

Voting Before Election Day

A Policy Paper on the Benefits and Challenges of Expanded Early Voting in Virginia

Prepared by

The William & Mary Election Law Program

January, 2015

The League of Women Voters of Virginia Education Fund commissioned the Election Law Program of the College of William & Mary Law School to prepare this paper. It is designed for use as background information by Virginia's legislators, election officials, civic organizations and citizens. It is hoped that those considering changes in Virginia laws and practices governing absentee or early voting will find it useful. The paper is not intended, however, to advocate any specific changes in law or practice. Neither does it support (or oppose) any specific bill or regulation.

This paper is issued by the League of Women Voters of Virginia Education Fund. The project has been supported in part by the League of Women Voters Education Fund.



EXECUTIVE SUMMARY

In 1916, Virginia became the first state to allow early voting for civilians residing abroad via absentee ballot. Since then, Virginians in ever-greater numbers have chosen to cast their vote before Election Day. From 1980 to 2012, Virginia has seen a 428% increase in absentee voting.¹ Nationwide, from 1972 to 2012, Americans are voting early by an increase of 700%. Today, thirty-three states and the District of Columbia provide for early voting, while three states conduct all-mail elections.² Just as early voting reflected the exigencies of life in an earlier time, 21st Century Americans have grown to expect convenience and made-to-order services that help to fit voting in complex and busy lives.

I. INTRODUCTION

Modern American democracy is predicated on the expansion of voter enfranchisement. Recent elections problems, however, ranging from long lines, limited and misallocated resources, and inconsistent accommodations for voters with disabilities, suggest that today’s voting procedures have room for improvement. A healthy democracy requires a system that ensures free, fair, and accessible voting for all eligible voters.

“A healthy democracy requires a system that ensures free, fair, and accessible voting for all eligible voters.”

Pre-election day voting tops the list of reforms many states are considering.³ Americans increasingly lead more complex and fragmented lives, struggling to balance work and family, managing commutes, and often juggling more than one job. Early voting offers the flexibility and convenience many voters have begun to demand.⁴ The 2014 bipartisan Presidential Commission on Election Administration (“PCEA”)⁵ dubbed early voting a “quiet revolution.” The PCEA Report recommends that states expand in-person and no-excuse absentee opportunities to vote before Election Day.⁶ While endorsing state-implemented early voting procedures, the Commission cautions that the benefits of pre-Election Day voting can only be realized if the expansion to pre-Election Day voting does not come at the expense of adequate facilities and resources dedicated to Election Day itself.⁷ Furthermore, while endorsing the expansion of no-excuse absentee voting, the Commission encourages the increased use of safeguards to promote ballot security.⁸

The bipartisan, widely endorsed PCEA recommendation of expanded pre-Election Day voting suggests that Virginia should take a hard look at whether such reforms make sense in this state.

II. BACKGROUND: PRE-ELECTION DAY VOTING

a. History of Early Voting

The absentee ballot was the first method by which U.S. citizens could vote before Election Day.⁹

“*In 1916, Virginia became the first state to adopt a law explicitly permitting ... vote by absentee ballot.*”

Introduced in the 1860s, during the Civil War, states used absentee voting to allow soldiers to cast ballots while away at war.¹⁰ Once the war ended, states allowed absentee voting statutes to expire or repealed them due to concerns about the security and privacy of voting.¹¹ During World War I, states again enacted absentee ballot laws, most of which expired after 1918.¹²

Until the Korean War, most states passed absentee voting legislation specifically for soldiers that expired at the termination of the conflict.¹³ In 1916, Virginia became the first state to adopt a law explicitly permitting non-military personal temporarily residing in a foreign country to vote by absentee ballot.¹⁴

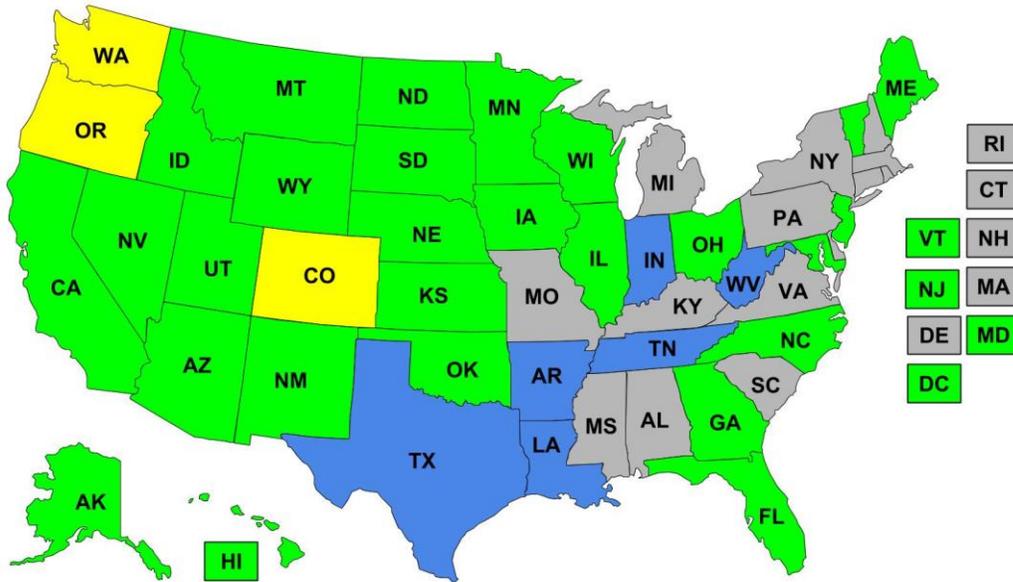
b. Current Pre-Election Day Voting Across the States

Today, pre-Election Day voting methods have expanded to encompass voting by excuse only absentee ballot, no-excuse absentee ballot, early in-person voting, and all mail voting.¹⁵ Early voting is a popular option and continues to grow, with an estimated one in three American voters casting their ballot by mail or in-person before Election Day in the 2012 election.¹⁶ Enthusiasm for early voting has not been universal; at least eight states in 2014 introduced legislation restricting early voting.¹⁷

“*One in three American voters cast their ballot by mail or in-person before Election Day in the 2012 election.*”

Currently, thirty-three states¹⁸ and the District of Columbia allow voters to cast an early in-person ballot during a designated period prior to Election Day.¹⁹ While thirteen of those thirty-three states do not have early voting in the traditional sense they allow “in-person absentee” voting. In-person absentee voting is a procedure where a voter, within a certain period preceding an election, is allowed to apply in-person for a no-excuse absentee ballot and cast that ballot in one trip to an election official’s office. Twenty-seven states and the District of Columbia permit no-excuse absentee voting.²⁰ Three states use all mail voting.²¹ Seven states plus the District of Columbia offer permanent absentee ballot status whereby once a voter asks to be added to the absentee voting list, that voter will automatically receive an absentee ballot going forward.²² Virginia currently allows for limited excuse-absentee voting,²³ military absentee voting,²⁴ as well as in-person absentee voting (see section VI(b): Current Non-Election Day Voting in Virginia).²⁵

Early Voting	Early Voting and No-Excuse Absentee Voting	All-Mail Voting	No Early Voting, Excuse Required for Absentee



* Data provided by the National Conference for State Legislatures, last updated October 21, 2014.

Early-in-person voting periods vary from state to state beginning as early as 45 days before the election or as late as the Friday before Election Day.²⁶ Among the thirty-three states that provide for early-in-person voting, the average starting time is twenty-two days before the election and the early voting period lasts on average nineteen days.²⁷ At least twelve of the early voting states require voting locations be open on at least one Saturday or Sunday during the early voting period.²⁸

No-excuse absentee voting varies across the states, but is generally conducted by a mail-in paper ballot prior to Election Day.²⁹ Most states require voters to fill out an application to receive an absentee ballot. Many states facilitate this process by making applications available online.³⁰ Five states (Florida, Louisiana, Maryland, Minnesota, and Utah) permit voters to submit an application entirely online.³¹ Some counties in Arizona have online absentee ballot applications, and in Detroit, Michigan, a smartphone app allows voters to request an absentee ballot from their phone.³²

“...the average starting time is twenty-two days before the election and the early voting period lasts on average nineteen days.”

