



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

State Board of Elections Annual Report

January 1, 2021 – December 31, 2021

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Executive Summary

In accordance with the Code of Virginia § 24.2-103 (J) the State Board of Elections (the Board), through the Department of Elections (ELECT), is pleased to provide to the Governor and the Virginia General Assembly the State Board of Elections Annual Report. Pursuant to §24.2-103 of the Code of Virginia, the Board supervises, coordinates, and adopts regulations governing the work of local electoral boards, registrars, and officers of election to ensure secure, uniform, and trustworthy elections. During the 2021 calendar year (January 1, 2021 – December 31, 2021), the Board met a total of twelve times certifying four elections, approving four regulations, adopting six amendments to existing regulations, assessing and addressing a variety of administrative matters, updating and ensuring election security, and defining penalties for Stand By Your Ad (SBYA) violations.

Previously, the Board consisted of three members appointed by the Governor. However, following the passage of Acts of Assembly Chapter 619, during the 2020 Session of the General Assembly, the Board increased to five members.¹ Three of the Board members are of the political party that cast the highest number of votes at the last preceding gubernatorial election.

On March 12, 2020, Governor Ralph S. Northam declared that a state of emergency exists in the Commonwealth as the result of the potential spread of COVID-19, a communicable disease presenting a threat to public health. On March 30, 2020, the Governor issued an executive order requiring all individuals in Virginia to remain at their place of residence, with certain enumerated exceptions. Accordingly, the State Board of Elections held six meetings through electronic communication means pursuant to the Virginia Freedom of Information Act § 2.2-3708.2, until Governor Northam's executive order ended on June 30, 2021. This report details the activities of the Board and ELECT during the 2021 calendar year.

¹ See [SB 856](#) Elections, State Board of; increasing membership, staggering terms, role and eligibility, report.
State Board of Elections Annual Report

Introduction

The Virginia State Board of Elections (the Board) was created in 1946 as a nonpolitical agency responsible for ensuring fairness, accuracy and uniformity in all elections in the Commonwealth of Virginia. The Board promotes the proper administration of election laws, campaign finance disclosure compliance, and voter registration processes in the state by promulgating rules, regulations, issuing instructions, and providing information to local electoral boards and general registrars. The Department of Elections (ELECT) was formed in 2014 to conduct the Board’s administrative operations and other duties consistent with its delegated authority. In 2021, ELECT proposed approximately 46 memorandums to the Board summarized in the table below.

2021 ELECT Memorandums and Proposals Presented to the State Board:

Type	Total
New Regulations	4
Amended Regulations	6
Election Administration	14
Risk Limiting Audits	2
Election Security	4
Stand By Your Ad	2
Electoral Board Complaints	4
Miscellaneous	10
ALL	46

Regulations

New Regulations

Pursuant to Virginia Code §24.2-103, the Board has the authority to make rules and regulations, issue instructions, and provide information consistent with election laws to the electoral boards and general registrars. Electoral Boards and registrars must adhere to the rules and regulations of the Board, ensuring compliance with Virginia and federal laws.

The Board approved a number of new regulatory actions in 2021 including setting standards for ranked choice voting, campaign finance print media requirements, witness signature requirements during a declared state of emergency, and 3rd party vendor requirements for printing, assembly, and mailing absentee ballots. Each

regulation is listed below along with a brief summary.

Ranked Choice Voting (1VAC20-100)

Ranked choice voting is a method of voting which permits voters to rank their preference of candidates and/or write-ins. In ranked choice voting, a voter may rank as many or as few candidates as they choose starting with their first choice. Acts of Assembly Chapter 1054 passed during the 2020 Session of the General Assembly required the Board to establish a process and standards for the administration of certain local seats elected by ranked choice voting.² 1VAC20-100 regarding ranked choice voting was initially proposed for public comment in July and after amending the proposed regulation a final version was adopted on September 14, 2021. The regulation established definitions, procedures for tabulating votes in rounds, procedures for determining winners in elections for offices where one or more candidates are being elected, and ballot standards.

