



Election Laws Position Update Part 2

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Introduction

Although state League members are covered by national positions, the League of Women Voters of Virginia (LWV-VA) has chosen to articulate its own Election Laws positions with greater specificity to assure they fully cover advocacy on issues that may need to be addressed in Virginia. LWV-VA members voted at Convention 2019 to review and update the following items in the LWV-VA Election Laws position:

- A. Include election processes, laws, and regulations (e.g. post-election audits) that ensure free and fair election results, transparency, security, and accountability
- B. Prepare amendment to State position to strengthen support for security, including physical security of voting equipment and ballots
- C. Review the language supporting electronic voting
- D. Add a statement opposing requirement for photo ID at polls
- E. Consider and explore the effectiveness and impact of ranked choice voting
- F. Address voter suppression

Due to the number of topics to be addressed, the report was broken into two parts. Part 1 (topics A-D) was published May 1, 2020. This report addresses the final two topics.

LWVUS publishes its position on elections in the Representative Government section of *Impact on Issues, 2018-2020*.¹ The League of Women Voters of Virginia (LWV-VA) publishes its position in the Election Laws section of *Positioned for Action 2019*.² In the discussion that follows, we have provided relevant excerpts from these positions.

Part E. Ranked Choice Voting Effectiveness and Impact

I. Background

Description of Ranked Choice Voting

Ranked choice voting (RCV) is a form of preferential voting that allows voters to rank candidates on their ballot in order of preference. When used in single winner elections, it is also referred to as Instant Runoff Voting (IRV). The process of determining the winner is described by FairVote as follows: “A candidate who receives over 50% of the first preference votes will be declared the winner; if this does not occur, the ballot count simulates a series of runoff elections. The candidate with the fewest first-place votes is eliminated, and ballots cast for that candidate are ‘transferred’ to second choices as indicated on voters’ ballots. This process of transferring votes continues until one of the candidates has a majority.”³

The process becomes more complex when used in multi-winner elections. Again, voters are invited to rank candidates on their ballot in order of preference. However, it is not mathematically possible for multiple candidates to receive 50% of the vote for multiple-winner elections, so it is necessary to determine an “election threshold”, defined by FairVote as “the number of votes that mathematically guarantees that the candidate cannot lose.” The election threshold is determined by the number of seats to be filled. “For example, if three candidates will be elected, the threshold is 25% of votes. That’s because if one candidate has more than 25% of the vote, it is impossible for three other candidates to get more votes than them (because that would add up to more than 100% of votes). If four candidates are to be elected, the threshold is 20% of votes. If five candidates are to be elected, it is about 17% of votes.”⁴

Other Voting Systems

The Constitution of Virginia says that the candidates receiving “the highest number of votes” shall be declared elected for the offices of governor, lieutenant governor and attorney general.⁵ This is the essence of **plurality voting**. In plurality systems, the candidate who wins the largest share of the vote wins the election. The candidate need not win an outright majority to be elected. These systems are sometimes referred to as “first-past-the-post” or “winner-take-all.” Plurality voting is simple to understand and to implement.

Plurality provides a majority vote count if there are only two candidates. However, when there are more than two candidates, plurality voting can result in a winner who is not supported by a majority of the voters. Plurality elections are also impacted by gerrymandered districts and prone to the spoiler effect⁶, which is “when a minor candidate takes enough votes from one of two major candidates to throw the election to the less-popular of the front runners.”⁷ Princeton University’s *Voting Research - Voting Theory* explains the spoiler effect this way, “The problem is that each voter has to make a judgment call and pick only one candidate to support. Similar candidates can end up splitting votes and losing to a less popular alternative.”⁸

There are several other voting systems that attempt to correct the failings of plurality voting. However, the assigned objective for this study was to “consider and explore the effectiveness and impact of ranked choice voting.” Therefore, this report will only summarize other methods in use in the US for government-run elections and note that all have their strengths and weaknesses. To quote economist Kenneth J. Arrow, developer of Arrow's Impossibility Theorem, “Most systems are not going to work badly all the time. All I proved is all can work badly at times.”⁹ This is also sometimes paraphrased as “the only voting method that isn't flawed is a dictatorship.”¹⁰ A more detailed review of other systems could be done in a separate study.

Majority voting: Also known as “plurality with runoff” and “two-round runoff system” (TRS). Winners are required to have 50% plus one votes. If the election does not result in a candidate with over 50% of the votes cast, then a runoff election is held between the two top vote getters. This is a costly method since more elections are held. In the US, TRS is used in a number of jurisdictions, mostly on the local level and mostly in the South.¹¹ Georgia and Louisiana are the only two states that use TRS in general elections for state and federal level elections.¹²

Score voting/range voting: A voting method for single-winner districts in which voters award each candidate a “score.” Voters’ scores are then either summed or averaged together for each candidate. The candidate with the highest total score wins.¹³ A variation called STAR (Score Then Automatic Runoff) has been promoted for use in Oregon and used in party-run primaries.¹⁴

Cumulative voting: Voters have a number of votes equal to the number of seats to be filled and may allocate their votes among the candidates in any way they see fit, including giving multiple votes to a single candidate or spreading their votes among multiple candidates. Cumulative voting is used in some US jurisdictions, imposed as the result of lawsuits under National Voting Rights Act of 1965. As of March 2012, more than 50 communities use cumulative voting.¹⁵

Approval voting: A single-winner voting method that allows voters to choose any number of candidates simply by approving them or not. The candidate chosen the most often wins. In 2018, Fargo, ND, became the first locality to adopt approval voting.¹⁶

Pros and Cons of Ranked Choice Voting

RCV proponents, such as Elizabeth Melson, president of FairVote Virginia, commonly point to several ways in which RCV is thought to improve voter choices and lead to a more representative outcome, including 1) cleaner campaigns with higher voter satisfaction, 2) higher voter turnout, and 3) more diverse candidates. However, detractors as well as other LWV studies have raised concerns with RCV. The benefits and concerns are explored in more detail below:

Pros

1. **Cleaner campaigns with higher voter satisfaction:** RCV is thought to encourage more civil discourse in campaigns as candidates are incentivized to appeal to the broadest range of voters, and risk alienating voters by using negative attacks. A 2016 study comparing cities with plurality systems and those that use preferential systems (which include RCV) found that citizens in the latter were significantly more satisfied with local campaigns and were twice as likely to report that campaigns were “a lot less negative.” FairVote has published a range of studies that similarly point to voters’ perceptions of less negativity in campaigns in RCV races as well as greater positivity in newspaper and social media posts covering campaigns.¹⁷

2. **Higher voter turnout:** RCV is thought to encourage voter turnout by reducing voter concerns about “wasted votes” when voting for weaker candidates.¹⁸ In elections without RCV, voters may feel that they need to vote for the “lesser of two evils,” because their favorite candidate is less likely to win¹⁹ (also called strategic voting). In its examination of the six largest cities that utilize RCV, FairVote found an increase in voter turnout after the implementation of RCV. However, the study did not control for other factors that could have increased participation.²⁰ Other studies have found that RCV has a positive effect since contests do not experience the drop in voter turnout typically seen between first round and runoff elections in jurisdictions that use TRS voting. However, in localities that do not use runoff elections, RCV has not been shown to have a significant effect on voter turnout.²¹

3. **More diverse candidates:** Proponents of RCV point to the ranked balloting process as an opportunity for women, minorities, and those from outside of the two major parties to win seats, even if they do not place highest on the first ballot. This enhanced opportunity encourages more diverse candidates to run for office, and therefore provides voters with a more representative choice of candidates.²² A 2018 study of election outcomes in four California Bay Area cities found that alternative voting, which includes RCV, led to an increase in the number of candidates of color from 17.2% to 25.6%, controlling for other factors. The study also found that the probability of a female candidate winning increased from 40.2% to 44.6% in the same cities.²³ The study theorized that elimination of the spoiler effect meant, “There are fewer incentives for gatekeepers and community groups to limit candidacy, and fewer reasons for would-be candidates to be discouraged from running because they feel their candidacy could harm their community’s interests (by splitting the vote).”²⁴ RCV is more effective in promoting greater diversity of winning candidates in multi-member districts than in single-winner districts. Some opponents of RCV argue that it has the potential to shut out minority representation in single-member districts, particularly where minority candidates have historically benefited from plurality voting.²⁵

4. **Voter support:** The winner of an RCV election takes office with the support of the majority of voters even if that candidate would not have won under a plurality voting system.

