

## LWV-VA ELECTION LAWS POSITION UPDATE

*Statement of position on election laws to be adopted by consensus at the 2021 convention of the LWV of Virginia. Text in bold italics is an addition or change to current Election Laws section of Positioned for Action, Spring 2019.*

### Position in Brief

The League of Women Voters of Virginia believes that democratic government depends on the informed and active participation of its citizens; that voting is a right and responsibility; and that election laws, regulations and administrative procedures should be uniformly designed and applied, and adequately funded to facilitate and increase voter participation throughout Virginia. ***The League further believes that democratic government, at the state, as well as federal, levels depends upon the voters' faith in the integrity of election processes and election outcomes. Therefore, the League of Women Voters of Virginia supports election laws, policies, and funding to ensure that elections are secure and the outcomes verified.***

Specifically, the League supports measures to ensure the availability of voter registration and to encourage and facilitate increased voter participation in elections, including: absentee voting by mail and in-person without ***having to provide*** a reason; an adequate number of voting machines and trained election officers; the use of satellite voting; split shifts for election officers when needed; online voter registration; the use of electronic poll books; and measures that take advantage of technological advances, as long as they are secure. (2011, 2015, 2021)

The League supports shared funding of statewide voter registration and election systems by the localities and the Commonwealth, providing adequate authority and resources to the Department of Elections (ELECT) and the State Board of Elections (SBE) for oversight and enforcement of laws and standards for registration and elections uniformly throughout the Commonwealth, and the ***facilitation of convenient yet secure*** voting for Virginia's military and overseas voters. (2011, 2015, 2021).

***The League further supports measures to secure Virginia's voter registration database, processes, and equipment against cyber- and physical threats. The League supports the introduction of ranked choice voting as an alternative to plurality voting. The League believes in increased voter access, removal of barriers to voting, such as a photo identification requirement at voting locations, and the prevention of voter suppression.*** (2021)

### The League's History

When it was reestablished as a state League in 1947, the LWV-VA adopted as its first study, "simplification and improvement of election laws to facilitate and increase registration and voting". Virginia required a poll tax as a prerequisite for voting at that time. During the 1940s, the League opposed the poll tax and other restrictive voting procedures.

In 1965, the League arrived at a position in opposition to the Freeholder Amendment to the Virginia Constitution, which would have limited voting on bond issues to property owners. Virginia had come under Section 5 of the Federal Voting Rights Act in 1965 because the state had a literacy requirement and less than 50% of its voting age population had voted in the 1964 presidential election. The League modified its position in 1967 to seek elimination of the literacy requirement, calling instead for some other means of identification for those unable to sign.

LWV-VA decided to restudy election laws in 1973. The study considered both voter registration and absentee voting (position adopted in 1975). Arguing against the notion that expanding registration

opportunities constituted an illegal “solicitation” of voters, the League asked that Virginia law require election officials to make available and publicize expanded voter registration opportunities throughout their communities and the state. It also asked that election officials carry out a voter outreach program, consider other systems of voter registration, and administer election laws uniformly across the state, including the interpretation of domicile and abode for voter registration. The League stated that the emphasis of absentee voting provisions should be the expansion of opportunities to vote and supported what was later called “no-excuse absentee voting”. Although the League recognized the need to prevent fraud, it believed it is best prevented by proper administration of the law rather than by tightening the law to restrict voting opportunities. Later in the decade, concurrence was taken on two topics: party identification of all candidates on the ballot (1977), and payment by the state of the costs of a recount in a close election (1979). Legislation was subsequently adopted by the Virginia General Assembly on these two issues, and League members did not indicate a need for further change during the 2009-11 study.

In May 1993, Early Voting was adopted as a state study to determine the feasibility of extending the voting period in Virginia. With the imminent introduction of the National Voter Registration Act, popularly known as “motor voter”, it seemed an opportune time to consider other methods to make voting easier. Early voting was defined as a procedure used to permit voting by mail or in person on days other than Election Day. As a result of the study, the League adopted positions supporting the extension of the voting period up to one month, the ability of qualified voters to vote on Saturdays and Sundays, and early voting in person without specifying a reason.

