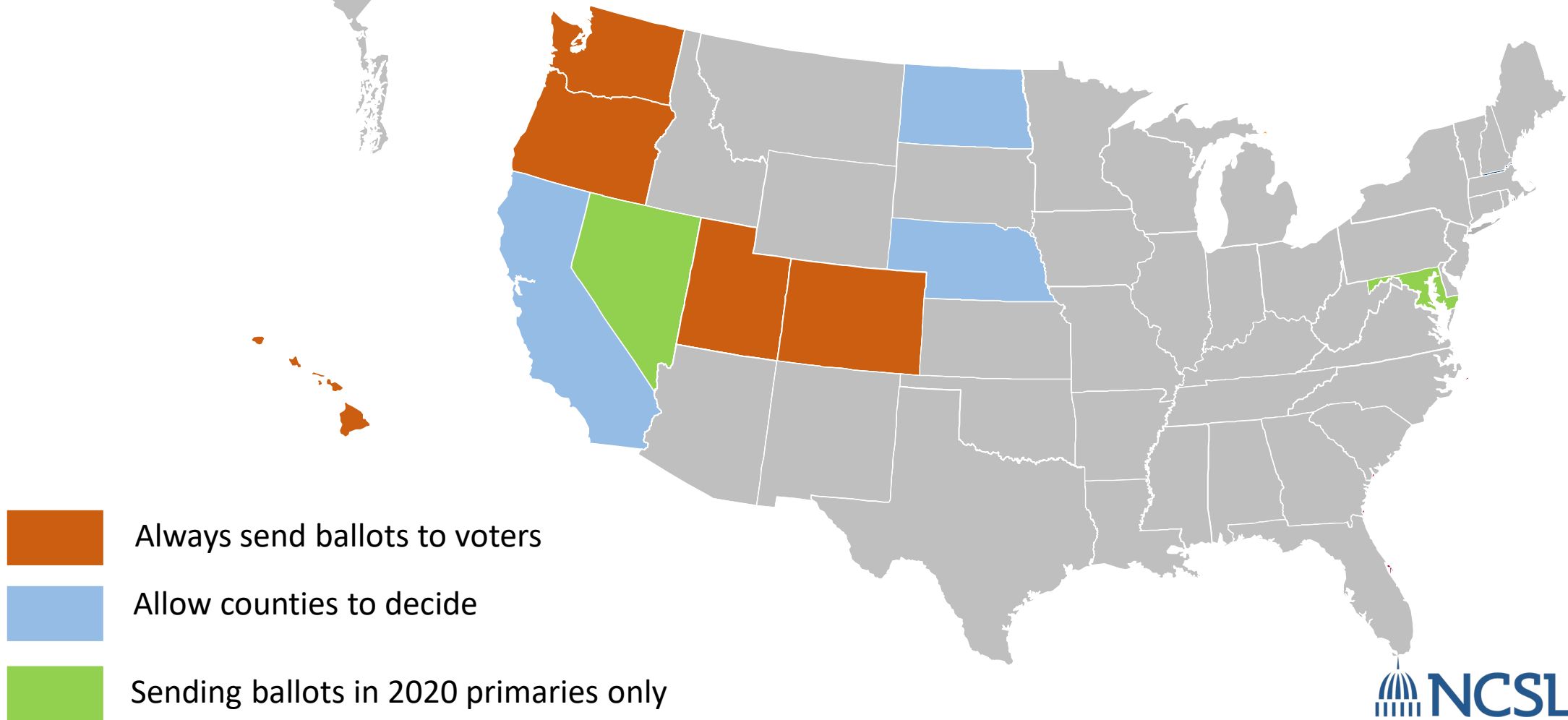
Election Delays Due to COVID-19



States Sending Ballot Applications to All



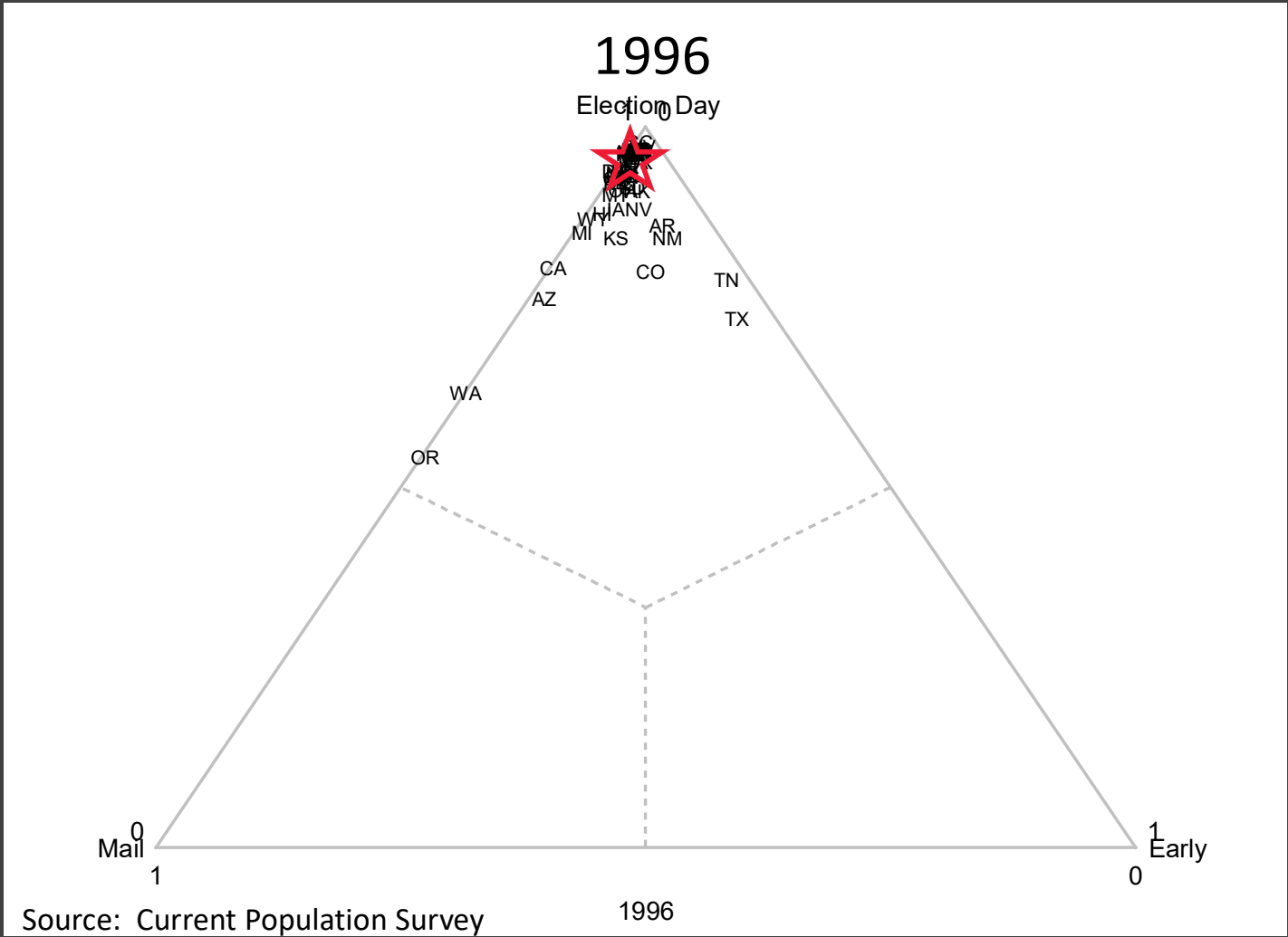
States and All-Mail Elections