5. **Cost of runoffs eliminated:** Proponents point out that RCV eliminates the cost of a runoff election in those jurisdictions which use the two-round runoff system (TRS). A runoff election is unusual in Virginia jurisdictions.

6. **Public health advantages:** Interestingly, RCV has provided added benefits in the COVID-19 context. Both the Democratic and Republican parties in Virginia utilized RCV during their 2020 delegate conventions to select candidates for some races. RCV allowed voters to cast one ballot, rather casting multiple ballots until one candidate reached a majority of votes. This shortened the process, and in some cases allowed delegates to cast their ballots by mail or from their cars, thus reducing the risk of COVID-19 exposure.²⁶

Cons

1. ***Complicated and hard to explain to voters:*** Implementation of RCV requires a significant training/educational effort for both voters and election officials. Training needs were broadly mentioned in LWV studies throughout the country. An investment in voter education must be budgeted for initial use of RCV so voters can complete ballots in a way that expresses their true candidate support.

2. ***Difficult for election administration:*** RCV is inherently more difficult to tally than plurality voting when there is no immediate first round winner. An analysis of Australia's experience with using RCV for over 100 years shows there has been an immediate first round winner only about 25% of the time.²⁷

3. ***Largely untested in the US beyond local contests:*** All eyes are on Maine, the only state that has approved RCV for broad use, having been approved by 52% of the vote in a 2016 citizen-initiated referendum.²⁸ However, RCV still cannot be used for state offices in general elections because the Maine Supreme Court has found it to conflict with the Maine Constitution. Similar challenges to RCV's constitutionality under the US Constitution failed, and it was used in Maine's US Senate election, its two congressional district elections in 2018, as well as in primaries for state and federal offices in both 2018 and 2020. It will be in effect for the US Senate race, the two congressional races, and the presidential race in Maine in 2020's general election.²⁹ Nonetheless, there are a very small number of state and federal races where RCV has been used to date in the US.

4. ***Requires a centralized tally for elections that cross locality borders:*** Should RCV be utilized for an election that covers more than one locality (city, county), the vote count would have to be centralized either at the state Department of Elections or in a single selected locality in order to allocate votes. While some state legislative districts in more densely populated areas of Virginia could be drawn in a way to reduce the number of localities represented, US congressional districts necessarily involve many localities which would require determining how/where to conduct a centralized vote count.

5. ***Ballot exhaustion:*** RCV has been criticized as not truly majoritarian because the winner of the final tally round is only required to have a majority of votes counted in that round, not a majority of all votes cast. This happens because of what is called ballot exhaustion. The simplest example of ballot exhaustion is a voter who decides to only vote their first choice without ranking any other candidates. If no candidate has a majority on the initial count and that voter's first choice is eliminated because it was the first choice of the least number of voters, that voter has no vote to count in subsequent rounds. Arguably, in this situation, there is little difference between that voter and someone who casts a vote in the initial round of a TRS election system but does not vote in the runoff election. The drop-off in voter participation in the runoff election of a TRS system is often quite significant. However, some jurisdictions that use RCV limit the number of candidates that voters can rank on the ballot, often allowing voters to rank only their top three choices. This may be because of complexities in tallying votes with more than three rankings. In a race with six or eight candidates where there are multiple rounds of counting to arrive at a majority, this can easily mean that all three of a voter's top three choices are eliminated before the final round. In this case, a voter's ballot is exhausted not through a choice of the voter, but because of the voting rules of the specific jurisdiction. FairVote looked at this issue in a 2016 article about elections in 4 jurisdictions around San Francisco. The article points out that, "While about half of exhausted votes were due to voters not using their full rankings, the other half were largely due to the limits of the voting systems used in the Bay Area, which can currently only accept three rankings."³⁰

History of Ranked Choice Voting

Ranked choice voting is one of a variety of methods of preferential voting, which has roots at least as far back as the French Revolution. It was first used in the 1850s in Denmark's proportional representation system (a multi-winner election system).³¹ In the 1870s, William Ware, an MIT professor,

proposed adapting RCV to a single-winner election for electing the head of MIT's alumni association.³² The concept of single transferable vote was further developed by Thomas Hare and Andrew Inglis Clark in Tasmania, Australia in the 1890s and was first used in two parliamentary³³ districts in 1896. From that beginning, it was eventually adopted in Australia for almost all its elections.³⁴

In the US, the American Proportional Representation League was formed in 1893 and actively advocated for preferential voting for 40 years.³⁵ Some variation of instant runoff voting was used for primaries in four states—Florida, Indiana, Maryland, and Minnesota—as early as 1912.³⁶ The 1912 presidential election, when Theodore Roosevelt ran under the Bull Moose Party splitting the Republican vote and resulting in the election of Woodrow Wilson, generated new interest in electoral reforms such as RCV. Between 1915 and the early 1940s, around two dozen cities across six states adopted RCV for multi-winner contests. In these early adoption cities, these reforms faced pushback centered around resentment of greater representation of various racial and ethnic groups, including Italians, Polish, Irish, and African-Americans.³⁷ Following repeal in Cleveland in 1931, Cleveland's city council had no elected women until 1949.³⁸ By 1962, all but Cambridge, MA had repealed its use.

More recently, Citizens for Proportional Representation was founded in 1992 to advocate for proportional representation nationally. The organization became the Center for Voting and Democracy in 1993, and in 2004 became FairVote.³⁹ According to data collected by FairVote, 19 city/county jurisdictions and the state of Maine are using RCV as of April 2020.⁴⁰ Three additional cities have approved RCV to be implemented in 2021, including New York City with 6.5 million voters.⁴¹ RCV ballot initiatives will be on the 2020 ballot for voter approval in the states of Massachusetts⁴² and Alaska, as well as the cities of Burlington, VT; Albany, CA; Eureka, CA; Bloomington, MN; and Boulder, CO.⁴³

As noted in the discussion of pros and cons, Maine voters approved the use of RCV in November of 2016, and approved it again in June of 2018. However, it has not been without controversy and it is currently barred by the Maine Constitution from use for state offices in general elections.

A recent study written for the California Law Review noted that almost 40 states, including Virginia, have plurality vote provisions in their state constitutions similar to Maine's, but concluded that, despite the ruling with respect to the Maine Constitution, such provisions "were not intended to bar RCV, and RCV is fully consistent with all the reasons behind the adoption of these provisions."⁴⁴ This is consistent with a 1923 Ohio Supreme Court case which ruled that the use of multi-member RCV, referred to as the Hare system of proportional representation at the time, violated neither the Ohio Constitution nor the US Constitution.⁴⁵ In an interesting side note, the opinion was written by Florence Allen, the first woman to serve on a state supreme court.⁴⁶

On a national level, Rep. Don Beyer (VA-8) introduced the Fair Representation Act in 2017. This proposal "would move US House elections into multi-member districts drawn by independent redistricting commissions and elected through ranked choice voting. The multi-member districts would be effective in states apportioned six or more seats in the House, and would elect three to five Representatives each, depending on the size of the state." The legislation was reintroduced in 2019.⁴⁷

LWV Positions in Other States

Over the last 25 years, sixteen state Leagues,⁴⁸ five local Leagues,⁴⁹ and the LWV of the District of Columbia have studied ranked choice voting, with some studies embracing additional alternative voting methods, and some focusing specifically on RCV. A common consensus among most of these studies is that plurality voting poses many problems—e.g., it allows a candidate to win with less than majority support, it creates the "spoiler effect", and voters tend to vote tactically rather than voting their true preferences. The end result is often reduced voter turnout and voter dissatisfaction. A second common concern expressed in many of these studies is the sense that voters may not understand how RCV works.