Print Media Advertisements (1VAC20-90-40)

Acts of Assembly Chapter 557 passed during the 2020 Session of the General Assembly, required the Board to promulgate regulations regarding print media advertisements.³ 1VAC20-90-40 is a proposed regulation which sets standards for the disclosure statements on print advertisements sponsored by a candidate campaign committee or by a person or political committee other than the candidate campaign committee. Print advertisements from these parties must have disclosure statements that are clear and conspicuous. The requirements in this regulation are similar to federal print media advertisement requirements established by the Federal Election Commission under 11 CFR § 110.11. The Board is required to have a public hearing regarding this regulation.

Absentee Witness Signatures during Qualifying State of Emergency (1VAC20-70-80)

1VAC20-70-80 was adopted on June 22, 2021, which clarified absentee ballot witness signature requirements pursuant to Virginia Code § 24.2-707. If a state of emergency is declared prior to the start of an election's in-person absentee voting under § 24.2-701.1 and is ongoing at the beginning of the in-person absentee voting period, then a witness signature is not required on any absentee ballot otherwise validly submitted for that election. This rule applies to all absentee ballots submitted for that election, including any absentee ballot submitted after the state of emergency has ended.

Absentee 3rd Party Vendor Requirements (1VAC20-70-90)

Following the passage of Acts of Assembly Chapter 246 during the 2021 Session of the General Assembly, general registrars were permitted to contract with third parties for the printing, assembly, and mailing of absentee ballot envelopes and supporting materials described under Virginia Code § 24.2-706(C).⁴ The Board adopted 1VAC20-

² See [HB 1103](#)

³ See [HB 1238](#)

⁴ See [SB 1239](#)

70-90 on June 22, 2021, which prescribed 14 processes that ensure secure and timely delivery of voter information to contractors and reports of mailed absentee ballots from contractors.

Amendments to Existing Regulations

During the 2021 calendar year the Board amended a total of 6 regulations. Four of the regulations were amended as a result of a periodic review pursuant to Executive Order 14 (as amended July 16, 2018) and Virginia Code §§ 2.2-4007.1 and 2.2-4017. The amended regulations are summarized below.

Material Omissions from absentee ballots (1VAC20-70-20)

Passed during the 2020 Session of the General Assembly, Acts of Assembly Chapter 288 extended the deadline for an absentee ballot to be received until noon on the third day after the election.⁵ On August 4, 2020, the Board adopted an amendment to 1VAC20-70-20 relating to material omissions in absentee voting, allowing for the counting of mail absentee ballots with missing or illegible postmarks that are received by the appropriate general registrar by noon the third day after an election. In a subsequent board meeting held on October 20, 2020, the State Board of Elections adopted amendments to this regulatory action, compelling the use of Intelligent Mail barcodes (IMbs) and voter oaths as evidence of the date that a ballot was postmarked. The Board's intent was to avoid disenfranchising individuals who had mailed their ballot on Election Day or earlier, but the USPS either failed to postmark it or the postmark was illegible. This particular amendment was challenged in court in *Reed v. Virginia State Board of Elections*. On January 13, 2021, plaintiff Thomas P. Reed and the Virginia Department of Elections entered into a consent decree to further amend and refine the text of this regulatory action. The consent decree was signed by Judge William Eldridge IV of the Circuit Court for Frederick County. The final amendment to 1VAC20-70-20 was adopted by the Board on February 23, 2021.

Organization of the State Board of Elections; seal... (1VAC20-20-30)

Following the passage of Acts of Assembly Chapter 619, during the 2020 Session of the General Assembly, the Board increased from three members to five members.⁶ As a result, on August 3, 2021, the Board approved an amendment to 1VAC20-20-30, amending the definition of a quorum from two members to three members.

Periodic Review of Regulations

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Elections (SBE) is required to conduct a periodic review of all regulations every four years. Additionally, 1VAC20-10-120 requires the SBE to conduct a periodic review of its regulations following each presidential election.

⁵ See [HB 238](#)

⁶ See [SB 856](#)

The purpose of the review conducted in June, 2021, was to determine whether a regulation should be repealed, amended, or retained in its current form. Public comment was sought on the review of any issue relating to the regulation, including whether the regulation (i) was necessary for the protection of public health, safety, and welfare or for the economic performance of important governmental functions; (ii) minimized the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) was clearly written and easily understandable. This review also included an examination by the Office of the Attorney General to ensure statutory authority. As a result of the review, four Administrative Code sections required amending: 1VAC20-20; 1VAC20-40; 1VAC20-45; and 1VAC20-70.