Three states, Oregon, Washington, and Colorado, conduct all-mail elections. In these three states, election officials automatically mail ballots to every registered voter in advance of Election Day.³³ Traditional in-person voting precincts are not available (although in Oregon, and

Washington voters have the choice to either mail ballots or drop them in official drop boxes stationed throughout the state).³⁴ In Colorado, all eligible voters are mailed a ballot 18-22 days prior to the election, although voters are not required send in their ballots by mail; they may still vote in person or drop off their ballot in a designated location if they prefer.³⁵

In sum, early voting continues to be a popular and growing method of casting ballots, although some states have begun cutting back on early voting windows.³⁶ These states aside, the range of options to expand convenient access to voting has steadily expanded since the early measures put in place during the Civil War.

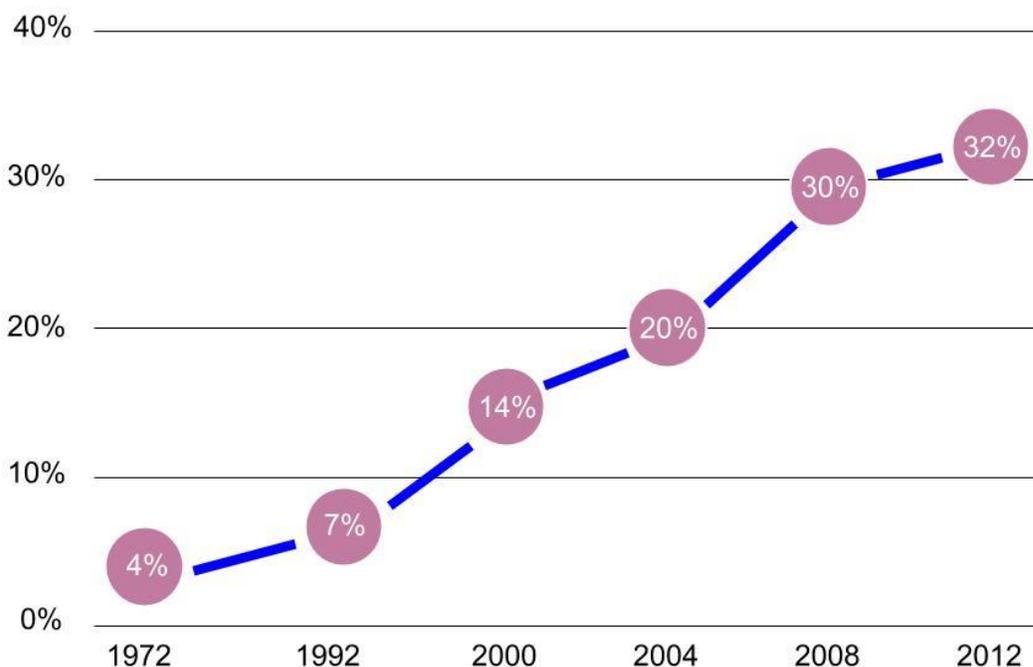
III. BENEFITS AND CHALLENGES OF PRE-ELECTION DAY VOTING

a. Expanding Early-In-Person and Absentee Voting

Faced with low voter turnout and the growing difficulty of voting during business hours on a Tuesday, legislatures and election officials in many states are seeking ways to make voting more accessible.³⁷ Expanding early-in-person voting is a popular convenience with voters,³⁸ so much so that early voting is often called “convenience voting.”³⁹ The PCEA reports that, “[h]aving chosen the day and time for voting that is convenient for them, early voters are described as being in a more ‘celebratory’ frame of mind than under the often rushed circumstances they face on [e]lection [d]ay.”⁴⁰ Twenty percent of voters, in the 2005 Current Population Survey, reported they did not vote in the 2004 presidential election because they were too busy or had conflicting schedules.⁴¹ In the 2012 Election, nearly a third of voters cast their ballot before Election Day, more than double than during the 2000 Election.⁴² Early voting increasingly reflects the consumer-driven culture that voters have come to expect in their day-to-day lives.⁴³ Building on this theme, John Fortier of the Bipartisan Policy Center has even suggested increased turnout might improve if people could vote while shopping or running their day-to-day errands.⁴⁴

“...having chosen the day and time for voting that is convenient for them, early voters are described as being in a more ‘celebratory’ frame of mind than under the often rushed circumstances they face on election day.”

Early Votes as a Percentage of Total Ballots Cast, 1972 - 2012



Sources: U.S. Elections Project, Census Voting and Registration Supplement, Census Bureau's 2008 Current Population Survey, and the PCEA

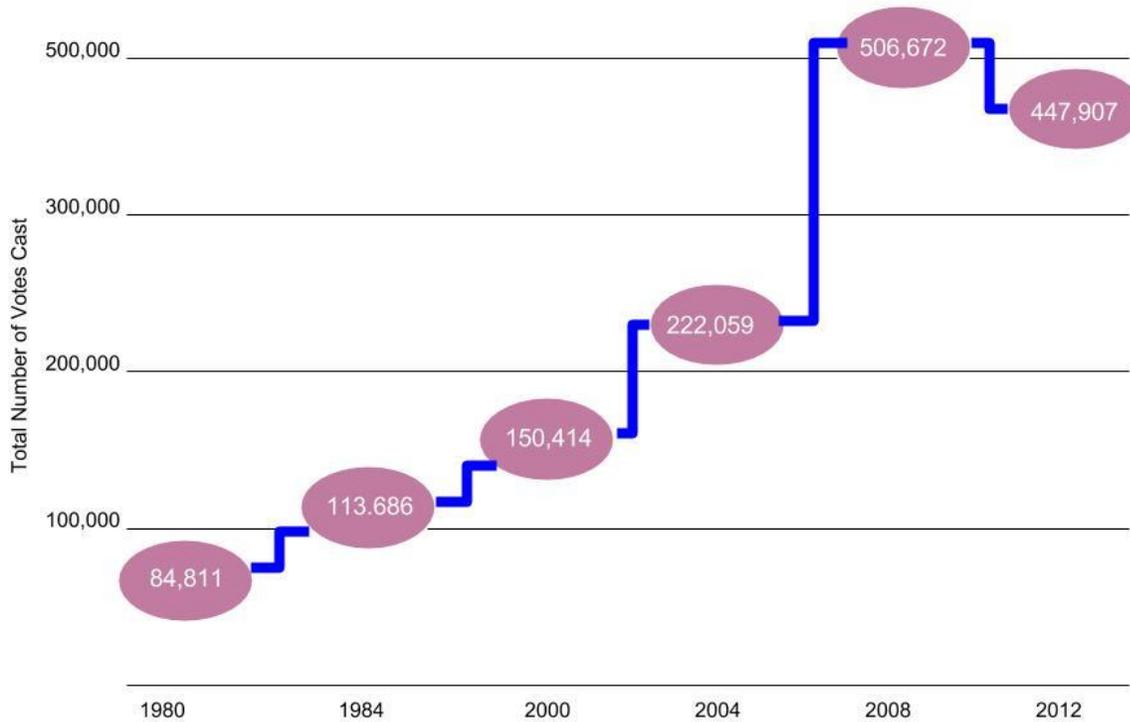
A variety of changes to the American lifestyle have propelled American voters' expectation of

“Between 1980 and 2012, absentee voting in Virginia has increased 428 percent in Virginia.”

and need for convenient voting choices. Researchers have found that greater distances of polling places from voters' homes and workplaces can depress voter turnout.⁴⁵ Making voting more convenient has the potential to alleviate this problem.