Only one study—LWV of San Jose/Santa Clara—reached a consensus to not support any election method change locally.⁵⁰ This study was limited to local elections and the consensus was based on the fact that current equipment (in 2011) did not allow ranking of more than three candidates, and a desire that the winning candidate should receive a majority of all votes cast, not a majority of unexhausted ballots. One study—Utah⁵¹—did not result in any position being adopted. Four organizations—LWV California,⁵² LWV Colorado,⁵³ LWV of Santa Monica (CA),⁵⁴ and LWV of Boulder County (CO)⁵⁵—adopted broad general statements of support for alternative election systems to plurality voting that would encourage honest vs tactical voting without specifically supporting RCV.

The Florida LWV board initially adopted a position supporting RCV in March of 2007 based on a study by the LWV of St Petersburg.⁵⁶ This position lasted until a 2017 Open Primary Study.⁵⁷ The Florida LWV's *Study and Action 2017-2019* has no position on the issue.⁵⁸ Concerns of Florida local leagues with Instant Runoff Voting (IRV) that surfaced during the 2017 Open Primary Study were “complexity, potential voter confusion and lack of state level election experience with Instant Runoff Voting.”⁵⁹ There was also a concern about the fiscal impact since few of Florida's jurisdictions had equipment capable of accepting a ranked ballot.

The study by the South Carolina LWV led to a position encouraging local communities to move away from plurality voting to an alternative voting system, suggesting localities consider IRV, limited voting, cumulative voting, more use of at large seats.⁶⁰

Fourteen studies—AZ, ME, MD, MA, MN, NC, OK, OR, PA, VT, WA, DC, Montgomery County (MD), and Larimer County (CO)—reached a consensus position supporting IRV for single seat elections. Of these fourteen, four—AZ, VT, DC, and Montgomery County—also support use of RCV for multi-winner elections.

Ranked Choice Voting in Virginia

In April 2020, Governor Northam signed into law two pieces of legislation pertaining to ranked choice voting. House Bill 1103 provides localities with the option to use RCV in county board of supervisors and city council elections. The law requires that the use of RCV be approved by a majority vote of the board or council for which the election is held and that any additional cost incurred by using RCV is covered by the locality. The law goes into effect on July 1, 2021 and will remain effective for a period of 10 years. The second piece of legislation, House Bill 506, extends the use of RCV to the county board of supervisors in Arlington County, however, with immediate effect. Arlington County required separate legislation as it is governed through a county manager plan. Thus, HB506 specifically amends the portion of the Code of Virginia pertaining to local elections under a county manager plan (§15.2-705).

In an interview, Delegate Sally Hudson, co-sponsor of HB1103, indicated that the sponsors chose to limit the bill to county boards of supervisors and city councils as those elected bodies have budgetary authority that would allow them to cover the additional costs of RCV elections. Other local elected bodies/officials, such as school boards, do not have the same budgetary authority.⁶¹

During the 2020 session, a third bill, House Bill 360, called for expanded use of RDV in state-wide contests including governor, lieutenant governor, and attorney general. Notably, the bill also calls for the use of a voter-nominated primary process where all candidates, regardless of party affiliation, appear on a single primary ballot. Voters then rank their choices, with the top four candidates advancing to the general election. The bill was continued into the 2021 General Assembly session for further consideration by the House Privileges and Elections Committee.

Sponsors of HB1130 and HB506, including Delegate Sally Hudson, who was interviewed for this study, see these new laws as opportunities to introduce RCV to Virginia voters. Starting at the local level has specific advantages, including working with individual registrars who are interested in implementing RCV, rather than trying to implement it state-wide. Elizabeth Melson, president of FairVote Virginia,

noted that the successful implementation of RCV in a few localities could spur wider options in other localities in the state and demonstrate the value of RCV to Virginia voters.⁶²

Statistics from an analysis of the 2018 and 2019 Virginia general elections for county boards of supervisors and city councils, which are specifically enabled to use RCV by the 2020 legislation, illustrate the potential impact in Virginia. For county boards of supervisors, winners exceeded 50% of the votes in ten of 101 races. In the city council races, winners gained a majority in only 2 of 16 races. At large races were not counted.⁶³

Most town councils and approximately 60% of city councils hold multi-winner elections. Two-thirds of city school boards but only three county school boards have multi-winner elections. County boards of supervisors elections are not multi-winner.⁶⁴

The Virginia Department of Elections (ELECT) and others who voiced opposition to the bills pointed to the potentially high cost of updating VERIS (Virginia Election Registration and Information System) to support ranked choice voting. In its fiscal impact statement, ELECT estimated that upgrades would cost approximately \$1.3 million.⁶⁵ However, VERIS is expected to be replaced in 2022.

A 2018 cost assessment conducted by the Ranked Choice Voting Resource Center indicated that only 13 of the 133 Virginia localities had ballot scanning technology that was not compatible with conducting RCV elections.⁶⁶ The assessment also noted that much of the cost associated with implementing RCV (e.g., technology upgrades) would have wider benefits to the election process or are costs that the registrars would incur (e.g., voter education) in a non-ranked choice voting election.

Another area seen for expanded use of RCV by its proponents in Virginia is primary contests. In 2020, RCV was used in the Democratic Party primary for the Arlington County special election for school board⁶⁷ and by the Republican Party during its delegate conventions to select candidates for the 10th ⁶⁸ and 11th congressional districts.⁶⁹ Notably, the adoption of RCV in these contests limited the need for in-person, multi-round balloting, particularly in light of the COVID-19 pandemic.

II. Current LWVUS and LWV-VA Positions

LWVUS: *Impact on Issues 2018-2020* is silent on ranked choice voting and other electoral systems. However, the 2020 Convention adopted a new position on electoral systems via concurrence.

Position in Brief:

Support electoral systems at each level of government that encourage participation, are verifiable and auditable and enhance representation for all voters.

Position in Full:

LWVUS promotes an open governmental system that is representative, accountable and responsive. We encourage electoral methods that provide the broadest voter representation possible and are expressive of voter choices.

Whether for single or multiple winner contests, the League supports electoral methods that:

- Encourage voter participation and voter engagement
- Encourage those with minority opinions to participate, including under-represented communities
- Are verifiable and auditable
- Promote access to voting
- Maximize effective votes/minimize wasted votes
- Promote sincere voting over strategic voting
- Implement alternatives to plurality voting
- Are compatible with acceptable ballot-casting methods, including vote-by-mail

LWV-VA: Positions do not address electoral systems.

III. Study Committee Recommendations

The study committee recommends that the current LWV-VA Election Laws positions be modified to include:

- Supporting the use of Ranked Choice Voting for local elections, both single- and multi-winner, for those races covered by the 2020 legislation (i.e., county boards of supervisors and city councils).
- Supporting the expanded use of Ranked Choice Voting in primaries
- Supporting implementation of Ranked Choice Voting that allows for all candidates in a race to be ranked.
- Supporting the purchase and use of voting systems on a state-wide and local level that are able to accommodate/adapt to alternative voting systems including Ranked Choice Voting. An example would be the VERIS replacement.
- Supporting use of Ranked Choice Voting beyond local elections, including statewide races such as US Senate, governor, lieutenant governor, and attorney general, after RCV Ranked Choice Voting has been shown to improve voter satisfaction in local Virginia elections.

