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## VIRGINIA'S ELECTION LAWS: AN UPDATE STUDY – Part 1

The League of Women Voters of Virginia's May 2009 Convention adopted a two-year update study and review of its current positions on Virginia's election laws. The first year of the study will look at voter registration, provisions for voting by military and overseas voters, and the governmental structure responsible for administering elections in the Commonwealth. During the second year, attention will be directed to the elections themselves.

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### VOTER REGISTRATION

#### INTRODUCTION

The current positions on voter registration of the League of Women Voters of Virginia (LWV-VA) were adopted following a League study that began in 1973. This was just two years after Virginia's new Constitution eliminated the poll tax and literacy tests as requirements for registration and voting, although such provisions had already been voided by the U.S. Congress and Supreme Court decisions in the 1960s. As was noted in a chart that the LWV-VA study committee prepared for that study, changes in provisions affecting registration and voting in Virginia during the 1960-70 period reflected the Commonwealth's seemingly grudging application of national laws and Supreme Court decisions that served to open registration and voting to all U.S. citizens.

*A true story from a member of the League of Women Voters of the Fairfax Area:* Thirty-some odd years ago when I was in the LWVFA office answering the telephone during the week before Election Day, I got a call from a voter in a local jurisdiction (not Fairfax County or City) who wanted to know where to vote. . . . We didn't have that information. I called the jurisdiction's electoral board and asked my question. The response was: "We don't give out that kind of information" . . . pause . . . "we only want quality voters, you know."

Many of the topics covered by the 35-year-old study are no longer issues that need to be covered by this study since they are now moot. These include: "absentee registration" including postcard registration, which was effectively achieved by "Motor Voter"; durational residency requirements, which were eliminated in Virginia as elsewhere following the 1972 Supreme Court decision in *Dunn v. Blumstein*; and the limitation on registration due to the prevalent interpretation of Virginia's constitutional prohibition of "solicitation of registrations," which was clarified during the course of the 1973 study by decisions of the Virginia and U.S. Attorneys General.

Other topics covered by that study are issues still being discussed today. They include the systematic availability throughout Virginia of what was called "registration on demand" – that is, extended registration locations and times; and the uniform interpretation and application of Virginia's constitutional requirement that registrants have both a domicile and abode. Both topics will be addressed in this study, as we consider the extent to which voter registration issues have been resolved – or maybe just changed – in Virginia.<sup>1</sup>

#### WHY IS VOTER REGISTRATION REQUIRED? OR IS IT?

According to most observers, voter registration is used to control who votes, limiting eligibility to those eligible under federal and state law, and thus controls access to the polls on Election Day. It is also used for election management and administration. In responding to a questionnaire in fall 2009, local Leagues in Virginia

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reported that registration was necessary to ensure that only people entitled to vote in a given jurisdiction can do so; that individuals vote only once; and for administrative purposes such as assigning voters to precincts, resource planning for election officials, voting machines needed, etc. However, while attention to voter **eligibility** has been an issue since the founding of the republic, voter **registration** itself has not received the same degree of attention.<sup>2</sup>

### **Voter Registration and the States**

Not addressed in the Constitution, voter registration in the United States dates to the early 1800s, when states and localities began to use it to control access to voting. It was at first a reaction to the growing numbers of foreign-born residents, but the procedures adopted by individual states and localities also served to disenfranchise poor citizens. Around the beginning of the 20th century, registration policies and procedures were designed, especially in the South, to disenfranchise African-Americans.<sup>3</sup> This was nowhere more true than in Virginia.

“Discrimination!” cried Carter Glass, a delegate at the [Virginia Constitutional] Convention [of 1902]. “Why that is precisely what we propose; that, exactly is what this convention was elected for – to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution with a view to the elimination of every Negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the white electorate.” *As quoted in the Washington Post of May 2, 1965, and printed in the September 1973 LWV-VA study of Voter Registration in Virginia.*

The patchwork of individual state and local registration laws and practices was not significantly addressed by federal legislation until the 1960s, with enactment of the Voting Rights Act. While there were individual state attempts to simplify voter registration over the next several decades, and legislation enacted affecting registration and voting of uniformed and overseas citizens, it was not until the 1990s that federal law established a modicum of uniformity for some elements of registration systems across the nation.

The 1993 National Voter Registration Act of 1993 (“Motor Voter”) requires states to give citizens the opportunity to register to vote: at the same time as they apply for or renew their driver’s license; at social services agencies; and by using mail-in forms, allowing individual voter registration drives. The Help America Vote Act (HAVA) of 2002 requires that each state develop and use a single, uniform, official, centralized, interactive, computerized statewide voter registration system to store and manage the lists of registered voters throughout the state. This database is used to ensure accurate voter registration lists for use at all elections. Another provision required new registrants to provide their driver’s license number or last four digits of their Social Security number with their registration application – or be given a unique identifier if the registrant had neither. Since Virginia already had a statewide system using Social Security numbers, it was grandfathered to allow the use of the entire Social Security number.

Implementation was left almost entirely in the hands of the states, which have great latitude in how they meet its minimum requirements. [Other provisions of HAVA affecting elections will be discussed in the next study.] Thus, for the most part, voter registration policies, procedures and administration continue to be left to each state to determine.

### **Voter Registration for the Military and Overseas Citizens**

**The Federal Voting Assistance Program:** The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) was enacted by Congress in 1986 and amended by HAVA in 2002. It requires states and territories to allow certain groups of U. S. citizens to register and vote in elections for federal offices, including: members

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of the Uniformed Services (on active duty), members of the Merchant Marine, their eligible family members, and citizens residing outside the United States.

The Federal Voting Assistance Program (FVAP), part of the Department of Defense, administers UOCAVA and the National Voter Registration Act of 1993. FVAP states its goals as to “inform and educate U.S. citizens worldwide of their right to vote; foster voting participation; and protect the integrity of, and simultaneously enhance, the electoral process at Federal, State and local levels.” The procedures and deadlines, however, vary from state to state.

To register to vote or apply for an absentee ballot, a person covered by UOCAVA fills out a Federal Post Card Application (FPCA). This application is accepted by all states and territories as the appropriate manner to register to vote and apply to vote absentee. It is postage paid in the U.S. mail, including the Military Postal System and the State Department mail pouch. An online version of the FPCA is available at the FVAP website (<http://www.fvap.gov/>). The online form must be completed, printed, signed, dated and mailed to the local election official, using an envelope with proper postage or the prepaid FVAP return envelope. (All states and territories except American Samoa and Guam accept the FPCA.) A UOCAVA voter may also send a written request to his or her local office of elections. To register in Virginia, the application must be received 22 days before Election Day. There are a few special exceptions made for military on active duty.

Information to apply to register or vote is available by going to the online Voting Assistance Guide, which outlines procedures of each state and territory and the addresses of where to send the forms and ballots. [The Virginia Code § 24.2-419-420.1 covers registration of UOCAVA voters.] Voting Assistance Officers are assigned to units at military installations. Each U.S. embassy or consulate and many U.S. citizen organizations overseas and corporate offices of U.S. companies have guides available.