Several data points suggest that Virginia should consider steps to make voting more convenient for Virginians. Virginians travel on average 27.5 minutes to work one-way (8.27 percent more than the U.S. average).⁴⁶ Additionally, the elderly population continues to increase in Virginia, with nearly one in every five Virginians projected to be 65 or older by 2030.⁴⁷ In 2012, nearly half of voters over 65 preferred to cast their votes in advance, compared to a quarter of voters aged 18-29.⁴⁸ Between 1980 and 2012, absentee voting in Virginia has increased by 428 percent.⁴⁹

Virginia Absentee Ballots Cast, 1980 - 2012



Source: Virginia Department of Elections

Beyond being popular with voters and more convenient for many, expanding early voting has additional benefits including reduced wait times on Election Day,⁵⁰ reduced burdens on election officials,⁵¹ potentially increased turnout and a potentially expanded electorate.⁵²

Early voting in its many forms can be structured to enable jurisdictions to operate more efficiently with fewer resources.⁵³ A recent Caltech/MIT study suggested that had the 2010 general election in Colorado been conducted entirely by mail, the state would have reduced their cost by 19%, a not insignificant savings.⁵⁴ In the instance of an all-mail election, most of the savings would come from a decrease in part-time personnel costs, which serve to offset the increase in printing and postage required by all-mail-voting systems.⁵⁵ A few examples provide some evidence of cost savings from early voting. Harris County, Texas lost all of the voting machines

“*...early voting has additional benefits including reduced wait times on Election Day, reduced burdens on election officials, potentially increased turnout and a potentially expanded electorate.*”

in a warehouse fire. The county managed to replace their machines quickly in part because the jurisdiction required fewer machines due to the increased percentage of early voters.⁵⁶ For jurisdictions facing a dearth of new voting machines, extending early voting periods allows more voters to cast a ballot per machine.⁵⁷ For example, in Utah, election officials reported using fewer machines and staff on Election Day as a result of early voting.⁵⁸ Empirical data also supports election officials' claims that absentee balloting, and vote-by-mail result in a more accurate count.⁵⁹

Another efficiency argument weighing in favor of expanded early voting is its potential to assist

“ A 2004 survey of the Oregon vote-by-mail system found that younger citizens, stay at home mothers, and persons with disabilities all reported that Oregon's system made it easier for them to vote.”

election officials in running elections more smoothly. Early voting can increase efficiency by helping election officials discover and diagnose common technical and administrative problems in advance of Election Day.⁶⁰ Early voting also provides election officials practice working with voters and opportunities to troubleshoot problems during the early-voting period in the lead up to Election Day.⁶¹ Many states also point to reducing Election Day congestion as the major reason for increasing early voting.⁶² Citizens also reap the benefit of more efficient pre-election voting and Election Day voting experiences. Voters with physical disabilities may use

absentee or mail-ballots to circumvent their handicap, or vote early-in person when the pressure is not so great on the system and they can receive help from poll workers.⁶³ Similarly, non-English speakers can more easily receive the assistance they require when the crowds are smaller.⁶⁴ A 2004 survey of the Oregon vote-by-mail system found that younger citizens, stay at home mothers, and persons with disabilities all reported that Oregon's system made it easier for them to vote.⁶⁵

b. Challenges of Pre-Election Day Voting

One fundamental criticism of early voting is that it lessens the public ceremony associated with voting and thus devalues it. A second concern is voting over a period of time as opposed to a single day can result in less-informed voters—particularly when problems arise in campaigns after a voter has cast her ballot but before Election Day.⁶⁶ For their part, some campaigns criticize the civic costs of “diffusing” Election Day, worrying that they may lose the ability to mobilize for “Get Out the Vote” efforts.⁶⁷ The Obama campaign in recent election cycles, however, has demonstrated the potential benefits of early voting to political campaigns. The campaign successfully combined its voter registration drives with early-voter mobilization and used early voting data to target voters they still needed to get to the polls.⁶⁸ The PCEA acknowledges concerns about the diffusion of Election Day, but the bipartisan Commission still recommends that states should expand early voting opportunities given the flexibility of the states and the campaigns to tailor early-voting to address concerns.⁶⁹

“...jurisdictions should not go too far in reducing resources dedicated to Election Day in order to capture the full benefits of pre-Election Day voting”

Another common critique of early voting is that it expands the burden on election officials and taxes the manpower and resources of voting jurisdictions. A Wisconsin survey found that 85% of county clerks felt that early-in-person voting would make their jobs more difficult.⁷⁰ According to election officials, “it could be a nightmare to find enough poll workers to handle the additional days/hours that would be required... early voting would be a hardship for the numerous part-time clerks that do not maintain regular office hours and work additional jobs.”⁷¹ The PCEA, addresses this issue by cautioning that jurisdictions should not go too far in reducing resources dedicated to Election Day in order to capture the full benefits of pre-Election Day voting.⁷²

Others express concern that no-excuse absentee or mail balloting may increase the potential for coercion and fraud, inhibit ballot security, and prolong the ballot counting process.⁷³ Absentee ballots are the most susceptible to fraud because of the ease with which they can be intercepted, bought and sold.⁷⁴ No-excuse absentee voting or vote-by-mail can also lead to procedural errors — in filling out the ballots by the voter — which can cause problems for election officials counting ballots.⁷⁵ Ballots can also be delayed by the mail and mistakes are occasionally made

“...expanding methods of early voting is a state-by-state decision that should be tailored to the needs and resources of each state and jurisdiction.”

by voters in complying with signature and other requirements.⁷⁶ When no-excuse absentee or mail balloting is used, jurisdictions must account for changes and cutbacks to the U.S. Postal Service.⁷⁷ Additionally, because of the potential issues with “pipeline” security — mailing out and receiving back ballots — the PCEA endorsed the expansion of no-excuse absentee voting while increasing safeguards. Safeguards could include online tracking of absentee ballots,

barcoding technology, and tighter integration and communication with local Postmasters.⁷⁸

Overall, expanding methods of early voting is a state-by-state decision that should be tailored to the needs and resources of each state and jurisdiction. As Virginia already has some of the protections the PCEA suggests in place, it may be a good candidate for expanded no-excuse absentee voting. Virginia might also consider limited pilot programs for specific types of elections—a tactic Colorado used before adopting its all-vote-by-mail system.

IV. OPPORTUNITIES FOR PRE-ELECTION DAY VOTING IN VIRGINIA

a. *Virginia Tradition*

Despite its bitter history of racially-motivated voter disenfranchisement Virginia paradoxically also has a long tradition of flexibility in voting when circumstances such a bad weather made it difficult for eligible Virginians to cast their vote,⁷⁹ Nineteenth-century Virginia voting practices encouraged eligible voters to cast their ballots.⁸⁰ The system of elections accommodated voters when they could not make it to the polls under certain circumstances. For example, the 1857 the Code of Virginia stated that, “[t]he poll shall not be opened at any election sooner than sunrise, and shall be closed at sunset.”⁸¹ Writing the rule without specific times assisted voters in rural areas, especially farmers who worked throughout the day without regard for time.⁸² Virginia law at the time also made accommodations for bad weather for voters in state and local elections.⁸³ For instance, the law provided for polls to stay open for three days if eligible voters were prevented from voting “by rain or rise of water courses.”⁸⁴ In 1830, the state legislature provided for three days of voting in the case of rain, thunder, and “thickness of the atmosphere.”⁸⁵ According to some reports, most elections were continued over the full three-day period.⁸⁶ In addition, prospective voters (white males who met residency requirements) were not required to register to vote; instead, the Commissioner of the Revenue provided a list of all eligible voters to clerks at polling places.⁸⁷ Despite the clear intent to encourage voting in early Virginia, however, the state also erected barriers to voting by making women and minorities ineligible to vote and in 1904 restricting the electorate to those who could afford to pay a poll tax six months prior to each general election.⁸⁸

“*Virginia has a long tradition of accommodating eligible voters.*”

In the wake of terrorist attacks on September 11, 2001, in New York City and Washington, DC, a General Assembly subcommittee on elections discussed the need to enact legislation to allow postponement of elections in the event of emergencies.⁸⁹ The attacks occurred on the day of primary elections in New York City. The subcommittee members recognized that if such an emergency were to occur in Virginia, no legal authority existed to postpone an election.⁹⁰ In recognition of this need for emergency authority, the General Assembly enacted a law allowing election officials to accommodate voters during a state of emergency by implementing alternative procedures for affected individuals to vote.⁹¹ If the

Governor or President of the United States issues a state of emergency, Virginia statute permits the Governor to postpone an election in affected areas to a date not longer than fourteen days following the originally scheduled election.⁹² Since that legislation became law, accommodations have been made in some situations and not in others. In February 2003, for example, a local registrar in Greene County coordinated with the State Board of Elections to request an Executive Order from Governor Mark Warner to postpone a special election because of an ice storm and dangerous road conditions.⁹³ During Hurricane Katrina in 2005, emergency workers and

“ *During Hurricane Katrina in 2005, emergency workers and National Guard members were permitted to receive ballots by email even though they were within the continental United States.*”

