



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

BOARD MEETING

Tuesday, February 23, 2021

Video and Teleconference

Videoconference:

<https://covaconf.webex.com/covaconf/j.php?MTID=m985d7f3d1066b4e5f6d19ec6f39a1670>

Meeting password: 2XaM8h2Vz9J

Teleconference:

1-517-466-2023 US Toll

1-866-692-4530 US Toll-Free

Access Code: 178 510 9261

Richmond, VA

1:00 P.M.

SBE Board Working Papers



**STATE BOARD OF ELECTIONS
AGENDA**

DATE: Tuesday, February 23, 2021

TELECONFERENCE:

+1-517-466-2023 US Toll

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Password: 2XaM8h2Vz9J

TIME: 1:00 PM

I. CALL TO ORDER

Robert Brink, Chairman

II. APPROVAL OF MINUTES

Jamilah LeCruise, Secretary

A. January 12, 2021

III. COMMISSIONER'S REPORT

*Christopher E. Piper
Commissioner*

IV. POST-ELECTION REPORT

*Christopher E. Piper
Commissioner*

**V. CONSIDERATION OF AMENDMENTS TO
1VAC20-70-20**

*Daniel Davenport
ELECT Policy Analyst*

VI. PROPOSED SBYA POLICY 2021-001

*Tammy Alexander
Campaign Finance Compliance and Training
Specialist*

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.

<https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31935>



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Approval of Minutes

BOARD WORKING PAPERS
Secretary LeCruise

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The State Board of Elections (“the Board”) meeting was held by electronic communication on Tuesday, January 12, 2021. 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, and Jessica Bowman, Deputy Commissioner, represented the Department of Elections (“ELECT”) and Carol Lewis represented the Office of the Attorney General (“OAG”). Chairman Brink called the meeting to order at 1:01 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.

This meeting was conducted consistent with the requirements for electronic meetings by public bodies set forth in Items 4-0.01 of House Bills 29 and 30, as passed by the General Assembly (“GA”) and signed by the Governor in April of this year. The purpose of the meeting is to transact the statutorily required business of the Board. Chairman Brink stated that the Board would receive public comments on agenda items prior to its action on that item. An open public comment period would be offered prior to adjournment.

22 The first item of business was the approval of the minutes from previous Board
23 meetings, presented by Secretary LeCruise. Vice Chair O’Bannon moved *that the Board*
24 *approve the minutes from the November 16, 2020 Board meeting.* Chairman Brink
25 seconded the motion and the motion passed unanimously. A roll call vote was taken:

26 Chairman Brink – Aye

27 Vice Chair O’Bannon – Aye

28 Secretary LeCruise – Aye

29 Vice Chair O’Bannon moved *that the Board approve the minutes from the November 18,*
30 *2020 Board meeting.* Chairman Brink seconded the motion and the motion passed
31 unanimously. A roll call vote was taken:

32 Chairman Brink – Aye

33 Vice Chair O’Bannon – Aye

34 Secretary LeCruise – Aye

35 Vice Chair O’Bannon moved *that the Board approve the minutes from the December 7,*
36 *2020 Board meeting.* Chairman Brink seconded the motion and the motion passed
37 unanimously. A roll call vote was taken:

38 Chairman Brink – Aye

39 Vice Chair O’Bannon – Aye

40 Secretary LeCruise – Aye

41 Vice Chair O'Bannon moved *that the Board approve the minutes from the December 16,*
42 *2020 Board meeting.* Chairman Brink seconded the motion and the motion passed
43 unanimously. A roll call vote was taken:

44 Chairman Brink – Aye

45 Vice Chair O'Bannon – Aye

46 Secretary LeCruise – Aye

47 The next item of business was the Commissioner's Report, presented by
48 Commissioner Piper. The Commissioner stated that the 2021 Election year would be
49 another extensive election year for Virginia. Commissioner Piper informed the Board that
50 a Special Election was held in January and another will be held in February. The
51 Commissioner stated that due to Senator Chafin's passing, a Special Election will be held
52 for the 38th district along with a Primary and General Election. Commissioner Piper
53 informed the Board that the Special Election went smoothly on January 5, 2021, and no
54 incidents were reported to ELECT.

55 The Commissioner explained that the Post-Election Report would soon be
56 provided to the Board and the public. Commissioner Piper advised that this would give
57 the public time to review the report and provide any questions at the February State
58 Board of Elections meeting. The Commissioner stated that the Board will be introducing
59 two additional members at the February Board Meeting. Commissioner Piper informed
60 the Board that in pursuant to Virginia Code § 24.2-671.1, ELECT will be participating in

61 its 1st Statewide Risk Limiting Audit (“RLA”) from the November 2020 Presidential
62 Election.

63 The Commissioner stated that this would allow election administrators to
64 demonstrate the integrity and security measures used in the Commonwealth.
65 Commissioner Piper explained that RLA is a form of post-election audit that provides a
66 statistical level of confidence that an outcome of an election is accurate. RLAs are
67 conducted by selecting a specific number of ballots and tallying the results for a specific
68 contest. The results are compared to the reporting outcome of the contest to confirm that
69 the reported outcome was accurate. The Commissioner stated that ELECT has been
70 working with Voting Works, the subject matter experts in risk limiting audits, to develop
71 recommendations and best practices in Virginia over the past two years.

72 Commissioner Piper informed the Board that 34 localities across the state have
73 previously participated in the RLA pilot. The Commissioner explained that the RLA
74 being conducted will not take much time because the Presidential Election results are not
75 close. Therefore, fewer ballots will need to be checked to mathematically confirm the
76 outcome of the election. Commissioner Piper informed the Board that ELECT estimates
77 using no more than 1400 hundred ballots statewide to perform the RLA of the 2020
78 General Elections. The Commissioner stated that smaller counties will only need to pull
79 around 20 ballots, and larger counties will not view more than 100 ballots.

80 Commissioner Piper informed the Board that all RLA meetings, both locally and
81 statewide, will be open to the public. The Commissioner stated that during the week of

82 February 1st, there would be an introduction to the audit process, including estimates of
83 the time requirement and request for identifying ARLO. ARLO is a software developed
84 by Voting Works for performing RLA, an audit conduct timeline. Commissioner Piper
85 informed the Board that the RLA audits will begin on February 16th. The Commissioner
86 stated that the RLA training will be conducted virtually, and localities would be provided
87 additional information on how to perform the different steps of the RLA. Commissioner
88 Piper informed the Board that Voting Works and ELECT staff would be available for
89 individual assistance to each locality.

90 The Commissioner and Chairman Brink expressed appreciation to the GRs,
91 Electoral Board members, staff, and the thousands of Election Officers across the
92 Commonwealth. Vice Chair O'Bannon asked Commissioner Piper if an RLA was
93 necessary since they have conducted targeting RLA pilots in the past. Commissioner
94 Piper stated that ELECT has done pilot audits in the past, but it is a unique opportunity to
95 do an audit statewide from the Presidential Election.

96 The next item of business was the Certification of the January 5, 2021 Special
97 Election presented by Paul Saunders, Elections Administration Supervisor. *This report is*
98 *in the Working Papers for the January 12, 2021 meeting.* Vice Chair O'Bannon moved
99 *after reviewing the Abstract of Votes Cast in the January 5, 2021, Special Elections for*
100 *Member, House of Delegates District 2 and Member, House of Delegates District 90, I*
101 *move that the Board certify the results as presented and declare the winners.* Secretary
102 LeCruise seconded the motion and the motion passed unanimously. A roll call vote was
103 taken:

104 Chairman Brink – Aye

105 Vice Chair O’Bannon – Aye

106 Secretary LeCruise – Aye

107 The last item of business was the appointment of a new member to the Advisory
108 Review Workgroup (“the Workgroup”) presented by Chairman Brink. Chairman Brink
109 stated the Workgroup was established in October of 2019, but due to COVID-19, the
110 Workgroup’s duties were postponed. The Chairman informed the Board that a position to
111 be recommended by the Voter Registrar Associations of Virginia (“VRAV”) opened up
112 during that time. Chairman Brink stated that VRAV recommended Jason Corwin,
113 Mecklenburg County, VA, General Registrar. The Chairman advised that the Board
114 would be naming a Citizen Member to succeed the late former Lieutenant Governor John
115 Hager.

116 Chairman Brink opened the floor to public comment. Vice Chair O’Bannon
117 moved *that the Board approve the recommended appointee*. Secretary LeCruise seconded
118 the motion and the motion passed unanimously. A roll call vote was taken:

119 Chairman Brink – Aye

120 Vice Chair O’Bannon – Aye

121 Secretary LeCruise – Aye

122 Chairman Brink stated at the December 16, 2020 Board meeting the Board voted
123 to extend the deadline for candidates in the January 5, 2020 Special Election to file

124 certain forms pursuant to Virginia Code § 24.2-503. He explained that in the two years
125 the Board has been in office, they have been forced repeatedly to chose between granting
126 an extension of the filing deadline or denying the candidate a place on the ballot under
127 Virginia Code § 24.2-504. The Chairman stated that he is unwilling for the Board to be
128 put in this unfair and inappropriate position in the future. Chairman Brink informed the
129 Board that last week he wrote to the Chairs of the Republican and Democratic parties
130 requesting help to ensure all candidates are aware of the filing deadlines and the
131 consequences for failure to meet those deadlines. The Chairman stated that his purpose is
132 to put all potential candidates on notice and that there is no assurance that the Board will
133 exercise its discretion to extend the filing deadline in the future.

134 Chairman Brink opened the floor for public comment. No public comment was
135 given.

136 Vice Chair O'Bannon moved *to adjourn the meeting*. Chairman Brink seconded
137 the motion and the motion passed unanimously. A roll call vote was taken:

138 Chairman Brink – Aye

139 Vice Chair O'Bannon – Aye

140 Secretary LeCruise – Aye

141 The meeting adjourned at approximately 1:28 P.M.

142

143

State Board of Elections
FINAL Meeting Minutes
Tuesday, January 12, 2021

144 _____

145 Chairman

146

147 _____

148 Vice-Chairman

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150 _____

151 Secretary

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★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Commissioner's Report

BOARD WORKING PAPERS
Christopher Piper
Commissioner



★ VIRGINIA ★
STATE BOARD *of* ELECTIONS

Post-Election Report

BOARD WORKING PAPERS
Christopher E. Piper
Commissioner



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

November 3, 2020
Post-Election Report

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November 3, 2020 Post-Election Report

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Introduction

Prior to the turn of the calendar on January 1, 2020, election officials across the Commonwealth of Virginia had predicted elections in 2020 would be unlike any other election year. Years in which there is a presidential election are always the most visible, have the highest voter interest and turnout, and experience the greatest scrutiny of the election administration process. Election officials across the country were preparing to handle an election focused on election security concerns after the 2016 election saw breaches in election systems from foreign nationals. Couple that with increased political polarization and a global health pandemic, and you begin to put together a recipe for an election year that was unprecedented in its challenges.

The General Assembly passed numerous laws in both the Regular Session early in the year and in a Special Session in August that resulted in several significant changes to the administration of this election. Changes included no-excuse absentee voting and voter identification as well as eliminating the requirement for where a hospital is located in order to qualify to vote an emergency absentee ballot. Throughout this process, the Department of Elections (ELECT) worked in partnership with general registrars and Electoral Board members to develop and communicate new policies, guidance, and procedures for each enacted change. In addition to new procedures mandated by the General Assembly, the Virginia State Board of Elections (SBE) promulgated new regulations that also impacted election administration. These new regulations also required policy, guidance, and procedural changes.

Along with these changes, court actions required additional alterations to the election administration process. Plaintiffs were successful in actions that lowered the number of petition signatures required to qualify as a candidate, delayed the deadline for parties to certify nominees for certain offices, eliminated the witness signature requirement on absentee ballots, and imposed several other requirements that are detailed in this report.

Implementation of these changes required communication and cooperation among the stakeholders who comprise the Virginia elections community. In some cases, ELECT was able to work with local election officials to find solutions. For others, the solutions came directly from the field.

This report seeks to provide a broad picture of the 2020 General Election: both the achievements and the shortfalls. Noting the changes required and challenges to overcome for general registrars, Electoral Boards, the SBE, and ELECT helps set the tone and context of this report. In the face of these challenges, Virginia election officials conducted the most safe, secure, and successful election in the history of the Commonwealth on November 3, 2020. While this report seeks to paint the picture and tell the story of the 2020 General Election, no amount of words on paper can begin to fully explain the twists and turns, roadblocks and detours, and sheer level of commitment and willpower demonstrated by Virginia election officials. Citizens in the Commonwealth and across the nation owe them a great debt of gratitude for their sacrifice and dedication to fair and free elections.

Law and Regulation Changes

2020 Regular Session of the General Assembly

The General Assembly mandated a number of changes to elections administration during the 2020 Regular Session that were subsequently signed into law by Governor Northam. Bills that directly impacted voters included changes to absentee voting, voter registration, voter identification, and processes at polling places. Other bills had a less direct impact on voters and included changes to campaign finance reporting requirements, candidate qualifications, officers of election, and Electoral Board members. This report will not discuss all of the new laws effective for the 2020 General Election, but will provide explanations of some of the more impactful legislation, the effect on voters, local election officials, and the Department of Elections by providing a summary of the bill, efforts required to effectuate the change, and lessons learned for future elections.

Absentee Voting Bills

House Bill 1/Senate Bill 111 – These bills eliminated the state’s requirement that a voter provide an excuse when voting absentee by mail or in person. These bills proved to be prescient in light of the COVID-19 pandemic. Eliminating the excuse necessary for absentee voting provided voters with more opportunities to cast their ballot on their own timeline and in the way that was most suitable for them. Any voter can now request and receive their ballot in the mail, go to the general registrar’s office or satellite office, or vote at their precinct’s polling place on Election Day.

General registrars, Electoral Board members, and ELECT worked cooperatively to issue guidance, gather experiential data from other states, and draft sample plans to help localities prepare for this change. Conversations centered on estimates of by-mail and in-person absentee (hereafter referred to as “early voting”) turnout, the number of additional early voting locations that may be necessary to properly service a locality’s voters, and procedures and staff necessary to manage the increased workload of preparing ballots to be mailed to voters.

Efforts to prepare for this process initially predicted that more voters would take advantage of early voting rather than absentee by mail. However, the COVID-19 pandemic shifted those expectations because many voters saw voting absentee by mail as a safer way to cast their ballot. Some localities struggled with the number of approved absentee by mail requests, and, during the first few weeks of the 45-day absentee voting period, could not process fast enough to keep to the requirement in Va. Code § 24.2-612 that a ballot be mailed to a voter within three (3) days of receiving a completed and valid application. After the first two weeks of absentee voting, localities had caught up to demand and were processing applications in a timelier manner.

HB 240 – This change in law allows any voter who is eligible to vote absentee by mail to be placed on the annual absentee voter list, which allows voters to receive by mail all ballots for all elections in the calendar year in which they are eligible to vote.

Prior to the change in law, only individuals with disabling medical conditions could join the annual absentee voter list. These voters had to submit personal medical information as well as a signed physician’s statement in order to join the annual list. The new law opens the annual list to all eligible Virginia voters, which means that the vast majority of Virginians need submit only one absentee ballot application to receive absentee ballots for each election in a calendar year. This may reduce the number of applications submitted by voters and received by registrars significantly as time goes on and more voters join the list. At the end of each calendar year, voters are sent a reminder to re-apply for the annual list for the next calendar year. This bill is transitional in that, effective July 1, 2021, the annual absentee list changes to a permanent absentee list. All eligible voters will be able to receive ballots for all elections without reapplying yearly. This will reduce even further the number of applications submitted by voters that must be processed by general registrars.

ELECT worked with general registrars and staff to develop a new absentee ballot application that reflected the changes made in HB 1/SB 111 and in HB 240. By combining the absentee ballot application with the annual absentee ballot application (formerly separate applications), general registrars saw an increase in the number of voters applying to be on the annual list.

SB 617 – This bill requires that if a locality chooses to utilize satellite locations for early voting, local governing bodies must establish and fund them in the same manner as precinct polling places. Prior to enactment of this law, determination of satellite locations was left to the decision of the local Electoral Board.

This change helped to ensure that voters had input into the choices for satellite locations in localities that chose to operate them. ELECT set up a process for localities to provide locations, hours of operation, security compliance documentation, and copies of the required ordinances for any satellite location created by a locality. This allowed ELECT to track the establishment of satellite locations and to post that information on ELECT’s website as required by law.

November 3, 2020 Post-Election Report

HB 238 – This bill changed the deadline for a voter to return an absentee ballot by mail or express delivery service. Prior to the enactment of this law, all absentee ballots (regardless of return method) had to be received by the general registrar no later than 7:00 p.m. on Election Day. With the change, ballots that are postmarked (or otherwise indicated by the express delivery service) by Election Day are permitted to be counted as long as they are received by 12:00 p.m., noon, on the third day after Election Day.

In the past, general registrars and Electoral Boards were required to have all ballots counted by the time the polls closed on Election Day. Because of the change to the ballot receipt deadline, many localities waited until after noon on Friday, November 6, 2020 to process and count any absentee ballots received after Election Day. This law change assured additional time for absentee ballots cast prior to or on Election Day to be counted, but does mean that the conclusion of some localities' canvass was delayed.

HB 239 – This bill changed the deadline for a voter to request an absentee ballot by mail from seven (7) days before Election Day to eleven (11) days before Election Day. This gave additional time for voters who requested absentee ballots by the deadline to receive and return those ballots and have them counted toward the election result.

Both ELECT and general registrars worked to make sure voters understood that the deadline to request an absentee ballot had changed. Through regular and social media and partnerships with outside groups, voters received consistent information regarding the deadline.

This change only minimally affected the administration of the November 2020 General Election. In addition to public education, training was provided to local election offices and changes were made to the Virginia Election and Registration Information System (VERIS) to ensure compliance and understanding of the change.

Voter Identification Bills

HB 19/SB 65 – The changes from these identical bills returned Virginia's law to language similar to that in the Code prior to the 2012 changes implementing photographic identification for voters. The changes included accepting voter registration documents, a utility bill, bank statement, government check, paycheck, or other government document containing the name and address of the voter. In the past, these documents were not acceptable because they did not contain a photograph of the voter. If a voter is not able to produce one of these documents or another form of acceptable identification (including driver's license or DMV identification card, employee identification card, etc.), the voter can sign a statement, subject to felony penalties, confirming their identification. Any voter who does not have an acceptable identification or refuses to sign the statement can still vote a provisional ballot and provide the required identification or statement by noon on the third day after the election.

ELECT staff worked with general registrars and staff as well as the Office of the Attorney General to develop the statement for voters to sign, if necessary. ELECT also worked with local election officials to make changes to voter information provided both at local elections offices and at polling places to ensure voters were aware of the changes. Electoral Boards and general registrars changed the training provided to officers of election (especially those working voter check-in stations) to ensure those officers knew of the changes and how to implement them.

Changes to Procedures in Polling Places

HB 1402 – This bill removed the requirement that an officer of election repeat a voter's address in a voice audible to party and candidate representatives. In order to implement this bill, ELECT and local Electoral Boards and general registrars updated their respective training materials provided to officers of election.