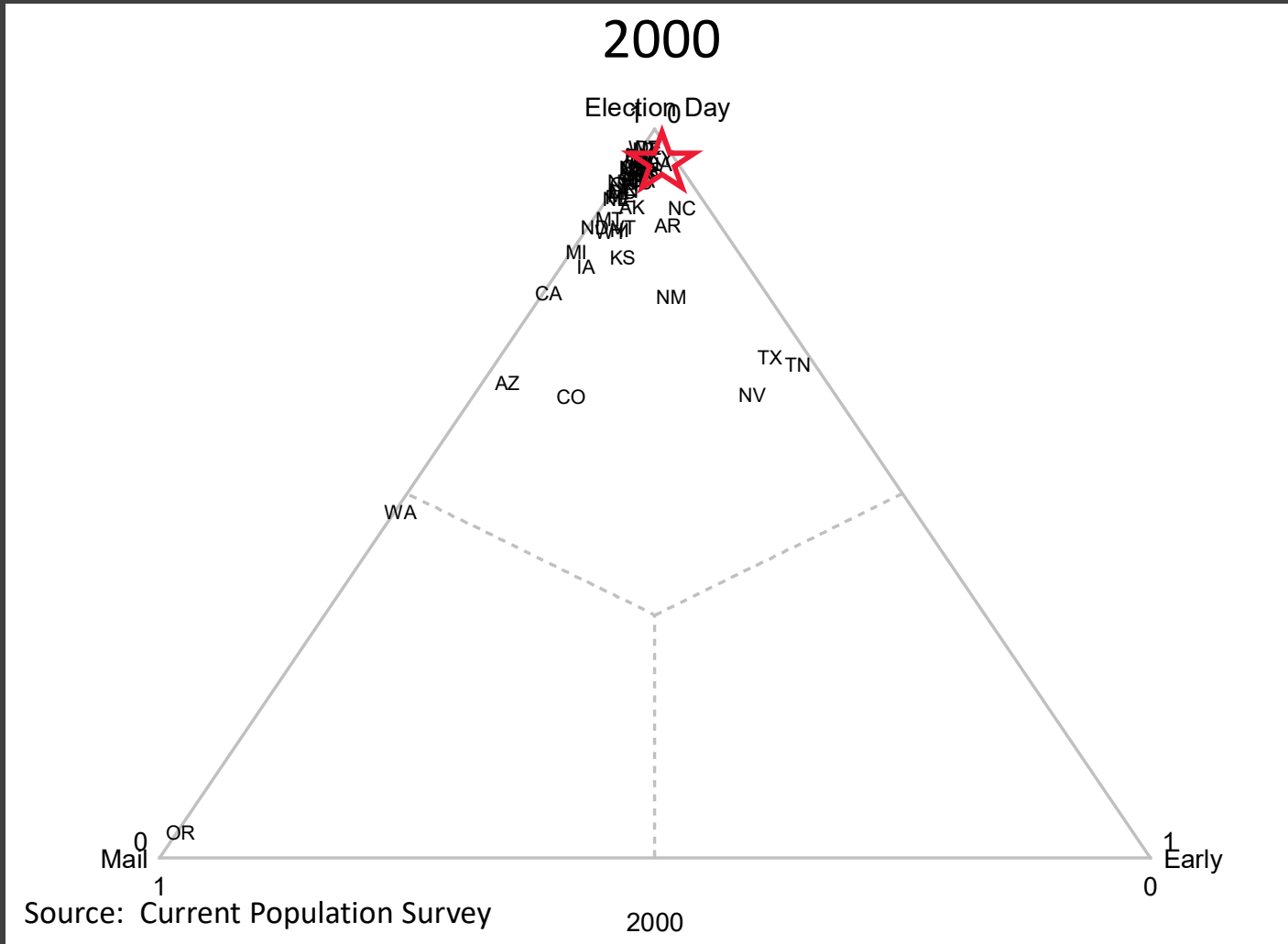




When given options in voting voters tend to move away from Tuesday, Election Day as demonstrated by Charles Stewart, MIT--what I have affectionately named the “Snow Globe of Elections”.