Part F. Voter Suppression

I. Background

Introduction

The Election Position Review and Update project was approved during the May 2019 League of Women Voters of Virginia (LWV-VA) Convention. The project was underway by August 2019 when the original scope for a study on voter suppression was set⁷⁰. The original stated intent was:⁷¹

- a. Check and update current position
- b. Reinstatement of felons' right to vote after completion of the terms and conditions of their sentences
- c. Extended hours for polling places
- d. Add a statement opposing requirement for photo ID at polls

In the intervening time, the scope of Section F subject material to correspond with evolving circumstances. For example, adding a statement opposing the requirement for photo ID at polls was reassigned to another team⁷². Extended hours for polling places was removed since the 2020 Virginia General Assembly addressed this issue through HB1678 (the bill must be reenacted in 2021 before becoming effective).⁷³ Additionally, discussion arose among the study group and project oversight teams regarding other voter suppression-related issues originally omitted from the original scope of this study.

As a result, the study group team sought to broaden the scope to include more specific voter suppression examples (i.e., not just reinstatement of felons' rights), but also to limit the depth of each category to stay within the project's time constraint. The result is an overview of voter suppression activities that can achieve our goal of enhancing advocacy by providing a collection of language around voter suppression. Voter suppression elements are mentioned throughout the LWVUS publication *Impact on Issues 2018-2020*⁷⁴ and the LWV-VA *Positioned for Action*,⁷⁵ however, they are interwoven throughout both documents and not located under a central heading. Our recommendations will provide suggested improvements for *Positioned for Action*.

Lastly, during our project, COVID-19 became a worldwide pandemic and was declared a public health emergency in the US in February 2020.⁷⁶ COVID-19 would have a dramatic effect on the 2020 elections and play a specific role in voter suppression. Although voter suppression exists independent of COVID-19, we recognized that the pandemic exacerbated voter suppression elements. As of this writing, we were unable to determine all of the effects of COVID-19 on voting, and it may be some time before they are fully known.

Definition of Voter Suppression

The study group team reviewed a variety of definitions of voter suppression that were generally very similar. For example, "Voter suppression is any effort, either legal or illegal, by way of laws, administrative rules, and/or tactics that prevents eligible voters from registering to vote or voting"⁷⁷ and "Voter suppression is a strategy used to influence the outcome of an election by discouraging or preventing specific groups of people from voting."⁷⁸ Perhaps the simplest definition was provided by Dr. Lindsay Nielsen, an election scholar based in Virginia, "Voter suppression is anything that discourages people from voting".⁷⁹ Regardless of how voter suppression is specifically defined, it remains a fundamental threat to democracy, as it undermines the core principle of the right to vote and equal protection under the law.^{80,81,82}

Dr. Nielson explains that for the past half century or so, political science scholars have largely understood voter turnout within a framework known as "the calculus of voting," which is predicated on a

cost-benefit analysis, or, “a trade-off between the cost of voting and the benefit of the act of voting.”⁸³ If the perceived benefit of voting outweighs the cost, then people will be likely to vote. Costs include diverse elements such as the dollar cost of a voter ID, the amount of time it takes to vote, and the distance one has to travel to vote. Benefits include a sense of fulfillment experienced by exercising one’s civic duty and/or the act of aligning oneself with a political party or candidate. Raising or lowering the costs and benefits can cause voter turnout to adjust accordingly.⁸⁴ Thus, voter suppression is essentially putting a thumb on the scale by either increasing the cost for people to vote or diminishing the benefit.

In the past, discussions of voter suppression have focused on laws or policies that directly limit the ability of voters to register and cast ballots, such as Jim Crow-era laws like poll taxes or literacy tests, and, more recently, strict voter ID laws or rolling back early voting opportunities. However, as technology and politics evolve, so do voter suppression efforts. Increasingly, voter suppression strategies aim to deter participation by undermining confidence in the election process by simply creating an environment of doubt and uncertainty.⁸⁵ Complicating matters further is that measures restricting voting access are often presented as necessary for election security or to prevent voter fraud. Proponents of these efforts often downplay the burdens imposed on voters or ignore how they may particularly affect certain groups.⁸⁶

Measuring voter suppression is challenging; it is difficult to *prove* why someone does not vote.⁸⁷ Researchers agree that establishing clearly defined data points for explicit non-voting is often, by necessity, derived or inferred evidence and not empirical.⁸⁸ For example, did a voter who was fully intending to vote *not* vote because of a recent law that was passed? Or, was there a death in the family that (understandably) directed the voter’s attention away from any imminent election? It is important to understand these details in order to develop strategies for countering barriers to voting.

There are other issues that impact voter access and also have the potential to disenfranchise voters while not falling directly under the general definition of voter suppression, such as the legitimate moving of polling places or bad weather events. Another example is gerrymandering which, while not directly limiting the ability of citizens to cast a ballot, inherently diminishes the value of citizens’ voices through voting. These are significant issues; however, it is important to make a distinction between issues or challenges that unintentionally affect voters and acts of voter suppression, which are intentional, targeted, and systematic in nature.⁸⁹

Historic Context of Voter Suppression in Virginia

Although Virginia’s constitution, adopted in 1869, provided for universal male suffrage, and the 14th and 15th amendments guaranteed equal protection under the law and gave all men the right to vote, Virginia has a history of racially-based voter suppression. Virginia officials enacted laws and regulations to hinder Black Americans from voting, including a poll tax, literacy tests, increased restrictions on those with criminal records, and a purge of voters from the rolls, among others.⁹⁰ The passage of the Voting Rights Act in 1965 strengthened the enforcement of the 14th and 15th amendments and eliminated blatant voter suppression laws such as literacy tests. Section 5 of the law added greater protections in states with a history of voter suppression, including Virginia. This measure required the US Attorney General or the District Court for the District of Columbia to review any changes that affected voting to ensure they were not discriminatory in intention or effect.⁹¹ This provision came to be known as “preclearance.”

Despite legal challenges, the courts continued to uphold Section 5 until the Supreme Court’s 2013 ruling in *Shelby County v. Holder*. The Court ruled that the formula (Section 4) used to determine which states and local governments were subject to preclearance was outdated, making Section 5 inoperable.⁹² The *Shelby County v. Holder* ruling paved the way for imposing voter photo ID requirements and allowed the Virginia State Board of Elections to remove voters from the rolls using other states’ voter rolls and an external database, which opponents challenged as an inaccurate source.⁹³ In 2020, Virginia passed new legislation repealing the photo ID requirement and expanding access to early and absentee voting.

Members of Congress have introduced legislation, now called the John Lewis Voting Rights Advancement Act, that would restore Section 5 (by adjusting Section 4) and add protections against voter suppression tactics. However, without this law’s passage, or equivalent measures at the state level, future legislation could roll back gains to voter access and institute new voter suppression measures.