HB 1421 – Prior to enactment of this law, any locality using an electronic poll book (EPB) had the option to also provide a paper poll book to each polling place as a backup. This bill requires all localities to provide a paper poll book to each precinct. While reverting to backup paper pollbooks as a result of EPB malfunction or error was ultimately not necessary on Election Day this year, the law was enacted in response to previous elections where electronic pollbooks had failed and the lack of a paper pollbook backup caused an impediment for voters.

2020 First Special Session of the General Assembly

In late August, the General Assembly met for a Special Session. On September 4, 2020, the General Assembly passed and the Governor signed into law SB 5120, an amendment to the budget with provisions directly affecting the administration of the November 2020 General and Special Elections. The changes from this bill only affected the November 2020 General and Special Elections. In order for these changes to be permanent, the General Assembly will need to pass these provisions as amendments to the Code of Virginia rather than as amendments to the budget. The SBE, ELECT, Electoral Boards, and general registrars all worked to implement these provisions prior to the beginning of absentee voting on September 18th.

The first change enacted involved allowing voters who had returned an absentee ballot that contained an error on the envelope that would prevent the ballot from being counted, to correct the error so the ballot could be counted. In the vernacular, the Virginia elections community called this the “cure process.” General registrars were required to contact a voter within three days of discovering the error as long as that ballot was received by October 31 – the last Saturday before Election Day. Voters were offered the opportunity to cure the ballot by either coming to the office to correct the error or having a new ballot sent to them. ELECT worked with the Office of Attorney General to develop and distribute an affidavit voters could use to confirm their ballot envelope if the error was that the voter had neglected to sign.

The second provision permitted drop-off locations for absentee ballots. As the COVID-19 pandemic continued and concerns arose about the ability of the United States Postal Service to deliver election mail on time, the General Assembly provided a method for voters to return their absentee ballots that did not involve mailing. By requiring drop-off locations at all early voting sites and at polling places, and authorizing additional options for secure drop boxes at the discretion of the general registrar, the General Assembly provided additional options for voters to return their absentee ballot. ELECT was required to set standards for the establishment and operation of drop-off locations, including necessary security standards. These standards were issued and communicated to the general registrars and Electoral Boards within a few days of enactment of the legislation. (Appendix A)

The third provision in SB 5120 required general registrars to provide pre-paid postage on absentee ballot return envelopes. The General Assembly set aside \$2,000,000 to reimburse localities for the costs of return postage after providing appropriate documentation. Localities met this requirement in a variety of ways. Some counties and cities utilized an existing Business Reply Mail account. Others provided the return postage by using vendor equipment to meter the envelopes before mailing them to voters. Still others purchased United States Postal Service (USPS) stamps and affixed one to each envelope. To date, ELECT has received reimbursement requests totaling just over \$937,600 from 126 of the 133 localities.

Finally, the General Assembly eliminated the requirement that a witness sign the absentee ballot envelope. A consent decree in *League of Women Voters of Virginia v. Virginia State Board of Elections* had already removed the witness signature requirement for absentee voting; this change by the General Assembly gave legislative approval to eliminate the requirement for the November 2020 General and Special Elections.

State Board of Elections Regulations

In addition to new laws passed by the General Assembly and signed by the Governor, SBE repealed, amended, or adopted six (6) new regulations in response to legislative changes, needs of voters, or concerns raised by the elections community.

SBE repealed 1VAC20-40-90 which related to requirements for voters to request a voter identification card. HB 19/SB 65 repealed language in the law authorizing ELECT and general registrars to provide identification cards, effective July 1, 2020. Therefore, the legislation rendered this particular regulation obsolete.

SBE amended 1VAC20-40-10 relating to the definition of “valid” for the purposes of identification provided by a voter. This change was made necessary by legislative changes in HB 19/SB 65.

November 3, 2020 Post-Election Report

In an effort to adopt some nationwide “best practices” for absentee voting as requirements in Virginia, SBE adopted a new regulation, 1VAC20-70-70. The new regulation required two elements on absentee ballot envelopes: 1) the USPS “Election Mail” logo on all envelopes, and 2) Intelligent Mail barcode (IMb) tracking on all outgoing and return absentee ballots. Many localities were already following these best practices, but in light of the increased interest in voters utilizing absentee by mail ballots made it imperative to require all localities to adopt these best practices. In conversations with representatives from the USPS, they indicated that they had been directed by their leadership to prioritize election mail. USPS further indicated that requiring the official Election Mail logo on all envelopes, it made it easier for USPS equipment and employees to identify absentee mail and prioritize it. By adding the USPS’ IMb to all absentee ballot envelopes, voters, local election officials, the USPS, and ELECT were able to track ballots being mailed to voters and mailed from the voter back to the general registrar.

SBE also adopted an amendment to 1VAC20-70-20 relating to material omissions in absentee voting. As discussed previously, the General Assembly extended the deadline for an absentee ballot to be received until noon on the third day after the election. The amendment to the regulation created clarity and uniformity for general registrars in situations where a ballot was received by mail after Election Day, but the postmark was missing or illegible. The Board’s intent was to avoid disenfranchising individuals who had mailed their ballot on Election Day or earlier, but the USPS either failed to postmark it or the postmark was illegible. This particular amendment was challenged in court in *Reed v. Virginia State Board of Elections*. The resolution is detailed in Court Actions section of this report.

SBE adopted new regulation 1VAC20-60-70 requiring all electronic poll books (EPBs) to undergo logic and accuracy testing prior to their use in an election. In previous elections, ELECT had seen issues reported by voters and localities in several areas around the Commonwealth concerning poll books either malfunctioning or containing incorrect data when deployed for use on Election Day. SBE’s action through this regulation ensured that EPBs were tested prior to use on Election Day. ELECT received no notification of issues related to poll books containing incorrect data for the November elections.

Finally, the SBE adopted amendments to 1VAC20-60-50 in response to concerns brought forward by general registrars. Due to changes in processing and volume of absentee and early voting ballots, general registrars were concerned about the regulation governing the when, how, and who for emptying full optical scan voting equipment ballot bins and storing those counted ballots. The amendments provided necessary clarity and uniformity in the process.

Court Actions

The SBE, ELECT, and the Office of the Attorney General worked together to address an unprecedented number of court actions directly related to the administration of the 2020 General Election.

Below is a table prepared by the Office of the Attorney General with the case name, number, and a brief summary of the ones that most directly affected the administration of the election. In addition to these cases, there were an additional six (6) cases in which the plaintiff was unsuccessful. Because these cases did not affect administration of the election, they are not detailed here. In the interest of brevity, copies of the court orders for the cases listed in the table are not included as part of this report, but are available for review.

2020 Election Litigation

Case Name	Court	Case Number	Case Summary
<i>Alberto v. City of Roanoke, et al.</i>	Roanoke City Circuit Court	CL20-997	Two candidates for City Council in Roanoke sought relief from the petition signature requirement (from 125 to 50) and due date (from June 9 to June 23). The Court ordered a reduction in the petition signature requirement for

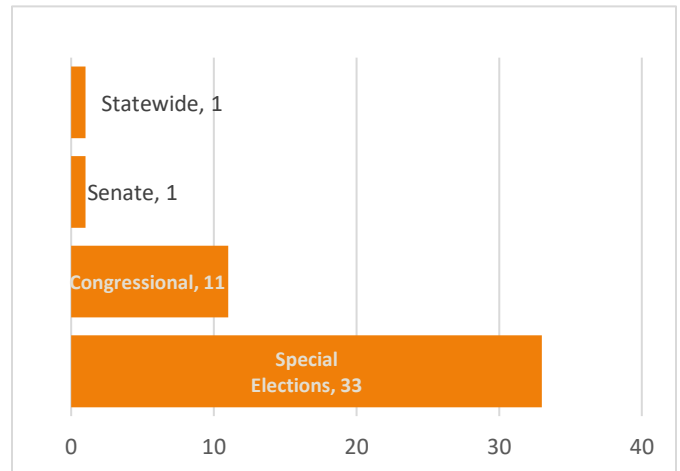
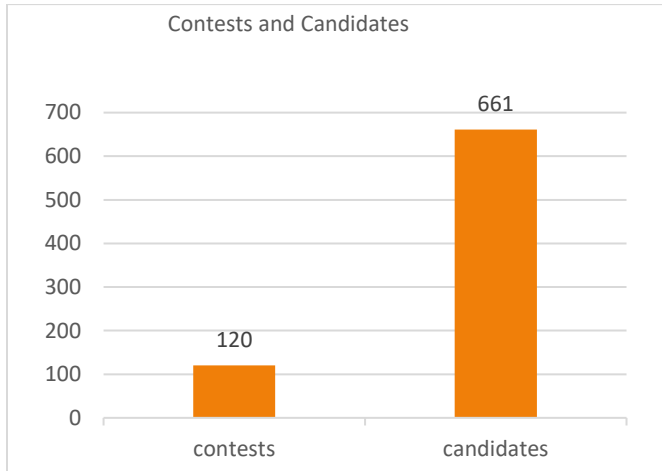
Case Name	Court	Case Number	Case Summary
			Roanoke City Council candidates to 50 signatures and extended the petition signature filing deadline to June 23.
<i>Constitution Party of Virginia, et al. v. State Board of Elections (SBE), et al.</i>	Eastern District of Virginia	3:20-CV-00349	Third-party candidates for Congress, vice president, and president sought to remove the petition signature requirement for independent candidates and to extend the relevant filing deadlines for such candidates. The Court ordered that, with respect to the named Plaintiffs for the November 2020 election, (1) the filing deadline for congressional candidates was extended to August 1; (2) the petition signature requirement for congressional candidates was lowered to 35% of the total required under Va. Code § 24.2-506; and (3) the petition signature requirement for presidential and vice-presidential candidates was lower to 50% of the total required under Va. Code § 24.2-506.
<i>DCCC v. State Board of Elections</i>	Richmond City Circuit Court	CL20-3251	Under Va. Code 24.2-503, the SBE granted an extension to file certain qualification forms to 8 candidates, including 1 Democrat. The Democratic Congressional Campaign Committee filed suit challenging the SBE's authority to do so. The Court granted SBE's demurrer and dismissed Plaintiffs' complaint.
<i>Gary, et al. v. Department of Elections (ELECT), et al.</i>	Eastern District of Virginia	1:20-CV-860	Plaintiff individuals and organizations sought accessible absentee voting for print disabled voters and compliance with the ADA. The Parties entered into a partial consent decree with respect to the November 2020 election that required ELECT to allow print disabled voters to request and electronically receive absentee ballots.
<i>Goldman, et al. v. SBE, et al.</i>	Richmond City Circuit Court	CL20-6468	Plaintiffs seek to reduce the petition signature requirement for certain candidates seeking to qualify for the June 2021 Democratic primary. As of January 4, Defendants have not been served.
<i>League of Women Voters of Virginia, et al. v. SBE, et al.</i>	Western District of Virginia	6:20-CV-00024	Plaintiffs League of Women Voters of Virginia (LWV) and various Virginia voters sought to enjoin the requirement that absentee voters complete their ballots in the presence of a witness and signed by the witness during the COVID-19 pandemic. The Parties entered into consent decrees with respect to the June 2020 primary, November 2020 election, and January 2021 special elections. A trial is scheduled for May 2020.
<i>Lean on Mclean v. ELECT, et al.</i>	Richmond City Circuit Court	CL20-1959	A potential candidate for mayor in Richmond, Tracey Mclean, sought a reduction in the number of petition signatures necessary to qualify as a candidate and/or to extend the deadline for such petition signatures to be submitted. The Court ordered a reduction in the required number of petition signatures for Richmond mayor 150 total and 10 in each district and extended the filing deadline to June 23.
<i>Omari Faulkner for Virginia, et</i>	Richmond City Circuit Court	CL20-1456	With respect to the 2020 U.S. Senate Republican primary, the Court ordered a reduction of the total number of petition signatures necessary to qualify as a candidate

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Case Name	Court	Case Number	Case Summary
<i>al. v. ELECT, et al.</i>			under Va. Code 24.2-521(1). The Court reduced the petition signature requirement to 3,500 statewide and 100 in each congressional district for Republican Senate candidates.
<i>Reed, et al. v. ELECT, et al.</i>	Frederick County Circuit Court	CL20-622	Plaintiffs challenged a SBE regulation relating to acceptance of ballots that are received after the close of polls. The Court ordered a preliminary injunction that, with respect to the November 2020 election: (1) If a ballot is received on Wednesday, Thursday, or Friday by noon with a postmark that indicates it was mailed on or before November 3, the ballot will be counted; (2) If a ballot is received on Wednesday, Thursday, or Friday by noon with no postmark but the Intelligent Mail barcode data indicates it was mailed by the voter on or before November 3, the ballot will be counted; (3) If a ballot is received on Wednesday, Thursday, or Friday by noon with an illegible postmark and the Intelligent Mail barcode was not scanned, the locality should look to the date the voter signed Envelope B (the statement under perjury). If the date is November 3 or earlier, the ballot will be counted. The judge indicated that this would be a sufficient indication that the ballot went through the mail system; and (4) If a ballot is received on Wednesday, Thursday, or Friday by noon with no postmark and the Intelligent Mail barcode was not scanned, the ballot will be invalid. The case remains open, and nothing further has been scheduled as of January 4.
<i>Richmond For All, et al. v. ELECT</i>	Richmond City Circuit Court	CL20-2432	Plaintiffs sought a 60% decrease of petition signature requirement and extension of time to file petitions. The Court granted an extension of the filing deadline to June 23 and decrease of signatures by 60% only as to Richmond City Council and Richmond Public School Board elections.
<i>Seventh Congressional District Republican Committee, et al. v. ELECT, et al.</i>	Richmond City Circuit Court	CL20-1640	The 7th CDRC sought an extension of time to nominate its candidate. The nominations deadline was June 9, but due to the pandemic, the 7th CDRC claims it is having difficulty finding a venue and insurance to satisfy this deadline. The Court extended the deadline for the 7th CDRC to July 28. The Republican Party of Virginia intervened, and the same relief was granted to all committees.
<i>Washington, et al. v. Trump, et al.</i>	Eastern District of Washington	1:20-CV-02295	The Commonwealth joined several states in challenging the actions by the Trump administration to make changes to the postal system in advance of the November 2020 election. While the case remains open, the Court entered an order on October 30, 2020 to ensure that election mail received priority and was timely processed.
<i>New Virginia Majority Education Fund, et al., v. ELECT, et al.</i>	Eastern District of Virginia	3:20-CV-801	The Citizen Portal experienced an outage as a result of a cut fiber line on the last day of voter registration before the November 2020 election. Plaintiffs sued to extend the voter registration deadline from October 13 to October 15.

Contests and Candidates

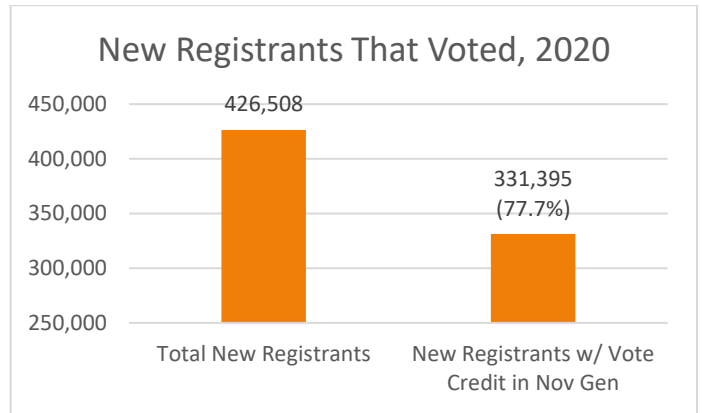
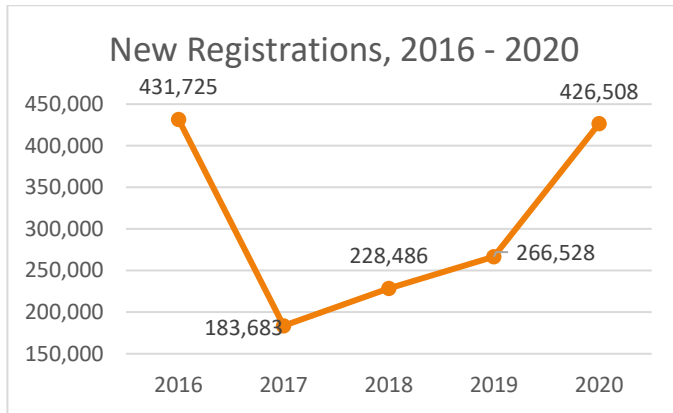
The November 2020 election included contests for electors for President and Vice President, a seat in the United States Senate, eleven (11) seats in the United States House of Representatives, one hundred seven (107) local regular or special election contests, two (2) statewide questions on amendments to the Constitution of Virginia, and 30 local referendum questions. In total, there were 661 candidates on ballots across the Commonwealth.



Participation

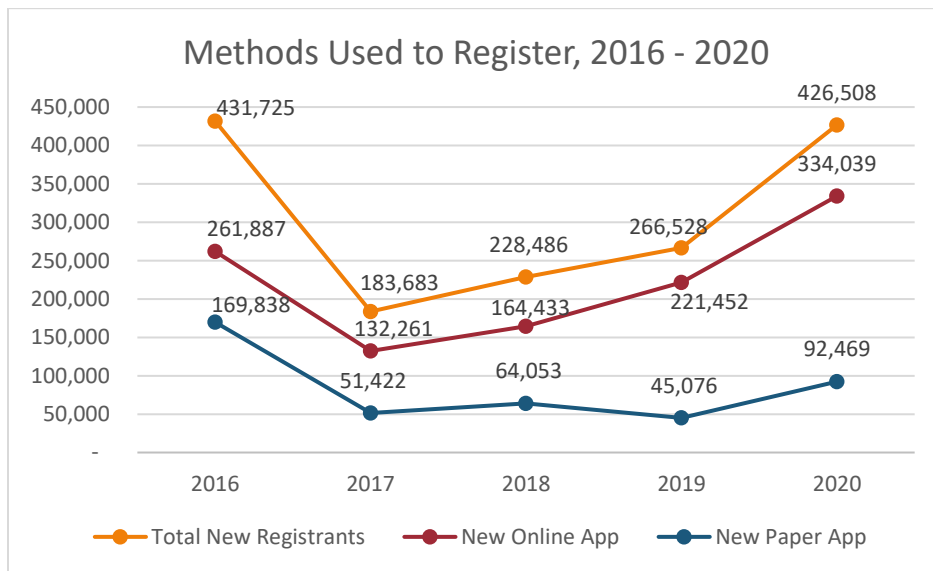
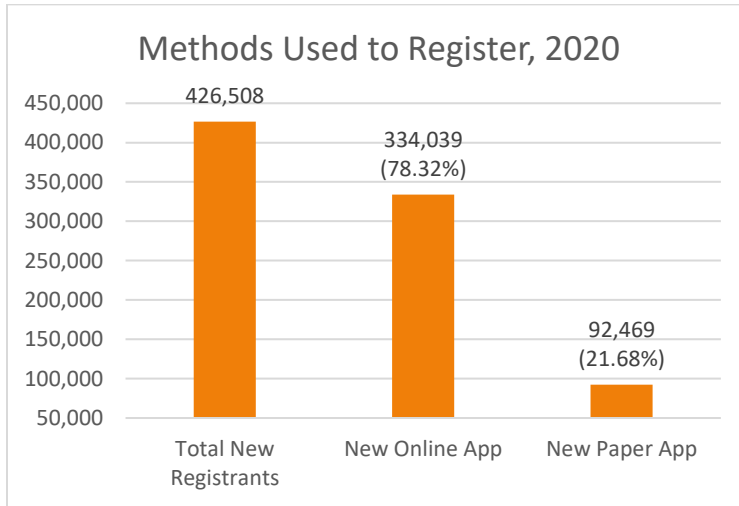
Newly Registered Voters

The Commonwealth saw a 1.2% decrease in the number of new voter registrations compared to the 2016 election cycle. In 2020, the total number of new registrations is slightly lower than in 2016. It is important to note that voter registration drives typically held by ELECT, local elections offices, and third party groups were severely limited due to the COVID-19 pandemic. Almost seventy eight percent (77.7%) of these newly registered voters cast a ballot in the 2020 General Election. For comparison, just over eighteen percent (18.25%) of newly registered voters cast a ballot in the 2019 General Election.