**Military and Overseas Voter Empowerment Act (MOVE):** MOVE was enacted in October 2009 to protect the voting rights of deployed troops and other Americans overseas by requiring states to expedite the transmission of absentee ballots to provide more time for them to vote in federal elections. Its main provisions require states to: transmit absentee ballots at least 45 days prior to the election; allow for electronic request and transmittal of voter registration applications and absentee ballot applications; allow for electronic transmittal of blank (unvoted) absentee ballots; accept the Federal Write-in Absentee Ballot (FWAB) for all federal elections; and develop an online system that allows UOCAVA voters to confirm that their voted ballot has been received. The law also requires states to accept any otherwise valid voter registration, absentee ballot applications, or marked absentee ballot regardless of restrictions on types of paper and lack of notarization.<sup>4</sup> Because of its (normal) June primary date and candidate filing deadline for federal general elections, Virginia was listed as one of the states best able to comply with MOVE timing requirements. Legislation enacted at the 2010 General Assembly session was designed to complete the changes needed for compliance.

## VOTER REGISTRATION IN VIRGINIA

**What is required to register?** The Virginia Code (title 24.2, chapter 4) establishes the requirements to register to vote, which are:

- U.S. citizenship
- At least 18 years of age by the next general election
- Virginia residency
- Restored voting rights if previously convicted of a felony.

Each applicant to register must provide, *subject to felony penalties for making false statements pursuant to § 24.2-1016*, the information necessary to complete the application to register and, unless physically disabled, sign

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the application. The registration application must be on a form or forms prescribed by the State Board of Elections (SBE). The application requires the applicant to provide the following information: full name; gender; date of birth; Social Security number, if any; whether the applicant is presently a United States citizen; address of residence in the precinct; place of last previous registration to vote; and whether the applicant has ever been adjudicated incapacitated or convicted of a felony, and if so, under what circumstances the applicant's right to vote has been restored. The form contains a statement that whoever votes more than once in any election in the same or different jurisdictions shall be guilty of a Class 6 felony. As of 2010, the registration deadline is 22 days before general and primary elections and 13 days before special elections.

In view of the prevalent notion that voter registration prevents fraud and provides a validation of a person's age, citizenship and residence, it is important to note that **applicants are not required to show identification to register**. In Virginia, an ID is necessary only "at the polls" and is not required to register; a voter's signature on the registration form attests to the fact that he or she is qualified to vote. During the recent General Assembly session, there was at least one proposal that identification be provided when registering to vote. While the proposal had little support, this was likely due in some part to the fact that such a step would be prohibitively expensive to implement, inefficient and probably end up in court. See Appendix A or [http://www.sbe.virginia.gov/cms/documents/VoterRegistration/sbe\\_voter\\_app\\_DOJ-Printed.pdf](http://www.sbe.virginia.gov/cms/documents/VoterRegistration/sbe_voter_app_DOJ-Printed.pdf) for a copy of the registration form.

**How Available Is Registration?** It is in this area, especially, that there has been a major change since the 1970s, due, at least in part, to enactment of Motor Voter in 1993. Voter registration can now be done either in person or by mail. Persons eligible to register can obtain a registration application online at the SBE website or at any of the following locations: SBE and local voter registration offices; state or local government offices when applying or recertifying for Aid to Dependent Children, Food Stamps, WIC, Medicaid, or Rehabilitation Services; government offices in the state that provide state-funded programs primarily engaged in providing services to person with disabilities; armed forces recruitment offices; public libraries; Department of Motor Vehicles (DMV) offices; and at voter registration drives. The completed application can be filed with the local registration office or mailed to the address printed on the form.

Because of the widespread availability of voter registration and forms that can be mailed in, the fact that some local election offices in less populous areas are not open five days a week has little effect on whether there is equal opportunity to register throughout Virginia. As part of the preparation for this study, local Leagues were asked to respond to questions about voter registration in their area. All responding Leagues reported that ease of registration is not a major issue. Leagues noted the availability of registration forms in libraries and at other government offices and via the Internet, plus the willingness of registrars to accommodate easy registration.

However, some Leagues mentioned ways in which registration could be made easier. Online registration, on-site registration at the polls on Election Day and a shorter time period between the last date for registering and Election Day were mentioned by three Leagues. Other comments dealt with potential complications. One League reported that many people using the DMV website for address change believed that they also changed their voter registration when the DMV address change was submitted. Another reported the need to stress that applications must be fully completed. Being housebound or not able to use the Internet were also mentioned as deterrents to registration.

## **OTHER VOTER REGISTRATION SYSTEMS<sup>5</sup>**

Voter registration in some states differs from that of Virginia in several ways.

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**No Voter Registration.** The greatest difference from that of Virginia is found in North Dakota, which has no voter registration requirement. Voter registration, which had existed since the 1800s, was abolished in 1951. As noted by North Dakota's Secretary of State Alvin Jaeger,

“North Dakota is a rural state and its communities maintain close ties and networks. . . . [Its] system of voting, and lack of voter registration, is rooted in its rural character by providing small precincts. Establishing relatively small precincts is intended to ensure that election boards know the voters who come to the polls to vote on Election Day and can easily detect those who should not be voting in the precinct.”<sup>6</sup>

The state has developed and maintains a central voter file based on input from the state's Department of Transportation, with additional information and updates provided by other state and local agencies, including the poll books used on Election Day. This file appears to replicate somewhat the poll books used in Virginia. According to Jaeger, there have been no widespread incidents of voter fraud in the state. He indicates, however, that there is a possibility for change in the system if the state's rural character diminishes and precincts grow larger.

**Election Day Voter Registration.**<sup>7</sup> Election Day Registration (EDR), also known as Same Day Registration, allows voters to register and vote on the same day. Nine states currently allow EDR: Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, North Carolina, Wisconsin and Wyoming. In North Carolina, EDR is allowed only during a “One Stop Absentee Voting” period that extends from 19 to three days before Election Day and must take place at a one-stop voting site. The applicant provides identification and proof of residency, registers, and votes at the same time and location. In Montana and Wyoming, EDR must take place at central elections offices, not at the polling places.

While the provisions governing EDR vary from state to state, registration on Election Day is generally more stringent and demands a higher level of identification than pre-election day registration, thus reducing the possibility of fraud. As an LWV Texas study notes, Iowa addressed the potential for fraud when adopting EDR by requiring that the citizen appear in person, be determined eligible, provide proof of identity, provide proof of residence in the precinct, complete and sign a voter registration form, and complete and sign an oath of “person registering to vote on Election Day.”

Those supporting EDR claim that it has been responsible for resulting in higher voter turnout in those states that have adopted it and point to Minnesota as the prime example. Minnesota has used EDR for 34 years and always has a higher turnout than other states (78 percent in the 2008 presidential election). Senator Feingold has made basically the same claims for Wisconsin.<sup>8</sup> It has proved to be especially beneficial to those who become enthusiastic about the elections late in the campaigns and for young people and others who move frequently.