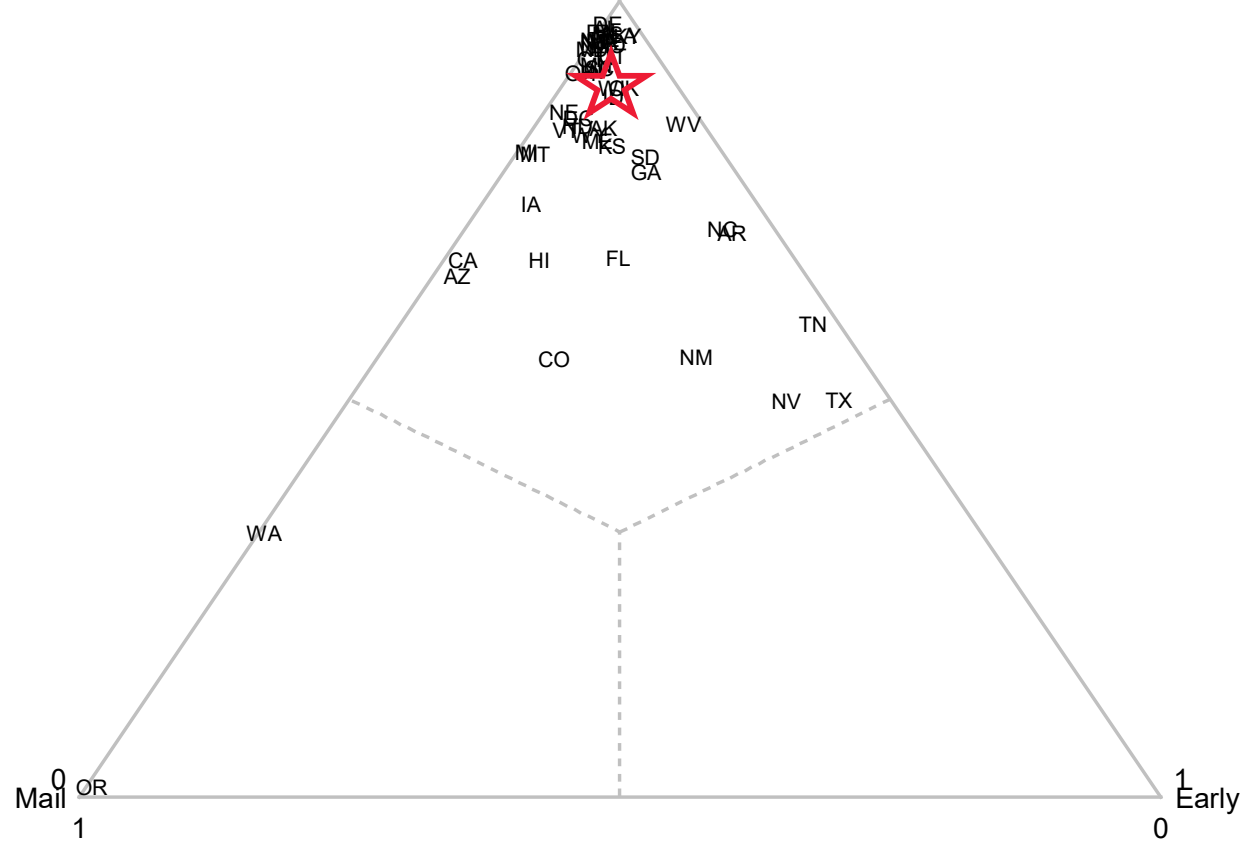






2004

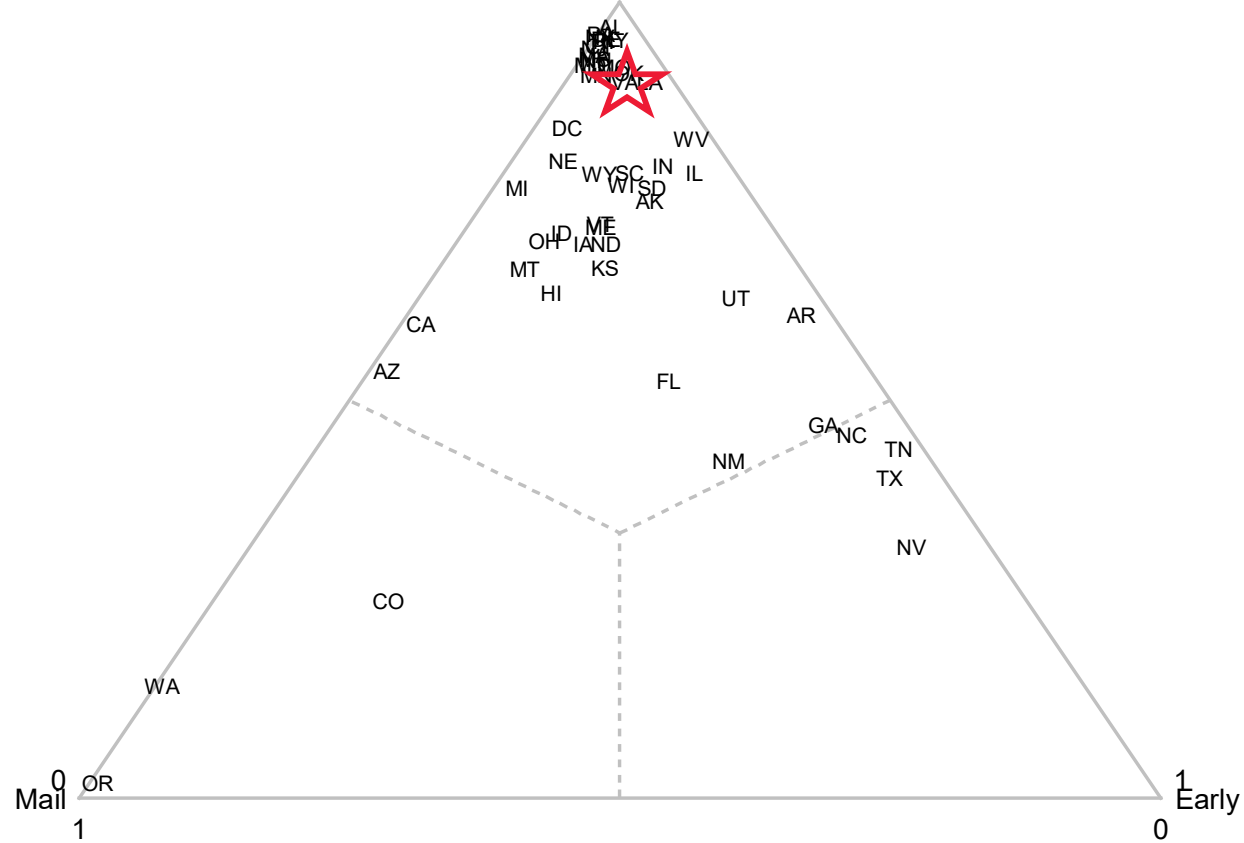
Election Day



Source: Current Population Survey 2004

2008

Election Day

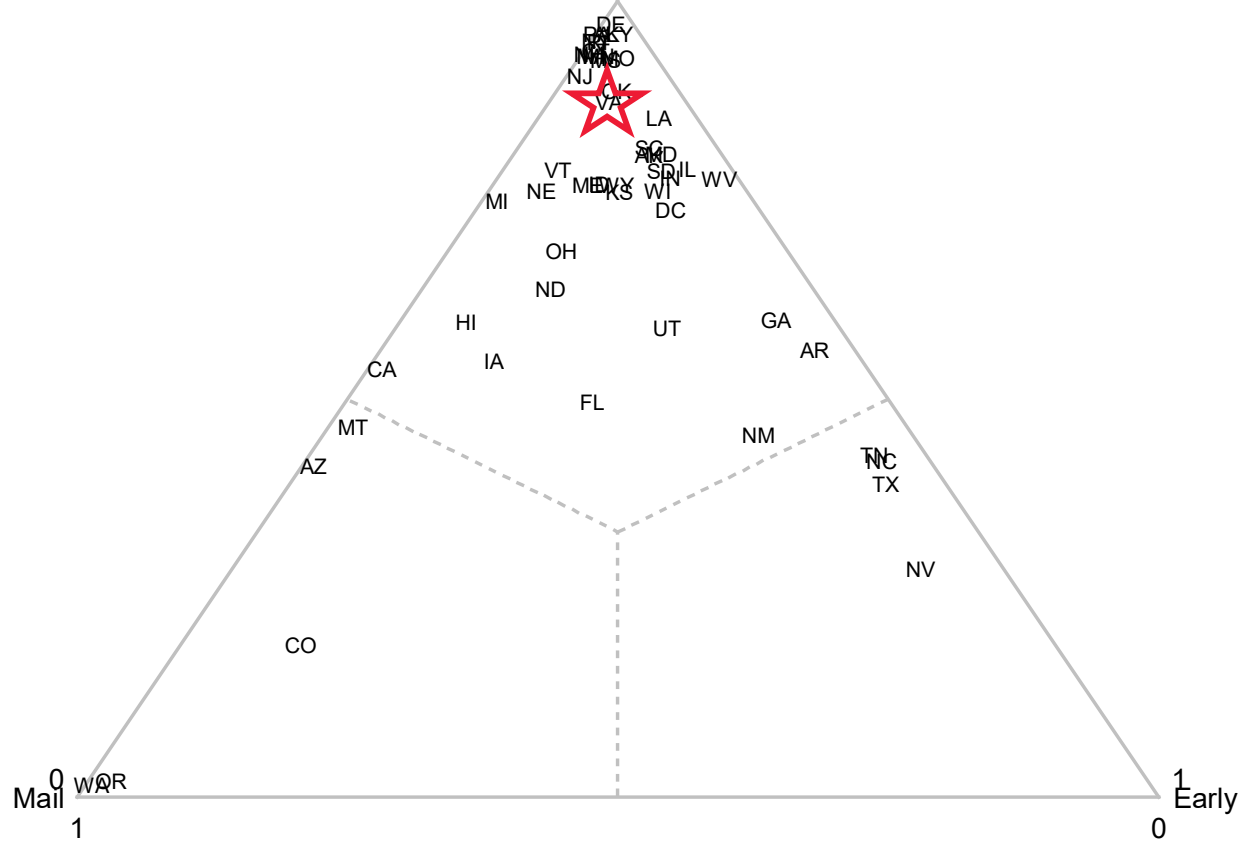


Source: Current Population Survey

2008

2012

Election Day