Method Used to Register

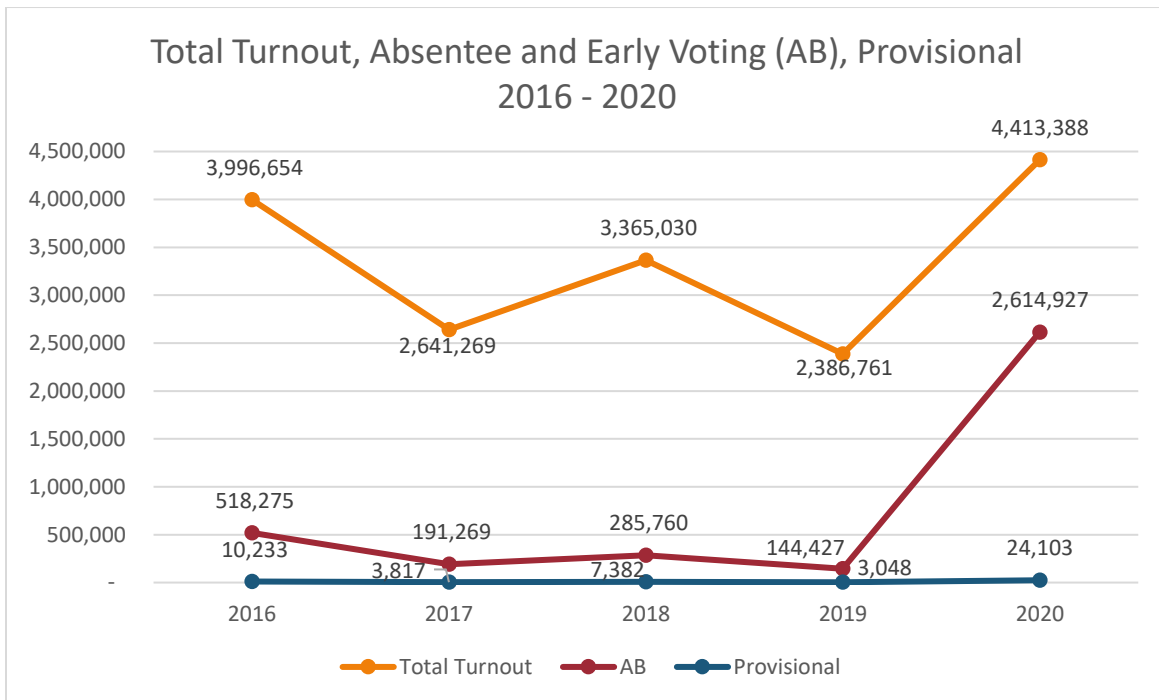
Since the implementation of electronic registration at the Department of Motor Vehicles (DMV) in 2016 and the online voter registration portal in 2014, the percentage of people registering to vote electronically instead of by paper application has continued to increase. However, the number of registrations submitted electronically as a percentage of the overall number went down in 2020 (78.32%) when compared to 2019 (83.09%). This is likely due in part to the DMV offices being closed for several months due to the pandemic and then reopening only on an appointment basis.



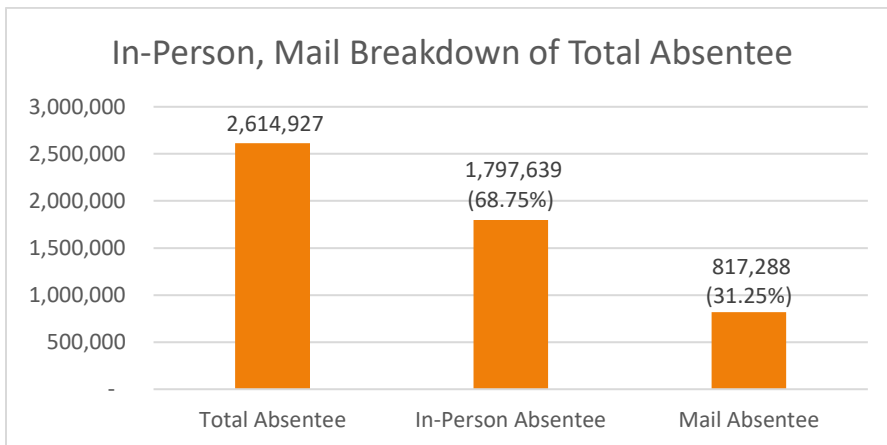
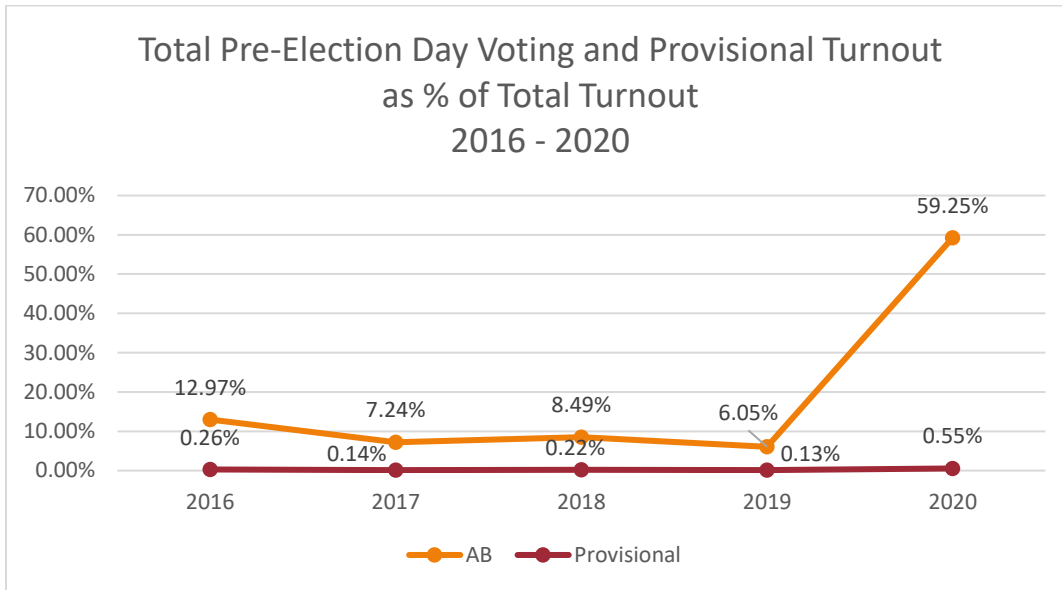
2020 November Turnout

Years in which a presidential election is on the ballot have always meant higher turnout than other election years. That trend held true again this year, and Virginia had the highest number of ballots cast in a presidential election in the history of the Commonwealth. Total voter turnout in 2020 was 4,413,388, or 74.85% of registered voters.

- 110.43% of 2016 (presidential),
- 167.09% of 2017,
- 131.15% of 2018, and
- 184.91% of 2019.



With the General Assembly’s changes to absentee voting and the COVID-19 pandemic, state and local election officials were prepared to see a higher number of both mailed absentee ballots and in-person absentee voting in 2020. The chart on the previous pages provides the actual numbers, and the chart below shows the percentage of combined mail and in-person absentee voting and provisional ballots cast as a portion of the overall vote total. In 2016, just under 13% of the ballots cast in the presidential election were absentee. In 2020, that number skyrocketed to just over 59% of the total votes cast. As expected, a combination of the changes to law and the pandemic drove this change. It will be important to continue to track this information in post-pandemic elections.



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A total of 2,982,667 Virginia voters requested an absentee ballot for the 2020 General Election. Of those requests, 2,814,378 voters (94.36%) returned their ballots (using the methods shown in the chart below) in time to be counted. Due to the provisions of HB 238, ballots mailed by Election Day were counted if they were received in the office of the general registrar by noon on Friday, November 6th. In total, the data shows 10,901 ballots were received between November 4th and noon on November 6th that were eligible to be counted.

Additional reporting by localities indicated a total of 194 ballots were received by the deadline but had no postmark and 36 had an illegible postmark.

Absentee returned on/before Election Day:

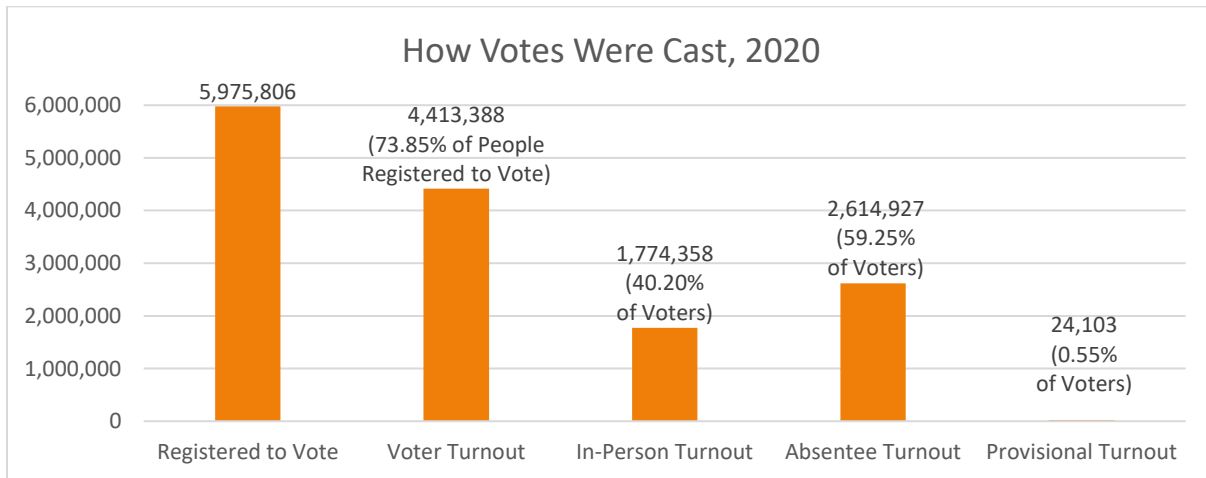
Return Method	Total	%
No type selected by GR	71	0.003%
Designated Representative	256	0.009%
In Person	1,860,063	66.091%
Mail	764,812	27.175%
Mail (Non-USPS)	189,176	6.722%
Total	2,814,378	100.000%

Absentee returned late and not counted:

Return Method	Total	%
Designated Representative	1	0.048%
Mail	2,038	98.788%
Mail (Non-USPS)	24	1.163%
Total	2,063	100.000%

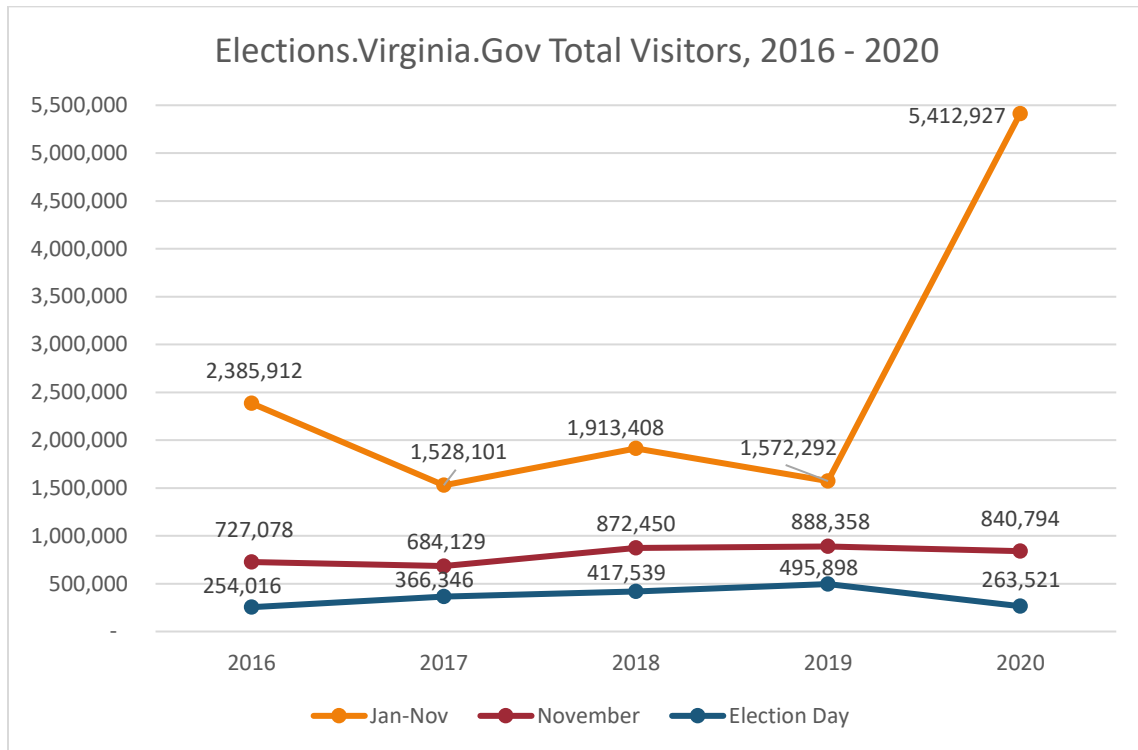
Voters and Votes Cast

Almost seventy-four percent (74.85%) of Virginia’s active registered voters cast a ballot in the November General Election. Of those voting, 40.2% cast their ballot in-person in a precinct on Election Day, 59.25% cast absentee ballots or voted early before Election Day, and 0.55% voted provisional.



Web Traffic

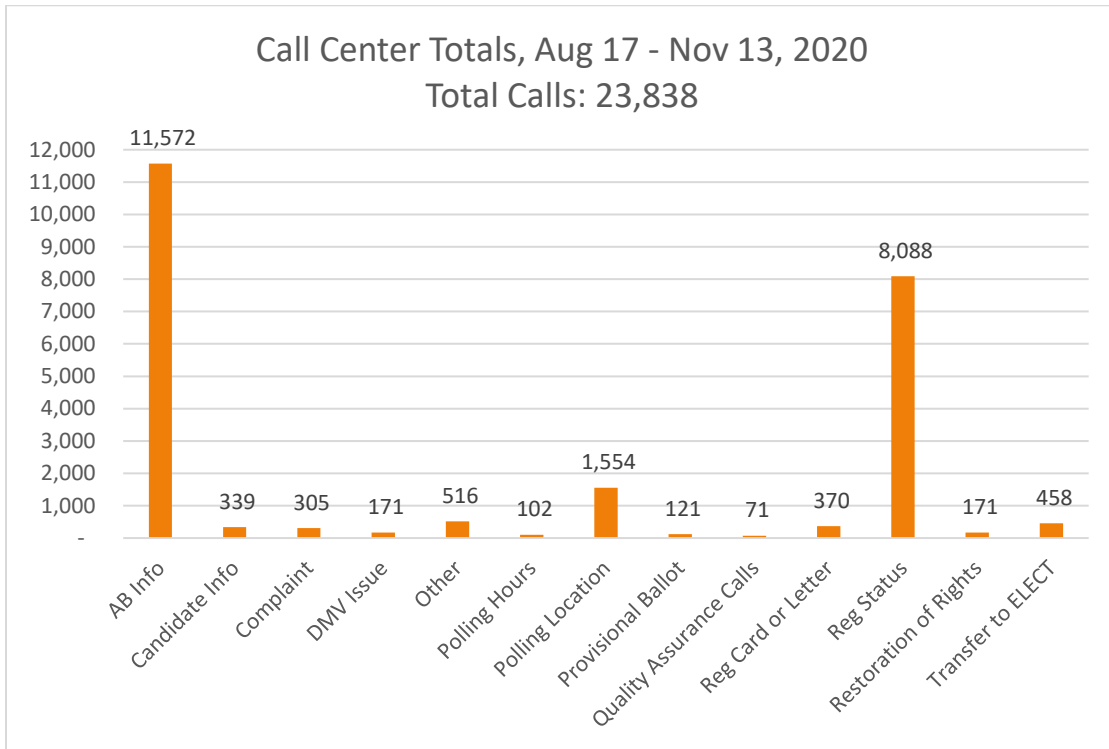
In consistent fashion, ELECT’s website had more traffic in 2020 than in previous election years, including the 2016 election. In the 2019 Post-Election Report, we predicted that website traffic would increase exponentially in 2020 because of the presidential election. That prediction proved true as visits to the website more than doubled the visits in 2016 and were nearly 350% higher than in 2019.