Although opponents of EDR claim that it encourages fraud, a study of election systems in five Midwestern states showed that “there is no evidence that this is the case. Consistent with other research on the topic, [it found] no reason to believe that voter fraud is more common in EDR states than in other states.”<sup>9</sup>

League leaders in states using EDR who responded to our inquiries (Wisconsin, Idaho, Minnesota, Iowa, Maine) universally supported EDR and stated that they found no evidence that it resulted in either fraud or long lines at the polls. The Montana League's HAVA representative stated that the long lines in that state's 2006 elections were due to a lack of preparation and actually proved that EDR was serving its intended purpose of increasing voter turnout.<sup>10</sup>

Since Iowa and North Carolina's adoption of EDR in 2007, at least 25 state legislatures have considered but not enacted EDR. Prospects for adoption by other states appear bleak. Most attribute this to partisan politics. “While the correlation between party preference and EDR is not always present, searches across the country

looking at bills to expand or restrict registration procedures closer to or on Election Day show some patterns. Republican lawmakers have sought to restrict efforts to introduce EDR or roll back existing rules allowing it; Democrats have sought to increase EDR in states and oppose measures to curtail its use in states that allow it.”<sup>11</sup>

The committee was unable to find any bill proposed by Virginia legislators that would provide for the implementation of EDR in Virginia, and local electoral board members and registrars we contacted do not believe that it will happen any time soon, though limiting EDR to central offices may be more feasible than allowing it at precinct polling places. They noted that all jurisdictions must first begin using electronic poll books and that Virginia’s restrictions on convicted felons’ voting rights would make it difficult to implement.

**Online Voter Registration.** Nine states already or will soon have online voter registration:<sup>12</sup>

State	Year Enacted	Year (to be) Implemented
Arizona	2002	2003
California	2008	2010
Colorado	2009	2010
Indiana	2009	2010
Kansas	Based on three recent laws	2009
Louisiana	2009	2010
Oregon	2009	2010
Utah	2009	TBD; not set by the law
Washington	2007	2008

As seen in the chart above, many states will be implementing online voter registration for the first time in 2010. Many factors have contributed to the recent addition of so many states to the list of those using online registration: technology that allows it, with little chance of fraud; the positive experience of the states that currently use it; and the need to save money. In 2009, several state legislatures turned down proposals to implement online voter registration, while others have carried the issue over for 2010 legislative consideration.

Arizona was the first state to use online voter registration and reports that over 70 percent of the registrations now come in online and it has proved to be faster, easier and reduced errors. The former Secretary of State and now Governor Jan Brewer noted that the state’s EZ voter system delivers a “secure, convenient and efficient way for citizens to register and participate.” The state also reports cost savings by eliminating the data entry process for state and county employees that a paper-based system required, as well as increased accuracy. In Maricopa County, Ariz., it cost 83 cents to process a paper registration form compared with an average of 3 cents for a registration completed online and data-matched against the DMV database.<sup>13</sup> A fact sheet prepared by New Era Colorado (a nonprofit organization reinventing politics for the millennial generation) for that state’s online registration campaign, noted that it saves time and money, prevents common errors made on paper forms, increases accessibility for many underrepresented demographics, reduces reliance on voter registration drives and is secure; and there is a strong demand for it. However, there are two conditions required to make it work: statewide lists and electronic signatures.

In its testimony to the Oregon legislature, the LWV of Oregon noted that the easy access to voter registration provided by electronic voter registration “will improve voter registration efforts, particularly among young people, and will be even more secure than the current paper system.”<sup>14</sup> While some believe that the system is not secure and is open to fraud, there has been no evidence of this according to studies and the states using it.<sup>15</sup>

**It is important to note that in all state programs to date, online registration is available only to those who have state-issued driver’s licenses or other identifications, and electronic signatures already in the state system.**

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During the 2009 session of the Virginia General Assembly, Delegate David Poisson, of Loudoun County, introduced House Bill 1607, which would have permitted online voter registration for those who possess a valid driver's license or identification cards issued by the DMV. The bill was left in the House Privileges & Elections Committee. The impact statement associated with the bill suggested that its implementation, if enacted, be delayed until 2010 to allow the DMV to complete the re-engineering of the driver's license process that would enable it to share electronic signatures with the SBE. No such proposal was introduced during the 2010 session, and it appears that the new DMV system is not yet operational. It has been reported that the DMV eventually wants to have an online voter registration system, with the applications being electronically transmitted to the SBE and general registrars. Introduction of online registration would require a change in the Virginia law requiring an original signature for registration.

The 2010-12 Strategic Plan of the Virginia State Board of Elections states that budget cuts, scarce resources and increasing public demand will require it to come up with new and more efficient service delivery mechanisms. "To address these factors, [SBE] will take advantage of the opportunities that exist because of the popularity of Internet technologies to deliver high-demand services to Virginia citizens. . . . Developing online services, such as online voter registration and online change of address . . . promises to increase public access and convenience, as well as increase efficiencies in delivery of these services. " The plan goes on to say, however, that security issues and the fact that Virginia law does not explicitly permit the use of electronic or digital signatures in voter registration hinders its efforts to efficiently provide more services online.<sup>16</sup>

**Voter Registration Modernization (VRM).** The Aug. 31, 2009, *Washington Post* carried the news that "Partisan Rivals Unite to Modernize Voter Registration System." A thirteen-member Committee to Modernize Voter Registration signed on to a statement that the country's voter registration system needs an upgrade, is costly, inefficient and unreliable, overwhelming election officials with needless paperwork and expense and blocking millions of eligible Americans from exercising their fundamental right to vote.<sup>17</sup>

Spearheaded by the Pew Center on the States and the Brennan Center for Justice, the VRM is basically an umbrella effort with four central features:

- **Automatic registration:** State election officials automatically register consenting eligible citizens by electronically transmitting reliable information from other government lists.
- **Portability:** Once an eligible citizen is on a state's voter rolls, she remains registered and her records move with her so long as she continues to reside in that state.
- **Safety Net:** Eligible citizens can correct errors on the voter rolls before and on Election Day.
- **Online Access:** Voters can register, check and update their registration records through a secure and accessible online portal. (See *BrennanCenter.org*)

According to the VRM proponents, the building blocks of a modernized system are already in place and its components are already being used successfully in various states, which have saved money in doing so. The most important step in the growing adoption of VRM was enactment of HAVA in 2002, requiring a statewide voter registration database capable of sharing information in some form with other government databases.<sup>18</sup>

In addition to the registration procedures of EDR and online registration discussed above, eight states (Florida, Delaware, Oregon, Maryland, Ohio, Colorado, Washington and South Dakota) have in place some system of permanent registration. Delaware is also one of nine states that have initiated electronic voter registration systems whereby citizens can initiate or update voter registration information at the same time as they obtain or make changes to their driver's license or identification card using an automated system.<sup>19</sup> Both Minnesota and Oregon automatically update registration records of voters who have moved within the state when the postal

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service processes changes of address for these registrants. Although it was vetoed by the governor, the Minnesota legislature approved a bill (HF 1053) during its 2009 session that would automatically register to vote applicants for state driver's licenses or identification cards.

Virginia joins the list of states that have adopted aspects of VRM, being one of 13 states that are introducing electronic poll books in at least part of the state and one of 34 states that enable voters to look up their registration information online. As many states are attempting to cut costs while correcting weaknesses in voter registration systems and procedures, the list of states adopting aspects of VRM is changing as this is being written in early 2010. It is also likely that many will apply changes required by MOVE to their general population and state and local elections.

The VRM proposal to implement a voter registration system that automatically puts eligible voters onto the voter rolls and updates existing voter records by using data in existing governmental databases would put the onus for registering on the state rather than the individual. Information on this proposal is available from the Pew Center on the States and the Brennan Center for Justice.