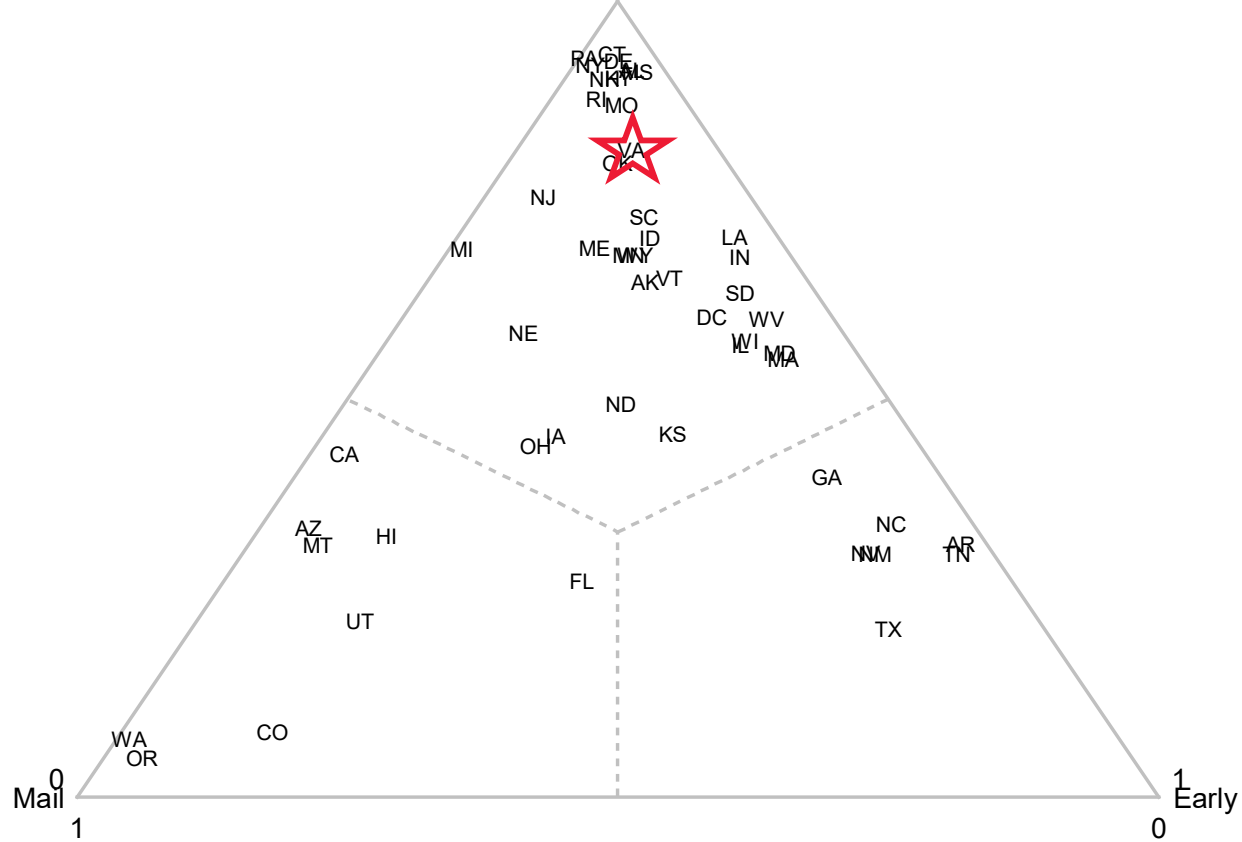


Source: Current Population Survey

2012

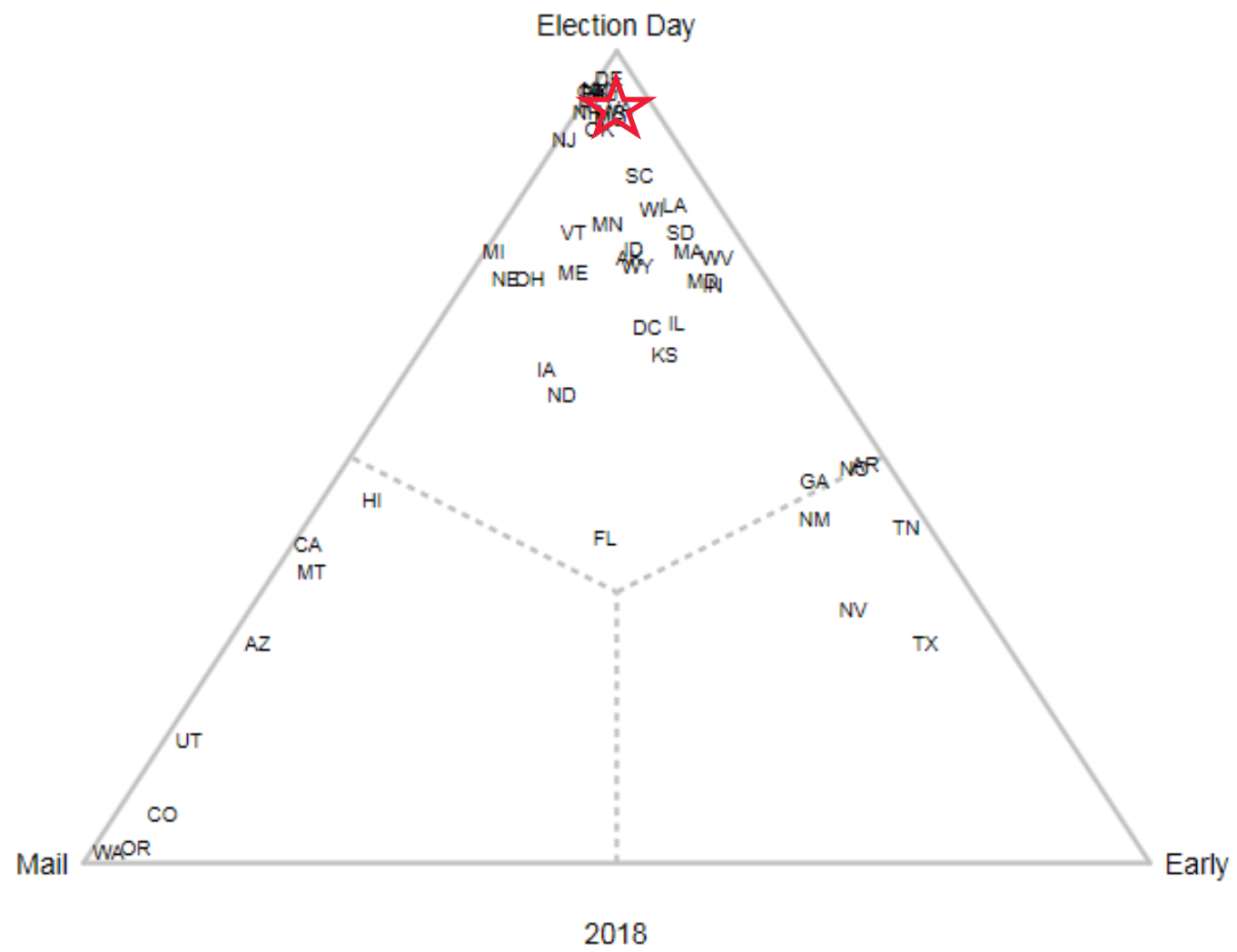
2016

Election Day



Source: SPAE

2016





Current Vote at Home Status by State – July 2019

States with blended policies in the Step 3 – 4 – 5 range.