General Administration 1VAC20-20

The amendments to this regulatory chapter reflected the structural changes after creation of ELECT. The Commissioner of ELECT handles administrative matters for the State Board of Elections, therefore, all references to the Secretary, unless otherwise noted, were stricken. The Board adopted amendments to this regulation at the advice of the Office of the Attorney General. The public did not provide any comments on this regulatory chapter.

Voter Registration 1VAC20-40-40

The Board adopted amendments to this regulation at the advice of the Office of the Attorney General and with consideration of public comment. 1VAC20-40-40 referenced Virginia Code § 24.2-411.1, which was repealed during the 2020 Session of the General Assembly. Therefore, the Board approved the removal of that provision from the regulatory text to conform with the statutory change.

Absent Military and Overseas Voters 1VAC20-45-40

The amendment to this regulation clarified material missions on Federal Write-In Absentee Ballots (FWAB), stating the absence of a witness signature on a FWAB is not a material omission during a declared state of emergency. The Board adopted amendments to this regulation at the advice of the Office of the Attorney General. The public did not provide any comments on this regulatory chapter.

Absentee Voting 1VAC20-70-20

The Board adopted amendments to this regulation at the advice of the Office of the Attorney General and with consideration of public comment. The amendments clarified material omissions, stating the absence of a witness signature on an absentee ballot is not a material omission during a declared state of emergency.

Election Administration

Election Administration encompasses the proper administration of election laws, campaign finance disclosure compliance, and voter registration processes in Virginia. This includes creating rules, issuing instructions, and providing information consistent with state and federal election laws to promote the proper administration of elections and to obtain uniformity in the practices of election officials. The Board reviewed many proposals from ELECT regarding election administration during the 2021 calendar year. These proposals include changes to hand-

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counting ballot standards, amending absentee applications, updating certification standards, certifying elections, determining ballot order, and reviewing candidate filing extensions.

Hand-counting Ballot Standards

Pursuant to Virginia Code §§ 24.2-802 and 24.2-802.2, the Board is responsible for creating and relaying procedures for a safe, timely, and accurate recount, including procedures for hand counting paper ballots. On September 14, 2021, ELECT presented the Board with revisions to the hand-counting ballot standards. The revisions aimed to provide clarity for the process of manually counting votes. The updated standards clarified instructions for reviewing votes, determining voter intent, and specified applicable language from Title 24.2 of the Code of Virginia.

SBE-701-703.1 Virginia Absentee Ballot Application

In 2021, ELECT consulted with a workgroup of general registrars and staff to develop changes to the SBE-701-703.1 Virginia Absentee Ballot Application to comply with multiple statutory changes enacted by the Virginia General Assembly. The application was a combined form, incorporating the former separate SBE-701 and SBE-703.1 forms adopted in 2020.

Reflecting the requirements of Acts of Assembly Chapter 1201, passed during the 2020 Session of the General Assembly, the “Annual Vote by Mail” section on the form was changed to the “Permanent Absentee Option”.⁷ Additionally, the proposed changes reflected Acts of Assembly Chapter 471 and Acts of Assembly Chapter 255, which passed during the 2021 Session of the General Assembly.⁸ These changes included the removal of language that required voters to vote in-person for the first time after applying for an absentee ballot by mail and added an option for print-disabled voters to self-designate to receive a ballot electronically. The instructions on the back of the form were updated to reflect the changes to the main portion of the application.

ELECT also presented the Virginia Permanent Absentee Voter Single Election Change form (SBE-703.1C), in compliance with Acts of Assembly Chapter 1201. This form allows a voter on the permanent absentee voter list to change the political party for which they receive absentee ballots for one election or for all elections. The form also permits a voter to request an absentee ballot be sent to a different address than the address in their voter registration record for one election. The Board approved both forms on June 22, 2021.