F1. Restoring Felons’ Right to Vote

Current LWVUS and LWV-VA Positions

The LWVUS positions do not specifically address felons’ right to vote, although *Impact on Issues* states that Leagues believe that “excessive disenfranchisement undermines voting rights as well as reintegration into the community.”⁹⁴ The LWV-VA has a position in support of Civil Rights of Felons adopted in 2009, separate from the Election Laws positions.⁹⁵

Background

Felony disenfranchisement is commonly cited as an example of voter suppression, affecting as many as 6.1 million Americans in 2016. The longer the waiting period following the completion of sentence before rights are restored, the larger the class of disenfranchised individuals.⁹⁶ The Virginia Constitution, Article II, Section 1 states, “No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority.”⁹⁷ In addition to voting rights, civil rights include the right to hold public office, serve on a jury, serve as a notary, and own a firearm. The Governor is empowered to restore all civil rights except gun rights, which must be restored by the courts.⁹⁸

The practice of revoking the civil rights of prisoners descends from English common law and dates to colonial times. After the Revolutionary War, states began making laws regarding disenfranchisement penalties and refined them after the Civil War. Many Southern states (including Virginia) targeted black male populations to ensure crimes disproportionately committed by them would cause their disenfranchisement. Additionally, it is likely that poor whites were targeted as well. Disenfranchisement policies and laws continue to this day and while advocates and critics can disagree about whether it is *intended* to suppress voting, the result is still disenfranchisement.⁹⁹

Felons lose their right to vote while incarcerated in all but two states and the District of Columbia.¹⁰⁰ Provisions for restoring voting rights vary widely from state to state. In Maine and Vermont, and Washington, D.C., incarcerated persons never lose their voting rights. In 18 states, rights are restored when the person completes their prison sentence. Three states restore rights at the completion of prison and parole, while 17 restore rights after prison, parole, and probation. Virginia and 10 other states are the most restrictive, where rights are lost during prison, parole, probation, and even post-sentence.¹⁰¹

Starting in 2000, the process of rights restoration was streamlined in Virginia—waiting periods were shortened and then eliminated, the requirement to pay all fees prior to rights restoration was eliminated, and governors began restoring voting rights in more cases each year. An estimated 188,000 persons had their voting rights restored over the period, with Governor McAuliffe restoring rights to the majority, an estimated 173,000 people, by executive order during his term.¹⁰² According to the Secretary of the Commonwealth, Governor McAuliffe’s action cleared the backlog of those eligible to have their rights restored. As of August 10, 2020, Governor Northam had restored rights to 32,731 individuals, and he is restoring rights to those who become eligible on a monthly basis.¹⁰³

Despite this recent progress, rights restoration still depends on action by the governor in each individual case as required by the Virginia Constitution, Article V, § 12. In recent years, resolutions for a Constitutional Amendment to eliminate or modify the rights restoration provision have been introduced in

the Virginia General Assembly. In the 2020 session, these included SJ8 (Locke), SJ14 (Deeds), and SJ59 (Morrissey). All were carried forward to the 2021 session.¹⁰⁴

F2. Barriers to Voter Registration

Current LWVUS and LWV-VA Positions

The LWVUS and LWV-VA positions on voter registration are not distinct from the larger message of voter accessibility and good election administration.^{105,106}

Background

Since the US was founded, there has been controversy over who gets to vote and how. Recent attempts to repress registration are more subtle than the old anti-Black “qualifying tests,”¹⁰⁷ but they are still with us. Examples of suppressive voter registration include excessively restrictive voter registration training (Texas),¹⁰⁸ targeting third-party registration groups with unreasonable pecuniary punishment (Tennessee),¹⁰⁹ and slow-rolling voter registration processing (Georgia).¹¹⁰

In Virginia, the 2020 legislative session produced a number of bills related to voter registration that are favorable to the goals of the LWV and recommendations from the Brennan Center for Justice,¹¹¹ the Brookings Institution,¹¹² and the NAACP.¹¹³

The specific voter registration laws from the 2020 General Assembly session are:

- Automatic voter registration (opting out vs. opting in)¹¹⁴
- High school voter registration (access to registration information and applications and the technology necessary to use them)¹¹⁵
- Same day voter registration (beginning 1 July 2022)¹¹⁶
- Removal of archaic laws requiring registration records to be separated by race (invalidated by Virginia courts, but still on the books)¹¹⁷

Since states make the ultimate decisions as to how, when, and under what circumstances voting will proceed, the 2020 legislative session seems to show that Virginia is genuinely determined to improve access to registration and voting.

Federal guidelines offer a template for how states and counties should approach voter registration, but documented abuses go back to just after the Civil War and continue to this day.¹¹⁸ The National Voter Registration Act of 1993 (NVRA), also known as Motor Voter, became official in 1995. It requires state governments to offer voter registration opportunities to any eligible person who applies for or renews a driver’s license or applies for public assistance. NVRA prohibits states from removing registered voters from the rolls unless certain criteria are met and also requires the US Postal Service to mail election materials at the marketing non-profit rate.¹¹⁹ In the first year after the passage of the NVRA, millions of voters registered under its provisions.¹²⁰ The provisions of the NVRA seem clear, yet it has been significantly weakened in many states, a process which has accelerated since 2013. There have been challenges to third-party registrations, more restrictive proof of identity requirements implemented, and many other encumbrances instituted.

The involvement of third-party groups in voter registration has been a mixed blessing. For example, since National Voter Registration Day was established in 2012, it has involved many civic groups, including LWV, in trying to boost voter awareness and increase registrations. Millions of voter registrations are the result, and National Voter Registration Day has become an institution. On the other hand, the Center for Voter Information sent applications for absentee ballots to all eligible voters in Virginia, but due to a misunderstanding, sent the applications to almost 600,000 people asking them to return them (in postage paid envelopes) to the wrong election office.¹²¹

In Washington, DC, a mailer from the DC Board of Elections “... meant to help registered voters in the District confirm their address has spurred confusion for some residents, who say the form’s poor design and instructions have prevented them from filling it out as intended.”¹²² Although these were not deliberate attempts to suppress voter registration, the process is demonstrably vulnerable to human error.

Voter registration was one of the main election activities impacted by COVID-19. Since the enactment of the NVRA, the Department of Motor Vehicles (DMV) has had a key role in voter registration. In Virginia, recent data indicates that DMV voter registration accounts for about half of all registrations.¹²³ Thus, DMV’s shutdown and/or severely curtailed hours during COVID-19 has had a serious impact on voter registration.¹²⁴

Other COVID-19 restrictions also contributed to the decline in registrations. Individuals are reluctant to risk visiting offices of general registrars and are equally leery of voting in person. Voter registration activities conducted by LWV and others at public occasions, e.g., Fourth of July celebrations, community events, and naturalization ceremonies, have been cancelled and are likely to remain in hiatus until next year. The Prince William Area LWV, for example, traditionally registers thousands of newly naturalized citizens annually.¹²⁵ Due to the cancellation of most naturalization ceremonies nationwide, aspiring citizens have been unable to take the Oath of Citizenship and, of course, are unable to register to vote. The result has been voter suppression on a massive scale.

F3. Aggressive Purges of Voter Rolls

Current LWVUS and LWV-VA Positions

While *Impact on Issues* does not have an explicit position on illegal voter roll purging, it describes legal challenges to purging mounted by the League in various states¹²⁶ (likely undertaken because of lack of consistency with Section 8 of the NVRA¹²⁷). LWV-VA’s position can be inferred from the statement of support for well-administered elections in general.¹²⁸

Background

Election officials and administrators regularly update voter rolls for accuracy, most often removing the names of people who have moved or are deceased.¹²⁹ A key component to fair and valid election administration is having up-to-date, accurate, and comprehensive voter registration lists. Done lawfully, and with good data, purging voter rolls is necessary. The problems come when laws are not followed, bad data is used, and outside agitators push for more aggressive purges, all of which can and have resulted in voter suppression by removing legitimate voters from voting rolls.