National Guard members were permitted to receive ballots by email even though they were within the continental United States.⁹⁴ On primary Election Day in 2008, icy road conditions halted traffic in some areas.⁹⁵ Governor Tim Kaine stated that neither he nor the State Board of Elections would extend polling hours as a result.⁹⁶ A spokesperson for the Governor suggested that a court order to extend hours might have been requested but such action was “unknown territory.”⁹⁷ When a rare earthquake occurred in Virginia on primary Election Day in 2011, the State Board of Elections approved emergency polling place relocations for localities that requested them.⁹⁸ Prior

to the 2012 presidential election, Hurricane Sandy forced some Virginia government offices to close preventing early in-person voting.⁹⁹ Then-governor Bob McDonnell pledged to extend early voting hours later in the week and assured voters that they could use Sandy as an “excuse” to vote absentee, by mail or in-person, prior to Election Day.¹⁰⁰ McDonnell fulfilled his pledge; early voting was later extended to compensate for lost hours.¹⁰¹ In a final example of Virginian flexibility in voting, Virginia has accommodated military and overseas voters by adopting the Uniform Military and Overseas Voters Act, which requires the state to transmit an absentee ballot to covered voters well before Election Day and in electronic format if requested.¹⁰² Military members can apply for absentee ballots for multiple elections.¹⁰³ The Commissioner of Elections may also authorize alternative absentee ballot procedures for other voters during emergency situations.¹⁰⁴ For example, Virginia firefighters sent out of state right before election day to fight wildfires have been allowed to vote absentee.¹⁰⁵

b. Current Non-Election Day Voting in Virginia

Virginia election law currently allows absentee voting for voters able to provide a permitted excuse.¹⁰⁶ The list of permissible excuses to vote absentee in Virginia has grown over the years; information required for some of them has also changed.¹⁰⁷ To vote absentee by mail, the deadline to apply is “5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote,” or in other words, the Tuesday one week before Election Day.¹⁰⁸ Absentee ballots must be returned to the electoral board or registrar by the time polls close on Election Day.¹⁰⁹

Recently, some members of the Virginia General Assembly have sought to expand absentee voting. During the 2014 session, Delegate Marcus B. Simon introduced House Bill 45, which would allow qualified voters to vote absentee in person without an excuse.¹¹⁰ This bill would have effectively allowed early in-person voting in Virginia. However, the bill stalled in committee as of February 2014.¹¹¹ In addition, Senator John C. Miller introduced Senate Bill 16 during the 2014 session, which would allow persons age sixty-five or older on Election Day to vote absentee with no excuse.¹¹² This bill also remained in committee.

Virginia is uniquely positioned to implement no-excuse absentee and all mail voting because the absentee ballot tracking system that the PCEA has recommended is already in place in Virginia.¹¹³ Through an online portal, Virginia already allows voters to see when their absentee ballot is available, when the county receives their application for a ballot, when the ballot is actually mailed, and when the county receives the voted-on ballot.¹¹⁴ Security measures such as these are crucial to alleviate voter concerns about security and privacy.

In addition to excused absentee voting by mail, Virginia election law also provides for in-person absentee voting.¹¹⁵ To vote absentee in-person, an application must be completed in the office of the general registrar no more than forty-five days¹¹⁶ and no less than three days prior to Election Day (i.e., the Saturday preceding the election).¹¹⁷ After the voter completes the Absentee Application in the presence of the registrar, the voter may vote absentee in-person using a voting machine in the registrar's office¹¹⁸ provided that an acceptable form of voter identification is provided.¹¹⁹ Furthermore, Virginia allows individual electoral boards of counties or cities to approve additional satellite locations where voters may both apply for an absentee ballot and vote.¹²⁰ To date, only a few Virginia localities have exercised this option to varying degrees, including Fairfax, Loudoun and Prince William counties, and the cities of Newport News, Virginia Beach, and Chesapeake.¹²¹ Although Virginia allows in-person *absentee* voting, it is currently one of fourteen states that (1) does not provide for early in-person voting and (2) requires an excuse for absentee voting.¹²² In-person absentee voting and early in-person voting are similar in that both methods allow voters to vote early and in-person; however, in-person absentee voting requires the voter to demonstrate an excuse (as listed in Appendix A) to fill out an absentee ballot in-person at the registrar's office before the election. In general, early in-person voting does not typically require an excuse as it does in Virginia. In thirty-three states and the District of Columbia, any eligible, registered voter may cast an early ballot in-person during a designated time period prior to Election Day without any excuse.¹²³

“*Virginia is uniquely positioned to implement no-excuse absentee and all mail voting because the absentee ballot tracking system that the PCEA has recommended is already in place in Virginia.*”

V. EARLY VOTING BEST PRACTICES

In 2008 and again in 2012, nine states achieved 25% or more of their total voter turnout from early-in-person voting: Arkansas, Florida, Georgia, Nevada, New Mexico, North Carolina, Tennessee, Texas, and Utah.¹²⁴ According to a Brennan Center’s report on best practices for early voting, successful early voting states implemented one or more of the following strategies:

1. Began early-in-person voting at least a full two weeks before Election Day;
2. Offered weekend voting;
3. Set minimum daily hours and allowed extended weekday hours;
4. Allowed both public and private voting locations;
5. Set standards for quantities or distribution of early in person voting locations;
6. Updated the county poll book or state voter file daily during the early-in-person voting period; and
7. Educated the electorate about the early-in-person voting schedule.¹²⁵

In the 2014 midterm election, early voting played a large role in turnout. Approximately 18.5 million Americans in 32 states cast early ballots, a significant increase over 2010 early voting.¹²⁶ South Florida saw a record-breaking “Souls to the Polls” turnout; as of the day before the election, around 3 million voters had cast early ballots, either by mail or at early voting centers.¹²⁷ In Palm Beach County alone there was a 48.7% increase in early turnout over 2010.¹²⁸ North Carolina also saw a dramatic increase, with more than 1.1 million voters casting early ballots between October 23rd and November 1st, a 34.7% increase from 2010, when approximately 858,000 people voted early.¹²⁹ At least eleven states saw increases in their advanced voting totals from the last midterm election in 2010.¹³⁰ Iowa, Wisconsin, North Carolina, and Louisiana also saw large increases in early voting.¹³¹

The early voting experiences of a few key states are illuminating:

Texas. Texans have been voting early since 1987 when Texas began allowing citizens to vote up to three weeks before the election.¹³² Early voting is very popular in Texas; between 1988 and 2000 statewide rates of early voting increased 58.33% (from 24% in 1988 to 38% in 2000).¹³³ Texas’ “non-traditional” polling places are also very popular; residents can cast their ballot on the weekend, at the supermarket, their gym, at a local government building, or a church.¹³⁴ Texas’ long experience with early voting has resulted in clear, easy to understand rules applied uniformly across the state.¹³⁵ One of these rules includes mandating a

...between 1988 and 2000 statewide [Texas] rates of early voting increased 58.33%.”

calculation for how many early voting locations each county must offer, based on population.¹³⁶ In the 2014 midterm elections, an estimated 1,504,076 (16.75%) of registered Texans cast votes in person before Election Day.¹³⁷ An additional 211,655 (2.35%) of registered Texas voters cast their ballots by mail.¹³⁸

California and Minnesota. California and Minnesota’s experience with early voting demonstrates the need for clear rules on absentee and early voting set out far in advance of elections. California¹³⁹ and Minnesota¹⁴⁰ are examples of states with transparency and guidance in early voting. Both states have adopted confirmation systems, encouraging voters to confirm whether their ballots were accepted and counted.¹⁴¹ Such a system could also help administrators create an internal audit trail.¹⁴² These tools have helped California and Minnesota election administrators ensure that voters are clear on what information is *required* for their vote to count. For its part, Virginia already has a similar online-system in place, which allows voters to see when their absentee ballot is available, when the county receives their application for a ballot, when the ballot is actually mailed, and when the county receives the voted-on ballot.¹⁴³

“ Virginia’s online system... allows voters to see when their absentee ballot is available, when the county receives their application for a ballot, when the ballot is actually mailed, and when the county receives the voted-on ballot.”