The State Board recommended a review of current state positions during the 1999-2001 biennium, at which time it combined the Election Laws and Early Voting positions.

The 2009 Convention adopted a restudy of election laws, particularly because of the enactment of national legislation, such as the National Voting Rights Act (NVRA), Help America Vote Act (HAVA), Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), and the Military and Overseas Voter Empowerment Act (MOVE), since the League’s earlier studies. The study was handled in two parts, with voter registration and management considered during the first year and elections during the second year. Two lengthy studies were prepared and posted on the League’s web site so that the same information would be available to all League members in Virginia. Due to confusion about the relationship of “early voting” to “absentee voting” and the Virginia Code and General Assembly’s use of the latter term, it was used in the study’s consensus questions and materials. The LWVUS has national positions on issues such as opposition to requirements for photo identification and other measures that restrict access to registration and voting, and support of voting systems that are secure, accurate, re-countable, accessible, and provide a voter verifiable paper trail. Therefore, those topics were not covered in the study and are not specifically addressed in the current LWV-VA positions.

In 2013, the LWVFA proposed a concurrence statement of support for vote centers, which was adopted at the LWV-VA convention that year. Technical edits were made to the position at the May 2015 Convention to reflect the establishment of the Department of Elections by the State of Virginia.

***At Convention 2019, the LWV-VA passed a resolution to review and update certain aspects of the Election Laws Position, addressing election processes, laws, and regulations that ensure free and fair election results, transparency, security and accountability. The resolution specifically identified post-election audits, security (i.e., cyber-security of election systems and equipment, and physical security of voting equipment and ballots), electronic voting, opposition to the photo identification requirement, ranked choice voting, and voter suppression as the subjects for study. The study, which also updates the League’s position with respect to early voting, was adopted at the Convention in 2021.***

## The League's Position

The League of Women Voters of Virginia believes that democratic government depends on the informed and active participation of its citizens; that voting is a right and responsibility; and that election laws, regulations and administrative procedures should be uniformly designed and applied, and adequately funded to facilitate and increase voter participation throughout Virginia *(2011) and to prevent voter suppression efforts that disenfranchise individual voters and groups of voters. The League further believes that election laws, regulations, policies and procedures should ensure that elections are protected against threats and that the outcomes are both verifiable and verified, to ensure that Virginia's citizens can have faith in the security, integrity, and outcomes of elections in the Commonwealth.* (2021)

### Voter Registration

Funding the cost of maintaining a statewide system of voter registration and providing equal and easy access for voting throughout Virginia are responsibilities shared by the Commonwealth and local governments. Because the system of voter registration affects voter turnout, and because federal *and state* legislation *have* extended the availability and ease of voter registration in Virginia:

- Voter registration opportunities must be available, online, by mail and in person, consistently throughout the Commonwealth;
- A uniform system of voter registration is required to facilitate voting and prevent fraud;
- *elections databases must be updated to reach the highest standards for security, usability, reliability, and functionality; and* (2021)
- Additional measures should be *maintained or* adopted to increase the availability of voter registration, including:
  - Reducing the interval between the registration deadline and Election Day to the smallest number of days consistent with effective elections management, and
  - Same-day registration at county and city central election offices. (2011)

In defining domicile and abode to determine residency for purposes of registration, a statewide policy should be applied and enforced to ensure:

- Uniform interpretation
- Broad construction
- Presumption of intent
- Consistent application. (2011)

Voter registration by political party should not be adopted in the Commonwealth. (2011)

### Election Management: Role of the Commonwealth

The Commonwealth should provide additional funding, *training, and expertise*, where localities *lack financial or technical resources* to support an accessible and well-managed election system. *The League believes* the Department of Elections (ELECT) and the State Board of Elections (SBE) must be given adequate authority and resources to:

- Enforce election laws and *promulgate and* enforce mandatory standards for local election offices; (2015, 2021)