Risk-Limiting Audits

Acts of Assembly Chapter 1254, passed during the 2017 Session of the General Assembly, required risk-limiting audits of ballot scanner machines in use in the Commonwealth to be conducted annually.⁹ In March 2021, ELECT conducted the first statewide Risk-Limiting Audit (RLA) and presented the findings to the Board, pursuant to Virginia Code § 24.2-671.1¹⁰. ELECT partnered with VotingWorks, a non-profit organization that hosts an open-

⁷ See [HB 207](#)

⁸ See [HB 1888](#); [SB 1331](#)

⁹ See [SB 1254](#)

¹⁰ §24.2-671.1 was repealed in 2022, and is now the new § 24.2671.2

source audit software, to assist with the technical side of the audit process and perform the statistical analysis. Ballots were chosen at random across all 133 localities to test a risk-limit of 10%. The audit confirmed with over 99% confidence the original count of votes accurately reflected the winners in Virginia for both the United States Presidential and Senate race.

On December 13, 2021, ELECT presented five House of Delegates races for the Board to randomly draw the two participants of the 2022 Risk-Limiting Audit of the 2021 General Election. When evaluating which races to audit, ELECT staff analyzed contests that had both Democratic and Republican winners and represented various geographical regions in the Commonwealth. Races in localities that were not selected in the random sample of the 2021 Risk-Limiting Audit were prioritized in order to comply with §24.2-671.1 of the Code of Virginia. Contests with margins greater than 2% were also considered better candidates, since they require the least amount of ballots to be reviewed. The Board conducted a random drawing and selected the 13th and 75th House Districts.

Ballot Order

In the event that two or more candidates file simultaneously, the order of the filing is determined by the electoral board or the Board, pursuant to Virginia Code § 24.2-529. Additionally, the Board must determine by lot the order of political parties, pursuant to Virginia Code § 24.2-613.

On March 31, 2021, the Board certified the determinations by lot of the order of candidates on the ballot for primary elections to be held on June 8, 2021. Then, on May 15, 2021, the Board determined by lot and certified the ballot order for all general and special elections held between July 1, 2021 and April 30, 2022.

Candidate Filing Extension

Pursuant to § 24.2-503 of the Code of Virginia, candidates must submit written statements of qualification and economic interest to qualify for ballot access; deadlines are specified based on the type of election. The Board is granted the authority to extend the deadline to all candidates. Additionally, the Board must notify all candidates included in the race, and the extension is granted for 10 days after the notice date. On March 31, 2021, ELECT presented two requests for extensions from candidates for the June 2021 Primary Election. However, when the Chairman asked if any members of the Board wished to make a motion, no motion was made.

On June 22, 2021 ELECT presented requests for extensions from candidates for the November 2021 General Election. The Chairman suggested the Board defer the consideration of these requests until June 30, 2021. ELECT presented the candidate extension requests again at the June 30 meeting of the Board. The Chairman asked if any members of the Board wished to make a motion, but no motion was made.

During the June 30 Board meeting, ELECT also presented a request to accept late ELECT-511 filings. Pursuant to VA Code § 24.2-511(A), the appropriate party chairman are required to certify the name of any candidate who was nominated for an office of the General Assembly by their party by a method other than a primary not later than five days after the date for nominations to be made. In the instances before the Board, the House of Delegates District Republican party chairs for the 2nd, 33rd, and 36th districts did not file the required ELECT-511 nomination form by June 14th, 2021 (five days after the date for nominations to be made). These chairs have

asked for the Board to accept these filings as timely under their authority in Va. Code § 24.2-511(A). For the three candidates impacted, the Board determined that each candidate made all reasonable attempts to comply with the submission process, and due to “the important constitution rights associated with a party’s access to the ballot” a motion was made to accept the ELECT-511 form certifying the Republican nominees. The motion passed 2-1.

Certification of Elections

During the 2021 Calendar year, the Board certified 4 elections. On January 12, 2021, the Board certified the results of the January 5, 2021 Special Elections for Member, House of Delegates District 2 and Member, House of Delegates District 90, pursuant to Virginia Code §§ 24.2-679 and 24.2-680.

Then, on March 31, 2021, the Board certified the results of the March 23, 2021 Special Election for Member, Senate of Virginia District 38, pursuant to Virginia Code §§ 24.2-679 and 24.2-680.