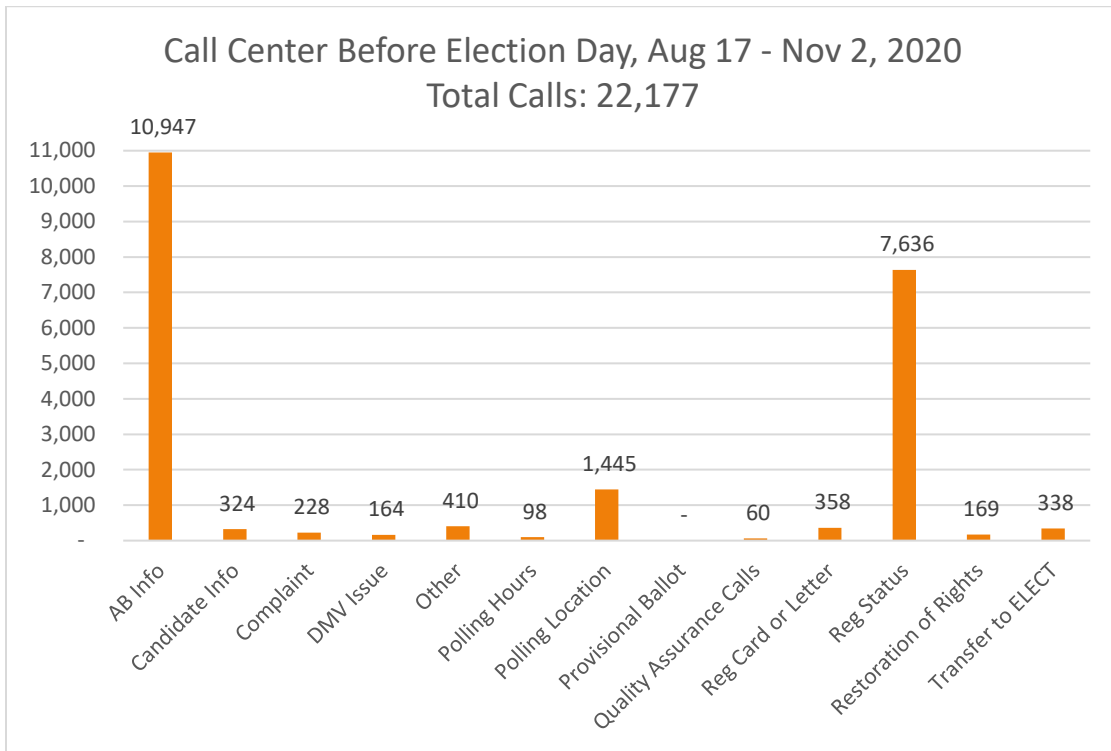
Call Center and Online Complaints

Call Center

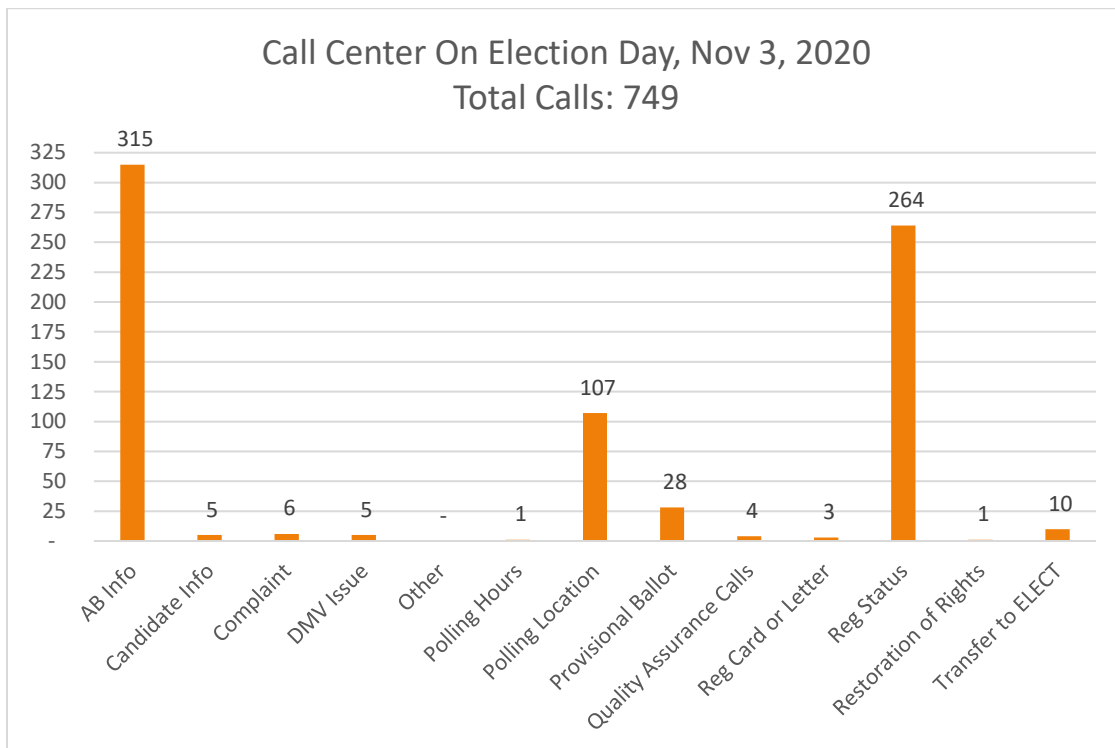
In addition to providing information to voters, media, and the general public through the website, ELECT receives a large number of telephone calls. These calls allow ELECT to interact directly with constituents to provide information and services. ELECT employed a professional call center from August 17, 2020 through November 13, 2020 in an 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 ELECT. The majority of the calls received by ELECT were questions about absentee ballots and voter registration status.



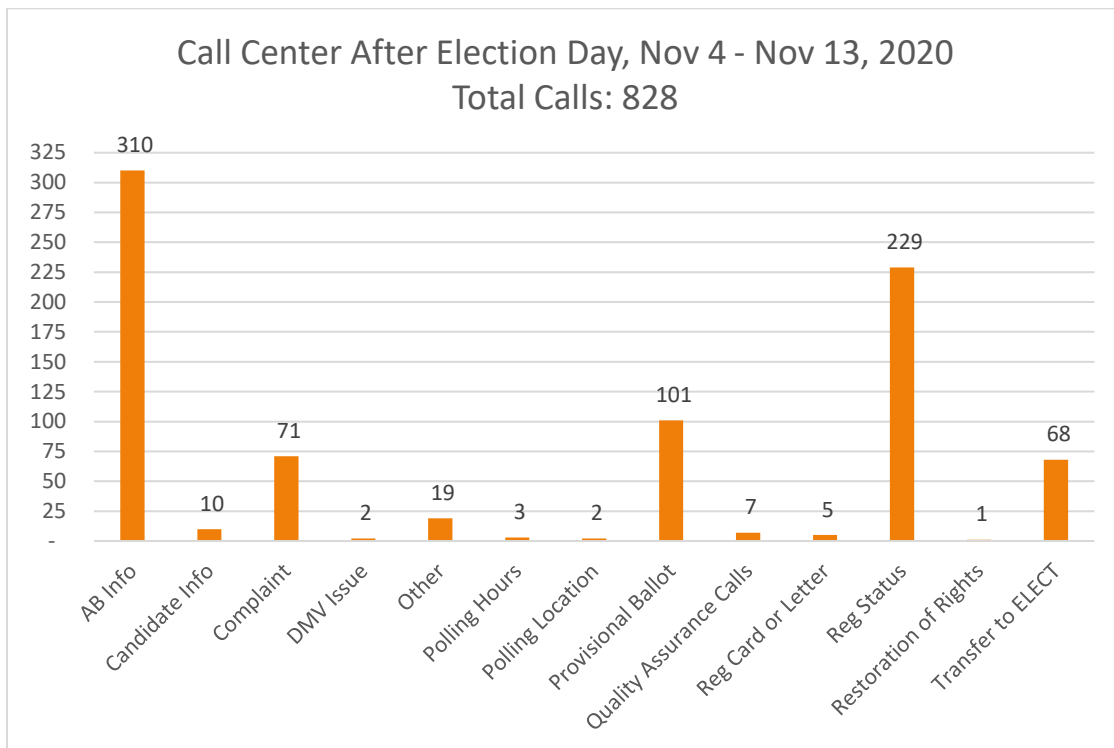
Aug 17 - Nov 13	Avg Time
Avg Handle Time	3:32 min
Avg Talk Time	3:25 min
Avg Call Wait	1 sec
Avg Queue Callback Wait Time	9 sec
Avg VM Callback Wait Time	20 sec



Before ED, Aug 17 - Nov 2	Avg Time
Avg Handle Time	3:03 min
Avg Talk Time	2:59 min
Avg Call Wait	1 sec
Avg Queue Callback Wait Time	10 sec
Avg VM Callback Wait Time	9 sec



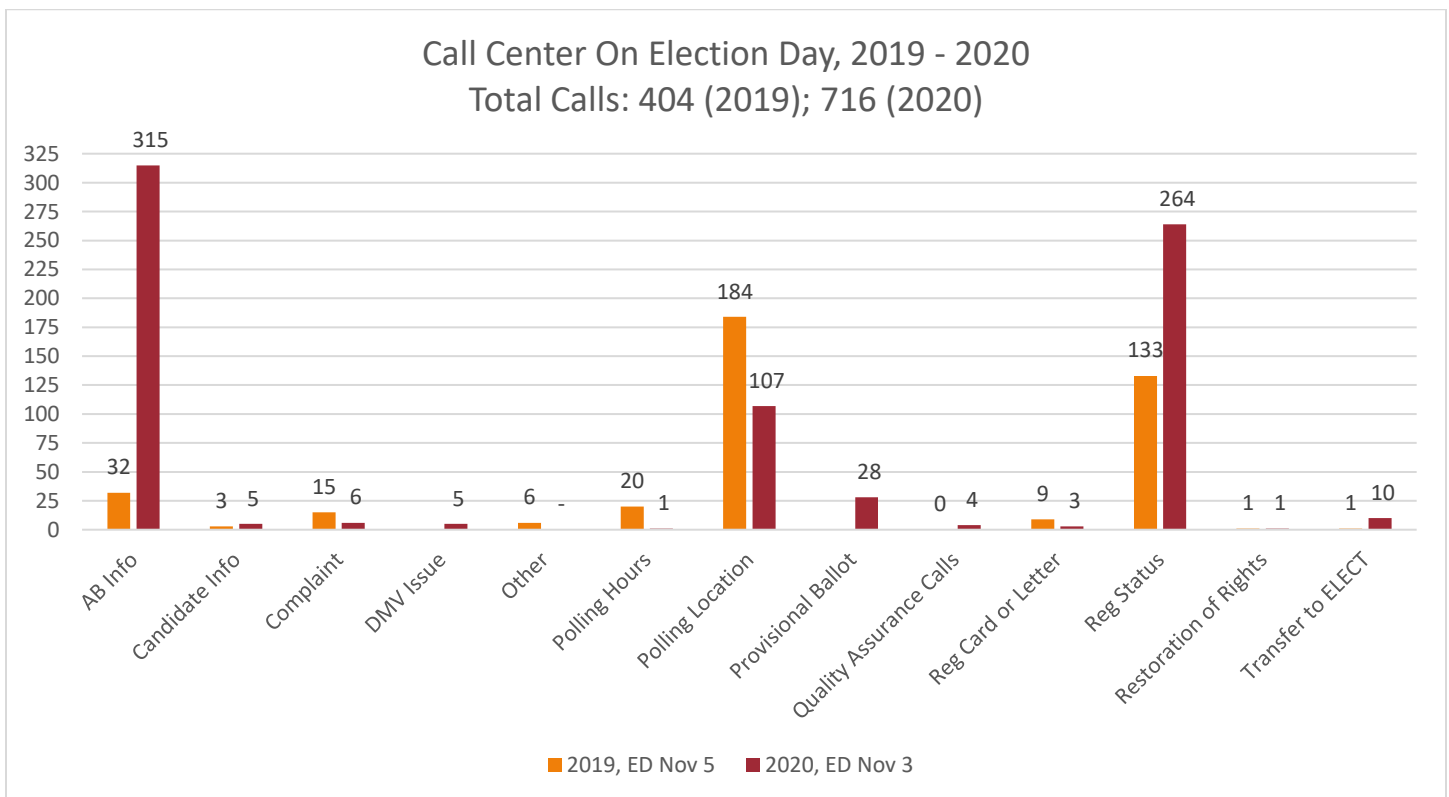
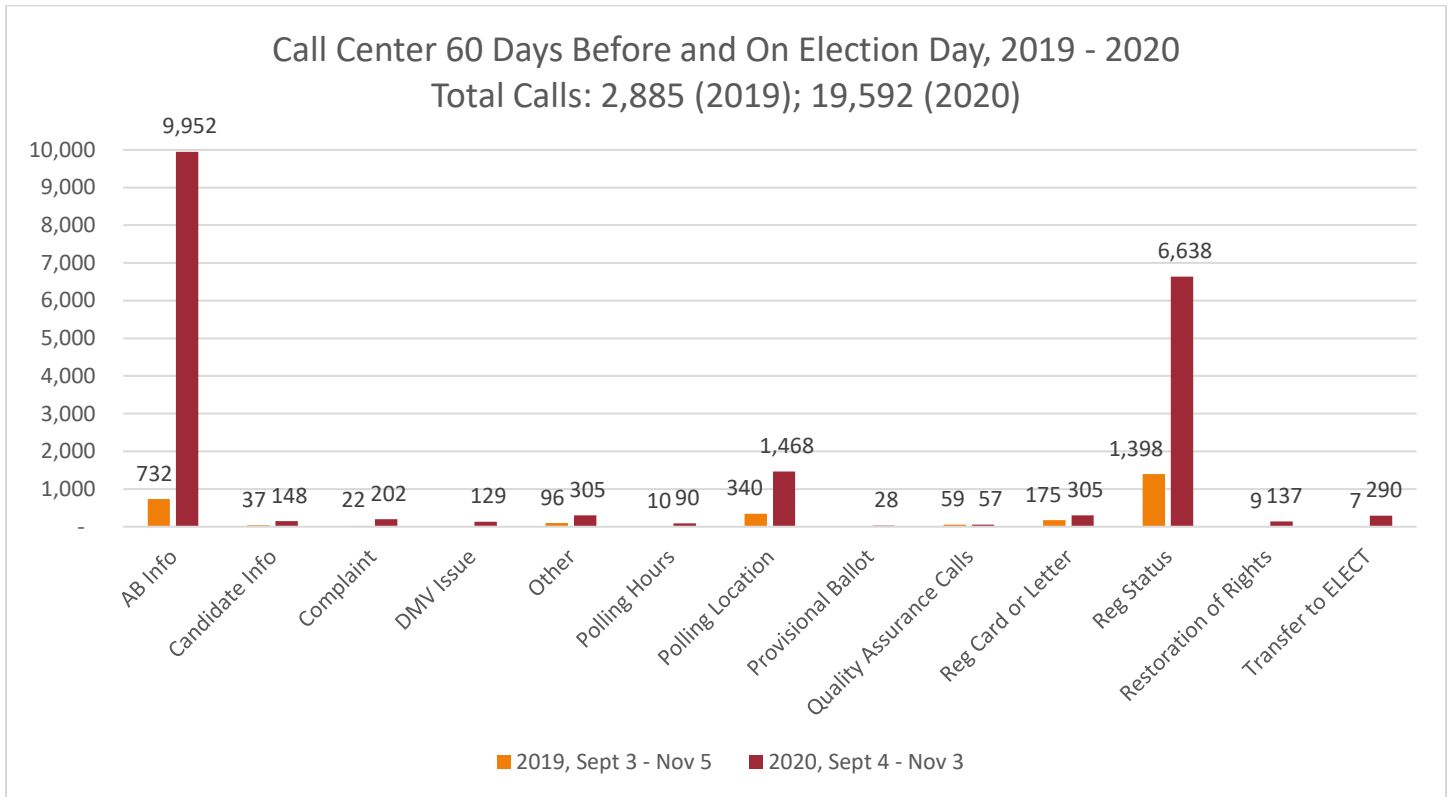
Election Day, Nov 3	Avg Time
Avg Handle Time	2:40 min
Avg Talk Time	2:34 min
Avg Call Wait	1 sec
Avg Queue Callback Wait Time	10 sec
Avg VM Callback Wait Time	10 sec



After ED, Nov 4 - Nov 13	Avg Time
Avg Handle Time	3:30 min
Avg Talk Time	3:15 min
Avg Call Wait	1 sec
Avg Queue Callback Wait Time	10 sec
Avg VM Callback Wait Time	20 sec

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The graphics below provide a comparison by topic of the calls received by the Call Center in 2019 and 2020. By providing this comparison over time, we will be able to see trends in the information voters most have questions about and adjust messaging from ELECT to better serve the needs of the voters.



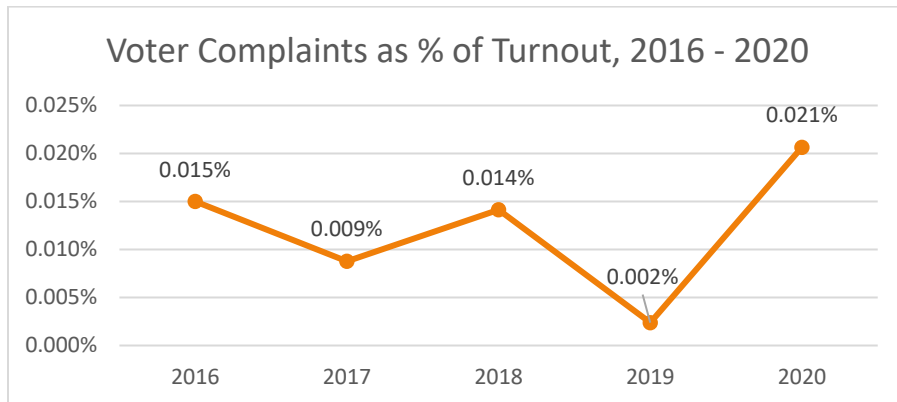
Online Complaints

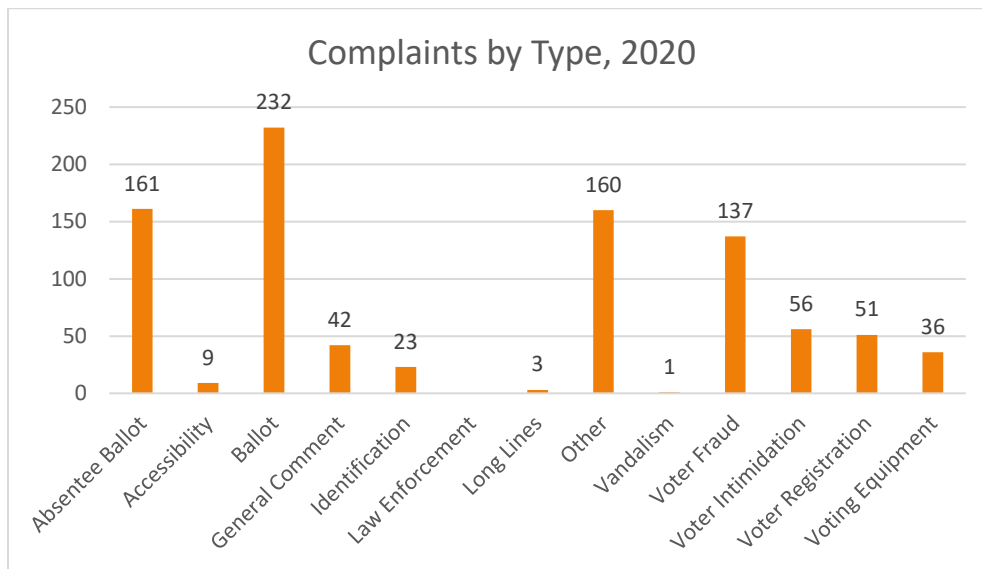
For several years, ELECT has provided an online tool for voters to voice their concerns about an election. In most cases, election officials in the voter’s locality best adjudicate these issues and ELECT forwards these issues to the local general registrar (with follow-up from ELECT to determine the outcome). A few of the issues are more urgent and require immediate attention from ELECT 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 ELECT 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 machine issues, etc.), are working on a solution, and simply have not had time to contact ELECT. In rare cases, ELECT 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 ELECT and general registrars to quickly recognize and work to resolve Election Day issues.