- ***Establish and maintain*** best practices in registration and elections management, especially in training election officers and officials; (2015, 2021)
- ***Use best practices in voter list maintenance to ensure that the list is up-to-date and that legitimately registered voters are not removed from the list;*** (2021)
- Provide adequate oversight of registration and elections at locality and precinct levels; (2015)
- Oversee implementation of election laws, regulations and policies to ensure their consistent and uniform application across the Commonwealth; (2015)
- ***Develop procedures for post-election risk-limiting audits of hand-marked paper ballots cast during each election, conducted prior to certification of the election;***(2021)
- ***Conduct risk-limiting audits when the election involves more than one jurisdiction;*** (2021)
- ***Support the purchase and use of election infrastructure on a state-wide and local level that is able to accommodate alternative electoral systems including Ranked Choice Voting; and*** (2021)
- ***Counter disinformation that can be used as a voter suppression tactic.*** (2021)

#### **Election Management: Role of the Localities**

Election laws must be designed to facilitate voting and encourage participation of a large percentage of citizens in all elections. To this end, laws, policies and procedures affecting the voting process should be applied consistently in all parts of the Commonwealth ***throughout the early voting period, at the polls on Election Day, and until the last ballot is counted. LWV-VA urges that the Commonwealth and localities work together to ensure sufficient funding, staff, space, security, and access to accommodate all voter participation comfortably.*** The League supports:

- Legislation to allow all registered voters to vote absentee prior to Election Day without specifying a reason. Both choices—voting in person or by mail—should be offered ***for the entire early voting period.*** (This no-excuse absentee voting is sometimes called “early voting.”); (2011, 2021)
- The use of satellite voting facilities ***to facilitate voter participation;*** (2011, 2021)
- The provision by all localities of evening and weekend voting hours ***as well as suitable weekday hours*** at central and satellite offices for several weeks before general elections, ***provided local registrars have flexibility in implementation, including determination of locations and operational hours;*** (2011, 2021)
- The ***facilitation of timely transmission of*** absentee ballots by military and overseas voters ***but not including electronic transmission of the voted ballot via the internet as of now;*** (2021)
- A pilot program of all-mail voting to test its use in some elections; (2011)
- ***For voters with disabilities, use of Ballot Marking Devices that produce ballots nearly identical to hand-marked ballots to avoid vulnerabilities associated with handwriting errors and barcodes;*** (2021)
- ***Maintaining optimal standards to protect the equipment used in all phases of the voting process, from computers that hold the database of registered voters to electronic poll books and electronic voting machines;*** (2021) ***and***
- ***Adequate voter education and outreach to ensure voters are informed about the voting process and to counter disinformation.*** (2021)

The following should be required throughout Virginia to ensure an efficient voting process:

- Electronic poll books, with back-up paper copies for emergencies;
- Appropriate precinct sizes and numbers of voting machines to minimize voting delays, *such as wait times that can result in voter disenfranchisement*; (2021)
- *Appropriate and systematic training of personnel and polling place election officers*; (2021)
- Polling places selected to maximize voter participation and near public transportation, wherever possible. (2011)
- *The use of auditable, recountable, voter-verified paper ballots marked either by hand and scanned or—for voters with disabilities—by a ballot-marking device that produces a paper or card ballot; and* (2021)
- *Participation in risk-limiting audits.* (2021)

The LWV-VA is concerned that Virginia’s polling hours might not be optimal for all areas of the Commonwealth, especially those close to adjacent states, and is concerned about the effect of long hours on officers of election. Split shifts and poll closing specialists should be used in all localities to ease the burden on officers of election, help in their recruitment, and ensure well-managed elections.

*With regard to voting on election day, the League supports:*

- *The courts’ authority* to extend the polling hours in case of disasters and other emergencies that prevent the voters from getting to the polls, and include the provisions needed to ensure fair access to the polls throughout the Commonwealth; and (2011)
- Pilot programs authorizing Virginia’s local governing bodies to use vote centers in conducting local (not statewide) primary, special, and May elections when warranted and implemented pursuant to regulations and policies established by ELECT and the SBE, especially those requiring a determination that using vote centers will not serve to restrict access to the polls or further decrease voter turnout. If proven efficient and effective, the League would support their authorization for continued use at the option of local governing bodies. (2013, 2015)