Oregon and Washington. Oregon and Washington have paved the way for all-vote-by-mail elections.¹⁴⁴ Building on their success, Colorado recently implemented all-mail elections. If the 2014 election was a test of its vote by mail processes, Colorado passed with flying colors both in terms of the smoothness of the voting and vote tabulation process and increased voter turnout. Colorado voters cast roughly two million votes in the 2014 election, an increase of over 1.8 million when compared with turnout in 2010.¹⁴⁵ Some even argue that the all-mail election fueled a greater turnout among elderly voters.¹⁴⁶ This tends to support the argument that all-vote by mail systems increase turnout. While the extent of the increase has come under scrutiny, studies show that voter participation is generally higher in Oregon and Washington than in other states.¹⁴⁷ In 2012, national turnout averaged 58.2%; turnout as a percentage of eligible voters in Oregon and Washington averaged 63.2% and 64.1% respectively.¹⁴⁸ Although critics express concern over ballot security in all-vote-by-mail systems, Oregon and Washington use signature-matching technology to ensure that the ballot matches the registered voter.¹⁴⁹ Both Oregon and Washington allow voters to return ballots either via mail or by dropping it off at a satellite location, known as a “drop box.”¹⁵⁰

While the experience of states experimenting with various forms of early voting is helpful in identifying best practices, a looming concern remains security. Experts who have looked at the issue of security in early voting have issued a series of recommendations. For example, the

Carter-Baker Commission recommended that states improve data sharing to ensure that voters cannot ask for mail ballots in more than one state.¹⁵¹ Another option is signature verification; Florida and Iowa are experimenting with signature verification software looking for a good fit between cost and efficacy.¹⁵² Wisconsin and Tennessee have chosen to enhance ballot security by requiring voters to enclose photocopied identification with their mailed-in-ballot¹⁵³ When expanding no-excuse absentee or all-mail-balloting, Virginia should carefully consider the countervailing security concerns of access and voter confidence in the electoral process. The absentee ballot tracking Virginia already has in place, provides a good starting place for ballot security.

Finally, overseas and military voting act as a laboratory for the mail-balloting process. Following the UOCAVA model, states mail ballots forty-five days before Election Day and use a strengthened version of the confirmation receipt UOCAVA allows for through military mail.¹⁵⁴ Some suggest that given concerns over chain of custody, early information deficiency in voters, and the relative efficiency of domestic mail, UOCAVA's forty-five-day window is too long for domestic mail-ballots.¹⁵⁵

VI. PERTINENT LITIGATION

States considering expanding early voting can turn to substantial recent guidance from the courts.

Ohio Litigation. In 2012, the Ohio legislature cut back early voting from 35 days to 28 days. The restrictions eliminated the last Sunday before Election Day, which African-American churches had traditionally used for “Souls to the Polls” voting drives.¹⁵⁶ On September 24, 2014, the U.S. Court of Appeals for the 6th Circuit ruled that the proposed cuts violated both the Constitution's Equal Protection Clause, as well as Section 2 of the Voting Rights Act, reasoning that cutting back early voting placed a disproportionate burden on poor and black voters.¹⁵⁷ On September 29, 2014, the U.S. Supreme Court voted 5-4 to allow Ohio to reduce the number of early voting days.¹⁵⁸

North Carolina Litigation. In 2013, Governor Pat McCrory signed into law House Bill 589.¹⁵⁹ Although the Bill shortened early voting by a week and barred local election boards from keeping polls open on the final Saturday before the election after 1:00 PM, it notably kept the same number of early voting hours, merely on fewer days.¹⁶⁰ Judge Thomas Schroeder of the U.S. District Court for the Middle District of Carolina denied a preliminary injunction, stating that Section 2 of the VRA did not include a non-retrogression standard (as had Section 5 of the VRA struck down in *Shelby County*).¹⁶¹ Thus, in deciding whether a cut from 10 days to 7 days of early voting violated Section 2, the question was whether 7 days standing alone made it that much harder for minority voters to participate in the political process on the same basis as other voters.¹⁶² The court found there was still ample opportunity to vote even under the shortened

dates. The court also rejected evidence that the North Carolina legislature passed House Bill 589 with racially discriminatory intent.

CONCLUSION

As states increasingly turn to early voting to make voting more accessible to their citizens, Virginia has a number of options for expanding early voting opportunities. Indeed, Virginia has a long history of accommodating eligible voters in casting ballots conveniently. In light of the possible benefits to the State's budget, alleviation of congestion at Virginia polling places on Election Day, possible increases in turnout, and greater convenience for Virginia citizens, Virginia legislators should consider pilot early voting programs that test out key variables and processes to determine which models might work best for Virginia. In light of experience in other states, Virginia legislators should pair any expansion of convenience voting with security provisions such as barcoded absentee ballots to ensure that voting in Virginia remains secure. Careful review of Virginia's early voting processes may reveal opportunities to expand voter turnout, reduce lines, and make voting more convenient for Virginians.

Appendix A¹⁶³

The Virginia Absentee Ballot Application allows voters displaying the following excuses to apply to vote absentee:

1. Student attending college or university outside of locality of residence in Virginia
2. Spouse of student attending college or university outside locality of residence in Virginia
3. Business outside County/City of residence on Election Day
4. Personal business or vacation outside County/City of residence on Election Day
5. Working and commuting to/from home from 11 or more hours between 6 AM and 7 PM on Election Day
6. First responder (law enforcement, fire fighter, emergency technician, etc.)
7. Disability or illness
8. Primarily and personally responsible for the care of a disabled/ill family member confined to home
9. Pregnancy
10. Confined, awaiting trial
11. Confined, convicted of misdemeanor
12. Electoral board member, registrar, officer of election, or custodian of voting equipment
13. Religious obligation
14. Active Duty Merchant Marine or Armed Forces
15. Spouse or depending living with Active Duty Merchant Marine or Armed Forces member
16. Temporarily residing outside U.S.
17. Temporarily residing outside of U.S. for employment or spouse or dependent residing with employee
18. Requesting a ballot for presidential and vice-presidential electors only
19. Authorized representative of candidate or party serving inside the polling place

¹ Summary of Virginia Registration & turnout Statistics, Virginia Department of Elections (last accessed Nov. 11, 2014) <http://elections.virginia.gov/index.php/resultsreports/registration-statistics/registrationturnout-statistics/>.

² While thirteen of those thirty-three states do not have early voting in the traditional sense they allow “in-person absentee” voting. In-person absentee voting is a procedure where a voter, within a certain period preceding an election, is allowed to apply in-person for a no-excuse absentee ballot and cast that ballot in one trip to an election official’s office. National Conference of State Legislatures, *Absentee and Early Voting* (Oct. 21, 2014), http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#no_excuse.

³ In 2014, three states expanded or created early voting opportunities. However, eight states passed laws cutting back on early voting days and hours. Wendy Weiser & Erik Opsal, *The State of Voting in 2014*, BRENNAN CENTER FOR JUSTICE (2014), available at http://www.brennancenter.org/sites/default/files/analysis/State_of_Voting_2014.pdf.

In the 2013 legislative sessions, at least 20 states considered proposals to start or expand early voting. However, several states have attempted to curb early voting. *Voting Laws Roundup*, BRENNAN CENTER FOR JUSTICE (Aug. 15, 2013), available at <http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup>.

⁴ Diana Kasdan, *Early Voting: What Works*, BRENNAN CTR. FOR JUSTICE, (2013), available at http://www.brennancenter.org/sites/default/files/publications/VotingReport_Web.pdf; see also Commission Report, *The American Voting Experience: Report and Recommendations* (Jan. 2014), <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf> [hereinafter Presidential Commission Report].

⁵ The PCEA was a six-month study on the administration of elections throughout the United States, which encompassed public hearings, consultations with state and local officials, as well as academic experts and organizations. Additionally, Caltech-MIT Voting Technology Project conducted a survey of local election officials. The Bipartisan Presidential Commission on Election Administration was established by President Obama's Executive Order 13639. See Presidential Commission Report, *supra* note 4.

⁶ Presidential Commission Report, *supra* note 4, at 56-58.

⁷ *Id.* at 57.

⁸ *Id.* at 58.

⁹ Griffith, Benjamin E. (ed.), *AMERICA VOTES!: A GUIDE TO MODERN ELECTION LAW AND VOTING RIGHTS*, 262 (2008).

¹⁰ *Id.*; see also Marshall Cavendish, *EXPLORING AMERICAN HISTORY*, 954 (2008).

¹¹ Griffith, *supra* note 9.

¹² *Id.* Historians suggest that World War I absentee voting featured confusion due to statements of high-level Army officials that voting would interfere with military operations abroad. See e.g., Michael R. Alvarez & Thad Edward Hall, *POINT, CLICK, AND VOTE: THE FUTURE OF INTERNET VOTING*, 106 (2003).

¹³ Griffith, *supra* note 9, at 264.

¹⁴ Alvarez, *supra* note 12.

¹⁵ Presidential Commission Report, *supra* note 4, at 56-58; see also *Early Voting*, *supra* note 2.

