

COVER SHEET FOR FILING CIVIL ACTIONS  
COMMONWEALTH OF VIRGINIA

Case No. CL24000417-00  
(CLERK'S OFFICE USE ONLY)

Waynesboro City

Circuit Court

Curtis G. Lilly, II et al.  
PLAINTIFF(S)

v./In re:

Susan Beals et al.  
DEFENDANT(S)

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

GENERAL CIVIL

Subsequent Actions

- Claim Impleading Third Party Defendant
  - Monetary Damages
  - No Monetary Damages
- Counterclaim
  - Monetary Damages
  - No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

Business & Contract

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Detinue
- Garnishment

Property

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Escheatment
- Establish Boundaries
- Landlord/Tenant
  - Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

Tort

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

ADMINISTRATIVE LAW

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

DOMESTIC/FAMILY

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

WRITS

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

PROBATE/WILLS AND TRUSTS

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

MISCELLANEOUS

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

Damages in the amount of \$ 0.00 are claimed.

10/4/2024  
DATE

Thomas F. Ranieri, Esq.  
PRINT NAME

33 Cedarside Court, Front Royal, Virginia 22630  
ADDRESS/TELEPHONE NUMBER OF SIGNATOR

412-419-6519

ranieri@tra-lawfirm.com  
EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

PLAINTIFF  DEFENDANT  ATTORNEY FOR  PLAINTIFF  DEFENDANT

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

VIRGINIA

IN THE CIRCUIT COURT FOR WAYNESBORO COUNTY

Chris G. Lilly, II,

in his official capacity as the  
Chairman of the Waynesboro County  
Board of Elections,

and

Sami Mares,

in his official capacity as the  
Vice-Chairman of the Waynesboro County  
Board of Elections,

Plaintiff,

vs.

Sarah Bush,  
in her official capacity as the  
Commissioner of the Virginia  
Department of Elections,

and

John O'Beanna, M.D.

in his official capacity as Chairman of  
The Board for the State Board of  
Examiners,

Defendants.

FILED IN THE CLERK'S OFFICE  
OF THE CIRCUIT COURT OF THE

FILED IN THE CLERK'S OFFICE  
OF THE CIRCUIT COURT OF THE  
WAYNESBORO CIRCUIT COURT  
DATE: 10/04/2024 @16:50:45

NICOLE BRIGGS, CLERK

TESTE: *N. Briggs*  
CLERK/DEPUTY CLERK

Case No.: CL-24-00017-00

TIME IS OF THE ESSENCE

NOTICE OF APPEARANCE

Christy Ann Kanter, Esq., who requests entry of appearance as

attorney for Plaintiff Chris G. Lilly, II and Sami Mares (hereinafter

VIRGINIA:

IN THE CIRCUIT COURT FOR WAYNESBORO COUNTY

Curtis G. Lilly, II,

in his official capacity as the  
Chairman of the Waynesboro County  
Board of Elections,

and

Scott Mares,

in his official capacity as the  
Vice-Chairman of the Waynesboro County  
Board of Elections,

Plaintiffs,

v.

Susan Beals,

in her official capacity as the  
Commissioner of the Virginia  
Department of Elections,

and

John O'Bannon, M.D.

in his official capacity as Chairman of  
The Board for the State Board of  
Elections,

Defendants.

FILED IN THE CLERK'S OFFICE  
OF THE CIRCUIT COURT OF THE  
WAYNESBORO CIRCUIT COURT  
DATE: 10/10/2024 @13:34:35

NICOLE BRIGGS, CLERK

TESTE: *Nicole Briggs*  
CLERK/DEPUTY CLERK

Case No.: CL-24-000417-00

**TIME IS OF THE ESSENCE**

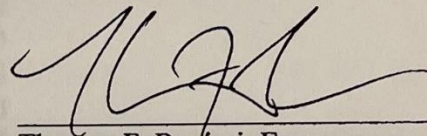
NOTICE OF APPEARANCE

COMES NOW Attorney Thomas F. Ranieri, Esq., who requests entry of appearance as  
counsel of record on behalf of Plaintiffs Curtis G. Lilly, II and Scott Mares (hereinafter

“Plaintiffs”) in the above-captioned matter, and, in support of same, respectfully submits the following:

1. I am an attorney licensed to practice law in the Commonwealth of Virginia and am currently in good standing with the Virginia State Bar;
2. I have an office at 33 Cedarside Court, Front Royal, Virginia 22630; and,
3. My Virginia Bar Number is 93150.

Respectfully submitted this 7th day of October, Anno Domini 2024.

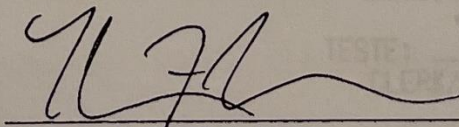


Thomas F. Ranieri, Esq.  
Va. Bar No. 93150  
RANIERI & ASSOCIATES, PLC  
33 Cedarside Court  
Front Royal, Virginia 22630  
Tel: 540-502-5147  
Email: ranieri@tra-lawfirm.com  
Counsel for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify and pledge that on October 7, 2024, a copy of the forgoing was transmitted to the following interested parties:

**John O'Bannon, M.D.**  
**Susan Beals**  
Washington Building  
1100 Bank Street, First Floor  
Richmond, Virginia 23219



Thomas F. Ranieri, Esq.

VIRGINIA:

COMPLAINT

COME IN THE CIRCUIT COURT FOR WAYNESBORO COUNTY

**Curtis G. Lilly, II,**

*in his official capacity as the  
Chairman of the Waynesboro County  
Board of Elections,*

and

**Scott Mares,**

*in his official capacity as the  
Vice-Chairman of the Waynesboro County  
Board of Elections,*

*Plaintiffs,*

v.

**Susan Beals,**

*in her official capacity as the  
Commissioner of the Virginia  
Department of Elections,*

and

**John O'Bannon, M.D.**

*in his official capacity as Chairman of  
The Board for the State Board of  
Elections,*

**SERVE:**

John O'Bannon, M.D.  
Susan Beals  
Washington Building  
1100 Bank Street, First Floor  
Richmond, Virginia 23219

*Defendants.*

Case No.: CL24000417-00  
**TIME IS OF THE ESSENCE**

FILED IN THE CLERK'S OFFICE  
OF THE CIRCUIT COURT OF THE  
WAYNESBORO CIRCUIT COURT  
DATE: 10/04/2024 @16:51:02

NICOLE BRIGGS, CLERK

TESTE: Nicole Briggs  
CLERK/DEPUTY CLERK

## COMPLAINT

COME NOW Plaintiffs Curtis G. Lilly, II and Scott Mares (hereinafter "Plaintiffs"), by and through the undersigned attorney, and pursuant to VA. R. SUP. CT. 3:3, to make this, their Complaint against the Defendants Susan Beals and John O'Bannon, MD in their official capacities as the Commissioner of Elections and Chairman of the State Board of Elections, respectively (hereinafter "Defendants"), and in support of the same, respectfully submit the following:

### **JURISDICTION AND VENUE**

1. This court has personal jurisdiction over the Plaintiffs as they reside in Waynesboro City, and all events relevant to this controversy have occurred or shall occur therein.
2. This court has personal jurisdiction over the Defendants as heads of state agencies whose policies and practices directly impact the rules governing the administration and certification of elections in the City of Waynesboro.

### **PARTIES**

3. Plaintiff Curtis G. Lilly, II, is the Chairman of the Waynesboro County Board of Elections. In that capacity, he is oath-bound to determine whether an election has been conducted properly before certifying that election. He is otherwise a private citizen who resides within the City of Waynesboro.
4. Plaintiff Scott Mares is the Vice-Chairman of the Waynesboro County Board of Elections. In that capacity, he is oath-bound to determine whether an election has been conducted properly before certifying that election. He is otherwise a private citizen who resides within the City of Waynesboro.

5. Defendant Susan Beals is the Commissioner of the Virginia Department of Elections, which administers elections in the Commonwealth.

6. Defendant John O'Bannon is the Chairman of the State Board of Elections, which makes policies and procedures for elections held in the Commonwealth.

7. Lisa P. Jeffers is the Registrar of Waynesboro County, with offices at 501 West Broad Street, Waynesboro, Virginia 22980 (hereinafter "Registrar"). Ms. Jeffers certifies candidates and election winners to the State Board of Elections.

8. The Virginia Department of Elections is the executive agency that administers and enforces elections in the Commonwealth of Virginia.<sup>1</sup>

9. Virginia State Board of Elections is "the regulatory board for the Department of Elections. It is authorized to prescribe standard forms for voter registration and elections, and to supervise, coordinate, and adopt regulations governing the work of local electoral boards, registrars, and officers of election."<sup>2</sup>

10. Waynesboro County Board of Elections (hereinafter "Electoral Board members") "is a three-member board appointed by the Circuit Court Judges. It is responsible for the conduct of all elections. They print ballots, prepare voting machines and polling sites, and recruit and train all election officials. They are guided by the State Board of Elections procedures and the Code of Virginia."<sup>3</sup>

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1. *About Us*, VIRGINIA DEPT. OF ELECTIONS, <https://www.elections.virginia.gov/about.html> (last visited September 27, 2024)

2. *Id.*

3. *Board of Elections*, WAYNESBORO VIRGINIA GOVERNMENT, <https://www.waynesboro.va.us/331/Board-of-Elections> (last accessed September 14, 2024).

## DISCUSSION OF AUTHORITIES

11. The United States Constitution grants the people the right to choose representatives to the people of several states, according to the voting eligibility requirements of the state. U.S. Const. Art. 1 § 2.

12. A “citizen” is a person born or naturalized in the United States and subject to the jurisdiction thereof and citizens are protected from the denial or abridgement of their vote. U.S. CONST. amend. XIV

13. The Constitution safeguards the right to vote in a properly administered election. *Reynolds v. Sims*, 377 U.S. 533 (1964).

14. “Every voter in a federal . . . election . . . whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes.” *Anderson v. United States*, 417 U.S. 211, 227 (1974).

## VIRGINIA CONSTITUTION

15. “The General Assembly shall establish a uniform system for permanent registration of voters pursuant to this Constitution, including provisions for appeal by any person denied registration, correction of illegal or fraudulent registrations, penalties for illegal, fraudulent, or false registrations, proper transfer of all registered voters, and cancellation of registrations in other jurisdictions of persons who apply to register to vote in the Commonwealth. The General Assembly shall provide for maintenance of accurate and current registration records and may provide for the cancellation of registrations for such purpose.” VA. CONST. art. II, § 4.

16. “The General Assembly shall provide for the nomination of candidates, shall regulate the time, place, manner, conduct, and administration of primary, general, and special



elections, and shall have power to make any other law regulating elections not inconsistent with this Constitution.” VA. CONST. art. II, § 4.

17. “The General Assembly shall provide for the nomination of candidates, shall regulate the time, place, manner, conduct, and administration of primary, general, and special elections, and shall have power to make any other law regulating elections not inconsistent with this Constitution.” VA. CONST. art. II, § 4.

18. “In elections by the people, the following safeguards shall be maintained: Voting shall be by ballot or by machines for receiving, recording, and counting votes cast. No ballot or list of candidates upon any voting machine shall bear any distinguishing mark or symbol, other than words identifying political party affiliation; and their form, including the offices to be filled and the listing of candidates or nominees, shall be as uniform as is practicable throughout the Commonwealth or smaller governmental unit in which the election is held.” VA. CONST. art. II, § 3.

19. “In elections other than primary elections, provision shall be made whereby votes may be cast for persons other than the listed candidates or nominees. Secrecy in casting votes shall be maintained, except as provision may be made for assistance to handicapped voters, **but the ballot box or voting machine shall be kept in public view and shall not be opened, nor the ballots canvassed nor the votes counted, in secret.** Votes may be cast in person or by absentee ballot as provided by law.” VA. CONST. art. II, § 3 [emphasis added].

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#### VIRGINIA CODE OF ELECTIONS

23. “The governing body of each county and city shall provide for the use of electronic voting systems, approved by the State Board, at every precinct and for all elections held in the county, the city, or any part of the county or city.” VA. CODE § 24.2-626(A).

24. “Each county and city governing body shall purchase, lease, lease purchase, or otherwise acquire such systems and may provide for the payment therefor in the manner it deems proper. Systems of different kinds may be adopted for use and be used in different precincts of

the same county or city, or within a precinct or precincts in a county or city, subject to the approval of the State Board.” VA. CODE § 24.2-626(A).

25. The Virginia Code prohibits the use of direct recording electronic machines in elections in the county or city. VA. CODE § 24.2-626(A).

26. “The governing body of any county or city that adopts for use at elections ballot scanner machines shall provide for each precinct at least one voting booth with a marking device for each 425 registered voters or portion thereof and shall provide for each precinct at least one scanner. However, each precinct having more than 4,000 registered voters shall be provided with not less than two scanners at a presidential election, unless the governing body, in consultation with the general registrar and the electoral board, determines that a second scanner is not necessary at any such precinct on the basis of voter turnout and the average wait time for voters in previous presidential elections.” VA. CODE § 24.2-627.

27. Under to VA. CODE § 24.2-629(B)-(C), the Commonwealth of Virginia may approve any electronic voting system that meets the following requirements:

- a. It shall correctly register or record and accurately count all votes cast for candidates and on questions;
- b. It shall be provided with a "protective counter," whereby any operation of the machine before or after the election will be detected;
- c. It shall be provided with a counter that at all times during an election shall show how many persons have voted;
- d. It shall ensure voting in absolute secrecy. Ballot scanner machines shall provide for the secrecy of the ballot and a method to conceal the voted ballot;
- e. It shall be programmable to allow ballots to be separated when necessary;

29. f. It shall retain each printed ballot cast; [and],
- g. Ballot scanner machines shall report, if possible, the number of ballots on which a voter undervoted or overvoted.
30. VA. CODE § 24.2-629(B)-(C).
28. After examining the equipment, ballots, and other materials submitted by the vendors, the Board shall prepare and file a report in its office detailing its finding regarding:
- a. The apparent capability of such equipment to accurately count, register, and report votes;
  - b. whether the system can be conveniently used without undue confusion to the voter;
  - c. its accessibility to voters with disabilities;
  - d. whether the system can be safely used without undue potential for fraud;
  - e. the ease of its operation and transportation by voting equipment custodians and officers of election;
  - f. the financial stability of the vendor and manufacturer;
  - g. whether the system meets the requirements of this title;
  - h. whether the system meets federal requirements;
  - i. whether issues of reliability and security identified with the system by other state governments have been adequately addressed by the vendor; and
  - j. whether, in the opinion of the Board, the potential for approval of such system is such as to justify further examination and testing.

VA. CODE § 24.2-629(B)-(C).

29. Throughout the election, the exterior of the voting equipment and every part of the polling place shall be in plain view of the officers of election. VA. CODE §24.2-638.

30. “No voting or counting machines shall be removed from the plain view of the officers of election or from the polling place at any time during the election and through the determination of the vote as provided in § 24.2-657, except as provided in subsection D of § 24.2-649.1. In the case of an emergency that makes a polling place unusable or inaccessible, voting or counting machines may be removed to an alternative polling place pursuant to the provisions of subsection D of § 24.2-310.” VA. CODE § 24.2-638.

31. “The equipment shall be placed at least four feet from any table where an officer of election is working or seated. The officers of election shall not themselves be, or permit any other person to be, in any position or near any position that will permit them to observe how a voter votes or has voted.” VA. CODE § 24.2-638.

32. “One of the officers shall inspect the face of the voting machine after each voter has cast his vote and verify that the ballots on the face of the machine are in their proper places and that the machine has not been damaged. During an election, the door or other covering of the counter compartment of the voting or counting machine shall not be unlocked or open or the counters exposed except for good and sufficient reasons, a statement of which shall be made and signed by the officers of election and attached to the statement of results. No person shall be permitted in or about the polling place except the voting equipment custodian, vendor, or contractor technicians and other persons authorized by this title.” VA. CODE §24.2-638.

REQUIREMENTS FOR ELECTION CERTIFICATION

33. “The process of reviewing, confirming, and recording the official local results of each election is called a ‘canvass’. [sic] Local election officials in each locality conduct a

canvass to verify and consolidate election results from the individual precincts. The officers of election, local electoral board, and general registrar are all jointly responsible for conducting an accurate and time canvass, and then transmitting the results of the canvass to the Department of Elections through Enhanced Results.” Ex. A – Virginia Department of Elections General Registrar/Director of Elections Handbook, chap. 14, pg. 3.

34. First, the electoral board must determine the persons who have received the highest number of votes for any office at which point the secretary of the electoral board creates an abstract of the votes for each eligible office. The abstract states the names of all people who received a vote as well as the numbers of votes each candidate received. VA. CODE § 24.2-675.

35. This abstract must be certified, signed by the electoral board, attested by the secretary, and retained as part of the board's records.