While changes in the way that U.S. citizens register to vote are occurring with growing frequency, the system remains a collection of 50 individual systems. There continue to be proposals in Congress to require VRM measures such as online voter registration on a national basis, but their chances of enactment are unpredictable at this time.

### **SOME CURRENT VOTER REGISTRATION ISSUES IN VIRGINIA**

**Defining and Applying the Definition of Domicile and Abode.** Virginia Election Law requires that the right to register to vote in a given jurisdiction is determined by both abode *and* domicile. An abode is a place where one lives and the domicile is the permanent abode. A voter may have more than one abode, but according to the law, only one domicile, and may vote only where he or she is domiciled. Beyond providing a physical address (a street address or location) the only criterion to establish domicile is the voter's "intent" to remain, that is, to continue living in the locality.

The absence of criteria to define intent has led to uneven determination of residency and the right to register to vote in Virginia. In some jurisdictions, the general registrar accepted a local address as *prima facie* evidence of domicile, and as long as the application was otherwise in order, the citizen would be registered to vote. In other jurisdictions, if the general registrar knew or suspected that an applicant might live in the community for a limited period of time, for example, in the case of college students, the registrar would attempt to determine intent and therefore domicile by questioning them about their previous address, address for filing tax returns, plans for housing during the summer, employment, etc. Since there are no questions about these essentially personal matters on the application for voter registration, they were asked selectively, at the discretion of the general registrar, who had the power and prerogative to deny the right to register to vote. Thus, a student listing an on-campus address might be questioned and denied registration, while another, living in a private home or apartment might be registered without question.

While many identify this issue in regard to voting by college students, it could affect all persons (including spouses and dependents) who might reside temporarily in a location such as military, post-doctoral employees at scientific facilities, visiting professors, medical interns and residents. Voting rights for military and their dependents, who are often "transient" are protected by federal law, as are the rights of homeless persons, who may register to vote by listing their address as the location where [the applicant] "lays his head," and a local post office as a mailing address (with "general delivery" sufficing).

The rationale for imposing the test of domicile was that only persons who "intend" to remain in a community,

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and would therefore have an investment in the outcome, should have the right to vote on local matters or candidates. Suits brought by citizens who had been denied voter registration resulted in judges deciding whether there was a basis for their denial and ultimately determining their right to vote. This situation, and the negative publicity and legal costs to the localities and the state were deemed unacceptable. It was suggested that a standardized test for all general registrars to use to determine domicile might ensure fairness and prevent legal problems.

In January 2007, a proposed uniform questionnaire for general registrars to use to determine domicile was rejected by Virginia's SBE. Arguments against using the questionnaire included the impossibility and impracticality of universal application and the likelihood that certain questions presuming domicile would constitute a violation of the Federal Voting Rights Act as well as equal protection guaranteed in the United States Constitution. The 2009 General Assembly session was not successful in reaching a solution to the problem of uneven determination of residency and tasked the SBE "*to promulgate rules and regulations to ensure the uniform application of the law for determining a person's residence for voter registration.*" In August 2009, the State Board of Elections adopted a policy to establish uniform interpretation, broad construction, presumption of intent, and equal application of the requirements to assure all Virginia citizens their right to vote. See Appendix B or [http://www.sbe.virginia.gov/cms/documents/Residency\\_Task\\_Force/2009-005\\_Voter\\_Residency.pdf](http://www.sbe.virginia.gov/cms/documents/Residency_Task_Force/2009-005_Voter_Residency.pdf) for a copy of the policy.<sup>20</sup>

In response to the questionnaire sent to local Leagues in Virginia, the Williamsburg Area League noted that: "The recently adopted State Board of Elections (SBE) policy on voters' eligibility to register with respect to 'residence', e.g. abode v domicile is very helpful." When they register, individuals must provide a mailing address in the locality. If the address is not a street, a description of where the person lives must be provided. "Any discrepancy in this regard will trigger a query by the General Registrar, using a form letter approved by the SBE. The applicant must then complete and sign an application for registration." Members of this League believe that "...the matter of domicile appears to be the only 'ID' issue related to registration, but further study is needed to be certain."

**Registration by Party Affiliation.** As of 2008, 29 states plus the District of Columbia asked for party affiliation when voters register to vote. Twenty other states, including Virginia, did not. The remaining state, North Dakota, does not have voter registration. The breakdown by state does not indicate any regional, political or urban/rural bias. Although many new Virginia residents are surprised that Virginians do not register by party, the committee could not determine that the issue has gained much attention from political parties or in the General Assembly.

Voter registration with party affiliation is inextricably linked to a state's rules for holding primary elections. Party affiliation is needed in order to conduct a closed primary; a state that requires voters to declare party affiliation when registering can potentially hold closed primaries. It is frequently left up to the parties to determine if their primaries or caucuses will be open or closed in these states. And where primaries/caucuses are closed, there are also decisions to make regarding whether to allow "Independents" to participate.

The Brennan Center for Justice issued a paper in 2009 titled, "Party Affiliation in a System of Automatic Voter Registration."<sup>21</sup> The center supports automatic voter registration, and the paper explores party affiliation in that context. The paper contains a detailed description of the various primary systems that exist, and their links with and dependency on, party affiliation. Also, the paper's Appendix A reviews recent court cases that have raised issues as to the constitutionality of open primaries such as Virginia conducts. So far the courts have ruled that, since Virginia offers alternate methods of nominating candidates (meetings, canvasses, conventions) to the open primaries, the system does not unduly burden a party's freedom of association. However, Virginia law also allows an incumbent rather than the party to choose the method, and this may constitute a severe burden on the party's freedom of association in conjunction with the open primary system. The courts in question did not

decide the issue and have left it open to future litigation.

Voter registration with party affiliation is also linked to the various state rules for party qualification or recognition. Some states that require a declaration of party affiliation allow parties to qualify based on some minimum number of voters registered in the party. These states obviously collect party affiliation for not-yet-recognized parties. Other states would force voters who affiliate with unrecognized parties to register as "Independents."

States that have voter registration with party affiliation are in a position to provide the information to the political parties, which allows the parties to target a demonstrably interested audience for contribution requests, volunteer recruitment, etc. In Virginia, the parties are forced to rely on primary voter lists for this information. Since voter turnout in primaries tends to be limited, this in turn limits the information available to parties about their supporters in a state that does not collect party affiliation information.

### **WHO'S IN CHARGE OF ELECTIONS AND VOTING IN VIRGINIA? WHO PAYS? <sup>22</sup>**

To ensure that elections are transparent, nonpartisan, fair, accurate and pure, citizens need to understand the election process and know who is in charge. As taxpayers, we know elections are ultimately paid for by the citizens, but do we know who pays for what and on what level? This section will provide some of the answers, but space limitations require us to refer the reader to the Constitution of Virginia, Title 24.2 of the Code of Virginia, and budget documents for further information.

Virginia's elections are administered by a three-tiered organization consisting of the SBE, county and city electoral boards and registrars, and precinct level election officers. All electoral board members, registrars and election officers are positions established under Virginia's Constitution or Code and are appointed positions. How are these officers appointed and for how long?