¹⁶ Nonprofit VOTE, *America Goes to the Polls 2012: A Report on Voter Turnout in the 2012 Election*, (2013), <http://www.nonprofitvote.org/documents/2013/03/america-goes-to-the-polls-2012.pdf>.

¹⁷ Wendy Weiser, *supra* note 3; Robert M. Stein, *Early Voting*, 62 PUB. OPINION Q. 57, 57 (1998); Paul Gronke, *Early Voting Reforms and American Elections*, 17 WM. & MARY BILL RTS. J. 423, 428-29 (2008).

¹⁸ Alaska, Arizona, Arkansas, California, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, Wisconsin, and Wyoming allow early-in-person voting. *Early Voting*, *supra* note 2.

¹⁹ *Id.*

²⁰ Alaska, Arizona, California, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Utah, Vermont, Wisconsin, and Wyoming permit no-excuse absentee voting. *Id.*

²¹ Colorado, Oregon, and Washington hold all-mail elections. Additionally, in Alaska, Arizona, Arkansas, California, Florida, Hawaii, Idaho, Kansas, Maryland, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, and North Dakota, certain elections may be held entirely by mail under circumstances that vary state to state. *Id.*

²² Arizona, California, District of Columbia, Hawaii, Minnesota, Montana, New Jersey, and Utah permit permanent absentee ballot list status. *Id.*

²³ VA. CODE ANN. § 24.2-701, *available at* <http://sbe.virginia.gov/Files/Forms/VoterForms/VirginiaAbsenteeBallotApplication.pdf>.

²⁴ Email from Rosanna Bencoach, former Virginia State Board of Elections Policy Analyst, (Oct. 30, 2014).

²⁵ Virginia.gov, *Absentee Voting* (last accessed Nov. 09, 2014), <http://sbe.virginia.gov/index.php/casting-a-ballot/absentee-voting/>.

²⁶ *Early Voting*, *supra* note 2.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Early Voting*, *supra* note 2.

³³ *Id.*

³⁴ Oregon Secretary of State Kate Brown, *Voting in Oregon* (last accessed Nov. 09, 2014), <http://sos.oregon.gov/voting/Pages/voteinor.aspx>; Office of the Secretary of State, Elections & Voting (last accessed Nov. 09, 2014), https://wei.sos.wa.gov/agency/osos/en/voters/Pages/vote_by_mail.aspx.

³⁵ Jefferson County Elections, *Mail Ballot Delivery With All Options* (Oct. 29, 2014), <http://jeffco.us/elections/voting-and-registration/voting-by-mail/>.

³⁶ Weiser, *supra* note 3.

³⁷ Presidential Commission Report, *supra* note 4; *see also* United States Census Bureau, *Voting and Registration* (last accessed Oct. 26, 2014), http://thedataweb.rm.census.gov/TheDataWeb_HotReport2/voting/voting.hrml.

³⁸ Presidential Commission Report, *supra*, note 4.

³⁹ Report of the Caltech/MIT Voting Technology Project, 40, *available at* http://www.vote.caltech.edu/sites/default/files/Voting%20Technology%20Report_final.pdf.

⁴⁰ Presidential Commission Report, *supra* note 4.

⁴¹ Robert M. Stein, & Greg Vonnahme, *Engaging the Unengaged Voter: Vote Centers and Voter Turnout*, 70 J. POL. 487, 488 (April 2008), *available at* <http://bakerinstitute.org/files/727/>; *see also* PewResearch Center for the People & the Press, Section 4: *Early Voting, Campaign Outreach and the Issues* (Nov. 23, 2008) (reporting an increase in early voting due to increased convenience for many. 48% voted early because they thought the process would be “more accessible or convenient,” 31% wanted to avoid lines or crowds at polling places, 11% said they voted early for convenience, and 5% said they voted early because they thought it would be easier. Nearly a third, 32%, said they voted early because they would have been unable to vote or would have had difficulty reaching their polling place on Election Day).

⁴² Presidential Commission Report, *supra* note 4 (reporting that “[o]f the more than 47 million Americans who cast ballots early in 2012, 29 million were cast by mail and 18.5 million early in-person”).

⁴³ *Id.*

-
- ⁴⁴ John C. Fortier, 40 ABSENTEE & EARLY VOTING: TRENDS, PROMISES, AND PERILS 47 (2006).
- ⁴⁵ Moshe Haspel & Gibbs Knotts, *Location, Location, Location: Precinct Placement and the Costs of Voting*, J. POL. (Apr. 13, 2005) available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2508.2005.00329.x/abstract>.
- ⁴⁶ From 1990 to 2013, the U.S. average travel time to work (one-way) has increased by 13.39%. From 22.4 minutes in 1990 to 25.4 minutes in 2013. U.S. Census Bureau, A Look at Commuting Patterns in the United States from the American Community Survey, (last accessed Nov. 11, 2014). In Fairfax County, voters may apply for absentee ballots because they are at work or commuting for 11 hours between 6:00am and 7:00pm on Election Day. Absentee Voting, Fairfax County Virginia (last accessed Nov. 22, 2014), <http://www.fairfaxcounty.gov/elections/absentee.htm>; http://www.census.gov/newsroom/cspan/commuting/20130308_cspan_commuting.pdf; United State Census Bureau, Virginia (Jul. 08, 2014), <http://quickfacts.census.gov/qfd/states/51000.html>.
- ⁴⁷ Virginia Performs, *A Profile of Virginia* (2012), <http://vapergforms.virginia.gov/extras/profileSummary.php>.
- ⁴⁸ Nonprofit VOTE, *supra* note 16.
- ⁴⁹ Virginia Department of Elections, *Summary of Virginia Registration & turnout Statistics*, (last accessed Nov. 11, 2014) <http://elections.virginia.gov/index.php/resultsreports/registration-statistics/registrationturnout-statistics/>.
- ⁵⁰ Kasdan, *supra* note 4; see also Demos Project Vote, *What is Early Voting?*, 1 (July 2013), available at <http://projectvote.org/images/publications/Early%20Voting/WhatIsEarlyVoting.pdf>.
- ⁵¹ Kasdan, *supra* note 4; see also Election Assistance Commission, *Ballots Cast Before Election Day Expected to Increase as Early Voting Trend Continues* (Sept. 30, 2010), available at http://www.eac.gov/ballots_cast_before_election_day_expected_to_increase_as_early_voting_trend_continues/; Demos Project Vote, *supra* note 50.
- ⁵² Demos Project Vote, *supra* note 50.
- ⁵³ Report of the Caltech/MIT Voting Technology Project, *supra*, note 39, at 40.
- ⁵⁴ *Id.* at 41.
- ⁵⁵ *Id.*
- ⁵⁶ Election Assistance Commission, *supra*, note 51.
- ⁵⁷ Presidential Commission Report, *supra*, note 4.
- ⁵⁸ Kasdan, *supra* note 4, at 5.
- ⁵⁹ Paul Gronke, Eva Galanes-Rosenbaum, & Peter A. Miller, *Early Voting and Turnout*, J. POL. SCI. & POLITICS, 642 (Oct. 2003), available at http://www.appstate.edu/~ehrhartgc/PSOct07Gronke_etal.pdf.
- ⁶⁰ Thad E. Hall & R. Michael Alvarez, *Why Everything That Can Go Wrong Often Does: An Analysis of Election Administration Problems*, (Caltech/MIT Voting Tech. Project Working Paper 03-10), available at http://vote.caltech.edu/sites/default/files/vtp_wp10.pdf.
- ⁶¹ Sarah Jane Capper & Michael Ciaglo, *The Real Vote-Fraud Opportunity Has Arrived: Casting Your Ballot by Mail*, NBC NEWS (Sept. 25, 2012), http://investigations.nbcnews.com/_news/2012/09/25/14092264-the-real-vote-fraud-opportunity-has-arrived-casting-your-ballot-by-mail?lite.
- ⁶² Kasdan, *supra* note 4.
- ⁶³ LAW AND ELECTION POLITICS: THE RULES OF THE GAME 145 (Matthew Justin Streb ed.).
- ⁶⁴ *Id.*