36. The Board then sends a certified copy of the abstract to the State Board of Elections. VA. CODE § 24.2-675.

37. The State Board of Elections then meets to ascertain the election results. They examine the certified abstracts on file and make statements of the total votes given for each candidate and office. The Board members certify these statements, determine the persons who received the greatest number of votes, and endorse and subscribe to a certificate of their determination. VA. CODE § 24.2-679.

38. The electoral board secretary must prepare election certificates for each county, city, town, or district office, except for offices shared by more than one county or city. VA. CODE § 24.2-680.

39. Finally, the State Board must complete and transmit to each elected person a certificate of their election, certified under its seal of office. VA. CODE § 24.2-680.

47. "The SOR" DEPARTMENT OF ELECTIONS REGULATIONS

40. Machine-counted ballots are assumed to be correct, and there are no regulations requiring election officials to verify that the machine correctly counted the cast ballots.

41. Moreover, in practice, election officials are prevented from comparing the paper ballots to the machine-generated numbers.

42. "All members of the electoral board *should* be present for the canvass; however, it is only mandatory that two members be present. In the event one member is unable to attend, two members of the electoral board constitute a quorum and may proceed with the canvass. The board member that cannot attend should notify [the Department of Elections]." Ex. A, chap. 14, pg. 5.

43. Further, "[w]hen conducting a canvass, only those members of the board present during the entire canvass may legally sign any document concerning it. If you attach a signature of a member that was not present at the canvass or a member that was present does not sign, the electoral board must reconvene." *Id.* at 5-6.

44. This means that a vote certification requires two Electoral Board members in order to complete a canvass.

45. If two Electoral Board members refuse to certify the election or conclude a canvass, then Waynesboro City will be unable to certify the 2024 election by the deadline set by the Dept. of Elections.

46. The officers responsible for the individual precincts and wards prepare and transmit the Statement of Results (hereinafter "SOR")<sup>4</sup> to the Electoral Board and Registrar.

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4. The Statement of Results contain the voting machine tape and the signatures of the election officials from the voting location.

47. “The SOR [] is a worksheet officers use to submit the results for each precinct. After polls close, officers of election begin to ascertain the votes by completing the SOR. Officers use materials such as the results tapes to complete the SOR. Officers of election must complete certain fields on the SOR such as: the number of voters checked-in at the pollbook, the number of voters that voted outside the polling place (“curbside”), and the number of ballots cast on the voting machine. The electoral board, then, verifies this information.” Ex. A at 7.

48. “Optical scanning machines produce tapes prior to an election and once the election is completed. The tapes produced prior to the beginning of the election are known as Zero Tapes while the printouts at the end of the election are the results tapes. Your printouts from the end of the night will have a total number of votes and, if applicable, tapes of any write-in names. Zero tapes and results tapes must be certified by the officials on election night; thus, each officer of election must sign these documents and submit an ELECT-658 Printed Return Sheet for all machines within the polling place.” *Id.*

49. “The Enhanced Results “Certification” report ([a.k.a.] Abstract of Votes) is generated after vote totals for each office or issue are submitted into Enhanced Results and confirmed correct. Once all data entered into Enhanced Results is confirmed correct, the local electoral board should have the general registrar or staff retrieve the Abstract of Votes.” *Id.*

50. The clerk of court must receive a copy of the return sheets, a copy of the inspection sheet, and a copy of the SOR to comply with Code of Virginia §24.2-658, which requires the return sheets be made available the day after the election and for 60 days thereafter for public inspection and transcription, regardless of the method of delivery chosen from Code of Virginia §24.2- 668.” *Id.* at 8.



51. The Virginia Department of Elections is required to maintain all ballots, used and unused, counted and uncounted, from both state and federal elections for a minimum of two years after any one particular election. Ex. A, chap. 9, pg. 14.

52. The Waynesboro County Electoral Board follows the Virginia Department of Elections guidelines for conducting an election in Virginia.

#### STATEMENT OF FACTS

53. All preceding paragraphs are incorporated by reference herein.

54. Prior to election day, the voting machines used by Virginia are programmed at what is called a "Logic and Accuracy Test" meeting between the vendor, Registrar, and one member of each political party. See Ex. B – Lilly Affidavit, Ex. C – Mares Affidavit.

55. At this meeting, the vendor comes in and installs election information programs into each machine by use of a thumb drive or laptop. *Id.*

56. The board members are prohibited from reviewing the machine's programming or the upload devices. *Id.*

57. The Registrar then generates a short pile of ballots called a "test deck" used to calibrate the voting machines. *Id.*

58. Typically, the test deck includes at least one ballot for each candidate, an undervoted ballot, an overvoted ballot, and other irregular ballot markings to test the logic and accuracy of the newly programmed voting machine. *Id.*

59. The test deck includes only ten to twenty ballots. *Id.*

60. The board members cannot know whether the voting machines are programmed to change how they process ballots. The program can change its protocol after a preset number

of votes are scanned, but the board members cannot know because they cannot audit the programming of the voting machines. *Id.*

61. As board members are prohibited from evaluating the voting machines except as permitted by the vendor, there is also no way to ensure that the machine does not connect to the Internet or present results inconsistent with the content of the ballot box. *Id.*

62. Once each machine has tabulated the test deck, the voting machines produce a tape representing the results. The newly generated voting machine tape must match the results of the Registrar's hand count of the test deck. *Id.*

63. After the polls close, the electoral board members go to the registrar's office and wait for the precinct chiefs to bring in a package from their respective precincts or wards. The chiefs provide the following to the electoral board members:

- a. *Envelope 1A*: Contains provisional ballots with voter registration forms.
- b. *Envelope 1B*: Contains provisional ballots collected during extended hours.
- c. *Envelope 2A*: Contains yellow return form and machine tapes that show the voting machine's count as zero at the beginning of election day, a statement of results from the end machine at the end of election day, and the "write-in" results tape.
- d. *Envelope 2*: Contains oaths of office, incident reports, Statement of Results form, zero machine tape, state of results tape, write-in results tape, morning check-in pollbook report summary, evening check-in summary pollbook report summary, ballot receipt chits (a.k.a. voting ticket), ballot record report, and closed polls checklist.

- e. *Envelope 3A*: Contains machine tape with the totals of the counted ballots. The actual ballots are not provided to the election officials.
- f. *Envelope 4*: Contains spoiled ballots.
- g. *Envelope 6*: Contains unused ballots.
- h. *Envelope 7*: Contains the voting machine's USB drive, voting machine keys, form for drive, and keys.
- i. *Envelope 8*: Contains voter registration forms, assistance oaths, affirmation of eligibility oaths, and the provisional ballot log.

*Id.*

64. The first step the Electoral Board must take in certifying an election is ensuring that each precinct and ward has provided the above materials. These must be provided after the polls close on election night. *Id.*

65. The Electoral Board members then compare the results printed by the voting machine to the numbers reported on the attached form detailing the contents. *Id.*

66. Once the numbers have been cross-referenced to ensure their accuracy, the Board then communicates with the registrar to compare the Board numbers with the results the registrar reports to the Department of Election utilizing the computer program "Veris." *Id.*

67. Board members are not permitted to see the Veris reporting screens and cannot verify that the Board numbers are the ones being reported to the Department of Elections. *Id.*

68. Further, the Electoral Board members are prohibited from having any access to Veris whatsoever. *Id.*

69. The Electoral Board members are prohibited from hand counting the ballots before returning them to the registrar. *Id.*

70. If Electoral Board members are not permitted to review the ballots, the only numbers the board can verify are that the number of votes for all candidates matches the number of ballots distributed and the number of voters who checked in at the poll books.

71. The Electoral Board members cannot ensure that the votes recorded by the secret ballots match the number of votes displayed on the voting machine results tape.

72. Consequently, the voting machine may be giving results on the closing tape that agree with the numbers of checked-in voters, ballots cast for all candidates, and ballots distributed but which votes have been incorrectly apportioned.

73. Further, the restriction that prohibits the Electoral Board members from hand counting ballots has no basis in Virginia law and is merely the internal policy of the Virginia Department of Elections. *See* Ex. D - Virginia's Guide to Hand-Counting Ballots.

74. As a result, under the current Virginia Department of Election administrative policy, the electoral board is unable to verify that such a mistake has not occurred. Ex. B, C.

75. After polls close, the ballots are removed from the machines, put in a box, and sealed along with the officers' of election signatures. *Id.*

76. The ballots are sent to the registrar's office and then to the Clerk of Court and the ballot boxes may not be opened without a court order. *Id.*

77. As the ballots themselves contain no identifying information that needs to be kept private, there is no basis in the Virginia Code upon which to refuse the board members' requests to review the ballots. *Id.*, *see* VA. CONST., art. II.

78. Under the current legal regime, board members are unable to personally review and verify that:

a. the voting machine program being used to count the ballots is keeping a true and accurate count;

b. the voting machine program being used to count the ballots is recording the true and accurate count; and/or,

c. that the voting machine record tape accurately represents the ballots cast.

79. Consequently, the Plaintiffs believe that the voting machine is counting the votes in secret because neither the program counting the votes recorded on the ballots nor the ballots themselves can be examined.

80. The Virginia Constitution explicitly states that the ballot count cannot be conducted in secret.

81. The board members have taken an oath to uphold the Virginia Constitution, and the Virginia Constitution prohibits the counting of ballots in secret, so the board members do not believe that any election decided by voting machine total in the City of Waynesboro can be certified as accurate.

82. The Plaintiffs believe that to certify the election under the current legal and administrative regime, therefore, would be a violation of their oaths of office, and, absent Court intervention, shall refuse to certify the 2024 election.

**COUNT 1:  
DECLARATORY JUDGMENT**

83. All preceding paragraphs are incorporated by reference herein.

84. "In cases of actual controversy, circuit courts within the scope of their respective jurisdictions shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed and no action or proceeding shall be open to objection on the ground that a judgment order or decree merely declaratory of right is prayed

for. Controversies involving the interpretation of deeds, wills, and other instruments of writing, statutes, municipal ordinances, and other governmental regulations, may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right.” VA. CODE § 8.01-184.

85. Here, the Plaintiffs are asking that this Court declare that the current election practices adopted by Virginia are in violation of both the Virginia Constitution as well as the Help America Vote Act.

*Violation of the Virginia Constitution*

86. The Commonwealth of Virginia requires that Electoral Board members swear the following oath: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia, and that I will faithfully and impartially discharge all the duties incumbent upon me as ....., according to the best of my ability (so help me God)." VA. CONST. art. II, § 7.

87. The Constitution of the Commonwealth of Virginia states that “[i]n elections other than primary elections, provision shall be made whereby votes may be cast for persons other than the listed candidates or nominees. Secrecy in casting votes shall be maintained, except as provision may be made for assistance to handicapped voters, **but the ballot box or voting machine shall be kept in public view and shall not be opened, nor the ballots canvassed nor the votes counted, in secret.** Votes may be cast in person or by absentee ballot as provided by law.” VA. CONST. art. II, § 3 [emphasis added].

88. Black’s Law Dictionary defines “secret” as acting “to conceal or secretly transfer (property, etc.), esp. [sic] to hinder or prevent officials or creditors from finding it” Secret, BLACK’S LAW DICTIONARY 9th ed., pg. 1473.

89. The word “Ballot” is defined as an “instrument, such as a paper or ball, used for casting a vote.” Ballot, BLACK’S LAW DICTIONARY 9th ed., pg. 165

90. “Secret Ballot” is “a vote cast in such a way that the person voting cannot be identified.” Secret Ballot, BLACK’S LAW DICTIONARY 9th ed., pg. 165.

91. A “count” is defined as a “canvassing.” Count, BLACK’S LAW DICTIONARY 9th ed., pg. 402.

92. “Canvassing” means “to formally count ballots and report the returns . . .” Canvass[ing], BLACK’S LAW DICTIONARY 9th ed., pg. 235.

93. Ballots are fed directly into the voting machine, where they are scanned by the machine, and then tallied by the machine.

94. There is no physical way to observe whether the machine is counting properly in real time.

95. As the counting of votes is a canvass, and the machine is the only method by which each vote is cast and counted, the machine is performing a secret canvass.

96. As indicated above, the Electoral Board is prevented from undertaking prospective efforts that might have a mitigating effect on the analysis, such as examination of the machine’s source code, election update programming, and any internet logs.

97. Because they cannot perform such a task, the Plaintiffs are unable to verify whether the voting machine will perform as it is required on election day.

98. Plaintiffs are also prohibited by the Department of Elections and the Circuit Court from performing a hand count of cast ballots.

99. As such, Plaintiffs cannot verify whether the votes contained on the ballots match the voting machine results tape.

100. The problem, then, is that Plaintiffs believe that the Virginia Constitution requires them to examine the ballots in public after the votes on the ballots have been cast to have ensured that the results of the machine's secret canvass are an accurate reflection of those votes.

101. Ballots do not contain any identifying information, and any ballot which does is an invalid ballot under Virginia law and ineligible to be counted.

102. Consequently, as Virginia's statutes and regulations prevent the Plaintiffs from ensuring that the election canvass is not being conducted in secret, Plaintiffs believe that to verify the 2024 election would be a breach of the Virginia Constitution and a violation of their oaths of office.

103. WHEREFORE, and for the foregoing reasons, the Plaintiff respectfully requests that this Court enter judgment in the Plaintiff's favor, and declare that the current legal regime and administration of Virginia elections is unconstitutional, and any other remedy the Court sees fit to award.

**COUNT 2:  
TEMPORARY INJUNCTION**

104. All preceding paragraphs are incorporated by reference herein.

105. Virginia Code § 8.01-622 states that "[a]n injunction may be awarded to protect any plaintiff in a suit for specific property, pending either at law or in equity, against injury from the sale, removal, or concealment of such property."

106. Va. Code § 8.01-628 states that no temporary injunction shall be awarded unless the court is satisfied with the plaintiff's equity.

107. "There is no great difference between federal and Virginia standards for preliminary injunctions. Both draw upon the same equitable principles." *Capital Tool &*



*Mfg. Co. v. Maschinenfabrik Herkules*, 87 F.2d 171, 173 (4th Cir. 1988) (citing VA. CODE § 8.1-628).

108. “In general, a court may not grant injunctive relief unless a party has shown that party would suffer irreparable injury without the injunction and that the party has no adequate remedy at law.” *May v. R.A. Yancy Lumber Corp.*, 297 Va. 1, 17-18 (2019) (citing *Wright v. Castles*, 232 Va. 218, 224 (1986)).

109. “Four factors enter into the determination of whether to grant or to withhold interim injunctive relief: (a) plaintiff’s likelihood of success in the underlying dispute between the parties; (b) whether plaintiff will suffer irreparable injury if interim relief is denied; (c) the injury to defendant if an injunction is issued; and (d) the public interest. There is a correlation between the likelihood of the plaintiff’s success and the probability of irreparable injury to him. If the likelihood of success is great, the need for showing the probability of irreparable harm is less. Conversely, if the likelihood of success is remote, there must be a strong showing of the probability of irreparable injury to justify issuance of the injunction.” *North Carolina St. Ports v. Dart Containerline*, 592 F.2d 749, 750 (4th Cir. 1979).

110. The four factors Virginia Courts consider when determining whether to grant an injunction enumerated above shall be addressed below. *Id.*

111. First, the Plaintiffs’ suit for an injunction is highly likely to succeed on the merits and result in both temporary and permanent injunctive relief.

- a. Plaintiffs have determined that their oath of office does not permit them to certify the 2024 elections in the City of Waynesboro, and have signed affidavits to that effect.

- b. As such, the Virginia elections will either be uncertified or will be certified in violation of the rights of Waynesboro City voters.

112. Second, there is a high likelihood that Plaintiffs will suffer irreparable harm absent an injunction.

- a. Plaintiffs are stuck between a rock and a hard place. They are duty-bound to perform their responsibilities in alignment with the United States Constitution, United States Code, the Constitution of Virginia, the Code of Virginia, and the regulations promulgated by the Virginia Department of Elections.

- b. Plaintiffs cannot perform the duties as determined by the Department of Elections because their policies and practices prevent the Plaintiffs from hand-counting the cast ballots.

- c. If the Plaintiffs cannot hand count the ballots, they cannot verify that the results of the voting machine's secret canvass are an accurate representation of the votes contained on the ballots.

- d. As such, the voting machines are performing a secret canvass, and the election cannot be certified.

113. Third, Defendants will not suffer legally cognizable harm if the injunctive relief sought is granted.

- a. The Commonwealth of Virginia has a responsibility to the rule of law to follow its own Constitution.

- b. Insofar as a law is in contradiction with the Constitution, it is an invalid law, and it would be wrongful to enforce.

120. c. The Defendants have an interest in holding transparent and accurate elections which reinforce the voters' belief that their government accurately represents the public will.