ELECT’s voter complaint website received a total of 100 complaints on Election Day 2020, and 911 between September 20th and December 17th. 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 0.021% of the Commonwealth’s electorate (.015% of registered voters). 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:

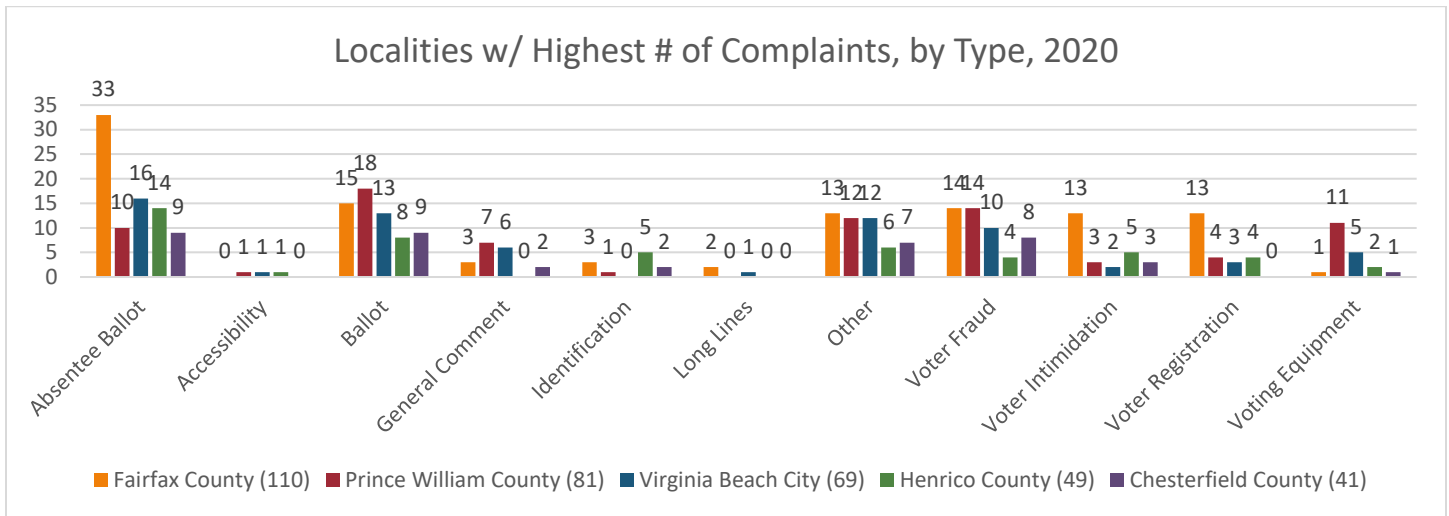
- Voter complaints in each of the past five years totaled less than 1/100th of a percent of turnout.
- 2020 saw the highest number of voter complaints in the past 5 years.
- Complaints about ballots (the largest topic area) were mostly relating to receipt of an absentee ballot.
- Complaints designated as voter fraud (second-highest specific topic area) mostly came in after Election Day and mirrored the concerns seen across the country.





Complaint Type	2016	2017	2018	2019	2020
Absentee Ballot	61	18	26	8	161
Accessibility	27	15	32	6	9
Ballot	46	26	27	45	232
General Comment	51	26	42	17	42
Identification	28	12	27	8	23
Law Enforcement	2	1	2	1	NR
Long Lines	15	2	113	0	3
Other	101	45	69	33	160
Vandalism	0	0	0	0	1
Voter Fraud	21	12	20	4	137
Voter Intimidation	58	34	44	5	56
Voter Registration	153	29	11	17	51
Voting Equipment	36	12	62	10	36
Total	599	232	475	154	911

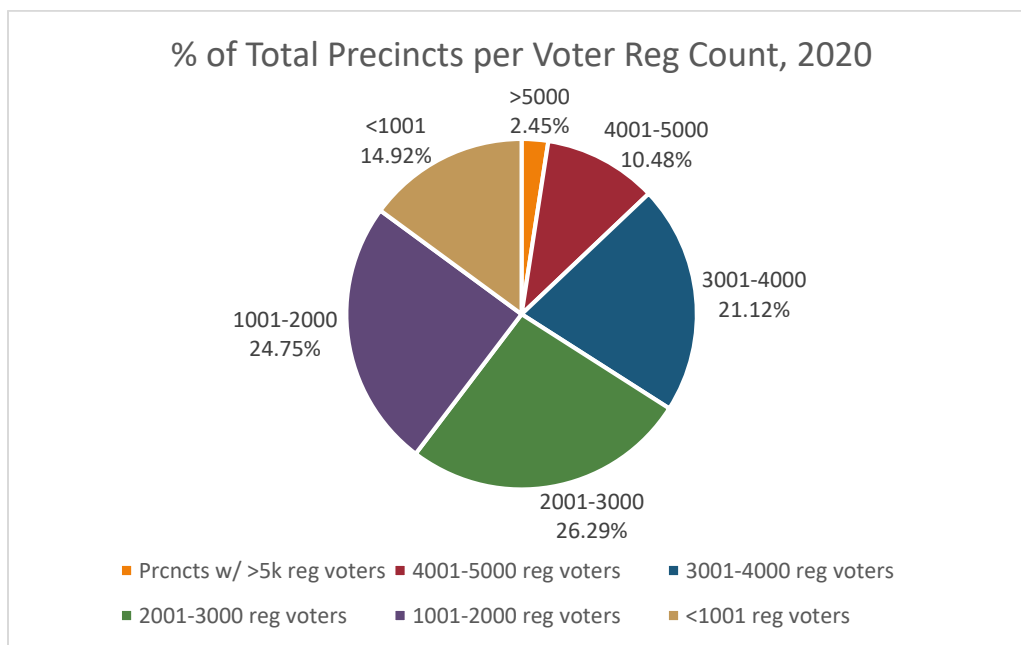
Localities w/ Highest # of Complaints	# of Complaints	% of Total Complaints (911)	% of Reg Voters (5,975,806)
Fairfax County	110	12.075%	0.0018%
Prince William County (2nd Highest in 2019)	81	8.891%	0.0014%
Virginia Beach City	69	7.574%	0.0012%
Henrico County (3rd Highest in 2019)	49	5.379%	0.0008%
Chesterfield County (Highest in 2019)	41	4.501%	0.0007%
Total	350	38.419%	0.0059%



Precinct Sizes

Localities across the Commonwealth employed 2,453 precincts in the November 2020 General Election. This number did not change from the number of precincts used in 2019. 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 2020, 60 precincts have grown to more than 5,000 active and inactive registered voters. In November 2019 that number was 24. An additional 257 precincts (194 in November 2019) have between 4,000 and 5,000 registered voters.



Breakdown of Precinct Counts by # of Reg Voters

Precinct Counts for Years:	2018	2019	2020
Precincts w/ >5k reg voters	40	24	60
4001-5000 reg voters	201	194	257
3001-4000 reg voters	474	485	518
2001-3000 reg voters	666	694	645
1001-2000 reg voters	656	653	607
<1001 reg voters	404	403	366
Total Precincts	2,441	2,453	2,453

of Precincts Close to/Over Max Reg Voters

Precinct Counts for Years:	2018	2019	2020
Precincts w/ >5k reg voters	40	24	60
4501-5000 reg voters	57	61	86
4001-4500 reg voters	144	133	171
Total Precincts	241	218	317

60 Precincts in 17 Localities Have Over 5,000 Active and Inactive Registered Voters

Localities (17)	# of precincts w/ >5k reg voters (60)
FAIRFAX COUNTY	17
CHESTERFIELD COUNTY	9
SPOTSYLVANIA COUNTY	5
STAFFORD COUNTY	5
PRINCE WILLIAM COUNTY	4
ARLINGTON COUNTY	3
NEWPORT NEWS CITY	3
ALEXANDRIA CITY	2
HAMPTON CITY	2
JAMES CITY COUNTY	2
SHENANDOAH COUNTY	2
FREDERICKSBURG CITY	1
HANOVER COUNTY	1
LOUDOUN COUNTY	1
LYNCHBURG CITY	1
TAZEWELL COUNTY	1
WILLIAMSBURG CITY	1
Total	60

86 Precincts in 25 Localities Are Approaching 5,000 (4,500 to 5,000 reg voters)

Locality (25)	Precincts w/ 4501-5000 reg voters (86)
FAIRFAX COUNTY	23
CHESTERFIELD COUNTY	6
ALEXANDRIA CITY	5
PRINCE WILLIAM COUNTY	5
HAMPTON CITY	4
NEWPORT NEWS CITY	4
STAFFORD COUNTY	4
ARLINGTON COUNTY	3
HENRICO COUNTY	3
LOUDOUN COUNTY	3
LYNCHBURG CITY	3
VIRGINIA BEACH CITY	3
YORK COUNTY	3
CHESAPEAKE CITY	2
FREDERICK COUNTY	2
KING GEORGE COUNTY	2
NORFOLK CITY	2
SPOTSYLVANIA COUNTY	2
CHARLOTTESVILLE CITY	1
CULPEPER COUNTY	1
FAUQUIER COUNTY	1
FLUVANNA COUNTY	1
FRANKLIN COUNTY	1
JAMES CITY COUNTY	1
WARREN COUNTY	1
Total	86

Election Administration Tasks

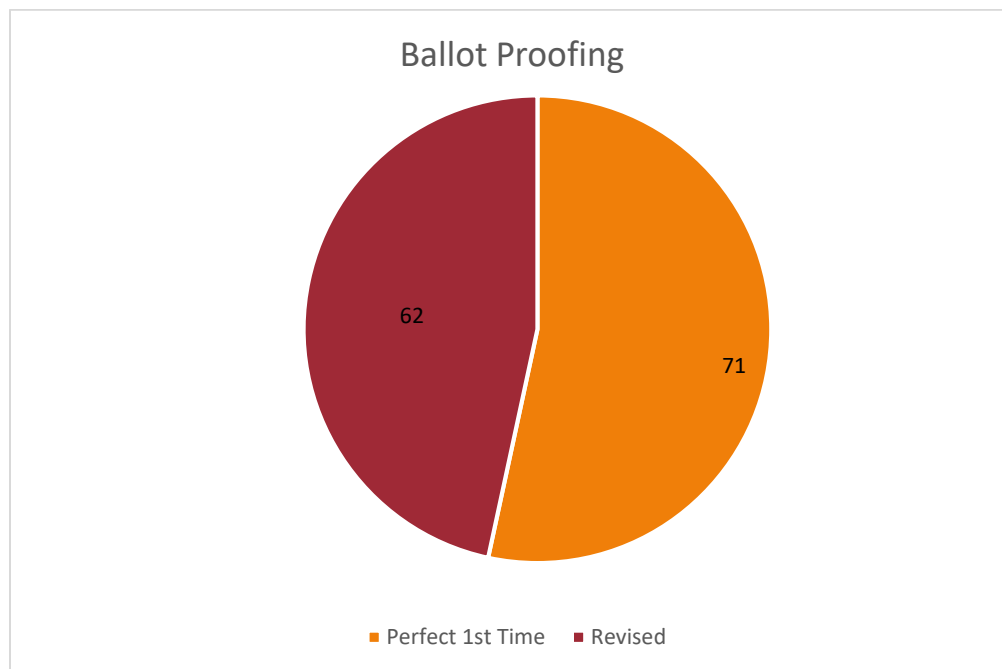
ELECT requires reports, information, or certification of completion from the general registrars for several election administration tasks. The tasks include the following:

- 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.

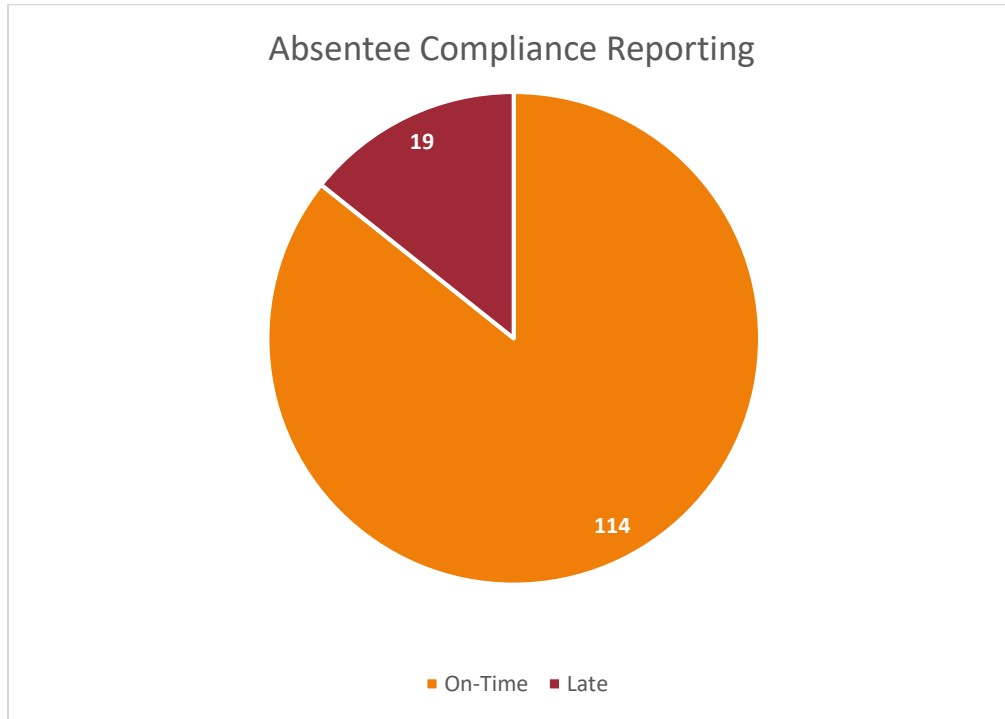
Ballot Proofing

All ballots must be approved by ELECT prior to their use in any election (VA Code § [24.2-612](#)). In the 2020 General Election, 71 localities submitted proofs of their ballot that did not require revisions. In 20, 63 localities submitted proofs that did not require revisions.



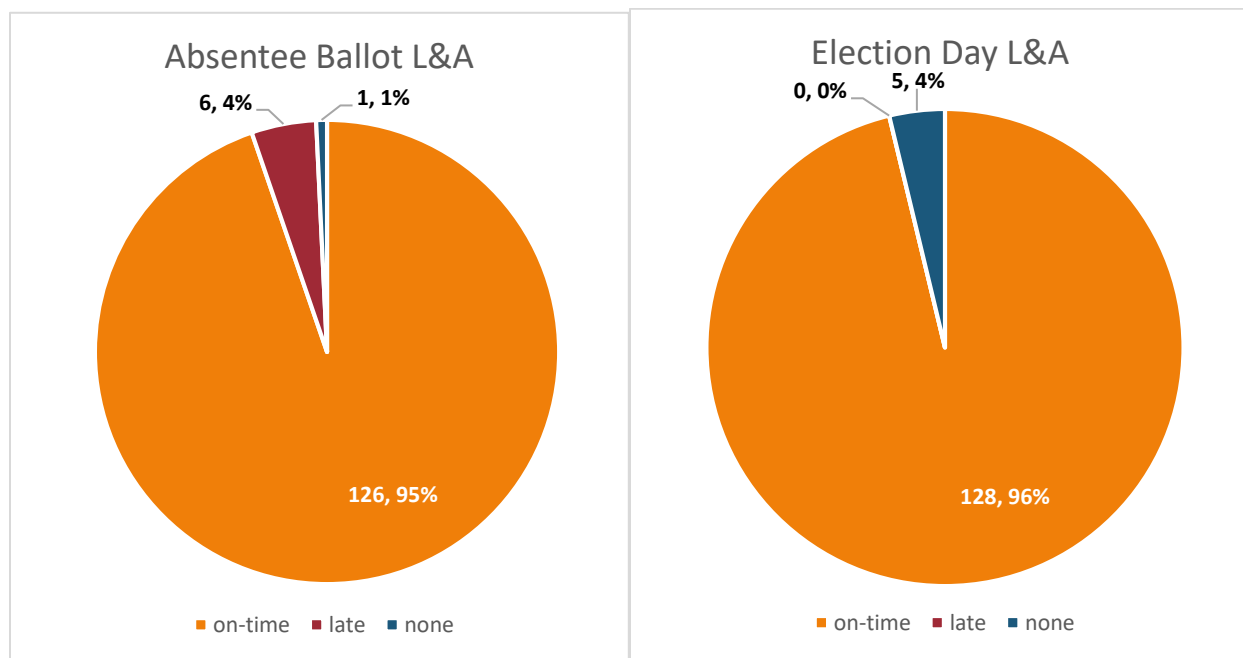
Absentee Compliance

VA Code § [24.2-612](#) requires general registrars to report to ELECT that ballots were available for both absentee voting by mail and in-person at least 45 days before Election Day. For this election, 114 localities reported on time to the Department, and 19 localities were late in their reporting. Ultimately, all localities were determined to have met the 45-day requirement.



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. ELECT requires that each locality certify that testing has been completed. It is imperative that localities report this information to ELECT. This allows ELECT to ensure both compliance with the law and that voting machines are properly prepared and ready for use in the election.