-
- ⁶⁵ Priscilla Southwell, *Five Years Later: A Re-Assessment of Oregon's Vote by Mail Electoral Process*, 89-93 PS, POL. SCI. & POLITICS (2004); Priscilla L. Southwell & Justin Burchett, *The effect of all-mail elections on voter turnout* 28 AMERICAN POL. Q. 72-79 (2000); Priscilla L. Southwell & Justin Burchett, *Survey of Vote-by-Mail Senate Election in the State of Oregon*, PS, POL. SCI & POLITICS 53-57 (1997).
- ⁶⁶ Report of the Caltech/MIT Voting Technology Project, *supra*, note 39; Presidential Commission Report, *supra* note 4.
- ⁶⁷ Gronke, *supra* note 17 at 434.
- ⁶⁸ Michael P. McDonald, *The Return of the Voter: Voter Turnout in the 2008 Presidential Election*, 6 THE FORUM 7 (2008).
- ⁶⁹ Presidential Commission Report, *supra* note 4.
- ⁷⁰ Barry C. Burden, David T. Canon, Kenneth R. Mayer, & Donald P. Moynihan, *The Effects and Costs of Early Voting, Election Day Registration, and Same Day Registration in the 2008 Elections* 18 (Pew Charitable Trusts Working Paper, 2009) available at http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2009/UWisconsin1pdf.pdf.
- ⁷¹ *Id.*
- ⁷² Presidential Commission Report, *supra* note 4.
- ⁷³ Report of the Caltech/MIT Voting Technology Project, 41, available at http://www.vote.caltech.edu/sites/default/files/Voting%20Technology%20Report_final.pdf; Presidential Commission on Election Administration, *supra* note 37.
- ⁷⁴ Report of the Caltech/MIT Voting Technology Project, *supra*, note 39, at 41.
- ⁷⁵ Presidential Commission Report, *supra* note 4.
- ⁷⁶ *Id.*
- ⁷⁷ *Id.*
- ⁷⁸ *Id.*
- ⁷⁹ See *infra* note 88.
- ⁸⁰ Eligible voters at this time excluded women and minorities.
- ⁸¹ Richard Franklin Bense, THE AMERICAN BALLOT BOX IN THE MID-NINETEENTH CENTURY 36 (citing Munford, *Code of Virginia including legislation to the Year 1860*, 82).
- ⁸² *Id.*
- ⁸³ *Id.*
- ⁸⁴ *Id.*
- ⁸⁵ 27 RICHMOND ENQUIRER at 4, (1830).
- ⁸⁶ Ronald Edward Shibley, *Election Laws and Electoral Practices in Virginia, 1867-1902: An Administrative and Political History*, at 6-7 (Ph.D. dissertation, University of Virginia).
- ⁸⁷ *Id.* at 5.
- ⁸⁸ Virginius Dabney, VIRGINIA: THE NEW DOMINION. A HISTORY FROM 1607 TO THE PRESENT 437 (1992). In 1966, the U.S. Supreme Court declared Virginia's poll tax unconstitutional as inconsistent with the Equal Protection Clause of the 14th Amendment. *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).
- ⁸⁹ House Document No. 35, *Virginia's Election Process and Voting Technologies* (2002), available at [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD352002/\\$file/HD35_2002.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD352002/$file/HD35_2002.pdf)
- ⁹⁰ Bencoach, *supra* note 24.

⁹¹ VA. CODE ANN. § 24.2-603.1; *Id.*; Report of the National Association of Secretaries of State Task Force on Emergency Preparedness for Elections, *State Laws & Practices for the Emergency Management of Elections*, at 9 [hereinafter *State Laws & Practices*] (Feb. 2014).

⁹² *State Laws & Practices* at 16. Localities needing more time may petition the Virginia Supreme Court for another extension, not to exceed thirty days after the originally scheduled election.

⁹³ E-mail from Jean Jensen, former Secretary of the State Board of Elections, (Oct. 23, 2014).

⁹⁴ E-mail from Vickie R. Williams, former Virginia State Board of Elections Uniformed and Overseas Citizens Absentee Voting Act Coordinator, (Oct. 20, 2014).

⁹⁵ Robert C. O'Brien, Amy Borlund, & John Kay, *Election Day Challenges to Polling Hours and the Judiciary's Cautious Response*, 27 BUFF. PUB. INT. L. J. 14 (2009).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Email from Martha Brissette, Policy Analyst, VA Department of Elections, to Carrie Mattingly, Graduate Research Fellow, William & Mary Law School (Oct. 20, 2014, 09:17 EST) (on file with author).

⁹⁹ Virginia technically only allows for early in-person absentee voting, but the articles cited in this paragraph refer to it as "early in-person voting" or simply "early voting." Matt Sledge, *Hurricane Sandy Halts Early Voting in Parts of Virginia, North Carolina*, HUFF. PO., (Oct. 29, 2012), http://www.huffingtonpost.com/2012/10/29/hurricane-sandy-early-voting-virginia_n_2041121.html.

¹⁰⁰ *Id.*

¹⁰¹ Eric A. Fisher & Kevin J. Coleman, CONG. RESEARCH SERV., R42808, HURRICANE SANDY AND THE 2012 ELECTION: FACT SHEET (Nov. 8, 2012) *available at* www.crs.gov.

¹⁰² Stevent F. Huefner, *Lessons from Improvements in Military and Overseas Voting*, 47 U. RICH. L. REV. 833 (2013).

¹⁰³ Bencoach, *supra* note 24.

¹⁰⁴ VA. CODE ANN. § 24.2-713.

¹⁰⁵ Bencoach, *supra* note 24.

¹⁰⁶ VA. CODE ANN. § 24.2-700, *available at* <http://sbe.virginia.gov/Files/Forms/VoterForms/VirginiaAbsenteeBallotApplication.pdf>

¹⁰⁷ *See* Appendix A.

¹⁰⁸ VA. CODE ANN. § 24.2-701(B)(2), *available at* <http://sbe.virginia.gov/index.php/casting-a-ballot/absentee-voting/>.

¹⁰⁹ VA. CODE ANN. § 24.2-709(A), *available at* <http://sbe.virginia.gov/index.php/casting-a-ballot/absentee-voting/>.

¹¹⁰ Virginia's Legislative Information System, HB 75 Absentee Voting; Allows Qualified Voters to Vote Absentee in Person Without and Excuse, <http://lis.virginia.gov/cgi-bin/legp604.exe?141+sum+HB75>.

¹¹¹ *Id.*

¹¹² Virginia's Legislative Information System, SB 16 Absentee Voting, Persons Age 65 or Older on Day of an Election are Entitled to Vote Absentee Ballot, <http://lis.virginia.gov/cgi-bin/legp604.exe?141+sum+SB16>.

¹¹³ Roanoke County Virginia, Absentee Voting (last accessed Nov. 11, 2014), <http://www.roanokecountyva.gov/index.aspx?NID=493>; Virginia Department of Elections, Virginia Voter Registration (last visit Nov. 11, 2014), <https://www.vote.virginia.gov/search>.

¹¹⁴ *Id.*

¹¹⁵ Virginia.gov, Absentee Voting (last accessed Nov. 11, 2014), <http://sbe.virginia.gov/index.php/casting-a-ballot/absentee-voting/>.

¹¹⁶ *Id.*

¹¹⁷ VA. CODE ANN. § 24.2-701(B)(1), available at <http://sbe.virginia.gov/index.php/casting-a-ballot/absentee-voting/>.

¹¹⁸ *Id.*

¹¹⁹ In the event acceptable voter identification is not provided, a provisional ballot is issued, and the voter has until noon of the Friday following Election Day to provide a copy of acceptable identification to the electoral board. VA. CODE ANN. § 24.2-701(B)(1).

¹²⁰ VA. CODE ANN. § 24.2-707.

¹²¹ Email from Theresa Martin of LWV, (Dec. 1, 2014), based on a limited, informal survey.

¹²² National Conference of State Legislatures, Absentee and Early Voting, *supra* note 2.

¹²³ *Id.*

¹²⁴ Kasdan, *supra* note 4.

¹²⁵ *Id.* at 11.

¹²⁶ *Correction: Midterm Elections-Early Vote Story*, Associated Press, (Nov 4, 2014), <http://bigstory.ap.org/article/52d23267c034407ab626d5ee892aad27/midterm-elections-186-million-votes-already-cast>.

¹²⁷ Christine Stapleton, *Record-breaking 'Souls to Polls' turnouts Sunday in South Florida*, PALM BEACH PO. (Nov. 3, 2014), <http://www.palmbeachpost.com/news/news/democrats-hoping-final-souls-to-the-polls-events-s/nhyD7/>.