114. Fourth, awarding the injunction would serve the public interest for several reasons.

- a. If the Plaintiffs are permitted to hand-count the ballots, then they would be able to check that the voting machine is recording votes accurately.
- b. If such hand-counting is permitted, then the voting machine performed secret canvassing would be fully transparent and open to the public.
- c. Thus, awarding the injunction would promote more accurate and transparent elections, which would increase public faith in our government's institutions.

115. Equity is an appropriate remedy because the Plaintiffs do not have an adequate remedy at law to address this situation. The only authority to whom the Plaintiffs may turn to request release from a constitutional controversy is the court sitting in equity.

**BOND**

116. Plaintiff's preceding paragraphs are incorporated by reference herein.

117. The Plaintiff requests that the Court waive the bond in this matter.

118. Virginia Code § 8.01-631 states that a Court may waive a bond where "any other person from whom in the opinion of the court awarding an injunction it may be improper or unnecessary to require bond . . . ."

119. The bond's purpose is to relieve the Defendant if the injunction is dissolved or if the enjoined party incurs damages.

120. In this interest, the government will not be financially taxed by this injunction and no damages are sought or expected.

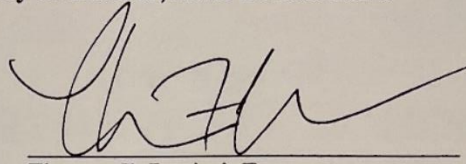
121. Because this case regards a constitutional matter and the bond would serve no purpose, the Plaintiff requests waiver.

**WHEREFORE**, and for the forgoing reasons, Plaintiff respectfully requests this Court waive the bond requirement for this matter as well as award the Plaintiff judgment, which accomplishes the following:

- a. Declares the current machine canvass a secret canvass and a violation of the Constitution of Virginia, Article II, § 3;
- b. Enjoin the City of Waynesboro to establish procedures for a hand count of paper ballots compliant with Article II, § 3 of the Constitution;
- c. Enjoin the Virginia Department of Elections to allow observers to monitor, cameras to live stream, and record the counting of the votes with ballots scanned and made available as a public record after the results are certified and posted;
- d. Any other remedy or relief the Court sees fit to award.

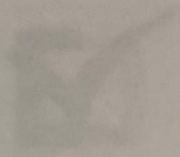
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Respectfully submitted this 4th day of October, Anno Domini 2024.



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**TIME IS OF THE ESSENCE**



• VIRGINIA •  
DEPARTMENT of ELECTIONS

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the Handbook

**Exhibit A**

# Chapter 14

## Canvass

August 2024



★ VIRGINIA ★  
DEPARTMENT *of* ELECTIONS

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# the Handbook

## Chapter 14 Canvass

August 2024

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## 14.1 CHAPTER ORGANIZATION

The process of reviewing, confirming, and recording the official local results of each election is called a "canvass". Local election officials in each locality conduct a canvass to verify and consolidate election results from the individual precincts. The officers of election, local electoral board, and general registrar are all jointly responsible for conducting an accurate and timely canvass, and then transmitting the results of the canvass to the Department of Elections through Enhanced Results. The requirements for canvassing are codified in the Code of Virginia, Title 24.2, §§24.2-671-24.2-676.

The purpose of this chapter is to provide an overview of the procedures for conducting a canvass in compliance with Virginia Code and is structured into three parts: Preparing for the Canvass, Conducting the Canvass, and After the Canvass.

§14.2 outlines steps to prepare for the canvass. The canvass occurs during a board meeting; thus, §14.2.1 discusses the basics of conducting a meeting, such as the need to follow requirements set in the Virginia Open Meetings and Freedom of Information Act. §14.2.2 discusses attendance and the important role of the secretary of the local electoral board. §14.2.3 lists materials needed to complete a canvass and explains the purpose of each document while §14.2.4 provides information regarding duties and responsibilities the clerk and general registrar have throughout.

The canvass is an iterative step-by-step process; general registrars and electoral board members must have a sound understanding of how the materials are to be used prior to initiating the canvass meeting. §14.3 provides a guide to conducting the canvass by outlining the duties and responsibilities of four entities: the officers of election, local electoral board





## 14. CANVASS

### REQUIRED FORMS

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### ADDITIONAL RESOURCES

### REFERENCE

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### REGULATIONS

## 14.3 PREPARING FOR CANVASS

### 14.2.1 Basics of the Meeting

## 14.1 CHAPTER ORGANIZATION

The process of reviewing, confirming, and recording the official local results of each election is called a “canvass”. Local election officials in each locality conduct a canvass to verify and consolidate election results from the individual precincts. The officers of election, local electoral board, and general registrar are all jointly responsible for conducting an accurate and timely canvass, and then transmitting the results of the canvass to the Department of Elections through Enhanced Results. The requirements for canvassing are codified in the Code of Virginia, Title 24.2, §§24.2-671- 24.2-680.

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The canvass is an intensive step-by-step process; general registrars and electoral board members must have a sound understanding of how the materials are to be used prior to beginning the canvass meeting. §14.3 provides a guide to conducting the canvass by focusing on the duties and responsibilities of four entities: the officers of election, local electoral board



members, the general registrar, and the Department of Elections. §14.3.1 discusses the importance of the officers of election. It is very important that general registrars and local electoral board members are familiar with the duties of the officers of election because this position is critical in verifying results. §14.3.2 focuses on the general registrar, whose role for the canvass includes bringing necessary supplies and ensuring that required documents are provided. §14.3.3 examines how the electoral board members fit into canvassing as their presence is important for counting and verification purposes.

§14.4 concludes the chapter by giving a brief overview of what should occur after the canvass, which is primarily the responsibility of the general registrar and electoral board members.

§14.4.1 discusses required filings regarding campaign finance reports, while §14.4.2 dives into the certificates of election that the local electoral board sends out. §14.4.3 closes the canvass chapter by discussing the work of general registrars, such as sending out rejection letters to provisional and absentee ballot voters.

While conducting a canvass seems complex, the canvass can be completed smoothly if each entity is aware of how their responsibilities fit within the process.

## 14.2 PREPARING FOR CANVASS

### 14.2.1 Basics of the Meeting

The canvass is a meeting of the electoral board; thus, the Virginia Freedom of Information Act applies.<sup>1</sup> Refer to [redacted] for additional information on public meeting requirements.

For the most part, the canvass is open to the general public, who may attend all or a portion of the meeting.<sup>2</sup> The provisional ballots meeting, however, is the only part of the canvass that takes place during a closed session and therefore is not open to the public. Closed session allows for deliberations and the presentation of evidence by a provisional voter for qualification purposes and for this reason is exempt from the Virginia Freedom of Information Act. The vote by the electoral board to approve or reject a provisional ballot is done in open session, pursuant to Code of Virginia §2.2-3710(A).<sup>3</sup> For additional information on the provisional ballot process, please see [redacted].

Notice of the date, time, and location for the provisional ballots meeting and the canvass must be given to the public by the electoral board at **least three business days** prior to the meeting date.<sup>4</sup> While the canvass is required to begin no later than 5:00 PM on the day after the election, results from the canvass cannot be certified and submitted to the Department of Elections until all provisional ballots have been addressed.

#### 14.2.1.1 When to Meet

The electoral board should proceed with canvassing immediately following adjourning the provisional ballots meeting, which is when qualifications of those persons who cast provisional

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<sup>1</sup> See Code of Virginia

<sup>2</sup> See Code of Virginia

See also Code of Virginia

<sup>3</sup> See Code of Virginia

<sup>4</sup> See Code of Virginia



votes is determined.<sup>5</sup> The electoral board must begin the canvass no later than **5:00 PM on the day after the election.**<sup>6</sup> The board may adjourn as needed, not to exceed six calendar days for June Primaries and ten calendar days for the November General from the date of the election, unless an extension has been granted for a risk-limiting audit (RLA).<sup>7</sup>

Before the electoral board can meet, the officers of election must deliver election materials on the night of the election to the clerk of the circuit court's office or the office of the general registrar.<sup>8</sup> If the officers of election do not deliver the materials before the canvass to the clerk or the office of the general registrar, the clerk of the circuit court must have law enforcement retrieve the materials.<sup>9</sup> This is discussed in greater detail in 14.2.3.

#### 14.2.1.2 Where to Meet

The electoral board must hold the meeting "at the clerk's or general registrar's office of the [locality] for which they are appointed" and "may adjourn to another room of sufficient size in a public building."<sup>10</sup> The board has some discretion in determining where the canvass should take place. Written directions to the location of any room other than the clerk's or general registrar's office where the board will meet shall be posted at the doors of the clerk's and general registrar's offices prior to the beginning of the meeting.<sup>11</sup>

#### 14.2.1.3 Attendance

No person, regardless of official function or statutory right to be present, may disrupt the meeting or interfere with the canvass in any way. Inform unruly individuals that interruptions can cause errors and explain that questions concerning each precinct will be taken *after* work concludes but *before* the electoral board reseals the pollbooks, pollbook count forms, and the statement of results (SOR) for the precinct back into Envelope #2.

#### 14.2.1.4 Whose Attendance is Required.



All members of the electoral board *should* be present for the canvass; however, it is only mandatory that two members be present. In the event one member is unable to attend, two members of the electoral board constitute a quorum and may proceed with the canvass.<sup>12</sup> The member of the board that is unable to attend should notify ELECT.

When conducting a canvass, the secretary must be present. If the official secretary is unable to attend the canvass, the board members must elect one of the remaining board members to act as secretary.<sup>13</sup> In acting as secretary, the board member must sign any official documents regarding the canvass as "acting secretary".

When conducting a canvass, **only those members of the board present during the entire**

<sup>5</sup> See GREB Handbook Chapter 13, Provisional Ballots, for more information on the provisional ballot meeting.

<sup>6</sup> See Code of Virginia

<sup>7</sup> *Id.*

<sup>8</sup> See Code of Virginia

<sup>9</sup> See Code of Virginia

<sup>10</sup> See Code of Virginia

<sup>11</sup> *Id.*

<sup>12</sup> See Code of Virginia

<sup>13</sup> See Code of Virginia



**canvass may legally sign any document concerning it. If you attach a signature of a member that was not present at the canvass or a member that was present does not sign, the electoral board must reconvene.**

#### 14.2.1.5 Whose Attendance is Optional:

During a primary election, each candidate is entitled to have as many representatives as there are teams of officials working to ascertain the results. In a general and/or special election, each political party and each independent candidate can have as many representatives as there are teams working to ascertain the results. The electoral board must use a room of sufficient size to accommodate these individuals. These individuals must be allowed an unobstructed view of the proceedings.

#### 14.2.2 Required Totals for Canvass

##### **Pollbook/EPB Data      Statement of Results      Voting Results Tapes**

#### 14.2.2.1 Pollbook and Pollbook Count Sheet

A pollbook is either a printed (PPB) or electronic (EPB) list of all the eligible voters for a given precinct, in a given election. Pollbooks list each eligible voter by last name and includes their ID number, full name, year of birth, town code (if applicable), super-district (if applicable), residence address, and mailing address. Additionally, a voter may have a pre-printed code beside their name to indicate one of the following:

- Voter requested an absentee ballot (AB).
- Individual is a temporary or federal overseas voter (T or F).
- Individual is a permanently registered overseas voter (R).
- Voter moved within the jurisdiction or is inactive (?).
- Voter has an assigned number instead of a social security number (A).
- Voter utilized Same Day Registration (SDR)

The pollbook count sheet is a tally sheet used by officers of election to track the number of voters who checked in on election day. If an electronic pollbook (EPB) is used, this count is



tracked automatically. A pollbook count sheet template can be found in

#### 14.2.2.2 Statement of Results (SOR)

The SOR is a worksheet officers use to submit the results for each precinct.<sup>14</sup> After polls close, officers of election begin to ascertain the votes by completing the SOR. Officers use materials such as the results tapes to complete the SOR. Officers of election must complete certain fields on the SORs such as: the number of voters checked-in at the pollbook, the number of voters that voted outside the polling place (“curbside”), and the number of ballots cast on the voting machine. The electoral board, then, verifies this information.<sup>15</sup> SOR templates can be found in

#### 14.2.2.3 Voting System Results Tapes

Optical scanning machines produce tapes prior to an election and once the election is completed. The tapes produced prior to the beginning of the election are known as Zero Tapes while the printouts at the end of the election are the results tapes. Your printouts from the end of the night will have a total number of votes and, if applicable, tapes of any write-in names. Zero tapes and results tapes must be certified by the officials on election night; thus, each officer of election must sign these documents and submit an ELECT-658 Printed Return Sheet for all machines within the polling place. A printed return sheet template can be found in

Optical scanning machines that are used in the Central Absentee Precinct (CAP) will also produce a result tape with office and issue results listed by the Election Day precincts. This result tape should be provided to the General Registrar so that the effort to confirm CAP by Precinct election results may be verified and corrected as needed. The electoral board should focus its attention on the cumulative results tapes and write in tapes.

#### 14.2.2.4 Abstracts of Votes Cast

The Enhanced Results “Certification” report (Abstract of Votes) is generated after vote totals for each office or issue are submitted into Enhanced Results and confirmed correct. Once all data entered into Enhanced Results is confirmed correct, the local electoral board should have the general registrar or staff retrieve the Abstract of Votes. The Abstract may need to be supplemented with the ELECT-675 Write-Ins Certification and Continuation if a write-in candidate wins or the total number of write-in votes cast for the office is 10% or more of the overall votes cast for the office. In the 10% situation, when you generate the abstract in Enhanced Results, there will be a note on the abstract notifying you that an ELECT-675 Write-Ins Certification and Continuation is required for the office. The Write-Ins Certification can be found in



**Note:** The ELECT-675 Write-Ins Certification and Continuation is a different document from the SOR Write-Ins Certification.

<sup>14</sup> See Code of Virginia

<sup>15</sup> See Code of Virginia



### 14.2.3 Election Materials Provided to the Clerk of Court and the General Registrar

Envelope 2 or 2B and Envelope 2A are used to deliver elections materials to the clerk of court or to the general registrar.<sup>16</sup> Artwork of these envelopes to provide to your printer can be found in [Appendix A](#). The Circuit Court Clerks Guidance memo that outlines all envelopes used to store election records and related items can be found in [Appendix B](#).

The clerk of court must receive a copy of the return sheets, a copy of the inspection sheet, and a copy of the SOR to comply with Code of Virginia §24.2-658, which requires the return sheets be made available the day after the election and for 60 days thereafter for public inspection and transcription, regardless of the method of delivery chosen from Code of Virginia §24.2-668.<sup>17</sup>

The Code of Virginia §24.2-668 provides 2 methods for delivering the two Envelopes to the clerk of court and the general registrar.

1. If the officers of elections are directed to give the clerk of court the election materials outlined in Code of Virginia §24.2-668(A), the officers of elections must deliver the materials no later than noon of the day following the election. The clerk of court is to retain Envelope 2A and provide the electoral board with Envelope 2 or Envelope 2B for the canvass.<sup>18</sup>
2. If the officers of elections are directed to give the election materials to the general registrar, as provided in Code of Virginia §24.2-668(B), on the night of the election or the morning following the election, the general registrar is to provide Envelope 2 or Envelope 2B and the election materials therein to the electoral board and provide the clerk of court Envelope 2A for the required public inspection and preservation of records.<sup>19</sup> All other election materials outlined in Code of Virginia §24.2-668(A) shall be provided by the general registrar to the clerk of court by noon on the day following the ascertainment of the results of the election by the electoral board.

## 14.3 CONDUCTING THE CANVASS

<sup>16</sup> See Code of Virginia

<sup>17</sup> See Code of Virginia and

<sup>18</sup> See Code of Virginia

<sup>19</sup> See Code of Virginia





### Juneteenth Holiday

Juneteenth is a federal and state holiday that occurs on June 19<sup>th</sup> every year. As the June primary is set on the third Tuesday of June, Juneteenth may occur in the days following the June primary election, affecting canvass.

If Juneteenth occurs on the day following the primary when canvass typically begins the clerk of court's office may be closed that day, and the electoral board will need to choose how election materials will be delivered to the clerk of court's office in this situation.

Electoral boards have 3 options:

1. **Officers of election may deliver materials to the clerk of court on election night.** Please keep in mind that if this option is selected, coordination will have to take place with the clerk of court as this will fall outside of normal business hours.
2. **Officers of election may deliver election materials by noon the day following Juneteenth.** Code of Virginia §1-210 directs that when a deadline falls on a legal holiday or day when the clerk's office is closed, as authorized by an act of the General Assembly, that the act may be performed on the next day that is not a Saturday, Sunday, legal holiday, or day or part of a day on which the clerk's office is closed by an act of the General Assembly. Therefore, localities may adjust their post-election timelines by delaying the delivery of election materials to the next business day.
3. **Officers of election may be directed to convey the elections materials to the principal office of the general registrar on election night or the morning after.** The general registrar will deliver the election results to the clerk by noon on the day following the ascertainment of the results of the election by the electoral board. Pursuant to Code of Virginia §§24.2-668(B) and 24.2-659(G), the general registrar will be responsible for securing and retaining these materials in their office, in addition to delivering the results by noon on the day following the conclusion of the local canvass.