On June 22, 2021, the Board certified the results of the June 8, 2021 Democratic and Republican Primaries which included the statewide Democratic primary for Governor, Lieutenant Governor, and Attorney General, and 24 House of Delegates Districts. The winners of each primary were declared as that party’s nominee for the November 2, 2021 election, pursuant to Virginia Code § 24.2-543.

Last, on November 15, 2021, the Board completed the certification of the November 2, 2021 General Election pursuant to Virginia Code § 24.2-679. The Board certified the election results for the races for Governor, Lieutenant Governor and Attorney General as well as all 100 District Representatives in the House of Delegates.

Party Abbreviations

Pursuant to Virginia Code § 24.2-613(A) “[t]he ballots shall comply with...the standards prescribed by the Board.” ELECT staff recommended on August 3, 2021 that the Board approve the recommended abbreviations for general and special elections being held through April 30, 2022. The memorandum included political parties, recognized political parties, and potential abbreviation options. The Board approved the party abbreviations by a unanimous vote.

General Registrar Certification Extension

Pursuant to Virginia Code § 24.2-103(C), the Board, through ELECT, is required to provide a certification program for general registrars. Each general registrar is required to complete the certification program and receive their certification within the 12 months following initial appointment or any subsequent reappointment; failure to do so results in a removal from office. Additionally, the Board is authorized to grant a waiver requested by a local Electoral Board to extend, on a case-by-case basis, this deadline by up to three months. On June 22, 2021, the Electoral Board of Appomattox County submitted a request to extend the deadline for their general registrar, and the Board unanimously granted the extension.

Officer of Election Training

The Board is required to set the training standards for the officers of election and to develop standardized training programs to be conducted by the local electoral boards and the general registrars, pursuant to Virginia Code § 24.2-103(D). The Board is also required to provide standardized training materials for such training and an online course must be available on ELECT's website. The Board is required to review the standardized training materials and the content of the online training course every two years in the year immediately following a general election for federal office. On August 3, 2021 the Board approved amended officers of election training materials, which included a series of legislative changes from the 2021 Session of the General Assembly.

Election Security

On November 15, 2021 the Board conducted its annual review of the Virginia Voter Registration System Security standards, pursuant to Virginia Code § 24.2-410.2. Additionally, Virginia Code § 24.2-629, permits “[a]ny person, firm, or corporation, ... manufacturing, owning, or offering for sale any electronic voting or counting machine and ballots designed to be used with such equipment” to apply to the Board “to have examined a production model of such equipment and the ballots used with it.” The Board and ELECT consistently work to ensure the integrity and security of every election is upheld in the Commonwealth of Virginia. Throughout the 2021 calendar year, the Board approved various changes to electronic pollbooks, voting systems, and voting system security.

Electronic Pollbook Certification

In January of 2020, the Voting Systems Certification Standards were reviewed, updated, and approved by the Board. These standards were designed to ensure conformity between different vendors, better evaluate EPB systems for use in Virginia, re-evaluate and recertify vendor systems, and standardize the process of EPB systems. The Board directed compliance to these new standards by July 2021. On March 31, 2021 ELECT informed the Board the Election Assistance Commission (EAC) passed updated Voluntary Voting System Guidelines (VVSG 2.0) in February, 2021. VVSG 2.0 focused on improvements to usability, accessibility, security, and interoperability, is structured differently than previous guidelines, and offered a more thorough revision of certification standards. ELECT recommended that localities be allowed to continue use of the current uniform baseline certified versions of voting equipment and electronic pollbooks (only non-satellite locations) through July 2022. The Board approved all localities upgrading to the VVSG 2.0 standards by July 2022.

During the June 22, 2021 meeting of the Board, ELECT presented the three voting systems and/or electronic pollbooks that would have expired certifications by July 31, 2021: Election Systems & Software's Voter Assisted Terminal AutoMark (HW 1.0, 1.1 and 1.3) firmware 1.8.6.0, version 5.2.0.2; VR Systems EVID electronic pollbook, version 2012.21.106; and Election Systems & Software ExpressPoll 5000 electronic pollbook, version 3.2.0.0.