*LWV-VA supports a statutory requirement that risk-limiting audits of selected cast ballots be randomly conducted in the Commonwealth after each election. Such audits must be conducted in a transparent manner before the election is certified and with the potential to affect the outcome of the election. Each locality must be subject to an audit at least once every five years. If a contest involves more than one jurisdiction, the League urges ELECT to participate in conducting the audit across localities.* (2021)

### *Election Cybersecurity (2021)*

*For voters to have the confidence to participate in elections, the laws, policies and procedures must include measures to ensure that the process and the election infrastructure that accesses central registration and election applications are secure and backed up by penalties for failing to take adequate measures. The League supports standards and a robust certification process for election systems including:*

- *Updating certification standards regularly to keep pace with the state of knowledge of the cybersecurity landscape;*
- *Ensuring localities have sufficient resources, both expertise and financial, to manage updates to voting systems as certification standards evolve;*

- *Requiring standards for security practices of voting machine vendors, their personnel and consultants/contractors;*
- *Mandating state certification for all components of election management systems;*
- *The promulgation of standards for logic and accuracy testing of election equipment, and*
- *Recommending that the Commonwealth consult with other states and other organizations in sharing best practices about certification regimes. (2021)*

*To address the security of registration and election software applications and databases, the LWV-VA supports:*

- *The Commonwealth's provision of sufficient resources for*
  - *adequately staffing central information technology functions and maintaining infrastructure and applications to the highest level of cyberprotection and*
  - *supporting localities in securing systems that access central registration and election applications;*
- *The Commonwealth's participation in national and multistate associations that develop cybersecurity standards, monitor emerging threats to critical infrastructure, and identify protection strategies; and*
- *The acquisition and maintenance of a voter registration and election management system that meets high standards for security, usability, reliability, and functionality. (2021)*

*To address the cybersecurity of election equipment, the League supports measures including:*

- *Supporting the use of ballot marking devices that produce ballots identical to hand-marked ballots to avoid vulnerabilities associated with barcodes;*
- *Supporting the use of statewide standards for logic and accuracy testing of election equipment;*
- *Requiring statewide standards for security practices of voting machine vendors, their personnel and consultants/contractors;*
- *Supporting the replacement of devices well before "end-of-life" (when the technology is no longer supported);*
- *Recommending that the Commonwealth and localities have sufficient resources to follow best practices for cybersecurity; and*
- *Requiring the use of paper backups of voter lists (or other contingency plans) in case of electronic pollbook malfunction. (2021)*

### *Electoral Systems (2021)*

*LWV-VA recognizes the deficiencies of the current plurality system and supports the introduction of alternative electoral systems such as ranked choice voting:*

- *Supporting the option for localities to utilize Ranked Choice Voting for local elections, both single- and multi-winner. Localities opting to use RCV should consider the need for voter education in planning for these elections.*
- *Supporting the expanded use of Ranked Choice Voting in state-run primaries*
- *Supporting implementation of Ranked Choice Voting that allows for all candidates in a race to be ranked.*
- *Supporting use of Ranked Choice Voting beyond local elections, after Ranked Choice Voting in local Virginia elections has been shown to meet the criteria listed in the LWVUS Impact on Issues 2020-2022.*

**Voter Access (2021)**

***LWV-VA supports the fundamental right to vote and supports measures that seek to enhance voter access and voter participation. Equally, LWV-VA opposes measures that seek to infringe on this fundamental right or create barriers to voters casting ballots. Voter suppression efforts can include but are not limited to: manipulation of the registration process; policies that make voting difficult, time consuming or dangerous; felon disenfranchisement; and disinformation that confuses voters or discourages them from casting their vote. These examples have changed over time and will continue to evolve. Thus, Leagues across the Commonwealth should monitor activities and adapt accordingly.***

- ***The LWV-VA opposes the requirement that a voter present a photo ID at any voting location place in order to be able to vote.***
- ***The LWV-VA supports the review of all election laws and regulations to ensure that measures do not infringe on the right to vote nor unduly burden or restrict the rights of individuals or groups, as was previously required under the Voting Rights Act of 1965.***