Electoral boards may still choose to begin canvass on Juneteenth. The occurrence of Juneteenth in the days following the June primary, much like Veterans Day in November, does not extend canvass, the ballot cure deadline as set out in Code of Virginia §24.2-709.1(C), the absentee deadline as set out in Code of Virginia §24.2-709(B), or the provisional deadline as set out in Code of Virginia §24.2-653(B).

## 14.3 CONDUCTING THE CANVASS

The purpose of the canvass is to compile and certify vote totals and voter turnout for each precinct within your locality. The canvass requires actions by the officers of elections, general registrar, and the electoral board, all of which are transmitted by the general registrar or staff to the Department of Elections via Enhanced Results for website publishing. The purpose of this section is to understand the responsibilities of each entity within the canvass process.

More information on the steps that need to be taken during canvass can be found in the Department of Elections' [canvassing courses](#): Enhanced Results Training Materials and Election Night and Post-Election Process.



### 14.3.1 Duties of the Officers of Election

The officers of election are critical to the canvass process because the officers begin the process by ascertaining, or verifying, vote totals for each machine on election night. Information that is collected and verified by the officers of election will be provided to the general registrar and the local electoral board for certification. For more details, see the ELECT-103EDG and ELECT-103CAP Election Day Guides found in

Officers of election must accurately complete:

- The pollbook count form (except when an electronic pollbook is used),
- Duplicate SORs,<sup>20</sup> and
- Produce the voting equipment printouts (e.g., results tapes, precinct consolidation tape or final precinct report).<sup>21</sup>

#### Best Practice

In certifying returns provided by officers of election, the general registrar or electoral board may discover discrepancies in the totals provided. To correct any discrepancies, the board must summon the officers of election to the canvass at which point the discrepancy can be amended and signed by the officers (Code of Virginia §24.2-672). The officers should be required to appear either on the day of the canvass or no later than the following day.

If it is necessary to summon officers to correct errors, the material used must be returned to its original envelope and set aside until they appear. If the officers of election cannot appear on a particular day during the canvass, follow the instructions for packaging and re-open the envelope when the officers appear.

### 14.3.2 Duties of the General Registrar

The duties performed by the general registrar for the canvass break down into two sections: Before the Election and After the Canvass. The specifics of each section are described below and in Chapter 10 of this Handbook.

#### 14.3.2.1 Before the Election

The general registrar should:

- Review all training materials found in the Department of Elections' course: Enhanced Results Training Materials.
- Review all items found in the course: Election Night and Post-Election Process.
- Attend Enhanced Results online training webinars put on by the Department of Elections.
- Review the election in Enhanced Results for accuracy of precincts, offices, candidates, and issues.

<sup>20</sup> See Code of Virginia \_\_\_\_\_ and \_\_\_\_\_

<sup>21</sup> See Code of Virginia \_\_\_\_\_





- Enter data and test in Enhanced Results (while the election is in testing mode) to ensure familiarity with how to enter data election night and after.
- Export the fillable excel in Enhanced Results (this replaces the County/City Results Report that used to be run in VERIS). For more information see the Enhanced Results Training Materials in LMS.
- Print the Definitions document found in for the  
electoral board to use as a reference.

#### 14.3.2.2 After the Canvass

After the canvass is complete, the general registrar should make available for public inspection one copy of each of the following:<sup>22</sup>

- Enhanced Results exported fillable excel or similarly generated spreadsheet (if applicable).
- SOR for each precinct.
- SOR Write-Ins Certification completed by the officers of election for each precinct (if applicable).

These documents may also be copied by the public with their own device or they may purchase a copy pursuant to Code of Virginia §17.1-275(A)(8).

#### 14.3.3 Duties of the Electoral Board

The electoral board completes and certifies the abstract of votes. To create the abstract of votes, the officers of election supply the SOR to the electoral board who reviews these documents and certifies them. This process is the ascertainment of results. Much of this process is completed through Enhanced Results by the general registrar or their staff. The general registrar should refer to the Enhanced Results training materials found in the Department of Elections' course: Enhanced Results Training Materials.



**Note:** Once all local winners are confirmed and before generating the Abstracts of Votes, the general registrar must mark the winners as such in Enhanced Results. For more information refer to the Enhanced Results training materials found in the course: Enhanced Results Training Materials

#### 14.3.3.1 Processing the Statements of Results (SORs)

SOR templates can be found in

Officers of election must submit two copies of the SOR for each precinct. Each copy should be checked for discrepancies by the electoral board members, a Democratic board member and a Republican board member should each check a copy for matching information.

In large localities, it may be necessary to employ teams of two people to perform this function under the direct supervision of board members. In this case, each team should be comprised of one Democrat and one Republican. Each should check one copy of the SOR to ensure

<sup>22</sup> See Code of Virginia



matching information, and all required signatures have been entered.

- Electoral board members should ensure that all voting systems in the polling location are properly accounted for in the SOR and that all machine tapes from all voting systems in use are present.
- Compare the number of voters voting with the total number shown as voting on the SOR. This is done by checking either the last page of the pollbook count sheet or the "Checked-In" count from the EPB. If they do not agree and no statement adequately explaining the disagreement has been entered, the officers must be called in to correct the SORs or to enter the missing explanation.<sup>23</sup>



#### Law Note

**Never** open the sealed envelope or receptacle containing voted ballots unless authorized to do so by the Commissioner of the Department of Elections, by order of a Court (e.g., in a recount or contest), or as part of a risk-limiting audit pursuant to Code of Virginia §24.2-671.2. **Opening the sealed counted ballots envelope or receptacle for any other reason could constitute illegal tampering, which is subject to prosecution as a felony per Code of Virginia §24.2-1009.**

- Officers may have to look at counted ballots or examine voting machines to correct discrepancies in the returns. If this is the case, authorization must be granted by the Department of Elections **before** proceeding further with that precinct. The registrar or an electoral board member must complete the  
<sup>24</sup> Once the request has been approved by the Department you will receive an email confirmation with the completed, signed form.
  - Each political party and each independent candidate on the ballot (in a primary, each candidate) is entitled to have a representative during this process.<sup>25</sup> Parties and candidates must be provided with a reasonable advance notice of the time and place of the inspection. The representatives must have an unobstructed view of the proceedings but cannot interfere in any way.<sup>26</sup>

The electoral board is required to notify the Department of Elections when changes are made to the SOR, or later, to its certified abstract, and include a reason, which will be posted to the Department of Elections website.<sup>27</sup> Revisions may be made to the data entered in Enhanced Results without notifying the Department up to the point at which abstracts are submitted to the Department via the Abstract Submission Forms site form. If changes need to be made after the Department has approved the submitted abstracts, notify your ERS Liaison right away of what changes need to be made and why. They will instruct you how to move forward with making the required changes in Enhanced Results and/or submitting the revised abstract.

<sup>23</sup> See Code of Virginia

<sup>24</sup> See Code of Virginia

<sup>25</sup> See Code of Virginia

<sup>26</sup> See Code of Virginia

<sup>27</sup> See Code of Virginia



- Once the results are ascertained, the secretary of the board must return to the clerk:
  - all pollbooks,
  - any printed inspection and return sheets, and
  - one copy of each SOR.<sup>28</sup>

#### 14.3.3.2 Write-in Votes

Write-in votes cannot be cast in primary elections.<sup>29</sup> For general and special elections localities must always report the total number of write-in votes for an office.

Accounting for write-ins may be accomplished either manually or by computer. If using a computer, entry is done office-by-office, district-by-district, of the names of persons receiving write-ins and the votes each received. Invalid votes for each office and its district should also be included. The names can then be sorted (including names entered as "Invalid") along with the number of votes received by everyone in each precinct.

#### Best Practice

Determining what may be counted as a write-in vote for a particular candidate often requires determining voter intent. Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party should be disregarded in determining the validity of the vote, if the intention of the voter can be ascertained. Write-in candidates should be instructed to educate voters on using the candidate's full name.

In an election for a local office in a locality or town with a population of no more than 4,000 persons:

- If the person having the highest number of votes for the office is elected by write-in votes and is not qualified to hold such office or declines to assume such office, the person having the second highest number of votes shall be deemed to have been elected to such office and shall receive the certificate of election.
- In the event that the person having the second highest number of votes is not qualified to hold such office or declines to assume such office, the person having the third highest number of votes shall be deemed to have been elected to such office and shall receive the certificate of election.
- In the event that the person having the third highest number of votes is not qualified to hold such office or declines to assume such office, a vacancy shall be declared and filled by special election.<sup>30</sup>

In all other cases, if the person having the highest number of votes for the office is elected and is not qualified to hold such office or declines to assume such office, a vacancy shall be declared and filled by special election.

Once the write-in winner is determined, the general registrar will need to create a candidate

<sup>28</sup> See Code of Virginia

<sup>29</sup> See Code of Virginia

<sup>30</sup> See Code of Virginia



line for them in Enhanced Results and move their results out of the Write-In “bucket” row and into the newly created candidate row on the Summary Entry page and all applicable Detailed Results Entry precinct pages. For more information refer to the Enhanced Results training materials found in the course: Enhanced Results Training Materials.

All valid write-in votes for each office must be counted by the Electoral Board even if no candidate received at least 10% or no write-in candidate won the election. The Electoral Board must record the valid write-in votes in the minutes of the canvass meeting.<sup>31</sup>

**An ELECT-675 Write-Ins Certification and Continuation is required when:**

- A write-in candidate wins the election.

**OR**

- The write-in vote total for an office is 10% or more of the total votes cast for the office.<sup>32</sup>

In this situation, when you generate the abstract in Enhanced Results, there will be a note on the abstract notifying you that an ELECT-675 Write-Ins Certification and Continuation is required for the office.

The ELECT-675 Write-Ins Certification and Continuation can be found in

In each instance, the electoral board must complete the ELECT-675 Write-ins Certification and Continuation. The Certification form tallies valid, invalid, and total votes received for the write-in candidates.



**Note:** The ELECT-675 Write-Ins Certification and Continuation is a different document from the SOR Write-Ins Certification.

The ELECT-675 Write-Ins Certification and Continuation provides space for reporting all the write-in votes cast. The **valid** write-in votes should be listed in alphabetical order. If the electoral board develops its own list of valid write-in votes in a similar way as the Continuation page, that list may be used in lieu of the Continuation page. Newer voting systems permit the production of a write-in report from the voting systems themselves. This report is also acceptable and may be used in lieu of the Continuation page.

#### 14.3.3.3 Voter Turnout

A voter turnout number must be determined for each precinct involved in an election. Voter turnout is the total number of individuals who attempted to vote in an election. For more information review the Definitions document found in

The voter turnout number should be listed on the precinct’s SOR. Once voter turnout has been determined for each precinct, the general registrar or staff will need to enter the information into Enhanced Results.

<sup>31</sup> See Code of Virginia

<sup>32</sup> See Code of Virginia and



#### 14.3.3.4 Enhanced Results Data Validation: Enhanced Results and VERIS Reports Available to Confirm Accurate Election Results

After entering the election results and voter turnout into Enhanced Results general registrars should analyze and resolve all data validation errors that are flagged in the Data Validation section in Enhanced Results. Any data validation errors that cannot be cleared must be explained. The general registrar should include an explanations document with the Abstracts in the

There are several reports in Enhanced Results that can be run to help find and resolve validation errors. Additionally, exporting the precinct results excel spreadsheet from Enhanced Results may prove to be helpful in finding errors. For more information refer to the Enhanced Results training materials found in the course: Enhanced Results Training Materials.

After entering/uploading voting credit into VERIS, the Enhanced Results Voter Turnout report should be compared to the VERIS Voting Credit Audit by Locality report (found in VERIS > Reports Library > Election) and any discrepancies should be corrected or explained. If it is determined that the credit was entered/uploaded incorrectly in VERIS, the general registrar should submit a System Support JIRA ticket as soon as possible so ELECT IT staff can research and help resolve any issues found. The general registrar should provide their ERS Liaison with the ticket number so they can help facilitate a timely resolution.

If the general registrar or electoral board needs assistance in interpreting data validation errors or reports, they may contact their ERS Liaison or the ERS Election Administration team.

#### 14.3.3.5 Processing the Abstracts of Votes

Once all local winners are confirmed and before generating the Abstracts of Votes, the general registrar must mark the winners as such in Enhanced Results. For more information refer to the Enhanced Results training materials found in the course: Enhanced Results Training Materials



**Note:** If there is a write-in winner, before generating the Abstracts, the general registrar will need to create a candidate line for them in Enhanced Results and move their results out of the Write-In "bucket" row and into the newly created candidate row on the Summary Entry page and all applicable Detailed Results Entry precinct pages. For more information refer to the Enhanced Results training materials found in the course: Enhanced Results Training Materials.

Registrars generate the Abstracts of Votes in Enhanced Results. For more information refer to the Enhanced Results training materials found in the course: Enhanced Results Training Materials.

For each office, complete one Abstract and, if the total write-in votes for an office equals 10% or more of the total number of votes cast for the office or a write-in candidate wins the election, the ELECT-675 Write-Ins Certification and Continuation (found in ). If applicable, complete one Abstract for each referendum issue.

For offices, make **three** copies of each completed and signed Abstract and, if required for the office, the ELECT-675 Write-Ins Certification and Continuation. For issues, make **four** copies of the Abstract. The Secretary must sign each copy, attesting that it is a true copy, and affix the



seal of the electoral board.

- All members of the electoral board who participate in the canvass must sign each original Abstract and ELECT-675 Write-Ins Certification and Continuation (if applicable) **before** the secretary affixes the seal of the electoral board and second signature.
- Preserve one attested copy of each Abstract and, if required for the office, the Write- Ins Certification and Continuation as part of the minutes of the meeting at which the results were ascertained.<sup>33</sup> Place the originals (unattested) in a file to be kept with the minute book.

**A tie may occur** when two or more candidates for any such office receive the same (and highest) number of votes. To determine the winner, follow the procedures in the next section, Determination of Tied Results.

**Write-in vote totals may also need to be certified**, pursuant to Code of Virginia §24.2-675.

- If it is determined that an ELECT-675 Write-Ins Certification and Continuation form is necessary, follow the instructions on the form to ensure it is completed accurately:
  - Enter the appropriate numbers in the Write-Ins Summary section (Lines 1, 2, and 3).
  - Enter, in alphabetical order, the **valid** names of persons receiving write-in votes and the number of votes received by each in the Valid Write-Ins – Detail section.
  - The Continuation page should be copied as many times as needed for a complete reporting of valid write-in names.
- If a write-in candidate appears to have received the highest number of votes for an office, therefore winning the election, the general registrar will need to create a candidate line for them in Enhanced Results and move their results out of the Write-In “bucket” row and into the newly created candidate row on the Summary Entry page and all applicable Detailed Results Entry precinct pages. For more information refer to the Enhanced Results training materials found in the course: Enhanced Results Training Materials.
- To ensure accuracy of reporting on the ELECT-675 Write-Ins Certification and Continuation:
  - Adding Write-Ins – Summary section lines 1 Invalid Write-Ins and 2 Valid Write-Ins must equal line 3 Total Write-Ins.
  - The total on line 2 Valid Write-Ins in the Write-Ins – Summary section must equal the total of all votes for everyone listed in the Valid Write-Ins – Detail section (including Continuation pages).
  - The Write-Ins – Summary section line 3 Total Write-Ins total must equal the total votes on the Abstract for the write-in winner plus the write-in “bucket”.
- The other criteria for candidacy still need to be met by a write-in winner, including campaign finance reports.

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<sup>33</sup> See Code of Virginia



#### 14.3.3.6 Determination of Tied Results

If the results of the election for any of the offices certified by the electoral board (those set forth above) indicate that two or more candidates received the same (and highest) number of votes, the electoral board must first check and double check again the total votes cast for each candidate. If no error is found, determine the successful candidate by lot conducted by the electoral board at a meeting open to the public.<sup>34</sup>

Notify the candidates involved so that they or their representatives may be present for the drawing. The board should continue with the drawing even if a candidate's representative fails to show.<sup>35</sup> In any event, ensure that witnesses are present.

To conduct the drawing, take the following steps:

1. Enter the name of each of the candidates receiving a tie vote on a separate slip of opaque paper.
2. Exhibit the slips, one at a time, to any interested person who is present.
3. Fold each slip and seal it, individually, in an opaque envelope or other small opaque container.
4. Place all envelopes or containers in another opaque container large enough to mix them thoroughly.
5. Shake the container thoroughly and have one of the members of the electoral board draw out one envelope or container to select the winner.