UT 100% VAH in 2019
HI 100% in 2020
CA targeting 2022

NE has 11 counties on 100% VAH for 2020

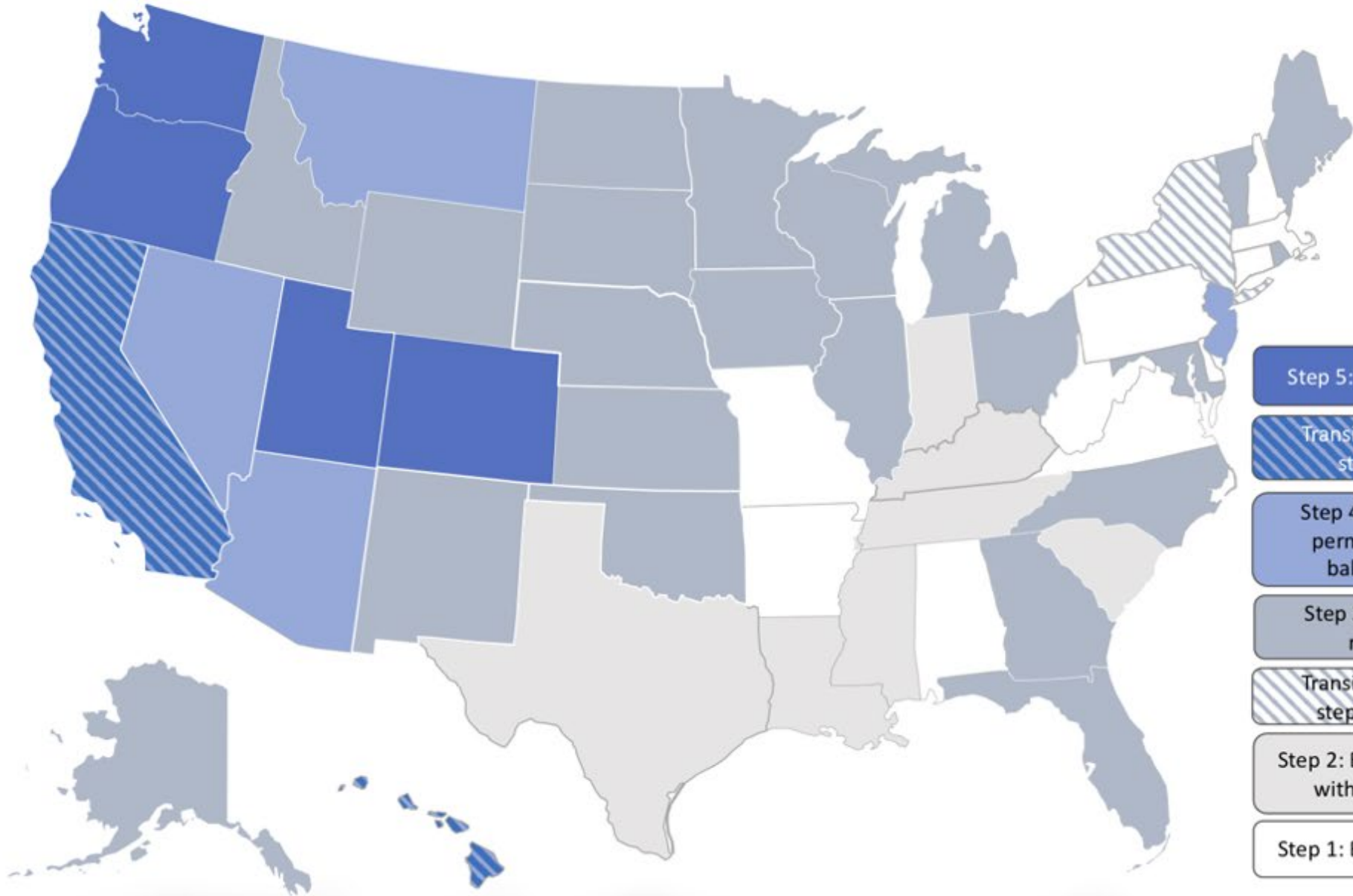
ND has 30 counties using 100% mailed-out ballot voting

OH sends absentee request forms to all 8M voters, every election

MI & MN have a permanent absentee list, but send request forms, not ballots, to voters

AL, KS, & WI offer permanent absentee status to voters with disabilities

DC offers Step 4 to its voters



- Step 5: Vote at Home
- Transitioning from step 4 to 5
- Step 4: No Excuse, permanent mail ballot option
- Step 3: No excuse required
- Transitioning from step 1 or 2 to 3
- Step 2: Excuse required with age waiver
- Step 1: Excuse required

**Make no assumptions.
Voters may behave
differently in 2020 (and
beyond).**



Amid coronavirus outbreak, most Americans uncomfortable going to a party, restaurant or polling place

*% saying that, given the current situation with the coronavirus outbreak, they would feel **uncomfortable** doing each of the following*



Source: Survey of U.S. adults conducted March 19-24, 2020.
"Most Americans Say Coronavirus Outbreak Has Impacted Their Lives"

PEW RESEARCH CENTER

Lesson in Wisconsin

158,846 ballots in 2016

168,788 ballots in 2018

Even if you are a state with traditionally low VBM/AB it will be larger volumes this year.

The question remains, how large?



Wisconsin Elections 
@WI_Elections

Latest absentee ballot stats:

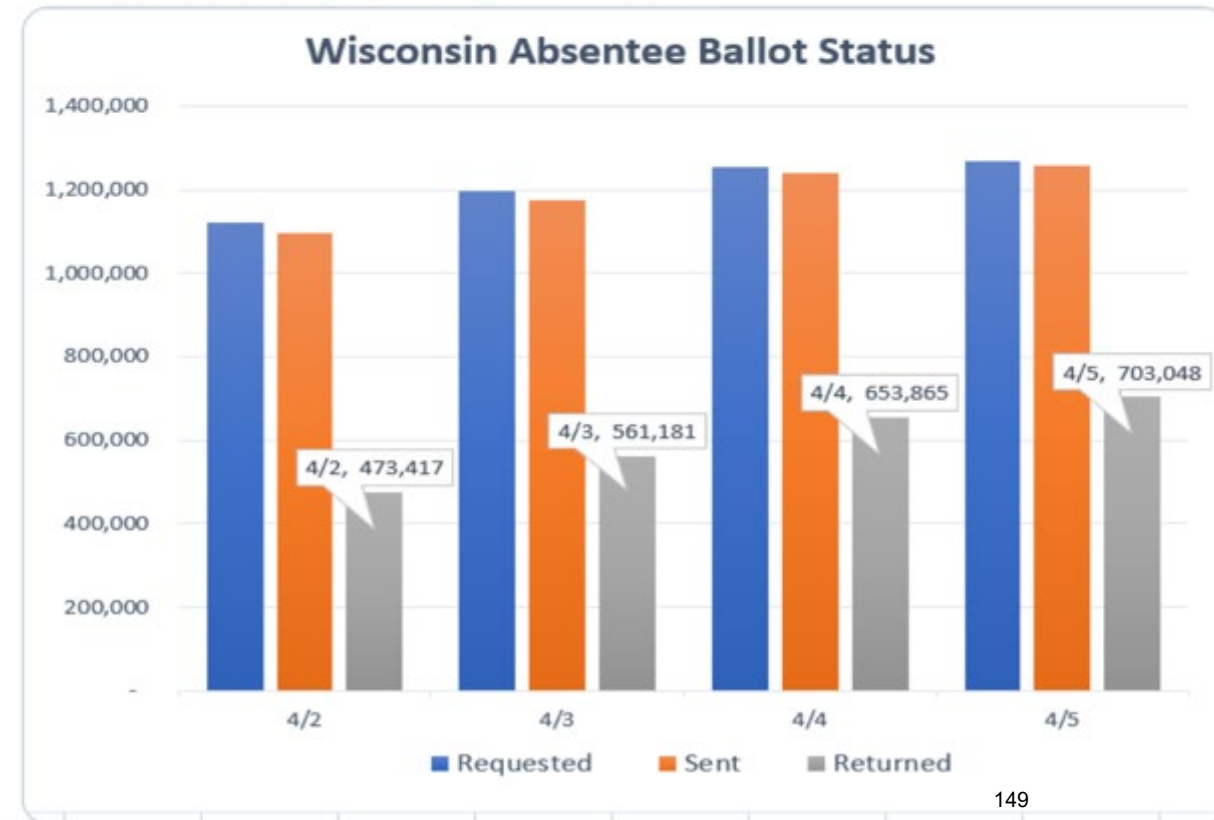
1,268,587 absentee requests

1,256,474 sent

703,048 returned

Full county-by-county statistics:

elections.wi.gov/publications/s...