The Brennan Center for Justice has studied the issue of voter purges extensively. In a 2018 study, the Brennan Center reported that 16 million people were purged from voter rolls nationwide between 2014 and 2016, compared with 12 million between 2006 and 2008. This increase was disproportionate to the increase in the voter population. The report further documented that purge rates increased more in jurisdictions that had been subject to preclearance under Section 5 of Voting Rights Act before the *Shelby County v. Holder* decision of 2013. The Brennan Center estimated that 2 million more voters were purged than would have been if these jurisdictions had stayed with their pre-*Shelby* purge rate.¹³⁰

In Virginia, counties removed 379,000 more voters between 2012 and 2016 than they had in the previous 4-year period. Virginia is among four states (the others being Florida, New York, and North Carolina) that have conducted illegal purges since 2013. In 2013, Virginia joined the Crosscheck program and used its information to remove about 40,000 voters from the voting rolls. Unfortunately, Crosscheck data (designed to detect “double-voters”) was problematic in many respects. Error rates as high as 17% were not discovered before voters had been removed from the rolls right before the 2013 election.¹³¹ A

lawsuit brought by the Democratic Party of Virginia to return these individuals to the voting rolls was not successful.¹³²

The Crosscheck program was suspended indefinitely in December 2019, as the result of a lawsuit filed by American Civil Liberties Union (ACLU) of Kansas that had challenged Kansas' management of the program. Prior to that ruling, a number of states had withdrawn from the program citing inaccurate data among other reasons. The program had also been accused of enabling unlawful voter purges.¹³³ Virginia had withdrawn from the Crosscheck program some months prior to the suspension.¹³⁴

Virginia has been subject to the work of activist groups intent on implementing more aggressive purges, an activity that has become more common since 2008. Before the 2016 election, a self-styled “election integrity” group sued the city registrar of Alexandria in federal court, attempting to pressure her into an improper purge of the voter rolls. In order to protect eligible voters from unlawful disenfranchisement, LWV-VA joined the city’s legal efforts to have plaintiffs’ claims dismissed. The Public Interest Legal Foundation (PILF) and the Virginia Voters Alliance (VVA) published *Alien Invasion in Virginia* in 2016, which purported to document a “massive problem” with voting by noncitizens in the 2016 election. The report may have had a role in doubling the number of alleged noncitizens purged from the voter rolls in 2017. The resulting purges led to litigation, including one against PILF for defamation.¹³⁵ The latest information, posted on March 3, 2019, indicates that this case, filed in the Eastern District of Virginia by the League of United Latin American Citizens (LULAC) of Richmond, is still pending.¹³⁶ This represents a change from the decade prior to 2008 when it was private plaintiffs who were generally worried about improper purges.

Allegations of noncitizen voting, such as those brought by PILF, have been proven baseless and the Presidential Advisory Commission on Election Integrity, set up after the 2016 election, was disbanded after finding no fraud and without even issuing a report.¹³⁷ In a study after the 2016 election, the Brennan Center noted that “The absence of fraud reinforces a wide consensus among scholars, journalists and election administrators: voter fraud of any kind, including noncitizen voting, is rare.”^{138,139}

Many states have “challenger” laws that allow officials or private citizens to question the eligibility of a voter at the polls.¹⁴⁰ Virginia is among them and the statute states that “Any qualified voter may, and the officers of election shall, challenge the vote of any person who is listed on the pollbook but is known or suspected not to be a qualified voter.”¹⁴¹

Federal law does not allow states to conduct large-scale, systemic purges of the voter rolls within 90 days of a federal election, but challenger laws operate much closer to the elections without this safeguard. Virginia is among the states that also allows challenges to registration before an election. The Code of Virginia states that “In addition to challenging a voter’s registration before the general registrar, any three qualified voters may file with the circuit court of the county or city in which they are registered, a petition stating their objections to the registration of any person whose name is on the registration records for their county or city. However, no petition may be filed if the only objection raised is based on removal of residence from the precinct.”¹⁴² Virginia statutes further state that the individual being challenged must be given 15 days’ notice by the petitioner¹⁴³ and that the petition must be filed within six months of the individual’s registration.¹⁴⁴ The Brennan Center notes that large scale challenges that could, in effect, become purges have been attempted in Colorado, Georgia, Iowa, and North Carolina, but these have been blocked with litigation.¹⁴⁵ Some states have repealed challenger laws, but laws allowing challenges to registration and at the polls are still on the books in Virginia.

The job of maintaining accurate voter rolls falls to the Virginia Department of Elections (ELECT) and local registrars play key roles. The ultimate authority to update, retain, or remove voters on the voter list lies with local election officials.¹⁴⁶ The components of list maintenance are spelled out in the Code of Virginia.¹⁴⁷ The 2019 ELECT *Annual List Maintenance Report* shows how, pursuant to state law and the National Voter Registration Act, ELECT conducted its annual match of Virginia’s voters addresses

against records in the US Postal Service's National Change of Address (NCOA) registry, which it is able to do as part of ELECT's membership in the Electronic Registration Information Center (ERIC).

ERIC is a "non-profit organization with the sole mission of assisting states to improve the accuracy of America's voter rolls and increase access to voter registration for all eligible citizens. ERIC is governed and managed by the states who choose to join (currently 30 plus DC) and was formed in 2012 with assistance from the Pew Charitable Trusts. The seven states that pioneered the formation of ERIC in 2012 are: Colorado, Delaware, Maryland, Nevada, Utah, Virginia, and Washington."¹⁴⁸ Member states receive reports "that show voters who have moved within their state, voters who have moved out of state, voters who have died, duplicate registrations in the same state and individuals who are potentially eligible to vote but are not yet registered."¹⁴⁹

Specifics as to procedures for removing a voter from the voter rolls are enumerated in Virginia Code in parts of §24.2-427, 24.2-428, 24.2-428.1, and 24.2-428.2.¹⁵⁰ General registrars are required to cancel the registrations of persons who are known to be deceased, disqualified or ineligible to vote. In response to an LWV-VA inquiry in December 2019 concerning current practices in Virginia, Chris Piper, Commissioner of the Virginia Department of Elections, noted that, as described above, Virginia had formally withdrawn from the Crosscheck program in 2019 and had not actively participated since at least 2017. He also stated that "First, Virginia follows Federal law before an individual can be removed. Any individual who was identified through the Crosscheck program would have been sent a forwardable confirmation letter from the Department. The letter asks the voter to let us know if information received through the program indicating that they may have moved is correct. If the voter returns the letter (postage pre-paid by the state) to the Department confirming that they have moved out of Virginia, then they were removed. If they indicate that they have not moved, then they are kept on the rolls. If the letter is returned undeliverable or if we receive no response thirty days after mailing (remember that it was sent to their Virginia address and would be forwarded to their new address if they had notified USPS that they had moved), then they are marked "inactive". An inactive voter can still appear at the polling place and cast a regular ballot; however, if they fail to vote for two consecutive federal elections, then they are canceled."¹⁵¹ The statutory sections referenced above describe a comparable process when the registrar receives information from the US Postal Service or other reliable source that the voter has moved. ELECT also receives information from the Virginia State Police and the US Attorney's Office concerning felons, from the DMV where the record states whether the individual is a citizen, and from clerks of the circuit courts concerning individuals judged mentally incapacitated.¹⁵² Maintaining accurate voter rolls in Virginia depends on information from many state agencies beyond just ELECT. Every one of them must have the resources and staffing to keep accurate records and provide accurate information to ELECT and ultimately to local elections officials.

F4. Voting Inequities in Long Lines and Faulty Equipment

Current LWVUS and LWV-VA Positions

The LWVUS and LWV-VA positions on specific elements of voting activities are broadly inferred under the category of election administration: every effort should be made to facilitate successful elections.^{153,154}

Background

Waiting to vote is not merely annoying or inconvenient—if a voter cannot wait because, for example, she needs to get to work, that voter is disenfranchised¹⁵⁵ and arguably has been subject to voter suppression. Moreover, problems on Election Day, such as malfunctioning scanners or electronic pollbooks, can be seen as a form of voter suppression or, at the very least, voter disenfranchisement.¹⁵⁶

Heavy turnout, problems with voting equipment, or decisions about polling place management can all be factors that result in long lines.