#### 14.3.3.7 Where to Send Abstracts/ Write-Ins Certifications and Continuations

As soon as the canvass is concluded and the Abstracts are signed and attested, but no later than the tenth day after the election for the November General, sixth day after for the June Primary, the general registrar must submit the following to the Department of Elections using the

- One of each attested Abstract
- One of each ELECT-675 Write-Ins Certification and Continuation (not applicable for Primaries)
- If applicable, a document containing explanations for all uncleared validation errors, discrepancies between credit and turnout, and any other explanations or documentation that will help the Department in their review.
- One of each ballot, voided



The general registrar and electoral board should stand ready to respond immediately to any requests from the Department of Elections for additional information and/or correction of any errors found during their review.



Only after the Department of Elections authorizes, mail the following to the Department of Elections, Attn: Abstracts:

<sup>34</sup> See Code of Virginia

<sup>35</sup> *Id.*



- One of each attested Abstract
- One of each ELECT-675 Write-Ins Certification and Continuation (not applicable for Primaries)
- A completed Election Results Certification Checklist – ELECT-103(A) (found in )

• Only if you were unable to submit electronically, one of each voided ballot

For **general** elections: forward a copy of each attested abstract for recording in the record book of the local governing body to the following:<sup>36</sup>

- To the Clerk of the City Council or Board of Supervisors,
- For town elections, send the documents to the Clerk of the Town Council,
- For local referenda, to the Circuit Court Clerk of the locality.

For **primary** elections: unless directed otherwise by the Department of Elections, forward a copy of each attested abstract to the following:

- For U.S. House of Representatives, to the congressional district party committee.
- For General Assembly, to the party chair of the Senate or House of Delegates district.
- For constitutional offices including those shared by more than one county or city, to the party chair of each county or city.
- For all county, city, or local district offices, to the chair of the county or city of the party holding the primary.<sup>37</sup>
- For United States President, United States Senate, Governor, Lieutenant Governor, and Attorney General do **not** send to any political party chair

#### 14.3.3.8 Requesting a Risk-Limiting Audit for a Local Contest

Pursuant to Code of Virginia §24.2-671.2(D) a local electoral board may request a local race be a part of the risk-limiting audits chosen by the State Board of Elections. The local electoral board may hold a vote during the canvass to select a contested race wholly contained within the jurisdiction of the county or city to audit.<sup>38</sup> The contest must have a margin greater than or equal to 1%.<sup>39</sup>

If the local electoral board approves by a majority vote the request for an audit, the local electoral board must submit an SBE-671.2(D) Request for Risk-Limiting Audit form (found in ) to the State Board of Elections for consideration.<sup>40</sup> If the request is granted by the State Board of Elections an extension may be granted, up to two weeks, for the electoral board's certification deadline.

<sup>36</sup> See Code of Virginia

<sup>37</sup> *Id.*

<sup>38</sup> See Code of Virginia

See also Virginia Administrative Code

<sup>39</sup> See Virginia Administrative Code

<sup>40</sup> *Id.* See also





#### 14.3.3.9 Responsibility for Certification of Results

The State Board of Elections is responsible for the final certification of the results of most offices and issues that cross locality lines, i.e. federal, statewide, General Assembly, shared constitutional, and Soil and Water Conservation Directors.<sup>41</sup> Review Code of Virginia § 24.2-601 for responsibility information on shared towns.<sup>42</sup>

The local electoral board is responsible for the final certification of the results of all local offices and issues that are wholly contained within the locality.<sup>43</sup> Review Code of Virginia § 24.2-601 for responsibility information on shared towns.<sup>44</sup>

#### 14.3.4 Duties of the Department of Elections

To verify the accuracy of the Abstracts of Votes, Election and Registration Services (ERS) staff will review and compare the data entered in Enhanced Results by the locality. They will then compare the results totals entered in Enhanced Results to the totals on the attested Abstracts submitted by the locality. ERS staff will notify the general registrar of any errors or questions found immediately after their review is complete.

Upon notification by ERS staff that there are errors or questions that need to be resolved, the general registrar or the electoral board, as appropriate, are required to correct any errors found and answer questions posed immediately and swiftly. If the locality is unable to correct an error, they must provide an explanation as to why.<sup>45</sup>

SBE Policy 2023-001 – Counting and Reporting Results of Absentee Ballots from a Central Absentee Precinct (found on the Department of Elections ) directs the Department of Elections to post the results of absentee ballots cast in-person during early voting and all other absentee ballots cast by precinct to its website by no later than noon on the seventh calendar day following an election.<sup>46</sup> Localities must have all of their results entered by this deadline.<sup>47</sup> The Department of Elections will post to its website comprehensive reports indicating, for each precinct, the actual election results, and other vital information such as voter turnout percentages and percentages of votes cast for each candidate.

### 14.4 AFTER THE CANVASS

#### 14.4.1 Certificates of Election

A certificate of election cannot be provided to the candidate with the highest number of votes until the individual complies with campaign finance reporting requirements.<sup>48</sup> The following conditions must be met:

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<sup>41</sup> See Code of Virginia

<sup>42</sup> See Code of Virginia

<sup>43</sup> See Code of Virginia

<sup>44</sup> See Code of Virginia

<sup>45</sup> See Code of Virginia

<sup>46</sup> See

<sup>47</sup> *Id.*

<sup>48</sup> See Code of Virginia





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the Handbook

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**Records Access and**  
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Virginia FOIA Council  
 Update the content of Existing FOIA Page Listings  
 if necessary, by 1/1/2024

CHAPTER ORGANIZATION

A general registrar serves at the discretion of a wide range of both public and governmental agencies. Public access to records is essential to assure governmental transparency but must be limited to protect individual privacy. Before releasing information, the general registrar must understand what is being released, who is requesting the information, and the rules underlying the disclosure of that information. This chapter provides a general overview of rules and rules that govern records access and release.

The sources of law that touch access to records that general registrars are most often challenged with are Virginia Freedom of Information Act (FOIA), Title 24.2 and the National Voter Registration Act (NVRA).

9.1 provides a brief overview of FOIA, relevant code of 24.2, and rules, when determining the release of information, FOIA, FOIA, and relevant sections of 24.2 and other laws for information either through records or providing disclosure to the general registrar. The various, many government records are available under FOIA, however, information can be excluded or withheld from FOIA requests due to the nature of the information. 9.2.4 and 9.2.5 discuss personal information that must be redacted prior to any information release.



9. Records Access and Retention

<p><b>REQUIRED FORMS</b>                  Library of Virginia: <a href="#">Blank ARC-1 Form</a>                  Library of Virginia: <a href="#">Blank RM-3 Form</a></p>	<p><b>ADDITIONAL RESOURCES</b>                  Records Retention and Disposition Schedule (<a href="#">GS-01</a>)                  Library of Virginia: <a href="#">Virginia Public Records Management Manual Chapter 7 and 8</a>                  Library of Virginia: <a href="#">Electronic Records Guidelines</a>  <a href="#">Records Retention and Disposition Schedule for Localities</a>                  Library of Virginia: <a href="#">Records Management</a>                  Library of Virginia: <a href="#">Instructions for Completing the Certificate of Records Destruction (RM-3Form)</a>                  Library of Virginia: <a href="#">Instructions for Completing Archival Transfer List and Receipt (Form ARC-1)</a></p>
<p><b>REFERENCE</b>                  Virginia FOIA Council: <a href="#">FOIA Charges Guide 2023</a>                  Virginia FOIA Council: <a href="#">Access to Public Records</a>                  Virginia FOIA Council: <a href="#">Email: Use, Access &amp; Retention</a>                  Virginia FOIA Council: <a href="#">Responding to Requests from Out-of-State</a>                  Virginia FOIA Council: <a href="#">Forms and Sample Letters</a>                  Virginia Department of Elections FOIA Page: <a href="#">Freedom of Information Act</a></p>	<p><b>REGULATIONS</b>  <a href="#">1VAC20-20-20 Electronic Transmission of Records Containing Sensitive Personal Information; Encryption or Redaction Required</a>  <a href="#">1VAC20-40-90 Voter Photo Identification Cards</a></p>

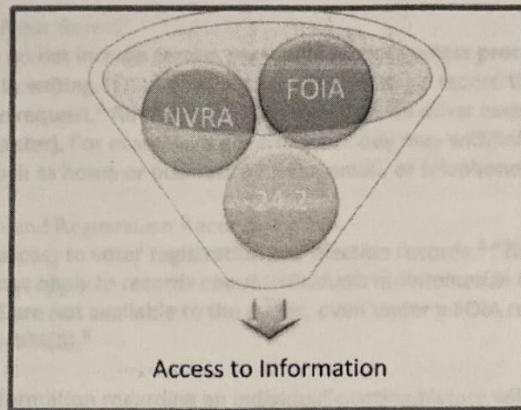
9.1 CHAPTER ORGANIZATION

A general registrar serves as the custodian of a wide range of both public and confidential documents. Public access to records is essential to ensure government transparency but must be limited to protect individual security. Before releasing information, the general registrar must understand what is being requested, who is requesting the information, and the rules underlying the disclosure of that information. This chapter provides a general overview of concepts and rules that govern records access and retention.

The sources of law that touch access to records that general registrars are most often challenged with are Virginia Freedom of Information Act (FOIA), code within Title 24.2, and the National Voter Registration Act (NVRA).

§9.1 provides a brief overview of FOIA, relevant code of 24.2, and NVRA. When determining the release of information, FOIA, NVRA, and certain sections of 24.2 can act as a filter for information either through mandate or providing discretion to the general registrar. For instance, many government records are available under FOIA; however, information can be excluded or exempted from FOIA requests due to the nature of the information. §9.1.4 and §9.1.5 discuss personal information that must be redacted prior to any information release.





§9.2 dives into handling a FOIA request and discusses the elements of a request and creating a proper response. This section also provides examples of proper responses depending on the record being requested. §9.2.3 describes certain exemptions, such as protecting security information related to voting systems and working papers of a public body. §9.2.4 and §9.2.5 briefly focus on enforcement and penalties for not fulfilling a request.

§9.3 describes what information is required to be provided under NVRA and best practice guidance on how release of information should be conducted for this act. This section is especially important as general registrars often receive requests that fall under NVRA. §9.4 closes this chapter with a brief introduction into records retention and a reference chart for localities' retention schedule.

9.1.1 FOIA: Definition of a "Public Record"

Virginia's Freedom of Information Act (FOIA) defines public records broadly to include **all records** a public body or officer creates, owns, or possesses during their appointment, employment, or public duties.<sup>1</sup> Drafts and preliminary versions of documents are considered public records and available for public access under FOIA.<sup>2</sup>



**Best Practice**

Electronic records, including e-mails, are covered by FOIA, unless some content-based exemption applies (e.g., attorney client privilege). The Virginia Freedom of Information Advisory Council published a useful guide called *E-Mail: Use, Access & Retention* which explains public access to local government officials' and employees' email and discusses how email correspondence must be saved.

<sup>1</sup> See Code of Virginia §2.2-3701

<sup>2</sup> See Virginia FOIA Advisory Council Opinion AO-3-00.



## 9.1.1.1 What is Not a Public Record?

Public records do not include certain personnel records unless protection is waived by the individual in writing.<sup>3</sup> FOIA does not require creating a record that does not exist at the time of the request.<sup>4</sup> Additionally, FOIA may provide other exemptions (discussed later in the chapter). For example, a government body may withhold personal contact information such as home or business address, email, or telephone number.<sup>5</sup>

## 9.1.2 Title 24.2 and Election and Registration Records



Election law restricts access to voter registration and election records.<sup>6</sup> “The Virginia Freedom of Information Act shall not apply to records about individuals maintained in this system [VERIS].”<sup>7</sup> Voter records in VERIS are not available to the public, even under a FOIA request, as per the Code of Virginia §24.2-404(B).<sup>8</sup>

Often, requests for information regarding an individual’s voting history will come to a registrar; this information cannot be released, and the request should be denied. Further, lists of registered voters are not available under FOIA. As will be discussed later in this chapter, §§24.2-405 and 24.2-444 govern access to lists of registered voters.<sup>9</sup> Similarly, lists of those who voted are also not available under FOIA, but may be available to certain groups under §§24.2-406 and 24.2-407.<sup>10</sup>

If you are not sure whether a particular record is addressed by election law or FOIA, you should contact your local commonwealth’s attorney. Once it is determined that no election law or FOIA exemption applies, the records are open to inspection and copying. Reasonable costs are allowed, including time required to redact protected information.<sup>11</sup>

It is important to be aware of what code section is providing or restricting access. For instance, absentee ballot applications are not NVRA but rather Va. Code §24.2-706, which permits the inspection of absentee ballot applications only by a registered Virginia voter during regular office hours.<sup>12</sup>

## 9.1.3 National Voter Registration Act and Registration Records

Protecting voter privacy requires strict compliance with statutory restrictions. The National Voter Registration Act (NVRA) established mandates for states regarding the voter registration process and the maintenance of related records. Prior to July 20, 2011, voter registration applications were not publicly available. As a result of *Project Vote v. Long*, voter registration

<sup>3</sup> See Code of Virginia §2.2-3705.1.

<sup>4</sup> See Code of Virginia §2.2-3704.

<sup>5</sup> See Code of Virginia §2.2-3705.1(10).

<sup>6</sup> See Code of Virginia §2.2-3703(B).

<sup>7</sup> See the Code of Virginia §24.2-404(B). See also Code of Virginia §2.2-3700 et seq. (the Virginia Freedom of Information Act).

<sup>8</sup> See Code of Virginia §24.2-404.

<sup>9</sup> See Code of Virginia §24.2-405 and §24.2-444.

<sup>10</sup> See Code of Virginia §24.2-406 and §24.2-407.

<sup>11</sup> See Code of Virginia §24.2-107.

<sup>12</sup> See Code of Virginia §24.2-706.



applications submitted on or after July 20, 2011, are available for public disclosure if confidential information is properly redacted.<sup>13</sup>



#### Law Note

The *Project Vote* Consent Decree outlines requirements general registrars must follow regarding maintenance and public inspection of voter registration applications. General registrars are required to:

- Maintain for at least two years and make available for public inspection (including photocopying) completed voter registration applications,
- Redact social security numbers of all completed voter registration applications, and
- Redact the residence address of individuals permitted to provide a post office box address in lieu of residence address due to protected voter status under Va. Code §24.2-418(B).

#### 9.1.4 Generally Redacted Information

Sensitive information is often collected as part of the process of administering elections. Public access to information is important, but it must be balanced with an individual's right to privacy. Therefore, state and federal laws restrict public access to sensitive personal information.

Before sending any records that contain sensitive personal information electronically through email or fax, you should review the contents of each record. You must encrypt or redact sensitive information per 1VAC20-20-20: Electronic Transmission of Records Containing Sensitive Personal Information; Encryption or Redaction Required.<sup>14</sup> Sensitive personal information includes: (1) more than four digits of a social security number or other unique identifier **other than voter identification number**; (2) day and month of birth; or (3) the residence address of voters qualified for protective status under Va. Code §24.2-418.<sup>15</sup>

You are required to redact the following information when providing the following information:



All or part of an individual's social security number;<sup>16</sup>

- The birth month and date;<sup>17</sup>
- The residence address of an individual with protected status authorized by §24.2-418(B);<sup>18</sup>

#### 9.1.5 Social Security Numbers

State and local governments are prohibited from collecting social security numbers without statutory authorization.<sup>19</sup> Election law authorizes collection of all or part of social security

<sup>13</sup> See *Project Vote v. Long*, 682 F.3d 331 (E.D. VA. 2012). See also *Project Vote v. Long* Consent Decree.

<sup>14</sup> See Virginia Administrative Code 1VAC20-20-20.

<sup>15</sup> *Id.* See also Code of Virginia §24.2-418.

<sup>16</sup> See Code of Virginia §24.2-405 and §24.2-444.

<sup>17</sup> See Code of Virginia §24.2-444.

<sup>18</sup> See Code of Virginia §§24.2-405, 24.2-406, and 24.2-444.

<sup>19</sup> See Code of Virginia §2.2-3808. See also Privacy Act of 1974, 5 U.S.C. §552(a).



numbers for certain purposes, including voter registration.<sup>20</sup> The release of social security information in election records is strictly regulated.<sup>21</sup> Unauthorized release of a voter's or registration applicant's social security number or a part thereof is a Class 5 felony.<sup>22</sup>

If the SSN (or part) appears on a record or list open for inspection or copying, the number must be covered so it cannot be read. Marking out the SSN may not be sufficient protection when copying records as the numbers may still be visible after copying.



You must **completely obscure** the social security number. Please remember to take care to

- cover the information manually before photocopying, or
- complete "Black Out" formatting if using Adobe Acrobat.

## 9.2 HANDLING A FOIA REQUEST FOR INFORMATION

This section discusses how a FOIA request for information should be handled and the elements of a request. A seemingly complex information request can be simplified by engaging with the requester, understanding their specific needs, and providing them with the chance to clarify their requirements. FOIA is largely a matter of customer service, i.e., good communication. Requestors often may not know what report or document to request but they have an idea of what information they want to find.