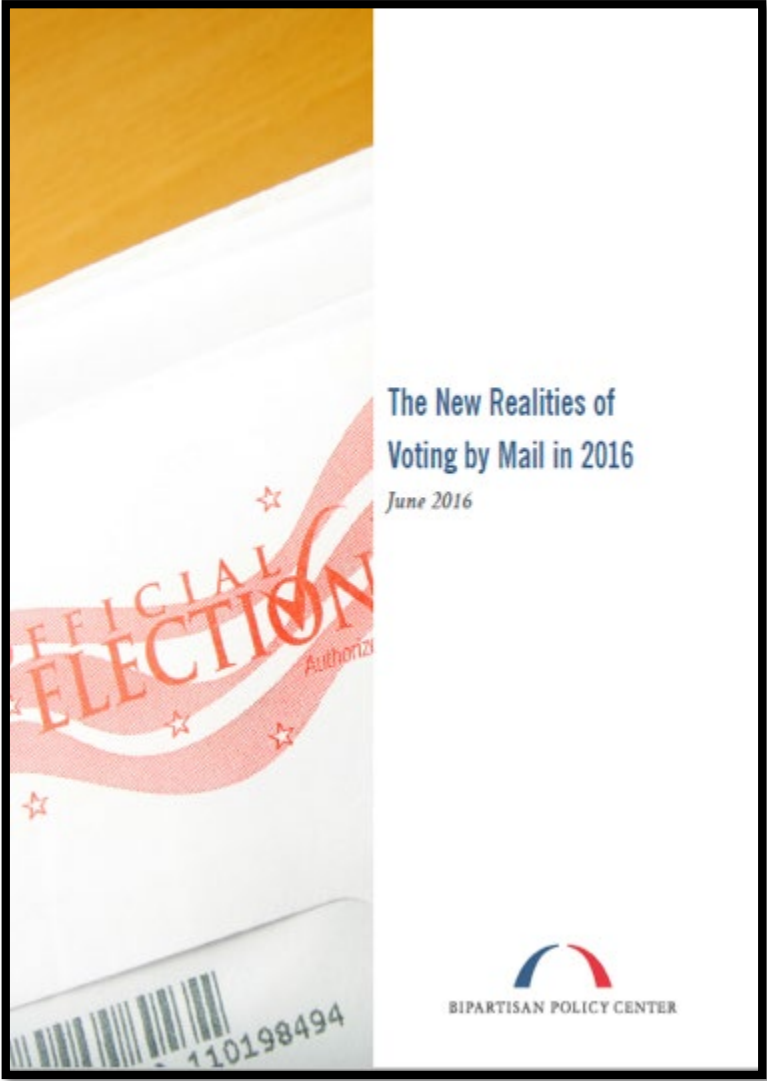
Ballot Delivery & Return



**Tens of millions of American
Voters have their ballots
handed to them by their USPS
Postal Carrier, not a
pollworker.**

**Together election officials,
industry, and USPS serve the
American Electorate and
“Deliver Democracy”**

New Reality of Voting by Mail



← Checklist for voters who vote by mail

← Checklist for election administrators

← Checklist for state legislators

← Checklist for USPS®

First-Class Mail: DMM 333.2.0

- Personal, handwritten, or typed information
- **2-5 day delivery (Contiguous 48 United States)**
- Free forwarding and return
- Sealed against inspection

Standard Mail: DMM 243.2.0

- No personal, handwritten, or typed information
- **3-10 day delivery (Contiguous 48 United States)**
- Forwarding/return require endorsement and a fee
- May be opened for postal inspection

- ✓ **Application process (each election/annual/PEVL)?**
- ✓ **Review envelope requirements**
- ✓ **Ballot tracking**
- ✓ ***Check statutory dates & deadlines***
- ✓ **Provide ballot return options**
- ✓ **Update postmark language**
- ✓ **Security**



Bad Design (& all that statutorily-required language) can send the ballot back to the voter instead of to election official.

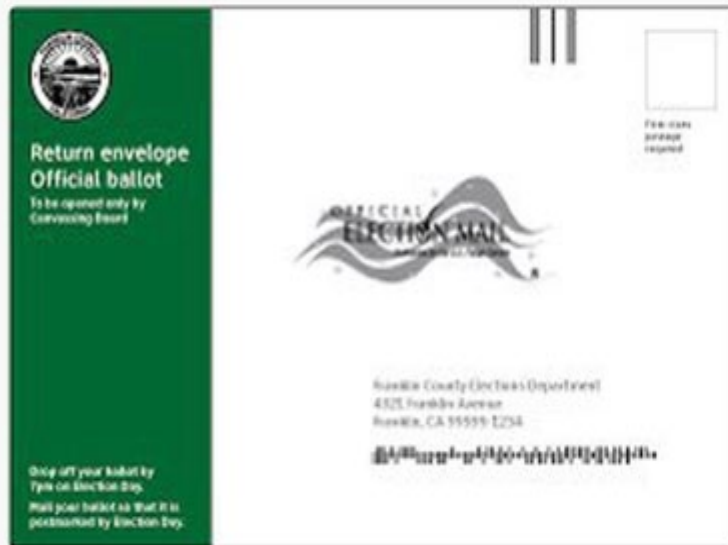


 **Justin Roebuck** @JustinRoebuck

Polls are now open across Michigan - and in Ottawa County over 11% of our voters have already cast ballots by mail. You still have time to drop off your absentee ballot any time before 8pm if you haven't yet done it!

<https://pbs.twimg.com/media/ESvtNVDWAAAqcnq.jpg>

 Twitter | Mar 10th (8 kB) ▾

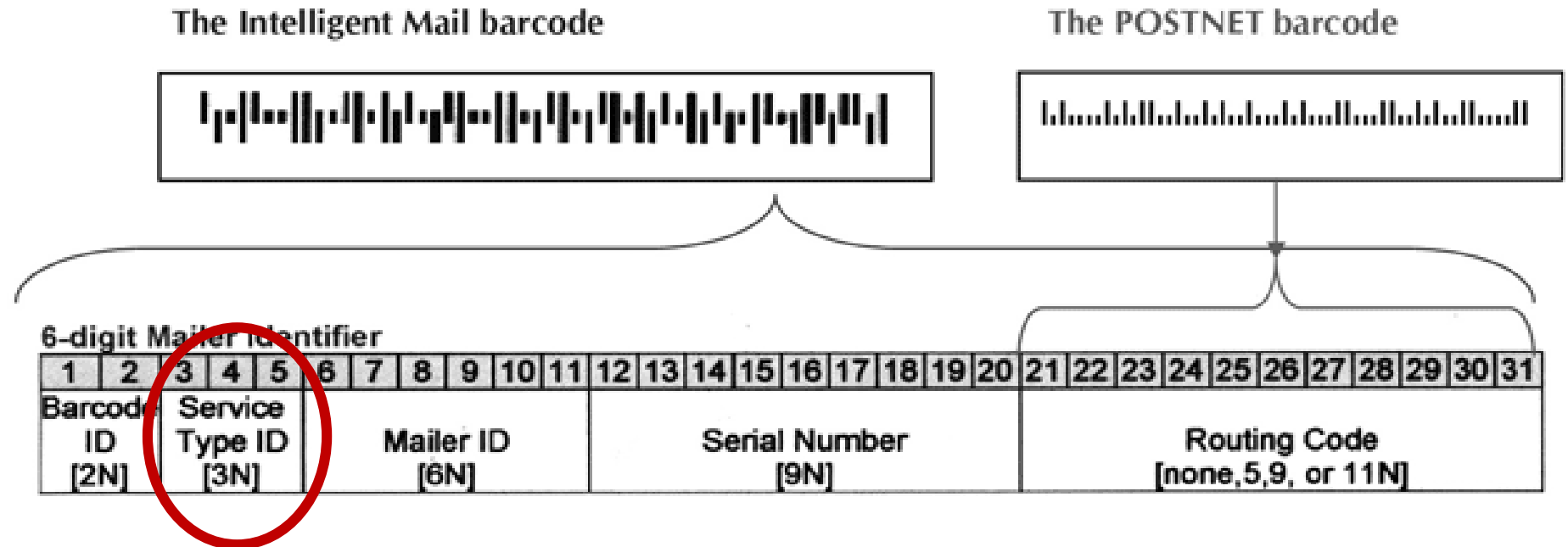


Center for
Civic Design

- Projects on VBM materials, language access, voter guides, etc.
- Working with many jurisdictions on updating

Visibility: Ballot STIDs!