### **STATE BOARD OF ELECTIONS (SBE)**

The State Board of Elections (SBE) was created in 1946 as a bipartisan agency responsible for ensuring uniformity, fairness, accuracy and purity in all elections in the Commonwealth of Virginia. The agency promotes the proper administration of election laws, campaign finance disclosure compliance, and voter registration processes in Virginia by promulgating rules, regulations, issuing instructions, and providing information to local electoral boards and general registrars. In addition, the agency maintains a centralized database of statewide voter registration and election related data.<sup>23</sup>

The SBE consists of three members appointed by the governor and confirmed by the General Assembly. Two board members are of the party of the governor and one of the opposing party. Each political party recommends at least three qualified voters of the Commonwealth to the governor. They are appointed for four-year terms; no member except the Secretary may serve more than two successive terms. The governor designates one member of the board as the Secretary, who receives the salary as fixed by law; the other two members do not receive compensation but they generally receive reimbursement for mileage. No member of the board is eligible to offer or hold public office, serve as chairman of a state, local or district level political party committee or as a paid worker in a campaign.

A bill introduced during the 2010 General Assembly session, but ultimately defeated in the Senate, would have increased the size of the State Board from three to five members. It would also have provided for the position of Director of Elections to be hired by the SBE with the concurrence of at least four of its members, subject to

confirmation by the General Assembly, as head of the elections agency, in place of the present position of the Secretary. Although it may have professionalized the position of Director of Elections, it could also be interpreted as resulting in the director becoming the political appointee of the General Assembly. Since the SBE Secretary is appointed by the governor, he or she could easily change every four years and may or may not have expertise in the administration of elections. With the growing need for continuity and changing demands on the SBE and its director, it is likely that further attempts to build continuity and professionalism in the SBE will be made in future General Assembly sessions. In a recent survey of Virginia's electoral boards and registrars, 54.3 percent would favor making the SBE director a non-appointed professional position, with 15.5 percent opposed and 30.2 percent undecided. It is interesting to note that respondents from large and very large jurisdictions were significantly more favorable.<sup>24</sup>

The Virginia budget includes funds for both electoral services provided by the SBE and financial assistance for electoral services provided by Virginia localities. In carrying out its responsibilities of ensuring uniformity and legality in election practices, the SBE conducts annual training seminars for electoral board members and general registrars. It also provides assistance in the form of data circuits provided by and paid for by the SBE. These circuits connect the registrar's office to the centralized voter registration system.

Financial assistance to localities includes reimbursement for the compensation paid to local registrars and the compensation and mileage paid to local electoral board members. The SBE annually calculates and sets the days of service for 134 general registrars, according to law. Compensation for the general registrars is set by the General Assembly in the Appropriation Act based on local population. Compensation for the electoral board members is set based on local population and the number of towns, if any, in the locality as set forth in the Appropriations Act. The tables showing the authorized amounts are included in the budget bill each year. Localities are authorized to supplement the compensation paid to the registrar and secretary of the electoral board.

#### **SBE Budget (\$000)\***

<b>ITEM</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>Electoral Services</b>	<b>18,889.8</b>	<b>13,777.9</b>	<b>7,998.7</b>	<b>6,933.5</b>
<b>Financial Assistance for Electoral Services</b>	<b>7,392.7</b>	<b>7,392.7</b>	<b>5,835.8</b>	<b>5,835.8</b>
<b>Exec. Mgt. Savings</b>	<b>-337.4</b>	<b>-1,153.1</b>	<b>-</b>	<b>-</b>
<b>SBE Total</b>	<b>25,945.1</b>	<b>20,017.5</b>	<b>13,834.5</b>	<b>12,769.3</b>

*\* The budget numbers reflect proposals, including reductions for FY 2010, as transmitted to the General Assembly at the beginning of the 2010 session and amendments adopted in the budget conference report. The budget had not been approved by the governor at the time this study was written.*

The Virginia budget document notes that the SBE is funded by state general funds, which are used to support state-mandated activities, and a federal grant from the U.S. Election Assistance Commission, which is used to implement federal HAVA requirements. The HAVA grant requires a 5 percent state match and a continuity of effort from state funds used for HAVA implementation. HAVA funding is in the form of one-time grants, which might not be available after FY 2014. About two-thirds of the budget is used to provide financial assistance to local governments. Thirty percent of the SBE portion is used to maintain the computerized statewide voter registration system. See Appendix C for further information about HAVA funding.

#### **LOCAL ELECTORAL BOARDS**

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Each county or independent city has an electoral board composed of three members who are nominated by their political party and appointed by the district's circuit court judges. Three names are submitted for each vacancy, but traditionally the first name on the list is chosen. If a majority of the judges cannot agree, then the senior judge makes the appointment. The clerk of the circuit court sends the SBE a copy of the order making an appointment to the electoral board. Two electoral board members are of the governor's political party and one of the opposing party. Each member serves a three-year staggered term set to expire at midnight the last day of February. No three-year term will be cut short in order to comply with the political party representation requirements. The board elects one of its members as chairman and another as secretary; the chairman and secretary must be of different political parties unless the representative of the opposing party declines in writing to accept the unfilled office. No member of the board is eligible to offer or hold public office, serve as chairman of a state, local or district level political party committee or as a paid worker in a campaign.

Local electoral boards appoint the general registrar and all officers of elections. They are also responsible for managing the elections in their jurisdiction, including the preparation of ballots, administration of absentee ballot provisions, conduct of the election, and ascertaining the results of elections. They work with the registrar in training election officers. Under just-enacted legislation, the SBE will require certification every four years, by the local electoral board or registrar, that officers of election have been trained consistent with the training standards it sets.

Local electoral board members are political appointees, with their membership shifting according to whichever party wins the gubernatorial election. While technology has the promise to make the electoral process easier, less expensive, and less open to fraud, it can also be challenging and require skills that some might find difficult to achieve. The need for expertise and continuity will continue to grow at the local as well as at the state level.

### **GENERAL REGISTRARS (LOCAL)**

Local electoral boards meet in May or June to appoint a general registrar, who serves a four-year term. They are responsible for filling any vacancy that occurs, with the replacement to serve the remainder of the unexpired term. General registrars must be qualified voters of the county or city for which they are appointed. They are not eligible to offer or hold an office to be filled by election in whole or in part by the qualified voters of their jurisdiction. No general registrar may serve as the chairman of a political party or other officer of a state, local or district level political party committee. Nor may they serve as a paid or volunteer worker in the campaign of a candidate for office. The general registrar, with the consent of the electoral board, may undertake duties that are not in conflict with his or her duties. The electoral board may not appoint any family member to the office of general registrar.

Just as the local electoral board administers elections, the general registrar administers all registration procedures. These are numerous and include: Establish additional public places for voter registration; educate the public regarding registration and deadlines; have available appropriate forms for registration; receive registrations and transfers by mail; maintain official registration records; preserve written applications of all persons registered and, for a period of four years, those of anyone whose registration is either denied or canceled; notify by mail all persons being denied registration promptly with reason; and as persons from other states are registered, notify the other state of the registration. Registrars also notify voters if election districts, precincts or polling places are altered, providing (by mail) information regarding voting location and district; verify accuracy of all poll books; return poll books to SBE or transfer a copy of the data from any electronic poll book to the SBE after each election. At the request of the county chairman of any political party nominating candidates for office, the general registrar may review the petitions to determine if signers are registered voters with active status. Registrars also prepare and coordinate training of officers of election before each election and attend or designate a staff member to attend an annual training program provided by the SBE.