### 9.2.1 Elements of a FOIA Request

FOIA requests for state and local records can be made only by Virginia residents or representatives of print or broadcast media reaching Virginia.<sup>23</sup> Requests from non-Virginians or other media representatives may be granted or denied at your discretion.<sup>24</sup>

#### 9.2.1.1 The Request

The request does not have to be in writing. If the request is made by mail, it will contain the requestor's name and address. If the request is made in person, the office may require the requestor to provide his name and legal address. Nothing in FOIA defines the way in which the requestor must provide his name and legal address, either by stating it or in writing (such as signing a logbook). If the request, name, and address are not provided in writing, record them for the office's information and protection.

The request for records does not need to reference FOIA to invoke the requirements of the Act. If the request is from a qualified requestor (a Virginia citizen or reporter, with both categories broadly interpreted), and is a request for information, it should be considered a FOIA request.

#### 9.2.1.2 "Reasonable Specificity"

The request should include enough information for the recipient to identify whether there are any records in the office (or the official's possession) *which* satisfy the request.

<sup>20</sup> See Code of Virginia §24.2-418.

<sup>21</sup> See Code of Virginia §§24.2-405, 24.2-406, and 24.2-444.

<sup>22</sup> See Code of Virginia §24.2-1002.1.

<sup>23</sup> See Code of Virginia §2.2-3704.

<sup>24</sup> See *McBurney v. Young*, U.S. Sup. Ct. Slip. Op. No. 12-17 (4/29/2013). See also Virginia FOIA Council, *Responding to Requests from Out-of-State*.





If there is any question about what is being requested, contact the requestor to discuss the request and response. Keep notes (or emails) on these discussions and file them with the request in the office FOIA file in case there is ever any question about the request and response.<sup>25</sup>

9.2.2 Responding to a Request

Under FOIA, the general rule is that the public official or employee must respond to the requestor within five working days of receiving the FOIA request; you may request an extension for providing information.<sup>26</sup>

9.2.2.1 Responses



As a public body, your office is subject to FOIA requests. As the custodian of the requested records, you must respond within five working days of receiving the request. If the response is made within five working days, you will have an additional seven workdays in which to provide one of the following responses:

- The requested records are being entirely withheld,
- The requested records are being provided in part and are being withheld in part,
- The requested records could not be found or do not exist, or
- It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period.<sup>27</sup>

Refer to the Virginia FOIA Advisory Council for sample response letters.

9.2.2.2 Charges



Under the Code of Virginia §2.2-3705.1, “a public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. **No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body.** Any duplicating fee charged by a public body shall not exceed the actual cost of duplication.”<sup>28</sup>

A public body is also required to have a written policy that (i) explains how the public body assesses charges for accessing or searching for requested records, and (ii) notes the current fee charged, if any, for accessing and searching for such requested records.<sup>29</sup> The local electoral board may establish a cost policy specific to the office of the general registrar, or they may adopt an existing policy created by the locality. The cost policy must be published on the public body’s website and made available upon request. ELECT has provided a link to this policy in the reference section of this chapter that may be used as a potential template for localities.

<sup>25</sup> See Code of Virginia §2.2-3704.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> See Code of Virginia §2.2-3705.1.

<sup>29</sup> See Code of Virginia §2.2-3704.1.



When you assess charges, you should choose the method that is the most cost effective for producing the records consistent with your written cost policy.<sup>30</sup> Charges may include the time needed to access, find, copy, and mail/ship the documents, and the actual cost of the copies and the mailing/shipping. The costs of fringe benefits or other overhead expenses may not be added to the charged personnel costs.<sup>31</sup> If the FOIA request is a repeat of a previous FOIA request, charge the amount to reproduce the previous records not the amount charged for the previous request. Reasonable charges not exceeding actual cost may be assessed for searching, accessing, supplying, and duplicating public records.

If the resident requests an advance estimate, all charges for supplying the requested records must be estimated in advance.<sup>32</sup>

- For requests above \$200, you may ask the requestor to pay in advance, and you do not have to fulfill the request until receipt of this advance payment.<sup>33</sup>
- For requests under \$200, the office may *not* require the requestor to pay the charges before turning over the requested documents. If any requestor does not pay in a reasonable time, report the bill to the office that handles normal debt collection for the local government.

Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.<sup>34</sup>

### 9.2.3 FOIA Exemptions

FOIA must be “liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government.”<sup>35</sup> Unless a public body, its officers, or employees expressly invoke a specific exemption provided by FOIA or another statute, all public records are available for inspection and copying upon request. Any exemption from public access to records must be narrowly construed, and no record can be withheld unless specifically made exempt by FOIA or other specific law.<sup>36</sup> The Virginia Freedom of Information Advisory Council’s website includes an excellent summary and discussion about records exemptions of general applicability; this guide addresses most of the exemptions that might ever be needed by a local electoral board or a general registrar.<sup>37</sup>

<sup>30</sup> *Id.*

<sup>31</sup> For more information about allowable costs under FOIA, see Virginia Freedom of Information Advisory Council’s *Taking the Shock Out of Charges: A Guide to Allowable Charges for Record Production under the Freedom of Information Act*.

<sup>32</sup> See Code of Virginia §2.2-3704.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See Code of Virginia §2.2-3700.

<sup>36</sup> See Code of Virginia §2.2-3700 et seq.

<sup>37</sup> See *Access to Public Records*. See also Virginia Freedom of Information Advisory Council’s *Records Exemptions of General Applicability*.



Below is a brief overview of certain records that are exempted from FOIA but may be provided at the discretion of the custodian unless disclosure is prohibited by law. Prior to making any decision to withhold information, the general registrar should discuss FOIA access with their local legal counsel.

9.2.3.1 *Records Regarding Computer Software and Electronic Security*

"Computer software developed by or for a state agency, public institution of higher education in the Commonwealth, or political subdivision of the Commonwealth."<sup>38</sup>

"Information that describes the design, function, operation, or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system."<sup>39</sup>

Election law provides an exemption for plans relating to voting equipment security.<sup>40</sup> The exemption is applicable for "protocols for maintaining the security of ballots or voting and counting equipment...." And any information that reveals "the results of risk assessments of specific local electoral procedures."<sup>41</sup>

9.2.3.2 *Records compiled in lawfully closed meetings.*

Records created in or compiled *exclusively* for use in closed meetings lawfully held under the Code of Virginia §24.2-3711 are excluded from mandatory disclosure.<sup>42</sup> Disclosure is at the discretion of the general registrar unless prohibited by law. This rule may be applicable to certain documents produced exclusively for the local electoral board's provisional ballot meeting *since* this meeting is a closed meeting.

**NOTE:** No record that is otherwise open to inspection under FOIA will be considered exempt because it was reviewed or discussed in a closed meeting.<sup>43</sup>

9.2.3.3 *Working Papers of a Public Body*

"Working papers" means records prepared by or for any of the following named public official for his personal or deliberative use.<sup>44</sup>

- Office of the Governor;
- Lieutenant Governor;
- Attorney General;
- Members of the General Assembly (and legislative aides working on a member's behalf);
- Division of Legislative Services;
- Mayor or chief executive officer of any political subdivision of the Commonwealth; or

<sup>38</sup> See Code of Virginia §2.2-3705.1(7).

<sup>39</sup> See Code of Virginia §2.2-3705.2.

<sup>40</sup> See Code of Virginia §24.2-625.1.

<sup>41</sup> *Id.*

<sup>42</sup> See Code of Virginia §2.2-3705.1.

<sup>43</sup> See Code of Virginia §2.2-3705.1.

<sup>44</sup> See Code of Virginia §2.2-3705.7.



- President or other chief executive officer of any public institution of higher education in Virginia.<sup>45</sup>

However, no record, that is otherwise open to inspection under FOIA, will be determined exempt *because* it was attached to or incorporated within any working paper or correspondence.

**NOTE:** This exception does not extend to local electoral boards or the general registrar unless they are involved in preparing working papers for a named state or local official.

#### 9.2.3.4 Inmates and Criminal Information

Historically, Virginia has closed criminal records, but increasingly criminal record information is available online through the courts and law enforcement offices. Any information a general registrar receives regarding criminal records must be kept confidential unless permitted by code.<sup>46</sup> The Division of Central Criminal Records Exchange provides felony information to the Department of Elections only for purposes of allowing registrars to cancel the registration of any voter known to be a convicted felon.<sup>47</sup>

Requests for information regarding criminal records should be referred to the State Police.

#### 9.2.4 Enforcement

In any action to enforce FOIA, the public body bears the burden of proof to establish an exemption by a preponderance of the evidence.<sup>48</sup> Any failure by a public body to follow the procedures established by FOIA is presumed to be a violation.<sup>49</sup>

#### 9.2.5 Penalties

If you violate FOIA, you may be held **personally liable**. The civil penalty imposed will be no less than \$500 nor more than \$2,000.<sup>50</sup> For a second or subsequent violation, the civil penalty will be no less than \$2,000 or more than \$5,000.<sup>51</sup> The public body can also be required to pay the requestor's attorneys' fees.<sup>52</sup>

### 9.3 HANDLING AN NVRA REQUEST FOR INFORMATION

The National Voter Registration Act does not specify a deadline or procedures for responding to requests. ELECT recommends the following best practices for responding to requests for voter registration applications under the NVRA:

- NVRA requests should be acknowledged promptly with an estimate of the cost for responding. You may ask for advance payment if estimated costs exceed \$250 before proceeding with the request.

<sup>45</sup> See Code of Virginia §2.2-3705.7.

<sup>46</sup> See Code of Virginia §24.2-409 and §19.2-389.

<sup>47</sup> See Code of Virginia §§24.2-409 and 24.2-427.

<sup>48</sup> See Code of Virginia §2.2-3713.

<sup>49</sup> See Code of Virginia §2.2-3713.

<sup>50</sup> See Code of Virginia §2.2-3714.

<sup>51</sup> See Code of Virginia §2.2-3714.

<sup>52</sup> See Code of Virginia §2.2-3713.



- Within 10 working days after acknowledging the request, copies of requested applications held by your office that were **submitted on or after July 20, 2011**, should be provided with confidential information redacted. These include social security numbers, the identity of the voter registration agency through which a particular voter registered, and, where applicable, the residence street address of any individual *who* provides a post office box address *instead* of his street address under §24.2-418(B).<sup>53</sup> The time involved to redact may be charged to the first request for which the redacted copies are prepared.
- If a request involves a *lengthy search or will be extraordinarily voluminous*, you should make reasonable efforts to reach an agreement with the requester concerning the production of the applications requested. Additionally, you should consult your local government attorney or Commonwealth's Attorney if you are unable to reach an agreement to prepare for possible enforcement action under NVRA. Under 52 USC §20510(b)(3), no prior notice is required to bring suit for alleged violations within 30 days of a federal election.<sup>54</sup>

### 9.3.1 Voter Registration Applications

Individuals or organizations may request to see voter registration applications, and as general registrar, you should supply these documents in compliance with NVRA. **Voter registration applications received before July 20, 2011 are not available to anyone other than the voter or authorized law enforcement.**<sup>55</sup>

### 9.3.2 Information to Provide for an NVRA Request

A FOIA request is distinct from an NVRA request. Where information may not be available under FOIA, it may be available under NVRA. NVRA makes available for public inspection and photocopying "*all* records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of the registration records pursuant §§24.2-427, 24.2-428, and 24.2-428.1..." (emphasis added).<sup>56</sup> These records available under NVRA do not include voter registration applications submitted *before* July 20, 2011.

Virginia Code §24.2-444(C) outlines what information must be redacted when providing these records:<sup>57</sup>

- All or part of an individual's social security number;
- The residence address of an individual who has provided a post office box address in lieu of her residence addresses due to protected voter status as authorized by Va. Code §24.2-418(B);
- The declination by an individual to register to vote and related records;
- The identity of the voter registration agency an individual registered through; and
- The day and month of birth of an individual.

<sup>53</sup> See Code of Virginia §24.2-418.

<sup>54</sup> See NVRA, 52 U.S.C. §20510.

<sup>55</sup> See *Project Vote v. Long*, 682 F.3d 331 (E.D. VA. 2012). See also *Project Vote v. Long* *Consent Decree*.

<sup>56</sup> See Code of Virginia §24.2-444.

<sup>57</sup> *Id.*



9.3.3 The Precinct List

A general registrar may receive a request for a list of registered voters from a locality. This list is also known as the “record precinct list” and should be made available for public inspection in each office of the general registrar.<sup>58</sup> This list does not provide voter history. In providing this information, check that all sensitive personal information is redacted, including:<sup>59</sup>

- All or part of an individual's social security number, including the last four digits;
- The residence address of an individual who has provided a post office box address in lieu of her residence addresses due to protected voter status authorized by Va. Code §24.2-418(B);
- The declination by an individual to register to vote and related records;
- The identity of the voter registration agency an individual registered through; and
- The day and month of birth of an individual.

9.3.4 The Voter History List

The Department of Elections is required to furnish, “at a reasonable price,” lists of registered voters and persons voting in elections to certain authorized individuals and organizations for specific purposes.<sup>60</sup> Persons interested in purchasing lists of registered voters and history should be referred to ELECT’s department for information on eligibility and cost

9.4 RECORDS RETENTION

The Library of Virginia provides numerous schedules to assist state and local government agencies in maintaining and disposing of records in compliance with applicable legal requirements. The Library of Virginia Records Retention Schedule GS-01 for Local Election Records was updated and made effective May 26, 2010. The shared Retention Schedule for the State Board and Department of Elections is available on the Library of Virginia website. If any schedule conflicts with federal or state election law requirements, the statutory requirements must be followed.

While reformatting records is at the discretion of the locality, the Department of Elections strongly encourages localities to digitalize records for accessibility, storage, and preservation purposes. **Both permanent and non-permanent records may be digitalized.** After records are digitalized, inspected, and approved according to established standards, the *originals may be destroyed*, unless specifically prohibited by law. **The digital version will be considered the official copy of record.**

Appendix A provides a quick reference chart for records retention for localities. General registrars and staff should review the Library of Virginia’s full schedule on the website. Additionally, Appendix B provides a summary table of frequently requested records.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> See Code of Virginia §§ 24.2-405 through 24.2-407.1.



### APPENDIX A: GUIDELINES: RETENTION OF RECORDS

The following chart is taken from the Library of Virginia's (LVA) Records Retention and Disposition Schedule. Refer to the LVA's [Virginia Public Records Management Manual Chapter 7 and 8](#), [Electronic Records Guidelines](#), and [Records Retention and Disposition Schedule](#) for full guidance.

TYPE OF RECORD (Non-Permanent)	RETENTION SCHEDULE
Administrative Management Records: Registrar (EX: policies, reference materials, management assessments, and reports)	5 years or until superseded, whichever is longer
Absentee Ballots: Applicant List	2 years after election
Absentee Ballots: Drop Box Surveillance	30 days after closed
Ballots: Counted and Uncounted (Federal)	2 years by Circuit Court after election
Ballots: Counted and Uncounted (Non-Federal)	1 year by Circuit Court after election
Ballots: Unused	Retain by Circuit Court until time has expired for initiating a recount, contest, or other proceeding
Candidate Qualification: Campaign Finance Final Report	1 year after the successive election
Candidate Qualification: Campaign Finance Final Report Not Filed (Candidate seeking same office)	Retain through the next general election
Candidate Qualification Forms: Non-Campaign Finance	2 years after receipt
Change of Address Confirmation Records (NVRA)	2 years after deadline for response
Damaged Applications: Voter Registration Applications	4 years after date received
Election Materials (EX: copies of absentee ballot applications, poll books and pollbook count sheets, election day logs)	2 years after applicable election
Electoral Board: Administrative Records (EX: Action plans, accessibility audit reports, cert. of training programs)	Retain as long as administratively necessary
Officers of Election List: Appointments (Form SBE 115)	Retain until superseded with a new list
Receipts and Certificates for Ballots (Forms SBE 616 - 621)	2 years after the applicable election
VERIS: Database and Documentation	Retain database reports as long as administratively necessary
Voter/ Election Mail: Returned	2 years after receipt



Voter Registration Applications: Approved, Cancelled, Transferred Out	4 years after cancellation
Voter Registration Application: Denied	4 years after denial

TYPE OF RECORD (Permanent)	
Abstracts	Any original records with <u>permanent retention</u> or records created before 1913 must be offered in writing to the Library of Virginia before destruction of the originals.
Electoral Board: Minutes	
List of Those Who Voted (LTWV): Pre-1970	
Precinct Redistricting Materials	
Voting Rights Act/ USDOJ Correspondence	

	redacted (received on or after 7.20.2011)	request)	reasonable cost for copying only	
3	List of registered voters	General public only in form of printed record being containing the data specified in § 2-2-410.1)	May charge for inspection	Qualified requests municipal or county may receive more information
4	Cancelled list (birth, address, confirmed move, declared non-voter)	General public (NYRA (open)	May charge for cost for copying	Applicable to destruction





**APPENDIX B: SUMMARY TABLE FREQUENTLY REQUESTED ITEMS**

Records provided generally may not contain any SSN, driver license number, birthday, birth month, or protected voter residence address.