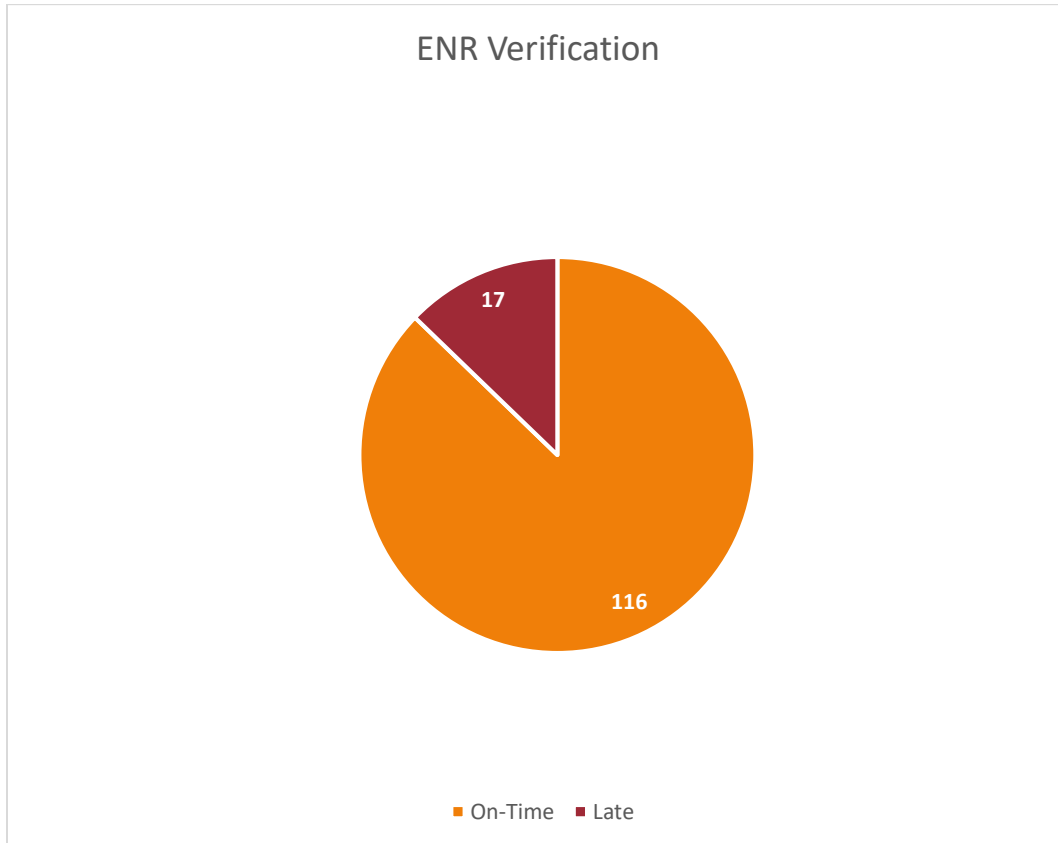
The City of Galax Did Not Certify to ELECT L&A Testing on Absentee Equipment

Localities That Did Not Certify to ELECT L&A Testing on Election Day Equipment:

- City of Charlottesville
- City of Norfolk
- Prince William County
- Smyth County

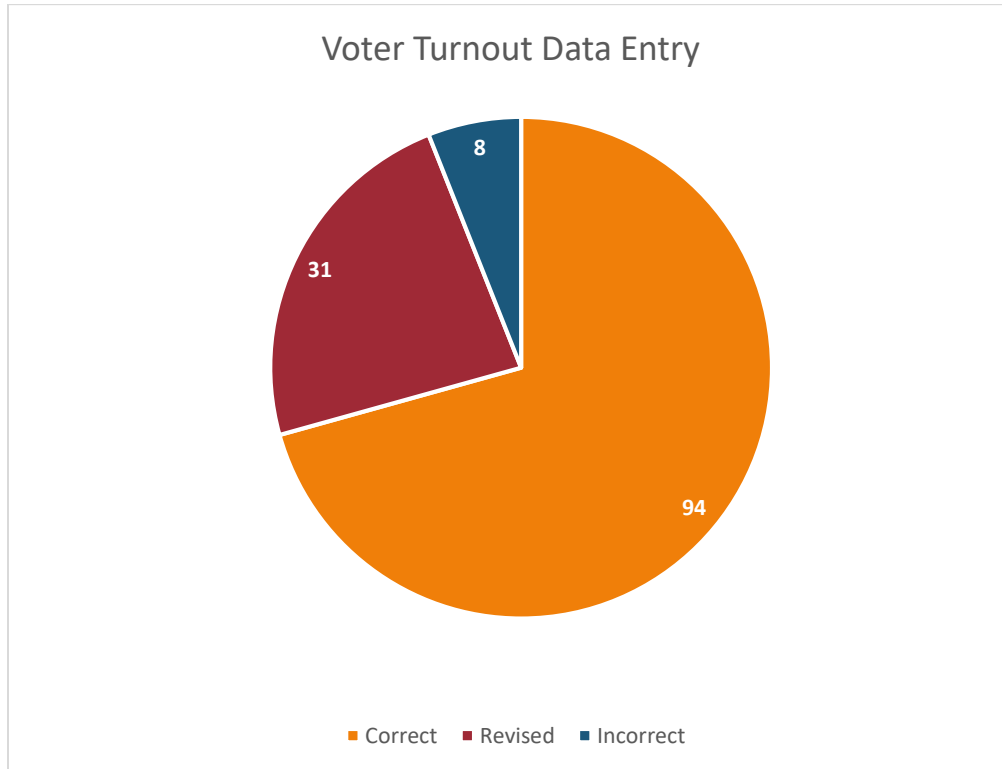
Confirm Offices Using Election Night Reporting Website

Prior to Election Day, ELECT sends notice to all localities asking them to review the information presented in their Election Night Reporting (ENR) web site screens on ELECT's website. By verifying this information prior to the election, ELECT 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.



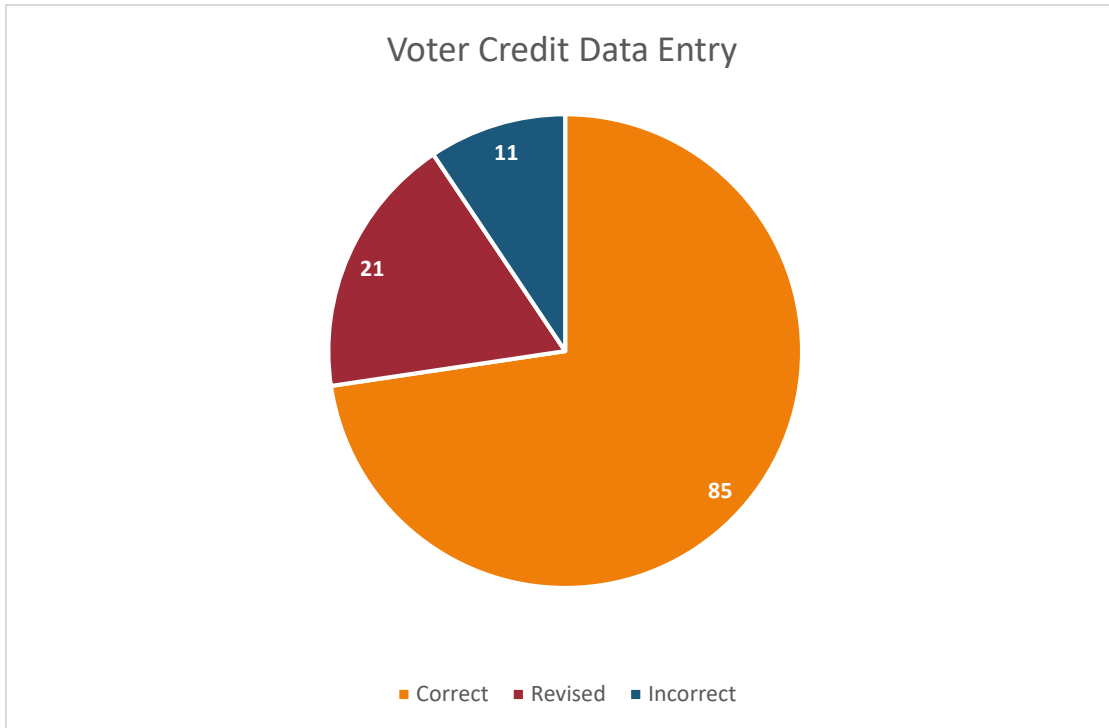
Voter Turnout Data

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.



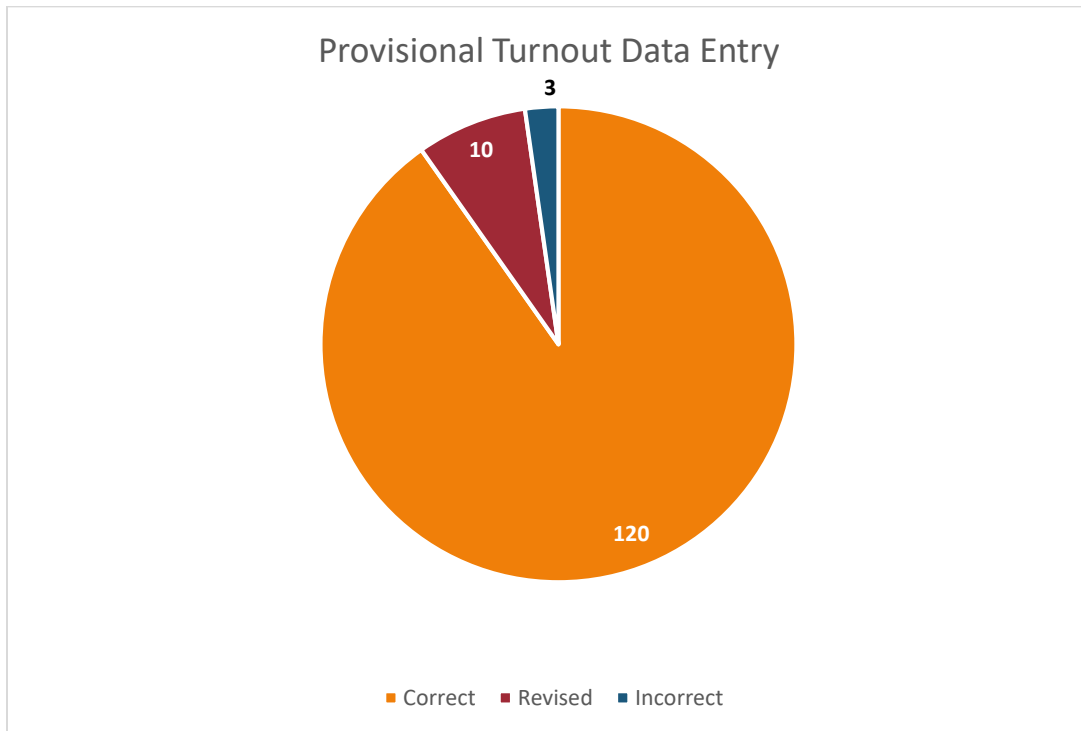
Voter Credit

Localities across the Commonwealth use either electronic or paper pollbooks to verify that a voter is registered and voting in the correct precinct. 16 localities utilize paper poll books and 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 117 localities that use electronic pollbooks 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.

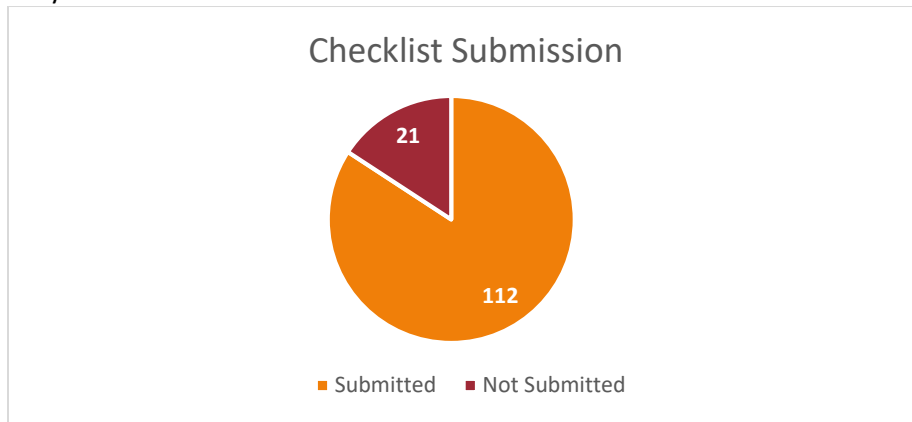


Election Results Verification

After previous elections, occasionally data entered into VERIS and presented on ELECT’s website did not accurately reflect Election Day. This issue was brought before the State Board of Elections by a member of the Virginia Electoral Board Association (VEBA) in 2018. 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 third year for which this process has been used.

Prior to Election Day, ELECT 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. ELECT runs these same reports when verifying a locality’s abstracts prior to the SBE certification.

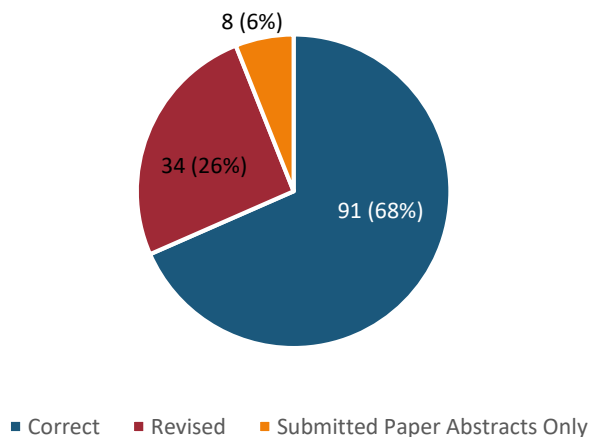
ELECT continued the use of a checklist as a means of reminding localities to run the reports as well as providing an easily accessible list of items to submit to ELECT after canvass. In most cases, the checklist has worked well and has been helpful to both the locality and ELECT.



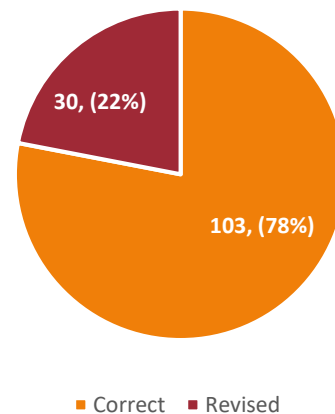
Abstracts of Votes

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

2019 Electronic Abstract Submission



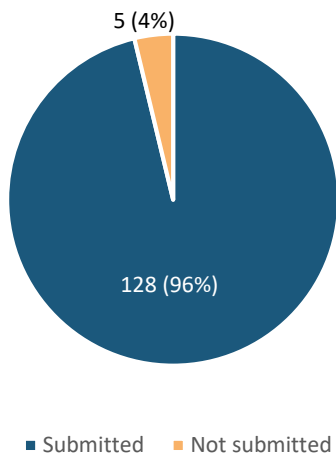
2020 Electronic Abstract Submission



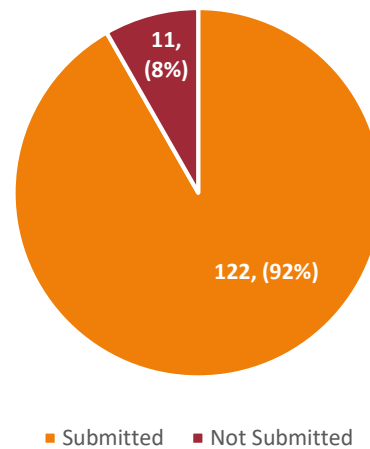
Voided Ballots

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

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



2020 Void Ballots Submission



Primary Issue Identified for Election Administration Tasks Training

Each year, ELECT and general registrars continue to improve the results verification process. With each election ELECT 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. ELECT ran these reports for all localities and worked with general registrars during canvass to identify and correct issues. ELECT staff tracked the kinds of issues found during this process and will build future training around these.

Special Topics Related to the 2020 General Election

Statewide

COVID-19

The global pandemic impacted all aspects of the 2020 election. Conducting an election is a challenging process under any circumstances. Conducting an election during a global pandemic brings those challenges to a new level. ELECT partnered with local election officials, state and local health authorities, and vendors to ensure voters, officers of election, and election officials would remain safe during in-person interactions.

ELECT utilized funding from the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act which designated specific funds to state election entities to obtain and provide personal protective equipment (PPE) and other supplies to localities. Using traditional vendors and some non-traditional sources (e.g. breweries and distilleries which produced hand sanitizer in bulk containers), ELECT was able to supply items such as single use pens and folders, face masks, disinfectant wipes, face shields, disposable gloves and hand sanitizer to localities.

Localities across the state also received support from the Medical Reserve Corps (MRC). For November, 793 MRC Election Infection Prevention Ambassadors completed MRC election training, monitored early voting locations, trained poll workers in infection control, and provided consultation at polling places on Election Day. MRC volunteers served 6,270 hours for a workforce value of over \$178,000. This was the largest one-day deployment of MRC volunteers to date, which required significant coordination and tracking efforts.

Because of the pandemic, many facilities that normally served as polling places alerted general registrars that their facilities could not be used for this election. General registrars worked to ensure adequate backup facilities were available to serve as polling places and notified voters of the changes.

Virginia Information Technology Agency (VITA)

On the last day to register to vote for the November election (Tuesday, October 13, 2020), a fiber optic cable critical to operations at the Virginia Information Technology Agency (VITA) was cut during roadway maintenance. This led to a massive statewide outage of numerous state agencies including ELECT and DMV. For ELECT, that meant access to VERIS was unavailable so general registrars could not process pending voter registration applications. The outage also meant that ELECT's online Citizen Portal was inaccessible and could not be used by citizens to submit a voter registration application or an absentee ballot application. Since systems at the DMV were also affected, individuals could not use the DMV's electronic "Motor Voter" system to apply to register to vote. Ultimately, systems access was restored on the same day, but the inaccessibility led to a court order extending the voter registration deadline to Thursday, October 15, 2020.

Online Absentee Ballot Applications/Citizen Portal

After the deadline to request an absentee ballot by mail had passed on October 23rd, general registrars continued to receive Annual Absentee Ballot Applications through the online Citizen Portal. While many general registrars were concerned by this, the Code of Virginia does allow for a voter to apply to be placed on the annual absentee voting list at any point during the year. However, because the applications were submitted after the deadline to apply for an absentee ballot for the November election, the applications could be approved, but the voter would not be sent a ballot for the November election. ELECT will consider additional training for general registrars and clarifying language for the public on the Citizen Portal. Voters need clear guidance that while they may apply using the Annual Absentee Ballot Application (soon to be the Permanent Absentee Ballot Application), if they have missed the deadline for a particular election, they will not receive a ballot in the mail.

Reporting Results on Election Night and Through the End of Canvass

Because of the increase in the number of absentee ballots and the new law extending the date ballots could be received, ELECT and general registrars knew there would be new challenges in the way elections results were reported and

possible perceptions based on the timing and changing of the results. Once the results have been obtained from a voting machine, the law requires that the device holding the results be locked down: this can be the media inside the machine (i.e. a flash drive) or the machine itself. Prior to the law changes, a locality had almost all of the absentee ballots that required counting by the time the polls closed on Election Day. This provided them the opportunity to cast all of the valid ballots on the voting machine(s) at the Central Absentee Precinct (CAP), pull the results information from the machine, and post the full results along with the totals from Election Day polling places.

ELECT worked with a group of general registrars to develop a plan whereby localities would process absentee ballots up until 11pm on Election Night or until they had counted all ballots they had on hand, whichever came first. At the end of that counting period, localities would report vote totals as unofficial results, with the notice and caveat to the public that these results were not complete, and would not be complete until after noon on Friday, November 6th. After this initial results reporting, localities had the option to continue processing and counting absentee ballots on Wednesday, Thursday, and Friday, or wait until after the final deadline to receive absentee ballots. Localities took advantage of both options dependent on the quantity of ballots that arrived afterward. However, no locality was to report any additional results until after the ballot receipt deadline had passed and all valid ballots had been processed and counted.

While this plan was reasonable in concept and application, it presented unforeseen issues with public perception. As was the case in many states for this election, voters who took advantage of absentee or early voting tended to vote for a particular candidate or political party's candidates, while voters who waited to go to the polls on Election Day tended to support another candidate or party's candidates. As a result, the results from the votes cast on Election Day at polling places were reported first; therefore, a candidate or candidates from one political party showed an apparent advantage over the other. Because results from the absentee and early votes were not reported until much later in the evening, some voters complained that votes were "dumped"¹ into the results. This was especially the case in larger localities. Some members of the public expressed confusion over how one candidate could be "winning" (in some cases by a significant amount), then once the results from one precinct were added (CAP), the numbers suddenly changed and the other candidate was significantly in the lead.

While this particular scenario was confusing to some individuals, election officials across the country had attempted to educate voters of this likely outcome for weeks and months prior to Election Day². In places like Fairfax County, where more voters voted absentee or early than voted at the precinct on Election Day, given the significant differences between how candidates' supporters chose when to cast their ballot, this situation was expected. Some voters alleged fraud, but this outcome was in fact a combination of voters for each candidate utilizing different options for voting, when those ballots were tabulated, and when the results were reported.