City of Hampton Waiver

On September 14, 2021, ELECT informed the Board that the certification for the ExpressPoll 5000, an Election Systems and Software (ESS) electronic pollbook, expired as of July 1, 2021. The City of Hampton, which has over 100,000 voters and 125 electronic pollbooks, was the only locality utilizing the ExpressPoll 5000. The vendor, ESS, did not inform the City of Hampton that they did not intend to certify in 2021 until August 19, 2021. As a result, the City of Hampton requested a waiver from the Board to utilize the ExpressPoll 5000 for the November Election. The Board was informed that without a waiver the locality would be required to purchase an entirely new product, which was not feasible by the November Election, or rely on the use of paper pollbooks pursuant to Virginia Code § 24.2-612(F). The Board was informed that the previously certified version of ExpressPoll 5000 is secure, independently tested, and would not be used at satellite early-voting sites so there would be no connection to a VPN or Cloud. If used only on Election Day, the ExpressPoll 5000 posed no security concerns and filled a necessary operational need for such a large locality. Therefore, the Board granted the waiver for use of the ExpressPoll 5000 up until the locality secures a newly certified system, but not later than July 31, 2022.

Robis Elections Electronic Pollbook 3.4.139.0

On June 22, 2021, ELECT requested the Board certify the use of Robis Elections electronic pollbooks version 3.4.139.0. SLI Compliance, an independent testing authority, determined that the Robis Elections electronic pollbooks met the requirements of the Election Assistance Commission Voluntary Voting System Guidelines. Robis provided the certification fee and testing was conducted on June 8th at ELECT facilities in Virginia. In addition, the system was successfully tested in a Mock Election in Montgomery County on June 15, 2021. The Board motioned and approved the use of the updated system by a unanimous vote.

HART Intercivic 2.5.1

On June 22, 2021, ELECT requested the Board approve the Hart InterCivic 2.5.1 voting system, which was an updated version from Hart InterCivic 2.3. SLI Compliance, an independent testing authority, determined that the Hart Verity Voting System met the requirements of the Election Assistance Commission Voluntary Voting System Guidelines. Hart InterCivic provided the certification fee and testing was conducted on March 29 through April 1, 2021 at ELECT facilities in Virginia. In addition, the system was successfully tested in a Mock Election in Essex County on May 7, 2021. The Board motioned and approved the use of the updated system by a unanimous vote.

Dominion 5.5

During the June 22, 2021 meeting of the Board, ELECT also recommended the Board certify the use of the Dominion 5.5 voting system. SLI Compliance, an independent testing authority, determined that the Dominion Voting System met the requirements of the Election Assistance Commission Voluntary Voting System Guidelines. Dominion provided the certification fee and testing was conducted on May 3 through May 6, 2021 at ELECT facilities in Virginia. In addition, the system was successfully tested in a Mock Election in Amelia County on June 1, 2021. The Board motioned and approved the use of the updated system by a unanimous vote.

Unisyn Voting Solutions 2.1.1

ELECT recommended the Board approve the use of Unisyn Voting Solutions 2.1.1 in elections in the Commonwealth of Virginia on June 22, 2021. SLI Compliance, an independent testing authority, determined that the Unisyn Voting Solutions 2.1.1 met the requirements of the Election Assistance Commission Voluntary Voting System Guidelines. Unisyn provided the certification fee and testing was conducted on March 23 through March 24, 2021 at ELECT facilities in Virginia. In addition, the system was successfully tested in a Mock Election in Arlington County on April 27, 2021. The Board motioned and approved the use of the updated system by a unanimous vote.

Elections Systems & Software 6.1.1.0

During the June 22, 2021 meeting of the Board, ELECT recommending the Board certify the use of Elections System & Software voting system, version 6.1.1 in elections in the Commonwealth of Virginia. Election Systems & Software provided the certification fee and testing was conducted on March 8 through March 12, 2021 at ELECT facilities in Virginia. In addition, the voting system was successfully tested in a Mock Election in Chesterfield County on April 6, 2021. The Board motioned and approved the use of the updated system by a unanimous vote.