	<b>Record</b>	<b>Inspect</b>	<b>Copy</b>	<b>Department of Elections</b>
1.	Voter registration application received before 7.20.2011	Commonwealth attorney, applicant, or applicant's authorized representative	Commonwealth attorney, applicant, or applicant's authorized representative	Registrar is custodian
2.	Voter registration application <b>redacted</b> (received on or after 7.20.2011)	General public (NVRA request)	Where available, may charge reasonable cost for copying only	Registrar is custodian
3.	List of registered voters	General public only in form of precinct record listing containing the data specified in <u>24.2-444(A)</u>	No, only for inspection	Qualified requestors enumerated in <u>24.2-405</u> may receive more information
4.	Cancelled list (felony, adjudication, confirmed move, declared noncitizen)	General public (NVRA request)	May charge the cost for copying	Registrar is custodian



	Record	Inspect	Copy	Department of Elections
5.	List of Those Who Voted.	Can only be provided by ELECT	See Department of Elections	Qualified requestors enumerated in <u>24.2-406</u> may purchase voter list with voting history for the last 4 years.
6.	Absentee ballot applications	Virginia registered voter	No, only for inspection	Registrar is the custodian
7.	Absentee applicant list	Virginia registered voter	Physical copying only; cannot be sent electronically by GR	Electronically to requesting party or candidate.
8.	Campaign Finance reports	General Public	May charge a reasonable cost for copies	Has electronic submissions in COMET
9.	Petitions	Citizen or entity of Virginia. Any SSN or part must be redacted	Yes, can charge reasonable cost not to exceed actual time incurred copying/supplying	If filed with state
10.	Candidate forms (e.g., declaration, qualification, economic interest)	Citizen or entity of Virginia. Any SSN or part must be redacted.	Yes, can charge reasonable cost not to exceed actual time incurred copying/supplying	If filed with state.
11.	List of officers of election with party designations.	Names public but personal information may be withheld.	Only parties and candidates can receive copies. EB Secretary or general registrar must provide to requesting candidates and parties for cost.	If filed with state or available in VERIS.



Supporting citations:

1. Va. Code <u>24.2-114(8)</u> , <u>24.2-444</u> .
2. <i>Project Vote v. Long</i> consent decree (1.30.13); Va. Code <u>24.2-444(B)</u> .
3. Va. Code <u>24.2-444</u> .
4. Va. Code <u>24.2-114(8)</u> , <u>24.2-444(B)</u> , <u>24.2-444(D)</u> .
5. Va. Code <u>24.2-444</u> , <u>24.2-447</u> .
6. Va. Code <u>24.2-114</u> , <u>24.2-444</u> .
7. Va. Code <u>24.2-114</u> , <u>24.2-444</u> .
8. Va. Code <u>24.2-444</u> .
9. Va. Code <u>Title 24.2 Chapter 5</u> , GS-01, Series 000509.
10. Va. Code <u>24.2-3114</u> , <u>24.2-3115</u> . GS-01, Series 000509.
11. Va. Code <u>24.2-115</u> .



## Supporting citations:

1. Va. Code 24.2-114(8), 24.2-444.
2. *Project Vote v. Long* consent decree (1.30.13); Va. Code 24.2-444(B).
3. Va. Code 24.2-444.
4. Va. Code 24.2-114(8), 24.2-444(B), 52 USC 20507(d).
5. Va. Code 24.2-444, 24.2-447.
6. Va. Code 24.2-706, 52 USC 20701.
7. Va. Code 24.2-706, 52 USC 20701.
8. Va. Code 24.2-046.2.
9. Va. Code Title 24.2 Chapter 5, GS-01, Series 000509.
10. Va. Code 24.2-3114, 24.2-3115. GS-01, Series 000509.
11. Va. Code 24.2-115.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WYANDORF

Curtis G. Lilly, et al.

Plaintiffs

Case No.

TIME & OF THE TRIENCE

Scots Bush et al.

Defendants

**JOEL AFFIDAVIT**

**Exhibit B**

1. My name is Curtis G. Lilly, et al.
2. I am the Chairman of the Wyandorf City Board of Directors.
3. In my role as Chairman, I am responsible for the oversight of all activities in my jurisdiction.
4. When I accepted my position on the Board, I swore the following oath to solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the Commonwealth of Virginia and that I will faithfully and impartially discharge all the duties incumbent upon me according to the best of my ability to help the City.
5. Further, I must abide by the laws of the Commonwealth of Virginia, which include the regulations of the Commonwealth of Virginia.
6. Based on my personal knowledge and experience of the state's rules, regulations, administrative, and general practices employed by Virginia and the Department of Education in my jurisdiction.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WAYNESBORO

Curtis G. Lilly, II et al.,

Plaintiffs,

v.

Susan Beals et al.,

Defendants.

Case No.:

TIME IS OF THE ESSENCE

LILLY AFFIDAVIT

1. My name is Curtis G. Lilly, II (hereinafter "I" or "me").
2. I am the Chairman of the Waynesboro City Board of Elections.
3. In my role as Chairman, I am responsible for the oversight of all elections in my

jurisdiction

4. When I accepted my position on the Board, I swore the following oath: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia and that I will faithfully and impartially discharge all the duties incumbent upon me as ....., according to the best of my ability (so help me God)."

5. Further, I must abide by the laws of the Commonwealth of Virginia, which includes the Constitution of the Commonwealth of Virginia.

6. I have personal knowledge and experience of the statutes, rules, regulations, administration, and general practices employed by Virginia and the Department of Elections to run an election.

7. Prior to election day, the Virginia voting machines are programmed at a "Logic and Accuracy Test" meeting between the vendor, the Registrar, and at least one member of each political party. At this meeting, the vendor comes in and installs election information software programs into each machine by use of a thumb drive or laptop.

8. I am prohibited from reviewing the machine's programming software, or the upload devices.

9. The Registrar then generates a short pile of ballots called a "test deck" used to check if the voting machines will count the sample ballots that we cast accurately

10. Typically, the test deck includes randomly selected items of choice which we can select, such as favorite vacation spots, favorite colors, or favorite foods as well as an undervoted ballot, an overvoted ballot, and other irregular ballot markings to test the logic and accuracy of the newly programmed voting machine.

11. The test deck is generally limited to fewer than twenty ballots.

12. I cannot know whether the voting machines are programmed to change how they process ballots on the day of testing compared to how they operate on election day since I have no way of having an independent and unbiased review of the software and its operational subroutines done.

13. The Virginia Information Technology Agency is the state agency that conducts a secretive review of this software. Then, they deem it acceptable without any public or other third party reviews.

14. I know that any software program can change the way it functions after a preset number of votes are scanned or after any selected date, but I have no way of verifying that the

ballot scanning machines are not doing that because I cannot independently audit the voting machines' programmed software.

15. As electoral board members are prohibited from evaluating the voting machines software, except to observe them and how they appear to operate during Logic and Accuracy testing, as permitted by the vendor, then I cannot ensure that the machines do not connect to the Internet, allowing for vote counting algorithm manipulation, nor can I ensure with any certainty that the electronic ballot scanners are presenting results which are consistent with the contents of the ballot box.

16. Once each machine has tabulated the test deck, the voting machines produce a tape representing the results. The newly generated voting machine tape must match the results of the Registrar's hand count on the test deck for the machines' testing to be considered complete and accurate.

17. On election day, after the polls close, the other electoral board members and I go to the registrar's office and wait for the precinct chiefs to bring in a package from their respective precincts or wards. The chiefs provide the following to the electoral board members:

- a. *Envelope 1A*: Contains provisional ballots with voter registration forms.
- b. *Envelope 1B*: Contains provisional ballots collected during extended hours.
- c. *Envelope 2A*: Contains yellow return form and machine tapes that show the voting machine's count as zero at the beginning of election day, a statement of results from the end machine at the end of election day, and the "write-in" results tape.



- d. *Envelope 2*: Contains oaths of office, incident reports, Statement of Results form, zero machine tape, state of results tape, write-in results tape, morning check-in pollbook report summary, evening check-in summary pollbook report summary, ballot receipt chits (a.k.a. voting ticket), ballot record report, and closed polls checklist.
- e. *Envelope 3A*: Contains machine tape with the totals of the counted ballots. The actual ballots are not provided to the election officials.
- f. *Envelope 4*: Contains spoiled ballots.
- g. *Envelope 6*: Contains unused ballots.
- h. *Envelope 7*: Contains the voting machine's USB drive, voting machine keys, form for drive, and keys.
- i. *Envelope 8*: Contains voter registration forms, assistance oaths, affirmation of eligibility oaths, and the provisional ballot log.

18. The first step I, as a member of the Electoral Board, must take in certifying an election is ensuring that each precinct and ward has provided the above materials. These must be provided after the polls close on election night.

19. My fellow board members and I then compare the results printed by the voting machine to the numbers reported on the attached form detailing the contents.

20. Once the numbers have been cross-referenced to ensure their accuracy, my fellow board members and I communicate with the registrar to let her know the totals to report to the Department of Election utilizing the computer program "Veris."

21. My fellow board members and I are not permitted to see the Veris reporting screens and cannot verify that what is reported to the Department of Elections is an accurate

representation of the vote totals contained on the cast ballots. In fact, we are prohibited from accessing Veris at all.

22. Based on current Virginia election regulations, I am prohibited from hand-counting the cast ballots before returning them to the registrar.

23. If I cannot review the ballots, the only numbers that I can verify are that the total number of votes for all candidates matches the number of ballots distributed and the number of voters who checked in at the poll books.

24. As Electoral Board members are prohibited from hand-counting ballots, we cannot ensure that the vote tally produced by the voting machines matches the votes memorialized on the case paper ballots.

25. Consequently, the voting machine may be giving results on the closing tape that agree with the numbers of checked-in voters, ballots cast for all candidates, and ballots distributed but which votes have been incorrectly apportioned.

26. Further, I am prohibited from hand counting all paper ballots for all races and all precincts, and I cannot access the ballots without a court order.

27. As a result, I cannot certify that votes have been counted and apportioned correctly by the voting machines.

28. After polls close, the ballots are removed from the machines, put in a box/envelope, and sealed along with the officers' of election signatures.

29. The ballots are sent to the registrar's office and then to the Clerk of Court, and the ballot boxes may not be opened without a court order.

30. The ballots themselves contain no identifying information that needs to be kept private, so there is no reason why the paper ballots and the votes cast thereon should be filed

away in secret without being able to view them to ascertain voter intent prior to certifying the vote totals

31. Under the current legal regime, I am unable to personally review and verify that:

a. the voting machine program being used to count the ballots is keeping a true and accurate count;

b. the voting machine program being used to count the ballots is recording the true and accurate count; and/or,

c. that the voting machine record tape accurately represents the ballots cast.

32. Consequently, I believe that the voting machines are conducting a secret canvass as prohibited by the Virginia Constitution.


33. The Virginia Constitution explicitly states that the ballot count cannot be conducted secretly.

34. I have taken an oath to uphold the Virginia Constitution, which prohibits the secret canvassing of ballots. As such, I believe that certifying the 2024 election would be a violation of the Virginia Constitution.

35. As such, I shall refuse to certify the 2024 election until such time as the legal regime permits for hand-counting ballots, and certification would not result in a violation of the Virginia Constitution.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

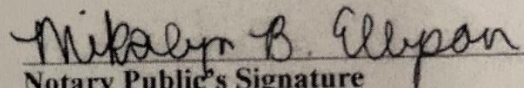
I HEREBY CERTIFY under penalty of perjury that the foregoing statement is true and within my understanding, knowledge, and experience.

  
Mr. Curtis G. Lilly, II

**NOTARY ACKNOWLEDGMENT**

In the Commonwealth of Virginia, County of Augusta

The forgoing instrument was executed or acknowledged before me this the 3 day of October, Anno Domini 2024.

  
Notary Public's Signature

Personally Known \_\_\_\_\_; OR,

Type of Identification Produced: VA DL

MIKALYN BROOKE ELLYSON  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES APRIL 30, 2028  
COMMISSION # 7871204

VIRGINIA

IN THE CIRCUIT COURT FOR THE CITY OF WAYNESBORO

Carrie G. Lilly, II et al.,

Plaintiffs,

v.

Susan Beale et al.,

Defendants.

Case No. \_\_\_\_\_

TIME IS OF THE ESSENCE

MARE'S AFFIDAVIT

**Exhibit C**

1. My name is Scott Mares (he "me")
2. I am the Vice Chairman of the Waynesboro City Board of Alderemen.
3. In my role as Vice Chairman, I am responsible for the oversight of all elections in my jurisdiction.
4. When I accepted my position on the Board, I swore the following oath: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia and that I will faithfully and impartially discharge all the duties incumbent upon me as \_\_\_\_\_ according to the best of my ability (so help me God)."
5. Further, I shall abide by the laws of the Commonwealth of Virginia, which includes the Constitution of the Commonwealth of Virginia.
6. I have personal knowledge and experience of the statutes, rules, regulations, administration, and general practices employed by Virginia and the Department of Elections in my jurisdiction.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF WAYNESBORO

Curtis G. Lilly, II et al.,

Plaintiffs,

v.

Susan Beals et al.,

Defendants.

Case No.:

TIME IS OF THE ESSENCE

MARES AFFIDAVIT

1. My name is Scott Mares (hereinafter "I" or "me").
2. I am the Vice Chairman of the Waynesboro City Board of Elections.
3. In my role as Vice Chairman, I am responsible for the oversight of all elections in my jurisdiction
4. When I accepted my position on the Board, I swore the following oath: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the Commonwealth of Virginia and that I will faithfully and impartially discharge all the duties incumbent upon me as ..... according to the best of my ability (so help me God)."
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7. Prior to election day, the Virginia voting machines are programmed at a "Logic and Accuracy Test" meeting between the vendor, the Registrar, and at least one member of each political party. At this meeting, the vendor comes in and installs election information software programs into each machine by use of a thumb drive or laptop.

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10. Typically, the test deck includes randomly selected items of choice which we can select, such as favorite vacation spots, favorite colors, or favorite foods as well as an undervoted ballot, an overvoted ballot, and other irregular ballot markings to test the logic and accuracy of the newly programmed voting machine.

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19. My fellow board members and I then compare the results printed by the voting machine to the numbers reported on the attached form detailing the contents.

20. Once the numbers have been cross-referenced to ensure their accuracy, my fellow board members and I communicate with the registrar to let her know the totals to report to the Department of Election utilizing the computer program "Veris."

21. My fellow board members and I are not permitted to see the Veris reporting screens and cannot verify that what is reported to the Department of Elections is an accurate

representation of the vote totals contained on the cast ballots. In fact, we are prohibited from accessing Veris at all.

22. Based on current Virginia election regulations, I am prohibited from hand-counting the cast ballots before returning them to the registrar.

23. If I cannot review the ballots, the only numbers that I can verify are that the total number of votes for all candidates matches the number of ballots distributed, and the total number of voters who checked in at the poll books.

24. As Electoral Board members are prohibited from hand-counting ballots, we cannot ensure that the vote tally produced by the voting machines matches the votes memorialized on the case paper ballots.

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26. Further, I am prohibited from hand counting all paper ballots for all races and all precincts, and I cannot access the ballots without a court order.

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28. After polls close, the ballots are removed from the machines, put in a box/envelope, and sealed along with the officers' of election signatures.

29. The ballots are sent to the registrar's office and then to the Clerk of Court, and the ballot boxes may not be opened without a court order.

30. The ballots themselves contain no identifying information that needs to be kept private, so there is no reason why the paper ballots and the votes cast thereon should be filed

away in secret without being able to view them to ascertain voter intent prior to certifying the vote totals. *understanding, knowledge, and experience*

31. Under the current legal regime, I am unable to personally review and verify that:

a. the voting machine program being used to count the ballots is keeping a true and accurate count; *Mr. Scott Mares*

b. the voting machine program being used to count the ballots is recording the true and accurate count; and/or, *in the County*

c. that the voting machine record tape accurately represents the ballots cast. *the County*

32. Consequently, I believe that the voting machines are conducting a secret canvass as prohibited by the Virginia Constitution.

33. The Virginia Constitution explicitly states that the ballot count cannot be conducted secretly. *County*

34. I have taken an oath to uphold the Virginia Constitution, which prohibits the secret canvassing of ballots. As such, I believe that certifying the 2024 election would be a violation of the Virginia Constitution. *County*

35. As such, I shall refuse to certify the 2024 election until such time as the legal regime permits for hand-counting ballots, and certification would not result in a violation of the Virginia Constitution.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

I HEREBY CERTIFY under penalty of perjury that the foregoing statement is true and within my understanding, knowledge, and experience.