Lines and Wait Times

The subject of lines and their disparate impacts on lower income and minority voters has been studied a great deal by the Brennan Center, the Bipartisan Policy Center, and others. In its study after the 2018 election, the Brennan Center found that areas that had become less white and poorer over the previous 10-year period had longer wait times compared with whiter, wealthier jurisdictions. This finding is in line with other social science research that finds that areas undergoing substantial demographic change can struggle to fund and provide the additional services that may be required.¹⁵⁷ The Brennan Center report also notes that simply ensuring resource parity does not necessarily ensure equal outcomes when it comes to wait times. For example, voting can be much harder and more time-consuming for voters for whom English is not their first language.¹⁵⁸ The Bipartisan Policy Center, using extensive data collected from 230 jurisdictions during the 2018 election—including 17 jurisdictions and 392 precincts in Virginia—found that wait times were longer in precincts with higher percentages of minorities, renters, and low income voters. Almost 5% of precincts in this study had average wait times of more than 30 minutes.¹⁵⁹

What is a reasonable amount of time to wait? In its report presented in January 2014, *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*, the Commission set 30 minutes as the maximum acceptable wait time to vote.¹⁶⁰ Yet in the 2016 election, the Bipartisan Policy Center estimated that more than half a million eligible voters did not vote because of polling place problems, including long lines.¹⁶¹ In the 2016 election, stories about voting problems in states including Arizona, Florida, North Carolina, Ohio, Pennsylvania, and Virginia filled the press.¹⁶²

For the 2018 midterm elections, the Brennan Center estimated that 3 million voters waited more than 30 minutes to vote as voter turnout surged compared with the previous nonpresidential cycle in 2014.¹⁶³ Long lines at the polling places can arise when local elections officials make resource decisions based on turnout in the previous comparable election. In Virginia, almost 55% of registered voters turned out to vote in 2018, compared with 37% in the 2014 election.¹⁶⁴ In 2018, there were also pollbook glitches and scanner issues.^{165,166} In Prince George's County, MD, in 2018, "Voters, who turned out in unusually large numbers for a midterm election, waited for more than two hours at some polling sites. Elections officials calculated the number of paper ballots sent to each of the county's 274 precincts based on 2016 turnout, allotting enough ballots for 70 percent of the total turnout from the presidential election that year." However, that formula did not work for a number of precincts, as turnout was 52% compared with 40% in the 2014 midterm elections. "Prince George's election officials denied any effort to suppress voters, saying that Election Day was a success for most voters; but they blamed themselves for the miscalculation."¹⁶⁷

Voting problems in a number of states holding primary elections in 2020 during the COVID-19 pandemic foreshadow potential problems in November. Wisconsin; Georgia; Maryland; and Washington, DC, all experienced long lines for a variety of reasons.¹⁶⁸ Turnout is expected to be heavy again in November 2020.¹⁶⁹ The start of early voting in Virginia on September 18 is instructive. Lines of voters hundreds deep were reported in Northern Virginia as well as elsewhere in the Commonwealth. And the lines started early: in Arlington, 200 voters had voted by 9 a.m. and by the end of the day over 1,400 people had voted.¹⁷⁰

Voting Equipment

Federal laws, state laws and regulations, and decision-making by local officials all play a role in shaping the voting experience, including wait times. For voting equipment, Virginia localities are required

by law to meet standards set forth by the State Board of Elections as well as the Code of Virginia.¹⁷¹ State law requires at least one scanner per precinct and one voting booth with a marking device per 425 voters. The statute requires that each precinct with more than 4,000 registered voters provide not less than two scanners for a presidential election.¹⁷² The statutes also make a general statement concerning resources, “The governing body of each county, city, and town shall provide funds to enable the general registrar to provide adequate facilities at each polling place for the conduct of elections.”¹⁷³

While Election Day equipment issues can happen, Virginia has not demonstrated an overall pattern of machine problems, nor does it have a reputation for being nonresponsive in the event of problems. ELECT has created a *General Registrar and Electoral Board Handbook*¹⁷⁴ (*the Handbook*) that is amended annually to reflect any changes in Virginia election laws and includes, for example, the specifications for voting machines and other electronic equipment, such as pollbooks, and Election Day contingencies (e.g., machines breaking down).¹⁷⁵ Moreover, the Code of Virginia sets statewide standards that require localities to meet an acceptable standard of election equipment and administration, which, in turn, requires localities to budget for their needs in order to be compliant with the law.¹⁷⁶ However, it is not unreasonable to think that the resources of a district—there are 133 voting districts in Virginia with per capita incomes ranging from \$17,500 to almost \$70,000¹⁷⁷—may dictate decisions such as how often machines are replaced, their maintenance, how many poll workers can be hired and adequately trained, all of which ultimately determine the extent to which all citizens have similar, and positive, voting experiences.

Polling Places

Fewer polling places or changes in polling places are likely to lead to voter confusion and longer lines. For example, a Stateline post from Pew noted that “In the five years since the U.S. Supreme Court struck down key parts of the Voting Rights Act, nearly a thousand polling places have been shuttered across the country, many of them in southern black communities” and that in the first eight months of 2018, “10 counties with large black populations in Georgia closed polling spots after a white elections consultant recommended they do so to save money.”¹⁷⁸

By law, in Virginia, precincts in counties and cities can have no more than 5,000 registered voters.¹⁷⁹ For towns, the general requirement is one precinct for each town.¹⁸⁰ Changes in polling places within a precinct can cause voter confusion and Virginia also has laws governing these changes. In general, changes to polling places cannot be made within 60 days of a general election, any changes must be advertised, and voters affected must be notified at least 15 days prior to the election.¹⁸¹

Absentee Voting

Problems can also arise if elections officials overestimate the amount of early or absentee voting. A Policy Note in ELECT’s *the Handbook* states “Due to the rise in absentee voting, and the projected continued expansion of absentee voting, ELECT Policy recommends that absentee voters be excluded when calculating the number of voters a precinct will serve. However, absentee voters may be included or excluded for the purpose of calculating the number of voters in each precinct and creating new precincts when necessary.”¹⁸²

And, as became painfully evident during the 2020 primaries in some states, projections for absentee voting break down if voters do not receive their absentee ballots in a timely manner.¹⁸³ Long lines in Maryland were subsequently described as voter suppression by Governor Hogan, prompting his call for all polling places to be open in November, despite challenges created by the COVID-19 pandemic.¹⁸⁴ Governor Hogan reversed his decision at the urging of the Maryland Electoral Board, which had urged the use of vote centers, instead of precincts. In issuing his proclamation, however, the governor “told elections officials he worried fewer polling locations could lead to long lines and potentially

disenfranchise voters.” Hogan went on to write in a brief letter, “I remain very concerned,” about getting applications for mail-in ballots to every registered voter.¹⁸⁵

By making this change, Maryland joins 16 states that allow vote centers, according to the National Conference of State Legislatures.¹⁸⁶ In a policy recommendation that states develop a vote center transition plan, the Brennan Center recommends that vote centers be piloted in lower turnout elections, allowing elections officials to gather information on how voters distribute themselves, among other factors.¹⁸⁷ Certainly the 2020 election cannot be considered a low turnout practice event.

Poll Workers

COVID-19 is having a broad impact on Election Day logistics nationwide as elderly poll workers are unlikely to volunteer because they are a high-risk group.¹⁸⁸ Across the country, there have been severe shortages of poll workers; this has restricted the number of voting sites and, therefore, reduced access to voting.¹⁸⁹ In many cases, the result has also been very long lines.¹⁹⁰

F5. Purposeful Dissemination of False Information: Disinformation

Current LWVUS and LWV-VA Positions

Currently, there is no LWVUS or LWV-VA position on disinformation.

Background

Disinformation in elections, the deliberate dissemination of false, misleading, or biased information, is not a new concept in the US. Note that *misinformation* is also misleading or incorrect, but it lacks the purposeful intent of disinformation.¹⁹¹ Most commonly, disinformation took the form of phone calls or fliers that conveyed inaccurate information about the voting process with the aim of keeping certain voters away from the polls; these forms still exist today. Examples include mailers that list the wrong election date or robotic calls that claim that one party votes on Tuesday while another votes on Wednesday. Disinformation also has the potential to undermine public confidence in the electoral process and outcomes.