Stand By Your Ad Citations: (SBYA)

Stand by Your Ad (SBYA) is a provision of the 2002 Bipartisan Campaign Reform Act, which requires any candidate running for federal political office to identify themselves on and approve any political advertisement. Virginia Code § 24.2-955 states that any sponsor of print media, radio, television, or online platform advertising is required to disclose their sponsorship on said advertisement. If a violation of Political Campaign Advertisement occurs, §24.2-955.3 states the penalties and in what manner the Board must handle the assessment of the violation.

SBE Policy 2021-001: Stand By Your Ad Hearings

ELECT initially presented a proposed set of standard operating procedures to be used by ELECT in processing SBYA complaints in March of 2018. The Board approved the proposed procedures unanimously and asked ELECT to prepare proposed procedures for SBYA hearings with a list of factors for the Board to consider when determining the appropriate civil penalty to assign for a violation of Virginia Code Title 24.2 Chapter 9.5. The Board adopted State Board of Elections Policy 2018-001 on August 15, 2018. Until February 2021, the Board had conducted SBYA hearings according to the 2018 policy.

Counsel from the Office of the Attorney General (OAG) suggested changes to Policy 2018-001 to further align the Board's hearing process with Virginia's Administrative Process Act (APA) of the Code of Virginia §2.2-4000, *et. seq.* These changes allow candidates a chance to rebut any complaint that is brought against them and permits candidates to request that any complainant appear before the Board for cross examination. ELECT presented the proposed updated policy on February 23, 2021, and the policy was approved unanimously.

SBYA Citations

On August 3, 2021, the Board held a public hearing to assess violations of Virginia Code § 24.2-955. For statewide or General Assembly offices, ELECT recommends a \$100 penalty for a first time violation and \$300 thereafter, doubling the value if the violation is within 14 days of the election. For local or constitutional offices, ELECT recommends a \$50 penalty for a first time violation, and \$100 thereafter, again doubling the penalty within 14 days of an election. If the Board unanimously agrees that the consequences of the ad are low, the Board may address a \$25 violation so long as the perpetrator is a first time offender. The Board heard 7 cases, dismissing 2, and finding 5 guilty. The board assessed a total of \$650 in civil penalties.

Electoral Board Complaints

In April and June of 2021, the Board discussed alleged irregularities in the operations of two local Electoral Boards: Richmond City Electoral Board and Nottoway County Electoral Board. Pursuant to §24.2-103(E), the Board is authorized to institute proceedings pursuant to § 24.2-234 for the removal of any member of an Electoral Board who fails to discharge the duties of their office in accordance with law.

As a result of the Board's review of submitted documents pertaining to Nottoway County, the Nottoway County Electoral Board was ordered to take the ELECT Electoral Board training and training on the Virginia Freedom of Information Act. Nottoway County Electoral Board was required to provide proof of completion of both trainings within 90 days of the ruling.

The matters concerning Richmond City Electoral Board were referred to the Commonwealth's Attorney for the City of Richmond. However, due to the nature of the alleged irregularities, the Commonwealth's Attorney for the City of Richmond stated the matter should be referred to the Office of the Attorney General, pursuant to Virginia Code § 2.2-511(A)(ii). The Board voted unanimously to submit a letter to the Office of the Attorney General to investigate the alleged improper actions in violation of Virginia Code Title 24.2.

Miscellaneous

During the 2021 calendar year, the Board also reviewed the Delegations of Authority, which had not been updated since 2019. The Delegations specified the roles and responsibilities of ELECT as delegated by the Board. The Board also updated its electronic meeting policy to ensure compliance with Virginia Code §2.2-3708.2. Since the state of emergency ended June 30, 2021 meetings were required to be in person, and members could participate remotely only under specific circumstances as outlined in a policy, pursuant to § 2.2-3708.2.

Conclusion

A wide variety of regulations, amendments, administrative policies and procedures, election security updates, and campaign finance polices were approved by the Board in 2021. The Board certified new voting systems with various pollbook vendors in accordance with the state certification process. The Board and ELECT also provided updates to campaign finance regulations, specifically relating to stand by your ad campaigns. Furthermore, the

Board accurately certified the election results of the 2021 primary and general elections. The elections community will continue to promote and support accurate, fair, open and secure elections for the citizens of the Commonwealth.