Scott Mares  
Mr. Scott Mares

**NOTARY ACKNOWLEDGMENT**

In the Commonwealth of Virginia, <sup>City</sup> County of Waynesboro.

The forgoing instrument was executed or acknowledged before me this the 4 day of October, Anno Domini 2024.

Angela Young  
Notary Public's Signature

Personally Known \_\_\_\_\_; OR,

ANGELA YOUNG  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES JAN. 31, 2027  
COMMISSION # 8042298

Type of Identification Produced: VATA T61492921 dx 12/27/21

## Can this vote count?

A complete guide to  
hand-counting printed  
ballots for elections  
and recounts

### Exhibit D

#### Contents

1 - Extra Marks

Page 5

2 - More than 1

mark marked

Page 7

3 - Strikethroughs

Page 9

4 - Marks outside the  
oval

Page 11

5 - Circle-like marks

Page 13

6 - Written words

Page 15

7 - Write-in votes

Page 17

# VIRGINIA'S GUIDE TO HAND-COUNTING BALLOTS

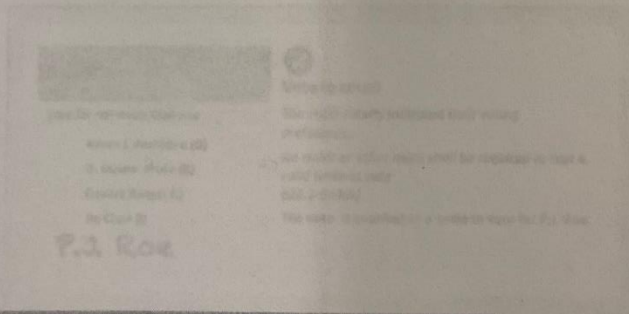
## Can this vote count?

A complete guide to  
hand-counting printed  
ballots for elections  
and recounts

When a voter's choice is not clear, these instructions can help you make a determination about the vote.

### What's in this guide?

The instructions include illustrated scenarios of votes to count. When a rule in the Virginia election code applies to an illustration.



\* VIRGINIA \*  
STATE BOARD of ELECTIONS

Hand-counting Ballots - September 2021

## Contents

- 1 – Extra Marks  
Page 5
- 2 – More than 1  
candidate marked  
Page 7
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oval  
Page 11
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Page 13
- 6 – Written words  
Page 15
- 7 – Write-in votes  
Page 17

# Introduction

## What is hand-counting?

Hand-counting ballots is the process by which ballots are manually counted rather than read by the voting machine. The majority of ballots for an election will not be hand-counted. Hand-counting ballots should be considered only when the ballot cannot be read by the voting machine.

The purpose of these instructions is to assist you while manually counting ballots. Throughout these instructions you will see examples that discuss how to read a ballot and determine if a vote should be counted.

## How to use these guidelines

Use these guidelines when you are looking for an indication that a voter affirmatively chose a candidate or a write-in for their vote. Many times this will be obvious and other times it may not be as clear.

These guidelines are the rules and principles that must be applied to every manually counted ballot.

When a voter's choice is not clear, these instructions can help you make a determination about the vote.

## What's in this guide?

The instructions include illustrated scenarios of votes to count and votes not to count. When a rule in the Virginia election code applies to an example, it is included with a citation.

<p>Member House of Delegates 64<sup>th</sup> District</p> <p>Vote for not more than one</p> <p><input type="radio"/> Aaron J. Peshkin II (D)</p> <p><input type="radio"/> G. Duane Kruse (R)</p> <p><input type="radio"/> Davitra Rangel (I)</p> <p><input type="radio"/> Jin Chen (I)</p> <p><b>P.J. Roe</b></p>	<p><input checked="" type="checkbox"/></p> <p><b>Vote to count</b></p> <p>The voter clearly indicated their voting preference.</p> <p><i>No check or other mark shall be required to cast a valid write-in vote</i> §24.2-644(A)</p> <p>The vote is counted as a write-in vote for P.J. Roe</p>
---	---

Can this example be counted?

Description of the marks

Election code, when applicable

How the vote is counted (or not)

Visual illustration of the example

## What to do if...

### What if the ballot I am reading is not shown in the examples?

Sometimes the vote you are looking at will not be exemplified in these instructions. Use the principles provided in these instructions to determine if and how a vote should be counted.



### What if my team cannot determine who the voter voted for?

In a recount if the teams cannot agree on how to process the ballot, the vote must be challenged and adjudicated by the court.

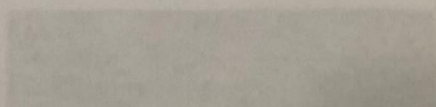
For other ballots being manually counted, speak with your general registrar.



# Abbreviations and symbols

	A vote that can be counted
	A vote that cannot be counted

## Vote marking scenarios



Vote for not more than one

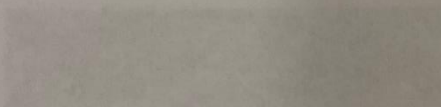
- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davira Rangel (L)
- Jim Chen (I)
- Victoria Martinez (I)



### Vote to count

The example contains two marks, but one stands out because it is bold and circled. This vote is counted for Davira Rangel.

## Vote marking scenarios: Marks between candidates



Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davira Rangel (L)
- Jim Chen (I)
- Victoria Martinez (I)



### Vote not to count

The voter marked between two candidate names. In this instance, the voter did not clearly indicate their choice. This vote cannot be counted.

# 1. Extra Marks

A voter might accidentally make extra pen marks or smudges on their ballot.

## Follow the rule in the elections code

- Any ballot marked so that the intent of the voter is clear shall be counted. (Va. Code §24.2-644)

## How to determine voter intent if a ballot contains extra marks

- Count the vote for the mark that stands out and is clearly associated with a candidate.

### Vote marking scenarios

Member  
House of Delegates  
64<sup>th</sup> District



#### Vote to count

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)

This example contains two marks, but one stands out because it is bold and complete.

This vote is counted for Davitra Rangel.

### Vote marking scenarios: Marks between candidates

Member  
House of Delegates  
64<sup>th</sup> District



#### Vote not to count

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)

The voter marked between two candidate names.

In this instance, the voter did not clearly indicate their choice.

This vote cannot be counted.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)



**Vote not to count**

The mark is between two names and gives no clear indication of the voter's choice.

This vote cannot be counted.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)



**Vote not to count**

It is not clear who the voter prefers because the mark is in between two candidates.

This vote cannot be counted.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)



**Vote not to count**

The mark is between—and touches—two names and gives no clear indication of the voter's choice.

This vote cannot be counted.

## 2. More than one candidate marked

You may encounter a ballot that contains more than one mark for a vote-for-one contest.

### Follow the rules in the elections code

- Any ballot marked so that the intent of the voter is clear shall be counted. (Va. Code §24.2-644).
- If a ballot for an office contains a greater number of votes than permitted, no vote for the office can be counted (Va. Code §24.2-663).
- In a recount, voting for more candidates than permitted is considered an overvote and the vote cannot be counted (Va. Code §24.2-802.2).

### How to determine voter intent if a ballot contains more than 1 mark for a race

- Count the vote for the mark that stands out and is clearly associated with a candidate.

### Vote marking scenarios

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)



### Vote to count

This example contains two marks, but one stands out because the box contains an x and is circled.

The vote is counted for Aaron J. Peshkin II.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)

#2b



**Vote not to count**

The voter marked each candidate on the ballot. One candidate was marked with a check while the others are marked with an "X". Each mark has the same weight for choice and there is no clear indication of voter intent.

The voter marked each candidate which is an overvote; thus, the vote cannot be counted.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)

P. J Roe

#2c



**Vote not to count**

The voter marked a candidate and wrote the name of a write-in candidate. Both are a vote for a candidate.

This vote cannot be counted.

3 Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

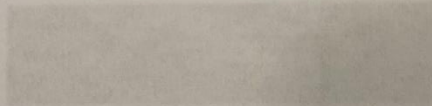
- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)



**Vote not to count**

The voter marked two candidates, when only one is allowed. It is not clear who the voter prefers because both marks are the same. No mark stands out for a particular candidate. This vote cannot be counted.

Vote marking scenarios



Vote for not more than one

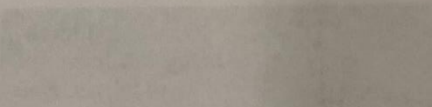
- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)



**Vote to count**

This voter checked the oval for one candidate and marked out the others.

The vote is counted for Viviana Montoya.



Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)



**Vote not to count**

The voter marked a line X between two names and there is no clear indication of the voter's choice.

This vote cannot be counted.

### 3. Strikethroughs

Some voters draw lines (also called strikethroughs) across candidate names instead of marking in the oval or box.

#### Follow the rule in the elections code

- Any ballot marked so that the intent of the voter is clear shall be counted. (Va. Code §24.2-644)

#### How to determine voter intent if a ballot contains strikethroughs

- Strikethroughs mean a voter does not favor a candidate. They don't provide information about voter intent. Often, these votes cannot be counted.

#### Vote marking scenarios

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

Aaron J. Peshkin II (D)

~~G. Duane Kruse (R)~~

~~Davitra Rangel (L)~~

~~Jin Chen (I)~~

Viviana Montoya (I)

#30



#### Vote to count

This voter checked the oval for one candidate and marked out the others.

The vote is counted for Viviana Montoya.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

Aaron J. Peshkin II (D)

G. Duane Kruse (R)

Davitra Rangel (L)

Jin Chen (I)

Viviana Montoya (I)

#30



#### Vote not to count

The voter marked a line in between two names and there is no clear indication of the voter's choice.

This vote cannot be counted.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davita Rangel (L)
- Jim Chen (H)
- Viviana Montoya (I)

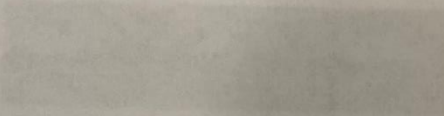


**Vote not to count**

In this example, 4 candidates are struck out. There is no clear mark that indicates who the voter prefers.

This vote cannot be counted.

**Vote marking scenarios**



Vote for not more than one

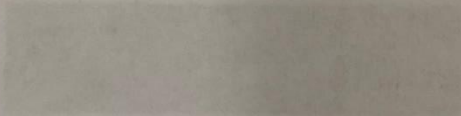
- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davita Rangel (L)
- Jim Chen (H)
- Viviana Montoya (I)



**Vote to count**

In this example, it is clear the voter has marked a single candidate.

The vote is counted for Aaron J. Peshkin II.



Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davita Rangel (L)
- Jim Chen (H)
- Viviana Montoya (I)



**Vote to count**

In this example, the arrow clearly points to a candidate.

The vote is counted for G. Duane Kruse.



## 4. Mark outside the oval

A voter's mark for a candidate may fall outside the oval or box.

### Follow the rule in the elections code

- Any ballot marked so that the intent of the voter is clear shall be counted. (Va. Code §24.2-644)

### How to determine voter intent if a ballot contains marks outside the oval

- Consider whether the mark indicates a preference for a candidate. If the mark is unclear, the vote cannot be counted.

### Vote marking scenarios

**Member  
House of Delegates  
64<sup>th</sup> District**

Vote for not more than one

Aaron J. Peshkin II (D)

G. Duane Kruse (R)

Davitra Rangel (L)

Jin Chen (I)

Viviana Montoya (I)

#4a



### Vote to count

In this example, it is clear that the checkmark aligns with a candidate.

The vote is counted for Aaron J. Peshkin II.

**Member  
House of Delegates  
64<sup>th</sup> District**

Vote for not more than one

Aaron J. Peshkin II (D)

G. Duane Kruse (R) ←

Davitra Rangel (L)

Jin Chen (I)

Viviana Montoya (I)

#4b



### Vote to count

In this example, the arrow clearly points to a candidate.

The vote is counted for G. Duane Kruse.

5. Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)

#4c



**Vote not to count**

This mark outside of the oval is not clearly associated with any candidate.

This vote cannot be counted.

Vote marking scenarios

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)

#4d



**Vote not to count**

This mark is not clearly associated with a single candidate.

This vote cannot be counted.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)

#4e



**Vote to count**

In this example, the checkmark touches more than one candidate. The center of the circle closes on one candidate.

The vote can be counted for Davitra Rangel.

## 5. Circle-like marks

You may encounter a ballot on which a voter has circled a candidate name, rather than filling in an oval or box to specify their vote.

### Follow the rule in the elections code

- Any ballot marked so that the intent of the voter is clear shall be counted (Va. Code §24.2-644).

### How to determine voter intent if a ballot contains circle-like marks

- Consider whether the mark indicates a preference for a candidate. If it is unclear, the vote cannot be counted.

### Vote marking scenarios

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)



### Vote to count

In this example, the circle corresponds to a specific candidate.

The vote is counted for Aaron J. Peshkin II.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)



### Vote to count

In this example, the circle line touches more than one candidate. The center of the circle closes on one candidate.

The vote can be counted for Davitra Rangel.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)



**Vote not to count**

The circle closes around two candidates. The voter's preference cannot be determined.

This vote cannot be counted.

## 6. Writing words

Voters shall not write words, other than a candidate's name, to indicate preference. Writing words cannot be used to indicate preference.

### Vote marking scenarios

**Member  
House of Delegates  
64<sup>th</sup> District**

Vote for not more than one

*This one*

Aaron J. Peshkin II (D)

G. Duane Kruse (R)

Davitra Rangel (L)

Jin Chen (I)

Viviana Montoya (I)



### Vote to count

In this example, the words "this one" cannot be taken as an indication of preference. However, the voter also drew an arrow which can be used to indicate the voter's preference for 1 candidate.

The vote is counted for G. Duane Kruse.

**Member  
House of Delegates  
64<sup>th</sup> District**

Vote for not more than one

Aaron J. Peshkin II (D)

G. Duane Kruse (R) *This one*

Davitra Rangel (L)

Jin Chen (I)

Viviana Montoya (I)



### Vote not to count

The voter checked all the boxes and wrote "this one" on the ballot. The words "this one" cannot be used as an indication of preference.

Additionally, voter marked each candidate which is an overvote; thus, the vote cannot be counted

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron Pechetti (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)
- Viviana Montoya (I)



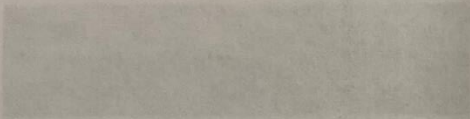
**Vote not to count**

The voter only wrote "My Guy" across a candidate's name.

This is not a clear indication that the voter was choosing this candidate for their vote.

This vote cannot be counted.

Voting scenarios



Vote for not more than one

- Aaron J. Pechetti (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Write-in  
P.J. Roe



**Vote to count**

The voter wrote the name circled in the poll to indicate that this is their choice.

The vote is counted as a write-in vote for P.J. Roe.

## 7. Write-in votes

Voters may choose to write in the name of a candidate not listed on the ballot.

### Follow the rules in the election code

- At all elections, except primary elections, a voter may vote for any person other than the listed candidates for the office by writing or hand printing the person's name on the official ballot. No check or other mark shall be required to cast a valid write-in vote.  
§24.2-644(C)
- No write-in vote shall be counted for an office for any person whose name appears on the ballot as a candidate for that office.  
§24.2-644(D)

### Voting scenarios

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Write-In  
P.J. Roe



### Vote to count

The voter wrote the name and filled in the oval to indicate that this is their choice.

The vote is counted as a write-in vote for P.J. Roe.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)

X P.J. Roe

#7a



**Vote to count**

The voter wrote in the name and created a mark to indicate that this is their choice.

The vote is counted as a write-in vote for P.J. Roe.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Jin Chen (I)

P.J. Roe

#7b



**Vote to count**

The voter clearly indicated their voting preference.

*No check or other mark shall be required to cast a valid write-in vote.*

§24.2-644(C)

The vote is counted as a write-in vote for P.J. Roe.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)
- Write-In

AARON J PESHKIN II

#7c



**Vote not to count**

The voter indicated their choice; however, their choice is already printed on the ballot.

*No write-in vote shall be counted for an office for any person whose name appears on the ballot as a candidate for that office.*

§24.2-644(D)

This vote cannot be counted.



Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)

Write-In  
Peshkin

#7d



**Vote not to count**

The voter indicated their choice with the last name of a candidate; however, their choice is already printed on the ballot.

*No write-in vote shall be counted for an office for any person whose name appears on the ballot as a candidate for that office.*

§24.2-644(D)

This vote cannot be counted.

Member  
House of Delegates  
64<sup>th</sup> District

Vote for not more than one

- Aaron J. Peshkin II (D)
- G. Duane Kruse (R)
- Davitra Rangel (L)

Write-In  
P.J. Roe

#7e



**Vote not to count**

The voter marked a selection and wrote down a name.

This indicates two choices—more than are permitted for this contest.

*If voter indicates a number of choices for a race in which is not permitted they have made an overvote and no vote shall be counted.*

§24-802.2

This vote cannot be counted.