- With the new STID we will increase election mail visibility in the mail stream and be able to communicate where ballots are en route.



States failed to get absentee ballots to thousands of voters in recent primary elections, signaling problems for November

By [Marshall Cohen](#) and Kelly Mena, CNN

Updated 1:28 PM ET, Mon June 22, 2020

Did they?

Without ballot tracking it is hard to tell for certain where the breakdown was.



Visibility: Security

Informed Delivery is another security layer for voters to know when to expect their ballot.

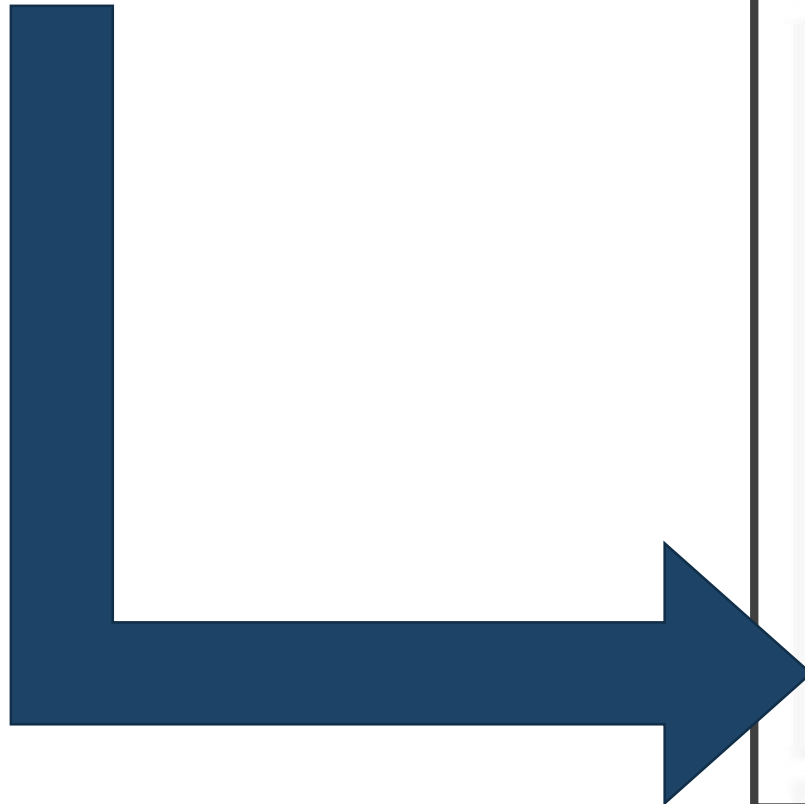
By signing up they will know when to anticipate the ballot in their mailbox!





OC Registrar ✓
@OCRegistrar

We are leveraging @USPS Informed Delivery by embedding color graphic images in voters' emails notifying them of their ballot delivery with links to track their ballot! Learn more bit.ly/2IKNUlt #ocvote2020 #protect2020 #ocvotecenters2020



▶ “The U.S. Postal Service® recommends that voters mail ballots *one week before the due date* to account for any unforeseen events or weather issues and to allow for timely receipt and processing by election officials”

Do your statutes allow for a voter to request a ballot later than this?
If so, what are their options to return the ballot?

A single vote puts the Virginia balance of power in limbo, again



By [Deena Zaru](#) and [Ryan Nobles](#), CNN

Updated 10:50 AM ET, Fri December 22, 2017

Virginia Politics

Half a day late, 55 ballots land with disconcerting thud in tight Va. House race

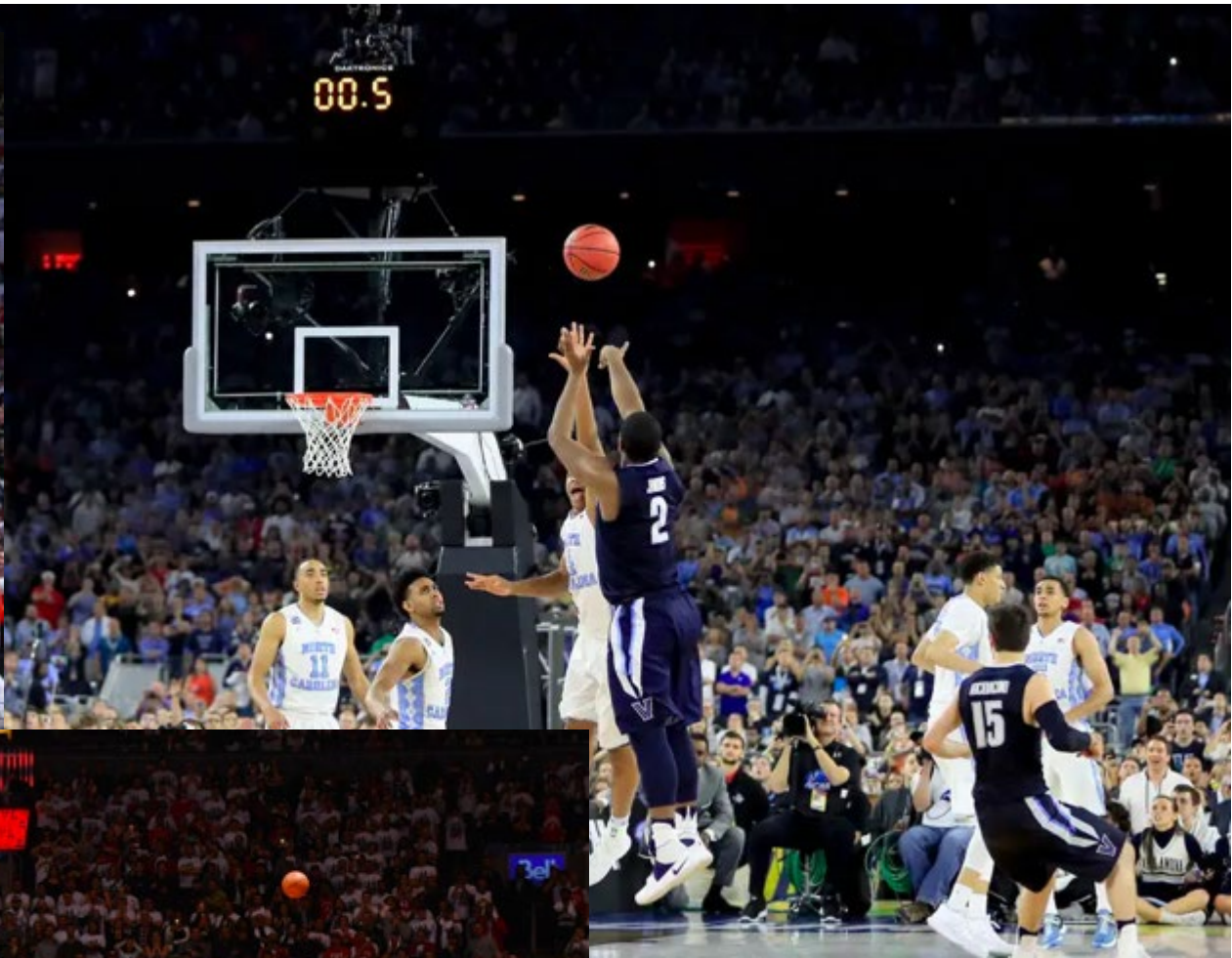


Control of Virginia's House of Delegates turns on the outcome of three tight races. (Matt McClain/The Washington

Virginia 2017

- Stafford County posted this picture of 55 “late” ballots they received on Weds, they did not use the IMb tracking, nor did they use the logo
- 46 of the ballots were mailed the day before, and on, Election Day.