The issue was significant enough that ELECT will again collaborate with local election officials to determine a better way to present results under the new law that will help alleviate confusion among the public. Legislators in the General Assembly are also discussing a potential legislative remedy.

In addition to this particular issue, some localities appeared to not understand the reporting expectations. Some reported only their early voting results rather than reporting both early voting and absentee. This was directly contradictory to the instructions provided by ELECT. Other localities operated under the impression that they were required to complete the count of all ballots by 11:00 p.m. on election night. Again, this was not presented as a requirement in the instructions from ELECT. (Appendix B)

¹ "Dumped" was used by the complainants; however, it is a misnomer. Results were reported as expected and as was briefed to the press and the parties prior to and again on Election Day.

² This was often referred to as the "Red Mirage" as detailed in this article from Axios: <https://www.axios.com/bloomberg-group-trump-election-night-scenarios-a554e8f5-9702-437e-ae75-d2be478d42bb.html>

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Cooperation with the United States Postal Service (USPS)

The USPS plays a critical role in elections, especially in an election when so many voters choose to vote absentee. The USPS is tasked with ensuring ballots are delivered to voters and from voters back to elections offices across the Commonwealth. Representatives from ELECT and the USPS met regularly throughout the time leading up to the November General Election. These conversations allowed both parties to share information, discuss issues, and plan for upcoming deadlines. The meetings also facilitated communication directly with participants when emergent situations arose. For example, when USPS blue mailboxes were vandalized prior to the election, ELECT was able to work with the USPS to dispel misinformation that ballots had been stolen from the mail boxes. This partnership was very beneficial to both the USPS and ELECT, and we plan to continue working together to collaborate in future elections.

Ballot Scout and Absentee Ballot Tracking

ELECT uses a vendor to provide tracking of absentee ballots. Ballot Scout is a program that has been used in Virginia for several elections, but its use became even more important in 2020 with the increased number of voters applying to vote by mail. In August, the SBE passed regulations requiring USPS IMb tracking information on all absentee ballot envelopes. Ballot Scout relies on USPS IMb scan data to provide tracking information to voters about where their ballot is in the mail stream. When a ballot envelope is scanned by the USPS, it updates Ballot Scout and thus provides the information on the ballot's status. As absentee voting began, USPS scan rates on absentee envelopes were relatively low resulting in 'holes' in the data. Voters contacted either their local general registrar or ELECT confused about where their ballots were in the process. As absentee voting progressed and ELECT continued to bring the issues to the attention of representatives from the USPS, scan rates improved and more voters were able to use the Ballot Scout system to track their ballot. ELECT has already initiated conversations with USPS and Ballot Scout on how to improve these processes prior to future elections.

Public Information and Media Campaign

ELECT committed to provide the public with all of the information voters could need on their options for voting. ELECT contracted with a vendor to produce and distribute a multi-faceted public relations campaign. The "Defending Democracy" ad, featuring general registrars and ELECT staff, was distributed digitally. The ad emphasized for voters that the people administering the election were just like them – regular people who are committed to doing the right thing. The "Free to be Absentee" campaign provided voters with information about their voting options and deadlines. ELECT also placed in-kind digital advertisements with Facebook to assist localities in recruiting officers of election.

Localities

New Kent County

As early voting began on September 18th, ELECT began receiving reports from New Kent County that voters who went to the general registrar's office to vote early were voting the ballot, then placing it in an Envelope B (with voter information and signature) to have it opened, processed, and voted onto the voting machines at the CAP on Election Day. Since this was contrary to ELECT's instructions, staff contacted the general registrar to correct the issue. The general registrar offered an explanation and promised to begin having voters cast their ballots on the voting machine as soon as possible.

Over the course of the early voting period, staff and executive leadership repeatedly contacted the general registrar as reports continued to come in that voters were still required to place their ballot in an absentee envelope rather than cast it on the voting equipment. The general registrar's explanations for this situation evolved as time went on, and always with the conclusion that a change would be made as soon as possible. However, as time continued to pass and the general registrar did not correct the issue, ELECT was able to determine that the reasons were a ruse. The general registrar never intended to allow voters to cast their ballots on the voting machine.

The general registrar also indicated that processing and tabulation of the early voting ballots would begin on the Sunday prior to Election Day so that they could be completed before Election Day, thereby relieving the CAP officers of election of that particular pressure. Again, this did not happen. Early votes were presented to the CAP on Election Day, and the process of counting the ballots began at that time.

This action is of serious concern to ELECT. Staff and leadership were repeatedly misled by the general registrar.

City of Hopewell

Staff at ELECT reviewed abstracts and reports from the City of Hopewell after the Electoral Board had completed canvass and prior to the SBE meeting to certify the election. It became clear in the review that information provided by the City of Hopewell may not be correct. Department staff contacted the general registrar and asked for additional information relating to their reported results, voter credit, and voter turnout in an effort to parse the errors they were seeing. Unfortunately, ELECT was not able to ascertain the errors before the date set in the Code of Virginia for the SBE to meet and certify the results.

Two members of ELECT's staff traveled to Hopewell to review documents first-hand in an attempt to determine the cause of the reporting errors. Staff found several errors in post-election and canvass processing that led to the inconsistencies in the reports. In addition to some small, and frankly not uncommon, paperwork errors, staff determined that the biggest problems were with the processing and accounting of provisional ballots.

On Election Night, Hopewell indicated an estimated 121 provisional ballots had been cast; however after canvass, that number had dropped to 36. In trying to sort out this discrepancy, it was determined that the number 36 was the number of provisional ballots that were not counted, and that once it was determined that a provisional ballot should be counted, it was no longer designated as "provisional" for accounting and records purposes. Additionally, if a Hopewell voter cast a provisional ballot because they were in the wrong precinct, the Electoral Board voted to count the ballot, but only the portions of the ballot to which the voter would have been entitled to vote had they voted at the correct precinct. Further, if a voter cast a provisional ballot in Ward 4, but should have voted in Ward 5, the Electoral Board had the votes from that ballot calculated with the votes from Ward 5 rather than Ward 4 where the ballot was cast. This created further confusion for staff as they worked through the issues. Finally, some provisional envelopes were marked indicating that the voter was registered to vote in Prince George County. The Electoral Board chose to count those ballots in the precinct in which they were cast, again only counting the contests and questions on the ballot that the voter would have been eligible to vote for had they cast a ballot in Prince George County.

Staff was able to sort through all of the issues and make a proper accounting of Hopewell's election. Once the errors were corrected, Hopewell's certified abstracts needed to be corrected. The general registrar and Electoral Board corrected the abstracts and sent new certified copies to the State Board of Elections. Because there were differences between the results originally certified by the Electoral Board in contests for federal office, the State Board was required to recertify the election results prior to the meeting of the Electoral College on December 14th.

Prince William County

On November 20th, ELECT staff found evidence that there may have been undiscovered errors in the results and abstracts from Prince William County. After further investigation, staff determined that local officials had entered the results for constitutional amendment questions incorrectly for three precincts. Two of the precincts are split by a congressional district, and total results were entered for half of the split while zeros were entered for the other. The final precinct had no results for the constitutional amendment questions. ELECT staff worked with the general registrar to correct the errors and provide new certified abstracts for those ballot questions. Because the SBE was already recertifying statewide results for contests and questions due to the changes from Hopewell, the results changes from Prince William County were included in that same recertification.

In order to prevent this type of error going forward, ELECT's Election Administration Division will add another layer to its checks on abstracts and reports.

City of Richmond

There were several issues reported to ELECT in regard to the City of Richmond. First among the concerns was the processing of absentee ballot applications and ballots. The elections office seemed to struggle to keep up with the

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number of absentee applications coming into the office and turning those around into ballots mailed to voters. Once voted ballots were returned to the office, that office also struggled to log those ballots appropriately. At one point, a box of over 1,000 voted ballots was discovered that had not been properly processed.

ELECT provided guidance to all localities specific to the issue of the availability of documentation of ballots subject to the cure process under the Freedom of Information Act (FOIA). Representatives from the Democratic Party of Virginia requested any documentation the Richmond office had for ballots that needed to be cured. After initially responding to the FOIA request by indicating that no documents were responsive to the request, the general registrar discovered that such documentation did exist and provided the information after threat of a lawsuit.

After the election, there was an outbreak of COVID-19 in the general registrar's office. The general registrar, Electoral Board members, office staff, elected officials, and various campaign staff all had to quarantine and the office was shut down. Because of this shutdown, the City of Richmond did not complete canvass of the election by the statutorily mandated deadline. Completion of the canvass was delayed enough that, when the SBE met on the second Monday after Election Day to certify the election (as required by law), Richmond's canvass was still not complete, and certification of any results that included the City of Richmond were delayed until two days later. Even then, the general registrar and Electoral Board worked through the night to adjudicate provisional ballots and complete the canvass. The general registrars of several other localities offered to assist with the process, but received no response.

After the election, the City of Richmond was late in entering their voter credit for the election. The delay in entering voter credit further delayed the city's participation in the state's required list maintenance procedures. Because voter credit was not applied until after the Christmas holiday, the Department had to exclude City of Richmond voters from the required list maintenance mailing.

Fairfax County and the City of Virginia Beach

General registrars and Electoral Board members across the state anticipated high turnout for in-person early voting. Many localities chose to have more early voting satellite locations than in previous elections, including Fairfax County and the City of Virginia Beach. At the beginning of the early voting period, voting was available only at the general registrars' office in these two localities. Turnout during this period was higher than what was anticipated. Initially, voters waited in line for as long as four hours to vote early. As a result of the increased turnout, these localities opted to open their satellite voting centers earlier than they had planned. While this move did alleviate some of the pressure on, and lines at, the general registrar's office, voters still waited in long lines to vote early (waiting times of up to seven hours were reported at some locations in Virginia Beach). The bright side of this situation is that lines at polling places on Election Day were not long and officers of election were able to process Election Day voters efficiently.

Other Issues

Several localities, including Fairfax County, Frederick County, Henrico County, and the City of Richmond sent some absentee voters more than one ballot. These localities printed absentee ballot mailing labels multiple times for some voters. Once the issue was brought forward, ELECT worked with localities to identify the cause and recommend changes in administrative processes to prevent recurrence. Election records show that none of these voters attempted to vote both ballots.

ELECT witnessed a lack of uniformity in pre-processing of absentee ballots. Even though ELECT had provided step-by-step instructions and procedures to help localities understand how best to manage the process and keep information updated in VERIS, some localities struggled. New Kent County did not pre-process either their early voting ballots or their absentee ballots despite assurances to the contrary from the general registrar. As a result, the election results from New Kent's CAP were delayed. In Lynchburg, the general registrar had arranged for pre-processing to occur on a particular day. Unfortunately, the assigned officer of election representing one political party was unable to attend, and the other officers of election representing that same political party were also unavailable. The Code of Virginia § 24.2-709.1 requires that an officer of election representing each political party be present when ballots are scanned onto voting machines during pre-processing. The general registrar did not understand this requirement and pre-processed

absentee ballots with an officer of election representing only one political party present. ELECT also saw instances from several other localities where general registrars did not accurately reflect pre-processing in VERIS in a timely manner.

Summary and Suggested Best Practices

Ultimately, the story of the 2020 General Election is a successful one for the Commonwealth of Virginia. With a record of more than 4.4 million people casting a ballot in a manner that provided the greatest degree of safety and comfort in the midst of a pandemic, issues will inevitably 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 way that improves the voter's experience.

General registrars, Electoral Board members, and ELECT will take the story of 2020, learn its many lessons, and plan for improvements going into the 2021 election cycle.

It is with the information presented that ELECT recommends the following to improve election administration in the Commonwealth for future elections:

- Increase training and instructions to ensure uniformity in pre-processing procedures
- Create uniformity in reporting of election results
- Educate the public on election processes and how ballots are counted
- Provide a different or updated solution for tracking absentee ballots through the mail
- Work with local election officials to determine how to improve absentee systems to ensure more timely processing of absentee applications and delivery of absentee ballots;
- Ensure general registrars receive required certification and provide additional training to Electoral Board members;
- Encourage general registrars to incorporate ELECT created officer of election training tools into their officer of election training sessions, and
- Encourage and train general registrars to use ELECT created election night and canvass training tools.

Appendix A – ELECT Official Guidance: Revised Security Standards for Drop-off Locations



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

OFFICIAL GUIDANCE

DATE: September 25, 2020

RE: Security standards for drop-off locations (revised)

The Virginia General Assembly has passed a law providing for the use of drop-off locations in the November 3, 2020 elections. Under the new law, you as the general registrar are required to maintain drop-off locations at:

- the general registrar's office;
- any satellite offices in your locality; and
- at each polling place on Election Day.

Further, as the general registrar, you may establish additional drop-off locations within your county or city as you deem necessary. The General Assembly has mandated that the Department of Elections "shall set standards for the establishment and operation of drop-off locations, including necessary security requirements."

What are drop-off locations?

Under the new law, drop-off locations are physical locations where voters can deposit completed absentee ballots for the November 3, 2020 elections. Drop-off locations can be either secured drop-boxes or staffed locations where a voter can return their completed ballot. **Your locality's drop-off locations must be:**

- accessible;
- on public property, unless located at a polling place;
- compliant with any criteria for drop-off locations set by the Department of Elections.

Establishing drop-off locations

- As the general registrar, you must establish drop-off locations at the office of the registrar and at each voter satellite office.
- Your locality's drop-off locations *must* be available for the hours that the general registrar's office or satellite office is open.
- On Election Day, you must operate a drop-off location at each precinct's polling place.
- These locations must be available for the hours that the polling place is open.
- As the general registrar, you may also establish additional drop-off locations as you deem necessary. As noted above, these must be accessible, on public property unless located at a polling place, and compliant with any other criteria set by the Department of Elections.
 - The Department of Elections highly recommends that registrars confer with their local Electoral Boards to determine if and where to place additional drop-off locations.
- Existing drop-boxes on government property may be utilized as drop-boxes for the November 3, 2020 elections (e.g. drop-boxes for making utility payments). However, any drop-box used must comply with all of the requirements in this guidance.

Accessibility requirements

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- All drop-off locations must meet accessibility requirements, including being accessible to qualified voters as required by the provisions of the Virginians with Disabilities Act (51.5-1 et seq.) the Voting Accessibility for the Elderly and Handicapped Act (52 U.S.C. 20101 et seq.), and the Americans with Disabilities Act relating to public services (42 U.S.C. 12131 et seq). These are the same accessibility requirements as those for polling places, found in 24.2-310(C) of the Code of Virginia.

Operation of drop-off locations

- You may operate your drop-off locations as either 1) secured drop boxes; or 2) staffed drop-off locations.
- Individuals are not required to show identification (ID) when returning their ballots to drop-off locations.
- At the general registrar's office, satellite locations, and polling places, clear signage should indicate where voters drop-off their ballots versus where voters vote in-person.
- On Election Day, it is especially important that proper signage ensure that drop-off voters do not mistakenly wait in line to vote with in-person voters.
- **On Sunday November 1 and Monday November 2**, you are not required to operate drop-off locations at your satellite offices. However, *you must* continue to collect ballots daily from any drop-off location or drop boxes that remain open to the public on those days. If a drop box is available to the public on those days (for example boxes that are outside) and you do not wish for it to operate, it must be 1) locked so that ballots cannot be deposited in the box; and 2) have clear signage indicating that the last day for voting at this box is/was October 31, 2020.

Physical security requirements

For secured drop boxes

- Must be constructed of durable material able to withstand vandalism, removal, and inclement weather, and be securely fastened to prevent moving or tampering.
- Your drop boxes must be monitored by a video surveillance system. Existing security systems on government property may be utilized for drop-box surveillance.
- Video surveillance footage must be retained for 30 days following the deadline to certify the election, or until the conclusion of any election contest, whichever is later; except where there is a potential violation of law where the surveillance could be used as evidence, then it must be retained through the statute of limitations or conclusion of judicial proceedings, whichever is later.
- Your locality's drop boxes should be well lit and have a clearly identified ballot insertion slot.
- Drop boxes should have signage clearly indicating that they are absentee ballot drop- boxes.
- Drop boxes should be designed to prevent overflow.
- If a drop-off location has multiple drop boxes, then each should be labeled with a unique identifier, such as a number, letter, or string of numbers and letters. That identifier will be used to describe the particular drop box for record keeping.
- All drop boxes must have an opening slot that is not large enough to allow ballots to be tampered with or removed. The opening slot should be designed to minimize the ability for liquid to be poured into the drop box or for rainwater to seep in.
- All drop boxes must be secured by a lock (e.g. padlock) or sealable with a tamper-evident seal. Only an elections officer, general registrar staff, or the general registrar or assistant should have access to the keys and/or combination of the lock.
- The individuals retrieving ballots should wear a badge or other identifier that readily identifies them as a designated ballot retriever.
- The drop box must be clearly and visibly marked as an "Official Ballot Drop Box" in all languages required under the federal Voting Rights Act of 1965. This includes:
 1. Language stating that tampering with the drop box is a felony.
 2. A phone number connecting the voter to your office.
 3. A statement informing the public that no ballots will be accepted after 7:00 p.m. on Election Day, unless there are voters in line or the time for the closing of the polls has been extended by a court order.

For staffed drop-off locations

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- Staffed locations do not need to use a drop box, and instead may have ballots placed into either 1) a container placed behind a counter; or 2) a portable container that can be transported to a curbside or mobile voting area.
- However, these containers **must be monitored at all times and may not leave the possession of the drop-off location staff while in operation.**
- At least one staff member must monitor the drop-off location at all times.
- These individuals should be officers of election representing the two major parties, when practicable, or two employees from the office of the general registrar. Registrars and assistant registrars may also staff drop-off locations.
- To secure ballots, these individuals must use a container that can be locked or sealed
- Once the drop-off location is not in use, any mobile containers must be placed in an area that is inaccessible to the public and/or otherwise safeguarded from tampering during the hours not in use.

On Election Day, polling place drop-off locations should have clear signage to keep drop-off voters and in-person voters separate.

Chain of custody requirements

Under the new law, absentee ballots shall be collected from each drop-off location at least daily, by two officers of election representing the two major political parties, when practicable, or by two employees from the office of the general registrar, unless the drop-off location is in the office of the general registrar, in which case the general registrar or an assistant may collect the absentee ballots.

Your officers of election or employees should follow the instructions below to collect ballots from drop-off locations:

Before Election Day

1. The officers of election or employees will remove the ballots from the drop-off location and place them in a secure container.
2. That container will be sealed or locked by the officers of election or employees with their signatures, the date, and a record of the number of ballots that have been secured in the container.
3. The sealed or locked container shall be immediately transported to the general's registrar office by the officers of election or employees who collect the ballots.
4. At the general registrar's office, these ballots shall be processed following the procedures in § 24.2-709.1 and § 24.2-711 of the Code of Virginia.
5. Please note that all drop-off ballots should be logged into VERIS as "Mail/Non USPS" when choosing the return method from mail, in person, or other.