¹²⁸ *Id.*

¹²⁹ Benji Schwartz & Hannah Webster, *Early Voting in NC Midterm Election Tops 1.1 Million*, DAILY TARHEEL (Nov. 4, 2014), <http://www.dailytarheel.com/article/2014/11/early-voting-in-nc-midterm-election-tops-1-1-million>.

¹³⁰ *Correction: Midterm Elections-Early Vote Story*, *supra* note 126.

¹³¹ *Id.*

¹³² Stein, *supra* note 17, at 57; Gronke, *supra* note 17, at 428-29.

¹³³ Gronke, *supra* note 17, at 428-29.

¹³⁴ Early Voting Locations, Lubbock County (Nov. 4, 2014), <http://www.votelubbock.org/election-information/early-voting-information/>; *see also* Stein, *supra* note 17.

¹³⁵ Early Voting In Texas, PROGRESSIVE STATES (last accessed Oct. 29, 2014), http://www.progressivestates.org/resources/elections/Texas_Early_Voting_Election_Assistance_Commission_Analysis.pdf; *see also* Stein, *supra* note 17.

¹³⁶ Early Voting In Texas, *supra* note 135, at 4.

¹³⁷ Texas Secretary of State, *Elections and Voter Information*, (Oct. 31, 2014), <http://www.sos.state.tx.us/ELECTIONS/earlyvoting/2014/oct31.shtml>.

¹³⁸ *Id.* However, it is important to note that early data from the 2014 Midterm Election in Texas showed that between 600,000 and 800,000 registered voters did not have the kind of photo ID required by law, and Hispanics were 46% to 120% more likely to lack ID than white voters. Weiser, *supra* note 3; Gabriel Trip & Manny Fernandez, *Voter ID Law Scrutinized for Impact*, N.Y. TIMES (Nov. 18, 2104), http://www.nytimes.com/2014/11/19/us/voter-id-laws-midterm-elections.html?_r=0.

-
- ¹³⁹ *Check Status of Your Ballot*, California Secretary of State, available at <http://www.sos.ca.gov/elections/ballot-status/> (last visited Oct. 11, 2014).
- ¹⁴⁰ Office of the Minnesota Secretary of State, *What is the status of my absentee ballot?*, (last visited Oct. 11, 2014), available at <https://mnvotes.sos.state.mn.us/AbsenteeBallotStatus.aspx>.
- ¹⁴¹ Barry C. Burden, David T. Canon, Kenneth R. Mayer, & Donald P. Moynihan, *The Effects and Costs of Early Voting, Election Day Registration, and Same Day Registration in the 2008 Elections* 15 (Pew Charitable Trusts Working Paper, 2009) available at http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2009/UWisconsin1pdf.pdf.
- ¹⁴² *Election Assistance Comm'n, Election Management Guidelines* 51, 95 (last visited Oct. 11, 2014) http://www.eac.gov/assets/1/workflow_staging/Page/264.PDF, http://www.eac.gov/assets/1/workflow_staging/Page/267.PDF.
- ¹⁴³ Roanoke County Virginia, Absentee Voting (last accessed Nov. 11, 2014), <http://www.roanokecountyva.gov/index.aspx?NID=493>; Virginia Department of Elections, Virginia Voter Registration (last visited Nov. 11, 2014), <https://www.vote.virginia.gov/search>.
- ¹⁴⁴ Paul Gronke & Peter Miller, *Voting by Mail and Turnout in Oregon*, 40 Am. Pol. Res. 976, 977 (2012). The reduction in costs may partly be due to the fact that the Oregon postal service will deliver ballots without proper postage. Patrick Preston, *Ballots delivered without proper postage raises questions*, KATU (Nov. 2, 2012), <http://www.katu.com/politics/Ballots-delivered-without-proper-postage-raises-questions-177070941.html>.
- ¹⁴⁵ A Vote of Confidence for Mail Elections in Colorado, The Denver Post (Nov. 10, 2014), http://www.denverpost.com/editorials/ci_26909639/vote-confidence-mail-elections-colorado.
- ¹⁴⁶ *Id.*
- ¹⁴⁷ Gronke, *supra* note 59, at 641-42.
- ¹⁴⁸ *2012 General Election Turnout Rates*, United States Elections Project (Nov. 6, 2012), http://www.electproject.org/2012_early_vote.
- ¹⁴⁹ Ralph C. Heikkila, *Election Signature Retrieval Systems*, ELECTION ASSISTANCE COMM'N INNOVATIONS IN ELECTION ADMIN. (Nov. 3, 1993), <http://www.eac.gov/assets/1/Page/Innovations%20in%20Election%20Administration%203.pdf>.
- ¹⁵⁰ Oregon Secretary of State Kate Brown, *Voting in Oregon*, *supra* note 34; OFFICE OF THE SECRETARY OF STATE, ELECTIONS & VOTING, https://wei.sos.wa.gov/agency/osos/en/voters/Pages/vote_by_mail.aspx.
- ¹⁵¹ *Building Confidence in U.S. Elections: Report of the Commission on Federal Election Reform* (Sept. 2005), <http://www.eac.gov/assets/1/AssetManager/Exhibit%20M.PDF> (hereinafter Carter-Baker Commission).
- ¹⁵² *Absentee Voting*, Miami-Dade County Elections, available at http://www.miamidade.gov/elections/vote_absentee.asp; Scott Powers & David Damron, *1,400 Absentee Ballots Rejected for Bad Signatures in Central Florida*, ORLANDO SENTINEL (Dec. 11, 2012); Associated Press, *Iowa May Consider Signature Verification of Voters*, OMAHA WORLD-HERALD (Nov. 20, 2012).
- ¹⁵³ *Absentee Voting: Wisconsin's New Voter Photo ID Law*, Electronic Privacy Information Center, available at http://epic.org/privacy/voting/Wisconsin-voting_by_absentee_ballot_pdf_46357.pdf; *Voter ID Laws Passed Since 2011*, BRENNAN CENTER FOR JUSTICE, <http://www.brennancenter.org/analysis/voter-id-laws-passed-2011>.
- ¹⁵⁴ John C. Fortier, 40 ABSENTEE & EARLY VOTING: TRENDS, PROMISES, AND PERILS, 69 (2006); Presidential Commission Report, *supra* note 4.
- ¹⁵⁵ Paul Gronke, *Testimony of Professor Paul Gronke before the Presidential Commission on Election Administration* 8 (Aug. 8, 2013), available at <https://www.supportthevoter.gov/files/2013/08/Paul-Gronke-PCEA-Testimony.pdf>.

¹⁵⁶ *Ohio State Conference of N.A.A.C.P. v. Husted*, 786 F.3d 524 (6th Cir. 2014), available at <http://electionlawblog.org/wp-content/uploads/6th-early.pdf>.

¹⁵⁷ Adam Liptak, *Supreme Court Blocks Order to Restore 7 Days of Voting in Ohio*, N.Y. TIMES (Sept. 29, 2014), http://www.nytimes.com/2014/09/30/us/supreme-court-blocks-order-to-restore-7-days-of-voting-in-ohio.html?_r=0; <http://electionlawblog.org/wp-content/uploads/6th-early.pdf>.

¹⁵⁸ *Husted v. N.A.A.C.P.*, Order in Pending Case (Sept. 29, 2014), available at http://www.supremecourt.gov/orders/courtorders/092914zr1_4315.pdf; Randy Ludlow & Jack Torry, *U.S. Supreme Court Delays Start of Ohio Early Voting*, COLUMBUS DISPATCH (Sept. 30, 2014), <http://www.dispatch.com/content/stories/local/2014/09/29/early-voting-in-ohio.html>.

¹⁵⁹ General Assembly of North Carolina, HB 589 (2013), <http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H589v9.pdf>.

¹⁶⁰ Ari Berman, *North Carolina Passes the Country's Worst Voter Suppression Law*, THE NATION (July 26, 2013), <http://www.thenation.com/blog/175441/north-carolina-passes-countrys-worst-voter-suppression-law#>.

¹⁶¹ Richard Fausset, *Judge Backs New Limits on North Carolina Voting*, N.Y. TIMES (Aug. 8, 2014), <http://www.nytimes.com/2014/08/09/us/judge-in-north-carolina-upholds-2013-voting-law.html>.

¹⁶² *Id.*

¹⁶³ State Board of Elections, Virginia Absentee Ballot Application Form (last visited Oct. 16, 2014), <http://elections.virginia.gov/Files/Forms/VoterForms/VirginiaAbsenteeBallotApplication.pdf>.