Election disinformation in the digital age takes on new forms and offers tools that allow malign actors to spread disinformation more rapidly, widely, and in a more targeted manner. Social media provides a platform where actors can utilize user data to hyper-target individuals based on their demographic or likely political sentiments. Actors also use tools such as bots to automate fake accounts that share and repost these messages, further amplifying their reach. Moreover, deliberate disinformation can easily become misinformation as articles and posts are shared and re-shared through social media or picked up and published by traditional media outlets.

Disinformation as a tactic of voter suppression gained a foothold during the 2016 elections with the revelation that Russian-backed actors utilized social media to spread inaccurate information about the election process and stoke partisan sentiments with the intent of undermining confidence in the electoral process. While disinformation from foreign actors remains a threat, these tactics are increasingly being adopted by domestic actors, including political parties and candidates.¹⁹²

In the 2018 midterm elections, the Brennan Center for Justice found that disinformation took on three forms that aimed at suppressing voter turnout:

1. ***Deception*** such as sharing of inaccurate information about how and when to vote in the elections

2. **Demobilization and calls to boycott** including messages expressing sentiments that voting is worthless or candidates do not care about certain groups. Notably, many of these messages were targeted at minority voters

3. **Intimidation** inducing threats of violence at polling stations¹⁹³

In the 2020 election environment, an aggressive disinformation campaign against mail-in voting has been carried out.¹⁹⁴ This is a particularly insidious circumstance since mail-in voting and absentee voting have increased dramatically because of COVID-19. In fact, 35 states have changed their absentee/mail-in voting laws in some manner.¹⁹⁵ As of this writing, this attack on mail-in/absentee voting is an ongoing effort.

Actors share disinformation through different types of messages and posts including:

1. **Memes:** images with text that evoke human or other emotions
2. **Deepfakes:** videos created using artificial intelligence that misrepresent or manufacture events, including mimicking individuals' speaking patterns and mannerisms
3. **False news pages and articles** that convey inaccurate, misleading, sensational, or divisive information for financial or political gain¹⁹⁶

Activist groups and election officials have tried a number of tactics to counter disinformation efforts or to mitigate their negative effects. Social media platforms have struggled with mitigating the spread of disinformation on their sites. Facebook, Twitter, and YouTube have banned the use of manipulated media, such as deepfakes. They have also banned content that includes deceptive information about voting procedures, while promoting authentic sources of voting information. However, they have struggled to keep up with the volume and evolving tactics of those pushing disinformation.¹⁹⁷ Social media platforms have been successful in identifying and removing networks of accounts belonging to foreign actors that push disinformation or divisive posts, but regulating disinformation of domestic actors is more difficult since statements and social media posts could be claimed as free speech. Political actors may also claim the platforms are taking a partisan stance.¹⁹⁸

Other measures to counter disinformation include:

1. **Controlling the narrative through promoting accurate information from trusted sources:** Ensure that election stakeholders such as election administrators have adequate resources and the tools to provide voters with timely and accurate information to enhance confidence in the electoral process. These efforts should particularly target those most vulnerable to disinformation and voter suppression efforts. For example, ELECT is hiring a public relations firm specifically to develop such messaging.
2. **Understanding disinformation trends and sources:** Election stakeholders need to rapidly identify disinformation being circulated and quickly respond with mitigation measures. Tools such as the MITRE Corporation's SQUINT can help to crowdsource information about potential election misinformation circulating on social media and share it with local election officials.¹⁹⁹ LWV-VA is participating in a pilot of SQUINT for the 2020 elections.
3. **Fact checking:** Flag potentially deceptive or inaccurate information and provide access to more accurate information sources.

The 2016-2020 period shows that a more sophisticated and aggressive disinformation campaign is taking place. Moreover, tactics of creating doubt and confusion around routine elements of election administration have allowed actors to cast doubt on the normal election procedures themselves. Bluntly put, creating confusion itself is all that is required; the merits of the claim(s) are irrelevant.

II. Study Committee Recommendations

Carefully consider the need for and the appropriate timing of future studies

The COVID-19 pandemic has highlighted many of the strengths and weaknesses in overall voting administration. However, this is also an opportunity for the LWV (at state and national levels) to reflect deeply on voter access goals and develop new ways to increase voter participation and, more broadly, foster civic engagement. For example, many of the temporary laws passed because of COVID-19 should be considered for permanent legislation and could be considered as *de facto* “pilot programs.” Likewise, an analysis of the funding aspect of those temporary laws can help improve understanding of costs involved in combatting voter suppression. Additionally, as an examination of resources will inevitably arise from such a thoughtful undertaking, including a focus on the difference between equality and equity (i.e., where applicable, resources should be distributed – not equally – but according to need).

Add a paragraph/statement on voter suppression to Positioned for Action

LWV-VA positions regarding voter suppression are inferred and not articulated specifically. One way to bring greater focus to reducing voter suppression is to add this paragraph (or one similar) within the Election Laws sections:

Voter Suppression

Voter suppression is best understood as placing a thumb on a scale to either increase the cost of voting or diminish the benefit of voting. Our advocacy will be critical towards actions undertaken to increase voter access and resist efforts to narrow it. As such, use descriptive words and phrases like ‘long waiting times’ or ‘disinformation campaigns’ in lieu of the broad term ‘voter suppression.’ Where necessary, an analysis of costs associated with specific actions that we are endorsing to mitigate voter suppression should be considered and included in advocacy opportunities. Every effort should be made to support Virginia legislators’ endeavors to propose legislation that will establish Voting Rights Act-like measures where they have been diminished at federal levels; specifically, but not limited to, the “preclearance” component. Voter suppression activities will continually change over time; Leagues across the Commonwealth should monitor activities and adapt accordingly.

Add language about voter suppression throughout Positioned for Action

This would allow for voter suppression language to be integrated throughout the existing document. Here are some examples of how existing text could be amended:

Rights of Felons in Virginia

Existing Position:

The League of Women Voters of Virginia believes that:

- The civil rights of felons in Virginia should be restored automatically either upon release from incarceration or upon completion of probation and parole.
- The procedure should be identical for all felons, regardless of the nature of their crime.
- The process should be easy to understand, accessible, transparent and fair.
- Information about the process should be available to felons, the justice and corrections system and the general public. (2009)

Add

- *A constitutional amendment and enabling legislation should be pursued to guarantee that future administrations continue a rights restoration process as developed and implemented starting in 2016.*

Election Laws

Existing position under Role of the Commonwealth:

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. The Commonwealth should provide additional funding where localities are financially unable to support an accessible and well-managed election system.

The Department of Elections (ELECT) and the State Board of Elections (SBE) must be given adequate authority and resources to: enforce election laws and mandatory standards for local election offices; encourage best practices in registration and elections management, especially in training election officers and officials; provide adequate oversight of registration and elections at locality and precinct levels; and oversee implementation of election laws, regulations and policies to ensure their consistent application across the Commonwealth. (2015)

Add

...and combat disinformation that can be used as a voter suppression tactic

Existing position under Registration:

Because the system of voter registration affects voter turnout, and because federal legislation has extended the availability and ease of voter registration in Virginia,

- Voter registration opportunities must be available, by mail and in person, consistently throughout the Commonwealth;
- A uniform system of voter registration is required to facilitate voting and prevent fraud; and
- Additional measures should be adopted to increase the availability of voter registration, especially those that utilize technological advances or provide cost savings, including:
 - Online voter registration,
 - 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.

Add

- *Care should be taken to ensure that the maintenance of voter rolls does not result in purges of eligible voters or other voter suppression.*

Existing position under At the Polls:

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*;
- Well-trained officers of election; and
- Polling places selected to maximize voter participation and near public transportation, wherever possible.

Replace “voting delays” with:

wait times which can result in voter disenfranchisement

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