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## LOCAL FUNDING

In addition to providing supplements for local registrar salaries (about 40 percent of registrar salaries are supplemented – close to 70 percent of those in very large localities), counties and cities also pay the costs for additional staff and administrative expenses. Costs may include items ranging from the “I Voted” stickers to the statutory requirements that “each local governing body shall furnish the general registrar with a clearly marked and suitable office which shall be the principal office for voter registration. . . . The governing body shall provide property damage liability and bodily injury liability coverage for the office and shall furnish the general registrar with necessary postage, stationery, equipment, and office supplies.”

It is important to note that, according to statute, the cost of conducting elections is paid by the counties and cities and the cost of town elections is paid by the town. The current Virginia budget also states that all costs associated with May town and city elections, including SBE costs, are to be paid by the localities. With the current economic situation facing localities, it is hard to imagine that local electoral boards and registrars will have an easy task of obtaining the resources that they believe necessary to conduct an efficient voter registration program and well-run elections.

## ARE CHANGES NEEDED?

If only because of the budget situation, many observers believe that additional changes are warranted in Virginia’s election process. A bill calling for a study of the Commonwealth’s voter registration and election system was an early casualty in the 2010 General Assembly session. It would have established a joint subcommittee to “study the structure and operation of the registration and election processes. . . . [and] examine (i) measures that might be necessary or desirable in enhancing the authority of the State Board of Elections to establish and enforce uniform administration of state and federal laws by local election officials; (ii) methods by which the State Board might improve the training of local election officials and verify that local officials have participated in the appropriate level of training; (iii) measures to promote stability and reduce turnover among those responsible at the state level for administering the voter registration and election system; (iv) the desirability of establishing the position of professional agency director for the Board of Elections; and (v) any other matters that might promote the efficiency, uniformity, and integrity of the administration of the voter registration and election processes.”<sup>25</sup> Perhaps as a result of its study, League members will be in a better position to make a major contribution to an eventual, comprehensive General Assembly study of Virginia’s electoral process.

## 2010-11 STUDY

This is the first part of a two-year study. The second part will address Virginia’s elections themselves, both absentee and at precinct polling places, and related issues.

## Endnotes and Sources

1. For additional information, see Public Policy Positions (2009) at [www.LWV-VA.org](http://www.LWV-VA.org).

2. See especially "Voter Registration: Past, Present and Future," testimony prepared by R. Michael Alvarez for the Commission on Federal Election Reform, June 17, 2005; and "Voter Registration Systems," a paper prepared by Eric A Fischer and Kevin J Coleman of the Congressional Research Service of the Library of Congress, for a conference at American University, March 22, 2006.
3. See [www.fairvote.org/history-of-voter-registration](http://www.fairvote.org/history-of-voter-registration) for an article by Alexander Keyssar.
4. See materials on this topic published by the Brennan Center for Justice, [www.brennancenter.org](http://www.brennancenter.org), and the Pew Center on the States, [www.pewcenteronthestates.org](http://www.pewcenteronthestates.org).
5. Ibid.
6. See [www.state.nd.gov/sos](http://www.state.nd.gov/sos). There is an interesting video of polling place registration on this site.
7. The League of Women Voters of Texas has completed a study of elections and voting, including Election Day registration (EDR). See the League's website, [www.LWVTexas.org](http://www.LWVTexas.org), to read the study materials and a list of pros and cons for EDR.
8. <http://feingold.senate.gov/releases/08/05/20080501.html>
9. See "From Registration to Recounts: The Election Ecosystems of Five Midwestern States," a project of Election Law @ Moritz at the Ohio State University Moritz College of Law.
10. See "Election-Day Registration: A Case Study," at [www.electionline.org](http://www.electionline.org), a project of the University of Richmond supported by the Pew Charitable Trusts.
11. "From Registration to Recounts: The Election Ecosystems of Five Midwestern States," a project of Election Law @ Moritz at the Ohio State University Moritz College of Law.
12. Information from the National Conference of State Legislatures, [www.ncsl.org](http://www.ncsl.org), and e-mails to Therese Martin from contacts and officers in Arizona, Kansas, and Washington.
13. Press release from Arizona Secretary of State, October 7, 2008, and reports from the National Conference of State Legislatures and the Pew Center on the States
14. See [www.lwvor.org/testimony.htm](http://www.lwvor.org/testimony.htm)
15. See, for example, the Washington State website, [www.sos.wa.gov](http://www.sos.wa.gov).
16. Virginia State Board of Elections Strategic Plan for 2010-12, <http://vaperforms.virginia.gov/agencylevel/stratplan/spreport.cfm?AgencyCode=132>
17. See the Committee to Modernize Voter Registration, [www.modernizeregistration.org](http://www.modernizeregistration.org).
18. Brennan Center for Justice
19. Testimony of Adam Skaggs of the Brennan Center for Justice before the Illinois House of Representatives Elections Committee, 2009, and a February 23, 2009 press release from the Delaware Department of Transportation

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20. [http://www.sbe.virginia.gov/cms/Misc/Residency\\_Task\\_Force.html](http://www.sbe.virginia.gov/cms/Misc/Residency_Task_Force.html)
  21. [http://brennan.3cdn.net/20f072ddef43a7d2f5\\_bgm6ii9s9.pdf](http://brennan.3cdn.net/20f072ddef43a7d2f5_bgm6ii9s9.pdf)
  22. The primary reference for this section is the SBE publication, Virginia Election Laws, 2008 edition with the 2009 supplement. It includes Article II of the Constitution of Virginia and Title 24.2 of the Code of Virginia, annotated. The references are also available at the Legislative Information System website: <http://leg1.state.va.us/>. Information was also found on the SBE website (see below). Specific citations will not be provided.
  23. SBE website: [http://www.sbe.virginia.gov/cms/About\\_Us/Index.html](http://www.sbe.virginia.gov/cms/About_Us/Index.html).
  24. 2008 Virginia Election Administration Survey, conducted by the Virginia Registrars Association in consultation with researchers from George Mason University.  
*[http://elections.gmu.edu/Election\\_Admin.html](http://elections.gmu.edu/Election_Admin.html)*
  25. SJ68, continued to 2011

#### VIRGINIA’S ELECTION LAWS STUDY: GLOSSARY

EAC	Election Assistance Commission, created to assist in the administration of federal elections.
EDR	Election Day Registration, also called Same Day Registration
FPCA	Federal Post Card Application
FVAP	Federal Voting Assistance Program
FWAB	Federal Write-In Absentee Ballot
HAVA	Help America Vote Act of 2002
MOVE	Military and Overseas Voter Empowerment Act of 2009
SBE	State Board of Elections
UOCAVA	Uniformed and Overseas Citizens Absentee Voting Act of 1986
VERIS	Virginia Election and Registration System
VRM	Voter Registration Modernization

APPENDIX A

Virginia Voter Registration Application Form

Use this form to register to vote in Virginia or report a change in name or address. If you are already registered with your current name and address, you do not need to re-register.