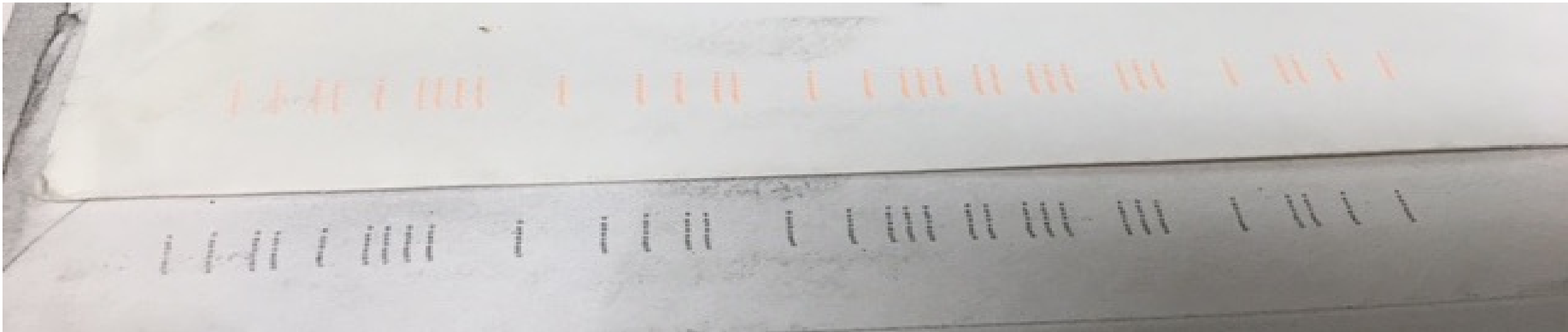


democracy
fund

Return: Processing Mark Data

In 2016 Ohio Secretary of State Jon Husted passed a directive allowing for the use of processing marks to demonstrate a ballot was mailed in time.

In 2018 Washington Secretary of State Kim Wyman got scanners for all the counties in Washington.



2017 Kansas Statutes

25-1132. Advance voting; delivery of ballots; where; deadline for receiving ballots. (a) All advance voting ballots which are received in the office of the county election officer or any polling place within the county not later than the hour for closing of the polls on the date of any election specified in K.S.A. 25-1122(f), and amendments thereto, shall be delivered by the county election officer to the appropriate special election board provided for in K.S.A. 25-1133, and amendments thereto.

(b) Subject to the deadline for receipt by the office of the county election officer as set forth in this subsection, all advance voting ballots received by mail by the office of the county election officer after the closing of the polls on the date of any election specified in K.S.A. 25-1122(f), and amendments thereto, and which are postmarked or are otherwise indicated by the United States postal service to have been mailed on or before the close of the polls on the date of the election, shall be delivered by the county election officer to a special election board or the county board of canvassers, as determined by the secretary of state, for canvassing in a manner consistent, as nearly as may be, with other advance voting ballots. The deadline for the receipt by mail of the advance voting ballots by the office of the county election officer shall be the last delivery of mail by the United States postal service on the third day following the date of the election, unless additional time is permitted by the secretary. The secretary of state shall adopt rules and regulations to implement this subsection.

History: L. 1973, ch. 155, § 2; L. 1992, ch. 45, § 2; L. 1995, ch. 192, § 35; L. 2017, ch. 49, § 2; July 1.



democracy
fund



Electionmail.org

Elections*:
Fast
Cheap
Accurate

***pick two.**




Montgomery County, MD

Resources?

Budgets are even tighter now, every efficiency will count.


Most precious resource may be time—it is running out.



 **Fairfax County Votes** ✓ @fairfaxvotes · Jun 23

We call her Denise 850. She's the high-speed machine we're using to count the more than 30,000 absentee ballots for today's congressional #primary elections.

#election2020 #2020election #absenteevoting #vote #vote2020 #VA11 #CD11

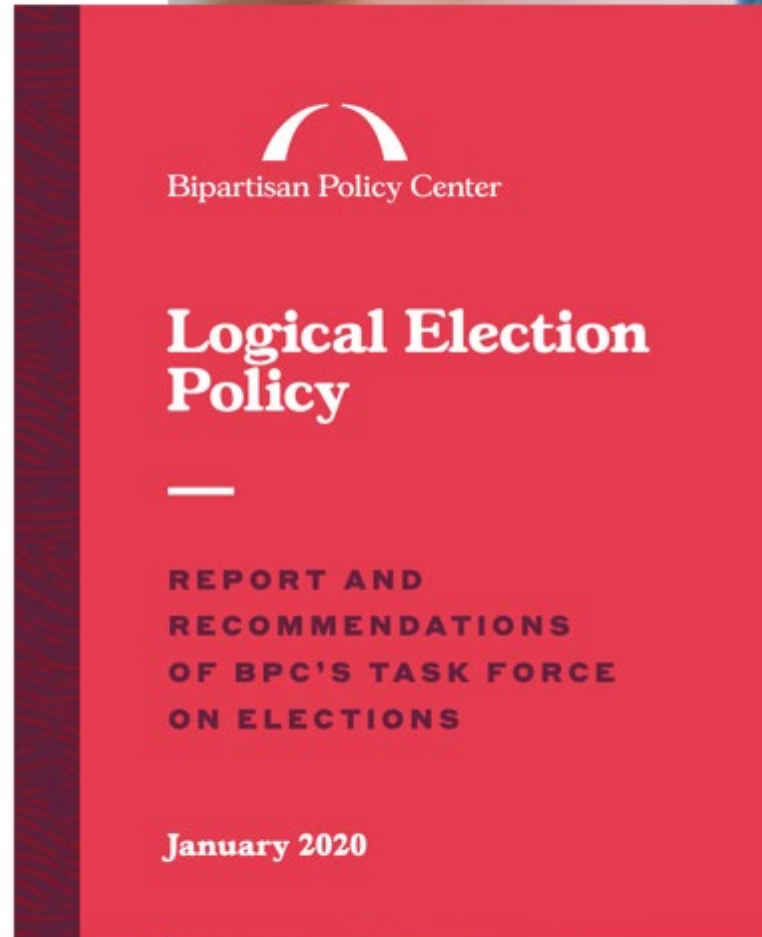


0:08 617 views

The image shows a tweet from Fairfax County Votes. The tweet text describes a high-speed ballot counting machine named Denise 850 used for counting absentee ballots. Below the text is a video thumbnail showing the machine in operation. The machine is a large, light-colored unit with a screen on top displaying a software interface. A label on the front of the machine reads "Denise 850". The machine is positioned in front of a window with blinds, and green foliage is visible outside. The video player interface at the bottom of the thumbnail shows a duration of 0:08 and 617 views.

Good news: some policies help!

This report includes many practical, logical recommendations .



RECOMMENDATION 16:

Election administrators should be permitted to process vote-by-mail ballots beginning at least seven days prior to Election Day but must be prohibited from producing results.

RECOMMENDATION 17:

State election certification deadlines should be set no earlier than 14 days after a general election to provide time to complete pre-certification tasks.

RECOMMENDATION 20:

States should allow sufficient time for voters to cure eligibility deficiencies in vote-by-mail-ballots, even if this period extends beyond Election Day.





Return: Signature Verification / Authentication

- Notifying voters when there are issues in the acceptance of their ballot is a security measure as well as good customer service.
- If it is a bad signature, ***and truly not theirs***, how else would you know?



Thank you for all that you do for voters!



Tammy Patrick
@aztammyp
tpatrick@democracyfund.org