On Election Day

1. Follow steps 1 and 2 above.
2. The sealed or locked container shall be immediately transported to the general's registrar office OR the central absentee precinct by the officers of election or employees who collect the ballots.
3. At each polling place, and each drop-box, the two mandatory officers of election or employees *must* be at the drop-off location at 7 pm to collect the final cast ballots. Any person in line to drop-off their ballot at 7 pm is allowed to do so.
4. Please note that all drop-off ballots should be logged into VERIS as "Mail/Non USPS" when choosing the return method from mail, in person, or other. These ballots do not need to be counted on Election Night but must be counted as soon as possible in the following days.

Notice requirements

- You must post notice of each drop-off location in the general registrar's office.
- You must post notice of each drop-off location on the official website of your county or city.

Appendix B – ELECT Official Guidance: Election Night Reporting and the Central Absentee Precinct for November 3, 2020 Elections



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OFFICIAL GUIDANCE

Date: October 6, 2020

RE: Election Night Reporting and the Central Absentee Precinct for November 3, 2020 Elections

Under section § 24.2-709 of the Code of Virginia, mail-in ballots postmarked on or before Election Day and received by Friday, November 6 at noon will count toward the election results. The following guidance explains how registrars should report election results from the Central Absentee Precinct (CAP) for the November 3, 2020 elections.

1. On Election Day and Night, localities should process and count as many of the absentee ballots as can reasonably be counted. These ballots will include any received by the CAP and those that are dropped off at polling places on Election Day. There is no requirement that ALL of these ballots have to be processed that night. Some localities will be able to process and count all of the ballots received through Election Day by the time the night is over. Others will not. **Continue processing ballots until you have finished or until 11:00 p.m., whichever comes first.**
2. Once counting has finished for the night, pull the results tapes and create an initial SOR for the CAP. Report the results as you normally would in VERIS. Follow the closing procedures for your optical scan equipment.
3. You may continue to process ballots on Wednesday, Thursday, and Friday, or any combination. However, you are not required to process incoming ballots until after the deadline to receive ballots at noon on Friday, November 6. This will be a locality-by-locality decision based on the number of ballots received and processing time necessary to complete canvass by Tuesday, November 10.
 - a. If you have a machine set aside to scan ballots after Election Day, follow opening procedures, run zero tapes, qualify and feed the ballots. Once all precincts are completed, pull your results.
 - b. If you are reusing your machine from CAP to scan ballots after Election Day, you will need to place the Election Day media in Envelope #7. Follow your vendor's instruction on resetting your machine to zero, and insert new CAP media to reopen the voting machine. Follow opening procedures, run zero tapes, qualify and feed the ballots. (If you have not already completed L&A Testing on the media to be used for counting ballots after Election Day, you will need to conduct L&A Testing before scanning ballots.)
4. Once you have completed processing all ballots validly received and cast, pull results tapes from the machines, combine them with the initial SOR from election night, and edit the SOR to add new columns as necessary to capture the additional results tapes. Edit the CAP results in VERIS to reflect the new totals.
5. Please note that the post-election night CAP will ensure that no locality is reporting 100% results through ENR until the locality has counted all ballots.

6. Please scan or otherwise record received ballots in VERIS as your office receives them. This will ensure that VERIS maintains current, accurate data on the number of ballots returned. ELECT will be displaying this information on our website as part of our election results. Keeping this information current should help reduce the number of calls to your office.

7. CAP ballots counted after Election Day must be processed and counted by members of your CAP team, including the original CAP Chief and Assistant Chief, and at least one other Officer of Election. While the Chief and Assistant Chief must be the original CAP Officers, additional OOE's brought in to assist do not have to have been part of your original CAP team. You may bring in as many teams as necessary to efficiently handle processing and counting. You should consider the availability of these officers when making your schedule to count CAP ballots.

8. Notify political parties and candidates of when you plan to continue processing and counting ballots. Note that the rules for observers/authorized representatives are the same for these additional days as they are for Election Day.



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Consideration of Amendments to IVAC20-70-20

BOARD WORKING PAPERS
Danny Davenport
ELECT Policy Analyst



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DEPARTMENT *of* ELECTIONS

Memorandum

To: Chairman Brink, Vice Chair O'Bannon, and Secretary LeCruise
From: Daniel Davenport, Policy Analyst
Date: February 23, 2021
Re: Regulatory Action Related to Processing Absentee Ballots with Missing or No Postmark

Suggested motion for a Board member to make:

"I move that the Board adopt the Department's proposed amendments to regulatory action 1VAC20-70-20."

Applicable Code Section: § 24.2-709

Attachments:

- Proposed amendments to 1VAC20-70-20

Background:

On August 4, 2020, the State Board of Elections approved a regulatory action that allows for the counting of mail absentee ballots with missing or illegible postmarks that are received by the appropriate general registrar by noon the third day after an election. In a subsequent board meeting held on October 20, 2020, the State Board of Elections adopted amendments to this regulatory action, compelling the use of Intelligent Mail barcodes (IMBs) and voter oaths as evidence of the date that a ballot was postmarked.

On January 13, 2021, plaintiff Thomas P. Reed and the Virginia Department of Elections entered into a consent decree to further amend and refine the text of this regulatory action. The consent decree was signed by Judge William Eldridge IV of the Circuit Court for Frederick County.

Virginia Administrative Code (VAC) citation(s): Amendment to existing regulatory action 1VAC20-70-20.

Regulation title(s): Material Omissions from Absentee Ballots.

Date before State Board of Elections: February 23, 2021



Brief Summary:

The proposed amendments alter the text of subsection (F)(2) and add subsection (F)(3) to the regulatory action. This language applies to mail absentee ballots with missing or illegible postmarks received by the General Registrar's office by noon on the third day after Election Day.

Under section (F), the General Registrar may use data from a ballot's Intelligent Mail barcode (IMb) to count the ballot, IF the IMb data shows the ballot was mailed on or before the date of the relevant election.

If the data does not meet (F) but also does not show the ballot was mailed after the election the General Registrar will do the following:

Under (F)(2) if the ballot has an illegible postmark, the general registrar shall refer to the date on which the Envelope B oath was signed to determine whether the ballot was cast on or before the date of the relevant election.

Under (F)(3), a ballot with no IMb data and a missing postmark would not be counted.

Under (F)(1) any ballot with a missing or illegible postmark with IMb data showing it was mailed after Election Day will not be counted.

Regulation Text:

1VAC20-70-20. Material omissions from absentee ballots.

A. Pursuant to the requirements of § [24.2-706](#) of the Code of Virginia, a timely received absentee ballot contained in an Envelope B shall not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any Envelope B containing such omissions shall be rendered invalid if any of the following exists:

1. Except as provided in subdivisions C 2 and 3 of this section, the voter did not include his full first name;
2. The voter did not provide his last name;
3. The voter omitted his generational suffix when one or more individuals with the same name are registered at the same address, and it is impossible to determine the identity of the voter;
4. The voter did not provide his house number and street name or his rural route address;
5. The voter did not provide either his city or zip code;
6. The voter did not sign Envelope B; or
7. The voter's witness did not sign Envelope B.



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C. The ballot shall not be rendered invalid if on the Envelope B:

1. The voter included his full name in an order other than "last, first, middle";
2. The voter used his first initial instead of his first full name, so long as the voter provided his full middle name;
3. The voter provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");
4. If the voter provided his first name and last name, the voter did not provide a middle name or a middle initial;
5. The voter did not provide his residential street identifier (Street, Drive, etc.);
6. The voter did not provide a zip code, so long as the voter provided his city;
7. The voter did not provide his city, so long as the voter provided his zip code;
8. The voter omitted the date, or provided an incorrect or incomplete date on which he signed Envelope B; or
9. The ballot is imperfectly sealed within Envelope B, provided that the outer envelope with Envelope B and the ballot arrived sealed.
10. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.

D. For the purposes of this regulation, "city" may include the voter's locality, town, or any acceptable mailing name for the five-digit zip code of the voter's residence.

E. Whether an error or omission on an Envelope B not specifically addressed by this regulation is material and shall render the absentee ballot invalid shall be determined by a majority of the officers of the election present.

F. If a ballot is received by the general registrar's office by noon on the third day after the election pursuant to § [24.2-709](#) of the Code of Virginia but the return envelope has a missing or illegible postmark, the General Registrar shall refer to the Intelligent Mail barcode on the return envelope to determine whether the ballot was mailed on or before the date of the relevant election.

1. If there is evidence from the Intelligent Mail barcode that the ballot was mailed after the close of polls for the relevant election, the ballot shall be rendered invalid.

~~2. If there is no evidence from the Intelligent Mail barcode that the ballot was mailed after the close of polls for the relevant election, including if the Intelligent Mail barcode was not scanned, the General Registrar shall refer to the date on which the oath on Envelope B was signed.~~

~~a. If the oath on Envelope B was signed on or before the date of the relevant election, the ballot shall not be rendered invalid due to receipt after the close of polls by the General Registrar.~~

~~b. If the oath on Envelope B was signed after the date of the relevant election, the ballot shall be rendered invalid. If there is no evidence from the Intelligent Mail barcode that the ballot was mailed after the close of polls for the relevant election, but the return envelope has an illegible postmark, the~~



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General Registrar shall refer to the date on which the oath on Envelope B was signed to determine whether the ballot was cast on or before the date of the relevant election.

3. If there is no evidence from the Intelligent Mail barcode that the ballot was mailed after the close of polls for the relevant election and if the return envelope has a missing postmark, the ballot shall be rendered invalid.

Statutory Authority

§ 24.2-103 of the Code of Virginia.



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Proposed SBYA Policy 2021-001

BOARD WORKING PAPERS
Tammy Alexander
Campaign Finance Compliance
and Training Specialist



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DEPARTMENT *of* ELECTIONS

Memorandum

To: Robert Brink, Chairman; John O'Bannon, Vice Chair; Jamilah LeCruise, Secretary
From: Tammy Alexander, Campaign Finance Specialist
Date: February 23, 2021
Re: SBE Policy 2021-001: Stand By Your Ad Hearings

Suggested Motion

I move that the Board adopt SBE Policy 2021-001 to govern Stand By Your Ad (SBYA) hearings.

Background

On March 23, 2018, the Department of Elections (ELECT) presented a proposed set of standard operating procedures to be used by ELECT in processing SBYA complaints. The State Board of Elections (SBE) approved the proposed procedures unanimously, and asked ELECT to prepare proposed procedures for SBYA hearings and a list providing factors for the SBE to consider when determining the appropriate civil penalty to assign for a violation of Chapter 9.5. The SBE adopted State Board of Elections Policy 2018-001 on August 15, 2018. Since that time, the SBE has conducted SBYA hearings according to that Policy.

Counsel from the Office of the Attorney General (OAG) has suggested changes to Policy 2018-001 to further align the SBE's hearing process with Virginia's Administrative Process Act (APA) of the Code of Virginia §2.2-4000, *et. seq.* ELECT and the OAG have prepared the Policy below to be used by the SBE when conducting SBYA hearings pursuant to Code of Virginia §24.2-955.3.

Attachment

Draft State Board of Elections Policy 2021-001

State Board of Elections Policy 2021-001

A meeting of the Virginia State Board of Elections (SBE) was held on February 23, 2021, during which the following policy was proposed by the Department of Elections (ELECT) and approved by the Board:

STAND BY YOUR AD HEARINGS

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

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

The policy entitled “State Board of Elections Policy 2018-001” is rescinded; and

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

Definitions

- “Clearly identified” means the candidate’s name, nickname, photograph, or drawing or the identity of the candidate is otherwise apparent—
 - through an unambiguous reference, such as the candidate’s initials (ex. FDR), nickname (ex. Ike), office (ex. “the Governor”); or
 - through an unambiguous reference to their status as a candidate such as “the Democratic Senate nominee for District 5”.
- “Complainant” means the filer of a complaint.
- “Express advocacy” has the meaning given the term in 1 Va. Admin. Code 20-90-30.
- “Occurrence” means—
 - one broadcast of a radio or television political campaign advertisement¹; or
 - with respect to print media, one print media political campaign advertisement.
- “Respondent” means a person that is the subject of a complaint.

Complaints

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

¹ Section 24.2-955.1.

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

Notice

Method

- If a person is alleged to have violated SBYA, ELECT shall provide notice to the respondent via certified mail not later than 10 days before the date on which a hearing on the matter will be held.²
- If the respondent is a registered voter, ELECT shall send such notice via certified mail to the most recent physical address provided in the respondent’s voter registration statement.
- If the respondent is a registered committee, ELECT shall send such notice via certified mail to the most recent physical address provided in the respondent’s statement of organization.
- If ELECT is aware of an electronic mail address for the respondent, ELECT shall also send such notification via electronic mail.

Contents

- Each notice shall include—
 - The time³, date⁴, location⁵, and nature of the hearing⁶;
 - The basic law under which the SBE contemplates its possible exercise of authority⁷;
 - The matters of fact and law asserted or questioned by the SBE⁸, including an explanation of the alleged violation⁹;

² Section 24.2-955.3(D).

³ Sections 24.2-955.3(D) and 2.2-4020(B).

⁴ *Id.*

⁵ Section 2.2-4020(B).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Section 24.2-955.3(D).

- A statement of the maximum civil penalty that may be assessed with respect to the alleged violation;¹⁰
- Contact information consisting of the name, phone number, and government email address of the person designated by the SBE to respond to questions or otherwise assist a named party;¹¹ and
- Notice that a default order may be issued pursuant to Va. Code § 2.2-4020.2(A) against the respondent if the respondent fails without good cause to attend or appear at the hearing and, if such a default order is issued, the SBE may conduct all further proceedings necessary to complete the hearing without the defaulting respondent's presence at the hearing.¹²

Hearings

Timing of Hearings

- The SBE will meet in January of each year to consider SBYA complaints received between the previous July 1 and November 30.
- The SBE will meet in August of each year to consider SBYA complaints received between the previous December 1 and June 30.

Rights of respondents

- A respondent shall be entitled to—
 - Be accompanied by and represented by counsel;
 - Submit oral and documentary evidence and rebuttal proofs;
 - Conduct such cross-examination as may elicit a full and fair disclosure of the facts; and
 - Have the proceedings completed and a decision made with dispatch.¹³
- A respondent shall be given the opportunity to, on request and before the recommendations of ELECT are presented, submit in writing for the record—
 - Proposed findings and conclusions; and
 - Statements of reasons for the proposed findings and conclusions.¹⁴
- If a respondent intends to conduct cross-examination of any person at the hearing, the respondent shall provide reasonable notice of such proposed cross-examination to the SBE prior to the hearing.

Rights of the Board

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

¹⁰ *Id.*

¹¹ Section 2.2-4020(B)

¹² Section 2.2-4020.2(B).

¹³ Section 2.2-4020(C).

¹⁴ Section 2.2-4020(D).

- Oversee a verbatim recording of the evidence;
- Hold conferences for the settlement or simplification of issues by consent;
- Dispose of procedural requests; and
- Regulate and expedite the course of the hearing.¹⁵

Default orders

- If a respondent without good cause fails to attend or appear at a hearing, the SBE may issue a default order against the respondent.¹⁶
- If the SBE issues a default order, the SBE may conduct all further proceedings necessary to complete the hearing without the defaulting respondent's presence at the hearing.¹⁷
- Not later than 15 days after the SBE gives notice to a respondent subject to a default order that an initial or final order has been rendered against the respondent, the respondent may petition the SBE to vacate the order.¹⁸
 - If good cause is shown for the respondent's failure to appear, the SBE shall vacate the order and, after proper service of notice, conduct another hearing.¹⁹
 - If good cause is not shown for the respondent's failure to appear, the SBE shall deny the motion to vacate.²⁰

Continuance

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

Subpoenas

- The SBE may, and on the request of a respondent shall, issue a subpoena requiring testimony or the production of other evidence.²¹
- Any person who receives a subpoena issued by the SBE to appear or produce evidence with respect to a hearing and who objects to the subpoena may procure by petition a decision on the validity of the subpoena in the Circuit Court for the City of Richmond.²²
- If any person refuses or neglects to comply with a subpoena issued by the SBE with respect to a hearing, the SBE may procure an order of enforcement from the Circuit Court for the City of Richmond.²³

¹⁵ Section 2.2-4020(C).

¹⁶ Section 2.2-4020.2(A).

¹⁷ Section 2.2-4020.2(C).

¹⁸ Section 2.2-4020.2(E).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 2.2-4022.

²² *See id.*

²³ *Id.*

Interpreter services

- If an interpreter is required, ELECT will make appropriate arrangements to ensure an interpreter is present during the hearing.

Presentation of complaints

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

Initial decision

- At a hearing at which a complaint is presented, after the complaint is presented, the SBE shall—
 - Carry out further deliberation as necessary; and
 - Conduct a vote relating to an initial decision as to whether a violation has occurred and, if so, the civil penalty that should be assessed.
- To assess a civil penalty for a violation of SBYA, the SBE must find that SBYA requirements apply to the communication in question, and that the communication fails to comply with SBYA requirements.
 - The SBE should consider whether the communication—
 - constitutes an advertisement subject to SBYA; and
 - expressly advocates for the election or defeat of a clearly identified candidate.
 - Upon such finding, the SBE may then determine whether the advertisement complies with SBYA disclosure requirements, and if not, what civil penalty to assess.

- An initial decision of the SBE may be modified or vacated subject to the requirement that a final decision shall be rendered not later than 90 days after the date on which the hearing occurs.

Final decisions

- The SBE shall render any final decision not later than 90 days after the date on which a hearing occurs.²⁴
- The SBE shall provide notice to the respondent not later than 5 days after the date of its final decision,²⁵ and such notice shall be signed by the SBE and served upon the respondent by mail.²⁶
- The original signed copy of a final decision of the SBE shall remain in the custody of the agency as a public record.²⁷
- A decision shall briefly state—
 - The findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the agency is operating;
 - The appropriate order for a penalty under Va. Code § 24.2-955.3 or denial thereof; and²⁸
 - The time for filing a notice of appeal under Va. S.Ct. Rule 2A:2.

Reconsideration

- A respondent may file a petition for reconsideration with the SBE of a final decision of the SBE made pursuant to Va. Code § 2.2-4020.²⁹
- A petition for reconsideration shall be filed with the SBE not later than 15 days after service of the final decision.³⁰
- A petition for reconsideration shall include—
 - A full and clear statement of the facts pertaining to the reasons for reconsideration;
 - The grounds in support thereof; and
 - A statement of the relief desired.³¹
- Not later than 30 days after the date on which the SBE receives a respondent's timely petition for reconsideration, the SBE shall render a written decision on the petition, which shall—
 - Deny the petition;
 - Modify the case decision; or
 - Vacate the case decision and set a new hearing for further proceedings.³²

²⁴ Section 2.2-4021(B).

²⁵ *Id.*

²⁶ Section 2.2-4023.

²⁷ *Id.*

²⁸ See 2.2-4020(E).

²⁹ Section 2.2-4023.1(A).

³⁰ *Id.*

³¹ *Id.*

³² Section 2.2-4023.1(B).

- The SBE may reconsider a final decision on its own initiative for good cause within 30 days of the date of the final decision.³³

³³ Section 2.2-4023.1(E).



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Public Comment

BOARD WORKING PAPERS