To register to vote in Virginia, you must:

- Be a United States citizen
Be a resident of Virginia
Be 18 years old by the next general election
Have had your voting rights restored if you have ever been convicted of a felony
Have had your capacity restored if you have ever been declared mentally incapacitated in a Circuit Court

Starred (\*) items are required. If you do not complete all of the items that are marked with \*, your application may be denied. Once your local registrar approves your application, you will receive a voter card by mail.

Privacy Act Notice: This form requires your social security number for identification and to prevent fraud. Your application will be denied if you fail to provide your social security number or any other information necessary to determine your qualification to vote.

WARNING: INTENTIONALLY MAKING A MATERIALLY FALSE STATEMENT ON THIS FORM CONSTITUTES THE CRIME OF ELECTION FRAUD, WHICH IS PUNISHABLE UNDER VIRGINIA LAW AS A FELONY. VIOLATORS MAY BE SENTENCED TO UP TO 10 YEARS IN PRISON, OR UP TO 12 MONTHS IN JAIL AND/OR FINED UP TO \$2,500.

1 \*Are you a citizen of the United States of America? YES NO \*Will you be at least 18 years of age on or before the next General Election day? YES NO If you checked "NO" in response to either of these questions, do not complete this form.

2 Social Security Number Gender Male Female Date of Birth Daytime Telephone Number Last Name First Name Full Middle or Maiden Name Suffix (Jr., Sr., III, Etc.)

3 Residence (Permanent) Home Address Apt/Unit/Lot/Rm/Ste City/Town Zip Code If Rural Address or Homeless, please describe where you reside E-mail address Mailing Address (if different) Virginia P.O.Box or Uniformed Service Address, if applicable (include Zip Code) City or County Name of City or County of Residence

4 \*Have you ever been convicted of a felony? YES NO State where convicted If YES, have your voting rights been restored? YES NO If YES, when restored?

5 \*Have you ever been judged mentally incapacitated? YES NO If YES, has court restored you to capacity? YES NO If YES, when restored?

6 Registration Statement: I swear/affirm, under felony penalty for making willfully false material statements or entries, that the information provided on this form is true. I authorize the cancellation (entered in Box 7 below) of my current registration and I have read the Privacy Act Notice on the front of this form.

\*Signature (or mark if unable to sign)

If applicant is unable to sign due to a physical disability, write the name/address of person who assisted. (Required). Check/describe if you have a disability that requires accommodation in order to vote.

I'm interested in being an Election Official on Election Day. Please send me information. You may request that your home address not be released if you (a) are active or retired law enforcement, or (b) have been granted a protective court order, or (c) are in fear of your personal safety from someone who has threatened or stalked you and have filed a complaint against that person with a magistrate or law enforcement (must attach copy of complaint). You must show a Virginia P.O. box under mailing address in Box 3 above. Law Enforcement Protective Order Threatened/Stalked

7 Commonwealth of Virginia - \*Previous Voter Registration Information

- No, I am not currently registered to vote in Virginia or another state.
Yes, I am registered to vote at another address in Virginia or in another state. If YES, the information below must be completed:

Full Name as Registered Date of Birth Social Security Number (last 4 digits required) Address at which you were previously registered to vote City/Town State Zip Code City/County/Town of Residence (if applicable). This cancellation information will be sent to the county or city and state you entered above.

**RESIDENCY: DOMICILE AND ABODE****APPENDIX B****COMMONWEALTH OF VIRGINIA STATE BOARD OF ELECTIONS****State Board of Elections Policy 2009-005**

A meeting of the Virginia State Board of Elections was held on August 29, 2009 whereby a policy was proposed and approved by the Board:

**Voter Residency**

Pursuant to the requirements of § 24.2-404(D), the following shall apply only in determining a person's residence under Article II, Sec. 1 of the Constitution of Virginia and Title 24.2 of the Code of Virginia:

## 1) Definitions:

- a) "Residence," "residency" or "resident," for all purposes of qualification to register and vote means and requires both domicile and a place of abode.
- b) Place of abode means a physical place where a person dwells. One may have multiple places of abode, such as a second home.
- c) Domicile is a person's primary home, the place where a person dwells and which he considers to be the center of his domestic, social and civil life.
- i) Domicile is primarily a matter of intention, supported by an individual's factual circumstances.
- ii) Once a person has established domicile, establishing a new domicile requires that he intentionally abandon his old domicile.
- iii) For any applicant, the registrar shall presume that domicile is at the address of residence given by the person on the application. The registrar shall not solicit evidence to rebut this presumption if the application appears to be legitimate, except as provided in §§ 12 and 13.

## 2) Required Intent:

- a) A person who intends to remain in a location for an unlimited time has established the intent required to establish domicile.
  - b) A person who intends to remain in his current location for an unlimited time has established the intent required to establish domicile even if he may leave, upon the happening of a future contingency. Examples of such future contingencies include, but are not limited to: a change in job status or location, graduation from school, military transfer deployments or other relocations, and medical emergencies.
  - c) A person who presently intends to leave his current location at a fixed and certain date may not have established the intent required to establish domicile depending on the facts and circumstances of each case, as determined by the registrar, with all due consideration given to persons in the circumstances contained in § 5 below.
  - d) A person who applies to register to vote in a precinct for the primary purpose of registering to vote or voting in that precinct has not established the intent to establish domicile there.
  - e) The duration or expiration date of an individual's lease to occupy a specific place of abode shall not be a factor in the determination of his intent to remain in his current location. For example, a college student does not need specific intent to stay in the college jurisdiction beyond graduation, and a member of the military (or spouse or dependent of such person) does not need specific intent to stay in the jurisdiction beyond the end of the current tour of duty, in order to establish domicile there.
- 3) Nothing in this regulation shall be construed to confer upon any person any privileges or benefits other than the right to register to vote and to be qualified to vote in an election.
  - 4) Residency shall be broadly construed to provide the greatest opportunity to register and to vote. A residence can be established in a commercial, industrial or other building that is not normally used for residential purposes if the building serves as the applicant's primary nighttime residence. A homeless person will be considered resident in the location where the homeless person usually sleeps at night. In cases involving non-traditional habitations, the location of the person's usual sleeping area shall be controlling as to the residency of that person.
  - 5) No presumption in favor of or against residence may arise merely on the basis of a person's

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presence or absence in the following circumstances:

- a) while employed in the service of the Commonwealth or United States, whether military or civilian;
  - b) while engaged in the navigation of the waters of the United States or of the high seas;
  - c) while employed by, or enrolled as a student in, any educational institution, or residing in any housing commonly occupied by students or faculty;
  - d) while confined in any jail or other correctional facility as a non-felon;
  - e) while receiving treatment, or being confined for any reason, in a nursing home, hospital, rehabilitation, or short term care facility, retirement or veterans' home, or like institution or private facility;
  - f) while remaining in a location only during the workweek in order to conduct business; or
  - g) while residing in an area within the boundaries of Virginia which has been ceded to, or acquired by, the federal government.
- 6) If a person resides in an area lacking a specific mailing address, the general registrar shall ask him to provide a mailing address along with a description indicating where the person resides. However, no person shall be denied registration for failure to submit a mailing address. The description must identify the location with sufficient specificity to allow the general registrar to place the location in a defined precinct. The general registrar shall assign the person to the precinct containing the location where he resides.
- 7) A person whose home is destroyed or rendered uninhabitable does not lose residence at that home if he intends to return to the home when it is reconstructed or made habitable, unless he has either established a new domicile or has changed his voter registration.
- 8) A person whose residence is divided by a jurisdictional boundary line or election district boundary line shall be deemed to reside in the location of his bedroom or usual sleeping area.
- 9) The general registrar shall not automatically presume the residence of one spouse to be that of the other spouse, but shall determine the other spouse's residence in accordance with the applicable statutes and regulations.
- 10) A person loses voting residence in any county or city in Virginia by registering to vote or voting in any other county, city, or state. An otherwise qualified voter shall not lose their residence at an address until they have established their residence at another address.
- 11) Except as provided in Va. Code § 24.2-411.1, if an application to register to vote is not signed, or is missing information required by law, or if the general registrar cannot determine from the information provided on the application the location at which the applicant intended to register, the general registrar shall deny the application and process it in accordance with Va. Code § 24.2-422.
- 12) If an application to register to vote contains all information required by law, but contains other apparent discrepancies, the general registrar may promptly resolve the discrepancies through informal means. Informal means include ascertainment of information through the statewide, voter registration system, the Division of Motor Vehicles, and any form of communication with the applicant.
- 13) If an application to register to vote contains all information required by law, and if any of the situations in (a) – (e) below apply, the general registrar shall not deny the application, but shall ask the applicant to provide additional information in support of the application. The general registrar shall request the information in writing on a form prescribed by the Board, and the applicant shall respond in writing. The application shall not be accepted or denied while the registrar is awaiting the applicant's response. The general registrar shall act promptly to resolve the question of residency as soon as possible. In the event the applicant does not provide the requested information by the last day to register, as established in Va. Code § 24.2-416, and the general registrar is unable to determine the applicant's residency through any other means, the general registrar shall deny the application in accordance with Va. Code § 24.2-422(B).
- a) The applicant provides a mailing address in a different county, city, or state from his residential address. In this situation, the general registrar shall reconfirm the residential address and mailing address by asking the supplemental questions provided in § 14 and mailing the questions to both the residential and mailing addresses;
  - b) The applicant provides a residential address that cannot receive mail, or from which mail sent by the registrar's office is returned. In this situation, the general registrar shall ask for an alternate mailing address;

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c) The applicant provides an address that is temporary in nature. Temporary addresses shall include, but not be limited to, hotels, motels, motor homes, hospitals and other short term medical care facilities, houseboats, campgrounds or other facilities that have durational restrictions, such as a 30 day limitation, or any other transient address that would not be considered as a typical permanent residence address. Temporary addresses shall not include apartments or other facilities, such as dormitories, that provide for leases or other rental agreements of at least six months duration. The general registrar shall treat these addresses as permanent ones.

In the event the applicant provides an address that is

temporary in nature, the general registrar shall ask the supplemental questions provided in § 14.

d) The applicant provides a residential address that is a commercial, industrial or other building that is not normally used for residential purposes, or other non-traditional residential address; or

e) The application causes a conflict with another existing voter in the statewide, voter registration system, such as a duplication of the social security number with an existing voter.

14) Supplemental Questions: When warranted by the situations described in § 13 above and where any other information on the voter registration application is unclear, the general registrar shall ask the following questions on a form prescribed by the Board, after notifying the applicant that any response he makes is subject to the same oath he took to sign the application:

a) Are you currently registered to vote at another address? The general registrar shall not ask this question unless the applicant failed to provide the information on the voter registration application.

i) If yes to § 14(a), what is that address, and in what county, city, or state is that address located?

ii) If yes to § 14(a) or as indicated on the voter registration application, do you wish to cancel your registration in that county, city, or state and register and establish residence in this county or city in Virginia?

b) Do you have a specific plan to move away from this county or city at a fixed date in the future?

15) Review of Supplemental Questions:

a) If the applicant answers the questions with information sufficient to assign him a polling place within the precinct and to cancel his current registration elsewhere (if any), the applicant shall be registered and added to the voting rolls of the locality and the jurisdiction where the voter was previously registered shall be notified to remove the registrant from their rolls.

b) If the applicant does not provide information sufficient to assign him a polling place within the precinct, the application shall be denied.

c) If the applicant indicates that the application was in error or filed incorrectly the registrar shall provide him voting information that could allow the applicant to register or vote absentee in the Commonwealth.

d) No new or changed voter registration application is effective until an applicant provides answers to the supplemental questions. Any such answers must be in writing and must be returned before the last day to register, as established in Va. Code § 24.2-416. Any supplemental information based upon an application made prior to the close of books shall be accepted and the applicant registered if the response is received before the last day to register, as established in Va. Code § 24.2-416.

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**FEDERAL FUNDING****APPENDIX C**

The **Help America Vote Act** (Pub. L. 107-252) or **HAVA**, was signed into law by President Bush on Oct. 29, 2002. Drafted, at least in part, in reaction to the controversy surrounding the 2000 U.S. presidential election, the goals of HAVA are to:

- Replace punch card voting systems
- Create the Election Assistance Commission (EAC) to assist in the administration of Federal elections; and
- Establish minimum election administration standards.

HAVA mandates that all states and localities upgrade many aspects of their election procedures, including their voting machines, registration processes and poll-worker training. The specifics of implementation have been left up to each state, which allows for varying interpretations of the law.

**Funds, State Plans and Reporting.** HAVA provides various grants to states to carry out its purposes. To be eligible for this funding, states must submit a plan describing how payments will be used and distributed, provisions for voter education and poll-worker training, adoption of voting system guidelines, performance measures to determine success (including goals, timetables, responsibilities, and criteria), administrative complaint procedures, and the committee who helped develop the state plan. Each year a state receives federal funding it must submit a report to the EAC detailing a list of expenditures, the number of and types of voting equipment obtained with the funds, and an analysis and description of the activities funded.

**The Virginia State Plan** was adopted by the Virginia State Board of Elections on July 31, 2003, and amended in July, 2006. The document can be found on the SBE website:  
[http://www.sbe.virginia.gov/cms/documents/HAVA/Hava\\_State\\_Plan\\_Amendment\\_2006.pdf](http://www.sbe.virginia.gov/cms/documents/HAVA/Hava_State_Plan_Amendment_2006.pdf).

The Virginia budget includes HAVA grant funds under SBE “non general” funds. Its share of federal funds awarded through 2005 was \$58 million (requiring a 5 percent or approximately \$2.5 million match). Fund uses have included:

- As of March 2006, all 134 localities replaced outdated voting machines with HAVA-compliant voting equipment. All localities have received at least one accessible DRE (direct recording electronic voting system machine) for each precinct.
- Polling place accessibility: When all localities are in compliance and barriers removed, SBE will reimburse with HAVA funds.
- SBE conducted training sessions for local election officials.
- SBE developed new Easy Voter Guides and Voting Rights and Responsibilities publications that have been distributed to localities, public libraries, colleges and universities.
- SBE completely redesigned its website to provide better and easier access for the public regarding the election process.
- SBE contracted for a computerized statewide voter registration system known as Virginia Election and Registration System (VERIS)
- Updated voter registration by mail, UOCAVA implementation, grievance procedures and provisional voting.
- About \$7 million was provided for electronic poll books in the past year.

